SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: April 11, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: **Before 4:00 PM today you must notify the:**

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
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FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1-2	23CV410276	Samuel Nathan et al vs Stanford Health Care, a California Non-Profit Corporation	Defendant's demurrer is SUSTAINED with 20 days leave to amend; their motion to strike is MOOT. Scroll to lines 1-2 for full tentative ruling. Court to prepare formal order.
3	23CV427733	HOGE, FENTON, JONES & APPEL, INC., a California corporation vs Amanda Martin	Defendants' Motion to Strike is DENIED. Scroll to line 3 for complete ruling. Court to prepare formal order.
4	23CV419278	Qian Yang vs Irene Lin et al	Defendant Irene Lin's motion to compel further responses to first sets of form and special interrogatories and requests for production of documents is GRANTED, IN PART. First, to the extent Plaintiff's responses to this discovery were served late, the Court sets aside any waiver and permits Plaintiff to assert appropriate objections. (Code of Civ. Pro. §§2030.290(a)(2); 2031.300(a).) Next, the Court finds the timing of Plaintiff's supplemental responses supports Defendants' argument that but for this motion to compel, no supplemental responses would have been forthcoming. Plaintiff is therefore ordered to pay $2,260 (a reasonable 5 hours of time to prepare this motion multiplied by the reasonable rate of $452/hour) to Defendants within 30 days of service of this formal order. However, it is unclear to the Court what additional supplementation is necessary now that some supplemental responses have been served. Accordingly, the parties are ordered to meet and confer by video conference—letters, emails, and telephone calls are not sufficient—at least once on or before May 3, 2024 and on or before May 17, 2024 to file, serve, and email to Department6@scscourt.org a joint statement of no more than 2 pages listing the discovery issues that remain for the Court to determine. The Court will hear any further argument regarding such remaining issues on May 23, 2024 at 9 a.m. in Department 6. Court to prepare formal order.
5	19CV351096	CREDITORS ADJUSTMENT BUREAU, INC. et al vs RAFAEL PEREZ et al	This matter is resolved by stipulation of the parties and is therefore off calendar.
6-7	22CV401810; 22CV402927	JANE DOE vs QIN XIE et al; JANE DOE vs DOE 1 et al	Jane Doe's Motion to Consolidate is GRANTED. Jane Doe shall deposit back rent in the amount of $288,000 within 90 days of service of this formal order and deposit $6,000 per month until the resolution of this consolidated case. Scroll to lines 6-7 for complete ruling. Court to prepare formal order.
8	23CV415470	1992 PLYMOUTH STREET HOMEOWNERS ASSOCIATION vs Bindu Joshi	Defendant's motion to set aside default is GRANTED. A notice of motion with this hearing date and time was served by U.S. mail on March 8, 2024. Plaintiff did not file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Defendant also declares that he did not receive service of the summons and complaint. The proof of service states these documents were served by substitute service on "Jane Doe (refused name, unable to get a description)/Co-Occupant." Under Evidence code section 647, a registered process server's declaration of service establishes a presumption that the facts stated in the declaration are true. (*Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.) However, where a defendant challenges the court's personal jurisdiction on the ground of improper service of process, the plaintiff has the burden of proving the facts required for effective service. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 414-413.) Plaintiff fails to come forward with such evidence. Accordingly, Defendant's motion is granted, and default is set aside. Defendant has 30 days to respond to the complaint. Court to prepare formal order.

9	2005-1-CV-037836	National Credit Acceptance, Inc. vs R. Harp	The parties are ordered to appear for the debtor's examination.
10	2011-1-CV-204598	GCFS, Inc vs M. Arnold	Marvin Arnold's claim of exemption is DENIED. Court will prepare formal order.
11	23CV418376	AMIRABBAS KASHANIPOUR et al vs FAYETTE PROPERTIES, LLC. et al	Application for Minor's Compromise is GRANTED. Court to use form of order on file.

