March 7, 2025
Dept. 9
Tentative Rulings

1.	**24CV0666**	**ROCHE v. AKERS**
Motion to be Relieved		

Counsel for the Plaintiffs has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there is an irretrievable breakdown in the attorney-client relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion was served on the Plaintiffs by e-mail on February 18, 2025.

The Declaration does not state the date or time of the next hearing scheduled and the proposed Order incorrectly states the next hearing date and location.

TENTATIVE RULING #1:

ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS ORDERED TO SUBMIT A REVISED PROPOSED ORDER WHICH CORRECTLY INCLUDES THE UPCOMING HEARING INFORMATION. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e). ORDER IS EFFECTIVE UPON FILING OF PROOF OF SERVICE INDICATING SERVICE OF SIGNED ORDER ON CLIENT.

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

2.	**23CV1811**	**CAPITAL ONE v. TILL**
Motion to be Relieved		

Counsel for the Defendant has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown of the attorney-client relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendant at his last known address and on counsel for Plaintiff was filed on February 3, 2025.

The following upcoming hearings are scheduled: motions in limine for March 28, 2025, at 1:30 PM in Dept. 9; trial confirmation on April 4, 2025, at 1:30 PM in Dept. 9; and trial on April 8, 2025, at 8:30 AM in Dept. 9. All dates are listed on the Declaration and proposed Order.

TENTATIVE RULING #2:

ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e). ORDER IS EFFECTIVE UPON FILING OF PROOF OF SERVICE INDICATING SERVICE OF SIGNED ORDER ON CLIENT.

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3.	**24CV1253**	**CAPITAL ONE v. GANSBERG**
Judgment on the Pleadings		

The Motion does not comply with Local Rule 7.10.05(C).

Request for Judicial Notice

Plaintiff has filed a request for the Court to take judicial notice of the December 16, 2024, Order in this case. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "records of (1) any court in this state." Evidence Code §452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Plaintiff's request for judicial notice is granted.

Motion

On December 16, 2024, this Court issued an Order deeming certain facts admitted based on Defendant's failure to respond to Requests for Admissions propounded by Plaintiff. Based on those admitted facts, Plaintiff moves for judgment on the pleadings pursuant to Code of Civil Procedure §438. Plaintiff's counsel filed a declaration confirming her meet and confer efforts with Defendant prior to filing the motion, as required by Code of Civil Procedure §439.

All elements of the cause of action for common counts having been conclusively established by the Court's Order, there is no possibility that granting leave to amend would alter the result.

Proof of service of notice of the hearings was filed on January 17, 2025. There is no opposition.

TENTATIVE RULING #3:

1. **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND.**

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4.	**24CV0676**	**COCHRAN v. MARSHALL MEDICAL**
Motion to be Relieved		

Counsel for the Plaintiff Cindy Cochran has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there is an irreconcilable breakdown in the attorney-client relationship and communication.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on counsel for Defendant was filed on January 23, 2025. The Plaintiff is not listed on the Proof of service.

The proposed Order included with this Motion lists several hearing dates, which are not accurate. This case is set for a Case Management Conference on April 8, 2025, at 8:30 AM in Dept. 10; Defendant's Motion for Stay and Protective Order are set to be heard on April 25, 2025, at 8:30 AM in Dept. 9 and Defendant's Motion for Summary Judgment is set on May 9, 2025, at 8:31 AM in Dept. 9. No amended Order was filed with the accurate hearing dates.

Defendant filed an Opposition, noting the errors identified by the Court above. Due to the lack of service of Plaintiff, the motion is denied.

TENTATIVE RULING #4:

MOTION DENIED.

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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5.	**24CV1687**	**JP MORGAN CHASE BANK v. D'AURIZIO**
Deem Matters Admitted		

On October 1, 2024, Plaintiff served Defendant with Requests for Admissions ("RFA") as part of discovery in this lawsuit. Responses to the RFA were due on November 5, 2024.[1] Defendant has not yet responded to this discovery. Plaintiff's counsel wrote to Defendant in an attempt to meet and confer, and offering an extension for Defendant's responses. Plaintiff has filed this motion seeking to have the matters specified in the RFA deemed admitted and served notice of the motion on Defendant by mail on February 13, 2025.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

[1] With the exception of unlawful detainer actions, "[w]ithin 30 days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response." Code of Civil Procedure § 2033.250(a).

