**TENTATIVE RULINGS**

**DEPT W15**

**JUDGE RICHARD Y. LEE**

Date: April 25, 2024

**Civil Court Reporters:** The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

**Tentative Rulings**: The Court will endeavor to post tentative rulings on the Court's website by 5 p.m. on Wednesday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

**Submitting on the Tentative Ruling**: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5915. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give Notice of Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

**Non-Appearances**: If no one appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

**Remote Appearances:** Department W15 generally conducts non-evidentiary proceedings, including law and motion, *remotely, by Zoom videoconference*: (1) All counsel and self-represented parties appearing for such hearings **must,** prior to 1:30 p.m. on Thursday, check-in online via the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html. (2) Participants will then be prompted to join the courtroom's Zoom hearing session. (3) The calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Guidelines for Remote Appearances" posted online. In compliance with Local Rule 375, parties preferring to be heard in-person, instead of remotely, **shall** provide *notice of in-person appearance* to the court and all other parties five (5) days in advance of the hearing. (See the appropriate Local Form available at https://www.occourts.org/forms/formslocal.html).

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| 100 | Luparello vs. Yorba Linda Villages Condominium Association | Plaintiff Denise Luparello ("Plaintiff") moves to compel Defendant Yorba Linda Villages Condominium Association ("Defendant") to serve further responses to Demand for |

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| | 23-01316548 | Production of Documents (Set One), Nos. 2-14; Requests for Admission (Set One), Nos. 1-5; Special Interrogatories (Set One), Nos. 1-7; and Form Interrogatories (Set One), Nos. 1.1, 3.1-3.7, 4.1-4.2, 14.1-14.2, 15.1, 16.1, and 17.1.<br><br>Defendant's responses to the disputed requests and interrogatories contained only objections. When Plaintiff sent a meet and confer letter, Defendant's prior counsel responded to state that the responses were served to preserve the objections because a potential conflict of interest had arisen that would require new counsel to be tasked with providing substantive responses. (Declaration of Jessica E. Lehr, ¶¶ 4-5.)<br><br>Defendant's prior counsel has since substituted out and new counsel has substituted in. (Declaration of Brian C. Holloway, ¶ 3.) New counsel is preparing supplemental responses to each of the disputed requests and interrogatories and expects to serve verified supplemental responses before the scheduled hearing date. (Ibid.)<br><br>If the Motions are not withdrawn before the scheduled hearing date, Defendant should be prepared to submit evidence at the hearing showing that supplemental responses have been served. Upon an adequate showing, the Motions will be denied as moot. If no responses have been served by the time of the hearing, the Motions will be granted.<br><br>*Moving party to give notice.* |
| 101 | Campbell vs. Brooks<br>22-01286871 | *(ROA 112) Plaintiff Robert Campbell will, and hereby does, move for an order (1) compelling third-party Niko Houston to appear for and testify at deposition; and (2) for sanctions in the amount of $2,537.00 against Niko Houston.*<br><br>Initially, where the witness whose deposition is sought is not a party (or a "party-affiliated" witness), a subpoena must be served to compel the witness' attendance, testimony, or production of documents. [Code Civ. Proc. §§ 2020.010(b), 2025.280(b); *see Terry v. SLICO* (2009) 175 Cal.App.4th 352, 357, (citing text)] (Code Civ. Proc. § 1985 et seq. dealing with subpoenas generally also apply to deposition |

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| | | subpoenas except as modified by § 2020.010 et seq.; see Code Civ. Proc. § 2020.030.]<br><br>Personal service of a deposition subpoena requires a person who is a resident of California to appear, testify and produce whatever documents or things are specified in the subpoena; and also to appear in any proceedings to enforce discovery. [Code Civ. Proc. § 2020.220(c)(3)]<br><br>Here, although third-party Niko Houston was personally served with the Deposition Subpoena (Declaration of JC Chimoures¶3, Ex. 2), she was not personally served with this motion. Indeed, it does not appear she was served with the Motion at all.<br><br>As such, the Motion is DENIED WITHOUT PREJUDICE.<br><br>*(ROA 145) Plaintiff Robert Campbell will, and hereby does, move for an order (1) compelling the deposition of Defendant 94 Ways Investment Group; and (2) for monetary sanctions in the amount of $4,575.00 against Defendant 94 Ways Investment Group and its counsel of record, Ralph E. Harrison, II and the Law Office of Ralph Harrison.*<br><br>Pursuant to Cal. Code of Civ. Proc.§ 2025.450(a), "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice."<br><br>Here, Plaintiff electronically served 94 Ways Investment Group, through its counsel of record, with a deposition notice on October 16, 2023, setting its deposition for November 1, |

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| | | 2023. 94 Ways Investment Group never served objections. 94 Ways Investment Group never informed Plaintiff that it did not intend to appear for deposition. 94 Ways Investment Group never appeared for deposition as-scheduled. Mr. Campbell took a non-appearance. [See Decl. JC Chimoures , ROA 146.]<br><br>However, pursuant to Cal. Code of Civ. Proc §2025.450(b)(2), this motion, "shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance."<br><br>The Declaration of JC Chimoures is silent as to any attempted meet and confer, or suggestion that MP contacted the deponent to inquire about the nonappearance.<br><br>As such, the Motion is DENIED WITHOUT PREJUDICE.<br><br>*(ROA 131) Plaintiff Robert Campbell will, and hereby does, move for an order compelling Defendant Lawrence Brooks to provide further responses to Mr. Campbell's Set One Form Interrogatories. Mr. Campbell also requests sanctions against Defendant Lawrence Brooks in the amount of $1,760.*<br><br>A motion to compel lies where the party to whom the interrogatories were directed gave responses deemed improper by the propounding party; e.g., objections, or evasive or incomplete answers. [Code Civ. Proc. § 2030.300.]<br><br>A notice of motion to compel must be served, if at all, within 45 days after verified responses, or any verified supplemental responses, were served, unless the parties agree in writing to extend the time. [Code Civ. Proc. § 2030.300(c).]<br><br>The motion to compel must also be accompanied by a declaration stating facts showing a "reasonable and good faith attempt" |

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| | | to resolve informally the issues presented by the motion before filing the motion. [Code Civ. Proc. §§ 2016.040, 2030.300(b)(1).]<br><br>If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure fully to answer the interrogatories. [*Coy v. Sup.Ct*. (*Wolcher*) (1962) 58 Cal.2d 210, 220-221; *Fairmont Ins. Co. v. Sup.Ct*. (*Stendell*) (2000) 22 Cal.4th 245, 255.]<br><br>Finally, pursuant to Ca. Code of Civ. Proc. §2030.300(d), "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."<br><br>Here, Plaintiff propounded Set One Form Interrogatories on August 2, 2023. Brooks served his responses on September 22, 2023. Plaintiff met-and-conferred with Brooks via email on October 13, 2023 and telephonically on October 20, 2023. Brooks took the position that discovery was closed such that he did not need to provide complete responses to the Form Interrogatories. The Parties were unable to resolve their disagreement. Brooks never served further responses. [Declaration of JC Chimoures, ROA 132.] This motion was filed and served on October 27, 2023.<br><br>As such, the motion is timely and moving party has properly met and conferred to no avail. Defendant fails to file any opposition; and as such, has failed to sustain his burden to justify the objections. Therefore, the Motion is GRANTED and Defendant Brooks ordered to provide responses, without objections, within 30 days of the service of the Notice of Ruling.<br><br>Sanctions are awarded against Defendant Brooks in the amount of $1,160 (sum represents 2.9 hours of attorney work on this motion at $400 an hour). Sanctions to be paid within 30 days of service of Notice of Ruling. |

