Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: April 15, 2025

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

All hearings are open to the public.

If you desire a transcript of the proceedings, you must provide your own court reporter (unless you have a fee waiver and request a court reporter in advance). Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and
- Court Reporter Interpreter Services

These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling **(657-622-5232)**. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

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
1	**Maddah vs. Luo** **2024-01437781**	**Demurrer to Complaint** Defendant Lilia Luo's Demurrer is SUSTAINED with 20 days leave to amend. Luo is named in the caption of the Complaint as the sole Defendant. However, Plaintiffs allege Creative Dynasty Estate is the landlord of the premises they are occupying. Further, Plaintiffs define "Defendant" as referring to Creative Dynasty Estate and all allegations are directed to "Defendant". Luo is not mentioned in the body of the Complaint. Therefore, Plaintiffs have failed to allege any claims against Luo and the Demurrer must be sustained. Leave to amend should be liberally granted unless the complaint shows on its face that it is unable to be amended. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) It is not evident from the face of the Complaint that no cause of action can be alleged against Luo. Thus, leave to amend is granted.
2	**Martinez vs. Rosenberg** **2024-01435685**	**Demurrer to Complaint** The general demurrer of defendant Gary Rosenberg, D.O., to the third cause of action in the complaint of plaintiffs Kristina Martinez and Benjamin Smith is SUSTAINED with 20 days' leave to amend. Defendant Gary Rosenberg, D.O., demurs generally to the third cause of action for fraudulent concealment. The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact. Hambrick v. Healthcare Partners Medical Group, Inc. (2015) 238 Cal.App.4th 124, 162. Fraud must be pleaded with specificity, to provide the defendants with the fullest possible details of the charge so they are able to prepare a defense to this serious attack.

		Goldrich v. Natural Y Surgical Specialties (1994) 25 Cal.App.4th 772, 782. To withstand a demurrer, the *facts* constituting every element of the fraud must be alleged with particularity, and the claim cannot be salvaged by references to the general policy favoring the liberal construction of pleadings. Ibid. Even in a case involving numerous oft-repeated misrepresentations, the plaintiff must, at a minimum, set out a representative selection of the alleged misrepresentations sufficient to permit the trial court to ascertain whether the statements were material and otherwise actionable. Id. at p. 783. Although plaintiffs contend in their opposition that they have sufficiently set forth the elements of fraudulent concealment, the cause of action is devoid of facts. In ¶ 46 of the third cause of action, plaintiffs allege as follows: > Defendant, GARY ROSENBERG, D.O., intentionally failed to disclose to Plaintiff, KRISTINA MARTINEZ, known facts or facts that could have been discovered by him, including that there was a retained foreign body, specifically, set screw guidance hardware, that was negligently left behind during her July 27, 2023 surgery. This information was withheld despite available post-operative imaging immediately following the surgery and imaging from September 5, 2023 which clearly revealed that set screw guidance hardware that had been negligently left behind during the July 27, 2023 [surgery]. This fact was known to Defendant, GARY ROSENBERG, D.O., between July 27, 2023 and September 14, 2023, by Defendant, GARY ROSENBERG, D.O., intentionally failed to disclose this fact to Plaintiff, KRISTINA MARTINEZ, and concealed it in order to deceive Plaintiff, Krisina Martnez, and avoid having her find out about it and having it reported to the California Medical Board. Among other things, these allegations fail to show that moving defendant intentionally concealed anything from plaintiff because the first sentence is pled in the alternative and the alternative allegation is that defendant "could have known" about the retained foreign body. Also, the allegations fail to show how moving defendant discovered the retained foreign body, notwithstanding the allegation that imaging was available immediately after the surgery.

		Thus, the general demurrer to the third cause of action is SUSTAINED with 20 days leave to amend.
3	**Martinez medina vs. Santa Ana Unified School District** **2023-01320099**	**Demurrer to Cross- Complaint** Cross-Defendant Santa Ana Unified School District's unopposed demurrer to the Cross-Complaint filed by Cross-Complainants Kevin Harris, in *pro per*, and M. Harris, a minor, in *pro per* is SUSTAINED with 20-days leave to amend. Cross-Defendant challenges the Cross-Complaint in its entirety on the grounds it fails to plead compliance or excuse for such compliance with the Government Tort Claims Act. Pursuant to Government Code section 945.4, "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented…until a written claim therefor has been presented to the public entity and has been acted upon. . . or has been deemed to have been rejected. . ." (Gov. Code §945.4). The requirement "is not merely procedural, but is a condition precedent to maintaining a cause of action and, thus, is an element of the plaintiff's cause of action. [Citation.] As a result, the 'failure to allege facts demonstrating or excusing compliance with the claim presentation requirements subjects a claim against a public entity to a demurrer for failure to state a cause of action.' [Citation.]" (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1236; see also *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1243.) Here, the Cross-Complaint fails to allege compliance or excuse from compliance with the claim presentation requirement. Cross-Complainants seek monetary damages as to each cause of action and, consequently, a claim was required as to each. (Gov. Code, §945.4.) Based on the foregoing, the demurrer is SUSTAINED with 20-days leave to amend. Moving party to give notice.

4	**Ko vs. Newrez, LLC** **2024-01400538**	**1. Demurrer to Amended Complaint** Defendants William R. Jarrell and Aldridge Pite, LLP's Demurrer to the First Amended Complaint is OVERRULED as moot. Defendants were dismissed on 4/2/25. (ROA 104, 106.) Thus, the Demurrer must be overruled as moot. (See *JKC3H8 v. Colton* (2013) 221 CA4th 468, 477.)
5	**Rodriguez vs. Career Networks Institute** **2023-01322769**	**1. Demurrer to Amended Complaint** The unopposed general demurrer of defendants Career Networks Institute, Inc., dba CNI College, and Anne Gonzales to the second amended complaint of plaintiff Gabriela Rodriguez is sustained in its entirety without leave to amend. Defendants Career Networks Institute, Inc., dba CNI College, and Anne Gonzales demur generally and specially on the ground of uncertainty to all three causes of action in the second amended complaint of plaintiff Gabriela Rodriguez (ROA 73), which are based on her dismissal from the nursing program of defendant Career Networks Institute, Inc. Plaintiff alleges that defendant Anne Gonzales was an employee of the co-defendant. (See SAC, ¶ 3.) First cause of action for negligence against defendant Gonzales. The first cause of action is for negligence, which is asserted only against defendant Gonzales. Actionable negligence is traditionally regarded as involving the following: (1) a legal duty to use due care; (2) a breach of that duty; and (3) the breach as the proximate or legal cause of the resulting injury. 6 Witkin, Summary of Cal. Law (11 ed. 2024), Torts § 961. The threshold element of a cause of action for negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion. Greenberg v. Superior Court (2009) 172 Cal.App.4th 1339, 1349. Courts have invoked the concept of duty to limit generally the otherwise potentially infinite liability that would follow from every negligent act. Ibid. Unlike the elements of breach, causation, and injury, all of which are fact-specific issues for the trier of fact, the existence and scope of a duty are questions of law. Staats v. Vintner's Golf Club, LLC (2018) 25 Cal.App.5th 826, 833.

