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

HON. Donald F. Gaffney

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

Date: April 17, 2024

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

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

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

#	Case Name	Tentative
1	Castro vs. Cies Family Trust	**TENTATIVE RULING:** Defendant Coldwell Banker Realty demurs to the fourth cause of action for intentional infliction of emotional distress in Plaintiff's Second Amended Complaint and moves to strike the punitive damages allegations. Defendants Marlene Goren, Shari Ten Eyck, and Ten Eyck Real Estate demur to the eighth cause of action for intentional infliction of emotional distress and move to strike the punitive damages allegations. For the reasons set forth below, Defendant Coldwell Banker Realty's demurrer is OVERRULED as to the fourth cause of action. The demurrer of Defendants Marlene Goren, Shari Ten Eyck, and Ten Eyck Real Estate to the eight cause of action is OVERRULED. The motions to strike the punitive damages allegations are DENIED. **Facts/Overview** On November 13, 2023, Plaintiff Charles Castro filed the operative Second Amended Complaint against Defendants:

- Cies Family Trust, the owner of a residential rental unit at 510 ½ Dahlia Avenue, Corona del Mar (the "First Premises").

- Coldwell Banker Realty ("Coldwell"), the alleged broker, manager, and agent of the owner of the First Premises (Cies Family Trust and Coldwell, together, the "First Premises Defendants")

- Marlene Goren, the owner of a residential rental unit at 611 Marguerite Avenue, Corona del Mar (the "Second Premises").

- Shari Ten Eyck and Ten Eyck Real Estate, the brokers, managers, and agents of the owner of the Second Premises, (Goren, Eyck, and Ten Ryck Rel Estate, collectively, the "Second Premises Defendants").

Plaintiff alleges the following causes of action:

- C/A 1: Breach of Implied Warranty of Habitability (against CIES Family Trust)
- C/A 2: Negligence (against the First Premises Defendants)
- C/A 3: Nuisance (against the First Premises Defendants)
- C/A 4: Intentional Infliction of Emotional Distress (against the First Premises Defendants)
- C/A 5: Breach of Implied Warranty of Habitability (against Second Premises Defendants)
- C/A 6: Negligence (against Second Premises Defendants)
- C/A 7: Nuisance (against Second Premises Defendants)
- C/A 8: Intentional Infliction of Emotional Distress (against Second Premises Defendants)

Plaintiff alleges that the First and Second Premises were unfit for human occupation as water intrusion caused mold to permeate the rental units.

Pending Demurrers/Motions

A. Coldwell Demurrer and Motion to Strike

On December 12, 2023, Coldwell filed a demurrer to the fourth causes of action for IIED. Coldwell argues that Plaintiff fails to provide specific allegations relating to Coldwell's conduct that gives rise to an IIED claim.

		Colwell also filed a motion to strike allegations relating to punitive damages. Coldwell argues that Plaintiff does not sufficiently allege conduct that gives rise to malice, oppression or fraud. Coldwell also argues that Plaintiff fails to allege punitive damages against the corporate employer for the acts of its employees. Finally, Coldwell argues that Plaintiff did not sufficiently allege an IIED claim for which punitive damages is available. On February 16, 2024, Defendant Cies Family Trust filed a joinder in Coldwell's motion to strike. On April 4, 2024, Plaintiff filed an opposition. Plaintiff argues that Plaintiff alleges sufficient allegations under *Stoiber v. Honeychuck (1980) 101 Cal.App.3d 903,* to allege an IIED claim. Plaintiff argues that Plaintiff pled that Defendant knew of the water leak, mold, and dangerous condition at the time of move-in, failed to do a mold test at Plaintiff's request, and failed to remedy the condition for months. Further, Plaintiff argues that under *Stoiber*, Plaintiff sufficiently alleged facts for Plaintiff's claim of punitive damages. On April 10, 2024, Coldwell filed a reply. **B. Second Premises Defendants' Demurrer and Motion to Strike** On December 4, 2023, the Second Premises Defendants filed a demurrer to the eighth cause of action for intentional infliction of emotional distress. They argue that Plaintiffs' allegations are insufficient to allege conduct that is outrageous or extreme to allege an IIED claim. The Second Premises Defendants also filed a motion to strike Plaintiff's punitive damages allegations. On April 4, 2024, Plaintiff filed an opposition. Plaintiff argues that his claim for IIED is sufficient under *Stoiber*. As such, Plaintiff also argues that the sufficiency of his IIED claim warrants punitive damages. On April 10, 2024, the Second Premises Defendants filed a reply.

Analysis

I. Legal Standard on Demurrer

A. Demurrer Based on Uncertainty

A demurrer to a complaint may be brought on the ground the pleading is uncertain, ambiguous, or unintelligible. (Code of Civ. Proc., § 430.10, subd. (f); *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1191.) A demurrer based on uncertainty is disfavored and will be strictly construed even when the pleading is uncertain in some respects. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when a defendant cannot reasonably determine to what he or she is required to respond. For example, when a plaintiff joins multiple causes of action as one, fails to properly identify each cause of action, or fails to state against which party each cause of action is asserted if there are multiple defendants, a complaint is uncertain. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

B. Demurrer Based on Insufficiency

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 720-721.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) "A demurrer tests the pleading alone, and not on the evidence or facts alleged." (*E-Fab, Inc. v. Accountants, Inc. Servs.* (2007) 153 Cal.App.4th 1308, 1315.) As such, the court assumes the truth of the complaint's properly pleaded or implied factual allegations. (*Ibid*.) The only issue a demurrer is concerned with is whether the complaint, as it stands, states a cause of action. (*Hahn, supra*, 147 Cal.App.4th at 747.)

