TENTATIVE RULINGS

DEPT C21

LAW AND MOTION CALENDAR

Judge Deborah C. Servino

Date: May 3, 2024

Please read the applicable rules carefully. Do not call the department unless submitting on the tentative.

The court will endeavor to post tentative rulings on the Court's website by 3 p.m. on the preceding Thursday. However, ongoing proceedings may prevent posting by that time. Do not call the department for tentative rulings if none are posted. The court will not entertain a request for continuance once a ruling has been posted and no additional papers will be considered once a ruling has been posted.

If you wish to submit on the tentative and do not want to appear, please inform the clerk by calling **(657) 622-5221**, and inform opposing counsel.

The Law and Motion Calendar is heard on Fridays at 10 a.m. All arguments will be heard at that time. Unless otherwise indicated in the tentative ruling, the prevailing party will give Notice of Ruling. If no one appears for the hearing, the court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

APPEARANCES: The Court offers remote appearances for the Law and Motion Calendar via Zoom. All counsel and self-represented parties appearing remotely for the Law and Motion Calendar must check-in online through the Court's website at **https://www.occourts.org/media-relations/civil.html,** then click on the gold ribbon that states "Click here to appear/check-in for civil small claims/limited/unlimited/complex remote proceedings", and then click on Department C21 (to check-in). However, counsel and self-represented parties preferring to appear in-person may do so. The Court's "Appearance Procedures and Information - Civil Unlimited," "Guidelines for Remote Appearances," remote video appearance instructions, Orange County Superior Court Local Rule 375 on Remote and In-Person Proceedings in Civil, Administrative Order No. 23/06 (Updated Remote Appearance Guidelines for Civil and Probate), and an instructional video are also available through the Court's website at **The Superior Court of California - County of Orange (occourts.org).** If you encounter difficulty checking-in online or connecting remotely, please call Department C21 for assistance at (657) 622-5221.

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are NOT typically provided for law and motion matters in this department. Please see the Court's website for further information. The Court's policy on privately-retained court reporters is available on the Court's website at: Privately-Retained Court Reporter Policy.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

#	Case Name	Tentative
50	Estrada v. Morales 30-2023-01312608	Defendant Troyce Morales' motion to compel Plaintiff Lester Estrada's response to the first set of demand for production of documents is granted. A propounding party may move for an order compelling responses to a demand for inspection at any time "[i]f a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response." (Code Civ. Proc., § 2031.300, subd. (b).) By failing to serve timely responses, Plaintiff waived "any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010)." (Code Civ. Proc., § 2031.300, subd. (a).) On April 14, 2023, Defendant properly served the demand for production of documents on Plaintiff. (Sims Decl., at ¶ 2; Exh. A.) Plaintiff's counsel acknowledged receipt of the discovery and requested several extensions of time to provide responses. (Sims Decl., at ¶ 3; Exh. B.) On December 8, 2023, the court granted Plaintiff's counsel's motion to be relieved as counsel. (12/8/2023 Minute Order.) After Plaintiff's counsel was relieved as counsel for Plaintiff and before the motion was filed, defense counsel attempted to speak with Plaintiff about the outstanding discovery. However, Plaintiff refused to discuss the case. At the time the motion was filed, no response to the demand for production of documents had been filed. (Sims Decl., at ¶ 4.) Accordingly, the court grants the motion to compel Plaintiff to provide a response to the first set of demand for production of documents. Plaintiff is ordered to provide Code-compliant, verified responses, without objections, to this discovery within 20 days of the notice of rulings. Defendant is awarded sanctions against Plaintiff. Within 30 days of the notice of ruling, Plaintiff shall pay $510 to Law Offices of Brian P. Smith & Associates. Defendant shall give notice of the ruling.
51	Hyatt v. City of Fountain Valley, et al. 30-2022-01290088	Cross-Defendant David James Eulberg's application for a determination of good faith settlement is denied. Defendant City of Fountain Valley's (the "City") motion to contest the application for determination of good faith settlement is granted. Eulberg filed an application for a determination that his settlement with Plaintiff William Hyatt, IV has been made in good faith under Code of Civil Procedure section 877.6. Eulberg settled with Plaintiff for $15,000, which is the policy limit of the only applicable insurance policy he had at the

time of the subject accident. Defendant City of Fountain Valley filed a timely motion to contest Eulberg's application for determination of good faith settlement.

