

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 16, 2024

02:00 PM

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

#	Case Name	Tentative
1	Watkins vs. Iqbal 20-01123380	<p>Motion to Compel Answers to Form Interrogatories</p> <p>Defendant Chapman Global Medical Center (“Defendant”) moves for an order compelling Plaintiff Debra V. Watkins (“Plaintiff”) to serve verified responses to Defendant’s Requests for Production, Set Two, Special Interrogatories, Set Three, Supplemental Interrogatories, and Supplemental Requests for Production.</p> <p>Code of Civil Procedure §§ 2030.290 and 2031.300 state that if a party to whom interrogatories or demand for inspection “fails to serve a timely response to it,” the party waives any objections and the propounding party may move for an order compelling responses to the interrogatory or demand. Code Civ. Proc. §§ 2030.290(a)-(b), 2031.300(a)-(b).</p> <p>The defendant served the discovery at issue on January 10, 2023. Declarations of John M. Racanelli ¶ 2. Plaintiff</p>

received one extension of time to respond to March 31, 2023. Id. ¶ 3. To date, no responses have been received. Id. ¶ 4.

In light of Plaintiff's failure to timely respond to Defendant's written discovery, the Motions to Compel are GRANTED. Plaintiff is ORDERED to serve verified responses, without objections, to Defendant's Requests for Production, Set Two, Special Interrogatories, Set Three, Supplemental Interrogatories, and Supplemental Requests for Production within 15 days.

Defendant requests monetary sanctions for Plaintiff's failure to respond to the discovery at issue. Monetary sanctions must be imposed unless the Court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. Code Civ. Proc. §§ 2030.290(c), 2031.300(c).

Here, the Court notes that Plaintiff's former counsel passed away unexpectedly on March 30, 2023. ROA 240. It appears that it took Plaintiff several months to obtain new counsel. The Court finds that the imposition of monetary sanctions against Plaintiff under these circumstances would be unjust. Thus, the request for monetary sanctions is DENIED.

Defendant to give notice.

Motion to Compel Answers to Special Interrogatories

In light of Plaintiff's failure to timely respond to Defendant's written discovery, the Motions to Compel are GRANTED. Plaintiff is ORDERED to served verified responses, without objections, to Defendant's Requests for Production, Set Two, Special Interrogatories, Set Three, Supplemental Interrogatories, and Supplemental Requests for Production within 15 days.

Here, the Court notes that Plaintiff's former counsel passed away unexpectedly on March 30, 2023. ROA 240. It appears that it took Plaintiff several months to obtain new counsel. The Court finds that the imposition of monetary sanctions

		<p>against Plaintiff under these circumstances would be unjust. Thus, the request for monetary sanctions is DENIED.</p> <p>Defendant to give notice.</p> <p>Motion to Compel Production – Same rulings as above.</p> <p>Motion to Compel Production – Same rulings as above.</p>
<p>2</p>	<p>Rodriguez vs. Arthritis & Osteoporosis Medical Center, Inc.</p> <p>20-01138157</p>	<p>Defendant Pfizer Inc. (“Pfizer”) moves for summary judgment or summary adjudication as to the Third Amended Complaint (“SAC”) of Plaintiff Maria Rodriguez (“Plaintiff”).</p> <p>Plaintiff requests a continuance of the hearing pursuant to Code of Civil Procedure section 437c(h).</p> <p>“If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just.” (Code Civ. Proc., § 437c(h).)</p> <p>“When lack of diligence results in a party’s having insufficient information to know if facts essential to justify opposition may exist, and the party is therefore unable to provide the requisite affidavit under Code of Civil Procedure section 437c, subdivision (h), the trial judge may deny the request for continuance of the motion.” (Bahl v. Bank of America (2001) 89 Cal.App.4th 389, 398.) “But when a party submits an affidavit demonstrating that facts essential to justify opposition may exist but have not been presented to the court because the party has not been diligent in searching for the facts through discovery, the court’s discretion to deny a continuance is strictly limited.” (Ibid.)</p> <p>Plaintiff seeks a continuance to allow for the deposition of Jonathan Marks and production of documents pertaining to clinical trials, risks, contraindications, among other things. Specifically, Plaintiff has requested documents regarding</p>

