TENTATIVE RULINGS

LAW & MOTION

DEPT C24

Judge Gassia Apkarian

The court will hear oral argument on all matters at the time noticed for the hearing, **unless the Court has stated that the matter is off calendar**. Do not call the department to verify if you should appear or not. Please read below for the information. If you would prefer to submit to the Court's tentative without oral argument, advise all counsel first to find out if all parties are submitting and then moving party is to telephone the clerk at (657)622-5224 with the status of all parties. If the moving party has submitted the matter and there are no appearances by any party at the hearing, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:30 p.m. on the day before the hearing. Generally, motions will not be continued or taken off calendar after the tentative has been posted. **The moving party shall give notice of the ruling**.

April 30, 2024
02:00 PM

If you want a transcript, you must provide your own court reporter

#	Case Name	Tentative
1	**United Capital Title Insurance Company vs. Anton** **11-00452850**	**(1) Motion to Be Relieved as Counsel of Record (2) Case Management Conference** The unopposed motion of attorney Mac W. Cabal of Lanak & Hanna to be relieved as counsel for Defendant/Cross-Complainant Imelda Anton and **CMC** are CONTINUED to June 11, 2024 at 02:00 PM. First, the proof of service does not reflect that the client was served with the moving papers at least 16 court days before the hearing. (Code Civ. Proc., § 1005(b); Cal. Rules of Court, rule 3.1362(d).) Second, while the proof of service filed in support of the motion shows that the interested parties were served with the mandatory proposed order (MC-053), moving attorney failed to file MC-053 with the court. "The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as

		Counsel-Civil (form MC-053) and must be lodged with the court with the moving papers." (Cal. Rules of Court, rule 3.1362, subd. (e).) Moving attorney shall file and serve MC-053 no later than 16 court days before the continued hearing. Moving attorney shall also file a proof of service establishing service of the moving papers on the client. Moving attorney to provide notice of this order on client and all interested parties.
2	**Rodriguez vs. Arthritis & Osteoporosis Medical Center, Inc.** **20-01138157**	**Motion for Summary Judgment and/or Adjudication** **Granted** Plaintiff's Objections to Declaration of Richard Johnson, M.D. are OVERRULED. Plaintiff objects to the declaration on the ground that Dr. Johnson states that he is familiar with the standard of care as it existed in 2020, which is not the correct timeframe. However, Plaintiff admits that the applicable timeframe was 2018-2019, just two-one years before the year stated in the Declaration. Plaintiff presents no reason to believe that the applicable standard of care changed in this short time period. Plaintiff's objections to Exhibits 3-5 are OVERRULED. "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c(a)(1).) In a medical malpractice action, when a defendant moves for summary judgment and supports his or her motion with expert declarations that his or her conduct fell within the community standard of care, he or she is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. (Munro v. Regents of the University of Calif. (1989) 215 Cal. App. 3d 977, 985.)

		"A properly qualified expert may offer an opinion relating to a subject that is beyond common experience, if that expert's opinion will assist the trier of fact. Even so, the expert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. Moreover, an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based." (Bushling v. Fremont Medical Center (2004) 117 Cal.App.4th 493, 510.) Moving Defendants' Motion is supported by the Declaration of Richard Johnson, M.D. Plaintiff's Opposition is supported by the Declaration of M. Eric Gershwin, M.D., MACP, MACR. Dr. Gershwin concludes that Dr. Rose and Pathway Medical Group breached the applicable standard of care by failing to treat Mr. Rodriguez's morbid, life-threatening obesity and failing to address his urgent and primary health challenge. The Court finds that there are several deficiencies with Dr. Gershwin's declaration. First, he focuses on the fact that Inflectra should never have been prescribed to Mr. Rodriguez but he does not state that Dr. Rose was the one who prescribed Inflectra. Rather, it was Dr. Ho of Arthritis & Osteoporosis Medical Center who decided to give Mr. Rodriguez Inflectra. The Inflectra injections began over a month before Mr. Rodriguez's last visit with Dr. Rose on January 28, 2019. Moreover, per Dr. Johnson, during the time period where Mr. Rodriguez received treatment from Dr. Rose, Mr. Rodriguez showed no evidence of cellulitis in his lower left extremity or any condition which could result in sepsis or cardiac arrest, which were listed as the cause of death. This demonstrates that Dr. Rose did not fail to properly

