Tentative Rulings for July 24, 2024
Department 3

To request oral argument, you must notify Judicial Secretary Vanessa Siojo at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 3 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252, 1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: 161 692 7358

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2304643	WONG VS FORD MOTOR COMPANY	DEMURRER ON 1ST AMENDED COMPLAINT FOR BREACH OF CONTRACT/WARRANTY (OVER $25,000) OF LOUIE WONG BY FORD MOTOR COMPANY

Tentative Ruling:

The Court overrules the demurrer and orders Defendant to file an answer within 30 days.

The Court denies the request for judicial notice.

<u>Factual / Procedural Context:</u>

Plaintiff Louie Wong alleges that on October 21, 2021, he purchased a used 2018 Ford Mustang from an authorized dealership of defendant Ford Motor Company that came with express warranties. Plaintiff alleges the vehicle came equipped with material defects that Defendant's authorized repair facility was unable to repair, and Defendant refused to buyback or replace the vehicle. Plaintiff filed the original complaint on September 5, 2023, and the operative First Amended Complaint on April 12, 2024, alleging 1) violation of the Song Beverly Act – breach of express warranty; 2) violation of the Song Beverly Act – breach of implied warranty; 3) violation of Song Beverly Act, Civil Code § 1793.2(b); 4) violation of Magnuson-Moss Warranty Act; and 5) breach of express warranty under California Commercial Code.

Defendant now moves for judgment on the pleadings arguing that Plaintiff's state warranty claims fail as a matter of law because the Song-Beverly Act does not apply to vehicles purchased used pursuant to *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209 and *Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385. Defendant further argues that the Magnuson-Moss Warranty Act claim fails because the Song-Beverly Act fails, and the Commercial Code claim fails because Plaintiff fails to allege privity.

Plaintiff opposes, arguing that *Rodriguez* is distinguishable and not binding pending California Supreme Court review, and used cars with a remainder warranty do qualify for relief under the Song-Beverly Act pursuant to *Jensen v. BMW of North America, Inc.* (1989) 35 Cal.App.4th 112 and the recent case of *Stiles v. Kia Motors Am., Inc.* (2024) 101 Cal.App.5th 913. Plaintiff argues the Magnuson-Moss Warranty Act claim and the Commercial Code claim survives for the same reasons.

Request for Judicial Notice

Defendant seeks judicial notice of the Retail Installment Sales Contract and the 2018 Model Year Ford Warranty Guide. These documents are not appropriate for judicial notice as they are reasonably subject to dispute.

<u>Analysis:</u>

A demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) In evaluating a demurrer, 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 University of California* (1990) 51 Cal. 3d 120, 125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal. 4th 666, 672.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 713.) Facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary allegations appear in the complaint, will be given precedence. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal. App. 3d 593, 606.) 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, 318.)

A. Breach of express warranty (1st and 3rd causes of action)

"The Song-Beverly Act is a remedial statute designed to protect consumers who have purchased products covered by an express warranty." (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.4th 785, 798.) Under the Song-Beverly Act, if a manufacturer fails to repair a new motor vehicle as defined by the Act within a reasonable number of attempts, it must promptly offer a repurchase or replacement vehicle. (Civ. Code, §1793.2(c) and (d)(2).) To assert a Song-Beverly claim against a manufacturer, the plaintiff must be a retail buyer of new consumer goods from a retail seller. (*Dagher v. Ford Motor Co*. (2015) 238 Cal.App.4th 905, 924.)

Defendant argues that Plaintiff cannot maintain his express warranty claims under the Song-Beverly Act because Plaintiff alleges that he purchased the subject vehicle used. Under the *Song*-Beverly Act, "consumer goods" is defined as "any *new* product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables." (Civ. Code §1791(a); *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, 217 ("*Rodriguez*").) "New motor vehicle" means "a new motor vehicle that is bought or used primarily for personal, family, or household purposes," and includes (among categories not relevant in this case), "a dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty." (Civ. Code §1793.22(e)(2).) A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type. (*Id.*; *Rodriguez, supra*, 77 Cal. App. 5th at 219.)

The courts are split as to whether a pre-owned vehicle sold with a balance remaining on the manufacturer's warranty is a "new motor vehicle" within the meaning of Civ. Code § 1793.22. In *Rodriguez, supra*, 77 Cal. App. 5th at 215, the Fourth District Court of Appeals held that the phrase "or other motor vehicles sold with a manufacturer's new warranty", which is preceded by the terms "a dealer-owned vehicle and demonstrator," refers to cars sold with a full warranty, not to previously sold cars accompanied by some balance of the original warranty. (*Id.* at 224.)

