SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/26/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2202251

PRESIDING: HON. ANDREW SWEET

REPORTER:	CLERK:
PLAINTIFF: JOHN DOE vs. DEFENDANT: TAMALPAIS UNION HIGH SCHOOL DISTRICT, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Plaintiff John Doe's ("Plaintiff") motion to compel is denied.

BACKGROUND

This is a childhood sexual assault case. Plaintiff alleges that when he was a fifteen-year-old student at Tamalpais High School in 1999 and 2000, he was sexually assaulted by Normandie Burgos ("Burgos"), a teacher and coach at the school. (Complaint, ¶¶ 1, 10-11, 14.) The Complaint alleges that despite numerous complaints about Burgos to Tamalpais Union High School District ("the District") personnel, the District did not intervene to protect Plaintiff. (*Id.*, ¶¶ 13, 16, 19.) Plaintiff asserts claims for negligent hiring, supervision, and retention; failure to report suspected child abuse; and negligent supervision of a minor against the District.

On December 27, 2023, Plaintiff served a deposition subpoena for the production of business records on the California Commission on Teacher Credentialing ("the Commission"). (Chung Dec., ¶ 3 & Ex. 1.) The subpoena "sought records related to [Burgos'] history as a credentialed teacher." (*Ibid.*) After objecting to the subpoena on various grounds, the Commission produced 30 pages of documents in response. (*Id.*, ¶¶ 4-5 & Ex. 3 [excerpt of production].) The production only contained publicly available records or records that had been heavily redacted. (*Id.*, ¶ 5.) The redactions are so heavy as to render several of the documents useless. For example, on two "professional fitness" questionnaires Burgos filled out in 2011, all of the filled-in content has been redacted except details of when and where Burgos executed the form. (See *id.*, Ex. 3 at AG-023-24.) Plaintiff now moves to compel the Commission to comply with the subpoena by producing unredacted documents.

LEGAL STANDARD

"If a subpoena requires . . . the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made . . . may make an order . . . directing compliance with it upon those terms or conditions as the court shall declare[.]" (Code Civ. Proc., § 1987.1, subd. (a).) "In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." (*Ibid.*)

DISCUSSION

Generally speaking, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action." (Code Civ. Proc., § 2017.010; but see *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366, fn. 6 ["The permissible scope of discovery in general is not as broad with respect to nonparties as it is with respect to parties."].)

The Commission argues that Plaintiff "has not explained how any of the categories of documents requested are relevant to the litigation, or will lead to the discovery of admissible evidence." (Opposition, p. 7.) Plaintiff has sued the District for negligent hiring, supervision, and retention. To prevail on this claim, he will need to show that the District had reason to know that Burgos posed a risk of harm to children. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054; *Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 842-843.) Plaintiff argues that the materials requested in the subpoena bear on what the District knew regarding Burgos' dangerous propensities. (Memorandum, p. 5.)

The Court agrees that the material requested in Item #8 ("[a]ny and all DOCUMENTS referring [to] and/or regarding correspondence and/or communications between the [Commission] and [the District] regarding NORMANDIE SANTOS BURGOS") relates to the District's knowledge of Burgos' behavior and so is comfortably within the scope of discovery. The rest of the material requested in the subpoena is more problematic. Unlike Item #8, none of the other items include a built-in nexus between what information the Commission had on the one hand and what information the District knew on the other. Plaintiff has not provided the Court with anything suggesting that any and all information in the Commission's possession was necessarily shared with the District. Absent a nexus between the Commission's information and the District's, Plaintiff cannot demonstrate that material in the possession of the Commission is relevant, and if it is not relevant, it is inadmissible. (Evid. Code, § 350.) Plaintiff has also not explained how information in the possession of the Commission but never communicated to the District might lead to the discovery of admissible evidence, even if it is not admissible in and of itself. (See Code Civ. Proc., § 2017.010.) Accordingly, the motion is denied as to Items #1-7 and #9, leaving only Item #8.

