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

**Department 10**
**Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

**DATE: December 5, 2024 TIME: 9:00 A.M.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

**Scheduling motion hearings**: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

**CourtCall is no longer available**: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

**Recording is prohibited**: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters**: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 1 | 2006-1-CV-065745 | National Credit Acceptance, Inc. v. Christin R. Vierra | Order of examination: parties to appear. |
| LINE 2 | 23CV417737 | Albert Hoxha et al v. Adam Burns | Click on LINE 2 or scroll down for ruling. |
| LINE 3 | 23CV412715 | Ali Abhari v. Jaguar Land Rover North America, LLC | Motion to compel: parties to appear. Click on LINE 3 or scroll down for tentative decision. |
| LINE 4 | 24CV428693 | Christopher Novak v. Charles Ross et al. | Click on LINE 4 or scroll down for ruling. |
| LINE 5 | 23CV411435 | Ke Fang v. Ritula Malhotra | Motion to seal: it appears that notice is not proper for the motion, as service was made on November 13, 2024, which is five days too late. Parties to appear. |
| LINE 6 | 24CV432798 | Michael Karavastev v. Andrean Karavastev | Motion to "stay" the court's prior order staying this case: notice is not proper, as the proof of service for the motion appears to be based on the erroneous notion that e-filing documents with this court accomplishes service on all parties. This notion confuses the federal court's e-filing system (PACER) with the state court's (admittedly less sophisticated) e-filing system. Moreover, it is clear on the face of the motion that it is an effort to re-litigate the merits of the court's July 31, 2024 order granting the stay (signed by Judge Pennypacker), as well as the court's September 26, 2024 order denying reconsideration of the July 31, 2024 order. It is an improper effort to obtain a third bite at the apple. Accordingly, the court DENIES the motion to "stay the stay." |
| LINE 7 | 24CV434209 | Ezequiel Ciappolino v. Dmitry Stadlin et al. | Click on LINE 7 or scroll down for ruling. |

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 8 | 24CV444662 | Kam Hong Lui et al. v. Rozita Dadgostari | Click on LINE 8 or scroll down for ruling in lines 8-9. |
| LINE 9 | 24CV444662 | Kam Hong Lui et al. v. Rozita Dadgostari | Click on LINE 8 or scroll down for ruling in lines 8-9. |

**- oo0oo -**

**Calendar Line 2**
**Case Name:** *Albert Hoxha et al v. Adam Burns*
**Case No.:** 23CV417737

Plaintiffs Albert Hoxha and Felipe Deguer ("Plaintiffs") filed this action for negligence against defendant Adam Burns, as a result of a collision between Burns's vehicle and Hoxha's vehicle. Burns now brings a motion for summary judgment as to Plaintiffs' single cause of action for negligence, based on the statute of limitations.

## I. BACKGROUND

According to the complaint, on May 26, 2021, a police officer ("Officer O'Sullivan") responded to a hit-and-run incident in Saratoga, California. (Complaint, p. 4.) Hoxha reported that Burns rear-ended his vehicle at a red light and then fled the scene. (*Ibid.*) Hoxha took photos of Burns and his vehicle, a 2013 Silver Jeep Wrangler, and reported signs of Burns's possible intoxication. (*Ibid.*) Upon further investigation, Burns admitted his involvement in the collision, stating that his GPS distracted him and he fled out of fear. (*Ibid.*) Officer O'Sullivan concluded that Burns drove at an unsafe speed and left the scene without providing necessary information, both violations of California law. (*Ibid.*) The officer suspected that Burns was also intoxicated and unlicensed at the time of the incident. (*Ibid.*)

The filing date of the operative complaint is May 10, 2023, although it appears that the clerk's office originally rejected this filing on that date, requiring Plaintiffs to refile the complaint. On December 20, 2023, the court granted an ex parte application, filed by Plaintiffs and unopposed by Burns, that sought to "correct the date on Plaintiffs' complaint and summons to reflect a filing date of May 10, 2023." (See Order Granting Plaintiffs' Ex Parte Application for Order Correcting Date of Filing of Plaintiffs' Complaint and Summons.) On September 12, 2024, Burns filed the present motion for summary judgment.

## II. REQUEST FOR JUDICIAL NOTICE

With their opposition papers, Plaintiffs request that the court judicially notice Exhibit 5 to their compendium of evidence. (See Plaintiffs' Request for Judicial Notice in Support of Opposition to Defendant's Motion for Summary Judgment, p. 2:10-14, citing Declaration of Avi E. Muhtar ("Muhtar Decl."), ¶ 6, Plaintiffs' Compendium of Evidence in Opposition to Defendant's Motion for Summary Judgment ("Compendium of Evidence"), Ex. 5.) Exhibit 5 is the December 13, 2023 ex parte application that the court granted on December 20, 2023. (*Ibid*.)

The court GRANTS Plaintiffs' request for judicial notice. The court may take judicial notice of the "[r]ecords of any court of this state." (Evid. Code, § 452, subd. (d).) "It is settled that a court may take judicial notice of its own records . . . ." (*Nuliad Farmer Assn. v. La Torre* (1967) 252 Cal.App.2d 788, 791, internal citation omitted.)