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| | | *(ROA 136) Plaintiff Robert Campbell will, and hereby does, move for an order compelling Defendant 94 Ways Investment Group to provide further responses to Mr. Campbell's Set One Form Interrogatories. Mr. Campbell also requests sanctions against Defendant 94 Ways Investment Group in the amount of $1,560.*<br><br>Here, the same law and basic facts apply to this motion as he Motion directed to Defendant Brooks. (See Declaration of JC Chimoures, ROA 137. )<br><br>Therefore, the Court finds the motion is timely and Moving Party has properly met and conferred to no avail. Defendant fails to file any opposition; and as such, has failed to sustain its burden to justify the objections. Therefore, the Motion is GRANTED and Defendant 94 Ways Investment Group is ordered to provide responses, without objections, within 30 days of the service of the Notice of Ruling.<br><br>Sanctions are awarded against Defendant 94 Ways Investment Group in the amount of $1,160 (sum represents 2.9 hours of attorney work on this motion at $400 an hour). Sanctions to be paid within 30 days of service of Notice of Ruling.<br><br>*Plaintiff to give notice*. |
| 102 | Reddy vs. Park Regency Care, LLC<br>23-01302625 | *Motion to Compel Further Responses to Form Interrogatories (ROA 54)*<br><br>Plaintiffs Fatima Reddy, by and through her successor in interest, Schuyler Dunk, and Schuyler Dunk move for an order compelling Defendant Park Regency Care, LLC dba Park Regency Care Center to serve further responses to Form Interrogatories, Set One Nos. 1.1, 3.1-3.7, 4.1, 12.1-12.7, 13.1-13.2, and 14.1-14.2, 15.1, and 17.1 and for monetary sanctions in the amount of $4,020.<br><br>In opposition, Defendant provides evidence that it has now provided supplemental responses and second supplemental responses to the interrogatories at issue. Accordingly, the motion is MOOT as to the request to compel further responses.<br><br>As to the remaining issue of sanctions, Defendant has shown substantial justification |

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| | | for its initial refusal to provide substantive responses to the discovery. Accordingly, the request for sanctions is DENIED.<br><br>*Plaintiffs to give notice.*<br><br>*Motion to Compel Further Responses to Special Interrogatories (ROA 122)*<br><br>Plaintiffs Fatima Reddy, by and through her successor in interest, Schuyler Dunk, and Schuyler Dunk move for an order compelling Defendant Sun-Mar Health Care, Inc. to serve further responses to Special Interrogatories, Set One Nos. 1 through 33.<br><br>On 4/12/24, Plaintiff dismissed Defendant Sun-Mar Health Care, Inc. (ROA 194.)<br><br>Accordingly, the motion is OFF CALENDAR as MOOT.<br><br>*Plaintiff to give notice.* |
| 103 | Caplan vs. Kestenbaum-Caplan 23-01339875 | Defendant Bess Kestenbaum-Caplan ("Defendant") moves to quash service of summons on the grounds that Plaintiff Navon Caplan's ("Plaintiff") purported service on her by personal service in Israel was not made according to any of the statutorily authorized methods and this Court has no personal jurisdiction over her.<br><br>Section 418.10(a)(1) authorizes a defendant to file and serve a notice of motion to quash service of summons on the ground of lack of jurisdiction. When a defendant challenges that jurisdiction by bringing a motion to quash, the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1440.)<br><br>The parties agree that there is no basis for the exercise of general personal jurisdiction over Defendant. The question is whether specific personal jurisdiction may be exercised.<br><br>Specific personal jurisdiction may be exercised over a nonresident defendant if he or she has purposefully availed himself or herself of the privilege of conducting activities within the forum State and the controversy arises out of |

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| | | or is related to the defendant's contacts with the forum State. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475-478; *see also Data Disc, Inc. v. Systems Tech. Assocs., Inc.* (9th Cir. 1977) 557 F.2d 1280, 1287; *Vons Cos., Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 446.) "Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " (*Burger King*, 471 U.S. at p. 477.)<br><br>This action arises from a March 15, 2021 event wherein Plaintiff alleges that he returned home to discover that his wife – Defendant, and two children had disappeared. (Compl. ¶ 20.) Plaintiff alleges that Defendant committed parental abduction of their children, causing him severe emotional distress. Plaintiff and Defendant were married in Israel and both their children were born in Israel. (Compl. ¶¶ 12-13, 15.) Plaintiff alleges that Defendant began suffering from postpartum depression in early 2021 after the birth of their second child, which was compounded due to strict lockdown measures ordered by the State of Israel during the Coronavirus pandemic. (Compl. ¶¶ 18-19.) Plaintiff has been a resident of California since 2023. (Compl. ¶ 6.)<br><br>Defendant permanently resides in Israel and states that she remained in Israel for all periods relevant to this lawsuit. (Declaration of Bess Kestenbaum-Caplan, ¶ 5.) She was personally served with the Summons and Complaint on September 12, 2023 in Israel. (Id. ¶ 2.)<br><br>Plaintiff argues that specific personal jurisdiction over Defendant is proper under the "effects" test set forth in *Calder v. Jones* (1984) 465 U.S. 783. In *Calder*, the United States Supreme Court held that jurisdiction over two Florida resident defendants was "proper in California based on the 'effects' of their Florida conduct in California. (*Id*. at p. 789.) The defendants had published an article in a national magazine about the plaintiff, an actress who resided and worked in California. (*Id*. at pp. 784-785.) The Supreme Court |

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| | | explained that jurisdiction over the nonresidents was proper because the focal point of both the article and the harm was located within California:<br><br>"The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California. In sum, California is the focal point both of the story and of the harm suffered."<br><br>(*Ibid.*)<br><br>Here, the facts are distinguishable. The allegations in the Complaint all occurred within the country of Israel. Plaintiff was not a resident of California when he discovered his children missing. None of Defendant's alleged conduct was directed at a California resident or undertaken to purposefully avail Defendant to any privileges or benefits of this state. The only connection this action has with this state is the allegation that Plaintiff became a resident in 2023. The Court finds that this connection is insufficient to show the minimum contacts necessary for the exercise of specific jurisdiction. (*See In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 122 ["In order for California courts to properly exercise our specific jurisdiction, this state must have been the focal point of the tort and the brunt of the harm must have been felt here."].)<br><br>Further, under these circumstances, the exercise of specific personal jurisdiction over Defendant would not comport with fair play and substantial justice. It would be unreasonable and unfair to hail Defendant to defend against a case in California when she has had no contacts with this state whatsoever.<br><br>In light of the above, the Court GRANTS Defendant's Motion to Quash.<br><br>The Case Management Conference is continued to May 30, 2024 at 1:30 p.m. |

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| | | *Defendant to give notice.* |
| 104 | Shukla vs. UnitedHealth Group, Inc.<br>22-01271671 | Defendant Kathleen Leano ("Defendant" or "Leano") demurs to the Ninth and Eleventh causes of action in the Second Amended Complaint ("SAC").<br><br>*Ninth Cause of Action for Hostile Work Environment*<br>Defendant demurs to the hostile work environment cause of action on the grounds every one of Plaintiff's allegations is a personnel management action and allegations of personnel management alone are insufficient to state a cause of action. Defendant cites to *Janken v. GM Hughes Elec*. (1996) 46 Cal.App.5th 55, 64-65 as legal authority.<br><br>In Opposition, Plaintiff contends that the Court previously found a viable claim could be pled based on Plaintiff's protected status if alleged; that the SAC pleads that Plaintiff went on medical leave on 4/23/2020, returned, and then Defendant Leano's conduct worsened when she returned (see SAC, ¶¶ 23 and 32); and the fact that a defendant is in a managerial position does not mean all of their actions and conduct are protected as a managerial decision.<br><br>"To establish a prima facie case of a hostile work environment, [Plaintiff] must show that (1) she is a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her protected status; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment." (*Ortiz v. Dameron Hospital Association* (2019) 37 Cal.App.5th 568, 581).<br><br>Here, the SAC alleges that Defendant Leano "would harass Plaintiff, yelling at her for issues beyond Plaintiff's control and made belittling comments such as, 'Why can't you get this done, when all of your peers can get this done?'"; that Plaintiff was singled out to have daily one-on-one meetings with Defendant Leano unlike the other employees;  that Plaintiff took a medical leave of absence on |

