Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT N16

HON. Donald F. Gaffney

Counsel and Parties Please Note:
Law and Motion in Department N16 is heard on Wednesdays at 9:00 a.m.

Date: July 9, 2025

Tentative Rulings will be posted on the Internet on the day before the hearing by 5:00 p.m. [or earlier] whenever possible. To submit on the tentative ruling, please contact the clerk at (657) 622-5616, after contacting opposing party/counsel. Prevailing party shall give notice of the Ruling and prepare the Order/Judgment for the Court's signature if required.

NOTE: After posting of tentative rulings, the Court will not take the motion off calendar and will grant a continuance of the motion only upon stipulation of all affected parties.

If no appearances are made on the calendared motion date, then oral argument will be deemed to have been waived and the tentative ruling will become the Court's final ruling.

#	Case Name	Tentative
1	Li vs. Liu	**CMC/RELATED TO CASE #4 ON CALENDAR**
2	Chery vs. Larney	**OFF CALENDAR**
3	Zatta vs. Brandlin	**OFF CALENDAR**
4	Granite Escrow & Settlement Services vs. Li	**TENTATIVE RULING:** Plaintiff Granite Escrow & Settlement Services moves for discharge from any and all liability involving the rights and obligations of the parties arising out of disputed funds, which Plaintiff deposited with the Clerk of the Court. For the following reasons, the motion is GRANTED. **Statement of Law** Interpleader is a procedure whereby a person holding money or personal property, to which conflicting claims are being made by others, can join the adverse claimants and force them to litigate their claims among themselves. (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122.)

		The stakeholder may take the initiative and file a lawsuit against the various conflicting claimants, requiring them to litigate their respective claims to the money or property he or she holds. (Code Civ. Proc., § 386(b).) Code of Civil Procedure section 386(b) provides that: "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims." "The true test of suitability for interpleader is the stakeholder's disavowal of interest in the property sought to be interpleaded, coupled with the perceived ability of the court to resolve the entire controversy as to entitlement to that property without need for the stakeholder to be a party to the suit." (*Pacific Loan Management Corp. v. Superior Court* (1987) 196 Cal.App.3d 1485, 1489-1490.) "As against the stakeholder, claimants may raise only matters which go to whether the suit is properly one for interpleader, i.e., whether the elements of an interpleader action are present." (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 612-613, citing *Conner v. Bank of Bakersfield* (1917) 174 Cal. 400, 403.) Failure to challenge—by demurrer, answer, or motion—the plaintiff's right to interplead is deemed a waiver. (*Continental Nat. Bank of Los Angeles v. Stoltz* (1920) 46 Cal.App. 532, 535.) Defendants cannot change the nature of the action by filing crossclaims against the plaintiff; such claims must be asserted in a separate action. (*Conner v. Bank of Bakersfield* (1917) 174 Cal. 400, 403 [holding "[t]he only question that can be litigated between the plaintiff [interpleader] and the defendants in such actions is whether the plaintiff is entitled to compel the defendants to interplead with respect to their conflicting claims to the fund or debt . . . . The defendants cannot litigate in the interpleader suit any other claim against the plaintiff"].) Once the stakeholder's right to interplead is established, and he or she deposits the money or personal property in court, he or she may be discharged from liability to any of the claimants. (*See City of Morgan Hill v. Brown, supra,* 71 Cal.App.4th at pp. 1126-1127.) Specifically, "a two-step procedure is generally followed. First, it is determined whether the plaintiff may bring the suit and force the claimants to interplead. Second, if it is so determined, then the court will discharge the plaintiff from liability and 'the action may proceed for the determination of the rights of the various claimants to the property which is then in the custody of the court.'" (*Id.* at pp. 1126-1127.)

Section 386.5 provides for an application of discharge by the interpleader:

> Where the only relief sought against [the interpleader] is the payment of a stated amount of money alleged to be wrongfully withheld, such [interpleader] may, upon affidavit that he is a mere stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order.

The court may enter an order restraining all parties to the action from instituting or further prosecuting any other proceeding in any court in this state affecting the rights and obligations as between the parties to the interpleader until further order of the court. (Code Civ. Proc., § 386(f).)

Application

Here, Plaintiff establishes its right to interplead the funds. The $100,000 in disputed funds were deposited by Defendant Zhao, on behalf of Buyer Li. (Bracha Decl. ¶ 5; McNeil Decl. ¶ 9.) Buyer Li did not sign the mutual cancellation instructions permitting the disputed funds of $100,000 to be released to Seller Liu (Bracha Decl. ¶ 6), and Seller Liu demands release of those funds (McNeil Decl. ¶ 10).