C. Fourth Cause of Action for Intentional Infliction of Emotional Distress against Coldwell and Eighth Cause of Action for Intentional Infliction of Emotional Distress against the Second Premises Defendants

"To state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless

		disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Yau v. Santa Margarita Ford, Inc*. (2014) 229 Cal.App.4th 144.) A defendant's conduct is "outrageous" when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.) *Stoiber* held that plaintiff's allegations were sufficient to plead a cause of action for IIED in addition to a breach of the warranty of habitability. (*Id*. at 912.) The plaintiff in *Stoiber* alleged: > "On or about October 8, 1974, to the present, numerous defective and dangerous conditions were in existence, including, but not limited to leaking of sewage from the bathroom plumbing; defective and dangerous electrical wiring; structural weaknesses in the walls; deteriorated flooring; falling ceiling; leaking roof; dilapidated doors; broken windows; and other unsafe and dangerous conditions. These defective conditions were unknown to plaintiff at the time she moved in to the premises, but as she continued to live on the premises, she became increasingly aware of them." *(Id.* at 912*).* The complaint attached a copy of the health department's notice to vacate and demolish the subject property due to various violations. (*Ibid*.). Finally, plaintiff alleged that "the defendants' failure to correct the defective conditions was knowing, intentional and willful, and that she suffered extreme emotional distress resulting from the condition of the premises." (*Id*. at 913). The court found that because these allegations "present a factual question it cannot be said as a matter of law that appellant has not stated a cause of action." (*Id*. at 922). In so holding, the *Stoiber* court also summarized other cases which have held that plaintiff sufficiently pled an IIED claim based on habitability issues: > In *Newby v. Alto Riviera Apartments, supra*, 60 Cal.App.3d 288, 131 Cal.Rptr. 547, the evidence showed that after the plaintiff tenant organized opposition to rent increases, the landlord shouted at the tenant and insulted her, directed her to vacate the premises. The plaintiff was also told if she did not

> leave " . . . , We (will) handle this the way we do down South." (*Id*., 297-298, 131 Cal.Rptr. 554.) The court held this sufficient to meet the test of outrageous behavior.
>
> In *Aweeka v. Bonds* (1971) 20 Cal.App.3d 278, 97 Cal.Rptr. 650, the landlord had failed to keep the premises in good repair and the tenant exercised his "repair and deduct" remedy under Civil Code sections 1941 and 1942. The landlord thereafter increased the rent from $75 per month to $145 per month; this increase was clearly not justified by the rental value of the premises, and the landlord was aware that the tenant could not pay the increased rent. On these facts, it was held the complaint alleged a cause of action for intentional infliction of mental distress (*Id*., at p. 281, 97 Cal.Rptr. 650).

(*Id.* at 921-922). Since then, the court in *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1299 relied on *Stoiber* to hold that allegations that successor landlord's purchased property after the prior landlord had turned off tenant's utilities and failed to allow tenant to return to the property were sufficient to withstand a demurrer on an IIED claim: "the present allegations present[] a factual question; however, it cannot be said as a matter of law that appellant has not stated such a claim." (*Id*. at 1298-99).

Under the above line of cases, allegations of a tenant's uninhabitable conditions, about which the tenant informed defendants, but which defendants ignored, are sufficient to allege an IIED claim.

Here, the court finds that Plaintiff has sufficiently pled Plaintiff's uninhabitable conditions, how Plaintiff informed the various defendants, and their refusal to repair the conditions.

As to Coldwell, Plaintiff alleges that "Plaintiff did not discover that his illness was caused by mold in the premises till sometime in July 2021. Defendant Coldwell Banker managed the FIRST PREMISES. Defendant Coldwell Banker knew at the time Plaintiff took possession that the premises were infected with mold caused by prior water intrusion. Defendant Coldwell Banker Realty's agent, Diane Metzler, told Plaintiff to "keep an open eye" in the area to the right of the toilet where a water leak was later detected by Plaintiff. The managing agent of Coldwell Banker, Marilyn Read, was also aware of the pre-existing leak which was never fixed which caused the mold. This very same exact area is where Plaintiff discovered

		the mushroom [mold] in July 2021. The acts of Diane Metzler and the managing agent Marilyn Read were fraudulent as they knowingly failed to disclose the pre-existing mold to Plaintiff when he moved into the premises until the time the mushroom appeared which was determined to be mold." (SAC, ¶ 42.). Further, Plaintiff alleges that "Plaintiff was exposed to toxic mold from 3/1/2021, the date Plaintiff moved into the premises, until August 30, 2021 , when Plaintiff vacated the premises. On or about July 17th, 2021, Plaintiff discovered the mushroom toxic mold and stopped residing at the property. Plaintiff suffered symptoms of inter alia esophageal reflux, causing him to order a mold test. Plaintiff requested the Defendants to repair this dangerous condition. However, Defendants and each of them refused to do a mold test, even though they promised to do one, and eventually repaired this condition months later." (SAC, ¶ 19.) As pled, Plaintiff has sufficiently given Coldwell notice of the basis of Plaintiff's claim for IIED. Under *Stoiber*, Coldwell's alleged deliberate failure to correct defective conditions after Plaintiff informed Coldwell of the uninhabitable condition is sufficient to allege a cause of action for IIED. Similarly, as to the Second Premises Defendants, Plaintiff alleges that "In managing the SECOND PREMISES, Defendants Shari Ten Eyck and the Ten Eyck Real Estate failed to repair the premises when provided with 2 mold reports by Plaintiff in early November 2021. The failure of Defendants Shari Ten Eyck and the Ten Eyck Real Estate to act was both oppressive and malicious, as well as fraudulent as Shari Ten Eyck, the managing agent for the Ten Eyck Real Estate provide(d) Plaintiff with a phony mold test. Plaintiff is informed and believes that Defendant Marlene Goren was aware of these fraudulent actions which subjected Plaintiff to cruel and unjust hardship . . ." (SAC, ¶ 72.) Plaintiff also alleges "Plaintiff was exposed to toxic mold from 9/1/2021, the date Plaintiff moved into the premises, until June 1, 2022 , when Plaintiff vacated the premises. On or about 10/28/2021, Plaintiff discovered the toxic mold. Plaintiff has Chronic Inflammatory Response Syndrome ("CIRS"). Plaintiff carries the HLA-DR gene and developed chronic health issues involving systemic inflammation from mold exposure. Plaintiff requested the Defendants to repair this dangerous condition in the rental unit, and Defendants claimed they eventually repaired this condition. But following another mold test in May 2022, there were still high levels of mold present in the house." (SAC, ¶ 50.)

