

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

Department 16

Honorable Vincent I. Parrett, Presiding

191 North First Street, San Jose, CA 95113

Telephone: (408) 882-2270

April 15, 2026

9:00 and 9:01 A.M.

Unauthorized Recording of Court Proceedings will be Punished

ORAL ARGUMENT

If you are contesting the tentative ruling then by 4 PM today you must notify:

- (1) The Court by calling **(408) 808-6856**, and
- (2) The other side by phone or email that you will appear at the hearing to contest the tentative.

If you fail to notify the court and opposing side by 4 PM then no oral argument will be heard and the tentative ruling becomes the final ruling. (C.R.C. 3.1308(a)(1) & Local Rule 8.E.)

APPEARANCES

The Court encourages in-person appearances for all matters.

The Court discourages remote appearances.

The Court forbids phone-only appearances.

If, despite the above clear guidance, you still elect to appear remotely in Department 16 then you must appear by video using our Court's Unicorn Digital Courtroom ("UDC") system. If for whatever reason you do not like using UDC, *then come to D16 in person.*

To use UDC, click or copy and paste this link into your internet browser & scroll to Department 16: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml
When using UDC you must *separately register for each case* in which you appear remotely. If you find UDC too cumbersome, *then come to D16 in person.*

Proposed Orders filed by counsel after the hearing must include the Judicial Council Form EFS-020 Proposed Order Cover Sheet.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
<p>9:01 1</p>	<p>20CV369303</p>	<p><i>Regency Centers, L.P.</i> <i>v.</i> <i>Subway Real Estate Corporation, et al.</i></p>	<p>Hearing: Order of Examination</p> <p>On January 14, 2026, the Court Ordered Defendant Judgment Debtor Hak Yoo to appear personally in Department 16 to give information regarding a money judgment against him on April 15, 2026 at 9:01 AM in Department 16 (the “Order of Examination”).</p> <p>Accordingly, Judgment Debtor Hak Yoo is Ordered to appear in person on April 15, 2026, at 9:01 AM in Department 16 for this Examination.</p> <p>If Judgment Debtor Hak Yoo does not appear as Ordered on April 15, 2026, at 9:01 AM in Department 16 then a Civil Bench Warrant will issue against Hak Yoo with bail set at \$2,000.00. Specifically, if Judgment Debtor Hak You does not appear then Plaintiff Regency Centers, L.P. is to prepare and file a Civil Bench Warrant against Hak Yoo with bail set at \$2,000.00 using Form CW-9002 that will be given to Plaintiff by the D16 Court Room Clerk.</p> <p>SO ORDERED.</p>