In *Jensen v. BMW of North America, Inc.* (1989) 35 Cal.App.4th 112 ("*Jensen*"), the Third District Court of Appeals held that a previously owned vehicle that was subject to the manufacturer's new car warranty qualified as a new motor vehicle as defined in section 1793.22(e)(2).) (*Id.* at 122-123.) In the newly decided case of *Stiles v. Kia Motors America, Inc.* (May 2, 2024) 101 Cal.App.5th 913 ("*Stiles*"), the Second District Court of Appeals determined *Jensen* was "properly decided", disagreed with the holding in *Rodriguez*, and held that the term "other motor vehicle sold with a manufacturer's new car warranty" is a separate category from "dealer-owned" and demonstrator" and includes preowned vehicles sold with remaining warranties. (*Stiles*, *supra,* 101 Cal.App.5th at 917-920.)

The facts of this case are more similar to *Stiles* than *Rodriguez.* In *Rodriguez*, the plaintiff bought the used vehicle from a third party used car dealership. (*Rodriguez,* 77 Cal. App. 5th at 215.) In *Stiles*, the plaintiff alleged Kia is the manufacturer and distributor of the car, and express warranties accompanied the sale by which Kia agreed to preserve the utility and performance of the car or provide compensation on failure of utility or performance. (*Stiles*, *supra,* 101 Cal.App.5th at 916.)

In this case, Plaintiff does not allege he bought the subject vehicle from a third party dealer. Instead, he alleges that he purchased the vehicle from an authorized Ford dealership. (FAC, ¶ 32.) Identical to *Stiles*, Plaintiff also alleges that Ford is the manufacturer and distributor of the car, and "[e]xpress warranties accompanied the sale by which Kia agreed to preserve the utility and performance of the car or provide compensation on failure of utility or performance." (FAC, ¶ 13, 17.) These facts must be taken as true for purposes of the demurrer.

Moreover, *Rodriguez* is currently pending review in the Supreme Court. The Court finds that the better course of action is to allow the matter to proceed rather than decide this case at a pleading stage. If the Supreme Court upholds the appellate ruling in *Rodriguez,* Defendant may certainly revisit this issue with the Court. If *Rodriguez* is reversed, then the matter needs no further action.

As such, the demurrer is overruled on these grounds.

B. Breach of implied warranty (2nd cause of action)

The Song-Beverly Act also provides for implied warranties of merchantability and fitness for "consumer goods"—*i.e.*, new products. (Civ. Code §§ 1791.1(c) & 1792.) These implied warranties may not last less than 60 days or more than one year after the sale of the consumer goods to which they apply, and liability for their breaches lies with the manufacturer. (*Id.* at §§ 1791.1(c) & 1792.) The Act also provides implied warranties for used products. These are shorter than the implied warranties for new products; their maximum duration is three months. (*Id.* at § 1795.5(c).) "[I]n the sale of used consumer goods, liability for breach of implied warranty lies with **distributor and retailers, not the manufacturer**," unless the manufacturer issues a new warranty along with the sale of the used good. (*Ruiz Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385, 398 (emphasis added) ("*Nunez*"); *see also Kiluk*, *supra*, 43 Cal.App.5th at 339–40 ("The Song-Beverly Act provides similar remedies in the context of the sale of used goods, except that the manufacturer is generally off the hook.").)

Defendant argues that, under *Nunez*, it cannot be held liable for breach of implied warranty as the manufacturer of the subject vehicle and Plaintiff cannot establish privity of contract. This argument is unpersuasive in light of the facts alleged in the complaint. Plaintiff does not only allege Ford is the manufacturer but also the "distributor" of the subject vehicle. (FAC, ¶ 13.) Plaintiff also alleges that he purchased the vehicle from an authorized Ford dealership. (FAC, ¶ 32.) These facts suggest the dealership from whom Plaintiff purchased the vehicle was an agent of Ford and thus sufficient to establish privity. (Civ. Code § 2316, § 2317.)

C. Violation of the Magnuson-Moss Warranty Act (4th cause of action)

Defendant argues that Plaintiff's claim under the Magnuson-Moss Warranty Act fail because his Song-Beverly Act claim fails. While the "failure to state a warranty claim under state law necessarily constitute[s] a failure to state a claim under [Magnuson-Moss]" (*Daugherty v. Am. Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 833), this claim survives because Plaintiff's Song-Beverly Act survives.