"As between parties to litigation and nonparties, the burden of discovery should be placed on the latter only if the former do not possess the material sought to be discovered. An exception to this may exist where a showing is made [that] the material obtained from the party is unreliable and may be subject to impeachment by material in possession of the nonparty." (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 225.)

Plaintiff's only attempt to explain why he must rely on the Commission for any of the material described in the subpoena is to say that he obtained Burgos' personnel file through discovery with the District, and "the redacted records provided by the [Commission] pertaining to the abuser's responses concerning his 'Personal and Professional Fitness' and 'Character' . . . were not included in the personnel file, underscoring the necessity of the [Commission's] records." (Reply, p. 7.)

Assuming for the sake of argument that Burgos' responses to character and fitness questions fall within Item #8 at all, this statement is sufficient to make either showing required by *Calcor*. One would expect the District to have communications between itself and a third party in its possession. The Court interprets Plaintiff's explanation as an attempt to show that what the District produced in discovery was unreliable to the extent it did not include Burgos' responses to character and fitness questions. (See *Calcor, supra*, 53 Cal.App.4th 216, 225.) This might have merit if there were any evidence before the Court to suggest that the Commission routinely communicates credentialed teachers' self-declared character and fitness information to the school districts that employ them. Plaintiff has not provided any evidence, or even argument, that such communication is routine. The Court cannot order compliance with a subpoena based on an unsupported assumption about the Commission's practices. Without evidence of a nexus between the Commission's information and the District's knowledge, the fact that the District apparently does not have Burgos' responses to character and fitness questions does not suggest that it withheld anything from Plaintiff, so Plaintiff has not made the showing described in *Calcor*.

Accordingly, the motion is denied and the Court does not reach the remainder of the Commission's arguments.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for July, 2024 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/26/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2203564

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK:

PLAINTIFF: DANIEL BISSMEYER vs. DEFENDANT: KONIKU, INC	

NATURE OF PROCEEDINGS: 1) MOTION – SANCTIONS
2) DEMURRER

RULING

Plaintiff Daniel Bissmeyer's ("Plaintiff") Demurrer to defendant Koniku, Inc.'s ("Koniku") Cross-Complaint is SUSTAINED in part with leave to amend.

Plaintiff's Renewed Motion for Award of Additional Sanctions re Motion to Vacate Order Compelling Arbitration Based on Statutory Waiver is DENIED.

BACKGROUND

Plaintiff brought a wrongful termination action against his former employer Koniku and its founder/CEO Oshiorenoya Agabi (Koniku and Agabi are referred to collectively as "Defendants"), alleging causes of action for: 1) Retaliation in violation of Labor Code sections 1102.5, 1102.6; 2) Wrongful Termination in Violation of Public Policy; 3) Failure to Pay Wages in violation of Labor Code sections 201, 1194; 4) Failure to Reimburse for Necessary Business Expenses (Labor Code, § 2802); 5) Waiting Time Penalties (Labor Code, §§ 201-203) ; 6) Failure to Permit Inspection of Personnel and Payroll Records (Labor Code, §§ 226, 1198.5); and 7) Unfair Competition (Bus. & Prof. Code, § 17200). The Unfair Competition cause of action is based on alleged violations of the Labor Code.

Plaintiff alleges that he worked as Vice President of Sales for Defendants beginning January 25, 2022 until he was terminated on July 26, 2022. (Compl., ¶ 24)

Plaintiff alleges that when he complained to Mr. Agabi that Defendants had falsely told investors, customers, and board members that the product would be completed in the fall, Mr. Agabi nevertheless expected Plaintiff to promote and sell an untested and unfinished product to customers. (Compl., ¶ 19) Plaintiff also protested to Mr. Agabi that he (Agabi) was making false representations to government agencies concerning the sensitive technologies used in the product

in order to obtain a less strict export classification (*Id.*, ¶ 20); that Agabi was not complying with even these less onerous export requirements; and the company had not received the certifications of Koniku's laboratories from the Departments of Homeland Security and the Alcohol, Tobacco and Firearms for handling explosives. (*Id.*, ¶ 21) Plaintiff also brought these concerns to the Board of Directors. (*Id.*, ¶ 22) In response to his complaints, Plaintiff alleges that he was terminated. (*Id.*, ¶ 23)

