SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
Law and Motion Calendar
HONORABLE NICOLE S. HEALY
800 N. Humboldt Street, San Mateo CA 94401
Department 28, Courtroom I

Wednesday April 30, 2025

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR *YOU MUST GIVE NOTICE TO THE COURT DAY BEFORE THE HEARING* as explained below:

1. **EMAIL: Dept28@sanmateocourt.org the day before by 4:00 P.M., COPIED IN THE SAME EMAIL TO ALL PARTIES OR THEIR COUNSEL OF RECORD. The email must include the name of the case, the case number, and the name of the party contesting the tentative ruling; or**

2. **TELEPHONE: 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 the COURT and to ALL PARTIES OF YOUR INTENT TO APPEAR pursuant to California Rules of Court, Rule 3.1308(a)(1).**

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

New: You must email a copy of any reply brief, or an Opposition to a Motion for Summary Judgment in an Unlawful Detainer matter to:

lawandmotionreplybriefs@sanmateocourt.org

At this time, *appearances can be in person or by Zoom*. When you sign in to Zoom, use your first and last name. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS STRICTLY PROHIBITED. Please check in by 1:50 pm.

Zoom Video/Computer Audio Information
(For remote appearances, ALL COUNSEL must use a device with a camera)
https://sanmateocourt.zoomgov.com/

Meeting ID: 160 226 9361
Password: 289347

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 cases referenced; and (8) spell all names, even common names.

Case	Title / Nature of the Case

2:00 LINE 1

21-CIV-00764 PRADEEP KHATRI VS BRETT STOCKS

PRADEEP KHATRI	JEFFERY A. CHADIC
BRETT HAVEN STOCKS	ALEXANDER R MOORE

MOTION FOR GOOD FAITH SETTLEMENT

AMENDED TENTATIVE RULING:

The hearing of this motion was continued from April 23, 2025.

The parties **ARE ORDERED TO APPEAR** in connection with the continued hearing on cross-defendant GMS Construction & Associates, Inc.'s (GMS) Motion to Determine Good Faith Settlement. (Code Civ. Proc., § 877.6.)

The settlement entered into between plaintiffs Pradeep Khatri, Kokila Khatri and Farrah Khatri (plaintiffs) and GMS includes a payment of $20,000 which "shall be allocated to potential bodily injury claims," although plaintiffs have not asserted claims for personal injury. David Telson d/b/a DECA Construction (DECA) and West Valley Ventures, LLC (West Valley) have objected to the settlement on this basis.

A. Background

In this multi-party construction defect case arising from issues with the construction of a single-family home, GMS has brought a motion for a determination of good faith settlement and for an order "determining that the settlement reached with plaintiffs Pradeep Khatri, Kokila Khatri and Farrah Khatri is made in Good Faith, pursuant to Code of Civil Procedure Section 877.6." (Not. of Mot. & Mot., filed April 1, 2025, at p. 2.)

In June 2018, GMS "entered into an oral agreement with Kevin Fehey of defendant West Valley Ventures, LLC to install windows, exterior doors and building wrap at the subject property." (MPA iso Mot., at p. 2; Declaration of Greg Shannon [Shannon Decl.], ¶ 3.) GMS did not have any written agreements with any party.

GMS supplied the "nails, caulk, paper flashing and Tyvek building wrap at locations where it performed work," and West Valley "supplied windows and exterior doors." (*Ibid*.) GMS partially performed but could not complete the process of installing doors, windows, and Tyvek because it was missing parts and materials. According to GMS, West Valley stated that GMS would be called back to complete the work. (MPA, at p. 2.) GMS never completed its

work, and the work performed was not inspected. On October 10, 2018, GMS submitted an invoice to West Valley in the amount of $6,900 for time and materials. (*Ibid*.)

Plaintiffs contend that the windows and doors were not properly flashed and are leaking. Plaintiffs' expert has testified that some siding needs to be removed and repaired. (MPA, at pp. 3-4.)

GMS has not admitted any liability, but estimates that it installed 75-85% of the windows and doors and partially wrapped that house in Tyvek. Other parties including DECA installed some of the siding, building wrap, windows, and possibly sliding doors, however, the parties disagree as to the scope of DECA's work. (MPA, at p. 3; Declaration of Mark Edson [Edson Decl.], ¶ 4.) DECA's expert has indicated that the liability should be shared equally between the defendants.

West Valley filed a cross-complaint against cross-defendants including GMS alleging causes of action for equitable indemnity, contribution, breach of contract, breach of guaranty and professional negligence. (Edson Decl., ¶ 25.) DECA has also cross-complained, alleging causes of action for indemnity, contribution and declaratory relief. (*Ibid*.) GMS was added as a doe defendant.

Blackstone Global (Blackstone) prepared a bid for plaintiffs to perform repairs at the subject property. (MPA, at p. 4; Edson Decl., ¶ 17; exh. F, at pp. 70-71.) According to Blackstone, the total cost of repair is $1,238,121. (MPA, at p. 4; Edson Decl., ¶ 17; exh. G.) The cost to repair and replace the windows is estimated to be $79,512 and the cost to repair and replace the siding and exterior trim is an estimated $182,197. (*Ibid*.) Other experts' bids come in lower. (MPA, at p. 8.)

Repair and replacement work is estimated to take six months. (MPA, at pp. 4-5.) Plaintiffs are claiming $72,000 damages for loss of use of the home. (MPA, at p. 5.)

DECA's expert witness has allocated potential liability 30% to West Valley, 30% to DECA, and 30% to GMS. (MPA, at p. 5.)

B. The Settlement Between Plaintiffs and GMS

Following mediation, the plaintiffs and GMS agreed to a settlement. In pertinent part, the terms of the settlement are as follows:

1) GMS Construction & Associates, through its insurer, will pay the sum of $370,000 to plaintiffs;

2) Settlement funds shall be allocated as follows:

   a. $20,000 shall be allocated to potential bodily injury claims;

   b. $30,000 shall be allocated to Stearman costs;

c. $320,000 shall be allocated to damages arising from cross-defendant GMS Construction's work, which includes a portion of the installation of windows, exterior doors, flashing and building wrap.

The parties to the settlement further agreed to mutual releases, and each will bear its own fees and costs.

Given that no personal injury claims have been asserted in this action, it is unclear from the settlement agreement (which GMS provided to the court and counsel after the initial hearing on April 23, 2025) whether the payment for "potential bodily injury claims" is intended to fully and finally resolve claims that could have been or may be raised in this action, or whether it is intended to function as a covenant not to sue for such claims in the future.

The court notes that the settlement agreement contains a waiver under Civil Code, section 1542. Accordingly, the parties to the agreement (plaintiffs and GMS) have waived unknown claims and causes of action that the parties of which the parties were unaware at the time of the release and if known "would have materially affected his or her settlement with the debtor or released party." (*Ibid*.)

The court previously analyzed the settlement agreement only in the context of the claims currently asserted, and found that it was fair and reasonable as to the alleged defects and proposed repairs to the doors and windows pursuant to the factors cited in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.) If plaintiffs intend to assert claims for personal injury, that may change the court's analysis. Accordingly, plaintiffs' counsel is directed to advise the court whether they intend to seek to amend the complaint to assert causes of action or claims for personal injury.

2:00 LINE 2

22-CIV-04302 JAMES BURROUGHS VS. KEN M. FITZGERALD, ET AL

JAMES BURROUGHS	PETER W. CRAIGIE
KEN M. FITZGERALD	WILLIAM A MUNOZ

MOTION TO CONTINUE

TENTATIVE RULING:

Defendant Kenneth M. Fitzgerald's motion to continue the trial date presently scheduled for June 9, 2025 is **DENIED**.

Initially, the court notes that defendant has provided an incorrect address for the hearing. Department 28 is not located in Redwood City as the notice states, but instead at the Central Courthouse, Courtroom I, 800 North Humboldt St., San Mateo, CA 94401. (See Cal. Rules of Court, Rule 3.1110 [the Notice "must specify" the location of the hearing].)

The complaint in this matter was filed on October 14, 2022. In a CMC on September 18, 2024, trial was set for June 9, 2025. The court takes judicial notice of the fact that plaintiff's counsel Peter Craigie and defense counsel Gregory Sabo were present at that hearing. (Evid. Code, § 452, subd. (d) [court may take judicial notice of records of any court].) On March 27, 2025, Mr. Sabo filed an ex parte application to continue the trial date due to other trial obligations which were already in place when he agreed to this trial date. (See Declaration of Peter W. Craigie [Craigie Decl.], ¶ 2.) The court denied that request. Thereafter, Mr. Sabo filed this motion.

Rulings on a motion for continuance of trial date have rested "almost entirely in the trial court's discretion" for over a hundred years. (See *Corbin v. Howard* (1923) 61 Cal.App. 715, 717 [noting this tenet of discretion was "well-established" even then].) Trial continuances are ordinarily disfavored, however, each request for a continuance is considered on its own merits. (Cal. Rules of Court, rule 3.1332(c).) "To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (*Id*., rule 3.1332(a).) The court may grant a continuance only upon an affirmative showing of good cause requiring the continuance. (*Id*., rule 3.1332(c).) The substitution of trial counsel "may" indicate good cause "but only where there is an affirmative showing that the substitution is required in the interests of justice." (*Id*.)

In ruling on a motion to continue trial, the court considers all facts and circumstances relevant to that determination including (1) proximity of trial date; (2) prior continuances; (3) length of continuance requested; (4) availability of alternative means to address the problem giving rise to the motion to continue; (5) prejudice to parties or witnesses as a result of the continuance; (6) the court's calendar and impact on other trials currently set; (7) the need for preferential trial setting; (8) whether counsel is scheduled for another trial; (9) whether parties stipulated to continuance; (10) the interests of justice; and (11) any other fact or circumstance

relevant to the fair determination of the motion. (Cal Rules of Court, rule 3.1332(d).) Here, defense counsel requested a continuance of the trial date because of counsel's conflict with two other trials set for the same date and the interests of justice. Plaintiff opposes that motion on the basis that the request is untimely under Rule of Court 3.1332(b) because it should have been made "as soon as reasonably practical once the necessity for the continuance is discovered" and counsel knew of the other trial dates at the time this one was set. (Craigie Decl., ¶ 2.) Thus, the instant request, approximately seven months after the trial date was set, and just over a month from the June 9, 2025 trial date, is too late. The court agrees.

