

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 2, Honorable Mark H. Pierce Presiding  
Mai Jansson, Courtroom Clerk**

191 North First Street, San Jose, CA 95113  
Telephone: 408-882-2120

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

**LAW AND MOTION TENTATIVE RULINGS**

**DATE: 5-16-19 TIME: 9 A.M.**

**PREVAILING PARTY SHALL PREPARE THE ORDER**

(SEE [RULE OF COURT 3.1312](#) – PROPOSED ORDER MUST BE E-FILED BY  
COUNSEL AND SUBMITTED PER 3.1312(C))

**EFFECTIVE JULY 24, 2017, THE COURT WILL NO LONGER PROVIDE  
OFFICIAL COURT REPORTERS FOR LAW AND MOTION HEARINGS.  
SEE COURT WEBSITE FOR POLICY AND FORMS.**

**TROUBLESHOOTING TENTATIVE RULINGS**

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH", or "QUIT" your browser and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

<b>LINE #</b>	<b>CASE #</b>	<b>CASE TITLE</b>	<b>RULING</b>
<a href="#">LINE 1</a>	17cv309176	Equinix, Inc. vs Viewcentral, LLC	Order of Examination
<a href="#">LINE 2</a>	17cv314864	Westlake Flooring Company, LLC vs Friendly Wholesalers of California	Click on line 2 for tentative ruling
<a href="#">LINE 3</a>	17cv314864	Westlake Flooring Company, LLC vs Friendly Wholesalers of California	See above
<a href="#">LINE 4</a>	18cv326912	A. Sotelo vs Jane Doe	Parties/Counsel to appear
<a href="#">LINE 5</a>	18cv329267	H. Zargaria vs R. Yadav	Motion to Seal is DENIED. Good cause is not shown.
<a href="#">LINE 6</a>	19cv344922	B. Williams vs Acting Sheriff of Santa Clara County	There is no proof of service that either the complaint or the motions was served on the Defendants. The motions are off calendar without prejudice.
<a href="#">LINE 7</a>	19cv344922	B. Williams vs Acting Sheriff of Santa Clara County	See above
<a href="#">LINE 8</a>	14cv266238	N. Tieu vs N. Tieu	Parties to appear
<a href="#">LINE 9</a>	17CV314864	Westlake v Friendly Wholesalers	As a result of prior order, this motion is continued to July2, 2019 at 9:00 in Dept 2.

**Calendar line 1**

**- 0000 -**

## Calendar line 2

**Case Name:** *Westlake Flooring Company, LLC v. Friendly Wholesalers of California, et al.*

**Case No.:** 17-CV-314864

Currently before the Court are the demurrer and motion to strike by cross-defendant ABS Finance Company, LLC (“ABS”).

### **Factual and Procedural Background**

The underlying action in this case arises from a loan whereby plaintiff Westlake Flooring Company, LLC dba Westlake Flooring Services (“Westlake”) agreed to finance the vehicle inventory of defendant Friendly Wholesalers of California dba See Mo Cars (“Friendly Wholesalers”) under a loan and security agreement.

Westlake filed its complaint against Friendly Wholesalers, defendant and cross-complainant Azzam Abdo (“Abdo”), and defendant and cross-defendant Jalal Shreim (“Shreim”) (collectively, “Defendants”) on August 21, 2017. According to the allegations of complaint, Westlake is in the business of financing vehicle inventory for car dealerships. Abdo and Shreim allegedly signed individual personal guarantees for all amounts owed by Friendly Wholesalers to Westlake under the loan and security agreement. Friendly Wholesalers, subsequently, entered into two promissory notes with Westlake wherein Friendly Wholesalers acknowledged receipt of \$250,000 and then \$1,000,000. Friendly Wholesalers agreed to repay these amounts with interest. These funds were used to purchase vehicles. Thereafter, Defendants failed to repay the loan. Consequently, Westlake filed suit against Defendants, seeking immediate possession of the vehicles purchased with the loaned money as security for the debt. Westlake alleged causes of action for breach of contract, breach of personal guarantee, declaratory relief, and recovery and possession of personal property.

The matters currently before the Court involve Abdo’s cross-action. Abdo filed his original cross-complaint on October 24, 2017.

