

TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

May 6, 2024 at 2:00 p.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5228. Please do not call the department unless all parties submit on the tentative ruling. 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 the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody 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 the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C28 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C28 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5228 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

Arguments: The court will allow arguments on the pending motions, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

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

#	Case Name	Tentative
50.	<p>The Irvine Company, LLC v. Babette's Newport Beach, LLC</p> <p>2020-01164868</p>	<p>Plaintiff The Irvine Company LLC's Unopposed Motion to Substitute Party and Revise Caption to Reflect New Entity as the Plaintiff is GRANTED.</p> <p>Cal. Code Civ. Proc. § 368.5 provides: "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."</p> <p>Plaintiff has established that its interest in this action has been transferred to Crystal Cove Retail LLC. (See ROA No. 57, Shahryar Decl., ¶4 and Exh. 1.) The transferee seeks to be substituted for purposes of enforcing the judgment in this action.</p> <p>The requested relief is granted. Crystal Cove Retail LLC is hereby substituted as the Plaintiff. The caption shall be amended to reflect this change.</p> <p>Plaintiff shall give notice of this ruling.</p>
51.		
52.	<p>Maldonado v. Aluminum Precision Products, Inc.</p> <p>2023-01299935</p>	<p>Defendant Aluminum Precision Products, Inc.'s motion for an order compelling the completion of the deposition of Plaintiff John Maldonado, Jr., answer certain questions, appointing a discovery referee for volume two of Plaintiff's deposition and all future depositions at Plaintiff's expense, and for monetary sanctions is GRANTED in part and DENIED in part. (Code Civ. Proc., §§ 2025.290, subd. (b)(4) [seven-hour deposition limit does not apply to "any case brought by an employee or applicant for employment against an employer for acts or omissions arising out of or relating to the employment relationship"], 2025.480 [authorizing motion to compel answers at deposition].)</p>

	<p>Plaintiff's evidentiary objection no. 3 to the Thomas Decl. is SUSTAINED [relevance]. Plaintiff's remaining evidentiary objections are OVERRULED.</p> <p>The motion is GRANTED as to a second session of plaintiff's deposition. Plaintiff John Maldonado, Jr. shall appear for a second session of his deposition on Wednesday, May 15, 2024, at 10:00 AM, at the offices of Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 10th Floor, Costa Mesa, CA 92626. Plaintiff shall answer all questions set forth in moving party's separate statement (ROA 241), as well as reasonable follow-up questions. Moving party may also pose additional questions regarding plaintiff's claims for whistleblower retaliation, age discrimination, and failure to provide rest breaks, to the extent these additional questions concern matters not addressed in the first session.</p> <p>The second deposition session shall be limited to an additional four hours, exclusive of reasonable meal and rest breaks. If more time is needed, moving party may request same via ex parte application.</p> <p>The parties may agree in writing to conduct the deposition at a different date, time, or location, and/or to conduct the deposition by remote means rather than in person.</p> <p>The court finds that plaintiff's counsel acted in some respects without substantial justification. In particular, the court notes that plaintiff's counsel instructed plaintiff not to answer questions regarding a document solely because the document was only recently produced, which is not a proper legal ground to instruct a witness not to answer. (Code Civ. Proc., § 2025.460 [governing objections at deposition].) The court also observes that plaintiff's counsel instructed plaintiff not to answer questions regarding complaints by plaintiff of alleged legal violations by defendant, based on <i>Rifkind v. Superior Court</i> (1994) 22 Cal.App.4th 1257, 1258 [involving "legal contention" questions at deposition]. However, plaintiff here asserts a claim for retaliation under Lab. Code, §</p>
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		<p>1102.5, subd. (b), which requires the employee to show that "he or she reasonably believed that there was a violation of a statute, rule, or regulation." (<i>Nejadian v. County of Los Angeles</i> (2019) 40 Cal.App.5th 703, 719.) Finally, plaintiff's counsel unilaterally terminated the deposition, which is improper unless the deposition is being suspended in order to seek a protective order, which plaintiff has not sought. (Code Civ. Proc., § 2025.470.)</p> <p>Accordingly, the court imposes monetary sanctions against plaintiff's attorney, Sima Farde, in the amount of \$2,925.00. Sanctions are payable to counsel for moving party within 30 days.</p> <p>The court urges the parties to be mindful of the civility guidelines of both the Orange County Bar Association and the Los Angeles County Bar Association regarding depositions. The court also urges all parties exercise more professional courtesy and respect in the future than is demonstrated in this instance.</p> <p>The appointment of a discovery referee will be addressed at the hearing on this motion. The parties are ordered to meet and confer regarding that topic prior to the hearing time.</p> <p>Moving party shall give notice.</p>
53.	<p>Zaharias v. United Airlines, Inc.</p> <p>2021-01200049</p>	<p>Defendant County of Orange's motion for summary judgment as to the claims asserted by plaintiff Louis Zaharias is GRANTED.</p> <p>A motion for summary judgment is directed to the issues framed by the pleadings. As such, the burden of a defendant moving for summary judgment only requires that the defendant negate a plaintiff's theories of liability as alleged in the complaint. (<i>Leyva v Garcia</i> (2018) 20 CA5th 1095, 1102.)</p>