Plaintiff claims he was not paid the first $15,000 installment of his Retention Bonus, he was not paid his accrued and unused paid time off, and he was not reimbursed for business expenses in the amount of $1,647.30. (*Id.*, ¶ 24)

Koniku filed a Cross-Complaint on April 10, 2024 alleging causes of action for Breach of Contract, Intentional Interference with Contractual Relations, Intentional Interference with Prospective Economic Relations, and Negligent Interference with Prospective Economic Relations. Koniku alleges that Bissmeyer was obligated to pay back unearned commissions at the time of separation from employment and failed to do so, as well as that Bissmeyer disparaged Koniku to current clients, resulting in the loss of at least one $25 million dollar contract, and engaged in acts of dishonesty towards Koniku.

OBJECTIONS TO EVIDENCE

Defendants' Objections to Plaintiff's Reply and to the Supplemental Coleman Declaration are OVERRULED. However, to the extent Defendants argue that the Reply to the renewed motion unfairly raised issues not previously addressed in the moving papers, if Defendant seeks additional time to address them, the Court will entertain a request for continuance.

LEGAL STANDARD – DEMURRER

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

DISCUSSION – DEMURRER

Plaintiff and Cross-Defendant demurs to the Cross-Complaint on the grounds that each cause of action therein fails to plead facts sufficient to state a cause of action and is uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) The Court will address each cause of action in turn.

Breach of Contract

Establishing a claim for breach of contract requires a showing of "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*D'Arrigo Bros. of California v. United Farmworkers of Am.* (2014) 224 Cal.App.4th 790, 800.)

Plaintiff argues that Koniku fails to state a claim for breach of contract because Koniku fails to set forth facts establishing the existence of a contract enforceable by Koniku or Plaintiff's breach. This Court disagrees. The allegations in the Cross-Complaint are sufficient to state a cause of action for breach of contract at this stage in the pleadings (See Cross-Compl., ¶¶ 1-3, 8-27.) Accordingly, the demurrer to the first cause of action is overruled.

Intentional Interference with Contractual Relations

To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove the following: (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

Koniku alleges that Plaintiff interfered with Koniku's contract with Airbus "by calling Bruce Coole and making disparaging remarks regarding Koniku." (Cross-Compl., ¶ 31.) Koniku does not allege the substance or nature of any remarks by Plaintiff. Without such a factual basis, the conclusions that the remarks were disparaging and/or made with the intent to disrupt Airbus' performance of the contract are simply conclusions of law. Moreover, this failure also renders this cause of action uncertain. For these reasons, the Court finds that element three of the required elements for this cause of action (see above) is inadequately pleaded and SUSTAINS the demurrer to this cause of action with leave to amend.

Intentional Interference with Prospective Economic Relations and Negligent Interference with Prospective Economic Relations

Because the third and fourth cases of action for Intentional Interference with Prospective Economic Relations and Negligent Interference with Prospective Economic Relations also rely on these allegedly disparaging remarks, the demurer as to those causes of action is also SUSTAINED with leave to amend.

LEGAL STANDARD – RENEWED MOTION

Renewed motions are governed by Code of Civil Procedure section 1008, subdivision (b), which provides:

> A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion.

There is no ten day limitation to file a renewed motion. (Code Civ. Proc., § 1008, subd. (b).)

