Superior Court of the State of California, County of Orange

TENTATIVE RULINGS FOR DEPARTMENT W02

HON. JUDGE CARMEN R. LUEGE

Date: April 25, 2025

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

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 4 p.m. on Thursday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5902. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give Notice of Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

Non-Appearances: If no one appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

Remote Appearances: Department W02 permits non-evidentiary proceedings, including law and motion, to be conducted remotely. *If you are appearing remotely*: (1) all counsel and self-represented parties appearing for such hearings **must,** prior to 10:00 a.m. on Friday, check-in online via the Court's civil video appearance website at Civil Appearance Procedure and Information | Superior Court of California | County of Orange (occourts.org); (2) participants will then be prompted to join the courtroom's Zoom hearing session; and (3) the calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. Attorneys **shall** comply with Local Rule 375(c) which governs "Decorum for In-Person and Remote Court Appearances." (https://www.occourts.org/system/files/hr/div3.pdf.)

#	Case Name	Tentative
51	**Mai v The Tu Firm** **20-01142902**	Motion- Relief from Waiver of Jury Trial by PLTF Plaintiff David Mai's motion for relief from jury trial waiver is GRANTED.

		"The California Constitution provides that all civil litigants have the right to trial by jury, but they may waive that right in a manner prescribed by statute. (Cal. Const., art. I, § 16.) The statute implementing this provision, Code of Civ. Proc. Section 631, sets forth various acts and omissions that constitute jury waiver, including, as relevant here, oral consent, in open court, entered in the minutes. (§ 631, subd. (f)(3).) Even if one of these conditions has been met, "the court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury." (Code Civ. Proc., § 631(g).) "In exercising such discretion, courts are mindful of the requirement 'to resolve doubts in interpreting the waiver provisions of section 631 in favor of a litigant's right to jury trial.'" (*Tesoro del Valle Master Homeowners Assn. v. Griffin* (2011) 200 Cal.App.4th 619, 638.) "A trial court abuses its discretion as a matter of law when '... relief has been denied where there has been no prejudice to the other party or to the court from an inadvertent waiver.'" (Id.) (780.) "[L]ack of hardship to the other parties or the court is generally controlling, absent other factors that weighs against relief." (*TriCoast Builders, Inc. v. Fonnegra* (2024) 15 Cal.5th 766, 782.) Defendants oppose the motion arguing at length that the waiver was not inadvertent. However, as the authority above provides, even if a party has waived a right to a jury trial, the Court has discretion on whether to grant relief of said waiver and set this matter for jury trial. Prejudice or hardship to the opposing party is the foremost consideration. Defendants also argue prejudice. Defendants never requested a jury trial. Defendants were informed on July 24, 2023, that the trial would proceed as a bench trial. The Defendants have relied on that status in preparing their case for over fourteen months. Preparation for a bench trial versus a jury trial involves fundamentally different strategies, evidence presentation, and trial management. Defendants' counsel has devoted a lot of time preparing for a bench trial with research, witness preparation and trial documents specifically tailored for a judicial fact finder. Switching to a jury trial at this late stage would not only force Defendants to revise their trial strategy, but would also increase litigation costs, requiring the involvement of additional experts, ultimately delaying the trial. However, these arguments are not supported by evidence, other than Attorney Weiss' conclusory assertion at Para. 8 that he would have designated a third-party expert, or citation to any authority. (*Muskan Food & Fuel, Inc. v. City of Fresno* (2021) 69 Cal.App.5th 372, 389-390)["Statements by an attorney, whether made in court or in a brief, are not

		evidence;" also referring to Evidence Code Section 140 (definition of evidence)]. Moreover, prejudice from having to try the case to a jury is not prejudice for purpose of a motion for relief from a jury trial waiver. (*Mackovska v. Viewcrest Road Props., LLC.* 40 Cal. App.5th 1, 10-11 [judge should not deny relief based on the assertion that a jury trial would impose "significant additional expenses"].) In addition, the stipulation that was made orally before the Court and entered into the minutes on 10/21/24 alleviates any prejudice regarding expert witnesses. Indeed, it was noted in the 10/21/24 Minute Order: "Oral stipulation to allow new expert designations should the Motion for Relief from Jury Trial Waiver be granted on 03/24/2025 is recited on the record and parties present agree to the conditions as ordered." (See, ROA 224.) Thus, any prejudice permitting this matter to be tried before a jury is negated by the parties' stipulation. Defendants further assert that changing the nature of the trial disrupts the Court's calendar as they require more time. This, perhaps, would have been true on 10/21/24, but once the court granted the trial continuance for the pending motion for relief, the court's current trial calendar no longer presents an issue. As to Defendant's argument that this motion for relief of jury waiver is an inappropriate motion for reconsideration, this Court disagrees. The 10/1/24 Minute Order denying the ex parte application specifically states "this order only addresses the ex parte nature of the request since it is not an emergency." (See, 10/1/24 Minute Order, emphasis in original.) Based on this analysis, the Motion is GRANTED. Moving Party to give notice.
52	**OV Loop Inc v Brockstar Financial Services Inc** **24-01430374**	Motion to Appear Pro Hac Vice by PLTF Application to Appear Pro Hac Vice filed by Meleah M. Skillern is continued to September 12, 2025. In support of the application, Meleah M. Skillern, the moving attorney, declares as follows to meet the requirements of Cal. Rules of Court, Rule 9.40: 1. Member of State Bar of CA? No. (Verified App. ¶ 2). 2. Resident of California? No. (Verified App. ¶ 1). 3. Regularly employed in California? Not properly established by the language of the application. Perhaps it could be inferred but it is not explicitly addressed. (Verified App. ¶ 2.) 4. Regularly engaged in substantial business, professional, or other activities in California? Again, not properly established

		by the language of the application. Perhaps it could be inferred but it is not explicitly addressed. (Verified App. ¶ 1.) 5. Associated with California attorney? Yes. (Verified App. ¶ 6; see also Generelli Decl., ¶¶ 1 and 2.) 6. Verified declaration? Yes, Verified App. of Skillern. 7. Service on the State Bar in San Francisco? Yes. (Verified App. ¶ 6; Heath Decl., ¶ 4, Exh. 2) 8. Good standing and not currently suspended or disbarred? Yes. (Verified App. ¶¶ 3 and 4.) 9. Courts admitted and dates of admission? Yes, none. (Verified App. ¶ 5.) 10. Number of other California appearances in prior 2 years? None. (Verified App. ¶ 5.) 11. Residence address? This information is not provided. It only states she resides in Philadelphia, Pennsylvania. (Verified App. ¶ 1.) 12. Office address? Yes. (Verified App. ¶ 1.) Name, address, and telephone number of active member of State Bar of CA who is attorney of record? Yes. (Verified App. ¶ 6; see also Generelli Decl., ¶ 1.) 13. Proof of payment? Appears, yes. (Verified App. ¶ 6; Heath Decl., ¶ 4, Exh. 2.) Defendant has submitted the verified application of counsel which complies with the California Rules of Court, Rule 9.40, **except** that counsel fails to affirmatively state that: she is not regularly employed in California and does not engage in substantial business in California. In addition, counsel fails to provide her residential address (see Nos. 2, 3 and 11.). Counsel shall file and properly serve an amended verified application addressing the deficiencies set forth herein no later than 10 days prior to the next hearing. Defendant to give notice.
53	**Rumore v York Risk Services Group Inc** **19-01110102**	Motion to Appear Pro Hac Vice by DEFT The Application to Appear Pro Hac Vice, brought on behalf of Meleah M. Skillern is GRANTED, as the subject Application fully complies with California Rules of Court Rule 9.40 Defendants to give notice.
54	**Nguyen v Doan** **24-01412655**	Motion to Compel Further Responses to Form Interrogatories by PLTF Form Interrogatory No. 12.1 states: State the name, ADDRESS, and telephone number of each individual: (a)who witnessed the INCIDENT or the events occurring immediately before or after the INCIDENT; (b) who made any statement at the scene of the INCIDENT; (c)who heard any statements made about the INCIDENT by any individual at the scene;