	<p>The defendant may meet the burden of showing that an essential element of the plaintiff's claim cannot be established by presenting evidence that the plaintiff "does not possess and cannot reasonably obtain, needed evidence." (<i>Lona v Citibank, N.A.</i> (2011) 202 CA4th 89, 110.)</p> <p>Only after a defendant meets that burden, does the burden shift to the plaintiff to produce admissible evidence showing the existence of a triable issue as to a cause of action or complete defense. (<i>Hawkins v. Wilton</i> (2006) 144 Cal.App.4th 936, 940 (citations omitted).)</p> <p>The moving party's papers are to be strictly construed, while the opposing party's papers are to be liberally construed. (<i>Committee to Save Beverly Highland Homes Ass'n v. Beverly Highland</i> (2001) 92 Cal.App.4th 1247, 1260.)</p> <p>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. (<i>McCabe v. American Honda Motor Corp.</i> (2002) 100 Cal.App.4th 1111, 1119.)</p> <p>Plaintiff contends a plexiglass display case in the John Wayne Airport baggage claim area constitutes a dangerous condition of which Moving Party was obligated to warn plaintiff.</p> <p>A "dangerous condition" is defined as a condition that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used. (<i>Biscotti v. Yuba City Unified School Dist.</i> (2007) 158 Cal.App.4th 554.)</p> <p>Plaintiff's expert has testified that the plexiglass display case on/upon/by which Plaintiff was injured violated inter alia, Chapter 3: Building Blocks,</p>
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	<p>Protrusion Limits Section 307.2 and Chapter 34 of the California Building 3401A.2.</p> <p>A violation of a building code could potentially form the basis for a finding of a “dangerous condition” of government property.</p> <p>Moving Party submits the declaration of its expert who opines that the Building Code sections cited by plaintiff’s expert do not apply in the location where the incident happened. As such, there appears to be a triable issue of fact as to whether Moving Party was in violation of the Building Code at the time of the incident and whether or not those violations actually caused plaintiff’s injuries.</p> <p>However, even assuming the Building Code sections cited by plaintiff were violated, the court must still consider the issue of whether the alleged violation (the placement of the plexiglass display) constitutes a “trivial defect.” Gov’t Code 830, 835.</p> <p>When determining whether a condition is a trivial defect, a court follows a two-step analysis according to the Government Claims Act. First, the court reviews evidence regarding the type and size of the defect. If that preliminary analysis reveals a trivial defect, the court considers evidence of any additional factors such as the weather, lighting and visibility conditions at the time of the accident, the existence of debris or obstructions, and plaintiff’s knowledge of the area to decide if the defect presents a substantial risk of injury. (<i>Stack v. City of Lemoore</i> (2023) 91 Cal.App.5th 102.)</p> <p>A condition is not a dangerous condition if the court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was</p>
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		<p>used with due care in a manner in which it was reasonably foreseeable that it would be used. (<i>Barone v. City of San Jose</i> (1978) 79 Cal.App.3d 24; <i>Dolquist v. City of Bellflower</i> (1987) 196 Cal.App.3d 261.)</p> <p>When considering whether a condition is dangerous as a matter of law, the court should consider the circumstances surrounding the accident which might have rendered the defect more dangerous than its mere abstract size would indicate. (<i>Dolquist, supra.</i>) Other relevant factors include the time and place of the occurrence, and whether there is any evidence that other persons have been injured on the same alleged defect. (<i>Sanbrano v. City of San Diego</i> (2001) 94 Cal.App.4th 225.)</p> <p>The court may determine, as a matter of law, that a given defect is not dangerous. (<i>Stack v. City of Lemorre</i> (2023) 91 Cal.App.5th 102; <i>Barone v. City of San Jose</i> (1978) 79 Cal.App.3d 284.) Here, the court makes that finding as it relates to the plexiglass display case. Defendant has met its burden showing plaintiff cannot prove an essential element of his claim--the presence of a dangerous condition about which defendant had the duty to warn. (<i>Lona v Citibank, N.A.</i> (2011) 202 CA4th 89, 110.)</p> <p>Further, even assuming that the display case was a dangerous condition, where an alleged dangerous condition is "open and obvious" it does not mean that the landowner is liable to the injured plaintiff. Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition. In these situations, owners and possessors of land are entitled to assume others will perceive the obvious and take action to avoid the dangerous condition. (<i>Kaney v. Custance</i> (2022) 74 Cal.App.5th 201; <i>Nicoletti v. Kest</i> (2023) 94 Cal.App.5th 140.)</p>
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		<p>In this case, even if some Building Code violations existed, and the plexiglass display case did constitute a dangerous condition, the alleged dangerous condition was open and obvious. There is no evidence the case was hidden or otherwise not visible to a reasonable person in the same location as defendant. A defendant has no duty to warn of an open and obvious danger. (<i>Chavez v. Glock, Inc.</i> (2012) 207 Cal.App.4th 1283.)</p> <p>As defendant has met its burden, the burden shifts to Plaintiff to show a triable issue of material fact. Plaintiff has not met his now shifted burden raising a triable issue of fact thereto. See, <i>Saelzler v. Advanced Group</i> (2001) 25 Cal.4th 763 and <i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826</p> <p>As such, summary judgment is GRANTED in favor of Moving Party.</p> <p>This motion was filed on February 15, 2024. At that time, the court had already continued the trial date to June 3, 2024. (See Minute Order of January 18, 2024, ROA #196.) As such, it is timely.</p> <p>Defendant shall give notice.</p>
54.	<p>Gonzalez v. Medrano</p> <p>2020-01148086</p>	<p>Plaintiff Edward Gonzalez' Motion For Issue, Evidentiary, and Terminating Sanctions is DENIED.</p> <p>"Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. [C]ontinuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. A decision to order terminating sanctions should not be made lightly."</p> <p>(<i>Doppes v. Bentley Motors, Inc.</i> (2009) 174 Cal.App.4th 967, 992) (internal quotations and citations omitted).</p>