However, the conversation does not end there given the substitution of new defense counsel William A. Muñoz in place of Gregory Sabo on April 14, 2025. The "substitution of trial counsel" can amount to good cause for continuing a trial date "where there is an affirmative showing that the substitution is required in the interests of justice" (Cal. Rule of Court, rule 3.1332(c)(4)), and a "significant, unanticipated change in the status of the case as a result of which the case is not ready for trial." (*Id*., rule 3.1332(c)(7).) However, an attorney who substitutes into a case is tasked with complying with deadlines already in place. (*Smith v. Whittier* (1892) 95 Cal. 279, 289 ["An attorney who is substituted for another in a cause has no greater rights than his predecessor, nor is his client's position in the case in any way changed by such substitution. He steps into the place of his predecessor, and stands, with reference to the case, and to the other party, precisely as did his predecessor, and can repudiate or be relieved from an agreement that had been made by him only to the same extent and in the same manner as could his predecessor."].)

Here, the court notes that though counsel Muñoz has a trial date set on or around May 19 (which has tentatively settled) and a speaking engagement set for June 19, he does not have another trial set for June 9, 2025. (Craigie Decl., ¶ 5.) Thus, there is no direct date conflict. With respect to the other grounds for cause, the court finds the reasons defense counsel originally listed as reasons supporting granting his motion (underlined below) apply equally as well in support of maintaining the current trial date as set:

- Trial is more than two months away so Mr. Muñoz has time to prepare.
- No party has presented evidence showing that any party or witness will be prejudiced;
- Lastly, the interests of justice will be served by keeping trial as set because there will be less disruption overall to the court's docket, pretrial and discovery deadlines have already passed.

While it is true that this is defendant's first request to continue trial, however it is also the fifth substitution of defense counsel. (See Craigie Decl., ¶ 5.) Thus, the court is not persuaded that the substation of Mr. Muñoz is a "significant, unanticipated change" rendering the case not ready for trial. Additionally, the three parties to the lawsuit have all been deposed and there appears to be a total of 17 exhibits produced at deposition. (*Id*., ¶ 6.) The parties estimate that this will be a 4-5 day jury trial. In the court's experience, this should not be so overly

burdensome for new counsel to review he cannot then be ready for trial in approximately six weeks. Accordingly, the defense motion to continue the date of trial is **DENIED**.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, plaintiff's counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 3

23-CIV-03489 SUBWAY REAL ESTATE, LLC, ET AL. VS. BURLINGAME MUSICH - 2, LLC, ET AL.

SUBWAY REAL ESTATE, LLC	AZIM KHANMOHAMED
BURLINGAME MUSICH - 2, LLC	ANDREW G. WATTERS

DEFENSE ATTORNEY MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

The Motion to be Relieved as Counsel – Civil, filed by counsel for defendant Burlingame Musich - 2, LLC is **DENIED WITHOUT PREJUDICE**.

Counsel initially selected a hearing date of April 9, 2025. The motion and supporting documents were filed and served on defendant on March 3, 2025. However, the clerk's office re-set the hearing to April 30, 2025. There is no evidence that defendant was given notice of the new hearing date.

If, however, defendant appears or counsel provides evidence that defendant was given notice of the revised hearing date, the court will grant the motion.

2:00 LINE 4

23-CIV-04726 KEVIN SPORER VS. ILIANA RODRIGUEZ, ET AL

KEVIN SPORER	STEPHEN F HENRY
ILIANA RODRIGUEZ	BRIAN J. WONG

DEFENDANTS HEARING ON DEMURRER

TENTATIVE RULING:

The Demurrer of defendants County of San Mateo, Iliana Rodriguez, and Ann Stillman (defendants) to the Second Amended Complaint (SAC) is **CONTINUED** to June 18, 2025 at 2:00 p.m. in Department 28 for Plaintiff Kevin Sporer (plaintiff) to file and serve a copy of the SAC by May 7, 2025. Plaintiff filed the SAC in the federal action. (See defendants' Request for Judicial Notice, Exh. 12.) However, the SAC has not been filed in this court.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 5

24-CIV-02639 TODD YANCEY V. ESTATE OF EDWIN BLUE

TODD YANCEY	PRO SE
ESTATE OF EDWIN BLUE	DARIN DONOVAN

HEARING ON DEMURRER OF CAROL BLUE HITCHENS

TENTATIVE RULING:

Defendant Carol Blue Hitchens's Demurrer to plaintiff Todd Yancey's Verified Amended Creditor Complaint filed February 10, 2025 (VAC) is **SUSTAINED without leave to amend**.

Defendants' Request for Judicial Notice is **GRANTED**, but not as to the truth of the matters asserted therein. (Evid. Code, § 452, subd. (d).) Plaintiff's Request for Judicial Notice is **GRANTED** as to Exhibits A-C, but not as to the truth of the matters asserted therein, and **DENIED** as to Exhibit D. (*Ibid*.)

A. Legal Standard for Demurrers

"A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be based." (*McKell v. Washington Mutual, Inc*. (2006) 142 Cal.App.4th 1457, 1469.) Courts "assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 111.)

"Although a demurrer makes no binding judicial admissions, it provisionally admits all material issuable facts properly pleaded, unless contrary to law or to facts of which a court may take judicial notice. On the other hand, it does not admit contentions, deductions or conclusions of fact or law alleged in the challenged pleading." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.)

"[I]t is well settled that a general demurrer admits the truth of all material factual allegations in the complaint [citation]; that the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court [citations]; and that plaintiff need only plead facts showing that he may be entitled to some relief [citation]." (*John's Grill, Inc. v. The Hartford Financial Services Group, Inc*. (2024) 16 Cal.5th 1003, 1013 (*John's Grill*), quoting *Alcorn v. Anbro Engineering, Inc*. (1970) 2 Cal.3d 493, 496 (*Alcorn*).)

A court reviewing a demurrer accepts as true the facts alleged in the complaint as well as those of which it may take judicial notice (*John's Grill*, *supra*, 16 Cal.5th at p. 1008, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318), but does not "assume the truth of

contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.)

Although leave to amend is liberally allowed, such leave should not be granted where, in all probability, amendment would be futile. (*Foroudi v. Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1001.) It is the burden of the party seeking leave to amend to show the possibility that amendment can cure the legal defects of the pleading. (*A.J. Fistes Corp. v. GL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 687.) If plaintiff seeks leave to amend, he should properly contest the tentative ruling and appear at the hearing (in person or via Zoom) to state facts that provide a reasonable possibility that he can state a cause of action as to the violations alleged.

B. Issue Preclusion

The doctrine of issue preclusion provides that "a party ordinarily may not relitigate an issue that he fully and fairly litigated on a previous occasion." (*In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1028, quoting *Benasra v. Mitchell Silberberg & Knupp* (2002) 96 Cal.App.4th 96, 104.) Relitigation of issues argued and decided in previous proceedings is barred. (*JPV I L.P. v. Koetting* (2023) 88 Cal. App. 5th 172.)

Issue preclusion applies where (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding was final and on the merits, and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. (See, e.g. *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 513.)

Plaintiff Todd Yancey (plaintiff or Yancey) previously sued Carol Blue Hitchens (Carol),[1] individually, and as Trustee of the Blue Family Trusts, in Case No. 19-CIV-02501 (the "Underlying Action") for conversion, breach of oral contract, negligent misrepresentation, fraudulent deceit, breach of the implied covenant of good faith and fair dealing, fraud in the inducement, unfair and unlawful business practices, unjust enrichment, intentional infliction of emotional distress, and declaratory relief. (See First Amended Complaint, Case No. 19-CIV-02501, filed Oct. 10, 2023.) These claims all arose out of Yancey's alleged business relationship with Carol's deceased father, Dr. Edwin Blue, and Yancey's contentions that Dr. Blue made false and fraudulent promises regarding a partnership agreement and that Yancey owned and controlled certain software technology that he claimed Dr. Blue and certain corporate entities misappropriated and converted.

On November 22, 2023, the court (the Honorable Marie S. Weiner, ret.) sustained Carol's demurrer to the first eleven causes of action in the first amended complaint in the Underlying Action, without leave to amend, finding that "[a]ll of these causes of action are

[1] Because defendants Carol Blue Hitchens and Antonia Hitchens share the same last name, and because the deceased Dr. Edwin Blue and Robert Blue also share the same last name, the court refers to the defendants by their first names. No disrespect is intended.

barred by the applicable statutes of limitations." (Defts.' RJN, exh. G, at p. 2.) That order granted Yancey leave to amend the complaint "to add and allege only a cause of action for fraudulent transfer against Carol Blue Hitchens as Trustee of the Blue Family Trusts (and not individually)."

Yancey filed his Second Amended Complaint in the Underlying Action on January 2, 2024, asserting a cause of action for fraudulent transfer against Carol in her role as Trustee of the Blue Family Trusts (the complaint also realleged the first eleven causes of action against all "defendants," not excluding Carol). In deciding Carol's demurrer to the Second Amended Complaint in the Underlying Action, the court ruled that:

> Plaintiff's first eleven causes of action are time-barred based on plaintiff's failure to file a proper creditor's claim by the one-year anniversary of Edwin Blue's death, therefore, the twelfth cause of action for intentional fraudulent transfer also fails. Assuming for purpose of this demurrer that the causes of action asserted against Dr. Blue survived his death, claims against his estate were required to be filed within one year after his death. (See Prob. Code, §§ 9000, subd. (a)(1), 9100, 9101; Code Civ. Proc., § 366.2; *Varney v. Superior Court* (1992) 10 Cal.App.4th 1092, 1101; *Newberger v. Rifkind* (1972) 28 Cal.App.3d 1070, 1077.)

