TENTATIVE RULINGS

LAW AND MOTION CALENDAR

Judge Nathan Vu

Department N15

Hearing Date and Time: May 6, 2024 @ 08:30 AM

TENTATIVE RULINGS: The court will endeavor to post tentative rulings on this website by 3:00 p.m. on the day before the hearing. However, ongoing proceedings may prevent posting by that time or the court may have no tentative ruling on a matter.

Once a tentative ruling has been posted, the court may not entertain requests for continuance and may not consider additional papers.

ORAL ARGUMENT: The court will hear oral argument regarding law and motion matters on the hearing date and at the time stated above, unless all parties submit on the tentative ruling. Parties are not required to give notice of intent to appear.

If you wish to submit on the tentative ruling and do not intend to appear at the hearing, please inform opposing counsel and the court clerk by electronic mail n15@occourts.org or by telephone (657) 622-5615. If all parties submit on the tentative ruling or no parties or counsel appear for the hearing, then the tentative ruling shall become the final ruling.

APPEARANCES: Parties and counsel may appear at the law and motion hearing in-person or via Zoom. Persons appearing in-person shall come to Department N15 at the North Justice Center, 1275 N. Berkeley Avenue, Fullerton, CA 92832.

Persons appearing remotely must check-in online through the court's website at **https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings** and then clicking on the button entitled "Department N15 Judge Nathan Vu".

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All persons appearing remotely must abide by all applicable laws and rules, including Local Rule 375, and must obtain, test the functionality of, and learn how to use the Zoom application and all necessary equipment prior to the remote hearing. More information is available at https://www.occourts.org/media-relations/civil.html.

COURT REPORTERS: Court reporters employed by the court are NOT normally provided for law and motion matters in civil courtrooms. If a party desires a record of a law and motion proceeding, it is the party's responsibility to arrange for a privately-retained court reporter, who may appear in-person or remotely. Parties must comply with the Court's policy on the use of privately-retained court reporters, available at https://www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf.

1	**Cadillac Avenue Property, LLC vs. Abrahami** **30-2022-01275471**	Demurrer Defendants Daniel J. Abrahami's; Gonen S. Abrahami's; and GMDY Enterprises, LLC's Demurrer to Plaintiff's Complaint is SUSTAINED with 21 days leave to amend as to the 1st and 2nd Causes of Action. Defendants Daniel J. Abrahami; Gonen S. Abrahami; and GMDY Enterprises, LLC demur to the 1st and 2nd Causes of Action of the Complaint filed by Plaintiff Cadillac Avenue Property, LLC. Standard for Demurrer A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05.) For this reason, the court will not decide questions of fact on demurrer. (See *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Instead, the court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law . . . ." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, citation omitted; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318). Therefore, the court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 fn.7.) However, "where facts appearing in attached exhibits or judicially noticed documents contradict, or are inconsistent with, the complaint's allegations, we must rely on the facts in the exhibits and judicially noticed documents." (*Jimenez vs. Mrs. Gooch's Natural Foods Markets, Inc.* (2023) 95 Cal.App.5th 645, 653.) Although courts should take a liberal view of inartfully drawn pleadings, (see Code Civ. Proc., § 452), it remains essential that a pleading set forth the actionable facts relied upon with sufficient precision to inform the responding party of the

		matters that the pleading party is alleging, and what remedies or relief is being sought, (see *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413). Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; see Code Civ. Proc., § 425.10, subd. (a).) <u>1st Cause of Action (Breach of Contract)</u> "The standard elements of a claim for breach of contract are: '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom.'" (*Wall Street Network, Ltd.* v. *New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178, quoting *Regan Roofing Co. v. Superior Court* (1994) 24 Cal.App.4th 425, 434-435.) In addition, the parties must be able to ascertain from the complaint whether the contract was written, oral, or implied by conduct. (See Code Civ. Proc., § 430.10, subd. (g).) "Where contractual liability depends upon the satisfaction or performance of one or more conditions precedent, the allegation of such satisfaction or performance is an essential part of the cause of action." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1389.) "This requirement can be satisfied by allegations in general terms [and] [i]t is sufficient for a plaintiff to simply allege that he has 'duly performed all the conditions on his part.'" (*Ibid.*, quoting Code Civ. Proc., § 457.) However, "where the condition is an event, as distinguished from an act to be performed by the plaintiff, a specific allegation of the happening of the condition is a necessary part of pleading the defendant's breach." (*Ibid.*) Defendants contend that the contract in this case (Contract) contains a contingency and that Plaintiff has not specifically allege that the contingency was satisfied.

		In this case, the Standard Industrial/Commercial Multi-Tenant Lease – Gross, dated May 14, 2018 (Lease), is attached to the Complaint as Exhibit A. The express terms of the Lease states: > This lease shall be contingent until the Lessee may obtain its necessary CUP (including all applicable local permitting and state licensing for Cannabis Type 7 and Type 11) for the intended use. If Lessee is unable to obtain this CUP (including all applicable local permitting and state licensing for Cannabis Type 7 and Type 11) then the paid rent and security deposit shall be forfeited to the Lessor and this lease will terminate. (Compl., Exh. A, § 51.) Thus, the Lease is contingent on the occurrence of an event. Plaintiff argues that Plaintiff has sufficiently alleged each of the elements of a breach of contract cause of action, including a general allegation that it "has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing." (Compl. at p. 4.) However, Plaintiff has not made a specific allegation of the happening of the event – in this case, Defendants obtaining the necessary conditional use permit (CUP). (See *Careau & Co. v. Security Pacific Business Credit, Inc.*, supra, 222 Cal.App.3d at p. 1390 [where six of eight conditions precedent were events, general allegations were not adequate and specific allegations that conditions precedent were met was required].) Plaintiff also contends that, pursuant to Section 51 of the Addendum and the parties' conduct, Defendants still owe rent for the time that Defendants occupied the premises until Defendants gave notice that they had been able to obtain the CUP. This argument is not consistent with the Lease, which says that if Defendants do not obtain a CUP, then rents and security deposit that have *already* been paid are *forfeited*. Plaintiff does not point to any provision of the Lease that states that if

		Defendants do not obtain a CUP, then Defendants owe rent for the time they occupy the premises. In addition, the Complaint does not allege any course of conduct of the parties that would give rise to an agreement that if Defendants do not obtain a CUP, then Defendants owe rent for the time they occupy the premises. Where the complaint fails to allege that the conditions precedent have been met or were excused, the court may sustain a demurrer. (See *Daum v. Superior Court, Sutter County* (1964) 228 Cal.App.2d 283, 287.) The court will sustain the demurrer to the 1st Cause of Action. <u>2nd Cause of Action (Account Stated)</u> "The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due." (*Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491.) For the reasons stated above, Plaintiff has not sufficiently alleged an agreement between the parties, express or implied, for the payment of an amount due. Therefore, Plaintiff has failed to sufficiently allege all the elements of a claim for account stated. The court will sustain the demurrer to the 2nd Cause of Action. <u>Leave to Amend</u> "It is an abuse of the trial court's discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the plaintiff can amend the complaint to allege any cause of action." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.)