Defendant Liu contends discharge is not proper in this instance because he has filed claims against Plaintiff Granite Escrow for negligence, conversion, and others. The court notes Defendant Liu submits no competent evidence of these claims. (*See In re Zeth S.* (2003) 31 Cal.4th 396, 413, fn. 11 [noting "[i]t is axiomatic that the unsworn statements of counsel are not evidence"].) Even if the court assumed Defendant Liu had filed a separate action against Plaintiff Granite Escrow pleading claims for negligence, conversion, and other claims, the existence of those claims is not relevant to the disposition of this motion. (*See Conner v. Bank of Bakersfield* (1917) 174 Cal. 400, 403 [holding "[t]he only question that can be litigated between the plaintiff [interpleader] and the defendants in such actions is whether the plaintiff is entitled to compel the defendants to interplead with respect to their conflicting claims to the fund or debt . . . . The

		defendants cannot litigate in the interpleader suit any other claim against the plaintiff"].) Plaintiff has deposited the Disputed Funds with the Clerk of the Court. (Bracha Decl. ¶ 10.) The court finds Plaintiff has complied with the procedural requirements of Section 386.5, having established its right to interplead the funds and deposited the Disputed Funds with the Clerk of the Court. Furthermore, the court finds discharging Plaintiff Granite Escrow to be proper. **Attorney's Fees and Costs** The court may, in its discretion, award a discharged party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. (Code Civ. Proc., § 386.6(a).) Recoverable fees are limited to those related "solely to the pursuit of the stakeholder remedy of Code of Civil Procedure section 386, et seq. (including fees incurred to overcome resistance to the remedy)." (*Sweeney v. McClaran* (1976) 58 Cal.App.3d 824, 830-831.) Here, the court chooses not to exercise its discretion to award fees and costs to Plaintiff Granite Escrow, given the existing dispute over the escrow company's possible role in contributing to the stakeholders' claims on the disputed funds. Plaintiff to give notice.
5	Guillen vs. FCA US LLC	**TENTATIVE RULING:** **Motion for Attorney's Fees** Plaintiffs Carmen Guillen and Salvador Valencia Vargas move for attorney's fees, costs, and expenses. For the following reasons, the motion is GRANTED. Plaintiffs Carmen Guillen and Salvador Valencia Vargas shall recover $ 35,748.00 in reasonably incurred attorney's fees. Plaintiffs shall recover $3,298.99 in claimed prejudgment costs.

Statement of Law

On a motion for attorney's fees, the moving party has the burden of: (1) establishing entitlement to an award, and (2) documenting the appropriate hours expended and hourly rates. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020.)

The Song-Beverly Act provides for the recovery of attorney's fees, costs, and expenses. (Civ. Code, § 1794(d).)

It is moving party's burden of proof to show the fees they incurred and that the fees were reasonably incurred. (*See Christian Research Institute v. Alno* (2008) 165 Cal.App.4th 1315, 1320; *Maughan v. Google Tech.*, Inc. (2007) 143 Cal.App.4th 1242, 1254.) "[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v Board of Trustees of California State University* (2005)132 Cal.App.4th 359, 396; *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1367 [declarations of counsel are also "sufficient to meet the burden of establishing the reasonableness of the fees incurred, without the need to produce copies of counsel's detailed billing statements"].) "[N]ecessary support services for attorneys, e.g. secretarial and paralegal services, are includable within an award of attorney fees." (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951.)

To oppose a showing of a fee request supported by declarations describing the efforts taken with billing records to establish the hours of work, a party may "attack the itemized billings with evidence that the fees claimed were not appropriate, or obtain the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable." (Premier Med. Mgmt. Sys. v. Cal. Ins. Guarantee Assoc. (2008) 163 Cal.App.4th 550, 563-564.) "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (Id. at p. 564.) "When confronted with hundreds of pages of legal bills, trial courts are not required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary." (Gorman v. Tassajara Development Corp. (2009) 178 Cal.App.4th 44, 101.) "The party opposing the fee award can be expected to identify the particular charges it considers objectionable. A reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections." (Ibid.)

		The Court will reduce the hours it determines were excessive or not supported. (*Levy v. Toyota Motor Sales, U.S.A., Inc*. (1992) 4 Cal.App.4th 807, 816 [party seeking attorney fees has the "burden of showing that the fees incurred were 'allowable, 'were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount'"]; *Christian Research Institute v. Ahor* (2008) 165 Cal.App.4th 1315, 1326-29 [affirming award for 71 hours of attorney time in case where attorneys sought fees for over 600 hours].) Fee award amounts are matters within the trial court's discretion: the "trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 [noting that " 'unless special circumstances would render such an award unjust,'" "parties who qualify for a fee should recover for all hours reasonably spent"]; *see also Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 447–448.) The *Serrano* court cited with approval a federal case encouraging a complete denial of fees where the fee request was unreasonably excessive. (*Id.* at p. 635.) "'If ... the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked in the first place. To discourage such greed, a severer reaction is needful....' " (*Serrano v. Unruh*, *supra*, 32 Cal.3d at p. 635, citation omitted.) In addition, "a trial court may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees." (Snoeck v. Exaktime Innovations, Inc. (2023) 96 Cal.App.5th 908, 911.) Courts use the lodestar adjustment method to determine the amount of attorney's fees to award in Song-Beverly actions. (*Reynolds v. Ford Motor Co.* (2020) 47 Cal.App.5th 1105, 1112.) "[T]he lodestar is the basic fee for comparable legal services in the community." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 ("*Ketchum*").) It is "based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.' [Citation.] [The California Supreme Court] expressly approved the use of prevailing hourly rates as a basis for