In her first cause of action, plaintiff alleges that she was harmed by negligence of defendant Gonzales during her enrollment at the nursing school until she was expelled. (SAC, ¶ 67.) Among other things, plaintiff alleges that defendant Gonzales owed her "a duty to use ordinary care in facilitating [her education], including but not limited to providing redress, applying fairness as well as treating its student equally." (SAC, ¶ 71.) She alleges that defendant Gonzales breached this duty "when she gave Plaintiff the wrong test and then announced the bad scoring of the test to the entire class." (SAC, ¶ 74.)

Defendants contend that plaintiff was not owed a duty of care with respect to her education, citing Wells v. One2One Learning Foundation (2006) 39 Cal.4th 1164, and Smith v. Alameda County Social Services Agency (1979) 90 Cal.App.3d 929. In Wells, the court explained that there was no cognizable cause of action for educational malfeasance, stating:

> As the court [in Peter W. v. San Francisco Unified School District (1976) 60 Cal.App. 3d 814] noted, "classroom methodology affords no readily acceptable standards of care, or cause, or injury." Pedagogical science, the court observed, is "fraught with different and conflicting theories" about how children should be taught; moreover, educational success or failure "is influenced by a host of factors," both personal and external, " which affect the pupil subjectively" and often are beyond the control of educators. [Citation.] "We find in this situation," said the court, "no conceivable 'workability of a rule of care' against which defendants' alleged conduct may be measured [citation], no reasonable 'degree of certainty that ... plaintiff suffered injury' within the meaning of the law of negligence [citation], and no such perceptible 'connection between the defendant's conduct and the injury suffered,' as alleged, which could establish a causal link between them within the same meaning [citation]." [Citation.]
>
> Peter W. also identified other public policy considerations, "even more important in practical terms," that counsel against an "actionable 'duty of care' in persons and agencies who administer the academic phases of the public educational process."

> [Citation.] The opinion noted that the public schools are "already beset by social and financial problems," including widespread dissatisfaction with their academic performance, and are subject to "the limitations imposed upon them by their publicly supported budgets." [Citation.] Subjecting such institutions to an academic duty of care under these circumstances, the opinion concluded, "would expose them to the tort claims—real or imagined—of disaffected students and parents in countless numbers.... The ultimate consequences, in terms of public time and money, would burden them—and society—beyond calculation." [Citation.]

Wells v. One2One Learning Foundation, supra, 39 Cal.4th at pp. 1211-1212.

Plaintiff has not opposed the demurrer or otherwise shown that the Court should conclude that defendant Gonzales owed her a duty of care in her educational studies.

Second cause of action for negligent misrepresentation. The second cause of action is for negligent misrepresentation and it is asserted against both defendants.

The elements of fraud are: (a) misrepresentation, i.e., 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. Charnay v. Cobert (2006) 145 Cal.App.4th 170, 184. The elements of negligent misrepresentation are similar to intentional fraud except for the requirement of scienter; in a claim for negligent misrepresentation, the plaintiff need not allege the defendant made an intentionally false statement, but simply one as to which he or she lacked any reasonable ground for believing the statement to be true. Ibid.

Defendants contend that this cause of action fails because plaintiff does not allege that they made any false representations, and this contention is well-taken. Plaintiff merely alleges that defendant Gonzales purposefully gave her "an erred test to make her fail because the test was on a subject not covered in the class at said time" and that defendant Gonzales "intentionally told the entire class that [plaintiff] failed the erred test which was demeaning and despicable."

		(SAC, ¶¶ 96 and 97.) As defendants point out, these are actions and not misrepresentations. Third cause of action for vicarious liability. The third cause of action is for vicarious liability against defendant College Networks Institute only. It appears to state a cause of action against this defendant based on negligence of the co-defendant. Plaintiff alleges that defendant Career Networks Institute "had a duty, whether arising under statute or by common law, to exercise due care with respect to the professional, ethical, and legal conduct of its business, such that no undue harm would befall its customers, i.e., its students." (SAC, ¶ 114.) She alleges that defendant breached this duty because co-defendant Gonzales "harmed [p]laintiff as a result of her unlawful disclosure of [p]laintiff's examine grade and erred test as previously complained of herein." Again, California courts have not recognized a duty of care on the part of an educational institution that supports a claim for educational malfeasance, and plaintiff has not opposed the demurrer or shown that such a duty was owed. Thus, the unopposed general demurrer of defendants Career Networks Institute, Inc., dba CNI College, and Anne Gonzales to the second amended complaint of plaintiff Gabriela Rodriguez is sustained in its entirety without leave to amend. **2. Motion to Strike Portions of Complaint** The motion of defendants Career Networks Institute, Inc., dba CNI College, and Anne Gonzales to strike portions of the second amended complaint of plaintiff Gabriela Rodriguez is MOOT.
6	**Pacific Rim Cultural Foundation vs. Ainsworth** **2024-01400894**	**1. Demurrer to First Amended Complaint by Defendant Andrew Boyd-Jones (ROA 85)** The Demurrer of Defendant Andrew Boyd-Jones is SUSTAINED. Plaintiff's request for judicial notice of filings in the Orange County and Los Angeles Superior Courts (ROA 102) is granted.