DISCUSSION – RENEWED MOTION

Plaintiff brings this renewed motion of his request for an award of additional evidentiary sanctions, previously heard with his motion to vacate the order compelling arbitration. The matter was heard in Department E on March 8, 2024. After hearing, the Court granted in part Plaintiff's motion to vacate. The Court awarded monetary sanctions against Defendants in the amount of $7,745.50 for Plaintiff having to bring the motion, awarded additional fees and costs in the amount of $4,105.50 with regard to the abandoned arbitration proceeding. The combined amount of $11,851 was due by or before April 5, 2024 at 5:00 p.m. The only relief sought by Plaintiff that the Court did not grant was "the additional requests for evidentiary sanctions." (Coleman Decl., ¶ 7; Exh. 1, at p. 4.)

It is this denial of the additional request for evidentiary sanctions which Plaintiff now seeks to have the Court reconsider. Plaintiff argues that since the granting of Plaintiff's motion, new facts and/or circumstances have arisen, specifically, that Defendants have failed to pay the attorneys' fees and sanctions awarded by the Court.

Plaintiff seeks terminating sanctions. Alternatively, Plaintiff seeks the imposition of an evidentiary sanction prohibiting Defendants from conducting (but not responding to) discovery in this civil action unless and until the previously-awarded monetary sanctions have been paid.

Code of Civil Procedure section 1281.99 permits discretionary evidentiary, terminating, or contempt sanctions for a material breach of an arbitration agreement, i.e. the late payment of an invoice. The Court finds that the "new facts" presented by Plaintiff are appropriate for the Court to consider on renewed motion. That is to say, they *could* tip the balance in favor of the Court exercising its discretion to award evidentiary sanctions.

However, the Court, having considered the motion, the opposition thereto and the new facts, still declines to do so. Plaintiff has options available to him to collect on the Court's earlier award of monetary recompense.

The renewed motion for sanctions is DENIED.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/26/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV0000980

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK:

PLAINTIFF: LINDA S. LAW vs. DEFENDANT: H. TRACEY BROWNFIELD	

NATURE OF PROCEEDINGS: DEMURRER – TO CROSS-COMPLAINT

RULING

Linda Law's demurrer to the First, Second and Third Causes of Action in the Cross-Complaint is overruled.

Allegations in the Cross-Complaint

H. Tracey Brownfield ("Brownfield"), individually and as Trustee and Successor Trustee of the Amendment and Complete Restatement of "The Helen Tracey Brownfield Restated Declaration of Trust" dated 12/19/23, alleges in her Cross-Complaint that in the 1990s she began working with Linda Law ("Law") in a consulting capacity on various real estate projects. (Cross-Complaint, ¶10.) In 2011, Brownfield identified Petersen Ranch, which consists of almost 4,000 acres of ranchland in northern Los Angeles County, as a suitable site for an environmental mitigation bank. Law introduced Brownfield to hedge fund Baupost Private Investments ("Baupost") as a potential capital investor for the acquisition. (*Id.*, ¶13.) In 2021, Brownfield, as Trustee and Successor Trustee of the Amendment and Complete Restatement of "The Helen Tracey Brownfield Restated Declaration of Trust" dated 10/18/07, Law and her husband James G. Law, as Trustees of the Law 2006 Living Trust dated 2/13/06, and Land Veritas Corp., executed an Operating Agreement of LV Petersen Ranch (the "PVPR Agreement") to use in the venture with Baupost. (*Id.*, ¶14.) LV Petersen Ranch and Baupost formalized their agreement to pursue the Petersen Ranch venture by forming LV-BP Investors I, LLC ("Investors I"), with LV Petersen Ranch as the managing member with a 5% interest and Baupost as capital member with a 95% interest. (*Id.*, ¶18.) Investors I formed LV-BP Investors Ranch, LLC ("Investors Ranch") to hold title to the Petersen Ranch property. (*Id.*, ¶19.) Investors Ranch acquired the property on December 21, 2012. (*Id.*, ¶20.) As a result of an amendment to the LVPR Agreement in 2018, the two members of LV Petersen Ranch each holding a 50% membership interest were Brownfield and Law in their capacities as trustees of their respective trusts. (*Id.*, ¶26.)

