

July 27, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003212 Jefferson Capital Systems, LLC vs. John Ahearn

No appearances required. In light of the judgment filed on July 2, 2026, the OSC re Failure to Request Default is dismissed.

2. CL0003783 Independence Capital Recovery, LLC (ICR) vs. MICHELLE SHELTON

No appearances required. In light of the proof of service of the Summons and Complaint filed on June 2, 2026, the OSC re Dismissal is dismissed. The Court notes, contrary to the declaration of counsel filed on July 20, 2026, the Court has not received a default judgment package filed under separate cover.

3. CL0003831 Midland Credit Management Inc. vs. William Wong

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for October 16, 2026 at 11:00 a.m.

4. CU0001445 James B. House vs. Gregory Atchley et al

Plaintiffs' motion to compel compliance with deposition subpoena for production of business records served on non-party Cory A. Birnberg is granted in part as described herein. Non-party Birnberg is ordered to respond to the subpoena, except requests 5-7 and 9, within 30 days' notice of this ruling. Subpoenaed Party Birnberg's motion to quash service of subpoena is granted in part as described herein, as to requests 5-7 and 9. Both parties' requests for sanctions are denied.

Legal Standards

Motion to Compel Deposition Subpoena

A party seeking discovery from a person who is not a party to the action may obtain discovery by oral deposition, written deposition, or deposition subpoena for production of business records. Code Civ. Proc., § 2020.010. A deposition subpoena may command either: (1) only the attendance and testimony of the deponent, (2) only the production of business records for copying, or (3) the attendance and testimony of the deponent, as well as the production of business records, other documents, electronically stored information, and tangible things. Code Civ. Proc., § 2020.020.

Service of a deposition subpoena shall be effected in such a manner as to allow sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated documents and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Code Civ. Proc., § 2020.220(a). Personal service of any

deposition subpoena is effective to require a deponent who is a resident of California to: personally appear and testify, if the subpoena so specifies; to produce any specified documents; and to appear at a court session if the subpoena so specifies. Code Civ. Proc. § 2020.220(c). A deponent who disobeys a deposition subpoena may be punished for contempt without the necessity of a prior order of the court directing compliance by the witness. Code Civ. Proc. § 2020.240. A motion to compel compliance with a deposition subpoena must be made within 60 days after completion of the deposition record, the date objections are served, or the date specified for production, and be accompanied by a meet and confer declaration. Code Civ. Proc. §2025.480(b); *Board of Registered Nursing v. Sup.Ct.* (2021) 59 Cal.App.5th 1011, 1032-1033.

Motion to Quash Deposition Subpoena

All matters which are not privileged and which are relevant to the subject matter involved in a lawsuit are discoverable under the California Discovery Act. Code of Civil Procedure section 2017.010(a) sets forth the general scope of discovery states as follows:

Unless otherwise limited by the order of the court in accordance with this article, 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 in that action if the matter either is admissible in evidence or appears reasonable 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.

Information that is not relevant or may not lead to the discovery of admissible evidence is not discoverable. A litigant does not waive all rights to privacy as to unrelated matters. *Britt v. Superior Court* (1978) 20 Cal.3d 844, 864-65. A litigant is entitled to retain the confidentiality of information unrelated to the litigation. *Ibid.* Even when information sought is relevant to the litigation, the party has a right to privacy as to their confidential financial affairs. *Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550. The right of privacy prevents excessive intrusion into matters normally regarded as confidential. *H&M Associates v. City of El Centro* (1980) 109 Cal.App.3d 399, 409.

Matters that would otherwise be protected by the constitutional right of privacy are discoverable only if “directly relevant to plaintiff’s claims and essential to the fair resolution of the lawsuit.” *Vinson v Super. Court* (1987) 43 Cal.3d 833, 841-842. “When the right to discovery conflicts with a privileged right, the court is required to carefully balance the right of privacy with the need for discovery.” *Harris v. Super. Court* (1992) 3 Cal.App.4th 661, 665.