Abdo filed the operative SACC against Westlake, Friendly Wholesalers, Shreim, ABS, cross-defendant Pinnacle Bank, and cross-defendant Sean Harmon (“Harmon”) on October 2, 2018. In the SACC, the claims alleged against ABS are the fifth cause of action for breach of contract, the eighth cause of action for fraud and deceit, the tenth cause of action for negligent training, the eleventh cause of action for negligent misrepresentation, the twelfth cause of action for intentional misrepresentation, the thirteenth cause of action for breach of implied covenant of good faith and fair dealing, the fourteenth cause of action for conversion, the fifteenth cause of action for breach of fiduciary duty, the sixteenth cause of action for unjust enrichment, the seventeenth cause of action for declaratory relief, and the eighteenth cause of action for financial elder abuse.

On January 11, 2019, ABS filed the instant demurrer and motion to strike.<sup>1</sup> Abdo filed papers in opposition to the demurrer and motion to strike on April 30, 2019.<sup>2</sup> On May 9, 2019, ABS filed a reply in support of its demurrer.

## **Discussion**

### **I. Requests for Judicial Notice**

#### **A. ABS's Request**

ABS asks the Court to take judicial notice of the complaint filed by it in the case of *ABS Finance Company, LLC dba ABS Auto Auctions v. Friendly Wholesalers of California dba Seemo Cars, et al.* (Orange County Superior Court, Case No. 30-2017-00940846) (“Orange County Action”).

The complaint filed in the Orange County Action is generally a proper subject of judicial notice as it is a court record relevant to issues raised by the pending matters. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 (*Lockyer*) [“There is ... a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue.”]; *People v. Woodell* (1998) 17 Cal.4th 969B, 455 (*Woodell*) [“Evidence Code sections 452 and 453 permit the trial court to ‘take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached-in the documents such as orders, statements of decision, and judgments-but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.’”].)

Accordingly, ABS’s request for judicial notice is GRANTED as to the existence of the complaint filed in the Orange County Action.

#### **B. Abdo's Request**

Abdo asks the Court to take judicial notice of: (1) a tentative ruling posted on the court’s website in connection with an April 3, 2018 hearing in this case; (2) a minute order

---

<sup>1</sup> Notably, memorandum of points and authorities filed in support of ABS’s demurrer does not comply with California Rules of Court, rule 3.1113(f) as it exceeds 10 pages and lacks both a table of contents and a table of authorities. (Cal. Rules of Ct., rule 3.1113(f) [“[a] memorandum that exceeds 10 pages must include a table of contents and a table of authorities”].) ABS is admonished that all future filing must comply with the California Rules of Court.

<sup>2</sup> The Court notes that Abdo also filed a document entitled “Cross-Complainant Azzam Abdo’s Opposition to Cross-Defendant ABS Finance Company LLC Demurrer” on May 6, 2019. Upon review of the document, it appears Abdo may have intended the document to be an opposition to the demurrer filed by Harmon, which is currently set for hearing on May 21, 2019. However, it is unclear to the Court whether Abdo also intended the document as a supplemental opposition to ABS’s demurrer. To the extent Abdo intended the document to be a supplemental opposition to ABS’s demurrer, the Court declines to consider the document because there is no legal authority permitting the filing of a supplemental opposition and the document was filed after the May 3, 2019 deadline for opposition papers. (See Code Civ. Proc., § 1005, subd. (b) [all papers opposing a motion shall be filed with the court and a copy served on each party at least nine court days before the hearing]; see also Cal. Rules Ct., rule 3.1300(d) [courts have discretion to refuse to consider late-filed papers].)

issued in the Orange County Action; and (3) a commercial guaranty between him, Friendly Wholesalers, and ABS.

As a preliminary matter, the tentative ruling is not a proper subject of judicial notice. Abdo has not demonstrated that the tentative ruling was adopted as the order of the court such that it constitutes a court record subject to judicial notice under Evidence Code section 452, subdivision (d). Furthermore, a tentative ruling has no persuasive or precedential value. (See *Panakosta, Partners, LP v. Hammer Lane Management, LLC* (2011) 199 Cal.App.4th 612, 624 [a tentative ruling, is just that, tentative, until the court's order becomes final]; see also *Darling Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156 [the court's statements in its tentative ruling are not binding]; *Bolanos v. Super. Ct.* (2008) 169 Cal.App.4th 744, 761 [a written trial court ruling has no precedential value]; *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409 [there is no "horizontal stare decisis"].)