		<p>As defendants establish, service of most, if not all of the disputed discovery brought to the court’s attention through motions, which resulted in court orders, has been accomplished. (See Benjamin Dec. ¶ 2. Exh. 1; Benjamin Supp. Dec. ¶¶ 2-3, Exh. 1-4.) To the extent defendants’ discovery responses lack signatures or verifications, defendants shall provide those forthwith.</p> <p>Given the above, an award of terminating sanctions would not be appropriate at this time and would provide plaintiff with an unmerited windfall, as discovery sanctions are not designed to punish, but rather to gain compliance. (See <i>Doppes</i>, at 992.) Therefore, any additional sanctions are not warranted at this time.</p> <p>The court exercised its discretion and considered both the reply declaration and supplemental declaration.</p> <p>The court orders the parties to engage in a meet and confer telephonically regarding all outstanding discovery, including the continued deposition of Defendant Medrano and any verifications, before May 15, 2024. If the parties cannot agree otherwise, the meet and confer shall occur on May 15, 2024 at 12:30 p.m. Plaintiff’s counsel shall initiate the call.</p> <p>Plaintiff shall give notice.</p>
55.	<p>Michael v. The Home Depot USA, Inc.</p> <p>2018-01037899</p>	<p>Plaintiff John Michael has two different discovery motions pending on the court’s calendar: Motion to Compel Related to Request for Production, Set Two; and a continuance of Motion to Compel Further Responses to Special Interrogatories, Set One. Each motion seeks the imposition of sanctions.</p> <p>These are addressed in turn below.</p> <p><u>Motion to Compel Production</u></p> <p>Plaintiff John Michael’s Motion to Compel Related to Request for Production, Set Two is DENIED. (See Code Civ. Proc. § 2031.300.)</p> <p>As an initial point, plaintiff’s points and authorities incorrectly reference a motion to compel responses to</p>

