Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: April 30, 2024

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

All hearings are open to the public.

If you desire a transcript of the proceedings, you must provide your own court reporter (unless you have a fee waiver and request a court reporter in advance). Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and
- Court Reporter Interpreter Services

These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling **(657-622-5232)**. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

#	Case Name	Tentative
2	**Orellana vs Orellana 30-2022-01260098-CU-BC-CJC**	**Plaintiff's Demurrer to Defendant's Answer** The demurrer of plaintiff Juan Carlos Orellana to the Answer filed by Defendant Victor Manuel Orellana to the Third Amended Complaint is SUSTAINED with 20-days leave to amend. Plaintiff challenges the 3rd, 4th, 5th, 6th, 7th, 9th, 13th, 15th, 16th, 17th, 18th, 21st, 22nd, 23rd, 24th, 25th, 26th and 28th Affirmative Defenses asserted by Defendant in its Answer to the Third Amended Complaint. "A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds: (a) The answer does not state facts sufficient to constitute a defense. (b) The answer is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible. (c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral." (Code Civ. Proc. § 430.20.) Section 431.30, subdivision (b), states, "The answer to a complaint shall contain: [¶] (1) The general or specific denial of the material allegations of the complaint controverted by the defendant. [¶] (2) A statement of any new matter constituting a defense." (Code Civ. Proc. § 431.30, subd. (b).) "The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. [Citation.] Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.'" (*State Farm Mut. Auto. Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725.) Such "new matter" is also known as "an affirmative defense." (*Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627, 63 Cal.Rptr.3d 195.) Affirmative defenses must not be pled as "terse legal conclusions," but "rather ... as facts 'averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint.'" (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) "It has long been held that 'if the *onus* of proof is thrown upon the defendant, the matter to be proved by him is new matter.' [Citations.]" (*Harris v. City of Santa Monica*, (2013) 56 Cal.4th 203, 239.) The demurrer to the 9th and 28th Affirmative Defenses is SUSTAINED. These Affirmative Defenses are not new matters

		constituting an affirmative defense. They do not specifically need to be alleged in the Answer. The demurrer to the remaining Affirmative Defenses is SUSTAINED because Defendant has failed to allege any facts in support of these Affirmative Defenses, all of which plead new matter. Plaintiff to give notice.
3	**WLA Entertainment, Inc. vs Klyatskly 30-2023-01361226-CU-BC-CJC**	**Plaintiff's Motion to Strike Defendant's Answer** Plaintiff WLA Entertainment, Inc.'s Motion to Strike Unverified Answer by is GRANTED with leave to amend. Plaintiff filed the complaint on 11/14/23. The complaint was verified under penalty of perjury by Plaintiff's CEO. Defendant, who was unrepresented, filed an answer on 12/29/23. The answer was not verified. Plaintiff filed a proof of service of this motion on Defendant, but Defendant has not filed an amended answer. Code of Civil Procedure section 446(a) states in part, "When the complaint is verified, the answer shall be verified." Here, because the complaint was verified, Defendant was required to file a verified answer to the complaint. Therefore, the motion is granted. Defendant may file an amended verified answer within twenty days of service of notice of this order. Plaintiff's request for sanctions is denied because Plaintiff has not shown its counsel made a good-faith effort to meet and confer to resolve the issue before filing the motion. Therefore, this case is distinguishable from the case cited by Plaintiff in support of the request for sanctions, *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 765, where the parties met and conferred regarding the motion to strike. Plaintiff to give notice.