		monitor Mr. Rodriguez during his treatment with Inflectra. Thus, the Court finds that any references to the use of Inflectra is not relevant to whether Moving Defendants complied with the applicable standard of care. Second, Dr. Gershwin bases his assertion that Moving Defendants did not comply with the applicable standard of care on the fact that Mr. Rodriguez's obesity was his primary, urgent health challenge and Moving Defendants failed to treat that obesity. This assertion ignores the fact that Dr. Rose discussed weight loss procedures with Mr. Rodriguez on January 28, 2019, and that Mr. Rodriguez did not want to participate in any procedures. Further, Mr. Rodriguez's first visit with Dr. Rose was for evaluation of a mass on his upper left arm. There is no indication that Mr. Rodriguez was complaining of any symptoms related to his obesity. His second visit with Dr. Rose also related to the mass on his arm, not to his weight. During his third visit to Dr. Rose on January 28, 2019, when Mr. Rodriguez complained of chronic back and knee pain, Dr. Rose appropriately discussed weight loss procedures with the patient. Under these circumstances, the Court finds that the conclusion that Moving Defendants' failure to treat Mr. Rodriguez's obesity did not meet the applicable standard of care or led to Mr. Rodriguez's death, which was caused by sepsis, cellulitis of the thigh, and cardiac arrest, does not appear to be well-reasoned. There appears to be no connection between Dr. Rose's treatment of Mr. Rodriguez and Mr. Rodriguez's eventual development of sepsis, cellulitis, and cardiac arrest following treatment with Inflectra by another doctor. Under Bushling, the parties' experts must offer opinions with reasoned explanation as to why the underlying facts lead to their ultimate conclusions. (117 Cal.App.4th at p. 510.) Because Dr. Gershwin's declaration contains no such reasoned explanation as to Moving Defendants, it has no evidentiary value.

		Based on the above, the Court finds that Moving Defendants have shown that they are entitled to summary judgment and Plaintiff has failed to rebut that showing with proper expert evidence. Thus, the Motion for Summary Judgment by Moving Defendants is GRANTED. Moving Defendants to prepare the appropriate order and judgment. Moving Defendants to give notice.
3	**Patel vs. Brahmbhatt** **21-01188360**	**(1-2) Demurrer to Amended Complaint (3) Motion to Quash** (1): Overrule. The demurrer brought by Defendant Sunil Brahmbhatt is OVERRULED in its entirety. Sunil contends that the 19th and 20th causes of action fails to state facts sufficient to state a cause of action and are uncertain. All Plaintiffs assert the 19th cause of action for fraud [Civ. Code § 1710(4)] and the 20th cause of action for fraud [Civ. Code § 1710(3)] against all Defendants. These are claims of fraud based on false promises and/or misrepresentations and concealment, respectively. "'The elements of fraud that will give rise to a tort action for deceit are: '(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 974.) "[I]n a promissory fraud action, to sufficiently allege [] defendant made a misrepresentation, the complaint must allege (1) the defendant made a representation of intent to perform some future action, i.e., the defendant made a promise, and (2) the defendant did not really have that