Although admissibility is not a prerequisite to discoverability, a heightened standard of discovery may be justified when dealing with information which, though not privileged, is sensitive or confidential.” *Volkswagen of America, Inc. v. Super. Ct.* (2006) 139 Cal.App.4th 1481, 1492. “The burden is on the party seeking the constitutionally protected information to establish *direct relevance*.” *Davis v. Super. Ct.* (1992) 7 Cal.App.4th 1008, 1017 [emphasis added]. “Mere speculation as to the possibility that some portion of the records might be relevant to some substantive issue does not suffice.” *Id.*

In challenging the right of a party to take a deposition, Code of Civil Procedure section 2025.410(c) states, “In addition to serving [a] written objection, a party may also move for an order staying the taking of a deposition and quashing the deposition notice.” With respect to a deposition subpoena, Code of Civil Procedure section 1987.1(a) authorizes a motion to quash, mandating:

If a subpoena requires . . . the production of books, documents, electronically stored information, or other things before a court, or at the trial of any issue therein, or at the taking of a deposition, the court, upon motion reasonably made . . . or upon the court’s own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including a protective 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.

Analysis

Because the motions involve the same general analysis, the Court will consider them together.

Party / Non-Party Status

In his motion to quash, Birnberg argues he is “not a party” and thus the information sought is irrelevant. Mot. to Quash, 2:13. In his opposition to the motion to compel, Birnberg argues he is a party so a non-party deposition is not the appropriate discovery mechanism. Opp. Mot. Compel, 4:13-23. It appears Birnberg is trying to take advantage of his shifting status to maximize the arguments he can make against producing the documents requested; however, one cannot have his cake and eat it too. Because Birnberg argued in his own motion to quash he is a non-party, the Court will rely on that assertion. Additionally, as noted by both Plaintiffs and Birnberg, Birnberg is no longer a party to the action after the Court granted his anti-SLAPP motion without leave to amend. Thus, the Court will analyze the motions based upon a finding Birnberg is no longer a party to the suit.

Timeliness

Birnberg next argues the deposition subpoena was invalid because Plaintiffs served the deposition subpoena simultaneously with the cross-complaint on February 24, 2026. However, the record reflects it was not Plaintiff who filed the cross-complaint, but rather Defendants, and any simultaneous service of the deposition subpoena and cross-complaint was coincidental. Code of Civil Procedure § 2020.410(c) only requires compliance “on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.” Code Civ. Proc. § 2020.410(c). The deposition subpoena was issued on February 6, 2026, personally served on served on February 24, 2026 and ordered production of business records by March 13, 2026, which complies with the statutory guidelines. Pruna Decl., Ex. C. Thus, Birnberg’s timeliness argument fails.

Birnberg also argues Plaintiffs violated the “discovery hold” under Code of Civil Procedure § 425.16 because discovery was automatically stayed by his anti-SLAPP motion. However, the

stay expired upon notice of entry of the order ruling on the anti-SLAPP motion, which was filed and served on May 6, 2026. Plaintiffs filed their motion to compel on May 11, 2026 after the stay had expired. Therefore, the issue of a discovery stay is moot.

Relevance

Birnberg argues his insurance documents are irrelevant to Plaintiffs' claims against Defendants and the subpoena violates his privacy rights. The Court disagrees.

"California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides "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." Code Civ. Proc. § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co.* (2004) 116 Cal.App.4th 694, 712, fn. 8. "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement...'" See *Lopez, supra*, 246 Cal.App.4th at 590 591, citing *Garamendi, supra*, 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Ibid.* "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Ibid.* The scope of discovery is one of reason, logic and common sense. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612. The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540.

Compelling need is not always the test to apply in determining whether discovery is permissible, as "[c]ourts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies". *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Good cause should be shown on requests for production from non-parties as well as parties. *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223 224. Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388.

As the right to discovery is liberally construed, so too is good cause. *Id.* at 377 378. "(A) party seeking to compel production of records from a nonparty must articulate specific facts justifying the discovery sought; it may not rely on mere generalities. (Citation). In assessing the party's proffered justification, courts must keep in mind the more limited scope of discovery available from nonparties." *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal.App.5th 1011, 1039; citing *Calcor Space Facility* at 567; see also *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366.

At bar, Birnberg formerly represented Plaintiffs in the action and in a related case, and Birnberg was involved in the construction project dispute. Pruna Decl., ¶ 3. Further, on June 2, 2025, Birnberg filed a Notice of Charging Lien asserting a lien against any recovery obtained by Plaintiffs for attorney's fees and costs. Pruna Decl., Ex. B. Therefore, Birnberg has put at issue his own financial interest in the case. Additionally, Birnberg's prior representation of Plaintiffs in the action put at issue professional liability matters making his insurance documents relevant.

