TENTATIVE RULINGS

DEPT W15

JUDGE RICHARD Y. LEE

Date: May 2, 2024

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 5 p.m. on Wednesday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5915. 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 Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

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 whether the tentative ruling shall become the final ruling.

Remote Appearances: Department W15 generally conducts non-evidentiary proceedings, including law and motion, *remotely, by Zoom videoconference*: (1) All counsel and self-represented parties appearing for such hearings **must,** prior to 1:30 p.m. on Thursday, check-in online via the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html. (2) Participants will then be prompted to join the courtroom's Zoom hearing session. (3) The calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Guidelines for Remote Appearances" posted online. In compliance with Local Rule 375, parties preferring to be heard in-person, instead of remotely, **shall** provide *notice of in-person appearance* to the court and all other parties five (5) days in advance of the hearing. (See the appropriate Local Form available at https://www.occourts.org/forms/formslocal.html).

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100	Lucic vs. Yoder Development Inc. 22-01260983	Defendants, Marc Steven Applbaum and Midway Law Firm APC (the "Moving Defendants") move for an order vacating the request for default filed on July 28, 2023 under

		the mandatory provision of Code of Civil Procedure section 473(b) due to lack of notice, inadvertence, excusable neglect, and mistake, and for an order permitting Moving Defendants to file the Answer attached to the motion. "In civil cases involving both represented and self-represented parties or other persons, represented parties or other persons may be required to file and serve documents electronically; however, in these cases, each self-represented party or other person is to file, serve, and be served with documents by non-electronic means unless the self-represented party or other person affirmatively agrees otherwise." (California Rules of Court, rule 2.253(b)(3).) The proof of service attached to the motion provides that the motion was served on October 19, 2023, by e-mail. However, it does not identify who was served, and only states under the email service list: "cavic.danny@yahoo.com." No such email appears for Plaintiff, Marijana Lucic, in the request for entry of default at issue nor on the First Amended Complaint. To the extent that it was served on Plaintiff, she appears to remain in pro per and there is no indication that she agreed to accept electronic service. The Court additionally notes that no opposition has been filed. Based on the foregoing, the Court CONTINUES the hearing to July 11, 2024 at 1:30 p.m. in Department W15. Case Management Conference is also CONTINUED to July 11, 2024 at 1:30 p.m. in Department W15. *Court orders Clerk to give notice.*
101	Reddy vs. Park Regency Care, LLC 23-01302625	*Motion to Compel Further Responses to Form Interrogatories from Defendant Sun-Mar Health Care, Inc. (ROA 83)* Plaintiffs Fatima Reddy, by and through her successor in interest, Schuyler Dunk, and Schuyler Dunk move for an order compelling Defendant Sun-Mar Health Care, Inc. to serve

		further responses to Special Interrogatories, Set One Nos. 1 through 33. On 4/12/24, Plaintiff dismissed Defendant Sun-Mar Health Care, Inc. (ROA 194.) Accordingly, the motion is OFF CALENDAR as MOOT. *Plaintiff to give notice.* *Motion to Compel Further Responses to Special Interrogatories from Defendant Sun Mar Management Services (ROA 127)* Plaintiff Fatima Reddy, by and through her successor in interest, Schuyler Dunk, and Schuyler Dunk move for an order compelling Defendant Sun-Mar Health Care, Inc. to serve further responses to Special Interrogatories, Set One. Plaintiff did not request sanctions. In opposition, Defendant provides evidence that it has now provided supplemental responses and second supplemental responses to the interrogatories at issue. Accordingly, the motion is MOOT as to the request to compel further responses. Sanctions were no requested and sanctions are not awarded. *Plaintiff to give notice.*
102	Cipriano Trujillo vs. General Motors, LLC. 22-01275123	Plaintiff requests an order from this Court compelling further responses to Plaintiff's Form Interrogatories to Connell Chevrolet, Set One and sanctions. As an initial issue, the Court notes Plaintiff fails to cite to any enabling authority for the requested relief either in the Notice of Motion or the memorandum of points and authority. Nonetheless, a motion to compel lies where the party to whom the interrogatories were directed gave responses deemed improper by the propounding party; e.g., objections, or evasive or incomplete answers. [Code Civ. Proc. § 2030.300.] Additionally, failing to respond to Form Interrogatories within the time limit waives most objections to the interrogatories, including

		claims of privilege and "work product" protection. [Code Civ. Proc. § 2030.290(a).] In this instance, Plaintiff propounded Form Interrogatories to Connell Chevrolet, Set One on April 18, 2023, by email. [Decl. of Klitzke¶ 2, Ex. 1.] Responses were due approximately 30 days thereafter. [Code Civ. Proc. §2030.260(a); Code Civ. Proc. §1010.6(a)(3).] Connell Chevrolet waited until August 28, 2023 to provide responses. [Id., Ex. 2.] As such, any objections are waived. Defendant fails to address the argument that objections are waived, instead it merely suggests that responses were served on June 9, 2023. [See Decl. of Major¶3.] As proof, Attorney Major refers to "Klitzke Decl. Ex. 2"; however, that document clearly shows on the Proof of Service that "On August 28, 2023 I served the foregoing document(s), bearing the title(s): DEFENDANT CONNELL CHEVROLET'S RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES, SET ONE on the interested parties in the action as follows…" [Decl. of Klitzke, Ex. 2.] This is insufficient. As a result, the motion is GRANTED as to Form Interrogatories, Set One Nos. 12.1 and 12.6 as Defendant has responded with objections, which were waived by its untimely responses. Further responses, without objections, are due within 20 days. Also, in the points and authorities, Plaintiff requests that the Court "impose a terminating sanction against Connell Chevrolet or prohibit Connell Chevrolet and its attorneys from examining witnesses at trial." [Motion page 6:2-6.] However, "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." [Code Civ. Proc. § 2023.040.] Here, the Notice of Motion merely seeks "sanctions" and fails to put Defendant on notice