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| | | April 23, 2020 and returned on July 21, 2020 and that upon her return, Defendant Leano's behavior towards Plaintiff worsened and she was subjected to increased pressure and harassment because Plaintiff suffered from a disability and took three months off on a protected medical leave; that Defendant Leano would contact Plaintiff outside normal work hours and ask Plaintiff to drop everything and return to the office to attend to certain tasks; that Defendant Leano singled out Plaintiff to discuss incomplete tickets from over two years ago that were not assigned to Plaintiff and re-assign them to Plaintiff for the sole purpose of humiliating, berating, and belittling her in front of the entire team; that Defendant Leano singled out Plaintiff on a weekly basis for non-existent issues and reprimanded her; and that Defendant LEANO repeatedly badgered and berated Plaintiff. (See SAC, ¶¶ 14, 19-27.)<br><br>These allegations are not simply "personnel management actions" as Defendant contends and the facts of this case are distinguishable from *Janken*, the case relied upon by Defendant. In *Janken*, plaintiffs sought to assert a cause of action for work-place harassment based on defendants' evaluation of plaintiffs' performance appraisals, demoting/terminating/or laying off plaintiffs, failure to promote or transfer plaintiffs, failure to provide plaintiffs with commensurate salaries, etc... (*Janken, supra*, 46 Cal.App.4th at 79 [the "complaint variously alleges that the defendants collectively or individually downgraded or altered plaintiffs' performance appraisals; demoted, terminated or laid off plaintiffs; failed to promote or failed to transfer plaintiffs; failed to provide plaintiffs with salaries commensurate with their qualifications, experience and responsibilities; placed a 'cap' on salaries of long-term employees such as plaintiffs; sent plaintiffs 'at risk' notifications warning of possibly impending layoffs, or at other times failed to send 'at risk' notifications warning of possibly impending layoffs; failed to provide plaintiffs with work assignments; failed to provide plaintiffs with sufficient clerical or secretarial support; failed to respond to correspondence sent by plaintiffs to 'senior Hughes management'; 'accused' one plaintiff of not properly maintaining a time card; and similar claims."].) It was upon these facts that |

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| | | the *Janken* Court found that harassment could not be alleged since "the actions alleged here are within the realm of properly delegated personnel management authority." (*Id*.)<br><br>Here, unlike in Janken, Plaintiff alleges that Defendant Leano yelled at her, belittled her, and singled her out from amongst other employees to berate and humiliate her.<br><br>Accordingly, the Court OVERRULES the demurrer as to the 9th cause of action for hostile work environment harassment.<br><br>*Eleventh Cause of Action for Intentional Infliction of Emotional Distress*<br><br>Defendant demurs to the cause of action for intentional infliction of emotional distress on the grounds that personnel management actions, without more, cannot constitute a valid cause of action for intentional infliction of emotional distress; that Plaintiff's allegations fall within the realm of a personal management action; and that Defendant's alleged conduct, even if done for the purpose of humiliating, berating, or embarrassing Plaintiff, cannot support a claim for intentional infliction of emotional distress as a matter of law. Defendant cites, again, to *Jenken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 80 as legal authority.<br><br>In Opposition, Plaintiff contends that the Court previously overruled Defendant's demurrer to this cause of action and thus her demurrer is inappropriate and that the cause of action, in any event, is sufficiently pled as Defendant engaged in a pattern of extreme and outrageous conduct meant to humiliate, deride, and degrade Plaintiff.<br><br>Here, Plaintiff is correct that the Court previously overruled Defendant's demurrer to this cause of action and found that the First Amended Complaint ("FAC") sufficiently alleged facts that "a trier of fact could conceivably conclude" as "extreme and outrageous conduct". (See 8/10/23 Minute Order.) The Court also found that the intentional infliction of emotional distress cause of action is not preempted by the Workers Compensation Act. (Id.; see also 8/16/23 Minute Order.) "[A] |

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| | | defendant cannot demur on the same grounds to a previous demurrer that was overruled." (*Cnty. of El Dorado v. Superior Ct*. (2019) 42 Cal.App.5th 620, 625.)<br><br>And, as to the merits, the elements of IIED are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903; CACI 1600.) "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.) "Liability for IIED does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (*Crouch v. Trinity Christian Center of Santa Ana, Inc*. (2019) 39 Cal.App.5th 995, 1007).<br><br>Here, the SAC alleges that Defendant "yell[ed] at her for issues beyond Plaintiff's control and made belittling comments such as, 'Why can't you get this done, when all of your peers can get this done?' which added to Plaintiff's stress"; that Defendant contacted Plaintiff outside the normal work hours; and singled Plaintiff out for non-existent issues and reprimanded her for those same non-issues. (See SAC, ¶¶ 14, 21-27.) As set forth above, this case is unlike Janken, supra, which involved actions solely within the realm of personnel management authority. (*See Janken, supra*, 46 Cal.App.4th at 79.) Accordingly, the Court OVERRULES the demurrer to the eleventh cause of action for intentional infliction of emotional distress.<br><br>Defendant is ORDERED to file and serve her Answer to the SAC within the next 20 days.<br><br>The Case Management Conference is continued to June 6, 2024 at 1:30 p.m.<br><br>*Plaintiff to give notice.* |

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| 105 | Anderson vs. Pacific Coast Management 23-01310148 | Defendant Las Casas Tustin, L.P. dba Pacific Coast Management ("Defendant") demurs to the First Amended Complaint ("FAC") of Plaintiff Van Anderson ("Plaintiff") on the grounds that on the grounds that the FAC fails to state facts sufficient to constitute a cause of action for negligence or premises liability.<br><br>On March 21, 2024, the Court continued the demurrer to allow Plaintiff to file an opposition brief to the instant demurrer. The opposition was to include why the Court should not sustain, without leave to amend, the demurrer to the First Amended Complaint. (See ROA 60.)<br><br>Initially, the Court notes that the opposition does not have a proof of service. A proof of service of the opposition must be filed with the court. (California Rules of Court, rule 1.21(b).) Nevertheless, as a reply on the merits has been filed, the Court will address the merits of the demurrer.<br><br>The Court also notes that Defendant served its papers on Plaintiff, a self-represented party, by e-mail. "In civil cases involving both represented and self-represented parties or other persons, represented parties or other persons may be required to file and serve documents electronically; however, in these cases, *each self-represented party* or other person *is to* file, serve, and *be served with documents by non-electronic means unless the self-represented party or other person affirmatively agrees otherwise*." (California Rules of Court, rule 2.253(b)(3), emphasis added.) There is no indication that Plaintiff has affirmatively agreed to service by electronic means, but the reply is considered to the extent that it raises no new arguments.<br><br>Defendant asserts that Plaintiff has failed to allege any facts against Defendant for negligence, motor vehicle negligence, or premises liability, and that Plaintiff cannot maintain any cause of action because he has not alleged any particular breach of care or beach of duty against Defendant.<br><br>Plaintiff asserts that as to each cause of action, he has expressly pleaded facts sufficient to constitute a cause of action or has pled facts from which facts sufficient to state a cause of |

