TENTATIVE RULINGS

LAW AND MOTION CALENDAR

Judge Nathan Vu

Department N15

Hearing Date and Time: April 14, 2025 @ 09:00 AM

TENTATIVE RULINGS: The court will endeavor to post tentative rulings on this website by 3:00 p.m. on the day before the hearing. However, ongoing proceedings may prevent posting by that time or the court may have no tentative ruling on a matter.

Once a tentative ruling has been posted, the court may not entertain requests for continuance and may not consider additional papers.

ORAL ARGUMENT: The court will hear oral argument regarding law and motion matters on the hearing date and at the time stated above, unless all parties submit on the tentative ruling. Parties are not required to give notice of intent to appear.

If you wish to submit on the tentative ruling and do not intend to appear at the hearing, please inform opposing counsel and the court clerk by electronic mail n15@occourts.org or by telephone (657) 622-5615. If all parties submit on the tentative ruling or no parties or counsel appear for the hearing, then the tentative ruling shall become the final ruling.

APPEARANCES: Parties and counsel may appear at the law and motion hearing in-person or via Zoom. Persons appearing in-person shall come to Department N15 at the North Justice Center, 1275 N. Berkeley Avenue, Fullerton, CA 92832.

Persons appearing remotely must check-in online through the court's website at **https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings** and then clicking on the button entitled "Department N15 Judge Nathan Vu".

Anyone having difficulty appearing remotely may contact the court clerk at (657) 622-5615.

All persons appearing remotely must abide by all applicable laws and rules, including Local Rule 375, and must obtain, test the functionality of, and learn how to use the Zoom application and all necessary equipment prior to the remote hearing. More information is available at https://www.occourts.org/media-relations/civil.html.

COURT REPORTERS: Court reporters employed by the court are NOT normally provided for law and motion matters in civil courtrooms. If a party desires a record of a law and motion proceeding, it is the party's responsibility to arrange for a privately-retained court reporter, who may appear in-person or remotely. Parties must comply with the Court's policy on the use of privately-retained court reporters, available at https://www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf.

1	**Bhuvneshwari Corporation vs. Pansuria** **30-2021-01218873**	Motion to Tax Costs Defendant Ken Pansuria's Motion to Strike Costs is DENIED. Defendant Ken Pansuria's Motion to Tax Costs is GRANTED in part and DENIED in part. The court ORDERS that Plaintiff Bhuvneshwari's costs in its Memorandum of Costs be taxed by $215.76 in service of process fees, $186.57 in electronic filing or service fees, and $10,661.68 in travel expenses. Pending Motion Defendant Ken Pansuria (Defendant Pansuria) moves to strike the entirety of $27,943.86 in costs requested by Plaintiff Bhuvneshwari in its Memorandum of Costs. (See ROA #454.) In the alternative, Defendant Pansuria moves to tax those costs. Seeking Costs and Striking or Taxing Costs Generally, the "prevailing party" is entitled as a matter of right to recover costs of suit in any action or proceeding. (See Code Civ. Proc., § 1032, subd. (b); *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.) Civil Procedure Code section 1033.5 enumerates the specific costs that are recoverable by the prevailing party in a civil action. (See Code Civ. Proc, § 1033.5.) Section 1033.5 also provides that the court may award costs not expressly described in the statute for expenses that are "reasonably necessary to the conduct of the litigation" and are "reasonable in amount." (Code Civ. Proc, § 1033.5, subd. (c)(2)-(4).) For example, recoverable costs also may include expert witness fees. (See *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 138 ["The legislative history indicates the Legislature exercised its power to permit the recovery of expert witness fees by prevailing buyers under the [Song-Beverly] Act . . . ."]; *Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1158 [expert witness fees "are allowable 'expenses' under

		section 1794, subdivision (d)" of the Song-Beverly Act].) While the trial court has discretion to decide whether a cost item was reasonably necessary, the trial court does not have discretion to award a cost item that is not statutorily authorized. (*Ladas v. California State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 774.) To recover costs, the prevailing party must file and serve a memorandum of costs "within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Ct., rule 3.1700(a.)) The nonprevailing party then has 15 days after service of the memorandum of costs to file a motion to strike a cost altogether, or to tax the cost and reduce it. (Cal. Rules of Ct., rule 3.1700, subd. (b.)) If the items on a memorandum of costs appear to be proper on their face, the verified memorandum of costs is *prima facie* evidence of their validity and the burden is on the party seeking to strike or tax costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Ass'n*, *supra*, 19 Cal.App.4th at p. 774.; see also *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 ["If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they are not reasonable or necessary."].) However, once an item is shown to be not reasonable or necessary, it is put in issue and the burden of proof shifts to the party claiming the cost. (*Ibid*.) This burden is met by providing sufficient detail as to the reasonableness of the costs incurred. (See *Thon v. Thompson* (1994) 29 Cal.App.4th 1546, 1548-1549.) <u>Costs</u> It is undisputed that Plaintiff was the prevailing party at trial. Therefore, Plaintiff was entitled to recover costs of suit. (See Code Civ. Proc, §§ 1032, subd. (b), 1033.5.)

		Filing and Motion Fees In its Memorandum of Costs, Plaintiff claimed $1,655 in filing and motion fees. (See ROA # 454.) These charges appear on their face to be proper charges so that the burden is on Defendant Pansuria to show that they were not reasonably necessary. Here, Defendant Pansuria challenges $900 in filing fees associated with discovery motions relating to Defendant Pansuria as well as Defendant Shelby Hospitality, LLC (Defendant Shelby) and Defendant Eurocan Enterprises Inc. (Defendant Eurocan), both of whom were including dismissed prior to trial. (See ROA #334.) The court record shows that Plaintiff paid $720 in filing fees associated with discovery motions related to Defendant Shelby and Defendant Eurocan. However, merely because these discovery motions related to Defendant Shelby and Defendant Eurocan (collectively, Dismissed Defendants) does not necessarily lead to the conclusion that they were not necessary to the prosecution of the case against Defendant Pansuria. As alleged in the Complaint, Defendant Pansuria acted in concert with Defendant Shelby and Defendant Eurocan in committing the wrongful acts alleged. Thus, while Defendant Shelby and Defendant Eurocan may not have been liable to Plaintiff, they may have had discovery that was relevant to Plaintiff's case against Defendant Pansuria. It is Defendant Pansuria's burden to show that the costs were not reasonably necessary and he has failed to do so. The court will deny the motion as to these costs. Deposition Costs In its Memorandum of Costs, Plaintiff claimed that it had incurred $5,506.80 in deposition costs. (See ROA # 454.) These charges appear on their face to be proper charges so that the burden is, again, on Defendant Pansuria to show that they were not reasonably necessary.

		Defendant Pansuria challenges $1,034.45 in costs related to the depositions of the principals of the Dismissed Defendants, including Gary Patel ($531) and Yash Patel ($503.45). The necessity for costs incurred for depositions not used at trial "is always a question for the trial judge." (*Moss v. Underwriters' Report* (1938) 12 Cal.2d 266, 276.) As with the discovery motions relating to the Dismissed Defendants, Defendant Pansuria contends but submits no evidence that the depositions of the Dismissed Defendants' principals did not relate to Plaintiff's claims against Defendant Pansuria. Defendant Pansuria fails to meet its burden to show that these Deposition Costs were not necessary to the prosecution of this case. The court will deny the motion as to these costs. <u>Service of Process</u> Plaintiff's Memorandum of Costs also claims $1500.33 in service of process fees. (See ROA # 454.) These charges are specifically allowed by law and the burden is on Defendant Pansuria to show that they were not reasonably necessary. (See Code Civ. Proc., § 1033.5, subd. (a)(4)(B); *Citizens for Responsible Development v. City of West Hollywood* (1995) 39 Cal.App.4th 490, 506.) Defendant Pansuria argues that $495.76 in fees for service of process on the Dismissed Defendants and individuals associated it the Dismissed Defendants. Here, cost of serving the summons and complaint upon the Dismissed Defendants was not a necessary cost, as Plaintiff did not need to sue them in order to prosecute his lawsuit against Defendant Pansuria. (Compare *Republic Indemnity Co. v. Schofield* (1996) 47 Cal.App.4th 220, 229.) However, with respect to the individuals, they were not named as defendants and therefore, the fees may have been for service of deposition subpoenas or other discovery documents rather than service of the summons and complaint. It is Pansuria's burden to show that these fees were not necessary and he has failed to do so. The

