LAW & MOTION CALENDAR
TENTATIVE RULINGS

April 18, 2024

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
10:00 a.m.		
1	Irvine Orchard Hills Retail LLC v. Green Cleaners LLC	Off calendar.
1:30 p.m.		

1	Carpenter v. Bartlett Care Center, LLC	**Demurrer to Complaint** Defendant Sun Mar Management Services ("Sun Mar") demurs to all of the causes of action the Complaint of Plaintiffs Don W. Carpenter, Jr., by and through his Successors-in-Interest Gina Falcon, Larry Carpenter, and Sean Carpenter; Gina Falcon; Larry Carpenter; and Sean Carpenter. For the following reasons, **the demurrer is OVERRULED** as to the **first cause of action** for elder abuse **and the fourth cause of action** for wrongful death. The demurrer is SUSTAINED as to the second cause of action for medical malpractice. 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, 1404-05.) Questions of fact cannot be decided on demurrer. (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Because 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 fn.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, subd. (a).) <u>First Cause of Action for Elder Abuse</u> Pursuant to the Elder Abuse and Dependent Adult Civil Protection Act [(Welf. & Inst. Code, § 15600 et seq.)], heightened remedies are available to plaintiffs who successfully sue for dependent adult abuse. Where it is proven by clear and convincing evidence that a defendant is liable for neglect or physical abuse, and the plaintiff proves that the defendant acted with recklessness, oppression, fraud, or malice, a court shall award attorney fees and costs. Additionally, a decedent's survivors can recover damages for the decedent's pain and suffering." (*Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 88, 50 Cal.Rptr.3d 266.) The Elder Abuse and Dependent Adult Civil Protection Act requires proof of either "physical abuse ..., or neglect ..., and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse." (Welf. & Inst. Code, § 15657.) Welfare and Institutions Code section 15610.57 includes both a general definition of "neglect" and specific examples. The general definition is; "The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (*Id.*, subd. (a)(1).) The statute then provides that neglect "includes, but is not limited to," "(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or

shelter." "(2) Failure to provide medical care for physical and mental health needs." "(3) Failure to protect from health and safety hazards." "(4) Failure to prevent malnutrition or dehydration." (*Id.*, subd. (b)(1)-(4).)

"Recklessness involves ' "deliberate disregard" of the "high degree of probability" that an injury will occur' and 'rises to the level of a "conscious choice of a course of action ... with knowledge of the serious danger to others involved in it." ' " (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405, 129 Cal.Rptr.3d 895 (*Carter*).) " 'Recklessness' refers to a subjective state of culpability greater than simple negligence ... [citations]. Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' ...." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31, 82 Cal.Rptr.2d 610, 971 P.2d 986.) "[T]o obtain the [Elder Abuse] Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages." (*Covenant Care*, *Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789, 11 Cal.Rptr.3d 222, 86 P.3d 290.)

The Complaint alleges Defendant Sun Mar Management Services ("Sun Mar") is subject to direct liability for elder abuse Sun Mar because failed to staff Defendant Bartlett Care Center LLC dba French Park Care Center (the "Facility") with adequately trained staff, which resulted in the systematic neglect of Don W. Carpenter, Jr. ("Decedent"). (Compl. ¶ 54.) Facility staff were inadequately trained or not trained in recognizing signs and symptoms of renal failure, or the process and importance of reporting significant changes of condition in residents. (*Id*.) Sun Mar had a pattern and practice of understaffing the Facility and was, or in the exercise of reasonable diligence should have been, aware of the understaffing of Facility, in both number and training, the relationship between understaffing and sub-standard provision of care to Facility patients. (Compl. ¶¶ 54, 67-88.)

In *Delaney v. Baker* (1999) 20 Cal.4th 23, the California Supreme Court affirmed the Court of Appeal's judgment that the defendant nursing home and its administrators were subject to the heightened remedies of the Welfare & Institutions Code. (*Id*. at pp. 41-42.) In that case, the plaintiff had brought an action against the nursing facility and its administrators, alleging neglect as a result of the rapid turnover of nursing staff, staffing shortages, inadequate training of employees, violations of medical monitoring and recordkeeping regulations, etc. (*Id*. at pp. 27-28.) The jury found in favor of plaintiff on the elder abuse claim based on neglect. (*Id*. at p. 28.)

