LAW & MOTION CALENDAR
TENTATIVE RULINGS

April 17, 2025

Judge R. Shawn Nelson
Department C19

Department C19 hears law and motion on Thursdays at 10:00 a.m. and 1:30 p.m.

Court reporters: Official court reporters are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth in the Privately Retained Court Reporter Policy on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. 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) 622-5219. 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.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording, and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

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.

NO.	CASE NAME	MATTER
1:30 p.m.		
1	Carrillo v. Tesla, Inc.	Defendant Tesla, Inc.'s motion to compel binding arbitration is **GRANTED**. Defendant's request for judicial notice is GRANTED. (Evid. Code § 452, subd. (d)). <u>General Law</u>

Both the Federal Arbitration Act and the California Arbitration Act require the existence of a valid Arbitration Agreement, before arbitration can be compelled. (See 9 U.S.C. §2 and C.C.P. §1281.2). The Federal Arbitration Act ("FAA") provides that an arbitration agreement in any "contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for revocation of any contract." (9 U.S.C. § 2.) "The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972). Defendant must also show plaintiff's refusal to submit to arbitration, and proof that the arbitration agreement covers the dispute at issue. (*See Mansouri v. Superior Court* (2010) 181 Cal.App.4th 633, 642).

In this matter, Defendant produced two separate arbitration agreements: the Motor Vehicle Order Agreement arbitration agreement ("Order arbitration agreement"), which Plaintiffs signed on 11/4/23 by electronically accepting the terms, and the Retail Installment Sale Contract arbitration agreement, which the Plaintiffs signed on 11/8/23. (See Kim Decl., ¶¶ 4, 13, and exhibits 1 and 2, respectively).

The Order arbitration agreement provides that it applies to any dispute between Plaintiff and Tesla, Inc. This would include the three causes of action for Violation of Song-Beverly Act in Plaintiff's complaint. (See Compl., *generally*).

Plaintiffs do not dispute executing both arbitration agreements, or that they apply to the claims asserted in this action. Rather, Plaintiffs contend that the arbitration provisions are procedurally and substantively unconscionable.

Accordingly, Defendant met its initial burden.

Unconscionability

Procedural and substantive unconscionability "must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Armendariz v. Foundation Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 114.) However, they need not be present in the same degree. (*Id.*) A sliding scale approach is used and the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required. (*Id.*) "The party resisting arbitration bears the burden of proving unconscionability." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.)

a. Procedural Unconscionability

"Procedural unconscionability focuses on the elements of oppression and surprise." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 177.) "Oppression arises from an inequality of bargaining power

which results in no real negotiation and an absence of meaningful choice. Surprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party in a superior bargaining position." (*Id*.) "[A] finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided." (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244.)

Plaintiffs argue that the arbitration agreements are procedurally unconscionable because the RISC arbitration agreement was a contract of adhesion. However, the Order arbitration agreement (which is the primary agreement that Defendant seeks to enforce) contains an opt-out agreement. Accordingly, this argument fails. Furthermore, even with regards to the RISC's adhesion contract, courts have consistently held that an arbitration agreement's adhesive nature will not alone invalidate the agreement. Instead, an adhesive contract is one factor a court may consider in deciding degree of procedural unconscionability. (See *Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 84.)

Plaintiffs also argue that the arbitration agreement is procedurally unconscionable because Defendant did not provide a copy of the arbitration rules. The Order arbitration agreement, however, includes a link to adr.org which would direct Plaintiffs to a copy of the American Arbitration Association (AAA) rules. (See *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 691 [failure to attach AAA rules did not render agreement procedurally unconscionable, as referenced rules were easily accessible on the Internet].) Accordingly, the court does not find procedural unconscionability with regards to the Order arbitration agreement, and only some procedural unconscionability with regards to the RISC arbitration agreement.

b. <u>Substantive Unconscionability</u>

Plaintiffs argue that the agreement is substantively unconscionable because the arbitration provision provides: "The party electing arbitration may choose any of the following arbitration organization and its applicable rules....". (Opp., 6:10-11). However, it is unclear which arbitration agreement Plaintiffs are referring to, as neither the Order arbitration agreement nor the RISC arbitration agreement contain this language. The Order arbitration agreement specifically provides that arbitration will be administered by the AAA and subject to AAA rules. (Ex. 1 to Kim Decl.).

Plaintiffs cite to *Chavarria v. Ralphs* (9th Cir. 2013) 733 F.3d 916 in support of their argument that where Tesla may elect both to arbitrate in the first place, and choose the forum and the rules, it renders the agreement unconscionable. However, this argument is misplaced. In *Chavarria*, the arbitration agreement had numerous one-sided terms, including the arbitrator selection process itself, which "invariably" resulted in the selected arbitrator being one nominated by the employer:

> [The arbitrator selection provision] provides that, unless the parties agree otherwise, the arbitrator must be a retired state or federal judge. It explicitly prohibits the use of an administrator from either the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Service ("JAMS").
>
> If the parties do not agree on an arbitrator, the policy provides for the following procedure:
> (1) Each party proposes a list of three arbitrators;
> (2) The parties alternate striking one name from the other party's list of arbitrators until only one name remains;
> (3) The party "who has not demanded arbitration" makes the first strike from the respective lists; and
> (4) The lone remaining arbitrator decides the claims.
>
> In practice, the arbitrator selected through this process will invariably be one of the three candidates nominated by the party that did not demand arbitration. (*Chavarria, supra* at 920.)

The *Chavarria* court upheld the district court's finding that the arbitrator selection provision was substantively unconscionable, because it "would always produce an arbitrator proposed by Ralphs in employee-initiated arbitration proceedings," as well as precluding "institutional arbitration administrators, namely AAA or JAMS, which have established rules and procedures to select a neutral arbitrator." (*Id.* at 923.) However, in the instant case, there is no such unconscionable provision regarding arbitrator selection. Rather, the arbitration provision in the Order arbitration agreement (Ex. 1 to Kim Decl.) requires arbitration before AAA, and the arbitration provision in the RISC (Ex. 2 to Kim Decl.) provides for arbitration before AAA or another organization agreed to by the parties.

The *Chavarria* court also found the arbitration agreement there unconscionable because it required the employee to split arbitration fees, subject to reimbursement if requested. (*Id.* at 923.) Here, there is no such requirement.

Next, Plaintiffs argue that the arbitration-cost provisions are substantively unconscionable and violate both State law and the minimum due process standards for consumer arbitrations. However, Plaintiffs do not specify which arbitration agreement contains this offending language, nor do Plaintiffs cite to any specific provision. Plaintiffs argue: "This serves to benefit the more financially-capable manufacturer and discourages, or even prevents, buyers from seeking to enforce their legal rights, as buyers are potentially faced with bearing exorbitant arbitration costs and expenses they may have to reimburse to Tesla (along with potentially suffering ongoing costs of repair to the defective vehicle at issue), resulting in substantive unconscionability. Arbitration would impose prohibitive costs on Plaintiffs, and, combined with the other substantive and procedurally unconscionable aspects, this renders the Arbitration Provision unenforceable." (Opp., 7:5-12).