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| | | action can be inferred. Plaintiff contends that the allegations must be taken as true and construed liberally, that per Civil Code section 833, trees whose trunks stand wholly upon the land of one owner belong exclusively to him although their roots grow into the land of another such that Defendant is responsible for the tree that fell on Plaintiff's vehicle, and that said tree fell without apparent causation other than that Defendant failed at its duty to ensure their tree was not at risk of causing damage. Plaintiff also contends that Defendant adds irrelevant and erroneous information about "heavy winds," among other information.<br><br>A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co*. (2004) 116 Cal. App. 4th 968, 994.) No other extrinsic evidence can be considered. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) On demurrer, a complaint must be liberally construed. (Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-67.) Under Code of Civil Procedure section 430.10(e), the test is whether the complaint states any valid claim entitling plaintiff to relief, even if Plaintiff's cause of action is improperly titled, or an improper remedy is stated. (*Quelimane Co., Inc. v. Stewart Title Guar. Co*. (1998) 19 Cal.4th 26, 38.)<br><br>A complaint must contain "[a] statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc. § 425.10, subd. (a)(1).) This fact-pleading requirement obligates the plaintiff to allege ultimate facts that "as a whole apprise[ ] the adversary of the factual basis of the claim. [Citations.]" [Citations.]" (*Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415.)<br><br>The FAC appears to assert causes of action for negligence and premises liability. The elements |

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| | | 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. Sup.Ct*. (*Pneumo Abex, LLC*) (2016) 1 Cal.5th 1132, 1158.) Premises liability is grounded in the possession of the premises and the attendant right to control and manage the premises; accordingly mere possession with its attendant right to control conditions on the premises is a sufficient basis for the imposition of an affirmative duty to act. [Citations.]" "But the duty arising from possession and control of property is adherence to the same standard of care that applies in negligence cases. [Citations.]" (*Id*. at pp. 1158-1159.)<br><br>Civil Code section 833 states, "[t]rees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another."<br><br>The only facts alleged in the FAC are that Plaintiff parked his car at his brother's apartment in Las Casas Apartment in the city of Tustin and while the car was parked, a large tree fell on top of it. However, in opposition, Plaintiff argues that the subject tree belonged to Defendant, that Defendant is responsible for the tree that fell on Plaintiff's vehicle, and that Defendant failed at its duty to ensure their tree was not at risk of causing damage. These facts are not alleged in the FAC. Therefore, the Court SUSTAINS, with 20 days leave to amend, the demurrer to the FAC.<br><br>Defendant's assertion that a portion of a large tree on the Defendant's property blew over in heavy winds is extrinsic to the FAC and not considered on demurrer.<br><br>Plaintiff to file and serve an amended complaint within 20 days of the date of this order.<br><br>As a final note, the Court reminds Plaintiff and Defendant to properly serve and/or file documents.<br><br>The Case Management Conference is continued to June 27, 2024 at 1:30 p.m.<br><br>*Defendant to give notice.* |

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| 106 | Williams vs. Sterling Motors, Ltd<br>23-01340419 | Defendant Sterling Motors, L.T.D. dba Sterling BMW filed a Demurrer to the first cause of action for fraudulent deceit, second cause of action for breach of contract, and third cause of action for fraud/intentional misrepresentation alleged in the operative First Amended Complaint.<br><br>Plaintiff Bartholomew Williams failed to oppose the Demurrer. The court may consider Plaintiff's non-opposition as an abandonment of any opposition to the arguments raised by Defendant in the Demurrer. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Accordingly, the court construes Plaintiff's non-opposition as an abandonment of the issues raised in the Demurrer. (*Ibid*.)<br><br>The Demurrer is SUSTAINED in its entirety WITH 30 DAYS LEAVE TO AMEND.<br><br>The Case Management Conference is continued to July 11, 2024 at 1:30 p.m.<br><br>*Defendant to give notice.* |
| 107 | Clay vs. Delgadillo<br>23-01359983 | Cross-Defendants, The Law Office of Jerome A. Clay, A.P.C. ("Clay Law") and Jerome Anthony Clay, Jr., Esq. ("Clay, Esq.") (collectively, "Cross-Defendants"), jointly and severally to each cause of action, move for an order sustaining a demurrer to the Cross-Complaint of Cross-Complainants, Frank Delgadillo, Jr. ("Delgadillo, Jr."); Dessau, Inc. ("Dessau"); and M86CHEM, LLC ("M86") (collectively, "Cross-Complainants").<br><br>On April 2, 2024, Cross-Defendants timely filed and served a supplemental declaration pursuant to the Court's March 7, 2024 Minute Order. Despite apparent telephonic conferences to meet and confer held on March 15, 2024, and March 26, 2024, it appears that the parties failed to reach an agreement concerning any of the 11 causes of action at issue.<br><br>*Standing for Dessau and M86*<br>Cross-Defendants contend that Dessau and M86 lack standing to file a lawsuit against Cross-Defendants in California as they have not registered in California to conduct business which is required for a foreign corporation transacting intrastate business. |

Cross-Complainants contend that Dessau and M86 have standing, and that Cross-Defendants' argument is premised on the basis that either Dessau or M86 are engaged in intrastate commerce in California, but that neither are.

Code of Civil Procedure section 367 states, "Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." "Where the complaint shows the plaintiff does not possess the substantive right or standing to prosecute the action, 'it is vulnerable to a general demurrer on the ground that it fails to state a cause of action.' [Citations.]" (*Schauer v. Mandarin Gems of Cal., Inc*. (2005) 125 Cal.App.4th 949, 955.)

Here, the Cross-Complaint alleges that M86 is a Wyoming limited liability company whose principal offices are located in Orange County, California, and that Dessau is a Wyoming corporation whose principal offices and CEO are in Orange County, California. (Cross-Complaint, ¶¶ 1, 2.) Cross-Defendants' argument requires that M86 and Dessau is transacting intrastate business, but this fact is not alleged or otherwise shown by materials that are the proper subject of judicial notice. A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co*. (2004) 116 Cal. App. 4th 968, 994.) Cross-Defendants point to no allegations showing that M86 and Dessau transact intrastate business, and the allegations in the Cross-Complaint do not show that either Dessau or M86 lacks standing to prosecute the Cross-Complaint. The demurrer based on lack of standing is OVERRULED.

*Uncertainty*
Cross-Defendants contend that the attorney malpractice and breach of contract claims are uncertain but do not specify how and why the pleading is uncertain. 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,

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| | | 1135.) A party attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where that uncertainty can be found in the challenged pleading. (*Fenton v. Groveland Community Services Dept*. (1982) 135 Cal.App.3d 797, 809 [*disapproved on other grounds in Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300].) The demurrer based on uncertainty is OVERRULED.<br><br>*Failure to State Facts Sufficient to State a Claim*<br>A complaint must contain "[a] statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc. § 425.10, subd. (a)(1).) This fact-pleading requirement obligates the plaintiff to allege ultimate facts that "as a whole apprise[ ] the adversary of the factual basis of the claim. [Citations.]" [Citations.]" (*Davaloo v. State Farm Ins. Co*. (2005) 135 Cal.App.4th 409, 415.)<br><br>Under Section 430.10(e) the test is whether the complaint states any valid claim entitling plaintiff to relief, even if Plaintiff's cause of action is improperly titled, or an improper remedy is stated. (*Quelimane Co., Inc. v. Stewart Title Guar. Co*. (1998) 19 Cal.4th 26, 38.)<br><br>On demurrer, a complaint must be liberally construed. (Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal. 4th 962, 966-67.)<br><br>The court may ignore allegations that are legal conclusions. (*Schep v. Capital One, N.A*. (2017) 12 Cal.App.5th 1331, 1336.) The court is to treat the demurrer as an admission by defendants of all material facts pled in the complaint, but not logical inferences, contentions, or conclusions of fact or law. (*Winn v. Pioneer Medical Group, Inc*. (2016) 63 Cal.4th 148, 152.)<br><br>If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to |