In 2019, Baupost told Brownfield it wanted to exit the Petersen Ranch investment before the December 2022 contractual end of the venture. By 2020, Baupost began to exert pressure on Brownfield to find a way to enable it to cash out before December 2022. Brownfield began negotiations with a large eco-investor regarding its interest in purchasing Petersen Ranch. (*Id.*, ¶¶29, 30.) Baupost deemed the eco-investor's offer to be unacceptable so Brownfield continued to explore other potential opportunities for a buy-out or refinancing of Bauport's interest. (*Id.*, ¶32.) Brownfield proposed an acquisition structure to Law for the two of them together to buy out Bauport's interest in Investors I, and Law acted as if she was intending to proceed under this structure. (*Id.*, ¶¶33-38.) However, as the scheduled closing date approached, Law used the imperative to close – to avoid a sale to a third party at a distressed price – as an opportunity to wrongfully attempt to extort economic and other concessions from Brownfield and LV Petersen Ranch, including participation in the management of Petersen Ranch even though that right had been exclusively given to Brownfield. Law also demanded that Brownfield forfeit earned fees and that the management fee paid to an entity owned by Brownfield be reduced. (*Id.*, ¶40.) After Brownfield agreed to some demands and Law's attorney stated that Law was prepared to close, Law made a series of new demands that were unreasonable and not commercially viable. (*Id.*, ¶¶42-45.) After Brownfield did not agree to these new demands, Law refused to fund her share of the purchase price when the time to close arrived. Brownfield was forced to fund the entire deal herself to avoid a forced sale to a third party at a depressed price. (*Id.*, ¶47.)

In 2022, Cobie, an entity owned and controlled by Brownfield, acquired LV Peterson Ranch's 5% interest in Investors I and Law received $2,288,379.50 for her 50% membership interest in LV Petersen Ranch. (*Id.*, ¶50.) Law's conduct caused substantial financial damage to Brownfield, including lost profits and increased closing and other costs. (*Id.*, ¶¶51-54.)

Request for Judicial Notice

Law's request for judicial notice of the LVPR Agreement is granted, as that agreement is referenced throughout the Cross-Complaint. (See *Scott v. JPMorgan Chase Bank, NA* (2013) 214 Cal.App.4th 743, 754, as modified on denial of rehearing (April 16, 2013); *Chacon v. Union Pac. Railroad* (2020) 56 Cal.App.5th 565, 572; *Align Technology Inc. v. Tran* (2009) 179 Cal.App.4th 949, 956, fn. 6; *Ascherman v. General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 310.) Brownfield does not object to the Court taking judicial notice of this agreement. (Opp., p. 6 n. 3.)

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in

the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Discussion

First Cause of Action

In her First Cause of Action for breach of fiduciary duty, Brownfield alleges that Law, as a member of LV Petersen Ranch, owed fiduciary duties of loyalty and care to LV Petersen Ranch and to Brownfield as the other member pursuant to the LVPR Agreement. (Cross-Complaint, ¶¶57-59.) Brownfield alleges that Law breached her fiduciary duties by (1) failing to disclose to Brownfield for approximately six months that Law would not participate in or fund her share of the Baupost buyout without substantial concessions from Brownfield, and (2) at the eleventh hour, attempting to use the looming closing deadline for the Baupost buyout as an opportunity to extract self-interested concessions from Brownfield. (*Id.*, ¶60.)

Law demurs to this cause of action on the ground that Brownfield fails to allege any fiduciary duty that Law owed to her.