		intent at the time that the promise was made, i.e., the promise was false." (Beckwith v. Dahl (2012) 205 Cal.App.4th 1039, 1060.) "[F]raudulent intent is an issue for the trier of fact to decide." (Id. at p. 1061.) Fraud must pleaded with particularity. The particularity requirement necessitates pleading facts that "show how, when, where, to whom, and by what means the representations were tendered." (Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.) A fraud claim against a corporation must "'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.' " (Ibid.) As to the 20th COA for concealment, "[T]he elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (Boschma v. Home Loan Center, Inc. (2011) 198 Cal.App.4th 230, 248.) The specificity requirement may be relaxed if it is apparent from the allegations that defendants necessarily possess knowledge of the facts. (Quelimane Co. v. Steward Title Guaranty Co. (1998) 19 Cal.4th 26, 27; Alfaro v. Community Housing Improvement System & Planning Association, Inc. (2009) 171 Cal.App.4th 1356, 1384 ["As plaintiffs accurately respond, it is harder to apply this rule to a case of simple nondisclosure"].) Sunil first argues that there are no allegations whatsoever that Sunil or any other defendants made any representations to Plaintiffs Jatin Bhakta, Mukesh Bhakta, Pratik Bhakta, Rusabh Bhakta, Chanse Bhakta,

		Hitendra Bhakta, or Kiran Moran which would give rise to the alleged fraud in the 19th and 20th causes of action in the FAC, and that the demurrer should be sustained without leave to amend as to these plaintiffs. A "defendant will not escape liability if he makes a misrepresentation to one person intending that it be repeated and acted upon by the plaintiff. [Citations.] Likewise, if defendant makes the representation to a particular class of persons, he is deemed to have deceived everyone in that class. [Citation.]" (Geernaert v. Mitchell (1995) 31 Cal.App.4th 601, 605.) Section 533 of the Restatement Second of Torts states, " 'The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of transaction involved.' [Citation.]" (Id. at pp. 605-606.) The rule stated in section 533 of the Restatement Second of Torts has been accepted by California cases involving indirect deception. (Id. at p. 606.) This covers cases "in which the perpetrator of the fraud intends third party transmissions [citations] as well as those in which it may be inferred from the circumstances that the defendant knew the injured party would rely thereon. [Citations.]" (Id. at p. 608.) "Consistent with the rule requiring specificity in pleading fraud [citation], a complaint must state ultimate facts showing that the defendant intended or had reason to expect reliance by the plaintiff or the class of persons of which he is a member." (Ibid.) The reply fails to address this authority and Plaintiff's argument in opposition. Plaintiffs have alleged sufficient facts to support causes of action for direct and indirect fraud and concealment as to all Plaintiffs. The FAC alleges that Sunil made representations between certain plaintiffs with the knowledge that such representations would be repeated to

		the other plaintiffs. (FAC, ¶¶ 221-222, 237(a)-(c).) In turn the FAC alleges that Sunil made fraudulent misrepresentations and/or false promises to Plaintiffs, and that Plaintiffs "actually and reasonably relied" upon said representations by investing "in the Grow and the Lab." (FAC, ¶¶ 218, 219, 224-227, 230-233.) Sunil next argues that the 19th cause of action fails to establish a cause of action for fraud and deceit because his statement(s) was one of mere opinion, not fact, and that there are no allegations or evidence presented that the statements made by Sunil at the time they were made were false. "Whether a statement is nonactionable opinion or actionable misrepresentation of fact is a question of fact for the jury." (Furla v. Jon Douglas Co. (1998) 65 Cal. App. 4th 1069, 1080-1081.) In addition, the FAC expressly alleges that Sunil made representations that were false and that were known to be false at the time they were made. (FAC, ¶¶ 219, 224-227, 229.) Third, Sunil argues that even if the FAC sufficiently pleads a cause of action for fraud, the contractual language of the warranties and representations made by each Plaintiff in the Investment Agreement, including the integrated Subscription Agreement and Letter of Investment Intent, that they are not relying on any statements or representations made by Sunil prior to the execution of the written investment agreement, and that Investment Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter, contradicts the allegations and bars a claim for fraud as alleged in the 19th and 20th causes of action. "A party may claim fraud in the inducement of a contract containing a provision disclaiming any fraudulent misrepresentations and introduce evidence to show such fraud. [Citations.]" (Hinesley v. Oakshade Town Center (2005) 135 Cal.App.4th 289, 301.) "Fraud in the inducement renders the entre contract voidable, including

