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 **10:30 a.m**. on the day of 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 15, 2025
2:00 PM

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

#	Case Name	Tentative
1	**Hillsboro Brown Capital, LLC vs. Taft** **19-01087702**	1-4) Motion to Compel Answers to Special Interrogatories 5-9) Motion to Compel Production **Off calendar**
2	**3H Investments, LLC vs. Duncan** **19-01106394**	1) Motion - Other 2) Motion for Attorney Fees Plaintiffs 3H Investments, LLC, Melissa Priest, and Richard Priest's (collectively, "Plaintiffs") Motion for Attorney Fees on Appeal is GRANTED. Plaintiffs seek contractual attorney's fees incurred in connection with three appeals taken by Defendant Kathleen Duncan ("Duncan") in this case. Plaintiffs also request an additional $3,060 in fees and costs incurred in filing this motion. Duncan does not contest Plaintiffs' entitlement to fees in the amount of $43,145.65 for the first two appeals (the "Fees

		Appeal" (Appeal No. G062498) and the "Indemnity Appeal" (Appeal No. G061947)). As to fees for the third appeal (the "Contribution Appeal" (Appeal No. G062641)), Duncan contends that the award would be premature until the Court enters an order on her renewed Contribution Motion, which is set for hearing on the same date as this motion. Duncan concedes that, if the Court denies her Contribution Motion, then Plaintiffs would be the prevailing party and entitled to an award of fees pursuant to the parties' operating agreement. (Oppn at 2:18-22.) Duncan's Motion for Contribution is denied. Duncan has not disputed the reasonableness of the amount sought in fees. Nor has Duncan offered any argument in opposition to Plaintiffs' request for $3,060 in fees and costs incurred in filing this motion. Accordingly, the Plaintiffs' motion is granted in full. Plaintiffs are awarded their requested fees as follows: 1. For the "Fees Appeal" (Appeal No. G062498): $20,843.95 2. For the "Indemnity Appeal" (Appeal No. G061947): $21,477.25 3. For the "Contribution Appeal" (Appeal No. G062641): $19,150 4. Fees and Costs incurred in filing this motion: $3,060 Plaintiffs to give notice.
3	**Montag vs. Mirador at Rancho Niguel Association** **20-01165493**	Motion – Other Plaintiff, Elaine Montag ("Plaintiff"), moves for an Order to Show Cause re: Contempt against Defendant, Mirador At Rancho Niguel Association ("HOA") for the HOA's failure to comply with the Court's Order dated August 13, 2024 and Judgment dated October 3, 2024, ordering the HOA to comply with the terms of the written settlement agreement between Plaintiff and the HOA and complete repairs required under the Settlement Agreement by October 18, 2024. Plaintiff also moves for an award of her attorneys' fees and costs incurred in the contempt proceedings and enforcing the Settlement Agreement in the sum of $39,392.35 should the Court determine that the HOA is guilty of the contempt charged. Plaintiff's Motion is DENIED. "There are two types of civil contempt, direct and indirect contempt." (*Moore v. Superior Court of Orange County* (2020) 57 Cal.App.5th 441, 454 ("*Moore*").) Direct contempt is when the

		offending conduct is committed in the court's presence and punished summarily, whereas, indirect contempt is not committed in the immediate view and presence of the court. (*Ibid.*) "An 'indirect contempt' requires a sequential series of steps: (1) an affidavit is presented to the court of the facts constituting the contempt; (2) a warrant of attachment or order to show cause is issued; (3) service of the warrant or order; (4) if there is a warrant (not applicable here), arrest and bail may occur; (5) a hearing, at which the judge investigates the charge and hears any answer, including witnesses; and (6) findings and punishment. [Citation.]" (*Ibid.*) Code of Civil Procedure section 1211 states, in relevant part: "When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers." (Code Civ. Proc. § 1211(a), emphasis added.) "A contempt proceeding [for indirect contempt] is commenced by the filing of an affidavit and a request for an order to show cause." (*Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1286, citing Code Civ. Proc., § 1211 ("*Cedars-Sinai Imaging Medical Group*").) "After notice to the opposing party's lawyer, the court (if satisfied with the sufficiency of the affidavit) must sign an order to show cause re contempt in which the date and time for a hearing are set forth." (*Id* at p. 1286.) The essential facts to establish contempt for violation of a court order are '(1) the making of the order, (2) knowledge of the order, (3) ability of the respondent to render compliance, and (4) willful disobedience of the order.' [Citation.]" (*Moore, supra,* 57 Cal.App.5th at p. 456.) "[T]he filing of a sufficient affidavit is a jurisdictional prerequisite to a contempt proceeding." (*Koehler v. Superior Court* (2010) 181 Cal.App.4th 1153, 1169 ("*Koehler*").) In indirect contempt proceedings based on a disobedience of a prior court order, a valid order and judgment must establish the following: (1) facts establishing the court's jurisdiction (e.g., personal service or subpoena, validity of the court order allegedly violated, etc.); (2) the contemnor's knowledge of the order disobeyed; (3) the contemner's ability to comply; and (4) the contemnor's willful disobedience of the order. (*Id.* at pp. 1160, 1169; *Moore, supra,* 57 Cal.App.5th at p. 456 ["The essential facts to establish contempt for violation of a court order are '(1)