		the lodestar… In referring to 'reasonable' compensation, [the Court] indicated that trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation. (*Id.* at pp. 1131-1132.) When determining a reasonable attorneys' fees award using the lodestar method, the court begins by deciding the reasonable hours the prevailing party's attorney spent on the case and multiplies that number by the reasonable hourly compensation of each attorney. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 998; *see also Environmental Protection Info. Ctr. v. California Dep't of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 248.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The court may rely on personal knowledge and familiarity with the legal market in setting a reasonable hourly rate. (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009; *569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal. App. 5th 426, 437.) The court then has the discretion to increase or decrease the lodestar figure by applying a positive or negative multiplier; "such an adjustment is commonly referred to as a 'fee enhancement' or 'multiplier.' [Citation.]" (*Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 247 ("*Mikhaeilpoor*").) The lodestar may be adjusted based on factors which include the novelty and difficulty of issues presented, complexity of the case, the attorney's skills, the results achieved, and the extent to which taking the case on a contingent fee basis has precluded the attorney from taking other fee-generating work. (*Ketchum, supra,* 24 Cal.4th at pp. 1132-1134; *Mikhaeilpoor, supra*, 48 Cal.App.5th at p. 247.) "The purpose of [the] adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Ketchum, supra*, 24 Cal.4th at p. 1132.) The court is not required to impose a multiplier; the decision is discretionary. (*Mikhaeilpoor, supra*, 48 Cal.App.5th at p. 247; *Galbiso*, *supra*, 167 Cal.App.4th at 1089; *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1241.) "'[T]he lodestar method vests the trial court with the discretion to decide which of the hours expended by the attorneys were

		"reasonably spent" on the litigation' [Citation] and to determine the hourly rates that should be used in the lodestar calculus. [Citation.]" (*Mikhaeilpoor, supra*, 48 Cal.App.5th at pp. 246-247.) "The experienced trial judge is the best judge of the value of professional services rendered in his court . . . . [Citation.]" (*Ketchum*, *supra*, 24 Cal.4th at p. 1132.) **Entitlement to Fees** Here, it is undisputed that the Song-Beverly Act provides for the recovery of attorney's fees and that Plaintiffs are the prevailing parties. **Lodestar Calculation: Reasonable Rates** "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The court may rely on personal knowledge and familiarity with the legal market in setting a reasonable hourly rate. (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009; *569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal. App. 5th 426, 437.) Having reviewed and considered Plaintiffs' evidence, having presided in several cases involving statutory claims for attorney's fees of this type, and taking into consideration Defendant's opposition to the rate charged by Plaintiff's counsel, the court finds $495 to be a reasonable rate for attorneys of similar experience in the community who conduct litigation of similar type as in this case. Defendant contends the following billing entries are clerical and should be excluded from the Lodestar or billed at a lower paralegal rate of $150: - On 06/02/2023, 0.3 hrs ($180) billed to email Defendant and review letter. - On 09/26/2023, 0.8 hrs ($400) billed to file, draft CMC statement, draft notice of posting jury fees, electronically serve CMC statement, and deposit jury fee. - On 11/13/2023, 0.5 hrs ($250) billed to reviewing additional documents/info from client. - On 11/13/2023, 0.4 hrs ($200) billed to email FCA attorney re FCA's refusal to reimburse Plaintiffs for part of their down payment. - On 04/02/2024, 0.7 ($350) hrs billed to draft a notice of depo,

email FCA re same, and e-serve FCA re same.

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Plaintiff chose not to file a reply and, therefore, concedes these entries should be billed at the amounts proposed by Defendant. Therefore, the court awards all these challenged entries at the lower $150 paralegal rate, awarding $405 total for 2.7 hours.

Lodestar Calculation: Reasonable Hours

Plaintiffs submit billing records, itemizing the hours spent. (Kamana Decl., Ex. E.) The court has read and considered the billing records, which set forth the services by date, amount of time incurred, and description of work performed. The billing records reflect 91.2 hours of work performed or anticipated to be performed on this case by Attorney Kamana.

Defendant contends the following billing entries are unreasonable and excessive:

- On 05/02/2023, 2.5 hrs billed to review file, and draft complaint, civil cover sheet, summons, order service of process, look up the agent for service of process, and schedule service. Defendant contends any "file" would be minimal, there is no need for research, and the amount billed is excessive. The court awards 0.5 hrs to initiate the suit.
- On 07/10/2023, 1.8 hrs billed to review file and draft written discovery. Defendant argues there is nothing novel to justify spending this amount of time drafting discovery. The court awards 0.8 hrs to drafting discovery, most of which could be edited from templates by a paralegal.
- On 12/08/2023, 12/11/2023, and 07/10/2023, 1.5 hrs billed to draft discovery motions. The court awards the full 1.5 hrs to draft the motions.
- On 01/17/2024, 1.7 hrs billed to review FCA's discovery responses. The court awards 0.5 hrs to review discovery responses.
- On 01/01/2024, 2.8 hrs to research FCA's felony conviction. The court awards no time for this entry.
- On 04/15/2025, 2.6 hrs to prepare for PMQ deposition, review file, CACI, and FCA document production. The court awards 1.6 hrs for this work.
- On 04/16/2025, 3.3 hrs billed to continue review of file, reviewing info re felony convictions, and drafting outline for PMQ deposition. The court awards no time for this work.
- On 04/22/2024, 1.6 hrs to email FCA re Plaintiff's deposition dates, meet and confer re motion to compel depositions,

update settlement demand, and request status of sanctions. The court awards 0.6 hrs for this work.
- On 12/05/2024, 3.3 hrs billed to draft this straightforward motion, which should be based on the detailed time records, not the purported extensive review of previous correspondence, case documents, ROA, and billing records. The court awards 1.6 hrs for this work.
- Counsel anticipates incurring three hours to reply and appear for hearing on this fees motion. Plaintiffs submit no reply and may not attend hearing. The court awards no fees for reply or attending the hearing.