		Again, under *Stoiber*, the Second Premises Defendants' knowledge of the uninhabitable condition, promises to repair the condition, and failure to do so is sufficient to state a claim for IIED. Whether or not this conduct is sufficient enough to rise to the level of "outrageous" is a question of fact. At the pleading stage, however, Plaintiff's allegations are adequate. The demurrers to these causes of action against Coldwell and the Second Premises Defendants are overruled. II. **Motions to Strike** A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63; Cal. Civ. Code § 3294(a); See also, *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 ("In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff").) "Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Cal. Civ. Code, § 3294(c)(1).) Despicable conduct is "conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. Such conduct has been described as 'having the character of outrage frequently associated with crime.'" (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.) "'Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) Defendants argue that Plaintiff has not sufficiently pled conduct that rises to the level of malice, oppression, or fraud. Specifically, in the context of breach of implied warranty of habitability cases, "[t]o support an award of punitive damages on the basis of conscious disregard of the safety of others, a plaintiff 'must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.'" (*Penner v. Falk* (1984) 153

		Cal. App. 3d 858, 867.) In *Penner*, the court of appeal held that a plaintiff sufficiently pled allegations to support an award of punitive damages where: 1. "The pleadings sufficiently allege facts setting forth long existing physical conditions of the premises which portend danger for the tenants." (*Id*.) 2. "The pleadings also set out that respondents knew of those conditions for up to two years, had power to make changes, but failed to take corrective and curative measures." (*Id.)* 3. "If proven, these allegations would support an award of punitive damages." (*Id.)* Accordingly, the *Penner* court held that the trial court committed error and *reversed* the trial court's order granting a motion to strike punitive damages allegations from the plaintiff's complaint. (*Id*.) For the same reasons why the court found that Plaintiff has sufficiently alleged an IIED claim, the court finds that, under *Penner*, Plaintiff has sufficiently pled facts "setting forth long existing physical conditions of the premises which portend danger for the tenants", that the Defendant knew of those conditions, had the power to make changes, but failed to take corrective and curative measures, or that the allegations, if proven, "would support an award of punitive damages." (*Penner*, 153 Cal. App. 3d at 867). Plaintiff alleges sufficient facts to infer that each of the Defendants knew of probable dangerous conditions and each specific Defendant ignored those conditions in conscious disregard of the Plaintiff's health. Plaintiff has also identified the names of the agents of Defendants with whom Plaintiff interacted. The motions to strike are, therefore, denied. Defendant Cies Family Trust's joinder in Coldwell's motion to strike is also denied. Plaintiff to give notice.
2	Li vs. Liu	**TENTATIVE RULING:** **<u>Demurrer to Fourth Amended Complaint.</u>** Defendant Dehong Liu demurs to the Fourth Amended Complaint (4AC) filed by Plaintiff Jie Li. For the following reasons, the demurrer is SUSTAINED without leave to amend. Defendant's request for judicial notice is GRANTED.

Statement of Law

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. Although California courts take a liberal view of inartfully drawn complaints, it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.)

On demurrer, a complaint must be liberally construed. (Code Civ. Proc., § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-67.)

A pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. The degree of detail required depends on the extent to which the defendant in fairness needs such detail which can be conveniently provided by the plaintiff. Less particularity is required when the defendant ought to have co-extensive or superior knowledge of the facts. Under normal circumstances, there is no need for specificity in pleading evidentiary facts. However, bare conclusions of law are insufficient. (Code Civ. Proc., §§ 425.10(a), 459; *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-50; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Doheny Park Terrace HOA v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1098-99; *Berger v. California Insurance Guarantee Assn* (2005) 128 Cal.App.4th 989, 1006.)

Notice

On March 6, 2024, Defendant filed a proof of service reflecting sufficient service of the Demurrer on Plaintiff's current counsel. (ROA 582.) Defendant has sufficiently shown service of the demurrer. (Evid. Code § 452(d).)

		Plaintiff's counsel contends she was not served with notice that the demurrer was continued to April 17, 2024. But the Court served such notice on Plaintiff's counsel on February 22, 2024. (ROA 557.) **Analysis** Plaintiff did not oppose the merits of the demurrer. Instead, she filed an objection "in lieu of opposition." Plaintiff does make an argument pursuant to Civ. Code § 1632 regarding contracts negotiated in a foreign language. However, the Fourth Amended Complaint does not assert any claim under Section 1632, nor does it even reference Section 1632. The demurrer takes issue with the causes of action in the 4AC for 1) contract reformation, 2) conversion, 5) aiding and abetting, 6) unjust enrichment, and 10) declaratory relief. **First, Fifth, and Tenth Causes of Action** As to the first cause of action for contract reformation, fifth cause of action for aiding and abetting, and tenth cause of action for declaratory relief, Defendant is correct that a party must have leave to amend to add entirely new causes of action after a demurrer is sustained. Where a court grants leave to amend after sustaining a demurrer, the scope of permissible amendment is limited to the causes of action to which the demurrer has been sustained. (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal. App. 4th 1018, 1023 (adding new cause of action after demurrer is improper); *People v. Clausen* (1967) 248 Cal. App. 2d 770, 785-86 (adding new party after demurrer is improper).) After the court sustained the demurrer to the Third Amended Complaint, Plaintiff did not seek or obtain leave to file the new first, fifth, and tenth causes of action. Thus, the demurrer to theses causes of action is sustained. **Second Cause of Action for Conversion** 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." (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.) "Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved." (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser,*

Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384, 395.) California cases that permitted an action for conversion of money involved an amount of money that was "readily ascertainable." (*Id.* at 396.)

