January 31, 2025
Dept. 9
Tentative Rulings

1.	**24CV1559**	**ARCHIBEQUE v. FCA US, LLC**
Motions to Compel		

Plaintiff filed a Motion to Compel Further Responses and Documents and a Motion to Compel Further Responses to Interrogatories. Discovery has been an issue throughout this case and the parties have a pattern of failing to successfully meet and confer.

Neither of these Notices complies with Local Rule 7.10.05, which was an issue with Plaintiff's prior Motions and was stated in the December 4, 2024, Tentative Ruling,

TENTATIVE RULING #1:

1. **THE PARTIES ARE DIRECTED TO MEET AND CONFER ON THESE MOTIONS AND ALL OUTSTANDING DISCOVERY REQUESTS.**
2. **THIS HEARING IS CONTINUED TO FRIDAY, MARCH 21, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	**24CV0407**	**CITIBANK v. GHORBANZADEH**
Motion to Set-Aside Default		

Defendant hereby moves for the Court to set aside the default entered on November 25, 2024, pursuant to California Code of Civil Procedure § 473. Defendant states that she is a white woman but the proof of service states the person served answered to Defendant's name and was a black-haired American Indian male. Defendant states she was never served and never had the alleged line of credit. She provided a proposed Answer with the Motion.

> [B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite* v. *Southern Pacific Co*. (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

Defendant timely brought this Motion, so the Court grants Defendant's request to set-aside the default.

TENTATIVE RULING #2:

MOTION GRANTED.

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3.	**24CV2395**	**MATTER OF FUNDING METRICS, LLC**
Petition to Confirm Contractual Arbitration Award		

Petitioner Funding Metrics, LLC dba Lendini alleges and requests relief against Respondent Cal-Sun Constriction, LLC and Raymond Tyler Fritz. The Petition involves a dispute over $64,825.00. This Court is the proper venue because the arbitration was held outside of California, and the agreement was made in El Dorado County, plus Respondent have a place of business and reside in the county.

The dispute involves an alleged breach of the Future Receipts Sale Agreement where Petitioner agreed to purchase future receivables for $81,600.00 and Respondent allegedly failed to pay Petitioner the business weekly rate of $2,550.00 until the full amount was paid. The agreement is submitted at Attachment 4(b) and contains an arbitration provision in paragraph 8. The Arbitration award was made on September 4, 2024, and requires Respondent to pay Petitioner $78,636.00. The award is attached as Attachment 8(c). Petitioner alleges that a signed copy of the award was served on September 4, 2024, and requests that the Court confirm the award and enter judgment according to it, with interest at the statutory rate.

Pursuant to California Code of Civil Procedure § 1285, the Court grants the Petition.

TENTATIVE RULING #3:

PETITION GRANTED.

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4.	**24CV0579**	**JP MORGAN CHASE BANK v. VISCONTI**
Motion for Judgment on the Pleadings		

Plaintiff brings this Motion for Judgment on the Pleadings ("Motion"). This case involves money damages from a credit card account and the Complaint has common count causes of action. Defendant filed an Answer on May 20, 2024, and does not deny any of the allegations nor offer any affirmative defenses. Defendant only asks to arrange a different payment plan and for a reduction of the amount owed.

California Code of Civil Procedure § 438 provides in relevant part that a party may move for judgment on the pleadings. If the moving party is a plaintiff, the grounds for the motion are that the complaint states facts sufficient to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. The grounds for the motion shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.

Plaintiff argues that the Complaint sets out all necessary allegations for common count causes of action, that Defendant admits all allegations of the complaint and admits owing the debt and has no valid affirmative defenses so judgment on the pleadings must be granted. Since Defendant has admitted the allegations, Plaintiff argues there is no reasonable possibility that the defect could be cured by amendment and therefore leave of amend should be denied. When there is no reasonable possibility of curing the defect, the motion is properly granted without leave to amend. *Smiley v. Citibank* (1995) 11 Cal.4th 138, 164.