In sum, the court awards $ 35,748.00 in attorney's fees, which is the requested hours at the $495 billing rate proposed by Defendant, *minus*

- 17.1 hours the court finds to be duplicative, unnecessary, and/or unreasonable; and
- 2.7 hours of administrative/paralegal rate awarded at the reduced rate of $150.

Lodestar Calculation: Multiplier

In determining whether to apply a multiplier, the court considers a variety of factors that the court did not consider when determining the lodestar figure, such as the novelty and difficulty of the issues presented, the skill displayed in presenting them, the extent to which the nature of the litigation precluded other employment by the attorneys, and the contingent nature of the fee award. (*See Ketchum, supra,* 24 Cal.4th at pp. 1132-1134; *Northwest Energetic Servs., LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 879-82; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.) The court is not required to impose a multiplier; the decision is discretionary. (*Galbiso*, 167 Cal.App.4th at 1089; *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1241.) The contingent nature of fee award is relevant where it is "uncertain that the attorneys would be entitled to an award of fees even if they prevailed." (*Weeks v Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1175.) On the other hand, contingent nature is not generally sufficient where contingency is limited to whether or not the party will prevail. (*Id.*, at pp. 1174-1175.) A multiplier is more typically seen in cases where counsel undertakes a difficult case in the public interest, not a personal injury case brought by a single plaintiff to recover her own economic damages. (*Id.*, at p. 1174.)

Here, the *Ketchum* factors do not weigh in favor of a multiplier. Plaintiffs do not show the warranty issues presented to be novel or

difficult, and the contingent nature is limited to whether the plaintiffs will prevail; and counsel did not undertake a complex case in the public interest.

In sum, the court finds that Plaintiffs are entitled to an award of attorney's fees in the amount of $35,748.00.

The court finds this amount and the hours associated therewith to be reasonable.

Costs

The right to recover costs of suit is determined entirely by statute. (Code Civ. Proc., § 1032.) The prevailing party is entitled to costs as a matter of right in any action or proceeding. (Code Civ. Proc., § 1032(b).) "If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they are not reasonable or necessary." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.)

Prejudgment costs must be claimed and contested in accordance with the rules adopted by the Judicial Council. (Code Civ. Proc., § 1034(a).) California Rules of Court, rule 3.1700(a)(1) provides:

> A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. The memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case.

The court notes this request for costs is premature, as the court has not yet entered any entry of judgment or dismissal. The court also notes that Plaintiffs filed no memorandum of costs, instead submitting a true and correct copy of the breakdown of costs incurred. (Kamana Decl. ¶ 37, Ex. F.) The attorney declaration does not state that the costs were necessarily incurred in the case. The court exercises its discretion to overlook these deficiencies given that Defendant asserts no objection.

The costs breakdown (Exhibit F) includes some claimed costs that are not proper on their face.

		1) Plaintiffs claim $572.95 and $645.90 in *unpaid discovery sanctions*. These are not recoverable costs. Orders imposing monetary sanctions have the force and effect of a money judgment, and are immediately enforceable through execution, except to the extent the trial court may order a stay of the sanction. (*Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615; *see also* Code Civ. Proc., §§ 680.230, 680.270, 699.510(a).) 2) Plaintiffs claim $203.02 in filing fees, which Plaintiffs previously requested in connection with the discovery sanctions. (*See* ROA # 27, 29, 31.) Awarding the filing fees here would constitute double recovery for Plaintiffs. Therefore, the court grants the motion for costs and awards $3,298.99 in prejudgment costs—which is the requested amount *minus* $572.95 in unrecovered discovery sanctions, $645.90 in unrecovered discovery sanctions, and $203.02 in costs already recovered. Plaintiffs to give notice.
6	Jones vs. Yale Navigation Center	**TENTATIVE RULING:** For the reasons set forth below, Defendant PATH's unopposed motion for terminating sanctions against Plaintiff Lydell Jones is DENIED. **Statement of Law** Code Civ. Proc. § 2030.300(e) states: If a party … fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010). Similarly, with exceptions not applicable here, Code Civ. Proc. § 2031.310(i) states: [I]f a party fails to obey an order compelling further response [to production demands], the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section

2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

"A trial court has broad discretion to impose discovery sanctions, but two facts are generally prerequisite to the imposition of nonmonetary sanctions … (1) absent unusual circumstances, there must be a failure to comply with a court order, and (2) the failure must be willful." (*Biles v. Exxon Mobil Corp*. (2004) 124 Cal.App.4th 1315, 1327; see also, *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1423.)

"A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280 [overruled on other grounds in *Mileikowsky v. West Hills Hospital & Medical Center* (2009) 45 Cal.4th 1259, 1273].)

The sanction imposed "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." (*Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 228, citing *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.) See also *Lee v. Lee* (2009) 175 Cal.App.4th 1553, 1559: "A failure to respond to an authorized method of discovery may constitute misuse of the discovery process. [Citation.] Nevertheless, absent unusual circumstances, such as repeated and egregious discovery abuses, two facts are generally prerequisite to the imposition of a nonmonetary sanction. There must be a failure to comply with a court order and the failure must be willful. [Citation.]"