		court will grant the motion as to the service of process fees related to the Dismissed Defendants and deny the motion as to the service of process fees related to the individuals. <u>Fees for Electronic Service or Filing</u> Plaintiff's Memorandum of Costs also requests $1,191.99 in electronic filing or service costs. (See ROA # 454.) These charges appear on their face to be proper charges so that the burden is on Defendant Pansuria to show that they were not reasonably necessary. Defendant Pansuria challenges $186.57 in electronic filing fees, arguing Plaintiff's exhibits reveal it incurred only $1,005.42 in electronic filing or service fees. Defendant Pansuria is correct and the court will grant the motion as to $186.57 in claimed electronic filing or service costs. <u>Other</u> In the Memorandum of Costs, Plaintiff seeks $16,696.81 in "other" costs related to out-of-state travel for depositions and trial, as well as fees for mediation. Section 1033.5 states that "[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion." (Code Civ. Proc, § 1033.5, subd. (c)(4).) Where a cost is not specifically enumerated as allowable under Section 1033.5(a), but not specifically barred under Section 1033.5(b), the party seeking the cost has the burden to show that the cost was "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (Code Civ. Proc, § 1033.5, subd. (c)(2); see *Ladas v. California State Auto. Ass'n*, *supra*, 19 Cal.App.4th at pp. 774-776 [items that are properly objected to are put in issue and burden of proof is on party claiming costs].) Here, Defendant Pansuria challenges $1,826.53 for Plaintiff's Counsel's travel costs from Montana to Orange County to attend local depositions and $8,835.15 for Plaintiff's Counsel's travel costs

		from Montana to Orange County to attend trial. Plaintiff has not shown that these travel costs were reasonably necessary to the conduct of the litigation, rather than merely convenient or beneficial to its preparation. Plaintiff voluntarily chose to retain counsel from Montana but did not necessarily have to do so. The court will exercise its discretion and grant the motion as to these travel costs. Defendant Pansuria shall give notice of this ruling.
2	**Carriedo vs. Warden** **30-2023-01362615**	Motions to Compel Discovery Defendant Wesley Warden's Motion for Order Compelling the Response of Beach Medical Group to Deposition Subpoena for Business Records is taken OFF CALENDAR. Defendant Wesley Warden's Motion for Order Compelling the Response of Kamran Rabbani MD to Subpoena Duces Tecum is GRANTED. Kamran Rabbani MD is ORDERED to serve full, complete, and verified responses and responsive documents to the Deposition Subpoena for Production of Business Records served on July 18, 2024, within 30 days of service of the notice of ruling. Pending Motions Defendant Wesley Warden moves to compel compliance with subpoenas for business records served upon Third-Party Beach Medical Group (Beach Medical) and Third-Party Kamran Rabbani M.D. (Rabbani) Standard to Compel Production of Documents through Subpoena A party wishing to take the oral testimony of a nonparty in a deposition may do so by serving the nonparty with a subpoena a sufficient time in advance to allow the nonparty a reasonable opportunity to travel to the place of deposition. (See Civil Procedure Code, §§ 1985, 1987, 2020.220.)

		The party seeking to take the deposition [of a party or nonparty] may also request that the deponent produce documents at the deposition by including in the notice of deposition a "specification with reasonable particularity of any materials or category of materials, including any electronically stored information, to be produced by the deponent." (Code Civ. Proc., § 2025.220, subd. (a)(4).) Where a party seeks the production of documents at deposition, the party must serve the subpoena a sufficient time in advance to allow the deponent a reasonable opportunity to locate and produce any designated documents. (See Civil Procedure Code, §§ 1985, 1987, 2020.220.) "If a deponent fails . . . to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling . . . production." (Code Civ. Proc., § 2025.480, subd. (a).) A party seeking documents from a third-party must also "'set forth specific facts showing good cause justifying the discovery sought by the inspection demand . . . .'" (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223 [applying good cause requirement of Civil Procedure Code section 2031(l) to party seeking documents from third-party], quoting Code Civ. Proc., § 2031, subd. (l).) In order to show "good cause," the burden is on the moving party to make a "fact specific showing of relevance." (*Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) "[U]nless there is a legitimate privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance." (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement. Admissibility is not the test, and it is sufficient if the information sought might reasonably lead to other, admissible evidence." (*Glenfed Develop. Corp. v. Superior Court*, supra, 53 Cal.App.4th at p. 1117.)

		Arguments made in the moving papers or in a separate statement are insufficient to satisfy this requirement; good cause must be shown by way of admissible evidence, such as by declaration. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224.) Once good cause is shown by the moving party, the burden then shifts to the responding party to justify any objections made to requests for production. (See *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) The motion to compel shall also include "a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., § 2025.450, subd. (b)(2).) The moving party is required to meet and confer with the nonparty, rather than just the opposing party or parties. (See *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal.App.5th 1011, 1034 ["If a party is not satisfied with the nonparty's compliance, the party has 60 days in which to meet and confer with the nonparty"].) <u>Subpoenas for Business Records</u> With respect to the subpoena relating to Beach Medical, on November 19, 2024, Defendant filed Defendant Wesley Warden's Notice of Withdrawal and Taking Off-Calendar of the Motion for Order Compelling the Response of Beach Medical Group to Deposition Subpoena for Business Records and the Hearing Scheduled for April 14, 2025. (See ROA #82.) Therefore, the court will take off calendar the motion to compel with respect to Defendant Beach Medical. With respect to the subpoena relating to Rabbani, Defendant shows that on July 18, 2024, Rabbani "was personally served with a subpoena along with the required fee." (Decl. of Jennifer S. Leeper in Supp. of Mot. for an Order Compelling

		Compliance with Subpoena (Leeper Decl.), ¶ 2, Exh. B.) The subpoena included a demand for Plaintiff's "'complete medical records, billing records, and radiology images from the first date of treatment of the present. . . .'" (*Ibid.*) When Defendant did not receive the documents in a timely manner, Defendant's Counsel reminded Rabbani that Defendant had paid the fees to obtain the documents and inquired when the documents would be produced. (See *id.*, ¶ 3, Exh. A.) However, despite the fact that Rabbani was served with the subpoena and never objected to it nor filed a motion to quash, Rabbani did not produce any of the medical records to Defendant. (See *id.*, ¶¶ 4-6.) Defendant explained that these records are relevant because Plaintiff alleges multiple injuries and sought treatment from Rabbani. (See *id.*, ¶ 2.) (fn.1) (fn.1) Here, Defendant did the minimum to set forth specific facts showing good cause justifying the discovery sought, but just barely. The court encourages Defendant, in the future, to be more thorough in meeting the requirements of the Civil Procedure Code. Rabbani has failed to file an opposition or respond to the motion. Thus, Rabbani has waived any arguments regarding the motion. (See *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue]; see also *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion"].) Therefore, the court will grant the motion. Defendant shall give notice of this ruling.
3	**Lobaton vs. Swartz & Smidtz Associates**	<u>Motion to Set Aside Default</u>