(Defendant's RJN, exh. K [Aug. 21, 2024 Order].)

On February 24, 2025, the court issued a judgment of dismissal in the Underlying Action, in favor of Carol individually and as Trustee of the Blue Family Trusts, and against Yancey. The judgment dismissed the eleven causes of action pled against Carol in the First Amended Complaint and the sole (twelfth) cause of action pled against her in the Second Amended Complaint in that action. Further, the court's records in the Underlying Action do not show that Yancey appealed that ruling. Accordingly, the judgment in Case No. 19-CIV-02501 is final.

Yancey filed this action on May 1, 2024. The issue of law presented here is whether plaintiff was required to comply with the same mandatory creditor claim requirements as to this 2024 lawsuit. (See MPA iso Demurrer, at pp. 10-11; Opp. at p. 13:1-17.) Plaintiff's Verified Amended Creditor Complaint (VAC) in this action alleges causes of action for fraud, aiding and abetting fraud, civil liability for conspiracy to commit a voidable transfer, unjust enrichment, intentional fraudulent transfer, unlawful voidable transfer, to set aside void transfer of property, to set aside voidable transfer of property, and for judgment debtor's interest in property to satisfy a money judgment against Antonia and Robert. (See VAC.) The court previously found that these are substantially the same allegations as those filed in the Underlying Action, and that both cases arise out of the same common nucleus of operative facts. (May 10, 2024 Order Deeming Cases Related and Order Assigning All Purpose Judge.) The allegations against Carol are predicated on the alleged liability of Dr. Blue and his putative estate to Yancey, which turns on compliance with creditor claim

statutes. (See VAC, generally.) That is precisely the issue that has already been adjudicated.

The first element of issue preclusion is therefore satisfied. The order sustaining Carol's demurrers in the Underlying Action demonstrate that the issues were actually litigated and necessarily decided, satisfying the second and third elements. Because the ruling addressed each cause of action alleged against Carol, individually, and as Trustee of the Blue Family Trusts, the demurrer was sustained without leave to amend, and judgment was entered thereon, was not appealed, and the decision was final. The decision was made on the merits as to the issue of whether creditor claims against Edwin Blue's estate were required to be filed within one year of Dr. Blue's death, and it was made against Todd Yancey, whom defendant seeks to preclude from relitigating the issue in this action.

Each of plaintiff's claims against Carol Blue Hitchens is therefore precluded, and the general demurrer on that basis, is **SUSTAINED without leave to amend.**

Plaintiff's Opposition to defendant's Demurrer does not address issue preclusion. Instead, plaintiff argues that defendant's demurrer on statute of limitations grounds should be overruled because Carol has not shown that notice was given under the probate code to commence running of the statute. (Opp., at p. 13:1-28.) In other words, plaintiff seeks to relitigate the issue. Issue preclusion is intended to prevent inconsistent judgments. (*Kieu Hoang v. Phong Minh Tran* (2021) 60 Cal.App.5th 513.) It protects litigants from relitigating the same issue with the same party, as well as promoting judicial economy. (*Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407.) It therefore operates to prevent plaintiff from raising these arguments and seeking to relitigate an issue that has already been decided.

The court need not reach the issue of whether plaintiff's VAC alleges sufficient facts to state a claim for fraud, aiding and abetting, unjust enrichment, or IIED, because each of those claims is barred.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 6

24-CIV-02639 TODD YANCEY V. ESTATE OF EDWIN BLUE

TODD YANCEY	PRO SE
ESTATE OF EDWIN BLUE	ANTONIA HITCHENS AND ROBERT ELIOT BLUE

HEARING ON DEMURRER OF ANTONIA HITCHENS AND ROBERT ELIOT BLUE

TENTATIVE RULING:

Defendants Antonia Hitchens and Robert Eliot Blue's Demurrer to plaintiff Todd Yancey's Verified Amended Creditor Complaint filed February 10, 2025 (VAC) is **SUSTAINED** without leave to amend, as follows:

Defendants' Request for Judicial Notice is **GRANTED**, but not as to the truth of the matter asserted therein. (Evid. Code, § 452, subd. (d).) Plaintiff's Request for Judicial Notice is **GRANTED** as to Exhibits A-C, but not as to the truth of matters asserted therein, and **DENIED** as to Exhibit D. (*Ibid*.)

A. Legal Standard for Demurrers

"A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be based." (*McKell v. Washington Mutual, Inc*. (2006) 142 Cal.App.4th 1457, 1469.) Courts "assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 111.)

"Although a demurrer makes no binding judicial admissions, it provisionally admits all material issuable facts properly pleaded, unless contrary to law or to facts of which a court may take judicial notice. On the other hand, it does not admit contentions, deductions or conclusions of fact or law alleged in the challenged pleading." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.)

"[I]t is well settled that a general demurrer admits the truth of all material factual allegations in the complaint [citation]; that the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court [citations]; and that plaintiff need only plead facts showing that he may be entitled to some relief [citation]." (*John's Grill, Inc. v. The Hartford Financial Services Group, Inc*. (2024) 16 Cal.5th 1003, 1014 (*John's Grill*), quoting *Alcorn v. Anbro Engineering, Inc*. (1970) 2 Cal.3d 493, 496 (*Alcorn*).)

A court reviewing a demurrer accepts as true the facts alleged in the complaint as well as those of which it may take judicial notice (*John's Grill*, *supra*, 16 Cal.5th at p. 1008, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318), but does not "assume the truth of contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.)

Although leave to amend is liberally allowed, such leave should not be granted where, in all probability, amendment would be futile. (*Foroudi v. Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1001.) It is the burden of the party seeking leave to amend to show the possibility that amendment can cure the legal defects of the pleading. (*A.J. Fistes Corp. v. GL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 687.) If plaintiff seeks leave to amend, he should properly contest the tentative ruling and appear at the hearing (in person or via Zoom) to state facts that provide a reasonable possibility that he can state a cause of action as to the violations alleged.

B. Issue Preclusion

The doctrine of issue preclusion provides that "a party ordinarily may not relitigate an issue that he fully and fairly litigated on a previous occasion." (*In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1028, quoting *Benasra v. Mitchell Silberberg & Knupp* (2002) 96 Cal.App.4th 96, 104.) Relitigation of issues argued and decided in previous proceedings is barred. (*JPV I L.P. v. Koetting* (2023) 88 Cal. App. 5th 172.)

Issue preclusion applies where (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding was final and on the merits, and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. (See, e.g. *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 513.)

As an initial matter, the court notes that the causes of action pled against defendants Antonia Hitchens (Antonia) and Robert Blue (Robert) are derivative of those pled against defendant Carol Blue Hitchens (Carol).[2] Indeed, there are few allegations in the complaint against Antonia and Robert, and most of those are conclusory. (See, e.g., VAC, ¶¶ 21, 76.) Both are alleged to be beneficiaries of the Blue Family Trusts and sub-trusts and to live "rent free" in the home formerly occupied by Antonia's grandfather and Robert's father, Dr. Edwin Blue. (*Id*., ¶¶ 32, 33, 43.)

Plaintiff Todd Yancey (plaintiff or Yancey) previously sued Carol Blue, individually, and as Trustee of the Blue Family Trusts, in Case No. 19-CIV-02501 (the "Underlying Action") for conversion, breach of oral contract, negligent misrepresentation, fraudulent deceit, breach of the implied covenant of good faith and fair dealing, fraud in the inducement, unfair and unlawful business practices, unjust enrichment, intentional infliction of emotional distress, and declaratory relief. (See First Amended Complaint, Case No. 19-CIV-02501, filed Oct. 10, 2023.) These claims all arose out of Yancey's alleged business relationship with Carol's deceased father, Dr. Edwin Blue, and Yancey's contentions that Dr. Blue made false and fraudulent promises regarding a partnership agreement and that Yancey owned and controlled

[2] Because defendants Carol Blue Hitchens and Antonia Hitchens share the same last name, and because the deceased Dr. Edwin Blue and Robert Blue also share the same last name, the court refers to the defendants by their first names. No disrespect is intended.

certain software technology that he claimed Dr. Blue and certain corporate entities misappropriated and converted.

On November 22, 2023, the court (the Honorable Marie S. Weiner, ret.) sustained Carol's demurrer to the first eleven causes of action in the first amended complaint in the Underlying Action, without leave to amend, stating that "[a]ll of these causes of action are barred by the applicable statutes of limitations." (Defts.' RJN, exh. G, at p. 2.) That order granted Yancey leave to amend the complaint "to add and allege on1y a cause of action for fraudulent transfer against Carol Blue Hitchens as Trustee of the Blue Family Trusts (and not individually)." Yancey filed his Second Amended Complaint in the Underlying Action on January 2, 2024.

In deciding Carol's demurrer to the Second Amended Complaint in the Underlying Action, the court ruled that:

> Plaintiff's first eleven causes of action are time-barred based on plaintiff's failure to file a proper creditor's claim by the one-year anniversary of Edwin Blue's death, therefore, the twelfth cause of action for intentional fraudulent transfer also fails. Assuming for purpose of this demurrer that the causes of action asserted against Dr. Blue survived his death, claims against his estate were required to be filed within one year after his death. (See Prob. Code, §§ 9000, subd. (a)(1), 9100, 9101; Code Civ. Proc., § 366.2; *Varney v. Superior Court* (1992) 10 Cal.App.4th 1092, 1101; *Newberger v. Rifkind* (1972) 28 Cal.App.3d 1070, 1077.)

(Defendant's RJN, exh. K [Aug. 21, 2024 Order].)

On February 24, 2025, the court issued a judgment of dismissal in the Underlying Action, in favor of Carol individually and as Trustee of the Blue Family Trusts, and against Yancey. The judgment dismissed the eleven causes of action pled against Carol in the First Amended Complaint and the sole (twelfth) cause of action pled against her in the Second Amended Complaint in that action. Further, the court's records in the Underlying Action do not show that Yancey appealed that ruling. Accordingly, the judgment in Case No. 19-CIV-02501 is final.

