TENTATIVE RULINGS

DEPARTMENT C33

Judge Sandy N. Leal

April 18, 2024 at 10:00 a.m.

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative rulings: The Court endeavors to post tentative rulings on the Court's website in the morning, prior to the hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the Department for tentative rulings if tentative rulings have not been posted. The Court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5233. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.*, 205 Cal.App.4th 436, 442, fn. 1 (2012.))

Appearances: Department C33 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C33 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California.

All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time. All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at https://www.occourts.org/media-relations/civil.html before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at https://www.occourts.org/media-relations.aci.html. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this Department by either coming to the Department at the designated hearing time or contacting the Courtroom Clerk at (657) 622-5233 to obtain login information. For remote appearances by the media or public, please contact the Courtroom Clerk 24 hours in advance so as not to interrupt the hearings.

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
2	***22-01250216*** ***Cruz vs. Lewis Topps***	**Motion to Strike Portions of Complaint** The Motion to Strike brought by Defendants Paul Lewis Topps and Lisa Marie Topps is DENIED. The First Amended Complaint alleges, "Defendant Paul Topps ("Defendant" or "Defendant Topps") willfully consumed drugs to the point of impairment/intoxication knowing he must operate a vehicle shortly thereafter. Defendant Topps then knowingly and recklessly drove his vehicle while under the influence and ultimately caused the subject incident giving rise to this complaint." (FAC, EX-2 of Exemplary Damages Attachment.) Defendant was so impaired that he had "red/watery eyes, dilated pupils, slow lethargic speech, and difficulty concentrating" when being interviewed by the investigating Officer and failed the sobriety test. (Id.) "Defendant Topps knew from the onset that he must and would subsequently operate or control his vehicle on the public roads and that he would and did pose a serious threat of harm and danger to others, the public, and Plaintiffs." (Id.) The FAC further alleges Defendant was "involved in a prior collision with a motorcycle, ... fled the scene and was engaged in a car chase with co-defendant Christopher Evans, ... [drove] through a red light and continually [drove] on the opposite side of the road into oncoming traffic that ultimately resulted in the collision between Defendant Topps and Plaintiffs herein." (FAC, Attachment to Exemplary Damages Attachment). The above allegations are consistent with the standard outlined in by the California Supreme Court in Peterson v. Superior Court (1982) 31 Cal.3d 147 and Taylor v. Superior Court (1979) 24 Cal.3d 890. "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.) Here, assuming the truth of Plaintiffs' allegations, Defendant Paul Lewis Topps knowingly engaged in behavior that posed a danger to the public, knowing harm was substantially likely. This is sufficient to demonstrate malice. (Civ. Code, §3294, subd. (c)(1).) While Defendants assert that additional factual allegations are necessary, the California Supreme Court in Taylor v. Superior Court (1979) 24 Cal.3d 890, did not find aggravating factors to be necessary. (Id. at 896.) The Court in Taylor examined a complaint which alleged: "Defendant became intoxicated and thereafter drove a car while in that condition, despite his knowledge of the safety hazard he created thereby." (Ibid.) The Court noted that the above was "the essential gravamen of the complaint," and further noted that "while a history of prior arrests, convictions and mishaps may heighten the probability and foreseeability of an accident, we do not deem these aggravating factors essential

		prerequisites to the assessment of punitive damages in drunk driving cases." (Ibid.) Finally, Defendants' argument that the references in the Exemplary Damages Attachment to statements contained within the Traffic Collision Report constitute improper matter lacks merit. The facts alleged are within the FAC and do not require looking the Court to look outside of the four comers of the FAC. The origins of those facts are irrelevant since the FAC is complete in and of itself. As the allegations herein, concerning Defendant Paul Lewis Topps' awareness of the danger, mirror the allegations in Taylor, the motion is denied.
3	***22-01252786*** ***Dancy vs. Cedar Operations, LLC***	**Motion for Summary Judgement and/or Adjudication** Defendants Cedar Operations LLC and Madison Creek Partners, LLC Motion for Summary Adjudication as to the first, second, third, fourth, fifth, sixth, seventh, and eighth causes of action and claim for punitive damages is DENIED. <u>Relationship between Defendant Cedars Operations LLC and Madison Creek Partners LLC</u> The Complaint alleges that "PLAINTIFF is informed and believes, and thereon alleges that at all times mentioned, each of DEFENDANTS, except as otherwise alleged or contended, are and have been the partners, joint venturers, alter egos, and/or co-conspirators of each other." (Compl. ¶ 12.) Further, Plaintiff alleged that "DEFENDANTS were "employers" within the meaning of Government Code section 12926(d) . . . ." (Compl. ¶ 8.) Although not initially raised in the MSA, Defendants now claim that Cedar Mountain and not Madison Creek, was the true employer of Plaintiff. Juliene Reese, Operations Manager for Cedar Mountain avers the following: Madison Creek provides consulting and administrative services to Cedar Mountain under an Administrative Services Agreement. These services include billing and accounts receivable management with respect to patient accounts, payroll processing and management, accounts payable management, vendor management, and facility bookkeeping, reporting, and budgeting. The use of management services or (as here) administrative services agreements for these functions is common in the long-te1m health care field. (Reese Decl, ¶ 3.) Ms. Reese then concludes that Cedar Mountain and not Madison Creek is Plaintiff's employer. (Reese Decl, ¶ 4.) But in support of the MSA, Defendants also submitted the declaration of Courtney Small who is identified as the Human Resources Business Partner for Madison Creek Partners, LLC. Ms. Small states, "I was