		The Order arbitration agreement specifically provides as follows: "To initiate the arbitration, you will pay the filing fee directly to AAA and we will pay all subsequent AAA fees for the arbitration, except you are responsible for your own attorney, expert, and other witness fees and costs unless otherwise provided by law. If you prevail on any claim, we will reimburse you your filing fee. The arbitration will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may call any AAA office or go to www.adr.org" . (Ex. 1 to Decl. of Kim). Plaintiff has not made any argument as to why this language, specifically, is unconscionable. The court will STAY this action pending resolution of the parties' arbitration. (*See* Code Civ. Proc., § 1281.2.) The court sets a Status Conference Re: Status of Arbitration for December 04, 2025, at 9:00 a.m. in this department. Defendant shall give notice.
2	Luisi v. Vishnevski	<u>Motion for Leave to File Cross-Complaint</u> Defendant Vitaly Vishnevski moves for leave to file a Cross-Complaint against Plaintiffs Michael John Luisi and Diana Genin Heard and ROS 1 through 50. For the following reasons, the motion is **GRANTED**. Code Civ. Proc. § 428.10 provides that a party may file a cross-complaint setting forth: "[a]ny cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him." There are two types of cross-complaints: compulsory cross-complaints and permissive cross-complaints. A compulsory cross-complaint is a cross-complaint that is asserted against the plaintiff and related to the subject matter of the complaint. (Code Civ. Proc. § 426.30.) A cross-complaint is "related" to the complaint if it arises out of the same transaction, occurrence, or series of transactions or occurrences as the complaint. (Code Civ. Proc. § 426.10(c).) All other cross-complaints are permissive cross-complaints. If the proposed cross-complaint is permissive, leave of court may be granted "in the interests of justice" at any time during the course of the action. (Code Civ. Proc. § 428.50(c).) On the other hand, if the proposed cross-complaint is compulsory, leave *must* be granted so long as defendant is acting in good faith. (Code Civ. Proc. § 426.50.) Cross-complaints for equitable indemnity are virtually always transactionally related to the complaint that has been filed in the main action. (*Time for Living Inc. v. Guy Hatfield Homes* (1991) 230 Cal.App.3d 30, 38-39.) This is because "[a]n indemnity claim effectively seeks to apportion among the parties to the indemnity action the precise liability claimed by the plaintiff in the main action; therefore

		the indemnity claim of necessity arises out of the same occurrences or series of occurrences as asserted by the plaintiff." (*Id.* at 39.) Here, the proposed Cross-Complaint asserts causes of action for 1) express indemnity, 2) equitable indemnity, and 3) declaratory relief. The Complaint alleges that Defendants breached the warranty of habitability and breached a lease agreement by failing to maintain the premises and make certain repairs at the residence that Plaintiffs were renting. Defendant Vishnevski now alleges that Plaintiffs obligated by the terms of the lease to procure liability insurance and Plaintiff agreed to indemnify and defendant Vishnevski. Thus, the Cross-Complaint is compulsory. Even if the cross-complaint were permissive, leave to amend would be granted because it would not interfere with a trial date or otherwise prejudice the action. Moving Defendant to give notice. <u>Case Management Conference</u> The Case Management Conference is continued to June 26, 2025, at 9:00 a.m. in this department. Plaintiff to give notice.
3	Saba v. Tayyan	Defendant Angel Tayyan's motion for protective order is **GRANTED as to John Saba, Jack Saba and George Saba's requests for admissions, set one, and DENIED as to the remaining discovery.** <u>Background facts</u> On April 17, 2023, Plaintiffs George Saba, John Saba, and Jack Saba filed this lawsuit against Defendant Angel Tayyan. According to the Complaint, in or about 1979, the parties' parents purchased property in Santa Ana. In 2008, the parties' mother (Josephine Saba) executed The Saba Family Irrevocable Inter Vivos Trust (the "2008 Trust"). The mother indicated that after her death, she wanted Plaintiffs to each receive 20% of her estate and for Defendant to receive 40%. One of the reasons Defendant was to receive a greater share was because Defendant promised that she would take care of Settlor if and when Settlor was unable to take care of herself. In 2015, Settlor executed a 2015 Restatement of Trust. The Complaint alleges Defendant took Settlor to execute the 2015 Restatement and failed to serve Plaintiffs with a copy of the document. The 2015 Restatement redistributed the 2008 Trust's assets such that Plaintiffs would receive only $30,000, $25,000, and $25,000. The Complaint alleges causes of action for 1) Breach of written contract; 2) Failure to serve Plaintiffs with documents pursuant to Probate Code Section 166061.7; 3) Breach of the implied covenant of good faith and fair dealing; 4) Fraud and deceit; 5) Negligent misrepresentation; 6) Elder abuse; 7) Undue influence; 8) Conversion; 9) Breach of fiduciary duty; 10) Negligence; 11) Intentional infliction of emotional distress; 12) Declaratory and injunctive relief; and 13) Fraud and deceit.

The complaint alleges a total of 30 pages without exhibits, and lists a total of 133 paragraphs. The complaint includes many factual allegations relating to the parties' relationship with Settlor, Defendant's handling and caretaking of Settlor, communications with Settlor, Defendant's handling of Settlor's finances, and the actions that unfolded when the second trust was created.

Defendant was served with the following discovery requests by Plaintiff:

a. Three sets of Requests for Admissions (Decl. of Duncombe, ¶ 3, Exhibit "E");
b. Three sets of Special Interrogatories (Decl. of Duncombe, ¶ 3, Exhibits "A," "B," and "C" respectively);
c. Three sets of Request for Production of Documents, Set No. One (Decl. of Duncombe, ¶ 3, Exhibit "G");
d. Two sets of Request for Production of Documents, Set No. Two Decl. of Duncombe, ¶ 3, Exhibit "F"); and finally,
e. Three sets of Form Interrogatories, set one (Decl. of Duncombe, ¶ 3, Exhibit "E").

Governing law

A protective order may be obtained if the relief is sought "promptly" (Code Civ. Proc. §§ 2030.090(a) [protective order for interrogatories, 2031.060(a) [protective order for requests for production], 2033.080(a) [protective order for requests for admissions]).

The burden is on the moving party to establish "good cause" for whatever order is sought. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 (interrogatories); *Stadish v. Super. Ct.* (1999) 71 Cal.App.4th 1130, 1145 (document requests).) "Good cause" requires specific facts demonstrating unwarranted annoyance, embarrassment, oppression, or undue burden and expense. (*Goodman v. Citizens Life & Cas. Ins. Co.* (1967) 253 Cal.App.2d 807, 819; Code Civ. Proc. §§ 2030.090(b), 2031.060(b).) The discovery burden is "undue" only if the inconvenience and expense of responding clearly outweighs the benefits likely to be obtained if the interrogatories are answered. (Code Civ. Proc. §§ 2019.030(a), 2030.090(b).)

In considering whether discovery is unduly burdensome or expensive, warranting a protective order, the court takes into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation. (*People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1553).

Timeliness

A protective order should be "reasonably made", normally within the 30-day period for answering discovery or within the period of the stipulated extension. (*Willis v. Superior Court* (1980) 112 Cal.App.3d 277, 289 fn. 5). See also Code Civ. Proc. §§ 2030.260(a), 2031.300(a), 2033.080(a) [30 days to respond to interrogatories, requests for admissions, and requests for production]).