Next, Birnberg argues the deposition subpoena violates his privacy rights by requesting insurance documents. The Court again disagrees.

"A party may obtain discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Code Civ. Proc. § 2017.210. "Insurance policies are subject to a request for production..." which is limited to discovery of the "contents" of the insurance policies. *Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 734-735.

Therefore, the content of insurance policies for the subject time period are not shown to be privileged and may lead to admissible evidence. *Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court* (2006) 137 Cal.App.4th 579, 598. "Liability insurance policies are discoverable "to avoid a situation where any party argues language in the policy precludes coverage in this matter." *Ibid.* To the extent the deposition subpoena seeks the contents of the insurance policies (namely Request Nos. 1-4, 8, 10), the motion to compel is granted and the motion to quash is denied, **subject to a protective order in a form submitted by counsel and approved by the Court, or any privilege log Birnberg may file.** To the extent the deposition subpoena seeks documents, communications, or correspondence exceeding the contents of insurance policies (namely Request Nos. 5-7, 9) the motion to compel is denied and the motion to quash is granted.

Sanctions

Both parties request sanctions in connection with their respective motions. Although both parties have been successful in part, the respective actions do not constitute a misuse of the discovery process and both were unsuccessful, in part. Therefore, each of the parties' requests for monetary sanctions are denied.

In light of the Court's addressing both the Motion to Quash and the Motion to Compel simultaneously, the Court directs counsel for Plaintiffs' to prepare an order after hearing as to both motions setting forth the Court's ruling herein verbatim and to file and serve a corresponding notice of entry which, again, shall be deemed to pertain to ruling on both motions.

5. CU0001498 Robin Fladeboe et al vs. Gail H Beardsley et al

Appearance required by Plaintiffs to show cause as to why this case should not be dismissed and/or Plaintiffs sanctioned for failure to file a Request for Dismissal despite the fact a Notice of Settlement was filed nine (9) months ago indicating a request for dismissal would be filed no later than April 30, 2026. Absent good cause being shown, the Court intends, on its own motion,

to set the matter for dismissal pursuant to CCP section 583.420 and sanction each plaintiff \$250.00.

6. CU0001584 Matthew Coulter vs. Mark Olsen et al

Plaintiff Matthew Coulter's demurrer to Defendants' answer to the Third Amended Complaint (TAC) is **OVERRULED** with respect to the first, eighth, and eleventh affirmative defenses, and otherwise **SUSTAINED** with thirty (30) days leave to amend.

Legal Standard

A party against whom an answer has been filed may object by demurrer on the following grounds: (a) the answer does not state facts sufficient to constitute a defense, (b) the answer is uncertain, or (c) where the answer pleads a contract and it cannot be ascertained from the answer whether the contract is written or oral. Code Civ. Proc. § 430.20. A demurrer may be taken to the entire answer or to any one or more of several defenses in it. Code Civ. Proc. § 430.50(b). "A demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice." *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. The allegations of the pleading demurred to are regarded as true. *Ibid.*

"Unlike the usual general demurrer to a complaint the inquiry is not into the statement of a *cause of action*. Instead it is whether the answer raises a *defense* to the plaintiff's stated cause of action." *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-880 (emphasis in original). The analysis of whether an answer states a defense is governed by the same principles as that of whether a complaint states a cause of action. *South Shore Land Co., supra*, 226 Cal.App.2d 725, 732.

The sufficiency of an answer is evaluated with reference to the complaint it purports to answer. *South Shore Land Co., supra*, 226 Cal.App.2d 725, 733. A defendant must set forth only the "essential facts" of the affirmative defense, "sufficient to acquaint [plaintiff] with the nature, source and extent" of the defense. *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608. This is known as the "fair notice" test. *Ibid.* "There 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." *Ibid.*

Code of Civil Procedure § 431.30(b) provides that an answer to a complaint shall contain: (1) the general or specific denial of the material allegations of the complaint controverted by the defendant, and (2) a statement of any new matter constituting a defense. "The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.'" *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725, internal citations omitted. Where, however, the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not 'new matter,' but only a traverse." *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725. Traverse need not be specifically alleged. *Ibid.*