		any provision in the contract providing the written contract is, for example, the sole agreement of the parties, that is contains their entire agreement and that there are no oral representations (integration/no oral representations clause). [Citations.]" (Ibid.) A provision in a contract stating that no representations were made by the parties except as set forth in the agreement does not establish as a matter of law that any reliance by a party on misrepresentations not contained in the contract was unreasonable and does not preclude a party from proving fraud. (Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Development Corp. (1995) 32 Cal.App.4th 985, 992-996.) Based on the foregoing, contrary to Sunil's contention that certain provisions in the subject agreement which disclaim any fraudulent representations and provide that the written agreement is the entire agreement do not bar Plaintiffs' claims for fraud. Fourth, Sunil contends that Plaintiff cannot plead a cause of action fraud and suppression of facts as asserted in the 20th cause of action when the written agreements and representations and warranties provided by each of the plaintiffs contradicts the duty to disclose, and where Plaintiffs were conducting their own investigation into a high-risk investment which each plaintiff acknowledged in writing. Sunil cites to no authority in support of this proposition as it relates to the 20th cause of action. The Court may treat an argument as waived where no legal authority supporting the argument is cited. (Hood v. Gonzales (2019) 43 Cal.App.5th 57, 73-74.) Even if considered, the provisions of the agreement identified in the demurrer do not establish that Sunil did not have a duty to disclose facts either before the investment was made, or during the business relationship between the parties. Notably, the 20th cause of action is not premised solely upon concealment of facts prior to Plaintiffs' investment to induce Plaintiffs to invest, but also on concealment of material facts by Defendants during the entirety of the business relationship between the parties until late 2020. (FAC, ¶¶ 238-255.)

		Lastly, the purported uncertainty in paragraph 230 which describes one alleged representation does not render the 19th or 20th cause of action or the FAC uncertain such that a defendant cannot reasonably respond. The Court declines to consider all new points, arguments, and evidence presented for the first time on reply. (See Balboa Ins. Co. v. Aguirre (1983) 149 Cal.App.3d 1002, 1010; Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537-1538.) Arguments as to the truth or proof is irrelevant at this stage. (2): Overrule in its entirety. Defendants' Motion to Quash Subpoena Defendants, Rashila Brahmbhatt; Natasha Brahmbhatt; Keven Brahmbhatt; and Sunil A. Brahmbhatt Motion to Quash Subpoena is CONTINUED to [INSERT DATE] at [INSERT TIME] in Department C24. Code of Civil Procedure section 1987.1 provides, in pertinent part: "[T]he courts, upon motion reasonably made by [a party, witness, consumer, or employee] … 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, subds. (a)-(b).) Here, on January 9, 2024, the day before the production date of January 10, 2024, Plaintiffs' counsel was copied to the individual defendants' current counsel's letter to Kho & Patel instructing them not to produce documents. (Shrenger Decl., ¶ 9, Ex. E.) Plaintiffs' counsel reached out to defense counsel, received a response email that did not raise deficiencies or issues with the subpoena except for service on Brown Rudnick, LLP, and then filed the instant motion that same day. (Id., ¶ 10, Ex. F.) The

		foregoing does not indicate that the motion was reasonably made by the individual defendants, and there is no indication that counsel for the parties discussed the grounds for this motion. Counsel for Defendants and Plaintiffs are ORDERED to discuss the grounds for this motion by telephone, in person, or by other video remote technology to determine whether any issues may be resolved informally. Defendants' counsel to file and serve a supplemental declaration describing the foregoing discussion between counsel and stating whether the issues have been resolved. If the issues have not been resolved, said declaration to set forth what issues remain for the court to resolve. No other briefing or evidence is allowed. Plaintiffs to give notice. (3): Continue for conference between counsel.
4	**Laguna Electric, Inc. vs. Han** **21-01234928**	**Motion for Entry of Judgment** This "motion" should not have been filed as a law and motion matter. See Orange County Local Rule 384. Motion is taken off calendar as a law and motion matter. MP to proceed via Orange County Local Rule 384.
5	**Global Finance Group vs. Precision Forging** **21-01237069**	**Continued to 7/09/2024**
6	**SY VENTURES VI, LLC vs. FITNESS INTERNATIONAL, LLC** **21-01218261**	**Off Calendar**