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| | | amend must be granted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)<br><br>*First Cause of Action for Attorney Malpractice*<br>Cross-Defendants contend that the Cross-Complaint fails to allege facts as to the nature of the alleged representation, how the duty of care was allegedly breached, how Cross-Complainants were injured, or why the harm or loss would not have occurred "but for" the alleged malpractice.<br><br>Cross-Complainants contend that the Cross-Complaint alleges the monetary damages at pages 3-4 of the Cross-Complaint, and the nature of the alleged representation and breach in paragraphs 17, 20, 23, and 43-45. Cross-Complainants also contend that the Cross-Complaint pleads facts demonstrating proximate cause for losing the Meiwa case at paragraphs 30-37, and alleges that despite several requests for an accounting, Cross-Defendants have failed to show any accounting for more than $2,388,000 of Cross-Complainants' funds paid monthly and held in trust under a paymaster agreement.<br><br>"The elements of a cause of action in tort for professional negligence are (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200.) "[I]f the allegedly negligent conduct does not cause damage, it generates no cause of action in tort." (*Moua v. Pittullo, Howington, Barker, Abernathy, LLP* (2014) 228 Cal.App.4th 107, 112–113.)<br><br>In legal malpractice cases, plaintiff must establish causation by showing either (1) but for negligence, the harm would not have occurred, or (2) the negligence was a concurrent independent cause of the harm. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1240-1241.) Under the but for test, plaintiff must establish that but for the alleged negligence of the defendant attorney, the plaintiff would have obtained a more favorable judgment or |

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| | | settlement in the action in which the malpractice allegedly occurred. The concurrent independent cause, or substantial factor test applies where a case involves concurrent independent causes operating at the same time and independently such that each would have been sufficient by itself to bring about the harm. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1240.)<br><br>The first cause of action is alleged against Clay, Esq. The Cross-Complaint alleges that Clay, Esq. and/or Clay Law represented Delgadillo on a worker's compensation case, an ongoing child support case, and a SSI Disability claim, as well as held the position of general corporate counsel for M86 in exchange for a monthly retainer of $5,000. (Cross-Complaint, ¶¶ 16-18.) It is also alleged that M86 was a party to a paymaster agreement with Cross-Defendant, Jerome Anthony Clay, Jr. ("Clay"), an authorized representative of Clay Law and Clay, Esq. whereby Clay was to be paid $40,000 to hold all funds paid by a Japanese company, Meiwa Engineering, Inc., for a performance by Jose Alvaro Osorio Balvin, known as J. Balvin, for a half-time show at a mixed martial arts event in Tokyo. (Cross-Complaint, ¶¶ 6, 19, 20.) It is alleged that Clay agreed to hold these funds in trust for the beneficiaries, and that the paymaster agreement stipulated $350,000 for M86 as a finder's fee, as well as stated that any and all direction on disbursements by Clay as paymaster had to come from M86. (Cross-Complaint, ¶ 20.) It is also alleged that $2,640,000 was wired to Clay Law, and that after all payments to facilitators and administrators were tendered, the remaining $2,000,000 was held in trust to be paid to J. Balvin's company upon the completion of the performance. (Cross-Complaint, ¶ 22.) The Cross-Complaint alleges that Meiwa's owner canceled the performance, that M86 sought Cross-Defendants' advice, and that Clay Law agreed to sue Meiwa's owner and his companies "on a fully expense paid forty percent contingency basis." (Cross-Complaint, ¶ 23.) It is alleged that Clay agreed that his pleading preparation burdens would be offset by the assistance of M86 "even though his would be the ultimate responsibility as attorney of record." (Ibid.) Cross-Complainants also allege M86 engaged Clay Law to sue Meiwa and |

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| | | Meiwa's owner concerning a branding project but that Clay stated he had no intention of following through with the service of process of the overseas defendants in the case and the case was dismissed for insufficiency of service and lack of personal jurisdiction, with appeal of the dismissal also being dismissed for failure to prosecute. (Cross-Complaint, ¶¶ 25, 26-36.)<br><br>The Cross-Complaint additionally alleges that as of August 17, 2023, Clay Law was responsible for two contingency based cases on behalf of M86, and a third on behalf of Dessau. (Cross-Complaint, ¶ 38.) It is alleged that M86 and Dessau were co-plaintiffs on a lawsuit referenced in the December 18, 2022, engagement letter. (Cross-Complaint, ¶¶ 40, 41.)<br><br>As to Delgadillo's personal cases, it is alleged that Clay Esq. skipped the 10/3/2023 hearing for disability, and made no efforts to prepare Cross-Complainant; that Clay claims to have "subbed out" of Delgadillo's worker's compensation case and that there is no evidence that Clay performed any work on the case except for filing the initial intake form; as well as that Clay never made a formal appearance on Delgadillo's child support case until almost ten months after he agreed to take the case. (Cross-Complaint, ¶¶ 44, 45.) The Cross-Complaint alleges that Clay, Esq. breached his duty by failing to use the standard of care that a reasonably careful attorney would have used, by failing to disclose relevant information to each of the Cross-Complainants, and by failing to avoid a conflict of interest, and that in each of the cases, Cross-Complainants would have obtained a better result if Clay had acted as a reasonably careful attorney. (Cross-Complaint, ¶¶ 48, 49.)<br><br>M86 seeks to recover in excess of $2,265,000 in converted funds and unrefunded retainer fees for which Cross-Defendants have performed no services in damages and lost revenue due; Dessau seeks to recover in excess of $23,000 in unrefunded retainer fees; and that Delgadillo seeks in excess of $100,000 in damages to his current cases. (Cross-Complaint, ¶ 11.) |

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| | | The foregoing allegations are sufficient to support a claim by M86 as to the retention of Clay, Esq. to file and prosecute an action against Meiwa and/or its owner as it relates to a branding project. However, to the extent Cross-Complainants seek to allege malpractice concerning a lawsuit referenced in the December 18, 2022, engagement letter concerning the Japan Transaction brought by co-plaintiffs M86 and Dessau, there are insufficient factual allegations concerning breach, causation, and damages.<br><br>The retention of Clay, Esq. by Dessau, as well as breach, causation, and resulting damages are not sufficiently alleged, such that the attorney malpractice claim brought by Dessau fails to state facts sufficient to state a claim for attorney malpractice.<br><br>In addition, breach, causation, and resulting damages are not sufficiently alleged in relation to Delgadillo's retention of Clay, Esq. Thus, the attorney malpractice claim brought by Delgadillo is not sufficiently alleged.<br><br>Based on the foregoing, the demurrer to the first cause of action is SUSTAINED, with 20 days' leave to amend.<br><br>*Second Cause of Action for Breach of Fiduciary Duty*<br>Cross-Defendants contend that the second cause of action for breach of fiduciary duty fails to state facts to state a cause of action as they did not have a fiduciary obligation to M86 because its claim for breach of fiduciary duty is based on a paymaster agreement that never existed, and that M86 fails to either attach the agreement or state its terms verbatim in the Cross-Complaint.<br><br>Cross-Complainants contend that the paymaster agreement need not be attached, and that the terms are alleged in the Cross-Complaint.<br><br>The three elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, breach of fiduciary duty, and damages. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) |

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| | | In addition to incorporating the preceding allegations of the Cross-Complaint, the second cause of action alleges that Cross-Defendants, "individually, corporately and collectively agreed in writing to assume the function of 'paymaster' and fiduciary over funds to [be] disbursed at the specific and exclusive instruction of" M86; that Cross-Defendants failed to acts as a reasonably careful paymaster by resisting instructions to disperse the remainder and by failing to disclose to M86 that they had already spent a portion of the funds for Cross-Defendants' own benefit. (Cross-Complaint, ¶¶ 51-53.) The Cross-Complaint alleges that on November 7, 2022, Clay Law purchased an aircraft in excess of $400,000, by using the funds over which it was to hold in trust. (Cross-Complaint, ¶ 43.)<br><br>Despite Cross-Defendants' argument, there is no authority to support their assertion that a copy of the paymaster agreement is required to be attached or that the Cross-Complaint must allege the terms verbatim for a claim for breach of fiduciary duty. When legal argument with citation to authority is not furnished on a particular point, the court may treat the point as forfeited and move on without consideration. (*Okasaki v. City of Elk Grove* (2012) 203 Cal.App.4th 1043, 1045, fn. 1.) Cross-Defendants' argument is treated as waived. The demurrer to the second cause of action brought by M86 is OVERRULED.<br><br>That Cross-Defendants dispute the existence of the alleged paymaster agreement is not relevant on demurrer. "A demurrer tests only the sufficiency of the allegations. It does not test their truth, the plaintiff['s] ability to prove them or the possible difficulty in making such proof." (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 840.)<br><br>However, the second cause of action does not plead sufficient facts to support a breach of fiduciary duty claim as to Dessau or Delgadillo. The demurrer to the second cause of action by Dessau and Delgadillo is SUSTAINED, with 20 days' leave to amend.<br><br>*Third and Fourth Causes of Action for Promissory Fraud and Fraud in the Inducement* |