Defendant next argues that this claim fails because Ford only provided a limited warranty with the original new car sale of the subject vehicle, and Plaintiff fails to allege that he participated in Ford's informal dispute settlement procedure (BBB Auto Line) set forth in the warranty guide. In support, Defendant cites to the declaration of Jad I. Doudar and the 2018 Model Year Ford Warranty Guide attached to the request for judicial notice. These facts are outside the four corners of the pleading, not appropriate for judicial notice (as noted above) and cannot be considered on a demurrer.

D. Breach of express warranty under California Commercial Code

Defendant argues that this claim fails because there are no facts in the complaint that establish privity. This argument is no different than Defendant's argument on the breach of implied warranty claim and fails for the same reason.

2.

CVRI2305453	SUNRUN INSTALLATION SERVICES INC. VS JOHNSON	MOTION FOR ORDER SETTING ASIDE DEFAULT

Tentative Ruling:

The Court on its own motion shall continue this motion to 8/26/24 at 8:30am because the opposition for this motion is untimely. Oppositions must be filed by the ninth court day before the hearing (C.C.P. §1005(b)) and served in a manner "reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day" (C.C.P. §1005(c)). Here, the opposition was filed on 7/16/24, and thus is not timely.

It is within the court's discretion whether to consider the late opposition. (See *Kapitanski v. Von's Grocery Store* (1983) 146 Cal. App. 3d 29, 32.) The Court shall consider the late opposition, however, Defendant should be allowed to file a reply. As such, the Court shall continue the motion to the date above, and Defendant shall be permitted to file a reply, if Defendant chooses to do so, by August 7, 2024.

3.

CVRI2305990	BROWN VS LEWIS	MOTION TO BE RELIEVED AS COUNSEL FOR ANGELA R. LEWIS
CVRI2305990	BROWN VS LEWIS	MOTION TO BE RELIEVED AS COUNSEL

Tentative Ruling:

The Court grants attorney Hornbuckle's motion to be relieved as counsel for Angela Lewis and James Lewis, effective upon the filing of the proof of service of a signed order upon the client.

On calendar today is also a CMC hearing. The Court orders all counsel to appear to discuss setting future dates.

4.

CVRI2401465	GRANILLO VS GRANILLO	DEMURRER ON COMPLAINT FOR OTHER COMPLAINT (OVER $35,000) OF KATHLEEN G. GRANILLO

Tentative Ruling:

The Court overrules the demurrer as to the 1st, 7th, 8th and 9th causes of action and the claim of misjoinder of parties. The demurrer is sustained with 20 days leave to amend as to the 2nd cause of action due to Plaintiff's failure to comply with Corp. Code § 800.

Factual / Procedural Context:

This is a family business dispute and shareholder's derivative action. Plaintiff Kathleen Granillo ("Plaintiff") alleges that she is an officer, director and minority 49 percent shareholder of Defendant V.C.I. Victor Construction, Inc. ("Corporation"). Plaintiff alleges that Defendant Victor Granillo, Sr. ("Victor") owns 51 percent of shares of the Corporation. Plaintiff asserts that for over one year, Victor used his power as majority shareholder to control the Corporation for his benefit and Plaintiff's detriment. Plaintiff claims that Victor transferred assets and good will of the Corporation to engage in competition. Plaintiff further alleges that Victor stripped the Corporation of assets, falsified books and removed Plaintiff from corporate bank account. Additionally, Plaintiff claims that Victor, as well as Defendants Victor Granillo, Jr., Katrina Granillo and Shilo Luna had Plaintiff falsely arrested for embezzlement, fraud and elder abuse. On February 28, 2024,

Defendants unlocked Plaintiff's car and removed personally property and threw it on the ground, entered Plaintiff's office and recorded her while on speaker phone.

On March 19, 2024, Plaintiff filed her Complaint. She asserts eight causes of action for: (1) Breach of Fiduciary Duty; (2) Shareholder's Derivative Action; (3) Involuntary Dissolution; (4) Appointment of Receiver; (5) Accounting; (6) Conversion; (7) Assault; (8) Intentional Infliction of Emotional Distress; and (9) Negligent Infliction of Emotional Distress.

Defendants V.C.I. Victor Construction Inc., Victor Granillo, Sr., Victor Granillo, Jr., Katrina Granillo, Shilo Luna (collectively "Defendants") now demur to the Complaint. Defendants argue that the first cause of action is not pled with specificity. Defendants argue that Plaintiff cannot bring a shareholder's derivative action without first making a demand on the board of directors. Defendants argue that the claims against Victor Granillo, Jr., Katrina Granillo, Shilo Luna should be dismissed for misjoinder since they are not officers or directors of the Corporation and were not involved in any of the corporate activities. Defendants argue that the assault cause of action does contain specific acts committed by each Defendant. Defendants argue that the emotional distress causes of action are improper because Plaintiff seeks damages for general emotional distress.