7	**Gomez vs. Chassiakos** **23-01336619**	**(1) Motion to Compel Further Responses to Form (2) Motion to Compel Further Responses to Special (3) Motion to Compel Production (4) Motion to Compel Responses to Requests for Adm (5) Case Management Conference** Motion 1: Form Interrogatories (ROA 26) Plaintiff initially sought further responses to Form Interrogatories Nos. 13.1, 13.2 and 20.3. After receiving further responses, Plaintiff contends the responses to 13.1 and 13.2 are still insufficient. The court disagrees. Interrogatory No. 13.1 asks whether Defendant has conducted surveillance. Defendant responded "no." Interrogatory No. 13.2 asks if a written report has been prepared on the surveillance. Defendant responded, "not applicable." These responses are full responses. Accordingly, the court DENIES the motion as moot insofar as it seeks further responses. The motion is GRANTED as to sanctions. Sanctions of $1,260 are issued against Defendant for failure to make discovery. The amount represents 3 hours of attorney time at $400 per hour plus $60 in filing fees. Sanctions are due and payable to Plaintiff's counsel within 30 days of this ruling. Motion 2: Special Interrogatories (ROA 36) Plaintiff initially sought further responses to Special Interrogatories Nos. 1, 9, 10, 12, 14, 18, 21, 22, and 23. After receiving further responses, Plaintiff contends the responses to Nos. 10, 18, 22 and 23 are still incomplete. Interrogatory No. 10 asks, for all persons listed in Defendant's response to Form Interrogatory No. 12.1, for Defendant to "state the substance of their knowledge and articulate their expected testimony." Defendant asserts several objections, including that the interrogatory calls for speculation, and responds that "Responding party

		does not have sufficient information to set forth their expected testimony or speculate as to their knowledge regarding the incident." The court finds the interrogatory calls for speculation and therefore the motion is denied as to Interrogatory No. 10. Interrogatory No. 18 asks Defendant to state with what frequency she had driven the same route of the subject INCIDENT in the 10 years prior to the subject INCIDENT. Defendant responded, "Responding party has been in the general area on at least one occasion per year." This response is evasive and incomplete. The motion is granted as to Interrogatory No. 18. Interrogatory No. 22 asks Defendant to list all violations of the motor vehicle laws of the State of California or any other jurisdiction with which she has been charged since she obtained her driver's license. Defendant objected and responded, "Responding party does not recall any." This response is evasive and incomplete, in that it does not comply with CCP §2030.220(c). The motion is granted as to Interrogatory No. 22. As to Interrogatory No. 23, Defendant objected and did not provide a response. The interrogatory asks Defendant to state whether her automobile insurance has ever been cancelled and, if so, to state the name of the insurer and the reason for the cancellation. Defendant objects on the grounds of relevance, and contends the interrogatory is overbroad as to time and scope and vague. Specifically, Defendant contends the only reason for the information would be for improper character evidence purposes in violation of Evid. Code §1101. Plaintiff counters that the information could prove a habit or custom under Evid. Code §1105.