Next, the minute order issued in the Orange County Action is a proper subject of judicial notice as it is a court record that is generally relevant to issues raised by the pending matters. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *Lockyer, supra*, 24 Cal.4th at p. 422, fn. 2 ["There is ... a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue."]; *Woodell, supra*, 17 Cal.4th at p. 455 ["Evidence Code sections 452 and 453 permit the trial court to 'take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached-in the documents such as orders, statements of decision, and judgments-but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.'"].)

Finally, the commercial guaranty is a proper subject of judicial notice because it is referenced in the SACC. (See *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145, fn. 1 [judicial notice of a private contract is possible where that contract is referenced in pleadings].)

Accordingly, Abdo's request for judicial notice is DENIED IN PART and GRANTED IN PART. The request is DENIED as to the tentative ruling. The request is GRANTED as to the existence of the minute order and the commercial guaranty.

## **II. Meet and Confer**

Abdo argues that ABS failed to adequately meet and confer prior to filing its demurrer and motion to strike.

Code of Civil Procedure sections 430.41 and 435.5 require a party bringing a demurrer or motion to strike to meet and confer with the party who filed the challenged pleading to seek informal resolution of any objections to the pleading. (Code Civ. Proc., §§ 430.41, subd. (a) & 435.5, subd. (a).) The meet and confer must be conducted in person or by telephone, and must address each cause of action, defense, or allegation at issue in the demurrer or motion to strike. (Code Civ. Proc., §§ 430.41, subd. (a)(1) & 435.5, subd. (a)(1).) If these efforts fail, the demurring or moving party must file and serve a declaration regarding the meet and confer process. (Code Civ. Proc., §§ 430.41, subd. (a)(3) & 435.5, subd. (a)(3).) While a court may not overrule a demurrer or deny a motion to strike for insufficient meet and confer efforts (see

Code Civ. Proc., §§ 430.41, subd. (a)(4) & 435.5, subd. (a)(4)), it may continue the hearing and order the parties to meet and confer as required (see Assem. Com. on Judiciary, Rep. on Sen. Bill No. 383 (2015-2016 Reg. Sess.), p. 2).

Here, the declaration of ABS's counsel shows that counsel sent an email to Abdo, asking Abdo to call him regarding perceived deficiencies in the SACC. (McMillen Dec., ¶ 3.) Counsel declares that he choose to email Abdo because he has "never been able to call [Abdo] and have [Abdo] answer his phone." (*Ibid.*) Counsel's email does not constitute compliance with Code of Civil Procedure sections 430.41, subdivision (a)(1) and 435.5, subdivision (a)(1). Notwithstanding the fact that counsel found it difficult to reach Abdo by phone on prior occasions, ABS was required to attempt to meet and confer by telephone or in person. ABS did not do so.

Nonetheless, in the interest of moving the case forward, the Court will overlook—in this instance only—ABS's failure to adequately meet and confer. ABS is admonished to comply with the Code of Civil Procedure going forward.

### **III. Demurrer**

ABS demurs to the SACC, as a whole, on the grounds of another action pending between the same parties on the same cause of action and failure to allege sufficient facts to constitute a cause of action.<sup>3</sup> (Dem., p. 2:4-11; Mem. Ps. & As., pp. 3:10-22, 4:10-14, & 6:11-15.)

#### **A. Legal Standard**

The function of a demurrer is to test the legal sufficiency of a pleading. (*Trs. Of Capital Wholesale Elec. Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617, 621.) Consequently, "[a] demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice [citation]." (*Hilltop Properties, Inc. v. State* (1965) 233 Cal.App.2d 349, 353; see also Code Civ. Proc., § 430.30, subd. (a).) "'It is not the ordinary function of a demurrer to test the truth of the ... allegations [in the challenged pleading] or the accuracy with which [the plaintiff] describes the defendant's conduct. ... .' [Citation.] Thus, ... 'the facts alleged in the pleading are deemed to be true, however improbable they may be. [Citation.]" (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958.)