The 4AC alleges "Plaintiff maintained ownership and possessory interests in money in an amount in excess of $389,000, which she paid to Defendant Liu directly and/or indirectly via Escrow in furtherance of her purchase of the Subject Property." (4AC, ¶ 113.) Given that these payments were made pursuant to agreements signed by Plaintiff in connection with the purchase of the home, Plaintiff cannot establish the first element of a conversion claim – Plaintiff's ownership or right to possession of the funds at issue.

The demurrer to this cause of action is sustained.

Sixth Cause of Action for Unjust Enrichment

"The elements for a claim of unjust enrichment are 'receipt of a benefit and unjust retention of the benefit at the expense of another.' [Citation.] 'The theory of unjust enrichment requires one who acquires a benefit which may not justly be retained, to return either the thing or its equivalent to the aggrieved party so as not to be unjustly enriched.' [Citation.]" (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1132.)

The 4AC alleges "Plaintiff conferred a benefit upon Defendant by, among other things, paying an amount in excess of $659,000 to Defendant Liu, directly or indirectly via Escrow, in furtherance of Plaintiffs purchase of the Subject Property and making valuable improvements to the Subject Property…." (4AC, ¶ 157.) The exhibits to the 4AC and the Third Amended Complaint demonstrate that the payments to Defendant were pursuant to agreements signed by Plaintiff. Plaintiff does not allege facts showing that Defendant has been unjustly enriched.

The demurrer to this cause of action is sustained.

Leave to Amend is Denied

On demurrer, a court determines whether the complaint states facts sufficient to constitute a cause of action. If the court sustains the demurrer, it must decide whether to grant leave to amend. Leave to amend should be granted if there is a reasonable possibility that the defect can be cured by amendment. Plaintiff has the burden of proving that there is a reasonable possibility that the defect can be

		cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) This is the fifth pleading Plaintiff has filed. Plaintiff has not met her burden of proving there is a reasonable possibility that the defects in the pleading can be cured by amendment. The demurrer is sustained without leave to amend. Moving Defendant to give notice. **Motion to Strike.** Defendant First Team Real Estate – Orange County moves to strike portions of the Fourth Amended Complaint filed by Plaintiff Jie Li. For the following reasons, the motion to strike is DENIED without prejudice. This motion was filed on December 11, 2023, and originally set for hearing on March 27, 2024. Defendant served the motion on Plaintiff – who at the time was not represented by counsel – by email on December 11, 2023. (ROA 457.) California Rules of Court, Rule 2.251(c)(3)(B) provides that self-represented parties "are to be served by non-electronic methods unless they affirmatively consent to electronic service." Code of Civil Procedure section 1010.6 provides for electronic service of documents in cases filed on or after January 1, 2019, but section 1010.6 subdivision (d)(4) states that local rules requiring electronic filing and service must make unrepresented persons exempt from mandatory electronic filing and service. There is no evidence Plaintiff consented to electronic service. Moving Defendant to give notice.
3	Rivera Recycling, Inc. vs. B & S Haster, LLC	**OFF CALENDAR**
4	Oviedo Andino vs. General Motors, LLC	**TENTATIVE RULING:** **Motion to Compel Deposition** Plaintiff Dennis Rafael Oviedo moves to compel Defendant General Motors LLC to designate and produce for deposition its Person(s) Most Qualified on all categories identified in Plaintiff's Amended Notice of Deposition of the of the Person Most Qualified and Demand to Produce Documents at Deposition. For the

		following reasons, hearing on the Motion is CONTINUED to June 12, 2024, at 9:00 a.m. in this Department. Trial is continued to 2/3/25, and the pre-trial conference is continued to 1/31/25, both at 9:00 a.m. in this Department. All discovery and motion cut-off dates will correspond to the new trial date. The court has reviewed the Complaint in this case. Based on that review, the court tentatively finds that the Complaint does not contain allegations sufficient to support venue in Orange County. Thus, the court hereby sets for hearing an OSC re Change of Venue, to be heard in this Department on 5/22/24 at 9:00 a.m. Any written response to the OSC re Change of Venue must be filed at least 5 court days prior to the hearing. The court orders that any such written response include a true and correct copy of the sales/lease agreement of the vehicle at issue. Plaintiff to give notice.
5	Saucedo vs. General Motors, LLC	**TENTATIVE RULING:** **Motion to Compel Deposition** Plaintiff Samuel Saucedo moves to compel Defendant General Motors LLC to designate and produce for deposition its Person(s) Most Qualified ("PMQ") on all categories (the "Categories") identified in Plaintiff's Amended Notice of Deposition of the of the Person Most Qualified and Demand to Produce Documents at Deposition (the "Deposition Notice"). For the following reasons, hearing on the Motion is CONTINUED to June 12, 2024, at 9:00 a.m. in this Department. Trial is continued to 2/3/25, and the pre-trial conference is continued to 1/31/25, both at 9:00 a.m. in this Department. All discovery and motion cut-off dates will correspond to the new trial date. The court has reviewed the Complaint in this case. Based on that review, the court tentatively finds that the Complaint does not contain allegations sufficient to support venue in Orange County. Thus, the court hereby sets for hearing an OSC re Change of Venue, to be heard in this Department on 5/22/24 at 9:00 a.m. Any written response to the OSC re Change of Venue must be filed at least 5 court days prior to the hearing. The court orders that any