		Defendant contents the complaint is barred by the statute of limitations. Plaintiff's claims arise from a 1998 lawsuit to which Plaintiff was not a party. The parties included Nicholas Rockefeller (Plaintiff's assignor, now apparently deceased) and parties including the Lehmer Parties (the underlying Plaintiff, a non-party to this lawsuit), and the Trenwith Parties (some of whom are Defendants in this lawsuit). Plaintiff alleges it eventually obtained, via assignment, a right of indemnification against Defendants against loss and damage "arising out of any claim by the Rockefeller Defendants by reason [of] th[e] assignment of claims" in the 1999 settlement of the 1998 lawsuit. In 2000, Rockefeller filed a cross-complaint against the other parties to the 1998 lawsuit and obtained a 2003 settlement with Lehmer Parties, which included a promise to provide a $5 million promissory note and assignment of Lehmer Parties' indemnity rights under their 1999 settlement with the Trenwith Parties. Rockefeller obtained a 2007 judgment enforcing this settlement, but Lehmer Parties apparently failed to comply with the judgment. After years of further litigation against Lehmer Parties, Rockefeller obtained a subsequent judgment, including interest, against the Lehmer Parties for approximately $12.5 million arising from the 2003 settlement. Plaintiff now seeks to enforce the indemnity agreement between the Trenwith and Lehmer Parties which was set out in the 1999 settlement agreement and eventually assigned to Plaintiff. Moving Defendant contends Plaintiff's claims are barred by the four year statute of limitations for breach of written contract under code of Civil Procedure section 337. Construing the underlying indemnity agreement as indemnity against liability, Defendant argues that Plaintiff's claim first accrued at the latest in May 2007, when judgment was entered against the Lehmer Parties on the 2003 settlement agreement. In the alternative, construing the underlying indemnity agreement as an indemnity agreement against loss, Defendant contends that such a claim has not yet accrued because it does not arise until payment has been made. Plaintiff does not allege

		that any payment has been made under the 2024 judgment of $12.5 million. Plaintiff apparently concedes the agreement was for indemnity against liability, arguing the claim accrued when liability was established via the 4/17/24 judgment against Lehmer. Plaintiff cites *Alberts v. American Cas. Co. of Reading, Pa.* (1948) 88 Cal.App.2d 891, 899 (cleaned up), which holds: "The same instrument may indemnify against actual loss and against liability. Liability is established upon the rendition of a judgment against the indemnitee with respect to the thing indemnified although the judgment remains unpaid. The form which the litigation takes is of no importance so long as the liability of the indemnitee is established. If the contract binds the indemnitor to pay money and the payment of the money will prevent harm or injury to the indemnitee it is a contract of indemnity against a liability." The problem with Plaintiff's argument is that the 2024 judgment was not the first judgment holding the Lehmer parties liable for claims by Rockefeller. It was only the final result of decades of litigation to enforce the 2003 settlement which included a prior 2007 judgment arising from the same liability. Plaintiff makes no attempts to distinguish between the 2007 judgment and the 2024 judgment for purposes of the statute of limitations. Even construing the FAC in the light most favorable to Plaintiff, the May 2007 judgment "established" the liability of the indemnitee, Lehmer. Therefore, the May 2007 judgment triggered the applicable four-year statute of limitations despite the fact that Rockefeller went on to obtain a later judgment as to the same subject with added interest. Plaintiff has not explained how the complaint could be further amended to state a timely claim under Code of Civil Procedure section 337. Therefore, the demurrer is sustained without leave to amend.

		2. Demurrer to First Amended Complaint by Defendants BDO Seidman, LLP; BDO USA, P.C.; BDO Capital Advisors, LLC; and Trenwith Group, LLC (ROA 91) The Demurrer of Defendants BDO Seidman, LLP; BDO USA, P.C.; BDO Capital Advisors, LLC; and Trenwith Group, LLC is SUSTAINED. Plaintiff's request for judicial notice of filings in the Orange County and Los Angeles Superior courts (ROA 102) is granted. Moving Defendant asserts the same statute of limitations argument raised by Defendant Andrew Boyd-Jones and addressed above. The demurrer is sustained without leave to amend for the same reasons. **3. Demurrer to First Amended Complaint by Defendant Ron E. Ainsworth (ROA 79)** The Demurrer of Defendant Ron E. Ainsworth is SUSTAINED. Plaintiff's request for judicial notice of filings in the Orange County and Los Angeles Superior courts (ROA 102) is granted. Moving Defendant asserts the same statute of limitations argument raised by Defendant Andrew Boyd-Jones and addressed above. The demurrer is sustained without leave to amend for the same reasons.
7	**LCS Capital, LLC vs. Sell** **2023-01345115**	**1. Motion to Enforce Settlement** Plaintiff LCS Capital, LLC's unopposed Motion to Enforce the Settlement is GRANTED. (Code Civ. Proc. § 664.6) "A court ruling on a motion under CCP § 664.6 must determine whether the parties entered into a valid and binding settlement. A settlement is enforceable under section 664.6 only if the parties agreed to all material settlement terms. The court ruling on a motion may consider the parties' declarations and other evidence in deciding what terms the parties agreed to, and the court's factual findings in this regard are reviewed under the substantial evidence standard. If the court determines

		that the parties entered into an enforceable settlement, it should grant the motion and enter a formal judgment pursuant to the terms of the settlement. The statute expressly provides for the court to 'enter judgment pursuant to the terms of the settlement.'" (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182 [internal citations omitted].) Here, Plaintiff and Defendant entered into a written settlement of the above captioned action. As part of the settlement agreement, the parties agreed that this Court would have continued jurisdiction pursuant to CCP 664.6 and agreed to a stipulated judgment in the event of Defendant's default. The Parties also executed and filed a Joint Stipulation For Judgment Pursuant to a Settlement Agreement ("Joint Stipulation"), and this Court retained jurisdiction to enforce the settlement in an Order entered June 5, 2024. Pursuant to the terms of the Settlement Agreement, Defendant was required pay first appearance fees in the amount of $435.00 and then make 269 consecutive monthly payments in the amount of $100.00 beginning on March 15, 2024, and continuing the 15th day of each and every month through and including a final payment in the amount of $62.60 on or before August 15, 2046. (Plaintiff's Decl., ¶ 4.) On May 15, 2024, Defendant's check for first appearance fees was returned for insufficient funds. (Brown Decl., Exh. A & ¶7). Credits from Defendant's account were applied to cure the default and cover Defendant's appearance fees in the amount of $435.00 (Brown Decl., ¶8). On July 15, 2024, Defendant defaulted under the Settlement Agreement and Joint Stipulation by failing to make a payment per the terms of the Settlement Agreement. (Decl. Brown, ¶10); see also (Plaintiff's Decl., ¶9). On August 16, 2024, Plaintiff, through counsel, mailed a letter to advise Defendant of the default and provide a 10 day opportunity to cure. (Brown Decl., Exh. C & ¶11.) As of the date of this filing, Defendant has failed to cure the default and has also failed to make any future payments. (Plaintiff's Decl. ¶8). Based upon the foregoing, Plaintiff has established there was a valid and binding settlement agreement between the parties, the parties agreed to all material terms of the settlement, the

