IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar

HONORABLE NICOLE S. HEALY
Department 28, Courtroom I
800 N. Humboldt Street, San Mateo, CA 94401

April 24, 2024

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ITEM 1 OR ITEMS 2 & 3 BELOW, THE *DAY BEFORE THE HEARING*:

1. **EMAIL Dept28@sanmateocourt.org BEFORE 4:00 P.M., COPIED IN THE SAME EMAIL TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING; or**

2. **YOU MUST CALL (650) 261-5128 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE; and**

3. **YOU MUST GIVE NOTICE BEFORE 4:00 P.M. — BY TELEPHONE OR IN PERSON — TO ALL PARTIES OF YOUR INTENT TO APPEAR PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.1308(a)(1).**

Failure to comply with item 1, or items 2 *and* 3, will result in no oral presentation.

***Appearances can be in person or by Zoom*. When you sign in to Zoom, please display your first and last name. Please know your line number. Mute your line until your case is called. Please check in by 1:50 pm.**

RECORDING OF A COURT PROCEEDING IS STRICTLY PROHIBITED.

Zoom Video/Computer Audio Information:
https://sanmateocourt.zoomgov.com/
Meeting ID: 160 226 9361
Passcode: 289347
Your name must appear on the Zoom login screen

Zoom Phone-Only note: You must join by dialing in from a telephone. Zoom credentials will not work from a tablet or PC. VIDEO APPEARANCES ARE PREFERRED.
Phone number: 1-669-254-5252
same meeting ID & passcode as above

Zoom can be joined directly from Judge Healy's page on the Court's website.

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: **(1) state their name each time they speak and only speak when directed by the Court**; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 1

19-CIV-07567 TONY CHAN, ET AL. VS. TOWN OF ATHERTON, A MUNICIPAL CORPORATION GOVERNMENT ENTITY, ET AL

TONY CHAN	CYRUS J JOHNSON
TOWN OF ATHERTON, A MUNICIPAL CORPORATION GOVERNMENT ENTITY	MATTHEW J OREBIC

DEFENSE MOTION RE: FOR JUDGMENT ON PLEADINGS

TENTATIVE RULING:

The parties are **ORDERED TO APPEAR**.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 2

21-CIV-00289 REBECCA SOLER, ET AL VS. TIMOTHY LOGUE, ET AL

REBECCA SOLER	JEFFREY R. SMITH
TIMOTHY LOGUE	JOHN W. RANUCCI

DEFENSE MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

Continued to May 1, 2024 at 2:00 p.m.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 3

21-CIV-00289 REBECCA SOLER, ET AL. VS. TIMOTHY LOGUE, ET AL

REBECCA SOLER	JEFFREY R. SMITH
TIMOTHY LOGUE	JOHN W. RANUCCI

DEFENSE MOTION FOR LEAVE TO FILE AMENDED COMPLAINT/ANSWER

TENTATIVE RULING:

Defendant Live Nation Entertainment, Inc.'s (Live Nation) motion for leave to file an amended answer to plaintiffs Rebecca Soler and George Soler's complaint is **GRANTED**.

Code of Civil Procedure, section 473 authorizes the court to allow a party to amend a pleading "in furtherance of justice, and on any terms as may be proper." (Code Civ. Proc., § 473, subd. (a)(1).) There is a policy of "great liberality" in allowing amendments to pleadings at any stage of the proceeding so as to dispose of cases upon their merits where the authorization does not prejudice the substantial rights of others. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.) When considering whether to permit amendments to pleadings, court should be guided by two general principles: (1) whether facts or legal theories are being changed, and (2) whether opposing party will be prejudiced by the proposed amendment. (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 909-910 [citation omitted].) "However, even if a good amendment is proposed in proper form, unwarranted delay in presenting it may — of itself — be a valid reason for denial." (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939-940; and see *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 [denying leave to amend when party offered no explanation for seeking to amend until after the trial readiness conference and the amendment would require additional discovery].)

Here, plaintiffs learned of defendant Timothy Logue's sudden and unanticipated seizure over two years ago in March 2022, when Live Nation responded to written discovery requests. Since that time, the facts surrounding and underlying the seizure have, in the words of Live Nation, been "thoroughly mined" and Live Nation explained its delay in seeking to amend its answer. Under these circumstances, Live Nation's addition of an affirmative defense based on facts already alleged and well-known to the opposing party does not, at this stage of the litigation, prejudice plaintiffs' ability to put forward their cause of action. Therefore, in accordance with the "great liberality" of Code of Civil Procedure, section 473 and the preference to dispose of cases on their merits, Live Nation's motion is **GRANTED**. (*Board of Trustees, supra*, 149 Cal.App.4th at 1163.)

The proposed amended answer is not deemed filed. Live Nation shall file and serve the amended answer attached as exhibit F to the declaration of Yvonne V. Jorgensen within ten days from service of written notice of entry of order. (Cal. Rules of Court, rule 3.1324; Code Civ. Proc., § 473.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for Live Nation shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 4

21-CIV-02032 VERA KOVAL, ET AL VS. ANAS ALI ARTIMEH, ET AL.

VERA KOVAL	GAIL J. LAMCHICK
ANAS ALI ARTIMEH	THERESA T. NGUYEN

DEFENSE MOTION FOR LEAVE TO INTERVENE

TENTATIVE RULING:

The unopposed Motion for Leave to Intervene by Infinity Insurance Company has been **WITHDRAWN.**

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APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 5

22-CIV-00167 MIN ZHAO, ET AL. VS. HERMINIGILDO V. VALLE, MD, ET AL.