		employed by Madison Creek Partners, LLC as the Human Resources Business Partner for 1 ½ years." (Small Decl. ¶ 1.) She further states that she "provided HR support to several skilled nursing facilities including Cedar Operations, LLC," including "Alycia Reyes . . . and others at Cedar Mountain." (Ibid.) Although Ms. Small was a Madison Creek employee, she admits that "At the end of March 2020, I was helping Cedar Mountain contact its employees." (Id. at ¶¶ 6-7.) Finally, on March 31, "Cedar Mountain . . . asked me to prepare [Plaintiff's] voluntary termination paperwork." (Id. at ¶ 11.) Similarly, Alycia Reyes, who attests to being Cedar Operations employees, alleges that "Courtney Small (Human Resources Business Partner) and I, along with help from a co-worker, began calling employees to find out their status and whether they would show for their shift." (Reyes Decl. ¶ 8.) Additionally, in discovery the only employee handbook produced to Plaintiff was a "Madison Creek Partners Employment Handbook 2019" which states, "Welcome to Madison Creek Partners, LLC." Filings with the California Secretary of State also suggest a finding of joint employer or integrated enterprise. Cedar Operations, LLC was incorporated in Delaware and registered in California on March 18, 2015. Its most recent Statement of Information before Plaintiff's employment, on January 22, 2019, listed its principal place of business as 26522 La Alameda, Suite 300, in Mission Viejo. (Davidson Decl. II, Exh. Y.) It also listed Covey Christensen as its sole Manager or Member, and lists "Healthcare" as the type of business. (Ibid.) Madison Creek Partners, LLC was initially incorporated on September 16, 2014, in Delaware and was registered in California on September 19, 2014. (Davidson Decl. II, Exh. Z.) It was initially named Madison Partners West, LLC, but in October 2014 changed its name to Madison Creek Partners, LLC. (Ibid.) On August 22, 2022, it filed a complete Statement of Information with the Secretary of State, which listed the same Mission Viejo address as Cedar Operations, LLC as its principal place of business, and also listed Covey Christensen as its sole Manager or Member. "Healthcare" is listed as the type of business. Thus, both Defendants have almost identical profiles, which increases the likelihood that they are an integrated enterprise or operate as joint employers. Based on the foregoing, the Court finds a triable issue of fact exists as to whether Madison Creek was a joint employer or otherwise liable for Plaintiff's claims. <u>Standard for Summary Adjudication</u> A motion for summary adjudication may be granted if "it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c(f)(1).) As used in this section, a "cause of action" means the invasion of a primary

right, i.e., an injury, rather than a theory of liability. (Lilienthal & Fowler v. Superior Court (1993) 12 Cal.App.4th 1848, 1854.)

"Summary adjudication motions are 'procedurally identical' to summary judgment motions. Summary judgment '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).) To be entitled to judgment, the moving party must show by admissible evidence that the "action has no merit or that there is no defense" thereto. (Id., subd. (a)(1).) A defendant moving for summary adjudication meets this burden by presenting evidence demonstrating that one or more elements of the cause of action cannot be established or that there is a complete defense to the claim. (Id., subds. (o), (p)(2).) Once the defendant makes this showing, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to that cause of action or defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Material facts are those that relate to the issues in the case genuine 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." (Zamora v. Security Industry Specialists, Inc. (2012) 71 Cal.App.5th 1, 28-29 [cleaned-up].)

Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. (§ 437c, subd. (c); Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.) "[A]ll doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party. The court focuses on finding issues of fact; it does not resolve them. The court seeks to find contradictions in the evidence or inferences reasonably deducible from the evidence that raise a triable issue of material fact." (Trop v. Sony Pictures Entertainment, Inc. (2005) 129 Cal.App.4th 1133, 1144-1145 [internal citations omitted].)

<u>First Cause of Action – Disability Discrimination</u>

California courts adopted the so-called McDonnell Douglas test, a "three-stage burden-shifting test established by the United States Supreme Court for trying claims of discrimination…based on a theory of disparate treatment." (Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 354.)

For trial purposes, "the McDonnell Douglas test places on the plaintiff the initial burden to establish a prima facie case of discrimination…Generally, the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive…If, at trial, the plaintiff establishes a prima facie case, a presumption of discrimination arises…the burden