		However, it is the plaintiff's "burden to establish how the complaint can be amended to state a valid cause of action." (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044.) In order to meet this burden, a plaintiff may submit a proposed amended complaint or enumerate facts and demonstrate how those facts establish a cause of action. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890.) Nonetheless, "for an original complaint, regardless whether the plaintiff has requested leave to amend, it has long been the rule that a trial court's denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment.'" (*Eghtesad v. State Farm General Insurance. Co.* (2020) 51 Cal.App.5th 406, 411, quoting *King v. Mortimer* (1948) 83 Cal.App.2d 153, 158; see *Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240 ["Only rarely should a demurrer to an initial complaint be sustained without leave to amend."].) Plaintiff has requested leave to amend, on the basis that the issues presented can be resolved by including allegations of additional facts. The court agrees that there is a reasonable possibility that the Complaint can be amended to state a cause of action. In addition, this demurrer was made as to the original Complaint. Plaintiff generally should be allowed an opportunity to amend where one has not been granted previously. The court will sustain the demurrer with leave to amend. The parties are reminded that when leave to amend is granted upon the sustaining of a demurrer, amendments are limited to the issues addressed in the court's ruling and generally may not include amendments to causes of action not addressed on demurrer or the addition of new causes of action. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 ["It is the rule that when a trial court sustains a demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. It gives the pleader an opportunity to cure the defects in

		the particular causes of action to which the demurrer was sustained, but that is all."].) Defendants shall give notice of this ruling.
2	**Kameli vs. English** **30-2023-01304346**	Motion for Summary Judgment Defendants Anthony English's and English Realty, Inc.'s Motion for Summary Judgment, or, In the Alternative, Summary Adjudication as Against Plaintiff Sean Kameli, is DENIED. Defendants Anthony English's and English Realty, Inc.'s Request for Judicial Notice is GRANTED as to Exhibits 1 and 2. (See Evid. Code, § 452, subd. (d).) Plaintiff Sean Kameli's evidentiary objections to the Declarations of Ryan English and Anthony English are OVERRULED as to evidentiary objection numbers 1 to 5. Defendants Anthony English and English Realty, Inc. move for summary judgment on the First Amended Complaint (FAC) filed by Plaintiff Sean Kameli. Separate Statement California Rules of Court rule 3.1350(b) requires that each cause of action that is the subject of the motion for summary adjudication must be repeated in the separate statement. (See Cal. Rules of Court, rule 3.1350(b) ["If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action . . . must be . . . repeated, verbatim, in the separate statement of undisputed material facts."].) In addition, California Rules of Court rule 3.1350(d) mandates that, for each cause of action, the separate statement must list all undisputed material facts supporting summary adjudication of that cause of action. (See Cal. Rules of Court, rule 3.1350(b) ["The Separate Statement of Undisputed Material Facts in support of a motion must separately identify: (A) Each cause of action . . . that is the subject of the motion; and (B) Each supporting material fact claimed to be without dispute with respect to the cause of action . . . that is the subject of the motion."].)

		Plaintiff argues that, as an initial matter, Defendants' separate statement in support of their motion does not comply with Rules 3.1350(b) and (d), and that Plaintiff was prejudiced by this failure to comply because Plaintiff was not given fair notice of what to oppose. While the court agrees that Defendants' separate statement does not comply Rules 3.1350(b) and (d), the court cannot discern any prejudice to Plaintiff. The fact that Defendants seek summary judgment makes it clear that they are requesting, in the alternative, summary adjudication as to every cause of action. In addition, Defendants' memorandum of points and authorities clearly lays out the basis for Defendants' motion and also the undisputed material facts that support those arguments. The court did not have any difficulty understanding what Defendant was arguing and, from the quality of the opposition to the motion, it does not appear that Plaintiff had any difficulty either. The court therefore will consider the motion. <u>Standard for Summary Judgment or Summary Adjudication</u> A party may move for summary judgment, which "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) In addition, "[a] party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, . . . or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1).)

		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.) A defendant moving for summary judgment or summary adjudication satisfies the initial burden by submitting undisputed evidence "showing that a cause of action has no merit [because] one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc. § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at pp. 850-51.) However, "[t]he defendant *must* indeed present evidence." (*Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at p. 855, italics original.) If the moving party meets its burden, the burden then shifts to the party opposing summary judgment to show, by reference to specific facts, the existence of a triable, material issue as to a cause of action or an affirmative defense. (*Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at p. 855; *Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 575.) The nonmoving party must present substantial evidence in order to avoid summary judgment. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) "In some instances . . ., 'evidence may be so lacking in probative value that it fails to raise any triable issue.'" (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1083-1084, quoting *Advanced Micro Devices, Inc. v. Great American Surplus Lines Ins. Co.* (1988) 199 Cal.App.3d 791, 795.) When the moving party has met its initial burden and the responding party fails to file an opposition or establish a triable issues of material fact, the court may grant summary judgment or summary adjudication. (*Tire Distributors, Inc. v. Cobrae* (2005) 132 Cal.App.4th 538, 543.) In ruling on a motion for summary judgment or summary adjudication, "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 v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843, citations omitted.) Courts "'construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it.'" (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 636, quoting *Seo v. All–Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1201–1202.) A court may not make credibility determinations or weigh the evidence on a motion for summary judgment or adjudication, and all evidentiary conflicts are to be resolved against the moving party. (*McCabe v. American Honda Motor Corp.* (2002) 100 Cal.App.4th 1111, 1119.) "The court . . . does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and Ventura Counties* (2009) 173 Cal.App.4th 740, 754, citation omitted.) "[S]ummary judgment cannot be granted when the facts are susceptible [of] more than one reasonable inference . . ." (*Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1392.) <u>1st Cause of Action (Intentional Misrepresentation, Concealment, Nondisclosure of Material Facts)</u> <u>Amended Pleading</u> This motion was directed to the First Amended Complaint (FAC). However, on February 20, 2024, the court sustained Defendants' demurrer as to the 1st and 3rd Causes of Action of the FAC with leave to amend. (See ROA #117.) In response, March 6, 2023, Plaintiff filed a Second Amended Complaint (SAC). "It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 384.) "Thus, an amended complaint supersedes all prior complaints. The amended complaint furnishes the

		sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment." (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130, citations omitted.) "[T]he filing of an amended complaint moots a motion directed to a prior complaint. Thus, once an amended complaint is filed, it is error to grant summary adjudication on a cause of action contained in a previous complaint." (*Id.* at p. 1131, citations omitted.) Accordingly, to the extent the motion seeks summary adjudication as to the 1st Cause of Action of the FAC, it is moot. <u>Different Theories</u> However, even if the court were to consider whether summary adjudication should be granted as to the 1st Cause of Action of the FAC, it would nonetheless deny the motion. The basis of Defendants' motion is that Plaintiff lacks standing to bring this claim because the undisputed facts show that Plaintiff was not a party to the attempted purchase and sale of the property that is at the center of this lawsuit, Plaintiff did not have any legal interest in the property, and Defendants did not represent Plaintiff in the transaction. Specifically, Defendants assert that only Plaintiff's girlfriend made a written offer to purchase the property and that Plaintiff did not make a written offer on the property. (See Def.s' Separate Statement of Undisputed Facts in Supp. of Mot. for Summ. Judgment (Separate Statement), Undisputed Fact 5.) In addition, Defendants point out that all of the purchase and sales documents, including Purchase and Sale Agreement, were signed by Plaintiff's girlfriend as the buyer and not by Plaintiff. (*Id.*, Undisputed Facts 5-7.) Defendants also point to evidence that Plaintiff and his girlfriend were not married and that they had entered into an agreement to keep their property separate. (*Id.*, Undisputed Facts 3-4.)