Allegations of new matter in an answer should not be proffered in the form of terse legal conclusions but rather they should be averred as carefully and with as much detail as the facts that constitute the cause of action alleged in the complaint. *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384; *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 812-813. Equitable defenses are “new matter” requiring ultimate facts pled. *Wade v. Howe* (1934) 2 Cal.App.2d 435, 439-440. “It is elementary that if one wishes to avail himself of an equitable defense he must set it up in his answer.” *Fillmore v. Reilly* (1938) 28 Cal.App.2d 460, 463.

Analysis

First and Eighth Affirmative Defenses: Failure to State a Cause of Action / Failure to Plead with Specificity

Plaintiff argues the first and eighth affirmative defenses fail because this Court overruled Defendants’ demurrer as to the first and second causes of action in the Second Amended Complaint (SAC), and because defendants do not explain what the uncertainties are in the TAC.

Pursuant to Code of Civil Procedure § 430.20, a party against whom an answer has been filed may object by demurrer on the grounds, the “answer does not state facts sufficient to constitute a defense” and the “answer is uncertain.” Code Civ. Proc. § 430.20(a), (b). A demurrer for uncertainty will be sustained only when the pleading is such that the responding party cannot discern what it must respond to. “A demurrer for uncertainty is strictly construed, even where a [pleading] is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” *Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616. “A special demurrer on the ground that an answer is (a) ambiguous, (b) unintelligible, or (c) uncertain is insufficient unless the demurrer points out specifically wherein the pleading is ambiguous, uncertain or unintelligible.” *Coons v. Thompson* (1946) 75 Cal.App.2d 687, 690.

As to these defenses, the Court agrees additional allegations are not required. The defenses are legal contentions challenging the sufficiency of Plaintiff’s allegations and therefore do not require Defendants to allege additional facts in support. The Answer provides sufficient notice of Defendants’ defenses for Plaintiff to respond and any uncertainties can be clarified in discovery. Additionally, the court’s overruling of Defendants’ demurrer to the SAC is inapplicable to the TAC where there are additional facts and causes of action that have not been previously analyzed by the court. Thus, the demurrer to the first and eighth affirmative defenses are OVERRULED.

Second Affirmative Defense: Laches, Estoppel, and Waiver

Plaintiff argues the Second Affirmative Defense does not aver specific facts apprising Plaintiff of the basis for the defense. The Court agrees.

“The burden of pleading facts which raises the issue of estoppel lies with the party who would estop the other party [citation], and for estoppel to be available it must be specially pleaded.” *Larue v. Swoap* (1975) 51 Cal.App.3d 543, 551. The pleading of a generic statement is insufficient. To assert the defense of laches where the application of the defense does not appear

on the face of the complaint, a defense must plead facts constituting laches. *Phoenix Mut. Life Ins. Co. v. Birkelund* (1946) 29 Cal.2d 352, 363; *Victor Oil Co. v. Drum* (1920) 184 Cal. 226, 243. Again, a generic statement is insufficient. “Waiver is an affirmative defense that must be pleaded with specificity and separately stated. In pleading waiver the defendant must set forth the facts upon which he bases his claim of waiver.” *Meyer Koulish Co. v. Cannon* (1963) 213 Cal.App.2d 419, 432; accord, *Richter v. Adams* (1937) 19 Cal.App.2d 572, 576. Defendants have not alleged facts supporting any of these affirmative defenses.

Moreover, laches, estoppel, and waiver are equitable defenses, and thus constitute new matter. Code Civ. Proc. § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725; *Wade, supra*, 2 Cal.App.2d at 439-440. Defendants must allege ultimate facts pleading the elements of these defenses, yet failed to do so. Defendants assert only that Plaintiff’s recovery is barred due to these equitable doctrines. Such a terse legal conclusion does not give Plaintiff fair notice of the nature and extent of the defenses or whether Defendants aver these defenses as to all or some of the causes of action. *FPI Development, Inc., supra*, 231 Cal.App.3d at 384; *Quantification Settlement Agreement Cases, supra*, 201 Cal.App.4th at 812-813; *Ludgate Ins. Co., supra*, 82 Cal.App.4th at 608.