6	**Silva vs Ayala 30-2021-01237149-CU-BC-CJC**	**Motion to be Relieved as Counsel of Record** The motion of attorney David Chase to withdraw as attorney of record for Plaintiff Oscar Silva is **DENIED** without prejudice. Moving attorney has not filed the Judicial Council's mandatory declaration form (MC-052) and proposed order (MC-053) in support of the motion. (See Cal. Rules of Court, Rule 3.1362.) Moving attorney may file and serve amended motion in compliance with the Rules of Court.
7	**Somers vs. FCA US LLC 30-2023-01352879-CU-BC-CJC**	**Plaintiff's Motion to Compel Responses to Form Interrogatories, Set One** Plaintiff's Motion to Compel Responses to his Form Interrogatories (set one) is GRANTED. Plaintiff seeks to compel responses to his Form Interrogatories (set one). Plaintiff propounded the interrogatories on 1/12/24. Defendant failed to serve timely responses and did not request an extension. Defendant has not served responses to Plaintiff's Form Interrogatories (set one) as of the date of this hearing. Thus, Defendant is compelled to provide responses to Plaintiff's Form Interrogatories (set one) and has waived objections by failing to timely respond. (See Code Civ. Proc., § 2030.290(a).) <u>Sanctions</u> Plaintiff's request for sanctions is GRANTED in the amount of $1,109.25., payable within 30 days of this order. (See CCP § 2030.290(c); CRC, Rule 3.1348(a).)
8	**Nishihama vs General Motors LLC 30-2023-01357426-CU-BC-CJC**	**Plaintiff's Motion to Compel Responses to Form Interrogatories, Set One** Plaintiff's Motion to Compel Further Responses to Form Interrogatories, Set One, is CONTINUED to 5/28/24 at 9:00 a.m. in this Department. As an initial matter, Plaintiff incorrectly contends Defendant served an opposition brief that included a Memorandum of Points and Authorities (MPA) from a different case in Department N15 (*Anthony J. Ortiz v. General Motors*, Case No. 30-2022-01290082). Upon review of Defendant's entire opposition, the Court finds only the caption page is directed to the *Ortiz* matter. Defendant's opposing MPA identifies factual

		details and discovery disputes specific to this case, *Nishihama v. GM*, including, but not limited to, the subject vehicle, service of Plaintiff's discovery requests and Defendant's responses, and the parties meet and confer efforts. Defendant apparently made a glaring cut and paste error, which Plaintiff seems to acknowledge by filing a substantive reply. As with Plaintiff's Motions Compel Further Responses to Special Interrogatories, Set One, and Requests for Production, Set One, the parties, in particular Defendant, have not made good faith attempts to meet and confer to resolve or narrow the issues regarding this dispute. Plaintiff's counsel sent an initial meet and confer letter. A few days later, Defendant sent a letter in response. In its letter, Defendant expressed its willingness to resolve the disputes informally and offered to participate in an Informal Discovery Conference (IDC). However, Defendant never responded to Plaintiff's repeated follow up emails and letter requesting a telephonic conference to meet and confer further, even after Plaintiff informed Defendant that Court staff said that this department does not offer IDCs. Further, Defendant contends that it offered in its responsive meet and confer letter to produce additional documents pursuant to the entry of a protective order. However, upon review of Defendant's letter, the Court finds no such offer. Nevertheless, Plaintiff indicates that she signed a stipulated protective order and sent it to Defendant. The Court's e-filing system does not reflect a stipulated protective order having been filed as of 4/25/24. Therefore, the parties shall promptly file a stipulated protective order for the Court's signature. The parties shall engage in additional meet and confer efforts, including an in-person, telephonic, or videoconference meeting of counsel no later than 4/19/24. If Defendant agrees to serve supplemental responses and/or additional documents, Defendant shall serve supplemental verified responses and produce additional documents no later than 5/10/24. No later than 5/17/24, Plaintiff's counsel shall file and serve a supplemental declaration, not to exceed five pages, including (1) a description of the parties' additional attempts to meet and confer, (2) attaching a copy of Defendant's supplemental responses, if any, and (3) a concise description of any remaining dispute including identification of the specific discovery requests which remain in dispute. Defendant's counsel may file a responsive supplemental declaration, not to exceed three pages, no later than 5/21/24. Court orders Defendant to give notice.