MIN ZHAO	FELICIA C CURRAN
HERMINIGILDO V. VALLE	JENNIFER STILL

PETITION FOR APPROVAL OF COMPROMISE OF CLAIM

TENTATIVE RULING:

The unopposed verified petition of guardian ad litem Chao Michael Xu for the approval of the compromise of disabled plaintiff Wenzhong Zou's claim is **GRANTED.** The parties are **ORDERED TO APPEAR**.

A petition for court approval of a compromise of a claim for a disabled person must be verified by the petitioner and must contain a full disclosure of all information that has any bearing on the reasonableness of the compromise. (Cal. Rule of Court, Rule 7.950.) Here, the petitioner, Mr. Xu has verified the petition and set forth information relating to the compromise and the Court finds that the settlement is fair and reasonable.

The court must use a reasonable fee standard when the payment of attorney's fees from funds paid or to be paid for the benefit of a disabled person. (Cal. Rules of Court, Rule 7.955(a)(1).) The court must consider the terms of any representation agreement made between the attorney and the representative of the disabled person based on the facts and circumstances existing at the time the agreement was made. (*Id.*, Rule 7.955(a)(2).) The petition to approve a fee must include a declaration addressing the factors listed in Rule 7.955(b) that are applicable to the matter before the court.

The petition, unopposed by either defendant, meets the requirements of the California Rules of Court. Counsel's Declaration in support of attorney's fees also demonstrates that the requested fees meet the requirements set forth by the California Rules of Court.

The case involves the death of an elderly person, Min Zhao, at a skilled nursing facility. Plaintiffs are the widower and daughter of the decedent; petitioner is her grandson and guardian ad litem. Plaintiff Wenzhong Zou is 94 years old, suffers from severe dementia, and lives with his daughter and grandson who care for all his needs. Plaintiffs represent that Mr. Zou is unable to comprehend the circumstances relating to his wife's death. The Court grants the request to apportion the recovery 95% to his daughter Qian Zou and 5% to Wenzhong Zou. Ms. Zou has represented that she will continue to care for her father's needs.

The court grants the request for payment of expenses totaling $22,098.01. The records supplied by plaintiffs' counsel demonstrate that the expenses were reasonable and necessary to the litigation.

The court further grants the attorneys' fees request of $69,293.73. Plaintiff's counsel, Felicia Curran, has been practicing since 1987, and since 2000 has focused 60% of her practice on cases involving the neglect and death of an elderly patient by a skilled nursing facility. Ms. Curran has litigated this case for the past two years. She has engaged in motion practice, conducted discovery, worked with expert witnesses, took and attended depositions, prepared for and attended mediation, and ultimately negotiated a settlement.

Ms. Curran represented Mr. Zou on a contingent fee basis, and is seeking a fee of $69,293.73, which is 33.33% of the gross $230,000 settlement. Counsel represents that liability was contested, the amount of recovery was in dispute and she took the case on contingency. The cost of going to trial could have netted plaintiff less money than she received in settlement. This court may allow attorneys' fees under a valid contingency fee agreement as long as the fees are reasonable. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial § 12:576.1 (June 2023 update).) Plaintiff's counsel 33.33% is reasonable based upon the facts of this case. (*Cotchett, Pitre & McCarthy v. Universal Paragon Corp*. (2010) 187 Cal.App.4th 1405, 1415, 1421, 1423, n.3 ["typically range from 33 percent to 40 percent of a settlement amount, and a contingency of 50 percent is not unconscionable."].)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 6

23-CIV-02850 SCOTT RHODES VS. COUNTY OF SAN MATEO, ET AL.

SCOTT RHODES — DANIEL D. GEOULLA
COUNTY OF SAN MATEO

PETITION FOR RELIEF

TENTATIVE RULING:

Petitioner Scott Rhodes' Petition for Relief from the Claims Requirement and to File a Complaint to Include a Claims Against Respondent City of Burlingame is **DENIED**.

Petitioner alleges that he was injured on February 22, 2022. He did not present a claim to Respondent City of Burlingame (Burlingame) until October 18, 2022. (August 11, 2023 Declaration of Daniel D. Geoulla (Geoulla Decl.) ¶¶ 3-4; *id.*, exh. C.)

Petitioner seeks relief from the requirement of presenting a claim for personal injury within six months of accrual of his cause of action before bringing an action against Burlingame. There is no dispute that he did not present a claim to Burlingame within six months, but Rhodes contends his failure was due to his mistake, inadvertence, surprise, or excusable neglect.

A. Legal Standard on Petition for Relief from Claim Presentation Requirement

Generally, before an action may be filed against a public entity for personal injury, a claimant must present the claim to the public entity in accordance with Government Code, section 915, et seq, within six months after the accrual of the cause of action. (Gov. Code, § 911.2, subd. (a); see *id.*, § 945.4.) If a claim is not presented in that time, the claimant may make, within a reasonable time not exceeding one year after accrual, a written application to the entity for leave to present that claim. (*Id.*, § 911.4, subd. (a)–(b).)

If the entity denies or is deemed to have denied the application, the claimant may then petition the court for relief from the requirement to present the claim within six months after the entity denied or is deemed to have denied the application. (Gov. Code, § 946.6, subds. (a)–(b).) The petition must be granted if the application to the entity was timely and "[t]he failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court" grants relief. (*Id.*, subd. (c).)