		such written response include a true and correct copy of the sales/lease agreement of the vehicle at issue. Plaintiff to give notice.
6	Asics America Corporation vs. Shoebacca Ltd.	**TENTATIVE RULING:** For the reasons set forth below, Defendant and Cross-Complainant Shoebacca, Ltd.'s Motion to Seal Confidential Documents is GRANTED. Plaintiff's Motion to Seal is also GRANTED. Plaintiff and Cross-Defendant's "Answer to Defendant and Cross-Complainant Shoebacca, Ltd.'s Third Amended Cross-Complaint" is sealed. [ROA # 1092] Defendant's Motion to Reopen the Deposition of Travis Velez [ROA # 1033], the Declaration of Braden M. Wayne [ROA # 1024], and Exhibits B, C, I, J, K, L, M, and N to the Wayne Declaration [ROA # 1025-1032], are sealed. **Statement of Law** "Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c); *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1079.) "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) "A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." (Cal. Rules of Court, rule 2.551(b)(1); see Cal. Rules of Court, rule 2.551(b)(2) [motion must be served on all parties]; see also Cal. Rules of Court, rule 2.551(b)(4)-(b)(5), (d) [rules regarding lodging of redacted and unredacted records].) The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d); *Timothy W. v. Julie W*. (2022) 85 Cal.App.5th 648, 301; *In re Marriage of Tamir*, *supra*, 72 Cal.App.5th at p. 1079; see *Kirk v. Ratner* (2022) 74 Cal.App.5th 1052, 1056, fn. 2 [settlement agreement obligated any party petitioning to vacate the arbitrator's award to seek an order sealing all documents in the court file, and the superior court granted motions by all parties to seal all documents filed with the court].)

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON (DATE)," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in electronic form, the clerk must file the court's order, maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2) The order must state whether--in addition to the sealed records--the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) The order must state whether any person other than the court is authorized to inspect the sealed record.

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed.

(Cal. Rules of Court, rule 2.551(e).)

(1) An order sealing the record must:

(A) Specifically state the facts that support the findings; and

(B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

(Cal. Rules of Court, rule 2.550(e).)

"While the findings may be set forth in cursory terms, '[i]f the trial court fails to make the required findings, the order is deficient and cannot support sealing.' [Citation.]" (*In re Marriage of Tamir*, *supra*, 72 Cal.App.5th at p. 1079.)

Defendant's Motion to Seal

In *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, the amended and consolidated complaint was filed under seal, as the complaint included 17 exhibits that had been previously produced by plaintiff in discovery with a confidentiality designation. (*Mercury*, *supra*, 158 Cal.App.4th at pp. 68-69.) The trial court granted the media's motion to unseal the Complaint. (*Id.* at pp. 69, 71.)

After a thorough analysis of *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 and its holding that documents filed "as a basis for adjudication[1]" were subject to a First Amendment right of access, the *Mercury* court explained that "[d]iscovery material is not automatically submitted 'as a basis for adjudication'—and thus does not perforce become accessible to the public—simply by virtue of it becoming a part of the court file." (*Mercury*, *supra*, 158 Cal.App.4th 60, 90; see *Id*. at p. 93 ["the court would have had no need to use the qualifying phrase 'as a basis for adjudication' if it had meant that case authority supported a right of access to discovery material once it became part of the court's file" and "the California Supreme Court recognized a clear distinction between court-filed documents that are used at trial or

[1] The term "submitted as a basis for adjudication" "embraces discovery materials submitted in support of and in opposition to substantive pretrial motions, regardless of the ground on which the trial court ultimately rules." (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 497.)

to otherwise adjudicate a controversy and those that serve no function but are merely part of the pretrial discovery process"].) Instead, the term "as a basis for adjudication" meant the subject documents "were submitted to the trial court for its consideration in deciding a substantive matter in that action." (*Mercury, supra*, 158 Cal.App.4th at p. 91.) For example, " '[o]nce the documents are made part of a dispositive motion, such as a summary judgment motion, they "lose their status of being 'raw fruits of discovery.' " [Citation.]' [Citation.]" (*Ibid*.)

> The Supreme Court in *NBC Subsidiary*, drawing upon prior United States Supreme Court cases and other authorities, identified several policy justifications supporting the constitutional right of access to the courts. The court summarized these rationales as follows: "[P]ublic access plays an important and specific structural role in the conduct of such proceedings. Public access to civil proceedings serves to (i) demonstrate that justice is meted out fairly, thereby promoting public confidence in such governmental proceedings; (ii) provide a means by which citizens scrutinize and check the use and possible abuse of judicial power; and (iii) enhance the truthfinding function of the proceeding. [Citation.]" [Citation.]
>
> It cannot be said that public access to *any* court-filed civil discovery documents—regardless of their relevance to the issues in the case, the circumstances of their filing, or the extent of their use in the proceedings—promotes any or all of these three objectives. Public access to a discovery document that is not considered or relied on by the court in adjudicating any substantive controversy does nothing to (1) establish the fairness of the proceedings, (2) increase public confidence in the judicial process, (3) provide useful scrutiny of the performance of judicial functions, or (4) improve the quality of the truthfinding process.

(*Mercury, supra*, 158 Cal.App.4th 60, 96–97.)