<p>9:01 2</p>	<p>19CV360398</p>	<p><i>Westlake Services, LLC dba Westlake Financial Services v. Janie L. Hackett</i></p>	<p>Hearing on Claim of Exemption</p> <p>The Writ of Execution filed on October 28, 2025 shows that Defendant Judgment Debtor Janie Hackett “Hackett”) owes \$34,686.80 on a Judgment to Plaintiff Judgement Creditor Westlake Services, LLC. Hackett now seeks a complete exemption of “all earnings from wage garnishment, and offers to pay “none” of the \$34,686.80 that she owes. <i>See</i> Hackett Claim of Exemption at ¶¶ 2 & 4</p> <p>Under Code of Civil Procedure Section 703.530, Hackett as the Judgment Debtor has the burden to establish that the levied funds are exempt, e.g., by demonstrating that the funds at issue are reasonably necessary for her support.</p> <p>Hackett fails to carry her burden. Rather, the evidence shows that the levied funds are not reasonably necessary for her support. Hackett has sufficient income, assets, and financial flexibility to meet her basic needs without exception of the levied funds. She claims gross monthly income of \$14,000.00 with net income of \$6,800.00. <i>See</i> Financial Statement attached to Hackett Claim of Exemption. But she fails to provide proof for any of the various expenses she claims. Accordingly, the Court finds that Hackett has sufficient disposable income to pay, through reasonable garnishment payments, the amount of the Judgment that she owes.</p> <p>Accordingly, Defendant Hackett’s Claim of Exemption is DENIED.</p> <p>Judgment Creditor Westlake Services, LLC is to prepare and file the formal order after this hearing.</p>
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<p>9:01 3</p>	<p>25CV460695</p>	<p><i>Bank of America, N.A. v. Cezar A. Quinones</i></p>	<p>Hearing on Claim of Exemption</p> <p>The Writ of Execution filed on August 13, 2025, shows that Defendant Judgment Debtor Cezar A. Quinones (“Quinones”) owes a current balance of \$8,303.07 on a Judgment to Plaintiff Judgement Creditor Bank of America, N.A. Quinones now seeks a complete exemption of all earnings from wage garnishment.</p> <p>Under Code of Civil Procedure Section 703.530, Quinones as the Judgment Debtor has the burden to establish that the levied funds are exempt, e.g., by demonstrating that the funds at issue are reasonably necessary for his support.</p> <p>Quinones fails to carry his burden. Rather, the evidence shows that the levied funds are not reasonably necessary for his support. Quinones has sufficient income, assets, and financial flexibility to meet his basic needs without exception of the levied funds. His take-home income of \$4,723.67 appears to exceed his monthly expenses. He also fails to provide proof for any of the various expenses he claims. So to the extent that Quinones’s income exceeds his expenses, these funds could and should be used towards satisfaction of the Judgment debt. Hence, the Court finds that Quinones has sufficient disposable income to pay, through reasonable garnishment payments, the balance of the Judgment that he owes.</p> <p>Accordingly, Defendant Quinones’s Claim of Exemption is DENIED.</p> <p>Judgment Creditor Bank of America, N.A. is to prepare and file the formal order after this hearing.</p>
<p>9:01 4</p>			
<p>9:01 5</p>			

9:00 <u>1</u>	25CV461494	<i>Bryan Martin</i> <i>v.</i> <i>General Motors, LLC, et al.</i>	Order on Defendant's Demurrer to the Complaint See Line 1 below for complete tentative ruling. After the hearing, the Court will prepare and file the formal Order.
9:00 <u>2</u>	25CV468349	<i>Benjamin Hayes</i> <i>v.</i> <i>City of Mountain View, et al.</i>	Order on Motion for Leave to File See Line 2 below for complete tentative ruling. After the hearing, the Court will prepare and file the formal order.
9:00 <u>3</u>	24CV441530	<i>Oscar Cabrera</i> <i>v.</i> <i>Apple Inc., et al.</i>	Order on Defendant's Demurrer to the Complaint See Line 3 below for complete tentative ruling. After the hearing, the Court will prepare and file the formal order.
9:00 <u>4</u>			
9:00 <u>5</u>			
9:00 <u>6</u>			
9:00 <u>7</u>			
9:00 <u>8</u>			

9:00 9			
9:00 10			
9:00 11			
9:00 12			
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9:00 14			
9:00 15			

Line 1

Case Name: *Bryan Martin v. General Motors, LLC, et al.*

Case No.: 25CV461494

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

Defendant General Motors LLC (“GM”) demurs to the Complaint under Section 430.10(e) on the grounds that: Plaintiff cannot state his Fifth Cause of Action for fraudulent inducement-concealment because Plaintiff fails to sufficiently plead with particularity the essential elements of a fraud claim, and because it is barred by the economic loss rule. Notice of Demurrer (the “Demurrer”) at 1:3-8.

The Demurrer came on for hearing on April 15, 2026, at 9:00 AM in Department 16. After reviewing all the papers and the record, and giving counsel for all parties the full and fair opportunity to be heard, the Court finds and rules as follows.

Fact Allegations of the Complaint

The Complaint alleges that on July 27, 2024, Plaintiff entered a warranty contract with General Motors LLC (“GM”) for a 2024 Chevrolet Suburban, vehicle identification number 1GNSKEKD3RR297023 (“Subject Vehicle”), which was manufactured and distributed by GM. The contract warranted the Subject Vehicle “bumper-to-bumper”, including but not limited to powertrain, emission, etc. Complaint ¶¶ 6, 7.