Code of Civil Procedure section 877.6 applies to a settlement between a plaintiff and an alleged tortfeasor or an alleged co-obligor on a contract debt. (Code Civ. Proc., § 877.6, subd. (a)(1).) Section 877.6 allows a settling defendant or cross-defendant to obtain a determination that its settlement is in good faith and, thus, by operation to bar actions for "equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc., § 877.6, subd. (c); see *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1019 ["a settlement—even if in good faith—does not relieve the settling defendant from performing the contractual indemnification obligations"].) "Equity is the aim of section 877.6. The dual equitable goals of section 877.6 are: 'equitable sharing of costs among the parties at fault and encouragement of settlements.'" (*Long Beach Mem. Med. Ctr. v. Superior Court* (2009) 172 Cal.App.4th 865, 872, citation omitted.)

As to the good faith determination itself, there is no precise yardstick for measuring "good faith" of a settlement with one of several tortfeasors. But it must harmonize the public policy favoring settlements with the competing public policy favoring equitable sharing of costs among tortfeasors. To accomplish this, the settlement must be within the "reasonable range" (within the "ballpark") of the settling tortfeasor's share of liability for the plaintiff's injuries. (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499.) Whether the settlement was within the "good faith ballpark" is to be evaluated on the basis of information available, including:

- A rough approximation of plaintiffs' total recovery and the settlor's proportionate liability;
- The amount paid in settlement;
- A recognition that a settlor *should* pay less in settlement than if found liable after a trial;
- The allocation of the settlement proceeds among plaintiffs;
- The settlor's financial condition and insurance policy limits, if any; and
- Evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the nonsettling parties pay more than their fair share.

(*Ibid*.) The most important factor is the settling party's proportionate liability. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1350.) A court must consider not only the settlor's potential liability to the

		plaintiff, but also its proportionate share of culpability as among all parties alleged to be liable for the same injury. (*TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal. App. 4th 159, 166.) Also, simply because the alleged damages are large, does not automatically justify a higher settlement amount. Pursuant to *Horton v. Superior Court* (1987) 194 Cal.App.3d 727, 734, "practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be." The party asserting the lack of good faith bears the burden of proof on that issue. (*Dole Food Co., Inc. v. Superior Court* (2015) 242 Cal.App.4th 894, 909; Code Civ. Proc., § 877.6, subd. (d).) Where the nonsettling defendant contests "good faith," the moving party must make a sufficient showing of all the *Tech-Bilt factors*. Such showing may be made either in the original moving papers or in counter-declarations filed after the nonsettling defendant has filed an opposition challenging good faith of the settlement. (*City of Grand Terrace v. Superior Court (Boyter)* (1987) 192 Cal.App.3d 1251, 1262.) For instance, the nonsettling tortfeasor has the burden of demonstrating that the settlement is "so far 'out of the ballpark' in relation to these (*Tech-Bilt*) factors as to be inconsistent with the equitable objectives of the statute." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assocs*., *supra,* 38 Cal.3d at pp. 499-500.) In his motion, Eulberg asserts: (1) the accident happened "as he exited the private shopping center making a right turn onto westbound Ellis Avenue, at which time Plaintiff, WILLIAM HYATT, IV., who was riding an electric scoter [sic] eastbound on Ellis Avenue, struck Mr. Eulberg's vehicle."; (2) Plaintiff "told the investigating officer he did not see Mr. Eulberg exiting the parking lot."; and (3) Eulberg "told the officer he was looking towards oncoming traffic, and he did not see [Plaintiff]." (Eulberg Mot. at p. 4 [ROA 132].) Plaintiff's version of events is somewhat different. According to his form interrogatory response, just before the accident, he "was traveling eastbound in the bike lane on Ellis towards Brook Hurst. David Eulberg was traveling through the parking lot and was exiting the parking lot, attempting to make a right turn onto Ellis westbound." At the time of the accident, Eulberg, "looking in the opposite direction of [Plaintiff], very briefly performed a rolling stop before accelerating to beat oncoming traffic. As [Plaintiff] was yelling 'stop', he had jumped off of his scooter and was instantly impacted my [sic] David Eulberg vehicle. [Plaintiff] was hit by the vehicle and launched into the air, while his scooter went under the