		shifts to the employer to rebut the presumption by producing admissible evidence, sufficient to 'raise [ ] a genuine issue of fact' and to 'justify a judgment for the [employer],' that its action was taken for a legitimate, nondiscriminatory reason… If the employer sustains this burden, the presumption of discrimination disappears…The plaintiff must then have the opportunity to attack the employer's proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive." (Guz, 24 Cal.4th at 354-356.) For summary judgment proceedings, if an "employer presents admissible evidence either that one or more of plaintiff's prima facie elements is lacking, or that the adverse employment action was based on legitimate, nondiscriminatory factors, the employer will be entitled to summary judgment unless the plaintiff produces admissible evidence which raises a triable issue of fact material to the defendant's showing." (Sandell v. Taylor-Listug, Inc. (2010) 188 Cal.App.4th 297, 309; see King v. United Parcel Service, Inc. (2007) 152 Cal.App.4th 426, 432-434 (The employer bears the "initial burden of demonstrating that at least one of the elements of plaintiff's employment discrimination claim is without merit. Once an employer satisfies its initial burden of proving the legitimacy of its reason for termination, the discharged employee seeking to avert summary judgment must present specific and substantial responsive evidence that the employer's evidence was in fact insufficient or that there is a triable issue of fact material to the employer's motive…In other words, plaintiff must produce substantial responsive evidence to show that [employer's] ostensible motive was pretextual; that is, 'that a discriminatory reason more likely motivated the employer or that the employer's explanation is unworthy of credence'") In addition, "plaintiff's subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations…plaintiff's evidence must relate to the motivation of the decision makers to prove, by nonspeculative evidence, an actual causal link between prohibited motivation and termination." (King, 152 Cal.App.4th at 433-434.) An employee plaintiff's "prima facie burden is light; the evidence necessary to sustain the burden is minimal…generally an employee need only offer sufficient circumstantial evidence to give rise to a reasonable inference of discrimination." (Sandell v. Taylor-Listug, Inc. (2010) 188 Cal.App.4th 297, 310.) "[T]he elements of a claim for employment discrimination in violation of section 12940, subdivision (a), are (1) the employee's membership in a classification protected by the statute; (2) discriminatory animus on the part of the employer toward members of that classification; (3) an action by the employer adverse to the employee's interests; (4) a causal link between the discriminatory animus and the adverse action; (5) damage to the employee; and (6) a causal link between the adverse action and the damage." (Mamou v. Trendwest Resorts, Inc. (2008) 165 Cal.App.4th 686, 713.) Protected classes include race, religious creed,

		color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. (Gov. Code, § 12940(a).) The Complaint alleges the following regarding the disability discrimination theory: Defendants were aware Plaintiff was not feeling well and may have contracted COVID, yet terminated her employment despite awareness of her perceived medical condition. The threshold issue is whether COVID is considered a disability under the FEHA. As noted by both parties, there are no California appellate cases regarding whether COVID is a disability. The only guidance is the District Court's ruling in Roman v. Hertz Loc. Edition Corp. (S.D. Cal. May 16, 2022) No. 20CV2462-BEN (AGS), 2022 WL 1541865 *, and the FEHA regulations. FEHA defines a physical disability as a physiological condition that affects one or more body systems. Cal. Govt. Code § 12926(m)(1)(A). The disability must also limit a major life activity. Id. § 12926(m)(2)(B). A condition limits a major life activity if it makes the achievement of the major life activity difficult. Id. § 12926(j)(1)(B), (m)(1)(B)(ii). On the other hand, a disability is not a condition that is mild or does not limit a major life activity. 2 Cal. Code Regs. § 11065(d)(9)(B). According to Cal. Code Regs. tit. 2, § 11065(d)(2)(C), FEHA's definition of physical disability is to be construed broadly, and includes deafness, blindness, cerebral palsy, and chronic or episodic conditions such as HIV/AIDs, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, and heart and circulatory disease. The list of specific examples is not particularly helpful, however, as it does not specifically mention COVID-19 and it addresses mostly chronic and long-term conditions that are remarkably unlike Plaintiff's infection. Cal. Code Regs. tit. 2, § 11065(d)(9)(B) excludes from the definition of a FEHA disability those "conditions are mild, which do not limit a major life activity, as determined on a case-by-case basis." "Mild conditions" are conditions that "have little or no residual effects, such as the common cold; seasonal or common influenza; minor cuts, sprains, muscle aches, soreness, bruises, or abrasions; non-migraine headaches, and minor and non-chronic gastrointestinal disorders." The Roman Court noted, that "[p]ublished at the onset of the COVID-19 pandemic, the relevant guidance here instructs that 'whether illness related to COVID-19 rises to the level of a disability (as opposed to a typical seasonal illness such as the flu) is a fact-based determination.' DFEH Employment Information on COVID-19, Department of Fair Employment and Housing (Feb. 16, 2022)." (Roman, supra, 2022 WL 1541865 at *6.) "[B]ecause any given COVID-19 infection can range from producing no symptoms to producing symptoms severe enough to cause death, the guidance logically reasons that FEHA requires that

		COVID-19 infections be analyzed on a fact-based determination to decide whether they qualify as a disability." (Id.) Based on the regulations and the DFEH guidance, the District Court in Roman, concluded as follows: When it presents with temporary symptoms akin to the common cold or seasonal flu, COVID-19 will fall outside the FEHA definition of ailments considered a disability, pursuant to § 11065(d)(9)(B). . . [Where] the symptoms of [] infection [are] mild with little or no residual effects, . . . COVID-19 infection is excluded from FEHA's definition of disability. . . . At the same time, it should not go without saying that for some individuals COVID-19 can cause exceedingly severe, even deadly, symptoms with long durations that would easily qualify as a FEHA disability. . . . And what has been termed "long-haul COVID-19 ... may well fall within FEHA's definition of a disability." (Roman, supra, 2022 WL 1541865 at *5.) The undisputed evidence shows that Roman's case of COVID was mild. Roman's fatigue, body aches, headaches, and cough were mild enough that she was able to work and continue her work activities. She only stayed home sick on one day, and tested negative for COVID about two-weeks later and does not allege she suffers from long-term or residual effects. Here, the majority of Plaintiff's alleged symptoms were mostly transitory in nature, lasting several weeks – running nose, fatigue, headaches, sore throat, and loss of taste and smell. The only symptom that purportedly lasted longer was a cough for which she was prescribed albuterol and Tessalon, and lingering loss of taste and smell. But there is no evidence that the prescription of these medications was related to COVID, nor is there any evidence such as medical records or an expert declaration stating Plaintiff suffers from long-term COVID or any condition that limits a major life activity. Moreover, Defendants argue Plaintiff had not even tested positive for COVID at the time of her termination. Only after her employment was deemed terminated did the test come back positive, therefore, Plaintiff cannot contend her termination was based on her having COVID. Plaintiff argues that even assuming, arguendo, that Plaintiff's illness did not rise to the level of a disability, the possibility that her condition could become severe is sufficient to raise a triable issue of fact. The FEHA defines disability to include: "Being regarded or treated by the employer ... as having, or having had, any physical condition that makes achievement of a major life activity difficult" and being regarded by the employer as having a condition "that has no present disabling effect but may become a physical disability...." (§ 12926, subd. (m)(4) & (5).)