## III. MOTION FOR SUMMARY JUDGMENT

### A. Legal Standard

On summary judgment, the moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic*

*Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) The motion shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment–or adjudication–can be entered."].)

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action . . . . The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72, internal citations omitted.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* 25 Cal.4th at p. 850.) "A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact." (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1378, internal citations and quotation marks omitted; see also *McHenry v. Asylum Entertainment Delaware, LLC* (2020) 46 Cal.App.5th 469, 479 [because speculation is not evidence, speculation cannot create a triable issue of material fact].)

The pleadings limit the issues presented for summary judgment or summary adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 74 ["[T]he pleadings determine the scope of relevant issues on a summary judgment motion. [Citations.]"].) "A moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion. [Citations.]" (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444, quoting *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 421.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

**B. Discussion**

**1. The Official Filing Date of the Complaint is May 10, 2023**

Burns argues that California Code of Civil Procedure section 335.1, provides for a two-year limitations period for negligence actions.[1] (See Defendant's Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment ("Memorandum"), p. 5:1-5.) Based on an incident date of May 26, 2021, Plaintiffs had until May 26, 2023 to file their negligence cause of action, but Plaintiffs' initial filing on May 10, 2023 was rejected by the court clerk's office, and it was not until July 10, 2023 that the court ultimately accepted the complaint. Burns therefore argues that the statute of limitations bars Plaintiffs from seeking

[1] Burns repeatedly recites Code of Civil Procedure ***section 331.5*** in the supporting Memorandum, a provision that does not exist. The court assumes that Burns intends to refer to Code of Civil Procedure ***section 335.1***, the provision that sets forth a two-year limitations period for an "action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another." (See Code Civ. Proc., § 335.1.)

relief. (*Id.* at p. 5:7-22.) Burns further argues that the court erred in granting Plaintiffs' ex parte application to correct the filing date to reflect a date of May 10, 2023. (*Id.* at pp. 6:1-8:2.)

Plaintiffs respond that it "is indisputable that the operative Complaint in this Case is stamped with a filing date of May 10, 2023," and therefore the statute of limitations does not bar Plaintiffs' negligence cause of action. (Memorandum of Points and Authorities in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Opposition"), p. 1:4-10.) According to Plaintiffs, Burns has failed to provide any legal authority for disregarding the record in this case—*i.e.*, the filing date stamped on the complaint—and, at best, Burns's motion constitutes an untimely and deficient motion to reconsider. (See *id.* at pp. 1:11-25, 3:3-6:3.) Furthermore, Plaintiffs argue that they properly served Burns with the ex parte application, and Burns could have filed an opposition but chose not to. (See *id.* at pp. 7:4-11:25.)

Neither party appears to dispute that a two-year statute of limitations applies to Plaintiffs' negligence cause of action, or that the statute of limitations would bar this cause of action if Plaintiffs first filed their complaint in either June or July 2023, given the date of the accident. (See *Nava v. Saddleback Memorial Medical Center* (2016) 4 Cal.App.5th 285, 290 ["An action for personal injury 'caused by the wrongful act or neglect of another' is generally subject to a two-year statute of limitations. [Citation.]"].) There is no allegation of "delayed discovery" in this case.

The court agrees with Plaintiffs that Burns presents no authority for disregarding the file-stamped date of the operative complaint, May 10, 2023. Nor does Burns provide any valid basis for the court to override its previous decision to grant Plaintiffs' ex parte application to correct the filing date of the complaint.

On this basis alone, the motion for summary judgment based on the statute of limitations must be denied.

**2. The Court's December 2023 Ex Parte Order was not Erroneous**

Burns "respectfully submits that the Court erred in its December 14, [2023] ex parte order, entered by a different judge than the one assigned to this case,[2] thereby effectively 'backdating' the July 10, 2023 filing date on the Complaint." (Memorandum, p. 5:19-22.) Burns then proceeds to argue why the court erroneously granted Plaintiffs' ex parte application. (*Id.* at pp. 6:1-7:27.) In his reply brief, Burns further argues that courts "always retain the power to revisit and change their rulings prior to judgment." (Reply in Support of Defendant's Motion for Summary Judgment ("Reply"), p. 3:23-24, citing *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 389-390 ["Clearly, trial courts do not make applications, motions, or renewals of motions themselves. The language chosen by the Legislature strongly suggests it intended to restrict the actions of parties in bringing motions to reconsider, but did

[2] Burns repeatedly, throughout both the supporting memorandum and reply brief, confuses the temporary judge who presided over the initial case management conference in this case (Laurie Mikkelsen) with the judge who has been assigned to this case from the very beginning (the undersigned). To the extent that Burns relies on any potential difference between judicial officers as a basis for granting his motion for summary judgment, the court finds this reliance to be ill-informed and unavailing.

not contemplate restricting the discretion of a trial judge who realizes he or she has erred in making a ruling and wishes to remedy the mistake. This statutory language unambiguously confines the procedural requirements of section 1008 to applications or motions for renewal brought by parties, and does not purport to govern a court's reconsideration of an order on its own motion."].)