		vehicle." (Brennan Decl. at ¶ 5, Exh. A, Response to Form Interrogatory no. 20.8 [ROA 145].) The court must consider Eulberg's proportionate share of culpability as among all the parties alleged, i.e., between him and the City. Plaintiff's theory against the City is that there was a dangerous condition because a stop sign was obstructed by tall vegetation at the exit of a busy shopping center. (FAC, at ¶¶ 12-13.) Eulberg indicates, that "[a] stop sign controlled the exit". (Eulberg Mot. at p. 4.) However, based on the version of the events as told by Eulberg and Plaintiff, the City's culpability appears to be minimal compared to Eulberg's culpability. The court must also consider Eulberg's potential liability to Plaintiff. According to Plaintiff's interrogatory responses, there was a $52,399 bill from UCI Health for emergency services and $2,078.32 from Lawrence Miller for pain management. (Brennan Decl., Exh. A, Response to Form Interrogatory no. 6.7.) At the time of the interrogatory responses, he still had complaints that he attributed to the accident. (Brennan Decl., Exh. A, Response to Form Interrogatory no. 6.3.) He also attributed property damage of $800 for the damage to his electric scooter, and $640 for his clothes worn during the accident. (Brennan Decl., Exh. A, Response to Form Interrogatory no. 7.1.) The total amount of income he lost as a result of the accident was $13,200. (Brennan Decl., Exh. A, Response to Form Interrogatory no. 8.7.) He has not been able to work since the date of the accident. (Brennan Decl., Exh. A, Response to Form Interrogatory no. 8.6.) The court acknowledges that "damages are often speculative" and the "probability of legal liability therefore is often uncertain". (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1262.) According to Plaintiff's interrogatory responses, his damages are well-above the settlement amount. In addition, these damages do not include any future damages or noneconomic damages. Finally, Eulberg stated in his motion that he has "no assets." (Eulberg Mot., at p. 7.) His declaration is entitled "Declaration of No Assets", but his declaration does not actually support that assertion. Even after the City pointed this out in its motion (see City's Mot., at p. 5), Eulberg does not satisfactorily address this noted deficiency. He simply restates in his opposition to the City's motion that he has no assets besides his insurance policy limit. (Opp., at p. 5 [ROA 162].) After considering the *Tech-Bilt* factors, the court is unable to make a determination of good faith settlement. Accordingly, Eulberg's application is denied.

		The City shall give notice of the ruling.
52	Joharifard v. Bat Inc., et al. 30-2012-01286749	Plaintiff Mostafa Joharifard's moves to compel Defendant BAT, Inc. to provide responses to: (1) form interrogatories - employment, set one; and (2) request for production, set one. As to BAT, Inc., Plaintiff also moves to deem admitted the requests for admissions, set one. <u>Legal Standard</u> A propounding party may move for an order compelling responses to interrogatories at any time "[i]f a party to whom interrogatories are directed fails to serve a timely response." (Code Civ. Proc., § 2030.290, subd. (b).) By failing to serve timely responses, BAT, Inc. waived "any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product." (Code Civ. Proc., § 2030.290, subd. (a).) A propounding party may move for an order compelling responses to a demand for inspection at any time "[i]f a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response." (Code Civ. Proc., § 2031.300, subd. (b).) By failing to serve timely responses, BAT, Inc. waived "any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010)." (Code Civ. Proc., § 2031.300, subd. (a).) A propounding party may move for an order to deem the truth of any matters specified in the requests be deemed admitted "[i]f a party to whom requests for admission are directed fails to serve a timely response." (Code Civ. Proc., § 2033.280, subd. (b).) By failing to serve timely responses, the party to whom requests are directed "waive[s] any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010)." (Code Civ. Proc., § 2033.280, subd. (a).) <u>Merits</u> On September 15, 2023, Plaintiff properly served BAT, Inc. with the first sets of form interrogatories – employment, requests for production of documents, and requests for admission. BAT, Inc. failed to timely serve responses. (Rasi Decls., at ¶ 4, Exhs. A.) Defense counsel confirmed receipt of the discovery at issue, but indicated that counsel intended to withdraw as counsel of record. Defense counsel also asserted that the case was stayed pending "the bankruptcy". When Plaintiff's counsel noted that Defendant The Litigation Practice Group, P.C. had filed a bankruptcy petition, and