		settlement was made during the pendency of litigation, and the settlement is enforceable by motion made under Code Civ. Proc. § 664.6. Accordingly, the motion is GRANTED. Judgment in the amount of $28,801.10 shall be entered against Defendant Nicole Sell as set forth in the Consent Judgment.
8	**Cao vs. General Motors, LLC** **2024-01409133**	**1. Motion to Compel Production** Plaintiff Derick Cao moves to compel Defendant General Motors LLC ("GM") to serve further substantive responses to Plaintiff's Special Request For Production of Documents, Set One, ("RFP") Nos. 9-10, 83; 12-16; 22-26, 40-52, 84-88, 90, 22-26, 40-52, 58-62, 63-67, 68-72, and 73-82 is CONTINUED to 05/20/2025 at 9:00 am.. Code of Civil Procedure section 2031.310 provides in pertinent part, "(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: [¶] (1) A statement of compliance with the demand is incomplete. [¶] (2) A representation of inability to comply is inadequate, incomplete, or evasive. [¶] (3) An objection in the response is without merit or too general. [¶] (b) A motion under subdivision (a) shall comply with each of the following: [¶] (1) the motion shall set forth specific facts showing good cause justifying the discovery sought by the demand. [¶] (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." Section 2016.040 provides: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." The rule requiring a good faith effort to meet and confer about discovery disputes "is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . [t]his, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.)

On November 23, 2024, Plaintiff's counsel sent Defendant's counsel a meet and confer letter regarding the requests that are at issue in this Motion. (Cohen Decl., ¶ 6, Ex. 5.) Defendant's counsel never substantively responded to Plaintiff's meet and confer letter. (Cohen Decl., ¶ 7.)

Defendant is ordered to meet and confer in good faith with Plaintiff to attempt to resolve each issue presented by Plaintiff's Motion. Meet and confer may be conducted telephonically or in-person (not via email). No later than 9 court days prior to the continued hearing, the parties are to file a Joint Statement which shall (1) describe the parties' attempts to meet and confer pursuant to this order, (2) identify each discovery request that remains in dispute, and (3) each party's position on the discovery request that remains in dispute.

The court expects the parties to engage in a good faith meet and confer effort to resolve the issues that are the subject of this Motion. Failure to comply with this order may result in sanctions against the non-compliant party or their counsel.

Plaintiff to give notice.

2. Motion to Compel Further Responses to Special Interrogatories

Plaintiff Derick Cao moves to compel Defendant General Motors LLC ("GM") to serve further substantive responses to Plaintiff's Special Interrogatories, Set One, Nos. 14, 35, 14-19, 20-24, 25-30, 35, 31–34 is CONTINUED to 05/20/2025 at 9:00 am.

Code of Civil Procedure section 2030.300 provides in pertinent part: "(a) On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: [¶] (1) An answer to a particular interrogatory is evasive or incomplete. [¶] (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. [¶] (3) An objection to an interrogatory is without merit or too general. (b)(1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040."

		Section 2016.040 provides: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." The rule requiring a good faith effort to meet and confer about discovery disputes "is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . [t]his, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) On November 23, 2024, Plaintiff's counsel sent Defendant's counsel a meet and confer letter regarding the requests that are at issue in this Motion. (Cohen Decl., ¶ 6, Ex. 5.) Defendant's counsel never substantively responded to Plaintiff's meet and confer letter. (Cohen Decl., ¶ 7.) Defendant is ordered to meet and confer in good faith with Plaintiff to attempt to resolve each issue presented by Plaintiff's Motion. Meet and confer may be conducted telephonically or in-person (not via email). No later than 9 court days prior to the continued hearing, the parties are to file a Joint Statement which shall (1) describe the parties' attempts to meet and confer pursuant to this order, (2) identify each discovery request that remains in dispute, and (3) each party's position on the discovery request that remains in dispute. The court expects the parties to engage in a good faith meet and confer effort to resolve the issues that are the subject of this Motion. Failure to comply with this order may result in sanctions against the non-compliant party or their counsel. Plaintiff to give notice.
9	**Sohn vs. Kwon** **2021-01208574**	**Motion for Order Setting a Reasonable Rate for Defendants' Expert Witness Fees** Plaintiff Young Sohn's motion for an order setting a reasonable rate for the expert witness fees for defendants Ojin Kwon, Jin Jin Dental, Inc., Hokyung Lee and Min Roh's retained expert Dr. Hamlet Garabedian is DENIED as MOOT.

		On 1-30-25, the Court granted Defendants Ojin kwon, DDS; Jin Dental, Inc.; Hokyung Lee; Min Roh DDS' and Tae Keun Kim's Motion for Non-Suit. [ROA No. 825.] Therefore, the Motion is MOOT. Plaintiff to give notice.
10	**Ledesma vs. Massive Dollar Plus USA, LLC** **2022-01295839**	**1. Motion to Deposit Interpleader Funds by Stakeholder** Cross-Complainant Western Surety Company's ("Western") unopposed motion for the following order is GRANTED: (1) Allowing Western to deposit the penal sum of the Bond ($50,000 minus court-ordered costs and attorneys' fees, if any) with this Court; (2) Upon deposit of the bond funds, exonerating from all further liability and fully and forever discharging Western from any and all liability, whether known or unknown, arising from Bond No. 70961509 ("Bond") issued to "Massive Dollar Plus USA, LLC dba Premium Finance" ("Massive"); (3) Restraining and prohibiting the prosecution of any further legal action against said Bond; (4) Dismissing Western from the entire Action with prejudice; and (5) Granting Western's request for costs and reasonable attorneys' fees in the amount of $6,015.36. "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims." (Code Civ. Proc. § 386, subd. (b).) "When a person may be subject to conflicting claims for money or property, the person may bring an interpleader action to compel the claimants to litigate their claims among themselves. [Citation.] Once the person admits liability and deposits the money with the court, he or she is discharged from liability and freed from the obligation of participating in the litigation between the claimants. [Citations.] The purpose of interpleader is to prevent a multiplicity of suits and double vexation. [Citation.]" (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122, fn. omitted.) "When a person brings an interpleader action, a two-step procedure is generally followed.