Yancey filed this action on May 1, 2024. The issue of law presented here is whether plaintiff was required to comply with the same mandatory creditor claim requirements as to this 2024 lawsuit. (See MPA iso Demurrer, at pp. 10-11; Opp. at p. 13:1-17.) Plaintiff's Verified Amended Creditor Complaint (VAC) in this action alleges causes of action for fraud, aiding and abetting fraud, civil liability for conspiracy to commit a voidable transfer, unjust enrichment, intentional fraudulent transfer, unlawful voidable transfer, to set aside void transfer of property, to set aside voidable transfer of property, and for judgment debtor's interest in property to satisfy a money judgment against Antonia and Robert. (See VAC.) The court previously found that these are substantially the same allegations as those filed in the Underlying Action, and that both cases arise out of the same common nucleus of operative facts. (May 10, 2024 Order Deeming Cases Related and Order Assigning All Purpose Judge.)

The allegations against Carol, and derivatively Antonia and Robert, are predicated on the alleged liability of Dr. Blue and his putative estate to Yancey, which turns on compliance with creditor claim statutes. (See VAC, generally.) That is precisely the issue that has already been adjudicated.

The first element of issue preclusion is therefore satisfied. The order sustaining Carol's demurrers in the Underlying Action demonstrate that the issues were actually litigated and necessarily decided, satisfying the second and third elements. Because the ruling addressed each cause of action alleged against Carol, individually, and as Trustee of the Blue Family Trusts, the demurrer was sustained without leave to amend, and judgment was entered thereon, was not appealed, and the decision was final. The decision was made on the merits as to the issue of whether creditor claims against Edwin Blue's estate were required to be filed within one year of Dr. Blue's death, and it was made against Todd Yancey, whom defendants seeks to preclude from relitigating the issue in this action. There are no allegations against Antonia or Robert that are independent of the allegations against Carol. Thus, because the court is sustaining the demurrer without leave to amend as to Carol, the court must also do so as to Antonia and Robert.

Accordingly, each of plaintiff's claims against defendants Antonia Hitchens and Robert Eliot Blue is therefore precluded, and the general demurrer on that basis is **SUSTAINED without leave to amend.**

Plaintiff's Opposition to defendant's Demurrer does not address issue preclusion. Instead, plaintiff argues that defendant's demurrer on statute of limitations grounds should be overruled because defendants have not shown that notice was given under the probate code to commence running of the statute. (Opp., at p. 13:1-28.) In other words, plaintiff seeks to relitigate the issue. Issue preclusion is intended to prevent inconsistent judgments. (*Kieu Hoang v. Phong Minh Tran* (2021) 60 Cal.App.5th 513.) It protects litigants from relitigating the same issue with the same party, as well as promoting judicial economy. (*Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407.) It therefore operates to prevent plaintiff from raising these arguments and seeking to relitigate an issue that has already been decided.

The court need not reach the issue of whether plaintiff's VAC alleges sufficient facts to state a claim for fraud, aiding and abetting, unjust enrichment, or IIED, because each of those claims is barred.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 7

24-CIV-07497 JOSE ZARAGOZA VS. STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, ET AL

JOSE ZARAGOZA
STATE OF CA DEPARTMENT OF MOTOR VEHICLES

MATTHEW O'CONNOR
JOHN MCGLOTHLIN

PETITION FOR WRIT OF MANDATE

TENTATIVE RULING:

Petitioner Jose Zaragoza's (petitioner or Zaragoza) petition for a writ of mandate is **DENIED**.

A. Introduction

On January 13, 2024, petitioner Jose Zaragoza was arrested in San Mateo County for violating Vehicle Code, sections 23152, 23153, and 23154. (Petition for Writ of Mandamus [CCP §§ 1085 and 1094.5] ¶ 4 [Petition].) Thereafter, respondent Department of Motor Vehicles (DMV) held an administrative per se (APS) hearing on October 21, 2024, and on November 6, 2024, and suspended Zaragoza's license for a two-year period for refusing consent to a blood test. (*Id*., ¶¶ 5-7, 17.)

Petitioner challenges the DMV's hearing procedure contending that the hearing officer impermissibly served both as an advocate for the DMV and as a neutral adjudicator. (Petition, ¶ 8, citing *California DUI Lawyers Assn. v. Department of Motor Vehicles* (2022) 77 Cal.App.5th 517 (*DUI Lawyers*).) Petitioner contends that the burden is on the DMV to demonstrate that the hearing officer was not serving as an advocate for the DMV during the APS hearing. (Petition, ¶ 13, citing *Knudsen v. Department of Motor Vehicles* (2024) 101 Cal.App.5th 186 (*Knudsen*).) He further argues that the DMV violated the injunction issued in *DUI Lawyers*, as well as the decisions in *Knudsen*, which found that the hearing officer had impermissibly acted as an advocate and an adjudicator, and *Clark v. Gordon* (2024) 104 Cal.App.5th 1267 (*Clarke*) (same).

Unlike *DUI Lawyers*, which involved a taxpayer action challenging the DMV's APS hearing procedures, *Knudsen*, *Clark*, and more recently, *Kazelka v. California Dept. of Motor Vehicles* (2025) 109 Cal.App.5th 1239 (*Kazelka*), involve the conduct of actual hearings. The outcome of each of these cases turned on the facts of the hearings. Accordingly, the court has examined the record in this case to determine whether the hearing officer impermissibly acted as both an advocate and adjudicator.

B. Factual Background

On the evening of January 13, 2024 Jose Zaragoza's ex-wife Jennifer called the Burlingame Police Department to report that his ex-girlfriend had called her at about 5 p.m., asking for a welfare check on Zaragoza who was believed to have been drinking and driving. Officers did not locate him or his Chevy pickup at his home. Jennifer was able to track Zaragoza's phone, and it "pinged" initially to a Chick-Fil-A restaurant in Daly City. Officers did not locate him there but found his truck when it pinged again at a gas station at a different location in Daly City. (RT 9.)

At approximately 6:23 p.m., Officer Michael Cattaneo located Zaragoza in his pick-up truck at the gas station. Zaragoza appeared to be "dozing off." He had an unopened pack of White Claw in the front seat, and his seven-year-old daughter in the back. Officer Cattaneo approached the truck and knocked on the window. Zaragoza rolled down the window, and Officer Cattaneo observed a strong odor of an alcoholic beverage coming from Zaragoza, and that Zaragoza's eyes appeared bloodshot and watery, and his speech appeared slurred. He refused to perform any field sobriety tests, or chemical tests, or to answer questions, and was taken into custody at approximately 6:05 p.m. Zaragoza's daughter confirmed that he had driven her in the truck "all day." (RT 9.)

At approximately 6:30 p.m., Officer Arvin Tualualelei of the Daly City Police Department was called to the gas station and took over the investigation. Officer Tualualelei obtained a blood draw search warrant.

Officer Cattaneo transported Zaragoza to the Daly City Police Department. Zaragoza complained of chest pains, and was transported to Seton Medical Center.

While at Seton Medical Center, Officer Tualualelei read the Chemical Test Admonition verbatim from the CHP DS-367 to Zaragoza who refused to provide a sample of either his breath or blood. Officer Tualaulelei advised Mr. Zaragoza that he had a search warrant for his blood draw. (RT 15.) At approximately 9:04 p.m., a plebotomist drew Zaragoza's blood. (RT 16.) After Zaragoza was discharged from Seton Medical Center, Officer Martin transported and booked him into the San Mateo County Jail. (*Ibid*.)

The APS hearing was rescheduled multiple times, including because petitioner's counsel had subpoenaed Officer Tualaulelei to produce audio and video recordings which were not initially produced. (RT 32-33.) At the initial hearing, on July 18, 2024, hearing officer Lauren Medina (Medina) stated that she would act a neutral factfinder and not an advocate for the DMV, identified the issues to be addressed, and introduced three exhibits. Exhibit 1 was the DS-367, Exhibit 2 was the investigative report of Zaragoza's arrest, and Exhibit 3 was a printout of his driving record. (RT 32.) Zaragoza's counsel Matthew O'Connor objected to the first two based on a lack of foundation, authentication, and multiple hearsay. Medina overruled his objections. (*Ibid*.)

At the reconvened APS hearing on October 21, 2024, Medina introduced as a fourth exhibit the BWC video, to which O'Connor did not object. (RT 47.) Indeed, he had

subpoenaed it. (RT 115-116.) O'Connor called Officer Tualaulelei as his first witness. (RT 48.) Officer Tualaulelei testified that no law enforcement officers had observed Zaragoza driving his vehicle. (RT 50, 53.) Rather the only person who witnessed Zaragoza's driving was his seven-year-old daughter who was present in the car when her father was arrested but did not say when her father had driven during that day. (RT 52-53.) Nor does it appear that she was asked if he had driven to the gas station where the police located them in the truck.

Officer Tualaulelei also confirmed that Zaragoza complained of chest pain and that he was transported to the hospital by ambulance. (RT 54.) At the hospital, Officer Tualaulelei informed Zaragoza that was under arrest and was being investigated for driving under the influence. (RT 55.) Zaragoza was not in a private room; he was separated from other patients and staff by a curtain. (RT 56.) The BWC footage shows that the room was somewhat noisy. Officer Tualaulelei testified that he read the chemical test admonition verbatim from the CHP DS-367 to Mr. Zaragoza. (RT 57.)

After O'Connor finished questioning the officer, Medina questioned him. She asked: what made Officer Tualaulelei believe that Zaragoza was driving under the influence; whether Zaragoza indicated that he was not the driver of the truck; why he asked to have someone obtain a warrant to draw Zaragoza's blood before giving the admonition; whether the admonition was read at the hospital; and which test was available at the hospital. (RT 61-63.) O'Connor followed up by asking Officer Tualaulelei additional questions, and then he was excused. (RT 63-64.)