10	**Bolsinger vs. Home Depot U.S.A., Inc 30-2023-01314706-CU-BC-CJC**	**Plaintiff's Motion to Compel Deposition** Plaintiffs' Motion to Compel the Deposition is CONTINUED to 06/04/2024 at 9:00am in Department C32. Plaintiffs have not made a good faith effort to meet and confer to resolve the issue without court intervention. Defendant states it is willing to produce its deponent on a mutually agreeable date. The parties are ordered to engage in additional meet and confer efforts. The parties are ordered to file a joint statement or remaining issues no later than 05/28/2024.
11	**Garcia vs Hyundai Motor America 30-2023-01357022-CU-PL-CJC**	**Defendant's Motion to Compel Arbitration and Stay Proceedings** Defendant Hyundai Motor America's ("HMA") motion to compel Plaintiff Maria Garcia to arbitrate her claims against Defendant and to stay this action pending arbitration is GRANTED. HMA moves to compel arbitration pursuant to the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and Code of Civil Procedure Sections 1281 et seq. <u>Federal Arbitration Act ("FAA")</u>: The FAA "applies where there is 'a contract evidencing a transaction involving commerce.'" (*Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 277 [quoting 9 USC § 2] [emphasis in original].) Here, HMA moves to compel arbitration under a: (1) Owner's Handbook & Warranty Information ("Warranty"), and (2) Motor Vehicle Lease Agreement ("Lease"). Both the Warranty and the Lease provide that the agreement to arbitrate will be governed by the FAA. Specifically, the arbitration provision contained in the Warranty "This agreement evidences a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. sections 1-16." (Ameripour Decl., ¶ 6, Ex. 3.) Similarly, the arbitration provision in the Lease states that "This Agreement to Arbitrate is governed by the Federal Arbitration Act (FAA)." (Ameripour Decl., ¶ 4, Ex. 2.) A court's role in considering a petition to compel arbitration under the FAA is limited to "determining (1) whether a valid agreement

		to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue. If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." (*Chiron Corp. v. Ortho Diagnostic Sys. Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) "The party seeking arbitration bears the burden of proving the existence of an arbitration agreement, and the party opposing arbitration bears the burden of proving any defense, such as unconscionability." (*Ibid.*) Existence of valid agreement to arbitrate: Plaintiff leased the subject vehicle from Fontana Hyundai on May 18, 2022. (Complaint, ¶ 5; Ameripour Decl., ¶ 4, Ex. 2.) In addition to the Lease, Plaintiff received a Warranty which includes an agreement to arbitrate in Section 4, which states in pertinent part: If you purchased or leased your Hyundai vehicle in the State of California, you and we, Hyundai Motor America, each agree that any claim or disputes between us (including between you and any of our affiliated companies) related to or arising out of your vehicle purchase, advertising for the vehicle, use of your vehicle, the performance of the vehicle, any service relating to the vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty, including without limitation claims related to false or misleading advertising, unfair competition, breach of contract or warranty, the failure to conform a vehicle to warranty, failure to repurchase or replace your vehicle, or claims for a refund or partial refund of your vehicle's purchase price (excluding personal injury claims), but excluding claims brought under the Magnuson-Moss Warranty Act, shall be resolved by binding arbitration at either your or our election, even if the claim is initially filed in a court of law. If either you or we elect to resolve our dispute via arbitration (as opposed to in a court of law), such binding arbitration shall be administered by and through JAMS Mediation, Arbitration and ADR Services (JAMS) under its Streamlined Arbitration Rules & Procedures, or the American Arbitration Association (AAA) under its Consumer Arbitration Rules.

(Ameripour Decl., ¶ 6, Ex. 3, p. 12.) The agreement to arbitrate further states:

> IF YOU PURCHASED OR LEASED YOUR VEHICLE IN CALIFORNIA, YOUR WARRANTY IS MADE SUBJECT TO THE TERMS OF THIS BINDING ARBITRATION PROVISION. BY USING THE VEHICLE, OR REQUESTING OR ACCEPTING BENEFITS UNDER THIS WARRANTY, INCLUDING HAVING ANY REPAIRS PERFORMED UNDER WARRANTY, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE CONTACT US AT OPT-OUT@HMAUSA.COM WITHIN THIRTY (30) DAYS OF YOUR PURCHASE OR LEASE TO OPT-OUT OF THIS ARBITRATION PROVISION.

(Ameripour Decl., ¶ 6, Ex. 3, p. 14.)

HMA has sufficiently shown the existence of an agreement to arbitrate in the Warranty, however, Plaintiff is not a signatory to the Warranty. HMA moves to compel Plaintiff to arbitrate her claims under the doctrine of equitable estoppel.

"When a plaintiff brings a claim which relies on contract terms against a defendant, the plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement. [Citations.] There is no reason why this doctrine should not be equally applicable to a nonsignatory plaintiff. When that plaintiff is suing on a contract—on the basis that, even though the plaintiff was not a party to the contract, the plaintiff is nonetheless entitled to recover for its breach, the plaintiff should be equitably estopped from repudiating the contract's arbitration clause." (*JSM Tuscany, LLC v. Superior Ct.* (2011) 193 Cal.App.4th 1222, 1239–40; see also *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 269 [" 'A party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. .... [¶] A nonsignatory is estopped from refusing to comply with an arbitration clause "when it receives a 'direct benefit' from a contract containing an arbitration clause." [Citations.]' [Citation.]"