		However, the 1st Cause of Action for Intentional Misrepresentation does not require that Plaintiff be the buyer or have attempted to buy the property. Rather, in the 1st Cause of Action, the SAC alleges that Defendants made certain misrepresentations about the property that they knew to be false and that induced Plaintiff to pay more than $25,000. (SAC, ¶¶ 12-14.) The SAC further pleads that these misrepresentations then lead Plaintiff to suffer damages. (See SAC, ¶¶ 16-20.) Plaintiff provides evidence that he suffered monetary damages separate and apart from his alleged role as the buyer of the property. (See Decl. of Sean Kameli in Opp'n to Mot. for Summ. Judgment (Kameli Decl.), ¶ 5 [asserting that Plaintiff incurred more than $25,000 in costs for "home inspection report, appraisal, and for travel"].) Where a plaintiff has pleaded more than one theory, the defendant has the burden of demonstrating there are no material facts requiring trial on any of them. (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 889.) Here, Defendants have not shown that there is no triable issue of fact on the theory that Plaintiff suffered damages due to Defendants' intentional misrepresentation even if Plaintiff was not the buyer of the property. The court cannot grant summary adjudication as to the 1st Cause of Action on the basis of lack of standing. <u>Triable Issue of Fact Regarding Whether Plaintiff Was a Buyer and Represented by Defendants</u> In addition, Plaintiff submits evidence to show that he was the buyer or prospective buyer of the property and that Defendants represented him. (See Pltf.'s Separate Statement in Opp'n to Def.s' Mot. for Summ. Judgment or Summ. Adjudication (Opp'n Separate Statement), Response and Supporting Evidence to Undisputed Facts 1-2.) It is true that all of the evidence provided by Plaintiff is either Plaintiff's own deposition testimony and discovery responses or Plaintiff's declaration specifically prepared to oppose this motion. (See Decl. of Ali Ari Aalaei in Supp. of Pltf.'s Opp'n to Def.s' Mot. for Summ. Judgment (Aalaei Decl.), Exh.s A-B [Plaintiff's deposition

		transcript and discovery responses]; Kameli Decl., ¶¶ 2-5.) (fn.1) (fn.1) Plaintiff does attach many text messages to his declaration, (see Kameli Decl, Exh. 1), but it is unclear from the attachment who sent which message. Further, it is difficult to determine the meaning of many of the messages. At a minimum, there is no message in which Plaintiff explicitly is referred to as the buyer or prospective buyer of the property, or in which Defendants explicitly are referred to as representing Plaintiff. The court thus does not rely on the text messages in its ruling. However, the court can only ignore a party's statements or declarations under certain circumstances. For example, "[i]t is well-established that 'a party cannot create an issue of fact by a declaration which contradicts his prior discovery responses.'" (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087, quoting *Shin v. Ahn* (2007) 42 Cal.4th 482, 500, fn. 12; see also *Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451 ["A party cannot create an issue of fact by a declaration which contradicts his prior pleadings"].) A court may also ignore a party's self-serving statements when they relate to a party's subjective belief with regard to a material fact. (See *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 435 ["[P]laintiff's subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations."]; *Meighan v. Shore* (1995) 34 Cal.App.4th 1025, 1047 [trial court may disbelieve party's statement regarding mental process in reaching conclusion].) In this case, Plaintiff's statements and declaration do not contradict prior discovery responses or pleadings. Nor do Plaintiff's statements and declaration relate to his subjective beliefs or mental process. The court is not aware of any authority that would allow the court to ignore Plaintiff's statements and declarations because they are not supported by any documentary evidence or contradict other documentary evidence presented by Defendants. It is true that Plaintiff's evidence is not strong, especially when compared to the substantial

		documentary evidence provided by Defendants. However, at this stage, the court may not make credibility determinations or weigh the evidence, and all evidentiary conflicts are to be resolved against the moving party. While Plaintiff's self-serving statements are not particularly persuasive, the court cannot say that the evidence is so deficient that a reasonable trier of fact could not find, by a preponderance of the evidence, that Plaintiff was the buyer or prospective buyer of the property or that Plaintiff was represented by Defendants. (See *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th at p. 850; CACI 107 ["If you believe it is true, the testimony of a single witness is enough to prove a fact."].) <u>Damages</u> Defendants also contend that Plaintiff cannot prove damages. However, this argument relies on Defendants' point that Plaintiff was not a party to the purchase and sale transaction for the property. As stated above, Plaintiff has pointed to a measure of damages separate and apart from his allegation as the buyer. In addition, Plaintiff has shown that there is a triable issue of fact with respect to whether he was a buyer of the property. Plaintiff also has submitted evidence that he suffered damages as a buyer. (See Kameli Decl., ¶ 5 [stating that Plaintiff paid $19,000 of $25,000 deposit retained by Defendants].) <u>Civil Code Section 1532 Waiver</u> Defendants next argue that Plaintiff's girlfriend and the sellers of the property settled the dispute between them and as part of that dispute, both sides entered into a complete waiver of their claims pursuant to Civil Code section 1532. However, Defendants do not contend and do not present any evidence that Plaintiff was a party to this settlement or that Plaintiff waived his claims. Defendants have not met their initial burden and Plaintiff need not present evidence on this issue. (See *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840 [if defendant fails to meet its initial burden, plaintiff need not oppose motion

		with evidence].) The court will deny summary adjudication as to the 1st Cause of Action. <u>2nd Cause of Action (Negligent Misrepresentation, Concealment, Nondisclosure of Material Facts)</u> Unlike the 1st Cause of Action, the court did not sustain the demurrer as to the 2nd Cause of Action for negligent misrepresentation. Therefore, Plaintiff was not entitled to amend the 2nd Cause of Action. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 ["It is the rule that when a trial court sustains a demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. It gives the pleader an opportunity to cure the defects in the particular causes of action to which the demurrer was sustained, but that is all."].) Thus, the 2nd Cause of Action in the FAC and the SAC should be identical and the motion as to the 2nd Cause of Action is not moot. The court therefore considers whether the summary adjudication should be granted as to the 2nd Cause of Action. The 2nd Cause of Action incorporates all of the prior allegations, including the allegations of the 1st Cause of Action. (See SAC, ¶ 31.) In fact, the only difference between the allegations of the two causes of action is that the 2nd Cause of Action alleges that the misrepresentations were made negligently. (See *id.*, ¶ 33.) Thus, the 2nd Cause of Action also lays out a theory of liability which is not dependent on Plaintiff being the buyer of the property. The court cannot grant summary adjudication as to the 2nd Cause of Action based on lack of standing. Further, for the reasons stated explained above, there is a triable issue of fact whether Plaintiff was the buyer or prospective buyer of the property and whether Plaintiff was represented by Defendants. There also is a triable issue of fact whether Plaintiff suffered damages. The court will deny summary adjudication as to the 2nd Cause of Action.

		3rd Cause of Action (Nondisclosure of Material Facts) The court did sustain Defendants' demurrer as to the 3rd Cause of Action with leave to amend, and Plaintiff amended the 3rd Cause of Action in the SAC. (See ROA #117.) Thus the SAC supersedes the FAC with respect to the 3rd Cause of Action, rendering this motion moot insofar as it attacks the 3rd Cause of Action. In addition, while the 3rd Cause of Action is premised on Plaintiff being a purchaser of the property and being represented by Defendants, (see SAC, ¶ 31), for the reasons stated above, there is a triable issue of fact whether Plaintiff was the buyer of the property and was represented by Defendants. There also is a triable issue of fact whether Plaintiff suffered damages. The court will deny summary adjudication as to the 3rd Cause of Action. 4th Cause of Action (Failure of Seller's Real Estate Broker to Conduct Reasonable Inspection – Essential Factual Elements (Civ. Code, § 2079)) The court did not sustain the demurrer as to the 4th Cause of Action for failure of seller's real estate broker to conduct reasonable inspection. Therefore, Plaintiff was not entitled to amend the 4th Cause of Action in the SAC and the claim stated in the SAC should be identical to the claim stated in the FAC. The motion is not moot as to the 4th Cause of Action. On the merits, the 4th Cause of Action is premised on Defendants failing to disclose to Plaintiff all material facts determined from a reasonable inspection. (See SAC, ¶ 49 ["Before the sale, Defendants failed to disclose to Plaintiff all facts that materially affected the value or desirability of the property that such an inspection would have revealed."].) However, Defendants only owed this duty Plaintiff if Plaintiff was a "prospective buyer of residential real property." (See Civil Code, § 2079, subd. (a) ["It is the duty of a real estate broker or