		and (d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the INCIDENT (except for the expert witnesses covered by Code of Civil Procedure section 2034). Doan's Supplemental Response to Form Interrogatory No. 12.1 states: N/A, this was not an accident or single incident subject to being investigated. Doan's supplemental response is evasive. Thus, the Court grants the motion to compel a further response to Form Interrogatory No. 12.1. Where the question is specific and explicit, it is improper to provide only a portion of the information sought or "deftly worded conclusionary answers designed to evade a series of explicit questions." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) To the extent Doan's objections are at issue, Doan failed to justify his objections. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 [upon the filing of a timely motion to compel further responses, the burden is on the responding party to justify any objection or failure to fully answer the discovery].) Form Interrogatory No. 15.1 states: Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each: (a) state all facts upon which you base the denial or special or affirmative defense; (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and (c) identify all DOCUMENTS and other tangible things that support your denial or special or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT. The Court grants the motion to compel as to Form Interrogatory No. 15.1(c). Doan should separately identify all documents and tangible things that support Doan's denial or special or affirmative defense and provide the contact information for the person who has each document. Form Interrogatory No. 17.1 requests further information from Doan in connection with each response to Plaintiff's Request for Admissions that is not an unqualified admission. Among the information requested is all facts upon which Doan bases his response, the persons and their contact information who have knowledge of those facts, and an identification of all documents that support Doan's response. Doan's Response to Form Interrogatory No. 17.1 lists the Requests for Admissions for which Doan did not respond with an unqualified admission. When asked to state the contact information for persons who have knowledge of the facts upon which Doan bases all facts on which Doan based his responses, Doan often replied "none." Further, Doan failed to

		provide a response to subpart (d), which requests identification of all documents that support Doan's response. The Court denies the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 1. Doan's response is sufficient. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 2. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 6. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 7. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 8. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 9. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response.

		The Court grants the motion as to Response to Form Interrogatory No.17.1 as to Request for Admission No. 10. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 11. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 12. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 14. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grant the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 16. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 18. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response.

		The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 21. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 23. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No.17.1 as to Request for Admission No. 24. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 25. Doan's response is insufficient as to subparts (c) and (d). Doan did not provide a response to subpart (c) or subpart (d). The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 26. Doan's response is insufficient as to subparts (c) and (d). Doan did not provide a response to subpart (c) or subpart (d). The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 27. Doan's response is insufficient as to subpart (d). Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 29. Doan's response is insufficient as to subpart (d). Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 30.

		Doan's response is insufficient as to subparts (c) and (d). Doan did not provide a response to subpart (c). As to subpart (d), Doan should separately identify all documents and tangible things that support Doan's response. The Court grants the motion as to Response to Form Interrogatory No. 17.1 as to Request for Admission No. 32. Doan's response is insufficient as to subparts (c) and (d). Doan answered "None" in response to subpart (c), which requests the persons and their contact information who have knowledge of those facts. Doan did not provide a response to subpart (d), which asks Doan to identify all documents that support his response. Plaintiff to give notice.
55	**Rex v Lok** **21-01228300**	Motion to Compel Response to Admissions x2 by PLTF Plaintiff Liang Rex moves to Compel Defendant Tang Lok Wai Yuk to provide further responses to Plaintiff's Request for Admissions, Set Two and Request for Admissions, Set Three. The motion is DENIED. A party may propound a request for the admission of "the truth of specified matters of fact, opinion relating to fact, or application of law to fact." (Code Civ. Proc., § 2033.010.) "On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response," if they contend the response is incomplete or that an objection is without merit. (Code Civ. Proc. § 2033.290, subd. (a).) The main purpose of requests for admissions "is to set issues at rest by compelling admission of things that cannot reasonably be controverted." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) Sec. 8:1256.) Nonetheless, as a practical matter, "the important facts in a case are usually legitimately disputed" and cannot be resolved by requests for admissions. (Id. at ¶ 8:1259.) As a result, requests for admissions are useful "only as to matters of lesser importance (for which they may not be necessary, since unimportant matters can usually be handled by stipulation with opposing counsel)." (Ibid.) Although requests for admission may ask a party to admit the truth of specified fact, opinion relating to fact, or application of law to fact and may relate to a matter that is in controversy, the Code of Civil Procedure permits assertion of the work product protection as a response to a request for admission. (Code Civ. Proc., §§ 2033.210, subd. (b); 2033.230, subd. (b); see also 2033.280, subd. (a).) In California, an attorney's work product is protected by statute. (CCP §§ 2018.010-2018.080). Civil work product

		protection is codified in Section 2018.030, which describes both the absolute and the qualified protection. The purpose of the privilege is to preserve the rights of attorneys in the preparation of their cases and to prevent attorneys from taking advantage of the industry and creativity of opposing counsel. (*State Comp. Ins. Fund v. Superior Court* (2001) *91 Cal.App.4th 1080*, as modified on denial of rehearing (Sep 20, 2001)) The attorney is the exclusive holder of the privilege. (*Curtis v. Superior Court* (2021) 62 Cal. App.5th 453, 468.) The stated purpose of the statute creating the work product privilege for matters prepared in anticipation of litigation, and the underlying reasons for its creation, emphasize the need to limit discovery so that "the stupid or lazy practitioner may not take undue advantage of the adversary's efforts." (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 133.) The determination of whether there is good cause for application of the privilege for attorney work product contemplates a balancing of the need for disclosure against the purpose served by the work product doctrine. (*2,022 Ranch, L.L.C. v. Superior Court* (2003) 113 Cal.App.4th 1377, as modified on denial of rehearing (Jan 05, 2004) [disapproved on other grounds by *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal. 4th 725].) In determining whether work product protection applies, the court should be guided by the underlying policies that form the basis of the protections. Including, the policy of promoting diligence in preparing one's own case, rather than depending on an adversary's efforts. *Coito v. Superior Court* (2012) 54 Cal.4th 480, 488. Generally, "material created by or derived from an attorney's work reflecting the attorney's evaluation of the law or facts—constitutes work product." (*Id.* [citations omitted]). Materials of a derivative character, include diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed as a result of counsel's initiative in preparing for trial. This is to be contrasted against "[n]on-derivative material—material that is only evidentiary in nature—does not constitute work product. . . such [as] material [that] include[s] the identity and location of physical evidence or witnesses." (*Id.)* In *Fireman's Fund Ins. Co. v Superior Court* (2011) 196 Cal. App. 4th 1263, 1275-1278 the appellate court determined that an attorney's legal opinion work product is absolutely protected under CCP §2018.030 even when it is unwritten. The opinion underscores the important of protecting an attorney's work product. (*But see*, *Curtis v. Superior Court, supra, at* 472-473 n 13 [questions *Fireman's Fund* absolute protection based on the language of the statute affording absolute protection only to a writing].)