		The motion was filed on February 3, 2025. However, the following discovery sets were served in November of 2024: Jack Saba's requests for production, set one, John Saba's first set of requests for production, set one, George Saba's requests for production, set one, and all three Plaintiffs' special interrogatories, set one. Defendant has not shown that Plaintiffs granted her an extension to file this motion and/or raise Defendant's objections. Furthermore, Defendant failed to establish in her motion that she objected to any of these discovery requests in a timely manner. Accordingly, the court DENIES the motion for a protective order as to all three Plaintiffs' Requests for Production, Set One, and Special Interrogatories, Set One. <u>Meet and Confer</u> A motion for a protective order must be accompanied by a declaration showing the moving party made a reasonable and good faith attempt to resolve the issues outside of court. (Code Civ. Proc. §§ 2016.040, 2030.090(a), 2031.060(a), 2033.080(a).) Plaintiffs contend that Defendant did not properly meet and confer before filing this motion. Code Civ. Proc. § 2016.040 requires the following: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." Defendant's counsel, Mr. Duncombe, declared that on December 30, 2024, he sent a meet and confer letter to Plaintiffs. (Ex. H to Decl. of Duncombe). This letter sets forth Defendant's position and proposes that the parties stipulate to limit discovery. The court finds this to be sufficient. <u>Notice of Motion</u> Next, Plaintiffs contend that Defendant's notice of motion is improper/insufficient because it does not specify the sets of discovery that Defendant seeks to limit. However, the memorandum of points and authorities makes clear that Defendant is seeking to impose limitations on the general amount of interrogatories, requests for admissions, and requests for production that Plaintiffs propounded. Accordingly, the court will address the merits of the discovery sets that Defendant timely objected to. <u>George, Jack and John Saba's Form Interrogatories, Set One</u> First, with regards to the form interrogatories, Plaintiffs each propounded 26 form interrogatories to Defendant. Defendant has not shown that these form interrogatories are so burdensome as to warrant a protective order. Accordingly, the court DENIES the motion as to Plaintiffs George, Jack and John Saba's Form Interrogatories, set one.

		<u>George and John Saba's Requests for Production, Set Two</u> John Saba propounded 27 requests for production in his second set. These requests pertain to financial documents and the Irrevocable Trust. George Saba propounded 115 requests for production in his second set. These requests include Defendant's bank account statements/any account in which she was a signatory, financial and bank documents relating to Settlor, checks to counsel, documents showing reasons for specific withdrawals, documents relating to expenses, documents relating to itemizations, inventory, documents relating to the Trust, documents relating to rental income, and other similar requests. Defendant has not met her burden of proving that these requests are unnecessarily oppressive or constitute an undue burden. Accordingly, the court DENIES the motion as to Plaintiffs George and John Saba's Requests for Production, Set Two <u>George, Jack and John Saba's Requests for Admissions, Set One</u> With regards to the requests for admissions, George Saba propounded a total of 221 requests; John Saba propounded a total of 170 requests; and Jack Saba propounded a total of 117 requests. (See Ex. E to Decl. Duncombe). All three Plaintiffs provided a declaration for additional admissions with their requests. In their declarations, all three Plaintiffs attested that the number of requests for admissions is warranted because the issues involved in this action are numerous and complex. (See Ex. "E": Decl. of Jack Saba, ¶ 9, Decl. of John Saba, ¶ 9, Decl. of George Saba, ¶ 9). Plaintiffs' requests pertain to matters such as: each specific transaction that Defendant undertook during the relevant time frame; each of Defendant's actions that were alleged to amount to breach of fiduciary duty; various facts regarding Settlor; various facts regarding Defendant; various facts regarding Plaintiff's backgrounds; the relationship between Settlor and Defendant; the Settlor's decline; the actions regarding the execution of the 2015 restatement, and other more detailed requests that are related to the allegations in the complaint. The court finds that this matter is complex, and will require a factually sensitive inquiry regarding Defendant's relationship with Settlor, Defendant's handling of Settlor's finances, a close look into the bank account(s) at issue, the interactions that unfolded when the new trust was created, etc. However, the court also finds that each of these sets of requests could be more succinct. Furthermore, while each party is entitled to propound its own discovery, all of Plaintiffs' allegations against Defendant are the same, and there are no particular issues that are unique as to each Plaintiff. Rather, all three Plaintiffs are contending that Defendant committed fraud and engaged in other unlawful actions when she convinced the Settlor (who is the mother to all three Plaintiffs and Defendant) to alter the Trust.

		Accordingly, the court GRANTS Defendant's motion as to George, Jack and John Saba's Requests for Admissions, set one. The court limits each Plaintiff to 75 requests for admissions (a maximum of 225 requests in total). <u>Sanctions</u> The court DENIES Defendant's and Plaintiffs' requests for sanctions. (See *Mattco Valley Forge v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1437 [court's discretion to deny sanctions upon mixed results].) Defendant shall give notice.
4	Nguyen v. Le	Defendant Holly Ngo's Special Motion to Strike Under CCP §425.16 is **DENIED**. Defendant's requests for judicial notice are GRANTED. Plaintiffs Thang Dinh Nguyen, Ph.D. and Boat People SOS, Inc.'s evidentiary objections to the Declaration of Defendant Holly Ngo are OVERRULED. Plaintiff's evidentiary objections to the Declarations of Le Xuan Khoa and Hanh Tran, which were submitted with Defendant's Reply brief, are SUSTAINED. <u>Standard for Anti-SLAPP Motion</u> Under the anti-SLAPP statute, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1); *Olson v. Doe* (2022) 12 Cal.5th 669, 678) "The moving party 'must establish that the challenged claim arises from activity protected by section 425.16'; if the moving party does so, 'the burden shifts' to the nonmoving party 'to demonstrate the merit of the claim by establishing a probability of success.' [Citation.]" (*Olson v. Doe* (2022) 12 Cal.5th 669, 678; *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.) "To succeed in opposing a special motion to strike, the nonmoving party must 'demonstrate both that the claim is legally sufficient and that there is sufficient evidence to establish a prima facie case with respect to the claim.' [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.] The moving party prevails by 'defeat[ing]' the 'claim as a matter of law' [citation] in 'a summary-judgment-like procedure' [citation]." (*Olson v. Doe* (2022) 12 Cal.5th 669, 679; *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.) "If the plaintiff fails to meet that burden, the court will strike the claim." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.)

Defendant Did Not Establish the Challenged Claim Arose From Protected Activity

" 'Initially, the moving defendant bears the burden of establishing that the challenged allegations or claims "aris[e] from' protected activity in which the defendant has engaged. [Citations.]' [Citation]" (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884; see *Smith v. Adventist Health System/West* (2010) 190 Cal.App.4th 40, 50 [protected activity is defined as an act in furtherance of the right of petition or free speech].)

"As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e).)

While section 425.16 does not define "an issue of public interest," " '[i]n each case where it was determined that a public issue existed, "the subject statements either concerned *a person or entity in the public eye* [citations], conduct that could directly affect a large number of people beyond the direct participants [citations] or a topic of widespread, public interest [citation]." ' [Citations.]" (*Kieu Hoang v. Phong Minh Tran* (2021) 60 Cal.App.5th 513, 527.)

> [T]he Legislature, when enacting section 425.16, expressed in the statute's preamble a desire "to encourage continued participation in matters of public significance" [citation] does not imply the Legislature intended to impose, in the statute's operative sections, an across-the-board "issue of public interest" pleading requirement. Construing clauses (1) and (2) of section 425.16, subdivision (e) as lacking such a requirement does not diminish their effectiveness in encouraging participation in public affairs. Any matter pending before an official proceeding possesses some measure of "public significance" owing solely to the public nature of the proceeding, and free discussion of such matters furthers effective exercise of the petition rights section 425.16 was intended to protect. The Legislature's stated intent is best served, therefore, by a construction of section 425.16 that broadly encompasses participation in official proceedings, generally, whether or not such participation remains strictly focused on "public" issues.