The Complaint further alleges that before Plaintiff’s purchase, GM knew that vehicles equipped with the same 5.3L engine, as installed in the Subject Vehicle, suffered from one or more defects that could cause loss of power while driving, stalling, running rough, or engine misfires (the “Engine Defect”). GM acquired this knowledge through various sources of information, including but not limited to pre-production testing, consumer complaints, dealership repair orders, and testing conducted by GM in response to consumer complaints. Had Plaintiff known the Subject Vehicle and its engine were defective at the time of sale, he would not have purchased it. Complaint ¶¶ 47, 51.

Based on those fact allegations, the Complaint brings causes of action for (1) Violation of Civil Code section 1793.2, subdivision (d); (2) Violation of Civil Code section 1793.2, subdivision (b); (3) Violation of Civil Code section 1793.2, subdivision (a)(3); (4) Breach of the Implied Warranty of Merchantability; and (5) Fraudulent Inducement – Concealment.

Legal Standard on Demurrer

“The party against whom complaint or cross-complaint has been filed may object,

by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state sufficient facts to constitute cause of action, (f) The pleading is uncertain.” C.C.P. § 430.10(e) & (f).

A demurrer may be used by “[t]he party against whom complaint has been filed” to object to the legal sufficiency of the pleading as whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. C.C.P. §§ 430.10 & 430.50(a).

“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal. 3d 197, 213-214. In ruling on demurrers, courts may consider matters subject to judicial notice. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal. App. 4th 743, 751. Evidentiary facts found in exhibits attached to complaint can be considered on demurrer. *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.

Under California law, even if a demurrer is sustained, leave to amend the complaint is routinely granted. “Liberality in permitting amendment is the rule, if fair opportunity to correct any defect has not been given.” *Angie M. v. Superior Court* (1995) 37 Cal. App. 4th 1217, 1227. “Unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion, irrespective of whether leave to amend is requested or not.” *McDonald v. Sup. Ct. (Flintkote Co.)* (1986) 180 Cal. App. 3d 297, 303-304.

Analysis of Demurrer to the Fifth Cause of Action for Fraudulent Inducement-Concealment

GM’s Demurrer argues that Plaintiff’s claim for fraudulent inducement-concealment is defective at the pleading stage because it

- (1) fails to plead with specificity the content of omitted facts (Demurrer at 9:6-25)
- (2) fails to plead with specificity facts establishing a duty to disclose (Demurrer at 9:26-13:16), and
- (3) is barred by the economic loss rule (Demurrer at 14:18-16:11).

The Court will now consider each of those arguments in turn.

1. The Fifth Cause of Action for fraudulent inducement-concealment pleads facts with the requisite specificity.

GM argues that the Fifth Cause of Action fails to allege facts with the requisite specificity as it “fails to allege the content of omitted facts” such as “the defect GM alleged

concealed” as well as “the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.” Demurrer at 9:5-7 & 9:21-23 (citing *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal. App. 4th 153, 157).

It is true as a general principle of California law that each element in fraud cause of action must be pleaded with specificity. *Lazar v. Super. Ct. (Rykoff-Sexton, Inc.)* (1996) 12 Cal.4th 631, 645. *But* this specific pleading requirement is significantly relaxed in the case of fraud by concealment or omission because, as one court has explained, “[h]ow does one show ‘how’ and ‘by what means’ something didn’t happen, or ‘when it never happened, or ‘where’ it never happened?” *Alfaro v. Community Housing Imp. System Planning Ass’n, Inc.* (2009) 171 Cal. App. 4th 1356, 1384.

Additionally, one of the purposes of the specificity-in-pleading-fraud requirement is to provide “notice to the defendant, to furnish the defendant with certain definite charges which can be intelligently met.” *Committee, supra*, 35 Cal.3d at 216, internal quotations omitted. So where, as in this case, “it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party. . . .” *Id.* at p.217; *see also Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal. App. 4th 915, 931 (“plaintiffs did not have to specify the . . . personnel who prepared these documents because that information is uniquely within . . . [defendant’s] knowledge.”)]