Calendar Line:
Case Name: *Dr. Samuel Zev Nathan and Dr. Neal Hiken v. Stanford Health Care, et.al.*
Case No.: 23CV410276

Before the Court is Defendant Stanford Health Care's motion to strike and demurrer to Plaintiffs' Second Amended Complaint ("SAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Factual Background

This is a medical malpractice action. The FAC alleges that on March 11, 2022, Dr. Samuel Nathan was admitted to Stanford Hospital for a navigational bronchoscopy. (SAC ¶ 2.) While Dr. Nathan was under anesthesia, the anesthesiologist left him for crucial minutes, during which time the internist made a mistake, and Dr. Nathan suffered a stroke. (SAC ¶ 22.) Failing to detect the stroke, Stanford staff wrongly concluded that Dr. Nathan had suffered a heart attack and did not conduct a physical or neurological examination until 48 hours after the procedure. Dr. Nathan was released on March 16, 2022 and has since been recovering in Santa Barbara. (SAC ¶ 6.)

Dr. Nathan and his spouse, Dr. Neal Hiken, claim that Defendant's staff misdiagnosed the stroke, failed to provide proper care, and failed to air transport Dr. Nathan to Santa Barbara. (SAC ¶ 7.) According to Plaintiffs, these negligent acts have caused them both physical pain and emotional suffering.

In their operative SAC, filed on January 4, 2024, Dr. Nathan and Dr. Hiken, allege (1) medical negligence, (2) negligent infliction of emotional distress, (3) loss of consortium, and (4) fraud.

II. Legal Standard

A. Demurrer

A demurrer tests the sufficiency of a complaint as a matter of law and raises only questions of law. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) In testing the sufficiency of the complaint, the Court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Allegations should be read liberally and in context. (*Taylor v. City of Los Angeles Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.) Still, the court may not

consider contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.App.4th 634, 638.)

Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must demonstrate that the complaint alleges facts sufficient to establish every element of each cause of action. (*Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (Code Civ. Proc. §430.10(e); *Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1126.) Sufficient facts are the essential facts of the case "with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action." (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.) Whether the plaintiff will be able to prove the pleaded facts is irrelevant. (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-610.)

B. Motion to Strike

Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. (Code of Civ. Proc., § 435(b)(1); Cal. Rules of Court (CRC), Rule 3.1322(b).) The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code of Civ. Proc., § 436, subds. (a)-(b); *Stafford v. Shultz* (1954) 42 Cal.2d 767, 782 ["Matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded"].)

IV. Analysis

A. Demurrer

Defendant demurrers to Plaintiffs' second and fourth causes of action for failure to allege sufficient facts constituting a claim.

1. Second Cause of Action: Negligent Infliction of Emotional Distress

Plaintiff, Dr. Hiken's claim for negligent infliction of emotional distress is based on his status as spouse and a bystander. "'[A] plaintiff may recover damages for emotional distress caused by observing the negligently inflicted injury of a third person if, but only if, said plaintiff: (1) is closely related to the

injury victim; (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim; and (3) as a result suffers serious emotional distress—a reaction beyond that which would be anticipated in a disinterested witness and which is not an abnormal response to the circumstances.'" (*Bird v. Saenz* (2002) 28 Cal.4th 910, 915 (*Bird*).)

Defendant asserts the SAC fails to sufficiently allege (1) the date of the alleged injury-producing event, i.e., Defendant's refusal to authorize air transportation, (2) Dr. Nathan's location when the alleged refusal of a helicopter transport occurred, (3) air transportation was necessary, (4) the destination Dr. Nathan needed to be air transported to, (5) how Defendant's alleged refusal of a helicopter transport physically injured Dr. Nathan, (6) what physical injuries Dr. Nathan suffered as the result of Defendant's refusal to authorize air transport, (7) Dr. Hiken was present and contemporaneously aware that the failure to authorize air transport caused Dr. Samuel physical injury, (8) Dr. Hiken was contemporaneously aware that it was negligent not to authorize air transportation, and (9) the nature and extent of Dr. Hiken's emotional distress.

In their SAC, Plaintiffs allege:

- Dr. Nathan was admitted to Stanford Hospital on March 11, 2022, for navigational bronchoscopy. (SAC ¶ 2.)
- The anesthesiologist left the operating room for many minutes while Dr. Nathan was under anesthetic, during which the internist made a mistake and Dr. Nathan suffered a serious stroke. (SAC ¶ 6.)
- Defendant wrongly concluded Dr. Nathan had suffered a heart attack and did not administer neurological examination until 48 hours later. (SAC ¶ 22.)
- As a result of the delay in performing a physical exam, a critical window was missed during which treatment could have resulted in a better prognosis for Dr. Nathan. (SAC ¶ 6.)
- Defendant's practice of "double booking" anesthesiologists is a direct cause of its failure to detect Dr. Nathan's stroke. (SAC ¶ 6.)
- Dr. Nathan was released by Defendant on March 16, 2022, and has since been recovering in Santa Barbara, CA. (SAC ¶ 6.)