(*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118.)

Both the "public forum" and "public interest" requirements are broadly construed. (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 464 [public interest]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476 [public forum].)

"For purposes of the third category in subdivision (e) of section 425.16, a ' "public forum" is traditionally defined as a place that is open to the public where information is freely exchanged.' [Citation.]" (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 539, citing *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475.) Web sites accessible to the public, such as Internet "newsgroups," are "public forums" for purposes of the anti-SLAPP statute. (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 42, fn. 4; accord, *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 917-918.)

A public issue may be implicated when the content of the speech implicates the qualifications, competence and professional ethics of a professional. (*Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939, 947; see *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 343-344 [newspaper article about doctor was issue of public interest where information would assist others in choosing doctors].)

Defendant identifies two separate protected activities. However, neither support a finding that Defendant's actions or conduct constitutes a protected activity under section 425.16, subdivisions (e)(3) or (e)(4) of the Code of Civil Procedure, which Defendant cites to in her Anti-SLAPP Motion.

First, Defendant refers to Department C23 of this Court's denial of Plaintiff's motion for summary judgment in a related lawsuit between Plaintiffs and Defendant Le. However, it is unclear to the Court how this purported protected activity pertains to Defendant, as she was neither the moving party nor the opposing party to that motion for summary judgment. (See Exhibit 3 to Request for Judicial Notice.)

In fact, it is not even clear to that Defendant was a party to that related matter. It is also not clear that the allegations in the related matter, including the allegedly defamatory statements at issue in that case, are the same as the one raised in Plaintiffs' present lawsuit.

Further, while Defendant Ngo contends Department C23 of this Court "determined that the underlying conflict of [Plaintiff] and [Defendant Le] … amount to a public controversy and was protected speech," Defendant Ngo has merely asked the Court to take judicial notice of Department C23's September 16, 2024 Minute Order.

While the Court may take judicial notice of the existence of Department C23's Minute Order, as well as the truth of the results reached, namely, that Department C23 granted the motion for summary judgment in part, and denied it in part, it may not take judicial notice of the truth of hearsay statements in the minute order. (*Lockley v. Law Office of*

Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.)

"[J]udicial notice could not properly be taken of the truth of the factual findings of the trial judge in" a prior case. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1563.) "To state this a bit more simply, the taking of judicial notice that the judge believed A (i.e. that the judge ruled in favor of A on a particular factual dispute) is different from the taking of judicial notice that A's testimony must necessarily have been true simply because the judge believed A and not B." (*Sosinsky*, *supra*, 6 Cal.App.4th at p. 1565.)

The second protected activity Defendant identifies is her republication and redistribution of Defendant Le's articles that allegedly defamed Plaintiffs by referring to Plaintiff Nguyen as a criminal defendant, rather than a defendant in a civil lawsuit.

However, Defendant has presented no evidence establishing that the statements concerning Plaintiffs concern an issue of public interest.

For example, Defendant's Motion does not provide any evidence, or even make an argument, that the subject statements concerned a person or entity in the public eye, that the republication of Defendant Le's article could directly affect a large number of people beyond the direct participants, or that the topic of Defendant Le's article concerned a topic of widespread and/or public interest. (*Kieu Hoang v. Phong Minh Tran* (2021) 60 Cal.App.5th 513, 527.) Further, and contrary to the arguments made in the Reply, Paragraphs 6 and 7 of the Ngo Declaration do not support a finding that Plaintiffs are limited purpose public figures.

Similarly, Defendant's Motion provides no evidence, and makes no argument, that her republication of Defendant Le's article implicated the qualifications, competence and professional ethics of a professional. (*Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939, 947.)

Instead, based on the allegations of the Complaint, the arguments raised in the Anti-SLAPP Motion, and the evidence presented in the Anti-SLAPP Motion, the Court finds Defendant Le's article, which Defendant republished, involves a private dispute, rather than one that implicates the public interest.

The allegations of the Complaint, and the evidence presented in Defendant's Motion, are reminiscent of the facts in *Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624. In *Woodhill*, the defendant, who had over a million social media followers, was unhappy with a birthday cake the plaintiff had made for defendant's son, as the chemistry-themed cake included pills that looked too realistic for defendant's liking. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 626-628.) As retribution for what he perceived as plaintiff's refusal to apologize and take responsibility for its error, the defendant posted disparaging statements about plaintiff on his social media account, and he described the incident on his podcast, which resulted in the plaintiff receiving threats from defendant's followers. (*Id*. at pp. 628-629.)

		The *Woodhill* plaintiff filed suit, which included causes of action for libel, slander, and violation of the unfair competition law. The trial court denied the defendant's Anti-SLAPP motion, finding that none of defendant's challenged statements involved the public interest. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 629-630.) Even if the statements constituted protected activity, the trial court found plaintiff had shown a probability of prevailing on the merits. (*Id.* at p. 630.) The Court of Appeal affirmed, concluding that the defendant's statements did not involve the public interest, as defined under section 425.16 of the Code of Civil Procedure. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 630.) First, the *Woodhill* court rejected the defendant's contention that his statements involved an issue of public interest because they were about the dangers of candy confusion, or children mistakenly eating pills they believed to be candy. The *Woodhill* court explained that there must be some degree of closeness between the challenged statements and the asserted public interest, but a tangential relationship would not be enough. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 632.) The *Woodhill* court went on to hold that defendant's "statements did not seek public discussion of anything. They aimed to whip up a crowd for vengeful retribution. They were an unprotected effort ' "to gather ammunition" ' in his spat with [plaintiff]. [Citation.]" (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 632–633.) Next, the *Woodhill* court rejected defendant's claim that a public interest was implicated because both he and plaintiff were in the public eye. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 633-634.) Relevant here, the court concluded that defendant could not rely on the fact he published his statements to many people, as a private dispute could not be transformed into a matter of public interest through wide communication to the public. (*Id*. at p. 633.) "Shouting makes the volume loud. It does not make the content worthy. [Citation.]" (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 633.) Finally, the court held that the defendant's "quest for revenge did not give consumers information beyond his complaints about his one cake order. Consumers are interested in the reactions of other consumers, but a single report is the classic small sample, subject to the classic small sample error. [Defendant's] complaints about the decoration of a cake are not a public interest discussion." (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 634.) Here, Defendants are accused of defaming Plaintiffs by referring to Plaintiff Nguyen as a criminal defendant, which has "affected Plaintiffs' reputation and hindered Plaintiffs' ability to fundraise for BPSOS." (Complaint, ¶¶ 26, 34, 44.) It is further alleged these defamatory statements have a tendency to expose "Plaintiffs to public contempt, ridicule, aversion, or disgrace, or to induce in the minds of a substantial number of members of the community an opinion of Plaintiffs as criminals," and they "tend to deter other people from associating or dealing with Plaintiffs, both personally and professionally." (Complaint, ¶¶ 32, 34, 42, 44.)