Because the parties have expended significant efforts addressing the application of Code of Civil Procedure section 1008, which governs motions for reconsideration, the court will address Burns's arguments that the court erred in granting Plaintiffs' ex parte application.

Here, the clerk's office rejected Plaintiffs' attempt to file the complaint and related documents on May 10, 2023 because Plaintiffs did not complete items one and four on the civil case cover sheet, the civil case cover sheet and complaint did not properly list the court's address or branch name, and Plaintiffs did not submit a civil lawsuit notice form. (See Declaration of R. Wylie Lowe in Support of Defendant's Motion for Summary Judgment ("Wylie Decl."), Ex. B, p. 1.) On June 14, 2023, Plaintiffs attempted to file the complaint again, and on the same day, the clerk's office accepted the complaint and summons but rejected the civil case cover sheet because Plaintiffs did not file a civil lawsuit notice form and failed to complete items one and four on the cover sheet. (See *id.*, Ex. D; Muhtar Decl., ¶ 3, Compendium of Evidence, Ex. 2.) The clerk's office ultimately accepted the civil case cover sheet on July 10, 2023. (See Wylie Decl, Ex. E.)

In *Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 776 (*Rojas*), plaintiff Rojas was injured in an automobile accident, and her attorney mailed a summons and complaint with a filing fee to the clerk of the Ventura County Superior Court. (*Id.* at p. 776.) Rojas's counsel also enclosed a "Declaration for Court Assignment," a form required by the local court rules. (*Ibid*.) The clerk's office received the documents on November 7, 1996, but instead of filing thm, the clerk returned them by mail to counsel because counsel had not signed the declaration for court assignment, and the summons did not reflect the proper address of the Simi Valley division of the court. (*Ibid*.) By the time counsel received this mailing from the court, the statute of limitations had passed. (*Ibid*.) The trial court denied plaintiff's request for an order requiring the clerk to file the complaint *as of November 7, 1996*, and defendant successfully obtained summary judgment on statute of limitations grounds. (*Ibid*.) The Court of Appeal reversed with instructions to deem the complaint filed on November 7, 1996, holding that "[w]here, as here, the defect, if any, is insubstantial, the clerk should file the complaint and notify the attorney or party that the perceived defect should be corrected at the earliest opportunity." (*Id.* at p. 777.) "The clerk has no discretion to reject a complaint that substantially conforms to the local rules" and counsel for defendant cited no authority "in support of the proposition that the clerk may refuse to file the complaint if the summons contains the address of the wrong division." (*Ibid*.)

*Rojas* is analogous to the present situation. The errors identified in *Rojas* (the absence of counsel's signature, the failure to reflect the address of the correct division of the court) are similar to the errors identified here: a failure to complete items one and four on the civil cover sheet and a failure to list the court's address and branch name. (*Rojas, supra,* 67 Cal.App.4th at pp. 775-777.) These are all minor technical errors. (See Cal. Rules of Court, rule 3.220(c) ["If a party that is required to provide a cover sheet under this rule or a similar local rule fails to do so or provides a defective or incomplete cover sheet at the time the party's first paper is submitted for filing, the clerk of the court must file the paper."]; *Elliott v. Contractors' State*

*License Bd.* (1990) 224 Cal.App.3d 1048, 1053-1054 (*Elliott*) ["Under certain circumstances, technical noncompliance with nonjurisdictional filing requirements will not cause a petition to be deemed untimely filed . . . . [A]ppellant did not actually file his petition within the period of limitations. Instead, he filed it more than two months after the running of the limitations period. Late filing is not the same as technical noncompliance."]; *UFW of Am. v. Agric. Labor Relations Bd.* (1985) 37 Cal.3d 912, 918 (*UFW*) ["Thus, it is the filer's actions that are scrutinized in determining whether a petition was timely filed. Rejection of the petition by the clerk under [former California Rules of Court, rule 46] for a technical defect cannot undo a 'filing' that has already occurred."].)

Burns suggests that Plaintiffs did not properly serve him with the complaint because they did not submit a "civil lawsuit notice" when filing their complaint, but this purported failure to *serve* the form has no bearing on whether Plaintiffs *filed* their complaint within the applicable statute of limitations.[3] (See Memorandum, p. 6:16-17.) In any event, a "local superior court may not condition the filing of a complaint on local rule requirements. Instead, so long as a complaint complies with state requirements, the clerk has a ministerial duty to file. In legal effect, a complaint is 'filed' when it is presented to the clerk for filing in the form required by state law." (*Carlson v. Dep't of Fish & Game* (1998) 68 Cal.App.4th 1268, 1270 (*Carlson*).) The complaint at issue in *Carlson* "was hence effectively filed when it was first presented to the clerk, and the statute of limitations therefore did not run." (*Ibid*.)