		the making of the order, (2) knowledge of the order, (3) ability of the respondent to render compliance, and (4) willful disobedience of the order.' [Citation]"].) "The burden of proof is on the *moving party* to prove the respondent's ability to comply (rather than on the respondent to prove inability)." (*Koehler, supra,* 181 Cal.App.4th at p. 1169, emphasis in original [finding contempt must be reversed and annulled where there was no substantial evidence that petitioner had the ability to comply with the order; *In re Cassil* (1995) 37 Cal.App.4th 1081, 1088, fn. 1 [The burden of proof rests with the moving party when a punitive contempt judgment is imposed…in the case of a punitive contempt the burden of proving ability to comply rests with the moving party.].) Here, the declarations submitted in support of the motion for order to show cause re contempt indicates that at a continued hearing on Plaintiff's Motion to Enforce Settlement on August 13, 2024, the Court granted the Motion to Enforce Settlement Agreement, stating in its August 13, 2024 Minute Order, "HOA to complete all repairs by 10/18/24." (Declaration of Kirk C. Pearson, ¶ 5, Ex. 13.) Plaintiff submitted a proposed judgment to the Court on August 16, 2024 on the Motion to Enforce the Settlement Agreement, and on October 3, 2024, the Court entered judgment pursuant to the terms of the Settlement Agreement and ordered the HOA to complete all repairs by October 18, 2024. (*Id.*, ¶¶ 6-7, Ex. 14.) Based on the above, there appears to be a valid judgment providing that "[t]he HOA shall complete repairs to the property located at 28148 El Montanero, Laguna Niguel, CA 92677 (the "Property"), including the repairs to the interior wood framing at Property, in accordance with the terms of the Settlement Agreement by October 18, 2024." (Ex. 14 to Plaintiff's Compendium of Evidence.) However, Plaintiff does not submit sufficient evidence showing the HOA's actual knowledge of the order. Plaintiff provides that "At the August 13, 2024 hearing, both Dr. Montag's counsel and the HOA's counsel appeared and waived notice of the Court's order [granting the Motion to Enforce Settlement Agreement]." (Motion, 7:6-10.) Plaintiff does not present evidence showing service of the signed judgment on the HOA. " 'Notice waived" means the lawyer waives his right to written notice by opposing counsel of the *lawyer's understanding* of the court's ruling or of further notice concerning a hearing date. [Citation.]" (*Cedars-Sinai Imaging Medical Group, supra,* 83 Cal.App.4th at p. 1287, fn. 7 ["No one would suggest that, by waiving notice of a ruling

		granting summary judgment, the parties had waived their right to the entry and service of a signed judgment"].) Additionally, Plaintiff does not show the ability to comply with the judgment to complete repairs by October 18, 2024. Plaintiff counsel's declaration indicates that they received an email on September 27, 2024, representing that the HOA had completed the repairs to the Property. (Pearson Decl., ¶ 10, Ex. 17.) Plaintiff provides that on October 4, 2024, the HOA was informed that the HOA's contractor had drywalled the entire interior of the Property despite that the terms of the settlement agreement specifically excludes any drywall repairs by the HOA, and that she requested that the HOA remove the drywall so that she could conduct water testing of the Property. (Pearson Decl., ¶ 12, Ex. 17; Declaration of Elaine Montag ("Plaintiff's Decl."), ¶¶ 8-10, Ex. 5.) Plaintiff provides that the HOA's contractor removed the bottom of one to two feet of drywall, and that she arranged for water testing to be conducted on October 13, 2024, "to confirm that the HOA's repairs were fully and properly completed and thus that the water intrusion that the repairs were meant to repair as in fact remedied." (Plaintiff's Decl., ¶¶ 8, 10-12.) Water Intrusion Specialist conducted the water testing of the Property on October 13, 2024, and on October 16, 2024, Plaintiff received an email from Luke Cruz of Water Intrusion Specialist explaining the water test findings. (*Id.*, ¶¶ 12-13.) The evidence indicates that it was not until October 29, 2024, after the October 18, 2024, deadline to complete repairs, that Plaintiff's attorney, Shelby Daws, sent an email to the HOA's counsel, Andrew Mallon and David Swedelson, notifying them of the results of the water at the Property and providing a copy of the water testing report. (Pearson Decl., ¶ 13.) Based on the foregoing, as the HOA was not informed of the results of the water testing until after the deadline to complete repairs had passed, Plaintiff fails to show that the HOA could have completed repairs by October 18, 2024, in accordance with the judgment. Further, by failing to show the ability to comply by October 18, 2024, Plaintiff also fails to show willful disobedience of the order and judgment. Based on the foregoing, the declarations filed in support of the motion which served as the affidavit, do not present facts sufficient to constitute contempt. Thus, Plaintiff's Motion for Order to Show Cause Re Contempt is DENIED.