		However, there is no evidence presented that Defendants' statements sought public discussion of anything. Instead, they were an unprotected effort to gather ammunition in their spat with Plaintiffs. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 632-633.) The fact that the article may have reached hundreds of thousands of readers also does not transform a private dispute into a matter of public interest. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 633.) Finally, any information Defendants disseminated about Plaintiffs did not extend beyond their summary of the dispute in the related lawsuit. A "single report is the classic small sample, subject to the classic small sample error," such that Defendants' characterizations of Plaintiff Nguyen as being a criminal defendant in the related lawsuit. (*Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, 634.) In sum, Defendant has not met her initial burden of establishing her conduct, i.e., the republication of Defendant Le's articles, constitutes protected activity. In her Reply, Defendant argues the article constitutes an issue of public interest because: (1) Plaintiffs are limited purpose public figures because they voluntarily injected themselves into a public controversy; (2) Department C23 of this Court found that the related *Le v. Nguyen* lawsuit involved a public controversy; and (3) Defendant Le's article was in response to Plaintiffs' publicly published articles, which further establishes a public controversy. None of these arguments, or evidence, were included in the Motion, and it is improper for Defendant Ngo to raise these new arguments, and to present new evidence (such as the Declaration of Defendant Le, as well as the Declaration of Hanh Tran), for the first time in Reply. (See *Raceway Ford Cases* (2016) 2 Cal.5th 161, 178 ["We generally do not consider arguments raised for the first time in a reply brief."]; *Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 987 ["Generally, arguments raised for the first time in a reply brief are forfeited."]; *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1387-1388 [in general, "[w]e will not consider arguments raised for the first time in a reply brief, because it deprives [respondents] of the opportunity to respond to the argument"].) Further, while Plaintiffs and Defendants may be involved in multiple lawsuits pertaining to refugee assistance, and while the publications by all parties relate to said refugee assistance, the gravamen of this lawsuit, and of the disputed articles, pertain to a private dispute between Plaintiffs and Defendants, namely, whether Defendants defamed Plaintiffs by referring to Plaintiff Nguyen as a criminal defendant. That the articles tangentially involve refugee assistance is insufficient to transform a private dispute into a matter of public interest. Thus, Defendant's Anti-SLAPP Motion is denied. Plaintiffs to give notice.

5	Castellanos v. Mercedes-Benz USA, LLC	Defendant Fletcher Jones Motor Cars, Inc. (FJMC) moves for summary judgment on the Complaint filed by Plaintiffs Enrique Rodriguez Castellanos and Zachary Ian Ruiz. Specifically, FJMC moves for summary judgment on the third cause of action for negligent repair, which is the only cause of action asserted against FJMC. For the following reasons, the motion is **DENIED.** Under the revised deadlines of Code Civ. Proc. § 437c effective January 1, 2025, a summary judgment motion must be served at least 81 days before the hearing date. If notice is served by express mail or "another method of delivery providing for overnight delivery, the required 81-day period of notice shall be increased by two court days." (Code Civ. Proc. § 473c(a)(2).) This notice period provided by Code Civ. Proc. § 437c is mandatory. (*Id*; see *Lackner v North* (2006) 135 Cal.App.4th 1188, 1207-1208.) The court does not have discretion to shorten the notice period without the parties' consent. Code Civ. Proc. § 437c(a) gives the court power to shorten time on other summary judgment time requirements, but not on the 75-day notice of hearing. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 116.) The hearing on this motion is set for April 17, 2025. 81 days before April 17, 2025 is January 26, 2025. Two court days before January 26, 2025 is January 23, 2025. FJMC served the motion by email on January 30, 2025 – 7 days late. Thus, the motion must be denied as FJMC did not provide sufficient notice of the motion. Additionally, while the proofs of service indicate all the documents were served by email, the electronic service address of the person making the service was not provided in violation of Code Civ. Proc. § § 1013b(b). FJMC to give notice.
6	Gonzalez v. Phillips	Defendants Cardflex, Inc. d/b/a Cliq, and Andrew Phillips' Motion for Extension of Deadline re Motion for [Re]consideration is **DENIED**. "In general, a party may move for reconsideration of a motion within 10 days after the motion is denied, based upon 'new or different facts, circumstances, or law.' [Citation.] … The overriding purpose of Code of Civil Procedure section 1008 is to prevent duplicative motions. [Citation.]" (*UAS Management, Inc. v. Mater Misericordiae Hospital* (2008) 169 Cal.App.4th 357, 367; see *Myers v. Superior Court* (2022) 78 Cal.App.5th 1127, 1135 [motion for reconsideration properly denied because moving party failed to timely file its motion]; see *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392 ["The motion for reconsideration must be made within 10 days after service of written notice of entry of the order"].) In *Advanced Building Maintenance*, the amended notice of ruling on demurrer and motion to strike was served on October 12, 1994, such that the motion for reconsideration had to be filed by October 22, 1994. (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392.) However, respondent did not file the motion for reconsideration until October 31, 1994, which the trial court denied

as untimely. (*Ibid*.) On appeal, the Court of Appeal for the Second District, Division 2, held "the trial court's denial of the motion for reconsideration was correct." (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392.)

Here, Defendants were served with the Notice of Ruling, on Plaintiff's Motion for Attorneys' Fees, Costs and Prejudgment Interest, on November 21, 2024. (Huber Declaration, ¶ 4.) Taking into account electronic service, Defendants had to file their Motion for Reconsideration no later than December 3, 2024, or 10 days after service of the Notice of Ruling, plus two court days. However, Defendants did not file their present Motion for Extension, which included their proposed Motion for Reconsideration, until December 9, 2024. Defendants' Motion for Reconsideration was therefore untimely.

The *Advanced Building Maintenance* court held that section 473 of the Code of Civil Procedure could not be used to extend the filing date of a jurisdictional motion, such as a motion setting aside judgment under section 663 of the Code of Civil Procedure. (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1393-1394; Code Civ. Proc., § 663.)

Like section 663, section 1008 of the Code of Civil Procedure is also jurisdictional. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 840; *David S. Karton, a Law Corp. v. Musick, Peeler Garrett LLP* (2022) 83 Cal.App.5th 1027, 1048.)

The California Supreme Court further held that section 1008 is the only statute that governs motions for reconsideration, such that section 473 could not be used to circumvent the requirements of section 1008. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 840-844.) Thus, Defendants' failure to request the transcript be expedited, and their calendaring error, are not proper grounds for extending the 10-day deadline to file their Motion for Reconsideration. (Huber Declaration, ¶¶ 3, 5-8.)

In addition to section 473, Defendants also cite to section 1054 of the Code of Civil Procedure, as well as rules 3.503 and 3.1300 of the Rules of Court, *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1201, and *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765, in support of their position that the Court has the discretion to consider an untimely Motion for Reconsideration.

However, and as noted, section 1008 is a jurisdictional statute, such that the 10-day deadline to file the Motion for Reconsideration cannot be extended.