Here, Plaintiff relies on the express warranties contained in the Warranty to bring claims under the Song-Beverly Consumer

		Warranty Act. Not only does the Complaint allege a cause of action for "Breach of Express Written Warranty" but it specifically alleges that "Plaintiff received an express written warranty in which Defendant HMA undertook to preserve or maintain the utility or performance of the Vehicle or to provide compensation if there is a failure in utility or performance for a specified period of time." (Complaint, ¶ 9.) Plaintiff is simultaneously relying on the terms of the Warranty to assert claims while attempting to avoid the arbitration agreement contained in the Warranty, therefore, the court finds that equitable estoppel applies. <u>Agreement encompasses the dispute at issue</u>: The agreement to arbitrate applies to: "any claim or disputes between us . . . related to or arising out of your vehicle purchase, advertising for the vehicle, use of your vehicle, the performance of the vehicle, any service relating to the vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty . . ." Therefore, the agreement to arbitrate contained in the Warranty is broad enough to encompass Plaintiff's claims. Plaintiff's Opposition focuses on whether HMA can enforce the arbitration agreement contained within the Lease and does not address whether the Warranty's arbitration provision requires Plaintiff to arbitrate her Song-Beverly Consumer Warranty Claims against Defendant. Accordingly, the Motion to Compel Arbitration is GRANTED, and the action is stayed, pending the completion of arbitration. (Code Civ. Proc. § 1281.4.) Defendant to give notice.
12	**Geng vs Han 30-2023-01320032-CU-DF-CJC**	**Plaintiff's Motion to Compel Requests for Admission, Set One** Plaintiff's Motion to Deem Matters Admitted as to her Requests for Admission (set one) is GRANTED. Plaintiff seeks to deem the matters admitted as to her Requests for Admission (set one). Plaintiff propounded the requests on 8/29/23. Defendant failed to timely serve responses or request an extension. Defendant has not served responses as of the date of this hearing. Thus, the matters are deemed admitted as to Request for Admission (set one) and has waived objections by

		failing to respond. (See Code Civ. Proc., §§ 2033.280 and 2033.290.) <u>Sanctions</u> Plaintiff's request for sanctions is GRANTED in the amount of $735, payable within 30 days of this order. (See Code Civ. Proc., § 2033.290(c).)
13	**Brandt vs Brandt 30-2023-01330409-CU-DF-CJC**	**Defendant's Motion for Attorney Fees and Costs** Defendant Camille Brandt's Motion for Attorneys' Fees is GRANTED in part and DENIED in part. Defendant seeks attorneys' fees and costs as the prevailing party on the anti-SLAPP motion. The Court granted the anti-SLAPP motion in part and struck portions of the allegations in support of the second cause of action for interference, finding that the stricken allegations arose out of protected activity. **ATTORNEYS' FEES** The successful defendant on an anti-SLAPP motion is entitled to recover its attorney fees and costs as a matter of right. (Code Civ. Proc., § 425.16, subd. (c); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131, 104 Cal.Rptr.2d 377, 17 P.3d 735 ["any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees"].) Unless the results of the anti-SLAPP Motion were so insignificant that defendant achieved no "practical benefit" from it, partial success entitles a defendant to attorney's fees. (*Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App. 4th 329, 340 (*Mann*); *Moran v. Endres* (2006) 134 Cal.App.4th 952, 954.) Here, Defendant was successful in striking ¶ 21 of the Complaint: "knowingly and intentionally caused the filing of the ex parte request for a DVRO, including the supporting declaration with the false statements contained therein, and then," as alleged in the claim for interference with prospective economic advantage. As stated in *Mann*, "a party need not succeed in striking every challenged claim to be considered a prevailing party within the meaning of section 425.16." (*Mann*, supra, 139 Cal.App.4th at 339.) Accordingly, the Court finds Defendant to be the prevailing party.