Under the LVPR Agreement, Brownfield and Law are Members, and the Manager is Land Veritas Corp. The "Company" is LV Petersen Ranch. Section 3.4.3.1 of the LVPR Agreement provides:

> The only fiduciary duties a Member or Manager owes to the Company and the other Members are the duty of loyalty and the duty of care set forth in Sections 3.4.3.1 and 3.4.3.2:
>
> 3.4.3.1 A Member's and Manager's duty of loyalty to the Company and the other Members is limited to the following:
>
> (a) To account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member or Manager of Company property, including the appropriation of a Company opportunity, without the consent of the Company; and
>
> (b) To refrain from dealing with the Company in the conduct or winding up of the Company business as or on behalf of a party having an interest adverse to the Company without the consent of the other Members.
>
> 3.4.3.2 A Member's or Manager's duty of care to the Company and the other Members in the conduct and in the winding up of the Company business is limited to refraining from engaging in

> grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

Under the express terms of the LVPR, Brownfield cannot state a breach of fiduciary duty cause of action unless her allegations fall within the scope of Section 3.4.31 (duty of loyalty) or 3.4.3.2 (duty of care).

With respect to the duty of loyalty, Brownfield relies on subsection (b) of Section 3.4.31. (Cross-Complaint, ¶58.) Thus, Brownfield must allege that Law breached a duty to refrain from dealing with LV Petersen Ranch "in the conduct or winding up" of LV Petersen Ranch business "as or on behalf of a party having an interest adverse" to LV Petersen Ranch without the consent of Brownfield.

Brownfield's Cross-Complaint does not allege that Law breached a duty of loyalty under subjection (b). She does not allege that Law dealt with LV Petersen Ranch as or on behalf of a party with interests adverse to the company. Rather, she alleges that Law dealt with her personally (not the company) in such a manner that caused Brownfield to suffer financial damages. (Cross-Complaint, ¶¶60, 61.) Brownfield has therefore failed to adequately allege a breach of the duty of loyalty in the First Cause of Action.

With respect to the duty of care, in order to fall within Section 3.4.3.2, Brownfield must allege that Law breached a duty "in the conduct and in the winding up" of LV Petersen Ranch business by engaging in grossly negligent or reckless conduct, intentional misconduct, or knowing violation of law. Brownfield's allegations with respect to the duty of care are sufficient at this stage of the pleadings. Whether the allegations regarding Law's conduct are sufficient to rise to the level of grossly negligent, reckless or intentional misconduct is a factual question inappropriate for resolution on demurrer.

Law also demurs to this cause of action on the ground that Brownfield does not allege she suffered any damages resulting from Law's conduct. This is incorrect, as Brownfield alleges among other things that she lost profits in certain transactions, e.g., the loss of proceeds in the closing of two mitigation credit sales, as a result of Law's conduct. Brownfield also alleges she incurred incremental closing and other costs. (Cross-Complaint, ¶¶51, 52.)

Because Brownfield adequately alleges a cause of action for breach of the duty of care, the demurrer to the First Cause of Action is overruled. (*Spencer v. City of Palos Verdes Estates* (2023) 88 Cal.App.5th 849, 861 ["'Ordinarily, a general demurrer does not lie as to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the demurrer will be overruled'" [citation omitted].)

Second Cause of Action

In her Second Cause of Action for fraudulent concealment, Brownfield alleges that for six months beginning in or about November 2021, Law actively led Brownfield to reasonably believe that Law intended to participate in the joint buyout. Law intentionally concealed from Brownfield that she had no intention of doing so unless Brownfield agreed to certain concessions. Law had a duty to disclose this information because she owed fiduciary duties to

Brownfield as a member of LV Petersen Ranch, she made statements about her willingness to proceed while suppressing material facts regarding the conditions under which she would agree to proceed, and she had exclusive knowledge of these conditions. (Cross-Complaint, ¶¶64-66.)

Law demurs to this cause of action on the ground that there was no duty to disclose, as Brownfield alleges only that the two parties were negotiating a personal contract at arms' length. However, as discussed above, Brownfield has adequately alleged breach of a fiduciary duty of care by one member to another. Further, Brownfield alleges that Law made a misleading disclosure by stating some facts but concealing others. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 666 ["Even if a fiduciary relationship is not involved, a nondisclosure claim arises when the defendant makes representations but fails to disclose additional facts which materially qualify the facts disclosed, or which render the disclosure likely to mislead"].) Law also demurs on the ground that Brownfield fails to allege she suffered any damages. This argument is rejected for the reason noted above in connection with the demurrer to the First Cause of Action.

