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: 11-14-24 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.

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	19CV357522 Hearing: Order of Examination	Le-Chi Vu vs Daniel Vu	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 proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.
LINE 2	22CV404565 Hearing: Return of Warrant	Rossi, Hamerslough, Reischl & Chuck vs. Diana George et al.	If moving party fails to appear, matter will go off calendar.
LINE 3	22CV404565 Hearing: Order of Examination	Rossi, Hamerslough, Reischl & Chuck vs. Diana George et al.	It appears that service was not possible. 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 may be continued to allow for notice. If there is no appearance by the moving party, the matter will be ordered off calendar.

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

LINE 4	2000-7-CV-401591 Hearing: Order of Examination	National Credit vs Anima	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 there is no appearance by the moving party, the matter will be ordered off calendar.
LINE 5	23CV414553 Hearing: Demurrer	Biniyam Anbessie vs Robert Vantress et al	See Tentative Ruling. The Court will issue the final order.
LINE 6	23CV423006 Motion: Judgment on Pleadings	Jpmorgan Chase Bank N.a. vs George Clarke, Sr.	Notice appearing proper and good cause appearing, the unopposed motion for judgment on the pleadings is GRANTED. Plaintiff is ORDERED to mail a copy of the final order and judgment both to defendant's counsel, AND to defendant's address of record in Los Gatos. Plaintiff shall submit final order and judgment.
LINE 7	23CV418785 Motion: Quash	Eric Woodward vs Northern California Construction Services, Inc.	Off Calendar and Continued to April 2, 2025.
LINE 8	19CV349010 Motion: Continue	A-1 Trading, Inc. vs U.S. TelePacific Holdings Corp.	See Tentative Ruling. Defendant shall submit the final order.
LINE 9	19CV349010 Motion: Bifurcate	A-1 Trading, Inc. vs U.S. TelePacific Holdings Corp.	See Tentative Ruling. Defendant shall submit the final rulng.

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

LINE 10	23CV425919 Motion to continue trial	Louis Versman vs EDWARD KARPMAN et al	Plaintiff has filed a motion to continue the trial date. He has presented good cause, in that Plaintiff's prior counsel failed to adequately prosecute the case, while simultaneously refusing to timely get out of the case and falsely assuring Plaintiff that he was attending to the lawsuit. Although it was initially Plaintiff who asked for a prompt trial date, given that the lawsuit is not even one year old, the Court finds a brief continuance is appropriate to allow Plaintiff to litigate the propriety of the discovery rulings and to allow Plaintiff's counsel more time to prepare for trial. Defendant's claim that Plaintiff's ill health will prejudice him is not compelling. Because the burden to prove the case is on Plaintiff, any loss of memory by Plaintiff is more likely to prejudice Plaintiff than Defendant. The motion to continue is GRANTED. The current trial dates shall be vacated. Plaintiff shall submit the final order. Counsel are ordered to the hearing to pick new trial dates. Moreover, Plaintiff's counsel is advised that his motions tentatively scheduled for January have not been filed.

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

LINE 11	24CV441848 Hearing: Petition Compel Arbitration	Gerald Bittner, Jr. vs Joe Velasco et al	Notice appearing proper, the unopposed motion to compel arbitration is GRANTED. The Court will not designate an arbitrator as the request for a particular arbitrator was not made in the opening papers. Instead, Plaintiff shall submit in writing the names of the five retired judges named in the moving papers to Defendants and Defendants shall choose one of them as the arbitrator. Defendants will have 10 days from the date the names are received to choose one of those five as the arbitrator. If Defendants fail to choose one of the named retired judges as the arbitrator within those 10 days, Plaintiff may unilaterally select one of the five as the arbitrator. Plaintiff shall submit the final order.
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

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Calendar Line 5
Case Name: *Anbessie v. Vantress et al.*
Case No.: 23CV414553

I. Factual and Procedural Background

Self-represented plaintiff Biniyam Anbessie ("Plaintiff") brings a first amended judicial form complaint ("FAC") against defendant Robert Vantress ("Defendant") and Vantress Law Firm (collectively, "Defendants").