		of the type of sanction sought or against whom. Nor does it cite to the enabling authority for the sanctions in the notice of motion. As such, while some sanctions may be warranted here given Defense counsel's complete lack of any attempt to meet and confer, which is itself troubling (See Decl. of Klitzke¶¶6-10), as this request for a terminating sanction was not properly noticed, it is DENIED. The Court is concerned about the discovery litigation in this case. To date 13 discovery motions have been filed. Five have now been ruled on and a number are still pending. The Court has grave doubts that its invitation to meet and confer and consider the Court's voluntary stipulation has been given any consideration given the status of meet and confer efforts so far. The parties may consider a discovery reference. *Moving Party to give notice.*
103	Tanasescu vs. State of California Department of Justice 23-01333695	Defendant State of California's demurs to the First Amended Complaint filed by Plaintiff S. Tanasescu. *Demurrer to the 1st cause of action for violation of 42 U.S.C. § 1983* Title 42 U.S.C. § 1983 provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States. The elements of that cause of action are: "(1) the defendants acting under color of state law, (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." (*Murchison v. County of Tehama* (2021) 69 Cal.App.5th 867, 883.) While municipalities may be held liable for causing a constitutional deprivation inflicted by its employees or agents, *Monell v. Department of Social Services* (1977) 436 U.S. 658, 690, neither a state nor its officials acting in their official capacities can be held liable under it, *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 71. This cause of action cannot be had against Defendant based on the actions of the trial court. In response, Plaintiff seeks leave to file a Second Amended Complaint. She has filed a

		motion and lodged a copy of her proposed SAC. In the proposed SAC, Plaintiff tries to cure the defect by naming Gavin Newsom, Patricia Guerrero, Rob Bonta, Jeoffrey [sic] T. Glass, and Walter P. Schwarm as defendants. However, naming the individuals does not cure the defect because individuals acting in their official capacities on behalf of the State also cannot be liable under section 1983. Therefore, the demurrer to the 1st cause of action for violation of section 1983 is SUSTAINED WITHOUT LEAVE TO AMEND. *Demurrer to the 2nd cause of action for violation of the Civil Rights Act of 1964* The 2nd cause of action is for "discrimination, based on age and financial disadvantage, under the Civil Rights Act of 1964." It alleges that Plaintiff was injured when the court dismissed the underlying civil action on the grounds that she had no capacity to sue as a minor and could not cure the defect due to her dependency on her financially disadvantaged parents, i.e., the court discriminated against her for being a minor and dependent. [FAC, ¶ 87-92] The 2nd cause of action does not cite to a specific provision of the Civil Rights Act. The Civil Rights Act prohibits discrimination based on race, color, religion, sex, or national origin, or a combination thereof, in places of public accommodations, public facilities, public education, participation or denial of benefits of federally assisted programs, and employment. (42 U.S.C. §§ 2000a-e.) In opposition, Plaintiff asserts that she erroneously cited to the Civil Rights Act but intended to sue under the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107. The stated purpose of that Act is "to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance." (42 U.S.C. § 6101.) However, California courts are funded solely by the State. (Gov't Code, § 77200; *Obbard v. State Bar* (2020) 48 Cal.App.5th 345, 350.) Because Plaintiff's proposed amendment cannot cure the defect, the demurrer to the 2nd cause of action is also SUSTAINED WITHOUT LEAVE TO AMEND.

		The Motion for Leave to Amend is DENIED as moot in light of the Court's rulings. *Defendant shall serve notice of ruling.*
104	Hopper vs. Mercy House Living Centers 23-01331353	<u>Demurrer</u> Defendant, Mercy House Living Centers ("Defendant"), moves for an order sustaining a demurrer to the first cause of action for breach of contract; third cause of action for nuisance; and fourth cause of action for intentional infliction of emotional distress of the Complaint filed by Plaintiffs, Dale Hopper; Donald Gates; Doug Earls; and James Bromhead ("Plaintiffs"). Defendant's counsel timely filed and served a supplemental declaration in accordance with the Court's January 11, 2024 Minute Order. Said declaration provides that the parties met and conferred via telephone on February 7, 2024, per the Court's ruling, and that they were unable to come to an agreement as to any issue. (Declaration of Jason M. Fodrini, ¶¶ 5-8.) *First Cause of Action for Breach of Contract* Defendant contends that the Complaint is brought on behalf of five plaintiffs living in three separate units; that Plaintiffs do not allege if they had identical agreements for the three units; that the contract claim does not adequately plead the terms of the alleged contract as no lease agreement is attached, and do not set forth the term so the lease agreement(s) that the first cause of action is based on. Plaintiffs contend that they have sufficiently asserted the substance of the relevant material terms of the Lease Agreement that is the subject of this matter. "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) A demurrer lies "[i]n an action founded upon a contract, [where] it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct." (Code Civ. Proc.

		§ 430.10(g).) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. … In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*McKell v. Washington Mut., Inc.* (2006) 142 Cal. App. 4th 1457, 1489.) Initially, there are four (4) plaintiffs for three (3) separate units. The Complaint alleges that Plaintiff, Dale Hopper, resided in Unit #2; that Plaintiffs, Donald Gates and Doug Earls, resided in Unit #1; and that Plaintiff, James Bromhead, resided in Unit #4. (Complaint, ¶¶ 1-4.) The Complaint also alleges that Plaintiffs entered into a written lease agreement in 2018 for the lease of their units; that they agreed to "pay monthly rents in exchange for habitable, safe and clean-living quarters;" and that Defendant has not maintained the subject property, causing and allowing substandard living conditions including insect infestation and severe bed bug infestation, despite being repeatedly notified by Plaintiffs of the defective and dangerous conditions. (Complaint, ¶¶ 9-11, 13.) The First Cause of Action alleges that "Plaintiffs entered into a written lease contract with the defendants to lease Unit 3 . . ." and alleges that the lease agreement is attached. (Complaint, ¶ 18.) Plaintiffs do not dispute that a copy of the lease agreement(s) is/are not attached to the Complaint, and the relevant terms are not set out verbatim. Nor is there a dispute that Unit 3 is not at issue. Instead, Plaintiffs contend that they sufficiently allege the substance of the relevant terms by its legal effect as the Complaint alleges that they agreed to pay monthly rent "in exchange for habitable, safe and clean-living quarters." On demurrer, a complaint must be liberally construed. (Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v.*

		Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-67.) The foregoing allegations, taken as true, are sufficient to allege the relevant terms of the lease agreement(s) for all Plaintiffs by their legal effect. Thus, the Court OVERRULES the demurrer to the First Cause of Action. *Third Cause of Action for Nuisance* Defendant contends that the nuisance claim fails to state facts to state a cause of action because Plaintiffs did not allege that the nuisance upon the land existed before the time of the letting or that Defendant created the nuisance, and because the nuisance claim is derivative of the second cause of action for breach of implied warranty of habitability such that the third cause of action appears entirely duplicative of the second cause of action. Plaintiffs contend that their third cause of action for nuisance is an intentional tort and is not duplicative of Plaintiffs' negligence claim, that Plaintiffs allege that Defendant's conduct was done with "conscious disregard for the health and safety of plaintiffs," and that the allegations of intentional behavior are separate from the negligent behavior alleged. A nuisance is "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. (Civ. Code. § 3479.) "A nuisance is considered a 'public nuisance' when it 'affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.' (Civ. Code, § 3480.) A 'private nuisance' is defined to include any nuisance not covered by the definition of a public nuisance (Civ. Code, § 3481), and also includes some public nuisances. [Citation.]" (*Mendez v. Rancho Valencia Resort Partners,*

		LLC (2016) 3 Cal.App.5th 248, 261-262 ("*Mendez*").) A nuisance may be public, and from the perspective of individuals who suffer an interference with their use and enjoyment of land, to be private as well. (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 610 ("*Adams*").) To prove an action for private nuisance, the plaintiff must prove (1) an interference with his use and enjoyment of his property; (2) a substantial invasion of the plaintiff's interest in the use and enjoyment of the land, i.e., that causes plaintiff to suffer substantial actual damage; and (3) that the interference with the protected interest is not only substantial but also unreasonable, i.e., it must be of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land. (*Mendez, supra*, 3 Cal.App.5th at pp. 262-263.) The latter two elements are judged by an objective standard, and are questions of fact that are determined by considering all of the circumstances of the case. (*Id*. at pp. 263-264.) Contrary to Defendant's contention that Plaintiffs did not allege that the nuisance existed before the time of the letting or that Defendant created the nuisance, the Complaint alleges, "Defendants, and each of them, have not maintained the SUBJECT PROPERTY therein causing and allowing slum and substandard living conditions. During plaintiffs' tenancy, the following conditions have existed at the SUBJECT PROPERTY, and have been allowed to exist by defendants, and each of them . . . . " (Complaint, ¶ 11.) The Court also finds that the Third Cause of Action for Nuisance and Second Cause of Action for Breach of Implied Warranty of Habitability are different theories of recovery although they may be based on the same facts. Based on the foregoing, the Court OVERRULES the demurrer to the Third Cause of Action. *Fourth Cause of Action for Intentional Infliction of Emotional Distress* Defendant contends that Plaintiffs' allegations of bedbugs alone do not rise to the level of "severe emotional distress" required for this

		claim; that the allegation is that Defendant "failed in their duty" which is an allegation of negligence; that the allegations are conclusory and not supported by any factual claims; that the allegations do not show outrageous conduct by Defendant; and that even if Plaintiffs had pled sufficient facts showing outrageous conduct, they have not pled sufficient facts about the alleged mental or emotional distress. Plaintiffs contend that the Complaint alleges that the subject property had an insect infestation and a severe bed bug infestation; that they notified the Defendant of these conditions; and that Defendant ignored them, and thus, that this conduct shows reckless disregard for the health and safety which in turn caused Plaintiffs to suffer severe emotional distress. "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.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.' " (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.) "Outrageous conduct is conduct that is intentional or reckless and so extreme as to exceed all bounds of decency in a civilized community. [Citation.] The defendant's conduct must be directed to the plaintiff, but malicious or evil purpose is not essential to liability. [Citation.] Whether conduct is outrageous is usually a question of fact. [Citation.]" (*Ragland v. U.S. Bank National Assn*. (2012) 209 Cal.App.4th 182, 203.) "The complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct. [Citation.]"

		(*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1113.) The Complaint alleges that as a result of the insect infestation and severe bed bug infestation, Plaintiffs suffered with lack of sleep, stress and anxiety, as well as discomfort and health issues, including but not limited to respiratory issues. (Complaint, ¶¶ 12, 14-16.) The Fourth Cause of Action alleges that Plaintiffs suffered humiliation, mental anguish and emotional distress," and that they continue to suffer "severe mental and emotional distress," as a result of Defendant's failure "in their duty as a landlord to maintain the SUBJECT PROPERTY . . . ." (Complaint, ¶¶ 46-48.) It is also alleged that Plaintiffs continued to notify Defendant of the "defective and dangerous conditions in their apartments" but that Defendants "simply ignored their pleas or tried to avoid fixing them properly." (Complaint, ¶ 13.) Based on the foregoing, insufficient specific facts are pleaded that establish severe emotional distress resulting from Defendant's alleged failure to maintain the subject property, i.e., insect infestation and severe bed bug infestation. The Court also finds that the facts, as currently alleged, are insufficient to constitute outrageous conduct. As this is the first demurrer and this defect may be curable, the Court SUSTAINS, with 20 days' leave to amend, the demurrer to the Fourth Cause of Action. If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) <u>Motion to Strike</u> Defendant moves for an order striking Prayer for relief 3 for punitive damages in Plaintiffs' Complaint. Defendant contends that Plaintiffs fail to state facts sufficient to support a claim for punitive damages; that Plaintiffs do not allege any facts as to the nature/duration/extent of the alleged bedbug infestations in any of the units; that the

		primary claim against Defendant is that it failed in its duty to eradicate insects such that the complaint is founded in allegations of negligence which does not justify an award of punitive damages; that California law is clear that awareness of a defective condition, and refusal to make repairs, is not sufficient to state a claim for punitive damages; that the allegations are conclusory; and that there are no facts pled to support punitive damages against a corporate employer under Civil Code section 3294(b). Plaintiffs contend that Defendant had knowledge of the dangers at the subject property and failed to properly repair them; that the actions of Defendant were done with conscious and/or reckless disregard for the health and safety of Plaintiffs; that the Court cannot state as a matter of law that Plaintiffs have not stated a cause of action for intentional infliction of emotional distress; and that under Civil Code section 1942.4, attorney's fees are awarded to the prevailing party such that attorney's fees should not be stricken. Under Code of Civil Procedure section 436, a motion to strike is authorized in two situations. The court may strike out "...any irrelevant, false, or improper matter inserted in any pleading" or "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (*See Quiroz v. Seventh Ave. Ctr*. (2006) 140 Cal.App.4th 1256, 1281.) Code of Civil Procedure section 436, subdivision (a) does not authorize attacks on entire causes of action or entire pleadings. (*Ferrero v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.) The purpose is to "authorize the excision of superfluous or abusive allegations." (*Ibid*.) Irrelevant matters include allegations not essential to a claim or defense, allegations not pertinent to nor supported by a sufficient claim or defense, or requesting relief not supported by the allegations of the complaint or cross-complaint. (Code Civ. Proc. § 431.10(b).) "The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. [*See Taylor v. Superior Court, supra*., 24 Cal.3d 890, 894, citing Prosser, *Law of Torts* (4th ed. 1971) § 2, at pp. 9-10.] Not only must there be circumstances of

		oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. [*G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [122 Cal.Rptr. 218].]" (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.) "In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by plaintiff. [Citations.] In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. [Citations.] In ruling on a motion to strike, courts do not read allegations in isolation. [Citations.]" (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) To support exemplary damages, the complaint must allege facts of defendant's oppression, fraud, or malice, as required by Civil Code section 3294. (Civil Code § 3294(a); *College Hospital Inc. v. Superior Court* (1994) 8 Cal. 4th 704, 721; *Turman v. Turning Point of Central Calif., Inc*. (2010) 191 Cal.App.4th 53, 63.) "Malice" is defined as conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Civil Code § 3294(c)(1).) "Oppression" is defined as despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (Civil Code § 3294(c)(2).) Absent an intent to injure the plaintiff, "malice" requires more than a "willful and conscious disregard" of the plaintiff's interests, an additional component of despicable conduct is necessary. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) To establish, "willful and conscious disregard," plaintiff must establish that defendant: (1) was aware of the probable dangerous consequences of his or her conduct; and (2) willfully and deliberately failed to avoid those consequences. (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896.)

		"The adjective 'despicable' connotes conduct that is ... so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. … [A] breach of a fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive damages. [Citation.] The wrongdoer … must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. … Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages . . . . Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate . . . ." (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) "Consequently, to establish malice, 'it is not sufficient to show only that the defendant's conduct was negligent, grossly negligent or even reckless.' " (*Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1044; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1211 ["[R]ecklessness alone is insufficient to sustain an award of punitive damages…."].) Conclusory allegations that conduct was oppressive, fraudulent, or malicious are insufficient to support a claim for punitive damages. (*Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041-1042.) There must be factual assertions supporting a conclusion that a defendant acted with oppression, fraud, or malice. (*Ibid*.) Initially, attorney's fees is not at issue, therefore, Plaintiff's arguments in opposition as it relates to attorney's fees is disregarded. Here, the Complaint alleges that Plaintiffs repeatedly notified Defendant of the insect infestation and severe bed bug infestation but that Defendant ignored them or tried to avoid fixing them properly. (Complaint, ¶¶ 11, 13.) Plaintiffs also allege that they notified Defendant of their lack of sleep, stress, and anxiety, as well as health issues they were experiencing, including respiratory issues, but that despite knowledge of the conditions and Plaintiffs' health issues, Defendant failed to

		properly remedy the conditions, placing the health and safety of plaintiffs at risk. (Complaint, ¶¶ 12, 14-16.) Plaintiffs also allege that "Defendant's actions were oppressive and malicious within the meaning of Civil Code Section 3294 in that they have intentionally, and in conscious disregard for the health and safety, subjected the plaintiffs to cruel and unjust hardship thereby entitling plaintiffs to an award of punitive damages." (Complaint, ¶ 33.) Plaintiffs further allege that "[t]he acts of defendants as alleged herein were reckless, willful, wanton, malicious, and oppressive and justify an award of exemplary and punitive damages." (Complaint, ¶¶ 43, 49.) The foregoing allegations are insufficient to constitute the requisite despicable conduct and extreme level of indifference to show that Defendant acted with malice or oppression to support a claim for punitive damages. The current factual allegations indicate, at most, negligent, grossly negligent or reckless conduct in the failure to properly remedy the conditions. The cases cited by Plaintiffs in their opposition, as described therein as relating to the sufficiency of allegations to state a claim for intentional infliction of emotional distress or breach of implied warranty of habitability, are not salient to the issue of whether sufficient facts have been pled to support a claim for punitive damages. In addition, Civil Code section 3294, subdivision (b), provides: "An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director or managing agent of the corporation." "When the defendant is a corporation, '[a]n award of punitive damages against a

		corporation . . . must rest on the malice of the corporation's employees. [¶] But the law does not impute every employee's malice to the corporation.' [Citation.] Instead, the oppression, fraud, or malice must be perpetrated, authorized, or knowingly ratified by an officer, director, or managing agent of the corporation. [Citation.] ' "[M]anaging agent" . . . include[s] only those corporate employees who exercise substantial independent authority and judgment in their corporate decisionmaking so that their decisions ultimately determine corporate policy.' [Citation.]" (*Wilson v. Southern California Edison Co*. (2015) 234 Cal.App.4th 123, 164.) "A company ratifies a managing agent's decision when it knows about and accepts the decision. [Citations.]" (*Tilkey v. Allstate Insurance Co*. (2020) 56 Cal.App.5th 521, 554.) There are no allegations that any alleged malice or oppression was perpetrated, authorized, or knowingly ratified by an officer, director, or managing agent of Defendant, a California non-profit organization. (Complaint, ¶ 5.) Based on the foregoing, the Court GRANTS, with 20 days' leave to amend, the motion to strike. The case management conference is continued to July 6, 2024 at 1:30 p.m. *Defendant to give notice.*
105	Prindiville vs. Golden Rain Foundation of Laguna Woods 23-01315296	Defendant Golden Rain Foundation of Laguna Woods ("Defendant") demurs to Plaintiff Jim Prindiville's ("Plaintiff") Second Amended Complaint ("SAC") on the grounds the entire action is barred based on the two-year statute of limitations set forth in Code of Civil Procedure section 335.1 because the gravamen of Plaintiff's action is for negligence. Defendant also demurs to the breach of contract and breach of fiduciary duty causes of action on the grounds they are not sufficiently pled. Plaintiff did not file an Opposition. *Whether the Action is Barred by the Statute of Limitations?*