	30-2024-01371405	Defendant Bruce A. Wilson's Motion to Vacate Entry of Default as to Bruce A. Wilson, Per CCP § 473(b) is taken OFF CALENDAR as moot. <u>Pending Motion</u> Defendant Bruce A. Wilson moves to vacating the default entered against him with respect to the original Complaint. (See ROA #32.) <u>Procedural Posture</u> On January 9, 2024, Plaintiffs Michael Lobaton and Evelyn Lobaton filed their original Complaint (Complaint) asserting 8 causes of action against the 4 separate defendants, including Defendant Bruce A. Wilson (Defendant Wilson). (See ROA #2.) On February 26, 2024, Defendant Bruce A. Wilson was served with the Summons and Complaint by substituted service. (See ROA #24.) On April 26, 2024, Plaintiffs requested and the court entered default against Defendant Wilson on the Complaint. (See ROA #32.) On October 9, 2024, Defendant Wilson filed this motion seeking to vacate the entry of default against him. (See ROA #92.) On February 11, 2025, after the filing of this motion, Plaintiffs filed the Verified First Amended Complaint (FAC) and served it upon, among others, Defendant Wilson. (See ROA #169.) While the FAC named the same 4 defendants, it included only 5 causes of action. (See *ibid.*) On March 10, 2025, Defendant Wilson filed an answer to the FAC. (See ROA #171.) As the Court of Appeal has explained: "It is settled by a long line of decisions that where, after the default of a defendant has been entered, a complaint is amended in matter of substance as distinguished from mere matter of form, the amendment opens the default, and unless the amended pleading be served on the defaulting defendant, no judgment can properly be entered on the default. [Citations.] The reason for this rule is plain. A defendant is

		entitled to opportunity to be heard upon the allegations of the complaint on which judgment is sought against him. His default on the original complaint is limited in its effect to that complaint, and if by amendment a matter of substance is added, he should be given the opportunity to contest the same before any judgment is given against him on account thereof. The law, therefore, requires that the amended pleading shall be served on all the adverse parties, including defaulting defendants." (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1743, quoting *Cole v. Roebling Construction Co.* (1909) 156 Cal. 443, 446; see also *Ford v. Superior Court* (1973) 34 Cal.App.3d 338, 343 ["There is but one complaint in a civil action and, insofar as the rule that an amendment of substance opens a default is concerned, it matters not whether the amendment is accomplished by an amended complaint or an amendment to the complaint."], citation omitted.) Here, the FAC is substantively different from the Complaint as it includes 3 fewer causes of action but has more pages of allegations and exhibits. Thus, Defendant Wilson was entitled to respond to the FAC, which he has done by filing an answer. "The filing of [an] amended complaint render[s] [a] demurrer moot since 'an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.'" (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, quoting *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) Similarly, the FAC in this case supersedes the Complaint, which ceases to perform any function. This renders the instant motion moot because Defendant's default as to the Complaint has no effect. Therefore, the motion is moot and the court will take it off calendar. (fn.1) (fn.1) In any case, Defendant Wilson has shown that default was taken against him due to his own "mistake, inadvertence, surprise, or excusable neglect." (See Civ. Proc. Code § 473, subd. (b).)

		In fact, Defendant Wilson may be entitled to mandatory relief because he was an attorney representing himself at the time of the default. (See ibid.) "Because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233, superseded by statute, on other grounds, as discussed in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64.) Thus, even if Plaintiffs had not filed an amended complaint, the court would have been required to grant the motion. Defendant Wilson shall give notice of this ruling.
4	**Nepi vs. Harley-Davidson, Inc.** **30-2023-01335491**	<u>Motion to Compel Discovery</u> Defendant Harley-Davidson Motor Company, Inc.'s Motion to Compel Deposition of Plaintiff Garrett A. Nepi and Request for Sanctions is CONTINUED to April 21, 2025 at 9:00 a.m. in Department N15. <u>Pending Motion</u> Defendant Harley-Davidson Motor Company, Inc. moves to compel the deposition of Plaintiff Garrett A. Nepi. <u>Procedural Posture</u> While Plaintiff has not filed an opposition to this motion, he has filed a Motion for Protective Order, which seeks both a protective order relating to and to quash service of "the deposition notice defectively served by Defendants." (See ROA #117 at p. 1.) Although it is not clear, it appears that the Motion for Protective Order relates to Defendant's Notice of Taking Deposition of Plaintiff and Production of Documents that is at the heart of this motion. Therefore, it may be better for the two motions to be heard together. The court will continue this motion so that it may be heard with the Motion for Protective Order. The court clerk shall give notice of this ruling.

5	**Nguyen vs. Eli Lilly and Company** **30-2023-01335491**	<u>Motion to Compel Discovery</u> Defendants Eli Lilly and Company's and Shannon Lynn Chirco's Motion to Compel Plaintiff's Request for Production, Set No. Two is GRANTED. Plaintiff Hue Kim Nguyen is ORDERED to serve full, complete, and verified responses and responsive documents to Defendants' Request for Production of Documents to Plaintiff Hue Kim Nguyen, Set Two, without objections and within 30 days of service of the notice of ruling. Plaintiff Hue Kim Nguyen is ORDERED to pay to Defendants Eli Lilly and Company and Shannon Lynn Chirco sanctions in the amount of $800 within 30 days of service of the notice of ruling. <u>Pending Motion</u> Defendants Eli Lilly and Company and Shannon Lynn Chirco move to compel responses and responsive documents to Defendants' Request for Production of Documents to Plaintiff Hue Kim Nguyen, Set Two. <u>Standard to Compel Responses to Requests for Production</u> When a party properly propounds requests for production and the party receiving the requests fails to respond, "[t]he party making the demand may move for an order compelling response to the demand." (Code Civ. Proc., § 2031.300, subd. (b).) In addition, when the party receiving the discovery requests fails to respond, the propounding party is not required to file a meet and confer declaration prior to filing its motion to compel, and there is no time limit for the propounding party to file its motion. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) Further, "[t]he party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product . . . ." (Code Civ. Proc., § 2031.300, subd. (a).) <u>Requests for Production</u>

		On May 2, 2024, Defendants served Defendants' Request for Production of Documents to Plaintiff Hue Kim Nguyen, Set Two. (See Decl. of Derek A. Earley in Supp. of Def.s' Mot. to Compel Responses to Request for Production, Set Two (Earley Decl.), ¶ 7, Exh. C.) Plaintiff failed to respond by the due date for discovery responses and Plaintiff's Counsel sent a meet and confer letter on June 26, 2024, and also granted an extension to July 3, 2024, to serve responses. (See *id.*, ¶¶ 8-9, Exh. B.) As of October 15, 2024, Plaintiff had not provided any responses to Defendants' Request for Production of Documents to Plaintiff Hue Kim Nguyen, Set Two. (See *id.*, ¶¶ 4, 6.) In addition, Plaintiff has failed to file an opposition or respond to this motion. Thus, Plaintiff has waived any arguments regarding this motion. (See *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue]; see also *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion"].) Thus, the court will grant the motion. <u>Sanctions</u> The Civil Procedure Code requires the court to impose monetary sanctions against a party, person, or attorney who unsuccessfully makes or opposes a motion to compel "unless it 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., § 2031.300, subd. (c).) California Rules of Court rule 3.1348 further provides that "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, rule 3.1348(a).)

		Here, Plaintiff's conduct necessitated the filing of this successful motion and Plaintiff failed to show that Plaintiff acted with substantial justification or that other circumstances make the imposition of the sanction unjust. Therefore, the court will award sanctions to Defendants. However, the amount requested is somewhat excessive for a straightforward motion to compel and Defendants' Counsel has not explained how much time was expended on what tasks and at what billing rate. The court will reduce the amount of sanctions accordingly. Defendant shall give notice of this ruling.
6	**NTHC, LLC. vs. Crest Foods, Inc.** **30-2022-01252337**	<u>Motion for Determination of Good-Faith Settlement</u> Defendant Davis Wright Tremaine LLP's Motion for Determination of Good Faith Settlement [Code Civ. Proc. § 877.6(a)(1)] is DENIED without prejudice. <u>Pending Motion</u> Defendant Davis Wright Tremaine LLP (Defendant DWT) moves for a determination that the settlement between it and Plaintiff NTHC, LLC was made in good faith, pursuant to Civil Procedure Code section 877.6. <u>Standard for Determination of Good-Faith Settlement</u> Code of Civil Procedure section 877.6 provides in pertinent part: (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. . . .