In her Opposition, Plaintiff argues only that Defendants failed to meet and confer.

<u>Analysis:</u>

<u>Meet and Confer</u>:

Pursuant to Cal. Code Civ. Pro. §430.41 before filing a demurrer, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised. The demurring party shall file and serve with the demurrer a declaration stating either: (A) the means by which the demurring party met and conferred with the party who filed the pleading and that the parties did not reach an agreement; or (B) that the party who filed the pleading failed to respond to the meet and confer request of the demurring party. (Cal. Code Civ. Pro. §430.41(a)(3)(A)-(B).)

Here, Defendants did not file a meet and confer declaration prior to the initial hearing. The Court continued the hearing and ordered the parties to meet and confer. On July 15, 2024, Defendants' counsel filed a declaration stating that the parties exchanged meet and confer emails. (Decl. of Saunders, ¶¶ 5 and 6.) Per counsel's declaration, Plaintiff's counsel sent an email that indicated the meet and confer request was declined.

Although the Court could continue this matter again and order the parties to meet, the Court finds that under the circumstances it would be prudent to simply provide a ruling. However, if the parties choose not to engage in a meet and confer in person or by telephone in the future when required to do so by statute, the Court shall consider whether monetary sanctions would be appropriate going forward against the party failing to meet.

<u>Standards on Demurrer</u>:

A party may object by demurrer to a complaint on grounds that the pleading does not state facts sufficient to constitute a cause of action. (C.C.P. §430.10(e).) For the purposes of a demurrer, the allegations in the complaint must be accepted as true. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 713.) In short, the ruling on a demurrer determines a legal issue on the basis of assumed facts, i.e., all those material, issuable facts properly pleaded in the complaint, regardless of whether they ultimately prove to be true." (*State of California ex rel. Bowen v. Bank of America Corp.* (2005) 126 Cal. App. 4th 225, 240.) It is error to sustain a demurrer when the "plaintiff has

stated a cause of action under any possible legal theory." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 966-967.)

Breach of Fiduciary Duty:

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, breach of the fiduciary relationship and damages. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 820.) "A fiduciary relationship is '"any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent." (*Los Angeles Memorial Coliseum Com. v. Insomniac, Inc.* (2015) 233 Cal. App. 4th 803, 833-834.)

"Fiduciary duties are imposed by law in certain technical, legal relationships such as those between partners or joint venturers [citation], … trustees and beneficiaries, principals and agents, and attorneys and clients [citation]." (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 140.) An officer who participates in the management of the corporation is a fiduciary of the corporation as a matter of law. (*Los Angeles Memorial Coliseum Comm., supra*, 233 Cal. App. 4th at 834.) Additionally, "Majority shareholders, either singly or acting in concert to accomplish a joint purpose, have a fiduciary responsibility to the minority and to the corporation to use their ability to control the corporation in a fair, just, and equitable manner. Majority shareholders may not use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority." (*Schrage v. Schrage* (2021) 69 Cal. App. 5th 126, 149.) Whether a breach of fiduciary duty claim is derivative or individual depends on whether the breach damaged the overall value of the business or the minority shareholder's share of the corporation. (Id at 156.)

Plaintiff asserts that Victor is the majority shareholder of VCI with 51 percent of the shares, while she is the sole minority shareholder with 49 percent. (Comp., ¶ 9.) She alleges that Victor used his power to dominate and control the business affairs to benefit himself to the detriment of Plaintiff. (Id at ¶ 10.) Victor allegedly transferred assets and good will of the VCI to engage in competition with VCI in order to freeze Plaintiff out of her rights and interest. (Id at ¶ 11.) Plaintiff alleges that Victor breached his fiduciary duties by wasting and diverting corporate assets, falsifying books and records, attempting to remove Plaintiff from corporate accounts and removing Plaintiff from her position. (Id at ¶ 13.) These allegations are sufficient to state a cause of action against Victor. The demurrer on this cause of action is overruled.

Shareholders' Derivative Actions:

A shareholder derivative suit is an equitable action where the shareholder filing the action represents the corporation's interests. (*McDermott v. Bear Film Co*. (1963) 219 Cal.App.2d 607, 611.) In order to bring a derivative claim, the corporation must be named as a nominal defendant. The corporation is an indispensable party to a derivative action. (*Beyerbach v. Juno Oil Co.* (1954) 42 Cal.2d 11, 27-28.) In contrast, a stockholder's individual suit is a suit to enforce a right against the corporation which the stockholder possesses as an individual" (*Jara v. Suprema Meats* (2004) 121 Cal. App. 4th 1238, 1254.)

