TENTATIVE RULINGS

DEPARTMENT N17

Judge Craig L. Griffin

Date: April 21, 2025
Time: 2:00 PM

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1	Jurado v. Greystar Real Estate Partners, LLC, et. al.	Before the court is an unopposed Motion for Leave to File a Second Amended Complaint ("SAC") by plaintiffs Cathleen Jurado and Brittany Jurado. The motion will be GRANTED, subject to plaintiffs establishing proof of service of the motion. California Rules of Court, Rule 3.1324 sets forth the requirements for amending a complaint. The court finds that the motion generally complies with Rule 3.1324. A copy of the proposed SAC is attached as Exhibit A to Richie's declaration. There is a supporting declaration which states that as a result of the pre-demurrer meet and confer with counsel for Greystar, the plaintiff has opted to delete the two causes of action and that this modification was made in the SAC. Although plaintiffs also state that additional facts are being added, counsel represents that the additional facts are not substantive. (Richie Decl. ¶10) However, there is no proof of service attached to the motion showing that required notice was given to the two defendants, Greystar Real Estate Partners, LLC and Ocean Breeze Apartments Associates, LP. If counsel submits proof of service of the motion at or prior to the hearing of this matter, the motion will be GRANTED. If there is no proof of service, the motion will be DENIED.

		Also on calendar is a Case Management Conference. The parties should be prepared to discuss case status, status of the parties and scheduling a trial. Counsel for plaintiffs is to give notice of this ruling.
2	Ameris Bank v. Physi-Khul Therapy LLC	The motions to be relieved as counsel of record for defendants Physi-Khul Therapy LLC and Alex John Kuhlman (collectively, "Defendants") filed by attorney Jeffrey P. Boykin are **CONTINUED TO JUNE 2, 2025, AT 2:00 P.M. IN DEPARTMENT N17**. Although there appears to be good cause to grant the relief requested on the merits, there is no proof of service filed for these motions. "The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case." (C.R.C. 3.1362(d).) Although counsel's declaration states that Defendants were served by mail at their last known address, the statements in counsel's declaration are not a proper or adequate proof of service. (See Code Civ. Proc., § 1013a.) No oppositions were filed. It is thus unclear if Defendants and Plaintiff's counsel received proper notice of these motions. The motions are therefore continued as stated above. Moving counsel is ordered to file a proof of service showing Defendants and all parties were timely served with the notice of motion and motion, the declaration, and the proposed order. Said proof of service is to be filed at least 5 court days prior to the hearing. Moving counsel is ordered to give notice of this ruling.
3	Miltimore v. DCS Management LLC	O/C
4	Gee vs. Gee	Plaintiff Tamara Gee, as Executor of the Estate of Etta Wong's ("Plaintiff") Motions for Preliminary Injunctions ("Motions") against defendants Daniel Gee ("Daniel" individually) and Sagebrush Investments ("SI" individually; "Defendants" together with Daniel) are **GRANTED**. The court finds a preliminary injunction ("PI") should be issued in this instance. The burden is on *the moving party* to show all elements necessary to support issuance of a preliminary injunction. [Emphasis added.] (*O'Connell v. Superior Court* (2006) 141 Cal.App. 4th 1452, 1481.) The moving party has the burden to show that it is reasonably probable it will prevail on the merits. (*San Francisco Newspaper Printing Co. v. Superior Court* (1985) 170 Cal.App.3d 438, 442; Weil & Brown, ¶ 9:632.1.) Additionally, "[i]n deciding whether to issue a preliminary injunction, a trial court weighs two interrelated factors: [1] the likelihood the moving party ultimately will prevail on the merits, and [2] the relative interim harm to the parties from the issuance or noninsurance of the injunction." (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449–1450.)

The court finds Plaintiff has met her initial burden on each of the remaining five causes of action ("COA") alleged in the Complaint by showing there is a reasonable probability Plaintiff will prevail on each COA. Plaintiff has shown by evidence that defendant Daniel as an individual, and in his capacity as a general partner of SI and defendant SI have prohibited decedent Etta Wong ("Wong") while she was living and Wong's estate thereafter from obtaining their share of profits under the SI partnership agreement ("Agreement"). (Civ. Proc. Code § 527(a); Gee Decl., Ex. A.)

COA No. 1 – Declaratory Relief

"Declaratory relief generally operates prospectively to declare future rights, *rather than to redress past wrongs*." [Emphasis added.] *Id.* "A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court." (*Maguire v. Hibernia Sav. & Loan Soc.* (1944) 23 Cal. 2d 719, 728.) "The purpose of a declaratory judgment is "to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation."" (*Id.*, at 729.)

Plaintiff has shown there is a proper subject for declaratory relief (the winding up of SI and proper distribution of assets) and an actual controversy between the parties relating to their rights of SI's partnership assets. There is a question of how Wong's death affected the trust, whether the buy-out offer was proper or if SI was required to be wound up and the remaining assets disbursed between the estate and Daniel. (Corp. Code §§ 16202, 16601, 16801, 16807(b); *Corrales v. Corrales* (2011) 198 Cal. App. 4th 221, 227.) Defendants contention that Daniel can simply convert SI to a sole proprietorship does not appear well taken. (Corp. Code § 16902.)

Plaintiff has "prevailed" on this COA by showing there is an actual controversy as to Plaintiff's rights to receive funds from dissolution of SI due to Wong's disassociation by death, the legal requirement for the partnership to dissolve when there is only one remaining partner, and whether a "buyout" is permitted.

COA No. 2 – Breach of Fiduciary Duty

The elements of Breach of Fiduciary Duty are: 1) existence of a fiduciary duty; 2) the breach of that duty; and 3) damage proximately caused by that breach. (*Mosier v. Southern California Physicians Insurance Exchange* (1998) 63 CA4th 1022, 1044.)

"" 'Partnership is a fiduciary relationship, and partners are held to the standards and duties of a trustee in their dealings with each other. " ' "[I]n all proceedings connected with the conduct of the partnership every partner is bound to act in the highest good faith to his copartner and may not obtain any advantage over him in the partnership affairs by the slightest misrepresentation, concealment,

		threat or adverse pressure of any kind." ' " ' " (*Agam v. Gavra* (2015) 236 Cal. App. 4th 91, 112–13.) "" 'A partner may not dissolve a partnership to gain the benefits of the business for himself, unless he fully compensates his copartner for his share of the prospective business opportunity.' " [Citation.] Such a partnership opportunity may not be appropriated by one partner to the detriment of a copartner even after dissolution." (*Everest Invs. 8 v. McNeil Partners* (2003) 114 Cal. App. 4th 411, 424–25.) Plaintiff has alleged a fiduciary relationship between Wong and Daniel and a breach of the relationship by Daniel taking/withdrawing payments from SI, while not paying Wong the equal amounts under the Agreement. (Strickroth Supp. Decl., Ex. B at pp. 153 – 337; Plaintiff Supp. Decl. ¶¶ 13 - 14, Ex. B.) Plaintiff also alleged Daniel had a fiduciary relationship with Plaintiff through SI after Wong's death, and that Daniel has breached the relationship by failing to wind up the partnership and instead paying Plaintiff a low value for Wong's percentage of SI. Finally, Plaintiff contends Daniel has withdrawn large sums of SI's funds and transferred those funds to his personal accounts without consent or knowledge of Wong/Plaintiff. (Plaintiff Supp. Decl. ¶¶ 12 - 13, 16, Exs. B and C; RTJN, Exs. D – I.) Defendants did not make any specific opposition as to this COA other than to state the allegation of breaches were made after the statute of limitations ("SOL") had run. The SOL on a breach of fiduciary duty is four years. (Civ. Proc. Code § 343.) Plaintiff alleged Wong did not receive any disbursements from SI between July 2019 and her death on 09/11/21. Plaintiff would have at least the full four year limitation period from the date of the alleged breach (Civ. Proc. Code § 366.1), which, with the filing of the Complaint on 12/28/22, means any breaches since 12/28/18 would be within the SOL. The disbursements show that between 12/28/18 and 03/30/21 (prior to Wong's death), Daniel received disbursements of $103,373.61, while Wong received only $11,250. (Strickroth Supp. Decl., Ex. B at pp. 153 – 337.) The COA is not barred by the SOL. Daniel stated that Wong received disbursement amounts equal to Daniel, however he produced no evidence rebutting the evidence produced by Plaintiff showing Daniel received over four-times more disbursements than Wong. (Daniel Supp. Decl. ¶ 6.) Daniel also stated proceeds from the sale of assets that once belonged to SI have not been comingled with his personal accounts and remain in a separate specific account, but again produced no evidence supporting this contention or rebutting Plaintiffs' evidence. (Daniel Supp. Decl. ¶ 8.) He also produced no evidence that funds disbursed to him were used for SI and not for personal benefit. Plaintiff has shown a reasonable probability of prevailing on the merits on this COA.