Plaintiffs have alleged facts sufficient to support Sun Mar's liability for custodial neglect in its capacity as the Facility's owner, operator, parent company, administrative services provider, administrator, director of nursing, managing employees and/or management company. (*Delaney v. Baker* (1999) 20 Cal.4th 23, 27 ["The neglect was apparently the result, in part, of rapid turnover of nursing staff, staffing shortages, and the inadequate training of employees."]; see also *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1349 ["trier of fact should decide whether a knowing pattern and practice of understaffing in violation of applicable regulations amounts to recklessness"].) The demurrer is overruled as to first cause of action.

<u>Second Cause of Action for Medical Malpractice</u>

The elements of a cause of action for medical malpractice are (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence. (*Tortorella v. Castro* (2006) 140 Cal.App.4th 1, 3 n.2.)

Sun Mar, "as an entity that is not a natural person, cannot practice medicine. [Citations.] Its liability for medical malpractice, therefore, must be based upon a theory of vicarious liability." (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501.) Plaintiffs seek to hold Sun Mar liable for the Facility's alleged medical malpractice through the theory of vicarious liability.

" 'Under the doctrine of respondeat superior, an employer is vicariously liable for his employee's torts committed within the scope of the employment.' [Citation.] ... 'It is ... settled that an employer's vicarious liability may extend to willful and malicious torts of an employee as well as negligence. [Citations.]' [Citation.] [¶] ... [¶] 'The primary test of an employment relationship is whether the " 'person to whom service is rendered has the right to control the manner and means of accomplishing the result desired....' " [Citation.]' " (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1178–1179.)

" 'An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.' [Citation.] 'An agency is either actual or ostensible.' [Citation.] ... [¶] 'An agency is actual when the agent is really employed by the principal.' [Citation.] For an actual agency to exist, ' "[t]he principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on his behalf and subject to his control." [Citation.] In the absence of the essential characteristic of the right of control, there is no true agency and, therefore, no "imputation" of the [alleged agent's] negligence to the [alleged principal]. [Citations.]' ... [Citation.]" (*Franklin v. Santa Barbara Cottage Hospital* (2022) 82 Cal.App.5th 395, 403–404.)

The Complaint does not allege any facts indicating that an employment or agency relationship exists between Sun Mar and a health care professional, nurse, and/or physician. The demurrer is sustained as to the second cause of action.

<u>Fourth Cause of Action for Wrongful Death</u>

Wrongful death is a statutory cause of action that may be asserted when "the death of a person [is] caused by the wrongful act or neglect of another"; the cause of action belongs not to the decedent but to certain surviving heirs. (Code Civ. Proc., § 377.60.) The purpose of a wrongful death cause of action is to compensate such persons for their own losses of comfort and companionship resulting from the decedent's death. (*Fraizer v. Velkura* (2001) 91 Cal.App.4th 942, 945.) The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the pecuniary loss suffered by the heirs." (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) "In any action for wrongful death resulting from negligence, the complaint must contain allegations as to all the elements of actionable negligence."

(*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 195.)

Plaintiffs' wrongful death cause of action is based on two claims: (1) negligence and (2) elder abuse – neglect. (Compl. ¶ 111.) Wrongful death may be based upon an elder abuse claim. (See *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256; *Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82-83.) As discussed above, Plaintiffs have alleged sufficient facts to state an elder abuse cause of action. The demurrer to the fourth cause of action is overruled.

Should Plaintiffs desire to file an amended complaint that addresses the issues in this ruling, Plaintiffs must file and serve it within 15 days of service of notice of ruling.

Plaintiffs to give notice.

Motion to Strike Portions of the Complaint

Defendant Sun Mar Management Services ("Sun Mar") moves to the strike prayer for attorneys' fees and costs, and prayer for punitive and exemplary damages against Sun Mar and the prayer for treble damages against Sun Mar and Bartlett Care Center, LLC asserted in the Complaint of Plaintiffs Don W. Carpenter, Jr., by and through his Successors-in-Interest Gina Falcon, Larry Carpenter, and Sean Carpenter; Gina Falcon; Larry Carpenter; and Sean Carpenter. For the following reasons, the motion is DENIED as to the request to strike the prayer for attorneys' fees, costs, punitive damages, and exemplary damages. The motion is GRANTED as to the request to strike the prayer for treble damages.

