TENTATIVE RULINGS

Judge Michael J. Strickroth

DEPT C15

Department C15 hears Law and Motion matters on Mondays at 1:45 pm

Court Reporters: Official court reporters (i.e. court reporters employed by the Court) are NOT typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- **Civil Court Reporter Pooling; and**

- **For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.**

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 10:00 am in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. <u>Please do not call the department for tentative rulings if tentative rulings have not been posted.</u> The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5215. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C15 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)1.)

PUBLIC ACCESS: In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS

Date: April 29, 2024

<table>
<tr><th>#</th><th>Case Name</th><th>Tentative</th></tr>
<tr><td>1</td><td>Tran vs Tran

2023-01326527</td><td>Demurrer to Complaint

This matter is off calendar based on demurring party’s notice of withdrawal filed 04/19/2024.</td></tr>
<tr><td>2</td><td>Ivan vs Orozco

2022-01287392</td><td>Motion to Be Relieved as Counsel of Record for Plaintiff

The motion of attorney Michael A. DesJardins of the Law Office of Michael DesJardins, Inc. to withdraw as attorney of record for plaintiff John Ivan is GRANTED. (Code Civ. Proc. § 284, CRC 3.1362.)

Summary of Moving Attorney’s Evidence:

<table>
<tr><td>1A.</td><td>Mandatory Notice Form?</td><td>Yes. (ROA 30)</td></tr>
<tr><td>1B.</td><td>Mandatory Declaration Form?</td><td>Yes (ROA 28)</td></tr>
<tr><td>1C.</td><td>Proposed Order?</td><td>Yes. (ROA 31)</td></tr>
</table>
</td></tr>
</table>

		2.	Reasons for Motion?	Break down in communications. Client has not responded to several efforts made to discuss the matter.
		3A.	Service on Client?	Yes, by mail.
		3B1.	Recent Confirmation of Client's Address?	Yes, by telephone.
		3B2.	If no recent confirmation, what efforts made?	
		4.	The next hearing scheduled?	5-3-24 – Default Prove Up
		5.	Additional proceedings currently scheduled?	
		6.	Trial Date?	None

Moving attorney is to give notice. Counsel will be relieved effective upon filing proof of service on plaintiff of the Court's signed order granting the motion.

3	**Zhu vs Lee** **2023-01355740**	**Motion for Reclassification** **The unopposed motion of defendants Ka On Lee aka Amy Lee and Smart Kidz to reclassify this unlimited civil case as a limited civil case**

		and transfer the matter to limited jurisdiction is GRANTED. Defendants move pursuant to *Code of Civil Procedure* section 403.040, subdivision (b) which provides: "If a party files a motion for reclassification after the time for that party to amend that party's initial pleading or to respond to a complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied: [¶] (1) The case is incorrectly classified. [¶] (2) The moving party shows good cause for not seeking reclassification earlier." *Code of Civil Procedure* Section 86, subdivision (a) provides in pertinent part: "(a) The following civil cases and proceedings are limited civil cases: [¶] (1) A case at law if the demand, exclusive of interest, or the value of the property in controversy amounts to thirty-five thousand dollars ($35,000) or less." Defendants have met the requirements of section 403.040, subdivision (b). First, Defendants have shown the Complaint seeks damages limited to $35,000. (ROA No. 2, p. 2.) Second, Defendants have sufficiently demonstrated good cause for not seeking reclassification earlier. Specifically, Defendants have shown that on 02-05-2024, Defendants issued a Demand Letter to Plaintiff's lawyer, providing documentary evidence refuting Plaintiff's claims. In response, Plaintiff's counsel indicated an intent to pursue the Complaint, setting a deadline of 02-09-2024, for Defendants to respond. Defendants filed the instant Motion and their Demurrer on 02-29-2024.