		(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing. (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. (d) The party asserting the lack of good faith shall have the burden of proof on that issue. (Code Civ. Proc., § 877.6, subd.s (a)-(d).) The settling party's evidentiary burden depends on whether the good faith of the settlement is contested. When the settling party files a motion or application for determination of good faith settlement, it does not know whether the settlement will or will not be contested. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251 1260-1261.) Where "good faith" is not contested, a "barebones" motion which sets forth the grounds of good faith and is accompanied by a declaration setting forth a brief background of the case is sufficient. (*Id*. at p. 1261.) When the good faith nature of a settlement is disputed, however, the court must consider and weigh factors laid out by the Supreme Court in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488. (See *id.* at p. 1261 ["when the good faith nature of a settlement is disputed, it is incumbent upon the trial court to consider and weigh the *Tech-Bilt* factors"]; see also *id*. at pp. 1263-1264.) As explained by the Supreme Court:

		[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, *supra*, 38 Cal.3d at p. 499.) Another key factor is the settling tortfeasor's potential liability for indemnity to joint tortfeasors. (*Far West Financial Corp. v. D & S Co.* (1988) 46 Cal.3d 796, 816, fn. 16; *TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.) Because a good faith determination bars indemnity claims by nonsettling parties, the true value of the settlement may not be the amount paid to plaintiff but rather the value of the shield against such indemnity claims. (*TSI Seismic Tenant Space, Inc. v. Superior Court*, *supra*, 149 Cal.App.4th at p. 166.) "Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d at p. 499.) "'Good faith' is not affected by the fact the parties did not have access to all the evidence ultimately offered at trial on the disputed issues." (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 878.) In order to grant a motion for good faith determination of settlement, "a defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d at p. 499.)

		The opposing party bears the burden of proof on the issue of lack of good faith. (See Code Civ. Proc., § 877.6, subd. (d).) However, the statutory requirement of "good faith" presents an issue of fact and a finding of good faith must therefore be supported by substantial evidence. (*City of Grand Terrace v. Superior Court*, *supra*, 192 Cal.App.3d at pp. 1263-1265.) Therefore, just because the contesting party has the burden of proof on the issue of lack of good faith and might fail to meet that burden, does not mean that the trial court may properly grant the application if the record lacks sufficient evidence to support the conclusion that the settlement was entered into in good faith. (See *City of Grand Terrace v. Superior Court*, *supra*, 192 Cal.App.3d at pp. 1263-1264.) In fact, once an objecting party challenges a settlement, the settling party is required to "file counteraffidavits (Code Civ. Proc., § 877.6, subd. (b)) to make an evidentiary showing that the settlement was 'in the ballpark.' In the absence of such a showing by [the party] seeking approval of the good faith settlement, there is 'no substantial evidence to support a critical assumption as to the nature and extent of [the] settling [party's] liability[.]'" (*Mattco Forge, Inc. v. Arthur Young & Co.*, *supra*, 38 Cal.App.4th at p. 1350, fn. 6; see also *id*. at 1351 ["in view of the absence of any substantial evidence to show the $250,000 value of the guarantee was within the reasonable range of [the settling party's] proportionate liability, [the contesting party] met its burden in attacking the settlement as lacking in good faith"]; see also *City of Grand Terrace v. Superior Court, supra,*, 192 Cal.App.3d at pp. 1261, 1263 ["[T]he affidavits, declarations or other evidence should provide the court with the facts necessary to evaluate the settlement in terms of the factors contemplated by *Tech-Bilt*. Without the facts, in a contested hearing, it is impossible for a court to exercise its discretion in an appropriate fashion."].) In addition, where good faith is contested, conclusory allegations as to the settling parties' liability are insufficient to uphold the court's ruling granting a motion for good faith settlement as a

		matter of law. (*Mattco Forge, Inc. v. Arthur Young & Co.*, *supra*, 38 Cal.App.4th at p. 1351.) <u>*Tech-Bilt* Factors</u> In this case, because the good faith of the settlement has been contested by Defendants Crest Foods, Inc.; Crest Foods Systems, Inc.; and Ziad S. Dilal (collectively, Crest Defendants), the court must consider the factors laid out in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates.* <u>Approximation of Plaintiff's Total Recovery and Settlor's Proportionate Liability</u> Here, neither Defendant DWT nor the Crest Defendants any declarations or other evidence to establish Plaintiff's total recovery or Defendant DWT's proportionate liability. In fact, none of the parties present any analysis or argument regarding these matters. While the Crest Defendants do bear the burden of proof on the issue of lack of good faith, Defendant DWT nonetheless must present substantial evidence of good faith. Here, Defendant DWT only submits the declaration of one of its counsel, which only lays out some of the basic underlying facts of this case, but does not present any evidence relating to Plaintiff's total recovery or Defendant DWT's proportionate liability. (See Decl. of Jessica R. MacGregor in Supp. of Def. DWT's Mot for Determination of Good Faith Settlement [Code Civ. Proc., § 877.6(a)(1)] (MacGregor Decl.), ¶¶ 1-16.) For example, the declaration of Defendant DWT's Counsel does not provide any facts regarding what injuries Plaintiff suffered, what role (if any) Defendant DWT played in causing those injuries, or what defenses Defendant DWT may have against Plaintiff's claims. (See *ibid.*) In addition, after Crest Defendants opposed this motion, Defendant DWT did not file any "counteraffidavits" to show that the settlement amount was not grossly disproportionate or unreasonable, as required by Civil Procedure Code section 877.6(b). "In the absence of such a showing by [the party] seeking approval of the good faith settlement,

		there is 'no substantial evidence to support a critical assumption as to the nature and extent of [the] settling [party's] liability[.]'" (*Mattco Forge, Inc. v. Arthur Young & Co.*, *supra*, 38 Cal.App.4th at p. 1350, fn. 6.) Here, there are no facts presented that would allow the court to exercise its discretion. (See *City of Grand Terrace v. Superior Court, supra,*, 192 Cal.App.3d at pp. 1261, 1263 ["[T]he affidavits, declarations or other evidence should provide the court with the facts necessary to evaluate the settlement in terms of the factors contemplated by *Tech-Bilt*. Without the facts, in a contested hearing, it is impossible for a court to exercise its discretion in an appropriate fashion."].) <u>The Amount Paid in Settlement</u> The court has been presented with evidence of the amount paid in settlement. (See MacGregor Decl., ¶ 2.) However, without further evidence, the court is unable to determine whether the amount paid by Defendant DWT is "in the ballpark" or "within a reasonable range." For example, there is no evidence of the potential total liability or Defendant DWT's share of that liability. (See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates, supra,* 38 Cal.3d at p. 99 ["good faith" settlement is one that is "within the reasonable range" of settling tortfeasor's share of liability].) The parties have presented evidence and argument regarding Defendant DWT's statute of limitations defense. (See *ibid.* [disproportionately low settlement does not *ipso facto* reflect lack of good faith where damages are speculative, or liability is highly uncertain or remote].) However, because the court has not been provided with sufficient facts to come to even a rough approximation of Defendant DWT's share of the liability, an analysis of the strength of Defendant DWT's defenses is not helpful. The only exception is if Defendant DWT has a defense that is certain or nearly certain to succeed, in which case its estimated proportion of the liability would be zero.

		Here, there are substantial arguments on both sides regarding the strength of Defendant DWT's statute of limitations defense. The court cannot say that this defense is certain or nearly certain to succeed. Allocation of Settlement Proceeds Among Plaintiffs This is not a relevant factor as there is only one plaintiff in this case. Recognition that Settlor Should Pay Less in Settlement Than If Found Liable at Trial The court recognizes that Defendant DWT should pay less in settlement than it would have paid than if it had been found liable at trial. However, this consideration is not helpful where the court has not been provided with evidence as to the amount Defendant DWT might have been liable if Plaintiff had prevailed after a trial. Financial Condition and Insurance Policy Limits of Settling Defendant The court was not provided with any relevant evidence on this factor. Existence of Collusion, Fraud, or Tortious Conduct No party presented evidence that the settlement between Plaintiff and Defendant DWT was the product of collusion, fraud, or tortious conduct. To the extent that the burden of proof lies with the Crest Defendants, they have not met this burden. Settling Defendant's Potential Liability for Indemnity to Other Defendants There court was not presented with evidence or arguments that Defendant DWT may be liable for indemnity to the Crest Defendants or any other defendants. After considering all these factors, the court finds that Defendant DWT has not meet its burden to present substantial evidence upon which this court may base a finding of good faith.