		With these principles in mind, the Court finds that under subsection (b) of Section 2018.030, Requests No. 8 – 22, at least, infringe upon the qualified work product protection. Similarly, Request for Admission, Set Three also infringes upon the same protection. Here, defendant does not have the qualifications to respond to these requests for admission which are exceptionally legalistic in nature. To respond to these requests a person would have to be trained legal terminology, California law, and also the laws and procedures of a foreign nation. Thus, these requests necessarily demand the disclosure of defendant's attorney legal assessment and analysis, as well as the disclosure of the assessment and analysis of an expert familiar with the laws and procedures of the foreign nation's legal system. The requests do not call for admissions of any issue that in any way is evidentiary in nature. Finally, the Court finds that protecting defense counsel's work product does not unfairly prejudice plaintiff's claim or result in injustice. The moving party to give notice.
56	**Ma v Mcvay** **23-01357127**	Motion to Compel Further Responses to Form Interrogatories Motion to Compel Further Responses to Special Interrogatories and Motion to Compel Production By DEFT Defendant has filed three motions to compel further responses. Defendant moves to compel Plaintiff's further responses to: (1) Form Interrogatories Nos. 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.11, 2.12, 2.13, 6.6, 6.7, 10.1, 10.2, 11.1, 11.2, 12.2, 12.3, 12.7, 14.1, 17.1, 20.3, 20.4, 20.8, and 20.11 (ROA 53); (2) Special Interrogatories Nos. 1, 2, 5, 12, and 31 (ROA 61); and (3) RFP Nos. 1, 2, 10, 18, 19, and 20 (ROA 57). In addition, monetary sanctions are sought with each motion. Form Interrogatories (ROA 53) <u>Form Interrogatories</u> Defendant James Mcvay moves to compel Plaintiff Enze Ma's further responses to Form Interrogatories, Set One, Nos. 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.11, 2.12, 2.13, 6.6, 6.7, 10.1, 10.2, 11.1, 11.2, 12.2, 12.3, 12.7, 14.1, 17.1, 20.3, 20.4, 20.8, and 20.11 and monetary sanctions. Defendant's motion is GRANTED. (Code Civ. Proc. § 2030.300.) A party may move to compel further responses to interrogatories on the grounds that the answer is evasive or

		incomplete, an exercise of the option to produce documents under California Code of Civil Procedure section 2030.230 is unwarranted or the required specification of those documents is inadequate, and/or an objection to an interrogatory is without merit or too general. (Code Civ. Proc. § 2030.300(a).) Sanctions against any party who unsuccessfully makes or opposes a motion shall also be imposed unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (See Code Civ. Proc. § 2030.300(d).) In addition, a motion to compel further responses to interrogatories require a separate statement pursuant to Rules of Court, Rule 3.1345. If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure fully to answer the interrogatories. (*Coy v. Superior Cour*t (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) Defendant has shown that the motion is timely and has otherwise satisfied all procedural requirements to bringing this motion. Plaintiff did not file any opposition to this motion. As the motion is unopposed, Plaintiff has failed to justify any objection or failure to fully answer the interrogatories. Accordingly, the motion is GRANTED. Plaintiff ENZE MA is ORDERED to provide verified further responses to Form Interrogatories Nos. 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.11, 2.12, 2.13, 6.6, 6.7, 10.1, 10.2, 11.1, 11.2, 12.2, 12.3, 12.7, 14.1, 17.1, 20.3, 20.4, 20.8, and 20.11 within 20 days' notice of this ruling. The Court GRANTS Defendant's request for monetary sanctions of $500 (2 hrs. at $220/hr. plus $60 mtn fee). Plaintiff shall pay the sanctions no later than May 27, 2025. Defendant to give notice. <u>Special Interrogatories (ROA 61)</u> Defendant James Mcvay moves to compel Plaintiff Enze Ma's further responses to Special Interrogatories, Set One, Nos. 1, 2, 5, 12, and 31 and monetary sanctions. Defendant's motion is GRANTED as to Nos. 1, 2, 5 and 31. (Code Civ. Proc. § 2030.300.) The motion is DENIED as to No. 12 for failure to provide a separate statement. (Rules of Court, Rule 3.1345.)

		Defendant has shown that the motion is timely and has otherwise satisfied all procedural requirements to bringing this motion for Special Interrogatories Nos. 1, 2, 5, and 31. Plaintiff did not file any opposition to this motion. As the motion is unopposed, Plaintiff has failed to justify any objection or failure to fully answer the interrogatories. Accordingly, the motion is GRANTED as to Special Interrogatories Nos. 1, 2, 5, and 31. However, there is no separate statement addressing Special Interrogatory No. 12 (See, ROA 42). For this reason, the motion to compel a further response to S.ROG No. 12 is DENIED. Plaintiff ENZE MA is ORDERED to provide verified further responses to Special Interrogatories Nos. 1, 2, 5 and 31 within 20 days' notice of this ruling. The Court GRANTS Defendant's request for monetary sanctions of $500 (2 hrs. at $220/hr. plus $60 mtn fee). The sanction shall be paid no later than May 27, 2025. Defendant to give notice. <u>RFP (ROA 57)</u> Defendant James Mcvay moves to compel Plaintiff Enze Ma's further responses to Requests for Production of Documents, Set One, Nos. 1, 2, 10, 18, 19, and 20 and monetary sanctions. Defendant's motion is DENIED for failure to show good cause for the requests sought. (Code Civ. Proc. § 2031.310(b)(1).) A motion to compel further responses "shall" set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1).) Case law provides the burden is on a moving party to show good cause. (*See, e.g., Digital Music News, LLC v. Super. Ct.* (2014) 226 Cal.App.4th 216, 224 [disapproved on other grounds by *Williams v. Super. Ct.* (2017) 3 Cal.5th 531]; *Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to demonstrate both: (1) relevance to the subject matter (e.g., how the information in the documents would tend to prove or disprove some issue in the case), and (2) specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Super. Ct.* (1997) 53 Cal.App.4th 1113, 1117.) Specifically, the moving party can also show good cause by "identify[ing] a disputed fact that is of consequence in the action and explain[ing] how the discovery sought will tend in reason to prove or disprove that fact or

		lead to other evidence that will tend to prove or disprove the fact." (*Digital Music News*, 226 Cal.App.4th at p. 224.) The fact that there is no alternative source for the information sought is an important factor in establishing good cause for inspection but is not necessary in every case. (*Associated Brewers Distrib. Co., Inc. v. Super. Ct.* (1967) 65 Cal.2d 583, 588.) Further, arguments made in the moving papers or in a separate statement are insufficient to satisfy this requirement; good cause must be shown by way of admissible evidence, such as by declaration. (*Calcor Space Facility, Inc. v. Super. Ct.* (1997) 53 Cal.App.4th 216, 224 [motion to compel production of documents must be supported by factual evidence by way of declarations setting forth specific facts justifying each category of materials sought to be produced; arguments in a separate statement or in briefs are insufficient].) Only if good cause is shown by the moving party does the burden then shift to the responding party to justify any objections made to document disclosure—the same as on motions to compel responses to interrogatories or deposition questions. (*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) As the authority above provides, arguments made in the moving papers or in a separate statement are insufficient to satisfy this requirement; good cause must be shown by way of admissible evidence, such as by declaration. The Mendoza Declaration falls short of this requirement. The Mendoza Declaration identifies the general nature of the case, the discovery at issue, the meet and confer attempts, that Plaintiff did not provide further documents and the justification for monetary sanctions. (See ROA 57 at pp. 6-7.) Thus, good cause has not be shown and Defendant has failed to meet its moving burden. The motion is DENIED. Defendant to give notice.
58	**Ocampo v General Motors LLC** **20-01137999**	Motion for Judgment Not Withstanding the Verdict Motion for New Trial By DEFT **NO TENTATIVE**
59	**Dascanio v Arsenian** **22-01257590**	Motion for Leave to File Cross Complaint by PLTF Dascanio Motion for Summary Judgment and/or Adjudication by DEFT

Defendant Motion for Summary Judgment

The Motion for Summary Judgment brought by Defendants Benjamin Arsenian and the Law Offices of Benjamin Arsenian, PC, directed towards the Third Amended Complaint filed by Plaintiffs Dennis Dascanio and the Law Offices of Dennis Dascanio, is GRANTED.

Evidentiary Issues

Defendants request for judicial notice (ROA No. 711) is GRANTED, pursuant to Evidence Code section 452, subdivision (d).

"In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion." (Code Civ. Proc., § 437c, subd. (q).)

Here, Plaintiffs submits two objections, directed towards Defendants' Exhibit A (Retainer Agreement between Arsenian and Santamaria) and the portion of the Arsenian Declaration, referencing the retainer. (ROA No. 728.) Plaintiffs object to the above, asserting the retainer agreement was improperly withheld in discovery and, consequently, cannot be offered as evidence. (Ibid.) These objections are not material to the resolution of this motion and no ruling is necessary. (Code Civ. Proc., § 437c, subd. (q).)