---

<sup>3</sup> In its notice of demurrer and demurrer, ABS only lists the grounds of another action pending between the same parties on the same cause of action and failure to allege facts sufficient to state a claim as the grounds upon which the demurrer is taken. (Dem., p. 2:4-11; see Code Civ. Proc., § 430.10, subs. (c) & (e).) In its memorandum of points and authorities, ABS also references the ground uncertainty. (Mem. Ps. & As., pp. 3:15-17, 4:12-14, 6:11, & 8:26; see Code Civ. Proc., § 430.10, subd. (f).) But this ground is not listed in ABS's demurrer and the grounds for demurrer must be distinctly specified in the demurrer itself. (Code Civ. Proc., § 430.60; Cal. Rules Ct., rule 3.1320(a).) The Court, therefore, disregards the demurrer to the extent it is based on the ground of uncertainty. (See Code Civ. Proc., § 430.60 ["A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded."].)

## B. Another Action Pending

A party may demur on the ground “[t]here is another action pending between the same parties on the same cause of action.” (Code Civ. Proc., § 430.10, subd. (c).) A demurrer on this ground is also known as a plea in abatement. (*County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 564.) “To ‘abate’ a right of action is to suspend its prosecution due to some impediment that, without defeating the underlying cause of action, prevents the present maintenance of [the] suit.” (*Ibid.*, italics omitted.) Thus, a demurrer on this particular statutory ground is a request to suspend or stay a lawsuit based on the pendency of another lawsuit. (*Ibid.*; see *Childs v. Eltinge* (1973) 29 Cal.App.3d 843, 855–856; see also *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681–682 [“if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement (Code Civ. Proc., § 430.10, subd. (c))”].)

With this context in mind, a demurrer on the ground there is another action pending is sustainable when the demurring party shows: “ ‘(1) [t]hat both suits are predicated upon the same cause of action; (2) that both suits are pending in the same jurisdiction; and (3) that both suits are contested by the same parties.’ [Citation].” (*Conservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 176.) Additionally, “[t]he parties must stand in the same relationship (i.e., as plaintiff or defendant) in both suits.” (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2011) ¶ 7:75.1, p. 7(I)-36 citing *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 788–789 (*Plant*) [stating that a statutory plea in abatement requires “absolute identity of parties”]; see also *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 642 [indicating that a plea in abatement is a means to prevent a plaintiff from splitting a primary right and attempting to enforce it in two separate suits]; see also *Suisun Lumber Co. v. Fairfield School Dist.* (1912) 19 Cal.App. 587, 594 [“[w]here the action is against a number of defendants and the merits have been litigated and adjudicated as to all, and the same plaintiff thereafter proceeds in a subsequent action against one of said defendants for identically the same cause of action, then the later action is between the ‘same parties’ as those to the former in the sense that the plea of *res adjudicata* may, with perfect legal propriety, be set up”] [emphasis added].)

Related to the statutory plea in abatement is the rule of exclusive concurrent jurisdiction, which “has been interpreted and applied more expansively, and therefore may apply where the narrow grounds required for a statutory plea of abatement do not exist.” (*Plant, supra*, 224 Cal.App.3d at p. 788.) “Unlike the statutory plea of abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies.” (*Ibid.*) “If the court exercising original jurisdiction has the power to bring before it all the necessary parties ... [and] to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings,” the court should stay the second action pending resolution of the first. (*Ibid.*) Nevertheless, while complete identity between the parties and remedies sought is not required, “the issues in the two proceedings must be substantially the same and the individual suits must have the potential to result in conflicting judgments” for the rule to apply. (*County of Siskiyou v. Superior Court (Environmental Law Foundation)* (2013) 217 Cal.App.4th 83, 91.)

Under either doctrine, “[a]n order of abatement issues as a matter of right[,] not as a matter of discretion[,] where the conditions for its issuance exist.” (*Lawyers Title Ins. Corp. v. Superior Court (Harrigfeld)* (1984) 151 Cal.App.3d 455, 460.)