	<p>interrogatories, not a response to inspection demands. As the error did not prejudice defendant's ability to prepare a response on the merits, the court is going to treat the motion as one to compel responses to inspection demands.</p> <p>A motion to compel responses to discovery requires the moving party to show service of the disputed discovery and a failure of the party upon whom the discovery is propounded to respond. (See <i>Saxena v. Goffney</i> (2008) 159 Cal.App.4th 316, 334 [moving party has evidentiary burden].)</p> <p>Plaintiff made the required showing as to the service of the disputed inspection demands, but failed to show that responses were not timely served. Plaintiff's counsel's declaration acknowledges that responses, consisting entirely of objections, were served on 03/08/23. (King Dec. ¶ 3, Exh. B; see also Hill Dec. ¶ 3, Exh. A.)</p> <p>Plaintiff's moving evidence fails to establish that defendant withdrew or otherwise waived the 03/08/23 objections in response to the inspection demands. Even if defendant agreed to serve further responses, that is not the same as waiving the previously served objections, as the further responses could incorporate all objections timely preserved by the 03/08/23 responses.</p> <p>That having been said, the court does not condone promises to supplement responses which are illusory. The parties are reminded of what this court has already stated in its prior discovery order involving these parties: work in good faith to resolve your discovery disputes. See Minute Order of March 15, 2024. Failure of the parties to attempt to resolve discovery disputes as ordered may result in sanctions on the non-compliant party.</p> <p>Plaintiff's request for sanctions is denied.</p>
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Continued Motion to Compel Further Responses to Special Interrogatories, Set One

Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Set No. 1 and Imposition of Sanctions is GRANTED in part, and DENIED in part.

Based upon the latest briefing/declarations of counsel, the motion is now limited to Special Interrogatories No. 8-10, 14, 16, 30, 31, 36, 40, 46, 48, 58-59, 61-62, 81, 93, 111, & 114-118.

The motion is DENIED as to Special Interrogatories No. 93, 111, and 114-115, as defendant's objection on the grounds of third-party privacy, or discovery being equally available to plaintiff are well taken.

The motion is GRANTED as to the remaining disputed interrogatories. The court finds that the objections were without merit, and/or failed to set forth clearly the specific ground(s) for the objection. (Code Civ. Proc. § 2030.040) (*See Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-21.)

Defendant shall provide further responses, without objection, within 10 days.

The court imposes \$2,625.00 in monetary sanctions against defendant Home Depot USA, Inc., payable to counsel for plaintiff within thirty days.

The parties each addressed a dispute regarding the order of depositions. As that is not before the court in the discovery disputes at issue for this hearing, the court declines to issue any orders at this time. Should the parties agree, at the time of the hearing, to have the court address this issue informally, then the court will do so.