TENTATIVE RULING #5:

1. **PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED IS GRANTED.**
2. **SANCTIONS IN THE AMOUNT OF $150.00 ORDERED PAYABLE AGAINST DEFENDANT BEFORE MAY 9, 2025.**

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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6.	**23CV1190**	**FORD v. WFG NATIONAL TITLE INSURANCE**
Motion to Compel		

Plaintiff filed this Motion, moving the Court for an order compelling Defendant to provide further responses to: Plaintiff's Form Interrogatories – General, Set One, No. 17.1; Plaintiff's Request for Production of Documents, Set One, Nos. 2-4, 8-11, 15-16, 18-19, 21, 26, 28, 30-31, 35, 37-45, 48, 51-57, 63, 66, 68-69, 71, 83, 89-97; and Plaintiff's Special Interrogatories, Set One, Nos. 12-17 and 28.

On June 14, 2024, Defendant WFG served initial discovery responses. Searcy Decl. ¶ 3, Exs. 4-6. The parties met and conferred, and Defendant served some supplemental responses on November 8, 2024. On December 4, 2024, Plaintiff's counsel sent Defendant's counsel another meet and confer correspondence regarding the discovery responses included in my July 25, 2024 meet and confer correspondence that Defendant failed to supplement. Searcy Decl. ¶ 7, Ex. 12. Since December 4, 2024, several extensions between the parties were granted. Searcy Decl. ¶¶ 8-14, Exs. 13-19. However, to date, Plaintiff states that Defendant has failed to provide the requested supplemental discovery responses or a response to Plaintiff's December 4, 2024, meet and confer correspondence. Searcy Decl. ¶ 15.

The parties have successfully engaged in prior meet and confer efforts and were discussing settlement. Once the settlement conversations stalled, it seems the meet and confer efforts on the discovery issues did as well.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, MARCH 7, 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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7.	**25CV0008**	**MATTER OF SWEEDEN**
Minor's Compromise		

On November 25, 2024, Kayla Sweeden, the mother of the minor who is the subject of this filed an Ex-Parte Application to be appointed guardian ad litem for the purpose of this proceeding, which was not approved by the Court as no Order was prepared.

* * *

This is a Petition to compromise a minor's claim. The Petition states the minor sustained contusion and laceration of lip, bloody nose, facial laceration and anxiety, resulting from an auto accident in 2021. A copy of the accident investigation report was filed with the Petition, as required by Local Rule 7.10.12A(4) (Attachment 5). Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $10,000.00.

The Petition states the minor incurred $1,574.42 in medical expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $2,500.00, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The minor's attorney also requests reimbursement for costs in the amount of $802.00. There are copies of bills substantiating claimed costs in the amount of $510.00 attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6), but not the remaining $292.00 claimed.

With respect to the $5,123.58 due to the minor, the Petition requests that they be deposited into an insured account with an unknown bank, subject to withdrawal with court authorization, until the minor obtains age 18, when the mother can withdraw the funds without

further court order. Attachment 18b(2) indicates the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, MARCH 7, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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8.	**24CV1411**	**CONSOLIDATED ELECTRICAL DISTRIBUTORS v. GSJ**
Demurrer		

Defendant William Goldstein & Z-Sportz, Inc. (collectively "demurring Defendants") demur to each cause of action in the Complaint, despite only the Eighth and Ninth causes of action being brought against them. The Notice does not comply with Local Rule 7.10.05.

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.

Meet and Confer Requirement

Code of Civil Procedure §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").

According to the Declaration of Robert Fernandez, only the law clerk engaged in meet and confer discussions with Plaintiff's counsel. However, Defendant is now pro per so further conferences would likely not be productive.

***

The Complaint includes 9 causes of action and the demurring Defendants attack all 9, but as stated above, only 2 of those causes are brought against them: (8) Foreclosure of Mechanic's Lien; and (9) Enforcement of Mechanic's Lien Release Bond.

Demurring Defendants argue that the Eighth and Ninth causes of action fail to state facts sufficient to constitute a cause of action. However, as pointed out by Plaintiff this case is a limited civil action and pursuant to California Code of Civil Procedure §92(c), special demurrers are not allowed.

If the Court accepts this as a general demurrer, then the Court turns to the California Constitution, Article 14, §3 and California Civil Code §8460, which provides the standard for a mechanic's lien and foreclosure of that lien. Demurring Defendants argue that the Complaint fails to allege facts showing that Defendants were unjustly enriched or had any knowledge of potential liability related to unpaid suppliers; however, they provide no statutory or case law showing this is required of Plaintiffs. Demurring Defendants cite to *Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715, for the proposition that a mechanic's lien is invalid if the owner has paid the contract price in full to the general contractor. However, that case focuses on an unjust enrichment claim and the notice requirements of a mechanic's lien. *Truestone* does not actually say what Defendants state it does. Further, *Truestone* repeatedly states that there is policy, grounded in the California Constitution, favoring the protection of laborers and materialmen. *Id.* at 723. Based on the liberal reading of pleadings at the demurrer stage, the two statutes, and the facts alleged in the Complaint, the demurrer as to the Eight cause of action is overruled.