Plaintiff hired Defendant, an attorney, to represent him in an underlying civil case (Case No. 18CV328234) ("the underlying litigation"). According to the FAC, Defendant intentionally committed legal malpractice and fraud by removing Plaintiff's emails from his personal Yahoo email account without his authorization. Additionally, Defendant wrote an email to himself from Plaintiff's account on May 20, 2018. The emails that Defendant removed would have been evidence to support the underlying litigation. This caused Plaintiff to suffer huge financial damages and emotional distress. Additionally, Defendant's actions limited Plaintiff's legal rights to properly negotiate for a more favorable outcome in the underlying litigation.

Plaintiff filed his initial complaint on April 21, 2023. On March 21, 2024, Plaintiff filed his FAC, asserting two causes of action against Defendants for: general negligence – legal malpractice and intentional tort – fraud.

On July 30, 2024, Defendant filed a demurrer to each cause of action. Plaintiff filed a responsive pleading which the Court will treat as his opposition.

II. Request for Judicial Notice

In support of his demurrer, Defendant requests the Court take judicial notice of the contents of the following court-filed documents:

1) Minute Order filed on April 5, 2022 in the underlying litigation (Ex. 1);
2) Request for Dismissal filed on April 6, 2022 in the underlying litigation (Ex. 2); and
3) Complaint filed on May 14, 2018 in the underlying litigation (Ex. 3).

The Court grants judicial notice of the existence of the above exhibits. 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.'" (*People v. Woodell* (1998) 17 Cal.4th 448, 455; see also *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own file].)

III. Demurrer

Defendant demurs to the first and second causes of action on the ground they fail to state facts sufficient to constitute a cause of action pursuant to Code of Civil Procedure section 430.10, subdivision (e).

a. Legal Standard

In ruling on a demurrer, the Court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

b. Self-Represented Litigant

As noted above, Plaintiff is a self-represented litigant. In California, self-represented litigants are held to the same standards as attorneys and must comply with both the California Rules of Court and rules of Civil Procedure. (See *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) "[I]n propria persona litigants are not entitled to any special treatment from the courts." (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1285.) "[W]e cannot disregard the applicable principles or law and accord defendant any special treatment because he instead elected to proceed in propria persona." (*Stein v. Hassen* (1973) 34 Cal.App.3d 294, 303; see also *Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

As such, while the Court will treat Plaintiff's response to Defendant's demurrer as an opposition, it will not consider new allegations raised in the response or the attached exhibits. (See *Hall v. Great Western Bank* (1991) 231 Cal.App.3d 713, 719, fn. 7 ["A court will not consider facts which have not been alleged in the complaint unless they may be reasonably inferred from the matters which have been pled or are proper subjects of judicial notice."]; *Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400 [a demurrer is limited to the operative pleading's four corners, attached exhibits, and judicially noticeable matters]; *SKF Farms v. Superior Cour*t (1984) 153 Cal.App.3d 902, 905 ["A demurrer tests the pleadings alone and not the evidence or other extrinsic matters"].)

c. First Cause of Action – General Negligence/Legal Malpractice

"In a legal malpractice action arising from a civil proceeding, the elements are (1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence." (*Moua v. Pittullo, Howington, Barker, Abernathy, LLP* (2014) 228 Cal.App.4th 107, 112 [internal citations and quotations omitted].)

In support of his demurrer, Defendant argues that the first cause of action is barred by the relevant statute of limitations because California has a one-year statute of limitations for all claims by clients against their former counsel. (Demurrer, p. 2:5-6, citing Code Civ. Proc., § 340.6.)