Defendants also submitted objections to the Declaration of Dennis Dascanio. (ROA No. 738.) Once again, most of the objections are not material to the resolution of this motion.

As to Objections Nos. 2 and 5, the Court OVERRULES those two objections, on the basis that they include admissible testimony. "[I]t is settled law that where evidence is in part admissible, and in part inadmissible, 'the objectionable portion cannot be reached by a general objection to the entire [evidence], but the inadmissible portion must be specified." (*People v. Harris* (1978) 85 Cal.App.3d 954, 957; *see also Walls v. Macy's* (1964) 226 Cal.App.2d 29, 30.)

First Cause of Action – Breach of Contract

With respect to the first cause of action, the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

The first cause of action for breach of contract arises from a fee-sharing agreement. (See ¶18 and ¶115 of TAC.)

		Pursuant to California Rules of Professional Conduct, Rule 1.5.1, as relevant herein, "[l]awyers who are not in the same law firm shall not divide a fee for legal services unless: (1) the lawyers enter into a written agreement to divide the fee; [and] (2) the client has consented in writing, either at the time the lawyers entered into the agreement to divide the fee or as soon thereafter as reasonably practicable, after a full written disclosure to the client…" While the parties dispute the nature of their relationship, case law makes clear that rule 1.5.1 applies: "[T]he rule does not limit its application to 'pure referral fees'…[n]or does it purport to categorically exempt fee divisions among attorneys who work jointly on behalf of a client." (*Chambers v. Kay* (2002) 29 Cal.4th 142, 148 (Chambers).) Rather, the rule encompasses any division of fees where the attorneys working for the client are not in the same law firm. (Ibid; See also Rules Prof. Conduct, rules 1.5.1(a) and 1.0.1(c) [defining the term "firm"].) Here, it is undisputed Dascanio is the sole owner of The Law Offices of Dennis Dascanio and Arsenian was never an employee of Dascanio. (Separate Statement [ROA No. 722] at SSUF Nos. 38-39.) Similarly, despite Plaintiffs' assertion its relationship with Defendants constituted a "joint venture," authority indicates rule 1.5.1 applies: In examining former rule 2-200, the *Chambers* court noted that the same "makes no mention of an exemption for fee divisions between attorneys who are joint venturers." (*Chambers, supra*, 29 Cal.4th at p. 151.) While the rule was subsequently amended in 2018, the current version, rule 1.5.1 continues to make no reference to an exemption for joint ventures. (Rules Prof. Conduct, rules 1.5.1.) As noted within *Chambers*, the history of the rule "make[s] evident that its requirements have always applied to fee divisions where work on the client's behalf is divided among attorneys from separate law firms or law offices." (Chambers, supra, 29 Cal.4th at p. 152.) "[W]ere we to imply a joint venturer exemption, we essentially would stretch the rule's exemption 'so as to cover situations which were not contemplated by the rule' [Citation], with the effect that the rule's exemptions would appear to swallow the rule itself." (Ibid.) Based on this analysis, rule 1.5.1 applies herein. A failure to comply with this rule renders a fee-sharing agreement unenforceable, as against public policy. (See *Reeve v. Meleyco* (2020) 46 Cal.App.5th 1092, 1098; s*ee also Chambers, supra,* 29 Cal.4th at pp. 158-159.)

		Plaintiffs failed to comply with rule 1.5.1 as, per the complaint, the "Fee Sharing Agreement was oral." (¶18 of TAC.) "A defendant moving for summary judgment may rely on the allegations contained in the plaintiff's complaint, which constitute judicial admissions. As such they are conclusive concessions of the truth of a matter and have the effect of removing it from the issues." (*Castillo v. Barrera* (2007) 146 Cal.App.4th 1317, 1324.) Additionally, "judicial admissions in a complaint overcome evidence even if the opposing party seeks to contradict the prior admission." (Ibid.) While Plaintiffs nonetheless assert "the fee-sharing agreement for all referrals was confirmed in a writing in a text from Mr. Arsenian" and offer a text which states "[r]efferals for person (sic) injury cases will be 50%" (¶6 of Dascanio Declaration and Exhibit 5 thereto), Plaintiffs offer no authority which supports finding the text message itself constitutes a "written agreement," as required by rule 1.5.1. Instead, Plaintiffs appears to concede "there is no written contract," between the parties. (Separate Statement [ROA No. 722] at SSUF No. 41.) The Court notes that while SSUF No. 41 expressly refers to a contract creating a fiduciary relationship, Plaintiffs' opposition to this motion asserts a fiduciary relationship arose, because the fee-sharing agreement between the parties created a joint venture. (Opposition: 13:22-26.) Thus, per Plaintiff, the fee sharing agreement is the basis of any fiduciary duty. In addition to the above, the Court finds the undisputed evidence demonstrates Plaintiffs did not obtain client consent as soon as reasonably practicable, as required by rule 1.5.1. (Rules Prof. Conduct, rules 1.5.1.) As explained by rule 1.0.1(h), " 'reasonably' when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer." (Rules Prof. Conduct, rules 1.0.1(h).) It is undisputed Plaintiffs referred Santamaria to Arsenian in November of 2018. (Separate Statement [ROA No. 722] at SSUF No. 6.) Additionally, it is undisputed Defendants filed a personal injury suit on behalf of Santamaria on October 18, 2019. (Id. at SSUF No. 10.) Finally, it is undisputed Plaintiffs did not obtain a signed "Division of Contingency Fees form" from Santamaria until January 19, 2022, which is nearly 3-years after first referring the client to Defendants and approximately 2-years after the Santamaria action was initiated. (Id. at SSUF Nos. 2 and 18.) As early as November of 2018, Plaintiffs anticipated working with Defendants on the personal injury action for Mr. Santamaria. (¶8 of Dascanio Declaration ["[O]n November

		20, 2018…I introduced him to Mr. Arsenian and told Mr. Santamaria that Mr. Arsenian would be working with me on his personal injury case…"]) Moreover, Plaintiff declares he was involved in the personal injury action, as early as February 27, 2019. (¶10 of Dascanio Declaration.) Based on the above, Plaintiffs knew multiple attorneys were participating in the representation of Santamaria; however, Plaintiffs offer no evidence indicating Defendants were part of the same "firm," such as to exempt all parties from rule 1.5.1. In contrast, as indicated above, it is undisputed Dascanio is the sole owner of The Law Offices of Dennis Dascanio and that Arsenian was never an employee of Dascanio. (Separate Statement [ROA No. 722] at SSUF Nos. 38-39.) Plaintiffs asserts Defendants should be estopped from relying on rule 1.5.1, as "Arsenian concealed from Dascanio that he did not list Dascanio as co-counsel on the complaint," "concealed that he had entered into a separate attorney-client agreement with Santamaria" and "did not obtain consent to fee sharing from Santamaria." (Opposition: 8-14.) However, none of the above conduct is relevant to the requirements of rule 1.5.1. Regardless of whether Defendants listed Plaintiff on the complaint or entered into a separate attorney-client agreement, rule 1.5.1 required the client's written consent for attorneys who were not within the same firm to share fees. At all relevant times, client consent was required, and Plaintiffs failed to show they acted reasonably, in waiting 3-years to obtain it. For these reasons, Plaintiffs reliance on *Barnes, Crosby, Fitzgerald & Seman, LLP v. Ringler* (2012) 212 Cal.App.4th 172 (Barnes) is unavailing. In *Barnes* the court held that "an attorney may be equitably estopped from claiming that a fee-sharing contract is unenforceable due to noncompliance with rule 2-200 or rule 3.769, where that attorney is responsible for such noncompliance and has unfairly prevented another lawyer from complying with the rules' mandate." (Id. at p. 174.) Within that action, the plaintiff had obtained consent from one class representative; however, the defendants replaced that class representative and then threatened litigation, if the plaintiff attempted to contact the new representatives. (Id. at p. 186.) The defendant in Barnes, literally, prevented access to the client, so that consent could not be obtained. Here, Plaintiffs do not identify any conduct by Defendants which prevented access to the client or prevented Plaintiffs from obtaining consent. Instead, the record demonstrates