As to Plaintiff’s assertion the second affirmative defense violates CRC 2.112, these doctrines have some overlap yet are not identical. Thus, each should be asserted as a separate defense.

Accordingly, the Demurrer to the second affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Third Affirmative Defense: Failure to Mitigate

The Third Affirmative Defense alleges, “plaintiff’s recovery is barred due to plaintiff’s failure to properly and reasonably mitigate his damages, if any were so sustained.” Answer to TAC, 2:17-21.

To the extent the defense introduces factual theories not at issue in Plaintiff’s TAC, it constitutes new matter and must be pled with ultimate facts. Code Civ. Proc. § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725; *FPI Development, Inc., supra*, 231 Cal.App.3d at 384; *Quantification Settlement Agreement Cases, supra*, 201 Cal.App.4th at 812-813. Defendants have not alleged in what manner, even generally, Plaintiff failed to mitigate his damages. Thus, the affirmative defense is insufficiently pled. Plaintiff cannot reasonably determine from the face of this defense in what way he failed to mitigate his damages, and thus the defense is uncertain within the meaning of Code of Civil Procedure § 430.20(b).

Accordingly, the Demurrer to the third affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Fourth, Fifth, Sixth, Ninth, and Tenth Affirmative Defenses

These affirmative defenses allege comparative fault, negligence/intentional torts of third parties, assumption of risk, avoidable consequences, and consent. The answer contains no facts alleged in support of any of these affirmative defenses.

These defenses constitute new matter. Code Civ. Proc. § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co.*, *supra*, 228 Cal.App.3d at 725. The defenses are not merely a denial of Plaintiff's allegations, they introduce distinct factual claims that Plaintiff and/or third parties were negligent, which conduct contributed to Plaintiff's damages, and Plaintiff assumed the risk and consented to Defendants conduct. The defenses are not responsive to any essential allegation contained in Plaintiff's TAC. *State Farm Mut. Auto. Ins. Co.*, *supra*, 228 Cal.App.3d at 725. Because Plaintiff's own negligent conduct is not put at issue by the Complaint, nor is the negligence/intentional tort of any unnamed third party, these affirmative defenses qualify as new matter and Defendants must plead ultimate facts supporting the defenses; terse legal conclusions are insufficient. *FPI Development, Inc.*, *supra*, 231 Cal.App.3d at 384; *Quantification Settlement Agreement Cases*, *supra*, 201 Cal.App.4th at 812-813.

Specific to the ninth affirmative defense of avoidable consequences, Plaintiff asserts such is an improper affirmative defense in that it is grounded in negligence and, thus, inapplicable as a matter of law to the intentional torts of assault, battery and Bane Act violation. The Court disagrees. "Under the avoidable consequences doctrine as recognized in California, a person injured by another's wrongful conduct will not be compensated for damages that the injured person could have avoided by reasonable effort or expenditure." *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1043. Thus, the doctrine lies with respect to mitigation of damages as opposed to any theory of negligence, and Plaintiff's assertion the doctrine is founded in negligence is incorrect. It pertains solely to the issue of damages, and whether one asserts an intentional tort or one which lies in a negligence theory, such is irrelevant to the applicability of the doctrine. It is only once a party is found to have suffered damage applicability of the doctrine of avoidable consequences comes into question. Thus, The Court overrules as to this basis for Plaintiff's demurrer as to the second affirmative defense.

Accordingly, the Demurrer to the fourth, fifth, and sixth, ninth, and tenth affirmative defenses are SUSTAINED WITH LEAVE TO AMEND.

Seventh Affirmative Defense: Statute of Limitations

Plaintiff argues Defendants fail to plead sufficient facts showing what statute of limitation has run for a particular cause of action. The Court agrees.

To properly plead a statute of limitations defense, a party must either allege facts showing that the action is time barred and allege the lateness of the action as a defense, or plead the specific section and subdivision. Code Civ. Proc. § 458; *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91. "It is necessary for defendant who pleads the statute of limitations to specify the applicable section, and, if such section is divided into subdivisions, to specify the particular subdivision or subdivisions thereof. If he fails to do so the plea is insufficient." *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691.