So here, it is not necessary for Plaintiff to allege the identity of persons who allegedly concealed facts, as that information is *uniquely within GM’s knowledge*. The Complaint does allege well enough that GM knew that the subject vehicle had a transmission defect and an engine defect that resulted in loss of power, stalling, engine running rough, engine misfires; and failure of the engine that would result in a transmission and engine replacement; and that GM failed to disclose this information to induce Plaintiff to purchase the vehicle, including its agents involved in the sale and repair of the subject vehicle to Plaintiff and in its marketing materials and product disclosure—which failed to disclose the defect and were relied upon by Plaintiff inducing him to purchase the vehicle. Complaint ¶¶ 51-69. These allegations are pleaded with the requisite particularity as GM has possession of the information concerning the allegations, and any questions may be cleared up through discovery. *See Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608 (Sixth District stating that “[t]here is no need to require specificity in the pleadings because ‘modern discovery procedures necessarily affect the amount of detail that should be required in a pleading.’”)

Accordingly, GM’s demurrer to the Fifth Cause of Action on the ground that it fails to allege facts with the requisite specificity is **OVERRULED**.

2. The Fifth Cause of Action well pleads a duty to disclose.

As put by *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal. 5th 1:

A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as the plaintiff's fiduciary or is in some other confidential relationship with the plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to the defendant, and the defendant knows those facts are not known or reasonably discoverable by the plaintiff (*i.e.*, exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (*i.e.* partial concealment); or (5) the defendant actively conceals discovery of material fact from the plaintiff (*i.e.*, active concealment). Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as "between seller and buyer . . . or parties entering into any kind of contractual agreement. All of *these relationships are created by transactions between parties* from which a duty to disclose facts material to the transaction arises under certain circumstances.

Rattagan, supra, 17 Cal. 5th at 40 (emphasis added). And "[a] relationship between the parties is present if there is some sort of transaction between the parties." *Hoffman v. 162 N. Wolfe LLC*, (2014) 228 Cal. App. 4th 1178, 1187.

GM now argues that Plaintiff fails to plead facts to establish a duty to disclose because:

- (1) Plaintiff fails to plead the requisite transactional relationship, and
- (2) Plaintiff fails to plead that GM had exclusive knowledge of the Engine Defect.

Demurrer at 10:11-13:2.

But GM's argument fails on both points.

First, Plaintiff does allege that he entered into an express warranty agreement with GM on July 27, 2024. Complaint ¶¶ 6, 7. And giving Plaintiff the benefit of all reasonable inferences from this allegation in the light most favorable to Plaintiff, as the Court must do in resolving this Demurrer, the Court finds that Plaintiff has well pleaded facts that Plaintiff entered into a transaction with GM through their express warranty agreement, which in turn forged the requisite transactional relationship between GM and Plaintiff from which the duty to disclose arises here.

Second, Plaintiff does allege sufficient facts showing GM's exclusive knowledge of the Engine Defect, which were not reasonably discoverable by Plaintiff. Complaint ¶¶ 51-69. Relying on *Roe v. Ford Motor Co.*, Case No. 2:18-cv-12528-LJM-APP, 2019 WL 3564589, at *6 (E.D. Mich. Aug. 6, 2019) GM argues that Plaintiff's allegation regarding testing data is vague and insufficient to allow inference of its knowledge about the Engine Defect. But the Court respectfully finds that out-of-state federal court opinion is neither binding nor persuasive authority. Because whereas federal law requires a complaint to

contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face[.]’” (*Ashcroft v. Iqbal* (2009) 556 U.S. 662, 663, quoting *Bell Atlantic Corp. v. Twombly* (2007) 550 U.S. 544, 570), in contrast California law requires that the Complaint “set forth the essential facts of [the plaintiff’s] case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.” (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) And Plaintiff’s well-pleaded fact allegations satisfy this California law standard.

Accordingly, GM’s demurrer to the Fifth Cause of Action on the ground that it fails to sufficiently plead a duty to disclose is **OVERRULED**.