10/30/24 Order

On 10/30/24, the court granted Defendant PATH's motion to compel Plaintiff's responses to requests for production, set one, and ordered Plaintiff to serve complete responses to Defendant's requests for production, set one, without objections within 30 days of notice of the ruling. (See Decl. of Litchhult, ¶ 2, Ex. A). Defendant served the notice of ruling the next day via mail service to Plaintiff. (Ex. A).

		Counsel for Defendant declares that as of the date of his 12/6/24 declaration, Plaintiff had not served responses to the subject discovery. (Decl. of Litchhult, ¶ 3). Accordingly, Plaintiff violated the court's 10/30/24 Order. However, the court finds that terminating sanctions are not warranted at this time. First, if this entire matter were dismissed, Defendant would be in a better position than it would have been if it obtained the responses to discovery. (*Sauer, supra,* 195 Cal.App.3d at 228). Second, there has been no showing that lesser sanctions – such as evidence sanctions – have been, or would be, ineffective. (See *Lopez v. Watchtower Bible and Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604-605.) Third, there is no evidence of repeated or egregious discovery abuses on the part of Plaintiff. (*Lee, supra,* 175 Cal.App.4th at 1559). Defendant shall give notice.
7	Kia vs. Tabatabai	**OFF CALENDAR**
8	Konohia vs. American Money Group, Inc.	**TENTATIVE RULING:** Michael Rapkine of Lagerlof, LLP's motion to withdraw as counsel of record for Defendant American Money Group, Inc. is GRANTED. (Code Civ. Proc. § 284; Cal. Rules of Court, rule 3.1362). The order relieving counsel will be effective upon the filing of a proof of service of the executed order upon all parties. An OSC re: American Money Group, Inc.'s Failure to Be Represented by Counsel is set for August 26, 2025, at 9:00 a.m. in Department N16. Moving counsel shall give notice.
9	National Funding, Inc. vs. Select Employment Services Incorporated	**TENTATIVE RULING:** For the reasons set forth below, Specially Appearing Defendant Virgilio Diaz Jr.'s motion objecting to jurisdiction is CONTINUED to August 27, 2025, at 9:00 a.m. in this Department. Defendant's certificate of service is defective. It does not comply with the requirements set forth in Code Civ. Proc. § 1013b (electronic service) or Code Civ. Proc. § 1013a (mail service). For example, there is no attestation of the following: being over 18 years of age, the exact title of the document served and filed in the cause, the name and residence or business address of the person making the service,

		that the person is a resident of or employed in the county where the electronic service occurs., etc. Nor does he list counsel's email address or his own email address. Furthermore, the notice of the motion is defective as it does not comply with the requirements of Cal. R. Ct., Rule 3.1110. There is no responsive pleading by Plaintiff on the merits waiving the defective proof of service or defective notice. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 698 [response on merits can waive service defect].) Defendant shall re-serve the moving papers with proper notice to Plaintiff along with a notice of continuance. Defendant shall file a Code-compliant proof of service of same, at least five court days prior to the continued hearing date. Defendant shall give notice.
10	Truong vs. Tran	**TENTATIVE RULING:** For the reasons set forth below, the motion by Defendant Paul Nguyen to disqualify attorney Heidi Hieu Luong Griffith as counsel for Plaintiffs Hai Hoang Truong and Thuy Phuong Nga To is DENIED. The joinder by Defendant Chuong Ngoc Tran to the motion is DENIED. Plaintiffs' request for sanctions under section 128.5 is DENIED. **<u>General Principles re: Disqualification</u>** The court has inherent power "to control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner pertaining thereto." (Code Civ. Proc. §128(a)(5).) This includes the power to disqualify counsel in appropriate cases. (*In re Complex Asbestos Litig*. (1991) 232 Cal. App. 3d 572, 585.) Review of an order granting or denying a disqualification motion is for abuse of discretion. (*Id*.) The trial court's exercise of this discretion is limited by the applicable legal principles and is subject to reversal when there is no reasonable basis for the action. (*Id*.) "A trial court's authority to disqualify an attorney derives from the power inherent in every court [t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto. [D]isqualification motions involve a conflict

between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process." (*Walker v. Apple, Inc*. (2016) 4 Cal.App.5th 1098, 1106 [internal quotes and citations omitted].)

As a rule, deciding a motion to disqualify requires the court to weigh the following variables:

- the party's right to counsel of choice;
- the attorney's interest in representing a client;
- the financial burden on a client of changing counsel;
- any tactical abuse underlying a disqualification motion; and
- the principle that the fair resolution of disputes requires vigorous representation of parties by independent counsel.

(*Mills Land & Water Co. v. Golden West Refining Co*. (1986) 186 Cal.App.3d 116, 126.)

Rules of Professional Responsibility at Issue

Defendant Nguyen raises three rules of professional responsibility as the basis for disqualifying Plaintiffs' counsel, Heidi Hieu Luong Griffith.