Further, Defendants' Motion for Reconsideration fails on the merits because they have presented no new or different facts, circumstances or law. Instead, Defendants believe the Court erred in awarding Plaintiff approximately $650,000 in attorneys' fees, and approximately $100,000 in costs. (Huber Declaration, ¶ 5.) (See *David S. Karton, a Law Corp. v. Musick, Peeler Garrett LLP* (2022) 83 Cal.App.5th 1027, 1049 [trial court did not err in denying motion for reconsideration based on trial court's

		purported error of law, where moving party did not present any new or different facts in support of its motion].) In their Motion and Reply, Defendants contend the Court has the inherent power to reevaluate and correct its own rulings. They further maintain the Court should do so because the Court's ultimate ruling was substantially inconsistent with statements the Court made at the hearing. Section 1008 does "not limit a *court's* ability to reconsider its previous interim orders on its own motion, as long as it gives the parties notice that it may do so and a reasonable opportunity to litigate the question." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096-1097; accord, *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 211 and *Cox v. Bonni* (2018) 30 Cal.App.5th 287, 312.) "[I]t should not matter whether the 'judge has an unprovoked flash of understanding in the middle of the night' [citation] or acts in response to a party's suggestion. If a court believes one of its prior interim orders was erroneous, it should be able to correct that error no matter how it came to acquire that belief." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108; accord, *Boschetti v. Pacific Bay Investments Inc.* (2019) 32 Cal.App.5th 1059, 1070.) "Trial courts always have discretion to revisit interim orders in service of the paramount goal of fair and accurate decisionmaking." (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 34.) However, the Court did not err when it granted Plaintiff's motion for attorneys' fees. While the Court expressed its frustration with Plaintiff's inability, or refusal, to apportion his attorney fees, its ultimate ruling was based on its review and analysis of the billing records, and its personal experience and knowledge regarding the reasonable hourly rates for Orange County. Given this analysis, the Court reduced both the hourly rates, and the number of hours expended, by Plaintiff's counsel. This resulted in the reduction of attorney fees, from the requested amount of $1,443,140.35, to the awarded amount of $647,684.00. Defendants' Motion is denied. Plaintiff to give notice.
7	Paquette v. The Hertz Corporation	<u>Demurrer to FAC</u> Defendant The Hertz Corporation demurs to the First Amended Complaint of Plaintiff Robert Paquette's Complaint. For the following reasons, the demurrer is OVERRULED. In ruling on a demurrer, a court must accept as true all allegations of fact contained in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-1405.) Questions of fact cannot be

		decided on demurrer. (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) A demurrer tests only the sufficiency of the complaint; a court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 n.7.) Although courts should take a liberal view of inartfully drawn complaints (*see* Code Civ. Proc., § 452), it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; *see* Code Civ. Proc., § 425.10(a).) <u>First Cause of Action (Identity Theft)</u> The first cause of action alleges Defendant Hertz willfully obtained Plaintiff's personal identifying information and used the information to rent a car without Plaintiff's consent. Under California's Identity Theft Act ("CITA"), a "victim of identity theft" can bring an action for damages, civil penalties, and injunctive relief "against a claimant to establish that the person is a victim of identity theft in connection with the claimant's claim against that person." (Civ. Code, § 1798.93(a).) A "claimant" is defined as "a person who has or purports to have a claim for money or an interest in property in connection with a transaction procured through identity theft." (Civ. Code, § 1798.92(a).) A "victim of identity theft" is defined as a "person who had their personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not use or possess the credit, goods, services, money, or property obtained by the identity theft, and has submitted a Federal Trade Commission identity theft report." (Civ. Code, § 1798.92(d).) "In the alternative, the person may have filed a police report in this regard pursuant to Section 530.5 of the Penal Code." (Civ. Code, § 1798.92(d).) The victim may be able to recover actual damages or attorney's fees, the victim must show "they provided written notice to the claimant that a situation of identity theft might exist, including, upon written request of the claimant, a valid, signed Federal Trade Commission (FTC) identity theft report completed at least 30 days before filing the action, or within their cross-complaint pursuant to this section" or "a valid copy of a police report or of a Department of Motor Vehicles (DMV) investigative report, filed pursuant to Section 530.5 of the Penal Code, at least 30 days before filing the action or within their cross-complaint pursuant to this section." (Civ. Code, § 1798.93(c)(5).) Here, the FAC alleges that Plaintiff is a victim of identity theft, facts showing Defendant Hertz is a claimant within the statutory definition of the term, that Defendant Hertz attempted to collect on the fraudulent charge, and that Plaintiff provided written notice to Defendant Hertz that

		the situation of identity theft might exist. (*See* FAC ¶¶ 8, 9, 16, 18, 19, 22, 24, 29). <u>Second Cause of Action (Violation of Rosenthal Fair Debt Collection Practices Act)</u> The second cause of action alleges Defendant continuously and with such frequency contacted Plaintiff as to constitute harassment and without the proper licensure or display of the license number. (FAC ¶¶ 26, 41, 42, 43.) The Rosenthal Fair Debt Collection Practices Act (Civ. Code § 1788, et seq.) regulates the collection of consumer debts. (*See* Civ. Code, §§ 1788.10-1788.185 [setting forth debt collector responsibilities].) Consumer debts are those incurred by "natural persons by reason of a consumer credit transaction" and includes a mortgage debt. (Civ. Code § 1788.2(f).) Section 1788.11 provides that "[n]o debt collector shall collect or attempt to collect a covered debt by . . . [c]ommunicating, by telephone or in person, with the debtor with such frequency as to be unreasonable, and to constitute harassment of the debtor under the circumstances." (Civ. Code, § 1788.11(e).) The Act defines a "debt collector" as "any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engaged in debt collection." (Civ. Code, § 1788.2, subd. (c).) Debt collectors can include original creditors, agents of original creditors, or third-party collection agencies. (*In re Ganas* (Bankr. E.D. Cal. 2014) 513 B.R. 394, 407.) Defendant Hertz contends it is not a debt collector as defined by the Act (Civ. Code § 1788.2(c); FAC ¶ 6) and in any case, Hertz cannot be liable for the actions of any third-party debt collection agency. (*See, e.g., Olson v. La Jolla Neurological* Associates (2022) 85 Cal.App.5th 723.) Here, the FAC alleges sufficient facts to support a claim under the Rosenthal Act. The FAC alleges Defendant is the original creditor, attempted to collect a consumer debt from Plaintiff and in doing so, communicated with such frequency as to be unreasonable and to constitute harassment. (FAC ¶¶ 8, 22, 26, 40, 41.) <u>Third Cause of Action (Fraud of Theft by False Pretense)</u> The third cause of action alleges that Defendant received Plaintiff's property in excess of $950 by fraudulently charging his card and refusing or failing to correct the problem. (FAC ¶ 46.) Penal Code Section 496(a) provides criminal liability for: "[e]very person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained." Section 496(c) authorizes a civil action, recovery of attorney's fees and costs, and treble damages for any person who has been injured by a violation of subdivision (a).

		The elements of a civil claim under Penal Code Section 496 are: (1) that the particular property was stolen; (2) that the accused received, concealed or withheld it from the owner thereof; and (3) that the accused knew that the property was stolen. (*Finton Construction, Inc. v. Bidna & Keys, APLC (*2015) 238 Cal.App.4th 200, 213.) Here, the FAC alleges Plaintiff's property in excess of $950 was stolen, that Defendant Hertz received that property, and that Defendant knew the property was stolen under false pretense. (*See* FAC ¶¶ 46-47.) <u>Fourth Cause of Action (Violations of the UCL)</u> The fourth cause of action alleges Defendant Hertz violated the UCL by knowingly and intentionally creating fraudulent car rental agreements to place bogus charges on Plaintiff's credit card. (FAC ¶ 51.) Business & Professions Code Section 17200 prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Each prong of the UCL provides a separate and distinct theory of liability. (*South Bay Chevrolet v. Gen. Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861.) In addition, the Plaintiff must allege injury in fact and loss of money or property suffered as a result of the unfair business practices. (Bus. & Prof. Code § 17204; *R & B Auto Ctr. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 360.) Under the unlawful prong, a violation of law may be actionable as unfair competition under Cal. Business & Professions Code section 17200. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 81.) Here, the FAC alleges theft in violation of Penal Code section 496. The FAC also alleges Plaintiff suffered injury in fact and loss of money as a result, including the money charged to his credit card. (FAC ¶¶ 46, 47, 51, 52.) No later than 10 days after service of the notice of ruling, Defendant shall file and serve an answer to the Complaint. (Cal. Rules Ct., Rule 3.1320(g).) Plaintiff to give notice. <u>Case Management Conference</u> The Case Management Conference is continued to June 26, 2025, at 9:00 a.m. in this Department. Plaintiff to give notice.
8	Momenirad v. Hyundai Motor America	<u>Motion for Attorney Fees</u> Plaintiff Ali Momenirad moves for an award of attorney fees and costs against Defendant Hyundai Motor America. For the following reasons, the motion is **GRANTED IN A REDUCED AMOUNT**. Defendant shall