		The court finds Interrogatory No. 23 is not reasonably likely to lead to the discovery of admissible evidence and therefore the motion is denied as to Interrogatory No. 23. In sum, the motion is DENIED as moot as to Interrogatory Nos. 1, 9, 12, 14 and 21. The motion is DENIED on the merits as to Nos. 10 and 23. The motion is GRANTED as to Nos. 18 and 22. Further responses, without objections, to Nos. 18 and 22 shall be served within 15 days of notice of this ruling. Plaintiff's and Defendant's requests for sanctions in connection with this motion are denied. Motion 3: Requests for Production (ROA 28) Plaintiff initially sought further responses to Requests for Production Nos. 1, 5, 6, 7, 8, 10, 11, 13, 14, 16, and 17. After receiving further responses, Plaintiff contends the responses to Nos. 1, 5, 6, 7, 8, 10, 11, 13, 14 and 17 are insufficient. As to Request Nos. 5, 6, 7, 10, 11, 13, 14 and 17, Plaintiff contends that Defendant's response is ambiguous and not code compliant because Defendant represents both that the documents are not in the possession of Defendant and that none have ever existed. The motion is GRANTED as to Request Nos. 5, 6, 7, 10, 11, 13, 14 and 17. Defendant must provide responses that comply with CCP §2031.230. Request No. 1 seeks, for each communication device that was in Defendant's vehicle at the time of the incident, all documents reflecting usage and billing time for the time period beginning 48 hours before the incident and ending 48 hours after the incident. Defendant has objected on the grounds of privacy, relevance and overbreadth. The motion is GRANTED as to Request No. 1 with the following limitations: The time frame is limited to ten minutes before and after the accident, and any record

		may be limited to disclosing only whether the communication device(s) were on and in use during this period. There is a right to privacy to the subscriber and third parties and, without a further showing of good cause, the name, telephone number, and other identifying information of any third parties in the record is not required. On the other hand, the defendants have established a compelling need for the basic information. Request No. 8 seeks ALL DOCUMENTS disputing, in whole or in part, the extent, scope and nature of PLAINTIFF's present medical condition or extent and scope of the damages alleged in the COMPLAINT. Defendant objected and responded that "After a reasonable and diligent search, responding party is unable to comply as Responding party does not know Plaintiff's present medical condition or the extent and scope of the damages alleged by Plaintiff." Plaintiff has shown good cause for this discovery. In opposition, Defendant admits that she received information regarding Plaintiff's injuries prior to preparing her supplemental responses, but contends she does not have any responsive documents and that the only responsive documents anticipated in the future will be expert reports. The motion is GRANTED as to Request No. 8. Defendant is to serve a code compliant response within 15 days of notice of this ruling. Plaintiff's and Defendant's requests for sanctions in connection with this motion are denied. Motion 4: Requests for Admission (ROA 27) Plaintiff initially sought further responses to Requests for Admission Nos. 3 and 4. After receiving further responses, contends that the responses are subject to

		unwarranted objections. Plaintiff asks the court to order further responses without objections. Request No. 3 states: Admit that, at the time of the subject INCIDENT, YOU attempted to stop where YOU were not supposed to stop. Defendant responded with objections that the request is irrelevant, lacks foundation, and is vague. She responded, "deny as phrased." Request No. 4 states: Admit that, at the time of the subject INCIDENT, YOU did not stop at a stop sign. Defendant objected on the grounds of relevance and lack of foundation. She responded "admit." Defendant's objections are not well taken. The motion is GRANTED as to Requests Nos. 3 and 4. Defendant is ordered to produce further responses without objections within 15 days of notice of this ruling. Sanctions of $1,260 are issued against Defendant for failure to make discovery. The amount represents 3 hours of attorney time at $400 per hour plus $60 in filing fees. Sanctions are due and payable to Plaintiff's counsel within 30 days of this ruling. Plaintiff to give notice.
8	**Sperling vs. Hoag Memorial Hospital Presbyterian** **23-01339455**	**(1) Demurrer to Amended Complaint** **(2) Motion to Strike** Defendants GHC of Newport Beach, LLC dba Newport Nursing and Rehabilitation Center; and Life Generations Healthcare, LLC ("Defendants") filed a Demurrer to the first cause of action for elder abuse, the second cause of action for willful misconduct, and the fourth cause of action for violation of Residents' Rights. Defendant also filed a Motion to Strike, seeking to strike allegations related to punitive damages and attorney fees. The demurrer is OVERRULED.