First, Nguyen relies on Rule 1.7 (Conflict of Interest: Current Clients), which states, in part:

> (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
>
> (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.…

Second, Nguyen relies on Rule 1.8.1, which states:

		A lawyer shall not enter into a business transaction with a client, or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied: a) the transaction or acquisition and its terms are fair and reasonable to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing to the client in a manner that should reasonably have been understood by the client; b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and c) the client thereafter provides informed written consent to the terms of the transaction or acquisition, and to the lawyer's role in it. A lawyer has an "other pecuniary interest adverse to a client" within the meaning of this rule when the lawyer possesses a legal right to significantly impair or prejudice the client's rights or interests without court action. (See *Fletcher v. Davis* (2004) 33 Cal. 4th 61, 68). Finally, Nguyen relies on Rule 3.7, which states in relevant part: (a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless: (1) the lawyer's testimony relates to an uncontested issue or matter; (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or (3) the lawyer has obtained informed written consent from the client. … (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9. **Defendants Lack Standing**

		The court finds that Defendants lack standing to raise Rules 1.7, 1.8.1 and/or 3.7 as grounds to disqualify Plaintiffs' counsel. These rules are meant to protect current or former clients from conflicts of interests. There is no showing that Attorney Heidi Hieu Luong Griffith ever represented Defendants and/or entered into any transactions directly with Defendants which would give rise to any of the rules of professional conduct between Griffith and Defendants. "Standing generally requires that the plaintiff be able to allege injury, that is, an invasion of a legally protected interest." (*Great Lakes Constr., Inc. v. Burman* (2010) 186 Cal. App. 4th 1347, 1356.) "Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney [to demonstrate standing]." (*Id*.) Even without an attorney-client relationship, the movant must still show that "some sort of confidential or fiduciary relationship must exist or have existed before a party may disqualify an attorney predicated on the actual or potential disclosure of confidential information." (*Id*.) "The non-client must meet stringent standing requirements, that is, harm arising from a legally cognizable interest which is concrete and particularized, not hypothetical." (*Id*. at 1358.) Only "where the ethical breach is 'manifest and glaring' and so 'infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of [his or] her claims' . . . a nonclient might meet the standing requirements to bring a motion to disqualify based upon a third party conflict of interest or other ethical violation." (*Kennedy v. Eldridge* (2011) 201 Cal. App. 4th 1197, 1204.) "[W]here an attorney's continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process, the trial court may grant a motion for disqualification, regardless of whether a motion is brought by a present or former client of recused counsel." (*Id*.) Here, Defendants argue that it is unethical for Plaintiff's counsel to represent *Plaintiffs* because counsel purportedly had an interest in a real estate company that assisted *Plaintiffs* in obtaining financing on certain real property. Defendants' arguments involve duties owed by Plaintiff's counsel to Plaintiffs—not Defendants. As non-clients, Defendants were required to show that a conflict of interest between Griffith and *Defendants* was "manifest and glaring," such that it "infects the litigation," and "impacts the [*Defendant*s'] interest in a just and lawful determination of [his or] her claims." (*Kennedy*, 201 Cal. App. 4th at 1204.) The Defendants fail to make this showing. Defendants have not offered any admissible evidence demonstrating that Griffith had some kind of confidential or fiduciary relationship

with Defendants predicated on an actual or potential disclosure of Defendants' confidential information. Defendants have not shown any legally cognizable interest which is concrete and particularized. Any issues related to conflicts of interests, ethical breaches, lack of informed consent, etc., belong to Plaintiffs, not Defendants.

For these reasons, the motion is denied.

Plaintiffs' Request for Sanctions

"A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (a).)

"'Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading." (Code Civ. Proc., § 128.5, subd. (b)(1).) "'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5, subd. (b)(2); see *Littlefield v. Littlefield* (2024) 106 Cal.App.5th 815, 828 [a determination of frivolousness requires a finding the motion was totally and completely without merit such that any reasonable attorney would agree such motion was totally devoid of merit].)

A motion for sanctions under this provision "shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (f)(1)(A).)

Moreover, "[i]f the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected." (Code Civ. Proc., § 128.5, subd. (f)(1)(B).)

The court finds that Plaintiffs have not sufficiently established that Defendants' motion is made in bad faith, was frivolous, and/or solely intended to cause unnecessary delay. Further, the court finds that

		Plaintiffs' request for sanctions under section 128.5 fails to comply with subsection (f)(1)(A) or (B) and is, therefore, procedurally defective. Plaintiffs have not offered sufficient admissible evidence to establish any exception to the safe harbor and separate motion requirements of section 128.5 that apply here. Plaintiffs' sanctions request is, therefore, denied. Plaintiff to give notice.
11	Nguyen vs. Loya Casualty Insurance Company	**TENTATIVE RULING:** For the reasons set forth below, Defendants Loya Casualty Insurance Company and Fred Loya Insurance Agency, Inc.'s Motion for Judgment on the Pleadings is GRANTED. While it is unclear to the Court how Plaintiff Van My Nguyen can credibly amend her Complaint given the clear holding of *Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937 [third party not authorized to proceed against insurer for excess of judgment over policy limits] and *Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196 [where insurer has intervened or moved to set aside a default, it is not bound by a default taken against the insured], the Court shall afford Plaintiff 30 days' leave to amend. (See Cal. Rules of Court, rule 3.1320(g) ["Following a ruling on a demurrer, unless otherwise ordered, leave to answer or amend within 10 days is deemed granted"]; *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1146; see *Dudley v. Department of Transp.* (2001) 90 Cal.App.4th 255, 259 [a motion for judgment on the pleadings is the functional equivalent of a general demurrer, with the only significant difference being the timing].) **<u>Requests for Judicial Notice and Evidentiary Objections</u>** Defendants' requests for judicial notice are granted as to Exhibits 2 through 7, and they are denied as to Exhibit 1, as the Court may not take judicial notice of a contract, let alone the terms of the contract such as the subject insurance policy and declarations page. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1144-1145; see *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014 [while trial court could take judicial notice of the existence of a contract, it would not take judicial notice of its contents].) Plaintiff's objections to Defendant's requests for judicial notice are moot as to Exhibit 1, and overruled as to Exhibits 2 through 7.