		salesperson . . . to a prospective buyer of residential real property . . . to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the property that an investigation would reveal . . . ."].) For the reasons stated above, there is a triable issue of fact whether Plaintiff was the buyer or prospective buyer of the property, and whether Plaintiff suffered damages. The court will deny summary adjudication as to the 4th Cause of Action. <u>5th Cause of Action (Breach of Fiduciary Duty and Constructive Fraud)</u> As with the 4th Cause of Action, the court did not sustain the demurrer as to the 5th Cause of Action for breach of fiduciary duty and constructive fraud. Thus, the 5th Cause of Action stated in the SAC should be identical to the 5th Cause of Action stated in the FAC. The motion is not moot as to this claim. On the merits, the 5th Cause of Action is premised on Defendants owing Plaintiff a fiduciary duty. "The allegation of a fiduciary relationship must be supported by either a contract, or a relationship that imposes it as a matter of law." (*Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1558). "The mere allegation that [defendant] assumed fiduciary duties to [plaintiff] is a legal conclusion, not a well-pled fact." (*Ibid.*) The only basis alleged in the SAC upon which a finding of fiduciary could be made is that Defendants represented Plaintiff as the buyer of the property and also represented both the buyers and the sellers of the property. (See SAC, ¶ 5.) The law imposes upon a seller's agent, a buyer's agent, and a dual agent "[a] fiduciary duty of utmost care, integrity, honesty, and loyalty with either the Seller or the Buyer". (Civil Code, § 2079.16.) As stated above, there is a triable issue of fact whether Defendants represented Plaintiff with

		respect to the purchase and sale of the property, and whether Plaintiff suffered damages. The court will deny summary adjudication as to the 5th Cause of Action. Because the court has not granted summary adjudication as to all of the causes of action of the SAC, the court must deny summary judgment. Plaintiff shall give notice of this ruling.
3	**Knoll vs. Colbert** **30-2023-01359863**	<u>Application for OSC re: Contempt</u> Plaintiffs Leah Rae Knoll's; PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning's; and SC Equipment Company, LLC's Application for OSC re: Contempt is GRANTED in part and DENIED in part. IT IS HEREBY ORDERED that Defendant David L. Colbert shall appear on July 3, 2024, at 10:00 a.m. in Department N15 to show cause as to why he should not be adjudged in contempt of court on one count of violating the court's order issued January 16, 2024, as alleged in Paragraph 3.b.2 of the [Proposed] OSC re: Contempt (ROA #174). At that time and on that date, the court will hold the arraignment and set a further hearing, evidentiary hearing, or trial, as the case may be. Plaintiffs Leah Rae Knoll; PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning; and SC Equipment Company, LLC are ORDERED to personally serve Defendant David L. Colbert with a signed copy of this ruling, the Affidavit of Leah Rae Knoll (ROA #130), and the [Proposed] OSC re: Contempt (ROA #174) within 30 days of this ruling. Plaintiffs Leah Rae Knoll's; PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning's; and SC Equipment Company, LLC's request for sanctions and attorney's fees is DENIED without prejudice. Plaintiffs Leah Rae Knoll; PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning; and SC Equipment Company, LLC (collectively, Plaintiffs) move for this court to issue an Order to Show Cause Why Defendant David L. Colbert (Defendant Colbert) should not be held in

		contempt. <u>Proceedings and Standards for Contempt</u> A person is in contempt of court when the person acts or fails to act, among other things, in "disobedience of any lawful judgment, order or process of the court." (Code Civ. Proc., §1209(a)(5).) "When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers," it is considered a "direct contempt." (Code Civ. Proc., § 1211, subd. (a); *Hanson v. Superior Court* (2001) 91 Cal.App.4th 75, 80-81.) When the contempt is not committed in the immediate presence of the court, it is considered an "indirect contempt." (See Code Civ. Proc., § 1211, subd, (a); *Hanson v. Superior Court*, *supra*, 91 Cal.App.4th at p. 81.) In a contempt proceeding, "[i]t is [] required that the accused be proceeded against under due process." (*Coursey v. Superior Court* (1987) 194 Cal.App.3d 147, 154.) This means that in the case of direct contempt, the contempt "may be punished summarily" and upon the court making an order reciting the facts that occurred in its immediate view and presence, adjudging that the accused is thereby guilty of a contempt, and prescribing punishment. (See Code Civ. Proc., § 1211, subd, (a); *Hanson v. Superior Court*, *supra*, 91 Cal.App.4th at pp. 80-81.) However, when a person is accused of indirect contempt, due process requires a specific procedure to notify the person so charged and to allow that person an opportunity to be heard. (See Code Civ. Proc., §§ 1211-1218.) The procedure requires the presentation of an affidavit to the court stating the facts constituting the contempt, the issuance of an order to show cause, and a hearing by the court on the facts. (*Arthur v. Superior Court* (1965) 62 Cal.2d 404, 407-408.) Thus, a contempt proceeding is commenced by the filing of the affidavit and an application or motion for an order to show cause to issue. (See Code Civ. Proc., § 1211, subd. (a); *Cedars-Sinai*

		Imaging Medical Group v. Superior Court (2000) 83 Cal.App.4th 1281, 1286.) The affidavit serves as the "complaint" and must cover each element of the commission of the contempt. (See Code Civ. Proc., § 1211.5; *Lyons v. Superior Court* (1968) 68 Cal.2d 446, 452.) The filing of a sufficient affidavit is a "jurisdictional prerequisite" to a contempt proceeding. In other words, without an affidavit, any contempt order is void. (*In re Koehler* (2010) 181 Cal.App.4th 1153, 1169.) Each allegation in the affidavit must be made under oath and pleaded by factual statements based on firsthand knowledge. (See Code Civ. Proc., § 2003; Evid. Code, § 702.) However, the affidavit may be amended to correct technical insufficiencies if the substantial rights of the accused would not be prejudiced by the amendment. (See Code Civ. Proc., § 1211.5, subd. (b).) Although not required, the alleged contemnor may respond to the affidavit by filing and serving counter-affidavits, which serve as the "answer" to the charging allegations in the original affidavit. (See *Lyons v. Superior Court*, *supra*, 68 Cal.2d at p. 452.) In the alternative, the accused may assert defenses entirely at the hearing on the matter. (See Code Civ. Proc., § 1217.) "The facts essential to establish jurisdiction in the contempt proceeding, and thus to enable the trial court to punish the accused, are: (1) the making of the order; (2) the accused's knowledge of the order; (3) the accused's ability to render compliance, and (4) the accused's willful disobedience of the order." (*Coursey v. Superior Court*, *supra*, 194 Cal.App.3d at p. 154.) As to the first element, the order must have been made by the court and must "be clear, specific, and unequivocal." (*Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1549; see also *In re Blaze* (1969) 271 Cal.App.2d 210, 212 ["Any ambiguity in a decree or order must be resolved in favor of the alleged contemnor."].)

		"The precise court orders as written are what may be enforced, not any amplification of those orders by history of the litigation or documents incorporated by reference." (*Board of Supervisors v Superior Court* (1995) 33 Cal.App.4th 1724, 1737.) Thus, the order must have been sufficiently specific so that the initiating party can demonstrate that the order was disobeyed. In order to allege the second element, the affidavit may assert facts to show that the alleged contemnor was given notice of the contents of the order, such as that the accused was in court when the order was made or was served with a copy of the order. (See *Freeman v. Superior Court, San Diego County* (1955) 44 Cal.2d 533, 537-538 [evidence that alleged contemnor's attorney was in court when order was made and contemnor's attorney was subsequently served with order is sufficient to support finding that alleged contemnor had knowledge of order].) In addition, the burden of proof is on the initiating party to prove the accused's ability to comply, rather than on the accused to prove inability. (See *In re Cassil* (1995) 37 Cal.App.4th 1081, 1087, fn.1; *Koehler v. Superior Court* (2010) 181 Cal.App.4th 1153, 1160.) The fourth element requires that the accused acted willfully. Thus, a finding of contempt "can only rest upon clear, intentional violation of a specific, narrowly drawn order." (*Wilson v. Superior Court* (1987) 194 Cal.App.3d 1259, 1273.) However, the accused's subjective belief that they are complying with the order is not sufficient to defeat contempt; the court must apply an objective standard. (See *Taggart v. Lorenzen* (2019) 139 S.Ct. 1796, 1802.) The concepts of ability and willful disobedience are intertwined. A moving party may show willful disobedience by showing that the alleged contemnor could have complied but knowingly chose not to. (See *Little v. Superior Court* (1968) 260 Cal.App.2d 311, 319; *Oliver v. Superior Court* (1961) 197 Cal.App.2d 237, 240.) After notice and an opportunity to be heard have been given to the alleged contemnor, the court, if satisfied that the affidavit is sufficient, must issue