		Based on the foregoing, the Motion is GRANTED. Moving Defendants to give notice. The Court transfers this case to Limited forthwith.
4	**Mohseni vs Hyundai Motor America** **2023-01320429**	**Motion to Compel Arbitration** **Case Management Conference** Pursuant to the Court's order of 04/24/2024, this motion and the related Case Management Conference are both continued to 06/10/2024 at 1:45 PM in Department C15.
5	**Manos vs Do** **2023-01334470**	**Motion to Compel Arbitration** **Defendants Steven Do and Cindy Do's Motion to Compel Arbitration against Plaintiffs Christopher Manos and John Frieze is GRANTED.** *Code of Civil Procedure* Section 1281.2 provides in pertinent part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: [¶] (a) The right to compel arbitration has been waived by the petitioner; or [¶] (b) Grounds exist for rescission of the agreement. [¶] (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a

		possibility of conflicting rulings on a common issue of law or fact . . ." The moving party must prove by a preponderance of the evidence the existence of an arbitration agreement, and that the dispute is covered by the agreement. *Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 413. In resolving a motion to compel arbitration, "the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972. On or about January 28, 2023, Plaintiffs and Defendants Steven and Cindy Do (collectively the "Dos") entered into a Residential Purchase Agreement (hereinafter as "Agreement") to purchase the Subject Property. (The Dos' Exhibit A.) Section 31 of the Agreement provides, in pertinent part, as follows: "A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration….. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement." Plaintiffs do not dispute the validity of the Arbitration Clause, or otherwise object to its enforceability. Rather, Plaintiffs contend the Dos breached the Agreement by refusing to

		mediate, thereby waiving their right to compel arbitration. Section 30 of the Agreement provides as follows: "A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action." Based on the evidence submitted by the parties, the Court finds the Dos did not refuse to mediate with Plaintiffs. The facts show Plaintiffs demanded mediation on April 13, 2023. The mediation was allegedly scheduled by Plaintiffs for July 20, 2023, and canceled by the Dos who sought a later mediation date in September or October 2023. Plaintiffs' counsel asserted the Dos were engaging in delay tactics and filed this lawsuit instead of rescheduling the mediation. However, scheduling a mediation for five to six months after a demand letter is received is not unreasonable. Therefore, the Dos did not breach Section 30 of the Agreement and waive their right to compel arbitration. Accordingly, the parties are ordered to arbitration. The action is stayed pending completion of arbitration. **Joinder by Defendant Zutila, Inc.** **Defendant Zutila, Inc's joinder with the Dos' motion to compel arbitration is GRANTED.** Defendant Zutila, Inc. joins the Dos' motion to compel arbitration on the grounds the same claims against the Dos have been asserted against Zutila. Plaintiffs' have not opposed Zutila's joinder.

		Therefore, the Court also orders defendant Zutila to arbitration. The action is stayed pending completion of arbitration. Moving party to give notice. The Court schedules an ADR Review hearing for 4/28/2025 at 8:30 AM in Department C15. **Case Management Conference** If the parties submit on the tentative and/or the tentative becomes the order of the court, the Case Management Conference will go off calendar and an ADR Review hearing is set for 4/28/2025 at 8:30 AM in Department C15. If the tentative does not become the order of the court, the parties are required to attend the Case Management Conference, either remotely or in the courtroom.
6	**Coulter vs Emerson Maintenance Association** **2022-01249087**	**Motion to Compel Inspection** **Defendant's Motion to Compel Inspection of the Premises is GRANTED.** The parties are ordered to meet and confer regarding a mutually agreeable date and time for the inspection to take place within the next 45 days. Plaintiff's objection on the grounds Defendant previously inspected the premises is overruled. This is Defendant's first demand to inspect the premises and Plaintiff has not shown any undue burden by allowing the inspection. Thus, Plaintiff's objection on the grounds Defendant previously inspected the premises is overruled. Plaintiff's objection on the grounds the Demand seeks to inspect irrelevant portions of the premises is overruled. Discovery is permitted

		where the information sought is itself admissible or is reasonably calculated to lead to the discovery of admissible evidence. *Code of Civil Procedure*, § 2017.010. Discovery is liberally construed, and any doubt is resolved in favor of permitting discovery. *Colonial Life & Accident Insurance Co. v. Superior Court* (1982) 31 C3d 785, 790. Inspection of the entire exterior is reasonably calculated to lead to the discovery of admissible evidence. First, Defendant's Cross-Complaint is still at issue due to the Court's denial of the Motion for Summary Adjudication. Second, Plaintiff's Complaint seeks damages regarding the improvements to the exterior of the premises. Thus, Plaintiff's objection on the grounds the Demand seeks to inspect irrelevant portions of the premises is overruled. Therefore, Defendant's Motion to Compel Inspection of the Premises is granted, with the limitation that only the exterior portion of the premises may be inspected. Moving party to give notice.
7	**Malpica vs General Motors LLC** **2022-01253932**	**Motion to Compel Production** This motion is off calendar as a notice of settlement was filed 04/03/2024.
8	**Doe #1 J.H. vs Roe 1** **2022-01299923**	**Motion for In Camera Review of Certificate of Corroborative Fact and Request for Permission to Amend the Complaint and Substitute the Name of Defendants for the**