		Defendant contends that the gravamen of Plaintiff's action is for negligence despite the fact that he asserts causes of action for misrepresentation, breach of written contract, and breach of fiduciary duty. Defendant contends that Plaintiff "reframed" his claims in order to avoid the two-year statute of limitations applicable to negligence claims. Here, Plaintiff alleges that on or about January 23, 2021, he took the bus transportation at Laguna Woods Village where he resides provided by Defendant to get a Covid-19 vaccine; that when Plaintiff first exited Defendant's bus to get his vaccine, the bus driver put out the bus's ramp and then opened the doors for the passengers to exit the bus; that Plaintiff exited the bus without incident to get his vaccine; that on the return trip on the bus back to Laguna Woods Village, the bus failed to put out the bus's ramp before opening the bus's doors to allow passengers to exist the bus (which the bus driver was required to do); that the bus driver did not get out of his seat to assist or help Plaintiff to exit the bus; that "when plaintiff stepped out of the exit doors of the bus, instead of stepping onto the bus's ramp as expected, because of the high gap between the bus and the ground, plaintiff fell and broke his hip on the ground because there was no ramp connecting the bus to the nearby sidewalk to make it safe for passengers to exit the bus, as the ramp was not put out as required"; that the fall from the bus to the ground caused Plaintiff to re-fracture his hip which he previously had replaced; that the fall caused him to get surgeries, hospice care, and physical therapy; and that he had to repair his hip and leg. (See SAC, ¶¶ 14-17, 24-26.) Plaintiff alleges that Defendant failed to provide the transportation services that it was obligated to provide Plaintiff under the CC&Rs for Laguna Woods Village and that Defendant, as the appointed manager for Laguna Woods Village under the CC&Rs, owes Plaintiff a fiduciary duty to ensure the safety of their homeowners/members regarding the services that it provides including the bus services (See SAC, ¶¶ 1, 4, and 29-33.) Although Plaintiff does not assert a cause of action for negligence, the crux of Plaintiff's

		claims against Defendant is for negligence, not misrepresentation, breach of contract, or breach of fiduciary duty. "The applicable statute of limitations depends on 'the nature of the cause of action, i.e., the 'gravamen' of the cause of action.'" (*E-Fab, Inc.v. Accountants, Inc., Services* (2007) 153 Cal.App.4th 1308, 1316.) The statute of limitations for negligence is two years. (C.C.P. section 335.1.) Plaintiff alleges he sustained injuries on or about January 23, 2021. As such, the action accrued by January 23, 2023 yet Plaintiff's action was not filed until March 28, 2023. Accordingly, the Court finds Plaintiff's action is barred by the two-year statute of limitations and the demurrer is SUSTAINED, without leave to amend, on this ground. (*See E-Fab, Inc., supra,* 153 Cal.App.4th at pp. 1315–16 ["'The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.' [Citations omitted.] There is an important qualification, however: 'In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows merely that the action may be barred.'"].) *Whether the Breach of Written Contract Claim is Sufficiently Pled?* Defendant also demurs to the breach of contract cause of action on the ground it is not sufficiently pled as Plaintiff has not attached the alleged CC&Rs or sufficiently described their terms. Defendant also contends that Plaintiff will be unable to cure this defect because there is no "CC&Rs" as to Defendant and there is no contract between Plaintiff and Defendant. "To state a cause of action for breach of contract, a party must plead the existence of a contract, his or her performance of the contract or excuse for nonperformance, the defendant's breach and resulting damage." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) "If the action is based on alleged breach of a written contract, the terms must be set out

		verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Id*.) Here, the SAC alleges that copies of Defendant's governing documents are attached as Exhibit A and incorporated to the SAC; that Defendant and its bus drivers are trained to put out the bus's ramp before opening the bus's doors to prevent passengers falling from the bus to the ground and is part of defendant's duty under its CC&Rs; that Defendants owe an express contractual duty under the CC&Rs to ensure Plaintiff's safety as a passenger on Defendant's bus; that Defendants failed to provide the transportation services it was obligated to provide Plaintiff under the CC&Rs; and that said failure was a substantial factor in causing Plaintiff's injuries.) (See Complaint, ¶¶ 4, 21, 23, and 31.) Plaintiff, however, did not attach a copy of CC&Rs for Defendant and did not set forth verbatim the terms of the written contract which Defendant allegedly breached. Further, none of the documents attached as Exhibit A is a contract between Plaintiff and Defendant. Rather, Plaintiff attached copies of Defendant's Statement of Incorporation, Statement by Common Interest Development, Community Information for Laguna Woods Village, Defendant's Amended By Laws, Defendant's Amended and Restated Articles of Incorporation, and Defendant's Operating Rules.) Accordingly, the demurrer to the breach of contract cause of action is SUSTAINED with 30 days leave to amend. *Whether the Breach of Fiduciary Duty Claim Is Sufficiently Pled?* Defendant also demurs to the breach of fiduciary duty cause of action on the grounds there is no recognized fiduciary duty between a common carrier and a passenger and the SAC fails to allege a fiduciary duty between it and Plaintiff. Here, the SAC alleges that Defendant owed a fiduciary duty to Plaintiff in providing common carrier services to all members of Laguna Woods Village to ensure Plaintiff's safety as a

		bus passenger and that Defendant as the appointed manager of Laguna Woods Village under the CC&Rs owes a fiduciary obligation to each homeowner/member of Laguna Woods Village to ensure their safety regarding the services that Defendant provides including its bus services. (See Complaint, ¶¶ 23 and 32.) Defendant is correct that there is no recognized fiduciary duty between a common carrier and its passengers. And, although the SAC alleges that Defendant owed it fiduciary duty as the "appointed manager of Laguna Woods Village under the CC&Rs," it does not appear that such a duty exists. Accordingly, the demurrer should is SUSTAINED as to this cause of action with 30 days leave to amend. The Motion to Strike is MOOT in light of the Court's ruling on Demurrer. The case management conference is continued to July 20, 2024 at 1:30 p.m. *Moving Party is to give notice.*
106	Luparello vs. Yorba Linda Villages Condominium Association 23-01316419	Plaintiff Denise Luparello ("Plaintiff") moves to compel Defendant Yorba Linda Villages Condominium Association ("Defendant") to serve responses to Demand for Production of Documents (Set One), Nos. 1-14; Special Interrogatories (Set One), Nos. 1-7; and Form Interrogatories (Set One), Nos. 1.1, 3.1-3.7, 4.1-4.2, 14.1-14.2, 15.1, 16.1, and 17.1. Plaintiff further moves for an order deeming the truth of all matters asserted in her Requests for Admission (Set One), Nos. 1-5 admitted. Defendant's responses to the disputed requests and interrogatories remain outstanding. Defendant's prior counsel has since substituted out and new counsel has substituted in. (Declaration of Brian C. Holloway, ¶ 3.) New counsel is preparing responses to each of the disputed requests and interrogatories and expects to serve verified initial responses before the scheduled hearing date. (Ibid.) If the Motions are not withdrawn before the scheduled hearing date, Defendant should be prepared to submit evidence at the hearing showing that the responses have been served.