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| | | Cross-Defendants contend that the third and fourth causes of action for promissory fraud and fraud in the inducement fail to provide facts as to how Cross-Defendants induced Cross-Complainants to enter into a contract and when, where, to whom, and by what means Cross-Defendants made the representations. Cross-Defendants assert that they have fulfilled their obligations.<br><br>Cross-Complainants assert that they may concede the need to amend the promissory fraud and fraud in the inducement causes of action, but that the how, when, where, to whom, and by what means are clearly alleged in paragraphs 23, 27, 40, 41, and 43; that Delgadillo never signed the agreement to commit the funds; and that the sworn declaration of Jerome Clay filed in the child support case states that no contracts or agreements exist between him and anyone other than Delgadillo which is directly contrasts the demurrer.<br><br>" 'The elements of fraud that will give rise to a 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.' [Citations.]" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) " 'Promissory fraud' is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence where a promise is made without such intention, there is a misrepresentation of fact that may be actionable fraud. [Citation.]" (*Ibid*.) Deceit includes "[a] promise, made without any intention of performing it." (Civ. Code § 1710.) The claim of fraudulent inducement and promissory fraud are the same. (*Missakian v. Amusement Industry, Inc*. (2021) 69 Cal.App.5th 630, 640, fn. 4.)<br><br>Both fraud and negligent misrepresentation claims must be pleaded with particularity. (*Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1166.) To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were |

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| | | tendered.” (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.)<br><br>The only representation that is pled with sufficient particularity is found in paragraph 27, concerning a call by Clay to Delgadillo on or about December 18, 2022, where Clay claimed that the funds at his firm’s account had been frozen because he was required to have an engagement letter on file and did not, resulting in Delgadillo docu-signing an engagement letter dated December 18, 2022. However, the resulting damage to Cross-Complainants in Delgadillo signing the engagement letter is not sufficiently pled. To the extent that Cross-Complainants allege that Clay made other false promises or misrepresentations, they are not alleged with adequate particularity. The demurrer to the third and fourth causes of action for promissory fraud and fraud in the inducement is SUSTAINED, with 20 days’ leave to amend.<br><br>That Delgadillo never signed the agreement to commit the funds is not at issue as a demurrer does not test the truth of the allegations, and the contents of a sworn declaration of Jerome Clay is extrinsic to the complaint and not the proper subject of judicial notice. Therefore, it is not considered on demurrer.<br><br>*Fifth Cause of Action for Fraudulent Business Act in Violation of Cal. Bus. Code 17200*<br>Cross-Defendants contend that the fifth cause of action for fraudulent business act in violation of Cal. Bus. Code 17200 fails to state facts alleging any unlawful, unfair, or fraudulent business act or practice by Cross-Defendants.<br><br>Cross-Defendants assert that if the fraud causes of action are sufficiently alleged, then this cause of action is also properly pled.<br><br>The UCL [Business and Professions Code section 17200 et seq.] defines unfair competition as ‘any unlawful, unfair or fraudulent business act or practice . . . .” [Citation.]” (*In re Tobacco Cases* (2009) 46 Cal.4th 298, 311.) Thus, there are three prongs under which a claim may be established under the UCL. (*Daro v. Superior Court* (2007) 151 Cal.App.4th 1079, 1093.) “An act can be |

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| | | alleged to violate any or all of the three prongs of the UCL—unlawful, unfair, or fraudulent.” (*Berryman v. Merit Property Management, Inc*. (2007) 452 Cal.App.4th 1544, 1554.)<br><br>“A plaintiff alleging unfair business practices under [Business and Professions Code Sections 17000, et seq.] must state with reasonable particularity the facts supporting the statutory elements of the violation. (*Khoury v. Maly’s of California, Inc*. (1993) 14 Cal.App.4th 612, 619.)<br><br>The fifth cause of action is based upon the alleged false promises and/or misrepresentations supporting the third and fourth causes of action. In light of the Court’s ruling on the fraud claims, the demurrer to the fifth cause of action is SUSTAINED, with 20 days’ leave to amend.<br><br>*Sixth, Seventh, and Eighth Causes of Action for Breach of Contract*<br>Cross-Defendants contend that the sixth, seventh, and eighth causes of action for breach of contract fail to plead facts showing that Cross-Defendants breached the alleged agreements and what damages resulted from the alleged breaches, as well as that the Cross-Complaint does not attach the alleged written agreement or stated the terms verbatim, and that the allegations are conclusory.<br><br>Cross-Complainants contend that Cross-Defendants ignore the allegation that Cross-Complainants never received a return copy of the paymaster agreement with Clay’s signature; that the Cross-Complaint alleges facts evidencing an oral agreement; and that the question of whether the paymaster agreement was written or oral is a matter of fact to be resolved at trial and not properly a subject for resolution on demurrer.<br><br>“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff.” (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) The elements of a breach of oral contract claim are the same as those for a breach of written contract claim. (*Stockton* |

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| | | *Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)<br><br>A demurrer lies "[i]n an action founded upon a contract, [where] it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct." (Code Civ. Proc. § 430.10(g).) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. … In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*McKell v. Washington Mut., Inc*. (2006) 142 Cal. App. 4th 1457, 1489.)<br><br>The sixth cause of action is brought by M86 against Clay, Esq., realleges the prior allegations, and alleges that M86 entered into an express oral agreement on or about June 1, 2022, and a written paymaster agreement with Clay, Esq. on or about August 29, 2022. (Cross-Complaint, ¶¶ 76, 77.) There are insufficient factual allegations to support the existence of an oral agreement, breach thereof and resulting damages.<br><br>The seventh cause of action is brought by Dessau against Clay Law and Clay, realleges the prior allegations, and alleges that Dessau entered into an express oral agreement on or about October 1, 2022 with Clay Law and Clay, as well as an agreement on or about September 1, 2023, with Clay Law to represent Dessau in litigation on contingency. (Cross-Complaint, ¶¶ 81, 82.) There are insufficient factual allegations to support the existence of an oral agreement, breach thereof and resulting damages. It is also unclear whether the agreement made on or about September 1, 2023, is oral or written, and the existence and terms of said agreement, breach thereof and resulting damages is not sufficiently pled.<br><br>The eighth cause of action is brought by Delgadillo against Clay Law, realleges the prior allegations, and alleges that Clay Law entered into an express agreement on December 3, |

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| | | 2021 to represent Delgadillo on a worker's compensation case, as well as that M86 and Dessau entered into express oral and written contracts on or about June 1, 2023 for the benefit of paying for an attorney-client relationship between Clay, Esq. and Delgadillo. (Cross-Complaint, ¶¶ 86-88.) There are insufficient factual allegations to support the existence and terms of these agreements, breaches thereof and resulting damages.<br><br>The demurrer to the sixth, seventh, and eighth causes of action are SUSTAINED, with 20 days' leave to amend.<br><br>*Ninth Cause of Action for Unjust Enrichment*<br>Cross-Defendants contend that the ninth cause of action for unjust enrichment fails to state a claim as it is not a cause of action, but a theory of restitution, and that the claim is unsubstantiated and unsupported by any specific facts.<br><br>Cross-Complainants contend that the claim for unjust enrichment properly states a claim for restitution at pages 5 and 6 of the Cross-Complaint in that Cross-Defendants were paid a monthly retainer to perform services which were not provided, and that Cross-Defendants were engaged to act as a trustee for funds in the amount of $2,640,000 for a performance event in Japan and for which Cross-Defendants were paid $40,000 to hold said funds in trust in their IOLTA account, but that Cross-Defendants spent half million on an airplane.<br>Some California courts have suggested the existence of a separate cause of action for unjust enrichment. (*See e.g., Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593 ["The elements of an unjust enrichment claim are the 'receipt of a benefit and [the] unjust retention of the benefit at the expense of another.'"] Other courts state that "'[T]here is no cause of action in California for unjust enrichment.' . . . Unjust enrichment is synonymous with restitution." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370; *Levine v. Blue Shield of Cal.* (2010) 189 Cal.App.4th 1117, 1138.)<br><br>"The doctrine [of unjust enrichment] applies where plaintiffs, while having no enforceable contract, nonetheless have conferred a benefit |