COA No. 3 – Financial Elder Abuse

Abuse of an elder can be financial based. (Welf. & Inst. Code § 15610.07.) The elements of elder financial abuse are: 1) Plaintiff is 65-years of age or older at the time of the conduct; 2) Defendant took, secreted, appropriated, obtained, or retained real or personal property of Plaintiff for a wrongful use or with intent to defraud, or both; 3) Plaintiff was harmed. (Welf. & Inst. Code § 15610.30.) However, "[b]ad faith or intent to defraud [are] no longer required in elder or dependent adult abuse cases." (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal. App. 4th 522, 527.)

"Under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst.Code, § 15600 et seq.), an elder is "any person residing in this state, 65 years or older." (Welf. & Inst.Code, § 15610.27.) Section 15610.30 broadly defines financial abuse of an elder as occurring when a person or entity "[t]akes, secretes, appropriates, obtains, or retains real or personal property of an elder" for "a wrongful use or with intent to defraud, or both," as well as "by undue influence...." ` " (*Paslay v. State Farm Gen. Ins. Co.* (2016) 248 Cal. App. 4th 639, 656.)

Plaintiff contends Wong was more than 65-years of age at all times relevant to the issues in the Complaint. (Complaint ¶ 56.) Plaintiff alleged Daniel took, secreted, appropriated, obtained and/or retained the personal property that belong to Wong during her lifetime, including Wong' 50% partnership distributions from SI. (Strickroth Supp. Decl., Ex. B at pp. 153 – 337; Plaintiff Supp. Decl. ¶ 14, Ex. B) Daniel is also accused of transferring funds from SI's accounts to his own personal accounts, which would constitute elder financial abuse. (*Wood v. Jamison* (2008) 167 Cal.App.4th 156, 164-165.) After Wong's death (Plaintiff Supp. Decl. ¶¶ 13 – 14, Exs. B and C), Defendants allegedly failed to respond to requests of the estate for an accounting, although Daniel states otherwise without any supporting evidence.

Defendants made no real arguments on the merits regarding this COA.

Plaintiff has shown a reasonable probability of prevailing on the merits on this COA.

COA No. 4 – Unjust Enrichment

"[T]he elements for a claim of unjust enrichment: receipt of a benefit and unjust retention of the benefit at the expense of another." (*Lectrodryer v. SeoulBank* (2000) 77 Cal. App. 4th 723, 726.)

Plaintiff alleged Daniel deprived Wong of any and all distributions since 2019, despite Wong being entitled to 50% share of any distributions from SI. Plaintiff produced evidence supporting Daniel received over four times the distributions that Wong received during her lifetime. (Strickroth Supp. Decl., Ex. B at pp. 153 – 337; Plaintiff Supp. Decl. ¶ 14, Ex. B) As noted, Daniel is also attempting

to assert ownership over the entirety of SI and its assets without an equal distribution to Wong's estate. Again, Defendants produced no opposition to this COA.

Plaintiff has shown a reasonable probability of prevailing on the merits on this COA.

COA No. 6 – Conversion

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages....[Citation omitted.]" (*Lee v. Hanley* (2015) 61 Cal. 4th 1225, 1240 ("Lee").) "But where the money or fund is not identified as a specific thing the action is to be considered as one upon contract or for debt and not for conversion." (*Baxter v. King* (1927) 81 Cal. App. 192, 194.) Finally, "While it is true that money cannot be the subject of an action for conversion unless a specific sum capable of identification is involved [Citation], it is not necessary that each coin or bill be earmarked. When an agent is required to turn over to his principal a definite sum received by him on his principal's account, the remedy of conversion is proper." (*Haigler v. Donnelly* (1941) 18 Cal. 2d 674, 681.)

Plaintiff alleged Daniel deprived Wong of any and all distributions since 2019, despite Wong being entitled to 50% share of any distributions from SI. (Strickroth Supp. Decl., Ex. B at pp. 153 – 337; Plaintiff Supp. Decl. ¶ 14, Ex. B) Plaintiff has alleged a specific amount of funds taken by Daniel in an amount over $6,256,947.26. (Strickroth Decl. ¶ 6.) Plaintiff has also alleged Daniel transferred specific numbers of shares from SI's investment accounts into accounts under Daniel and his wife's names. (*Ibid.*)

Again, Defendants produced no opposition to this COA.

Plaintiff has shown a reasonable probability of prevailing on the merits on this COA.

Interim Harm

Plaintiff indicates she will suffer irreparable harm if Daniel and SI are not enjoined from using, transferring, spending, selling, and/or dissipating any and all assets in SI because otherwise Defendants will continue to abscond or dissipate the remaining assets of SI. (Gee Decl. ¶ 11.) Plaintiff will further suffer irreparable harm if Defendants are not enjoined because without injunctive relief, as it is extremely likely Daniel will continue to drain SI's assets and/or transfer assets Daniel has already taken making it impossible for Plaintiff to recover its 50% interest in SI and its assets. Absent an injunction, Daniel will be free to dispose of assets. Plaintiff argues Daniel will not be harmed by the injunction as he will still be entitled to the 50% of the funds from SI once the lawsuit ends. Daniel will also not be harmed as Plaintiff is informed the remaining assets in SI are low liquidity property such as real property investments. The

		injunction will only prevent Daniel from selling the property before the wind up. Defendants argue an injunction would harm them as it would prohibit the payment of financial obligations related to the remaining real property such as property taxes and maintenance. They also argue there is no imminent harm as some of the alleged bad faith actions took place years ago. However, the injunction would be to prevent Daniel from selling or moving assets away from Plaintiff. Defendants are correct that the scope of the requested injunction would prohibit the payment of the partnerships liabilities. However, in weighing the relative harm, the scale tips in favor of Plaintiff as without the injunction, Daniel will be able to transfer/dispose of assets that might otherwise be Plaintiff's. The Motion is **GRANTED** as Plaintiff has shown a reasonable probability of prevailing on each of the COA and the relative interim harm favors Plaintiff. The court will grant the injunction as requested; however SI is permitted to use its funds to pay for liabilities incurred for the upkeep of its assets (i.e. property taxes, property management fees, repairs, and investment management fees.) The court orders Plaintiff to lodge an undertaking in the amount of $10,000 with the court within 15-days of the hearing. (Civ. Proc. Code § 592.) Plaintiff to give notice.
5	Soto v. Garden Grove Unified School District	Before the court is the Motion to Compel a Psychological Examination of Plaintiff, filed by Defendant Garden Grove Unified School District ("Defendant" or District"). As set forth below, the motion is GRANTED. Code of Civ. Proc. § 2032.310(a) states "If any party desires to obtain discovery by a physical examination other than that described in Article 2 (commencing with Section 2032.210), or by a mental examination, the party shall obtain leave of court." Per CCP § 2032.320(a), a motion for an examination shall be granted "only for good cause shown." Here, Defendant seeks to compel Plaintiff J.N. Soto to appear for a psychiatric (mental) examination on April 29, 2025 at 9:00 a.m. by Dr. Anita Herrera Hamilton, at a mutually agreeable location near Plaintiff in Orange County. The neuropsychological evaluation will take approximately 5-6 hours (not to exceed 8 hours) to conduct and consist of a history taking and observation, as well as administration of a number of psychological and neuropsychological tests. Defendant asserts good cause, as Plaintiff's mental and psychological conditions are in controversy. Plaintiff agrees that a mental examination is warranted, but the parties disagree on the