		<p>risks associated with Inflectra, contraindications, drug effects, and the use of Inflectra by patients with comorbidities or who are obese or morbidly obese. (Declaration of Gary L. Chambers, ¶¶ 16-17.)</p> <p>While the deposition of Mr. Marks is not likely to produce facts essential to justify the opposition, as Mr. Marks’ declaration solely relates to the manufacturing of Inflectra and Plaintiff does not dispute that summary adjudication as to the manufacturing defect cause of action is appropriate, the documents requested by Plaintiff regarding Inflectra and the use of it by patients who are obese or morbidly obese may be essential to justify Plaintiff’s opposition.</p> <p>Defendant argues the continuance request should be denied due to Plaintiff’s delay in seeking discovery. However, even if Plaintiff’s conduct was dilatory, there has been no showing of any prejudice from any delay. Based on these circumstances, the Court concludes that “the policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.” (Bahl, 89 Cal.App.4th at pp. 399-400.)</p> <p>Thus, Plaintiff’s request for a continuance under Code of Civil Procedure section 437c(h) is granted. The hearing on Defendant’s Motion for Summary Judgment/Adjudication is CONTINUED to July 16, 2024 at 02:00 PM in Department C24.</p>
<p>3</p>	<p>Gardiner vs. Chipotle Mexican Grill, Inc.</p> <p>21-01193698</p>	<p>The unopposed motion of attorney Samer Habbas of Law Offices of Samer Habbas & Associates, Inc., P.C. to be relieved as counsel for Plaintiff Robert Gardiner is GRANTED.</p> <p>Service on the client and opposing counsel was proper, and all required forms containing the requisite information were filed pursuant to California Rules of Court, rule 3.1362.</p> <p>The order will take effect once moving attorney files proof of service of the signed order (MC-053) on the client.</p>

		Moving attorney to provide notice.
4	<p>Orange County Global Medical Center, Inc. vs. Oscar Health Plan of California</p> <p>22-01247810</p>	<p>#1) Grant with sanctions of \$2,500; #2) Grant in part and deny in part without sanctions; #3) Grant in part and deny in part without sanctions.</p> <p>Motion to Compel Further Responses to Special Interrogatories, Set One (ROA 64)</p> <p>The Court GRANTS the motion. Oscar Health Plan of California and Oscar Health Inc. (“Oscar”) is ORDERED to provide further responses to Interrogatories Nos. 1-6 within 30 days of notice of this ruling.</p> <p>If a timely motion to compel has been filed, the responding party has the burden to justify any objection or failure fully to answer the discovery requests. (Coy v. Sup.Ct. (Wolcher) (1962) 58 Cal.2d 210, 220-221 [re: interrogatories]; Kirkland v. Superior Court (2002) 95 Cal.App.4th 92, 98 [burden shifts to objector after good cause shown for RFPs]; Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725, 733 [party claiming the privilege has burden of establishing preliminary facts necessary to support objection].)</p> <p>As to Interrogatory No. 1, Oscar agreed to provide a response, limited in scope to Orange County for the years 2019 to 2023. Oscar failed to justify any of its objections, instead contending that Plaintiffs failed to show good cause. However, in the context of interrogatories, the onus is on the opposing party to justify its objections rather than on the moving party to show good cause.</p> <p>As to Interrogatory Nos. 2-3, Oscar contends the interrogatories are not relevant because the manner in which a health plan calculates fair market value is immaterial, but also states that it agrees to describe its R&C Methodology, including the date it utilizes. Plaintiffs contend the information is relevant to show how the payments at issue in this case were determined, and that information relating to how Oscar determined its payments may make it more likely that its payments failed to equal the “fair market value” of the services. The permissible scope of discovery is very broad.</p>

“For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. Admissibility is not the test. Rather, it is sufficient if the information sought might reasonably lead to other, admissible evidence.” (Children's Hosp. Cent. California v. Blue Cross of California (2014) 226 Cal.App.4th 1260, 1276–77 (citing Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117).)