Plaintiff has alleged that within the last four years Defendant had an open book account for money due, which was established in writing and that there is an amount due and unpaid. Defendant admitted the allegations. Therefore, judgment on the pleadings is warranted without leave to amend.

TENTATIVE RULING #4:

MOTION IS GRANTED WITHOUT LEAVE TO AMEND.

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5.	**24CV0278**	**BRAZELL v. INNOBIOSURG OF AMERICA**
Motions to Compel		

Neither Motion complies with Local Rule 7.10.05.

This case involves allegations of discrimination, retaliation and harassment by Defendant during Plaintiff's employment.

On April 25, 2024, Plaintiff served its first round of discovery requests on Defendant, which included Form Interrogatories (General and Employment), Special Interrogatories (Set One), and Requests for Production of Documents (Set One). On June 10, 2024, Defendant served its responses. The parties met and conferred which lead to Defendant serving further responses on August 27, 2024 with new verifications. Plaintiff contacted Defendant regarding additional deficiencies and Defendant argued that the deadline to file a motion to compel had expired and it was therefore not required to further supplement its responses. On October 23, 2024, the Court found that the Motions were filed as of October 15, 2024.

Plaintiff brings two Motions – one arguing she is entitled to further responses on Requests for Production Nos. 18, 38, 40, and 41, and the other arguing she is entitled to further responses to Form Interrogatories Nos. 15.1 and 216.1, and Special Interrogatories Nos. 18-20, and 22-24. Both Motions properly include separate statements, outlining Plaintiff's arguments as to why Defendant's responses are defective.

Defendant responds to the Motions, arguing that the Motions are untimely and that the deadline for filing was September 4, 2024. However, as pointed out in Plaintiff's Reply, because new verifications were also provided on August 27, 2024, pursuant to California Code of Civil Procedure ("CCP") § 2031.310(c) the 45-day clock started again. The Court agrees with Attorney Peck's own October 10, 2024 emails wherein she twice states that the deadline for filing the Motions to Compel is October 11, 2024. Plaintiff's Motions were not deemed filed by the Court until October 15, 2024. Therefore, the Motions are untimely.

According to CCP §§ 2031.300(c) and 2030.290(c), in the absence of substantial justification or other circumstances, the Court is required to impose monetary sanctions against the moving party for making an unsuccessful motion. By her own admissions, Plaintiff's counsel knew the deadline was October 11, 2024 and brought two untimely Motions regardless. Therefore, the Court is imposing sanctions of $00.00 per Motion against Plaintiff.

TENTATIVE RULING #5:

1. **MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS IS DENIED.**
2. **MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES IS DENIED.**

3. **SANCTIONS IN THE AMOUNT OF $400.00 ORDERED AGAINST PLAINTIFF, PAYABLE BY FRIDAY, FEBRUARY 28, 2025.**

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6.	23CV1906	PHOONG LAW CORP. v. MCKENZIE et al
Motion for Leave to Demurrer to Answer		

The Motion does not comply with Local Rule 7.10.05.

This case involves personal injury settlement funds of Kristen Ann Spignesi, who passed away before the funds were distributed. The decedent was survived by a fiancé and three daughters, who are the collective Defendants.

Terra Spignesi, Andrea Spignesi, and Danielle Spignesi (collectively the "Spignesi Defendants") hereby bring this Motion for Leave to Demurrer to the Answer filed by co-Defendant Matthew McKenzie ("McKenzie"). The Motion is made pursuant to Code of Civil Procedure §§ 430.30 and 473.

The Spignesi Defendants argue that McKenzie's Answer does not allege any facts supporting a legal right to the disputed funds, is untimely, and cannot be cured by amendment. First, the Spignesi Defendants argue that McKenzie admits he and the decedent were not married or in a registered domestic partnership, nor does he allege any written or implied agreement with decedent regarding the funds. Second, the Spignesi Defendants argue that McKenzie's claim is untimely, because any claim against a decedent's estate must be brought within one year from the decedent's death. This seems to be an error. The Spignesi Defendants' Motion states the decedent passed away in June 2022 and the statutory deadline for filing claims expired in June 2023. The Complaint states that the decedent signed a release of all claims on April 16, 2023, and passed away in June 2023. If the decedent signed a release of all claims in April 2023, then the Spignesi Defendants' allegation that decedent died in June 2022 cannot be true. Lastly, the Spignesi Defendants argue that the deficiencies in McKenzie's Answer cannot be cured and therefore the demurrer should be sustained without leave to amend.