3. The Fifth Cause of Action is not barred by the economic loss rule.

GM also argues the Fifth Cause of Action for fraudulent inducement-concealment is barred by the economic loss rule. Demurrer at 14:22-16:11. In support of its argument, GM cites *Rattagan*, which ruled that “under the economic loss rule, tort recovery for breach of a contract duty is generally barred . . . unless . . . [a] plaintiff [can] demonstrate the defendant’s injury-causing conduct violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract . . . [and that] the defendant’s conduct . . . caused injury to persons or property that was not reasonably contemplated by the parties when the contract was formed.” Demurrer at 14:24-15:1, citing *Rattagan*, 17 Cal. 5th at 20-21.

But *Rattagan* itself expressly stated that “the economic loss rule does not apply to limit recovery for intentional tort claims like fraud. The doctrine only applies to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in *Sheen*.” *Rattagan, supra*, 17 Cal. 5th at 38 (also stating that “Can a plaintiff assert an independent claim of fraudulent concealment in the performance of a contract? The answer to this question is also yes. . . . A plaintiff may assert a tort claim for fraudulent concealment based on conduct occurring in the course of a contractual relationship, if the elements of the cause of action can be established independently of the parties’ contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the agreement. . . . California case law similarly has viewed fraud by concealment on equal footing with fraud by affirmative misrepresentation”).)

So the *Rattagan* court merely confirmed its prior statement in *Erlich v. Menezes* (1999) 21 Cal. 4th 543, that “[t]ort damages have been permitted in contract cases . . . where the contract was fraudulently induced . . . [because] the duty that gives rise to tort liability is either completely independent of the contract or arises from conduct which is both intentional and intended to harm.” *Erlich, supra*, 21 Cal. 4th at pp.551-552. Likewise here, Plaintiff’s right to be free from the intentional concealment of material facts regarding the purchase of a vehicle is separate and distinct from the contractual rights of a warranty, and the fraudulent inducement of a contract is beyond the reasonable contemplation of parties in entering a contract. Hence, GM’s argument regarding the economic loss rule is unfounded.

Accordingly, GM's demurrer to the fifth cause of action on the ground that it is barred by the economic loss rule is **OVERRULED**.

CONCLUSION

All grounds of its Demurrer having failed, GM's Demurrer to the Complaint is **OVERRULED in its entirety**.

SO ORDERED.

Date: April 15, 2026

Hon. Vincent I. Parrett
Superior Court of the State of California,
County of Santa Clara

Line 2

Case Name: *Benjamin Hayes v. City of Mountain View, et al.*

Case No.: 25CV468349

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

Plaintiff Benjamin Hayes (“Plaintiff”) moves for leave to file a Second Amended Complaint. Notice of Motion (the “Motion”) at 1:22-23.

The Motion came on for hearing on April 15, 2026, at 9:00 AM in Department 16. After reviewing all the papers and the record, and giving counsel for all parties the full and fair opportunity to be heard, the Court finds and rules as follows.

Under Code of Civil Procedure Sections 473 and 576, California law liberally allows amendment of pleadings, especially where doing so will cause no prejudice to any party. *Klopstock v. Superior Court* (1941) 17 Cal. 2d 13, 19; *Nestle v. City of Santa Monica* (1972) 6 Cal. 3d 920, 930; *Hirsa v. Superior Court* (1981) 118 Cal. App. 3d 486, 490; *Morgan v. Superior Court* (1959) 172 Cal. App. 2d 527, 530 (affirming and approving liberal amendments to pleadings under California law).

On reviewing all the moving papers, including the Supporting Declaration of attorney David R. Shane and the proposed Second Amended Complaint, the Court finds the Motion is reasonable, timely, and causes no unfair prejudice to anyone.

Moreover, Defendants have not opposed the Motion. Under California Rule of Court 8.54(c): “A failure to oppose a motion may be deemed a consent to the granting of the motion.” CRC Rule 8.54(c).

Accordingly, the Motion is **GRANTED**. Plaintiff is **ORDERED** to file and serve the Second Amended Complaint within 30 days of today.

SO ORDERED.