In terms of the Ninth cause of action, the Court turns to California Civil Code § 8424. Demurring Defendants argue that the Complaint fails to allege they were parties to or obligated under any mechanic's lien release bond, nor that they obtained or were required to obtain a mechanic's release bond. Again, demurring Defendants do not provide any statutory or case law showing that Plaintiff must plead those particular facts. Demurring Defendants cite to §8424, which gives Plaintiff as a subcontractor, the ability to bring this cause of action. Based on the liberal reading of pleadings at the demurrer stage, the statute, and the facts alleged in the Complaint, the demurrer as to the Ninth cause of action is overruled.

Therefore, the Demurrer is overruled completely.

//

TENTATIVE RULING #8:

DEMURRER OVERRULED.

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9.	**23CV0035**	**J.M. v. GENERAL COUNCIL OF THE ASSEMBLIES OF GOD**
Demurrer		

This case involves allegations of childhood sexual assault by Plaintiff John Doe #1 J.M. ("Plaintiff") against Defendants, including Assemblies of God, Northern California & Nevada District Council, Inc. ("Defendant"). Defendant hereby demurrers to Plaintiff's First Amended Complaint ("FAC"). The Notice does not comply with Local Rule 7.10.05.

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.

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").

Based on the Declaration of attorney Kendrick Jan, the Court finds that the parties have engaged in sufficient meet and confer efforts.

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)."

Defendants requests judicial notice of two official records of this Court, an official record of the California Secretary of State, an official record of the California Franchise Tax Boad, and three corporate documents.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

In his Opposition, Plaintiff does not object to any of the requested items being judicially noticed. Therefore, Defendant's request for judicial notice is granted.

***

The FAC includes 7 causes of action: (1) Sexual Abuse of a Minor; (2) Intentional Infliction of Emotional Distress; (3) Sexual Harassment; (4) Negligence; (5) Negligent Supervision; (6) Violation of Civil Rights; and (7) Battery.

Defendant demurs to all seven causes of action on the following grounds:

1. Pursuant to CCP § 430.10(e), Defendant demurs to the First through Seventh Causes of Action in Plaintiff's FAC on the grounds that they fail to state facts sufficient to state a cause of action because they are barred by the applicable statute of limitation that was in effect at the time the original Complaint was filed.

2. The First Cause of Action (sexual abuse of a minor) fails to state facts sufficient to state a cause of action because Defendant cannot be liable for the perpetrator(s)' alleged conduct on a *respondeat superior* theory or directly liable on a ratification theory, and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

3. The Second Cause of Action (intentional infliction of emotional distress) fails to state facts sufficient to state a cause of action because Plaintiff has failed to allege the requisite elements against Defendant, and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

4. The Third Cause of Action (sexual harassment) fails to state facts sufficient to state a cause of action because Plaintiff failed to allege any specific facts supporting this cause of action against Defendant and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

5. The Fourth Cause of Action (negligence) fails to state facts sufficient to constitute a cause of action by failing to allege the requisite elements, and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

6. The Fifth Cause of Action (negligent supervision) fails to state facts sufficient to constitute a cause of action by failing to allege the requisite elements, and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

7. The Sixth Cause of Action (violation of civil rights) fails to state facts sufficient to state a cause of action because Plaintiff has failed to allege any specific facts supporting this cause of action against Defendant and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

8. The Seventh Cause of Action (battery) fails to state facts sufficient to state a cause of action because Defendant cannot be vicariously liable for the alleged perpetrator(s)' alleged acts, Plaintiff alleges no specific acts by Defendant, and it is uncertain because it fails to allege specific allegations of wrongdoing against Defendant.

Defendant's first argument is that Plaintiff's entire case is barred by the applicable statute of limitations and was filed eleven days late. Plaintiff alleges that "This action to recover damages on behalf of an adult who was a victim of childhood sexual abuse is governed by Code of Civil Procedure § 340.1." (FAC, ¶ 5.) The original complaint in this action was filed on January 11, 2023. See RJN, Court Docket and Complaint (Exhs. 1 and 2). However, CCP § 340.1, which was in place at the time the original complaint was filed, required the lawsuit to be filed by January 1, 2023. (See Code Civ. Proc. § 340.1(q) (2022).

Defendant argues, and the Court agrees, that the statute was subsequently amended for alleged abuse occurring on or after January 1, 2024, but the prior version of the statute remains in place for cases such as this, which allege abuse prior to January 1, 2024. See Code Civ. Proc. §§ 340.1(p) (2024)2 and 340.11(q); see also FAC ¶¶ 4 and 37, alleging the abuse occurred in 1980 or 1987, i.e., prior to January 1, 2024.

