

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

**Department 7, Honorable CHRISTOPHER G. RUDY, Presiding
Courtroom Clerk: R. Belligan**

DATE: 12/02/2021 TIME: 9:00 A.M.

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2170

1. **To contest the ruling, call (408) 808-6856 before 4:00 P.M.** Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
2. The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) The proposed order must be e-filed by counsel and submitted per 3.1312(c))
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4. There will be a public access line so that interested members of the public can listen in. That number is 888-363-4735, access #: 3118410.
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**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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	16CV302621	Amtrust North America Inc. et al vs Cal-Coast Custom Drywall Construction Inc.	Hearing: Demurrer to the Fourth Amended Complaint by Defendant Cal-Coast Custom Drywall Construction, Inc. Demurrer OVERRULED. Click link at line 1 for full ruling. The Court will prepare the formal order.

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LINE 2	21CV381534	Richard Beauchesne vs Bradford Baugh et al	Motion: Motion to Strike Defendant Bradford Baugh's Demurrer to the First Amended Complaint by Plaintiff Richard Beauchesne Motion DENIED. Click link at line 2 for full ruling. The Court will prepare the formal order.
LINE 3	21CV381534	Richard Beauchesne vs Bradford Baugh et al	Hearing: Demurrer to the First Amended Complaint or in the Alternative, Motion for Judgment on the Pleadings by Defendant Bradford Baugh. Demurrer SUSTAINED. Click link at line LINE 3 for full ruling. The Court will prepare the formal order.

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LINE 4	19CV346555	Qicheng Li vs Chengwen Wang et al	Motion: Motion to Compel Defendants Further Response to Request for Production to Thunder Taken Inc., (Set1) #21; Special Interrogatories to Thunder Token Inc. (Set 1) #5; and Special Interrogatories Chris Wang (Set 1) #4 & 9 by Plaintiff Qicheng Li. This matter was originally on calendar for hearing on calendar 8/17/21. The parties were ordered to an informal discovery conference (IDC). The matter was set for further hearing on 9/23/21. If not fully resolved at the IDC, the parties were ordered to provide the Court with a non-argumentative statement of remaining issues. The parties engaged in productive settlement discussions at the IDC and stipulated continue the 9/23/21 hearing to today's date so informal attempts to settle could continue. Neither party has filed a statement of remaining issues. If no appearance, the Court presumes the matter is resolved and the motion may go OFF CALENDAR.
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LINE 5	19CV352846	Albert Vande Steeg et al vs Ford Motor Company et al	Motion: Motion of Plaintiffs Albert Vande Steeg and Lucinda Vande Steeg to Strike Objections and to Compel Defendant Ford Motor Company to Further Respond to Request for Production of Documents, Set One. This matter was originally on calendar for hearing 9/23/21. The parties were ordered to an informal discovery conference (IDC). The matter was set for further hearing on 12/2/21. If not fully resolved at the IDC, the parties were ordered to provide the Court with a non-argumentative statement of remaining issues. The parties appeared before Judge Hayashi for CMC on 11/23/21 and the minute order suggests that they wanted to continue today's hearing. They were asked to submit a stipulation and order to continue. No stipulation has been filed. Neither party has filed a statement of remaining issues. If no appearance, the Court presumes the matter is resolved and the motion may go OFF CALENDAR.
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LINE 6	20CV368737	Abdullah Nadeem et al vs Jacinto Ayala et al	Motion: Motion of Genesis Medicus-CC, LLC and Jacinto "Jack" Ayala (Defendants) for an order directing non-party Dr. Gene Bohlmann ("Bohlmann") to comply fully and promptly with the subpoena issued and served on Bohlmann for the medical records of Senda Del Cid (Plaintiff) Notice of hearing was given to Plaintiff and Dr. Bohlmann. No opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. The moving papers establish that Plaintiff has placed her mental health and treatment with Dr. Bohlmann at issue in the litigation. Good Cause Appearing, the Motion is GRANTED. Dr. Bohlmann is ORDERED to produce all records responsive to Defendant's subpoena within 20 days of the date of the formal order after hearing. Moving party to prepare the formal order after hearing.
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LINE 7	21CV382331	Becky Edwards et al vs Tesla, Inc.	Motion: Motion of Defendant Tesla for an Order Authorizing the Release and Reproduction of the Santa Clara County Medical Examiner-Coroner's Photographs Concerning Decedents David Brown and Sheila Brown. Amended notice of hearing was served. No opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. CCP §129(a)(2), requires a party seeking photographs from a coroner to demonstrate good cause for the production of the coroner's photographs of a decedent. The moving papers establish that Good Cause exists here. The Motion is GRANTED. Moving party to submit a formal order.
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LINE 8	21CV382914	Jane Doe LSA 12 v. Uber Technologies, Inc., et al.	Motion: Motion of Plaintiff for Stay Pending Ruling on Plaintiff's Petition for Coordination and Request for Stay. Motion GRANTED. Click link at line 8 for full ruling. Plaintiff to prepare the formal order.
LINE 9	21CV385836	Hill Lane Estates L.P. vs W & N Transport, Inc.	Hearing Petition for Release of Property from Mechanics Lien by Petitioner Hill Lane Estates L.P. Notice of hearing provided. No opposition. Petition GRANTED. Click link at line 9 for full ruling and order. Petitioner to prepare the formal order.
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Calendar line 1

