SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(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: 10-08-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 will call the cases of those who appear in person first. If you 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. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

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	1996-7-CV-333099 Hearing: Order of Examination	Kbrg/Klok Radio Vs Feliciano Joe Et Al	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow for proper service. If there is no appearance by the moving party, the matter will be ordered off calendar.
LINE 2	24CV434749 Hearing: Demurrer	Eliseo Hernandez Villanueva vs General Motors, LLC	See Tentative Ruling. Court will issue the final order.
LINE 3	24CV436896 Hearing: Demurrer	Hassan Abpikar et al vs STATE FARM MUTUAL AUTOMOBILE et al	See Tentative Ruling. Court will issue the final order.
LINE 4	21CV381458 Motion: Summary Judgment/Adjudication	Tori Moses vs Hyatt Corporation et al	Off Calendar
LINE 5	22CV401826 Motion: Summary Judgment/Adjudication	Stuart Kirchick vs Allied Telesis, Inc. et al	See Tentative Ruling. Court will issue 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 6	21CV385112 Motion: Compel	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 7	21CV385112 Motion: Compel	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 8	21CV385112 Motion: Compel	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 9	21CV385112 Hearing: for Relief from Waiver	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 10	21CV385112 Hearing: for Relief from Waiver	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.

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

LINE 11	2009-1-CV-149951	C. Hui, Et Al Vs Q. Zhang, Et Al	Plaintiff's motion for indemnity and attorney's fees is denied. Plaintiff has failed to establish that he is the prevailing party prior to the motion to enforce being fully decided. Plaintiff did not provide legal authority for his proposition that the Court can award fees prior to determination of the motion to enforce. His cited case *In re Estate of Drummond* (2007) 56 Cal. Rptr. 3d 691, 695, does not stand for that. Moreover, the other case cited by Plaintiff specifically states that the "prevailing party determination is to be made only upon final resolution of the contract claims." *Hsu v. Abbara* (1995) 9 Cal. 4th 863, 876. The Court need not rule on Plaintiff's evidentiary objections as that evidence was not the basis for the court's ruling. Although Defendant filed his opposition late, the Court will not strike it, but warns Defendant that next time the Court may strike pleadings that are not timely filed. Defendant Liang shall submit the final order within 10 days of the hearing.
LINE 12	23CV414706 Motion Set aside & vacating prior order	Bank Of America, N.a. vs Alfonso Palma	Notice appearing proper and good cause appearing, the unopposed motion to set aside dismissal and enter judgment is GRANTED. Plaintiff shall submit the final order within 10 days.

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

LINE 13	21CV385112 Hearing: for Relief from Waiver	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 14			
LINE 15			
LINE 16			
LINE 17			

- oo0oo -

Calendar Line 2
Case Name: *Villanueva v. General Motors, LLC, et al.*
Case No.: 24CV434749

This is a lemon law action. According to the allegations of the complaint, on January 24, 2022, plaintiff Eliseo Hernandez Villanueva ("Plaintiff") purchased a 2020 Chevrolet Corvette, which had a balance of the original New Vehicle Limited Warranty from defendant General Motors, LLC ("GM") provided with it. (See complaint, ¶¶ 4-7.) An implied warranty that the vehicle was merchantable and GM's implied warranty of fitness also accompanied the vehicle's purchase. (See complaint, ¶ 8.) Unfortunately, the vehicle suffered from nonconformity to warranty, including defects relating to TCM, transmission, no start and the safety restraint system. (See complaint, ¶ 9.) Plaintiff subsequently delivered the subject vehicle to GM service and repair facilities for repair of the aforementioned defects on numerous occasions; however, GM has been unable to or refused to repair the vehicle pursuant to the applicable express and implied warranties under the Song-Beverly Consumer Warranty Act. (See complaint, ¶¶ 10-11.)

On April 5, 2024, Plaintiff filed a complaint against GM, asserting causes of action for:

1) Violation of the Song-Beverly Consumer Warranty Act;
2) Failure to commence repairs within a reasonable time and to complete them within 30 days—Civil Code §§ 1793.2(b) and 1794;
3) Violation of the Magnuson-Moss Warranty Act; and,
4) Violation of Consumer Legal Remedies Act--Civil Code § 1750, et seq.[1]

GM demurs to each of the causes of action on the ground that they fail to state facts sufficient to constitute a cause of action. Defendants also attempted to move to strike allegations supporting punitive damages.

I. DEFENDANT GM'S DEMURRER TO THE COMPLAINT

Plaintiff's request for judicial notice

In support of his opposition to GM's demurrer, Plaintiff requests judicial notice of the complaint. Plaintiff's request for judicial notice is GRANTED. (See Evid. Code § 452, subd. (d).)

First and second causes of action for violation of the Song-Beverly Consumer Warranty Act and for failure to commence repairs within a reasonable time and to complete them within 30 days

GM demurs to the first and second causes of action under the Song-Beverly Consumer Warranty Act on the ground that the Act does not apply since the complaint does not allege that Plaintiff purchased a "new motor vehicle" as required by the Act. (See GM's

[1] The third and fourth causes of action are labeled as the fourth and fifth causes of action, respectively. The court will refer to these causes of action as the third and fourth causes of action as there are only four causes of action in this complaint.

memorandum of points and authorities in support of demurrer ("GM demurrer memo"), pp.8:17-27, 9:1-15.) In opposition, Plaintiff asserts that GM's position is contrary to the law as the Act's protections extend to any vehicle sold with a balance remaining on its new vehicle warranty.

The Act's definition of "new motor vehicle"

Section 1793.2 provides that "[i]f the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B)." (Civ. Code § 1793.2, subd. (d)(2).) In turn, Civil Code section 1793.22, subdivision (e)(2) states that "'new motor vehicle' means a new motor vehicle that is bought or used primarily for personal, family, or household purposes… [but] also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state… the chassis, chassis cab, and that portion of a motor home devoted to its propulsion… a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty." (Civ. Code § 1793.22, subd. (e)(2) ("demonstrator" is in turn, defined as "a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type").)

Jensen

In *Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112 (hereinafter, "*Jensen*"), "Jensen leased a 1988 BMW 528e from Stevens Creek BMW Motorsport in Santa Clara in January 1989… [i]n response to a newspaper ad for BMW demonstrators…." (*Id*. at p.119.) The salesman told Jensen the car had been used as a demonstrator for the dealership… [had] 7,565 miles at the time of the lease… [and] also said she would get the 36,000-mile warranty on top of the miles already on the car, and gave her the warranty booklet." (*Id*.) "Unknown to Jensen, Stevens Creek BMW obtained the car at the Atlanta Auto Auction the month before… [and i]t had been owned by the BMW Leasing Corporation and registered in New Jersey." (*Id*. at p.120.) A few weeks after owning the car, Jensen had a brake problem that made the car shake violently. (*Id*.) Jensen took the car in for repair on multiple occasions, but the dealership was unable to solve the brake problem. (*Id*.) Thus, Jensen demanded a refund of her original down payment, lease payments and other fees, or replacement of the car with credit for the original down payment and lease payments. (*Id*.) BMW was unwilling to cede to Jensen's demands and Jensen filed a complaint alleging violation of the Song-Beverly Act. (*Id*.)

BMW argued that "or other motor vehicle sold with a manufacturer's new car warranty" was a clarifier word of "demonstrator," not its own category of vehicles to be considered as a a "new motor vehicle" under the Act. (*Id*. at p.122.) The *Jensen* court concluded that "section 1793.22 includes cars sold with a balance remaining on the new motor vehicle warranty [as that] is consistent with the Act's purpose as a remedial measure… [and] is also consistent with the Department of Consumer Affairs' regulations which interpret the Act

to protect 'any individual to whom the vehicle is transferred during the duration of a written warranty.'" (*Id*. at p.126.)