		For example, there is no evidence as to the total liability to Plaintiff nor Defendant DWT's proportionate share of that liability. In addition, while Defendant DWT presented some evidence and argument as to its statute of limitations defense, it was not sufficient to show that this defense was certain or almost certain to carry the day and thus reduce Defendant DWT's potential liability to zero. It is true that Crest Defendants did not meet their burden to show lack of good faith. However, if, in a contested case, "'there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant's liability, then a determination of good faith based upon such assumption is an abuse of discretion.'" (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1350-1351 & fn. 6, quoting *Toyota Motor Sales U.S.A., Inc. v. Superior Court*, *supra*, 220 Cal.App.3d at p. 871.) Therefore, the court will deny without prejudice the motion for determination of good faith settlement. <u>Motion to Seal</u> Defendant Davis Wright Tremaine LLP's Motion for Leave to File Documents Under Seal is GRANTED. The court ORDERS that the following shall be sealed: 1. The unredacted version of the Memorandum of Points and Authorities in Support of Defendant Davis Wright Tremaine LLP Motion for Determination of Good Faith Settlement [Code Civ. Proc. § 877.6(a)(1)] (ROA #227); 2. The unredacted version of the Declaration of Jessica R. MacGregor in Support of Defendant Davis Wright Tremaine LLP's Motion for Determination of Good Faith Settlement [Code Civ. Proc. § 877.6(a)(1)] (ROA #226); and

3. Exhibit A to the Declaration of Jessica R. MacGregor in Support of Defendant Davis Wright Tremaine LLP's Motion for Determination of Good Faith Settlement [Code Civ. Proc. § 877.6(a)(1)] (ROA #226).

Pending Motion

Defendant Davis Wright Tremaine LLP (Defendant DWT) moves to seal documents that disclose the amount of its settlement with Plaintiff NTHC, LLC.

Standard for Motion to Seal

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c); see *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1078 [public's right of access to court records is based on both common law right of access to public documents, as well as constitutional right grounded in the First Amendment].)

To seal a record, the moving party must file a motion for such relief, along with a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, Rule 2.551, subd. (b)(1).) The motion must be served on all parties, and unless the court orders otherwise, a complete copy of the document must be served on all other parties that already possess copies, along with the redacted version. (Cal. Rules of Court, Rule 2.551, subd. (b)(2).)

To grant a motion to seal, the court must expressly find that:

1. an overriding interest exists that overcomes the right of public access to the record;
2. the overriding interest supports sealing the records;
3. a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. the proposed sealing is narrowly tailored; and
5. no less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, Rule 2.550, subd. (d); *McGuan v. Endovascular Technologies, Inc*. (2010) 182 Cal.App.4th 974, 988.)

Examples of documents that may qualify to be sealed are:

- Documents containing trade secrets, (see *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 300; *McGuan v. Endovascular Tech., Inc.*, *supra*, 182 Cal.App.4th at p. 988 [business' quality control records and complaint handling procedures may be sealed]);
- Documents containing material protected by a privilege, (see *Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 108 [documents protected by attorney-client privilege may be sealed]);
- Confidential settlement agreement, (see *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1283).

In the last of the above cited cases, the Court of Appeal explained that a contractual duty not to disclose contract terms can be sufficient to constitute an overriding interest. (See *Universal City Studios, Inc. v. Superior Court*, *supra*, 110 Cal.App.4th at pp. 1283-84 ["We agree with defendant that its contractual obligation not to disclose can constitute an overriding interest within the meaning of rule 243.1(d)"].)

A sealing order must: (a) specifically state facts supporting the above findings; and (b) be narrowly tailored (*i.e.*, it should direct sealing of only those documents and pages that contain material that needs to be placed under seal; all other portions of each document or page must remain in the public file). (See Cal. Rules of Court, rule 2.550(e)(1); Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial (Rutter 2017) ¶ 9:418.1.)

In this case, the requirements of Rule 2.550 have been met. Here, Plaintiff and Defendant DWT have negotiated a settlement in this case that includes an agreement to keep the material terms of the settlement confidential.

Defendant DWT has shown an overriding interest

		exists in encouraging settlement of legal disputes and keeping material terms of settlement confidential that overcomes the right of public access to the information contained in the subject documents. Defendant DWT also has shown that the right supports the sealing of the documents. Defendant DWT has established that a substantial probability exists that the overriding interest will be prejudiced if the records are not sealed, that the proposed sealing is narrowly tailored, and there are no less restrictive means to achieve the overriding privacy interest. In addition, the requirements of Rule 2.551 have been met. No other party to this action or third-party has opposed the motion or shown that the requirements of Rule 2.550 or Rule 2.551 have not been met. Defendant DWT shall give notice of these rulings.
7	**Parker vs. Harris** **30-2024-01375596**	Motion for Attorney's Fees Cross-Defendant Matthew Parker's Motion for Attorney's Fees is GRANTED. Cross-Complainant Nathan Harris and Album Creative Studios Inc. are ORDERED to pay to Cross-Defendant Matthew Parker reasonable attorney's fees in the amount of $12,939.55 and costs in the amount of $192.20 within 30 days of service of the notice of ruling. Pending Motion Cross-Defendant Matthew Parker (Cross-Defendant Parker) moves for an award of attorney fees in the amount of $21,623 and costs in the amount of $192.20 pursuant to the Anti-SLAPP statute, Civil Procedure Code section 425.16. Basis for Award of Attorney's Fees Civil Procedure Code section 425.16 states that "a prevailing defendant on a [Anti-SLAPP] special motion to strike shall be entitled to recover that defendant's attorney's fees and costs." (Code Civ.

		Proc., § 425.16, subd. (c)(1).) Under this provision, "any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) The purpose of the statute is "compensating the prevailing defendant for the undue burden of defending against litigation designed to chill the exercise of free speech and petition rights." (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 328.) <u>Prevailing Party</u> "The term 'prevailing defendant,' as used in section 425.16, subdivision (c)(1), is not defined, and it is unstated whether a defendant who prevails on some, but not all, of the claims challenged in his or her anti-SLAPP motion is entitled to fees and costs. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 232.) "But as a general rule, a defendant who prevails in part in bringing a special motion to strike is entitled to fees and costs, subject to the trial court's determination of the appropriate amount awardable based upon the defendant's partial success." (*Ibid.*) Therefore, "a party need not succeed in striking every challenged claim to be considered a prevailing party within the meaning of section 425.16." (*Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 339.) However, this rule is not absolute. A party who partially prevails on an anti-SLAPP motion is not deemed to be the prevailing party where "the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. The determination whether a party prevailed on an anti-SLAPP motion lies within the broad discretion of a trial court." (*Id.* at p. 340.) <u>Dismissal of Claims</u> A plaintiff who dismisses its claims after an anti-SLAPP motion is filed may be liable for fees. (See, e.g., *Ross v. Seyfarth Shaw LLP* (2023) 96 Cal.App.5th 722, 733.) However, the authorities are split on the issue of the effect of the dismissal.

		(*Compare Coltrain v. Shewalter* (1998) 66 Cal.App.4th 94, 107 with *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1457; *Liu v. Moore* (1999) 69 Cal.App.4th 745, 752-753.) The court in *Coltrain v. Shewalter* held that dismissal creates a rebuttable presumption that the defendant would have prevailed, and the plaintiff may overcome this presumption by showing she or he dismissed for other reasons. (*Coltrain v. Shewalter*, *supra*, (1998) 66 Cal.App.4th at p. 107.) Under this approach, the court need not consider the merits of the anti-SLAPP motion. (See *ibid.*) The courts in *Tourgeman v. Nelson & Kennard* and *Liu v. Moore* expressly rejected this approach, holding that "a determination of whether a defendant would have prevailed on its motion to strike is an essential prerequisite to an award of attorney fees and costs pursuant to section 425.16, subdivision (c)(1)." (*Tourgeman v. Nelson & Kennard*, *supra*, 222 Cal.App.4th at p. 1457; see *Liu v. Moore*, *supra*, 69 Cal.App.4th at pp. 752-753 [holding that until court determines that defendant would have prevailed, defendant is not entitled to fees and costs under section 425.16].) In this case, while Cross-Defendant Parker's Anti-SLAPP Motion was pending, Cross-Complainant Album Creative Studios, Inc. (Cross-Complainant Album) dismissed its cross-claims, which included the 2nd, 3rd, 6th, and 7th Causes of Action of the Cross-Complaint. (See ROA #69.) This dismissal mooted 5 of the 9 allegations or claims that the Anti-SLAPP Motion sought to strike. Thus, under approach in *Coltrain v. Shewalter*, this creates a rebuttable presumption that Cross-Defendant would have prevailed. Cross-Complainants have not filed an opposition or otherwise responded to this motion. Therefore, they have failed to rebut the presumption that Cross-Defendant Parker would have prevailed on the anti-SLAPP motion. Under the approach favored by *Tourgeman v. Nelson & Kennard* and *Liu v. Moore*, the court finds that Paragraphs 56(c), 58, 85(d), and 85(e), as well of as the entire 3rd Cause of Action of the Cross-Complaint would have been stricken.