The language "mistake, inadvertence, surprise, or excusable neglect" is taken from Code of Civil Procedure, section 473, and the same standard applies. (See *Viles v. California* (1967) 66 Cal.2d 24, 29.) Thus, regardless of which of the four grounds is relied upon, the petitioner must show that the act or omission resulting in the failure to present a timely claim is one that a reasonably prudent person might have committed under similar circumstances. (*Renteria v. Juvenile Justice, Dept. of Corrections & Rehabilitation* (2006) 135 Cal.App.4th 903, 910.) This showing must be made by a preponderance of the evidence, and a court has no discretion to grant relief if it is not made. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.) Public policy favors relief and doubts are resolved in favor of the petitioner absent a showing of prejudice. (See *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275, 276, 281.)

B. <u>No Excusable Mistake, Inadvertence, Surprise or Neglect</u>

Rhodes identifies four separate reasons why his failure to file a timely claim is excusable: (1) his ignorance of the claim-presentation requirement; (2) his physical incapacitation due to injuries sustained in the underlying accident; (3) his ignorance of a tenable claim against any defendant; and (4) his inability to retain counsel until eight months after the claim had accrued.

As to the first reason, "[a]n honest mistake of law is a valid ground for relief where a problem is complex and debatable." (*Brochtrup v. INTEP* (1987) 190 Cal.App.3d 390, 329.) "The controlling factors in determining whether a mistake is excusable are: (1) the reasonableness of the misconception; and (2) the justifiability of the failure to determine the correct law." (*Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1136.)

However, "[m]ere lack of knowledge of the claim-filing requirement is insufficient to support relief under section 946.6." (*Garcia v. Los Angeles Unified School Dist.* (1985) 173 Cal.App.3d 701, 708.) While "a layman perhaps should not be charged with negligence in not discovering section 911.2 by failing to look it up, a layman who is aware of the fact that he has a compensable claim may be neglectful if he fails to consult an attorney" within the claim-presentation period. (*Ibid.*)

The only evidence presented by Rhodes is the declaration of his counsel, which does not contain any statement — admissible or otherwise — that Rhodes is a layperson who had been ignorant of the claim-presentation requirement throughout the six-month period following the accident. (See Geoulla Decl., *passim*.) Even were the Court to assume this fact, there is no evidence that Rhodes acted diligently to determine whether there was such a requirement by investigation or seeking counsel. Accordingly, this purported mistake cannot be a basis for relief.

As to the second reason, Rhodes's counsel states that Rhodes was incapacitated — and thus unable to retain counsel or pursue his claims — from the date of the accident through May 13, 2022, and refers the Court to Rhodes's medical records. (Geoulla Decl., ¶ 4, exh. B.) Notably, the medical records reveal that the claimed incapacity was intermittent, as Rhodes was discharged from the hospital and placed on home recovery as early as March 28, 2022. (*Id.*, exh. B, at p. 4 [reflecting discharge date of "3/28/2022" and discharge disposition of "Home with Home Health"].) Even so, Rhodes's incapacity spanned less than a month, leaving time to retain counsel or investigate his claim.

However, there is no evidence of Rhodes's efforts, if any, to secure counsel or investigate his claims, other than the fact that he retained his current counsel nearly five months later and eight months after the accident. (Geoulla Decl., ¶ 2.) A reasonably prudent person would make attempts to promptly seek legal advice and retain counsel. And, given that Geoulla was present to witness Rhodes' incapacity as evidenced by Geoulla's averment of such facts based on his personal knowledge, Rhodes' eight-month delay in engaging counsel further weighs against a finding that the failure to present a timely claim was excusable. Accordingly, this purported inadvertence cannot be a basis for relief.

As to the third reason, regarding a purported mistake of law, it is not excusable for the same reasons as the first. To the extent Rhodes means to suggest that he did not know Burlingame was a proper defendant, he again offers no evidence why such a mistake was reasonable. Mistakes as to a defendant's identity can be a basis for relief, but the petitioner's investigation must be sufficiently diligent so as to make that mistake excusable. (See, e.g., *Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1292 [denial where no showing plaintiff investigated]; *Spencer v. Merced County Office of Education* (1997) 59 Cal.App.4th 1429, 1438–1439 [denying relief where reasonable person would have conducted further inquiry].)

Rhodes's citations to *Kaslavage v. West Kern County Water Dist.* (1978) 84 Cal.App.3d 529 (*Kaslavage*) and *Ebersol v. Cowan* (1983) 35 Cal.3d 427 (*Ebersol*) are unavailing. In *Kaslavage*, "the plaintiff sought legal representation well within the [statutory claim-presentation] period" and an "extensive investigation was conducted" by his attorneys. (*Kaslavage*, *supra*, at p. 537.)

In *Ebersol*:

> Ms. Ebersol acted swiftly to place her case in the hands of an attorney on the very day she was injured. Thereafter, despite repeated rebuffs by the attorneys she contacted, Ms. Ebersol continued to seek legal advice and assistance. Despite her physical pain, the progressive deformity of her left hand, her frequent and prolonged admissions to the hospital, and her frequent outpatient medical treatments, Ms. Ebersol continued her search.

> Clearly, Ms. Ebersol's efforts to obtain counsel during the [statutory claim-presentation] period were both tenacious and diligent.