Case Name: *Castlepoint National Ins. Co. v. Cal-Coast Custom Drywall Construction, Inc.*
Case No.: 16CV302621

Defendant Cal-Coast Custom Drywall Construction, Inc. (“Defendant” or “Cal-Coast”) demurs to the Fourth Amended Complaint (“4AC”) filed by plaintiff Ricardo Lara, Insurance Commissioner of the State of California, as Liquidator of Castlepoint National Insurance (“Lara”).

I. Background

A. Factual

This is an action for breach of contract. According to the allegations of the 4AC, Cal-Coast purchased a workers compensation and employers liability insurance policy (the “Policy”) from Plaintiff, the surviving corporation from a merger of various insurance companies, including Tower Select Insurance Company (“Tower”), in October 2012. (4AC, ¶ 13, Exhibit A.) A subsequent audit performed by Plaintiff on the effective policy period for the Policy revealed that the premium basis estimate provided by Defendant was inaccurate and that the actual audited total premium and fees for that period was an additional \$78,157. (*Id.*, ¶ 14, Exhibit B.) Defendant, however, refused to make any further payments on the Policy premium, thereby breaching the agreement between the parties. (*Id.*, ¶ 16.)

B. Procedural

In November 2016, Tower initiated the instant action by filing suit against Cal-Coast for breach of contract. In November 2016, Amtrust North America, Inc. (“Amtrust”) became the new plaintiff and filed a first amended complaint (“FAC”) asserting the same claim for breach of contract, alleging that it was the administrator for Castlepoint National Insurance Company (“Castlepoint”). Cal-Coast demurred to the FAC arguing, among other things, that Amtrust failed to plead sufficient facts showing that it had standing to bring the lawsuit. In January 2020, the Court sustained the demurrer with leave to amend on that basis.

In February 2020, Amtrust filed a second amended complaint (“SAC”), alleging that it was acting by assignment from the Conservation and Liquidation Office on behalf of the Insurance Commissioner of the State of California, as conservator for Castlepoint. Cal-Coast again demurred, arguing that Amtrust still had not pleaded sufficient facts to establish its standing to file suit. The Court agreed, again sustaining the demurrer with leave to amend in June 2020.

On August 27, 2020, Castlepoint, now as plaintiff, filed the TAC asserting a single claim for breach of contract. In January 2021, Cal-Coast demurred to this pleading on the grounds that the party who filed the pleading does not have the legal capacity to sue, the pleading failed to state facts sufficient to constitute a cause of action, the pleading was uncertain, and it could not be ascertained from the pleading whether the contract sued upon was written, oral, or implied by conduct. (Code Civ. Proc., § 430.10, subs. (b), (e), (f) and (g).) The motion was opposed by Castlepoint. The Court held oral argument on January 14,

2021, and took the matter under submission, issuing a final order a week later sustaining the demurrer on the ground of failure to state facts sufficient to constitute a cause with leave to amend. The Court cautioned Castlepoint that this would likely be its last chance to state viable claims.

On February 18, 2021, the 4AC was filed by “Ricardo Lara, Insurance Commissioner of The State of California, as Liquidator of Castlepoint National Insurance Company” as the named plaintiff instead of Castlepoint. This party will be referred to herein as “Plaintiff” or “Lara.” On March 22, 2021, Cal-Coast filed the instant demurrer to the single claim asserted in the 4AC on the grounds of failure to state facts sufficient to constitute a cause of action and uncertainty. (Code Civ., § 430.10, subds. (e) and (f).) Plaintiff opposes the motion.