O'Connor called Zaragoza as his second witness. (RT 66.) Zaragoza testified that he went to the hospital with chest pain, and that he was anxious and concerned for his health. He also testified that he had been told he was under arrest, and somewhat confusingly, that while he was at the hospital he was told that he could take a breath test at the jail. (RT 67-69.)

Medina also questioned Zaragoza. She asked if he recalled being told he could take a breath test, and he responded that he did, but he refused. (RT 69-70.) She asked if he recalled being asked if he would take a blood test. He did, and said he preferred to take a breath test. (RT 70.) Medina asked Zaragoza to explain what he was unclear about and if he had expressed that to the officer. Zaragoza testified that he was unclear about why the officers had a warrant, that the officer read the admonition, and that a nurse was also speaking to Zaragoza. (RT 70-71.)

After O'Connor argued against finding a voluntary refusal to take a chemical test, Medina took the matter under submission. (RT 71-74.)

On November 6, 2024, Medina issued her decision, finding that Officer Tualaulelei had probable cause to contact Zaragoza after finding him in the driver's seat. She further found that the fact that no law enforcement officer had seen Zaragoza driving was of little weight because the "observation of driving or drinking is not relevant in a refusal case." (RT 3.) She gave greater weight to the exhibits and the circumstantial evidence of driving find probable cause for the contact. Thereafter, the officer observed that Zaragoza showed objective signs of

intoxication. (RT 3-4.) Based on these findings, she found that Officer Tualaulelei had reasonable cause to believe that Zaragoza was driving a motor vehicle while under the influence of alcohol. Thereafter, she found, he was lawfully arrested. (RT 4.)

With respect to the admonition and refusal, Medina found that although Zaragoza testified that he did not understand the chemical test admonition, "when asked if he was willing to give blood, he claims he responded that he wanted a breath test." (RT 4.) Medina gave greater weight to the BWC video that indicated Zartagoza heard and understood the officer's request to take a blood test. Further, she found that he understood the admonition. Accordingly, she found that he had refused a chemical test. (*Ibid*.)

C. Standard of Review

Section 1094.5 of the Code of Civil Procedure authorizes the Superior Court to review final decisions made by administrative agencies. (Code Civ. Proc., § 1094.5; see also Veh. Code, 13559, subd. (a) ["If the court finds that the [DMV] exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is not supported by the evidence in the record, the court may order the department to rescind the order of suspension or revocation and return, or reissue a new license to, the person."].)

"If the decision of an administrative agency will substantially affect a 'fundamental vested right,' then the trial court must not only examine the administrative record for errors of law, but also must exercise its independent judgment upon the evidence." (*Berlinghieri v. Department of Motor Vehicles* (1983) 33 Cal.3d 392, 395 (*Berlinghieri*) (in bank).) The right to drive has been found to be a fundamental right. (*Id*., at p. 398.)

"In ruling on an application for a writ of mandate following an order of suspension or revocation, a trial court is required to determine, based on its independent judgment, 'whether the weight of the evidence supported the administrative decision.'" (*Lake v. Reed* (1997) 16 Cal.4th 448, 456 (*Lake*), cleaned up; see also *Amerco Real Estate Co. v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 782-783 [The independent judgment test requires the trial court to review "the evidentiary sufficiency of an administrative agency's decision" and "exercise its independent judgment on the evidence; the trial court must weigh the evidence and determine whether the administrative findings are supported by the weight of the evidence."].)

D. Petitioner Has Not Shown that the Hearing Officer Violated His Due Process Rights

Independent of any criminal conviction, the DMV may administratively suspend the driver's license of an individual arrested for driving under the influence. The Legislature enacted the "administrative per se" laws to protect the public by suspending the licenses of those arrested for DUI while also "guard[ing] against erroneous deprivation by providing a prompt administrative review of the suspension." (*Lake, supra*, 16 Cal.4th, at p. 454, quoting *Gikas v. Zolin* (1993) 6 Cal.4th 841, 847.) The APS hearing is not a criminal proceeding, and

the DMV's factual findings are based on the preponderance of the evidence standard. (*Id.*, at p. 456.)

To suspend a driver's license for refusing a chemical test, the DMV must first make four factual findings, specifically that: "(1) the officer had reasonable cause to believe the person was driving a vehicle while under the influence of drugs or alcohol; (2) the person was arrested; (3) the person was told that if he or she refused to submit to, or did not complete, a chemical test his or her license would be suspended; and (4) the person refused to submit to, or did not complete, such a test." (*Garcia v. Department of Motor Vehicles* (2010) 185 Cal.App.4th 73, fn. 3.)

In a footnote, Zaragoza argues that he did not waive his arguments that Medina impermissibly acted as an advocate and adjudicator, and that the DMV violated his due process rights, by not making these arguments at the hearing, because "[t]he injunction imposed in [*DUI Lawyers*] was not conditioned on an objection. Nor has this injunction been dissolved." (MPA iso Pet., at p. 9, fn. 3.) He further argues that "there is evidence that the prohibition of a dual role by a hearing officer is unwaivable" citing case law relating to the Unemployment Insurance Appeals Board. And he contends that the objection would have been futile. (*Ibid*.) Addressing a similar failure to object at the hearing, in *Kazelka*, the First District Court of Appeal held that the failure to raise the objection at the hearing waived the argument. (*Kazelka*, *supra*, 2025 WL 923651, at *7.) The First District went on to consider the petitioner's due process arguments, however, finding that he had not demonstrated that the hearing violated due process. (*Kazelka*, *supra*, 2025 WL 923651, at *8.)

Zaragoza challenges the APS hearing contending that the hearing officer acted as both an advocate and the adjudicator in violation of the injunction issued by the Court of Appeal in *DUI Lawyers*. He argues that "immediately after setting the parameters as to her role in the hearing [as a neutral adjudicator], she exceeded these parameters by introducing exhibits on behalf of Respondent, overruling Petitioner's objections, formally moving these items into evidence, and cross-examining witnesses." (MPA iso Pet. at p. 8, citing RT 31-32; 61-63; 69-71.)

Zaragoza contends that "[t]his conduct is exactly what [*DUI Lawyers*] intended to enjoin." (MPA iso Pet., at p. 8.) He argues that Medina did not act as "an independent 'fact-finder'" because she introduced evidence on behalf of the DMV; overruled what O'Connor contends were legitimate objections to the first two exhibits; "automatically assumes a position adversary to the objector in arguing for the admission of the documents;" and questioned both of petitioner's witnesses. (*Id*., at pp. 8-9.) Petitioner argues that the "advocacy and fact-finding were tasked to one person, which violates the injunction imposed in [*DUI Lawyers*] and affirmed in *Knudsen* and *Clarke*."

However, as *Kazelka* notes that, "[w]hile generally prohibited, the California Supreme Court explained the same individual in an administrative agency may be tasked with 'developing the facts and rendering a final decision.'" (*Kazelka, supra,* 109 Cal.App.5th at p. *8, quoting *Today's Fresh Start, Inc. v. L.A. County Off. of Education* (2013) 57 Cal.4th 197,

220.) Accordingly, "[a]s relevant to APS hearings, courts have concluded hearing officers may collect and develop the evidence and then render a decision without having acted as an advocate for the DMV or running afoul of due process rights." (*Ibid*., citing *Knudsen*, *supra*, 101 Cal.App.5th at p. 207.) Indeed, *DUI Lawyers* recognizes that a single individual may serve as a collector and developer of the evidence as well as the adjudicator. (*DUI Lawyers*, *supra*, 77 Cal.App.5th at p. 533, fn 5.) While it might be preferable for the DMV to appoint an adjudicator and another person to serve as an advocate, it is not required to do so.

Here, Medina's questioning of Officer Tualaulelei clarified the basis for his belief that Zaragoza had driven the truck, and that because of Zaragoza's non-cooperative behavior, he obtained a blood draw warrant. Medina asked Zaragoza whether he explained to the officer what he was unclear about — his testimony was somewhat confused. However, he did testify that he understood that he had a choice of a breath or blood test, and that he refused the blood test, but wanted the breath test (which was not available at the hospital).

By contrast, in *Knudsen*, the question was whether Knudsen had driven with a BAC of .08 or greater. Not only did the hearing officer question the witness, in her decision she essentially ignored the toxicology expert witness's testimony and the bases for his opinion that Knudsen's BAC was under .08, because BAC rises over time, the PAS calibration was .0007% too high, the initial results of .084 and .086 would have indicated an actual result in the .07s, and the later .090 result indicated a rising BAC. (*Knudsen*, *supra*, 101 Cal.App.5th at pp. 208-211.) Moreover, the hearing officer's decision referred to the expert's testimony as "hearsay" and misunderstood California Supreme Court authority concerning the presumption of the "three-hour rule." (*Id*., at p. 212.) Given the infirmities of the APS hearing and the decision, *Knudsen* does not stand for the proposition that a single individual cannot serve as a collector and developer of evidence and an adjudicator.

Here, by contrast, Medina's questions were directed to developing the relevant evidence. Based on the foregoing, the court finds that DMV hearing officer Medina did not impermissibly act as both an advocate and an adjudicator.

Zaragoza's Writ Petition is therefore **DENIED.**

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for the DMV shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 8

25-CIV-00601 KEVIN RAMOS VS. SAN MATEO COUNTY TRANSIT DISTRICT, ET AL

KEVIN RAMOS	PRO SE
SAN MATEO COUNTY TRANSIT DISTRICT	DANIELLE K LEWIS

PLAINTIFFS MOTION FOR ORDER TO RECOGNIZE MEET & CONFER REQUIREMENTS

TENTATIVE RULING:

Plaintiff Kevin Ramos (Ramos or plaintiff), proceeding in pro per, filed his First Amended Complaint (FAC) on February 6, 2025. The FAC alleges, inter alia, that plaintiff sustained injuries due to a disruptive passenger while riding a bus operated by defendants, including defendants San Mateo County Transit District (SamTrans) and Marshall Rush (Rush, and collectively, defendants).