A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court. (Code Civ. Proc., § 436.)

"Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not support by the allegations of the complaint. (Code Civ. Proc., § 431.10, subd. (b).)

<u>Attorneys' Fees and Punitive Damages</u>

Welfare and Institutions Code section15657 provides for the awarding of reasonable attorney's fees and costs under a claim for elder abuse. (See Welf. & Inst. Code, § 15657 ["The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article."].)

A complaint including a request for punitive damages must include allegations showing that the plaintiff is entitled to an award of punitive damages. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) A claim for punitive damages cannot be pleaded generally and allegations that a defendant acted "with oppression, fraud and malice" toward plaintiff are insufficient legal conclusions to show that the plaintiff is entitled to an award of punitive damages. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Specific factual allegations are required to support a claim for punitive damages. (*Id.*)

Civil Code section 3294 authorizes a plaintiff to obtain an award of punitive damages when there is clear and convincing evidence that the defendant engaged in malice, oppression, or fraud. Section 3294, subdivision (c) defines the terms in the following manner:

> (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.

"In order to obtain the [Elder Abuse] Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789.) "[M]aking it more difficult for Elder Abuse Act plaintiffs to plead punitive damages would, as a general matter, likely diminish the willingness of attorneys to undertake such cases on a contingency basis. (See Welf. & Inst.Code, § 15600, subd. (h) [reciting Legislature's observation when enacting Elder Abuse Act that "few civil cases are brought in connection with this abuse due to … the lack of incentives to prosecute such suits"].)." (*Id*., at p. 787.)

Sun Mar argues Plaintiffs' claim for attorneys' fees, costs, punitive damages, and exemplary damages fails against Sun Mar because Plaintiffs cannot allege a cause of action for elder abuse against Sun Mar. In its concurrent ruling overruling Sun Mar's demurrer to the first cause of action for elder abuse, the court found the Complaint sufficiently alleges elder abuse, as well as sufficient facts to plead malice or oppression on the part of Sun Mar for its alleged part in directly overseeing, managing, and controlling the operation and management of the Facility, including staffing, training, policy, and procedures and that it acted with reckless disregard in choosing profits over care of the Facility's patients. (Compl. ¶¶ 68-88.) The motion to strike is denied as to attorneys' fees, costs, punitive damages, and exemplary damages.

<u>Treble Damages</u>

Treble damages are appropriate pursuant to Civil Code section 3345, which establishes that when a defendant knew or should have known its unfair or deceptive acts or practices or unfair methods of competition were directed to a senior citizen, and that conduct caused the senior to suffer loss of income or property, the court may impose a remedy up to three times greater than the amount the trier of fact would impose absent such a finding.

The Complaint does not allege that Decedent lost income or property due to Defendants' alleged unfair or deceptive acts or practices. The motion to strike is granted as to the prayer for treble damages.

Should Plaintiffs desire to file an amended complaint that addresses the issues in this ruling, Plaintiffs must file and serve it within 15 days of service of notice of ruling.