- Defendant negligently failed to diagnose Dr. Nathan's stroke, failed to provide any care or treatment for a prolonged period, and failed to authorize air transportation to Santa Barbara. (SAC ¶ 7.)
- Dr. Nathan incurred severe pain, suffering, and emotional distress. (SAC ¶ 9.)
- Dr. Hiken was present and aware of the negligence and wrongful conduct of the Defendant as well as the injury it was inflicting on Dr. Nathan at the time that Defendant failed to authorize air transportation to Santa Barbara thus forcing Dr. Nathan to be transported by automobile. (SAC ¶ 16.)
- Dr. Heiken was aware of the emotional distress the refusal for air transportation caused Dr. Nathan at the time of the refusal and during the transport to Santa Barbara. (SAC ¶ 16.)
- As a result of his contemporaneous awareness, Dr. Hiken suffered severe emotional distress – beyond that of a disinterested bystander. (SAC ¶ 17.)

According to these allegations there were three injury-producing events. The event leading to Dr. Hiken's emotional distress was Defendant's refusal to authorize air transportation of Dr. Nathan to an unknown location in Santa Barbara on an unknown date. Plaintiff does not allege facts to support that (1) the air transportation was necessary to transfer Dr. Nathan to another care facility, (2) Defendant's failure to provide air transport caused Dr. Nathan to suffer physical injuries, (3) Dr. Hiken was present and aware of the physical injuries Dr. Nathan was suffering at the time, and (4) the nature of Dr. Hiken's emotional distress that was beyond the distress a disinterested bystander would have suffered. Alleging that Dr. Nathan was emotionally distressed when air transport was refused and contemporaneously Dr. Hiken became emotionally distressed is insufficient.

Accordingly, SUSTAINS Defendant's demurrer to Plaintiff's second cause of action for negligent infliction of emotional distress is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

2. Fourth Cause of Action: Fraud

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or

nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Id*. at 638.) "The requirement of specificity in a fraud action against a corporation requires the plaintiff to 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." (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) "We acknowledge that the requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy' (Citation) or 'when the facts lie more in the knowledge of the opposite party[.]' (Citation.)" (*Id*. at 158.)

The SAC alleges:

- Dr. Nathan conveyed to the attending anesthesiologist (Dr. Kulkarni) his concern about residents and their mistakes. Dr. Nathan made clear that he had copious experience with such. (SAC ¶ 22.)
- Dr. Kulkarni stated to Plaintiff – before the start of the procedure – that he would remain in the operating room for the entirety of the medical procedure. This was a false intentional misrepresentation and Dr. Kulkarni was aware of its falsity due to Defendant's policy of "double booking" anesthesiologists. (SAC ¶ 22.)
- Dr. Nathan relied on Dr. Kulkarni's representation and consented to the procedure. (SAC ¶ 22.)
- Dr. Kulkarni left the operating room during Dr. Nathan's procedure and during his absence a mistake was made by the resident, which led to Plaintiff's severe damage. (SAC ¶ 22.)
- As the result of Defendant's false promise and violation of Civil Code §§ 1710(2) and (4), Plaintiffs suffered damages (SAC ¶ 23.)

These allegations are insufficient to constitute a cause of action for fraud. While Plaintiff states in Opposition that the statement was communicated in person and immediately before the start of the procedure in the operating room, those facts are not alleged in the SAC. Further, Plaintiff fails to allege a causal link between Dr. Kulkarni's alleged promise, Dr. Nathan's stroke, and Defendant's failure to promptly diagnose the stroke. While the SAC alleges that the resident made a mistake during the procedure, it fails to allege what the mistake was, how the mistake caused a stroke, how Dr. Kulkarni's

absence led to the internists mistake and/or Dr. Nathan's stroke, and how Dr. Kulkarni's presence in the operating room would have prohibited the mistake and/or the stroke.