On March 6, 2025, Danielle K. Lewis, counsel for defendants SamTrans and Rush, filed a declaration regarding counsel's inability to meet and confer regarding the responsive pleading. The declaration averred that these defendants were served with a copy of the FAC on February 7, 2025. (Lewis Meet and Confer Declaration [Lewis Decl.], ¶ 4.) Lewis describes two attempts to contact plaintiff on February 18 and 26, 2025, and declares that the parties were unable to meet and confer to satisfy Code of Civil Procedure, section 431.41, subdivision (a)(2). (*Id*., ¶¶ 5, 7.) For that reason, though the defendants' responsive pleading would normally have been due on March 10, 2025, the automatic extension under section 421.41, subdivision (a)(2) applied to extend the deadline to April 9, 2025. (*Id*., ¶ 7.) Defendants then filed a demurrer and motion to strike on April 9, 2025.

On March 11, 2025, plaintiff filed a declaration regarding the inability to meet and confer. According to plaintiff, he did not receive a copy of the Lewis declaration until March 10, 2025, when he was at the Hall of Justice in Redwood City. (Ramos Meet and Confer Declaration [Ramos Decl.] ¶ 2.) This was the first activity he had noticed from opposing parties. He then immediately emailed Lewis using the email address on her declaration, asking if corresponding via email would be acceptable, but did not hear back. (*Id*., ¶ 5.) On March 10, 2025, he checked his mail box and found a copy of the Lewis declaration. (*Id*., ¶ 6.) However, Lewis had written his address incorrectly on the envelope. (*Ibid*., and Ramos Decl., exh. 5.) There has also been an issue with getting mail at his address from the Court, suggesting that the post office is having trouble delivering his mail. (*Id*. ¶ 7, and Ramos Decl., exh 6.)

Now pending before the court is plaintiff's "motion for order to recognize the meet and confer requirements," which appears to be a request not to allow the extension to defendants' responsive pleading deadline. The specific relief that plaintiff requests is not entirely clear. But, however such relief is characterized, plaintiff has not shown that he is entitled to any relief.

As an initial matter, the court notes that plaintiff's motion lacks a filed proof of service showing that the motion was properly served on defendants and their counsel. (Code Civ. Proc.,

§ 1005, subd. (b).) Ordinarily, this alone would be enough to order the motion off calendar. However, because defendants filed their opposition and because it would be beneficial to address this motion given the pendency of defendants' demurrer and motion to strike hearings, the court proceeds to consider the merits.

Under Code of Civil Procedure, section 430.41, before filing a demurrer, the demurring party must meet and confer with the party who filed the challenged pleading "in person, by telephone, or by video conference" to determine if the demurring party's objections can be resolved by agreement. (Code Civ. Proc., § 430.41, subd. (a)(1).) If the parties are unable to meet and confer at least five days before the responsive pleading is due, the demurring party may file a declaration stating that a good faith attempt to meet and confer was made and explaining the reasons the parties could not meet and confer. (*Id*., subd. (a)(2).) Once this declaration is filed, "the demurring party ***shall be granted an automatic 30-day extension*** of time within which to file a responsive pleading . . ." (*Ibid*. [emphasis added].) The statute is thus clear that the extension of time is mandatory and automatic.

One possible interpretation of plaintiff's request for relief is that the court deny the extension and somehow require that the responsive pleadings have been filed by the original deadline. Plaintiff's own declaration points out some potential problems with the attempts to meet and confer, including that his address might have been noted incorrectly by defendants' counsel. Based on this, plaintiff avers that he did nothing wrong and did not "fail[] to meet and confer in good faith." This may be true, but it is not determinative. The statute requires the demurring party only to declare that the plaintiff failed to respond, or that the plaintiff "otherwise" failed to meet and confer in good faith. (Code Civ. Proc., § 430.41, subd. (a)(3)(B).) The fact that the automatic extension applies is not a determination that plaintiff failed to act in good faith. Defendants' filing of a declaration properly containing all that the statute requires is enough to entitle defendants to the automatic extension of time.

To the extent that plaintiff may be asking the court to delay hearing the demurrer and motion to strike until the parties have met and conferred further, this is also unavailing. The statute itself states — and California courts have consistently explained — that any defects in the meet and confer process shall not be grounds to overrule or sustain a demurrer. (Code Civ. Proc., § 430.41, subd. (a)(4); *Dumas v. Los Angeles County Bd. of Supervisors* (2020) 45 Cal.App.5th 348, 355 [declining to address any insufficiency in the meet and confer process because it did not affect the trial court's ruling on demurrer].) If a deficiency in the meet and confer process does not bar the court from ruling on the demurrer, a deficiency likewise does not bar that demurrer from being filed in the first place.

Plaintiff's motion is therefore **DENIED**.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 9

25-UDL-00215 KEI BABAKAN VS. BROCK KARLTON BURKE, ET AL.

KEI BABAKAN	GABRIELLE I. REKHTMAN
BROCK KARLTON BURKE	PRO SE

MOTION FOR ORDER RE: ADMISSIONS (TAMMY LAWRANCE)

TENTATIVE RULING:

The Court intends to construe defendant Tammy Lawrance's response to plaintiff Kei Babakan's Motion to Deem Admissions from Defendant Admitted and Request [for] Monetary Sanctions against as a motion to extend the time to respond made pursuant to Code of Civil Procedure, section 2033.250, subdivision (b). The Court intends to permit Babakan to file an opposition to the request for an extension.

The parties should be prepared to discuss whether Babakan intends to file an opposition, as well as when responses to the requests for admission served on Lawrance will be forthcoming.

2:00 LINE 10

25-UDL-00215 KEI BABAKAN VS. BROCK KARLTON BURKE, ET AL

KEI BABAKAN	GABRIELLE I. REKHTMAN
BROCK KARLTON BURKE	PRO SE

MOTION FOR ORDER RE: ADMISSIONS (BROCK KARLTON BURKE)

TENTATIVE RULING:

Plaintiff Kei Babakan's Motion to Deem Admissions from Defendant Admitted and Request [for] Monetary Sanctions against defendant Brock Karlton Burke (Burke) is **GRANTED** in the absence of any opposition at the hearing.

A party in an unlawful detainer proceeding must respond to requests for admission in five days unless the time is shortened or extended on the motion of either the propounding or responding party. (Code Civ. Proc., § 2033.250, subd. (b).) If the party to whom requests for admission fails to serve a timely responses, the propounding party may move "for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction … ." (*Id.*, at § 2033.280, subd. (b).) The court must issue the order unless a proposed response has been served, and it must impose monetary sanctions. (*Id.*, at subd. (c).)

Babakan served Burke with requests for admission by overnight mail on March 14, 2025, and his responses were due March 21, 2025. (Rekhtman Decl., ¶¶ 5–7, exhs. A–B.) No responses were served as of April 1, 2025, and there is no indication any have been served since. (See *id.*, ¶ 8.)

Babakan also presents evidence he has incurred $610.00 in filing each motion. (Rekhtman Decl., ¶¶ 9–10 [excluding one hour of billable time from request]; see *Tucker v. Pacific Bell Mobile Servs.* (2010) 186 Cal.App.4th 1548, 1562–1564 [no sanctions for future expenses].)

Burke has not filed a written opposition, but he is permitted to present an opposition orally at the hearing. (See Cal. Rules of Court, rule 3.1347(b).) If Burke intends to oppose the motion, he must appear in person or by Zoom on his own behalf — he cannot be represented by any person other than an attorney.

If the motion is not opposed, the genuineness of the documents and the truth of matters in the requests shall be deemed admitted and monetary sanctions will be imposed on Burke in the amount of $610.00.

2:00 LINE 11

CIV535490 MARYAM ABRISHAMCAR VS ORACLE AMERICA, INC

MARYAM ABRISHAMCAR	LAURA L. HO
ORACLE AMERICA, INC	BRITTANY A SACHS

MOTION FOR APPROVAL OF PAGA SETTLEMENT

TENTATIVE RULING:

The parties are to **APPEAR** at the hearing on plaintiffs' Maryam Abrishamcar and Kavi Kapur's (plaintiffs) Motion to Approve PAGA Settlement (Motion). The court will grant the Motion if the parties sufficiently address the court's concerns.

A. Background

1. Procedural History

Nearly ten years, on September 18, 2015, plaintiff Maryam Abrishamcar (Abrishamcar) filed this PAGA action against defendant Oracle America, Inc. (Oracle or defendant) alleging that it had violated the Labor Code in connection with commission sales compensation. Plaintiff Kavi Kapur (Kapur, and with Abrishamcar, plaintiffs) joined the lawsuit on October 30, 2017.

Since then, the court, the Honorable Marie S. Weiner (retired), conducted two (phase one and phase two) non-jury trials. On August 30, 2022, following the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, Oracle moved to compel arbitration of the individual PAGA claims and to dismiss the representative claims. Judge Weiner denied Oracle's motion. The First District Court of Appeal reversed that decision and remanded the case to the trial court in an unpublished opinion, *Abrishamcar v. Oracle America, Inc*. (1st Dist. June 24, 2024) Case No. A167116. Upon Judge Weiner's retirement, the case was reassigned for all purposes to Department 28, the Honorable Nicole S. Healy.

The declarations submitted by plaintiffs and their counsel detail the lengthy history of this lawsuit. The court briefly summarizes that history based on those representations.

Throughout the pendency of the proceeding, the parties engaged in extensive motion practice and substantial discovery. The named plaintiffs were each deposed for two or more days, and each testified at trial, as did two additional employees.

Oracle propounded 192 document requests, to which plaintiffs responded, producing over 5,600 pages of documents, including from other employees. (Declaration of Xinying Valerian [Valerian Decl.] iso Motion for Approval of PAGA Settlement, ¶ 15.) Oracle also

served 56 requests for admission, multiple sets of form interrogatories, and twenty special interrogatories, as well as supplemental discovery requests. (*Id*., ¶ 16.)