		The Court GRANTS Plaintiff's request for judicial notice of Exhibits 12-14 pursuant to Evidence Code section 452(d) as court records, and Exhibit 15 pursuant to Evidence Code section 452(h) as "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," but declines to take judicial notice of the truth of hearsay statement therein. Plaintiff to give notice.
4	**Mejia Villa vs. Castaneda** **23-01314626**	Motion to Compel Deposition (Oral or Written) Plaintiff Sarai Mejia Villa ("Plaintiff") filed a motion to compel the deposition of Defendant Daniel March ("Defendant"). Plaintiff requests $2,580 in sanctions. As an initial matter, Plaintiff still has not shown proof of service of the motion on Defendant. In the opposition, however, Defendant notes that he was served by email on March 17, 2025. Code of Civil Procedure section 2025.450(a) authorizes the Court to compel a party's attendance and testimony at deposition and produce documents described in the deposition notice if, after service of a deposition notice and without having served a valid objection, the party fails to appear for examination or fails to proceed with it. Here, the Court finds that Defendant has not failed to appear or proceed with his deposition. In the opposition, Defendant advised the Court that he does not oppose the taking of his deposition. Rather, Defendant requested that his deposition be continued because (1) Defendant was experiencing health issues, including a stroke and cardiovascular surgery, (2) Defendant filed a demurrer the operative complaint, and (3) Defendant wanted an opportunity to determine whether he would retain counsel to represent him in this matter. Defendant also argues that he communicated his request for a continuance to Plaintiff's counsel and Plaintiff's counsel did not response to Defendant's communications prior to filing this motion. Given the above, the Court finds that an order compelling the deposition of Defendant March is unwarranted at this time, as Defendant has neither failed to appear for examination nor refused to proceed with the examination.

		The Motion is DENIED WITHOUT PREJUDICE. No sanctions are awarded. The Court has been notified by Counsel that deposition is currently set for June 4, 2025. The Court sets a Review Hearing for June 10, 2025, 9:30. Plaintiff to give notice.
5	**Bigalimov vs. Tapia** **24-01389070**	1) Demurrer to Amended Complaint 2) Motion to Strike- Anti SLAPP 3) Case Management Conference Defendant Gafe Pizza Inc. moves for an order striking the entire FAC of Plaintiff Rolan Bigalimov on the grounds that the allegations arise out of Defendant's exercise of the right of petition and to free speech and it is not probable that Plaintiff will prevail on his claims. Code of Civil Procedure section 425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the Court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." This section is to be construed broadly. (Code Civ. Proc., § 425.16(a).) The court's determination of an anti-SLAPP motion is a two-step process. First, the court determines if the party moving to strike a cause of action has met its initial burden to show that the cause of action arises from an act in furtherance of the moving party's right of petition or free speech. Then, if the court determines that showing has been made, the court determines whether the opposing party has demonstrated a probability of prevailing on the claim. (Navellier v. Sletten (2002) 29 Cal.4th 82, 88.)

		"In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (Navellier v. Sletten (2002) 29 Cal.4th 82, 89.) "In deciding whether the initial 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (Ibid.) Here, Plaintiff does not dispute that this action is based on the filing of a motion for relief from default in the earlier-filed case. Plaintiff contends that declarations filed in support of that motion for relief from default contained false statements and, as a result of the fraud, the motion for relief from default was granted, the lawsuit continued, and he remained unhoused and suffered as a result. The filing of the motion for relief and supporting declarations falls within the language of the anti-SLAPP statute as "written or oral statement[s] or writing[s] made in connection with an issue under consideration or review by a . . . judicial body" and "written or oral statement[s] or writing[s] made before a . . . judicial proceeding[.]" (Code Civ. Proc., § 425.16(e)(1)-(2).) Gafe Pizza has met its burden of showing that this action arises out of acts in furtherance of its right of petition or free speech and that activity is protected by the anti-SLAPP statute. In light of Gafe Pizza's showing, the burden shifts to Plaintiff to demonstrate that he has a probability of prevailing on his claims. The FAC makes references to causes of action for fraud, intentional infliction of emotional distress, and conspiracy. Plaintiff's own declaration provides information as to how much time he spent preparing his opposition. It does not present any evidence in support of his claims. Plaintiff has attached several documents to a document he has titled an Opposition to Gafe Pizza's Request for Judicial Notice but which actually appears to be his own Request for Judicial