		First, it is determined whether the plaintiff may bring the suit and force the claimants to interplead. Second, if it is so determined, then the court will discharge the plaintiff from liability and 'the action may proceed for the determination of the rights of the various claimants to the property which is then in the custody of the court.' [Citation.]" (*Id.* at 1126-27.) Under the interpleader statute, "[a]ny amount which a plaintiff ... admits to be payable may be deposited by him with the clerk of the court at the time of the filing of the complaint or cross-complaint in interpleader" and "[a]ny interest on amounts deposited ... shall cease to accrue after the date of such deposit or delivery." (Code Civ. Proc. § 386, subd. (c).) Western has established its right to interplead. On October 8, 2011, Western issued Motor Vehicle Dealership Bond No. 70961509 ("Bond") in favor of its principal Massive pursuant to the provisions of the Vehicle Code, Sections 11710, et seq. (Kolb Decl., ¶ 4.) The Bond had a penal limit of $50,000. (*Id.*) Western has received multiple and competing claims in excess of the Bond amount. (*Id.* at ¶¶ 5-9.) Due to these multiple and competing claims, Western was unable to determine which claimant had priority to the Bond funds. (*Id.* at ¶ 9.) Therefore, Western has shown that it is a stakeholder holding funds for which double or multiple claims have been made, which are such that they may give rise to double or multiple liability. Costs and fees are permitted to be awarded under Code of Civil Procedure Section 386.6. Subdivision (a) states: "A party to an action who follows the procedure set forth in Section 386 or 386.5 may insert in his motion, petition, complaint, or cross complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court." The Court awards Western its reasonable attorneys' fees and costs in the amount of $6,015.36 to be deducted from the $50,000 to be deposited by Western with the clerk of the Court. (Kolb Decl., ¶ 11; Code Civ. Proc. § 386.6 subd. (a).) Western to submit a proposed judgment and to give notice.

11	**Langmuir-Logan vs. Sanders** **2024-01375066**	**1. Motion for Attorney Fees** Defendant Benjamin Berger motion for attorneys' fees is GRANTED in the reduced amount of $20,280. Defendant Berger seeks an award attorneys' fees against Plaintiffs in an amount of $29,120 as the prevailing party pursuant to California's anti-SLAPP statute, Code of Civil Procedure section 425.16(c). Plaintiffs acknowledge that Defendant Berger was the prevailing parties in his anti-SLAPP motion. (See Opp, p. 2:8-10.) Nevertheless, Plaintiffs contend Defendant's motion for attorney's fees should be denied in its entirety because of Defendant's misconduct. According to Plaintiffs, Defendant used the MSC for the sole purpose of establishing the value of Defendant Sanders' claims so that Sanders could effectuate the sale of the claims to Defendant Collins. On this basis, Plaintiffs argue Defendant acted in bad faith in the furtherance of an unrelated commercial enterprise and, therefore, the Court should not reward Defendant for his malfeasance and duplicity related to the MSC and should deny this motion in its entirety. However, these are the same actions and conduct Plaintiffs allege in their complaint, which was the subject of Defendant's anti-SLAPP motion. In ruling on that motion, the Court has already determined that all of Defendant's conduct was protected litigation activity. Additionally, Plaintiffs fail to present any evidence of any misconduct or bad faith. Absent such evidence and in light of the Court's prior ruling granting the anti-SLAPP motion, there is no basis upon which to find Defendant engaged in any misconduct or bad faith. The "prevailing defendant" on a special motion to strike "shall be entitled" to recover his or her attorney fees and costs. (Code Civ. Proc. § 425.16(c).) Thus, subject to certain exceptions, an award of attorney's fees to a prevailing defendant is mandatory. (*Moore v. Kaufman* (2010) 189 Cal.App.4th 604, 614.) Further, the fee award is against the losing plaintiff, not the losing plaintiff's attorney. (*Ibid*.) "[A]n award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure section 425.16. … [A]bsent circumstances rendering the award unjust, fees recoverable ... ordinarily include compensation for all hours reasonably spent, including those necessary to establish

and defend the fee claim." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141.) The anti-SLAPP statute also permits recovery of costs and fees on an appeal from the court's ruling on an anti-SLAPP motion. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499-1500.)

The trial court retains jurisdiction to entertain a motion for attorney fees even if a party appeal of the court's ruling on the anti-SLAPP motion. (*Carpenter v. Jack In The Box Corp.* (2007) 151 Cal.App.4th 454, 461.)
"Code of Civil Procedure section 425.16 permits the use of the so-called lodestar adjustment method under our long-standing precedents, beginning with *Serrano v. Priest* (1977) 20 Cal.3d 25." (*Ketchum, supra,* 24 Cal.4th at 1131.) Under this approach, a base amount is calculated from a compilation of time reasonably spent and reasonable hourly compensation of each attorney. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.)

Hourly Rate

Defendant is represented by Erik McLain of McLain Firm, P.C., whose hourly rate is $650. (McLain Decl., ¶¶ 1, 5.) Plaintiffs do not dispute the reasonableness of this rate.

Number of Hours Reasonably Worked on the Matter

"[A]n award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) "[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Bd. Of Trustees Of California State Univ.* (2005) 132 Cal. App. 4th 359, 396.) When a party challenges the reasonableness of the number of hours billed, it has the burden "to point to the specific items challenged, with a sufficient argument and citations to the evidence." (*Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564). "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Ibid*.)

Defendant contends the hours his counsel billed for Defendant's anti-SLAPP motion are as follows:

Description	Hours	Total
Time spent through the filing of this motion	39.30	$25,545.00
Time to be spent further litigating this motion	5.50	$3,575.00
Total	**44.80**	**$29,120.00**

(McLain Decl., ¶5, Exs. A, B.)

Plaintiffs dispute the following billing entries totaling 13.6 attorney hours in the amount of $8,840 as unreasonable because they do not relate to Defendant's anti-SLAPP motion:

- 1.8 hours on February 26, 2024, conferring with Defendant Berger about the complaint, reviewing the complaint, and exchanging emails regarding the scope and terms of representation;
- 2.1 hours on February 27, 2024, discussing the related lawsuits with Defendant Berger and again reviewing the complaint;
- 0.3 hours on February 28, 2024, communicating with Defendant Berger about representing the other Defendants and about a possible joint defense agreement;
- 4 hours on March 5, 2024, for an in-person meeting with Defendant Berger to discuss the case and review documentation regarding the Mandatory Settlement Conference in the underlying matter;
- 1.5 hours on March 12, 2024, exchanging text messages and conferring with attorney Dan Harrison about an "apparent division among EL/FL and who is likely directing" Plaintiffs' counsel and about representations made by Plaintiffs' former counsel;
- 0.1 hours on March 12, 2024, sending a text message and leaving a voicemail for Defendant Berger about his discussion with Mr. Harrison;
- 0.8 how-son March 13, 2024, exchanging text messages with Defendant Berger and reviewing screen shots of messages from Plaintiffs ' former counsel allegedly confirming no settlement had been reached;

- hours on March 21 , 2024, for a meeting with the Defendant discussing the merits of Plaintiffs' fraud claim and a joint defense agreement; and,
- hours on April 12, 2024, discussing affirmative defenses with Defendant Berger, drafting the answer to the complaint, and exchanging emails with Nancy Davis about the answer.

Plaintiffs are correct.

"[T]he anti-SLAPP statute's fee provision applies only to the motion to strike, and not to the entire action." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325.) In *Christian Research Institute*, the complaint contained only one cause of action for defamation. (*Id.* at 1319.)