		In Soria v. Univision Radio Los Angeles, Inc. (2016) 5 Cal. App. 5th 570, 589–90, the court of appeal denied summary judgment on a "regarded on" theory where plaintiff employee alleged she informed defendant employer that she had a tumor, and was going in for a biopsy, and thereafter terminated her. (Id. at 76.) Ultimately, the biopsy came back negative – nevertheless, the fact that plaintiff had "explained the possibility she would have to undergo major surgery" and the fact that "Soria's tumor could have been malignant, had the potential to become malignant or could continue to grow in a way that obstructed Soria's bodily functions," all led the Court of Appeal to deny summary judgment. (Id. at 75-76.) Plaintiff argues that crucially –as in the present case –plaintiff's supervisor denied she knew about Soria's tumor and possible surgery, and the only evidence in favor of plaintiff's factual statement apparently was plaintiff herself. (Id. at 76.) Nevertheless, denial of summary judgment was appropriate because "the evidence on this point is in conflict; and a jury could reasonably conclude Nava knew of Soria's tumor and believed she might continue to miss work due to further doctor appointments." (Ibid.) Just as in Soria, Defendants could have reasonably assumed Plaintiff's condition could become severe and that she would need additional time off because of her illness. The country was just shutting down at the time Plaintiff was terminated because of fears regarding the virus. It is no consequence Plaintiff had not yet been confirmed to have COVID or that her condition was not actually severe at the time she reported her condition to Defendants. Plaintiff has presented sufficient evidence that she informed Defendants she was not well and was going to be tested for COVID. This is sufficient to create a triable issue of fact as to whether Defendants perceived her to be suffering from a disability. Defendants also contend it had a legitimate non-discriminatory reason for Plaintiff's termination - Plaintiff was "voluntarily terminated" due to excessive absences, not terminated. Plaintiff was absent five days in February without a legitimate excuse, and absent March 14, 16, 24, 25, 30, and 31. An absence of two days in a row – March 30 and 31 with no legitimate excuse - is considered a voluntary termination under Defendants' policies and practices. Thus, Plaintiff did not suffer an adverse employment action because she ended her employment relationship with the company by not adhering to the attendance policy. Moreover, Defendants argue that no one at the company knew Plaintiff was ill on March 30, therefore, she could not have suffered an adverse employment action because of any disability. Plaintiff, however, has presented sufficient evidence of pretext. Plaintiff avers in her declaration that she received her final paycheck and paperwork after she informed supervisors at Cedar Mountain she would not be coming to work because she did not feel well and was being tested for COVID. Plaintiff informed Alycia Reyes (Payroll Specialist for Cedar Mountain) on March 30 that she was not feeling well and had an appointment to get tested for COVID. On March 30, Plaintiff spoke

		with Maintenance Supervisor Onesimo Gurrola letting him know that she would not be in because she did not feel well. Plaintiff's sister, Angela Graves, also confirmed Plaintiff was not feeling well on March 27 and continued to feel unwell when she took her to get a COVID test on March 30. Defendants claims two no call/no show in a row is considered a voluntary termination. Yet, Plaintiff allegedly missed work on February 12-14, and was not considered to have voluntarily resigned. She had also missed several days in March, yet she was not terminated until she mentioned she was not feeling well and wanted to be tested for COVID. Based on the foregoing, a triable issue of material fact exists as to whether Plaintiff was perceived to have a disability and whether Defendants' stated reason for her termination, excessive absences, was a pretext for discrimination. <u>Second Cause of Action – Retaliation</u> "[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1042, internal citations omitted.) Plaintiff alleges that she engaged in "protected activity, including requesting a reasonable accommodation for her disability and/or medical condition." (Complaint ¶ 57.) Plaintiff further asserts: "[O]n information and belief, PLAINTIFF was terminated because she has opposed the requirement of returning to work when she was suffering from a disability or medical condition, including COVID-19, and for requesting the accommodation of staying home and quarantining in order to recover and to minimize the risk of exposing others." (Complaint ¶ 59). Plaintiff further urges: "On information and belief, the reasons given by DEFENDANTS for PLAINTIFF'S discharge, including "abandoning your post," were pretextual and PLAINTIFFs opposition to working while ill and seeking an accommodation on account of her disability were substantial motivating reasons for DEFENDANTS' decision to discharge PLAINTIFF." (Complaint ¶ 60.) A request for reasonable accommodation on the basis of a disability is a protected activity. (Zamora v. Security Industry Specialists, Inc. (2021) 71 Cal.App.5th 1, 65.) Because there is a genuine dispute of material fact that Plaintiff was disabled under the FEHA, the Court denies summary adjudication as to the second cause of action for retaliation.