Dagher

In *Dagher v. Ford Motor Co*. (2015) 238 Cal.App.4th 905, the court noted that "[t]he Act treats new motor vehicles somewhat differently from used motor vehicles" and that "the Act's definition of consumer goods is qualified by section 1795.5… [which] limited provisions for an express warranty to be sold and enforced for used goods (or used vehicles): 'Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean 'new' goods, the obligation of a distributor or retail seller of used consumer goods in a sale in which an express warranty is given shall be the same as that imposed on manufacturers under this chapter [with some stated exceptions, involving who shall maintain sufficient service and repair facilities within this state, and the duration of any implied warranties].'" (*Id*. at p.921.) In fact, *Jensen*, *supra*, cited section 1795.5, to note that "[d]efective used cars are addressed by a separate section of the Act." (*Jensen*, *supra*, 35 Cal.App.4th at p.123, fn.2.) The *Dagher* court then noted that "the holding in *Jensen*, *supra*, 35 Cal.App.4th 112, hinged upon the circumstance that the subject vehicle had been leased to the plaintiff by the dealer, while it retained a balance on the manufacturer's new motor vehicle warranty." (*Dagher*, *supra*, 238 Cal.App.4th at p.922.) "'Section 1793.22, subdivision (e)(2), defines a 'new motor vehicle' as 'a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes,' and it also includes 'a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty,' by the dealer… Jensen was therefore entitled to the protections of the Act because that more specific definition of the 'consumer good' was controlling over the general provisions of section 1791, subdivision (a)." (*Id*.) "It was likewise crucial to the holding in *Jensen* that the dealer fit the section 1791, subdivision (l) definition of a 'seller' that "engages in the business of selling or leasing consumer goods to retail buyers," thus allowing application of the Act." (*Id*.) "In *Jensen*, the court's focus was mainly on the nature of the vehicle (a demonstrator), and on the seller (lessor), a dealer." (*Id*.) "Plaintiff cannot persuasively rely on the statement in *Jensen*, *supra*, 35 Cal.App.4th at page 126, that the protections of section 1793.22 may extend to all 'cars sold with a balance remaining on the manufacturer's new motor vehicle warranty,' in support of his claim that coverage for him is required by the Act's remedial purpose." (*Id*.) "The plaintiff in our case is not the same kind of 'subsequent purchaser' who bought or leased an essentially 'new' vehicle directly from a dealer, as discussed in *Jensen*, and he is not entitled to the same coverage by the Act." (*Id*. at pp.922-923 (also distinguishing *Jensen*, stating that "[i]n *Jensen*, the vehicle qualified as new because she acquired it from the dealer, at retail, under warranty").)

Rodriguez

In *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, the court noted that "no California court has addressed whether a used car purchased from a retail seller unaffiliated with the manufacturer qualifies as a 'new motor vehicle' simply because there is some balance remaining on the manufacturer's warranty." (*Id*. at p.223.) The *Rodriguez* plaintiffs "argue[d] *Jensen* is on point, but we find the case easily distinguishable… [as] *Jensen* involved a lease by a manufacturer-affiliated dealer who issued a full new car warranty along with the lease." (*Id*.) The *Rodriguez* court stated that "[t]hough we think *Jensen* was correctly decided, we agree with *Dagher* that its statement about 'the Act's coverage for subsequent purchasers of vehicles with a balance remaining on the express warranty, must be read in light of the facts then before

the court, and are limited in that respect.'" (*Id*. at p.224, quoting *Dagher*, *supra*, 238 Cal.App.5th at p.923.) Given that [*Jensen*'s] facts included a car leased with a *full* manufacturer's warranty issued by the manufacturer's representative, the court was not asked to decide whether a used car with an unexpired warranty sold by a third party reseller qualifies as a 'new motor vehicle.'" (*Id*. at p.224.) The court then concluded that "the phrase 'other motor vehicles sold with a manufacturer's new car warranty' refers to cars sold with a full warranty, not to previously sold cars accompanied by some balance of the original warranty." (*Id*. at p.225.)

On July 13, 2022, the California Supreme Court granted the petition for review of *Rodriguez* and noted that "[p]ending review, the opinion of the Court of Appeal… may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion… to choose between sides of any such conflict." (*Rodriguez v. FCA US, LLC* (2022) 295 Cal.Rptr.3d 351.)

Stiles

Subsequently, the Second District addressed a situation where the plaintiffs purchased a used 2011 Kia Optima for which some of Kia's original warranties were still in effect, including the basic and drivetrain warranties. (See *Stiles v. Kia Motors America, Inc*. (2024) 101 Cal.App.5th 913, 916.) The vehicle developed defects and Kia could not repair those defects after a reasonable number of attempts, and did not replace the vehicle or make restitution as required pursuant to the Song-Beverly Act. (*Id*.) The trial court sustained the demurrer on the ground that the vehicle was not a "new motor vehicle" under the Act, rejecting *Jensen*, *supra*, and relying on *Rodriguez*, *supra*. (See *Stiles*, *supra*, 101 Cal.App.5th at p.916.) The Second District reversed the trial court, stating that while the definition of "new motor vehicle" in Civil Code section 1793.22, subdivision (e)(2) "applies only to express warranties of motor vehicles" and that "[t]he provisions on implied warranties in the Song-Beverly Act make no reference to the definition of 'new motor vehicle,'" Stiles' car is nevertheless a "new motor vehicle" as defined by section 1793.22, subdivision (e)(2) as it "precisely me[t] the definition as a 'motor vehicle sold with a manufacturer's new car warranty.'" (*Stiles*, *supra*, 101 Cal.App.5th at pp.918-919.) *Stiles* also criticized the *Rodriguez* court's interpretation of the phrase "'other motor vehicle sold with a manufacturer's new car warranty' to be limited to vehicles that have 'never been previously sold to a consumer and come with full express warranties'… [as] add[ing] words to the statute." (*Id*. at p.919.) "The statute contains no such limitation as vehicles that have never been previously sold to a consumer and come with full express warranties" and the *Stiles* court's interpretation "defies the rules of English grammar and logic." (*Id*.) Instead, the *Stiles* court agreed with *Jensen*, *supra*, asserting that the *Jensen* court "relied on the rule of statutory construction… examin[ing] the language of the statute…[as well as] the legislative history [to] support[] its interpretation." (*Stiles*, *supra*, 101 Cal.App.5th at p.920.)

The Court agrees with *Stiles* that section 1793.22 plainly states that a "new motor vehicle" includes "other motor vehicle sold with a manufacturer's new warranty"

Here, it is clear that there is a split of authority; as previously stated, the California Supreme Court has recognized "the existence of a conflict in authority" and granted the petition for review of *Rodriguez*. As the California Supreme Court noted, this court thus has

the discretion to choose sides. (See *Rodriguez v. FCA US, LLC* (2022) 295 Cal.Rptr.3d 351; see also *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn. 4 (stating that "[s]uperior courts in other appellate districts may pick and choose between conflicting lines of authority… [t]his dilemma will endure until the Supreme Court resolves the conflict, or the Legislature clears up the uncertainty by legislation").)

Here, the Court agrees with the *Stiles* court that Civil Code section 1793.22, subdivision (e)(2)'s definition of a "new motor vehicle" plainly includes a "motor vehicle sold with a manufacturer's new car warranty." The subject vehicle is alleged to have been sold with a manufacturer's new car warranty. (See FAC, ¶ 7.) In reply, GM does not even address *Stiles* and thereby fails to distinguish the instant case from *Stiles*.

The demurrer to the first and second causes of action is OVERRULED.

Third cause of action for violation of the Magnuson-Moss Warranty Act

GM argues that because the complaint's causes of action based on the Song-Beverly Act fail to state facts sufficient to constitute a viable cause of action, the dependent third cause of action for violation of the Magnuson-Moss Warranty Act likewise fails. (See GM demurrer memo, pp.9:22-28, 10:1-10.) However, as stated above, the first and second causes of action state facts sufficient to constitute causes of action for violation of the Song-Beverly Act. Accordingly, GM's demurrer to the third cause of action for violation of the Magnuson-Moss Warranty Act is also OVERRULED.

Fourth cause of action for violation of the Consumers Legal Remedies Act (CLRA)

GM asserts that the fourth cause of action for fraud fails to allege facts with sufficient particularity. (See GM demurrer memo, pp.10:13-28, 11:1-28, 12:1-17.) However, the fourth cause of action is for violation of the CLRA, not for common law fraud. "The requirement that fraud be pleaded with specificity… does not apply to causes of action under the consumer protection statutes." (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261 (also stating that "we conclude causes of action under the CLRA and UCL must be stated with reasonable particularity, which is a more lenient pleading standard than is applied to common law fraud claims").) GM's argument that the fourth cause of action fails to allege facts with the requisite particularity for common law fraud causes of action is without merit.