A court may sustain a demurrer for failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc.*

Services (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*).) A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading and matters of which a court may properly take judicial notice. (*Id.* at pp. 1315-1316.) When evaluating whether a claim is time-barred, the court must determine: (1) which statute of limitations applies, and (2) when the claim accrued. (*Ibid.*)

"The statute of limitations for legal malpractice actions is contained in Code of Civil Procedure section 340.6, subdivision (a). Under this statute, the one-year limitations period generally commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but no later than four years. However, this limitations period is tolled until the plaintiff suffers actual loss or damage resulting from the allegedly negligent actions and/or while the attorney continues to represent the client in the same matter." (*Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 275 [internal citations and quotations omitted].)

The Court first notes that Plaintiff does not address the legal malpractice statute of limitations argument in his opposition. (See *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].) In any event, according to the email exhibits attached to the FAC, Plaintiff discovered Defendant's alleged wrongful acts between June 18, 2021 and June 25, 2021. The FAC includes emails indicating that Plaintiff was aware that Defendant was deleting his emails. (See FAC, pp. 23, 25.)[1] The FAC further alleges that Plaintiff was damaged by Defendant's actions at the time that his case settled on April 5, 2022 because he did not receive a "much [more] favorable outcome" in the underlying litigation. (See FAC, pp. 4, 12; RJN, Ex. 2.) Thus, the statute of limitations commenced on April 5, 2022 and Plaintiff had one year from that date to file an action against Defendant. Plaintiff did not file his initial complaint in this matter until April 21, 2023, after the one-year period had expired.

Accordingly, the first cause of action is barred by the applicable statute of limitations and the demurrer is SUSTAINED without leave to amend.

d. Second Cause of Action – Intentional Tort/Fraud

Defendant demurs to the second cause of action on the grounds it is barred by the statute of limitations and is not pled with the requisite particularity.

i. Statute of Limitations

Defendant contends that the second cause of action is barred by the statute of limitations for the same reasons as the first cause of action. He asserts that the fraudulent conduct occurred in 2018 and that Plaintiff cannot rely on the delayed discovery rule. (Demurrer, p. 2:18-26.) First, Defendant's citation to law without explanation and his conclusive statement that "[o]bviously, the complaint does not plead around the SOL" is not well taken. (Demurrer, p. 2:26; see also *Public Employment Relations Bd. v. Bellflower Unified School Dist.* (2018) 29 Cal.App.5th 927, 939 ["The absence of cogent legal argument . . .

[1] The FAC does not contain paragraph numbers, page numbers, or labeled exhibits. The Court treats the first page of the form complaint as page 1.

allows this court to treat the contention as waived"].) As Defendant himself notes in addressing the first cause of action, a claim for fraud against an attorney has a three-year statutory period. (See Demurrer, p. 2:5-6.)

"By its own terms, [Code of Civil Procedure] section 340.6 does not govern claims for fraud. Generally, courts have applied section 338, subdivision (d) to actions for fraud against attorneys. This statute of limitations for fraud is three years. This section also codifies the delayed discovery rule, providing that a cause of action for fraud is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. The date a complaining party learns, or at least is put on notice, that a representation was false is the date the statute starts running. The fraudulent concealment doctrine will also toll the statute of limitations under section 338, subdivision (d)." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1122-1123 [internal citations and quotations omitted].) "[T]he ground of relief is that the defendant, having by fraud or deceit concealed material facts and by misrepresentations hindered the plaintiff from bringing an action within the statutory period, is estopped from taking advantage of his own wrong." (*Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226, 231.)

Here, while the FAC does allege that Defendant sent an email from Plaintiff's email account without his consent in March 2018, according to the attachments, Plaintiff learned of emails being deleted or sent by Defendant by June 2021. (See FAC, pp. 5, 23, 25.) Accordingly, Plaintiff had three years from June 2021 to file his initial complaint for fraud against Defendant. Thus, the filing of the April 21, 2023 complaint was timely as to the second cause of action and the Court declines to sustain the demurrer on this basis.

ii. Sufficient Particularity

Defendant next argues that the fraud claim lacks the requisite particularity.

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 [internal citations omitted].)

"Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*Id*. at p. 793 [internal citations and quotations omitted].)