Defendants argue that Plaintiff failed to comply with pre-litigation requirements before filing the Complaint. To institute or maintain a shareholders' derivative action, the plaintiff must first allege in his or her complaint what particular efforts were taken by plaintiff "to secure from the board such action as plaintiff desires," or the reasons why seeking compliance by the board would be futile. A "'demand typically is deemed futile when a majority of the directors have participated in or approved the alleged wrongdoing, or are otherwise financially interest in the challenged transactions.'" (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 790, citing *Kamen v. Kemper*

Financial Services, Inc. (1991) 500 U.S. 90, 101-102.) In *Bader*, the court adopted a two-factor test for determining whether there is futility: (1) The directors are disinterested and independent; (2) The challenged transaction was the product of a valid exercise of business judgment. (*Bader*, *supra*, 179 Cal. App. 4th at 791.) Demand futility is satisfied for pleading purposes when either prong of the Bader two-factor test is satisfied. (*Ibid*.) The plaintiff must also allege that he or she either informed "the corporation or the board in writing of the ultimate facts of each cause of action against each defendant or delivered to the corporation or the board a true copy of the complaint which plaintiff proposes to file." (Corp. Code § 800(b)(2).)

Plaintiff claims that Victor harmed the interests of the VCI by wasting and diverting corporate assets, falsifying books and improperly removing Plaintiff and having her arrested. (Comp. ¶20.) Plaintiff asserts that no demand was made on the Board of Directors of the Corporation because such demand would have been futile because Victor has excluded Plaintiff from the Corporation and has usurped complete control and is named as a Defendant. (Compl, ¶ 19.) Based on the facts alleged, it is clear that Victor as the only shareholder other than Plaintiff, was not disinterested. Any demand made by Plaintiff would have been futile. However, there are no facts showing that Plaintiff complied with Corp. Code § 800(b)(2).

As such, the demurrer is sustained with leave to amend.

<u>Misjoinder of Victor, Jr., Donn, Katrina Granillo and Shilo Luna</u>:

Defendants argue that Defendants Victor, Jr., Donna, Katrina and Shilo are improper parties to this action. Cal. Code Civ. Pro. §430.10(d) provides for a demurrer based on nonjoinder of a necessary party or misjoinder of parties. A defendant is properly joined if (1) any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or (2) a claim, right, or interest adverse to them in the property or controversy which is the subject of the action. (Cal. Code Civ. Pro. §379(a); *Shaolian v. Safeco Ins. Co.* (1999) 71 Cal. App. 4th 268, 276, "permissive joinder of defendants proper so long as the right to relief asserted was joint or several and arose out of the same transactions or occurrences and presented common questions of law and fact".)

Here, the seventh, eighth and ninth causes of action for assault and emotional distress are asserted against Victor, Jr., Donna, Katrina and Shilo, as well as Victor, Sr. Plaintiff alleges that on February 28, 2024, all Defendants assaulted Plaintiff by opening Plaintiff's door at work without her permission and later opening her car and pulling her personal property out of the vehicle and throwing them on the ground. (Comp., ¶43.) Plaintiff also alleges that some of the items were pulled out from underneath her. (Id.) Plaintiff alleges that these Defendants intimidated and bullied her. (Id.)

Because Plaintiff alleges that all Defendants participated in this assault, Defendants have not established that they were improperly joined, and the demurrer is overruled on these grounds.

<u>Intentional and Negligent Infliction of Emotional Distress</u>:

A cause of action for intentional infliction of emotional distress ("IIED") requires: (1) extreme and outrageous conduct with the intent of causing, or reckless disregard of the probability of causing, emotional distress; (2) severe or extreme emotional distress; and (3) causation. (*Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1050-51). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id*. at 1050 [*quoting Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001] [internal quotation marks omitted]). The plaintiff must allege with "great specificity" the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

The IIED cause of action incorporates, and is based on, facts alleged in connection with other causes of action. For example, the assault described above at Paragraph 43 is incorporated. (Comp., ¶46). This assault was sufficiently despicable to constitute extreme and outrageous conduct.

Defendants argue that Plaintiff cannot assert claims of IIED as well as negligent infliction of emotional distress (NIED) because IIED requires intentional conduct, whereas NIED is a form of negligence. (*Huggins v. Longs Drug Store* (1993) 6 Cal. 4th 124, 129.) However, a plaintiff may plead alternative inconsistent theories of recovery. (*Dubin v. Robert Newhall Chesebrough Trust* (2002) 96 Cal. App. 4th 465, 477.) As such, Plaintiff should be permitted to plead both IIED and NIED. The demurrer is thus overruled as to both causes of action.