		pay Plaintiff reasonable attorney fees in the amount of $15,340.50 and costs in the amount of $924.58. Plaintiff and Defendant executed a settlement agreement at some point before December 12, 2024. Neither Plaintiff nor Defendant provided the Court with a copy of the settlement agreement. According to Plaintiff, the settlement agreement provided for attorney fees and costs reasonably incurred as determined by stipulation or by motion. (Saeedian Dec., ¶ 22.) Defendant does not dispute that Plaintiff is entitled to fees, though Defendant disputes the reasonableness of the hourly rate and the hours claimed by Plaintiff's counsel. Civil Code section 1794, subdivision (d) requires the attorney fees to be based on "actual time expended" and to have been "reasonably incurred." In *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 818–819, 820, the court concluded, "the statutory language of section 1794, subdivision (d), is reasonably compatible with a lodestar adjustment method of calculating attorney fees" because "the lodestar adjustment method *is* based on actual, reasonable attorney time expended as the objective starting point of the analysis [citation], it is compatible with this statutory provision." The lodestar adjustment method requires the trial court first to determine a lodestar figure based on actual time spent and reasonable hourly compensation for each attorney. (*Robertson,* 144 Cal.App.4th at 819, citing *Serrano v. Priest* (1977) 20 Cal.3d 25, 48–49.) For Song–Beverly Consumer Warranty Act claims, "[a] prevailing buyer has the burden of 'showing that the fees incurred were "allowable," were "reasonably necessary to the conduct of the litigation," and were "reasonable in amount.'" (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104; *Doppes*, 174 Cal.App.4th at 998.) The court then has the discretion to increase or decrease the lodestar figure by applying a positive or negative multiplier based on a variety of factors that the court did not consider when determining the lodestar figure, such as the novelty and difficulty of the issues presented, the extent to which the nature of the litigation precluded other employment by the attorneys, and the contingent nature of the fee award. (See *Northwest Energetic Servs., LLC v. California Franchise Tax Bd*. (2008) 159 Cal.App.4th 841, 879-82; *Graciano v. Robinson Ford Sales, Inc*. (2006) 144 Cal.App.4th 140, 154.) The court is not required to impose a multiplier; the decision is discretionary. (*Galbiso v. Orosi Pub. Util. Dist.* (2008) 167 Cal.App.4th 1063, 1089; *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1241.) The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1094.) This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represented the client on a straight contingent fee basis, or are in house counsel. (*Id*.) To determine that reasonable market value, the court must determine whether the requested rates are within the range of reasonable rates charged by and judicially awarded to comparable attorneys for comparable work.

		(*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal. App. 4th 740, 783.) Factors that may be considered in determining whether counsel's rates are reasonable include: level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.) 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]; *Davis v. City of San Diego*, 106 Cal.App.4th at 904.) Plaintiff seeks an hourly rate of $695 for attorney Michael Saeediann, $525 for attorney Christopher Urner, $350 for attorney Jorge L. Acosta, $300 for attorney Sergio Aivazov, and $250 for Jorge L. Acosta (law clerk rate). The hourly rates claimed are generally reasonable and the declaration Michael Saeediann provides a basis for the requested hourly rates. However, the Court reduces the claimed law clerk hourly rate from $250 to $100. Other than that, the Court applies the hourly rates requested by Plaintiff for time reasonably spent in this case. In challenges to the reasonableness of the number of hours billed, "it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence." (*Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee Ass'n* (2008) 163 Cal.App.4th 550, 564.) "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Id.*) Additionally, moving party's counsel's verified time records should be "entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 396.) However, the 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.) Here, Defendant has challenged numerous time entries by Plaintiff's counsel. In reviewing Plaintiff's counsels' invoices, there are numerous instances of overbilling. The billing information provided by Plaintiff's counsel contains a host of duplicative, excessive, and/or unnecessary entries and the Court does not award fees for that work. For instance, several attorneys billed time amounting to almost 10 hours for reviewing the vehicle's repair history. Further, Plaintiff's counsel billed for time spent on administrative work, such as reviewing Defendant's Notice of Posting Jury Fees and calculating response deadlines after the summons was served.

		Applying the above hourly rates and eliminating entries for duplicative, excessive and/or unnecessary work, the following hours and rates are reasonable: **Timekeeper** / **Hourly Rate** / **Time Claimed** / **Time Granted** / **Total** Michael Saeediann / $695 / 1.5 / 0.9 / 625.5 Christopher Urner / $525 / 24.8 / 16.8 / 8820 Jorge L. Acosta / $350 / 12.1 / 8.5 / 2975 Sergio Aivazov / $300 / 10.8 / 9.5 / 2850 Jorge L. Acosta (law clerk rate) / $100 / 0.8 / 0.7 / 70 Total / / / / $15,340.5 The Court declines to apply a positive or negative multiplier to this case. Plaintiff filed a memorandum of costs claiming $924.58 in costs. Defendant does not dispute the request for costs. Plaintiff's requests for costs of $924.58 is granted. Plaintiff to give notice. <u>Order to Show Cause re: Dismissal on Settled Case</u> The Order to Show Cause re: Dismissal on Settled Case is continued to June 26, 2025, at 9:00 a.m. in this Department. Plaintiff to give notice.
9	Perez v. My Botanica, Inc.	The motion by Defendant My Botanica, Inc., to strike portions of the complaint relating to punitive damages is **DENIED.** A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63; Cal. Civ. Code § 3294(a).) "'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." (Code Civ. Proc. § 3294(c)(1).) "'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Code Civ. Code § 3294(c)(2).) "'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." (Code Civ. Proc. §3294(c)(3).)