		Plaintiffs failed to obtain client consent, because they did not believe compliance with rule 1.5.1 was required. For all the foregoing reasons, ,the alleged fee-sharing agreement is unenforceable and judgment on the first cause of action is appropriate. (*See Reeve v. Meleyco* (2020) 46 Cal.App.5th 1092, 1098; *see also Chambers*, supra, 29 Cal.4th at pp. 158-159.) <u>The Second Cause of Action – Business & Professions Code, Section 6147</u> With respect to the second causes of action, the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The second cause of action seeks to recover a percentage of the settlement proceeds for several actions, pursuant to Business & Professions Code section 6147. (¶122 of TAC.) This provision outlines the requirements of contingency fee contracts and states: "Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee." (Bus. & Prof. Code, § 6147, subd. (b).) The provision does not permit relief against successive counsel; a fact which Plaintiffs concede within their opposition. (Opposition: 19:2-4.) Indeed, the complaint itself concedes the contingency fee agreements "were solely between Dascanio and his clients, excluding Arsenian." (¶31 of TAC.) Moreover, to the extent this claim arises solely from the contingency fee agreements with Plaintiffs' clients, Defendants are correct in asserting Plaintiffs were required to litigate the value and validity of any attorney lien against their recovery, prior to seeking payment from the client trust fund. (*Mojtahedi v. Vargas* (2014) 228 Cal.App.4th 974, 978-979.) It isundisputed the same did not occur. (Separate Statement [ROA No. 722] at SSUF No. 21.) Citing *McNair v. City and County of San Francisco* (2016) 5 Cal.App.5th 1154, which held that, in applying the litigation privilege to a breach of contract claim, "it is the gravamen of the cause of action rather than its designation that is controlling," Plaintiffs urge the court to interpret the second cause of action as a claim "for violation of the fiduciary obligation to act as a trustee." (Opposition: 19:6-7.) However, the second cause of action expressly indicates it arises from Business & Professions Code section 6147 (¶122

		of TAC) and "[a] moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Johnson v. The Raytheon Co., Inc*. (2019) 33 Cal.App.5th 617, 635.) Based on the above, Defendants have sufficiently established entitlement to judgment, as to the second cause of action. <u>The Third and Fourth Causes of Action</u> With respect to the third and fourth causes of action, the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) These claims allege that, "[i]n the thirteen or more cases which are detailed in Exhibit A attached hereto and, upon information and belief, in the nine matters set forth in Exhibit B," Defendants either induced clients to breach their contingency fee agreements or interfered with the client contracts. (¶87-¶100, ¶127, ¶130, ¶136 and ¶137 of TAC.) The litigation privilege applies to these claims. " 'The litigation privilege "generally protects from tort liability any publication made in connection with a judicial proceeding." ' " (*Pech v. Doniger* (2022) 75 Cal.App.5th 443, 465.) " 'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.' " (Ibid.) "[T]he privilege is now held applicable to any communication, whether or not it amounts to a publication [citation], and all torts except malicious prosecution." (Ibid.) Stated similarly, "[f]or well over a century, communications with 'some relation' to judicial proceedings have been absolutely immune from tort liability by the [litigation] privilege' set forth in Civil Code section 47, subdivision (b)." (*Bowen v. Lin* (2022) 80 Cal.App.5th 155, 165.) "The privilege has 'an expansive reach' [citation] and applies to claims such as interference with contractual relations…." (Ibid.) Per case law, "legal advice provided by attorneys to their clients concerning proposed litigation and the clients' obligations to their former attorney" are by definition "provided in preparation for litigation" and protected speech. (*Medallion Film LLC v. Loeb & Loeb LLP* (2024) 100

		Cal.App.5th 1272, 1286, discussing *Pech v. Doniger* (2022) 75 Cal.App.5th 443; See also Bowen v. Lin (2022) 80 Cal.App.5th 155, 165.) Here, any communications by Defendants which interfered or induced the clients to breach their contingency fee contracts with Plaintiffs, were necessarily made between counsel and clients, relating to litigation. In opposing this motion, Plaintiffs note the privilege "protects only publications and communications" and does not apply to "noncommunicative conduct." (Opposition: 20:11-21:11, citing *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1058.) Plaintiffs assert the third and fourth causes of action do not arise from communications but "must be interpreted in the context of Arsenian's actions as agent for Santamaria in causing a breach of the contract by Santamaria." (Opposition: 21:8-10 [emphasis added].) However, agents acting on behalf of a principal cannot be held liable for inducing a breach of contract or interfering with the contract. (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1604-1605.) <u>The Fifth Cause of Action</u> With respect to the fifth cause of action, the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) Within the fifth cause of action, Plaintiffs allege "Arsenian breached his fiduciary duties to Dascanio by not turning over the agreed-upon portion of the settlement proceeds in the above-referenced cases." (¶148 of TAC.) Additionally, the complaint alleges "[a]ttorneys owe fiduciary duties to each other when they form partnerships or work jointly on cases." (¶147 of TAC.) It is undisputed the parties did not form a business partnership. (Separate Statement [ROA No. 722] at SSUF No. 40, citing Defendants' Exhibit 16, Dascanio Deposition: 247:18-21 ["What I'm referring to is you don't have a business partnership where your corporation and Arsenian's corporation filed an LLP; correct? A: That is correct."] Additionally, a fiduciary duty does not arise, solely by virtue of working together on a case. "[I]n balancing the interests of attorneys in protecting their fees and the public policy of protecting clients' rights to receive the undivided loyalty of all counsel who represent them, the wiser course is to reject the recognition of a fiduciary duty between cocounsel." (*Saunders v. Weissburg & Aronson* (1999) 74 Cal.App.4th 869, 874 (Saunders).)

		Similarly, the California Supreme Court in *Beck v. Wecht* (2002) 28 Cal.4th 289 (Beck), held that a bright-line rule exists, which refuses to recognize a fiduciary duty between cocounsel "to conduct their joint representation in a manner that does not diminish or eliminate the fees each expects to collect…." (Id. at 298.) While it is true that *Beck* and *Saunders* both alleged a reduction in fees due to malpractice – a fact which is distinguishable from this action - the cases nonetheless stand for the proposition that a fiduciary duty does not exist between cocounsel, simply by virtue of the fact they are cocounsel. Thereafter, Plaintiffs assert a fiduciary duty exists, as the parties formed a "joint venture." (Opposition: 23:9-24:17.) However, the complaint does not allege the existence of a joint venture between Plaintiffs and Defendants. "The complaint limits the issues to be addressed at the motion for summary judgment." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) As previously stated, "[a] moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Johnson v. The Raytheon Co., Inc*. (2019) 33 Cal.App.5th 617, 635.) As the complaint does not allege the existence of a joint venture, the Court cannot consider this argument and judgment on the fifth cause of action is appropriate. The Court additionally notes, however, that Plaintiffs rely on the same oral contract to share fees, to establish the existence of a joint venture. (See Opposition: 14:27-15:5.) As indicated above, this agreement is unenforceable as it fails to comply with rule 1.5.1 of the California Rules of Professional Conduct. The California Supreme Court in *Chambers v. Ka*y (2002) 29 Cal.4th 142, made clear that joint venturers are not exempt from the requirements of rule 1.5.1. (Id. at p. 155.) In *Bunn v. Lucas, Pino and Lucas* (1959) 172 Cal.App.2d 450, the court cited "a general proposition of law that where lawyers jointly undertake to represent a client without any agreement as to the division of fees, they will be regarded as joint venturers, entitled to share equally in the fees earned by their joint efforts." (Id. at p. 464.) The California Supreme Court in Chambers noted that "Bunn long preceded the adoption of rule 2-200 [now rule 1.5.1] and its predecessors;