Plaintiffs propounded 499 requests for production, and Oracle produced over 14 gigabytes of data; and responded to ten sets of special interrogatories, and four sets of requests for admissions. Plaintiffs deposed Oracle's persons most knowledgeable for 25 days. (Valerian Decl., ¶ 17.) Plaintiffs also twice served *Belaire* notices, eventually identifying over 5,000 potentially aggrieved employees. (*Id*., ¶ 13.)

The phase one bench trial took place over nine days, beginning in January 2019. The phase two trial took place beginning in November 2019, lasting eleven days. More than a dozen Oracle corporate witnesses, as well as the two named plaintiffs, and five other Oracle employees testified. (Valerian Decl., ¶ 20.) The parties introduced over 900 trial exhibits. (*Id*., ¶ 21.) Following the close of the evidence, the court heard oral closing argument, and the parties submitted closing briefs. (*Id*., ¶ 20.) The court issued proposed statements of decision for each phase of the trial, and reviewed and considered the parties' objections. (*Id*., ¶¶ 24-25.)

In phase one, the court found Oracle liable as to three Labor Code sections and on the following theories: "(1) Oracle failed to provide employees with signed copies of commission contracts in violation of Labor Code section 2751(b); (2) in discrete instances Oracle failed to set forth the method by which commissions would be computed and paid in contracts with employees in violation of Labor Code section 2751(a); and (3) Oracle's mandatory confidentiality agreements prohibiting employees from discussing their wages violates Labor Code section 232." (Valerian Decl., ¶ 24.) In phase two, the court found Oracle liable as to three Labor Code sections, on the following theories: "(1) Oracle failed to provide employees with timely commission contracts at the start of their employment in a commission-eligible position in violation of Labor Code section 2751(a); (2) Oracle unlawfully took back paid wages from sales employees in violation of Labor Code section 221; and (3) Oracle failed to timely pay all incentive compensation wages in violation of Labor Code section 204." (*Id*., ¶ 25.)

In February 2024, before she retired, Judge Weiner issued a Final Statement of Decision After Phase One Court Trial and Final Statement of Decision After Phase Two Court Trial. The court held that plaintiffs had proven "violations of Labor Code sections 2751(a), 2751(b), 232, 204, and 221 in certain specified circumstances and failed to prove violations of Labor Code sections 201, 202, 203, 226, and 232.5." (Valerian Decl., ¶ 31.) The parties disputed how the court had ruled on the alleged violation of section 432.5. The parties and the court (Judge Healy) began to plan for a phase three trial that would focus on the penalties to be imposed and began conducting discovery relating to phase three. (*Id*., ¶¶ 31-32.) Oracle also advised the court that it intended to renew its motion to compel arbitration. (*Id*., ¶ 32.)

Thereafter, the parties re-engaged with the mediator, Michael E. Dickstein, which ultimately resulted in a mediator's proposal, which became the settlement now before the court. (Valerian Decl., ¶¶ 35-40.)

2. Settlement Terms

According to the Motion, there are approximately 5,167 aggrieved employees who worked approximately 229,711 pay periods. The proposed settlement provides for a gross payment by Oracle of $15.5 million. (Valerian Decl., exh. 1, ¶ 3.1.) Of the gross settlement amount, $8,610,000 will be paid to the California Labor and Workforce Development Agency (LWDA) and the aggrieved employees, with the LWDA receiving 75% ($6,457,500) and the employees, 25% ($2,152,500). The settlement provides the aggrieved employees with an average PAGA payment of approximately $67.48 per pay period. (*Id.*, ¶ 3.3(a).)

The settlement agreement provides for service award payments to plaintiffs Abrishamcar ($65,000) and Kapur ($45,000). (*Id.*, ¶ 3.3(b).) Plaintiffs' counsel has requested a fee and expense award of $6.2 million in fees, plus costs of $555,153.24. (*Id.*, ¶ 3.3(c); Valerian Decl., ¶¶ 68-69, 75.)

The settlement will be administered by Atticus Administration, which has submitted a declaration from its representative, Bryn Bridley, regarding its qualifications and experience. (Valerian Decl., exh. 2.) The payment to Atticus will not exceed $15,000. (Valerian Decl., ¶¶ 41-42.)

Plaintiffs have provided notice of the settlement to the LDWA as required by Labor Code, section 2699, subdivisions (l)(2) and (l)(4). (Valerian Dec., ¶ 44.)

3. Legal Standards

In ruling on class action and PAGA settlements, this court has a duty to independently determine whether a settlement is fair, reasonable and adequate. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77, disapproved of on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 66 [the "trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 ["'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.'"]; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.)

Trial courts have broad discretion to determine the fairness of the settlement. Both the federal circuit courts and our Court of Appeal have adopted a mix of relevant considerations, including "[1] the strength of plaintiffs' case, [2] the risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the proceedings, [6] the experience and views of counsel, . . . and [7] the reaction of the class members to the proposed settlement." (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Ibid*.)

The court has the following comments about the Motion and Notice:

- The parties should direct that funds from any uncashed checks go to their designated *cy pres* recipient, Bay Area Legal Aid.

- The void date for uncashed checks should be 180 days from mailing.

- The parties shall clarify why the PAGA release period is more comprehensive than the PAGA periods defining aggrieved employees. (*Compare* Valerian Decl., exh. 1, Settlement Agreement, ¶ 1.3 [aggrieved employees are persons "employed by Oracle as sales personnel subject to an Incentive Compensation Plan or Agreement or were in an Incentive Compensation Plan or Agreement-eligible sales position in California during the period from July 24, 2014 to September 18, 2015 or the period from October 30, 2016 to February 9, 2018] *with id*., ¶ 1.20 [the PAGA release period runs from July 24, 2014 to May 31, 2018].)

- The parties should clarify how fees will be split among the law firms. (See Weil & Brown, Cal. Prac. Guide: Civ. Pro Before Trial (Rutter, June 2024 Update) ¶ 14:145.5: "Where several firms have rendered services on behalf of the class (or have filed separate actions), the division of fees 'should be resolved by the trial court before an award of attorney fees, rather than by co-liaison counsel afterwards.'")

Aside from these concerns, the court finds that the settlement is fair, reasonable, and adequate in view of PAGA's purposes.

B. Plaintiffs' Counsels' Request for Attorneys' Fees and Costs is Reasonable Under the Circumstances

1. Fees and Expenses Requested

Plaintiffs are seeking a fee award of $6.2 million, or 40% of the gross settlement fund. (Valerian Decl., ¶ 61.) Plaintiffs have been represented by counsel from multiple law firms: Valerian Law; Kastner Kim; Sanford Heisler Sharp McKnight, LLP (Sanford Heisler); and Dardarian Ho Kan & Lee (Dardarian). All of plaintiffs' counsel are experienced in PAGA and class action litigation, focusing on employment disputes. (Valerian Decl., ¶¶ 83-96 [noting that Xinying Valerian was formerly an attorney with Sanford Heisler]; Declaration of Michael D. Palmer iso Motion [Palmer Decl.], ¶¶ 7-18; Declaration of James Kan iso Motion [Kan Decl.], ¶¶ 5-6, 8-9.)

Plaintiffs' counsel aver that they have collectively performed 22,526.5 hours of work in connection with this case over the approximately ten years that the matter has been pending. (Valerian Decl., ¶¶ 65, 67, 77-79.) Each firm provided summaries of the hours billed by their

attorneys and other professionals, excluding those who billed less than 10 hours each. Valerian Law billed 2,957.1 hours for a total of $2,828,412.50 at 2025 billing rates. (*Id*., ¶ 79.) Former counsel Kastner Kim will share in the fee award. Kastner Kim billed 428.9 hours for a total of $320,830.00. (*Id.*, ¶¶ 3, 62, 67.) Sanford Heisler billed 13,233.0 hours, for a total of $7,812,767.50 at their reported hourly rates. (Palmer Decl., ¶¶ 27-28.) Dardarian billed 5,907.5 hours, totaling $5,368,325.00 at 2025 hourly rates. (Kan Decl., ¶ 7.)

Valerian Law's hourly rates are $1,050 for attorneys with more than 17 years' experience, and $300-375 for support staff. Sanford Heisler's hourly rates range from $1,400 for attorneys with more than 20 years' experience to $300-$325 for support staff. Dardarian's hourly rates range from $1,275 for attorneys with 20 years' or more of experience to $425 for support staff. Based on the Laffey Matrix, these rates are generally consistent with those charged in the Bay Area, as adjusted based on federal locality pay tables. (Valerian Decl., ¶¶ 98, 100.)

Plaintiffs have also requested costs and expenses of $555,153.24. Plaintiffs' request is supported by summaries of expenses incurred in connection with the litigation. Such costs and expenses include expert witness and trial consultants' fees; court reporter fees and transcripts; ESI hosting, processing, and user access; court filing fees; private mediation fees; and travel expenses; expenses relating to the preparation and copying of trial exhibits; and other litigation expenses. (Valerian Decl., ¶¶ 69, 70, 75; Palmer Decl., ¶ 30; Kan Decl., ¶ 16.)

2. Legal Authority

The "fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*).) "'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.'" (*PLCM Group, supra*, 22 Cal.4th at p. 1095, quoting *Margolin v. Regional Planning Com*. (1982) 134 Cal.App.3d 999; see also *id.*, at p. 1004: "The reasonable hourly rate is that prevailing in the community for similar work.")

The California Supreme Court has endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. (*Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503 (*Lafitte*).) In *Lafitte*, our Supreme Court stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at p. 505.) Here, plaintiffs' counsel performed a lodestar crosscheck, which yielded a result of $16,320,260.50 at 2025 rates. (Valerian Decl., ¶ 65.) The requested fees total 40% of the gross settlement fund, resulting in a negative lodestar of 0.38. (MPA, at p. 21.) Plaintiffs' counsel notes that courts have approved attorneys' fee

awards of 45% where the request results in a negative lodestar adjustment. (*Id*., at pp. 19-21.)