GM also argues that the allegation that it induced consumers into believing that they are purchasing a high quality vehicle based on its written and implied warranties is non-actionable puffery. (GM demurrer memo, pp.12:18-25, 13:1-5.) However, this argument only pertains to one of the five alleged violations of the CLRA, and "a demurrer cannot rightfully be sustained to part of a cause of action." (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047; see also *PH II, Inc. v. Super. Ct. (Ibershof)* (1995) 33 Cal.App.4th 1680, 1682 (stating that "[a] demurrer does not lie to a portion of a cause of action").)

Lastly, GM cites to *Mel Clayton Ford v. Ford Motor Co*. (2002) 104 Cal.App.4th 46, 49, asserting that the case stands for the proposition that "in California, an automaker is not liable for the independent conduct of a dealership employee." (GM demurrer memo, p.13:6-11.) *Mel Clayton Ford* does stand for that proposition and it is unclear why GM believes the

case is applicable. In *Mel Clayton Ford*, *supra*, the appellate court reversed orders regarding motions for summary judgment and adjudication regarding an indemnity provision; the instant case does not involve a motion for summary judgment or adjudication or an indemnity provision. GM also argues that Plaintiff bears the burden to prove agency; however, this argument further demonstrates GM's misunderstanding of the law. "Generally, an allegation of agency is an allegation of ultimate fact and is, of itself, sufficient to avoid a demurrer." (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 376; see also *Dones v. Life Ins. Co. of North America* (2020) 55 Cal.App.5th 665, 685 (stating that "[a]n allegation of agency is an allegation of ultimate fact that must be accepted as true for purposes of ruling on a demurrer"); see also *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 230 (stating that "[t]he general allegation of agency is one of ultimate fact, sufficient against a demurrer"); see also *City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 212 (stating that "[a]n allegation of agency is an allegation of ultimate fact that must be accepted as true for purposes of ruling on a demurrer"); see also *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1106 (stating that "[a]n allegation of agency constitutes an averment of ultimate fact, which we accept as true on a demurrer").)

GM's demurrer to the fourth cause of action is OVERRULED.

II. GM'S MOTION TO STRIKE PORTIONS OF THE COMPLAINT

GM moves to strike allegations supporting punitive damages, arguing that the complaint fails to adequately allege facts supporting malice, oppression or fraud.[2] However, as Plaintiff notes, Civil Code section 1780, subdivision (a)(4) specifically provides for "punitive damages" for "[a]ny consumer who suffers any damage as a result of the use or employment by any person of a method act, or practice declared to be unlawful by Section 1770." (Civ. Code § 1780, subd. (a).) As previously stated above, Plaintiff states facts sufficient to constitute a cause of action for violation of the CLRA and alleges actual damages as a result of the violation of the CLRA. (See complaint, ¶¶ 46-59.)

GM also argues that Plaintiff may not seek punitive damages because "Civil Code section 3294 is applicable only for the breach of an obligation not arising from contract… [and w]hether it is the purchase contract or GM's warranty, this action relates only to obligations that did arise from a contract." (GM's reply brief in support of motion to strike, pp.4:25-27, 5:1-6.) However, the plain language of Civil Code section 1780, subdivision (a)(4) provides for punitive damages. Civil Code section 1752 notes that the remedies of the CLRA "shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law." (Civ. Code § 1752.) As to the argument regarding the nature of the obligation, while actions for violation of the CLRA will always peripherally involve a contract since the CLRA prohibits several unfair or deceptive acts or practices resulting in the sale or lease of goods or services to any consumer, section 1770, subdivision (a) concerns misrepresentations, false advertising, disparaging, passing off or unfair provisions with regards to the sale or lease of those goods—thereby qualifying it as "an action for the breach of an obligation not arising from contract." A CLRA action is, in fact, an action for the violation of a statutory obligation. Here, the allegations of the CLRA cause of action are sufficient to support Plaintiff's claim for

[2] GM failed to reserve the hearing for the motion to strike, resulting in a civil filing rejection from the clerk of the Court. However, the Court will nevertheless address the motion as it is otherwise fully briefed.

punitive damages if Plaintiff is able to prove those allegations. On a motion to strike, the Court must accept the allegations as true. (See *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1121; see also *Clauson v. Super. Ct. (Pedus Services, Inc.)* (1998) 67 Cal.App.4th 1253, 1255 (stating that "[i]n passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth"); see also *Shersher v. Super. Ct. (Microsoft Corp.)* (2007) 154 Cal.App.4th 1491, 1494, fn. 2 (stating that "[f]or purposes of a motion to strike, we assume the allegations of the complaint to be true"); see also *Blakemore v. Super. Ct. (Avon Products, Inc.)* (2005) 129 Cal.App.4th 36, 53 (stating that "[a] motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true").)

GM's motion to strike allegations supporting punitive damages is DENIED.

The Court will prepare the Order.

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Calendar Line 3
Case Name: *Abpikar, et al. v. State Farm Insurance, et al.*
Case No.: 24CV436896

This is an insurance coverage dispute. Plaintiff Hassan Abpikar ("Insured") obtained insurance coverage for two cars and his home with defendant State Farm Insurance ("State Farm") on November 23, 2021. (See complaint, ¶ 28.) On September 27, 2023, Insured called State Farm to add another vehicle, a Honda Civic, and Insured received a Temporary Auto Insurance Confirmation from State Farm agent Jennifer. (See complaint, ¶¶ 19-20.) On January 12, 2024, the Honda Civic was involved in an accident with plaintiff Elidia Jade "Liz" Nichols ("Liz") as the driver of the vehicle with Insured's permission. (See complaint ¶ 21.) On February 7, 2024, plaintiffs Insured, Albert Nichols ("Albert") and Liz had a phone conversation with State Farm Claim Specialist Celeste McNally White ("Celeste") who stated that the Honda Civic was a total loss and that Plaintiff had the option of either retaining the Honda Civic for the salvage value of $8,671.70 with State Farm paying the difference of $17,479.83 to lienholder American Honda Finance Corporation, sued as American Honda Financial ("AHF"), or, State Farm keeps the Honda Civic and pays the lienholder the sum of $27,030.33. (See complaint, ¶¶ 22-23.) That day, Insured, Albert and Liz received Celeste's email confirming the settlement options. (See complaint, ¶ 24, exh. A.) On February 8, 2024, Insured and Liz emailed a letter to State Farm, AHF and Guaranteed Auto Protection Insurance Co. ("GAP"), stating that they elected to have State Farm pay $17,479.83 to AHF and to have GAP pay the difference between what State Farm pays to AHF and what is owed by Liz to AHF. (See complaint, ¶ 25, exh. B.) On February 9, 2024, Insured moved the Honda Civic to a body shop to be repaired, and on February 23, 2024, the Honda Civic was repaired such that it is now operational. (See complaint, ¶¶ 26-27.) On March 31, 2024, Insured emailed a letter to State Farm, AHF and GAP that he had paid over $13,800 in parts and labor to a body shop for the repair of the 2023 Honda Civic. (See complaint, ¶ 28, exh. C.) On March 28, 2024, State Farm Claims Specialist Jill Zuber ("Ms. Zuber") contacted Insured with a documentation/ information request; on April 1, 2024, Ms. Zuber emailed Insured again seeking a recorded statement; on April 4, 2024, Ms. Zuber again sought a recorded statement along with a photocopy of the vehicle title, the vehicle registration, the complete name, telephone number and address for Liz, a copy of Insured's driver's license, a copy of Liz's driver license, a copy of the police report and a recorded statement from Liz; on April 8, 2024, Ms. Zuber asked Insured whether he was represented by an attorney and whether he would be available to complete his recorded statement; and on April 8, 2024, Ms. Zuber stated that State Farm would pay for storage of the Honda Civic through April 10, 2024. (See complaint, ¶ 29, exhs. D-H.) Insured responded to Ms. Zuber, indicating that he had already provided a recorded statement with Celeste on February 7, 2024, but would be willing to have a second recorded conversation if Ms. Zuber also gave permission to record her voice and to have an attorney present. (See complaint, ¶ 30.) Ms. Zuber did not respond to Insured's response. (See complaint, ¶ 31.) State Farm never paid AHF and AHF seeks to have Insured or Liz pay $596.63 per month on the vehicle, but Insured contends that State Farm and GAP owe the monies to AHF. (See complaint, ¶¶ 32-33.)