		consequently, its analysis did not address the rule-related issues posed here." (Chambers, supra, 29 Cal.4th at p. 155.) Thereafter, the Court expressly disapproved Bunn, to the extent it was inconsistent with the ruling therein. (Ibid.) Chambers noted that "neither the language nor the history of the rule supports an exemption for fee divisions among joint venturers…." (Ibid.) Here, the complaint alleges the breach of fiduciary duty was Defendants failure to turn over "the agreed-upon portion of the settlement proceeds." (¶148 of TAC.) This allegation further makes clear the claim for breach of fiduciary duty seeks enforcement of the same fee-sharing agreement, earlier found to be unenforceable. <u>The Seventh and Eighth Causes of Action</u> *plaintiffs dismissed the sixth cause of action when they filed the opposition to the MSJ. Finally, with respect to the seventh and eighth causes of action, the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "Summary judgment procedure includes declaratory relief actions 'in a proper case.' " (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1401.) "When summary judgment is appropriate, the court should decree only that plaintiffs are not entitled to the declarations in their favor." (Id. at p. 1402.) "Thus, in a declaratory relief action, the defendant's burden is to establish the plaintiff is not entitled to a declaration in its favor. It may do this by establishing (1) the sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief." (Ibid; *Accord, Camden Systems, LLC v. 409 North Camden, LLC* (2024) 103 Cal.App.5th 1068, 1079) In opposing this request for judgment, Plaintiffs assert the declaratory relief claims – in addition to encompassing the other claims herein - encompass Plaintiffs' entitlement to fees on a quantum meruit basis. "Quantum meruit refers to the well-established principle that 'the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered." (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458.) "To recover in quantum meruit, a party need not prove the existence of a contract [citation], but it must show the circumstances were such that 'the services were rendered under some understanding or expectation of

		both parties that compensation therefore was to be made." (Ibid.) Per the California Supreme Court an attorney can recover the "reasonable value of the legal services it rendered on the client's behalf," pursuant to quantum meruit, despite a failure to comply with rule 1.5.1. (Id. at 464.) While the declaratory relief claims asserted herein could be interpreted as encompassing claims for quantum meruit (See ¶165(C), ¶165(D), 165(E) and 171(A) of TAC), such relief addresses only past wrongs. "Declaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy that calls for a declaration of rights, it is no objection that past wrongs are also to be redressed; but there is no basis for declaratory relief where only past wrongs are involved. Hence, where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied." (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366.) "[W]ithout an actual controversy concerning present rights and duties, section 1060 does not authorize a declaration." (*Cordoba Corp. v. City of Industry* (2023) 87 Cal.App.5th 145, 157.) Applying the above herein, as the request for quantum meruit deals solely with past conduct that does not relate to a "continuing contractual relationship" or "future consequences," declaratory relief is unavailable. (*See Osseous, supra,* 191 Cal.App.4th at pp. 371 and 375. **Cross-Defendant Dascanio's Motion for Leave to File Cross-Complaint** The unopposed Motion for Leave to File a Cross-Complaint brought by Cross-Defendants Dennis Dascanio and the Law Offices of Dennis Dascanio, APC is GRANTED, pursuant to Code of Civil Procedure section 428.50, subdivision (c). Cross-Defendants shall separately file and serve the proposed Cross-Complaint, attached as Exhibit 1 to the Declaration of John P. Blumberg, within 10-days.
60	**Ceballos v Park Regency Care Center** **22-01238997**	Motion for Summary Judgment and/ or Adjudication by DEFT Defendants Park Regency Care LLC dba Park Regency Care Center and Sun Mar Management Services dba Sun Mar Healthcare's (collectively "Defendants") Motion for Summary Judgment is DENIED; the alternative request for Summary Adjudication is GRANTED as to the 1st and 2nd causes of action for Elder Abuse and Willful Misconduct, and DENIED as

		to the 3rd and 4th causes of action for Negligence and Violation of Resident's Rights. <u>Evidentiary Objections</u> The Court OVERRULES all of Plaintiff's evidentiary objections. Defendants' Response to Plaintiff's Opposition to Separate Statement. Defendants make objections in response to Plaintiff's Opposition to their Separate Statement. The Court OVERRULES any purported objections as the Separate Statement is not evidence and the objections are procedurally improper. Any objections to evidence must comply with CRC, Rule 3.1354. <u>Merits</u> As to the 1st and 2nd causes of action for Elder Abuse and Willful Misconduct, the Court finds that Plaintiff's failed to submit any evidence that Defendants are guilty of recklessness in the commission of their neglect. *First Cause of Action for Elder Abuse.* Pursuant to Welfare & Institutions Code section 15610.07, abuse of an elder or dependent adult means either: (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Pursuant to Welfare & Institutions Code section 15610.35(a) and (e), the phrase "[g]oods and services necessary to avoid physical harm or mental suffering" include "[t]he provision of medical care for physical and mental health needs" and "[p]rotection from health and safety hazards." "Neglect" is defined as "the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (Welfare & Institutions Code §15610.57(a)(1)). "'Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs.... (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration.' [Citation omitted.] In short, neglect as a form of abuse under the Elder Abuse Act refers

		'to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.' [Citation omitted.] Thus, when the medical care of an elder is at issue, 'the statutory definition of 'neglect' speaks not of the undertaking of medical services, but of the failure to provide medical care.'" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404-405.) As alleged in the SAC, Plaintiff alleges that Defendants "willfully neglected Ms. Bermudez"; "Defendants' staff were severely understaffed and untrained on how to provide the minimum level of care and supervision that their residents, including Ms. BERMUDEZ required in order to avoid preventable safety hazards, specifically with regard to falls"; and that "Defendants' staff were un-trained on how to care for and supervise 'high' fall risk patients with sitting and balance deficits who were on a regimen of pain medication and who were on a low-air-loss mattress". (See UMF Nos. 7-9; see SAC, ¶ 32.) The crux of Plaintiff's allegations of elder abuse is that "[o]n March 26, 2021, a PARK REGENCY CARE CENTER occupational therapist, [Abelardo Torres, Jr.], who provided care to Ms. BERMUDEZ one-to-three times per week, and who regularly placed Ms. BERMUDEZ on the edge of her mattress after rendering therapy, had left Ms. BERMUDEZ sitting on her bed unsupervised when he turned to put her walker away" ("Incident"); that he "left Ms. BERMUDEZ unsupervised sitting on the edge of her low-air-loss-mattress when he turned away to put her walker away, which inevitably caused Ms. BERMUDEZ to fall from her bed, and caused a fracture to her left hip"; that PARK REGENCY's occupational therapist knew that Ms. Bermudez had been administered pain medication prior to her therapy session yet recklessly placed her on the edge of her bed unsupervised; that Defendants failed to immediately assess Ms. Bermudez's injuries and transfer her to an acute hospital as needed after her fall; and Ms. Bermudez was forced to endure extreme and unnecessary pain because of Defendants' failure to timely evaluate her injuries after the fall and immediately transfer her to an acute care facility. (See UMF Nos. 10-13; see SAC, ¶¶ 33-35.) Plaintiff alleges that PARK REGENCY acted with reckless neglect based on: (1) "knowingly failing to properly staff the facility with trained, qualified care personnel to meet the needs of the residents", i.e., "untrained on how to care for the type of resident that were high fall risks, had postural and balance 'sitting' and 'standing' deficits who were only able to 'stabilize with staff assistance" and were on a "regiment of pain mediation, and who were on low-air-loss