The court may rely on its own experience, both as a litigator for over twenty years in the Bay Area, and since then as a judge reviewing other motions and applications for attorneys' fees. Based on this experience, the court finds that plaintiffs' counsel's rates are reasonable within the Bay Area legal community. (See *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, 587.) The court has also reviewed the invoices submitted by plaintiffs' counsel. The court agrees that the rates are reasonable. Further, the time spent appears reasonable given the number of parties, the length of the litigation, and the complexity of the proceedings, and that the case was taken on a contingency basis. As the California Supreme Court has explained, "'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable.'" (*Ketchum*, *supra*, 24 Cal.4th at p. 1132, quoting *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253.)

Accordingly, the court finds that the fees are reasonable and awards plaintiffs' counsel $6.2 million in attorneys' fees. The court further awards plaintiffs' counsel $555,153.24 in expenses.

C. The Claims Administrator's Fee is Reasonable and Necessary

As noted above, Atticus Administration, LLC, the proposed claims administrator, has submitted a declaration from its representative, Bryn Bridley, regarding its qualifications and experience. (Valerian Decl., exh. 2.) Based on these representations, the court finds that Atticus Administration, LLC is an experienced third-party claims administrator (Valerian Dec., ¶ 42, exh. 2) and approves its retention.

Moreover, the "not to exceed" fee of $15,000 to be paid for claims administration is reasonable. (Valerian Decl., ¶¶ 41-42.) Therefore, the approves the requested payment of up to $15,000 to Atticus Administration, LLC.

D. Plaintiffs' Request for Substantial Incentive Awards is Granted

Each of the named plaintiffs has requested a substantive incentive award: $65,000 to Ms. Abrishamcar and $45,000 to Mr. Kapur. Both named plaintiffs were actively involved in the litigation, including testifying in depositions and at the phase one and two trials. Both were concerned that their involvement in this litigation would affect their professional reputations and careers. (Valerian Decl., exh. 8 [Declaration of Maryam Abrishamcar iso Mot. (Abrishamcar Decl.)] ¶¶ ; and exh. 9 [Declaration of Kavi Kapur iso Mot. (Kapur Decl.) ¶¶ 15, 29-30.)

Ms. Abrishamcar initiated this lawsuit and has participated in this matter from the beginning. She avers that she assisted counsel with their investigation; responded to discovery requests; sat for two days of deposition testimony; testified at the phase one and two trials and attended many days of both trials; and also attended the mediation.

(Abrishamcar Decl., ¶¶ 3, 9, 10, 14, 15, 19, 21, 23, 26.) In addition, she reports that she was concerned that her participation in this matter would affect her employability. Ms. Abrishamcar avers that defendant had included on their witness list someone from her then-current employer to attend the phase one trial, but that the court granted a motion to quash that subpoena. (*Id*., ¶ 17.) Overall, Ms. Abrishamcar estimates that she spent hundreds of hours relating to this lawsuit over the ten-year period since its inception. (*Id*., ¶ 29.)

Similarly, Mr. Kapur, who joined the case when the amended complaint was filed, avers that he assisted counsel with their investigation and in responding to discovery requests; sat for two-and-a-half days of deposition testimony; testified at the phase one and two trials; and attended the mediation. (*Id*., exh. 9 [Declaration of Kavi Kapur iso Mot.] ¶¶ 10, 11, 12, 14, 17, 19, 21, 25.) Mr. Kapur stated that defendant had included on their witness list a custodian from his then-current employer to attend the phase one trial, but that the court granted a motion to quash that subpoena. (*Id*., ¶ 15.) Overall, Mr. Kapur estimates that he spent hundreds of hours relating to this lawsuit in the eight-year period of his involvement in this matter. (*Id*., ¶ 28.)

Based on their declarations, the named plaintiffs' participation in this lawsuit was substantial and sustained over a lengthy period that included two phases of trial at which they each testified. Ultimately, the matter resulted in a significant settlement. Accordingly, the court finds that the requested incentive awards are appropriate under the facts and circumstances of this lawsuit, and grants the request for awards of $65,000 to Ms. Abrishamcar and $45,000 to Mr. Kapur.

* * *

Having reviewed the papers filed in support of the settlement, the court finds that it is fair, reasonable, and adequate, notwithstanding the comments noted above. Once counsel responds to the court's comments, the court will sign the final order. The proposed order must comply with Local Rule 3.403(b)(iv), and append the settlement agreement and notice letter.

2:00 LINE 12

25-UDL-00544 **WOODLAND PARK PROPERTY OWWNER, LLC V. ALONDRA PATINO**

WOODLAND PARK PROPERTY OWWNER, LLC	TODD ROOTHBARD
ALONDRA PATINO	LAUREN ZACK

HEARING ON DEMURRER

TENTATIVE RULING:

Defendants Alondra Patino and Kenia Alexandra Patino's (defendants) demurrer to plaintiff Woodland Park Property Owner, LLC's (plaintiff) complaint is **SUSTAINED without leave to amend.**

Defendants demur to plaintiff's unlawful detainer complaint, asserting that it fails to state a cause of action because the three-day Notice to Pay Rent or Quit is defective. Defendants contend that the Notice is defective for the following reasons: (1) it provides tenants with the option of curing only by payment by personal delivery, without providing the option to pay by mail; and (2) the Notice does not include the correct and complete name of the party to whom payment should be made.

The Notice, which is attached to the Complaint as exhibit B, provides that payment should be made, by personal delivery between the hours of 10 am and 5 pm to:

Woodland Park Communities
5 Newell Court
East Palo Alto, Ca 94303
Telephone: (650) 566-2000

The Notice further provides that the check should be made payable to: Woodland Park Communities.

Defendants argue that if the notice provides for personal delivery it must also provide for delivery by mail, citing Code of Civil Procedure, section 1161, subd. 2. (MPA iso Dem., at pp. 4-5.)

Section 1161, subdivision (2) provides in pertinent part that:

When the tenant continues in possession, . . . without the permission of the landlord, . . . , after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, ***if payment may be made personally, the usual days and hours that person will be available***

to receive the payment (provided that, ***if the address does not allow for personal delivery***, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), . . .

Defendants would have the court read the parenthetical to mean that even if the address allows for personal delivery, the Notice also must permit payment by mail. The court must read the statute as written. It provides for payment in person unless the address does not allow for personal delivery. Nothing in the complaint or the Notice indicates that personal delivery cannot be made at 5 Newell Court, East Palo Alto, CA 94303.

Further, in considering whether a valid three-day notice must include the name of a natural person to whom payment should be made, or whether the name of a corporate entity is sufficient, the First District Court of Appeal held that because a corporation is a "person," the corporate entity's name is sufficient. (*City of Alameda v. Shaheen* (2024) 105 Cal.App.5th 68, 76 (*Shaheen*) ["the words of the statute reveal no ambiguity. A three-day notice must include "the name, telephone number, and address of the *person* to whom the rent payment shall be made." (§ 1161(2), italics added.) Although section 1161 does not define "person," section 17 of the Code of Civil Procedure does: "As used in this code, the following words have the following meanings, unless otherwise apparent from the context: [¶] . . . [¶] (6) 'Person' includes a corporation as well as a natural person." (§ 17, subd. (b)(6).) [emphasis in original].) Although the landlord in the instant case is a limited liability company rather than a corporation, the First District did not focus its decision on the form of the entity, but rather noted that the statute does not limit the definition of "person" to natural persons.

Defendants also argue, citing *Shaheen*, that the Notice is defective because it fails to include the full legal name of the entity to be paid. (MPA iso Dem., at pp. 6-7.) Defendants contend that the legal entity to be paid is "Woodland Park Property Owner, LLC" and not "Woodland Park Communities," which they contend is non-existent. "While a three-day notice may comply with section 1161(2) if it names a corporation or entity, the name must be correct and complete." (*Shaheen*, *supra*, 105 Cal.App.5 at p. 82.) In *Shaheen*, the First District Court of Appeal took judicial notice of Secretary of State filings showing that the name of the entity was misspelled as "River Rock" rather than "RiverRock," and that the notice failed to identify the corporate form of "RiverRock Real Estate Group, Inc.," which "creates confusion here where multiple similarly named entities with different corporate forms are registered, and none bear the same address that is listed on the notice." (*Ibid.*)

Defendants have submitted a request for judicial notice here which asserts that they searched the California Secretary of State's database, at https://bizfileonline.sos.ca.gov/search/business. They further assert that "When "'Woodland Park Communities' is searched, the database says, 'No results were found for 'Woodland Park Communities.'' When 'Woodland Park Property Owner, LLC' is searched, the results show a limited liability company." (Defts.' RJN, at p. 2.) The court notes that defendants'

counsel (here, certified law students and their advisor from the Stanford Community Law Clinic, Mills Legal Clinic at Stanford Law School) did not include a declaration, nor print-outs of their search results. The better practice would be to do both.

The court notes that the Lease Agreement states that the landlord is "Woodland Park Property Owner, LLC doing business as Woodland Park Communities." (Comp., exh. A, at p. 1.) Further, the lease requires that payments be made to "Woodland Park." (*Id*., § B.14.iii.)

It appears that in the ordinary course of business, plaintiff accepts payment as "Woodland Park," and does business as "Woodland Park Communities," pursuant to *Shaheen*, the name of the entity must be the full legal name, rather than a "dba." The First District noted the risk of confusion in *Shaheen* given that multiple entities were using variations of River Rock in their name. Whether a company using a "dba" rather than its legal name would likewise create confusion is a question that cannot be answered on demurrer. However, it seems clear that *Shaheen* requires this court to find that the use of the dba (Woodland Park Communities) rather than the full legal name of Woodland Park Property Owner, LLC as the person to which payment should be made does not comply with Section 1161, subdivision 2. Because there is no possibility that plaintiff can amend the complaint to overcome the defective Notice, the demurrer is sustained without leave to amend.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.