Plaintiff's requests for judicial notice are granted as to Exhibits A through D, but denied as to Exhibits E through G, as the Court may not take judicial notice of the contents of a website. (See *Bridges v. Mt. San Jacinto Community College District* (2017) 14 Cal.App.5th 104, 117 [a printout from website "not the type of agency action we may judicially notice"].)

However, the Court denies Plaintiff's requests for judicial notice nos. 2 and 9, as well as the legal arguments raised on pages 2:10-2:13, 2:15-2:19, 2:23-2:24, 3:3-3:4, and 3:9-3:18 of Plaintiff's Request for Judicial Notice. Defendants' objections to Plaintiff's requests for judicial notice are moot.

Merits

"An insurer's right to intervene in an action against the insured, for personal injury or property damage, arises as a result of Insurance Code section 11580. Section 11580 provides that a judgment creditor may proceed directly against any liability insurance covering the defendant, and obtain satisfaction of the judgment up to the amount of the policy limits. [Citation.] Thus, where the insurer may be subject to a direct action under Insurance Code section 11580 by a judgment creditor who has or will obtain a default judgment in a third party action against the insured, intervention is appropriate. [Citation.] The insurer may either intervene in that action prior to judgment or move under Code of Civil Procedure section 473 to set aside the default judgment. [Citation.] Where an insurer has failed to intervene in the underlying action or to move to set aside the default judgment, the insurer is bound by the default judgment. [Citation.]" (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386-387; see *Gray v. Begley* (2010) 182 Cal.App.4th 1509, 1522-1523 [when an insurer refuses to defend, it may be bound by a default judgment against its insured].)

However, " 'a judgment creditor who has prevailed in a lawsuit against an insured party may bring a direct action against the insurer *subject to the terms and limitations of the policy*.' [Citation.]" (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1205; see *Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937, 944 ["the Financial Responsibility Law does not require plaintiff be permitted to sue for breach of the duty to settle," and it does not authorize the plaintiff to proceed against the insurer for the excess of the judgment over policy limits, as the duty to settle was intended to benefit the insured, not the injured claimant].)

		"An intervener is not limited by every procedural decision made by a party with which it is aligned." (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1206.) "Just as a plaintiff's procedural default does not bar the claim of an intervening party aligned with the plaintiff, a defendant's procedural default does not bar the defense of an intervening party aligned with the defendant. A party permitted to intervene is permitted to do so in order to pursue its own interests. Once permitted to intervene, it is a party to the action not bound by other parties' procedural defaults." (*Id.* at p. 1207.) "[A]n intervening insurer is *not* bound by a default taken against its insured. ' "It is an established principle of law that admissions implied from the default of one defendant ordinarily are not binding upon a codefendant who, by answering, expressly denies and places in issue the truth of the allegations thus admitted by the absent party." ' [Citations.]" (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1211.) "It makes no logical difference whether the nondefaulting codefendant was originally named as a defendant or joined the action, as in this case, by subsequent intervention. A party's default does not bind nondefaulting codefendants, even when the basis for the action against the codefendants is vicarious liability arising from the acts of the defaulting defendant. Thus, an insurer intervening in an action to pursue its own interests after its insured has defaulted is not required to move to vacate the insured's default as to itself; the insured's default simply has no effect on the insurer." (*Ibid*.; accord, *Inzunza v. Naranjo* (2023) 94 Cal.App.5th 736, 745.) As the *Western Heritage* court explained, "[w]hile no case *expressly considers* whether the intervening insurers are then entitled to litigate liability and damages issues that their insureds are barred from litigating, this conclusion necessarily follows. Indeed, there would be no purpose in allowing an insurer to intervene in order to protect its *own* interests but then limit the scope of the insurer's defense to those issues to which *its insured*, because of the default, is limited to pursuing." (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1207.) "[A]n intervening insurer is not limited to those defenses to which its insured might be restricted due to the procedural default. The entire purpose of the intervention is to permit the insurer to pursue its own interests, which necessarily include the litigation of defenses its insured is procedurally barred from pursuing." (*Id*. at p. 1208.) In the Complaint, Plaintiff judicially admits the underlying insurance policy has a bodily injury limit of $15,000.00. (See *Shirvanyan v. Los*