(*Ebersol*, *supra*, 35 Cal.3d 427 at p. 437.)

Here, there is no evidence whatsoever of Rhodes's attempt to pursue his claims against Burlingame or any other potentially liable entity and thus the instant matter is readily distinguishable from these cases. Accordingly, this purported mistake cannot be a basis for relief.

As to the fourth and final reason, it cannot be a basis for relief for the same reasons discussed above. There is no evidence of Rhodes's attempts or lack thereof to retain counsel so as to determine whether he acted with sufficient diligence so as to excuse whatever inadvertence or neglect caused him to miss the six-month deadline. Without an evidentiary basis to grant relief, the Court must deny relief despite the liberal interpretation to be accorded to Government Code, section 946.6. (See *El Dorado Irrigation Dist. v. Superior Court* (1979) 98 Cal.App.3d 57, 62–63.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, respondent City of Burlingame shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00 LINE 7

23-CIV-03393 MARTIN LANFRANCO VS. DORATRIZ PADILLA, ET AL.

MARTIN LANFRANCO	DAVID HOLLENBERG
DORATRIZ PADILLA	PETER L. ISOLA

DEFENSE MOTION TO STRIKE

TENTATIVE RULING:

For the reasons set forth below, pursuant to Cal. Civ. Proc. § 430.10(e), the demurrer to plaintiff's Second Amended Complaint (SAC) is **SUSTAINED WITH LEAVE TO AMEND** as to the first cause of action for financial elder abuse and **SUSTAINED WITHOUT LEAVE TO AMEND** as to the third cause of action for negligence. The demurrer based on uncertainty is **OVERRULED**.

Legal Standard on Demurrer

A party may demur to a pleading on any one or more of the grounds laid out in Code of Civil Procedure, section 430.10, including that the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10.) A court must "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law [and] also consider matters which may be judicially noticed." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) "Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).)

"As a general rule, if there is a reasonable possibility the defect in the complaint could be cured by amendment, it is an abuse of discretion to sustain a demurrer without leave to amend. Nevertheless, where the nature of the plaintiff's claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459 (*City of Atascadero*).) The burden of proving that any defect can be cured by amendment "is squarely on the plaintiff." (*Blank, supra*, 39 Cal.3d at p. 318; *City of Atascadero*, *supra*, 68 Cal.App.4th at p. 459.)

Elder Abuse Cause of Action

Section 15610.30 of the Welfare and Institutions Code sets forth three forms of elder abuse: taking property for a wrongful use or with intent to defraud (subsection (a)(1)); assisting in such taking (subsection (a)(2)); and taking by undue influence

(subsection (a)(3).) Under plaintiff's facts as alleged against the LoanDepot defendants, only subsection (a)(2) — assisting with the taking — appears applicable. That is, the SAC does not allege that LoanDepot defendants themselves took or otherwise appropriated any property of plaintiff's such that subsection (a)(1) would apply, nor do the facts implicate subsection (a)(3).

In sustaining defendants' demurrer to the First Amended Complaint (FAC) with leave to amend, the Court held that plaintiff had not alleged that defendants "knowingly aided and abetted or gave substantial assistance to the alleged financial abuse of plaintiff." (Order on Demurrer to FAC, signed December 20, 2023.) In that Order, the Court analyzed the sufficiency of Plaintiff's allegations under Welfare and Institutions Code, section 15610.30, subdivision (a)(2), under which financial elder abuse occurs when a person or entity assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (Welf. & Inst. Code, § 15610.30, subd. (a)(2).)

The Court's Order looked to *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727 (*Das*) and its analysis of the statute, which concluded that the term "assists" could not be understood to impose strict liability for assistance in an act of financial abuse. (*Id*., at p. 744.) Rather, the *Das* court concluded that the statutory language of "assists" imposed the California common law understanding of liability for aiding and abetting a tort. (*Ibid.*) Such liability would be imposed if the defendant (a) knew the conduct was a breach of duty and gave substantial assistance or encouragement; or (b) gave substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person. (*Ibid.*) The *Das* court concluded that "when, as here, a bank provides ordinary services that effectuate financial abuse by a third party, the bank may be found to have 'assisted' the financial abuse *only if it knew* of the third party's wrongful conduct." (*Id.*, at p. 745 [emphasis added].)

Despite what this Court has already held in applying the *Das* standard in ruling on the demurrer to the FAC, plaintiff relies on cases interpreting subsection (b) to argue that the standard, contra *Das*, is not actual knowledge of the wrongful conduct, but rather, the lesser standard of "knew or should have known." (Opp. to Demurrer at p. 5.) Subsection (b) of section 15610.30 uses the "knew or should have known" standard with respect to taking, secreting, appropriating, obtaining, or retaining property for a wrongful use, as set forth in subsection (a)(1). As noted above, *Das* instructs that where subsection (a)(2) "assisting" with such taking, is concerned, there is no strict liability and a claim must allege actual knowledge. (*Das, supra*, 186 Cal.App.4th at p. 745.) Plaintiff's cited cases do not establish any other rule. (Opp. to Demurrer, at p. 5.) *Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302 did not involve a subsection (a)(2) (assisting) claim, but rather, involved direct taking under subsection (a)(1). *Bonfigli* does not state that the standard articulated in subsection (b) should be applied to an "assisting" claim. *Stebley v. Litton*

Loan Servicing, LLP (2011) 202 Cal.App.4th 522 is inapposite for the same reasons. (The Court does not consider plaintiff's citation to any unpublished and unciteable state and federal cases.)