Brownfield has sufficiently alleged a cause of action for fraudulent concealment. The demurrer to this cause of action is overruled.

Third Cause of Action

In her Third Cause of Action for promissory estoppel, Brownfield alleges that Law promised she would participate in the buyout of Baupost, Brownfield relied on this promise by continuing to work on the buyout for more than six months, and Brownfield was damaged by Law's failure to perform on her promise. (Cross-Complaint, ¶¶72, 73.)

Law demurs to this cause of action on the ground that promissory estoppel is merely a substitute for consideration for the formation of an enforceable contract, requiring all other elements of a contract to be present, and Brownfield fails to allege that the parties ever agreed to the terms of a buyout. The *Douglas E. Bernhart* case upon which Law relies, does not support Law's argument. Rather, this case held that mutual assent is not required for a promissory estoppel claim. (*Douglas E. Bernhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 242-243 ["A promissory estoppel claim also lacks another essential element of a contract claim: the parties' consent. Contract formation requires the parties' mutual assent, i.e., their 'agree [ment] upon the same thing in the same sense . . . . In contrast, we have held the lack of mutual assent is 'immaterial' to the resolution of a promissory estoppel claim, because 'the doctrine of promissory estoppel is not premised upon the existence of an enforceable contract'"] [citations omitted]; *H.W. Stanfield Constr. Corp. v. Robert McMullan & Son, Inc.* (1971) 14 Cal.App.3d 848, 853 ["We deem immaterial to a decision in the case defendant's contention an enforceable contract was not created between plaintiffs and defendant because mutual assent was lacking and for this reason the judgment is in error. Obviously the doctrine of promissory estoppel is not premised upon the existence of an enforceable contract"].)

Law also demurs to this cause of action on the ground that Brownfield cannot allege she suffered damages, because the profit she made by buying out Baupost alone outweighs the damages she alleges in her Cross-Complaint. The amount of Brownfield's damages is a factual determination inappropriate for determination on demurrer.

The demurrer to the Third Cause of Action is overruled.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for July, 2024 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/26/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001734

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK:

PLAINTIFF: TBF FINANCIAL I, LC vs. DEFENDANT: LAW OFFICES OF KARA S. HOLTZ, ET AL	

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiff's unopposed Motion for Entry of Judgment Pursuant to Written Stipulation is granted. The Court will sign and Order if/when one is submitted by Plaintiff.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/26/24 TIME: 1:30 P.M. DEPT: E CASE NO: PRO2200974

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK:

IN RE TRUST OF: KIISK 1996 REVOCABLE TRUST DATED MAY 10, 1996	

NATURE OF PROCEEDINGS: 1) MOTION – QUASH
2) MOTION – OTHER: LEAVE TO AMEND

RULING

Pursuant to Marin County Rule, Civil 2.13B, on July 1, 2024, attorney Steven Mark Kesten was appointed to preside as Discovery Facilitator for the motion for order quashing petitioner Mat Kiisk's ("Petitioner") deposition subpoena for production of business records to nonparty Varos Babakhanians, CPA. On July 19, 2024, Petitioner filed his Declaration of Non-Resolution in compliance with Marin County Rule, Civil 2.13H indicating that the parties participated in discovery facilitation resulting in "Defendants agreeing to produce a limited scope of discovery, a timeline for production, and a schedule for the parties to meet and confer in good faith for clarification or to request further production." (Declaration of Non-Resolution of Diego E. Garcia, ¶ 4.)

Accordingly, the motion is **OFF CALENDAR**. Should the parties fail to continue with their above resolution, either party may request (by ex parte application) that the Court re-set the motion for an expedited hearing.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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