As the court explained:

> Alnor contends the trial court "had no reasonable basis for disregarding counsel[']s time records." It is well-established, however, that the anti-SLAPP statute's fee provision " 'applies only to the motion to strike, and not to the entire action.' " (*Berti, supra,* 39 Cal.4th at p. 381, 46 Cal.Rptr.3d 380, 138 P.3d 713; *Lafayette Morehouse, supra,* 39 Cal.App.4th at p. 1383, 46 Cal.Rptr.2d 542.) Nevertheless, counsel inflated the fee claim with a multitude of time entries devoted to matters other than the motion to strike, thereby undermining the credibility of counsel's other entries. For example, counsel sought reimbursement for non-anti-SLAPP efforts such as attacking service of process, preparing and revising an answer to the complaint, summary judgment research, a senior associate's "[w]ork on [a] press release," and a conference "regarding the appropriate way to address opposing counsel and the client."
>
> The record suggests Alnor sought to transfer to the opposing parties the cost of every minute counsel expended on the case, whether or not anti-SLAPP work was involved. The fee request included, for example, billings for obtaining the docket at the inception of the case, obtaining unspecified but "numerous court documents," and attending the trial court's mandatory case management conference—all of which would have been incurred whether or not Alnor filed the motion to

		strike. Indeed, counsel even sought reimbursement for drafting the client retention agreement, which does not appear to have been limited to anti-SLAPP measures given the hours counsel billed for other work. Counsel's willingness to flout the statutory restriction on the scope of anti-SLAPP fee claims justified the trial court in taking a jaundiced view of the fee request. (*Christian Research Institute, supra,* 165 Cal.App.4th at 1324-25.) Here, the billing entries identified by Plaintiff do not relate to Defendant Berger's anti-SLAPP motion. The entries therefore are unreasonable. Defendant has not filed a reply contending otherwise. By failing to argue the contrary effectively concedes this issue. (*DuPont Merck Pharmaceutical Co. v. Sup. Ct.* (2000) 78 Cal.App.4th 562, 566.) Accordingly, the amount awarded will be reduced by $8,840.00 (13.6 hours x $650/hour rate). Therefore, the motion is GRANTED in the amount of **$20,280 (**$29,120.00- $8,840).
12	**Somers vs. FCA US LLC** **2023-01352879**	**1. Motion for Attorney Fees** Plaintiff Peter Raymond Somers's Motion for Attorney Fees For Time Actually Expended and Reasonably Incurred is GRANTED in the reduced amount of $32,307.61 for total attorney fees and costs. This case settled on 8/12/24 after mediation. On 8/13/24, Plaintiff filed a notice of conditional settlement. Thereafter, the parties were unable to privately agree on the reasonable attorney fees and costs. As a result, Plaintiff filed the instant motion and a memorandum of costs on 12/9/24. Plaintiff seeks a total amount of $37,312.81 (i.e., attorney fees in the amount of $35,101.50 and costs in the amount of $2,211.31). There is no dispute between the parties that Plaintiff is entitled to fees and costs/expenses. The issue in dispute is the amount of attorney fees. Defendant argues Plaintiff should recover no more than $19,861.78 in fees and does not oppose the requested costs. If a plaintiff prevails in a Song-Beverly action, they "shall be allowed by the court to recover as part of the judgment a sum

		equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd. (d).) Courts use the lodestar adjustment method to determine the amount of attorney's fees to award in Song-Beverly actions. (*Reynolds v. Ford Motor Co.* (2020) 47 Cal.App.5th 1105, 1112.) "[T]he lodestar is the basic fee for comparable legal services in the community." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*).) It is based on the careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case. [The California Supreme Court] expressly approved the use of prevailing hourly rates as a basis for the lodestar… In referring to "reasonable" compensation, [the Court] indicated that trial courts must carefully review attorney documentation of hours expended; "padding" in the form of inefficient or duplicative efforts is not subject to compensation. (*Id*., at p. 1131-1132 [cleaned-up].) "The amount of attorney fees awarded pursuant to the lodestar adjustment method may be increased or decreased. Such an adjustment is commonly referred to as a 'fee enhancement' or 'multiplier.'" (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 247 [cleaned-up].) The lodestar may be adjusted based on factors which include (1) the complexity of the case, (2) the attorney's skills, (3) the results achieved; (4) whether the case was taken on a contingency. (*Ketchum*, supra, 24 Cal.4th at 1132-1134.) "The purpose of [the] adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at 1132.) "In exercising its discretion to award a multiplier for contingent risk, the trial court 'should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome.' It should also consider the extent to which taking the case on a contingent fee basis has precluded the attorney from taking other fee-generating work." (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1188 [cleaned-up].) "The trial court is

		neither foreclosed from, nor required to, award a multiplier." (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 247.) "The prevailing party and fee applicant bears the burden of showing that the fees incurred were ... reasonably necessary to the conduct of the litigation and were reasonable in amount.… [I]f the prevailing party fails to meet this burden, and the court finds the time expended or amount charged is not reasonable under the circumstances, then the court must take this into account and award attorney fees in a lesser amount." (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 247 [cleaned-up]; see also *Save Our Uniquely Rural Community* Environment, supra, 235 Cal.App.4th at 1186 [It is not enough merely to state that counsel expended a certain number of hours in representing the client; fees motion must affirmatively demonstrate that the hours spent were reasonable and necessary].) "'[T]he lodestar method vests the trial court with the discretion to decide which of the hours expended by the attorneys were 'reasonably spent' on the litigation and to determine the hourly rates that should be used in the lodestar calculus." (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 246-247 [cleaned-up].) "The experienced trial judge is the best judge of the value of professional services rendered in his court…" (*Ketchum*, supra, 24 Cal.4th at1132.) **Hourly Rate** The general rule is as follows: "The reasonable hourly rate is that prevailing in the community for similar work. The relevant 'community' is that where the court is located." (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 71 [cleaned up].) In the absence of evidence to the contrary, a moving party's showing of rates that have been upheld, "compel[] a finding that the requested hourly rates were within the reasonable rates for purposes of setting the base lodestar amount." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140156.) To support the attorney hourly rates claimed, Plaintiff submits the Declaration of Michael Seedian, Esq. of The Lemon Law Pros, LLP wherein includes a summary of the experience of each attorney and paralegal who litigated this case. (Seedian Decl. ¶¶ 2-8.) Seedian also lists several recent (2023-2024) superior court lemon law cases in southern California where his firm's rates were awarded in full. (Seedian Decl. ¶¶ 18-19.)