Date: April 15, 2026

Hon. Vincent I. Parrett
Superior Court of the State of California,
County of Santa Clara

Line 3

Case Name: *Oscar Cabrera v. Apple Inc., et al*

Case No.: 24CV441530

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

Defendant Apple Inc. (“Apple”) demurs to the Complaint under Code of Civil Procedure Section 430.10(e) on the grounds that:

1. The First Cause of Action because it is time-barred by the statute of limitations.
2. The First Cause of Action (Slander Per Se, Civil Code § 46) is also subject to demurrer under C.C.P. § 430.10(e) for failure to state a claim for two reasons. First, the Complaint fails to allege facts sufficient to plead that any Apple employee, officer, or agent made the alleged defamatory statement such that Apple may be held liable for the statement. Second, to the extent that the unidentified speaker’s statement is attributable to Apple, the alleged defamatory statement was made in the context of a workplace investigation into Plaintiff’s conduct as an employee of the security company that Apple contracts to provide securities services for its store. Apple is therefore protected by conditional immunity in the form of the “common interest privilege” under Civil Code § 47(c), and Plaintiff does not plead any facts to overcome this protection.
3. The First Cause of Action (Slander Per Se, Civil Code § 46) is also subject to demurrer under C.C.P. § 430.10(e) for vagueness, because the Complaint fails to allege the identity of the individual who made alleged defamatory statements or any relationship whatsoever between the unidentified person and Apple.

Notice of Demurrer (the “Demurrer”) at 2:4-24.

The Demurrer came on for hearing on April 15, 2026, at 9:00 AM in Department 16. After reviewing all the papers and the record, and giving counsel for all parties the full and fair opportunity to be heard, the Court finds and rules as follows.

Fact Allegations of the Complaint

The Complaint alleges that between April and June 2022 Apple made the following defamatory statement to Defendant Security Industry Specialists Inc. (“SIS”) about Plaintiff: “Plaintiff assaulted an[] unknown female in parking garage” located on Elm Street, Los Gatos, CA. Complaint at ¶ 8.

The Complaint further alleges that between October 2022 and January 2023, SIS

made the same defamatory statement about Plaintiff assaulting an unknown female in a parking garage to the Chulla Vista Police Department and the Department of Corrections and Rehabilitation. Complaint at ¶ 14.

The Complaint further alleges that this defamatory statement was false each time it was made, that Defendants Apple and SIS knew that this defamatory statement was false when they made it, and that Defendants Apple and SIS made this defamatory statement with malice and intent to injure Plaintiff's good name and reputation and to interfere with Plaintiff's employment. Complaint at ¶¶ 10, 11, 16, 17. And the Complaint alleges that Defendants Apple and SIS damaged him by making this defamatory statement. Complaint at ¶¶ 12, 18.

Based on those fact allegations, the Complaint brings the First Cause of Action for Slander Per Se—Civil Code § 46 against Apple and the Second Cause of Action for Slander Per Se—Civil Code § 46 against SIS.

Legal Standard on Demurrer

“The party against whom complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state sufficient facts to constitute cause of action, (f) The pleading is uncertain.” C.C.P. § 430.10(e) & (f).

“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal. 3d 197, 213-214.

Under California law, even if a demurrer is sustained, leave to amend the complaint is routinely granted. California courts are quite liberal permitting amendments, not only where a complaint is defective in form, but also where substantive defects are apparent: “Liberality in permitting amendment is the rule, if fair opportunity to correct any defect has not been given.” *Angie M. v. Superior Court* (1995) 37 Cal. App. 4th 1217, 1227. In the case of an *original* complaint (like we have here), plaintiff need not even request leave to amend: “Unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion, irrespective of whether leave to amend is requested or not.” *McDonald v. Sup. Ct. (Flintkote Co.)* (1986) 180 Cal. App. 3d 297, 303-304. And so where, like here, we have an original complaint where plaintiff has not yet had opportunity to amend the complaint in response to a demurrer, “leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment.” *City of Stockton v. Sup. Ct. (Civic Partners Stockton, LLC)* (2007) 42 Cal. 4th 730, 747; *see also Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 (abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action).