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| | | on defendant which defendant has knowingly accepted under circumstances that make it inequitable for the defendant to retain the benefit without paying for its value. The defendant in an unjust enrichment claim must pay the amounts necessary to place the plaintiff in as good a position as he or she would have been had no contract been made…the measure of damages for unjust enrichment is synonymous with restitution." (*Hernandez v. Lopez* (2009) 180 Cal.App.4th 932, 938-939.) "[A] plaintiff need not amend his pleading to seek compensation under an unjust enrichment theory, but could do so based on the pleaded cause of action for breach of contract. The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so. In any event, there is no particular form of pleading necessary to invoke the doctrine of restitution." (*Id*. at p. 939.)<br><br>The ninth cause of action is brought against Clay Law and Clay. As set forth above, the Cross-Complaint alleges that fees were retained to the detriment of Cross-Complainants. It is also alleged that Dessau had bought Clay a Rolex for $8,709 in consideration for his assurances that certain personal litigation matters involving Delgadillo would be handled, including a child support matter, a worker's compensation claim, and an SSI disability claim, but that little to no work was performed. (Cross-Complaint, ¶¶ 37, 44, 45.) The demurrer to the ninth cause of action is OVERRULED.<br><br>*Tenth Cause of Action for Conversion*<br>Cross-Defendants contend that the tenth cause of action for conversion omits the essential elements of this cause of action, and that Cross-Complainants fail to state facts sufficient to allege the wrongful act or disposition of property rights by Cross-Defendants and damages as a result of Cross-Defendants' action.<br><br>Cross-Complainants contend that the cause of action for conversion is properly alleged for the same reasons the unjust enrichment claim alleges sufficient facts. |

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| | | ‘ “Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages....” ’ (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.)<br><br>“ ‘It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use. [Citations.]’ [Citation.] Money can be the subject of an action for conversion if a specific sum capable of identification is involved. [Citation.] Neither legal title nor absolute ownership of the property is necessary. [Citation.] A party need only allege it is ‘entitled to immediate possession at the time of the conversion. [Citations.]’ [Citation.] However, a mere contractual right of payment, without more, will not suffice.” (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451.)<br><br>The Cross-Complaint does not allege facts to support that any Cross-Complainant, M86, Dessau, or Delgadillo, owned or was entitled to immediate possession to the funds that was given to Cross-Defendants. The Cross-Complaint only alleges that the funds were paid by a Japanese company, Meiwa Engineering, Inc., that Clay purchased an aircraft at the time that he was charged to hold the funds in trust in safekeeping for the beneficiaries, including J. Balvin’s company, Mucho Fresco, LLC, and “its own administrative facilitators,” and that direction on disbursements could only come from M86. (Cross-Complaint, ¶¶ 20, 22, 52, 53.) Therefore, the demurrer to the tenth cause of action is SUSTAINED, with 20 days’ leave to amend.<br><br>*Eleventh Cause of Action for Intentional Infliction of Emotional Distress (“IIED”)*<br>Cross-Defendants contend that the eleventh cause of action for IIED consists of conclusory allegations that Delgadillo suffered severe emotional distress and that Cross-Defendants’ conduct was outrageous, but which are not substantiated by any credible factual narrative. |

Cross-Complainants contend that the cause of action for IIED is supported by factual allegations amounting to outrageous conduct including that Cross-Defendants let the disability to go to a denial and never performed any work to pursue, as well as made no efforts to prepare for hearing, and let his client sit alone at hearings while keeping the retainer fees and refusing to provide any accounting after Cross-Complainants discovered Cross-Defendants likely embezzled funds. Cross-Complainants also contend that the allegation of Delgadillo's suffering as a result of this outrageous conduct must be assumed true.

"A cause of action for intentional infliction of emotional distress exists when there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.' " (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.)

"Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyance, petty oppressions, or other trivialities." (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 233, internal quotations omitted.) Outrageous conduct may be demonstrated if a defendant abuses a relation or position which gives him power to damage the plaintiff's interest, knows the plaintiff is susceptible to injuries through mental distress, or acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. (*Ibid*.) Cases have dismissed intentional infliction of emotional distress cases on demurrer, concluding that the facts alleged do not amount to outrageous conduct as a matter of law. (*Id*. at p. 235.)

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| | | "The complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct. [Citation.]" (*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1114.)<br><br>The eleventh cause of action is brought by Delgadillo. It realleges prior allegations, and alleges that Cross-Defendants' conduct caused Delgadillo to suffer severe emotional distress and that Cross-Defendants' conduct was outrageous. (Cross-Complaint, ¶¶ 100-102.) The facts pled are insufficient to support that Cross-Defendant's conduct was extreme and outrageous, or that Delgadillo suffered severe emotional distress. The demurrer to the eleventh cause of action is SUSTAINED, with 20 days' leave to amend.<br><br>*Leave for Motion for Sanctions*<br>Cross-Complainants ask this Court for leave to file a separate motion for sanctions under Code of Civil Procedure section 128.7(c). There is no showing that leave is required for a party to file such a motion, nor is the Court away of any such requirement. Therefore, the Court declines to rule on this request.<br><br>The Court DENIES Cross-Defendants' Request for Judicial Notice filed in support of Reply as it is not relevant to the determination of the issues. (*State Compensation Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 442-443.)<br><br>The Case Management Conference is continued to July 11, 2024 at 1:30 p.m.<br><br>*Cross-Defendants to give notice.* |
| 108 | Brooks vs. Campbell<br>23-01312405 | Defendant Robert Campbell ("Defendant") moves for summary judgment on the unlawful detainer complaint filed by Plaintiff Lawrence Brooks ("Plaintiff").<br><br>I. Complaint<br><br>As an initial matter, the Complaint on file with the court does not contain any exhibits. The Complaint references to exhibit 1 as a copy of the written agreement. The Complaint also references to exhibit 2 as a copy of the 3-day |