Further, the *Mercury* court held, "[t]he comments of the Advisory Committee … make it clear that the sealed records rules[2] do not apply to the situation here: 'The sealed records rules also do not

[2] Cal. Rules of Court, rule 2.550 and 2.551

		apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. [Citation.]' [Citation.]" (*Mercury, supra,* 158 Cal.App.4th 60, 100; see *Id.* at p. 101 [confirming the sealed records rules, read consistently with *NBC Subsidiary*, do not apply to discovery materials not used at trial or submitted as a basis for adjudication].) The "mere act of attaching the discovery materials as exhibits to the Complaint did not result in them being submitted as a basis for adjudication within the ambit of the rules. While the importance of a complaint in framing the claims and issues presented in civil litigation cannot be downplayed, we disagree that any material attached to it—such as the discovery material designated confidential pursuant to a duly entered protective order here—necessarily is 'submitted as a basis for adjudication.' The pleadings, including complaints, are not typically evidentiary matters that are submitted to a jury in adjudicating a controversy. [Citation.]" (*Mercury, supra,* 158 Cal.App.4th 60, 103.) The *Mercury* court also explained that parties to civil litigation often enter into stipulations for protective orders that permit production, but limit the disclosure and use of discovered information that the producing party deems as containing confidential, proprietary and/or private information. (*Mercury, supra*, 158 Cal.App.4th at p. 98.) "Were we to find a presumed right of access to any discovery material filed with the court—irrespective of whether it has been previously designated confidential pursuant to a protective order, or has been submitted in connection with trial or a dispositive motion—we would invite myriad discovery skirmishes wherever a party is faced with producing material in discovery that it considers confidential. We are not unmindful of the ever-increasing costs of civil litigation and involvement of courts in the policing of all types of pretrial matters; we have no desire to add to those litigation costs and court burdens by creating unnecessary disincentives to the resolution of discovery controversies. [Citation.]" (*Id.* at p. 99.) Similar to the holding in *Mercury*, the facts alleged in an Answer, much like the allegations of a Complaint, are not submitted as a basis for the adjudication of Defendant's claims, or Plaintiff's affirmative defenses. (*Mercury, supra,* 158 Cal.App.4th 60, 103; accord, *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 494.) Since *Mercury* addresses a parallel situation, and since rules 2.550 and 2.551 of the Rules of Court do not apply, it is not necessary for

		Defendant to establish an overriding interest that overcomes the public right of access. Moreover, the subject information stems from documents produced in discovery, and which were marked as either Confidential, or Attorney's Eyes Only, under the Protective Order. (Kelly Declaration, ¶ 4.) If the Answer were not sealed, the Court "would invite myriad discovery skirmishes," as it would disincentivize parties from entering into protective orders that can be easily circumvented. (See *Mercury, supra*, 158 Cal.App.4th at pp. 98-99.) Other than the Court, no persons or parties are authorized to inspect the sealed record. The sealed material may not be disclosed in anything that is subsequently publicly filed. (Cal. Rules of Court, rule 2.551(e).) **Plaintiff's Motion to Seal** The subject Motion to Reopen Discovery references Plaintiff's non-public information regarding its business practices and strategies, as well as its inventory management and strategies, as well as the medical condition of one of Plaintiff's employees, and this information was obtained through discovery, or through communications relating to discovery. Further, the subject documents were designated as Confidential pursuant to the parties' Stipulation and Protective Order. (Durken Declaration, ¶¶ 4-5; Wedel Declaration, ¶¶ 2-4.) (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 503 [the right to privacy extends to one's confidential financial affairs].) Since Defendant has not challenged the sealing of the subject documents, and it has not raised any arguments, or produced any evidence, that would override Plaintiff's right to privacy, the Court finds Plaintiff has met its burden to seal the subject records. (Cal. Rules of Court, rule 2.550(d); see *In re Marriage of Tamir, supra*, 72 Cal.App.5th at p. 1088 [while party may have general right to privacy, it should identify any specific prejudice or privacy concerns that would override the right to public access].) Other than the Court, no persons or parties are authorized to inspect the sealed record. The sealed material may not be disclosed in anything that is subsequently publicly filed. (Cal. Rules of Court, rule 2.551(e).) Plaintiff to give notice.

7	Hong vs. Nguyen	**TENTATIVE RULING:** For the reasons set forth below, Plaintiffs Danh Hong and Nhu Thuan T. Nguyen's Motion to Quash Defendant Ngoc Hong Nguyen's Deposition Subpoenas for Production of Business Records to Bank of America and National Life Group is DENIED. The Court DENIES both parties' requests for an award of their reasonable expenses incurred in making or opposing the motion. The Court OVERRULES Plaintiffs' evidentiary objections. **Statement of Law** "Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum." (Code Civ. Proc., § 1985.3, subd. (g).) "Personal records" include "any copy of books, documents, other writings, or electronically stored information pertaining to a consumer and which are maintained by any 'witness' which is a … state or national bank, state or federal association …, state or federal credit union, … insurance company…." (Code Civ. Proc., § 1985.3, subd. (a)(1).) "If a subpoena requires … the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." (Code Civ. Proc., § 1987.1, subd. (a).) While the scope of discovery is broad (Code Civ. Proc., § 2017.010), it is not unlimited. Even where information may be highly relevant and non-privileged, it may still be shielded from discovery if its disclosure would impair a person's inalienable right of privacy, as guaranteed by both the United States and California Constitutions. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 855-

856; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370.)

A bank customer has an expectation of privacy as to his bank statements. (*Burrows v. Superior Court* (1974) 13 Cal.3d 238, 243; accord, *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 480-481.) This is because "the state's privacy provision 'extends to one's confidential financial affairs," and the bank customer has the "'"reasonable expectation … that, *absent compulsion by legal process*, the matters he reveals to the bank will be utilized by the bank for internal banking purposes."' [Citations.]" (*Pioneer, supra,* 40 Cal.4th at p. 368.)