		an OSC why the accused should not be held in contempt. (*Cedars-Sinai Imaging Medical Group v. Superior Court*, *supra*, 83 Cal.App.4th at p. 1286; see *Arthur v. Superior Court* (1965) 62 Cal.2d 404, 408 ["an order to show cause must be issued"].) The OSC then serves as a summons to appear in court and sets forth the date and time for a hearing. (*Cedars-Sinai Imaging Medical Group v. Superior Court*, *supra*, 83 Cal.App.4th at p. 1286.) Unless the alleged contemnor has concealed themselves from the court, he or she must be personally served with the OSC and affidavit. (*Ibid.*) Because contempt proceedings are quasi-criminal, the alleged contemnor possesses many of the rights of a criminal defendant. (See *People v. Gonzalez* (1996) 12 Cal. 4th 804, 816; *In re Kreitman* (1995) 40 Cal.App.4th 750, 753.) For example, the alleged contemner must be arraigned (advised of the charges) at the beginning of the contempt hearing, may be entitled to appointed counsel if they are not able to retain counsel, and is presumed innocent until proven guilty beyond a reasonable doubt. Live testimony is required from witnesses against the alleged contemner, to ensure their right to cross-examine. (See Civil Procedure Code, § 1217 [judge "must hear any answer" which alleged contemnor may make and "may examine witnesses for or against him"].) Testimonial and self-incrimination privileges apply (including the right not to testify at all and not to incriminate oneself). Thus, no finding of contempt may be made until the respondent is provided with the full protections of the law, including the opportunity to respond, call witnesses, and present evidence. <u>Prior Proceedings</u> On March 13, 2024, Plaintiffs filed an *ex parte* Application for Order to Show Cause re: Contempt. (See ROA #135.) However, at the *ex parte* hearing held on that same date, the court determined that there were some deficiencies in the affidavit submitted by

		Plaintiffs and that "there needs to be a proper charging document." (See ROA #147.) The court then set the matter as a noticed motion on May 6, 2024, to allow Plaintiffs to amend the affidavit and Defendant Colbert to file a full response and counter-affidavit(s). Plaintiffs have filed a [Proposed] OSC re: Contempt (Supplemental Affidavit). (See ROA #174.) Despite the title of the document, it is a supplemental affidavit and the court will treat it as such. In addition, Defendant Colbert has filed and served opposition papers and counter-affidavits. (See ROA #177, #179, #181, #183.) <u>Alleged Contemnor(s)</u> Plaintiffs' original notice of *ex parte* application and memorandum of points and authorities indicated that Plaintiffs were only seeking an OSC with respect to Defendant Colbert. However, the Supplemental Affidavit is addressed to Defendants DC Plumbing, Heating and Air Conditioning, Inc. and DC Plumbing, Inc., (collectively, DC Defendants) in addition to Defendant Colbert. (See Supp. Affidavit at p. 1.) The Supplemental Affidavit also charges the DC Defendants with disobeying court orders. (See *id.* at pp. 3:5-11, 4:4-8, 4:28-5:03.) However, Plaintiff cannot obtain more than what her notice of application and memorandum of points and authorities requested. (See *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125 ["As a general rule, the trial court may consider only the grounds stated in the notice of motion. An omission in the notice may be overlooked if the supporting papers make clear the grounds for the relief sought."], citations omitted.) Therefore, the court will deny the motion to the extent that it seeks an OSC addressed to the DC Defendants. <u>Number of Counts</u> The Supplemental Affidavit alleges that the court made three orders that Defendant Colbert disobeyed:

		1. The order issued January 16, 2024, that the parties refrain from transferring, encumbering, hypothecating, concealing, destroying, or in any way disposing of or making unavailable, any property, assets, documents, or information of Plaintiff PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning; Plaintiff SC Equipment Company, LLC; Defendant DC Plumbing, Heating and Air Conditioning, Inc.; or Defendant DC Plumbing, Inc. (collectively, Business Entities). (See Supp. Affidavit, ¶ 3.a.1.) 2. The order issued January 16, 2024, that the parties continue, without modification or termination, the manner in which the Business Entities were conducting business as of October 26, 2023. (See *id.*, ¶ 3.b.2.) 3. The order issued January 16, 2024, Plaintiff Leah Rae Knoll (Plaintiff Knoll) be provided an accounting of the financial transactions for the DC Defendants and any partnership formed between Plaintiff Knoll and Defendant Colbert. (See *id.*, ¶ 3.d.4.) While the Supplemental Affidavit asserts that the court made a fourth order in Paragraph 3.c.3, there is no allegation that that order was disobeyed. (See *id.*, ¶ 3.c.3.) The Supplemental Affidavit thus makes out three counts of contempt, one for disobedience of each of the orders listed above. <u>Count 1</u> Plaintiff Knoll alleges that Defendant Colbert disobeyed the January 16, 2024 court order because he did not "refrain from . . . concealing . . . or making unavailable, any property, assets, documents, or information of PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning; SC Equipment Company, LLC; DC Plumbing, Heating and Air Conditioning, Inc.; or DC Plumbing, Inc." (Supp. Affidavit, ¶ 3.a.1.) Specifically, Plaintiff Knoll asserts that Defendant

		Colbert changed the locks on the SC Equipment building even though Plaintiff Knoll is the sole owner of the property and holds the grant deed. (See *id.*, ¶ 3.a.1.i.) Plaintiff Knoll alleges that as a result, she has not been able to access her property and her personal belongings, including her laptop, tax returns, and other confidential records since September 27, 2023. (See *id.*, ¶ 3.a.1.ii.) Plaintiff Knoll asserts that Defendant continues to conceal and make unavailable her property to the present day. (See *id.*, ¶ 3.a.1.i.) In his counter-affidavit, Defendant Colbert admits that on or about September 27, 2023, before this case commenced, he changed the locks at the SC Equipment building. (See Decl. of David L. Colbert in Supp. of Def.s' Opp'n to Pltf.'s Mot. for Order to Show Cause re: Contempt (Colbert Decl.), ¶ 9.) However, Defendant Colbert alleges that he did so only after the family law court entered a domestic violence restraining order against Plaintiff Knoll that required her to stay at least 100 yards from the building. (See *id.*, ¶ 9; Exh. B.) Defendant Colbert also asserts that he subsequently provided Plaintiff Knoll's daughter with Plaintiff Knoll's property that was at the building, and he notes that Plaintiff Knoll has not made any further request for anyone to visit the building to search for additional property on her behalf. (See *id.*, ¶ 9; Declaration of John D. Drdek in Supp. of Def.s' Opp'n to Pltf.'s Mot. for Order to Show Cause re: Contempt (Drdek Decl.), ¶ 4.) Defendant Colbert argues that if he granted Plaintiff Knoll entry to the SC Equipment Building, he would be allowing her to violate the domestic violence restraining order. Therefore, he does not have the ability to comply with this aspect of the court's orders of January 16, 2024. Defendant Colbert is willing, however, to allow Plaintiff's representatives (although not Plaintiff herself) to come to the SC Equipment building to collect Plaintiff Knoll's property. (See Drdek Decl., ¶ 4.) Furthermore, Defendant Colbert contends that Plaintiff Knoll has failed to sufficiently allege the identity of any purported property at the SC