conditions of the examination. Specifically at issue are the disclosure of raw testing data, the presence of Plaintiff's mother during the examination, Defendant's expert interviewing the mother during the examination, the audio recording of the examination, and the scope of testing.

As to the release of raw test data, Defendant agrees to provide the raw test data to plaintiff's designated expert, so long as the exchange among experts is mutual. Plaintiff requests that raw data be disclosed to his attorney. The language Plaintiff proposed in the stipulation is "Dr. Herrera-Hamilton will share all raw testing data with plaintiff's counsel who may share such data with Plaintiff's psychologist." Plaintiff asserts in the opposition that his counsel "*will not* independently review the raw testing data, but rather, will share said testing data with a qualified expert neuropsychologist." (Opposition, page 6, lines 10-11.)

In analyzing the ruling in *Carpenter v. Superior Ct*. (2006) 141 Cal. App. 4th 249, the appellate court in *Randy's* held, "[t]here is no statutory authority, however, precluding a trial court from ordering the disclosure of test materials or test data when ordering a mental examination." (*Randy's Trucking, Inc. v. Superior Court* (2023) 91 Cal.App.5th 818, 834.) Further, "given the trial court's broad discretion in discovery matters, the trial court nevertheless has the power to order disclosure of test materials and data to plaintiff's attorney." (*Id.*, at 835.) "[T]he trial court reasonably could find plaintiffs had a legitimate need for the raw data and audio recording and the concerns about maintaining test security would be satisfied with a protective order. While defendants assert Dr. Victor stated she would violate her professional and ethical obligations if she transferred the raw data and audio recording to plaintiffs' attorney, Dr. Victor did not state that those obligations would be violated if a protective order were issued." (*Id.*, at 838.)

Randy's Trucking allows for the raw data to be released directly to counsel, which is what Plaintiff is requesting here. However, Plaintiff's counsel asserts that it only intends to share the data with a retained expert, thus there is no legitimate need for the raw data shown and the analysis of *Randy's Trucking* does not apply. Plaintiff has presented no reason for the data to be released directly to counsel in this case, as the intention is only to share the data with an expert. Particularly as there is no protective order in place to protect the integrity of the testing materials, the court sees no legitimate reason to order the release of raw test data directly to counsel rather than ordering the exchange of raw test data between retained experts.

As to the presence of Plaintiff's mother during the examination, Plaintiff note that he is only nine-years old and alleged to have cognitive deficits. Though Defendant cites *Golfland Enterntainment Centers, Inc. v. Superior Court* (2003) 108 Cal.App.4th 739, asserting no third parties could be in the room, that case was discussing the presence of counsel at the examination as the parties agreed that the mother would attend. (*Golfland,* supra, 108 Cal.App.4th at 748.) Likewise, *Edwards v. Superior Court* (1976) 16

		Cal.3d 905, 911, and *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 845-846 address the presence of counsel in a mental examination. *Vinson* notes that while the presence of an attorney is not required during a mental examination, "trial courts retain the power to permit the presence of counsel or to take other prophylactic measures when needed." (*Vinson*, supra, 43 Cal.3d at 846.) Accordingly, the court retains the power to permit Plaintiff's mother to attend and in light of Plaintiff's age and condition, this is a reasonable measure to protect Plaintiff. Accordingly, Plaintiff's mother may be present during the examination. As to the request to interview Plaintiff's mother as part of the examination, neither side presents authority that is directly on point. Plaintiff points to the holding in *Reuter v. Superior Court* in which the court found that plaintiff's mother could not be compelled to submit to "a battery of psychological tests to be administered by a psychologist" as her mental condition was not in controversy. (*Reuter v. Superior Court* (1979) 93 Cal.App.4d 332, 335, 344.) That is not what is being sought here. Defendant's expert does not seek to subject Plaintiff's mother to testing, but rather to include her in the interview to clarify information about plaintiff for the purposes of diagnosis and evaluation. As Plaintiff's mother will be present anyway to protect plaintiff's rights, asking her to participate in the interview to give background information on plaintiff that a child would not know is appropriate. However, Defendant is willing to withdraw this request to the extent that Plaintiff is willing to stipulate that such information will not be sought by his own experts from the mother. Accordingly, Defendant's expert may interview the mother only as part of Plaintiff's examination, unless Plaintiff agrees to stipulate that the mother will not be interviewed by his own experts. As to the audio recording of the examination, CCP § 2032.530(a) states "The examiner and examinee shall have the right to record a mental examination by audio technology." Despite Defendant's assertions, there is no case law limiting this to the interview portion. Though the footnote in *Vinson* uses the term "interview", the court notes that the plaintiff in that case "may record the examination on audio tape" to protect against the examiner probing into impermissible areas. (*Vinson v. Superior Court* (1987) 43 Cal.3d. 833, 846, fn 10.) It does not actually limit the recording to the interview portion of the examination. Further, Defendant's citation to federal cases is unavailing, as the case cited specifically states that they are applying federal rules, which do not allow for recording, and that California procedural rules do not apply. (*Newman v. San Joaquin Delta Community College Dist.* (2011) 272 F.R.D. 505, 515.) Accordingly, Plaintiff may record the entire examination, pursuant to statute. As to the limitation of the tests administered, there does not appear to be a genuine conflict here. Defendant's expert will choose from the listed tests which to administer during the examination, and will not go beyond the scope of those tests identified in the order.