II. Cal-Coast’s Demurrer

The instant motion by Cal-Coast asserts a variation of the same standing argument asserted by it in support its preceding demurrers to prior iterations of the Complaint. As Cal-Coast notes in their supporting memorandum, with each new filing of an amended complaint, the name of the entity plaintiff has changed subsequent to the Court agreeing with Cal-Coast that the prior named plaintiff lacked standing to pursue a breach of contract claim against it. Cal-Coast maintains that the 4AC is still defective because there is no assertion or statement of fact therein that there has been a proper assignment to the Plaintiff to pursue a legal action against it. Cal-Coast continues that the 4AC is devoid of any claim or assertion that the newly named Plaintiff’s counsel, the “Aires Law Firm,” has the authority to pursue his action for the State of California or for the Superior Court of California. Absent such an explicit assignment, Cal-Coast insists, its demurrer must be sustained without leave to amend.

In its order on Cal-Coast’s demurrer to the TAC, the Court explained the concept of standing thusly:

Standing is the threshold element required to state a cause of action and, thus, lack of standing may be raised by demurrer. To have standing to sue, a person, or those whom he properly represents, must “have a real interest in the ultimate adjudication because [he] has [either] suffered [or] is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented. Code of Civil Procedure section 367 establishes the rule that “[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” A real party in interest is one who has “an actual and substantial interest in the subject matter of the action and who would be benefited or injured by the judgment in the action.

(*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031-1032, internal citations and quotations omitted.)

In the SAC, where Amtrust was the named Plaintiff, Castlepoint was alleged to be “the surviving corporation from a merger of all former affiliated insurance companies, including Tower,” and Amtrust was alleged to be “acting by assignment from the Conservation and Liquidation Office on behalf of the Insurance Commissioner of the State of California, as

conservator for [Castlepoint].” When Cal-Coast challenged Amtrust’s standing as Plaintiff, the Court agreed, concluding that it had alleged, at most, that it had been granted some of type of right by virtue of assignment that it received from the Insurance Commissioner of California as conservator for Castlepoint, but failed to plead any facts about the nature of that right. The Court deemed this insufficient to establish standing because the “burden of proving an assignment falls upon the party asserting rights thereunder,” and an assignment agreement “must describe the subject matter of the assignment with sufficient particularity to identify the rights assigned.” (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 988.) Because Amtrust did not allege that the conservator assigned it claims that Castlepoint had arising out of the Policy, or that the conservator assigned it the right to prosecute actions on behalf of Castlepoint, the SAC’s allegations regarding standing were deemed insufficient. The Court also noted that the Insurance Commissioner’s status as conservator was terminated on April 1, 2017, and there were no facts pleaded demonstrating that it had the authority to assign the unspecified right to Amtrust at the time the assignment was made, or that if it had been assigned the right to sue Cal-Coast, it still retained that right. Amtrust was granted leave to amend.

In the TAC, Castlepoint replaced Amtrust as Plaintiff and alleged that it was bringing the action pursuant to the liquidation order entered on March 30, 2017 in the civil action entitled *Dave Jones, Insurance Commissioner of the State of California v. Castlepoint Insurance Company* in San Francisco Superior Court (the “Liquidation Order”). (TAC, ¶ 1.) This was problematic, however, because as Cal-Coast argued in its demurrer to the TAC, the Liquidation Order expressly gives all rights and title to all of the assets of the estate of Castlepoint, including the right to pursue legal action and appoint others to pursue the same, to the California Insurance Commissioner in its role as the “Liquidator” (the “Liquidator”). As there were no allegations in the TAC that Castlepoint or its counsel had been granted authority from and/or appointed by the Liquidator to file suit against Cal-Coast, the Court again found that the TAC did not plead sufficient facts to establish Castlepoint’s standing as plaintiff.

Now, in the 4AC, the plaintiff is identified as Lara, who is purportedly represented by the Aires Law Firm, and alleges that he succeeded Dave Jones as Insurance Commissioner for the State of California on January 7, 2019. (4AC, ¶ 2.) Lara specifically pleads that he has retained the Aires Law Firm to prosecute this action “for and on his behalf in his official capacity,” and that this action is being prosecuted pursuant to the Liquidation Order. (*Id.*, ¶¶ 4-5.) Cal-Coast contends that the foregoing is insufficient because “there is no assertion or statement of fact in the [4AC] that there has been a proper assignment to pursue a legal action against [it].” (Dem. at 3:11-13.) But the Court sees no need for such facts concerning assignment because the allegations of the 4AC make it abundantly clear that Lara brings this instant action as Liquidator pursuant to the authority invested in him to do so by the Liquidation Order. Unlike the parties previously named as plaintiff in prior iterations of the complaint, Lara’s standing to assert a claim against Cal-Coast that accrued to Castlepoint is not dependent on an assignment having taken place, but rather derives from an order issued in an earlier court proceeding in 2017 involving his predecessor and Castlepoint. Consequently, contrary to what Cal-Coast alleges, there is nothing uncertain about Lara, or the Aires Law Firm’s authority to file this action as pleaded in the 4AC.