		Equipment Building. As argued by Defendant Colbert, Plaintiff Knoll has only used vague terms such as "personal laptop" and "assets." Thus, Defendant Colbert did not willfully disobey the court's orders because he is unsure what property Plaintiff seeks. Defendant Colbert also argues that the Supplemental Affidavit alleges that Defendant Colbert is withholding "her property and assets" and "her property or her personal belongings." However, the court's orders only refer to the property and information of the Business Entities, not of Plaintiff Knoll. In this case, the domestic violence restraining order against Plaintiff Knoll requires her to stay at least 100 yards away from Defendant Colbert's "job or workplace," which includes the SC Equipment Building. (See Colbert Decl., Exh. B at p. 4.) The family law court has extended the restraining order to April 30, 2024, and as a result, the domestic violence restraining order remains in effect. (See *id.*, Exh. C at p. 1.) As this court previously noted, "when two superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved." (See ROA #67 at p. 6, citing to *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786, 787.) Here, the family law court was the first court to take jurisdiction of the issue of Plaintiff Knoll's ability to be at or near Defendant Colbert's workplace — the SC Equipment building. Since the issue of the domestic violence restraining order is still before the family law court, this court is without jurisdiction to issue orders requiring Defendant Colbert to give Plaintiff Knoll access to the SC Equipment Building. As stated in the domestic violence restraining order: "even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced." (Defendant Colbert Decl., Exh. B at p. 8.) Further, Defendant Colbert has attempted to

		comply with the court's orders to the extent possible, by providing Plaintiff's property to her daughter and by allowing Plaintiff's representatives to examine the building for property. In any case, the court's order only applies to the Business Entities' property and assets. The court's orders make no reference to Plaintiff Knoll's personal property. Thus, the affidavits of Plaintiff Knoll do not allege sufficient facts to show that Defendant Colbert had the ability to comply with the court's order or that Defendant Colbert willfully disobeyed the court's order. Accordingly, the Court denies the application for an OSC with respect to Count 1. <u>Count 2</u> Plaintiff Knoll next alleges that Defendant Colbert violated the January 2024 court order by failing "to continue, without modification or termination the way PHA Professional Services, Inc. dba DC Plumbing, Heating and Air Conditioning; SC Equipment Company, LLC; DC Plumbing, Heating and Air Conditioning, Inc.; and DC Plumbing, Inc. were conducting business as of October 26, 2023." (Supp. Affidavit, ¶ 3.b.2.) Specifically, Plaintiff Knoll asserts that Defendant Colbert has and continues to refuse to pay the ongoing material obligations of "PHA Professional Services, Inc. ('PHA') which has caused PHA's bond on file with the California State Contractor's License Board be claimed and at present the surety is seeking reimbursement from Knoll." (*Id.*, ¶ 3.b.2.i; see also Affidavit of Leah Rae Knoll (Knoll Affidavit), ¶¶ 11-12.) Plaintiff Knoll also alleges that Defendant Colbert has and continues to fail to pay an SBA business loan for the benefit of the "PHA and SCEC business operations for which Knoll is a personal guarantor." (Supp. Affidavit, ¶ 3.b.2.ii, 3.b.2.v; see also Knoll Affidavit, ¶ 11.) Plaintiff Knoll asserts that Defendant Colbert has "failed to conduct any business under PHA or make Payments to SCE for renting the SCE building, vehicles, and equipment." (Supp.

		Affidavit, ¶ 3.b.2.iii; see also Knoll Affidavit, ¶¶ 10, 12.) Plaintiff Knoll contends that Defendant Colbert has failed to pay rent to SC Equipment LLC for the use of 7 specified vehicles, and that Defendant Colbert has forged title as to one vehicle and sold the vehicle. (Supp. Affidavit, ¶ 3.b.2.iv, 3.b.2.vi; see also Knoll Affidavit, ¶ 13, Exh. 7.) In response, Defendant Colbert argues that all of the purportedly contemptuous activity alleged in the charging documents occurred before this litigation was initiated on October 26, 2023 and that the court's order only required the parties to continue the manner in which the Business Entities were conducting business as of October 26, 2023. Specifically, Defendant Colbert alleges that after the domestic violence restraining order was issued against Plaintiff Knoll, Plaintiff Knoll terminated Defendant Colbert's access to Plaintiff PHA Inc.'s (Plaintiff PHA) bank account and payroll services. (See Colbert Decl., ¶ 10.) Defendant Colbert asserts that as a result, in early October 2023, he disassociated his contractor's license from Plaintiff PHA, reactivated it with Defendant DC Plumbing, Inc. (Defendant DC Plumbing); established a new merchant account for Defendant DC Plumbing; and created a new payroll account and QuickBooks file for Defendant DC Plumbing. (See *id.*, ¶ 10; Exhs. D and E.) According to Defendant Colbert, the first pay period for Defendant DC Plumbing after this relaunch was October 8, 2023 to October 21, 2023. (See *id.*, ¶ 10. Exh. F.) Therefore, Defendant Colbert contends that since he had transferred his business back to DC Plumbing before Plaintiffs filed the instant lawsuit and before October 26, 2023, Defendants cannot be found in contempt. However, Plaintiff's affidavits allege that Defendant Colbert violated the court's orders because he has not paid the financial obligations associated with one or more of the Business Entities. Although Defendant Colbert's declaration disputes Plaintiff's allegations, it does not show that

		Plaintiff's allegations are insufficient. A fact finder must determine whether Plaintiff's allegations are true beyond a reasonable doubt, after an evidentiary hearing or trial in which both sides may present their evidence. Defendant Colbert also contends Plaintiff Knoll's affidavits fail to adequately allege that Defendants were responsible for paying the obligations of the Corporate Plaintiffs. Defendant Colbert argues that the affidavits actually establish that Plaintiff Knoll, not Defendants, was personally responsible for the financial obligations of the Business Entities prior to October 26, 2023. (See, e.g., Knoll Affidavit, ¶ 8; Supp. Affidavit, ¶ 3.b.2.ii.) However, the fact that Plaintiff Knoll was personally liable for the obligations in question does not resolve the issue. The central question is which of the Business Entities were paying the obligations prior to October 26, 2023. If those Business Entities were paying the obligations prior to October 26, 2023 and stopped paying the obligations after that date, then there may be a violation of the court's orders, regardless of who was ultimately responsible for the obligations. Regarding the allegations with respect to the vehicles, Defendant Colbert contends Plaintiff Knoll has failed to provide any documentary support for the allegation. However, at this stage, Plaintiff Knoll is not required to provide evidentiary support for every allegation. Defendant Colbert also alleges that he owns a 50% interest in the vehicles and he satisfied the loan, insurance, and registration obligations. (See Colbert Decl., ¶ 12, Exh.s J, K.) Defendant Colbert further asserts that one of the vehicles was sold on October 4, 2023, prior to the initiation of this litigation and the effective date of the preliminary injunction. (See Colbert Decl., ¶ 14; Exh. L.) These allegations put the issue into dispute but do not show that Plaintiff Knoll's allegations are insufficient. These issues will have to be resolved by the factfinder at an evidentiary hearing or trial. Plaintiff Knoll's affidavits adequately allege Count 2. Accordingly, the Court grants the application as to Count 2.