		Plaintiffs to give notice.
2	Duca-McCoy v. Hanna	Plaintiffs Duca-McCoy and Bertha M. Duca aka Marie Duca move for preferential trial setting within 120 days pursuant to Code Civ. Proc. § 36(a). For the following reasons, the **motion is DENIED**. Code Civ. Proc. § 36(a), permits a party who is over 70 years of age to petition the court for trial preference, which the court ***must*** grant if it finds that 1) the party has a substantial interest in the action as a whole and 2) the health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation. In support of the motion, the moving party's attorney may submit the supporting affidavit based upon information and belief as to the medical diagnosis and prognosis of the moving party. (Code Civ. Proc. § 36.5.) In support of Plaintiffs' contention that their health is such that a preference is necessary to prevent prejudicing their interest in the litigation, Plaintiffs rely on the following single sentence in their counsel's declaration: Based upon information and belief as to the medical diagnosis and prognosis of Pete and Bertha Duca which includes numerous ailments and for Bertha a deteriorating heart condition requiring her doctors continued oversight and care, they need to conclude this case without further delay. (Catanzarite Dec., ¶ 7.) While the court empathizes with Plaintiffs' condition, nothing in Plaintiffs' motion or the attached declaration tends to show that Plaintiffs will be prejudiced if trial preference is not granted, or that Plaintiffs' ability to participate in the trial will be reduced if the trial is not set on a preferential basis. Further, "[a]dmissible evidence is still required as to the party's age (e.g., declarations by party or admissible records showing he or she is over 70). The attorney's declaration is not sufficient for this purpose." (Weil, et al., Cal. Practice Guide: Civ. Pro. Before Trial (The Rutter Group 2023) ¶ 12:247.3.) The only evidence regarding Plaintiffs' age comes from their counsel's declaration. Defendants to give notice.
3	Lampley v. Hermosa 2019 LP	The court **DENIES the motion for continuance** filed by Plaintiff El Veasta Lampley. The motion is procedurally defective. The motion was filed on April 8, 2024 [ROA #137] and noticed the hearing on the motion for April 18, 2024. A noticed motion must be served at least court days before the hearing on the motion, or March 26, 2024. (Cal Civ. Proc. Code § 1005(b).) Plaintiff's motion was served by mail [ROA ## 138 & 139], which requires adding an additional five calendar days to the notice requirement. (Cal Civ. Proc. Code § 1005(b).) As such, Plaintiff was required to serve her motion on March 21, 2024. Having served her motion for a continuance on April 8, 2024, Plaintiff failed to give defendants the requisite notice. Further, the court finds that Plaintiff has not offered sufficient evidence to substantiate a six-month continuance. While her LMFT therapist states that "it might be beneficial to currently not pursue the court case until a

later date," Plaintiff's letter is insufficient to identify the extent and scope of Plaintiff's illness. The letter does not specify that Plaintiff is unable to prosecute this action, what accommodation Plaintiff may need to continue to prosecute this action, and why a six month continuance (rather than a shorter continuance) is necessary.

A. **The Hermosa Defendants' Motion**

Defendants Hermosa 2019 LP, Scott J. Baker, Village Investments, KDF Communities, LLC, VPM Management, Inc., Paul F. Frunchbom, and Arquis Hyatt (the "Hermosa Defendants") move to strike the fifth cause of action for libel, slander, and defamation of character under CCP § 425.16. For the following reasons, the **motion is GRANTED**.

a. Prong One—Conduct Arising from Protected Activity under CCP § 425.16?

Plaintiff alleges the following "false statements" at issue as the basis of her fifth cause of action against the Hermosa Defendants:

- On May 14, 2023, defendants posted a three-day notice on Plaintiff's front door stating that Plaintiff had breached the lease agreement. (FAC, ¶ 110). Plaintiff alleges that the contents posted in the notice were false and were posted in public view. (FAC, ¶ 111).

- On May 19, 2023, the defendants posted a second three-day notice posted on Plaintiff's door. (FAC, ¶112) Plaintiff alleges that the contents posted in the second notice were also false and were posted in public view. (FAC, ¶ 113).

Service of a three-day notice to quit was a legally required prerequisite to the filing of the unlawful detainer action. (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1480.) Prelitigation communications constitute "communications preparatory or in anticipation of bringing an action or other official proceeding." (Id.) "Consequently, service of the notice to quit [i[s protected communicative activity under section 425.16. (Id.)

The court, therefore, finds that the Hermosa Defendants have met their burden of establishing the first prong of the anti-SLAPP analysis—i.e., that the alleged conduct that serves the basis of Plaintiff's fifth cause of action "arises from" protected activity under section 425.16.

b. Prong Two—Minimal Merit re Probability of Prevailing at Trial

The burden now shifts to Plaintiff to provide with admissible evidence the minimal merit of her fifth cause of action against the Hermosa Defendants. Plaintiff has failed to file an opposition offering any evidence to establish the minimal merit of her cause of action.

The **motion is, therefore, GRANTED**.

B. **Wallace's Motion**

Defendant Earl Wallace's special motion to strike the entire first amended complaint by Plaintiff under CCP § 425.16 is **DENIED**.