Defendant also argues this claim is precluded by the Medical Injury Compensation Reform Act ("MICRA"). MICRA expressly applies to actions based on professional negligence, however, the California Supreme court has "not limited application of MICRA provisions to causes of action that are based solely on a 'negligent act or omission' … ." (*Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 192.) "[A]dditional claims often arise out of the same facts that support a professional negligence claim, including claims for battery, products liability, premise liability, fraud, breach of contract, and intentional or negligent infliction of emotional distress." (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 347.) To determine whether a claim is truly based on a theory other than professional negligence, courts must consider not just "the label or form of action the plaintiff selects," but also "the nature or gravamen of the claim" and "the legislative history of the MICRA provision at issue." (*Ibid.*)

The Court agrees with Defendant that this claim may fall under MIRCA. As currently alleged, the claim appears to be based on failing below the standard of care. However, the Court will reserve final determination on that issue because Plaintiff indicates an ability to amend. Accordingly, Defendant's demurrer to Plaintiff's fourth cause of action for fraud is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

B. Motion to Strike

Defendant moves to strike Plaintiffs' prayer for punitive damages because those damages stem from Plaintiff's insufficiently alleged fraud claim which is also precluded by MICRA. Given the above rulings, Defendant's motion to strike is MOOT.

Calendar line 3
Case Name: *Hoge, Fenton, Jones & Appel, Inc. v. Martin, et al.*
Case No.: 23CV427733

Before the Court is defendants' Amanda Martin individually, as Trustee of the Gerald D. Martin Living Trust aka Jack Martin Living Trust ("the Martin Trust"), dated January 26, 1995, and as Trustee of the Sunnysiders' Trust U/A, dated January 4, 2017 (the "Sunnysiders' Trust") (collectively, "Defendants"), motion to strike portions of the complaint by plaintiff Hoge, Fenton, Jones & Appel, Inc ("Hoge Fenton"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is an action for fraudulent conveyance. According to the allegations, on November 25, 2014, Martin and Hoge Fenton entered into an agreement in which Hoge Fenton agreed to represent Martin in an underlying action, which was a real property dispute between Martin's father and Mark and Paul Watts related to property located at 3156 Coolidge Avenue in Oakland (the "Coolidge Property"). (Complaint, ¶¶ 1-3.) At that time, the Martin Trust held the Coolidge Property and property located at 529 Callan Avenue in San Leandro (the "Callan Property"). (Complaint, ¶ 4.) Hoge Fenton alleges, upon information and belief, that as of May 2022, the Coolidge Property had an appraised value of $2.25 million. (Complaint, ¶ 5.) At the time Hoge Fenton disengaged from its representation of Martin, both properties were held in the Martin Trust. (Complaint, ¶ 6.)

Around October 27, 2016, Martin approached Hoge Fenton and requested a tolling agreement related to her alleged potential claims for malpractice against it arising from its representation in the Coolidge Action. (Complaint, ¶ 7.) Hoge Fenton agreed to enter the tolling agreement, and after several extensions, the tolling agreement expired on April 30, 2018. (*Ibid*.) On April 27, 2018, Martin sued Hoge Fenton for legal malpractice and related causes of action (the "Martin Action"). (Complaint, ¶ 8.)

On March 1, 2019, Hoge Fenton filed a cross-complaint for unpaid attorney fees and costs. (Complaint, ¶ 9.) On December 6, 2022, the jury returned a verdict in favor of Hoge Fenton on Martin's claims, and it found Martin breached her fee agreement with Hoge Fenton. (Complaint, ¶ 10.) On December 16, 2022, the Court entered judgment in favor of Hoge Fenton and against Martin. (Complaint, ¶ 11.)

On February 10, 2023, Martin filed a notice of appeal. (Complaint, ¶ 12.) Around March 2023, in the context of pursuing its motion for attorney fees and initiating enforcement efforts regarding the judgment, Hoge Fenton began investigating the Martin Trust's assets and it discovered that Martin had transferred the Coolidge and Callan Properties out of the Martin Trust during the tolling period and as a result, the Martin Trust held no assets. (Complaint, ¶ 13.) Specifically on February 10, 2017, Martin in her capacity as Trustee deeded the Callan Property to herself as an individual and subsequently, deeded the Callan Property to Mark Cairns and herself, as Trustees of the Sunnysiders' Trust. (Complaint, ¶ 24.) Also, on April 24, 2018, Martin, as Trustee deeded the Coolidge Property to herself as an individual and subsequently deeded the Coolidge Property to Mark Cairns and herself, as Trustees of the Sunnysiders' Trust. (Complaint, ¶ 15.) The transfers occurred during pre-litigation settlement negotiations between the parties and Hoge Fenton alleges, upon information and belief, that Martin was aware Hoge Fenton had preserved and not waived its claim for attorney fees. (Complaint, ¶ 16.) On June 29, 2023, the Court entered an amended judgment ("Amended Judgment") against Martin, individually and as trust of the Martin Trust. (Complaint, ¶ 17.) The Amended Judgment provided Hoge Fenton is entitled to recover from Martin as follows:

(1) As Trustee of the Martin Trust, $100,544.54 in unpaid attorney fees and interest;

(2) Individually and as Trustee of the Martin Trust, $106,494.15 in costs; and

(3) As trustee of the Martin Trust, $318,219.64 in attorney fees.

(*Ibid*; Exh. B.)

On July 7, 2023, Martin filed a notice of appeal related to the amended judgment. (Complaint, ¶ 18.) Hoge Fenton initiated this action for fraudulent conveyance on December 14, 2023. On February 16, 2024, Defendants filed the instant motion, which Hoge Fenton opposes.

II. Judicial Notice

A. Defendants' Request

Defendants request judicial notice of the following documents:

(1) Exhibit A: Grant Deed and related documents recorded on April 24, 2018, granting the Coolidge Property from Martin as Trustee to Martin, individually;

(2) Exhibit B: Grant Deed recorded on April 24, 2018, granting the Coolidge Property to Martin and Mark Cairns as Trustees for the Sunnysiders' Trust;

(3) Exhibit C: Grant Deed recorded February 10, 2017 granting the Callan Property from Martin as Trustee to Martin, individually;

(4) Exhibit D: Grant Deed recorded on February 10, 2017, granting the Callan Property from Martin to Martin and Mark Cairns as Trustees for the Sunnysiders' Trust;

(5) Exhibit E: Documents from the Alameda County Recorder's Office establishing that the APNs used in the deeds identify the Callan Property; and

(6) Exhibit F: Undertaking under California Code of Civil Procedure section 917.1 by American Contractors Indemnity Company in favor of Martin in the amount of $159, 741.23, field on July 10, 2023.

The Court may take judicial notice of property records under Evidence Code section 452, subdivision (c) and (h). (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264, disapproved of on other grounds by *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919 ["a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon *the legal effect* of the recorded document, when that effect is clear from its face" (emphasis added)].) Hoge Fenton disputes the authenticity of Exhibit E, however, the exhibit pertains to the Callan Property only and the second page has a seal which states, "Alameda County Accessor's Office" while the URL at the bottom of the first page states the source is www.acassessor.org/pacel_viewer. The Court may also take judicial notice of item 6 as a court record. (Evid. Code, § 452, subd. (d).) Thus, Defendants' request for judicial notice is GRANTED.

B. Hoge Fenton's Request

Hoge Fenton requests judicial notice of its Complaint, which is unnecessary because the Complaint is the pleading at issue on this motion, thus it is already under consideration by the Court. Thus, Hoge Fenton's request for judicial notice is DENIED.

III. Legal Standard for a Motion to Strike

Under section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.'" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are "irrelevant" or "improper." (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (Code Civ. Proc., § 431.10, subds. (b), (c).) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*).) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

"While under Code of Civil Procedure section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so. [Citation.] Where a whole cause of action is the proper subject of a pleading challenge, the court should sustain a demurrer

to the cause of action rather than grant a motion to strike. [Citation.]" (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281.)

Defendants move to strike nine portions of the complaint, including Exhibit A.[1]

IV. Analysis

A. Whether a Motion to Strike is Proper

Hoge Fenton's argument that Defendants offer no explanation or argument regarding why allegations, such as when the judgment was entered, when Hoge Fenton initiated enforcement efforts of the judgment (¶ 13), Hoge Fenton's right of payment from Martin, *as Trustee* of the Martin Trust in the initial judgment (¶ 27), and the total of Martin's indebtedness to Hoge Fenton at the time of the Complaint was filed (¶ 30) are irrelevant or improper.

However, Defendants argue the allegations regarding the debt from the prior representation are irrelevant because they are barred by the statute of limitations and the cost award is irrelevant because it is a demand for judgment requesting relief that is not supported by the allegations. This seems potentially problematic as it would be the subject of demurrer rather than a motion to strike. However, as explained below, under either analysis, Defendants' motion fails.