Burns also argues that courts have "held that a complaint that is rejected for numerous deficiencies, rather mere minor technicalities, does not constitute a 'filing' for purposes of the statute of limitations." (Memorandum, p. 6:1-3, citing *Elliott, supra,* 224 Cal.App.3d at p. 1053; *UFW, supra,* 37 Cal.3d at p. 912.) The cases relied upon by Burns do not appear to make any such point. *Elliott* states that "under certain circumstances, technical noncompliance with nonjurisdictional filing requirements will not cause a petition to be deemed untimely filed" but "[l]ate filing is not the same as technical noncompliance." (*Elliott, supra,* 224 Cal.App.3d at pp. 1053-1054.) Late filing is entirely different from "numerous deficiencies." Similarly, as Burns acknowledges, "[i]n [*UFW*], a petition for writ of review was submitted to the clerk's office of the court of appeal on the last day for filing. A deputy clerk stamped the petition 'received,' but returned it to the petitioner for lack of verification. A verified petition was then filed three days after the last day for filing. The California Supreme Court held that the petition was timely filed." (Memorandum, p. 6:5-9, citing *UFW, supra,* 37 Cal.3d at p. 912.) Nowhere in *UFW* or *Elliott* is there any distinction regarding a "numerously deficient" filing and one rejected for "minor technicalities." In fact, *Rojas,* as already discussed, involved at least two potential "deficiencies."

Burns also cites *Duran v. St. Luke's Hospital* (2003) 114 Cal.App.4th 457, 461 (*Duran*), noting that *Duran* discusses "multiple cases in which pleadings are wrongfully rejected, but each case has one minor issue of a wrong form or lack of signature." (Memorandum, p. 7:2-4.) Again, the Court of Appeal in *Duran* does not make any distinction

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[3] The relevant rule of local procedure reads, in part: "When the complaint or other initial pleading is filed, the filing party must submit a blank Civil Lawsuit Notice (CV-5012) to the Clerk for issuance of Judicial Assignment, Initial Court Hearing Date, Time, and Department with the filing of the new complaint. The Civil Lawsuit Notice will only be completed and returned by the Clerk if one is provided by the filer. The party who filed the initial pleading must serve a copy of the Civil Lawsuit Notice completed by the Clerk on all other parties named in the pleading." (Super. Ct. Santa Clara County, Local Civil Rules, rule 1(E)(1).)

between a filing with numerous deficiencies and a filing with just one; instead, it uses *Rojas, Carlson*, and other cases to distinguish between circumstances involving "insubstantial or technical defects" of form that do not disqualify a submitted pleading and a failure to pay a statutorily required filing fee. (See *Duran, supra*, 114 Cal.App.4th at p. 461 ["The remainder of the California authorities cited by plaintiffs for the proposition that insubstantial or technical defects of form do not disqualify a submitted pleading from being filed are likewise inapposite because they too do not involve the issue of failure to pay a filing fee."].) Again, that is completely distinguishable from the present facts.

### 3. Motions for Reconsideration under Code of Civil Procedure Section 1008

In the end, the court agrees with Plaintiffs that Burns is using the vehicle of a motion for summary judgment to relitigate the merits of the court's December 20, 2023 order granting Plaintiffs' ex parte application. (See Opposition, pp. 3:1-7:3; Memorandum, p. 5:19-21.) As such, the present motion is an untimely motion for reconsideration in disguise. "The name of a motion is not controlling, and, regardless of the name, a motion asking the trial court to decide the same matter previously ruled on is a motion for reconsideration under Code of Civil Procedure section 1008." (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577.)

Code of Civil Procedure section 1008, subdivision (a), requires that a party bring a motion for reconsideration "within 10 days after service upon the party of written notice of entry of the order." (Code Civ. Proc., § 1008, subd. (a).) In this case, it appears that Plaintiffs served Burns with notice of entry of the court's December 20, 2023 order on that same date. (See Muhtar Decl., ¶ 8, Compendium of Evidence, Exs. 7, 8.) Because Burns did not file this motion until September 12, 2024, over eight months later, it is exceedingly untimely.

Plaintiffs also note that they served Burns with the ex parte application, but Burns nonetheless failed to oppose it. (See Opposition, pp. 7:4-11:25.) Burns briefly replies that Plaintiffs did not serve the ex parte application on him properly, and that this serves as grounds for the court to revisit and reverse its December 20, 2024 order. (Reply, p. 4:5.) Burns claims that Plaintiffs' counsel "merely emailed" the ex parte application to Burns's counsel, and counsel had not yet appeared in the case or agreed to accept service "electronically or otherwise." (*Id.* at p. 4:12-19.) The court is unswayed by this claim. Rather than oppose the ex parte application, Burns's counsel purportedly attempted to submit a letter brief that the clerk's office rejected, and Burns did not thereafter attempt to inform the court of any opposition to the ex parte application. (*Id.* at pp. 4:26-5:6.) By waiting over eight months to file the present motion, Burns has long since forfeited the opportunity to register his opposition in the first instance.

Burns's motion also fails substantively under section 1008: "Section 1008, subdivision (a) requires that a party seeking reconsideration base its motion upon new or different facts, circumstances, or law. The moving party also must provide a satisfactory explanation for the failure to make the showing at or before the time the challenged order was issued." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 208.) The burden under section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*Id.* at pp. 212-213.)