In this "sometimes difficult area of pretrial procedure" (*Baral, supra,* at 396), *Baral* instructs, as far as the first prong of the analysis, that the

"proper subject of a special motion to strike [is] a "claim," a term that also appears in section 425.16(b)(1)." (*Baral, supra*, at 382, footnote omitted). In focusing on claims and not causes of action, courts are no longer restricted by an all-or-nothing relief to a cause of action, at least as to the first prong.

Where a cause of action contains "mixed" claims involving both protected and unprotected activity, courts look at particular allegations within a cause of action, applying a now-modified analysis of the first prong as instructed in *Baral,* as follows: "***At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them***. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage." (*Baral, supra,* at 396.)

At this first step, courts are to "consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009). "The defendant's burden is ***to identify what acts each challenged claim rests on*** and to show ***how those acts are protected*** under a statutorily defined category of protected activity." (Id.) "If a cause of action contains multiple claims and a moving party fails to identify how the speech or conduct underlying some of those claims is protected activity, it will not carry its first-step burden as to those claims." (*Id.* at 1011). "The nonmovant is not faced with the burden of having to make the moving party's case for it." (*Id*.)

Here, Defendant Wallace fails to identify the specific acts alleged in Plaintiff's complaint and show how ***each*** of those acts is protected under section 425.16. Further, Defendant Wallace fails to identify how the alleged conduct and/or protective activity serves as the basis of each of the causes of action alleged against Wallace. Rather, Wallace conclusively testifies that his only involvement with Plaintiff is where he represented "Plaintiff's former landlord, Hermosa 2019 LP ("Hermosa") and its management company, VPM Management, Inc. ("VPM") in connection with the underlying unlawful detainer proceedings, including prelitigation letters and notices and [that he] represented Arden Hoang in this action." (Mvg. Wallace Decl., ¶ 3.) He also declares that he provided legal advice to VPM regarding the content of its form Tenancy Agreement. (Id.) He makes the categorical conclusion that "every alleged at or omission by me which could have affected Plaintiff in any way was related to the Law Firm's representation of Hermosa and VPM in connection with the underlying unlawful detainer proceedings and my representations of Arden Hoang in this action." (Id. ¶ 5.)

Wallace, however, does not identify each statement or communication alleged in the FAC (e.g., various emails and letters) and establish how *each* statement was protected under CCP 425.16 and that the protective activity supports each cause of action that Plaintiff asserts against Wallace. By failing to identify how the speech or conduct underlying some of those claims is protected activity, Wallace failed to meet his first-step burden as to these claims.

Further, Wallace makes the blanket contention that every statement is protected by the litigation privilege.
"The litigation privilege of *Civil Code section 47* pertains to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects

		of the litigation; and (4) that have some connection or logical relation to the action." *(Abuemeira*, 246 Cal. App. 4th at 1299). "The privilege applies to any publication or other communication required or permitted by law in the course of a judicial or quasi-judicial proceeding ***to achieve the objects of the litigation***, whether or not the publication is made in the courtroom or in court pleadings, and whether or not any function of the court or its officers is involved." (*Rothman v. Jackson* (1996) 49 Cal. App. 4th 1134, 1140.) "A notice of eviction is a communication regarding prospective litigation, and, as such, it is <u>not *necessarily*</u> part of a judicial proceeding." (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1486.) To be protected by the litigation privilege, a communication must be 'in furtherance of the objects of the litigation.' (*Id*.) A prelitigation communication is privileged only when it relates to litigation that is contemplated in good faith and under serious consideration. (*Id*.) Here, Wallace has failed to meet his burden of showing that the communications alleged were each "in furtherance of the objects of the litigation." **Wallace's motion** is, therefore**, DENIED.**
4	Lucaci v. Hoag Memorial Hospital Presbyterian	Defendant Hoag Memorial Hospital Presbyterian's **Demurrer** to Plaintiff Christian Lucaci's Second Amended Complaint is **OVERRULED**. Defendant is ordered to file and serve its responsive pleading to the Second Amended Complaint within 30 days of Plaintiff providing notice of the Court's ruling. The Court further finds Defendant adequately met and conferred prior to filing the Demurrer. Plaintiff's **Motion to Compel** Defendant to Serve Further Responses to his Request for Production of Documents, Set One, is **GRANTED**. Defendant is ordered to serve further verified responses within 30 days of Plaintiff providing notice of the Court's ruling. The Court denies both parties' requests for monetary sanctions. <u>Demurrer</u> Defendant demurs to the sixth cause of action for Whistleblower Violations. Defendant's Demurrer is overruled. "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." (Lab. Code, § 1102.5, subd. (b).)