		Upon an adequate showing, the Motions will be denied as moot. If no responses have been served by the time of the hearing, the Motions will be granted. *Moving party to give notice.*
107	Citizens Insurance Company of America vs. CRH California Water 21-01200935	Defendant, Cross-Defendant, Cross-Complainant, Craig Mechanical, Inc. ("Craig") moves for an order granting summary judgment, in its favor, and against (1) Plaintiffs, Sanjay Grover, M.D., Inc. and Grover Surgical Arts, LLC; and against (2) each of the other defendants, cross-complaints, intervenors and cross-defendants in this action. Alternatively, Craig Mechanical moves for summary adjudication in favor and against the aforementioned parties on three issues. *Notice* Plaintiff, Citizens Insurance Company of America, ("Plaintiff" or "Citizens") contends that that motion should be denied as Craig failed to provide proper 75 days' notice as required by Code of Civil Procedure section 437c. 75-days' notice is required on a motion for summary judgment. (Code Civ. Proc. § 437c(a)(2).) Code Civil Procedure section 437c(a)(2) states, "Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. . . ." Here, the hearing is set for May 2, 2024. 75 days before May 2, 2024, is Saturday, February 17, 2024. The Court notes that a proof of service could not be located in the 339 page combined document containing the moving papers, and one was not separately filed concurrently with the moving papers. Nor was one filed five court days before the hearing. Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing. (California Rules of Court, rule, 3.1300(c).) However, Plaintiff provides evidence showing that the instant motion was personally served on the office of Grotefeld Hoffman on Wednesday, February 21, 2024. Therefore, the statutorily required 75 days' notice was not provided. (Declaration of Janice M. Seller, ¶ 2.)

		The Court of Appeal in *Carlton v. Quint* (2000) 77 Cal.App.4th 690 ("*Carlton*") held that although plaintiff raised the issue of inadequate notice of a motion for summary judgment that it was not timely served in his opposition and at the summary judgment hearing, plaintiff had filed an opposition to the motion for summary judgment, appeared and argued at the summary judgment hearing, and at no time requested a continuance of the summary judgment hearing or contend he was prejudiced by inadequate notice. (*Carlton, supra*, 77 Cal.App.4th at p. 696.) Under these facts, the Court concluded that plaintiff had waived any claim of inadequate service. " 'It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. [Citations.] This rule applies even when no notice was given at all. [Citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the notice was insufficient or defective.' [Citations.]" (*Id*. at p. 697.) Plaintiff cites to *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, *Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, and *Robinson v. Woods* (2008) 168 Cal.App.4th 1258 to support the proposition that the court may not consider a motion that is not timely served, and that the trial cannot shorten the statutory minimum notice period. As explained by the Court of Appeal in *Robinson*, there is a distinction between inadequate notice that is approved by the trial court and a statutory violation of untimely notice as follows: "Under this trilogy of cases—[Carlton], Urshan, and Boyle—the opposing party faces a difficult question in deciding whether to discuss the merits at all or to what extent. Where inadequate notice is approved by the trial court—through either a case-specific order Carlton] or a local court order (Boyle)—a full-

		blown opposition on the merits, in writing and at the hearing, does not appear to waive a timeliness objection. In contrast, (Quint), if untimely notice is attributable to a statutory violation by the moving party (see § 437c, subd. (a)), the opposing party faces the dilemma of risking a loss on the motion if (1) it does not address the merits at all and the trial court declines to continue the hearing or (2) it addresses the merits to some extent but does not adequately show prejudice due to the untimely notice." (*Robinson, supra*, 168 Cal.App.4th at p. 1267.) The cases upon which Plaintiff relies are also factually distinguishable and they either involve a statutory violation, or an opposition containing only a notice objection. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 114 [trial court order providing 21 days' notice for motions for summary judgment], *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 647-649 [unauthorized order by trial court shortening time to notice summary judgment based upon general order by the San Francisco Superior Court which allowed expedited summary judgment that conflicted with CCP § 437c], *Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, 768 [trial court set briefing schedule for motion for summary judgment to be filed on a shortened time schedule and did not solicit the consent of plaintiff], and *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1267-1268 [plaintiffs responded to summary judgment motion by filing a written opposition containing only the notice objections and never argued the merits, unlike in *Carlton*.].) Here, the circumstances involve a statutory violation, and an opposition addressing the merits of the motion. Therefore, it is more similar to *Carlton*. Since Plaintiffs filed an opposition addressing the merits of the motion, did not request a continuance on this basis, or assert that it is prejudiced by inadequate notice or service, any claim of inadequate service of notice of motion appears to have been waived. *Notice of Motion* Where a party moves for summary adjudication, the party moving must specify in

		its notice of motion and motion the claim, causes of action, or issues it is moving on. (California Rules of Court, Rule 3.1350 (b).) A notice of motion must state the "grounds upon which it will be made." (*Homestead Savings v. Superior Court* (1986) 179 Cal.App.3d 494, 498 [citing Code Civ. Proc. § 1010] ("*Homestead*").) The court has no power to adjudicate others. (*Maryland Cas. Co. v. Reeder* (1990) 221 Cal.App.3d 961, 974 n. 4; *Homestead, supra*, 179 Cal.App.3d at p. 498.) A party does not waive any requirement of notice for a subissue that was not set forth in the notice by responding to the argument. (*Homestead, supra*, 179 Cal. App. 3d at p. 498.) "A summary adjudication motion tenders only those issues or causes of action that are specified in the notice of motion and may only be granted as to these specified matters. A judge must deny the motion if the moving party fails to establish an entitlement to summary adjudication on the specified matters and cannot summarily adjudicate other issues or claims even if a basis to do so appears from the papers." (California Judges Benchbook: *Civil Proceedings-Before Trial* § 13.45 Summary Judgment and Summary Adjudication Motions, citing *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 743-744.) Here, the notice provides that Craig Mechanical moves for an order granting summary judgment, in its favor, and against (1) Plaintiffs, Sanjay Grover, M.D., Inc. and Grover Surgical Arts, LLC; and against (2) each of the other defendants, cross-complaints, intervenors and cross-defendants in this action. Alternatively, Craig Mechanical moves for summary adjudication in favor and against the same parties stated above as to the following three issues stated in the notice: "Issue 1 as to Negligence on August 16, 2019 and Damages as to August 16, 2019 and October 25, 2019: Plaintiffs, SANJAY GROVER M.D., INC. and GROVER SURGICAL ARTS, LLC, cannot establish the fourth cause of action for negligence and is incapable of proof and fails as a matter of law because there is no evidence that Defendant, CRAIG MECHANICAL, INC. owed a duty, breached a duty as to the Culligan