		inquired whether defense counsel was referring to that bankruptcy or whether BAT, Inc. was also filing a bankruptcy petition, defense counsel did not respond. (Rasi Decls., at ¶¶ 5-7, Exhs. B.) At the time that the motions were filed, Plaintiff had not received any responses to the discovery at issue. (Rasi Decls., at ¶ 8.) The day before the instant motions were filed, defense counsel filed and served motions to be relieved as counsel. (ROA 97, 102, 107, 112, 117, 122.) Even though defense counsel did not respond to Plaintiff's counsel asking for clarification regarding defense counsel's reference to a bankruptcy, BAT, Inc. argued in its oppositions that defense counsel "meant to state that as it pertains to the Litigation Practice Group the case against them was stayed pending bankruptcy, which should have been clear based on the only notice of stay filed on March 27, 2023 with regard to the Litigation Practice Group." (Opps., at p. 2.) But Plaintiff's counsel's email indicated that it was unclear. The notice of stay was filed approximately six months before defense counsel's September 26, 2023 email which stated, "Moreover, as it pertains BAT, Inc. the case is staying [sic] pending the bankruptcy." (Rasi Decls., Exh. B; compare Notice of Stay of Proceedings [Box 2.b. marked that the case was stayed with regard to the party The Litigation Practice Group, P.C.]; see Cal. Rules of Court, rule 3.650(c) [requiring that a notice of stay must state whether the case is stayed with regard to all parties or only certain parties, and must specifically identify those parties].) Defense counsel's failure to respond to Plaintiff's counsel's email kept matters unclear. Contrary to BAT, Inc.'s contention, Plaintiff was not required to meet and confer before filing these motions. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.) Nevertheless, a courtesy letter is considered good practice. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶ 8:1143.) Accordingly, the court grants the motions to compel BAT, Inc. to provide responses to the first sets of form interrogatories - employment and request for production documents. BAT, Inc. is ordered to serve Code-compliant, verified responses, without objections, within 30 days of the notice of rulings. Unless Bat, Inc. serves Code-compliant responses to Plaintiff's first set of requests for admissions, prior to this hearing, the truth of the matters specified in the requests for admissions, set one, are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (c) [the court shall deem the matters admitted "unless it finds that the party to whom the requests for admission have been directed has served, before the

		hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220"]; see also *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 782 [actual compliance not required where the proposed response is facially a good-faith effort to respond to requests for admission in a manner that is substantially code-compliant].) It appears that on April 19, 2024, BAT, Inc. served unverified responses to requests for admissions. (Reply, at p. 3.) A response to a request for admission must be signed under oath unless the response contains only objections. (Code Civ. Proc., § 2033.240, subd. (a).) An unsworn response is not in substantial compliance for the purpose of section 2033.220. (*Allen-Pacific, Ltd. v. Superior Court* (1997) 57 Cal.App.4th 1546, 1550, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973.) In other words, unless BAT, Inc. serves verified responses to the requests for admissions prior to the hearing, the truth of the matters specified in the requests for admissions, set one, are deemed admitted. Plaintiff is awarded total sanctions of $2,542.50 against Defendant BAT, Inc. Within 30 days of the notice of ruling, BAT, Inc. shall pay $2,542.50 to Denis & Rasi, PC. Plaintiff shall give notice of the ruling.
53	Mid-Wilshire Property, L.P. v. Dr. Leevil, LLC 30-2015-00801555	Plaintiffs Mid-Wilshire Property, L.P. and Mid-Wilshire Health Care Center's motion to disqualify Ronald Richards as counsel for Defendant Dr. Leevil, LLC, is denied. A court has inherent power "to control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner pertaining thereto." (Code Civ. Proc., § 128, subd. (a)(5).) This includes the power to disqualify counsel in appropriate cases. (*In re Complex Asbestos Litig.* (1991) 232 Cal.App.3d 572, 575.) Plaintiffs argue that Richards' representation of Defendant would violate the advocate-witness rule. Rule of Professional Conduct 3.7(a) provides: (a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless: (1) the lawyer's testimony relates to an uncontested issue or matter; (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or (3) the lawyer has obtained informed written consent from the client. If the lawyer represents the People or a governmental entity, the consent shall be