		Accordingly, Plaintiff is ordered to appear for mental examination with Dr. Anita Herrera Hamilton at a date and place agreed between the parties within 30 days of notice of this ruling. The exam will last for no more than 8 hours, consisting of a psychiatric interview and administration of one or more of the following: Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV); Delis Kaplan Executive Functioning System (D-KEFS); A Developmental Neuropsychological Assessment, Second Edition (NEPSY-2); California Verbal Learning Test, Third Edition; Child and Adolescent Memory Profile (CHAMP); Memory Complaints Inventory (MCI) Beery Buktenica Visual Motor Integration Task, Sixth Edition (Beery VMI); Balance Error Scoring System Dot Counting; ToMM; Green's Memory Symptoms Validity Test; Grooved Pegboard; Finger Tapping Task Medical Symptoms Validity Test; Balance and Error Scoring System; Rey 15-item Rey-Osterrieth Complex Figure; Connor's Continuous Performance Test, Third Edition (Conner's CPT3) Minnesota Multiphasic Personality Inventory, Adolescent (MMPI-A); Wechsler Individual Achievement Test, Fourth Edition; Memory Validity Profile; Adaptive Behavior Assessment System Behavioral Rating Inventory of Executive Functioning, Second Edition (BRIEF2) Behavior Assessment System for Children, Third Edition (BASC- 3), Parent Report Scale; Behavior Assessment System for Children, Third Edition (BASC-3), Self-Report, Child. Any raw data shall be exchanged between experts. The examination may be audio recorded by Plaintiff and Plaintiff's mother, Ms. Carillo may be present during the examination. Ms. Carillo may be interviewed during the examination, but limited to questions about Plaintiff and his history only. Moving party to give notice.
6	Ameris Bank vs. Allied Systems & Controls, Inc.	**A) Defendant Allied Systems & Controls, Inc.** **1) Form Interrogatories ("FROG")** Plaintiff Ameris Bank d/b/a Balboa Capital's ("Plaintiff") unopposed motion to compel Allied Systems & Controls, Inc.'s ("Allied") initial responses to FROG is **GRANTED**. Plaintiff served FROG on Allied. (Tabor Decl. ¶ 2, Ex. 1.) Allied failed to serve any responses to the FROG by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are late, and Allied has waived any objections thereto. (Civ. Proc. Code § 2030.290(a).) Plaintiff's motion is proper to compel Allied's initial responses to the FROG. (Civ. Proc. Code § 2030.290(b).) Plaintiff requests monetary sanctions against Allied which are permissible. (Civ. Proc. Code §§ 2023.010 and 2030.290(c).) Plaintiff requests $1,035 for the combined FROG, Special Interrogatory, and Requests for Production motion against Allied. (Tabor Decl. ¶ 6.) The combined motion is largely identical to the combined motion to compel defendant Barrey Stanton Camp's ("Camp") initial responses to those discovery requests, yet Plaintiff

also seeks $997.50 in monetary sanctions on that combined motion. Further, the two combined motions and the two requests for admission motions each seek one-hour of appearance time (four-hours total) despite the hearing being at the same time. The court will award 0.5 hrs. for appearance against each defendant. Finally, it appears Plaintiff is only seeking one $60 filing fee on the combined motion despite properly paying $180 in filing fees as the combined motion is three motions in one. The court will therefore award a reasonable 2.0 attorney hours total across all the combined motions (divisible by six), one hour for appearance fees divided between both defendants, and the $60 filing fee for each motion. (*PCLM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1096.) The reasonable attorney fees on the FROG motion is:

($375/hr. x 2 hrs.) / 6 motions + ($375/hr. x 0.5 hrs.) + $60 fee = $313.10

Allied is ordered to serve objection-free responses to the FROG and pay monetary sanctions within 15-days of written notice of the ruling.

2) Special Interrogatories ("SPROG")

Plaintiff's unopposed Motion to Compel Allied's initial responses to SPROG is **GRANTED**.

Plaintiff served SPROG on Allied. (Tabor Decl. ¶ 2, Ex. 2.) Allied failed to serve any responses to the SPROG by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are therefore late, and Allied has waived any objections thereto. (Civ. Proc. Code § 2030.290(a).) Plaintiff's motion is proper to compel Allied's initial responses to the SPROG. (Civ. Proc. Code § 2030.290(b).)

Plaintiff also requests monetary sanctions against Allied which are permissible. (Civ. Proc. Code §§ 2023.010 and 2030.290(c).) The appearance fee against Allied was included in the FROG motion (*supra*) and will not be awarded on the other motions against Allied. As noted, the court will award the following reduced monetary award on this motion (*PCLM, supra,* 22 Cal. 4th at 1096):

($375/hr. x 2 hrs.) / 6 motions + $60 fee = $125.60

Allied is ordered to serve objection-free responses to the SPROG and pay monetary sanctions within 15-days of written notice of the ruling.

3) Requests for Production ("RFP")

Plaintiff's unopposed Motion to Compel Allied's initial responses to RFP is **GRANTED**.

Plaintiff served RFP on Allied. (Tabor Decl. ¶ 2, Ex. 3.) Allied failed to serve any responses to the RFP by the date the motion was filed. (Tabor Decl. ¶ 5.) The responses are therefore late, and Allied has waived any objections thereto. (Civ. Proc. Code § 2031.300(a).)

Plaintiff's motion is proper to compel Allied's initial responses to the RFP. (Civ. Proc. Code § 2031.300(b).)

Plaintiff also requests monetary sanctions against Allied which are permissible. (Civ. Proc. Code §§ 2023.010 and 2031.300(c).) As noted, *supra,* the court will award a reduced amount of monetary sanctions on this combined motion (*PCLM, supra,* 22 Cal. 4th at 1096):

($375/hr. x 2 hrs.) / 6 motions + $60 fee = $125.60

Allied is ordered to serve objection-free responses to the RFP and pay monetary sanctions within 15-days of written notice of the ruling.

4) Requests for Admission ("RFA")

Plaintiff's unopposed Motion to Deem Allied's Responses to RFA as Admitted is **GRANTED**.

Plaintiff served RFA on Allied. (Tabor Decl. ¶ 2, Ex. 1.) Allied failed to serve any responses to the RFA by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are therefore late, and Allied has waived any objections thereto. (Civ. Proc. Code § 2033.280(a).) Plaintiff's motion to deem that RFA as admitted is also proper. (Civ. Proc. Code § 2033.280(b).)

Plaintiff also requests monetary sanctions against Allied which are permissible. (Civ. Proc. Code §§ 2023.030 and 2033.280(c).) This RFA motion is largely identical to the RFA motion against Camp and the court will therefore award a lower than requested amount divided between this RFA motion and Camp's RFA motion. The court will award the following reduced monetary award on each of these motions (*PCLM, supra,* 22 Cal. 4th at 1096):

($375/hr. x 1.6 hrs.) / 2 motions + $60 fee = $360

The court hereby deems Allied's responses to the RFA as admitted. Monetary sanctions on this motion are also due within 15-days of written notice of the ruling.

B) Defendant Barrey Stanton Camp

1) FROG

Plaintiff's unopposed motion to compel Camp's initial responses to FROG is **GRANTED**.

Plaintiff served FROG on Camp. (Tabor Decl. ¶ 2, Ex. 1.) Camp failed to serve any responses to the FROG by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are therefore late, and Camp has waived any objections thereto. (Civ. Proc. Code § 2030.290(a).) Plaintiff's motion is proper to compel Camp's initial responses to the FROG. (Civ. Proc. Code § 2030.290(b).)

Plaintiff requests monetary sanctions against Camp which are permissible. (Civ. Proc. Code §§ 2023.010 and 2030.290(c).) Plaintiff requests $997.50 for the combined FROG, Special Interrogatory, and Requests for Production motion against Camp. (Tabor Decl. ¶ 6.) As noted in the Allied FROG ruling, *supra*, the court has determined a lowered amount of reasonable attorney fees across these six motions to be (*PCLM, supra,* 22 Cal. 4th at 1096):

($375/hr. x 2 hrs.) / 6 motions + ($375/hr. x 0.5 hrs) + $60 fee = $313.10

Camp is ordered to serve objection-free responses to the FROG and pay monetary sanctions within 15-days of written notice of the ruling.

1) SPROG

Plaintiff's unopposed Motion to Compel Camp's initial responses to SPROG is **GRANTED**.

Plaintiff served SPROG on Camp. (Tabor Decl. ¶ 2, Ex. 2.) Camp failed to serve any responses to the SPROG by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are therefore late, and Camp has waived any objections thereto. (Civ. Proc. Code § 2030.290(a).) Plaintiff's motion is proper to compel Camp's initial responses to the SPROG. (Civ. Proc. Code § 2030.290(b).)