		mattress[es]" (see SAC, ¶¶ 42 and 44); (2) "consciously failing to properly prevent Ms. BERMUDEZ's fall despite knowledge that Ms. BERMUDEZ was highly prone to suffering such injury" by abandoning her and leaving her unsupervised (see SAC, ¶¶ 42 and 43); and (3) "consciously failing to properly treat and assess Ms. BERMUDEZ after her fall, which included improperly moving Ms. BERMUDEZ after her fall and delaying treatment and assessment by emergency services as necessary" "[d]espite facility policies indicating not to move a resident after a serious incident causing severe injury, and policies indicating to transfer a resident to the hospital immediately via 911 emergency services upon suspicion of a serious injury" (see SAC, ¶¶ 42 and 44.) Defendants contend that Plaintiff does not have any evidence to support her allegation that PARK REGENCY failed to provide the standard of care that a reasonable person in the same position would have exercised; that Plaintiff does not have any evidence at all; and that Plaintiff simply has a list of allegations that cannot be proven. In support of their Motion, Defendants present the following evidence: Ms. Bermudez was transferred to PARK REGENCY for further rehabilitation on March 12, 2021; upon her admission at PARK REGENCY, care plans were initiated to address and manage Ms. Bermudez's medical issues and due to her history of falls a specific care plan was put in place to address her fall risk; Ms. Bermudez' occupational therapist's ("OT") initial evaluation stated that she was able to maintain her balance while sitting against minimal resistance; Ms. Bermudez would regularly sit on the edge of her bed after therapy while OT, Abelardo Torres, Jr. ("Mr. Torres"), would put her walker by the door; Ms. Bermudez' initial evaluation for PT shows she was able to maintain balance without balance loss or upper extremity support while sitting and was evaluated as standby assist for bed mobility when she left the facility; March 26, 2021, at around 3:25 p.m., Ms. Bermudez had a fall (as set forth above, "Incident");prior to the fall, Ms. Bermudez had done her OT with her Mr. Torres; after the OT was completed, Mr. Torres walked with Ms. Bermudez to her room and she sat down on the edge of her bed as she had typically done after OT, Mr. Torres went to put her walker by the door and while he was turned to put the walker by the door, Ms. Bermudez fell off the bed on her own while sitting on the edge of the bed; the door was only four feet from Ms. Bermudez's bed and Mr. Torres could simply turn around to put the walker by her door; fter the fall, Mr. Torres assisted Ms. Bermudez back to bed after assessing her pain and Ms. Bermudez stated she was only in a little pain and he gave her an ice pack; Mr. Torres immediately called the charge nurse to come and assess Ms. Bermudez; the change nurse, Gloria

		Tolentino, LNV, performed an assessment of Ms. Bermudez and there were no signs of distress or injury other than a skin tear at the elbow; both the physician and daughter of Mr. Bermudez were notified of the fall at 3:55 p.m. and 4:05 p.m, respectively; Ms. Bermudez's physician, Joey Wong, M.D., ordered an X-ray of the sacral-coccyx and left femur of Ms. Bermudez to rule out a fracture; at around 11:00 p.m., the X-Ray results reported there was no fracture to the sacral-coccyx but suggested an acute fracture to the left femoral neck; based on the X-ray results, Ms. Bermudez's physician, Bao Tran, M.D., ordered her transferred to PIH Health Hospital – Whittier; at PIH Health Hospital – Whittier, Ms. Bermudez was diagnosed with an acute nondisplaced left subcapital femoral fracture and was not experiencing any acute distress; on March 28, 2021 (two days after the Incident), Ms. Bermudez was evaluated by the physical therapist at PIH Health Hospital – Whittier and was determined to have fair sitting balance even at the side of her bed; on March 28, 2021, Ms. Bermudez had surgery for the fracture which was a closed reduction percutaneous pinning of left femoral neck fracture; after the Incident, on March 29, 2021 (three days after), Ms. Bermudez was evaluated by the OT department at PIH Health Hospital – Whittier and she was evaluated as being standby assist for both bed mobility rolling/scooting and bed mobility supine-to-sit and her sitting balance was evaluated as good; there is no indication that medication affected Ms. Bermudez in her fall or that Ms. Bermudez was given pain medication prior to her fall and the previous time she reported pain for pain medication was at 9:00 a.m. on March 25, 2021—one day prior to the Incident; determining trunk control is based on an analysis done by the occupational therapist ("OT"); Mr. Torres received training on fall prevention which included training on having a resident sit on the edge of the bed even if he took his eyes off the resident to put away a walker as well as training on falls and use of pain medication; Ms. Bermudez was assessed as having trunk control to maintain her balance while sitting and even in bed mobility when she was first admitted; and Mr. Torres was trained to assess a person after a fall. (See UMF Nos. 17-19, 21-40, 42, 43, 45 and 46.) Plaintiff contends she "disputes" that Ms. Bermudez had a fall on March 26, 2021 because Plaintiff alleges that the details of the Incident "are unclear, leading to material facts in dispute regarding whether the occupational therapist breached the standard of care"; that "[t]here are substantial discrepancies regarding the details of the subject incident"; that the "accounts of the fall are inconsistent, with the nurse's notes (Exh 8 – PRCC Bermudez Resident File, PRCC-187) and the Torres deposition (Exh – Deposition of Abelardo Torres, pg. 36, lines 8-15) stating that the patient was already sitting on the bed, while the Inter Safety Investigation (Exh 8 – PRCC Bermudez Resident File, PRCC-002277-78) indicates the

		patient was turning around to sit when they fell after walking back to bed"; that there "are also various interviews in the facility accident reports, one by Ms. Bermudez stating she was walking to her bed and fell, one by her roommate stating the occupational therapist stood by the door and Ms. Bermudez walked to her bed unassisted and fell, and OT Torres stating that Ms. Bermudez fell while she was turning to sit down." (See Response to UMF Nos. 25 and 27.) The SAC, however, alleges that PARK REGENCY's OT "left Ms. BERMUDEZ unsupervised sitting on the edge of her low-air-loss mattress when he turned around to put her walker away, which inevitably caused Ms. BERMUDEZ to fall from her bed, and caused a fracture to her left hip." (See SAC, ¶ 33.) "The pleadings delimit the issues to be considered on a motion for summary judgment." (*Labbs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253.) "'[A] defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers.' [Citation omitted.] 'To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. [Citation.] If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion.'" (Id.) "The pleadings 'delimit the scope of the issues' to be determined and 'the complaint measures the materiality of the facts tendered in a defendant's challenge to the plaintiff's cause of action.' [Citation.] Plaintiff's separate statement of material facts is not a substitute for an amendment of the complaint." (*Lackner*, supra, 135 Cal.App.4th at 1202.) Plaintiff cannot contend a triable issue of fact exists based on theories that are not alleged in the SAC. As such, this purported evidence is improper and insufficient to meet Plaintiff's burden. The evidence before the Court is that Ms. Bermudez was sitting on the edge of her bed after her OT as she regularly did; that Mr. Torres turned away briefly to put Ms. Bermudez's walker by the door; that the door was only approximately four feet away from the bed; and that Ms. Bermudez slipped off the bed on her own. (See UMF Nos. 25, 27, and 39.) Plaintiff contends there is a triable issue as to whether Defendants engaged in elder abuse when Mr. Torres left Ms. Bermudez on the edge of her bed to put away her walker and submits the declaration of three experts. Plaintiff submits the declaration of Virginia A. Barragan, a practicing physical therapist, who opines that PARK REGENCY breached the standard of care by, inter alia, "not ensuring constant