As to Interrogatory Nos. 4-6, Oscar has agreed to provide supplemental responses.

Sanctions of \$2,500 are issued against Oscar for failure to make discovery. (CCP §§2023.010; 2030.300(d)). The motion could have been avoided had Oscar agreed to extend Plaintiffs’ motion filing deadline, but Oscar only offered to produce supplemental responses, stating that the motion deadline would then be extended another 45 days once the supplemental responses were provided. (ROA 66, Tassa Decl. Exh. C; ROA 107, Kuljis Decl. Exh. D.) This was, in effect, no extension so Plaintiffs were forced to file the motion.

The sanctions amount represents 5 hours of attorney time at \$500 per hour. The court notes that Plaintiffs’ counsel failed to provide the court with any of his credentials to justify the \$1,235 per hour rate requested. Sanctions are due and payable to Plaintiffs’ counsel within 30 days of this order.

Plaintiffs to give notice.

Motion to Compel Further Responses to Requests for Production, Set One (ROA 82)

Defendants Oscar Health Plan of California and Oscar Health Inc. (“Oscar”) Motion to Compel Further Responses to Requests for Production, Set One is GRANTED in part and DENIED in part as set forth below. Plaintiffs are ORDERED to provide further responses to RFP Nos. 2-5, 7-9, 14-15, 19 and 23-24 within 30 days of notice of this ruling. The motion is denied as to RFP Nos. 11-13.

Requests 2-5 and 7-9

Requests 2-5 and 7-9 pertain to Plaintiffs' "paid claims data" and written agreements between Plaintiffs and other payors containing agreed upon rates for emergency services. Oscar has shown good cause for the production of these documents. Plaintiffs agree that the documents are discoverable and only object on the basis that Oscar should be compelled to produce the analogous documents in its possession. This objection is without merit. Plaintiffs are to produce documents in response to RFP Nos. 2-5 and 7-9.

Requests 11-13

Requests 11-13 pertain to how Plaintiffs set their charges and determine charge increases. Oscar has not shown good cause for this discovery. At issue is whether the amounts paid by Oscar were the reasonable and customary value of the services rendered. The method Plaintiffs used to calculate their full chargemaster rates has no bearing on whether the Oscar paid Plaintiffs fair market value.

Requests 14-15

Requests 14-15 seek documents analyzing rates received by Plaintiffs for emergency medical services and market competition. Oscar has shown good cause for this discovery. The information sought is relevant to a determination of the market value of the services provided. Plaintiffs' only argument in opposition is that the requested documents are irrelevant. Accordingly, Plaintiffs are to produce documents in response to RFP Nos. 14-15.

Requests 19 and 24

Requests 19 and 24 pertain to the value of any benefits of contracting and to reimbursements by non-contracted payors. In their opposition, Plaintiffs state that they agree to produce all non-privileged, responsive documents to the extent they exist.

Request 23

Request 23 seeks “All DOCUMENTS assessing, analyzing or quantifying each FACILITY’S patient volume from the FACILITY’S payors.” Oscar has shown good cause for this discovery, as Plaintiffs have alleged that Oscar must pay more for their services than other commercial payors because those commercial payors bring “increased volume” to Plaintiffs’ facilities. (Compl. ¶ 19.) Plaintiffs’ only argument in opposition is that the requested documents are irrelevant. Accordingly, Plaintiffs are to produce documents in response to RFP No. 23.

Oscar’s request for sanctions is DENIED.

Oscar to give notice.

Motion to Compel Further Responses to Special Interrogatories, Set One (ROA 64)

The Court GRANTS the motion. Oscar Health Plan of California and Oscar Health Inc. (“Oscar”) is ORDERED to provide further responses to Interrogatories Nos. 1-6 within 30 days of notice of this ruling.

If a timely motion to compel has been filed, the responding party has the burden to justify any objection or failure fully to answer the discovery requests. (Coy v. Sup.Ct. (Wolcher) (1962) 58 Cal.2d 210, 220-221 [re: interrogatories]; Kirkland v. Superior Court (2002) 95 Cal.App.4th 92, 98 [burden shifts to objector after good cause shown for RFPs]; Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725, 733 [party claiming the privilege has burden of establishing preliminary facts necessary to support objection].)