		Seedian contends the court should use the Laffey Matrix, to which he provides a link, to determine the reasonable rate and cites to several California state appellate cases that have cited the Laffey Matrix as a reasonable source of attorney lodestar fees. (Seedian Decl. ¶ 16.) In the motion, Plaintiff argues his firm's rates are reasonable because they are below the contingency rates reflected in the Laffey Matrix after adjusting the matrix rates to California. Defendant urges the Court to use the same analysis that was performed in *Arias v. Ford Motor Co., No.* (C.D. Cal., Jan. 27, 2020) WL 1940843, where the court used the 2018 "Real Rate Report: The Industry's Leading Analysis of Law Firm Rates, Trends, and Practices" (the "Real Rate Report") to reduce the rates sought by the plaintiff's attorneys. Plaintiff argues the 2023 Real Rate Report is for traditional pay-as-you-go retainer legal work such as defense attorney's work and is inapplicable to Plaintiff unless adjustments are made to account for contingency risk and delay of payment. In support of this position, Plaintiff quotes *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." The parties ask this court to use two competing objective sources of data to determine Plaintiff's counsel's reasonable hourly rate. Because the 2023 Real Rate Report includes data about Plaintiff's counsel's practice area, whereas the Laffey matrix does not, the court finds the 2023 Real Report is more relevant to this analysis. (*Arias, supra,* 2020 WL 1940843, at *4.) Our Supreme Court has repeatedly explained that the reasonable hourly rate used for the lodestar calculation "is that prevailing in the community for *similar work*." (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095 (italics added); see *Ketchum, supra,* 24 Cal.4th at p. 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735 ["the lodestar is the basic fee for *comparable legal* services in the community" (italics added)].) Further, the list of recent superior court lemon law cases where Plaintiff's counsel's firm was awarded its rates in full do not establish that

		those rates in fact are the prevailing rates in the community for similar work. In addition, Plaintiff's concerns about the contingency risk assumes such a risk applies in this case. For the reasons stated in *Arias*, a case cited by Defendant, the court finds such a risk is relatively low in this case. *Arias* is a lemon law case wherein the plaintiff filed a fee motion seeking hourly rates between $350 and $650 for its partners and between $250 and $450 for its associates. (*Arias, supra*, 2020 WL 1940843, at *3.) The court turned to the 2018 Real Rate Report, describing it as "a useful guidepost to assess the reasonableness of these hourly rates in the Central District . . . [which] identifies attorney rates by location, experience, firm size, areas of expertise and industry, as well as specific practice areas, and is based on actual legal billing, matter information, and paid and processed invoices from more than eighty companies . . . [and] is 'a much better reflection of true market rates than self-reported rates in all practice areas.'" (*Ibid*.) The *Arias* court acknowledged the 2018 Real Rate Report showed that in Los Angeles, partners practicing in general litigation had hourly rates ranging from $220 to $715, and associates from $175 to $425. The court found "[h]owever, more relevant to Plaintiff's counsel's area of practice, partners litigating consumer goods cases nationwide have a lower average hourly rate of between $254 and $350, and associates between $205 and $265." (*Id*. at *4.) Based on this date, the court ruled the rates sought "outpace[d] the prevailing rate for similar work" and reduced them to $325 for all partners "across the board" and to $225 for the associates. (*Ibid*.) The court left the requested paralegal rate of $200 undisturbed because it was "consistent with similar work." (*Ibid*.) The plaintiff in *Arias* then argued that a 0.5 multiplier was warranted due to the risk of taking the case on a contingent fee basis and the defendant argued that a negative multiplier was appropriate because, among other things, there was very little contingent risk since the Song-Beverly Act is a fee-shifting statute. (Id. *5.) The court did not believe a negative multiplier was warranted because "it implicitly considered Defendant's arguments for doing so when it adjusted Plaintiff's counsel's hourly rates to make them consistent with the Real Rate Report, which reflects the usual rates in the community for

		similar work. (*Ibid*.) The court also did not believe a positive multiplier was warranted for several reasons, including that 'a contingent fee agreement only favors an upward departure when there is an "uncertainty of prevailing on the merits and of establishing eligibility for the award.' [Citation.] Here, the Song-Beverly Act statutorily authorizes an award of attorney's fees to a party prevailing on its claim. Given that Plaintiff's counsel regularly undertakes this type of work, the Court does not find that counsel reasonably faced an uncertainty of prevailing on the merits. [Citation.] Thus, this factor does not persuasively weigh in favor of an upward departure." (*Ibid* [citations omitted].) Similarly, here, since Plaintiff's counsel regularly undertakes California lemon law cases (see Seedian Decl., ¶2), the court does not find that counsel reasonably faced an uncertainty of prevailing on the merits. According to Defendant, if this court uses the most recent 2023 Real Rate Report, the senior attorney rate-in the context of consumer goods litigation-should be capped at $495/hour and the associate rate should be capped at $295/hour. Defendant also argues a rate of $150/hour is a more reasonable rate routinely applied by superior court judges for clerical/paralegal work in the context of lemon law fee motions. Defendant is correct with respect to the $495 rate for litigation partners; however, the 2023 Real Rate Report caps the rate for litigation associates at $371 not $295. With respect to the paralegal rate, Defendant provides no evidence to support a finding that Plaintiff's requested rate of $250 is unreasonable. (See *Arias, supra,* 2020 WL 1940843, at *4 [finding a rate of $200/hr to be "consistent with similar work" for paralegals].) The court therefore caps the partner, managing attorney, and senior associate rates at $495/hr, caps the associate rates at $371/hr, and awards the requested rate of $250/hr for paralegal work. **Time Spent on Tasks** The billing records submitted by Plaintiff indicates Lemon Law Pros spent 77.6 hours litigating this action.