On April 29, 2024, plaintiffs Insured and Albert (collectively, "Plaintiffs") filed a complaint against State Farm, AHF and GAP (collectively, "Defendants"), asserting causes of action for:

1) Breach of contract (against State Farm);

2) "Bad faith practices not to pay the Plaintiffs[‘] legitimate claim, constitutes grand theft of Plaintiffs[‘] personal properties (cash), CPC 487(a)" (against State Farm);
3) Concealing or withholding Insured's stolen personal property (cash), under CPC 496(a) and (c) (against State Farm);
4) Breach of fiduciary duty (against State Farm);
5) Intentional misrepresentation/fraud (against State Farm);
6) Constructive fraud (against State Farm);
7) Conspiracy (against State Farm); and,
8) Unjust enrichment (against State Farm).

Defendant AHF demurs to each cause of action of the complaint on the grounds that they are uncertain as to AHF and also fail to state facts sufficient to constitute causes of action against them.

III. DEFENDANT AHF'S DEMURRER TO THE COMPLAINT

The complaint does not label any causes of action against AHF

AHF demurs to each cause of action of the complaint on the ground that they are uncertain because none of the causes of action are alleged against them. As AHF notes, California Rule of Court requires that the complaint, for "[e]ach separately stated cause of action, count, or defense, [it] must specifically state… [t]he party or parties to whom it is directed (e.g., 'against defendant Smith')." (Rule of Court 2.112, subd. (4).) As AHF argues, the causes of action are stated to be against State Farm, not AHF. Plaintiffs apparently concede the issue as their opposition does not address the argument.

AHF's demurrer to the complaint on the ground that it is uncertain is SUSTAINED.

The first cause of action fails to state facts sufficient to constitute a breach of contract

AHF also demurs to each cause of action on the ground that they fail to allege facts with respect to it. As to the first cause of action, AHF argues that it fails to allege the existence of any contract between AHF and Plaintiffs and Plaintiffs have not set forth the terms of any such agreement. (See *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821 (stating that "the elements of a cause of action for breach of contract [include]… the existence of the contract"); see also *Lewis v. YouTube, LLC* (2015) 244 Cal.App.4th 118, 124 (Sixth District, stating same).) Indeed, the first cause of action alleges an "agreement … when Abpikar **insured** his 2023 Honda Civic with the **State Farm Insurance**." (Complaint, ¶ 33 (emphasis added); see also complaint, p.2 (alleging that "this complaint is based on Evidentiary Documents showing by 'Clear and Convincing Evidence' that Plaintiff Abpikar has made continuous monthly payments to the State Farm Insurance and is still making the same payments for his 3 cars for the last 27 months"), ¶¶ 19-20 (alleging that Abpkiar called State Farm on September 27, 2023 "to add another car, a 2023 Honda Civic… to be insured under the SAME COVERAGES of the existing policy for the other 2 cars"), 34 (alleging that the breach of the contract was "by failing to perform any of the obligations Defendant State Farm was required to pursuant to the agreement, including… [p]aying the $17,749.70 to AHF; and… [e]xplaining the reason why GAP Insurance would not pay the difference between the amount Albert Nicols and Elidia Jade Nichols owed ($30,618) to the AHF and the amount the State

Farm pays to the AHF").) Thus, the contract referenced by the first cause of action is the insurance contract between Insured and State Farm—not between Plaintiffs and AHF.

In opposition, Plaintiffs argue that AHF did not comply with the terms and conditions set in the Debt Cancellation Agreement ("DCA") or the GAP waiver Addendum by not cancelling the remaining amount owed when the car was totaled. (See Pls.' opposition to demurrer to complaint ("Opposition"), p.3, ¶ 12,) However, the complaint does not even mention either a DCA or a GAP waiver Addendum. Plaintiffs' argument lacks merit. Accordingly, the first cause of action fails to state facts sufficient to constitute a cause of action for breach of contract against AHF and the demurrer to the first cause of action on this ground is SUSTAINED.

Second cause of action for "Bad faith practices not to pay the Plaintiffs['] legitimate claim, constitutes grand theft of Plaintiffs['] personal properties (cash), CPC 487(a)"

AHF argues that the second cause of action fails to state facts sufficient to constitute a cause of action against it because it does not allege any acts by it and the complaint's allegations establish that AFC has not received any money relating to the insurance claim.

In opposition, Plaintiffs do not address AHF's argument but rather assert that AHF owes Plaintiffs $3,630.33 based on the amount that AHF has collected but has not yet refunded, again relying on the unpleaded DCA. (See Opposition, pp.4-5, ¶¶ 17-18.) Plaintiffs also assert that AHF creates a financial burden on Plaintiffs by holding them responsible for a debt that should not exist and constitutes harassment. (See Opposition, p.5, ¶ 19.) Plaintiffs lastly assert that reporting Albert and Liz to credit reporting agencies for being late on a loan payment where the loan should not exist is unlawful and should be reversed. (See Opposition, p.5, ¶ 20.)

To the extent that the second cause of action alleges a conspiracy to steal Plaintiffs' cash, "[t]he elements of a civil conspiracy are (1) the formation of a group of two or more persons who agreed to a common plan or design to commit a tortious act; (2) a wrongful act committed pursuant to the agreement; and (3) resulting damages." (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 212; see also *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1021 (stating that "[c]onspiracy is… a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration").) Here, the second cause of action fails to identify either the alleged agreement between conspirators or the common plan or design. The second cause of action does not allege a conspiracy. Moreover, the second cause of action also does not allege facts supporting liability as to AHF. The second cause of action fails to allege anything regarding a failure to deliver title or the reporting to credit reporting agencies. AHF's demurrer to the second cause of action on the ground that it fails to state facts sufficient to constitute a cause of action is SUSTAINED.

Third cause of action for "Concealing or withholding Insured's stolen personal property (cash), under CPC 496(a) and (c)"

As to the third cause of action, AHF again argues that the third cause of action fails to state facts sufficient to constitute a cause of action against it because it does not allege any acts

by it and the complaint's allegations establish that AFC has not received any money relating to the insurance claim and thus could not have concealed or withheld any stolen money.

In opposition, Plaintiffs do not address this cause of action, effectively conceding the issue. Accordingly, the demurrer to the third cause of action on the ground that it fails to state facts sufficient to constitute a cause of action is SUSTAINED.

Fourth cause of action for breach of fiduciary duty

AHF argues that the fourth cause of action for breach of fiduciary duty fails to state any facts demonstrating a fiduciary duty between it and Plaintiffs, and that the law is clear that lenders have no fiduciary duties owed to a borrower. (See *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 436 (stating that "a loan transaction is at arm's length and there is no fiduciary relationship between the borrower and lender").)

In fact, there are no allegations regarding AHF in the fourth cause of action. In opposition, Plaintiffs do not address this cause of action, effectively conceding the issue. Accordingly, the demurrer to the fourth cause of action on the ground that it fails to state facts sufficient to constitute a cause of action is SUSTAINED.

Fifth and sixth causes of action for fraud

AHF argues that the fifth and sixth causes of action for fraud fail to state facts with sufficient particularity as to it. (See *Lazar v. Super. Ct. (Rykoff-Sexton, Inc.)* (1996) 12 Cal.4th 631, 645 (stating that "[i]n California, fraud must be pled specifically; general and conclusory allegations do not suffice… [t]his particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered… against a corporate employer… the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written'").) Indeed, the fifth and sixth causes of action do not allege that AHF or its agents made any misrepresentations or concealed any material facts that caused harm to Plaintiffs, much less how, when, where, to whom and by what means any such representations were tendered. In opposition, Plaintiffs do not address these causes of action, effectively conceding the issue. Accordingly, the demurrer to the fifth and sixth causes of action on the ground that they fail to state facts sufficient to constitute a cause of action is SUSTAINED.

Seventh cause of action for conspiracy

AHF argues that the seventh cause of action fails to allege facts to support a conspiracy claim. As previously stated, "[t]he elements of a civil conspiracy are (1) the formation of a group of two or more persons who agreed to a common plan or design to commit a tortious act; (2) a wrongful act committed pursuant to the agreement; and (3) resulting damages." (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 212; see also *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1021 (stating that "[c]onspiracy is… a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration").) Here, there are no facts with respect to AHF's involvement in the common plan or design, AHF's agreement with the other alleged co-conspirators, or AHF's alleged wrongful acts in furtherance of the conspiracy.