Fees recoverable must be reasonable. (CCP § 425.16(c).) The reasonableness of attorneys' fees is within the discretion of the court, to be determined by such factors as the nature of the issues, the complexity of the litigation, the experience and expertise of the attorneys and the amount of time involved, including consideration of whether work was unnecessary or duplicative. (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443.) Ascertaining the fee amount is left to the trial court's sound discretion, as it is the best judge of the value of the professional services rendered in its court. (*Ketchum* v. Moses (2001) 24 Cal.4th 1122, 1132.)

Through the declaration of Alejandro Angulo, Defendant avers that 118.1 hours were spent on the anti-SLAPP motion and motion for attorneys' fees.

Timekeeper	2023	Total Hours
Alejandro Angulo (attorney)	20.9	20.2
Golsa Honarfar (attorney)	62.6	62.6
Amber Les (attorney)	35.3	35.3

Of the $60,082 requested, Defendant asserts $36,654 in attorneys' fees to litigate the anti-SLAPP motion and $21,504 to prepare the attorneys' fees motion, and $1,924.00 in costs. Aside from time sheets, there is no break down provided regarding the time spent on the anti-SLAPP and the time spent on the attorneys' fees motion. Nor has Defendant provided a breakdown of the requested costs.

As stated in Mann, *"where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.* In conducting this analysis, a court "may attempt to identify specific hours that should be eliminated, *or it may simply reduce the award to account for the limited success.*" (*Mann*, supra, 139 Cal.App.4th at 343 [cleaned-up].)

Defendant argues that she is entitled to all of her attorney's fees and costs incurred in connection with the anti-SLAPP for the following reason: "the hours billed by Ms. Brandt's counsel cannot be fairly severed or reduced to distinguish between the work performed to strike each separate cause of action in the Complaint. Indeed, the majority of the briefing prepared and legal services performed by Ms. Brandt's counsel to support her anti-SLAPP motion were so intertwined with both causes of

		action, and to addressing Plaintiff's arguments in opposition to the Anti-SLAPP motion in its entirety, that a reduction of fees in this particular circumstance would not be appropriate." Defendant, however, seeks $60,082 in fees and costs incurred on the anti-SLAPP motion." Defendant's argument here is that because the successful and unsuccessful claims were "integral" and overlapping, apportionment should not be required and all fees incurred should be awarded. Under *Mann*, supra, this is incorrect. A partially prevailing defendant "should not be entitled to obtain as a matter of right his or her entire attorney fees incurred on successful and unsuccessful claims merely because the attorney work on those claims was overlapping." (*Mann*, supra, 139 Cal.App.4th at 344.) Thus, "the court should first determine the lodestar amount for the successful claims, and, if the work on the successful and unsuccessful causes of action was overlapping, the court should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate." (Ibid.) "This analysis includes factors such as the extent to which the defendant's litigation posture was advanced by the motion, whether the same factual allegations remain to be litigated, whether discovery and motion practice have been narrowed, and the extent to which future litigation expenses and strategy were impacted by the motion. The fees awarded to a defendant who was only partially successful on an anti-SLAPP motion should be commensurate with the extent to which the motion changed the nature and character of the lawsuit in a practical way. The court should also consider any other applicable relevant factors, such as the experience and abilities of the attorney and the novelty and difficulty of the issues, to adjust the lodestar amount as appropriate." (Id. at 345.) The *Mann* court found that the failure to apportion was error and that a 50% reduction was required based upon objectives not obtained. (Id., at p 346.) Defendant argues the anti-SLAPP was not frivolous because she achieved an important win by eliminating the statements she allegedly made in court as statements for which she may be held liable. This in turn, narrowed the scope of the discovery and the potential damages. The Court agrees. Although the victory may have been slight, the motion was necessary in order to eliminate

any actionable theories arising from the alleged statements made by Defendant in family law court.

The Court, however, disagrees that the time and amount spent on the anti-SLAPP and attorneys' fees motions are reasonable. Rather, 118.1 hours spent on both motions and the amount billed is excessive.

The anti-SLAPP motion involved only two claims and the facts and legal arguments were not particularly complex. The main issue was whether statements made by Defendant in family law court arise out of protected activity. The actual substance of the anti-SLAPP motion is only 10 written pages – one page is the notice, more than two pages of introduction and facts, and about 6 ½ pages of argument – and a Request for Judicial Notice which simply attached the DVRO. There were no declarations or other evidence to consider. The quantity of work is not supported by Mr. Angulo's declaration.