The Spignesi Defendants also argue that they were unable to timely file the Demurrer within the statutory deadline due to McKenzie's delay in filing his Answer and therefore allowing leave to file the Demurrer will not prejudice McKenzie.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code of Civil Procedure, § 473(a)(1).)

The Complaint was filed on November 2, 2023. The McKenzie Answer was filed on January 17, 2025 and this Motion was promptly brought thereafter on January 21, 2025. The

Court finds that allowing the Spignesi Defendants leave to bring the Demurrer is in the furtherance of justice, based on the delay in filing the McKenzie Answer.

TENTATIVE RULING #6:

MOTION FOR LEAVE TO FILE A DEMURRER IS GRANTED. DEMURRER IS TO BE FILED WITHIN 10 DAYS FROM THIS ORDER.

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7.	**23CV1042**	**WELLS FARGO BANK v. ARBUCKLE**
Motion to Vacate Dismissal		

The Notice does not comply with Local Rule 7.10.05.

This matter is a collections case, wherein Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") sued Michael T. Arbuckle ("Defendant") for the collection of a debt in the sum of $10,707.36. The parties later entered into a Stipulation for Entry of Judgment and Installment Payments & Dismissal of Action with Consent to Court Retaining Jurisdiction Pursuant to California Code of Civil Procedure ("CCP") § 664.6 ("Stipulation").

Pursuant to the Stipulation, Defendant was required to make payments of $2,097.36 on or before March 1, 2024, followed by $210.00 on or before the 1st of every month beginning April 1, 2024 through July 1, 2027, with the final payment of $210.00 being due and payable on or before August 1, 2027. The total settlement amount was the full amount of debt, $10,707.36. As of December 4, 2024, Plaintiff states Defendant has made no payments. On July 22, 2024, Plaintiff wrote Defendant, informing him that he was in default pursuant to the Stipulation.

CCP § 664.6 provides that when parties to pending litigation stipulate, in a signed writing, settling a case, the court may enter judgment pursuant to the terms of the settlement. The Stipulation in this case is attached to the Motion as Exhibit 1. The Stipulation provides that in the event of default by Defendant, judgment may be entered against Defendant in the total sum of $10,707.36 plus costs, less credit for any payments made. Plaintiff received no payments from Defendant so there are no credits. Plaintiff incurred a $370.00 filing fee and a $75.00 fee for service of process. The costs added to the total debt, brings the amount to $11,152.36.

TENTATIVE RULING #7:

1. **MOTION TO VACATE DISMISSAL IS GRANTED.**
2. **JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE TOTAL SUM OF $11,152.36.**

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8.	24CV1657	DIEGO SALAZAR ENTERPRISES v. WOOD
Demurrer		

This case involves alleged defamatory statements and posts on the internet by Lisa Marie Wood ("Wood" or "Defendant") about Diego Salazar and Heather Teahan, who operate an auto lift business, Diego Salazar Enterprises, Inc. (collectively "Plaintiffs").

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)." There is no request for judicial notice.

Meet and Confer Requirement

Code of Civil Procedure ("CCP") § 430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Defense counsel claims compliance with the meet and confer requirements of CCP § 430.41(a) because one letter was sent to Plaintiff's counsel. However, the code requires the demurring party to "meet and confer in person or by telephone." Therefore, defense counsel's meet and confer efforts are not actually sufficient. Because there is no opposition filed, the Court will address the Demurrer.