		Defendant argues the Court should reduce billing by at least 35 percent by disputing nine "entries" that it claims are excessive, duplicative, vague, or otherwise unreasonable billing. When a party challenges the reasonableness of the number of hours billed, it has the burden "to point to the specific items challenged, with a sufficient argument and citations to the evidence." (*Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564). "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Ibid*.) Defendant has failed to meet this burden. First, Defendant provides virtually no argument as to many of the listed items. For example, for the first item to which Defendant objects ("Total of $1,100.00 (4.4 hours) billed on 10/13/2023 by JLA for research of NHTSA database regarding recalls and certain technical service bulletins. See Ex. A at 2."), Defendant merely argues "The amount billed is excessive, and it is unclear why the research of this magnitude was necessary." (See Opp. p. 6:10-12.) Defendant fails to explain why it believes 4.4 hours researching at least three vehicle diagnostic trouble codes, 13 applicable recalls and 461 technical services bulletins is unreasonable. (See Seedian Decl., Ex. A, p. 2.) Further, as explained by Plaintiff in its reply, "While counsel for FCA has ample access to FCA technically trained employees to find out information, Plaintiff has no such access. In order to understand the repairs and history for purposes of litigation and valuation of the case, Plaintiff needs to initially research specific items from the RO to figure out if the complaints are common or unique – this goes toward the reasonableness of the repair efforts. Plaintiff typically assigns this work to lower priced staff to gather the information for later use by attorneys. It is cost-prohibitive to involve an automotive expert at the start of the case and it would be expected that FCA and any reviewing court will claim such use is unreasonable, absent very specific facts indicting such was necessary and required." (Reply, 7:27-8:8.) Second, many of the "entries" Defendant contends are excessive, duplicative, vague, or otherwise unreasonable are not specific entries listed in Plaintiff's billing records. Instead, Defendant combined individual legal tasks and then disputes the alleged block-billed total. For example, Defendant states the following is excessive: "Total of $4,070.50 (**7.2 hours**) billed by AO billing $695/hour and JLA billing $350/hour in

connection with review/analysis of FCA's responses to Plaintiff's discovery requests. *See* Ex. A at pages 6-7." Given that Defendant lists two timekeepers "AO" and "JLA", Defendant fails to individually list the offending billing entries, their specific descriptions provided in the billing or even to provide the dates of the offending entries. It is Defendant's burden "to point to the specific items challenged." (*Premier Med. Mgmt. Sys., Inc., supra,* 163 Cal.App.4th at 564.)

The court finds Defendant has failed to establish that 77.5 hours litigating a case that is 1.5 years old is unreasonable.

Summary of Lodestar

Adjusting the hourly rate as discussed above, Plaintiff's request for attorney fees is GRANTED in the reduced amount of $30,085.30 as outlined below:

TK	Name	Hours	Rate	Total
MS	Michael Saeedian, Esq.	2.9	$495	$1,435.50
AO	Adina Ostoia, Esq.	23.3	$495	$11,533.50
CU	Christopher Urner, Esq.	7.1	$495	$3,514.50
JLA	Jorge L. Acosta, Esq.	20.8	$371	$7,716.80
SA	Sergo Aivazov, Esq.	0.2	$300	$60.00
JLA/EG	Paralegals	23.3	$250	$5,825.00
		Total Fees		**$30,085.30**

Costs

The instant motion requests of $2,211.31 in costs. After the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs on the judgment. (Cal. Rules of Court, Rule 3.1700(b)(4).) The deadline to file a motion to strike or tax costs is 15 days after service of the cost memorandum. (Cal. Rules of Court, Rule 3.1700(b)(1).)

Here, Plaintiff filed a Memorandum of Costs on 12/9/24. Defendant has not filed a motion to strike or tax costs and states in its opposition that it does not challenge the claimed litigation costs and expenses.

Therefore, Defendant's request of $2,211.31 in costs is GRANTED.

		Plaintiff to give notice.
14	**Brykrist Development, Inc. vs. Stewart** **2024-01372682**	**Motion for Summary Judgment and/or Adjudication** The Motion for Summary Judgment or Adjudication by Plaintiff Brykrist Development, Inc. is CONTINUED to 5/20/25. Defendants' request for judicial notice of bankruptcy court filings is granted. Defendant's objections to the Redsun declaration (ROA 52) are overruled. Plaintiff's objections to the Stewart declaration (ROA 62) are overruled. Plaintiff's objections to the Witten declaration (ROA 63) are also overruled. "[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. (See Evid.Code, § 500.) There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, footnote omitted.) Section 437c, subdivision (p) provides, "(1) A plaintiff or cross-complainant has met that party's burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of

		material fact exists as to the cause of action or a defense thereto. In the complaint, Plaintiff alleges a single claim for breach of guarantee arising from a 9/15/18 Financing and Security Agreement ("Agreement") attached as exhibit A to the complaint. In the Agreement, Stewart Homes, Inc. (SHI) borrowed $6 million from Plaintiff. The Agreement was guaranteed by Defendants via the Guaranty attached as Exhibit C to the complaint. Defendant fails to present evidence disputing the existence of the Agreement or the Guaranty or the amendments thereto. (Undisputed Facts 1-8.) Defendant concedes she signed the Guaranty, both individually and as Trustee. (Facts 18-19.) Defendant also fails to demonstrate that SHI is not in default under the Agreement. (Facts 14-16.) Plaintiff must show there is no triable issue regarding damages. (See *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1097, 64 Cal.Rptr.2d 457 ["Because issues of the calculation of damages apparently remain to be determined, it is not appropriate to grant summary judgment for appellant at this time"].) Plaintiff submits the declaration of its CEO, who explains that at the time of default, the principal balance outstanding on the Agreement was $6,302,996.92, and accrued unpaid interest was approximately $2,218,425.00, with a total amount due of $8,521,421.92. (¶ 11.) $4 million of the balance was satisfied by a life insurance policy held by SHI's principal, Michael Stewart, upon his death. (¶ 15.) Defendant disputes the amount owed based on SHI's financial records. (Response to Fact 12.) Defendant provides the declaration of Stacie Witten, Senior Managing Director of MCA Financial Group, the Chief Restructuring Office for SHI. Witten declares she examined SHI's books, records, bank statements and financial records to determine who was paid monies from SHI and who received monies from SHI, and found that Plaintiff received from SHI's accounts $4,304,078.24 more that it deposited, not including the $4 million in life insurance proceeds. (¶ 4.) Therefore, Defendant contends this reduces the amount owed to $217,343.68.

		Plaintiff responds to the Witten declaration by stating that the loan agreement was signed almost a year prior to the time frame investigated by Ms. Witten, making Witten's analysis inaccurate. Plaintiff also contends Witten's declaration is unsupported by documentary evidence and that Defendant's counsel has stated they represent Ms. Witten but refuses to allow Plaintiff to conduct discovery regarding her declaration. In opposition, Defendants seek a continuance of the hearing to conduct a deposition of Scott Redsun under Code of Civil Procedure section 437c(h), which states, "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. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due." Here, a continuance is appropriate to allow the parties to engage in additional discovery regarding the issue of damages. Specifically, Defendants should be permitted to take the deposition of Mr. Redsun. However, it would be unjust to allow Defendant to take the Redsun deposition without allowing Plaintiff to take the deposition of Ms. Witten regarding the same issues. Therefore, Mr. Redsun and Ms. Witten shall appear for their depositions regarding the issue of damages, pursuant to deposition notices which may include a request for documents, no later than 4/30/25. Each side may file a supplemental brief, not to exceed 10 pages, no later than 5/13/25.