		water treatment system, caused or was a substantial factor in causing or had any independent fault in causing the failure of the Culligan water treatment system at issue on August 16, 2019, nor can Plaintiffs establish the element for damages from the Culligan water treatment system failure of August 16, 2019 or October 25, 2019, and cannot distinguish the damages or the amount of damages that occurred from each of the three distinct water incidents, as the allegation was pleaded as a single, lump sum for all water incidents; thus not properly pleaded with distinct and separate damages; thus, cannot meet the essential elements to support this cause of action. "Issue 2 for Strict Products Liability on August 16, 2019 and October 25, 2019: Plaintiffs, SANJAY GROVER M.D., INC. and GROVER SURGICAL ARTS, LLC, cannot establish the second cause of action for strict product liability as to all three water incidents of August 16, 2019 and October 25, 2019, as it fails as a matter of law because Defendant, CRAIG MECHANICAL, INC.'s pass-through sale of the Culligan water treatment system was incidental to its plumbing services, it did not receive a direct financial benefit from the pass-through-only sale or the Culligan water treatment system, nor was involved in any way or necessary in bringing the Culligan product to the initial consumer market, nor did it have control over or ability to influence the manufacturing or distribution process of the Culligan water treatment system at issue, as well as its role in, and legal exceptions to, the stream of commerce theory which do not meet the essential elements to support this cause of action as to the water incidents of August 16, 2019 and October 25, 2019. Plaintiffs cannot establish the essential element of damages for each of the three distinct and separate water incidents of the failure of the Culligan water treatment system at issue on August 16, 2019 and the T-Bypass failure that occurred on October 25, 2019, and cannot distinguish damages or the individual amount of damages that occurred from each of the three water incidents, as the allegation was pleaded as a single, lump sum for all three water incidents; thus not properly pleaded with distinct and separate damages for each incident; and thus,

		cannot meet the essential elements to support this cause of action. "Issue 3 as to Damages for Each Cause of Action the Individual Water Incidents of August 16, 2019 and October 25, 2019: Plaintiffs cannot establish the essential element of damages for the two distinct water events of August 16, 2019 from a failed Culligan water treatment system and October 25, 2019 from a T-Bypass failure, and cannot distinguish the damages or the amount of damages that occurred from each of the distinct and separate water incidents of August 16, 2019 or October 25, 2019, as the allegation was pleaded as a single, lump sum for all three water incidents; thus not properly pleaded with distinct and separate damages for each incident; thus, cannot meet the essential elements to support this cause of action." The notice is defective in several respects. As to Issues 1 and 2, Sanjay Grover M.D., Inc. and Grover Surgical Arts, LLC are not the plaintiffs in this action, and to the extent this motion seeks summary judgment or summary judgment against this individual and entity, the motion is not proper. Rather, the plaintiff in this case is Citizens. The Court notes that the Complaint filed by Citizens contains the same causes of action set forth in Issues 1 and 2, i.e., negligence and strict products liability as the first and second causes of action respectively. However, despite the fact that Citizens has filed an opposition, because Craig did not specify in the notice of motion the causes of action or issues it is moving on as it relates to Citizens, it does not appear that the Court has the authority to adjudicate Issues 1 and 2 as it concerns Citizens. Further, Issue 3, as stated, does not specify the purported "Plaintiffs" or pleading at issue, rendering it deficient. The notice of motion provides that Craig seeks summary judgment, or alternatively, summary adjudication in its favor and against "each of the other defendants, cross-complaints, intervenors and cross-defendants in this action." To the extent Craig seeks such

		judgment, Craig does not specify the pleading or cause of action therein to which it seeks judgment in the notice, and otherwise fails to argue, discuss or show it is entitled to judgment against "each of the other defendants, cross-complaints, intervenors and cross-defendants in this action." Notably, no other party has filed an opposition to this motion, indicating that notice that Craig was seeking summary judgment against any other party is fatally deficient. Ultimately, the notice of motion seeks judgment and/or adjudication against parties that are not plaintiffs in this action, as well as against unidentified parties and unidentified pleadings in this action. Based on the deficiencies in the notice of motion which render the Court unable to adjudicate the issues noticed, the Court DENIES Craig's motion in its entirety. *Plaintiff Citizens to give notice.*
108	Sanjay Grover MD, Inc. vs. Eden Fertility Management, LLC 21-01215723	Defendant/Cross-Complainant/Cross-Defendant, Craig Mechanical, Inc. ("Craig") moves for an order granting summary judgment in its favor, and against (1) Plaintiffs, Sanjay Grover MD, Inc. and Grover Surgical Arts, LLC ("Plaintiffs" or together, "Grover"); and (2) each of the other defendants, cross-complaints, intervenors and cross-defendants in this action. Alternatively, Craig moves for summary adjudication in favor and against the aforementioned parties as to the five issues regarding Plaintiffs' causes of action for negligence, strict products liability, private nuisance, and trespass which are asserted against Craig. *Notice* Plaintiff, Citizens Insurance Company of America, ("Plaintiff" or "Citizens") contends that that motion should be denied as Craig failed to provide proper 75 days' notice as required by Code of Civil Procedure section 437c. 75-days' notice is required on a motion for summary judgment. (Code Civ. Proc. § 437c(a)(2).) Code Civil Procedure section 437c(a)(2) states, "Notice of the motion and supporting papers shall be served on all other

		parties to the action at least 75 days before the time appointed for hearing. . . ." Here, the hearing is set for May 2, 2024. 75 days before May 2, 2024, is Saturday, February 17, 2024. The Court notes that a proof of service could not be located in the 392 page combined document containing the moving papers, and one was not separately filed concurrently with the moving papers. Nor was one filed five court days before the hearing. Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing. (California Rules of Court, rule, 3.1300(c).) However, Plaintiffs' counsel provides evidence showing that the instant motion was personally served on February 21, 2024. Therefore, the statutorily required 75 days' notice was not provided. (Declaration of Ajay Ahluwalia, ¶ 2.) The Court of Appeal in *Carlton v. Quint* (2000) 77 Cal.App.4th 690 ("*Carlton*") held that although plaintiff raised the issue of inadequate notice of a motion for summary judgment that it was not timely served in his opposition and at the summary judgment hearing, plaintiff had filed an opposition to the motion for summary judgment, appeared and argued at the summary judgment hearing, and at no time requested a continuance of the summary judgment hearing or contend he was prejudiced by inadequate notice. (*Carlton, supra*, 77 Cal.App.4th at p. 696.) Under these facts, the Court concluded that plaintiff had waived any claim of inadequate service. " 'It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. [Citations.] This rule applies even when no notice was given at all. [Citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the notice was insufficient or defective.' [Citations.]" (*Id*. at p. 697.)