		An employee alleging retaliation under subdivision (b) of section 1102.5 "must show only that he or she *reasonably believed* that there was a violation of a statute, rule, or regulation…." (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719.) An employee who reports wrongdoing directly to his employer, or to his supervisor, engaged in a protected activity under section 1102.5, subdivision (b) of the Labor Code. (*People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719, 729-730.) To establish a prima facie case under a cause of action for retaliation under section 1102.5 of the Labor Code, Plaintiff "must show (1) [he] engaged in a protected activity, (2) [his] employer subjected [him] to an adverse employment action, and (3) a causal link between the two. [Citations.]" (*St. Myers v. Dignity Health* (2019) 44 Cal.App.5th 301, 314.) " 'The retaliatory motive is "proved by showing that plaintiff engaged in protected activities, that his employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter." [Citation.]' [Citation.] 'Essential to a causal link is evidence that the employer was aware that the plaintiff had engaged in the protected activity.' [Citation.]" (*Morgan v. Regents of University of Cal.* (2000) 88 Cal.App.4th 52, 69-70.) An "adverse employment action" requires that the adverse action materially affect the terms and conditions of employment. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387, disapproved, on other grounds, as discussed in *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718 [plaintiff need not satisfy *McDonnell Douglas'* three-step analysis in order to discharge its burden of establishing, by a preponderance of the evidence, that retaliation for an employee's protected activities was a contributing factor in a contested employment action]; accord, *Rodriguez v. Laboratory Corporation of America* (C.D. Cal. 2022) 623 F.Supp.3d 1047, 1055.) "The 'materiality' test of adverse employment action … looks to 'the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance *or opportunity for advancement in his or her career,*' and the test 'must be interpreted liberally ... with a reasonable appreciation of the realities of the workplace....' [Citations.]" (*Patten*, *supra*, 134 Cal.App.4th 1378, 1389-1390.) Plaintiff alleged he engaged in a protected activity by complaining to his supervisors that his health prevented him from being exposed to certain drugs and pathogens, and from administering certain procedures. This implicates sections 6300 and 6311 of the Labor Code, which prohibit the retaliation against an employee who refuses to perform work that would create a real and apparent hazard to the employee, as well as sections 12920 and 12940 of the Government Code, which prohibit employers from harassing, discriminating, and retaliating against employees based on the employees' disabilities. (Second Amended Complaint, ¶¶ 122, 125-127; see also Second Amended Complaint, ¶¶ 122(f), (h), (j), 123(b), (e), (l), 128-131 [alleging Defendants violated the law].) In response to Plaintiff's complaints about Defendant's potential violations of the law, Defendant subjected Plaintiff to an adverse employment action because, among other things, it refused to accommodate Plaintiff, which exacerbated his medical conditions, and which ultimately resulted in his constructive termination. (Second Amended Complaint, ¶ 123.) Plaintiff alleges the adverse employment

action was made in direct response to Plaintiff's protected activities. (Second Amended Complaint, ¶¶ 120, 122-123, 130.)

Contrary to Defendant's contention, Plaintiff does not merely allege he notified Defendant of his medical condition.

The Demurrer is overruled.

Motion to Compel

Parties can conduct discovery through, among other methods, requests for production of documents. (Code Civ. Proc., § 2031.010.) The responding party must provide complete and straightforward responses to the written discovery requests; to the extent it objects to the request, is unable to comply with the discovery request, or lacks sufficient information or knowledge to provide a complete and straightforward response, it must so state. (Code Civ. Proc., §§ 2031.210-2031.240.)

Under the Civil Discovery Act, "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 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." (Code Civ. Proc., § 2017.010; *Los Angeles Unified School Dist. v. Trustees of the Southern California IBEW-NECA Pension Plan* (2010) 187 Cal.App.4th 621, 627-628.)