Burns directs the court to no new facts, different facts, or circumstances, and does not point the court to any new law that would alter the court's analysis. (See *Torres v. Design Group Facility Solutions, Inc.* (2020) 45 Cal.App.5th 239, 243 ["Section 1008, subdivision (a) allows a party to move for reconsideration of a prior order based on new or different facts or a change in law."]; *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 770-771 ["We agree a motion for reconsideration, unlike a motion for a new trial, cannot correct judicial error. . . . In [*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494 (*Gilberd*)], we explained Code of Civil Procedure section 1008 gives the court no authority when deciding whether to grant a motion to reconsider to 'reevaluate' or 'reanalyze' facts and authority already presented in the earlier motion."]; *Gilberd, supra,* 32 Cal.App.4th at p. 1500 ["Since in almost all instances, the losing party will believe that the trial court's 'different' interpretation of the law or facts was erroneous, to interpret the statute as the respondent urges would be contrary to the clear legislative intent to restrict motions to reconsider to circumstances where a party offers the court some fact or authority that was not previously considered by it."].)

For all of these reasons, the court denies the present motion.

### C. Plaintiffs' Request for Sanctions

Plaintiffs request that the court impose sanctions against Burns under section 1008, subdivision (d). (Opposition, pp. 6:4-7:3.) Section 1008, subdivision (d), provides that "[a] violation of this section may be punished as a contempt and with sanctions as allowed by [Code of Civil Procedure section] 128.7." (Code Civ. Proc., § 1008, subd. (d).) A violation occurs where a party makes a motion that does not meet the requirements for bringing a motion under section 1008. (*In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1314; see also *Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1028-1029.) It is clear from the language of the provision that it is permissive, rather than mandatory. To the extent that Plaintiffs seek a contempt sanction, the court finds that the imposition of a contempt sanction here would be unduly harsh and over the top; the court denies that request.

To the extent that Plaintiffs seek sanctions under Code of Civil Procedure section 128.7, they fail to show that they complied with the "safe harbor" provisions of that statute. Section 128.7 contains certain procedural requirements, including a 21-day "safe harbor" before a request may be filed. (See, e.g., Code Civ. Proc., § 128.7.) Because Plaintiffs have not provided any indication that they followed these requirements, the court denies the request for monetary sanctions under section 1008.[4]

## IV. CONCLUSION

The court DENIES Burns's motion for summary judgment. The court DENIES Plaintiffs' request for sanctions. The court DENIES Burns's request for sanctions.

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[4] In his reply, Burns briefly, and without any supporting authority, requests that the court sanction Plaintiffs. (Reply, p. 5:7-9.) The court DENIES this baseless request.

**Calendar Line 3**
**Case Name:** *Ali Abhari v. Jaguar Land Rover North America, LLC*
**Case No.:** 23CV412715

This matter was originally brought as an ex parte application by plaintiff Ali Abhari to compel the person-most-knowledgeable ("PMK") deposition of defendant Jaguar Land Rover North America, LLC ("Jaguar"). As the court noted in its October 8, 2024 order on the application, a motion to compel must be filed as a noticed motion. Abhari should have filed the motion to compel on regular notice and *then* filed an ex parte application to shorten time to hear the motion.

In the October 8, 2024 order, the court set this matter for a hearing on December 5, 2024, expecting to hear more from the parties regarding the status of scheduling the deposition. The court has not received anything. In its prior order, the court did note that Jaguar's proposal to have the deposition taken in February 2025 was too late. Jaguar's response to the ex parte application focused solely on the impropriety of having a motion to compel be heard as an ex parte application. It did not address the merits of the application—*i.e.*, the question of timing—other than to say that its proposed witness's "schedule" did not allow a deposition before February 13, 2025.

Not having heard anything further from the parties, the court is inclined to grant the motion and order that the deposition occur within 30 days—*i.e.*, by no later than January 4, 2025. But the court would like an update from the parties before making a final decision. If the parties do not appear for the hearing on December 5, 2024, then the court will take this matter off calendar.

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**Calendar Line 4**
**Case Name:** *Christopher Novak v. Charles Ross et al.*
**Case No.:** 24CV428693

Defendant Charles Ross moves to compel initial responses to form interrogatories, special interrogatories, and inspection demands from plaintiff Christopher Novak. In addition, Ross seeks an order deeming RFAs admitted, given the absence of timely responses. In opposition, Novak argues that the motion is now moot, as he served written responses "[p]rior to the service of this opposition" on November 20, 2024. (Opposition, p. 2:1.) It is not exactly clear when Novak served these responses—neither side identifies the date(s) in their papers, and neither side has attached copies of these responses—but it is apparent that they were provided three or four months after than the original deadline of mid-July 2024.

The court agrees with Novak that the motion to compel responses and to deem RFAs admitted is largely moot. Although Ross argues that Novak's RFA responses (and form interrogatory responses) are not in "substantial compliance" with the rules, and that this court should therefore "deem this a request to have Defendant [sic] Request for Admissions, [sic] Admitted" (Reply, p. 4:19-23), he fails to show any inadequacy in his reply papers. Again, *neither side* has submitted the tardy responses with their papers, and so the court has no way of determining whether they are in "substantial" compliance or not. The court therefore rejects Ross's request.