		These portions of the Cross-Complaint relate to Cross-Defendants' alleged registration of trademarks and tradenames belonging to Cross-Complainants, which is a protected activity under the Anti-SLAPP Statute. (See *Mindys Cosmetics, Inc. v. Dakar* (9th Cir. 2010) 611 F.3d 590, 596.) Further, Cross-Complainants would have been unlikely to prevail with respect to the above allegations and claim. <u>Anti-SLAPP Motion</u> In addition, the court ordered that two additional allegations, in Paragraphs 51(f) and 79 of the Cross-Complaint, be stricken as part of the Anti-SLAPP Motion. Thus, Cross-Defendant Parker would have prevailed or did prevail with respect to 7 of the 9 allegations or claims that he moved to strike, and also obtained the voluntary dismissal of 4 causes of action. Considering all of the factors enumerated above, the court finds that Cross-Defendant Parker was the prevailing defendant on the Anti-SLAPP Motion. <u>Lodestar Calculation of Attorney's Fees</u> The lodestar method for calculating attorneys' fees applies to any statutory attorney's fees award, unless the statute authorizing the award provides for another method of calculation. (*Galbiso v. Orosi Pub. Util. Dist.* (2008) 167 Cal.App.4th 1063, 1089; *K.I. v. Wagner* (2014) 225 Cal.App.4th 1412, 1425.) When using this method, the court begins by determining the reasonable hours the prevailing party's attorney spent on the case and multiplying that number by the reasonable hourly rate. (See *Ketchum vs. Moses*, *supra,* 24 Cal.4th at pp. 1131-34; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) Nonetheless, the prevailing party should not receive a "windfall" through an award of reasonable attorney's fees. (*Ketchum vs. Moses*, *supra,* 24 Cal.4th at p. 1132.) Thus, the prevailing defendant in an Anti-SLAPP

		special motion to strike "'bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.'" (*Computer Xpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020, quoting *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437.) However, once an attorney has presented evidence of her or his actual time spent and hourly rate charged, the time and hourly rate are presumed to be reasonable. (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.) <u>Reasonable Hourly Rate</u> The reasonable hourly rate is based on the reasonable market value of the attorney's services. (See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095.) This standard applies regardless of how much the attorney actually charged the client. (See *ibid.*) Thus, the same reasonable hourly rate will apply whether the attorney charged nothing for their services, charged below-market or discounted rates, represented the client on a contingent fee basis, or are in-house counsel paid a fixed salary. To determine the reasonable market value of the legal services provided, the court must look to the range of reasonable rates charged by and judicially awarded to comparable attorneys for comparable work. (See *Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 783; see also *PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1095 ["[The] reasonable hourly rate is that prevailing in the community for similar work."].) The party requesting fees has the initial burden of producing evidence sufficient to support the reasonableness of the billing rates requested. (See *Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 903.) If the moving party meets its burden, the burden shifts to the opposing party to produce admissible evidence sufficient to show that the rates requested are not reasonable. (See *Graciano v. Robinson Ford Sales, Inc*. (2006) 144 Cal.App.4th 140, 155 [finding court erred in reducing rates where evidence of reasonableness of rate requested was undisputed].)

		"In making its calculation [of a reasonable hourly rate], the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees, the difficulty or complexity of the litigation to which that skill was applied, and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases." (*Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 41, citations omitted; see also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.) The value of legal services performed in a case is a matter of which the trial court has its own expertise. (*PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1096.) The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. (*Ibid*.) "It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court." (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623.) The court has reviewed and considered the evidence presented by Cross-Defendant Parker, and based on this evidence as well as the court's experience, the court finds the hourly rates billed by Attorneys Tate, Close, and Chamberlin, and Paralegal Saller, are reasonable for legal professionals in the community who conduct litigation of similar type to this case. <u>Hours Reasonably Expended</u> Absent circumstances rendering an award unjust, an award of attorney's fees should ordinarily include compensation for all hours reasonably spent, including those relating solely to obtaining the fee award. (See *Ketchum vs. Moses*, *supra,* 24 Cal.4th at p. 1133.) "[A]s the parties seeking fees and costs, defendants 'bear[ ] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.' To that end, the court may require defendants to produce records sufficient to provide 'a proper basis for determining how much time was spent on particular claims.'" (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020, quoting

		Hensley v. Eckerhart , *supra*, 461 U.S. at p. 437, fn. 12.) "[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 Board of Trustees of California State University* (2005)132 Cal.App.4th 359, 396; see *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1367 [declarations of counsel are "sufficient to meet the burden of establishing the reasonableness of the fees incurred, without the need to produce copies of counsel's detailed billing statements."].) Nonetheless "[a] trial court may not rubber stamp a request for attorney fees, but must determine the number of hours reasonably expended." (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271-272.) As the Court of Appeal has explained: Although [] billing statements in support of a fee request form the "'starting point'" for determining the "'hours reasonably expended'" in a lodestar calculation, the trial court is not bound to accept these hours and may reduce them if it concludes the attorneys performed work unrelated to the anti-SLAPP motion, or represented work that was unnecessary or duplicative or excessive in light of the issues fairly presented. (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 441, quoting *Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at pp. 1324, 1326.) Thus, the defendant may recover fees and costs "only for the motion to strike, not the entire litigation." (*Christian Research Inst. v. Alnor*, *supra*, 165 Cal.App.4th at p. 1320.) As explained by the Court of Appeal: [A] fee award under the anti-SLAPP statute may not include matters unrelated to the anti-SLAPP motion, such as 'attacking service of process, preparing and revising an answer to the complaint, [or] summary judgment research.' . . . Similarly, the fee award should not include fees for 'obtaining

		the docket at the inception of the case' or 'attending the trial court's mandatory case management conference' because such fees 'would have been incurred whether or not [the defendant] filed the motion to strike.' . . . In short, the award of fees is designed to 'reimburs[e] the prevailing defendant for expenses incurred in extracting herself from a baseless lawsuit' . . .rather than to reimburse the defendant for all expenses incurred in the baseless lawsuit. (*569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc*. (2016) 6 Cal.App.5th 426, 433, citations omitted.) In addition, the court need not include inefficient or duplicative efforts. (See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.) For example, the court may reduce the number of hours based on considerations of "whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended." (*Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at p. 1320.) Here, Cross-Defendant Parker submitted the declaration of his counsel summarizing the hours spent relating to the Anti-SLAPP Motion. (Decl. of M. Adam Tate in Supp. of Mot. for Attorneys' Fees (Tate Decl.), ¶ 4(a)-(e).) The number of attorney's hours expended by counsel for Cross-Defendant Parker was reasonable, except that counsel included 7 hours of time anticipated to respond to the opposition and to attend the hearing on this matter. Cross-Complainants did not file an opposition nor did Cross-Defendant Parker file a reply. Thus, the court will reduce this time to 1 hour to attend the hearing on this motion. Thus, the reasonable number of hours spent was 19.1 hours for Attorney Tate, 6.4 hours for Attorney Close, 4.8 Hours for Attorney Chamberlin, and 7.4 hours for Paralegal Saller. <u>Partially Successful Anti-SLAPP Motion</u>