Even if the Court were willing to accept the "knew or should have known" standard — which it cannot, but must instead follow *Das* (see *Auto Equity Sales* v. Superior Court (1962) 57 Cal.2d 450, 456) — plaintiff's allegations are insufficient to meet either standard. The SAC adds allegations that, if Perez had not referred plaintiff to the second loan broker, defendant Delis, the loan which led to plaintiff's alleged financial ruin would not have happened. (SAC ¶ 39.) The SAC also alleges that, after plaintiff contacted LoanDepot through the online platform Zillow, LoanDepot staff forwarded the lead to Perez, indicating to Perez that plaintiff had difficulty in filling out an application online and that plaintiff preferred to speak in person. (*Id.*, ¶ 43.) Plaintiff alleges that Perez, a mortgage loan officer with over ten years of experience, only did a cursory examination of plaintiff's financial situation and did not gather more information, and that Perez either determined plaintiff did not qualify for a loan, or "he received additional financial information about Martin [plaintiff] from Padilla motivating him to reject Martin for a loan… and *this* motivated Perez to deny Martin and pass him off to another broker for the next step in his ultimate financial ruin." (*Id.*, ¶¶ 44, 45.) "Perez had to either know, or he should have known given his ten years of experience, that passing Martin off to another broker rather than stopping the chain, would have ended in a non-traditional, high-interest bridge loan, that Martin could not afford given his financial situation." (*Id.*, ¶ 46.) The SAC also alleges that after Padilla forwarded a copy to Perez of the signed sales agreement on the Marisma property, Perez then passed it to Delis via his LoanDepot email, and that without the LoanDepot defendants serving as a conduit, plaintiff would never have been connected to Delis, "nor would the next step in the chain of fraud have been possible." (*Id.*, ¶ 48.)

This essentially constitutes the entirety of the SAC's allegations against the LoanDepot defendants. Nowhere does plaintiff adequately allege that Perez or LoanDepot had any actual knowledge of the alleged scheme to financially ruin plaintiff. It also appears contradictory that plaintiff repeatedly asserts that Perez failed to do due diligence on plaintiff's finances, yet at the same time, should have been aware enough of plaintiff's financial situation that it would have been likely or certain that plaintiff would end up signing a high-interest bridge loan he could not afford. Nor do plaintiff's additional allegations in the SAC amount to "substantial assistance" under *Das.* Even reading the alleged facts generously and in plaintiff's favor, it appears that the LoanDepot defendants simply declined to offer plaintiff a loan, referred him to Delis, and then forwarded an email of a sale that had already gone through. There is no indication in the SAC that the LoanDepot defendants knew of the loan which plaintiff eventually entered into. These allegations do not amount to "assistance" in an elder abuse scheme. (*Das, supra,* at p. 745 [appellant failed to allege that respondent assisted in financial abuse because she did not allege that respondent knew about the schemes that victimized

her father].) Nothing in the facts alleged amounts to the necessary actual knowledge standard as articulated in *Das*, nor does Plaintiff's SAC even meet the lesser standard which he proposes should apply. The demurrer to the first cause of action is therefore **SUSTAINED WITH LEAVE TO AMEND**.

Negligence Cause of Action

The Court sustained the demurrer to the FAC's negligence cause of action with leave to amend, finding that plaintiff had failed to allege a duty owed to him by the LoanDepot defendants.

To state a cause of action for negligence, a plaintiff must adequately allege the existence of a duty of care owed to him by the defendant. (*Beauchamp v. Los Gatos Golf Course* (1969) 273 Cal.App.2d 20, 32.) "As a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money. [citations] Thus, for example, a lender has no duty to disclose its knowledge that the borrower's intended use of the loan proceeds represents an unsafe investment. [citations] The success of the borrower's investment is not a benefit of the loan agreement which the lender is under a duty to protect." (*Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) "Liability to a borrower for negligence arises only when the lender actively participates in the financed enterprise beyond the domain of the usual money lender." (*Ibid.*)

Here, plaintiff has again failed to allege any activity by the LoanDepot defendants that goes beyond LoanDepot's conventional role as a mere lender of money, nor has plaintiff alleged that the LoanDepot defendants "actively participated" in the financed enterprise (i.e., the hard-money loan defendant Delis originated) at all. Plaintiff's opposition argues that the LoanDepot defendants went beyond their conventional roles by performing an "unorthodox service" in serving as intermediaries to Delis. But plaintiff does not provide support for his assertion that such a service is unorthodox, nor does plaintiff explain why such a referral does not fall neatly within *Nymark's* warning that a lender is not under any obligation to warn borrowers that their investments may be risky. (*Ibid.*)

To determine whether or not the LoanDepot Defendants owed Plaintiff a duty of care, the Court looks to the factors set forth in *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650: (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to him, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct, and (6) the policy of preventing future harm. Plaintiff argues that these factors are met because Perez was an experienced loan originator, and he knew that plaintiff would not qualify for a traditional

home loan, had no significant income, was of retirement age, and had trouble even filling out a cursory online application. (Opp. to Demurrer, at p. 11.)