ABS argues that the Court should stay this action “pursuant to the rule of ‘exclusive concurrent jurisdiction’ ” because ABS “has an active matter pending against [Abdo] in the Orange County Superior Court” and “[t]he Orange County court asserted jurisdiction first.” (Mem. Ps. & As., pp. 5:28-6:9.) ABS’s request for judicial notice establishes that ABS filed a complaint against Friendly Wholesalers, Shreim, and Abdo on August 30, 2017, alleging causes of action for: (1) breach of contract; (2) fraud; (3) conversion; (4) trespass to chattel; (5) declaratory relief; (6) quiet title; and (7) claim to bond proceeds.

As an initial matter, ABS fails to establish that it is entitled to a statutory plea in abatement. Upon review of the SACC and the complaint filed in the Orange County Action, it is readily apparent that the parties do not stand in the same relationship (i.e., as plaintiff or defendant) in both suits. In this action, Abdo is the cross-complainant and ABS is the cross-defendant. In the Orange County Action, Abdo is the defendant and ABS is the plaintiff. Thus, ABS is not entitled to a statutory plea in abatement.

Furthermore, ABS’s perfunctory argument does not demonstrate that the rule of exclusive concurrent jurisdiction applies here. ABS does not assert, or otherwise establish, that the court in the Orange County Action has power to bring before it all the necessary parties. (See *Plant, supra*, 224 Cal.App.3d at p. 788.) The material presented by ABS merely establishes that ABS, Friendly Wholesalers, Shreim, and Abdo are parties to the Orange County Action. There is no indication that the other parties to this action—Pinnacle Bank and Harmon—are parties to the Orange County Action or that court in the Orange County Action has power to bring Pinnacle Bank and Harmon before it. Additionally, ABS does not demonstrate that the Court in the Orange County Action has the power to litigate all the issues raised in this action and grant all the relief to which any of the parties might be entitled under the pleadings. (See *Childs v. Eltinge* (1973) 29 Cal.App.3d 843, 852 [“[t]he court asserting original jurisdiction must be able to litigate all of the issues and give all of the relief to which any of the parties may be entitled”].)

Accordingly, ABS’s demurrer to the SACC on the ground of another action pending is **OVERRULED**.

### **C. Failure to Allege Sufficient Facts to State a Claim**

As a threshold matter, it is significant that ABS’s demurrer is directed to the SACC as a whole. (See Dem., p. 2:4-11; see also Mem. Ps. & As., pp. 3:10-22, 4:10-14, & 6:11-15.) A demurrer directed to the complaint in its entirety must be overruled if any of the causes of action alleged is not vulnerable to the objection(s) asserted in the demurrer. (See *Jones v. Iverson* (1900) 131 Cal. 101, 104 [“The rule is well established that a general demurrer directed to the whole of the complaint should be overruled, if some portion of the complaint states a cause of action.”]; see also *Lord v. Garland* (1946) 27 Cal.2d 840, 850 [“[A] demurrer which attacks an entire pleading should be overruled if one of the counts therein is not vulnerable to the objection.”]; *Warren v. Atchison, Topeka & Santa Fe Railway Co.* (1971) 19 Cal.App.3d 24, 36 [“[A] general demurrer directed to the whole of the complaint should be overruled if some portion of the complaint states a cause of action.”].) Because ABS demurs to the SACC as a whole, if any one of Abdo’s claims is not vulnerable to ABS’s objection on the ground of failure to allege sufficient facts to state a claim, the demurrer must be overruled.



Here, ABS's arguments fail to dispose of the tenth, sixteenth, seventeenth, and eighteenth causes of action.

ABS argues that the tenth cause of action for negligent training fails because it did not have a duty to "train [Abdo] how he should act in his own business." (Mem. Ps. & As., p. 9:12-16.) However, the tenth cause of action is not predicated on an allegation that ABS had a duty to train Abdo. Rather, the tenth cause of action is based on allegations that ABS had a duty to train its employees and that ABS negligently failed to do so. (SACC, ¶¶ 62-63 & 65.) Thus, ABS's argue fails to dispose of the tenth cause of action as alleged.

Next, ABS argues that the sixteenth cause of action for unjust enrichment fails because the claim is not pleaded with specificity. (Mem. Ps. & As., p. 13:15-25.) But ABS does not cite any legal authority, and the Court is aware of none, providing that a claim for unjust enrichment must be pleaded with specificity. Thus, ABS's argument lacks merit. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When [a party] fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; see also *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 ["[A] point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion."].)