At the same time, the court finds that Novak fails to provide a reasonable explanation for why his responses were three to four months late. He simply claims that the delay "was clearly not a malicious act meant to gain a litigation advantage." (Opposition, p. 2:15-16.) This is inadequate. The court finds that Novak did not act with substantial justification in forcing Ross to incur the expense of bringing this motion. Although the court finds Ross's request for $2,700 to be excessive for such a simple motion, the court will order Novak to pay Ross **$900.00** (five hours at counsel's hourly rate of $180/hour) within 30 days of notice of entry of this order. As a reminder, the purpose of discovery sanctions is compensatory, not punitive.

In short, the court DENIES Ross's motion to compel responses and to deem RFAs admitted. The court GRANTS IN PART Ross's request for monetary sanctions.

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**Calendar Line 7**
**Case Name:** *Ezequiel Ciappolino v. Dmitry Stadlin et al.*
**Case No.:** 24CV434209

This is a motion for an award of attorney's fees arising out of a successful anti-SLAPP motion brought by defendant Dmitry Stadlin. In its order dated August 20, 2024, the court noted: "The motion and reply are not accompanied by any declaration stating the fees and costs incurred in bringing the special motion to strike. Therefore, Stadlin will have to bring a separate motion for attorney['s] fees in order to recover any mandatory award." (August 20, 2024 Order, p. 11:1-3.) This is now that separate motion, seeking an award of $15,400.00 (38.5 hours at a billing rate of $400/hour).

Plaintiff Ezequiel Ciappolino opposes the motion, but his primary argument does not focus on the scope of the proposed award; rather, he relies primarily on the fact that his current monthly income is only "about $2,000 per month working as a server/cook." (Ciappolino Declaration, ¶ 2.) He contends that under *Garcia v. Santana* (2009) 174 Cal.App.4th 464, 473-476 (*Garcia*), the court must consider "the losing party's financial condition" in determining the reasonableness of a fee award. (Opposition, p. 2:27-3:24.) In this case, he says that the amount requested by Stadlin is not reasonable because it imposes "an unreasonable financial burden on" Ciappolino, representing a majority of his annual income. (Opposition, p. 3:6-19 [citing *Garcia* at p. 475].)

As a general matter, the court notes (as it did in its August 20, 2024 order) that an award of attorney's fees is generally mandatory. (See Code Civ. Proc., § 425.16, subd. (c) [the "prevailing defendant" on a motion to strike "shall be entitled" to recover his or her attorney's fees and costs]; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 ["[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees."].) The purpose of this fee-shifting provision is both to discourage meritless lawsuits and to provide financial relief to the SLAPP lawsuit victim. *Garcia*, *supra*, was not a case involving an anti-SLAPP motion; it was a case involving an award of attorney's fees under the Davis-Stirling Act, which addresses disputes involving homeowner associations. As such, it is not directly on point. Indeed, the court is not aware of any statutory or case law authority that holds that a trial court must consider a non-prevailing party's financial condition in determining an award of attorney's fees on an anti-SLAPP motion. Moreover, Ciappolino proposes an extreme application of the principle here, arguing that the appropriate award should be $0. Such an outcome would be directly contrary to the purpose of the fee-shifting provision in section 425.16, subdivision (c), providing no deterrence against meritless SLAPP suits like the one filed by Ciappolino.

At the same time, the court recognizes that the deterrent purpose of the anti-SLAPP statute should be tempered by considerations of due process, and Ciappolino has shown an exceptionally limited ability to pay in this case. Accordingly, the court will reduce the attorney's fees award to $8,000 (20 hours at $400/hour). This is still one-third of Ciappolino's claimed annual income, which is a hefty sum and sufficient to realize the deterrent purpose of section 425.16. (Stadlin notes in reply that Ciappolino is supposedly due to collect on a $300,000 judgment in the related lock-out litigation between Ciappolino and Stadlin's former client (see Reply, p. 2:10-13).)

The court otherwise finds that the amount of requested fees is reasonable. $400 per hour is a relatively low hourly rate for counsel engaged in anti-SLAPP litigation, and Stadlin has shown that the 38.5 hours of work by his counsel were all in preparation of the anti-SLAPP motion itself (and the reply papers). The court finds that the overall total of 38.5 hours was also a reasonable total. Ciappolino's argument that "22.5 hours is not remotely a reasonable amount of time to prepare Defendant Stadlin's anti-SLAPP motion" is unpersuasive and conclusory—the court has seen much higher totals for similar anti-SLAPP motions. (Opposition, p. 4:15-16.)

Finally, the court is unmoved by Ciappolino's argument that Stadlin has "unclean hands." This argument has no bearing on a motion for attorney's fees and is instead an irrelevant attempt to relitigate the merits of the anti-SLAPP motion itself.

The motion is GRANTED IN PART. The court orders Ciappolino to pay **$8,000** in fees to Stadlin within 90 days of notice of entry of this order.

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**Calendar Line 8**
**Case Name:** *Kam Hong Lui et al. v. Rozita Dadgostari*
**Case No.:** 24CV444662

This is a petition to compel arbitration and stay the case by defendant Rozita Dadgostari. In addition, plaintiffs Kam Hong Lui, Weijia Cai, and Stanford Education Foundation LLC ("SEF") have filed a motion for leave to submit a surreply brief in opposition to the petition to compel. The court grants the motion for leave to file a surreply, and the court has reviewed the surreply.[5] The court ultimately grants the petition to compel arbitration and to stay the case.