		Third Cause of Action - Failure to Prevent Discrimination, Harassment, and Retaliation in Violation of FEHA Fourth Cause of Action - Failure to Provide Accommodation or Engage in Good Faith Interactive Process Plaintiff's third and fourth causes of action both require proof that she was disabled according to the FEHA. Because there is a genuine dispute of material fact that Plaintiff was disabled, the Court DENIES summary adjudication to Defendants on these claims. Fifth Cause of Action - Violation of California Sick Leave (Labor Code § 233) Defendants did not present any argument either in the Motion or Separate Statement that addresses this claim. In reply, Defendants belatedly attempt to rectify their omission by claiming Plaintiff had no accrued sick leave available. Apparently, payroll had inadvertently front-loaded and then reversed 9 days of sick leave which had not accrued. Defendants argue "Dancy admits that she missed 8 of 10 days in February and March 2020 period," and that in total "Dancy missed 61 hours of work due to purported illness." (Reply at 13:11-13.) Plaintiff disputes Defendants' account of Plaintiff's absences and whether sick time was used. Plaintiff states as to March 16, 24, and 25, "I do not recall the specific circumstances of why I was absent, but again it would have been with Patty's authorization." She does not contend that she or a family member was sick on those days. Further Plaintiff points out to the "Coronavirus/COVID-19 Sick Leave Policy March 2020" which was posted at the nurse's station and stated: "Employees who may be absent from work due to COVID-19 will be able to use their unused accrued sick and vacation time. This applies to any employee who is absent due to illness, diagnoses, care, treatment or preventative care of the employee or their dependents. Preventative care includes self-quarantine as a result of potential exposure to COVID19 if quarantine is recommended by civil authorities." Plaintiff had a balance of 18 hours for the period ending March 15, 2020, and had 20 hours as of her termination based on the final paycheck. Plaintiff could have used such time to get tested for COVID. Moreover, Plaintiff argues Defendants has not submitted any competent evidence in support of its position. Defendants' counsel Mattheus E. Stephens sets forth Defendants' argument with respect to Labor Code § 233. He attests that Plaintiff admits she had no accrued time available based on the days used. And a clerical error occurred in which 48 hours of sick time was incorrectly "frontloaded" to Plaintiff's paycheck in

		February. (Stephens Decl., ¶ 20.) Mr. Stephens does not have personal knowledge of such facts and cannot attest to them. Accordingly, a triable issue of fact exists as to the fifth cause of action and summary adjudication is DENIED. <u>Sixth Cause of Action - Retaliation in Violation of Labor Code § 6310</u> California Labor Code Section 6310 is a state law that protects employees who report workplace safety violations. It prohibits employers from retaliating against employees who report or refuse to participate in activities that violate health and safety standards in the workplace. (Lab. Code § 6310.) Plaintiff contends she engaged in protected activity by reporting unsafe work conditions, including not providing workers with PPE, or not taking steps to isolate any workers who have or may have COVID. (Complaint, ¶ 104.) Plaintiff also alleges she "engaged in protected activity under Cal. Labor Code section 6311 by refusing to work in an environment that she reasonably believed violated California's health and safety standards and taking time off." (Id.) In the Motion and Separate Statement, Defendants does not address the first allegation regarding PPE and isolating workers who have or may have COVID. For this reason, summary adjudication of the sixth cause of action is DENIED. <u>Seventh Cause of Action - Wrongful Termination in Violation of Public Policy</u> The elements of a claim for wrongful discharge in violation of public policy are (1) an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm. (Yau v. Santa Margarita Ford, Inc. (2014) 229 Cal. App. 4th 144, 154.) Plaintiff alleges Defendants discriminated against her because of her disability and/or medical condition in violation of various fundamental public policies including, but not limited to: (1) Government Code §§ 12900 et seq. and 12940 et seq.; (2) Labor Code §§ 233, 246, and 246.5 et seq.; (3) Labor Code §§ 1102.5, et seq.; (4) Labor Code §§ 6300, et seq.; (5) California Business and Professions Code section 17200 et seq.; (6) 42 United States Code §§ 12101-12213; and (7) 29 United States Code §§ 2601 et seq.. (Complaint, ¶ 112.) Defendants maintains Plaintiff abandoned her job and had a legitimate, non-discriminatory reason for terminating her employment because she had more absences that were allowed under the attendance policy. She also failed to report for her shift despite being directed to do so. Even if