		Angeles Community College District (2020) 59 Cal.App.5th 82, 100 [a complaint's allegations are judicial admissions].) (Complaint, ¶ 7.) Plaintiff further admits that, in response to her lawsuit against Owens – Loya Casualty's insured – Loya Casualty intervened in the underlying action. (Complaint, ¶¶ 8-10.) Owens' default, and a default judgment of $32,921.00, were later entered. (Complaint, ¶¶ 10-11.) Since Defendants failed to accept the policy limit demand within a reasonable period of time, Plaintiff alleges Defendants are liable for the entirety of the $32,921.00 default judgment. (Complaint, ¶¶ 12-16, 20-25.) However, and as the *Western Heritage* court held, since Loya Casualty intervened in the underlying lawsuit, it is not bound by Owens' default. And if Loya Casualty is not bound by the Owens' default, it cannot be bound by the default judgment Plaintiff obtained against Owens. This is so even though Loya Casualty did not move to set aside the default and/or default judgment. Plaintiff argues *Western Heritage* is inapplicable because it, along with its progeny, only recognized an insurer's right to intervene. Not so, as the holding of *Western Heritage* could not be clearer, namely, that an insurer – Loya Casualty – is not bound by the default of, and the subsequent default judgment against its insured, namely, Owens. *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865 and *Executive Risk Indemnity, Inc. v. Jones* (2009) 171 Cal.App.4th 319, which Plaintiff cites in the Opposition, are distinguishable because neither case discussed the effect of an insurer's intervention. (See *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680 ["An opinion is not authority for propositions not considered"]; see *Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th 234, 249 ["The case cannot stand for a principle never addressed"].) Plaintiff also cites to *Hand v. Farmers Ins. Exchange* (1994) 23 Cal.App.4th 1847, arguing that *Hand* supports her claim for Bad Faith Breach of Contract. However, as with *Clemmer* and *Executive Risk Indemnity*, *Hand* did not address an important factor, namely, Loya Casualty's intervention in the underlying lawsuit. Again, and as discussed, under the holding of *Western Heritage*, the practical and legal effect of Loya Casualty's intervention is that it is not bound by any subsequent default, or default judgment, against Owens. Plaintiff also argues the mere offer to pay the policy limits is no defense to the breach of contract cause of action. She further

		contends the amount of damages claimed in the Complaint is not a valid ground for a motion for judgment on the pleadings. The Court is unpersuaded by this argument, as the entire basis for Plaintiff's present lawsuit is her contention that Defendants are responsible for the $32,921.00 default judgment against Owens, notwithstanding Plaintiff's concession that the subject insurance policy has a $15,000 limit for bodily injury. As discussed, *Western Heritage* expressly holds that, because Loya Casualty intervened in the underlying action, it is not bound by the default judgment. Further, as the California Supreme Court has held, a plaintiff cannot sue the insurer for the breach of the duty to settle, and certainly not for an amount greater than the insurance policy's limits. (*Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937, 944.) This leaves Defendant Fred Loya. Plaintiff alleges in her Complaint that Fred Loya and Loya Casualty were alter egos (Complaint, ¶¶ 3), and that the two Defendants were each other's agents (Complaint, ¶ 5). However, Plaintiff's alter ego and agency "allegations are egregious examples of generic boilerplate…," which cannot withstand a motion for judgment on the pleadings. (See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 134, fn. 12 [conclusory allegations of agency are "egregious examples of generic boilerplate"]; see *Amiodarone Cases* (2022) 84 Cal.App.5th 1091, 1114 [agency between a drug maker and article authors not sufficiently alleged; see *Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 749 [insufficiency of alter ego allegations].) In their Motion for Judgment on the Pleadings, Defendants also contend Plaintiff cannot yet sue them because the underlying judgment in the Owens case is not final, and because the default judgment was not determined after trial. However, these arguments impermissibly require the Court to consider the terms of the insurance policy Loya Casualty issued to its insured. Since the Court has declined to take judicial notice of the declarations page and insurance policy Loya Casualty issued to Owens, it shall not consider these arguments. Should Plaintiff desire to file an amended complaint that addresses the issues in this ruling, Plaintiff shall file and serve the amended complaint within 30 days of service of the notice of ruling. Moving party to give notice.

12	Padilla vs. HOAG Memorial Hospital Presbyterian	**TENTATIVE RULING:** **Motion for Summary Judgment** Defendant Hoag Memorial Hospital Presbyterian moves for summary judgment or, in the alternative, summary adjudication on the Complaint filed by Plaintiff Monica Padilla. For the following reasons, the hearing on this motion is CONTINUED to August 27, 2025, at 9:00 a.m. in Department N16. Code of Civil Procedure section 437c(h) provides: > 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. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due. Given the high stakes involved in summary judgment motions, a continuance under section 437c(h) 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." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398 (internal quotation marks omitted); *Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 532 (" When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request.").) Before the original May 7, 2025, hearing, Plaintiff's counsel declared that Defendant refused to produce a Person Most Qualified (PMQ) for deposition. Thus, the Court's May 7, 2025, Minute Order provided that "Defendant shall produce a PMQ for deposition within the next 30 days." On May 13, 2025, Defendant's counsel indicated that Defendant would produce PMQs, but not for 5 of the requested categories of examination. (Allton Dec.) The parties dispute whether the categories of examination in dispute are relevant for purposes of this motion. On June 20, 2025, Plaintiff filed a motion to compel deposition concurrently with her supplemental opposition to the summary judgment motion. Plaintiff contends that the

		information requested is relevant for purposes of determining who spilled the water, who gave that man a full cup of water, etc. If it was an employee of Defendant that gave the man the full cup of water, Plaintiff contends that may serve as evidence that Defendant had knowledge of the spill before Plaintiff fell. The Court will not speculate as to what information Plaintiff might obtain from a deposition of Plaintiff's PMQ. On June 25, 2025, the motion to compel was set for an Informal Discovery Conference (IDC) before Judge Andre De La Cruz as part of the pilot Dedicated Discovery Department Program. The IDC is scheduled for July 30, 2025, in Department CM02. In light of the continued motion to compel hearing, the hearing on this summary judgment motion is likewise continued. Any Supplemental Opposition and Supplemental Reply papers shall be filed pursuant to the Code. Plaintiff to give notice.
13	Asics America Corporation vs. Shoebacca Ltd.	**CONTINUED TO 7/30/25**
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