B. Unpaid Attorneys Fees

Defendants move to strike the allegations regarding the unpaid attorney fees on the ground they are time-barred.

Claims for fraudulent transfer are governed by the California's Uniform Voidable Transfer Act ("UVTA"), Civil Code sections 3439 et seq., formerly known as the Uniform Fraudulent Transfer Act. The applicable statute of limitations is four years after the transfer was made or one year after the transfer was or reasonably could have been discovered by the claimant. (Civ. Code, § 3439.09 (a).)

Defendants attempt to separate the unpaid attorney fees from the rest of the underlying judgment on the basis that obligation was created at the time the engagement letter was entered or at the very least, no later than October 27, 2016, when Martin requested tolling for her potential malpractice claims. Defendants fail to cite any authority in support of their argument. (*People v. Dougherty* (1982) 138

[1] Although Defendants include ten bullet points identifying sections to strike, they mention the same section regarding paragraph 17 of the Complaint twice.

Cal.App.3d 278, 282 [points asserted without supporting authority are waived]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When [a party] fails to raise a point or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived]; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 ["[A] point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion"].)

Moreover, Hoge Fenton's claim is based upon the alleged fraudulent transfer of the Coolidge and Callan Properties, not the unpaid attorney fees. (Complaint, ¶¶ 20-23.) The Court entered judgment on December 16, 2022, which established the debtor-creditor relationship between the parties. Hoge Fenton alleges it discovered the fraudulent conveyances around March 8, 2023, and it commenced the instant matter on December 14, 2023, which is within one year of the initial judgment and the discovery of the alleged fraudulent conveyances. Thus, the claim is timely.

The Court is not persuaded by Defendants' argument that the unpaid attorney fees did not require a judgment. The unpaid attorney fees were the subject of Hoge Fenton's cross-complaint against Defendants in the Martin Action, filed on March 1, 2019. (Complaint, ¶ 9.) Therefore, Hoge Fenton attempted to recover that amount and its inclusion here is as part of the Amended Judgment. Defendants do not provide any authority, nor is the Court aware of any, which would require Hoge Fenton to file a fraudulent concealment claim/action during the parties pending matter on the same issue—especially since Hoge Fenton alleges it did not discover the purported fraudulent concealment until after the initial judgment in March 202. Defendants' arguments really seek to attack the underlying judgment, which arguments are not relevant here. The allegations regarding the unpaid attorney fees are relevant to the claim and the Amended Judgment. Thus, Defendants motion to strike is DENIED.

C. Costs Award

The Amended Judgment awarded Hoge Fenton costs in the amount of $106,494.15 from Martin, individually and as Trustee of the Martin Trust. (Complaint, Exh. B, p. 7.) Defendants argue the costs award against Martin, individually and as Trustee of the Martin Trust, has been appealed and a bond was filed on July 10, 2023 to stay any enforcement regarding that judgment.

Code of Civil Procedure section 917.1, provides:

(a) Unless an undertaking is given, the perfecting of an appeal shall not stay an enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:

(1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action.

(2) Costs awarded pursuant to Section 998 which otherwise would not have been awarded as costs pursuant to Section 1033.5.

(3) Costs awarded pursuant to Section 1141.21 which otherwise would not have been awarded pursuant to Section 1033.5

(Code Civ. Proc., § 917.1 (a).)

American Contractors Indemnity Company filed an undertaking under Section 917.1 as to Martin, individually and not in her capacity as a Trustee. Therefore, the enforcement of the judgment is stayed as to Martin in her individual capacity but not in her capacity as Trustee of the Martin Trust.

Defendants fail to cite any authority to support their contention that if execution of judgment is stayed, then a judgment creditor may not bring an action to set aside an alleged fraudulent transfer. For the first time in the reply, Defendants argue Hoge Fenton has not attempted to collect the costs judgment against Martin individually and that it cannot allege that it did. Hoge Fenton did not have an opportunity to reply to this argument and, the Court thus declines to consider it. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [points raised for the first time in reply brief will not ordinarily be considered, because this would deprive respondent of an opportunity to counter the argument]; *L.A. Taxi Cooperative, Inc. v. The Independent Taxi Owners Assn. of Los Angeles* (2015) 239 Cal.App.4th 918, 926, fn. 7 [contention forfeited where raised for the first time in reply brief without a showing of good cause].)