However, this privilege is not absolute. "[T]he right to privacy protects the individual's *reasonable* expectation of privacy against a serious *invasion*." (*Pioneer, supra*, 40 Cal.4th at p. 370.) In each case, the court must carefully balance the right of privacy against the need for discovery; in some cases, a simple balancing test is sufficient while, in others, a compelling interest must be shown. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 34-35; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557 [disapproving cases that required a party seeking discovery of private information to always establish compelling interest or need, without regard to the other considerations articulated in *Hill*].)

"To protect a bank customer's privacy rights, we employed a balancing test, '[s]triking a balance between the competing considerations, … before confidential customer information may be disclosed in the course of civil discovery proceedings, the bank must take reasonable steps to notify its customer of the pendency and nature of the proceedings *and to afford the customer a fair opportunity to assert his [or her] interests by objecting to disclosure*, by seeking an appropriate protective order, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered.' [Citations.]" (*Pioneer*, *supra*, 40 Cal.4th at pp. 368-369.)

Plaintiff's Evidentiary Objections

With their Reply, Plaintiffs object to pages 1:7-1:8, 1:14-1:17, 1:17-1:25, 1:26-2:1, 2:2-2:22, 2:23-3:12, 8:21-8:27, and 9:8-9:15 to the Opposition, along with the entirety of Defendant's Declaration.

The Court overrules all of Plaintiffs' objections. Plaintiffs' objections to the arguments made in the Opposition, which appear

to actually be objections to Defendant's declaration, are not true evidentiary objections. "Instead, the purported objections are merely a premise for arguing with the conclusions stated in [Defendant's] declarations," such that these objections "go to the weight to be given the declarations, not their admissibility." (*City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458, 464.)

As for the objection to the entirety of Defendant's declaration, the Court overrules the objections on the following grounds:

- Contrary to Plaintiffs' contention, the statements made in Defendant's declaration are relevant, as they addresses why Defendant has issued the subject subpoenas.
- Plaintiffs have not explained how the probative value of Defendant's declaration is substantially outweighed by the probability its admission will necessitate undue consumption of time, or create a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.
- There is a proper basis for Defendant's opinions regarding the alleged undue influence that a third party has allegedly exerted on Plaintiff Danh Hong.
- Evidence Code section 1400 does not apply, as Defendant's declaration did not include any documents.
- Plaintiffs have not specifically identified which statements constitute hearsay.

In addition, "[i]t has long been the rule in this state, as well as elsewhere, that objections to the admissibility of evidence, in order to have weight and to merit attention, must be specific." (*Root v. Conlin* (1924) 65 Cal.App. 241, 243.) "Where a party objects to the admission of testimony on trial, he must state the point of his objection at the time. General objection will not do. The party should lay his finger on the point at the time of trial, otherwise this Court cannot review it." (*Martin v. Travers* (1859) 12 Cal. 243, 243.) Rather than providing specific objections to Defendant's declaration, Plaintiffs instead generally object to the entirety of the declaration. This is inadequate.

Analysis

Plaintiffs contend they have a right of privacy as to their financial information, including their bank statements and life insurance policy, and they maintain Defendant cannot establish a compelling interest to warrant the production of the documents.

		In evaluating claims for protection of bank customers, the court should consider " '. . . the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances.' [Citation.] Where it is possible to do so, '. . . the courts should impose partial limitations rather than outright denial of discovery.' [Citation.]" (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 658; accord, *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 481.) While the Court must balance Plaintiffs' reasonable expectation of privacy as to their financial affairs, with Defendant's right to discover relevant facts, Plaintiffs have not cited any law to support their claim that Defendants must establish a compelling interest before the bank statements and life insurance documents are subject to discovery. *Valley Bank* and *Fortunato*, which both addressed the discovery of financial information, only referenced the need to perform a balancing test. *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, which Plaintiffs cite in their Motion, is distinguishable, as that case addressed the right of privacy as to the plaintiff's psychotherapist's records. (*Davis*, *supra*, 7 Cal.App.4th at pp. 1013-1020.) Thus, it does not support Plaintiffs' contention that Defendant must show a compelling need for financial documents. In their meet-and-confer letter, Plaintiffs cited to *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1854 for the proposition that "[t]he party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." However, the California Supreme Court held a number of cases, including *Lantz*, were incorrect in requiring a "compelling interest" or "compelling need" before a party could obtain discovery implicating the constitutional right of privacy. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 556-557; see *Id.* at p. 557, fn. 8 [disapproving *Lantz* to the extent it assumed a compelling interest or compelling need automatically required, and without regard to the other considerations articulated in *Hill*].)

		Plaintiffs also contend their Motion should be granted because the information is not directly relevant to a cause of action or defense, and because the disclosure would not be essential to the fair resolution of the lawsuit. The court disagrees. Plaintiffs allege, among other things, that Defendant unduly influenced them to transfer money to her, and then refused Plaintiffs' periodic requests for funds to pay for their expenses. In doing so, it is alleged Defendant left Plaintiffs unable to pay their mortgage or expenses, and she deprived them of the comfortable life she had promised them. Plaintiffs further allege, after obtaining power of attorney, Defendant has been attempting to obtain information regarding Plaintiff Danh Hong's life insurance policy, which they allege may result in the loss of Plaintiff Danh Hong's life insurance benefit. Based on Plaintiffs' own allegations, the financial information sought is directly relevant, even if, as Plaintiffs argue in their Reply, "the Complaint is not an action to establish or contest a conservatorship." In addition, Defendant has alleged in her Verified Answer that she stopped disbursing funds to Plaintiffs when she learned Plaintiff Danh Hong was being unduly influenced by a third-party. (See also Nguyen Declaration, ¶¶ 2, 10-16.) While Plaintiffs deny this allegation (Declaration of Danh Hong, ¶ 19(j)-(k)), and while they describe Defendant as a bad actor who is attempting to enrich herself at her parents' expense, these are questions of fact, which warrant discovery. Further, the subpoenas to Bank of America only seek documents from seven accounts, and 11 credit cards, and only from June 1, 2021, to present. Similarly, the subpoena to National Life Group only seeks "all documents concerning to, but not limited to, Life Insurance Policies, including any changes in beneficiaries or borrowing against policies from June 21, 2021, to the present," and only as to two insurance policies. (Exhibit 1 to Griffith Declaration.) This timeframe corresponds with Plaintiffs' allegations that Defendant's pattern of undue influence continued in 2021 when she hired an estate planning attorney, and then forced Plaintiffs to execute certain estate documents that deprived Plaintiffs of the funds they needed to pay their bills and to live comfortably. This is also consistent with the timeframe when it is alleged Defendant attempted to obtain information from National Life.