"Thus, for discovery purposes, information is relevant to the 'subject matter' of an action if the information might reasonably assist a party in evaluating a case, preparing for trial, or facilitating settlement." (*Jessen v. Hartford Cas. Ins. Co.* (2003) 111 Cal.App.4th 698, 711-712; *Los Angeles Unified School Dist.*, *supra*, 187 Cal.App.4th at pp. 627-628; *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1013; *Willis*, *supra*, 112 Cal.App.3d at p. 290.) This is because one of the purposes of the statutes establishing the expansive scope of discovery is to eliminate surprise at trial, to educate parties concerning their claims and defenses so as to encourage settlement and to expedite and facilitate trial. (*Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1249.)

"'Admissibility is *not* the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence. [Citation.] These rules are applied liberally in favor of discovery [citation], and (contrary to popular belief), fishing expeditions are permissible in some cases.' [Citations.]" (*Stewart*, supra, 87 Cal.App.4th at p. 1013.) Further, in resolving a discovery dispute, the trial court does not determine whether the disputed discovery will be admissible at trial. Instead, "[i]t can only attempt to foresee whether it is possible that information in a particular subject area could be relevant or admissible at the time of trial." (*Maldonado v. Superior Court* (2002) 94 Cal.App.4th 1390, 1397.)

A motion to compel further responses to RFP's must "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1).) "To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will

tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact." (*Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224, disapproved of, on other grounds, by *Williams v. Superior Court* (2017) 3 Cal.5th 531 [disapproving prior cases that held a party seeking discovery of private information was always required to establish a compelling interest of compelling need, without regard to the other considerations articulated in *Hill v. National Collegiate Athletic Assn.*(1994) 7 Cal.4th 1].)

Given the foregoing law, Plaintiff has established good cause to further responses to his request nos. 55 and 60.

Request no. 55 seeks the production of all communications between Plaintiff and Defendant for the past five years, and regarding the allegations of Plaintiff's lawsuit. The documents responsive to this request are subject to discovery because, among other things, they would assist in determining whether Plaintiff advised Defendant of his medical condition, and whether Defendant harassed, discriminated, or retaliated against Plaintiff, or whether it failed to accommodate Plaintiff.

Request no. 60 seeks the production of all documents that Plaintiff may have filed with any government agency, and which Defendant may be in possession of. These documents would show whether Defendant retaliated against Plaintiff for filing said charges. It would also assist Plaintiff in establishing whether Defendant knew of Plaintiff's medical condition, yet refused to accommodate him, which resulted in Plaintiff's alleged constructive termination.

Defendant provided objection-only responses to both requests, but none of its objections have any merit. First, neither request was vague, ambiguous, unintelligible, overly broad of burdensome. Second, while Defendant objected based on the privacy rights of third-parties, as well as potential violations of the attorney-client privilege and/or the attorney work product doctrine, Defendant neither produced a privilege log nor identified any communications that may implicate the privacy rights of non-parties.

Defendant also objects that these requests are duplicative of document requests from deposition notices. However, Plaintiff is permitted to seek the same information through different discovery devices. (*Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 996-997.)

Defendant also raises the argument that Plaintiff seeks the production of documents Plaintiff owns, or that are otherwise in Plaintiff's control. Regardless of whether Plaintiff is in possession of said documents, Defendant was still an under an obligation to produce documents in its possession, custody, or control. (Code Civ. Proc., § 2031.010.)

Finally, Defendant contends Plaintiff refused to meet and confer in good faith as to these two requests. Not so, as Exhibits E, H, I, and J to the Candiotti Declaration, as well as Exhibits 4 through 6 of the Angel Declaration, show the parties did discuss these two requests, even if Defendant was unsatisfied with Plaintiff's rationale as to why these two requests required further responses.