Here, Defendants allege Plaintiff's claims are "time barred due to the running and expiration of the applicable statute of limitations." Answer to TAC, 3:12-15. Defendants fail to specify any facts showing the action is time barred or plead any specific section of code. Accordingly, the demurrer to the seventh affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Eleventh Affirmative Defense: Bane Act

Defendant's eleventh affirmative defense alleges Plaintiff's claims under the Bane Act are barred because Defendants' conduct was not a substantial factor in causing Plaintiff's harm, and speech alone is not sufficient to constitute a violation of the Bane Act unless it involves a credible threat of violence. This defense is an argumentative denial of the allegations in the TAC, paired with a legal argument Plaintiff is not entitled to relief under the Bane Act, and therefore does not require Defendants to allege additional facts in support.

Accordingly, the demurrer to the eleventh affirmative defense is OVERRULED.

Leave to Amend

When a demurrer is sustained, the Court determines whether there is a reasonable possibility that the defect can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. California law imposes the burden on the party who filed the pleading to demonstrate the manner in which they can amend their pleadings to state their claims. See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349. "Denial of leave to amend constitutes an abuse of discretion unless the [pleading] shows on its face it is incapable of amendment. [Citation.] Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.

Here, Defendants have not shown the manner in which they could amend the answer to properly state their defenses against Plaintiff's claims. However, given the liberal standard for permitting amendment of the pleadings, and the defects in the answer arising merely from a paucity of alleged facts, the Court will exercise its discretion to permit leave to amend the answer.

Conclusion

Accordingly, the Demurrer to the Answer is OVERRULED with respect to the first, eighth, and eleventh affirmative defenses and otherwise SUSTAINED with leave to amend. Defendants shall have 30 days leave to amend the answer from the date of this order.

7. CU0002636 John Lascoe et al vs. Selene Finance LP et al

Defendants Selene Finance, LP's, Idea Law Group P.C.'s, and Ali Payravi, Trustee of 401K Arita's demurrers are dropped as moot. A party may amend its pleading once without leave of the court after a demurrer is filed but before the demurrer is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike. Code Civ. Proc. § 472(a). Plaintiff's First Amended Complaint was timely filed and served on July 14, 2026, rendering the demurrers moot.

8. CU0002676 Westcon Construction Corp. vs. C & D Contractors, Inc. et al

No appearances required. In light of the proofs of service of the Summons and Complaint filed on May 6, 2026 along with the declaration of counsel for Plaintiff Westcon, the OSC is hereby dismissed.

9. CU14-080744 TIMOTHY P DEMARTINI et al vs. MICHAEL J DEMARTINI et al

Plaintiffs' motion for relief and disposition of funds is granted.

Plaintiffs' unopposed requests for judicial notice are granted.

The Court's February 3, 2026 Order noted, "it seems the appeal is moving forward, and, once such has been decided, the Court will be in a position to take further action in this matter." On June 17, 2026, Defendants' appeal was dismissed for failure to file their opening brief, and on July 16, 2026, Defendants' request to reinstate the appeal was denied. RJN, Ex. G. Therefore, because there is no longer any appeal, there is no further reason to delay distribution of the funds in accordance with the Court's September 11, 2023 Statement of Decision and Judgment and the Court's August 13, 2025 Order. RJN, Exs. A-B. Therefore, the Clerk of the Court shall disburse all funds held in trust by the court in relation to this matter. The Court is aware of its prior award of costs payable to Plaintiffs in the amount of \$11,433.35 and requests parties appear to indicate whether a stipulation might be entered related to payment of the costs from Defendant Michael DeMartini's share of funds. If no stipulation is reached, the Court expects no more than a two page briefing related to payment of costs from the funds held by the Court. In addition, the Court requests parties' direction as to the manner in which payment of funds should be made, specifically, whether each side wishes payment be made to parties jointly, singularly, or, in the case of Plaintiffs, to counsel FBO one or both plaintiff.

10. FL0001988 Berber, Victoria Saldana v. Rodriguez, Jorge Aron Diaz

Attorney for Petitioner, Eric C. Werner, Esq. of Werner Law, PC is ordered to show cause as to why he should not be sanctioned \$250.00 for failing to appear with his client at the OSC set on June 18, 2026, failing to file a change of address with the Court, and failing to address the issues set forth in the OSC previously issued and set for June 18, 2026 on behalf of his client.