| | | and 30-day notice to quit. Neither of these exhibits are attached to the operative Complaint. (See ROA 2.)<br><br>Plaintiff filed a Supplement to Complaint attaching what appears to be a 3-day notice to quit, dated November 1, 2022. (ROA 10.) According to the declaration of service, the notice was personally handed to Defendant Robert Campbell on November 1, 2022.<br><br>Notably, the dates in the Supplement to Complaint do not match the dates and actions as alleged in the Complaint.<br><br>II. Request for Judicial Notice<br><br>First, Defendant requests judicial notice of the following<br>pursuant to Evidence Code section 451 and 452:<br><br>1. August 26, 2022 Grant Deed Transferring Ownership of the Property from Plaintiff Lawrence Brooks to Third Party 94 Ways Investment Group, LLC<br>2. February 28, 2023 Grant Deed Transferring Ownership of the Property from Third Party 94 Ways Investment Group, LLC to Plaintiff Lawrence Brooks<br>3. Plaintiff Lawrence Brooks' first unlawful detainer complaint against Defendant Robert Campbell, Case no. 30-2022-01290774-CL-UD-CJC.<br>4. Defendant Robert Campbell's Motion for Summary Judgment<br>5. The Court's March 7, 2023 Minute Order entering summary judgment in Defendant Robert Campbell's favor.<br><br>Plaintiff does not address the requests for judicial notice in the opposition. The court find that the documents are properly subject to judicial notice. As such, Defendant's request for judicial notice is GRANTED.<br><br>III. Motion for Summary Judgment<br><br>Moving to the merits, Defendant argues that he is entitled to summary judgment because Plaintiff was not the landlord at the time that the notice to quit was served. Rather, Defendant argues that 94 Ways Investment |
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| | | Group, LLC served the notice to quit. Defendant also argues that in a previous unlawful detainer proceeding, the court already determined that 94 Ways Investment Group, LLC was the owner of the Subject Property between August 26, 2022 and February 28, 2023, until it was transferred to Plaintiff on February 28, 2023 via a grant deed transfer.<br><br>In opposition, Plaintiff argues that he can assert the unlawful detainer action as successor in interest to 94 Ways Investment Group, LLC.<br><br>"The procedures governing a motion for summary judgment in an unlawful detainer action are streamlined (e.g., separate statements are not required under section 437c, subdivision (s) of the Code of Civil Procedure), but such a motion 'shall be granted or denied on the same basis as a motion under [Code of Civil Procedure [s]ection 437c.' " (*Borden v. Stiles* (2023) 92 Cal.App.5th 337, 344–345 [citing Code Civ. Proc., § 1170.7 and Cal. Rules of Court, rule 3.1351.].)<br><br>"[I]n moving for summary judgment, a 'defendant ... has met' his 'burden of showing that a cause of action has no merit if' he 'has shown that one or more elements of the cause of action ... cannot be established, or that there is a complete defense to that cause of action." (*Borden v. Stiles* (2023) 92 Cal.App.5th 337, 345.) "Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (*Ibid*.) "The plaintiff ... may not rely upon the mere allegations or denials' of his 'pleadings to show that a triable issue of material fact exists but, instead,' must 'set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.' " (*Ibid*.)<br><br>A. Plaintiff may Rely on his Successor in Interest's Notice to Quit<br><br>In *Lee v. Kotyluk*, the court expressly held that "plaintiffs were entitled to base their unlawful detainer action against defendant on the notice served by" the "successor in estate of the landlord." (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 733.) "The right to maintain |

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| | | an action by 'the successor in estate of [the] landlord' is expressly conferred by section 1161 of the Code of Civil Procedure." (*Ibid*.)<br><br>"Nothing in section 1161, subdivision 3 prevents a new owner from relying on a notice served by its predecessor in interest." (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 734.) "Rather, it states a tenant 'is guilty of unlawful detainer' if the tenant fails to cure the breach or quit the property within the notice period." (*Ibid*. [citing Code Civ. Proc., § 1161, subd. (3)].)<br><br>"Such an interpretation of the statute does not subvert the purpose of the notice requirement, which, as set forth above, is primarily designed to give the tenant an opportunity to cure the breach and retain possession of the property." (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 734.)<br><br>Importantly, the court in *Lee v. Kotyluk* (2021) 59 Cal.App.5th 719 addressed the argument that an unlawful detainer action under section 1161 was conferred upon the landlord only and not available to a landlord's successor in estate because the successor is considered a "stranger to the lease" since the successor was not in the conventional landlord-tenant relationship. (*Id*., 735.)<br><br>In refuting this argument, the court in *Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 735 explained that the "unlawful detainer 'statute was subsequently amended to provide ... that the action might be maintained by the landlord 'or the successor in estate of his landlord.'" (*Ibid*.) "Under this amendment the courts [have] found no difficulty in holding that the landlord's successor in estate could maintain the action, although the conventional relation of landlord and tenant did not exist between the tenant and the landlord's successor." (*Ibid*.)<br><br>Lee further explains that each subsection of 1161 that requires action from the landlord also permits such action to be attributed or relied upon by the landlord's successor in interest. (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 736.) |

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| | | Here, Defendant's motion for summary is based on the argument that 94 Ways Investment Group, LLC provided the notice to quit and therefore Plaintiff cannot maintain the unlawful detainer action because Plaintiff did not provide the notice. Caselaw clearly holds that Plaintiff may use the notice to quit provided by his successor in interest to maintain an unlawful detainer action. The court finds Defendant's argument without merit.<br><br>The court notes that the March 7, 2023 Minute Order in Case No. 2022 01290774 regarding Defendant's prior motion for summary judgment does not address whether an owner may use his successor in interest's notice to quit in maintaining an unlawful detainer cause of action. Rather, the court only addressed whether the Plaintiff must be the owner of the subject property to maintain the unlawful detainer cause of action. Thus, the March 7, 2023 Minute Order has no bearing on the issue of whether Plaintiff may use the notice to quit provided by his successor in interest to maintain an unlawful detainer action as presented in this motion.<br><br>B. Preclusion Argument<br><br>Next, Defendant argues that Plaintiff's claims are barred because the March 7, 2023 Minute Order regarding Defendant's motion for summary judgment in Case No. 2022 01290774 is a final judgment on the merits and precludes this case. The court disagrees. The March 7, 2023 Minute Order was not a judgment on the merits of the claims at issue in this case.<br><br>"A judgment is on the merits for purposes of res judicata 'if the substance of the claim is tried and determined." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1220.)<br><br>"If the prior judgment was not on the merits, then res judicata is not applicable and it does not have the effect of barring the subsequent action." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1219.) |

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| | | "A classic example of a judgment that is not on the merits is one resulting from the defense of laches, because laches 'has nothing to do with the merits of the cause against which it is asserted.' " (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1220.) Other examples of judgments that are not on the merits include the following: a judgment on statute of limitations grounds, a judgment based on lack of jurisdiction, and a judgment or dismissal for lack of prosecution. (*Ibid*.)<br><br>"In each of these instances of terminations that were not on the merits, the substance of the underlying claim was never tried or determined; instead, the outcome was reached on procedural or technical grounds that did not resolve or depend on the claim's merits." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1220.)<br><br>Judgment entered on the ground of mootness and/or lack of ripeness of the issues is likewise not on the merits." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1220.) "Moot cases entail the same justiciability concerns, but are [t]hose in which an actual controversy did exist but, by the passage of time or a change in circumstances, ceased to exist." (*Id*., at p. 1221.) "A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated." (*Id*., at pp. 1221-1222.) "In summary, a moot case is one in which there may have been an actual or ripe controversy at the outset, but due to intervening events, the case has lost that essential character and, thus, no longer presents a viable context in which the court can grant effectual relief to resolve the matter." (Id., at p. 1222.)<br><br>"California courts will decide only justiciable controversies." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1221.) "The concept of justiciability is a tenet of common law jurisprudence and embodies '[t]he principle that courts will not entertain an action which is |

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| | | not founded on an actual controversy....'" (*Ibid*.) "Justiciability thus 'involves the intertwined criteria of ripeness and standing." (*Ibid*.)<br><br>Here, the court finds that the matters presented in Case No. 2022 01290774 were not justiciable and that the outcome in Case No. 2022 01290774 did not address the substance of the underlying unlawful detainer claim. Rather, the court found that Plaintiff was not in position to maintain the lawsuit because he did not own the property at the time the action commenced. Plaintiff lacked standing. After that case was (improperly) initiated, Plaintiff became the owner of the subject property, which created a judicial controversy between Plaintiff and Defendant.<br><br>Based on the evidence before the court, there is now a judicial controversy because Plaintiff was the owner of the subject property when this action commenced. 94 Ways Investment Group, LLC was the owner of the Subject Property between August 26, 2022 and February 28, 2023, until it was transferred to Plaintiff on February 28, 2023 via a grant deed transfer. This action was initiated on March 14, 2023. Plaintiff now has standing to maintain the action to address the substance of the underlying unlawful detainer claim.<br><br>*The Motion is DENIED*. |