The Complaint includes 2 causes of action: (1) general negligence, and (2) intentional tort. Defendant argues both causes of action fail under CCP § 430.10(e) for failing to state a cause of action. The Complaint alleges that Defendants made "false and defamatory statements/posts on the internet and El Dorado Chat Web Page…claiming that Plaintiffs: (1) Business took her/their money and did poor work; (2) alleged criminal acts perpetrated by Plaintiffs when Defendants knew, or should have known, the statements were untrue." (Complaint, p. 4, General Negligence). The Complaint further alleges that Defendants made false, defamatory and slanderous statements about Plaintiffs on social media, El Dorado Chat, and other websites, claiming that Plaintiffs performed poor work for Defendants and took monies from Defendants on a false basis and that Plaintiff performed criminal acts.

Defendants cite to two cases, requiring that the alleged statements be included in the pleadings. See *Des Granges v. Crall* (1915) 27 Cal.App.313 and *Haub v. Friermuth* (1905) 1 Cal.App.556. In reviewing a case on Demurrer, the Court treats all material facts properly plead as admitted, but does not assume the truth of any contentions, deductions, or legal conclusions. *Kim v. Regents of California* (2000) 80 Cal.App.4th 160, 163. In this case, no material facts have been properly plead, but instead the Complaint only concludes contentions and legal conclusions. The demurrer is sustained.

Leave to amend must be denied where there is no reasonable probability that the defect in the complaint can be cured by an amendment. *Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1539. The Court finds that there may be a reasonable probability that the Complaint could be cured by amendment, but that burden rests on the Plaintiff and the Plaintiff has not opposed the Demurrer or provided any evidence of how the Complaint could be amended. *Blank v. Kirwin* (1985) 39 Cal.3d 311, 318; *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 384. Leave to amend is denied because Plaintiffs did not meet their burden.

TENTATIVE RULING #8:

1. **DEMURRER SUSTAINED AS TO ALL CAUSES OF ACTION WITHOUT LEAVE TO AMEND.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9.	**24CV0710**	**JONES v. MARR-JONES**
Demurrer		

This case involves a previously married couple. The Complaint alleges that Defendant took video recordings and photographs of Plaintiff in his home without his knowledge and consent, and that Plaintiff is attempting to use those recordings and photographs to defame Plaintiff in different proceedings.

Meet and Confer Requirement

Code of Civil Procedure ("CCP") §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Defendant filed a Declaration stating that attempts to meet and confer on the issues were unsuccessful. As both parties are pro per and based on their relationship, the Court does not find that further meet and confer efforts between the parties would be productive.

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)." There is no proper request for judicial

notice. Defendant improperly asks in her Memorandum of Points and Authorities that the Court take judicial notice of the filed Stipulation and Order for Disposition of the Marital Residence.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**
>
> Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

The Amended Complaint includes one cause of action for invasion of privacy. Defendant demurs on the grounds that the pleading does not state facts sufficient to constitute a cause of action (CCP §430.10(e), that the pleading lacks jurisdiction over subject matter (CCP §430.10(a), that the pleading is a misuse of the legal process, and that the pleading is uncertain and unclear (CCP §430.10(f). The Notice does not comply with Local Rule 7.10.05.

Judicial Council of California Civil Jury Instructions number 1800 states that in order to establish a claim for violation of privacy, the Plaintiff must prove: 1) he had a reasonable expectation of privacy in the house; 2) Defendant intentionally intruded in the house; 3) Defendant's intrusion would be highly offensive to a reasonable person; 4) Defendant was harmed, and 5) Defendant's conduct was a substantial factor in causing Plaintiff's harm. Based on the requirement that the Complaint must be construed liberally, the Court finds that Plaintiff has alleged facts sufficient to constitute a cause of action.

The Court is not persuaded by Defendant's argument that the Court lacks jurisdiction over this matter, as she is merely arguing that it should be heard in a different department and not a different jurisdiction.

Defendant attempts to argue that the pleading is a misuse of the legal process, without evidence, except for hearsay.

Lastly, Defendant argues that Plaintiff's allegations of emotional distress are vague and devoid of factual support so she cannot ascertain the specific conduct that caused harm. This again goes to whether Plaintiff has alleged facts sufficient to constitute a cause of action, which was addressed above.

Plaintiff filed an Opposition, which does not change the Court's analysis.

TENTATIVE RULING #9:

DEMURRER OVERRULED.

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