		Fictitious Designations under CCP 340.1(m) This *in camera* review is moved to the end of the calendar.
9	**Lawrence vs The Cape Series at Aliso Viejo Maintenance Corporation** **2023-01314623**	**Demurrer to Cross-Complaint** **The demurrers of Cross-Defendant Aliso Viejo Community Association ("AVCA") to the first, second, third, fourth and sixth causes of action asserted against the AVCA in the Cross-Complaint filed by Cross-Complainant Janeen Hunt ("Hunt") are SUSTAINED with 20-days leave to amend.** AVCA's Request for Judicial Notice is GRANTED. Plaintiffs' Request for Judicial Notice is also GRANTED. <u>Timeliness</u> Hunt opposes the demurrer on the grounds that it was not timely filed. Hunt served a copy of the summons and complaint on AVCA by substitute service on 06/06/2023, with a copy mailed on 06/12/2023. Accordingly, service was deemed completed on 06/22/2023. *Code of Civil Procedure*, § 415.20, subd. (a). The time for AVCA to demur expired 30-days after service on 06/22/2023 which was a Saturday, therefore, AVCA had until 06/24/2023 to serve its demurrer. AVCA served its demurrer on 06/24/2023. Therefore, the demurrer was timely filed.

		First, Second and Sixth Causes of Action: AVCA challenges the first cause of action for Violation of the Fair Housing Act ("FHA") for failure to provide a reasonable accommodation (42 *U.S.C.* § 3604 (f)(3)(B), 24 *C.F.R.* 100.1, et seq.); second cause of action for Violation of the Fair Employment and Housing Act ("FEHA") for failure to provide a reasonable accommodation (*Government Code*, §§ 12955, 12989.1); and the sixth cause of action for Violation of the Unruh Civil Rights Act (*Civil Code* § 51) on the grounds Hunt does not allege an accommodation is necessary to afford equal use or enjoyment of her unit. Under FEHA, discrimination includes "refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." (*Government Code*, §§ 12927 (c)(1).) FEHA provides broader protections against housing discrimination than the Unruh Act. (*Govt. Code*, § 12955 (d) ["or on any other basis prohibited by [the Unruh Act, *Civil Code* § 51.]") Similarly, under FHA, discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling[.]" (42 *U.S.C.* § 3604 (f)(3)(B).) "[T]he FHA provides a minimum level of protection that FEHA may exceed." *Auburn Woods I Homeowners Association v. Fair Employment & Housing Commission* (2004) 121 Cal.App.4th 1578, 1582, 1591 (*Auburn Woods*). "In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the

		discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation." *Auburn Woods*, *Id.* at 1592. AVCA contends the Cross-Complaint does not sufficiently allege the third element of the claim that an accommodation is necessary to afford an equal opportunity to sue and enjoy the dwelling. An accommodation request can be a demand for an exception to an existing rule, policy, practice or service. (*The Rutter Group*, California Fair Housing & Public Accommodations, Part I, Chptr. 1, § 1:9, Denial of Reasonable Accommodation ["The reasonable accommodation requirement reflects the notion that sometimes a rule or policy (as opposed to a physical or architectural barrier) needs to be waived or changed to provide an equal opportunity to the person with a disability, the goal is to level the playing field between people with disabilities and those without tin the housing market."].) Here, the Cross-Complaint fails to allege Hunt requested an exception to a rule, policy, practice, or service. Instead, Hunt alleges she requested that AVCA enforce its Governing Documents against plaintiffs Gregory and Nicole Lawrence and/or comply with its Governing Documents with respect to trees on her property. (First Opposition, at p.4:13-15, 12:11-12.) A request to enforce recorded equitable servitudes and levy member discipline to remove the cones is not an accommodation request. To the extent Hunt argues AVCA had an obligation to change its manner of providing services to Hunt, Hunt has failed to sufficiently allege that there are any covenants or rules that permit AVCA to remove cones or trees from any