		A moving defendant is entitled to recover attorney's fees and costs only to the extent its anti-SLAPP motion was successful, unless the successful and unsuccessful portions of the motion were so intertwined that it would be impracticable to separate the attorney's time into compensable and noncompensable units. (See *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 232 [holding that "as a general rule, a defendant who prevails in part in bringing a special motion to strike is entitled to fees and costs, subject to the trial court's determination of the appropriate amount awardable based upon the defendant's partial success"]; *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 342 [holding apportionment is not required when claims and issues are "'so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.'"], quoting *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672. 687.) As the Court of Appeal explained: > [T]he court should first determine the lodestar amount for the hours expended on the successful claims, and, if the work on the successful and unsuccessful causes of action was overlapping, the court should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate. (*Mann v. Quality Old Time Service, supra*, 139 Cal.App.4th at p. 345.) Courts will consider the following factors in determining whether to award attorney's fees to parties that partially prevailed on an anti-SLAPP motion: (1) "extent to which the defendant's litigation posture was advanced by the motion"; (2) "whether the same factual allegations remain to be litigated"; (3) "whether discovery and motion practice have been narrowed"; and (4) "the extent to which future litigation expenses and strategy were impacted by the motion." (*Ibid*.) "The fees awarded to a defendant who was only partially successful on an anti-SLAPP motion should be commensurate with the extent to which the motion changed the nature and character of

		the lawsuit in a practical way. The court should also consider any other applicable relevant factors, such as the experience and abilities of the attorney and the novelty and difficulty of the issues, to adjust the lodestar amount as appropriate." (*Ibid*.) The court cautioned that "allowing partially successful defendants to recover virtually all of their fees because the facts and legal theories are so intertwined that they cannot be segregated underestimates the ability of attorneys and experienced trial judges to evaluate the value of legal services associated with limited success" and instead, concluded that "an approach concentrates on the practice impact of a partially successful motion on the overall litigation advances the objectives of the anti-SLAPP statute and minimizes abuses." (*Id.* at p. 347.) Cross-Defendant Parker contends that he is entitled to all fees incurred given that Cross-Complainant Album's dismissal of claims and the allegations stricken by the court were "significant and not trivial." The dismissal of Cross-Complainant Album's cross-claims materially advanced Cross-Defendant Parker's litigation position. This narrowed the scope of discovery and motion practice and reduced the number of factual allegations to be litigated, which in turn, reduced litigation expenses. In addition, the Anti-SLAPP Motion lead to the striking important allegations that supported the breach of fiduciary duty and unfair competition claims, particularly as they related to the trademark registration. This also had a practical effect on the litigation that favored Cross-Defendant Parker. However, the entire 4th Cause of Action for Civil Theft was not stricken. It remains and may involve similar discovery. The court finds that Cross-Defendant Parker is entitled to 85% of the reasonably incurred fees, or $12,939.55. <u>Costs</u> Generally, the prevailing party is entitled, as a

		matter of right, to recover costs in any action or proceeding. (See Code Civ. Proc., § 1032, subd. (b); *Foothill-De Anza Comm. College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29-30.) Civil Procedure Code section 1033.5 enumerates the specific costs that are recoverable by the prevailing party in a civil action. (See Code Civ. Proc, §§ 1032, subd. (b), 1033.5.) Section 1033.5 also provides that the court may award costs not expressly described in the statute for expenses that are "reasonably necessary to the conduct of the litigation" and are "reasonable in amount." (Code Civ. Proc, § 1033.5, subd. (c)(2)-(4).) While the trial court has discretion to decide whether a cost item was reasonably necessary, the trial court does not have discretion to award a cost item that is not statutorily authorized. (See *Ladas v. California State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 774.) To recover costs, the prevailing party must file and serve a memorandum of costs "within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Court, rule 3.1700(a).) If the items on a memorandum of costs appear to be proper on their face, the verified memorandum of costs is *prima facie* evidence of their validity and the burden is on the party seeking to strike or tax costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Ass'n*, *supra*, 19 Cal.App.4th at p. 774.; see also *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 ["If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they are not reasonable or necessary."].) Cross-Defendant Parker seeks costs of $192.20 for filing and e-filing fees relating to the Anti-SLAPP Motion and this motion. (See Tate Decl. ¶ 5.) These costs appear to be proper on their face and Cross-Complainants do not show that they were not reasonably necessary.

		The court will award costs of $192.20. Cross-Defendant Parker shall give notice of this ruling.
8	**Selinger vs. American Honda Motor Company, Inc.** **30-2023-01348476**	Motions to Compel Discovery Pursuant to Defendant American Honda Motor Co., Inc.'s Notice of Withdrawal of Its Four Motions to Compel filed April 8, 2025, (ROA #149), these matters are taken OFF CALENDAR.
9	**Toone vs. Kairos Manford Private Equity Fund I LP** **30-2023-01357763**	Motion to Be Relieved as Counsel Counsel Blank Rome LLP's, Cheryl S. Chang's, and Harrison Brown's Motion to Be Relieved as Counsel for Plaintiff Sheng Zhang is CONTINUED to June 9, 2025 at 9:00 a.m. in Department N15. Counsel Blank Rome LLP, Cheryl S. Chang, and Harrison Brown are ORDERED to file with the court and serve on Plaintiff Sheng Zhang a proposed Order Granting Attorney's Motion to Be Relieved as Counsel – Civil (Form MC-053), in the manner in Rules of Court rule 3.1362(d), within 30 days of this ruling. Pending Motion Counsel Blank Rome LLP, Cheryl S. Chang, and Harrison Brown (Counsel) move to be relieved as counsel for Plaintiff Sheng Zhang. Standard to Be Relieved as Counsel "The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination . . . [u]pon the order of the court, upon the application of either client or attorney, after notice from one to the other." (Code Civ. Proc., § 284.) The notice of motion and motion to be relieved as counsel under Civil Procedure Code section 284 shall be directed to the client and shall be made on the Judicial Council's Notice of Motion and Motion to Be Relieved as Counsel-Civil form (Form MC-051). (Cal. Rules of Court, rule 3.1362(a).)

		No memorandum is required for the motion. (See Cal. Rules of Court, rule 3.1362(b).) However, "[t]he motion to be relieved as counsel must be accompanied by a declaration on the *Declaration in Support of Attorney's Motion to Be Relieved as Counsel – Civil* (form MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (Cal. Rules of Court, rule 3.1362(c), italics original.) In addition, "[t]he proposed order relieving counsel must be prepared on the *Order Granting Attorney's Motion to Be Relieved as Counsel--Civil* (form MC-053) and must be lodged with the court with the moving papers." (Cal. Rules of Court, rule 3.1362(e), italics original.) Motions to be relieved as counsel "must be served on the client and on all other parties who have appeared in the case" and service must be made by "personal service, electronic service, or mail." (Cal. Rules of Court, rule 3.1362(d).) If the motion is served by mail, it shall be accompanied by a declaration stating facts showing either that (1) the service address is the current residence or business address of the client or (2) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days prior to filing the motion. (Cal. Rules of Court, rule 3.1362(d).) "As used in this rule, 'current' means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current." (*Ibid.*) Here, the motion papers did not include a proposed *Order Granting Attorney's Motion to Be Relieved as Counsel--Civil* (Form MC-053) or any indication that such a document had been served on Plaintiff Sheng Zhang.

		Therefore, the court will continue the hearing on this motion and order that Counsel file and lodge the proposed order with the court and serve it upon Plaintiff Sheng Zhang as required by California Rules of Court Rule 3.1362. Counsel shall give notice of this ruling.
10	**United Auto Credit Corporation vs. Ethos Auto Group LLC** **30-2023-01336690**	Motion for Summary Judgment and/or Summary Adjudication Plaintiff United Auto Credit Corporation's Motion for Summary Judgment, or in the Alternative, Motion for Summary Adjudication is DENIED without prejudice. Pending Motion Plaintiff United Auto Credit Corporation moves for summary judgment as to the Complaint. In the alternative, Plaintiff moves for summary adjudication as to the 1st Cause of Action against Defendant Ethos Auto Group LLC (Defendant Ethos) and the 2nd Cause of Action against Defendant Takeshi Hayashi (Defendant Hayashi). Standard for Summary Judgment or Summary Adjudication A party may move for summary judgment, which "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) In addition, "[a] party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, . . . or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1).)