		obtained from the head of the office or a designee of the head of the office by which the lawyer is employed. (Rules Prof. Conduct, rule 3.7(a).) The general rule is that an attorney may serve as both advocate and witness, testifying at trial concerning disputed issues, if the client has provided his or her informed written consent. "Disqualification of counsel when consent has been given must be based on a convincing showing of prejudice to the opposing party or the potential for palpable injury to the judicial process." (*Geringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 822-823.) "The court's discretion to disqualify a likely advocate-witness notwithstanding client consent - the exception to the exception - has been judicially interpreted to be permissible only upon 'a convincing demonstration of detriment to the opponent or injury to the integrity of the judicial process.'" (*Id.* at p. 822.) "[T]he trial court can disqualify counsel only where it is confronted with manifest interests which it must protect from palpable prejudice." (*Lyle v. Superior Court* (1981) 122 Cal.App.3d 4780, 482.) In exercising its discretion to disqualify counsel under the advocate-witness rule, this court must consider: (1) whether counsel's testimony is, in fact, genuinely needed; (2) the possibility that opposing counsel is using the motion to disqualify for purely tactical reasons; and (3) the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case. (*Geringer v. Blue Rider Finance, supra*, 94 Cal.App.5th at p. 822.) Here, based upon Plaintiffs' motion to disqualify, it appears that Plaintiffs knew of the grounds for disqualification at the latest by November 2019, during the previous trial. At that time, Plaintiffs were aware that Richards had percipient knowledge in his capacity as Defendant's manager. (See Pham Decl., Exh. C [Trial Exh. 18]; Exh. D, at p. 10; see Amd. Joint Witness List [ROA 811].) As the motion highlights, the Court of Appeal's opinion pointed out that Richards "wore at least two hats" as the manager and counsel for Defendant. (Mot., at p. 6.) On September 16, 2022, remittitur was issued on the Court of Appeal's opinion reversing the judgment in this case. (ROA 946.) On September 21, 2022, the case was reassigned to this Department for all purposes. (9/21/2022 Minute Order.) On November 8, 2022, Mid-Wilshire-Property, L.P. filed a renewed motion for judgment on the pleading. (ROA 960.) At the March 3, 2023 case management conference, the court scheduled trial for March 11, 2024. Yet, Plaintiffs did

		not file a motion to disqualify until January 16, 2024, less than two months before trial. It appears that Ronald Richards' testimony at trial will be necessary. However, Plaintiffs have implicitly waived the attorney disqualification by failing to bring the motion in a timely manner. (*Fiduciary Trust International of California F. Superior Court* (2013) 218 Cal.App.4th 465, 490.) Even if they have not waived the attorney disqualification, the court concludes from Plaintiffs' delay in seeking to disqualify Richards that they are using the motion for purely tactical reasons. This conduct weighs against disqualifying Richards. Plaintiffs have not presented a convincing demonstration of a potential for injury to the integrity of the judicial process that outweighs Defendant's strong interest in having representation by the counsel of its choice. Accordingly, the motion is denied. Defendant shall give notice of the ruling.
54	Taylor v. The Regents of the University of California, et al. 30-2023-01331153	As an initial matter, the court notes that Defendants The Regents of the University of California (the "Regents") and Michael Dennin filed as a single document their demurrer and motion to strike Plaintiff Roxanne Taylor's First Amended Complaint ("FAC"). (See ROA 66.) California Rules of Court, rule 3.1322(b) provides that a motion to strike must be heard at the same time as a demurrer. A well-regarded practice guide has noted that motions to strike and demurrers should be filed as separate documents. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 7:162.1.) In any event, Defendants only reserved one hearing for both the demurrer and motion to strike. Counsel are reminded that for future motions, accurate reservations for motions must be made so that the court can properly allocate resources. **DEMURRER** Defendants' demurrer to the first and second causes of action of the FAC is sustained. Plaintiff did not timely file an opposition to Defendants' demurrer. Failure to oppose the demurrer may be construed as having abandoned the claims. (See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) It is unclear whether Plaintiff will be able to cure the deficiencies, as Defendants have made valid arguments that there is no common law tort liability for public entities and Plaintiff cannot seek damages against the Regents for violating her state constitutional right to privacy. (See Gov. Code, § 818; *Quigley v. Garden Valley Fire Protection Deist.* (2019) 7 Cal.5th 798, 803; *Clausing v. S.F. Unified Sch. District* (1990) 221 Cal.App.3d 1224, 1238.) Out of an