		Count 3 Plaintiff Knoll alleges that Defendant Colbert failed to provide her with monthly accountings, in violation of the court's order that "Plaintiff, Leah Rae Knoll shall be provided an accounting of the financial transactions for Defendant DC Pluming, Heating and Air Conditioning, Inc.; Defendant DC Plumbing, Inc.; and any partnership formed between Plaintiff Leah Rae Knoll and Defendant David Colbert." (Knoll Affidavit, ¶ 17; Supp. Affidavit, ¶ 3.d.4.) According to Plaintiff Knoll, on February 29, 2024, Defendant Colbert, through his counsel, provided Plaintiffs with Defendants' Provision of Accounting for January 1, 2023, to January 31, 2024 (Provision of Accounting). (See Knoll Affidavit, ¶ 18, Exh. 9.) However, Plaintiff Knoll claims that the Provision of Accounting stated that itemized accounting information beginning October 2023 was not available because Plaintiff Knoll had ceased operating Plaintiff PHA on October 1, 2023, thus necessitating the transfer of accounting information from Quickbooks, which was ongoing. (See *id.*, ¶ 18.) Plaintiff Knoll contends that Defendant Colbert can provide the missing information because the companies have an integrated payment processing services and real-time financials are automatically updated through cloud-based software. (See *id*., ¶ 19.) In opposition, Defendant Colbert asserts that not only did he provide the Provision of Accounting, but also that, on March 29, 2024, Defendants provided Plaintiffs an accounting from February 1, 2024, to February 29, 2024, with additional information to supplement the previous accounting. (See Drdek Decl., ¶ 5, Exh. N.) Defendant Colbert contends that these actions were in compliance with the court's orders, particularly because the court's order does not specify what information is to be included in the accounting other than "financial transactions." Defendant Colbert argues that Plaintiffs seek to hold him in contempt for failing to provide a

		"comprehensive accounting" and "source documents" without articulating what they believe should have been included in the accounting. (See Supp. Affidavit, ¶¶ 3.d.4.i, 3.d.4.ii.) Here, the court's order only require the provision of monthly accountings of the DC Defendants' "financial transactions" beginning January 1, 2024. The order does not define the scope of the financial transactions to be included in the accountings nor did it require the provision of "source documents". Thus, the court's order was not sufficiently specific so that Plaintiffs would be able to demonstrate that Defendant Colbert violated the order, at least not in the way that Plaintiffs allege. In addition, Plaintiffs cannot show that Defendant Colbert violated the order willfully, because it cannot be shown that Defendant Colbert knew what he was required to provide. The affidavits of Plaintiff Knoll do not allege sufficient facts to show that Defendant Colbert violated the court's order or that he did so willfully. Accordingly, the Court denies the application for an OSC with respect to Count 3. <u>Other Remedies</u> Defendant Colbert also argues that Plaintiff Knoll's original Affidavit seeks remedies that are either beyond the scope of the court's orders or do not clearly identify the remedies sought. Defendant Colbert is correct. However, most of these problems are resolved by Plaintiff Knoll's Supplemental Affidavit, which focuses the allegations on a smaller number of clearly-defined alleged actions by Defendant Colbert. The court also has limited the confusion by considering only the remedy requested by Plaintiff Knoll in the notice of application – namely, an OSC re: Contempt as to Defendant Colbert. The court is ignoring any other requests for relief by Plaintiff Knoll. <u>Punishment Sought</u> Defendant Colbert also attacks the Plaintiff Knoll's

		affidavits because they fail to state what contempt punishments Plaintiff Knoll is seeking. (See Code Civ. Proc., § 1218, subd. (a) [person adjudged to be in contempt may be fined $1,000 or imprisoned for a duration not to exceed 5 days, or both].) While it is preferable for the initiating party to indicate what punishment(s) are being sought, to allow the court and responding party to prepare adequately, there is no requirement in the Civil Procedure Code that the initiating party do so. In addition, the court may and will request this information from Plaintiff Knoll at the nexst hearing on this matter. Thus, this oversight is not fatal to the motion. <u>Sanctions</u> Plaintiffs request sanctions in form of reasonable attorney's fees and filing fees in the amount of $5,094. However, a party may recover attorney's fees only if provided for by contract or statute. (Code Civ. Proc., § 1033.5.) Here, Plaintiffs have not cited to any statute that would allow the award of sanctions or attorney's fees at this stage in the proceedings. Normally, attorney's fees can only be awarded against a party that has been "adjudged guilty of contempt for violating that court order." (Code Civ. Proc., § 1218, subd. (a).) Therefore, it appears that Plaintiffs request is premature. The court will deny Plaintiffs' request for sanctions. Plaintiffs shall give notice of this ruling.
4	**Larson vs. Freedline** **30-2020-01127166**	<u>Motions to Compel Discovery</u> Pursuant to the Notice of Withdrawal of Motions to Compel Further Responses to Special Interrogatories filed April 19, 2024, (ROA #525); Notice of Settlement of Entire Case filed April 11, 2024, (ROA #527); and the court's Minute Order filed April 23, 2024, (ROA #535), these matters are taken OFF CALENDAR.

5	**Mesa vs. GMI Building Services, Inc.** **30-2022-01276309**	Motions for Summary Judgment and/or Summary Adjudication Pursuant to the Request for Dismissal of the entire action of all parties and all causes of action filed on April 30, 2024, (ROA #124), these matters are taken OFF CALENDAR.
6	**Raile vs. Williams** **30-2023-01304903**	Motions to Compel Discovery Pursuant to the court's orders, these matters are CONTINUED to July 3, 2024 at 1:30 p.m. in Department N15.
7	**Torres vs. City of Huntington Beach** **30-2023-01350857**	Demurrer Defendant City of Huntington Beach's Demurrer to First Amended Complaint is SUSTAINED with 21 days leave to amend as to the 1st and 2nd Causes of Action. Defendant City of Huntington Beach demurs to the 1st and 2nd Causes of Action of the First Amended Complaint (FAC) filed by Plaintiff Anita M. Torres. Standard for Demurrer A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05.) For this reason, the court will not decide questions of fact on demurrer. (See *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Instead, the court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law . . . ." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, citation omitted; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318). Therefore, the court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice.

		(*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 fn.7.) However, "where facts appearing in attached exhibits or judicially noticed documents contradict, or are inconsistent with, the complaint's allegations, we must rely on the facts in the exhibits and judicially noticed documents." (*Jimenez vs. Mrs. Gooch's Natural Foods Markets, Inc.* (2023) 95 Cal.App.5th 645, 653.) Although courts should take a liberal view of inartfully drawn pleadings, (see Code Civ. Proc., § 452), it remains essential that a pleading set forth the actionable facts relied upon with sufficient precision to inform the responding party of the matters that the pleading party is alleging, and what remedies or relief is being sought, (see *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413). Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; see Code Civ. Proc., § 425.10, subd. (a).) <u>1st Cause of Action (Premises Liability) and 2nd Cause of Action (General Negligence)</u> "The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) The primary difference is that premises liability is based on "the possession of the premises and the attendant right to control and manage the premises." (*Ibid.*, quoting *Preston v. Goldman* (1986) 42 Cal.3d 108, 118.) However, "the duty arising from possession and control of property is adherence to the same standard of care that applies in negligence cases." (See *Kesner v. Superior Court*, *supra*, 1 Cal.5th at p. 1158.) <u>Government Code Section 815</u> "It is a well-settled rule that 'there is no common law governmental tort liability in California; and except as otherwise provided by statute, there is no liability on the part of a public entity for any act or omission of itself, a public employee, or any other person.'" (*Green Valley Landowners Assn. v.*

		City of Vallejo (2015) 241 Cal.App.4th 425, 441–442, quoting *Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 761.) Specifically, Government Code section 815 states: Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (Gov. Code, § 815.) Defendant contends that the FAC is deficient because it fails to allege the statutory basis for the 1st Cause of Action for Premises Liability and the 2nd Cause of Action for General Negligence. As the Court of Appeal has explained: [B]ecause under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795, quoting *Peter W. v. San Francisco Unified School Dist.* (1976) 60 Cal.App.3d 814, 819; *Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.) Therefore, a complaint must allege "a mandatory statutory duty as required by Government Code section 815." (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 410 n.2.) Where "[n]either [the] complaint actually alleges any duty on the part of the City . . . nor . . . any facts in support of the purported duties," the complaint is subject to demurrer. (*Ibid.*) Plaintiff argues that the FAC was prepared on a Judicial Council form that does not contemplate providing the level of detail demanded by the Defendant.

		However, "Judicial Council form complaints are not invulnerable to a demurrer." (*Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal.App.5th 547, 555.) The fact that Plaintiff used a Judicial Council form in this case does not mean that she has adequately plead a cause of action against Defendant. The court will sustain the demurrer as to the 1st and 2nd Causes of Action on the basis that they do not plead a statutory basis for liability of Defendant. <u>Dangerous Condition</u> Government Code section 835 states one of the bases upon which a public entity may be held liable under Government Code Section 815. Specifically, Section 835 states that: [A] a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. (Gov. Code, § 835.) Defendant argues that the Complaint does not sufficiently allege a dangerous condition under Section 835. However, this argument is premature as the FAC does not allege that the statutory basis of the 1st and 2nd Causes of Action is Section 835.