Defendant again asserts another conclusory argument that "[o]bviously, the complaint does not plead fraud with particularity." (Demurrer, p. 3:16.) However, aside from citing the elements of fraud and the pleading standard, Defendant offers no further argument. In any event, after reviewing the second cause of action, the Court finds that the second cause of action is insufficiently pled. In reading the pleading, it is entirely unclear what the fraudulent conduct is (i.e., intentional misrepresentation, deceit, or concealment) or in what way, or how,

Defendant acted with the intent to injure Plaintiff. (See e.g., *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 ["Fraud is an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant . . . thereby depriving a person of property or legal rights or otherwise causing injury."][internal quotations omitted].) Accordingly, the FAC fails to sufficiently plead fraud and the demurrer may be sustained on this basis. However, the opposition appears to include several additional allegations related to fraud, thus, the Court is inclined to give Plaintiff the opportunity to amend his pleading to sufficiently allege fraud in line with this Court's order and the above stated law.

Based on the foregoing, the demurrer to the second cause of action is SUSTAINED with 15 days leave to amend.

IV. Conclusion and Order

The demurrer to the first cause of action is SUSTAINED without leave to amend. The demurrer to the second cause of action is SUSTAINED with 15 days leave to amend. The Court shall prepare the final order.

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Calendar Lines 8 and 9
Case Name: A-1 Trading v. TelePacific Holdings
Case No.: 19CV349010

A-1 Trading ("A1") brings a motion to sever the cross-complaint brought by Defendant U.S. TelePacific Holdings ("TPX") against Honeywell and to set trial in the case between A1 and TPX before November 30, 2024. At the same time, TPX brings a motion to continue the trial date to allow the entrance of Honeywell to the case.

FACTS

On May 31, 2019, A1 brought suit against TPX claiming damages from a failure in TPX's plumbing system which cause A1's adjacent property to flood, causing damages and business interruption. On March 25, 2022, TPX filed a cross-complaint against Honeywell, asserting causes of action for indemnification and apportionment of fault and contribution. After a demurrer, it filed a first amended cross-complaint which added a third cause of action for declaratory relief. The court (Hon. J. Deen) granted Honeywell's demurrer to the cross-complaint with no leave to amend on January 10, 2023. On October 29, 2024, the appellate court reversed the judgment and remanded the case back to the trial court to overrule the demurrer as to the first and third cases of action and to sustain the demurrer to the second cause of action without prejudice.

The initial trial date set in this case was January 9, 2023. This date was continued on December 1, 2022 (Hon. J. Takaichi) from January 9 to July 17, 2023 at Honeywell's request, due to TPX's filing of the cross-complaint and Honeywell's recent entry into the case. On July 14, 2023, Defendant TPX moved to continue the trial date again, but the request was denied on July 17, 2023 (Hon. J. Rosen). On July 18, 2023, TPX filed its Notice of Appeal as to Honeywell's demurrer. The trial did not occur at this time, though there is no explanation in the record as to why the trial did not go forward.[2] Trial was reset to April 2, 2024, but when that time arrived there were no available trial courts to hear the case and the case was reset to November 4, 2024.

When the parties appeared for their trial assignment on October 31, 2024, there was a dispute as to whether to sever the cross-complaint now that the demurrer of Honeywell had been reversed and proceed to trial, or to continue the trial to allow the complaint and cross-complaint to be tried together. The Court vacated the November 4, 2024 trial date and set the case for hearing on a motion to sever and a motion to continue trial on November 14, 2024.

ISSUES

A1 argues that the five-year date for trial runs on November 30, 2024 and that to avoid mandatory dismissal, this Court must sever the cross-complaint and immediately set the case for trial. A1 also argues that the interests of justice require severance (1) because otherwise A-1 Trading would be prejudiced, as it has already suffered numerous continuances; (2) because this court already found that a separate trial would not prejudice TPX; and (3) because holding separate trials will be efficient and expeditious.

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[2] A1 asserts that the Court granted TPX's request for continuance (see Motion to Sever, pp3-4), but this is wrong, as indicated in the court's order of July 17, 2023.