However, the same analysis the Court applied in its Order sustaining the demurrer to the FAC's negligence claim applies here: plaintiff has not alleged facts showing the closeness of any connection between defendants' conduct and the injury suffered by plaintiff, the moral blame attached to defendants' conduct, and that the policy of preventing future harm applies here. (Order on Demurrer to FAC.) Though plaintiff stresses that the LoanDepot defendants' conduct was a link in the causal chain leading to his financial ruin, given the LoanDepot defendants' limited actions and total lack of connection to the loan itself, the link appears extremely attenuated. Nor is it clear what moral blame might attach to the situation, given that Perez's actions appear to be a simple referral rather than encouragement that plaintiff sign onto a risky loan — which, under *Nygard*, is not a risk that the LoanDepot defendants were obligated to warn plaintiff against, in any case.

The demurrer to the third cause of action for negligence is thus **SUSTAINED.** Plaintiff has not made any showing as to the possibility of curing the fundamental defects in its negligence claim. The nature of plaintiff's claim is clear, and under substantive law, no liability exists because plaintiff cannot establish the fundamental element of a duty of care owed to him by the LoanDepot defendants. As such, leave to amend is properly denied.

In sum, the Court **SUSTAINS** the demurrer to the elder financial abuse cause of action **WITH LEAVE TO AMEND**, and **SUSTAINS** the demurrer to the negligence cause of action **WITHOUT LEAVE TO AMEND**. Plaintiff shall file and serve a Third Amended Complaint, if any, within twenty days of service of written notice of entry of order by defendants.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for the Loan Depot defendants shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 8

23-CIV-03393 MARTIN LANFRANCO VS. DORATRIZ PADILLA, ET AL

MARTIN LANFRANCO	DAVID HOLLENBERG
DORATRIZ PADILLA	PETER L. ISOLA

DEFENSE HEARING ON MOTION TO STRIKE

TENTATIVE RULING:

Defendants' motion to strike the prayer for punitive damages and reference to punitive damages in paragraph 63 of the SAC is **DENIED AS MOOT**.

2:00 LINE 9

23-CIV-03763 KEVIN D. LONGBOY VS INTERSOLUTIONS, LLC, A LIMIED LIABILITY COMPANY

KEVIN MICHAEL D. LONGBOY	MARIAM GHAZARYAN
INTERSOLUTIONS, LLC, A LIMITED LIABILITY COMPANY	ANAHI CRUZ

DEFENSE MOTION / PETITION TO COMPEL ARBITRATION

TENTATIVE RULING:

Defendant Intersolutions, LLC's (defendant) Motion to Compel Arbitration is **GRANTED**. Plaintiff Kevin Michael D. Longboy's (plaintiff) individual claims are compelled to arbitration, and the action is **STAYED** as to the non-individual claims pending arbitration.

The Court finds defendant has met its initial burden to show there is an arbitration agreement between the parties (De la Torre Dec., filed Nov. 13, 2023, ¶ 5, Ex. A), and Plaintiff has not met his shifting burden to demonstrate ground for denial by a preponderance of the evidence. (Knight, Cal. Prac. Guide: Alt. Disp. Res. (Rutter, Dec. 2023 Update) ¶¶ 5:320, 5:321, 5:322. See Reply, filed Jan. 8, 2024, at p. 4:2-3 [arguing "Plaintiff's Opposition does not challenge the enforceability of the Agreement or that the Agreement encompasses his individual PAGA claim"].)

The California Supreme Court has held that under PAGA, "[a]n employee who has met these requirements upon bringing a PAGA action does not lose standing to litigate non-individual claims by virtue of being compelled to arbitrate individual claims[,] even if the employee obtains redress for individual claims in arbitration." (*Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104, 1127 (*Adolph*).) Further, the Court held that

> In sum, where a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court. This "is the interpretation of PAGA that best effectuates the statute's purpose, which is 'to ensure effective code enforcement.'"

(*Adolph*, *supra*, 14 Cal.5th at p. 1123; see also Knight, *supra*, ¶ 5:49.4h.)

Plaintiff asserts both individual and non-individual claims in his Complaint. (Complaint, at p. 1:11-12 [Case title, "KEVIN MICHAEL D. LONGBOY, individually, and on behalf of all others similarly situated"]; ¶ 4 ["Plaintiff brings this action against

Defendants seeking only to recover penalties for himself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of California"]; ¶ 30 ["Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees of Defendants"]; Prayer, ¶ 2 ["Plaintiff, on behalf of all similarly Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows: . . . An award of civil penalties on behalf of himself and all similarly aggrieved employees pursuant to PAGA"].) Under *Adolph*, plaintiff's individual claims may be compelled to arbitration.

Plaintiff does not cite to relevant legal authority supporting his argument that, "Plaintiff will not be pursuing *redress* for his "individual" PAGA penalties and will proceed in Court, on behalf of the State of California, to recover 'non-individual' PAGA penalties arising from conduct affecting aggrieved employees [and t]hus, there is no reason to stay the action at all." (Opp., filed Dec. 18, 2023, at p. 1:10-12 (original emphasis). See also *id*., at pp. 4:6-8, 4:28-5:1.) "[A] point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion." (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35, superseded by statute on other grounds in *Union Bank v. Sup. Ct.* (1995) 31 Cal.App.4th 573, 583.)