Accordingly, Cal-Coast’s demurrer to the 4AC on the grounds of uncertainty and failure to state sufficient facts is **OVERRULED**.

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Calendar lines 2 and 3

Case Name: *Beauchesne v. Baugh, et al.*

Case No.: 21CV381534

Defendant Bradford Baugh (“Baugh” or “Defendant”) demurs to the First Amended Complaint (“FAC”) filed by plaintiff Richard B. Beauchesne (“Plaintiff”) or, in the alternative, moves for judgment on the pleadings. Plaintiff moves to strike the demurrer/motion for judgment on the pleadings,

III. Background

C. Factual

This is an action for fraud purportedly committed by various individuals during Plaintiff’s divorce proceedings and actions subsequent to that. In 2009, Plaintiff’s now ex-wife, Laura Beauchesne, initiated a marital dissolution action (the “Dissolution Action”) against him in Santa Clara County Superior Court, Case No 1-09-FL-151906. Plaintiff was initially represented in the proceeding by defendant Baugh until he took over his own representation as a pro se party. Plaintiff alleges, among other things, that Baugh was engaged in a conspiracy with Plaintiff’s sister, Schmidt, and her domestic partner, Thomas Kenefick, to terminate a 2014 action filed by Plaintiff against them while he was incompetent and thus incapacitated.

D. Procedural

Plaintiff initiated this action against the defendants in Contra Costa County in December 2019, and filed the operative First Amended Complaint (“FAC”) on September 29, 2020 asserting the following causes of action: (1) attorney-client civil conspiracy (Civ. Code, § 1714.20); (2) extrinsic fraud; (3) elder abuse and negligence per se; (4) Probate Code §§ 850-859; (5) negligence; (6) breach of fiduciary duties; (7) constructive fraud; (8) Business & Professions Code § 17500 (false advertising); (9) tort of another; (10) accounting; and (11) Business & Professions Code §§ 6125-6126 (unlawful practice of law).

In January 2021, the Contra Costa County Superior Court granted Baugh’s motion to transfer the instant action to this Court. Prior to that point, in November and December of 2020, Baugh and Schmidt each filed special motions to strike portions of the FAC pursuant to Code of Civil Procedure section 425.16. Subsequent to the transfer of this action to Santa Clara County Superior Court, the Court granted ex parte applications by Baugh and Schmidt to set their special motions to strike for hearing in August 2021. Also set for hearing on that date was a demurrer to the FAC filed by Baugh in June 2021 to each of the eleven claims asserted against him on the ground of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc, § 430.10, subd. (e).)

After the hearing, as relevant here, the Court granted Baugh’s special motion to strike in its entirety and, mistakenly believing that the motion was aimed at all claims asserted against Baugh in the FAC, deemed his demurrer moot. In fact, Baugh’s special motion to

strike was directed at all claims asserted against him save for the fifth for negligence. Consequently, on September 7, 2021, Baugh filed the instant demurrer to the fifth cause of action in the FAC or, in the alternative, a motion for judgment on the pleadings as to that claim. Plaintiff opposes the motion.¹ On November 17, 2021, Plaintiff filed a motion to strike the demurrer/motion for judgment in the pleadings, which is opposed by Baugh.