Plaintiff also requests monetary sanctions against Camp which are permissible. (Civ. Proc. Code §§ 2023.010 and 2030.290(c).) The appearance fee against Camp was included in the FROG motion (*supra*) and will not be awarded on the other motions against Camp. As noted, the court will award the following reduced monetary award on this motion (*PCLM, supra,* 22 Cal. 4th at 1096):

($375/hr. x 2 hrs.) / 6 motions + $60 fee = $125.60

Camp is ordered to serve objection-free responses to the SPROG and pay monetary sanctions within 15-days of written notice of the ruling.

2) RFP

Plaintiff's unopposed Motion to Compel Camp's initial responses to RFP is **GRANTED**.

Plaintiff served RFP on Camp. (Tabor Decl. ¶ 2, Ex. 3.) Camp failed to serve any responses to the RFP by the date the motion was filed. (Tabor Decl. ¶ 5.) The responses are therefore late, and Camp has waived any objections thereto. (Civ. Proc. Code § 2031.300(a).) Plaintiff's motion is proper to compel Camp's initial responses to the RFP. (Civ. Proc. Code § 2031.300(b).)

Plaintiff also requests monetary sanctions against Camp which are permissible. (Civ. Proc. Code §§ 2023.010 and 2031.300(c).) As noted, *supra,* the court will award a reduced amount of monetary

		sanctions on this combined motion (*PCLM, supra,* 22 Cal. 4th at 1096): ($375/hr. x 2 hrs.) / 6 motions + $60 fee = $125.60 Camp is ordered to serve objection-free responses to the RFP and pay monetary sanctions within 15-days of written notice of the ruling. **3) RFA** Plaintiff's unopposed Motion to Deem Camp's Responses to RFA as Admitted is **GRANTED**. Plaintiff served RFA on Camp. (Tabor Decl. ¶ 2, Ex. 1.) Camp failed to serve any responses to the RFA by the date the motion was filed. (Tabor Decl. ¶ 4.) The responses are therefore late, and Camp has waived any objections thereto. (Civ. Proc. Code § 2033.280(a).) Plaintiff's motion to deem that RFA as admitted is also proper. (Civ. Proc. Code § 2033.280(b).) Plaintiff also requests monetary sanctions against Camp which are permissible. (Civ. Proc. Code §§ 2023.030 and 2033.280(c).) This RFA motion is largely identical to the RFA motion against Camp and the court will therefore award a lower than requested amount divided between this RFA motion and Camp's RFA motion. The court will award the following reduced monetary award on each of these motions (*PCLM, supra,* 22 Cal. 4th at 1096): ($375/hr. x 1.6 hrs.) / 2 motions + $60 fee = $360 The court hereby deems Camp's responses to the RFA as admitted. Monetary sanctions on this motion are also due within 15-days of written notice of the ruling. Plaintiff to give notice.
7	Sullivan v. Strathspey Crown Holdings Group, LLC	Before the Court is a motion to enforce stay pending appeal or, in the alternative, impose a stay pending appeal filed by defendants Strathspey Crown Holdings Group, LLC, Strathspey Crown Holdings, LLC, Robert Grant, and Vikram Malik (collectively, "Defendants"). For the reasons set forth below, the motion is **DENIED**. "[A]rbitration-related proceedings in California courts are governed by the CAA's procedural rules unless their application is preempted or the parties have expressly agreed that the FAA's procedural rules apply. [Citation.]" (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 576.) While the substantive provisions of the FAA apply when a contract involves interstate commerce, " '[t]he procedural provisions of the CAA [the California Arbitration Act] apply in *California* courts by default.... [T]he parties may "*expressly* designate that any arbitration proceeding [may] move forward under the FAA's procedural provisions rather than under state procedural law." [Citation.] Absent such an express designation, however, the FAA's procedural provisions do not apply in state

court.' [Citations.]" (*Nixon v. AmeriHome Mortgage Company, LLC* (2021) 67 Cal.App.5th 934, 945.)

"The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." (*Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.* (1989) 489 U.S. 468, 477.) The United States Supreme Court in *Volt* stated that the FAA's primary purpose is "ensuring that private agreements to arbitrate are enforced according to their terms," and when "the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA." (*Id*. at 479.)

SB 365, enacted in 2023, amended California Code of Civil Procedure section 1294 to no longer mandate an automatic stay during the pendency of an appeal of a motion to compel arbitration. Code of Civil Procedure section 1294 now provides the following: "An aggrieved party may appeal from: (a) An order dismissing or denying a petition to compel arbitration. Notwithstanding Section 916, the perfecting of such an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal." (Code Civ. Proc., § 1294(a).)

Here, the arbitration agreement at issue expressly states, "Any arbitration proceeding pursuant to this Agreement shall be determined pursuant to the laws of the State of California." (Agreement, Section 15.12(c).) This appears to the Court to reflect an intent by the parties that California procedural law would apply.

As Defendants acknowledge, the arbitration agreement at issue makes no reference to the FAA. Defendants also do not provide any evidence that the parties expressly agreed that the FAA's procedural rules applied. Defendants point out that this Court's minute order denying their motion to compel arbitration references the FAA. (See ROA 151.) However, the reference to the FAA was a recognition that the FAA's *substantive* provisions apply when a contract involves interstate commerce, such as the contract at issue. (See ROA 83, Grant Decl., ¶ 2 [demonstrating contract at issue involves interstate commerce].) Because Defendants fail to point to any evidence showing the parties expressly agreed that the FAA's procedural rules applied, the Court finds the procedural provisions of the CAA, including section 1294, apply to the instant matter. As such, an automatic stay is not mandated.

Coinbase, Inc. v. Bielski (2023) 599 U.S. 736, 747 is inapplicable here because its holding is based on the procedural rules of the FAA, namely, whether, when a party appeals the denial of a motion to compel arbitration pursuant to 9 U.S.C. § 16(a), the district court was required to stay proceedings during the pendency of an interlocutory appeal. (*Coinbase*, *supra*, 599 U.S. at 740-744; see also, *Muao v. Grosvenor Props.* (2002) 99 Cal.App.4th 1085, 1092, fn. 6 (finding that Section 16 of the FAA was a procedural federal rule, not binding in state court and finding "the legislative history of section 16 of the FAA indicates that Congress intended the

provision to apply only to federal court proceedings.").) *Coinbase* dealt with federal law and the holding would appear to apply only to federal courts.

Defendants also argue in the Reply that the holding in *Volt* has been limited by the subsequent decisions in *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52 (1995) and *Preston v. Ferrer*, 552 U.S. 346 (2008). Those cases are distinguishable as neither involved a provision, such as the one in the instant matter, that specifically states that any *arbitration proceeding* shall be determined pursuant to state law. Moreover, neither case dealt with a stay pending appeal of denial of a motion to compel arbitration. Additionally, the cases left intact the holding in *Volt* that when "the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA." (*Volt* at 479.)

Because the agreement here shows the parties agreed to apply California arbitration rules, the FAA's procedural rules do not apply. The Court thus need not reach the issue of whether the FAA preempts section 1294(a).

The Court also finds a discretionary stay is not warranted. Code of Civil Procedure section 1294 gives courts the discretion to grant or deny a stay pending appeal. SB 365 was designed to "promote judicial efficiency by reducing the number of meritless appeals that are filed only to delay litigation." (See California Bill Analysis, S.B. 365 Sen., 7/12/2023.) However, the legislature also recognized that if a judge denies a stay request, the parties will continue litigating the case and, for cases that are later ordered into arbitration by the appellate court, this "will result in courts and parties expending time and resources that have no impact on the final outcome of the case, straining already limited court resources." (*Ibid*.)