Lastly, where the action, such as here, involves "piecemeal litigation of arbitrable and inarbitrable remedies derived from the same statutory claim," "the court may stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." (*Adolph, supra*, 14 Cal.5th at p. 1125 (cleaned up).)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00 LINE 10

23-CIV-03789 CARSON LEVIT, TRUSTEE OF THE LEVIT FAMILY REVOCABLE TRUST VS REAL ADVANTAGE TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION

CARSON LEVIT, TRUSTEE OF THE LEVIT FAMILY REVOCABLE TRUST — JASON E GOLDSTEIN

REAL ADVANTAGE TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION — JAMES P WAGONER

DEFENSE MOTION TO STRIKE

TENTATIVE RULING:

Defendant Real Advantage Title Insurance Company's ("RATIC") Motion to Strike portions of plaintiffs' First Amended Complaint, filed December 21, 2023, is **DENIED**. (Code Civ. Proc., § 436.)

RATIC's and plaintiffs' Requests for Judicial Notice are **GRANTED**. (Evid. Code, § 452.)

The Court finds RATIC's motion to strike approximately 50 separate paragraphs, including two causes of action, is improper and implicates an improper line item veto of the First Amended Complaint. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528; *PH II, Inc. v. Sup. Ct.* (*Ibershof*) (1995) 33 Cal.App.4th 1680, 1682-1683. See also Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, June 2023 Update) ¶¶ 7:173, 7:188.1.) In its discretion, the Court declines to do so as the striking of the allegations is neither cautious nor sparing.

The Court also finds the judgment of dismissal entered without prejudice and after sustaining without leave to amend RATIC's Demurrer to the First Amended Complaint in *Bronstein v. Real Advantage Title Insurance Company* (Orange Cty. Sup. Ct. Case No. 30-2021-01237360- CU-IC-CXC) ("Orange County Action") has no preclusive effect on this subsequently filed action; no determination on the merits was made upon entering judgment. (7 Witkin, Cal. Proc. (6th ed., Mar. 2024 Update) Judgment, §§ 369, 370(2), 403.) Rather, the Court in the Orange County Action expressly found that the claims before it were premature at that time. (RATIC RJN, filed Jan. 23, 2024, Ex. J, p. 24:4-14. 28:22 – 29:12.)

The Court previously denied RATIC's motion to strike the punitive damages allegations and the Court finds its renewal in this motion is an improper motion for

reconsideration. (Code Civ. Proc., § 1008. See Min. Order, issued Nov. 22, 2023 ("Defendant's Motion to Strike the punitive damages allegations in the second cause of action and in the prayer for relief is DENIED").) RATIC does not present any new facts or law to warrant the Court reconsidering its prior ruling.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for plaintiffs shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 11

23-CIV-04639 YIYING HU ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED VS EVERNOTE CORPORATION

YIYING HU ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED	DEEPALI A. BRAHMBHATT
EVERNOTE CORPORATION	SCOTT D. JOINER

DEFENSE MOTION TO COMPEL ARBITRATION

TENTATIVE RULING:

Defendant Evernote Corporation's Motion to Compel Arbitration is **GRANTED**, and the action is **STAYED** pending arbitration.

Defendant's Supplemental Request for Judicial Notice is **GRANTED**.

On February 27, 2024, the Court continued the hearing to the instant hearing date:

> [T]o permit plaintiff to depose declarant Alberto Germano for the limited purpose of inquiring into the two screenshots at Paragraph 5 at of his two otherwise identical declarations filed on December 28, 2023 and February 13, 2024, respectively, and explanation regarding a printing error. (See Reply, filed February 13, 2024, at p. 3:25-28, fn. 2; Defendant's Response, filed February 21, 2024, at p. 2:6-14.) This limited deposition shall be taken by videoconference or by other means with the parties' agreement, and shall last no more than 30 minutes. This limited deposition does not implicate the one deposition rule. (See Code Civ. Proc., § 2025.610.)

(Min. Order, issued Feb. 27, 2024.) The Court also permitted supplemental briefing. (*Ibid*.)

Plaintiff deposed Mr. Germano regarding the original and substituted images. (See Germano Supp. Decl., filed April 11, 2024 ¶¶ 5-7, and image; see also Pltf.'s Objections to New Evidence, filed Feb. 21, 2024, at p. 3 [side-by-side images of landing page].) At his deposition, Mr. Germano testified regarding the discrepancies with his declaration and how the image looked when he first executed his initial declaration. (Penfold Decl., filed April 11, 2024, Ex. A, at pp. 14:14-15:4 (Germano Depo.).)

Mr. Germano testified that: (1) he personally checked both the Internet Archive Wayback Machine and defendant's remote repository on GitHub (*id.*, at p. 16:17-21, 19:16-21); and (2) the HTML code on the Wayback Machine showed hyperlinks to the Privacy Policy and Terms and Conditions (*id*., at pp. 24:5-27:21). Mr. Germano also

provided the images from the links presented to him at the deposition. (Compare Germano Depo., *supra*, at pp. 17:11-19:15, 24:5-26:21; with Germano Supp. Decl., filed April 11, 2024, ¶¶ 5, 6-8, 10.)

Having considered the papers and supplemental papers filed by the parties, the Court now rules as follows:

Defendant has met its initial burden and proved by a preponderance of the evidence that an arbitration agreement with a class action waiver was entered into by the parties. (Knight, Cal. Prac. Guide: Alt. Disp. Res. (Rutter, Dec. 2023 Update) ¶ 5:320. See Germano Dec., filed Dec. 28, 2023, ¶¶ 5 – 8, Ex. A.)