Analysis

First, the Court agrees with Apple that Plaintiff's Opposition brief impermissibly seeks to introduce new fact allegations and evidence, which this Court will not consider at all in resolving this demurrer. *SKF Farms v. Superior Court* (1984) 153 Cal. App. 3d 902, 905 (demurrer "tests the pleadings alone and not the evidence or other extrinsic matters"); *Ion Equipment Corp. v. Nelson* (1980) 110 Cal. App. 3d 868, 881 (impermissible extrinsic matters may not be considered in resolving a demurrer). Indeed, Plaintiff's Opposition brief does not cite a single paragraph of Plaintiff's own Complaint. And it is precisely the legal sufficiency of the Complaint, *not* Plaintiff's "Clarification of Points of Complaint" in his Opposition brief (Opp. at 1:22-5:17), that this demurrer tests and that it is the role of the Court to resolve now. *McKenney v. Purepac Pharm. Co.* (2008) 162 Cal. App. 4th 72, 79 ("only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.").

Focusing its analysis only on the Complaint and its attached Exhibits,¹ each of the grounds set forth in Apple's Demurrer has merit:

- Regarding the statute of limitations, Plaintiff's invocation of the discovery rule to toll the one-year statute of limitations is deficient because the Complaint does not plead facts showing (1) the time and manner of discovery, and (2) his inability to have made earlier discovery despite reasonable diligence. *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal. 4th 797, 809;
- The Complaint has not pleaded facts sufficient to state a claim of Slander Per Se Against Apple because it fails to plead facts establishing that the unidentified individual who made the defamatory statement was an agent of Apple—or indeed had any connection whatever to Apple—such that the statement could be imputed to Apple;
- The Complaint has not pleaded facts sufficient to state a claim of Slander Per Se Against Apple because it is too vague as it does not identify the speaker who made the defamatory statement, the speaker's relationship with Apple, the speaker's authority to speak on Apple's behalf, or the circumstances of the making of the statement; and
- The Complaint fails to sufficiently plead malice to defeat the common interest privilege under Civil Code § 47(c),² because, among other things, the Complaint's

¹ The Court may consider evidentiary facts found in Exhibits attached to a Complaint when resolving a demurrer. *Frantz v. Blackwell* (1987) 189 Cal. App. 3d 91, 94

² As the Exhibit attached the Complaint alleges that Plaintiff was a security guard employed by SIS to work at the Apple Store in Los Gatos, that Apple employees witnessed Plaintiff assault a woman in the parking garage on the premises after his shift, and Apple reported this conduct to SIS, Complaint at p. 7, Apple and SIS would indeed share a "common interest" in investigating this incident.

sole allegation on this point that “[Apple] made the aforesaid defamatory statement with malice” is conclusory—and malice cannot be inferred from the alleged defamatory statement itself. *Brewer v. Second Baptist Church of Los Angeles* (1948) 32 Cal. 2d 791, 799.

As each of these grounds of Apple’s demurrer has merit, the Court SUSTAINS Apple’s Demurrer.

But where the Court respectfully disagrees with Apple is that in sustaining this Demurrer to this *original* Complaint, the Court will grant Plaintiff LEAVE TO AMEND the Complaint within 30 days of today to try to cure these pleading deficiencies. While Apple’s arguments are reasonable and well taken that amendment here may turn out to be futile, the Court cannot say *at this point* that the Complaint on its face is “incapable” of amendment or that there is “no reasonable possibility” of amendment. *City of Stockton*, 42 Cal. 4th at 747; *Goodman*, 18 Cal. 3d at 349, *supra*. It is conceivable (or at least not beyond the bounds of conceivability) that Plaintiff in a First Amended Complaint might plead facts to address the pleading deficiencies identified above in this Order. So in the generous spirit of abundant liberality of California law to all litigants, the Court will give Plaintiff 30 days from today to file a First Amended Complaint to try to cure these pleading deficiencies.

Conclusion & Order

The Court **SUSTAINS Apple’s Demurrer** to the Complaint under Code of Civil Procedure Section 430.10(e) on each and every one of the grounds set forth in Apple’s Demurrer, **but GRANTS Plaintiff LEAVE TO AMEND within 30 days from today** if Plaintiff wishes to do so.

SO ORDERED.

Date: April 15, 2026

Hon. Vincent I. Parrett
Superior Court of the State of California,
County of Santa Clara

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