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) "[W]hen deciding whether to grant or deny a stay, the court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side." (*Alpha Media Resort Inv. Cases* (2019) 39 Cal.App.5th 1121, 1134 n.10, internal citations and quotations omitted.)

The Court finds the balance of hardships weighs in Plaintiffs' favor. The potential prejudice to Plaintiffs due to further delay is apparent, as this action has already been pending for almost a year. Defendants failed to identify specific circumstances in this case that would justify a discretionary stay of this action. Although Defendants complain that, without a stay, they will be burdened by having to litigate this action and they will be deprived of the benefit of arbitration, this can be said of any order denying arbitration. In contrast, a stay would unfairly prejudice Plaintiffs' right to promptly litigate their claims. Based on the foregoing, Defendants have failed to show a discretionary stay is warranted in this matter.

		Accordingly, the motion is **DENIED**. Counsel for Plaintiffs is ordered to give notice of this ruling.
8	Deebes vs. JD Property Management, Inc.	Defendants J.D. Property Management, Inc., and Pioneer Equities Corporation ("Defendants" together) Motion for Summary Judgment, or in the Alternative, Summary Adjudication ("Motion") is **GRANTED in part and DENIED in part**. The court notes the hearing on the Motion was continued to permit Plaintiff Souheil Deebes ("Plaintiff") time to conduct additional discovery. Plaintiff was given leave to file a supplemental opposition by 04/01/25. (ROA 188.) Instead of timely filing the supplemental opposition, Plaintiff waited until 04/07/25, without providing any reasoning for the delay. Despite Plaintiff's delay, Defendants were able to file a timely supplemental reply. Although the court in its discretion will consider the supplemental opposition, the Court's ultimate decision would not change if it were disregarded. "(p) For purposes of motions for summary judgment and summary adjudication: . . . (2) A defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Civ. Proc. Code § 437c(p)(2).) "(1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. . ." (Civ. Proc. Code § 437c(f).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact

and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Civ. Proc. Code § 437c(c).)

Defendants move for summary judgment/adjudication as to causes of action ("COA") No. 1 – Negligence and No. 2 – Negligent Hiring, Supervision, Training, And Retention. Defendants also request summary adjudication as to the issue of respondeat superior

1) COA No. 1 – Negligence

"The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.' " (*Ladd v. Cty. of San Mateo* (1996) 12 Cal. 4th 913, 917.) "[T]he existence of a duty is a question of law for the court." (*Kentucky Fried Chicken of Cal., Inc. v. Superior Court* (1997) 14 Cal. 4th 814, 819.)

"As a general principle, a "defendant owes a duty of care to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous." [Citations.] As we shall explain, however, when the avoidance of foreseeable harm requires a defendant to control the conduct of another person, or to warn of such conduct, the common law has traditionally imposed liability only if the defendant bears some special relationship to the dangerous person or to the potential victim." (*Tarasoff v. Regents of Univ. of California* (1976) 17 Cal. 3d 425, 434–35 ("*Tarasoff*").) "Although, as we have stated above, under the common law, as a general rule, one person owed no duty to control the conduct of another [Citations], nor to warn those endangered by such conduct (Rest.2d Torts, supra, § 314, com. c.; Prosser, Law of Torts (4th ed. 1971) § 56, p. 341), the courts have carved out an exception to this rule in cases in which the defendant stands in some special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct (see Rest.2d Torts, supra, §§ 315–320). (*Tarasoff, supra,* 17 Cal. 3d at 435.)

"We begin by noting that in any analysis of foreseeability, the emphasis must be on the specific, rather than more general, facts of which a defendant was or should have been aware." (*Pamela W. v. Millsom* (1994), 25 Cal. App. 4th 950, 957) "Also relevant are the observations of another court: "No one really knows why people commit crime, hence no one really knows what is 'adequate' deterrence in any given situation. While bright lights [or in this case, an alarm] may deter some, they will not deter all. Some persons

cannot be deterred by anything short of impenetrable walls and armed guards." ' " (*Id*.)

"It is now well established that California law requires landowners to maintain land in their possession and control in a reasonably safe condition. (Civ. Code, § 1714; [Citation.]) In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures." (*Ann M. v. Pac. Plaza Shopping Ctr*. (1993) 6 Cal. 4th 666, 674 ("*Ann M.*"), disapproved of on other issues by *Reid v. Google, Inc*. (2010) 50 Cal. 4th 512, 235 P.3d 988 (2010), and disapproved of by *Schinkel v. Sullivan*, No. 116CV00818AWIJLTPC, 2016 WL 8731391 (E.D. Cal. Dec. 30, 2016).) "[A] high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security guards. We further conclude that the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises. To hold otherwise would be to impose an unfair burden upon landlords and, in effect, would force landlords to become the insurers of public safety, contrary to well-established policy in this state." (*Ann M., supra,* 6 Cal. 4th at 679.)

Defendants produced deposition testimony of Plaintiff wherein Plaintiff stated he sublet a room from Thomas who was the individual on the lease for the Property. (Motion, Ex. B at 17:5-22.) Plaintiff testified Richard lived with his mother in the valley, but that sometimes Thomas let Richard sleep on the couch in the living room when he came down for work or something. (Motion, Ex. B at 23:14-19.) Plaintiff never had any prior arguments with Richard nor had Richard threatened Plaintiff with bodily injury, Plaintiff was not aware of Richard being arrested or having any criminal background prior to the incident, Plaintiff was not aware of any prior incidents of violence or drug problems by Richard. (Motion, Ex. B at 24:16-25:3, 26:1-17, 26:24-18, 33:20-34, 40:13-41:2, 58:9-12, 67:17-23.) Plaintiff never felt threatened by Richard prior to the incident. (Motion, Ex. B at 42:20-22.) Plaintiff did not know if the police had ever presented to the apartment complex due to Richard prior to the incident. (Motion, Ex. B at 31:22-32:9, 39:17-20, 40:7-12.) At the time of the incident, Plaintiff had been in the garage checking the oil in a friend's vehicle. (Motion, Ex. B at 33:20-34:25.) Plaintiff brought a chair from the garage into the house when Richard stabbed Plaintiff. (Motion, Ex. B at 35:23-36:3.) Richard did not say anything but fled after Richard stabbed Plaintiff. (Motion, Ex. B at 26:4-17, 30:8-12, 35:23-36:3, 37:10-15.) Plaintiff did not know why Richard stabbed Plaintiff and Plaintiff never asked why. (Motion, Ex. B at 50:22-51:1.) Plaintiff had never seen anyone at the Property affiliated with JDPM or PEC, but knew Thomas was a property manager as Thomas had shown Plaintiff a check Thomas received. (Motion, Ex. B at 21:12-25.)

Defendants produced the declaration of Property Supervisor Orlando Cintron ("Cintron"), who works for JDPM. (Cintron Decl. ¶ 2.)