IV. Baugh's Request for Judicial Notice

In support of his motion, Baugh requests that the Court take judicial notice of the following items: (1) "Application and Order for Appointment of Guardian ad Litem-Civil" filed in *Marriage of Beauchesne*, Santa Clara Superior Court Case No. 1-09-FL-151906 (Exhibit A to Declaration of Bruce D. MacLeod in Support of Baugh's Demurrer ("MacLeod Decl.)); (2) Baugh's Motion to Be Relieved as Counsel in the foregoing action (MacLeod Decl., Exhibit B); (3) the Complaint in *Beauchesne v. Baugh, et al.*, Santa Clara Superior Court Case No. 2014-1-CV-264241, filed April 13, 2014 (the "2014 Action") (MacLeod Decl., Exhibit C); (4) the Complaint in *Beauchesne v. Baugh, et al.*, Santa Clara Superior Court Case No. 2015-1-CV-287472, filed October 29, 2015 ("2015 Action") (MacLeod Decl., Exhibit D); (5) Plaintiff's first appeal of the decision in the 2015 Action, filed June 26, 2019 (MacLeod Decl., Exhibit F); (6) the Complaint in the instant action, filed July 24, 2019; (7) the FAC in the instant action, filed September 29, 2020; (8) the Court's "Notice of Transfer of Civil Matter," served on the parties on May 6, 2021; (9) Baugh's demurrer to the FAC was filed on June 10, 2021; and (10) the Court's Order on the Demurrer, Motion to Strike and Anti-SLAPP motions (MacLeod Decl., Exhibit H).

The foregoing are all court records and thus proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (d). Accordingly, Baugh's request for judicial notice is GRANTED.

V. Plaintiff's Motion to Strike Baugh's Demurrer

As threshold issues, Plaintiff contends that Baugh's demurrer should be stricken because (1) he failed to timely file and serve the motion; and (2) Baugh failed to fulfill his meet and confer obligations.

1. Timeliness

Plaintiff insists, as he did with the preceding demurrer to the FAC, that Baugh's demurrer is untimely because it was not filed until September 7, 2021, more than three months after the June 10, 2021 date mandated by the applicable Rules of Court.

As a general matter, "[a] person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint." (Code Civ. Proc., § 430.40, subd. (a).) Because this code section uses the term "may" rather than "must," it is permissive and *not* mandatory. Further, a court has the discretion, pursuant to Code of Civil Procedure section 473, subdivision (a)(1), to

¹ Plaintiff filed his opposition on November 17, 2021 and a "Supplemental Opposition" two days later. There is no authority which provides for such a supplemental document, nor is there any indication that Plaintiff sought the Court's permission for its filing. Consequently, the Court will disregard this item.

consider demurrers filed beyond the 30-day period set forth in the statute “in furtherance of justice” and where doing so will not affect the plaintiff’s “substantial rights.” (See also *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 280.)

Previously, the Court declined to exercise the discretion described in the foregoing code section because it did not agree with Plaintiff that the demurrer was untimely. As the Court explained in its order on that motion and the special motions to strike, the issue of timeliness in this instance is effected by the fact that a motion to transfer venue was filed and granted. California Rules of Court, rule 3.1326 provides, in pertinent part, that if a motion to transfer venue is granted, the defendant has 30 days to “move to strike, demur, or otherwise plead” if he or she has not previously filed a response, and this period is “deemed granted from the date the receiving court sends notice of receipt of the case and its new case number.” Here, the Court’s “Notice of Transfer of Civil Matter” was served by mail on the parties on May 6, 2021. Because service was effectuated by mail, the 30-day period was extended by an additional 5 days pursuant to Code of Civil Procedure section 1005, subdivision (b), i.e., to June 10, 2021, the date the first demurrer to the FAC was filed. Thus, the Court deemed the motion timely.

Here, Plaintiff makes the exact same arguments that he made in opposition to the prior demurrer in the instant motion to strike.² The Court does not find them persuasive. Even if it is true, as Plaintiff contends, that service of the instant motion was effectuated more than thirty-five days after the transfer notice was served, the Court maintains the discretion to consider it as long as doing so does “not affect the substantial rights of the parties.” (*Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750.) Plaintiff has not demonstrated that he would be so effected. Moreover, as Baugh maintains, a non-statutory motion for judgment on the pleadings, which he has made in the alternative, may be filed at any time. (Code Civ. Proc., § 438, subd. (f)(2).) Thus, even if the Court were to decline to exercise its discretion to hear the demurrer as untimely, Baugh’s motion would still be properly heard by the Court as a motion for judgment on the pleadings.

Ultimately, the Court will exercise its discretion and consider the demurrer on its merits.

2. *Meet and Confer*

Next, Plaintiff argues that Baugh’s motion should be stricken because he failed to satisfy the meet and confer requirement.