		"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff." (*Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1255.) Conclusory allegations, devoid of any factual assertions, are insufficient to support a conclusion that parties acted with oppression, fraud or malice. (*Smith v. Sup. Ct.* (1992) 10 Cal.App.4th 1033, 1042.) Section 3294 permits punitive damages against a corporate employer if the employee is sufficiently high in the corporation's decision-making hierarchy to be an "officer, director or managing agent." (Civ. Code, § 3294, subds. (a), (b); *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, 88 Cal.Rptr.2d 19, 981 P.2d 944 (*White*); see also *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 167, 99 Cal.Rptr.2d 435 ["'Managing agents' are employees who 'exercise [ ] substantial discretionary authority over decisions that ultimately determine corporate policy.' [Citation.]" (italics omitted)].) In employment discrimination cases, juries have found that corporate decisions that are discriminatory under FEHA are sufficient to constitute conduct for which punitive damages are available. For example, in *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, a strict attendance policy that did not reasonably accommodate persons with disabilities was sufficient for a jury to award punitive damages. (*Id*. at 713.) The court reasoned that due to the employee being terminated because of the attendance policy, the employee suffered emotional and mental distress as well as lost her financial savings after termination, leaving her financially vulnerable. (*Ibid*.) As such, a jury could reasonably infer that the company's adoption of such a strict and flawed attendance policy was "conduct that evinced an indifference to or a reckless disregard of the health or safety of others" and constituted oppression or malice. (*Ibid*.) Further, a corporate policy that reduced compensation for older managers after an employee filed an EEOC complaint constituted conduct for which punitive damages were available. (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428.) A jury could reasonably infer that the policy was a pretext to deny the employee a transfer and created a hostile work environment in retaliation for the EEOC complaint. (*Ibid*.) Here, Defendant identifies various allegations relating to punitive damages and argues that those allegations, in and of themselves, are conclusionary and insufficient to allege punitive damages. In doing so, Defendant fails to read the complaint and all of Plaintiff's allegations as a whole. The court finds that Plaintiff has alleged sufficient ultimate facts to state a claim for disability discrimination, from which punitive damages would be an available remedy. Similar to *Roby*, Plaintiff alleges that he suffered a disability, requested multiple accommodations, was denied accommodation and harassed for doing so, including the use of racial slurs, and was terminated for Plaintiff's requests for accommodation, reports of injury and pain, and perceived filing for workers' compensation. A jury could reasonably infer from these facts that terminating Plaintiff for asking for a medical accommodation was a *policy* that did not reasonably accommodate persons with disabilities—i.e., "conduct that evinced an indifference to or a reckless disregard of the health or safety

		of others" according to the jury in *Roby*. Further, given that Plaintiff alleges that he was terminated for requesting a medical accommodation and for perceived filing of workers' compensation, a jury could reasonably infer that Defendant terminated Plaintiff in retaliation for Plaintiff's exercising his rights—i.e., conduct for which a jury found was oppressive under *Wysinger*. As such, Plaintiff has sufficiently pled "the ultimate facts showing an entitlement to [punitive damages.]" (*Clauson, supra,* 67 Cal. App. 4th at p. 1255.) The motion is therefore DENIED. Moving Defendant to give notice.
10	Lampley v. Hermosa 2019 LP	The court has been made aware that Plaintiff is now deceased. A deceased individual has no legal existence. (*See Tanner v. Best's Estate* (1940) 40 Cal.App.2d 442, 444-445 [holding that judgment could not be entered against the "estate" of a decedent, as the "estate" "is neither a natural nor artificial person [but rather] merely a name to indicate the sum total of the assets and liabilities of a decedent"]; *see also* Code Civ. Proc., §§ 377.40 *et seq.* [governing claims against decedents]. Therefore, proceedings are suspended indefinitely pending appointment of a personal representative of decedent/plaintiff per CCP 385. In the case of a self-represented plaintiff, if no personal representative is appointed, the case cannot proceed until such a representative is substituted. The court must suspend all further proceedings until the executors or administrators are qualified and substituted as parties (Matter of Estate of Page, 50 Cal. 40 (1875))[4]. If the deceased plaintiff's estate has a personal representative, that representative can continue the action on behalf of the estate (Adams v. Superior Court, 196 Cal.App.4th 71 (2011))[5]. Status conference shall occur on December 11, 2025, at 9:00 a.m. in this department. The moving party to give notice.
11	Mass v. CTG Auto, LLC	Off calendar.
12	Oh v. Giving Tree Lending	Plaintiff April Oh moves for order compelling Defendant Giving Tree Lending to comply with this court's October 24, 2024 order and awarding monetary sanctions against Defendant and its attorneys. For the following reasons, the motion is **GRANTED**. The court may impose monetary sanctions on any party engaging in the misuse of the discovery process, including the reasonable costs and fees incurred as a result of the failure to obey (including fees on the sanctions motion). (*See* Code Civ. Proc., § 2023.030(a).) Disobeying a court order to provide discovery is a misuse of the discovery process. (Code Civ. Proc., § 2023.010(g); *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516.) Once a party is ordered by the court to

provide responses to discovery, continued failure to respond may result in the imposition of more severe sanctions. (*See, e.g.,* Code Civ. Proc., § 2030.290(c).)

Imposition of sanctions for misuse of discovery lies within the trial court's discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991.) "[T]he court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment." (*Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1183.)
The trial court tailors the sanction for such conduct to "fit the crime." (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.)

The burden of proof is on the moving party to establish the facts essential to an award of sanctions. (Evid. Code, § 500 [providing "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"]; *see also* Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter Group 2022) ¶ 8:2015.) Thereafter, the burden of proof shifts to the party seeking to avoid sanctions to establish a satisfactory excuse for his or her conduct. (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 201; *Puritan Ins. Co. v. Superior Court* (1985) 171 Cal.App.3d 877, 884.)

On October 24, 2024, this court ordered Defendant The Giving Tree Lending within 10 days to serve further responses without objection to:

- Form Interrogatories-General (Set One) Nos. 1.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 12.1, 12.2, 12.3, 12.4, 12.6, 13.1, 13.2, 14.1, 14.2, 15.1, 16.1, 16.2, and 17.1;
- Form Interrogatories-Employment (Set One) Nos. 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 201.1, 201.2, 201.4, 201.5, 201.6, 204.3, 204.4, 204.5, 204.6, 204.7, 207.1, 207.2, 209.2, 211.1, 214.1, 214.2, 215.1, 215.2, 216.1, and 217.1;
- Special Interrogatories (Set One) Nos. 1-15; and
- RFA Nos. 1-2.

(ROA # 109.)

Plaintiff contends Defendant failed to comply with the court order by failing to serve any further responses by the court-ordered deadline and by serving responses that are in bad faith and/or included boilerplate objections. Specifically, Plaintiff contends Defendant in bad faith responded with "I don't know" in response to Form Interrogatory Nos. 1.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7; and inserted boilerplate objections in response to Form Interrogatory Nos. 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.1, 13.2, 14.1, 14.2, and 15.1.

Here, it is undisputed Defendant did not timely serve responses by the court's deadline. (Choi Decl. ¶ 4; *see generally* Opp.) Plaintiff communicated with Defendant on multiple occasions in November 2024, following up on the status of the further responses. (*See* Choi Decl. ¶¶ 4-7.) Defendant served further responses on December 9, 2024, a month after the court-ordered deadline had passed. (Choi Decl. ¶ 7.)

The court finds Plaintiff is entitled to recover attorney fees to reasonably compensate her for fees incurred to ensure receipt the court-ordered

		further responses. The court further finds $960 to reasonably compensate Plaintiff for the costs and fees associated with that time. To the extent Plaintiff contends the further responses are deficient, Plaintiff did not submit evidence to support that contention. Attorney Choi's declaration does not attach the discovery responses at issue. (*See generally* Choi Decl.) Nevertheless, the court notes that Defendant does not dispute that it responded "I don't know" to several form interrogatories, or that Defendant asserted objections in violation of this court's 10/24/2024 order. Defendant submitted a copy of the interrogatory responses at issue (*see* Wolflick Decl. ¶ 2, Ex. 1), which confirms these facts. No later than 10 days from service of the notice of ruling, Defendant Giving Tree Lending shall serve code-compliant further responses without objection to Form Interrogatories-General (Set One) Nos. 1.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 12.5, and 12.7. Plaintiff's request for monetary sanctions against Defendant Giving Tree Lending is GRANTED. (*See* Code Civ. Proc., §§ 2023.010, 2023.030(a).) Defendant Giving Tree Lending is ordered to pay sanctions in the amount of $960.00 to Plaintiff by May 27, 2025. Plaintiff to give notice.