		Plaintiff is ordered to give notice.
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57.	Naderi v. Mazda Motor of America, Inc. 2022-01298400	<p>Defendant Mazda Motor of America, Inc. dba Mazda North American Operations' motion to compel third party Orange County District Attorney's Office to produce a copy of the Traffic Collision Report prepared by the Irvine Police Department, and police photographs, video and audio taken at the scene of the incident, which relates to criminal case number 22HF2262, pending against defendant Joshua James Weber and related to date of incident April 29, 2022 is DENIED.</p> <p>Defendant's motion demonstrates that it served a subpoena for certain records on the Irvine P.D.; that the IPD responded by asserting the protections under Evidence Code 1040, and advising defendant to contact the OCDA to obtain information; defendant contacted OCDA to obtain a copy of the Traffic Collision Report, and was advised to submit a California Public Records Act request; defendant made such a request; and OCDA denied the request. Decl. of Velilla and attached exhibits.</p> <p>Defendant argues that the CPRA does not allow a government entity to refuse to produce documents in a civil case under Code of Civil Procedure. Defendant's argument is sound. See <i>Marylander v. Superior Court</i> (2000) 81 Cal. App. 4th 1119, 1125. However, for reasons that are not clear, defendant proceeded under the terms of the CPRA when it made the request to the OCDA. If a request is made pursuant to the CPRA, the OCDA can withhold an investigative report. See <i>Rackauckas v. Superior Court</i> (2002) 104 Cal. App. 4th 169.</p> <p>Defendant shall give notice.</p>
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60.	Golka v. Doe 2022-01267816	Defendant Joel Don's demurrer to plaintiff Daniel Joseph Golka's Second Amended Complaint [SAC], is SUSTAINED, with leave to amend, on grounds of

		<p>failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)</p> <p>Defendant's request for judicial notice is GRANTED as to Exs. A and B, and DENIED as to Ex. C. (Evid. Code, § 452, subd. (d) [judicial notice of court records]; <i>Jolley v. Chase Home Finance, LLC</i> (2013) 213 Cal.App.4th 872, 889 [ordinarily no basis for judicial notice of content of government web sites].) As to Ex. B, judicial notice is limited to the fact that the declaration and exhibits were filed, but not of the truth of their contents. (<i>Williams v. Wraxall</i> (1995) 33 Cal.App.4th 120, 130, FN 7.)</p> <p><u>Timeliness:</u></p> <p>The SAC now adequately alleges delayed discovery so as to overcome defendants' statute of limitations arguments. (<i>Fox v. Ethicon Endo-Surgery, Inc.</i> (2005) 35 Cal.4th 797, 808-809; SAC, ¶¶ 20, 32, 38, 47, 57, 66, 75, 83, 92; see also <i>E-Fab, Inc. v. Accountants, Inc. Services</i> (2007) 153 Cal.App.4th 1308, 1320 ["once properly pleaded, belated discovery is a question of fact"].)</p> <p><u>1st cause of action: defamation; 4th cause of action: false light.</u></p> <p>These causes of action fail to state sufficient facts. (<i>Taus v. Loftus</i> (2007) 40 Cal.4th 683, 720 [defamation elements]; <i>Hawran v. Hixson</i> (2012) 209 Cal.App.4th 256, 277 [false light elements same as defamation]; <i>Jackson v. Mayweather</i> (2017) 10 Cal.App.5th 1240, 1264 ["[w]hen a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action"].)</p> <p>The SAC fails to sufficiently allege the substance of the defamatory statements. "Case law requires that statements alleged to constitute libel 'must be</p>
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		<p>specifically identified, if not pleaded verbatim, in the complaint.’ [Citation.]” (<i>Medical Marijuana, Inc. v. ProjectCBD.com</i> (2020) 46 Cal.App.5th 869, 893.) However, the SAC fails to allege the substance of the allegedly defamatory statements. (SAC, ¶¶ 16-19, 26, 52.)</p> <p><u>2nd cause of action: invasion of privacy; 3rd cause of action: public disclosure of private facts.</u></p> <p>These causes of action fail to state sufficient facts. (<i>Shulman v. Group W. Productions</i> (1998) 18 Cal.4th 200, 231 [invasion of privacy elements]; CACI 1801 [elements of public disclosure of private facts].) These causes of action are based on the alleged defamation (SAC, ¶¶ 35, 42), which is insufficiently alleged as discussed above. Moreover, there are no facts alleged, as opposed to conclusions, to show that defendants intruded into a private place, conversation, or matter (2nd cause of action), or published any private facts (3rd cause of action).</p> <p><u>5th cause of action: appropriation of name or likeness for improper purpose.</u></p> <p>This cause of action fails to state sufficient facts. (<i>Maxwell v. Dolezal</i> (2014) 231 Cal.App.4th 93, 97 [elements].) Specifically, the SAC fails to allege that appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise. Rather, this cause of action is based on the alleged invasion of privacy and/or defamation (SAC, ¶ 62), which are insufficiently alleged as discussed above.</p> <p><u>6th cause of action: use of name or likeness for improper purpose.</u></p> <p>This cause of action fails to state sufficient facts. (CACI 1804A [elements]; Civ. Code, § [authorizing statutory penalties and punitive damages for unauthorized use].) There are no allegations that defendant used plaintiff’s name, likeness, etc. on</p>
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merchandise, or to advertise or sell anything. (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 210–211 [“Civil Code section 3344, subdivision (a) explicitly provides for possible liability on '[a]ny person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner ... for purposes of advertising ... without such person's prior consent'"].) Rather, this cause of action is based on defendant's alleged invasion of privacy (SAC, ¶ 71); however, invasion of privacy is insufficiently alleged, as discussed above.