In opposition, Plaintiffs do not address this cause of action, effectively conceding the issue. Accordingly, the demurrer to the seventh cause of action on the ground that it fails to state facts sufficient to constitute a cause of action is SUSTAINED.

Eighth cause of action for unjust enrichment

AHF argues that the eighth cause of action fails to allege any facts sufficient to constitute a cause of action against it because there are no facts suggesting that AHF has received any insurance proceeds or is not entitled to receive payments under any agreement.

Again, in opposition, Plaintiffs do not address this cause of action, effectively conceding the issue. Accordingly, the demurrer to the eighth cause of action on the ground that it fails to state facts sufficient to constitute a cause of action is SUSTAINED.

Conclusion

AHF's demurrer to the complaint is SUSTAINED in its entirety with 20 days leave to amend.

The Court will prepare the Order.

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Calendar Line 5
Case Name: *Stuart Kirchick v. Allied Telesis, Inc. et al.*
Case No.: 22CV401826

I. Factual and Procedural Background

Plaintiff Stuart Kirchick ("Plaintiff") brings his Second Amended Complaint ("SAC") against defendants Allied Telesis, Inc. ("ATI"), Allied Telesis Holdings K.K. ("ATKK"), and Does 1-10 (collectively, "Defendants").

Plaintiff was hired as Senior Legal Counsel for ATI on December 1, 2011 at a rate of $60,000 annually and full benefits. (SAC, ¶ 12.) In addition to his employment at ATI, Plaintiff maintained his own private law practice. (*Ibid*.)

In or around 2013, ATI became involved in litigation against another company ("underlying litigation" or "underlying case"). (SAC, ¶ 13.) Plaintiff was involved in managing outside counsel, consulting with outside counsel and ATI executives, researching areas of law for discussion with outside counsel, participating in witness and export depositions, participating in mediations, and having settlement discussions with the other company's general counsel. (*Ibid*.)

In 2020, it was determined that ATKK was the proper plaintiff for the other litigation, not ATI. (SAC, ¶ 14.) Plaintiff was heavily involved in the litigation and "[a]s the case geared up for trial, ATI and ATKK asked [Plaintiff] to ramp up his time and assist the outside counsel in successfully prosecuting the litigation." (*Ibid*.) Thereafter, ATI and ATKK entered into an agreement ("2020 Agreement") with Plaintiff which included an agreement to pay Plaintiff a monthly, contingent, recoverable bonus draw of $15,000 ("the draw"). (*Id.* at ¶ 16.)

On or about September 2020, Ash Padwal ("Padwal"), ATI's Chief Risk Officer and Board Member of ATKK, told Plaintiff that ATKK was paying out too much in legal fees to outside counsel and could no longer pay the draw promised in the 2020 plan. (SAC, ¶ 17.) However, Padwal assured Plaintiff he would be getting a substantial bonus when litigation concluded. (*Ibid*.)

In January 2021, Plaintiff called Padwal to tell him he could not continue to take resources away from his law practice while working on the other litigation without a draw unless he could count on a bonus. (SAC, ¶ 18.) Padwal told Plaintiff that ATKK CEO Takayoshi Oshima ("Taki") wanted Plaintiff to continue in the litigation and he would "ensure Plaintiff would be compensated for his continued close involvement[.]" (*Ibid*.)

In February 2021, ATI presented Plaintiff with another compensation agreement ("2021 Agreement") with the same compensation bonus offered except that Plaintiff was no longer receiving a monthly draw. (SAC, ¶ 19.) Plaintiff agreed to this "because the litigation was looking more likely to conclude in [ATKK's] favor and Plaintiff anticipated being paid a substantial bonus." (*Ibid*.) Plaintiff signed this agreement in May 2021 when "it was contemplated that the litigation would resolve or commence trial in 2021." (*Id*. at ¶ 20.) However, due to COVID-19 delays in July 2021, there were no available courtrooms in Santa Clara County for the underlying case to proceed to trial. (*Id*. at ¶ 21.)

On December 13, 2021, the case was set for trial but was then continued to January 10, 2022 at the request of ATKK based on travel difficulties and because they did not want to remain in the United States while the Court was in recess in December. (SAC, ¶ 21.) As the

trial date neared, Plaintiff set aside most of his other work to focus on the litigation, anticipating the substantial bonus. (*Id*. at ¶ 22.)

On December 27, 2021, mediation in the underlying litigation failed and Plaintiff prepared for trial. (SAC, ¶ 23.) Padwal assured Plaintiff that he would speak with him about his bonus and everyone should remain focused on the trial. (*Ibid*.) Padwal's conduct and statements assured Plaintiff he would be paid his bonus so he focused on litigation rather than negotiating a bonus renewal. (*Ibid*.)

During the first week of January 2022, Plaintiff had repeated conversations with Padwal, wherein Padwal said that he should keep working hard to get the case settled because of the bonus agreements. (SAC, ¶ 24.) Relying on the assurances that ATI and ATKK would pay his bonus if the litigation was successful, Plaintiff continued to work on the case. (*Id*. at ¶ 25.)

In or around February 2022, Plaintiff inquired about his bonus payment to Padwal, who told Plaintiff "the decision on the bonus was up to [the] team in Japan at ATKK." (SAC, ¶ 28.) Then in May 2022, Defendants offered to pay Plaintiff a substantially smaller bonus if he executed a release of claims. (*Id*. at ¶ 29.) Plaintiff informed Defendants that asking him to sign a release of disputed wages was a misdemeanor and refused to sign the release. (*Ibid*.) Padwal ultimately told Plaintiff that ATKK was not willing to honor the bonus plan and would only pay him $350,000. (*Id*. at ¶ 30.) Plaintiff remains an employee of Defendants but still has not been paid his earned bonus. (*Id*. at ¶ 32.)

On July 18, 2022, Plaintiff filed his initial complaint against Defendants. Defendants demurred to the first, second, and third causes of action. On February 6, 2023, this Court (Hon. Rosen) issued its order sustaining the demurrer to the three causes of action with 20 days' leave to amend.[3] Plaintiff then filed his FAC on February 24, 2023 and Defendants again demurred to the first, second, and third causes of action. On July 11, 2023, the Court (Hon. Adams) issued its ordering sustaining the demurrer to the first and third causes of action with 10 days' leave to amend and overruling the demurrer to the second cause of action.

On July 21, 2023, Plaintiff filed his SAC asserting the following causes of action: (1) Failure to Pay Wages; (2) Breach of Contract; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Fraud – Intentional Misrepresentation; (5) Fraud – False Promise; (6) Promissory Estoppel; and (7) Negligent Misrepresentation. Defendants demurred to this pleading and on December 13, 2023, the Court (Hon. Rosen) issued its order sustaining the demurrer to the first and third causes of action without leave to amend.

On July 29, 2024, Defendants filed a motion for summary judgment, or in the alternative, summary adjudication, to Plaintiff's remaining causes of action, including the second, fourth, fifth, sixth, and seventh causes of action and the prayer for punitive damages. Plaintiff opposes the motion and Defendants filed a reply.

II. Requests for Judicial Notice

a. Defendants' Request

In support of their motion for summary judgment, Defendants request the Court take judicial notice of the following:

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[3] The Court overruled the demurrer on the basis of uncertainty.

1) Plaintiff's SAC; and
2) The Court's December 13, 2023 Order on Defendants' demurrer.

The request is GRANED. (See *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own file]; *People v. Woodell* (1998) 17 Cal.4th 448, 455 [While a trial court is permitted to "'take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments— [] the court cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.'"].)

b. Plaintiff's Request

Plaintiff requests the Court take judicial notice of its February 7, 2023 Order on Defendants' demurrer to the FAC. The request is DENIED. The Court finds it unnecessary to take judicial notice of a prior order to a pleading that is no longer operative. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

III. Legal Standard on Motion for Summary Judgment or Summary Adjudication

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id*. at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid*.) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion." (*Id*. at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]" (*Augilar*, *supra*, 25 Cal.4th at p. 844 [internal quotations omitted].) The moving party's evidence is strictly construed, while the opposing party's evidence is liberally construed. (*Id*. at p. 843.)