		Notice. Those documents include the declarations filed in support of the motion for relief from default, discovery requests, and email correspondence. None of the documents support Plaintiff's causes of action. Therefore, Plaintiff has not met his burden to show he has a probability of prevailing on his claims. In light of the above, the Special Motion to Strike is GRANTED. Gafe Pizza's request for attorney fees is DENIED. Gafe Pizza's Demurrer to the FAC is MOOT in light of the granting of the Special Motion to Strike. Gafe Pizza to give notice.
6	**Bigalimov vs. Tapia** **24-01420887**	1) Demurrer to Complaint 2) Demurrer to Complaint 3) Motion to Strike - Anti SLAPP 4) Motion to Strike - Anti SLAPP 5) Case Management Conference Kozo Nakagawa, Fernando Tapia, Kenia Covolo, Julie Tapia, Salmex Pizza Inc., Gafe Pizza Inc., Salmar Pizza Inc., Domino's Pizza Inc. and Granvista move for an order striking the entire Complaint of Plaintiff Rolan Bigalimov on the grounds that the allegations arise out of Defendants exercise of the right of petition and to free speech and it is not probable that Plaintiff will prevail on his claims. Code of Civil Procedure section 425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the Court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the

		claim." This section is to be construed broadly. (Code Civ. Proc., § 425.16(a).) The court's determination of an anti-SLAPP motion is a two-step process. First, the court determines if the party moving to strike a cause of action has met its initial burden to show that the cause of action arises from an act in furtherance of the moving party's right of petition or free speech. Then, if the court determines that showing has been made, the court determines whether the opposing party has demonstrated a probability of prevailing on the claim. (Navellier v. Sletten (2002) 29 Cal.4th 82, 88.) "In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (Navellier v. Sletten (2002) 29 Cal.4th 82, 89.) "In deciding whether the initial 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (Ibid.) Here, Plaintiff's action arises out of an administrative hearing before the California Unemployment Insurance Appeals Board. Plaintiff contends that representatives of Salmex Pizza Inc. submitted a set of 20+ pages of false and fake documents in support of their opposition to Plaintiff's unemployment insurance claim and appeal. Participation in an administrative hearing falls under the umbrella of the constitutional right to petition. Indeed, "[t]he constitutional right to petition . . . includes the basic act of filing litigation or otherwise seeking administrative action." (Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106, 1115, internal quotations omitted [applying anti-SLAPP statute to proceedings before HUD]; see also Dible v. Haight Ashbury Free Clinics, Inc. (2009) 170 Cal.App.4th 843, 850 [holding that statements made at EDD unequivocally were part of an official proceeding and subject to anti-SLAPP statutes].)

		Defendants have met their burden of showing that this action arises out of acts in furtherance of their right of petition or free speech and that activity is protected by the anti-SLAPP statute. The burden now shifts to Plaintiff to demonstrate that he has a probability of prevailing on his claims. The Complaint makes references to causes of action for fraud, defamation/libel, civil rights violations, intentional infliction of emotional distress, and conspiracy/vicarious liability. Plaintiff's own declaration provides information as to how much time he spent preparing his opposition. Otherwise, it does not present any evidence in support of his claims. Plaintiff has attached several documents to ROA 82, which he has titled an Opposition to Request for Judicial Notice of Defendants but what in actuality appears to be his own request for judicial notice. Those documents include the documents submitted to the CUIAB, discovery requests, and email correspondence. None of the documents support Plaintiff's causes of action. In light of the above, the Special Motions to Strike are GRANTED. Defendants' request for attorney fees is DENIED. Defendants' Demurrers to the Complaint are MOOT in light of the granting of the Special Motions to Strike. Defendants to give notice.
7	**Owen vs. Eagle Propco 6 LLC** **24-01426365**	Motion to Strike Portions Of Complaint **Continue to 4/29/25 to be heard with Demurrer**

8	**Huntley vs. FCA US, LLC** **24-01431820**	1) Demurrer to Complaint – **OFF CALENDAR**, FAC filed. 2) Case Management Conference - continued 06/10/2025 at 09:30 AM.