		First, the court finds that the allegations alleged in the First Amended Complaint are sufficient to plead a cause of action for elder abuse and neglect pursuant to Elder Adult and Dependent Adult Civil Protection Act - Welfare and Institution Code §§ 15600, et seq. Plaintiff has alleged that Defendant was aware of Ms. Sperling' to provide the requisite services necessary to avoid further physical harm. For example, Ms. Sperling's condition required turning and repositioning every two hours, but Defendant failed to provide this service – on multiple occasions neglecting this service for over 11.5 hours. Such failure caused her injury to severely worsen overtime. (See Carter v. Prime Healthcare Paradise Valley LLC (2011) 198 Cal.App.4th 396; Worsham v. O'Connor Hospital (2014) 226 Cal.App.4th 331.) Plaintiff attributes this failure to Defendant's intentional understaffing despite knowing that its patients (including Ms. Sperling) required more assistance than was provided, which as Plaintiff correctly points out can establish the requisite reckless ("i.e., a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.'") required for elder abuse. (See Fenimore v. Regents of University of California (2016) 245 Cal.App.4th 1339, 1349-1350.) Second, the allegations in support of the second cause of action for willful neglect are sufficient for the same reasons discussed above. (See also Berkley v. Dowds (2007) 152 Cal.App.4th 518; Nazar v. Rodeffer (1996) 184 Cal. App. 3d 546.) Last, the court finds that Defendant did not carry its burden to establish why the fourth cause of action for violation of Residents' Rights. Defendant failed to address the facts and legal authority as to this cause of action. The Motion to Strike is DENIED for the reasons discussed above. Plaintiff to give notice.

9	**Alliance Funding Group vs. Nirvana Transportation, Inc.** **23-01360138**	**Demurrer to Complaint** Defendants CHRISTOPHER ALI and MONICA ALI seek an order sustaining their demurrer to the Second, Third, Fifth and Sixth Cause of Actions of the complaint filed by ALLIANCE FUNDING GROUP. Demurrer is OVERRULED. Plaintiffs to file an Answer within 10 days. Initially, the Court notes that Defendants neither filed a declaration pursuant to CCP§430.41 with their demurrer, nor included a Notice of Hearing with the moving papers. [CRC 3.1320(c).] While the Court's ruling is not based on these defects, the Court reminds Defendants to comply with the CCP and CRC, moving forward. Notably, the fact that plaintiffs are in pro per does not afford them special treatment. (Nwosu v. Uba (2004) 122 Cal.App.4th 1229, 1246-1247.) Pro pers must also abide by the same procedural rules – e.g., the Code of Civil Procedure and the California Rules of Court. (See Gamet v. Blanchard (2001) 91 Cal.App.4th 1276, 1284.) As to the merits, Defendants argue that the causes of action against them are essentially barred because the guaranties (which are attached to the Complaint) allegedly show Defendants did not sign the documents. However, Ex. A and Ex. B attached to the Complaint both clearly establish that they were electronically signed by Christopher Ali and Monica Ali, defendants herein. The fact that a Docusign document (also attached to the aforementioned exhibits) shows that the signatories' email is scott@nirvanamotorcars.com does not, at the pleading stage, establish that the signatures were not Defendants. Furthermore, if a contract set out in the complaint (or attached as an exhibit) is ambiguous, plaintiff's interpretation must be accepted as correct in testing the sufficiency of the complaint: "[A] general demurrer to the complaint admits not only the contents of the

		instrument but also any pleaded meaning to which the instrument is reasonably susceptible." [Aragon-Haas v. Family Security Ins. Services, Inc. (1991) 231 CA3d 232, 239 (emphasis added); Rutherford Holdings, LLC v. Plaza Del Rey (2014) 223 CA4th 221, 229, 166 CR3d 864, 871—plaintiff who failed to allege its own "reasonable interpretation" should be given opportunity to amend complaint to do so] Furthermore, because it appears Defendants signed the guaranties, the statute of frauds argument is not a bar to the pled causes of action based on the four corners of the complaint and the exhibits attached thereto. Plaintiff to give notice.