Moreover, $21,504 for an attorneys' fee motion is also excessive, so is the 40 plus hours spent in preparing the motion.

Obviously, some time is necessary to prepare the anti-SLAPP motion and attorneys' fee motion, but this is around 35 hours for the anti-SLAPP and 12 for the attorneys' fee motion assuming Defendant was 100% successful on her motion.

Based on this hourly assumption and using the Lodestar method, the Court calculates the following fees:

Anti-SLAPP:

- (Mr. Angulo – partner) 5 hours x $650 = $3250
- (Ms. Honarfar – associate) 30 hours x $470 = $14,100
- Total: $17,350

Attorneys' Fee Motion

- (Mr. Argulo – partner) 1 hour x $650 = $650
- Ms. Les – associate) 11 hours x $370 = $4070
- Total: $4,720

Total: $22,070

(Ms. Honarfar seems to have worked on the bulk of the anti-SLAPP motion, while Ms. Les appears to have worked on the bulk of the attorneys' fee motion. Moreover, Mr. Angulo states that his billable rate is $750/hour but based on the chart provided

		by Mr. Angulo in his declaration, a reasonable rate would be $650, based on the average of rates for litigation partners who graduated in 2001.) This amount would assume Defendant prevailed on both claims, but she did not. The Court follows *Mann* and reduces the amount for the anti-SLAPP motion by 50% as Defendant was only partially successful in her anti-SLAPP motion. **Accordingly, the Court awards Defendant a total of $8,675 for the anti-SLAPP and $4,720 for the attorneys' fee motion for a total of $13,395.** **COST** Defendant also seeks $1,924.00 in costs. Defendant has provided no breakdown of the costs incurred in connection with the anti-SLAPP or the attorneys' fee motion, aside from entries in the billing records. A review of the billing records indicates a highlighted $499.50 in filing fees, which the Court assumes include first appearance fees because the filing fee for the anti-SLAPP motion and the attorneys' fee motion are $60 each. Therefore, the Court subtracts $435 for the first appearance fee as the anti-SLAPP motion did not eliminate the case. Additionally, there is an entry for $1,345 for "deposition/transcripts." No deposition or transcript was lodged by Defendant in connection with the anti-SLAPP motion or the attorneys' fees motion. No explanation was given for highlighting this amount. Therefore, the Court also reduces the costs by this amount. **Costs =** $1,924 – ($435+$1345) = $144 **In sum, the Court awards Defendant $13,395 in attorneys' fees and $144 in costs for a total of $13,539.**
14	**Balboa Capital Corporation vs. MDLoads&More LLC 30-2022-01294375-CU-CL-CJC**	**Plaintiff's Motion for Summary Judgment Adjudication** Plaintiff Balboa Capital Corporation's Motion for Summary Adjudication ("Motion") is GRANTED.

		The Court overrules objection no. 1 of Plaintiff's Objection to Declaration of Domingo Quintana-Palenzuela. Objection nos. 2-6 are sustained. "A 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.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at 851.) Simply put, "[i]f a party moving for summary judgment in any action . . . would prevail at trial without submission of any issue of material fact to a trier of fact for determination, then he should prevail on summary judgment." (*Id.* at 855.) Where a plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a cause of action entitling him or her to judgment. (Code Civ. Proc., § 437c (p)(1); *S.B.C.C., Inc. v. St. Paul Fire & Marine Ins. Co.* (2010) 186 Cal.App.4th 383, 388.) "It is not plaintiff's initial burden to disprove affirmative defenses and cross-complaints asserted by defendant." (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 565 [cleaned up].) If plaintiff meets this initial burden, the burden then shifts to the defendant "to show that a triable issue of one or more material facts exists as to that cause of action." (Code Civ. Proc. § 437c(p)(1).) "An issue of fact can only be created by a conflict of evidence. It is not created by speculation, conjecture, imagination or guess work." (*Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 166 [cleaned up]; see *Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481 [citing *Yuzon*].) In ruling on the Motion, the Court must consider all of the evidence and all of the inferences reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the opposing party." (*Aguilar, supa*, 25 Cal.4th at 843.) Plaintiff moves for an order granting summary adjudication in its favor and against Defendant Domingo Quintana-Palenzuela of Plaintiff's Third Cause of Action for Breach of Guaranty and Fourth Cause of Action for Indebtedness. The Court finds there are no triable issues of material fact as to either cause of action. As to the Third Cause of Action: "A contract of guaranty gives rise to a separate and independent obligation from that which binds the principal debtor." (*Security First National Bank v.*