7th C/A: intentional infliction of emotional distress.

This cause of action fails to state sufficient facts. (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903 [elements; outrageous conduct].) This cause of action merely incorporates prior allegations; however, the prior causes of action are insufficiently alleged, as discussed above. Further, absent some more specific facts as to the alleged defamatory statements, it cannot be determined whether defendant's conduct was so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Id.*)

8th cause of action: intentional interference with contractual relations.

This cause of action fails to state sufficient facts. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 [elements].) This cause of action fails to allege the existence of contract between plaintiff and a third party, but rather, only alleges defendant's knowledge of same. (SAC, ¶ 89.) Further, this cause of action fails to allege conduct by defendant which interfered with any contract. Presumably, as this cause of action incorporates all prior allegations by reference (¶ 88), the alleged interference is defendant's defamation; however, as the alleged defamation is insufficiently alleged, this cause of action fails for the same reasons.

		<p><u>9th cause of action: intentional interference with prospective economic relations; 10th cause of action: negligent interference with prospective economic relations.</u></p> <p>These causes of action fail to state sufficient facts. (<i>Youst v. Longo</i> (1987) 43 Cal.3d 64, 71 [intentional interference elements]; <i>North American Chemical Co. v. Superior Court</i> (1997) 59 Cal.App.4th 764, 786 [negligent interference elements].) First, like the 8th cause of action, these causes of action fail to allege the existence of prospective economic relationships, but only defendant’s knowledge thereof. (SAC, ¶¶ 95, 101.) Second, these causes of action allege that defendant “engaged in wrongful conduct, false allegations, and defamation against GOLKA.” (SAC, ¶¶ 96, 104.) However, defendant’s alleged defamation is insufficiently pled, as explained above. There are no facts alleged as to any other wrongful conduct which can support these causes of action. (<i>Della Penna v. Toyota Motor Sales, Inc.</i> (1995) 11 Cal.4th 376, 393 [for intentional interference claim, defendant’s actions must be wrongful by some measure other than the interference itself]; <i>National Medical Transp. Network v. Deloitte & Touche</i> (1998) 62 Cal.App.4th 412 [same re: negligent interference].)</p> <p>Plaintiff is granted 15 days leave to amend.</p> <p>The case management conference is continued to December 2, 2024 at 9:00 a.m. in Department C28.</p> <p>Moving defendant shall give notice.</p>
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