		Plaintiff had COVID, Defendants could decline any alleged request for an accommodation because that accommodation was not reasonable under the circumstances. Defendants contends it could insist Plaintiff report to work even fi she had COVID. Plaintiff has presented sufficient evidence that she informed Defendants she was ill on March 30, and that she had available sick or vacation time to use but was denied use of the time. Furthermore, the evidence demonstrates that when Plaintiff was "terminated" in March 2020 society was essentially shutting down because of the COVID pandemic. Terminating an employee who works with high risk elderly patients because she is ill and may have COVID violates the various public policies aimed at preventing the spread of COVID which included quarantining at home. For the reasons stated in regard to Plaintiff's first cause of action and for the reasons stated herein, summary adjudication is DENIED as to the seventh cause of action. <u>Eighth Cause of Action - Intentional Infliction of Emotional Distress</u> To state a cause of action for Intentional Infliction of Emotional Distress ("IIED"), the plaintiff must allege: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (Yau v. Santa Margarita Ford, Inc. (2014) 229 Cal.App.4th 144, 161.) For conduct to be outrageous for purposes of IIED, the conduct must be so extreme as to exceed all bounds of that usually tolerated in a civilized society. (Id.) In addition, "[the defendant's] conduct [must be] directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." (Christensen v. Superior Court (1991) 54 Cal. 3d 868, 903 (emphasis added).) Defendants terminated Plaintiff during the onset of the pandemic when she did not report to work because she was not feeling well. Plaintiff worked with elderly patients and lived with her mother and wanted to know her COVID status before returning to work and/or subjecting her family, co-workers and patients at Cedar Mountain to the virus. Such conduct by Defendants may be construed as severe and outrageous. Plaintiff presents evidence that she suffers from anxiety and depression as a result of Defendants' conduct. This is sufficient to raise a triable issue of material fact as to severe emotional distress and causation. Accordingly, summary adjudication is DENIED as to the eighth cause of action. <u>Punitive Damages</u>

		Civil Code § 3294(a) provides for punitive damages "[i]n an action for breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. . ." Section 3294(c) defines malice, oppression and fraud as follows: "(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Defendants moves for summary adjudication on the issue of punitive damages on the grounds no one at Defendants acted with oppression, fraud or malice. Plaintiff voluntarily ended her employment by abandoning her job. Defendants was merely enforcing its attendance policy. Plaintiff has presented sufficient evidence that Defendants terminated Plaintiff for not showing up to work despite her not feeling well because of COVID. Defendants further contends it could have made Plaintiff work even if she was COVID positive. Such conduct could be seen as malicious, especially given the climate of fear and concern over the potential deadly impact of the virus on the elderly patients. Accordingly, Defendants' motion for summary adjudication on the prayer for punitive damages is DENIED. Defendants' Request for Judicial Notice is DENIED as to Exhibits 1 and 17. The Court need not take judicial notice of existing statutes of this State or the court file in this case. The Request is GRANTED as to Exhibits 7, 9, 11, and 16. Defendants' Request for Judicial Notice is also DENIED as to Exhibits 7 and 8 to Stephens' Reply Declaration. The Court need not take judicial notice of existing statutes of this State. Plaintiff's Request for Judicial Notice is GRANTED. The Court makes the following rulings on Defendants' objections to evidence: Objections 3, 7-12, 15-30, 34, 46-52 are OVERRULED. Objections 2, 4, 5, 6, 13, 33, 36-40, 43, and 45 are SUSTAINED.

		The Court SUSTAINS Objection 31, except OVERRULE as to the statement "Around Friday March 27…." The Court SUSTAINS Objection 32, except OVERRULE as to the statement "She asked me, ……" The Court SUSTAINS Objections 41 and 42, except OVERRULE as to the attached Exhibits. The Court declines to rule on Objections 1, 14, 53-56 as the underlying evidence was immaterial to the Court's disposition of hits matter. The Court makes the following rulings on Plaintiff's objections to evidence: Objections 9, 12-15, 17, 18, 22-24 are OVERRULED. Objections 1, 2, 5, 8, 11, 16, 19-21 are SUSTAINED. The Court SUSTAINS Objection 4 as to "her voluntary resignation in March 2020." The Court SUSTAINS Objection 10 as to "5-Star Medicate Certified." The Court declines to rule on Objections 3, 6, and 7 as the underlying evidence was immaterial to the Court's disposition of hits matter.
4	***23-01348907*** ***Darmousseh vs. Chu***	**1) Motion to Compel Answers to Form Interrogatories** **2) Motion to Compel Answers to Form Interrogatories** **3) Motion to Compel Answers to Special Interrogatories** **4) Motion to Compel Answers to Special Interrogatories** **5) Motion to Compel Production** **6) Motion to Compel Production** The motions of defendant Michael Chu, as Trustee of the Chu Family Trust, to compel plaintiffs Albert and Lisa Darmousseh to serve responses to the first sets of form and special interrogatories and requests for production and monetary sanctions of $1810 per motion against plaintiffs and their attorney are moot except for the issue of sanctions. The replies to the motion indicate that the plaintiffs have served responses to the discovery requests. A total monetary sanction of $1,810 is imposed against plaintiffs, payable to defendant and his attorney of record within 30 days.
5	***23-01328341*** ***Desautel vs. Warpack***	**Motion to Compel Production** Plaintiffs' Motion is DENIED. Defendants request for sanctions is DENIED. Plaintiffs' Motion is procedurally defective because it is within 15 days of trial. "Except as otherwise provided in this chapter, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the