		Cintron indicated a background checks and drug tests on Thomas and his then wife were passed without any problems. (Cintron Decl. ¶ 4.) Cintron stated he had never met Richard and neither of the Defendants were aware of any criminal record or violent history regarding Richard prior to the date of the incident. (Cintron Decl. ¶ 6.) Cintron believed Richard was an occasional guest of Thomas. (Cintron Decl. ¶ 6.) Thomas never informed Defendants of any complaints, objections, grievances, or warnings regarding Richard before the incident, nor did either of the Defendants have such knowledge. (Cintron Decl. ¶¶ 7-8.) Cintron never received or heard of any complaints, objections, grievances, or warnings about Thomas during Thomas's tenure as an Apartment Resident Manager. (Cintron Decl. ¶ 9.) Defendants produced a copy of the Apartment Manager Duties, none of which indicate Thomas was responsible for security issues in the complex or that Thomas was prohibited from having family members stay with him. (Motion, Ex. C.) The drug test for Thomas came back negative, but there is no information on the outcome of the background check. Defendants have produced evidence that prior to the subject incident, Defendants were unaware of any complaints against Richard, any violent tendencies by Richard, any drug abuse by Richard, or that Richard was a threat. The subject incident also occurred inside the home Thomas shared with Plaintiff and where Richard was visiting, not in the common areas of the apartment complex. Defendants have produced sufficient evidence supporting it not being foreseeable for Richard to attack Plaintiff in Plaintiff's home. Richard did not work for Defendants and Defendants had no ability to control Richard as there was no special relationship between Richard and Defendants. Plaintiff himself testified he never felt threatened by Richard before the incident and was not aware of any prior criminal actions Richard was involved in. Defendants have met their initial burden on this COA, the burden transfers to Plaintiff to show triable issues of fact remain. Plaintiff argues there was a foreseeability of harm as Richard had previously been arrested by the Anaheim Police Department for a DUI in October 2022. (Lingenfelter Decl. ¶ 3, Ex. 1.) A prior DUI does not support foreseeability of a stabbing as the two crimes are completely different, with only the latter being a violent crime. Plaintiff did not produce evidence showing Defendants were aware of Richard's prior arrest record or that Defendants had the duty to seek out Richard's arrest record. There is nothing in the deposition testimony of Officer David Hill that suggests Defendants should have been on notice regarding Richard. Although Cintron testified that if Thomas notified Cintron of Richard's drug problem, Richard would be prohibited from the premises because he might be dangerous (Lingenfelter Decl., Ex. 5 at 30:15-31:11), Plaintiff has not shown Defendants were aware of any drug problem.

Regarding Richard's violent propensities and Defendants' knowledge thereof preceding the subject incident, Plaintiff produced declarations and recent deposition testimony of Plaintiff's friend Caroline Pouzbouris ("Pouzbouris"). (ROA 170, 185, 196.)

Pouzbouris testifies in her declaration (ROA 170) that she was at the complex when Richard suddenly and without substantial provocation grabbed a hammer and attempted to attack her while cursing, yelling, and calling her names. (¶5.) She stated that Thomas stopped the attack and told her that Richard "needs help." (¶¶ 5-6.) She heard Thomas yelling at Richard "that this was the second such time where it appeared that Richard was acting irrational, and in a dangerous and violent manner." (¶8.) Thomas said that he would notify the moving Defendants. (¶7.)

Pouzbouris' statement that she did not follow up to see if the Moving Defendants were notified of the incident does not mean that they did not have constructive notice of the incident. It is undisputed that Thomas was the resident property manager, hired to look after certain aspects of the property. True, Thomas was not hired to perform security duties; but as an agent of the Moving Defendants, any knowledge obtained by him of a dangerous condition on the property would be imputed to them. *See* CCP § 2332 ("As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.") This deemed notice is referred to as "constructive notice." *Jefferson v. Hewitt,* (1894) 103 Cal.624, 629 ("notice to an agent is constructive notice to the principal.")

In apparent recognition of the foregoing, Moving Defendants in their initial reply assert: "Plaintiff's theory as alleged in the opposition: that any knowledge allegedly possessed by Thomas Beck of Richard Beck's violent nature or that any criminal history of his is automatically imputed to defendants is not what was alleged in the complaint." (Reply, p.4, lines 6-12.)

But the second amended complaint alleged that JD Property Management was "individually and/or <u>through agents/employees</u>, aware of Defendant RICHARD THOMAS BECK's propensity for violence," (2AC, ¶4), and that "Defendants JD PROPERTY MANAGEMENT, INC. and PIONEER EQUITIES CORPORATION had . . . <u>constructive notice</u> of Defendant RICHARD THOMAS BECK's dangerous propensities and need to keep him off of the premises" (2AC, ¶13) (Emphasis added.). These allegations are sufficient to raise the issue of imputed/constructive knowledge.

Of course, Plaintiff later added Pouzbouris' deposition testimony that she left a detailed message indicating she had spoken with Thomas who has stated he had reported the incident between Thomas and Richard and that Richard was no longer allowed to go to the building. (ROA 196, Ex. 8 at 21:1-21:15.) Pouzbouris's statement that she notified Cintron of the incident in general is sufficient to have put Defendants on actual notice of a issue regarding Richard and for the need for further investigation.

While Cintron states he never received a notification of the incident involving Pouzbouris, Pouzbouris's deposition testimony puts a triable issue of material fact as to whether Defendants did receive information related to Richard and were put on notice of potential danger of Richard being on the Property.

Defendants next argue they are not the proximate or legal cause of Plaintiff's injuries.

"One of the concepts included in the term proximate cause is cause in fact, also referred to as actual cause. Indeed, for purposes of BAJI No. 3.75, "so far as a jury is concerned 'proximate cause' only relates to causation in fact." (Com. to BAJI No. 3.75, italics added.) "There are two widely recognized tests for establishing cause in fact. The 'but for' or 'sine qua non' rule, unfortunately labeled 'proximate cause' in BAJI No. 3.75, asks whether the injury would not have occurred but for the defendant's conduct. The other test, labeled 'legal cause' in BAJI No. 3.76, asks whether the defendant's conduct was a substantial factor in bringing about the injury." ` " (*Mitchell v. Gonzales* (1991) 54 Cal. 3d 1041, 1049.)

"Criminal conduct which causes injury will ordinarily be deemed *the* proximate cause of an injury, superseding any prior negligence which might otherwise be deemed a contributing cause. (See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 9926 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 992, pp. 382, 383.) However, "[i]f the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for harm caused thereby." ` " (*Koepke v. Loo* (1993) 18 Cal. App. 4th 1444, 1449.)

As set forth above, the is a triable issue fact whether Moving Defendants had actual or constructive notice of Richard's violent tendencies.

Plaintiff has met the transferred burden on this Motion of showing triable issues of material fact exist as to Defendants being on notice regarding Richard.

The Motion is **DENIED** as to this COA.

2) COA No. 2 – Negligent Hiring, Supervision, Training, And Retention

"An employer may be liable to a third person for the employer's negligence in hiring or retaining an employee who is incompetent or unfit. [Citation.]" [Citation.] Negligence liability will be imposed upon the employer if it "knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes. [Citation.] As such, "California follows the rule set forth in the Restatement Second of Agency section 213, which provides in pertinent part: 'A person conducting an activity through

servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: ... [¶] (b) in the employment of improper persons or instrumentalities in work involving risk supervision and/or retention of an employee is one of direct liability for negligence, not vicarious liability." (*Delfino v. Agilent Techs., Inc.* (2006) 145 Cal. App. 4th 790, 815 ("*Delfino*").)

"[O]ur Supreme Court enunciated seven factors relevant to determining the existence of duty: "[1] the foreseeability of harm to the plaintiff, [2] the degree of certainty that the plaintiff suffered injury, [3] the closeness of the connection between the defendant's conduct and the injury suffered, [4] the moral blame attached to the defendant's conduct, [5] the policy of preventing future harm, [6] the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and [7] the availability, cost, and prevalence of insurance for the risk involved." (*Delfino, surpa,* 145 Cal. App. 4th at 815.)