Furthermore, "a motion for summary adjudication may be made . . . as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) "A party may seek summary adjudication on whether the cause of action, . . . or punitive damages claim has merit[.]" (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630; Code Civ. Proc., § 437c, subd. (f)(1).)

IV. Defendants' Evidentiary Objections

In reply, Defendants submit objections to the Kirchick Declaration ("Kirchick Decl."): (1) Paragraph 9; (2) Paragraph 14; (3) Paragraph 20, p. 7:6-8; (4) Paragraph 20, p. 7:11-15; and (5) Paragraph 29.

The Court declines to rule on objections 1, 2, and 5. (See Code Civ Proc., § 437c, subd. (q) ["In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion."].) Objection 3 to Paragraph 20, p. 7:6-8 is OVERRULED. (See Evid. Code, § 1222.) Objection 4 to Paragraph 20, p. 7:11-15 is OVERRULED.

V. Discussion

Defendants move for summary judgment of Plaintiff's SAC, or in the alternative, summary adjudication of each of the SAC's remaining causes of action and its prayer for punitive damages.

A. Second Cause of Action – Breach of Contract

The elements of a breach of contract claim are: "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.)

a. Defendants' Burden

Defendants argue that Plaintiff does not have admissible evidence that they breached an enumerated term of the 2020 Agreement or 2021 Agreement. (Motion, p. 11:19-20.) Specifically, Defendants contend that Plaintiff cannot establish that he performed on the contract because the agreements provided that he would only receive a bonus if performance objections were achieved in the underlying litigation by the end of each respective calendar year. (Motion, p, 12:3-6.) Defendants proffer evidence that, per the terms of the contract, Plaintiff was required to meet the performance objections by December 31, 2021, and that he did not complete the performance objectives until after that date.

In support of their motion, Defendants provide the 2021 Agreement, which states that "it shall remain in effect through December 31, 2021" and that "[i]f the Company meets the following performance objectives by the end of the Calendar year 2021, [Plaintiff] will by entitled to payout as follows . . ." (UMF No. 18 [citing Burke Decl., Ex. 7 [2021 Agreement]].) The 2021 Agreement's performance objectives included that litigation efforts resulted in a settlement or award in favor of Defendants. (*Ibid*.) Defendants further provide evidence that the litigation that was the subject of the agreements did not resolve in either 2020 or 2021. (UMF Nos. 17 [citing Sheldon Decl., Ex. F [Plaintiff's Response to Defendants' RFA Nos. 1, 3, 4 wherein Plaintiff admits that the litigation did not resolve in the 2020 calendar year, the litigation did resolve in the 2022 calendar year, and Plaintiff was not entitled to a bonus under the 2020 Agreement] and 20 [citing Sheldon Decl., Ex. F [Plaintiff's Response to Defendants' RFA No. 2 wherein Plaintiff admits the litigation did not resolve in the 2021 calendar year] and Sheldon Decl., Ex. D [Plaintiff's deposition testimony stating the litigation resolved in 2022].)

Additionally, Defendants proffer evidence that Plaintiff admitted that he did not have conversations with anyone at ATI about what would happen if the underlying litigation did not

settle or go to trial in 2020 or 2021, pursuant to the 2020 and 2021 Agreements. (See UMF No. 25 [citing Shelon Decl., Ex. D [Plaintiff's deposition stating Plaintiff did not have specific conversations about what would happen if the underlying litigation did not settle in 2021].) This is undisputed by Plaintiff. Finally, Defendants argue that while Plaintiff had conversations with Padwal regarding his bonus, Plaintiff could not recall these conversations sufficiently to provide a quote about anything that was said between Plaintiff and Padwal and that instead, Padwal made "cheerleading comments." (Motion, p. 12:16-20, citing UMF No. 27 [Sheldon Decl., Ex. D [Plaintiff's deposition stating he could not describe the conversations he had with Padwal in detail and that it included general statements about the bonus and "cheerleading comments" and "encourag[ing] statements"]].)

Accordingly, Defendants have met their burden of demonstrating that Plaintiff failed to perform under the terms of the contract. The burden now shifts to Plaintiff to show a triable issue of material fact exists.

b. Plaintiff's Burden

In opposition, Plaintiff argues that Defendants have "completely ignore[d] whether the calendar year was a material term and whether Plaintiff substantially performed." (Opposition, p. 14:4-5.) Plaintiff asserts five arguments regarding the first cause of action: (1) he substantially performed on the contract; (2) his failure to perform by the end of the 2021 calendar year was excused; (3) the end of the calendar year was not a material term of the agreement that would result in a total forfeiture by Plaintiff; (4) Defendants waived the calendar year term after assuring Plaintiff he should keep working because of the bonus; and (5) evidence of the parties' intent is admissible when deciding whether there are triable issues of fact as to whether the terms of an agreement are material.

Substantial Performance

Plaintiff first contends that he is only required to prove that he substantially performed on the contract. (Opposition, p. 14:15-17, citing CACI 303 and *Connell v. Higgins* (1915) 170 Cal. 541, 556 (*Higgins*).) Plaintiff quotes the portion of *Higgins* where the California Supreme Court explained that:

> Substantial performance means that there has been no willful departure from the terms of the contract, and no omission of any of its essential parts, and that the contractor has in good faith performed all of its substantive terms. If so, he will not be held to have forfeited his right to a recovery by reason of trivial defects or imperfections in the work performed. . . . Whether, in any case, such defects or omissions are substantial, or merely unimportant mistakes that have been or may be correct, is generally a question of fact.

(*Higgins*, *supra*, at pp. 556-557.) Additionally, "the doctrine of substantial performance also applies when a party performs but misses a deadline. 'Where time is not of the essence of a contract, payment made within a reasonable time after the due date stated in the contract constitutes compliance therewith.'" (*Magic Carpet Ride LLC v. Rugger Investment Group, L.L.C.* (2019) 41 Cal.App.5th 357, 364 (*Magic Carpet*).)

Plaintiff contends that all parties intended the contracts to be renewed every year and intended that if Plaintiff successfully resolved the underlying litigation, he would be paid a percentage of the settlement as a bonus. To support this assertion, Plaintiff proffers his declaration wherein he states that on December 27, 2021, a mediation between the parties in

the underlying litigation took place and went until very late at night but ultimately failed. (AMF Nos. 21-23 [citing Kirchick Decl., ¶ 20].) Thereafter, "it was all hands on deck to prepare for the trial set to begin on January 10, 2022" and that Padwal repeatedly told Plaintiff "after the mediation and up until the time the case was settled," to keep working to get the case settled so that he could get his bonus. (*Ibid*.) Plaintiff continued to work on the litigation including reviewing motions in limine and staying in contact with the opposing counsel to continue to push for settlement through the 2021 calendar year. (*Ibid*.) Finally, the underlying case settled only a few days into the 2022 year. Thus, Plaintiff has evidence to establish that he substantially performed on the contract, therefore this issue should be resolved by a trier of fact. (See *Magic Carpet*, *supra*, 41 Cal.App.5th at p. 364; see also *Posner v. Grunwald-Marx, Inc.* (1961) 56 Cal.2d 169, 187 ["'What constitutes substantial performance is a question of fact, but it is essential that there be no wilful [*sic*] departure from the terms of the contract, and that the defects be such as may be easily remedied or compensated, so that the promisee may get practically what the contract calls for.'"].)

Given that the Court has concluded Plaintiff met his burden, it declines to consider his remaining arguments regarding his performance of the agreements.

Based on the foregoing, the motion for summary judgment, or adjudication as to the second cause of action is DENIED. The balance of the order will address Defendants' motion for summary adjudication.

B. Fraud-Based Claims (Intentional Misrepresentation, False Promise, Negligent Misrepresentation)

Plaintiff's fraud-based claims are predicated on a variety of misrepresentations purportedly made by Padwal. (See SAC, ¶¶ 17, 18, 23, 24, 25.) These alleged representations, including statements made after the expiration of the 2021 Agreement, include: assuring Plaintiff he would be getting a substantial bonus at the conclusion of litigation; telling Plaintiff that Taki wanted Plaintiff to continue his involvement in the litigation and that Plaintiff would be compensated for this involvement; assuring Plaintiff he would speak with him about their bonuses and to continue to focus on the trial; and that Plaintiff should keep working hard because of the bonus agreement. (*Ibid*.)