		action." (Code Civ. Proc., § 2024.020(a).) "On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set." (Code Civ. Proc., § 2024.050(a).) Plaintiffs state in their reply that he would seek leave of court to allow the Motion to be heard within the 15 days of trial or seek a trial continuance. Plaintiffs have not sought either. Thus, the court cannot hear the Motion and would abuse its discretion if it does so. (See *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1588.) Sanctions Defendant seeks sanctions in opposition. "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." (Code Civ. Proc., § 2023.040.) Defendant's counsel's declaration does not provide sufficient facts regarding the nature of the fees sought. The declaration provides: "My billing rate is $495 per hour. This motion, opposition and presentation, my client will incur no less than $2,475 in legal fees." Based on the statement, the Court cannot determine what the $2,475 is for and whether it is reasonable. Thus, Defendant's request for sanctions is denied. Defendant to give notice.
6	***21-01186059*** ***Doe vs. Anaheim Union High School District***	**1) Motion to Compel Further Responses to Form Interrogatories** **2) Motion to Compel Production** **Motion to Compel Responses to Interrogatories** Plaintiff's Motion to Compel Defendant Anaheim Union High School District to Provide Further Responses to Interrogatories is GRANTED in part and DENIED in part as set out below. Plaintiff moves to compel Defendant to provide further responses to Form Interrogatories 12.1(d), 12.2, and 12.3, and Special Interrogatories 42-45, 58-61, 74-77, and 89, which generally seek (1) the contact information of three students who allegedly assaulted Plaintiff and (2) the names and contact information of "Students E-M," who were third-party witnesses to the alleged incident(s). The Court grants the motion as to the first category of information but denies the motion without prejudice as to the second category. Code of Civil Procedure section 2017.010 states, "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible

		in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property." Here, Defendant objects to providing its students' identities and contact information based on the students' statutory privacy rights including Education Code section 49077, which states: "(a) Information concerning a pupil shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the pupil's parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order. (b) Once a court order or lawfully issued subpoena is issued to obtain a pupil's contact information, the school district shall make a reasonable effort to enter into an agreement with the entity that obtained the court order or subpoena requiring that the pupil contact information be maintained in a confidential manner. (c) Notwithstanding the content or existence of any agreement with a school district, a party that obtains pupil contact information pursuant to this section shall not use or disseminate that information for any purpose except as authorized by the court order or subpoena." Defendant also asserts the students' right to privacy under the California Constitution, Article 1, Section 1. The California Supreme Court has set out the following standard for evaluating the constitutional rights of third parties in civil discovery: "The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. [Citation] The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) Here, Plaintiff has demonstrated a strong interest in obtaining the contact information of the three students who allegedly assaulted Plaintiff during the incident on 2/24/20. The students who allegedly assaulted Plaintiff likely have information regarding the nature and circumstances of the assault which cannot be obtained by other means, including evidence regarding the history of the students' dispute, their intent with regard to the incident, and the nature of the physical encounter, which directly relate to Plaintiff's alleged damages and the

		school district's liability. Therefore, Defendant is ordered to produce the last known contact information of the three students, subject to the Stipulated Protective Order filed by the parties on 3/19/24 under ROA 129. However, at this time Plaintiff has not shown a sufficient interest in obtaining the identifying information of "Students E-M," who were third-party witnesses to the alleged incident(s) but were not directly involved in the incident. These students' written statements may be sufficient to allow the parties to conduct discovery regarding the incident without further intrusion into the third-party student witnesses' privacy. The Court therefore denies the request to obtain the identifying information of "Students E-M" without prejudice to Plaintiff's ability to pursue this information based on a further showing of good cause once additional discovery, including the production of student statements discussed below, has been completed. If Plaintiff still seeks the third parties' contact information after reviewing the written statements, before filing a further motion to compel Plaintiff shall first meet and confer with Defendant regarding a stipulation to admissibility of the students' written statements at trial and whether such stipulation would avoid the need for further discovery regarding the third-party students. Plaintiff may file a renewed motion to compel further responses to these interrogatories within the statutory time to compel further responses based on Defendant's service of further responses/documents in response to Request for Production No. 7, discussed below. **Motion to Compel Responses to Requests for Production** Plaintiff's Motion to Compel Defendant Anaheim Union High School District to Provide Further Response to Request for Production of Documents No. 7 (RFP 7) is GRANTED in part as set out below. Plaintiff moves to compel production of documents by Defendant in response to RFP 7, which requested, "written and recorded statements" by witnesses to the 2/24/20 incident. In its privilege log filed on 3/14/24, Defendant lists twelve Student Statement Forms regarding the alleged incident which were completed by the Assistant Principal "as part of the investigation" and contain the students' statements. Defendant objects based on the minor students' privacy rights, the attorney-client privilege, and work product doctrine. <u>Attorney-Client Privilege and Work Product Doctrine:</u> Defendant has not shown the Student Statement Forms are protected by attorney-client privilege or work product doctrine.

		Evidence Code section 954 provides that a client has a privilege to refuse to disclose a confidential communication between client and lawyer. Evidence Code section 952 states, "As used in this article, 'confidential communication between client and lawyer' means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship." Code of Civil Procedure section 2018.030 states, "(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. [¶] (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." "[W]itness statements obtained as a result of interviews conducted by an attorney, or by an attorney's agent at the attorney's behest, constitute work product protected by section 2018.030." (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 494.) Recorded interviews that reflect the "impressions, conclusions, opinions, or legal research and or theories" of the attorney are entitled to absolute protection. (Id. at p. 495.) Other witness statements procured by an attorney are entitled to qualified protection. (*Id*. at p. 496.) However, the burden of showing preliminary facts necessary to support a privilege lies with the party claiming it. (*Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 123; see *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130 [describing requirements for privilege log].) Here, Defendant's opposition filed on 2/23/24, the supporting declaration of attorney Hanes, and privilege log filed on 3/14/24 fail to meet Defendant's burden of showing RFP 7 seeks information protected by the attorney-client privilege or work product doctrine. Attorney Hanes generally declares the students' statements were obtained "as part of [Defendant's] investigation" and there are "a number of privileges and logistical hurdles" preventing disclosure. (Hanes Decl., ¶¶ 5, 7.) But Defendant has not presented admissible evidence showing the Student Statement Forms, which were prepared by the Assistant Principal and not an attorney, reflected any communications between an attorney and client. Moreover, Defendant has not shown the Student Statement Forms were prepared by an attorney, obtained at the direction of an attorney, or otherwise prepared in a manner that caused the forms