		of its sub-associations. Hunt relies on sections 7.03, 10.08 and 6.02(a) of the Declaration of Covenants, Condition and Restrictions for Aliso Viejo Community Association (AVCA-Declaration) to argue that AVCA had an obligation to change its manner of providing services to Hunt and that AVCA violated its architectural oversight, maintenance, and repair duties. (Second Opposition, p.7:12-24.) However, none of these sections appears to empower AVCA to remove cones or trees from lots. Specifically, section 7.03 is an architectural control provision and not a covenant that obligates or empowers the AVCA to maintain Hunt's Lot or remove cones from common area driveways. Similarly, section 10.08 of the AVCA-Declaration permits AVCA to enter a lot if an owner fails to maintain or repair their lot. Lastly, section 6.02 (a) of the AVCA-Declaration empowers AVCA to enter a lot if a member is in breach of provisions in the AVCA-Declaration. Further, Hunt has failed to allege facts which connect her mental or physical disabilities to the removal of cones from a driveway adjacent to the Lawrences' unit. Therefore, the demurrer to the first, second and sixth causes of action is SUSTAINED with 20-days leave to amend. <u>Third Cause of Action for Breach of Fiduciary Duty</u>: "The elements of a cause of action for breach of fiduciary duty are the existence of fiduciary relationship, its breach, and damage proximately caused by that breach." *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395. Although the Cross-Complaint sufficiently alleges the existence of fiduciary duty, Hunt has failed to allege its breach and damages. *Cohen v.*

		Kite Hill Community Association (1983) 142 Cal.App.3d 642. Therefore, the demurrer to the third cause of action is SUSTAINED with 20-days leave to amend. <u>Fourth Cause of Action for Negligence</u>: "'The elements of a cause of action for negligence are well established. They are "(a) a *legal duty* to use due care; (b) a *breach* of such legal duty; [and] (c) the breach as the *proximate or legal cause* of the resulting injury."' [Citation.]" *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917-918 (*Ladd*). Hunt relies on statutory duties created by the FHA, FEHA, and Unruh Act to support her negligence claim. (First Opposition, p.18:3-5.) Hunt has not alleged facts sufficient to state a claim under those statutes. Further, Plaintiff does not cite to any authority these statutory duties and remedies support a common law claim of negligence. Therefore, the demurrer to the fourth cause of action should be SUSTAINED with 20-days leave to amend. Demurring Cross-Defendant to give notice. ## Motion to Strike Portions of Cross-Complaint **Defendant Aliso Viejo Community Association's motion to strike portions of the Cross-Complaint filed by Cross-Complainant Janeen Hunt is MOOT.**

		Based on the court's ruling SUSTAINING the demurrer, the motion to strike is MOOT. Moving Cross-Defendant to give notice. **Demurrer to Cross-Complaint** **The demurrer of Cross-Defendant The Cape Series at Aliso Viejo Maintenance Corporation to the first through sixth causes of action alleged in the Cross-Complaint filed by Janeen Hunt is OVERRULED.** <u>First, Second and Sixth Causes of Action</u>: Cross-Defendant challenges the first cause of action for Violation of the Fair Housing Act ("FHA") for failure to provide a reasonable accommodation (42 *U.S.C.* § 3604 (f)(3)(B), 24 C.F.R. 100.1, et seq.); second cause of action for Violation of the Fair Employment and Housing Act ("FEHA") for failure to provide a reasonable accommodation (*Govt. Code,* §§ 12955, 12989.1); and the sixth cause of action for Violation of the Unruh Civil Rights Act (*Civil Code* § 51) pursuant to *Code of Civil Procedure* section 430.10 (e) and (f). Under FEHA, discrimination includes "refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." (*Govt. Code*, §§ 12927 (c)(1).) FEHA provides broader protections against housing discrimination than the Unruh Act. (*Govt. Code*, § 12955 (d) ["or on any other basis prohibited by [the Unruh Act, *Civ. Code* § 51.]") Similarly, under FHA, discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such

		accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling[.]" (42 *U.S.C.* § 3604 (f)(3)(B).) "[T]he FHA provides a minimum level of protection that FEHA may exceed." *Auburn Woods I Homeowners Association v. Fair Employment & Housing Commission* (2004) 121 Cal.App.4th 1578, 1582, 1591 (*Auburn Woods*). "In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation." *Auburn Woods, Id.,* at 1592. Cross-Defendant's demurrer is entirely unsupported by any argument in the moving papers as to why these causes of action are not sufficiently pled. Therefore, the demurrer to the first, second and sixth causes of action is OVERRULED. <u>Third Cause of Action for Breach of Fiduciary Duty</u>: "The elements of a cause of action for breach of fiduciary duty are the existence of fiduciary relationship, its breach, and damage proximately caused by that breach." *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395. Cross-Defendant's demurrer is entirely unsupported by any argument in the moving papers as to why this cause of action is not sufficiently pled. Therefore, the demurrer to the third cause of action should be OVERRULED.

		Fourth Cause of Action for Negligence: "'The elements of a cause of action for negligence are well established. They are "(a) a *legal duty* to use due care; (b) a *breach* of such legal duty; [and] (c) the breach as the *proximate or legal cause* of the resulting injury."' [Citation.]" *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917-918 (*Ladd*). Cross-Defendant's demurrer is entirely unsupported by any argument in the moving papers as to why this cause of action is not sufficiently pled. Therefore, the demurrer to the fourth cause of action should be OVERRULED. Fifth Cause of Action for Intentional Infliction of Emotional Distress: CACI No. 1600 sets for the elements necessary to establish a cause of action for IIED. "A cause of action for intentional infliction of emotional distress exists when there is '"'"'(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct."'"' [Citations.] A defendant's conduct is 'outrageous' when it is so '"'"extreme as to exceed all bounds of that usually tolerated in a civilized community.'"' [Citation.] And the defendant's conduct must be '"'"intended to inflict injury or engaged in with the realization that injury will result.'"' [Citation.]" *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051 (*Hughes*.) Cross-Defendant's demurrer is entirely unsupported by any argument in the moving papers as to why this cause of action is not

		sufficiently pled. Therefore, the demurrer to the fifth cause of action is OVERRULED. Demurring Cross-Defendant to give notice.
10	**Wild Rivers Waterpark Irvine SPE, LLC vs Riedel** **2023-01325401**	**Motion to Compel Answers to Form Interrogatories** **Motion to Compel Answers to Special Interrogatories** **Motion to Compel Further Responses to Form Interrogatories** **Motion to Compel Further Responses to Special Interrogatories** **Motion to Compel Production** **Motion to Compel Production** Each/All of these discovery motions are off calendar based upon the Court's appointing a discovery referee on 04/19/2024 to address such motions.
11	**Vazquez-Penaloza vs 5 Park Plaza** **2020-01176303**	**Motion for Summary Judgment and/or Adjudication** **The Motion for Summary Judgment and/or Adjudication by Defendant Mesquemai, Inc., sued as Olympique Façade Access**

		Consulting, is CONTINUED to May 13, 2024, at 1:45 p.m. Plaintiff alleges Defendant negligently recommended a ladder system for accessing a roof parapet, causing Plaintiff to fall while using the ladder to perform his duties as a window cleaner. In the motion, Defendant contends its recommended ladder complied with *California Code of Regulations*, Title 8, section 3294. (Motion, p. 6.) In opposition, Plaintiff submits the declaration of expert Gregg Tinker, who declares the ladder recommended by Defendant was not in compliance with section 3294. (Tinker Decl., ¶ 14.) In reply, Defendant responds by arguing section 3294 does not apply because the building was constructed in 1987, and the ladder did comply with the applicable regulations for buildings constructed prior to 1993. (Reply, pp. 3-5.) Defendant also submits additional evidence including Plaintiff's discovery responses. These contentions were not raised in Defendant's motion. Plaintiff has not had the opportunity to respond. The Court intends to consider Defendant's new contentions in reply but will give Plaintiff the opportunity to respond by filing and serving a supplemental brief, not to exceed five pages, no later than May 6, 2024, which shall respond to Defendant's new contentions in the reply brief. *Los Angeles Unified School District v. Torres Construction Corp.* (2020) 57 Cal.App.5th 480, 499 (court may consider new matters in reply if opposing party has notice and opportunity to respond). Moving party to give notice.