		Chapman (1940) 41 Cal.App.2d 219, 221.) "A surety or guarantor is one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor." (Civ. Code, § 2787.) "A lender is entitled to judgment on a breach of guaranty claim based upon undisputed evidence that (1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty." '(*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486 [internal citation omitted].) Here, the undisputed material facts establish: (1) the existence of a valid personal guaranty executed by executed by Quintana-Palenzuela; (2) MDLoads&More defaulted under the Equipment Financing Agreement No. 405052-000 ("EFA") with an outstanding loan balance of $73,978.68; and (3) Quintana-Palenzuela failed to perform under the guaranty despite Plaintiff's demand. (Undisputed Facts 1-24.) As to the Fourth Cause of Action: The essential elements of a common count for indebtedness are: "(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment." (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) Here, the undisputed material facts establish: (1) a statement of indebtedness – MDLoads&More defaulted under the EFA and owes Plaintiff the amount of $73,978.68, which Quintana-Palenzuela personally guaranteed; (2) the consideration, i.e., financing of the box truck; (3) Quintana-Palenzuela has failed to pay under the guaranty despite Plaintiff's demand. (Undisputed Facts 25-48.) Accordingly, Plaintiff has met its initial burden of showing that it is entitled to summary adjudication in its favor on the Third and Fourth Causes of Action against Quintana-Palenzuela. Quintana-Palenzuela has not disputed the above facts with admissible evidence. Accordingly, summary adjudication is proper as to the Third and Fourth Causes of Action because there are no triable issues material fact. Based on the foregoing, Plaintiff's Motion is GRANTED.
15	**Mendoza vs. Rivera 30-2022-01295096-CU-PO-CJC**	**Defendant's Motion for Leave to File Cross-Complaint** Defendant Summer Lynmarie Rivera, as Trustee of the Summer Lynmarie Rivera Revocable Living Trust's Motion for Leave to

		File Cross-Complaint and Continue Trial is GRANTED as set out below. Plaintiff's objections to the declaration of Defendant's counsel Rye Mhtar are overruled. Code of Civil Procedure section 428.50 states, "(a) A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint. (b) Any other cross-complaint may be filed at any time before the court has set a date for trial. (c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action." Here, Defendant seeks leave to file a cross-complaint arising from issues related to the tree which is the subject of this neighbor dispute. The cross-complaint therefore appears to fall under Code of Civil Procedure section 426.50, which states: "A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action." "A policy of liberal construction of section 426.50 to avoid forfeiture of causes of action is imposed on the trial court. A motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith." (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 98–99.) Even if the cross-complaint is not a compulsory cross-complaint under section 426.50, "[p]ermission

		to file a permissive cross- complaint is solely within the trial court's discretion." (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) Here, Defendant's counsel was retained to prosecute the potential cross-complaint in February 2024. Defendant filed the motion in April 2024. Defendant should have filed the motion much earlier. However, Defendant's counsel has submitted a declaration showing the failure to file the motion earlier was due to Defendant's mistake, inadvertence, or neglect. Plaintiff opposes the motion, justifiably arguing that the motion should have been filed much earlier. However, Plaintiff has not shown the motion is filed in bad faith. In light of the liberal policy in favor of allowing compulsory cross-complaints, and in order to avoid a second proceeding related to the subject tree, the motion is granted. Defendant shall file and serve the proposed cross-complaint, attached as Exhibit 1 to the motion, within three days. Defendant also requests a trial continuance, and seeks to re-open discovery. The parties shall appear at the hearing to discuss whether a continuance of trial and reopening discovery is necessary based on the specific additional discovery which will be necessary regarding the cross-complaint.
16	**Lux vs Specialized Loan Servicing 30-2023-01332187-CU-BC-CJC**	**Order to Show Cause re: Preliminary Injunction** The Application for Emergency Injunction to Stop Foreclosure by Plaintiff Karl William Lux, a.k.a. Karl W. Lux, is DENIED. <u>Legal Standard</u> "The decision to grant or deny a preliminary injunction is committed to the discretion of the trial court after the court determines (1) the likelihood that the plaintiff will prevail on the merits at trial, and (2) the relative harms suffered by the parties." (*Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal. App. 4th 678, 695.) The plaintiff has the burden of proof to show "upon a verified complaint, or upon affidavits" all elements necessary to support the issuance of a preliminary injunction. (Code Civ. Proc., § 527, (a); *O'Connell v. Sup. Ct.* (2006) 141 Cal.App.4th 1452, 1481.)