		supervision, which would have prevented the fall," "[a]llowing her to sit unsupported at the edge of the bed, without direct supervision," and "failing to recognize the risks associated with sitting on [a low air loss mattress]…without proper support". (See Plaintiff's Exhibits, Exh. 3 (Declaration of V. Barragan, ¶ 17(a)-(d).) Ms. Barragan, however, does not opine that PARK REGENCY's conduct rose to the level of recklessness, malice, oppression, or fraud. Likewise, Plaintiff's expert Byron Arbeit, who is licensed to administer nursing homes and residential care facilities, only opines that PARK REGENCY provided "substandard care and/or inadequate care" and breached the standard of care by, inter alia, "failing to adequately address Ms. Bermudez's known high risk of falls", "allowing Ms. Bermudez to sit unsupported on the edge of a low air loss mattress". and "failing to position her properly or provide adequate supervision while she was on the mattress". (See Plaintiff's Exhibits, Exh. 4 (Declaration of Byron Arbeit), ¶¶ 21, 22 and 25.) Mr. Arbeit does not opine that PARK REGENCY's breach of the standard of care constituted reckless neglect. And, again, Plaintiff's expert Pam Sharkey, a registered nurse, also does not opine that PARK REGENCY's breach of the standard of care consisted reckless neglect. (See Plaintiff's Exhibits, Exh. 5 (Declaration of Pam Sharkey), ¶¶ 15-19.) "Recklessness involves 'deliberate disregard' of the 'high degree of probability' that an injury will occur and 'rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.'" (*Carter, supra*, 198 Cal.App.4th at 405.) "'Recklessness' refers to a subjective state of culpability greater than simple negligence ... [citations]. Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' ...." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31.) Next, as to Plaintiff's allegation that PARK REGENCY failed to properly train staff on how to care for residents that were high fall risks, again, none of Plaintiff's expert witnesses opine that PARK REGENCY's failure to properly train staff constitutes reckless neglect or that it was a gross deviation from the standard of conduct of a reasonable person. Rather, Plaintiff's own experts only opine that PARK REGENCY breached the standard of care—which constitutes only negligence. (See Plaintiff's Exhibit, Exh. 4 (Declaration of Byron Arbeit), ¶ 27 ["The facility and its operators breached the standard of care by failing to ensure that staff were properly trained and supervised. Mr. Torres's misunderstanding of contact guard assistance, which requires

		maintaining physical contact with the resident at all times, highlights the lack of adequate training. By stepping away from Ms. Bermudez instead of providing continuous supervision, Mr. Torres failed to prevent her fall. The facility's failure to properly train and supervise its staff, particularly in the care of high-risk residents like Ms. Bermudez, was a breach of the standard of care that contributed to her injurious fall."]; Exh. 5 (Declaration of Pam Sharkey), ¶¶ 18 ["This standard of nursing practice was breached as Mr. Torres stated in his deposition that he was not trained in the use of a LAL mattress."].) Lastly, as to Plaintiff's allegation that PARK REGENCY failed to properly treat Ms. Bermudez after the fall, again, none of Plaintiff's experts opine that PARK REGENCY's conduct in treating Ms. Bermudez after the fall constituted reckless neglect, only that it fell below the standard of care. (See Plaintiff's Exhibit, Exh. 4 (Declaration of Byron Arbeit), ¶ 26["The facility and its operators breached the standard of care in their handling of Ms. Bermudez's fall. The occupational therapist, Mr. Torres, failed to follow proper post-fall protocols by lifting her off the floor without performing necessary neurological checks or summoning a nurse for immediate assessment. This failure to follow standard post-fall procedures increased the risk of further injury and pain for Ms. Bermudez. Additionally, the facility delayed her transfer to the hospital, allowing several hours to pass before she was sent for further evaluation. The inadequate response to her fall and the delay in providing necessary medical care represent clear breaches of the standard of care, exacerbating the harm she suffered."]; see Exh. 5 (Declaration of Pam Sharkey), ¶¶ 15-17 ["15. This standard of nursing practice was breached as Mr. Torres picked Ms. Bermudez up off the floor and put her back to bed after the fall without an assessment by the licensed nurse. The assessment by a licensed nurse reveals any potential fractures that the resident has suffered and once the assessment is complete and the resident is complaining of pain upon moving, the nurse calls 911. Should the assessment by the licensed nurse reveal no pain resulting from the fall, the staff is able to move the resident to the bed or the wheelchair. 16. This standard of nursing practice was breached by Mr. Torres as he gave Ms. Bermudez an ice pack for her pain after he placed her back in bed. The staff is not to give a resident any pain medication or treatment prior to the assessment by the registered nurse to deflect any symptoms of pain from an injury or a fracture suffered by the resident from the fall. 17. This standard of nursing practice was breached as Ms. Bermudez complained of pain in her left hip when she was on the floor after her fall. Ms. Bermudez was not assessed immediately by a licensed nurse on the floor. If Ms. Bermudez was assessed immediately on the floor by the licensed nurse, the nursing standard of practice is to

		make Ms. Bermudez comfortable on the floor, call 911 and have her transferred to the acute care hospital. The evidence is clear that PARK REGENCY never "withheld" medical care from Ms. Bermudez or "deprived" her of medical care after her fall. Rather, PARK REGENCY staff acted promptly by giving her an ice pack, having her assessed by the charge nurse, contacting Ms. Bermudez's physician and daughter, having an X-ray taken of her sacral-coccyx and left femur, and having her transferred to PIH Health Hospital – Whittier. (See UMF Nos. 28-34.) Although Plaintiff disputes the sufficiency of the medical care provided to Ms. Bermudez by PARK REGENCY, there is no evidence that PARK REGENCY deprived her of care after her fall. "[S]everal factors...must be present for conduct to constitute neglect within the meaning of the Elder Abuse Act and thereby trigger the enhanced remedies available under the Act. The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [citations omitted]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations omitted]; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness) [citations omitted]." (*Carter, supra*, 198 Cal.App.4th at 406-407.) Liability for Elder Abuse "excludes liability for acts of professional negligence." (*Sababin. v. Superior Court* (2006) 144 Cal.Apap.4th 81, 88.) "[It] does not apply to simple or gross negligence by health care providers." (Id.) "The plaintiff must prove 'by clear and convincing evidence' that 'the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of' the neglect. (Welf. & Inst.Code, § 15657.) Oppression, fraud and malice "involve 'intentional,' 'willful,' or 'conscious' wrongdoing of a 'despicable' or 'injurious' nature." [Citation omitted.] Recklessness involves 'deliberate disregard' of the 'high degree of probability' that an injury will occur and 'rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.' [Citation omitted.] Thus, the enhanced remedies are available only for 'acts of egregious abuse' against elder and dependent adults.'" (*Carter, supra*, 198 Cal.App.4th at 405.)

		In sum, although Plaintiff's evidence in Opposition create a triable issue as to whether Defendants were negligent in their care of Ms. Bermudez (see infra), it does not create a triable issue on the elder abuse cause of action. None of Plaintiff's experts opine that PARK REGENCY acted recklessly, deliberately, or with gross negligence. Elder abuse is distinct from professional negligence and elder abuse claims do not apply to simple or gross negligence by a health care provider absent specific facts of recklessness. (*See Carter, supra*, 198 Cal.App.4th at 408.) Accordingly, the Court GRANTs summary adjudication as to the 1st cause of action for elder abuse. <u>Second Cause of Action for Willful Misconduct</u> "Willful misconduct is not a separate tort from negligence, but rather 'an aggravated form of negligence, differing in quality rather than degree from ordinary lack of care' [Citations omitted]. In order to establish willful misconduct, a plaintiff must prove not only the elements of a negligence cause of action, that is, duty, breach of duty, causation, and damage, but also '(1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril.'" (*Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1140.) "Willful misconduct is not marked by a mere absence of care. Rather, it 'involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences.'" (Doe, supra, 8 Cal.App.5th at 1140.) For the reasons discussed above, the Court finds that Plaintiff failed to submit any evidence that Defendants engaged in conduct with an intent to harm and that they engaged in conduct constituting something other than negligence. Thus, summary adjudication on the 2nd cause of action for willful misconduct is GRANTED. <u>Third and Fourth Causes of Action</u> As to the 3rd cause of action for negligence, the Court finds there are competing declarations provided by the parties which create a triable issue as to whether Defendants breached the standard of care and/or caused Ms. Bermudez's injuries. As to the 4th cause of action for violation of resident's rights, the Court finds there are triable issues with respect to this claim.

		Moving Party to give notice.