		Uncertainty "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) Demurrers for uncertainty "are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Lickiss v. Fin. Indus. Regulatory Auth.* (2012) 208 Cal.App.4th 1125, 1135.) "[A] demurrer for uncertainty will not be sustained where the facts claimed to be uncertain or ambiguous are presumptively within the knowledge of the demurring party." (*Ching v. Dy Foon* (1956) 143 Cal.App.2d 129, 136.) Defendant contends that the FAC is vague, ambiguous, and uncertain. However, notwithstanding the deficiencies stated in this ruling, the FAC is not so incomprehensible that Defendant cannot reasonably respond. Claims Presentation Requirement "The Government Tort Claims Act (Gov. Code, § 810 et seq.) requires that '[b]efore suing a public entity, the plaintiff must present a timely written claim for damages to the entity.'" (*A.M. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257, quoting *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208; see Gov. Code, § 911.2, subd. (a) ["A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action."].) Further, the Government Tort Claims Act provides that: [N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written

		claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division. (Gov. Code, § 945.4.) "Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) In addition, the claims presentation requirement "is not merely procedural, but is a condition precedent to maintaining a cause of action and, thus, is an element of the plaintiff's cause of action." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1236.) Therefore, a party suing a public entity must allege compliance with this requirement or "the complaint is subject to attack by demurrer." (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374.) Defendant contends that the FAC fails because it does not allege compliance with or excuse from the claims presentation requirements of the Government Tort Claims Act. The FAC does not, in fact, allege compliance with the claims presentation requirement of Section 910. The court will sustain the demurrer as to the 1st and 2nd Causes of Action on the basis that they do not plead that the claims presentation requirement has been met. <u>Leave to Amend</u> "It is an abuse of the trial court's discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the plaintiff can amend the complaint to allege any cause of action." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not

		been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) However, it is the plaintiff's "burden to establish how the complaint can be amended to state a valid cause of action." (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044.) In order to meet this burden, a plaintiff may submit a proposed amended complaint or enumerate facts and demonstrate how those facts establish a cause of action. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890.) Nonetheless, "[f]or an original complaint, regardless whether the plaintiff has requested leave to amend, it has long been the rule that a trial court's denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment.'" (*Eghtesad v. State Farm General Insurance. Co.* (2020) 51 Cal.App.5th 406, 411, quoting *King v. Mortimer* (1948) 83 Cal.App.2d 153, 158; see *Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240 ["Only rarely should a demurrer to an initial complaint be sustained without leave to amend."].) While Plaintiff has not specifically requested leave to amend, the deficiencies upon which the court sustains the demurrer are based on pleading errors, which could be corrected if Plaintiff was allowed to amend. In addition, although this demurrer was made as to the First Amended Complaint, this is the first time the court has sustained a demurrer in this case. Plaintiff should be allowed at least one opportunity to cure the deficiencies asserted by Defendant. The court will sustain the demurrer with leave to amend. The parties are reminded that when leave to amend is granted upon the sustaining of a demurrer, amendments are limited to the issues addressed in the court's ruling and generally may not include amendments to causes of action not addressed on demurrer or the addition of new causes of action. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 ["It is the rule that when a trial court sustains a

		demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. It gives the pleader an opportunity to cure the defects in the particular causes of action to which the demurrer was sustained, but that is all."].) Defendant shall give notice of this ruling.
8	**Vargas vs. Chapman** **30-2023-01345881**	<u>Demurrer</u> Defendants Christofer Chapman's and Friedman & Chapman, LLP's Demurrer to the Complaint is OVERRULED. Defendants shall file an answer or other pleading in response to the Complaint within 10 days of service of the notice of ruling. (See Cal. Rules of Court, rule 3.1320(j).) Defendants Christofer Chapman and Friedman & Chapman, LLP demur to the 2nd Cause of Action of the Complaint for Damages (Complaint) filed by Plaintiff Brenda E. Vargas. <u>Standard for Demurrer</u> A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05.) For this reason, the court will not decide questions of fact on demurrer. (See *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Instead, the court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law . . . ." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, citation omitted; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318). Therefore, the court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 fn.7.) However, "where facts appearing in attached exhibits or judicially noticed documents contradict,

		or are inconsistent with, the complaint's allegations, we must rely on the facts in the exhibits and judicially noticed documents." (*Jimenez vs. Mrs. Gooch's Natural Foods Markets, Inc.* (2023) 95 Cal.App.5th 645, 653.) Although courts should take a liberal view of inartfully drawn pleadings, (see Code Civ. Proc., § 452), it remains essential that a pleading set forth the actionable facts relied upon with sufficient precision to inform the responding party of the matters that the pleading party is alleging, and what remedies or relief is being sought, (see *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413). Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; see Code Civ. Proc., § 425.10, subd. (a).) <u>2nd Cause of Action (Fraud)</u> "'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.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 676, p. 778.) The Complaint alleges that Plaintiff had had a $30,000 lien on any settlement proceeds arising from the case of *Zavala v. Dontheneni*, Case Number RIC 190313 (Zavala Case), as a result of certain legal services she had performed. (See Compl., ¶ 6, Exh. A.) The Complaint then pleads that, in order to satisfy the lien, Plaintiff and Defendants agreed that Defendants would pay to Plaintiff the sum of $25,000 from the settlement proceeds of the Zavala Case. (See Compl., ¶¶ 7, 28, Exh. B.) Specifically, the Complaint asserts that Defendants represented that they would make the $25,000 payment after the case settled and after Defendants received the settlement check. (See Compl., ¶¶ 7, 16, 19, 28.)

		The Complaint alleges that Plaintiff justifiably relied on Defendants' representations. (See Compl., ¶¶ 20, 31.) The Complaint pleads that Defendants knew their representations to Plaintiff were false, that they had no intention of paying Plaintiff, and that they made the misrepresentations with an intent to defraud Plaintiff. (See Compl., ¶¶ 20-22, 26-27, 29-30.) The Complaint asserts that, as a result of Defendants' fraud, Plaintiff has been damaged, as she has not received the $25,000 Defendants represented she would be paid. (Compl., ¶ 32.) The Complaint thus pleads the elements of a fraud cause of action. However, Defendants argue that: > Plaintiff did not, and cannot allege fraudulent inducement since the underlying attorney lien was unilaterally asserted "more than one year before Defendants' alleged promise to pay. Plaintiff could not possibly have been induced to perform legal services in the amount of $25,000 based on anything said by Defendant more than one year later. (Mem. of P.s&A.s at p. 5:6-11.) In this case, Plaintiff is not claiming that she was fraudulently induced to provide legal services in the Zavala Case. Reading the Complaint liberally and in context, it alleges that Plaintiff relied upon Defendants' representations when she agreed to accept $25,000 rather than the to which sums she would have been entitled under the lien. In other words, Plaintiff was fraudulently induced to enter into the agreement. Defendants also contend that Plaintiff is improperly trying to turn a simple breach of contract action into a tort claim, even though Plaintiff has not alleged facts showing Defendants breached a duty independent of the contract. However, as noted above, the Complaint can be read to allege that Defendants fraudulently

		induced Plaintiff to enter into the agreement, despite having no intent of fulfilling the agreement to pay Plaintiff the sum of $25,000. Fraudulent inducement to enter into a contract is a tort separate from breach of contract. (See *Erlich v. Menezes* (1999) 21 Cal.4th 543, 551-552 [same wrongful acts may constitute both breach of contract and invasion of an interest protected by law of torts, such as when contract is fraudulently induced].) Plaintiff shall give notice of this ruling.
9	**Young vs. Seabreeze Management Company, Inc.** **30-2023-01326864**	Motions to Compel Discovery Pursuant to the Request for Dismissal of the entire action of all parties and all causes of action filed on April 26, 2024, (ROA #109), these matters are taken OFF CALENDAR.