		Summary judgment, as opposed to summary adjudication, is not proper unless there is no merit or no defense to the entire action or proceeding. (See Code of Civil Procedure section 437c, subd. (a).) Thus, if any cause of action survives, a grant of summary judgment is improper. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2002) ¶¶ 10:26 to 10:27, p. 10–9.) A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact . . . ." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at 851.) A plaintiff moving for summary judgment satisfies the initial burden by submitting undisputed evidence "showing that there is no defense to a cause of action [because] the party has proved each element of the cause of action entitling the party to judgment on the cause of action." (Code Civ. Proc. § 437c, subd. (p)(1).) However, "[i]f the plaintiff is unable to meet her burden of proof regarding an essential element of her case, all other facts are rendered immaterial.'" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780, quoting *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482.) If the moving party meets its burden, the burden then shifts to the party opposing summary judgment to show, by reference to specific facts, the existence of a triable, material issue as to a cause of action or an affirmative defense. (*Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at p. 855; *Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 575.) In ruling on a motion for summary judgment or summary adjudication, "the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843, citations omitted.) Courts "'construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the

		party opposing it.'" (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 636, quoting *Seo v. All–Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1201–1202.) A court may not make credibility determinations or weigh the evidence on a motion for summary judgment or adjudication, and all evidentiary conflicts are to be resolved against the moving party. (*McCabe v. American Honda Motor Corp.* (2002) 100 Cal.App.4th 1111, 1119.) "The court . . . does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and Ventura Counties* (2009) 173 Cal.App.4th 740, 754, citation omitted.) "[S]ummary judgment cannot be granted when the facts are susceptible [of] more than one reasonable inference . . ." (*Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1392.) <u>1st Cause of Action (Breach of Written Contract – Dealer Agreement) and 2nd Cause of Action (Breach of Written Contract – Personal and Continuing Guarantee)</u> "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821) In addition, "[a] lender is entitled to judgment on a breach of guaranty claim based upon undisputed evidence that (1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty." (*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486.) Plaintiff presented evidence that it routinely purchases automotive retail installment contracts (RISC) from automobile dealers. (See Plaintiff's Separate Statement of Undisputed Material Facts in Supp. of Its Mot. for Summ. J., or in the Alternative, Summ. Adj. (Separate Statement), Undisputed Material Fact 2.)

		Plaintiff also showed that, on or about January 20, 2022, Plaintiff and Defendant Ethos entered into a written agreement entitled the "United Auto Credit Corporation Independent Dealer Agreement" (Dealer Agreement). (See *id.*, Undisputed Material Fact 3.) Plaintiff submitted evidence that Defendant Hayashi personally guaranteed Defendant Ethos' performance of the Dealer Agreement by way of a personal guaranty (Guaranty). (See *id.*, Undisputed Material Fact 4.) Section 6(a) of the Dealer Agreement states that Defendant Ethos must repurchase any Contract for which "Dealer either fails to perform any of its obligations hereunder or otherwise or Dealer breaches any representation, warranty, or covenant made herein, or made in connection with the sale of the Vehicle." (*Id.*, Undisputed Material Fact 9.) Therefore, Plaintiff has provided evidence showing the existence of an agreement between Plaintiff and Defendant Ethos, that Defendant Ethos breached the repurchase terms of the Dealer Agreement, and that Plaintiff was damaged by Defendant Ethos' breach. However, Plaintiff failed to present evidence that it performed its material obligations under the Dealer Agreement or that it was excused from performance. Plaintiff's primary obligation under the Dealer Agreement is to pay the agreed-upon purchase price for the RISCs that Plaintiff purchases from Defendant Ethos. (See Decl. of John Cardona in Supp. of Pltf.'s Mot for Summ. J., or in the Alternative, Summ. Adj. (Cardona Decl.), Exh. 1, §§ 1(a), 2.) Specifically, the Dealer Agreement states that "[t]he parties agree that the purchase of a Contract [RISC] shall occur as of the time Plaintiff forwards funds to Dealer after Plaintiff's receipt, verification and approval, in its sole discretion of the information and documents specified in Plaintiff's then-effective program guidelines or otherwise requested by Plaintiff." (*Id.*, Exh. 1, § 1(a); see also *id.*, Exh. 1, § 3(a) ["The purchase price for a Contract [RISC] shall be an amount

		agreed upon by Plaintiff and Dealer (‘Purchase Price’).”].) Although the Separate Statement indicates that Plaintiff purchased RISCs from Defendant Ethos, Plaintiff submits no evidence that it paid the agreed-upon purchase price for the RISCs. The memorandum of points and authorities in support of the motion states that Plaintiff purchased the RISCs for the vehicles in question. (See Pltf.’s Mem. of P.s&A.s in Supp. of Pltf.’s Mot for Summ. J., or in the Alternative, Summ. Adj. at p. 13:13-14.) However, Plaintiff does not provide any evidence to support this contention. Instead, Plaintiff only cites to evidence showing that consumers purchased the subject vehicles from Defendant Ethos. (See Separate Statement, Undisputed Material Facts Numbers 12, 21,29, 36, 43.) It is true that neither Defendant Ethos nor Defendant Hayashi filed an opposition to the motion or otherwise responded to the motion. However, as the moving party, Plaintiff bears the initial burden of making a prima facie showing as to each element of the claim. “’If the plaintiff is unable to meet her burden of proof regarding an essential element of her case, all other facts are rendered immaterial.’” (*Saelzler v. Advanced Group 400*, *supra*, 25 Cal.4th at p. 780, quoting *Leslie G. v. Perry & Associates*, *supra*, 43 Cal.App.4th at p. 482.) Similarly, Plaintiff failed to provide evidence that it performed or was excused from performing its material obligations under the Guaranty. Therefore, the court must deny summary adjudication as to the 1st and 2nd Causes of Action. And because there is a triable issue of material fact as to some of the causes of action, the court cannot grant summary judgment. The court clerk shall give notice of this ruling.
11	**Ramirez vs. City of Santa Ana** **30-2022-01287702**	<u>Motion for Protective Order</u> Defendant City of Santa Ana’s Ex Parte Application for A Protective Order is DENIED without prejudice.

		Plaintiff Rita Ramirez's evidentiary objection to the Declaration of Kevin J. Hernandez in Support of Defendant City of Santa Ana's Ex Parte Application for A Protective Order is SUSTAINED as to Objection Number 1. <u>Pending Motion</u> Defendant City of Santa Ana moves for a protective order prohibiting Counsel for Plaintiff Rita Ramirez from communication with employees of Defendant and for an award of monetary sanctions. <u>Standard</u> Courts have the authority to "provide for the orderly conduct of proceedings before it, or its officers" and "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.'" (Code Civ. Proc., § 128, subd.s (a)(3), (a)(5).) This power includes the ability to order that counsel abide the rules of professional ethics. California Rule of Professional Conduct Rule 4.2 provides: (a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person* the lawyer knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with: (1) A current officer, director, partner,*or managing agent of the organization; or (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person* in connection with the matter which may be binding upon or imputed to the

		organization for purposes of civil or criminal liability. (c) This rule shall not prohibit: (1) communications with a public official, board, committee, or body; or (2) communications otherwise authorized by law or a court order. (d) For purposes of this rule: (1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial* discretionary authority over decisions that determine organizational policy. (2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1). . . . Comment 5: This rule does not prohibit communications initiated by a represented person* seeking advice or representation from an independent lawyer of the person's* choice. Here, Defendant contends that Plaintiff's Counsel violated Rule 4.2 when he had communications with Deputy Chief Chuck Elms, who is an employee of Defendant, regarding the subject of this legal action. The only evidence that Defendant provides in support of this contention is the declaration of Defendant's Counsel, who states that "[o]n April 2, 2025, Deputy Chief Chuck Elms contacted me and advised me that Larry Lennemann contacted him directly and attempted to schedule a meeting with Mr. Elms. Specifically, Mr. Elms stated Mr. Lennemann texted him and asked him to schedule a meeting to discuss the trial in this matter." (See Decl. of Kevin J. Hernandez in Supp. of Def.'s Ex Parte Application for A Protective Order, ¶ 4.) However, these statements are hearsay and do not constitute admissible evidence. (See Evid.

		Code, § 1200, *et. seq.*) Therefore, Defendant has not met its burden as the moving party to show that it is entitled to the requested protective order. The court will deny the motion without prejudice. Plaintiff shall give notice of this ruling.