As to Interrogatory No. 1, Oscar agreed to provide a response, limited in scope to Orange County for the years 2019 to 2023. Oscar failed to justify any of its objections, instead contending that Plaintiffs failed to show good cause. However, in the context of interrogatories, the onus is on the

opposing party to justify its objections rather than on the moving party to show good cause.

As to Interrogatory Nos. 2-3, Oscar contends the interrogatories are not relevant because the manner in which a health plan calculates fair market value is immaterial, but also states that it agrees to describe its R&C Methodology, including the date it utilizes. Plaintiffs contend the information is relevant to show how the payments at issue in this case were determined, and that information relating to how Oscar determined its payments may make it more likely that its payments failed to equal the “fair market value” of the services. The permissible scope of discovery is very broad. “For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. Admissibility is not the test. Rather, it is sufficient if the information sought might reasonably lead to other, admissible evidence.” (Children's Hosp. Cent. California v. Blue Cross of California (2014) 226 Cal.App.4th 1260, 1276–77 (citing Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117).)

As to Interrogatory Nos. 4-6, Oscar has agreed to provide supplemental responses.

Sanctions of \$2,500 are issued against Oscar for failure to make discovery. (CCP §§2023.010; 2030.300(d)). The motion could have been avoided had Oscar agreed to extend Plaintiffs’ motion filing deadline, but Oscar only offered to produce supplemental responses, stating that the motion deadline would then be extended another 45 days once the supplemental responses were provided. (ROA 66, Tassa Decl. Exh. C; ROA 107, Kuljis Decl. Exh. D.) This was, in effect, no extension so Plaintiffs were forced to file the motion.

The sanctions amount represents 5 hours of attorney time at \$500 per hour. The court notes that Plaintiffs’ counsel failed to provide the court with any of his credentials to justify the \$1,235 per hour rate requested. Sanctions are due and payable to Plaintiffs’ counsel within 30 days of this order.

Plaintiffs to give notice.

Motion to Compel Further Responses to Requests for Production, Set One (ROA 63)

Plaintiffs' motion is GRANTED in part and DENIED in part as set forth below. Oscar Health Plan of California and Oscar Health Inc. ("Oscar") is ORDERED to provide further responses to RFP Nos. 5-8, 11, 13-14 and 15-17, in accordance with the parameters set forth below, within 30 days of notice of this ruling. The motion is denied as to RFP Nos. 1-4, 9-10 and 12.

As a preliminary matter, the parties appear to have come to an agreement regarding RFP Nos. 7-8, 13-14 and 15-17. (ROA 107, Kuljis Decl., Exh. E.) As to those requests, Oscar shall produce responsive, non-privileged documents. As to RFP Nos. 7-8 and 13-14, the production shall be limited to the time period of the disputed claims.

The remaining requests in dispute are RFP Nos. 1-6 and 9-12.

Request No. 5

This request seeks "All agreements effective on or after January 1, 2014 between YOU and any hospital or hospital system in San Diego, Imperial, Riverside, Orange, Los Angeles, and San Bernardino Counties (including agreements settling litigation or disputes) concerning or relating to YOUR payments for medical services provided to YOUR members."

Plaintiffs have shown good cause for this discovery, as the request is directly relevant to the issue at the heart of this case, i.e., the reasonable value of the services provided. Oscar contends that the scope should be limited to the years 2019 to 2023, which are the years Plaintiffs rendered the services at issue in this case. Oscar also contends that the responses should be limited to Orange County. Finally, Oscar contends that many of the agreements cannot be disclosed without notice to and or consent from the provider.

It is appropriate to limit the temporal scope of this request to the years 2019 through 2023. Plaintiffs have not articulated why or how agreements effective in prior years will help demonstrate the reasonable market value of the services rendered. However, the inclusion of additional surrounding counties is appropriate. These counties are all in the Southern California area, and Oscar has cited no authority for the proposition that “geographic area” is limited to the county in which the hospital is located.