As this matter is pending appeal, there could be a basis for striking the allegations against Martin in her individual capacity in the future, however it does not appear necessary to strike the allegations now. The stay does not render the demand for judgment unsupported by the allegations. (Complaint, ¶¶ 22-23, 25.) Thus, the motion to strike is DENIED without prejudice.

Calendar lines 6-7
Case Name: *JANE DOE vs QIN XIE et al; JANE DOE vs DOE 1 et al*
Case No.: 22CV401810; 22CV402927

Before the Court is Jane Doe's motion to consolidate her unlimited civil action with LHP 2019 LLC's unlawful detainer action. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Legal Standard and Analysis for Consolidation

Under California Code of Civil Procedure section 1048(a), a judge may order a joint hearing or trial of any or all matters at issue in actions where there is a common question of law or fact pending in the same court. CCP §1048(a). In considering a motion for consolidation, the court should consider the timeliness of the motion, the complexity of the case, and prejudice. *See State Farm Mut. Auto Ins. Co. v. Superior Court* (1956) 47 C.2d 428, 430-432.

Jane Doe's motion is timely and the two actions concern the same property and involve overlapping parties. However, LHP 2019 will not have the benefit of the expedited procedures in unlawful detainer actions if the Court consolidates these matters, and, thus in that respect will suffer prejudice. It is for this reason, that, in general, other claims are not permitted to be tried with unlawful detainer claims. (See *Childs v. Eltinge* (1973) 29 Cal. App. 3d 843, 852-853 ("except perhaps by mutual consent of the parties, an unlawful detainer action may not generally be tried together with other causes"). "The reason for the rule that unlawful detainer actions are not to be tried in conjunction with other causes or claims is that, otherwise, the very purpose of this statutory, summary procedure, to afford an expeditious and adequate remedy for obtaining possession of premises wrongfully withheld by tenants, would be entirely frustrated." (*Id.* at 853.)

However, a court may consolidate an unlawful detainer action with a simultaneously pending action in which title to the property is at issue, when a tenant's successful claim of title in the title action would defeat the landlord's right to possession in the unlawful detainer proceeding. (See *Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385.) Here, Jane Doe claims she is the true owner of the subject property because Xie promised to gift the property back to her. LHP spends significant time arguing the merits of Jane Doe's claim, but the merits on not before the Court on this motion. Regardless of their ultimate merit, Jane Doe's claims do involve the consideration of matters not typically addressed in a

truncated unlawful detainer proceeding. And consolidation will avoid the potential for conflicting rulings and preclusion. (See *Malkoskie v. Option One Mortgage Corp.* (2010) 188 Cal. App. 4th 968 (unlawful detainer judgment was *res judicata*, since the judgment necessarily determined title to the property.)

Under these circumstances, the Court concludes that the second filed unlawful detainer matter should be consolidated into the instant case, and Jane Doe's motion to consolidate is therefore GRANTED.

II. Undertaking and Rent

Consolidating these cases does mean that LHP will continue to be deprived of possession during the litigation. Jane Doe cites no authority to support her argument that LHP's decision to initiate an unlawful detainer proceeding after what she calculates to be four years should operate as a waiver of past or future rent. And Civil Code section 1170.50(c) provides:

> If trial is not held within the time specified in this section, the court, upon finding that there is a reasonable probability that the plaintiff will prevail in the action, shall determine the amount of damages, if any, to be suffered by the plaintiff by reason of the extension, and shall issue an order requiring the defendant to pay that amount into court as the rent would have otherwise become due and payable or into an escrow designated by the court for so long as the defendant remains in possession pending the termination of the action.

Accordingly, the Court orders that Jane Doe:

1. Deposit with the Court the amount of Six Thousand Dollars ($6000) as rent by May 1, 2024 and on the first day of each month thereafter until the termination of this action, or unless otherwise ordered by the Court;
2. Deposit with the Court the amount of Two Hundred Eighty-Eight Thousand Dollars ($288,000) within ninety (90) days of service of this order, representing rent payments from April 1, 2020 through April 1, 2024;

3. Serve by email on both counsel for LHP a copy of the deposit receipt from the Court for these deposits within seven (7) calendar days after each deposit.

LHP may apply ex parte to the Court to sever these actions if Jane Doe fails to make any of the required deposits.