ABS also argues that the seventeenth cause of action for declaratory relief fails because "declaratory relief is unnecessary under the circumstances, as [Abdo] alleges practically every available theory under the sun in his [SACC]." (Mem. Ps. & As., p. 14:19-22.) Code of Civil Procedure section 1061 gives a trial court broad discretion to decline to exercise its power to provide declaratory relief when another form of adequate relief is available, and such a declination may occur at the pleading stage. (*General of America Insurance Co. v. Lilly* (1968) 258 Cal.App.2d 465, 471.) With that said, ABS does not demonstrate the Court should exercise this discretion under the circumstances presented here. ABS simply asserts that Abdo has alleged other claims. ABS does not provide any legal analysis or discussion demonstrating that those claims provide Abdo with adequate relief. Consequently, ABS does not substantiate its position.

Lastly, ABS argues that the eighteenth cause of action for financial elder abuse fails because the claim is predicated on the allegation that ABS was asked, and failed, to remove Abdo from its list of guarantors. (Mem. Ps. & As., p. 14:25-28.) ABS contends that this alleged conduct is not actionable because it is not required to relieve a debtor of an obligation simply because it is asked to do so. (*Id.* at pp. 14:28-15:7.) However, the claim, as alleged, is not based solely on the foregoing allegation. The eighteenth cause of action is also based on allegations that ABS "allowed FWC to exceed its flooring limits," "concealed that Jalal did not sign the flooring or the guaranty agreement," and "allowed FWC to violate agreements." (SACC, ¶ 104.) ABS's argument does not address the claim to the extent it is predicated on these additional allegations. Thus, ABS's argument does not dispose of the claim in its entirety.

Accordingly, ABS's demurer to the SACC on the ground of failure to allege facts sufficient to constitute a cause of action is **OVERRULED**.

#### **IV. Motion to Strike**

ABS moves to strike the SACC, in its entirety, on the ground that the rule of exclusive concurrent jurisdiction applies. (Mtn. Strk., p. 2:4-10.)

**A. Legal Standard**

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a).) In ruling on a motion to strike, the court reads the pleading as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

**B. Analysis**

A motion to strike is not the proper procedural vehicle by which to challenge a pleading based on the rule of exclusive concurrent jurisdiction; rather, the proper procedural vehicle is a demurrer. (See *California Union Ins. Co. v. Trinity River Land Co.* (1980) 105 Cal.App.3d 104, 109 [discussing rule of exclusive concurrent jurisdiction in connection with demurrer brought on ground that another action was pending]; see also *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281 [it is improper for courts to strike entire causes of action of a pleading under Code of Civil Procedure section 436].) Notably, ABS has done just that as its demurrer is based, in part, on the rule of exclusive concurrent jurisdiction.

Accordingly, ABS's motion to strike the SACC is DENIED.

- oo0oo -

**Calendar line 3**

**- oo0oo -**

**Calendar line 4**

**- 0000 -**

**Calendar line 5**

**- 0000 -**

**Calendar line 6**

**- 0000 -**

**Calendar line 7**

**- oo0oo -**

**Calendar line 8**

**- 0000 -**



**Calendar line 9**

**- 0000 -**

**Calendar line 10**

**- oo0oo -**

**Calendar line 11**

**- oo0oo -**

**Calendar line 12**

**- oo0oo -**

**Calendar line 13**

**- oo0oo -**

**Calendar line 14**

**- oo0oo -**

**Calendar line 15**

**- oo0oo -**

**Calendar line 16**

**- oo0oo --**



**Calendar line 17**

**- oo0oo -**

**Calendar line 18**

**- oo0oo -**

**Calendar line 19**

**- oo0oo -**

**Calendar line 20**

**- oo0oo -**

**Calendar line 21**

**- oo0oo -**

**Calendar line 22**

**- oo0oo -**

**Calendar line 23**

**- oo0oo -**

**Calendar line 24**

**- oo0oo -**



**Calendar line 25**

**- oo0oo -**

**Calendar line 26**

- oo0oo -

**Calendar line 27**

**- oo0oo -**

**Calendar line 28**

**- oo0oo -**

**Calendar line 29**

**- oo0oo -**

**Calendar line 30**

- oo0oo -