		Plaintiffs cite to *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, *Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, and *Robinson v. Woods* (2008) 168 Cal.App.4th 1258 to support the proposition that the court may not consider a motion that is not timely served, and that the trial cannot shorten the statutory minimum notice period. As explained by the Court of Appeal in Robinson, there is a distinction between inadequate notice that is approved by the trial court and a statutory violation of untimely notice as follows: "Under this trilogy of cases—[*Carlton*], *Urshan,* and *Boyle*—the opposing party faces a difficult question in deciding whether to discuss the merits at all or to what extent. Where inadequate notice is approved by the trial court—through either a case-specific order Carlton] or a local court order (*Boyle*)—a full-blown opposition on the merits, in writing and at the hearing, does not appear to waive a timeliness objection. In contrast, (*Quint*), if untimely notice is attributable to a statutory violation by the moving party (see § 437c, subd. (a)), the opposing party faces the dilemma of risking a loss on the motion if (1) it does not address the merits at all and the trial court declines to continue the hearing or (2) it addresses the merits to some extent but does not adequately show prejudice due to the untimely notice." (*Robinson, supra*, 168 Cal.App.4th at p. 1267.) The cases upon which Plaintiffs rely are also factually distinguishable and they either involve a statutory violation, or an opposition containing only a notice objection. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 114 [trial court order providing 21 days' notice for motions for summary judgment], *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 299, *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 647-649 [unauthorized order by trial court shortening time to notice summary judgment based upon general order by the San Francisco Superior Court which allowed expedited summary judgment that conflicted with CCP § 437c], *Urshan v. Musicians' Credit Union* (2004) 120

		Cal.App.4th 758, 768 [trial court set briefing schedule for motion for summary judgment to be filed on a shortened time schedule and did not solicit the consent of plaintiff], and *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1267-1268 [plaintiffs responded to summary judgment motion by filing a written opposition containing only the notice objections and never argued the merits, unlike in *Carlton*.].) Here, the circumstances involve a statutory violation, and an opposition addressing the merits of the motion. Therefore, it is more similar to *Carlton*. Since Plaintiffs filed an opposition addressing the merits of the motion, did not request a continuance on this basis, or assert that it is prejudiced by inadequate notice or service, any claim of inadequate service of notice of motion appears to have been waived. *Request for Continuance* In the alternative, Plaintiffs contend that if the Court is not inclined to deny the motion, the Court should grant a continuance under Code of Civil Procedure section 437c(h) as additional facts regarding the purchase, installation, and failure of the Culligan System will be revealed through additional discovery including depositions for Defendant, Culligan's PMK; Defendant, Morris Inc.'s PMK; and Defendant, CRH California Water, Inc.'s employee, Felipe Aleman, which will not have taken place before the due date of the opposition. "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." (Code Civ. Proc. § 437c(h).) A continuance is a matter within the broad discretion of the court but is "virtually mandated ' "upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion." [Citation.]' [Citation.]" (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395.)

		Continuances are to be liberally granted." (*Ibid*.) "Where the opposing party submits an adequate affidavit showing that essential facts may exist but cannot be presented timely, the court must either deny summary judgment or grant a continuance. [Citation.]" (*Dee v. Vintage Petroleum, Inc*. (2003) 106 Cal.App.4th 30, 34-35.) "The nonmoving party seeking a continuance 'must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.]" (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633.) "[T]he affiant is not required to show that essential evidence does exist, but only that it may exist." (*Id*. at p. 634.) "The affidavit or declaration in support of the continuance request must detail the specific facts that would show the existence of controverting evidence. [Citations.]" (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715 ("*Lerma*").) "The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented." (*Ibid*.) The declaration should also provide an estimate of the time necessary to obtain such evidence, and the specific steps or procedures the opposing party intends to utilize to obtain such evidence. (Code Civ. Proc. § 437c(h); *see Granadino v. Wells Fargo Bank, N.A*. (2015) 236 Cal.App.4th 411, 420 [declaration that "additional information and testimony" required to "adequately respond to Defendant's Motion" insufficient]; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254 [merely stating "further discovery or investigation is contemplated" not sufficient].) Plaintiffs' counsel provides a declaration providing that facts essential to justify Plaintiffs' opposition likely exist but have not yet been discovered due to the inability to depose key witnesses, i.e., Morris, Inc.'s PMK; Culligan's PMK; and CRH California Water, Inc.'s employee, Felipe Aleman due to the unavailability of witnesses or other counsel in this case. (Declaration of Ajay Ahluwalia, ¶¶ 6,

		7.) Plaintiffs' counsel provides that Morris Inc.'s PMK will testify as to Craig's scope of work and what Craig was paid for its services; that Culligan's PMK will provide additional information regarding whether Craig's services caused or contributed to the failure of the Culligan System; and that Mr. Aleman's testimony will reveal "crucial information about this case, including without limitation, delivery of the Culligan System, Craig's conduct on the project when the Culligan System was delivered, Craig's installation of the Culligan System, the status of the Culligan System, and how the Culligan System failed. (Id., ¶¶ 8-10.) Plaintiffs' counsel states that the former two depositions have yet to be rescheduled, and that Mr. Aleman's deposition is set to take place on April 19, 2024, which is after the due date for this opposition. (Ibid.) Based on the foregoing, Grover establishes that the deposition testimony of the PMK for Morris, Inc.; the PMK for Culligan; and CRH California Water, Inc.'s employee, Mr. Aleman may reveal facts essential to justify opposition to the motion such that a continuance for this discovery is warranted. The Court will hear from the parties as to possible dates for the deposition of the PMK for Morris, Inc. and the PMK for Culligan in determining a new hearing date. *Plaintiff to give notice.*