As a general matter, "[t]he necessary elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1108 [superseded by statute on other grounds as stated in *Aguilar*, *supra*, 25 Cal.4th at p. 853, fn. 19].) "'Promissory fraud' is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) "The elements of a claim for negligent misrepresentation are nearly identical" to a claim for fraud. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166.) "Only the second element is different, requiring the absence of reasonable grounds for believing the misrepresentation to be true instead of knowledge of its falsity." (*Ibid*.)

Defendants assert two arguments concerning the fraud claims: (1) that there is no evidence that they made any false promises or representations to Plaintiff and (2) fraud claims

based on an alleged breach of contract are barred where the damages Plaintiff seeks are the same economic losses alleges to have stemmed from the breach of contract.

a. Defendants' Burden

Defendants first contend that there is no evidence they made any false promises or representations to Plaintiff. They assert that because of the long history of entering into annual bonuses, Plaintiff understood that each agreement was dependent on Defendants hitting certain performance objectives by the end of each calendar year. (Motion, p. 14:1-4, citing UMF Nos. 5-13.) To further support their argument, Defendants proffer Plaintiff's deposition testimony where he testified he did not have any conversations with anyone at ATI about what would happen if the case did not settle in 2020 or 2021. (UMF No. 25 [citing Sheldon Decl., Ex. D].) Next, Plaintiff could not sufficiently recall anything he told Padwal or ATI's CEO Taki regarding the bonuses or anything that they told him. (Motion, p. 14:8-13, citing UMF No. 23-27.) Finally, as to this point, Defendants contend that Plaintiff acknowledged that neither his supervisor, Padwal, or the head of HR, Mick Burke ("Burke"), had authority to offer bonus agreements without the approval of Taki. (Motion, p. 14:16-18, citing UMF No. 28 [Sheldon Decl., Ex. D [Plaintiff's deposition stating he understood that Taki and the board of directors had final say regarding approval of any bonus agreements and that he understood that neither Burke nor Padwal had authority to offer these agreements without approval from Taki or the board].)

Plaintiff's deposition testimony additionally states that, other than a phone call in December 2020, Plaintiff does not recall having any other conversations with Padwal about the 2021 Agreement, aside from Padwal's "general comments that, you know, keep working hard. Keep working hard. You've got that bonus. We got to get you that bonus. You know, just sort of dangling the carrot." (Sheldon Decl., Ex. D, p. 151:8-19.) Moreover, in his deposition testimony, Plaintiff acknowledges that the general gist of Padwal assuring him that he was going to speak to him about the bonus and that the focus should remain on the underlying trial and that conversations that took place in late 2021 or early 2022 were "kind of like cheerleading comments . . . I mean, it was just, like, you know, keep going . . . we got to get this case settled, . . . we got to get that bonus for you . . . It was just kind of encouragement statements." (Sheldon Decl., Ex. D, p. 210:2-15.) Further, any conversations that took place in early January 2022 are referred to by plaintiff as "general cheerleading comments." (*Id.* at p. 213:18-24.)

The Court finds that based on Defendants' proffered evidence, they have met their burden of showing that no specific false promises or representations were made to Plaintiff by anyone with authority regarding the 2021 Agreement or what would happen to Plaintiff's bonus if the underlying litigation did not complete by the end of the 2021 calendar year.

b. Plaintiff's Burden

In opposition, Plaintiff argues that both Taki and Padwal made representations to Plaintiff that he would get his bonus if the underlying litigation resolved in Defendants' favor. (Opposition, p. 18:14-16, citing AMF Nos. 21-26, 40.) AMF Nos. 21-26 refer to paragraph 20 of Plaintiff's declaration wherein he states that: Padwal repeatedly told him to keep working to settle the underlying litigation so he could get his bonus after the mediation and up until the case was settled and both Padwal and Taki told Plaintiff he would get the bonus if the case was successfully resolved and so he did not push to make sure he had a 2022 bonus plan. (See Kirchick Decl., ¶ 20.)

First, on summary judgment, "the pleadings frame the issues to be resolved." (*Snatchko v. Westfiled LLC* (2010) 187 Cal.App.4th 469, 477.) Additionally, "[a] plaintiff may not avoid summary judgment by producing evidence to support claims outside the issues framed by the pleadings." (*Ibid*.) Rather, "[a] plaintiff wishing 'to rely upon unpleaded theories to defeat summary judgment' must move to amend the complaint before the hearing." (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 90.) Here, the SAC is devoid of allegations that Taki himself made any representations to Plaintiff about the 2021 Agreement or a bonus if the underlying case settled after the agreement expired. The SAC contains only allegations that Padwal made certain representations to Plaintiff. However, Plaintiff proffers no evidence that Padwal knew that Defendants would not honor any bonus agreement or that he made any other statements with knowledge of their falsity. (See e.g., *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061 ["the essence of the fraud is the existence of an intent at the time of the promise not to perform it."][emphasis and internal quotations omitted].) As for negligent misrepresentation, similarly, Plaintiff provides no evidence that at the time Padwal made the statements to him, he had no grounds for believing that those representations were true.

The motion for summary adjudication of the fourth, fifth, and seventh causes of action is GRANTED. As such, the Court declines to address the remaining arguments related to these claims.

C. Sixth Cause of Action – Promissory Estoppel

"Promissory estoppel applies whenever a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance would result in an injustice if the promise was not enforced. The elements of a promissory estoppel claim are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting estoppel must be injured by his reliance." (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1671-1672 [internal citations and quotations omitted]; see also *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901.) For the purposes of this cause of action, a "promise" is "an assurance that a person will or will not do something." (*Grandadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 417.)

Plaintiff's sixth cause of action alleges that Defendants "clearly and unambiguously" promised him a bonus at the conclusion of the underlying litigation and that in reliance on this promise, he worked diligently and rejected or deferred all other work related to his private law practice. (SAC, ¶¶ 77-78.)

a. Defendants' Burden

Defendants argue that (1) they made no promises to Plaintiff about what would happen if the underlying litigation did not settle or go to trial in 2020 or 2021 and (2) there is no evidence that Plaintiff reasonably relied to his detriment on any false promises made by Defendants.

To support their first argument, Defendants contend that there is no evidence that they promised Plaintiff anything about what would happen if the underlying litigation did not settle or go to trial in either 2020 or 2021. In his deposition testimony, Plaintiff admits as much, stating he does not recall any specific conversations about what would happen if the underlying litigation did not settle in 2021. (UMF No. 25, citing Sheldon Ex. D, pp. 151:1-7, 171:13-24,

172:12-18 [Plaintiff's deposition testimony].) Defendants further assert that while Plaintiff did have conversations with Padwal after failed mediation in the underlying litigation, Plaintiff could not recall what exactly was said to him other than general "cheerleading comments." (UMF Nos. 23-27.) Next, Defendants contend that Plaintiff also knew that neither Padwal nor Burke had the authority to offer bonus agreements without Taki's approval and therefore, any reliance on the cheerleading comments made by Padwal was not reasonable. (Motion, p. 17:6-12, citing UMF No. 28.)

Accordingly, Defendants have met their burden of demonstrating there was no false promise or reasonable reliance by Plaintiff. The burden now shifts to Plaintiff to show that a triable issue of material fact exists.

b. Plaintiff's Burden

In opposition, Plaintiff argues he was promised that if he devoted his time to successfully resolving the underlying litigation, he would be paid a substantial bonus and that Plaintiff did devote his time to the litigation but would have otherwise devoted that time to his private practice without such a promise. (Opposition, p. 21:11-14.) Plaintiff does not refer to or cite any specific evidence with respect to the promissory estoppel claim. To the extent Plaintiff is relying on his evidence previously submitted in support of his opposition, the Court finds this persuasive. First, Plaintiff proffers evidence that Padwal made several statements to him regarding the bonus and that, even after the year ended, Padwal kept deferring the issue of the bonus. (See Kirchick Decl., ¶¶ 21, 24-25.) Combined with the 2021 Agreement itself, there was sufficient assurances made to Plaintiff that he would be paid a bonus if the case settled. Whether or not Plaintiff's reliance on these promises by Padwal were reasonable is a question of fact. (See e.g., *Flintco Pacific, Inc. v. TEC Management Consultants, Inc.* (2016) 1 Cal.App.5th 727, 734 ["whether the reliance was reasonable is a question of fact unless reasonable minds could reach only one conclusion based on the evidence"].)