Plaintiff created an Evernote account in 2015. (Declaration of Alberto Germano [Germano Decl.] filed Feb. 13, 2024, ¶ 4.) To do so, she accessed Evernote's website. On the sign-in page, under the phrase "Create Account" in large bright green text, two fillable boxes, "your email address" and "create a password." Underneath that was the sentence "By clicking Create Account, I agree to the Terms of Service and Privacy Policy." That text was grey except for "terms of service" and "privacy policy" which were in blue, indicating hyperlinks. Below that text was a large bright green box with white drop-out text also stating "Create Account." Under that was the phrase "already have an account? Sign In." (See Germano Decl., Feb. 13, 2024, ¶¶ 5-8, and image; Germano Supp. Decl., April 11, 2024 ¶¶ 4-5, and image.) Even if plaintiff did not click the hyperlink and review the terms of service before creating an account, she was on inquiry notice of Evernote's terms of service. Those included the arbitration provision. (Germano Decl., Feb. 13, 2024, Exh. A, at "What do I do if I think I have a claim against Evernote? – Arbitration Agreement".)

The account formation process used by Evernote falls under the rubric of "sign-in wrap." (*Sellers v. JustAnswer LLC* (2021) 73 Cal.App.5th 444, 464, 466 (*Sellers*) [noting that sign-in wrap falls between clickwrap agreements, which have generally been held enforceable, and browsewrap, which have not].) In *Sellers*, the appellate court — noting that the enforceability of sign-in wrap agreements was an issue of first impression in California at that time and after surveying federal and state cases — held that the terms, which included an arbitration provision, were not sufficiently conspicuous to place plaintiffs on inquiry notice. (*See id.*, at pp. 480.) Further, *Sellers* noted that "the transactional context is an important factor to consider and is key to determining the expectations of a typical consumer." (*Id.*, at p. 481.) There, plaintiffs were not informed that by signing up for a "trial" they were actually entering into a continuing financial arrangement with the defendant. (*Id.*, at pp. 477-480 [noting that the agreement appeared to violate the automatic renewal law, Bus. & Prof. Code, §§ 17600, et seq.].) Here, by contrast, the font is a reasonable size, on an uncluttered background, and the phrase "terms of service" is in blue, indicating a clickable hypertext link. (Cf., *Berman v. Freedom Financial Network, LLC* (9th Cir. 2022) 30 F.4th 849, 860-861, App. A

(*Berman*) [cluttered image and terms of service link buried in small grey text]; and *Sellers*, *supra*, 73 Cal.App.5th at pp. 454-457.)

The Court finds plaintiff has not met her burden to prove unconscionability by a preponderance of evidence. (Knight, *supra*, at ¶ 5:320.) Plaintiff is correct that the Agreement is an adhesion contract, and thus has a degree of procedural unconscionability. (*Sellers*, *supra*, 73 Cal.App.5th at p. 464.) However, plaintiff has not met her shifting burden to demonstrate substantive unconscionability and that the agreement is so permeated with unconscionability to n be unenforceable.

Plaintiff is correct that the shortened statute of limitations is unconscionable. (*Gostev v. Skillz Platform, Inc.* (2023) 88 Cal.App.5th 1035, 1060. See Opp., filed Jan. 30, 2024, at p. 11:23-12:8.)

However, the legal authority cited by plaintiff does not support the Court finding unconscionability where the indemnity provision is limited to third party claims against defendant relating to plaintiff's use of Evernote. (*Lim v. TForce Logistics, LLC* (9th Cir. 2021) 8 F.4th 992, 1002; *Long Beach Unified School Dist. v. Margaret Williams, LLC* (2019) 43 Cal.App.5th 87, 94–95, 101-102. See Germano Dec., *supra*, at Ex. B, p. 17 – 18 (Terms of Use); Opp., *supra*, at p. 12:9-23.) Further, plaintiff's contention that "given the lack of conspicuous notice of all of the terms with the contract of adhesion, including the lack of conspicuous notice for the disclaimer and limitation of liability terms, the agreement is unenforceable" disregards the language of the provisions for Disclaimer of Warranty / Limitation of Liability. (Compare Terms of Use, *supra*, at pp. 18-19; with Opp., *supra*, at p. 13:3-5.) The attorney fee provision is not unconscionable as it contemplates the arbitration fees fronted by defendant on plaintiff's behalf. (Terms of Use, *supra*, at p. 45; Contra Opp., *supra*, at p. 13:6-17.)

Further, plaintiff has not demonstrated she seeks public injunctive relief where, in the First Amended Complaint, she seeks injunctive relief for Evernote subscribers only and not the general public. (*Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535, 548; Knight, *supra*, at ¶ 5:424.4b; Stern, Bus. & Prof. Code § 17200 Prac. (Rutter, Mar. 2023 Update) ¶¶ 7:266.9. See First Am. Complaint, ¶¶ 44, 45, Prayer, ¶ J. Contra Opp., *supra*, at p. 6:27 – 7:9.)

Lastly, the Court notes that plaintiff does not address the class action waiver in her opposition. (See MPA, *supra*, at p. 10:2-15; Terms of Use, *supra*, at pp. 23-24.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for defendant shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised

Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

APRIL 24, 2024 Law & Motion Calendar
Judge: Honorable Nicole S. Healy, Department 28

2:00 LINE 12

23-CIV-04639 YIYING HU ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED VS EVERNOTE CORPORATION

YIYING HU ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED	DEEPALI A. BRAHMBHATT
EVERNOTE CORPORATION	SCOTT D. JOINER

CASE MANAGEMENT CONFERENCE