Under Code of Civil Procedure section 430.41, subdivision (a), a demurring party must meet and confer with the party who filed the challenged pleading “for the purpose of determining whether an agreement could be reached that would resolve the objections to be raised in the demurrer.” (Code Civ. Proc., § 430.41, subd. (a).) During this process, the demurring party must identify all causes of action it believes are subject to demurrer, identify the bases for the demurrer, and provide legal support. (Code Civ. Proc., § 430.41, subd. (a)(1).) The demurring party shall file and serve with its demurrer a declaration stating that: (1) the

² Plaintiff also makes these arguments in his opposition to Baugh’s motion. Plaintiff also asserts that if the Court made an error in ruling that the demurrer to the FAC was moot due to the granting of the anti-SLAPP motion in its entirety, the onus was on Baugh to recognize that and bring it to the Court’s attention, or subsequently move for relief pursuant to Code of Civil Procedure section 473.

means by which the demurring party met and conferred and that the parties did not reach agreement; or (2) that the party who filed the pleading failed to respond or otherwise failed to meet and confer in good faith. (Code Civ. Proc., § 430.41, subd. (a)(3).)

Baugh disputes Plaintiff's contention that he "repudiated his meet and confer obligations" but notes, correctly, that even if there is some truth to the contention, the failure of a party to meet and confer as mandated by Code of Civil Procedure section 430.41, subdivision (a), cannot serve as a ground to overrule the demurrer. (Code Civ. Proc., § 430.41, subd. (a)(4).) Thus, the Court will not strike the demurrer on this basis.

VI. Baugh's Demurrer

A. Procedural Issues

As threshold issues, Plaintiff contends that Baugh's demurrer should be denied because (1) he failed to timely file and serve the motion; and (2) Baugh failed to fulfill his meet and confer obligations. These arguments are rejected for the reasons set forth above in connection with Plaintiff's motion to strike.

B. Substantive Merits

The substantive thrust of Baugh's demurrer to the fifth cause of action is that the claim is time-barred under the applicable statute of limitations and none of the tolling provisions claimed in the FAC by Plaintiff to render his claim timely apply.

Baugh maintains that the applicable statute of limitations for the claim at issue is one year pursuant to Code of Civil Procedure section 340.6 ("Section 340.6"), subdivision (a), which provides that such a period of time applies to "[a]n action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services." The one-year limitations period is triggered when "the plaintiff discovers, or through the use of reasonable diligence should have discovered the facts constituting the wrongful act or omission[.]" (Code Civ. Proc., § 340.6, subd. (a).) As Baugh notes in his supporting memorandum, this statute applies to all causes of action "arising in the performance of professional service" and is not limited to claims of malpractice, with courts "consistently appl[ying] section 340.6 to various tort and contract actions." (*Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, 882-883, internal citations omitted.) Plaintiff does not dispute that Section 340.6 applies to his negligence claims, but maintains that the one-year period was not triggered when Baugh argues that it was.

It is Baugh's contention that the one-year period was triggered in 2014 and 2015, when Plaintiff filed similar lawsuits against him that he maintains are largely identical to the instant action because they all involve claims by Plaintiff that he was damaged by the various defendants' (inclusive of himself) actions in the handling of the Dissolution Action and 2014 and 2015 Actions. Because Plaintiff had access to pleadings prepared for Schmidt's benefit at that time by Baugh and defendant Kenefick that supposedly revealed their wrongdoing against him, Baugh argues, the statute began to run at that time.

Indeed, the event that Plaintiff argues triggered the statute in 2019 was his "discovery" that Baugh and Kenefick had prepared pleadings for Schmidt's benefit in defending the 2014

and 2015 Actions; his discovery was based on his review of the pleadings themselves. (See FAC, ¶ 44.) But Plaintiff had access to these documents well before 2019 in 2014 and 2015 when they were initially filed by Baugh and Kenefick. The fact that he did not appreciate the significance of certain notations in those pleadings until several years after they were initially filed does not delay the running of the statute of limitations because, as Baugh notes, “[u]nder Code of Civil Procedure section 340.6, .. the one-year period is triggered by the client’s discovery of ‘the facts constituting the wrongful act or omission,’ not by his discovery that such facts constitute professional negligence, i.e., by discovery that a particular legal theory is applicable based on the known facts. ‘It is irrelevant that the plaintiff is ignorant of his legal remedy of the legal theories underlying his cause of action.’” (*Village Nurseries of Greenbaum* (2002) 101 Cal.App.4th 26, 43, internal citation omitted.) Thus, unless the limitations period is tolled, Plaintiff’s claim for negligence appears to be time-barred.