As to agreements which Oscar contends cannot be disclosed due to third parties’ privacy interests, Oscar shall provide a privilege log.

Requests 1-3, 9 and 10

These requests seek documents relating to Oscar’s calculation of its payments on the disputed claims.

Plaintiffs contend that the requested documents are relevant because the payments they received pursuant to Oscar’s R&C Methodology did not result in the reasonable and customary value of the services rendered, and Oscar’s R&C Methodology is therefore not compliant with 28 CCR 1300.71(a)(3)(b). However, as Oscar points out, the validity of Oscar’s methodology for calculating payments is not at issue in the Complaint. Further, Oscar objects on the grounds that the production of the requested records would be unduly burdensome. In support of this objection, Oscar submits the declaration of Conor O’Rourke, who estimates it would take well over one hundred hours (excluding attorney time) to collect and review the documents to comply with these requests. Accordingly, at this juncture the undue burden of this discovery outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. (CCP §2017.020(a).)

Request No. 4

This request seeks “All expert reports, complaints, motion papers, and DOCUMENTS produced in discovery by YOU in any litigation or dispute since 2015 concerning YOUR

payments for emergency services provided to YOUR enrollees.”

Plaintiffs contend that this information is relevant because, if Oscar has taken inconsistent positions in other cases regarding how it

calculates the reasonable value of emergency services, that might bear on the credibility of Oscar’s retained expert witness or arguments made by counsel. This tenuous theory of relevance is insufficient to show good cause. Furthermore, the request is overbroad and will implicate third parties’ privacy rights.

Requests 6 and 11

These requests pertain to Oscar’s marketing materials targeted at Orange County.

Plaintiffs contend these documents are relevant to rebut an anticipated argument from Oscar that it is entitled to pay less for emergency services than it otherwise would because it is forced to pay for emergency care because its members can go to any emergency room. The requested marketing materials would demonstrate that Oscar knowingly solicits members in Orange County, and therefore is well aware that those members will be treated at Orange County hospitals, including at Plaintiffs’ facilities.

Oscar contends that the requests are irrelevant because the only issue is whether Oscar paid a fair market value for Plaintiffs’ services. Oscar also contends that request is unduly burdensome, which outweighs any relevance of the documents. In support of this argument, Oscar provides the declaration of Michael Hill, who estimates that it will take well over a hundred hours to collect the requested documents.

Oscar does not deny that it intends to argue the “forced transaction” theory described by Plaintiffs. Thus, the requested documents are directly relevant and production is warranted.

Request No. 12

This request seeks “All marketing materials made available or sent by YOU to members or prospective members or employers in San Diego County.”

Plaintiffs have not shown good cause for this request, which is targeted at San Diego County.

Plaintiffs’ request for sanctions is DENIED.

Plaintiffs to give notice.

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Defendants Oscar Health Plan of California and Oscar Health Inc. (“Oscar”) Motion to Compel Further Responses to Requests for Production, Set One is GRANTED in part and DENIED in part as set forth below. Plaintiffs are ORDERED to provide further responses to RFP Nos. 2-5, 7-9, 14-15, 19 and 23-24 within 30 days of notice of this ruling. The motion is denied as to RFP Nos. 11-13.

Requests 2-5 and 7-9

Requests 2-5 and 7-9 pertain to Plaintiffs’ “paid claims data” and written agreements between Plaintiffs and other payors containing agreed upon rates for emergency services. Oscar has shown good cause for the production of these documents. Plaintiffs agree that the documents are discoverable and only object on the basis that Oscar should be compelled to produce the analogous documents in its possession. This objection is without merit. Plaintiffs are to produce documents in response to RFP Nos. 2-5 and 7-9.

Requests 11-13

Requests 11-13 pertain to how Plaintiffs set their charges and determine charge increases. Oscar has not shown good cause for this discovery. At issue is whether the amounts paid by Oscar were the reasonable and customary value of the services rendered. The method Plaintiffs used to calculate

their full chargemaster rates has no bearing on whether the Oscar paid Plaintiffs fair market value.