Plaintiff opposes, arguing that the Complaint was timely filed based on when it was given to the third-party for filing. Plaintiff argues: "But a paper is deemed filed when it is deposited

with the clerk with directions to file the paper." (*Dillon v. Superior Court*, (1914) 24 Cal.App. 760, 765.) However, Plaintiff fails to acknowledge that the Complaint was not timely deposited with the clerk.

Plaintiff cites to a variety of cases, which are distinguishable from the current case. In *Shipley v. Sugita* (1996) 50 Cal.App.4th 320, the Court of Appeal affirmed dismissal, finding that the plaintiff failed to show that service on defendant was impossible or impracticable, entitling them to an exception under CCP §583.240(d) even though plaintiff's counsel's actions constituted positive misconduct. Furthermore, the court found that while the exceptions are limited to circumstances "beyond the plaintiff's control" that the failure to accomplish timely service was within plaintiff's control. *Id.* at 324.

Plaintiff argues that they provided the Complaint to the third-party for filing prior to the expiration of the statute of limitations and "was not informed until after the statute of limitations had passed that the Complaint was not timely." Opp., p. 7. Like *Shipley*, Plaintiff fails to show that service on Defendant was impossible or impracticable and even states in his Opposition that if the Complaint would have been filed by mail, it would have been timely.

Plaintiff also cites to *Daley v. County of Butte* (1964) 227 Cal.App.2d 380 and *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal. 3d 892. *Daley* and *Carroll* are both distinguishable because they involve a discretionary dismissal. As the court in *Carroll* addressed, the longtime standard was that an attorney's inexcusable neglect was charged to the client, but that *Daley* started a line of cases where if the attorney's conduct was so inexcusable and extreme as to amount to deprivation of representation, that would not be charged to the plaintiff. See *Carroll, supra*, 32 Cal. 3d at 895; *Daley*, *supra* 227 Cal.App.2d at 391. In this case, while counsel's failure to follow up on the status of the filing could arguably be negligent, when looking at the cases cited, it was not such gross misconduct as to practically deprive Plaintiff of representation.

<u>The entire action is premised on the revivor statute in CCP § 340.1, and under that statute the complaint is untimely, therefore, the demurrer will be sustained.</u>

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 is not a reasonable probability that the Complaint could be cured by amendment, and that burden rests on the Plaintiff. <u>Leave to amend is denied because Plaintiff did not meet his burden.</u>

Defendant offers additional arguments in support of its demurrer, but those need not be addressed based on the findings above.

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TENTATIVE RULING #9:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEMURRER SUSTAINED AS TO ALL SEVEN CAUSES OF ACTION, WITHOUT LEAVE TO AMEND.**

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10.	**24CV1592**	**MAIER v. SPRINGER**
Motion to Strike & Demurrer		

Defendants Salameh J. Naser, Lucy S. Naser and Evelyn Calopiz-Springer ("Sellers") filed a Demurrer to Plaintiffs' Complaint with a hearing date scheduled for February 14, 2025. The Court sustained all but the second cause of action in the Complaint, and granted Plaintiffs leave to amend their Complaint. One cause of action the Court granted Plaintiffs leave to amend is the fourth case of action for fraud. The Court did not specify in its Order any timeframe other than the statutory ten days per C.C.P. § 472a(c) to file the amended complaint. Therefore, Plaintiffs filed a First Amended Complaint on February 20, 2025, consistent with C.C.P. § 472a(c).

Defendant Springer filed a Motion to Strike Portions of Plaintiffs' Complaint, specifically the punitive damages request, and Demurrer with a hearing date scheduled for March 7, 2025. Plaintiffs' Opposition to the Motion to Strike would be filed on February 24, 2025. However, Plaintiffs' First Amended Complaint was filed prior to the date their Opposition to Motion to Strike would be required to file. Plaintiffs' First Amended Complaint includes an amended fourth cause of action, the basis for which is Plaintiffs' punitive damages request and, in turn, Defendant's Motion to Strike and Demurrer.

Thus, Defendant Springer's Demurrer is rendered moot and no opposition to the Motion to Strike to Complaint is required. See *Cohen v. Superior Court* (1966) 244 Cal.App.2d 650, 656 ("Accordingly, when an action is filed against several defendants and the demurrer of one is overruled and the demurrer of the other sustained with leave to amend, the amended complaint, if it is amended in matters of substance as distinguished from matters of form, constitutes a new complaint affecting all of the defendants each of whom, because he is entitled to answer the amended pleading de novo, must be served with a copy of the amended pleading.")

TENTATIVE RULING #10:

1. **DEFENDANT SPRINGER'S MOTION TO STRIKE IS OVERRULED AS MOOT.**
2. **DEFENDANT SPRINGER'S DEMURRER IS OVERRULED AS MOOT.**

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