Plaintiff has invoked three of the five tolling provisions enumerated in Section 340.6: subdivision (a)(2), which applies where the “attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred”; subdivision (a)(3), which applies where the “attorney willfully conceals facts constituting the wrongful act or omission when those facts are known to the attorney,” except this subdivision shall only toll the four-year limitation period; and subdivision (a)(4), which applies where the “plaintiff is under a legal or physical disability that restricts the plaintiff’s ability to commence legal action.” Baugh, however, persuasively demonstrates that none of the foregoing apply or have been adequately pleaded. First, Baugh withdrew as Plaintiff’s attorney of record in the Dissolution Action in 2013, and while Baugh continued to represent Plaintiff’s guardian ad litem, Schmidt, until 2016, the tolling provision applies only to representation of “the plaintiff,” and not someone connected to him. (See, e.g., *Gailing v. Rose, Klein & Marias* (1996) 43 Cal.App.4th 1570.) Further, even if tolling *did* apply while Baugh represented Schmidt, she was discharged as guardian ad litem in 2016, more than four years before the FAC was filed.³

Second, the only specific fact which defendants are alleged to have “willfully concealed” is that Baugh continued to communicate with Schmidt and Kenefick, but the fact that Baugh was not discharged as Schmidt’s representative in the action, and thus continued to communicate with her, was well known to Plaintiff.

Finally, the remaining tolling provision concerning disability only applies if the disability “restricts the plaintiff’s ability to commence legal action,” and Plaintiff successfully commenced *both* the 2014 and 2015 Actions, defeating any contention that he was so disabled. Plaintiff also offers no authority which supports the notion that a judicial determination of incompetence in one action (here, the Dissolution Action in which Schmidt was appointed as Plaintiff’s guardian ad litem) means that the disability tolling provision is automatically applicable to a subsequent action. Moreover, the only support offered by Plaintiff in support of

³ Baugh persuasively argues that the relevant date for determining timeliness relative to the claims asserted against him is the filing of the FAC on September 29, 2020 and *not* the original complaint in 2019, because Plaintiff failed to comply with Code of Civil Procedure section 474’s requirements for “Doe” defendants, specifically true ignorance of the Doe defendant’s name. (See *Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1143.) Baugh was added to the FAC as a named defendant, but Plaintiff clearly had knowledge of his identity when he filed this action as evidenced by his recitation of the facts included in his prior complaints, and his personal participation in the majority of the acts he describes in the FAC. Thus, his addition as a defendant to this action does not relate back to the filing of the original complaint.

his claim to “disability” is that the court in the Dissolution Action appointed a guardian ad litem, Schmidt, in that action, but a guardian ad litem is appointed only for the purposes of a *specific action* (see *Poester v. Superior Court* (1993) 20 Cal.App.4th 948, 951), and in any event Schmidt was discharged as guardian ad litem in 2016, more than four years before the FAC was filed.

Plaintiff additionally attempts to rely on the doctrine of equitable estoppel to salvage his claims. This doctrine addresses “the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period.” (*May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1338.) But as Baugh maintains, Plaintiff has not pleaded that he engaged in conduct that so induced Plaintiff; the appointment of a guardian ad litem, the conduct pleaded by Plaintiff in support of his equitable estoppel argument, did not prevent Plaintiff from filing suit in 2014 and 2015, and thus cannot be deemed to have prevented the filing of the instant action.

In sum, the Court finds that Plaintiff’s claim for negligence against Baugh is time-barred. Consequently, it need not address the merits of Baugh’s remaining argument that the conduct upon which the claim is predicted is protected by the litigation privilege. Therefore, Baugh’s demurrer to the fifth cause of action on the ground of failure to state facts sufficient to constitute a cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

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Case Name: *Jane Doe LSA 12 v. Uber Technologies, Inc., et al*

Case No.: 21CV382914

BACKGROUND

Before the Court is the Motion Jane Doe LSA 12 (Plaintiff) seeking an order staying this action until a decision has been issued on Plaintiff's Petition for Coordination and Request for Stay in Judicial Council Coordination proceeding No. 5188 (Uber Sexual Assault Cases). The Motion is opposed by Uber.

On June 10, 2021 Plaintiff Jane Doe 12 filed her complaint against Defendants Uber Technologies, Inc. and Rasier, LLC (collectively "Uber"), alleging causes of action for General Negligence; Negligent Hiring, Retention, and Supervision; Common Carrier Negligence; Negligent Failure to Warn; Vicarious Liability/Liability for the Torts of Uber's Drivers; Vicarious Liability for Sexual Assault; Vicarious Liability for Sexual Battery; Intentional Misrepresentation; Negligent Misrepresentation; Negligent Infliction of Emotional Distress; Breach of Contract; Strict Product Liability-Design Defect; and Strict Product Liability Failure to Warn. At this time, nearly 80 additional cases have been filed against Uber in San Francisco Superior Court, Kern County Superior Court, and Los Angeles County Superior Court. All of the complaints stem from what are described as "similar, if not identical, allegations against Uber for its failure to employ measures and policies to protect its customers."