**1. Background**

Lui, Cai, and Dadgostari are parties to an "Operating Agreement of Stanford Education Foundation LLC[,] a California Limited Liability Company," dated November 20, 2023 (the "Operating Agreement"). (Petition to Compel, Exhibit A.) Section 13.9 of the Operating Agreement includes an arbitration provision that states, in part:

> 13.9 Arbitration. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions, or the action or inaction of any Member or Manager that is not resolved through negotiation will be resolved exclusively by final and [b]inding arbitration conducted in accordance with the then-current Streamlined Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services ("JAMS"). The arbitration will be conducted by a single arbitrator selected by agreement of the parties or, if the parties cannot agree, an arbitrator appointed in accordance with the JAMS rules who shall be experienced in the type of dispute at issue . . . . The arbitrator will have full power and authority to determine issues of arbitrability and to interpret and construe the provisions of the agreement documents and to fashion appropriate remedies . . . .

There is a separate agreement between Dadgostari and non-party Jun Lu, a "Membership Inter[e]st Purchase and Transfer Agreement," by which Dadgostari agreed to purchase Lu's 30% interest in SEF (a.k.a., the "Purchase Agreement"). (Complaint, Exhibit 1.) The Purchase Agreement does not contain an arbitration provision. Both the Operating Agreement and the Purchase Agreement are dated November 20, 2023.

The complaint in this case asserts 13 causes of action against Dadgostari, including causes for fraud (both misrepresentation and fraudulent inducement), conversion, receiving stolen property, tortious interference (with business relationships, contracts, and prospective economic relations), unfair business practices, promissory estoppel, unjust enrichment, breach of contract (the Operating Agreement), breach of fiduciary duty (based on the Operating Agreement), and breach of the implied covenant of good faith and fair dealing (arising out of the Operating Agreement). Some of these causes of action are by all plaintiffs, some are by Lui and Cai only, and some are by SEF only.

[5] The court agrees with plaintiffs that Dadgostari's reply brief raises new issues and facts that merit consideration of a surreply.

According to the parties, Dadgostari already filed a demand for arbitration with JAMS under the Operating Agreement (as to Lui and Cai) in June 2024, before the present suit was filed. Less than two months later, Lui, Cai, and SEF filed the present complaint against Dadgostari.

**2. The Existence of an Arbitration Agreement**

In ruling on a petition to compel, a court applies general principles of contract law to determine whether the parties actually agreed to arbitrate their dispute. (*Diaz v. Sohnen Enterprises* (2019) 34 Cal.App.5th 126, 129.) In this case, the court finds that at least three of the parties—Lui, Cai, and Dadgostari—did enter into an arbitration agreement when they entered into the Operating Agreement. The court also finds the language of the arbitration provision to be exceptionally broad—not only encompassing "interpretation" of the Operating Agreement and any dispute "arising out of" the Operating Agreement, but also "the action or inaction of any Member or Manager [*i.e.*, Lui, Cai, or Dadgostari] that is not resolved through negotiation." (Operating Agreement, § 13.9.) This language is indisputably broad enough to encompass several of the causes of action in the complaint, including the breach causes of action (the eleventh, twelfth, and thirteenth) and the unfair business practices cause of action (the eighth). Arguably, the language is also broad enough to encompass the other causes of action brought by Lui and Cai (for fraud, theft, promissory estoppel, and unjust enrichment).

Plaintiffs argue that there is no agreement to arbitrate because Dadgostari never complied with her obligations under the Purchase Agreement with Lu—*i.e.*, that even though Dadgostari and Lu signed the Purchase Agreement, Dadgostari never fully paid Lu for the 30% interest that she now claims to have under the Operating Agreement. The court finds this argument to be unpersuasive.

First, plaintiffs allege that the Operating Agreement "was only to go into effect if the transaction closed." (Opposition, p. 1:9.) This allegation is belied by the face of the Operating Agreement, which states that it "is made and entered into as of November 20, 2023 (the "Effective Date"), by and among [Lui, Cai, and Dadgostari]." Plaintiffs repeatedly refer to the Operating Agreement as a "proposed operating agreement," but the Operating Agreement was signed by the parties, with an effective date that is exactly the same as the Purchase Agreement: November 20, 2023. In addition, the Operating Agreement contains an integration clause, which states that it is the "complete and exclusive statement of agreement among the Members and Managers with respect to the subject matter [*i.e.*, the operation of SEF]." (Operating Agreement, § 13.1.) Thus, the Operating Agreement is an actual agreement on its face, not a "proposed" agreement, as plaintiffs repeatedly contend.