		abundance of caution, the court grants Plaintiff 15 days leave to amend. **MOTION TO STRIKE** The Regents move to strike punitive damages allegations from the FAC. (Not., at p. 2.) Plaintiff asks for punitive damages in the third cause of action for wrongful disclosure of medical information (paragraph 26). She also asks for punitive damages in paragraph 2 in the Prayer for Relief. Government Code section 818 unambiguously exempts public entities from claims for punitive damages. (*Austin v. The Regents of Univ. of Cal.* (1979) 89 Cal.App.3d 354, 358.) Thus, the Regents' motion to strike is granted without leave to amend. Within 15 days of the notice of ruling, Plaintiff shall file a second amended complaint. If Plaintiff does not intend to file a second amended complaint, Plaintiff's counsel must give written notice to defense counsel within 15 days of the notice of ruling. Within 15 days of any written notice that Plaintiff does not intend to file a second amended complaint, Defendants shall file and serve an answer to the FAC, with the first and second causes of action having been abandoned. The case management conference is continued to August 2, 2024, at 9 am. Defendants shall give notice of ruling and of the continued case management conference.
55	Webb v. Aumaier 30-2020-01129964	Plaintiff Celia Webb's motion to set aside the dismissal of this action and for entry of judgment against Defendant Susan K. Aumaier pursuant to Code of Civil Procedure section 664.6, is denied. Code of Civil Procedure section 664.6 provides, in pertinent part: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." "If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc., § 664.6, subd. (a).) Under the stipulation re: entry of judgment, Defendant was to pay Plaintiff $35,500 in monthly payments beginning in October 2020 and continuing (in various amounts) through September 20, 2024. (Gaba Decl., Exh. 1 at ¶ 2.a.) If

		Defendant were to miss a payment, Plaintiff was to provide written notice to Defendant's counsel, Rutan & Tucker, LLP via email to Briana Richmond at brichmond@rutan.com. Defendant would then have three days to cure, otherwise she would be in default. (Gaba Decl., Exh. 1 at ¶ 6.) According to Plaintiff's counsel, Defendant has failed to make the entire scheduled monthly payments since October 20, 2022. (Gaba Decl., at ¶ 5.) On January 9, 2024, Plaintiff's counsel emailed notice of default to Defendant's counsel. According to the notice it was emailed to BRICHMOND@RUTAN.COMI. This email address is not the same as the one set forth in the stipulation re: entry of judgment. (Compare Gaba Decl., Exh. 1 at ¶ 6 and Exh. 3.) Accordingly, Plaintiff has not shown that she has properly given notice of Defendant's default as required by the parties' stipulation re: entry of judgment. Counsel avers that Defendant tendered an additional payment of $500, which did not cure the full amount of the defaulted amount of $8,721 as noted in the notice of default. (Gaba Decl., at ¶ 7.) However, this payment does not establish that it was in response to the notice or that the notice of default was received by Defendant's counsel. Second, the court is unable to confirm whether notice of the instant motion was properly given. The stipulation only refers to an email address for defense counsel. The proof of service indicates that the motion was served by mail to Rutan & Tucker, LLP, 611 Anton Blvd Ste 1400, Costa Mesa, CA 92626-1931 on January 25, 2024. It appears that Plaintiff paid Defendant's first appearance fee when Plaintiff filed the stipulation of all parties to dismiss action with the court retaining jurisdiction to enforce settlement pursuant to Civil Code section 664.6. The court has no address of record for Defendant or defense counsel in this case. There is no mailing address for defense counsel in the stipulation. (See Gaba Decl., Exh. 1.) No opposition was filed. Accordingly, Plaintiff has not established that the requirements of the stipulation re: entry of judgment were met. The motion is denied. Plaintiff shall give notice of the ruling.
56	Wilson v. Ross, et al. 30-2021-01184533	Plaintiff Evangelina Wilson's ("Plaintiff") motion for preference is denied. Defendants Don Franklin Realtor, Don Franklin, and Brett Franklin's (the "Franklin Defendants") evidentiary objections are sustained in their entirety.