Defendant TelePacific opposes severance and instead seeks a continuance of the trial. It argues that Honeywell is now a new party, requiring a new trial particularly since Honeywell's joinder in the trial is both proper, as well as more efficient. TPX contends that the reversal of the order granting demurrer changes the case status and that it is more efficient to try the complaint and cross-complaint together. It further argues that a continuance is necessary to allow the depositions of experts Ip and Gillihan. Finally, it argues that the five-year time limit for trial under CCP 583.310 has not run, as the Covid situation, continuances, lack of available courtrooms, and appeal have all acted to toll the clock by more than 1,000 days.

DISCUSSION

First, the Court agrees that the trial need not occur prior to November 30, 2024, which is when the five years would be up including the 6-month Covid extension. Defendant claims that the period that the case was on appeal should be tolled. While the trial court had found, based on the demurrer's finding that Honeywell was not alleged to have owed a duty to Plaintiff, that the case between A1 and TPX could proceed without Honeywell (see Order denying request for Stay of 2/21/24), the decision of the appellate court suggests this was incorrect. In its ruling, the appellate court states that TPX adequately alleged that Honeywell owed a duty to Plaintiff A1-Trading (Opinion p7-11), such that the liability of both TPX and Honeywell needs to be determined. As such, the appeal demonstrates that the time that the case was on appeal should have been stayed or at least should now be counted as tolled. The opinion does indeed change the case status. Accordingly, the Court now finds that the time from the notice of appeal on July 18, 2023 to the remittitur on October 29, 2024 is tolled. At a minimum then, an additional 469 days from November 30, 2024 remains on the clock, meaning that the trial must occur by March 13, 2026. It is possible that even more time remains on the clock, as Defendant contends that the time continued on Honeywell's request (from January 9 to July 17, 2023), as well as the time needed to find an available courtroom can be tolled. See *Rose v. Scott* (1991) 233 Cal.App.3d 537, 541-542. Moreover, even if the time were not tolled, the statute allows only either the Defendant or the Court, on its own motion, to dismiss the case. See CCP 583.360. Defendant already represented in open court at the October 31, 2024 hearing that it stipulated to an extension and the Court also believes an extension at least until March 13, 2026 is appropriate. As such, Plaintiff's fear that the case will be dismissed for failing to timely prosecute is unfounded.

The next question is whether or not the cross-complaint should be severed from the case to allow the case to go forward just against TPX. Given the appellate court's findings that Honeywell is alleged to have had a duty to plaintiff and that the TPX's cross-complaint for equitable indemnity and declaratory relief should go forward, the Court agrees that the cross-complaint should not be severed out from the rest of the case. Honeywell would be properly joined under CCP § 379 and as such, one trial is preferred "in order to carry out the policy of complete determination and avoidance of multiplicity of suits." *Johnson v. Threats* (1983)140 Cal.App.3d 287, 290. The issue of both TPX's and Honeywell's liability are closely intertwined and related and it would not be efficient to have two trials regarding the liability for the damages to Plaintiff. While the Court is sympathetic to Plaintiff's desire to have the trial proceed, and this Court did try to aid in that effort, given the reversal of the demurrer, there is no longer a strong basis to deny that the issues of the complaint and cross-complaint are closely related and appropriately tried together.

For these reasons, the motion to sever is DENIED and the motion to continue the trial is GRANTED. Defendant shall submit the final order. The case is set for a CMC hearing on December 17, 2024 at 10 am in Dept. 16. TPX is ordered to provide notice of the hearing to Honeywell.

The Court feels compelled to add that the appellate decision did not indicate that TPX had leave to amend its cross-complaint. On the contrary, it indicated only that the second cause of action should be sustained without prejudice (not with leave to amend) in case the statutory conditions--of one tortfeasor paying more than his pro rata share-- were to be met. These statutory conditions do not relate to TPX bringing a new claim against Honeywell. Moreover, any amendments at this point would only be allowed with leave of the court.

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