Second, plaintiffs allege that the "closing" of the purchase transaction was a "condition precedent" to the formation of the Operating Agreement. (Opposition, pp. 3:9-6:14.) Having reviewed both the Operating Agreement and the Purchase Agreement in their entirety, the court finds this allegation to be baseless. There is no language in either the Operating Agreement or the Purchase Agreement that states that the Operating Agreement is in any way dependent upon consummation of the Purchase Agreement. Of course, there is language in the Purchase Agreement that says that "closing" of the purchase is contingent upon delivery of the "Purchase Price" by Dadgostari to Lu—in other words, payment of the purchase price is expressly a condition precedent to a "closing" under the Purchase Agreement. But no similar language exists with respect to the formation or validity of the Operating Agreement. Indeed,

this language demonstrates that the parties knew exactly how to write a "condition precedent" into a contract—something that they did not write into the Operating Agreement here.

The court certainly understands plaintiffs' argument that if Dadgostari never fully paid Lu for a 30% share of SEF, then Dadgostari is not a valid "Member" or "Manager" of SEF under the Operating Agreement, but that is a merits issue that needs to be adjudicated (or arbitrated) later in this case. It has no bearing on whether Lui, Cai, and Dadgostari actually entered into an arbitration agreement. Whether Dadgostari has breached her Purchase Agreement with Lu is a separate matter that potentially goes to the question of arbitrability.[6]

**3. The Question of Arbitrability**

Unless the parties clearly delegate the question of arbitrability to the arbitrator in their agreement, the court generally determines the arbitrability of the dispute. (*BG Group, PLC v. Republic of Argentina* (2014) 572 U.S. 25, 34; *United Teachers of Los Angeles v. Los Angeles Unified School District* (2012) 54 Cal.4th 504, 524-525.) Here, the parties clearly and unmistakably agreed that the JAMS arbitrator would "have full power and authority to determine issues of arbitrability and to interpret and construe the provisions of the agreement documents and to fashion appropriate remedies." (Operating Agreement, § 13.9.) Indeed, it is the court's understanding that the JAMS arbitrator in this case, Judge Komar, has already provisionally scheduled an evidentiary hearing on the question of whether Dadgostari is a proper "Member" of SEF on March 11, 2025, subject to the court's decision on this petition to compel. (Surreply, pp. 1:1-2:11.) The court sees no reason why this March 11 hearing cannot proceed as originally scheduled. As noted above, the question of whether Dadgostari is a "Member" of SEF under the Operating Agreement is intertwined with the question of whether Dadgostari substantially complied with her obligations under the Purchase Agreement with non-party Lu—these questions involve contested factual issues that will likely need to be fleshed out in an evidentiary hearing. Again, the court finds this decision to involve a determination of arbitrability more than it involves a determination of whether an arbitration agreement exists.

Arguably, the question of whether Dadgostari is a "Member" of SEF is not quite an "arbitrability" determination or an "existence of arbitration agreement" determination—arguably, it is instead a determination on the *ultimate merits* of the case. If so, that is all the more reason why addressing the issue now on a petition to compel would be odd and premature. The question is best left to the ultimate trier of fact—in this case, the JAMS arbitrator.[7]

In her reply brief, Dadgostari requests (for the first time) an evidentiary hearing on her petition to compel, but it is the court's understanding that the issues as to which Dadgostari seeks such a hearing are factual issues that go either to arbitrability or to the ultimate merits of the case. Because Dadgostari does not appear to be requesting an evidentiary hearing *as to whether an arbitration agreement actually exists*—a question that the court has decided here

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[6] It also remains unclear to the court how Lui and Cai have standing to assert a breach of the payment obligation in the Purchase Agreement, given that Lu, not Lui and Cai, was the seller of the 30% interest in SEF. Lu is not a party to this case, and it is the court's understanding that Lu is not involved in the JAMS arbitration, either.

[7] Again, the arbitrator is best suited to making an initial determination as to whether Lui and Cai have the ability to assert a breach of the Purchase Agreement.

based on a reading of the Operating Agreement and Purchase Agreement—the court concludes that an evidentiary hearing is unnecessary at this time. The arbitration forum is more than capable of handling factual disputes concerning arbitrability or the ultimate merits of the case in a later proceeding.

**4. The Propriety of a Stay**

Finally, the court notes that while the causes of action asserted by Lui and Cai against Dadgostari in the complaint are potentially within the scope of the parties' arbitration agreement—plainly, a question of arbitrability for the arbitrator to decide—the causes of action asserted by SEF are almost certainly not, because SEF is not a party to the arbitration agreement. The court is not persuaded by Dadgostari's conclusory and unsupported argument that SEF is an "alter ego" of Lui or Cai (or both—the argument is singularly unclear). The court is also not persuaded that SEF is a third-party beneficiary of the Operating Agreement. Indeed, it strikes the court as extremely bizarre to claim that an entity is a third-party beneficiary of *its own* operating agreement. The court has been given no legal authority for this novel claim.

At the same time, the court has reviewed the causes of action asserted by SEF in this case—the tortious interference causes of action—and finds that they overlap significantly with, and in some instances are derivative of, the other causes of action asserted by Lui and Cai. Accordingly, the court finds it appropriate to *stay* any causes of action that the arbitrator ultimately finds to be unarbitrable. The court also finds it appropriate to stay the case as a whole under Code of Civil Procedure section 1281.4, pending the arbitration.

The petition is GRANTED. The court sets this matter for a case status review on May 29, 2025 at 10:00 a.m. in Department 10.

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