		Plaintiff moves for preference pursuant to Code of Civil Procedure section 36, subdivisions (d) and (e). Code of Civil Procedure section 36 states in pertinent part: (d) In its discretion, the court may also grant a motion for preference that is accompanied by clear and convincing medical documentation that concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months, and that satisfies the court that the interest of justice will be served by granting the preference. (e) Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference. (f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party. (Code Civ. Proc., § 36.) For discretionary preference, the court considers a number of factors, including the prejudice to defendant of an accelerated trial. (*Salas v. Sears, Roebuck Co.* (1986) 42 Cal.3d 342, 346.) The motion must be accompanied by a memorandum of points and authorities (Cal. Rules of Court, rule 3.1113) and should be accompanied by a declaration of someone who can state from personal knowledge the moving party's age and interest in the litigation and by a declaration of someone who can supply the medical diagnosis and prognosis of the party. Here, Plaintiff argues that trial preference is in the interests of justice because of Defendant Donald Franklin's age and health. On January 30, 2024, this court granted Defendant Donald Franklin's application for the appointment of a guardian ad litem. (ROA 314.) The application to appoint the guardian ad litem stated that the appointment was necessary because Donald Franklin "is 90 years old and is in poor health; he requires a full time assistant to help him with daily activities and is on oxygen and pain medication and has difficult ambulating. Donald Franklin's comprehension of the issues in this matter is severely diminished and he is not able

		to actively participate in defense of this matter including providing testimony or verifying discovery." (ROA 310.) The court's appointment of a guardian ad litem does not support trial preference. It demonstrates the contrary. Donald Franklin will not be able to participate at trial, regardless of whether it takes place in 120 days (around September 3, 2024) or on the scheduled trial date of October 14, 2024. Second, Plaintiff argues that her own health warrants preference. None of the evidence presented is admissible. But even if it were, Plaintiff's argument that she needs trial preference so she can get money to pay for medical treatments is not persuasive. Plaintiff argues that this case has been pending for nearly three years. Yet, Plaintiff did not bring into the action the Franklin Defendants as Doe Defendants until February 14, 2023, two years after she filed her Complaint. (See ROA 93, 94, 95.) The Franklin Defendants did not appear until March 27, 2023. The case has only been at issue for a little over a year. Plaintiff has not demonstrated that the interests of justice will be served by granting trial preference. Thus, the motion for preference is denied. The Franklin Defendants shall give notice of the ruling.
57	World Lab U.S.A., Inc. v. Yamakawa 30-2019-01056177	**NO TENTATIVE RULING** On May 1, 2024, the court ordered: "Pursuant to Orange County Superior Court Local Rule 375(d)(5) and Code of Civil Procedure section 367.75, subdivision (b)(3), the Court orders counsel from each side to appear in person for the May 3, 2024 hearing on Plaintiff World Lab U.S.A., Inc.'s motion to compel Koji Yamakawa's further response to request for production of documents, set two, and further production of documents. Counsel who appears for the hearing must be familiar with the motion at issue. The Clerk shall give notice of this Order. The Clerk shall also give a courtesy call to counsel to inform them of this Order."