Accordingly, Plaintiff establishes a triable issue of fact as to his promissory estoppel claim and the motion for summary adjudication of the sixth cause of action is DENIED.

D. Punitive Damages

Civil Code section 3294 permits recovery of punitive damages where, in an action for breach of obligation not arising from contract, the plaintiff proves by clear and convincing evidence that the defendant has been guilty of "oppression, fraud, or malice . . ." (Civ. Code, § 3294, subd. (a).) "[W]here the plaintiff's ultimate burden of proof will be by clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or summary adjudication, since if a plaintiff is to prevail on a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard." (*American Airlines, Inc. v. Sheppard, Mullen, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1049.)

As discussed above, the Court has granted the motion for summary adjudication as to the fraud causes of action. Further, there are no allegations that Plaintiff's remaining claims support oppression, fraud, or malice. Because the underlying fraud claims fail, the claim for punitive damages likewise fails. As such, the motion for summary adjudication of punitive damages is GRANTED.

VI. Conclusion and Order

The motion for summary judgment/adjudication of the second and sixth causes of action is DENIED. The motion for summary adjudication of the fourth, fifth, and seventh causes of action is GRANTED. The motion for summary adjudication of Plaintiff's request for punitive damages is GRANTED.

The Court shall prepare the final order.

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Calendar Lines 6-10, 13
Case Name: Quintara Biosciences v. Wang, et al.
Case No.: 21CV385112

Defendant Wang brings three motions for relief from waiver of objections pursuant to CCP §§ 2030.290(a) and 2033.280(a) relating to this Court's March 25, 2024 granting Plaintiffs' motions to compel. At the same time, Plaintiff brings three motions to compel compliance with the Court's March 25th order and for terminating, evidentiary, or monetary sanctions against Defendant Wang.

1. RELIEF FROM WAIVER

Sections 2030.290(a) and 2033.280(a) of the Code of Civil Procedure allow relief from waiver of objections to discovery requests if the party subsequently served a response that is in substantial compliance and the party's failure to serve a timely response was the result of mistake, inadvertence or excusable neglect.

a. Relief from Waiver for Form Interrogatories (FROGs) Set One

Defendant first argues that the March 25, 2024 order is void because the motion was based on Ruifeng's failure to respond, not Wang's failure. But this claim is made too late. Defendant failed to oppose the motion and cannot now raise this basis to void the order.

Defendant next argues that because he provided complete responses prior to the motion being heard, on March 14, 2024, the motion should have been denied. The rule cited by Defendant, § 2033.280, relates to requests for admissions to be deemed admitted, not form interrogatories. But even if that rule applied to FROGs, here, the responses of March 14, 2024, attached to Avila's declaration are not in substantial compliance. They continue to provide incomplete answers or fail to address specific questions.

Finally, Defendant claims that he should be relieved from waiver because of mistake or excusable neglect. First, the excuses offered regarding prior counsel were already considered by the Court. Prior counsel claimed he did not know about the motions, despite proper service on Defendant's then counsel. Prior counsel tried to blame his failure to respond on his surgery in February, even though, as mentioned in the prior discovery order, prior counsel himself stated that he did not know about the motions until March 12, after he was recovered. Finally, the Court does not find that Defendant has established that the failure to timely oppose the motions was the result of positive misconduct of counsel for which Defendant should not be held accountable. Defendant cycled through a number of counsel. That he changes counsel does not allow him to blame prior counsel for rulings that do not go his way.

The motion for relief from waiver for FROGs is DENIED.

b. Relief from Waiver for Special Interrogatories Set One

Defendant claims that the motion for relief must be granted because Plaintiff did not timely move to compel and that failing to timely move to compel deprives the court of jurisdiction. This claim fails, as plaintiff sufficiently showed in the last discovery motion that it had received an extension of the date in which to file its motions to compel such that it was

timely. Moreover, prior to the hearing on the motion in March, Defendant failed to oppose the motion and failed to provide any evidence that the motion to compel was not timely, despite filing a declaration on March 18, 2024 which made other claims as to why the motion should not be granted. Accordingly, the Court did have jurisdiction to hear the motion.

Nor should the motion be granted based on a failure to meet and confer. The objection is not timely. The motion was unopposed, which is an acknowledgement that it is meritorious. Moreover, even to the extent defense counsel objected prior to the hearing, he did not raise failure to meet and confer as a basis. See Decl. of Disston, filed March 18, 2024. This argument is rejected.

Defendant claims that the waiver should be set aside due to the excusable neglect of prior counsel and mistake. For the reasons stated above, this claim is rejected.

c. Relief from Waiver for Requests for Admissions Set One

Defendant claims, as he did with respect to the special interrogatories, that relief should be granted based on lack of jurisdiction or failure to meet and confer. For the same reasons given above, those claims are denied.

Defendant argues that because he provided responses on March 14, 2024, prior to the hearing, Plaintiff's motion to compel should have been denied. Again, because the responses are not in substantial compliance, this claim is denied.

Defendant claims that the waivers should be set aside due to the excusable neglect of prior counsel and mistake. For the reasons stated above, this claim is rejected.

The motions for relief from waiver on all the bases claimed are DENIED.

2. PLAINTIFF'S MOTIONS FOR EVIDENTIARY, ISSUE OR TERMINATING SANCTIONS

Plaintiff claims that Defendant has failed to comply with the Court's March 25, 2024 order compelling Defendant to provide responses to Plaintiff's requests for SI, FROGs, or Requests for Admissions, or to pay sanctions in the amount of $1000. Plaintiff acknowledges that Defendant provided a supplemental response of April 14, 2025, but contends that no sanctions were paid and that the supplemental response was neither complete, nor code complaint.

Defendant counters that because a supplemental response was made by a prior counsel on March 14, 2024, those responses mean that no further sanctions are warranted. Those responses, which are now attached to the Avila Declaration, are not in substantial compliance, both as stated above and for several of the reasons laid out in Plaintiff's papers.

Defendant also argues that Plaintiff is required to file a motion to compel further responses rather than seek greater sanctions. Plaintiff is not required to file motions to compel further responses after Defendant has been already been ordered to provide code-compliant responses. The supplemental responses were neither code-compliant nor complete. The sanctions ordered were not paid. Moreover, prior counsel indicated that further supplemental responses would be forthcoming, though they were not, thus admitting that the responses

provided on April 14, 2024 were not complete. Even current counsel admits with respect to the special interrogatories that the supplemental responses "appear to be less than straightforward and not in keeping with the spirit of Court's prior order." Opp. p4.

Given that the Court has already ruled on several discovery motions that are similar to these, the Court is not going to go through each motion and address every argument separately. Suffice it to say, Defendant Wang has not complied with his discovery obligations.

As to the particular sanctions to be imposed, Defendant seeks terminating sanctions and dismissal of the action for Plaintiff's failure to abide by the Court's order. Yet, terminating sanctions are severe and are to be used sparingly. Discovery sanctions are to be imposed incrementally and are meant to ensure that a party provides discovery, not to be punitive. "Discovery sanctions are intended to remedy discovery abuse, not to punish the offending party. Accordingly, sanctions should be tailored to serve that remedial purpose, should not put the moving party in a better position than he would otherwise have been had he obtained the requested discovery, and should be proportionate to the offending party's misconduct." (*Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223.)

In this case, the award of monetary sanctions was clearly insufficient, as Defendant Wang, while having provided some supplemental responses, continues to provide incomplete answers. As a result, with respect to the Special interrogatories the Court will impose the evidentiary sanction that Defendant Wang is prohibited from introducing evidence that Wong, Li, and Shao were not previously Quintara employees prior to working with Ruifeng. With respect to the FROGSs, because Defendant Wang failed to respond to 15.1 (a claim he does not even dispute other than to say it is contained in the responses of 3/14/25), he is prohibited from admitting at trial any documents which support his denials and affirmative defenses which are not mentioned in his answer to 15.1. With respect to the requests for admissions, he is fined an additional $2000 to be paid within 20 days.

Plaintiff shall submit the final order within 10 days.

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