		Although an OSC re: Preliminary Injunction directs the responding party to show cause why the preliminary injunction should not issue, the burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. (*O'Connell v. Superior Court* (2006) 141 Cal. App. 4th 1452, 1481.) In deciding whether to issue a preliminary injunction, the court must consider two interrelated factors: (1) the likelihood that the moving party will prevail on the merits, and (2) whether the harm the moving party will likely suffer if the motion is denied outweighs the harm the opposing party is likely to suffer if the motion is granted. (*Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 474.) "These two showings operate on a sliding scale: '[T]he more likely it is that [the party seeking the injunction] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.' [Citation.]" (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1183.) *DVD Copy Control Assn., Inc. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 721–722, holds: "It is common to speak of the need to show threatened irreparable harm as the basis for an injunction. (6 Witkin, Cal. Procedure (2008) Provisional Remedies, § 295, p. 236.) But the concept of irreparable harm means more than harm that cannot be repaired. Irreparable harm includes " 'that species of damages, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other.'... [Citation.] ... 'The argument that there is no "irreparable damage," would not be so often used by [defendants] if they would take the trouble to observe that the word "irreparable" is a very unhappily chosen one, used in expressing the rule that an injunction may issue to prevent wrongs ... which occasion damages estimable only by conjecture and not by any accurate standard.' " (*Wind v. Herbert* (1960) 186 Cal.App.2d 276, 285, 8 Cal.Rptr. 817.) Irreparable harm may be established where there is the fact of an injury, such as that arising from a breach of contract, but where there is an inability to ascertain the amount of damage. In other words, to say that the harm is irreparable is simply another way of saying that pecuniary compensation would not afford adequate relief or that it would be extremely difficult to ascertain the amount that would afford adequate relief. (*Syngenta Crop Protection, Inc. v.*

		Helliker (2006) 138 Cal.App.4th 1135, 1167, 42 Cal.Rptr.3d 191; Civ.Code, § 3422.)" <u>Application</u> Plaintiff seeks to enjoin Defendants from pursuing debt collection and/or foreclosure proceedings related to the disputed loan. Plaintiff has failed to meet his burden to support issuance of a preliminary injunction. First, Plaintiff has not shown he is likely to prevail on the merits. The allegations of the complaint are unclear, but the complaint generally calls into question the validity of a disputed loan. Plaintiff argues the disputed loan, apparently a mortgage loan obtained by Plaintiff's mother, should not be foreclosed during litigation. However, he fails to present evidence showing this litigation has merit. Plaintiff submits as exhibits a notice of default and related documents, his written correspondence to Defendants, and a transcription of a phone call with Defendants' representative. However, this evidence does not call into question the validity of the disputed mortgage loan. It only shows that Defendants are pursuing default and foreclosure and that Defendants have stated the appropriate means of conducting discovery is through this litigation rather than informal correspondence to Defendants' representatives. To obtain a preliminary injunction, Plaintiff must present evidence showing the complaint is likely to have merit. Plaintiff has failed to make such a showing here. Plaintiff has also failed to show that an injunction is necessary to prevent irreparable harm. While wrongful foreclosure would result in harm to Plaintiff, such harm could be remedied by damages that could be ascertained at trial. Moreover, Defendants will suffer harm if they are unable to pursue their contractual remedies while this litigation is pending. In light of Plaintiff's failure to show a likelihood of prevailing, Plaintiff has not demonstrated sufficient irreparable harm to support issuance of an injunction. The case law cited by Plaintiff is also inapposite. Plaintiff cites *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, which is distinguishable because there was evidence of improper fees and interest resulting in foreclosure. Plaintiff cites *Daniels v. Williams* (1954) 125 Cal.App.2d 310, which is

		distinguishable because there was evidence the promissory note was obtained by fraud. Here, Plaintiff has not presented such evidence showing the underlying loan arose from illegal conduct by Defendants. Therefore, the motion is denied.