		Further, the subpoenas are not overbroad in scope, as the bank and credit card accounts, as well as the life insurance policies, would shed light into Defendant's allegation that Plaintiff Danh Hong has been siphoning money to third parties who have supposedly been unduly influencing him, or that Plaintiff Danh Hong named these third parties as beneficiaries to his life insurance policies. Given the foregoing, permitting the discovery would advance the purposes of the discovery statutes, namely, eliminating surprise at trial, educating the parties concerning their claims and defenses so as to encourage settlements and to expedite and facilitate trial, and minimizing opportunities for fabrication and forgetfulness. (*Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1249.) Plaintiffs also contend that Defendant has not established good cause for the production of the documents. They also complain that Defendant did not first propound specific discovery seeking this information, nor did she meet and confer with Plaintiffs. However, they have not cited to any law requiring Defendant to establish good cause, to first propound discovery, or to meet and confer, before serving the subpoenas. Finally, Plaintiffs contend the subpoenas were not personally served. (Exhibit 1 to Griffith Declaration.) However, Defendant has presented evidence to the contrary. (Exhibit A to Becker-Zymet Declaration.) While Plaintiffs have a reasonable expectation of privacy as to their financial affairs, in balancing the parties' interests, it cannot be said that Defendants' subpoenas constitute a serious invasion of that privacy interest. Further, Plaintiffs' interests can be protected by way of a protective order, which the parties are ordered to prepare (See Code Civ. Proc., § 1987.1, subd. (a) [court may direct compliance with a subpoena "upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person"]; see *Hill, supra*, 7 Cal.4th 1, 38 ["if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged"].)

		Sanctions "Except as specified in subdivision (c), in making an order pursuant to motion made under subdivision (c) of Section 1987 or under Section 1987.1, the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive." (Code Civ. Proc., § 1987.2, subd. (a).) Since the Court denies Plaintiffs' Motion, it denies their request for $3,380.00 in sanctions. (Griffith Declaration, ¶¶ 7-9.) " 'Substantial justification' means 'that a justification is clearly reasonable because it is well grounded in both law and fact. [Citations.]' [Citation.]" (*Vasquez v. California School of Culinary Arts, Inc.* (2014) 230 Cal.App.4th 35, 40; *Evilsizor v. Sweeney* (2014) 230 Cal.App.4th 1304, 1312.) While Plaintiffs' Motion is ultimately unsupported by the law, Plaintiffs' expectation of privacy as to their financial documents, along with their objection to the subpoenas, was reasonable. Thus, the Court finds the Motion was not made in bad faith or without substantial justification. Defendant's request for sanctions is denied. Defendant to give notice.
8	Pham vs. Pettengill	**TENTATIVE RULING:** **Motion to Be Relieved as Counsel of Record.** The unopposed motion of Attorney Michael M. Marzban to be relieved as counsel of record for Plaintiff Mary T. Pham is GRANTED. The order relieving counsel will be effective upon the filing of a proof of service of the executed order upon all parties. Moving counsel to give notice and file a proof of service of such notice
9	Pham vs. Pham	**TENTATIVE RULING:** **Motion to Be Relieved as Counsel of Record**. The unopposed motion of the Attorney Christopher P. Lyon to be relieved as counsel of record for Defendant Ngan Thi Kim Pham is

		GRANTED. The order relieving counsel will be effective upon the filing of a proof of service of the executed order upon all parties. Moving counsel to give notice and file a proof of service of such notice.
10	Samadi vs. Miranda	**OFF CALENDAR**
11	Wells Fargo Bank vs. Hellman	**TENTATIVE RULING:** **Motion to Vacate.** Plaintiff Wells Fargo Bank, N.A. moves to vacate the dismissal and enter judgment against Defendant Cheyenne Hellman pursuant to the parties' stipulation. For the following reasons, the hearing on this motion is CONTINUED to May 22, 2024, at 9:00 a.m. in Department N16. Plaintiff served the motion on Defendant at 1010E Yorba Linda Blvd, Apt 1083, Placentia, CA 92870. According to the most recent document filed by Defendant, a Case Management Statement filed on June 23, 2022, Defendant is represented by Daniel S. March in Tustin. No substitution of attorney has been filed. According to the Stipulation for Entry of Judgment executed by Defendant, "All notices, correspondence or communications of any type from Plaintiff to Defendant shall be directed to Defendant, unless Plaintiff is otherwise directed by Defendant, or someone acting on Defendant's behalf. Furthermore, notices maybe sent by fax or email." (Mulhorn Dec., Ex. 1 at ¶ 14.) But this motion is not a "notice, correspondence, or communication." Plaintiff shall serve the motion on Defendant's counsel of record at least 16 court days before the continued hearing. Plaintiff to give notice.
12	Californians For Homeownership, Inc. vs. City of La Habra	**CONTINUED TO 5/1/24**
13		
14		