The Honorable Judge Andrew Y.S. Cheng of the San Francisco County Superior Court was assigned to sit as the Coordination Motion Judge in the Uber Sexual Assault Cases, JCCP No. 5188. (In Re: Uber Sexual Assault Cases August 12, 2021). Plaintiff requests that this court stay proceedings in this case pending a ruling from the Judicial Council on the Petition for Coordination or Request for a Stay, whichever comes first. Uber asks the Court to deny the request. Both parties ask the Court to take judicial notice of various court filings.

DISCUSSION

I. Applicable Law

Any party may file a motion for an order under Code of Civil Procedure section 404.5 staying the proceedings in any action being considered for, or affecting an action being considered for, coordination, or the court may stay the proceedings on its own motion. (California Rule of Court Rule 3.515 (a) in pertinent part)

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." *Walker v. Superior Court* (1991) 53 Cal.3d 257. This includes the inherent powers to manage and fashion procedures to control litigation to insure the orderly administration of justice.

Evidence Code section 452(d) permits 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"

II. Analysis

Both parties ask the Court to take judicial notice of orders and results reached at the trial court level involving requests for stay in other sexual assault claims against Uber. The Court grants each parties request for judicial notice.

Plaintiff has presented facts to support a finding of good cause to stay proceedings in this case pending Judge Cheng's rulings on Plaintiff's Petition. Uber has failed to show that it will suffer actual harm if a stay short stay is implemented. Uber's argument that it will be hampered in its investigation of the specific facts of this case is tempered by the fact that Plaintiff only seeks to stay this action pending Judge Cheng's decision.

While Uber may wish to conduct fact specific discovery as to the particular incident alleged in Plaintiff's Complaint in this action, the Court must also assume that Uber has, or will, propound broader discovery to probe Plaintiff's general allegations against Uber for its alleged failure to employ measures and policies to protect its customers. Those general allegations are the very claims argued to justify Coordination. The Court does not believe it makes sense to make piecemeal orders in this case limiting discovery. The better course is to permit Judge Cheng to rule on the Coordination Petition and Request for Stay.

The Court finds good cause to stay proceedings in this case pending Judge Cheng's rulings. Plaintiff's motion to stay pending a decision on Plaintiff's Petition for Coordination and Request for Stay in Judicial Council Coordination proceeding No. 5188 is GRANTED. This matter is set for a status hearing on 3/8/22 at 10:00 AM. The Demurrer and Motion to Strike scheduled for 1/6/22 are also continued to 3/8/22 at 10:00 AM for setting, depending upon Judge Cheng's ruling.

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Case Name: *Hill Lane Estates L.P. vs W & N Transport, Inc.*

Case No.: 21CV385836

BACKGROUND

Before the Court is Petition of Hill Lane Estates L.P., a California Limited Partnership, (Petitioner) for Release of Property pursuant to Civil Code §8480 from a Mechanics Lien filed W&N Transport, Inc. (Respondent).

DISCUSSION

Petitioner filed its Petition for Release of Property from Mechanics Lien on July 13, 2021. The property at issue is residential real property located at 30 Roberts Road, Los Gatos, California 92677; APN No. 529-10-1 56, The lot and parcel number are on a corner and the lot has been split and also shares the address of 6 Forrest Avenue #2, Los Gatos, CA 95032. The Mechanics' Lien was filed by Respondent.

The petition and notice of hearing were served on Respondent, October 24, 2021, which was more than 15 days before the hearing and in compliance with Civil Code § 8486 (b). The verified petition alleged that Respondent failed to perfect its lien, that there was no legal basis for the lien to remain in place and that Respondent refused to release the lien voluntarily. No opposition was filed to the petition. A failure to oppose a motion (or a petition) may be deemed a consent to the granting of the motion. CRC Rule 8.54c.

No opposition having been filed and good cause appearing, the Petition is GRANTED. Petitioner shall have judgment against Respondent as follows:

1. The real property described known as 30 Roberts Road, Los Gatos, California 92677; APN No. 529-10-1 56 and 6 Forrest Avenue #2, Los Gatos, CA 95032 are released from Respondent's claim of lien;
2. Petitioner shall recover attorney's fees as the prevailing party in the amount of \$3,500.00 pursuant to Civil Code §8488(c)

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