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Requests 14-15 seek documents analyzing rates received by Plaintiffs for emergency medical services and market competition. Oscar has shown good cause for this discovery. The information sought is relevant to a determination of the market value of the services provided. Plaintiffs' only argument in opposition is that the requested documents are irrelevant. Accordingly, Plaintiffs are to produce documents in response to RFP Nos. 14-15.

Requests 19 and 24

Requests 19 and 24 pertain to the value of any benefits of contracting and to reimbursements by non-contracted payors. In their opposition, Plaintiffs state that they agree to produce all non-privileged, responsive documents to the extent they exist.

Request 23

Request 23 seeks "All DOCUMENTS assessing, analyzing or quantifying each FACILITY'S patient volume from the FACILITY'S payors." Oscar has shown good cause for this discovery, as Plaintiffs have alleged that Oscar must pay more for their services than other commercial payors because those commercial payors bring "increased volume" to Plaintiffs' facilities. (Compl. ¶ 19.) Plaintiffs' only argument in opposition is that the requested documents are irrelevant. Accordingly, Plaintiffs are to produce documents in response to RFP No. 23.

Oscar's request for sanctions is DENIED.

Oscar to give notice.

<p>5</p>	<p>Moran vs. City of Santa Ana 22-01297525</p>	<p>Motion to be Relieved.</p> <p>Off calendar per Notice of Withdrawal by MP.</p>
<p>6</p>	<p>Cox vs. The Summit At Turtle Ridge Community Association 21-01309648</p>	<p>Demurrer to Complaint</p> <p>Defendant The Summit At Turtle Ridge Community Association filed a Demurrer and Motion to Strike. Defendant MLG Assessment Recovery LLC filed a Demurrer.</p> <p>On April 3, 2024, Plaintiff timely filed a First Amended Complaint pursuant to Code of Civil Procedure section 472. (Code Civ. Proc., § 472(a) [“A party may amend its pleading once without leave of the court at any time . . . after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike.”].)</p> <p>On April 10, 2024, Defendant The Summit At Turtle Ridge Community Association WITHDREW its Demurrer and Motion to Strike.</p> <p>Defendant MLG Assessment Recovery LLC’s Demurrer remains on calendar but it is MOOT since Plaintiff timely filed the First Amended Complaint.</p> <p>Plaintiff to give notice.</p> <p>Motion for Sanctions</p> <p>Off calendar because Defendant The Summit at Turtle Ridge Community Association withdrew the motion on April 10, 2024.</p> <p>Motion to Compel Deposition (Oral or Written)</p> <p>Continue for failure to establish that the deponent Amit Kothari was properly served with the Motion. It is unclear whether counsel for Defendant The Summit at Turtle Ridge Community Association is also representing Amit Kothari and whether they were permitted to accept service on behalf of the deponent. Amit Kothari is not a party to the action and</p>

Defendant claims (although not under oath) that Kothari testified in his personal capacity and is no longer associated with Defendant or served on its board in any capacity.

On the merits, grant Request No. 10 and deny all other requests. Deny both parties' requests for sanctions.

Plaintiff Alvin Cox ("Plaintiff") filed a Motion to Compel Compliance with First Amended Notice of Taking of Deposition Issued to Amit Kothari pursuant to CCP § 2025.450(a).

The court will exercise its discretion and consider the untimely filed opposition. (Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker (2016) 2 Cal.App.5th 252, 262 ["[A] trial court has broad discretion to accept or reject late-filed papers."].)

As the record stands, the court is not persuaded that Amit Kothari has been properly served with the moving papers.

Deponent Amit Kothari is not a party to this action. The proof of service filed in support of the motion does not establish that Amit Kothari was served with the moving papers. Based on the documents before the court, it is unclear whether counsel for Defendant The Summit at Turtle Ridge Community Association is permitted to accept service on Amit Kothari's behalf.

California Rules of Court, rule 3.1346 requires:

"A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record." (Cal. Rules of Court, rule 3.1346.)