		to reflect the work product, impressions, or opinions of Defendant's counsel. <u>Students' Privacy Rights:</u> As discussed above, Defendant's students are subject to privacy protections under the Education Code and California Constitution. (Ed. Code § 49077; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) At this stage, Plaintiff has shown a strong interest in obtaining the substance of the students' statements in order to investigate the circumstances of the alleged incident. However, Plaintiff has not shown a sufficiently strong interest to discover the identifying information of students other than the three individuals who allegedly assaulted Plaintiff during the 2/24/20 incident. Therefore, Defendant shall produce responsive documents while redacting the third-party students' true names from the documents. The Court denies the request to obtain the identifying information of "Students E-M" without prejudice to Plaintiff's ability to pursue this information based on a further showing of good cause once additional discovery, including the production of written student statements, has been completed. Plaintiff may file a renewed motion to compel production of this information based on the statutory time after service of further responses/documents pursuant to this order.
7	***22-01299135*** ***Hodges vs. Baronhr East, Inc***	**1-12) Motion to Be Relieved as Counsel of Record** The motion of attorneys Leah Lively and Shir Davidovicz for orders permitting them to withdraw as attorneys of record for defendants BaronHR East, Inc., BaronHR Group LLC, BaronHR Healthcare, LLC, BaronHR Security, Inc., BaronHR Hospitality, LLC, BaronHR Security, LLC, BaronHR, LLC, BaronHR Technical, LLC, BaronHR West, Inc., BaronHR, Inc., Lou Perez, and Ulises Jaurejui is moot in part and granted in part. The motion is moot as to defendants BaronHR Hospitality, LLC, and BaronHR Healthcare, LLC. It is granted with respect to all other defendants. Moving attorneys are to give notice.
9	***21-01183151*** ***LoanCare LLC vs. DataMortgage, Inc.***	**Motion to Exclude all Accounting Records** Defendant/Cross-Complainant Data Mortgage, Inc.'s ("DMI") motion for issuance of an order prohibiting: (1) Plaintiff/Cross-Defendant LoanCare LLC ("LoanCare") from introducing any accounting records related to DMI; and (2) LoanCare from claiming that it has or had any accounting records that could be used for any calculations or damages is DENIED without prejudice. DMI's Evidentiary Objection to LoanCare's Evidence should be OVERRULED.

DMI moves on the grounds that during the Phase 1 of trial "LoanCare testified that it has no accounting records and for that reason, Judge Schwarm did not order LoanCare to account." (Notice, 2:5-7.) Specifically, during the Phase 1 of trial, DMI sought to compel an accounting against LoanCare based on its second cause of action for Accounting alleged in it Cross-Complaint filed on 2-25-21. (Pennington Decl., ¶ 3, Ex. 1, 70:11-15.) The court found:

> "The undisputed evidence shows that cross-defendant transferred all of its records to the money source as part of the termination of the contract between the parties. The contract between the parties terminated on October 17, 2017. And that's at exhibit 2 at sections 1.20 and 5.1.
>
> Karen Bell testified that cross-defendant did not keep any of the data from the loan service under the contract, exhibit 2, with cross-complainant because cross-complainant instructed cross-defendant to transfer the loans serviced under the contract to The Money Source.
>
> Karen Bell testified that cross-complainant no longer has the data to perform an accounting because it turned over this data to The Money Source."

(Pennington Decl., ¶ 3, Ex. 1, 70:16-71:3.) DMI argues that because LoanCare represented to the court that it has no records to perform an accounting, based on which the court found for LoanCare and against DMI on the accounting cause of action, LoanCare should be precluded from introducing any accounting records during Phase 2 of the trial.

The court's ruling on the DMI's accounting cause of action is not a sufficient basis for excluding all "accounting records." The court found that LoanCare complied with DMI's instruction to transfer all data to The Money Source and as a result no longer has the data to perform an accounting. Since "the nature of a cause of action in accounting is unique in that it is a means of discovery" (*Teselle v. McLoughlin* (2009)173 Cal. App. 4th 156, 180), the court's finding that DMI is not entitled to an accounting from LoanCare is not grounds to exclude all "accounting records" that have been previously disclosed in discovery by either party.

Further, DMI has failed to identify with any particularity the "accounting records" it moves to exclude from the Phase 2 of trial. DMI has not submitted the documents for the court's review or otherwise identified any specific "accounting records" that are the subject of this motion.

Based on the foregoing, the court DENIES the motion without prejudice to DMI bringing a subsequent motion which specifically identifies the "accounting records" it seeks to exclude from Phase 2 trial.

Moving party to give notice.

10	***22-01270949*** ***Martinez-Green vs. Santos***	**Motion for Summary Judgement and/or Adjudication** The unopposed motion of plaintiff Martin Martinez-Green for summary judgment is GRANTED.
11	***23-01340686*** ***Previsich vs. So***	**Motion to Strike Portions of Complaint** **NO TENTATIVE**