In the present case, Defendants argue there is no evidence of foreseeability of harm to Plaintiff (a sublessee) by Richard (a non-tenant) as they claim to not have received any information regarding 1) Richard living on the Property, 2) Richard being violent towards anyone, or 3) of Richard's arrest record. Plaintiff also testified he never had any issues with Richard or felt threatened by Richard prior to the incident, was unaware of any prior arrest or criminal record of Richard, and Plaintiff did not know why Richard stabbed Plaintiff. (Motion, Ex. B at 24:16-25:3, 26:1-17, 26:24-18, 33:20-34, 40:13-41:2, 42:20-2258:9-12, 67:17-23.) In opposition to Defendants' arguments regarding prior knowledge, Plaintiff has produced the evidence constructive and actual knowledge noted above. There is an issue of material fact as to Defendants' prior knowledge and potential foreseeability that Richard might cause additional violence on the property.

It is certain Plaintiff suffered harm by Richard.

There is a connection between Defendants' conduct retaining Thomas and Plaintiff being stabbed. Thomas was Defendants' employee and permitted Richard to sleep on his couch despite knowing Richard's alleged drug history. Cintron testified that had Defendants known of Richard's drug problem, they would not have allowed Richard on the Property. (Lingenfelter Decl., Ex. 5 at 30:15-31:11.) Defendants would have asked any tenant with a drug issue that was dangerous to leave. (*Id.*) Defendants do not allow people with a history of drugs or felonies to stay on the Property. (Lingenfelter Decl., Ex. 5 at 12:8-25.) Thomas was also terminated in April 2022 due to illegally subletting a room without Defendants' knowledge. (Lingenfelter Decl., Ex. 5 at 17:2-11.) Thomas was responsible for being Defendants' "eyes and ears" on the Property. (Lingenfelter Decl., Ex. 5 at 29:4-8.) The fact that Thomas allegedly knew of Richard's violent propensities and drug habit, yet did not prohibit Richard from going onto the property nor notify Defendants of issues related to Richard suggests Thomas failed to perform the duties Thomas was hired to do. Those duties

being: 1) "Communication and coordination with Property Manager," and 2) "Exchange all information property manager." (Motion, Ex. C.) Richard also violated Defendants' standards of conduct and discipline including: 1) dishonesty by failing to notify Defendants of prior altercations with Richard on the Property and apparently subleasing a room for which he was ultimately terminated; and 2) conflict of interest between the safety of residents and letting Richard onto the Property. (Motion, Ex. C.) Thomas was also, "expected to assist management in injury and illness prevention activities. Unsafe conditions must be reported." (Motion, Ex. C.) All of which Thomas apparently violated.

Defendants provided no evidence of oversight of Thomas and apparently did not know Thomas had subleased the room to Plaintiff for almost 26-months prior to the stabbing, nor were Defendants aware of the stabbing until this lawsuit was served on Defendants. (Motion, Ex. 38:8-19; Lingenfelter Decl., Ex. 5 at 19:11 -21:18 .) Had Thomas prevented Richard from being on the Property, Plaintiff would likely not have been injured. These issues are related to negligent retention of an employee.

The level of moral blame is uncertain, but present. Defendants appeared to be largely "hands off" when it came to the complex and instead relying on Thomas's information, which Thomas minimized or did not provide to Defendants in violation of the requirements of his employment. While there is some leeway to leave an employee to perform his job duties, oversight to ensure the employee is performing his duties as required is necessary.

It is unclear what Defendants might have, or should have, done differently based on the lack of information they alleged had regarding Richard. However, again, Pouzbouris testified she notified Defendants of issues related to Richard. If Defendants did have that information, they could have possibly terminated or evicted Thomas for violating his employment requirements to ensure Richard did not return to the Property. No evidence of any policy of preventing future harm was provided.

The burden on Defendants is unclear. It could be as minimal as hiring better employee, doing more extensive background checks on employee family members, or simply supervising employees better. The burden could also be more excessive such as hiring full time security to patrol a 10 apartment complex. No information regarding burdens was provided.

Although Defendants may have met their initial burden on the "hiring" aspect of this COA, Plaintiff has met any transferred burden regarding duty related to "supervision" or "retention" aspects of this COA. This is direct liability versus vicarious liability on the part of Defendants. (*Delfino, supra,* 145 Cal. App. 4th at 815.)

The Motion is **DENIED** as to this COA.

3) Issue No. 3 – Respondeat Superior

		Defendants ask for summary adjudication as to the issue of respondeat superior. "The doctrine of respondeat superior holds an employer liable for torts of its employees committed within the scope of their employment. [Citations.] A plaintiff suing an employer under the doctrine must prove the person who committed the tort was acting within the scope of his or her employment." (*Marez v. Lyft, Inc.* (2020) 48 Cal. App. 5th 569, 577.) There are, " ' "two tests California courts have used "for scope of employment under the respondeat superior doctrine." [Citation.] "Under one test, the employer is liable if the activities that caused the employee to become an instrument of danger to others were undertaken with the employer's permission and were of some benefit to the employer, or in the absence of proof of benefit, the activities constituted a customary incident of employment. [Citation.] The second test, which was articulated in *Halliburton*, provides "an employee's conduct is within the scope of his or her employment if (1) the act performed was either required or incident to his duties or (2) the employee's misconduct could be reasonably foreseen by the employer in any event. [Citation.] In this test, foreseeability means that in the context of the particular enterprise, an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among the costs of the employer's business." (*Id.*) "[C]ourts have exempted "purely personal" conduct from the scope of employment. "Where an employee's activity does not come within the scope of employment, it is not part of the special employer-employee relationship. If an employee's act is purely personal, it is not 'typical of or broadly incidental to the employer's enterprise.' [Citation.] If the main purpose of the injury-producing activity 'was the pursuit of the employee's personal ends, the employer is not liable.' " [Citation.] Courts have held "even if a prong of the scope of employment test described in [*Halliburton*] had been established, an exception to the test existed for purely personal business." (*Id.*, at 587.) No court has commented on how the "purely personal activity" rule interacts with the first test. Defendants produced Thomas's job description and duties, while none of which indicate Thomas was specifically responsible for security in the complex, Thomas was responsible for 1) "Communication and coordination with Property Manager," and 2) "Exchange all information property manager." (Motion, Ex. C.) Thomas apparently failed to perform those duties and notify Defendants of issues with Richard being on the Property. Thomas also violated Defendants' standards of conduct and discipline including: 1) dishonesty by failing to notify Defendants of prior altercations with Richard on the Property and apparently subleasing a room for which he was ultimately terminated; and 2) conflict of interest between the safety of residents and letting Richard onto the Property. (Motion, Ex. C.) Thomas was not the instrument of danger to Plaintiff, Richard was. There is nothing to suggest Thomas's action of permitting Richard onto the Property was undertaken with the permission of Defendants or for the benefit of Defendants. The first respondeat superior test

		does not appear to support Defendants' liability. Permitting Richard onto the Property was also "purely personal" and independent from the scope of Thomas's employment, even though Thomas had the duty to notify Defendants of Richard's prior violence. The second respondeat superior test does not appear to apply. It appears Defendants have met their initial burden on this issue. Plaintiff made no specific arguments related to the respondeat superior issue in the opposition and has not met the transferred burden. The Motion is **GRANTED** as to the issue of respondeat superior liability. **4) Defendants' Objections** **Objections to Deebes Decl.:** Overrule. **Objections to Pouzbouris Decl.:** Sustain as to No. 7 (hearsay – last sentence). Overrule as to the remainder. **Objections to Lingenfelter Decl.:** Overrule as to Nos. 1 – 4 (Police custodian of records declaration was provided authenticating the exhibits – Ex. 4 and records prepared by public employee in course and scope of their duties.) Defendants to give notice.
9	Kim v. St. Joseph Hospital of Orange	Cont. to 4/28.
10	Dadras v. Canyon Estates Community Assn.	O/C
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