The Motion is CONTINUED to June 11, 2024 at 02:00 PM in Department C24. Plaintiff shall file proof of proper service on

deponent Amit Kothari no later than 16 court days before the continued hearing. Plaintiff is permitted to file a brief no longer than 5 pages establishing whether service was proper, which shall be filed and served on all interested parties no later than 16 court days before the continued hearing. Defendant is permitted to file a 5 page response, which shall be filed and served on all interested parties no later than 9 court days before the continued hearing. Plaintiff not permitted to file a reply.

Plaintiff to give notice.

Motion to Strike Complaint

Defendant The Summit At Turtle Ridge Community Association seeks an order sustaining the Demurrer as to all five causes of action. Defendant also filed a motion to strike the allegations seeking punitive damages.

Defendant MLG Assessment Recovery LLC seeks an order sustaining the Demurrer as to all five causes of action.

On April 10, 2024, Defendant The Summit At Turtle Ridge Community Association withdrew its Demurrer and Motion to Strike. (See ROA 265.)

All three motions are moot because Plaintiff timely filed a First Amended Complaint.

Defendant The Summit At Turtle Ridge Community Association filed a Demurrer and Motion to Strike. Defendant MLG Assessment Recovery LLC filed a Demurrer.

On April 3, 2024, Plaintiff timely filed a First Amended Complaint pursuant to Code of Civil Procedure section 472. (Code Civ. Proc., § 472(a) [“A party may amend its pleading once without leave of the court at any time . . . after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike.”].)

		<p>On April 10, 2024, Defendant The Summit At Turtle Ridge Community Association WITHDREW its Demurrer and Motion to Strike.</p> <p>Defendant MLG Assessment Recovery LLC’s Demurrer remains on calendar but it is MOOT since Plaintiff timely filed the First Amended Complaint.</p> <p>Plaintiff to give notice.</p>
<p>7</p>	<p>Bahri vs. Pacific Sales Kitchen and Bath Centers, LLC 23-01323508</p>	<p>Motion to Compel Further Responses to Form Interrogatories</p> <p>Initially, on March 5, 2024 the Court ordered “Lead counsel is to meet and confer either in person, telephonically or via video conference. Thereafter, nine Court days prior to the continued hearing date, counsel to file a joint separate statement indicating which issues have been resolved.” [ROA 80.]</p> <p>On April 3, 2024, Attorney Laura Hassan, for Plaintiff, filed a timely Declaration which states, “I am optimistic that supplemental responses will be served promptly to either resolve the issues raised in Plaintiff’s Discovery Motions or narrow down the issues before this Court.” [Decl. of Hassan¶9.]</p> <p>Thereafter, on April 4, 2024, Attorney James Tarter, for Defendant, filed an untimely Declaration which states, “During my last conversation with Ms. Hassan on April I, 2024, the parties agreed to continue to meet and confer regarding any other outstanding discovery before the April 16, 2024 hearing on Plaintiff’s discovery motions.” [Decl. of Tarter¶7.]</p> <p>To the extent supplemental responses are served, these motions will be moot, except for the issue of sanctions.</p> <p>Notably, however, even if supplemental responses are not served (and the Court is thus required to rule on the merits of</p>

the motions), it is clear that counsel has not complied with this Court's prior order pertaining to those motions.

First of all, it is not clear that either counsel are "lead counsel" as ordered to meet and confer.

Second, although it is encouraging that counsel met and conferred (and seem to believe they either will resolve or narrow the discovery issues), they failed to file a joint separate statement as ordered; rather, they filed two separate declarations, one of which was untimely, having been filed on April 4, 2024. As such, it is impossible for the Court to rule on the pending motions as it does not know what remains at issue.

Therefore, the recommendation is to simply take these motions off calendar for failure to comply with this Court's March 5, 2024 order.

Plaintiff Angela Bahri's four discovery motions (ROAS 43, 44, 45, 46) are off calendar. Counsel failed to comply with the Court's March 5, 2024 order, requiring a joint separate statement to be filed nine Court days prior to the continued hearing date.

Motion to Compel Production – same tentative ruling as above

Motion to Compel Response to Requests for Admissions – same tentative as above