<u>Sanctions</u>

"Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against

		any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310, subd. (h).) Since the Court grants Plaintiff's Motion to Compel, Hoag's request for $2,580.00 in sanctions (Angel Declaration, ¶ 10) is denied. Plaintiff requests $5,835.00 in sanctions, or 10.5 hours at $550.00 per hour, plus the $60.00 filing fee. (Candiotti Declaration, ¶¶ 14-18.) Since the parties met and conferred extensively, and they were able to resolve the Motion as to all but two requests, the Court finds Hoag "acted with substantial justification," or that Hoag's meet-and-confer efforts "make the imposition of the sanction unjust." Plaintiff to give notice.
5	Lu v. Tung	Defendants Derek C. Tung and Law Office of Tung & Company, Inc.s' Motion for Order Striking and/or Reducing Costs is **DENIED as untimely**. A motion to tax costs to enforce a judgment must be filed "[w]ithin 10 days after the memorandum of costs is served on the judgment debtor…." (Code Civ. Proc., § 685.070, subd. (c); see Code Civ. Proc., § 685.070, subd. (f) ["Section 1013, extending the time within which a right may be exercised or an act may be done, applies to this section"].) "If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed." (Code Civ. Proc., § 685.070, subd. (d).) "There are no exceptions to this rule, and the language of subdivision (d) is mandatory." (*Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 146; see *Briggs v. Elliiott* (2023) 92 Cal.App.5th 683, 697 [because " 'there are no exceptions'" to the rule enumerated in *Lucky United*, if a motion to tax costs is not timely filed, the "court has a 'mandatory' duty to allow such costs"].) The Post-Judgment Memorandum of Costs was served, by first-class mail, on January 2, 2024. Defendants admit they received the Post-Judgment Memorandum of Costs on January 5, 2024. (Tung Declaration, ¶ 2.) Thus, Defendants were required to file and serve their Motion no later than January 17, 2024, or 10 days after service of the Post-Judgment Memorandum of Costs, plus five additional calendar days since service was accomplished by first-class mail. (Code Civ. Proc., §§ 685.070, subds. (c), (f); 1013, subd. (a).) While the Motion's proof of service indicates it was electronically served on January 10, 2024, the Motion was not filed until January 31, 2024. This renders the Motion untimely, as a motion "is deemed to have been made and to be pending before the court for all purposes, upon the due service and filing of the notice of motion…." (Code Civ. Proc., § 1005.5; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 320 [a motion is made, according to section 1005.5 of the Code of Civil Procedure, " 'upon the due service and filing of the notice of motion' "]; see *In re R.R.* (2010) 187 Cal.App.4th 1264, 1276 [motion to quash untimely

		where it did not comply with court's local rule that the motion be personally served at least five calendar days before the hearing].) Since Defendant's Motion was untimely, the Court has a mandatory duty to allow the costs sought in the Post-Judgment Memorandum of Costs. (*Briggs*, *supra*, 92 Cal.App.5th at p. 697.) Plaintiff to give notice.
6	LVNV Funding LLC v. Rader	Plaintiff LVNV Funding LLC moves to deem admitted the truth of each matter specified in the Requests for Admission served on Defendant Michael Rader on July 17, 2023. Plaintiff's unopposed motion is GRANTED. Due to Defendant's failure to serve responses to the requests, Defendant has "waive[d] any objection to the requests, including one based on privilege or on the protection for work product . . . ." (Code Civ. Proc., § 2033.280(a).) Pursuant to Code of Civil Procedure section 2033.280(c), "[i]t is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated" the motion. Accordingly, because Defendant's failure to serve timely responses to Plaintiff's Requests for Admission caused the filing of the instant motion, the court ORDERS Defendant Michael Rader to pay $1.00 to Plaintiff LVNV Funding LLC by May 30, 2024. Plaintiff to give notice.
7	Moncada v. Disney Way Hotel Partners, LLC	Defendant Disney Way Hotel Partners, LLC's Motion to Quash Subpoena for Business Records is DENIED. (See Code Civ. Proc., § 1987.1.). The court finds that the discovery of documents relating to extermination services on the subject property is relevant as these records may establish notice, history of treatment, and information regarding the presence of bed bugs at the subject property. Defendant failed to meet its burden establishing that the subpoena should be narrowed to "the relevant area of the hotel," and that records relating to other areas would be too burdensome. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 [party opposing discovery has an obligation to supply the basis for determination of burden]; Defendant's Motion at 9:1-2). Plaintiffs' objections to the Tracy Anielski declaration are sustained as to #1, 2, 3 and 4 (relevancy only), and otherwise overruled. Moving party shall give notice.
8	Monsen v. White	Off calendar.
9	Newlane Finance Company v. Coollid Corporation	Plaintiff Newlane Finance Company's **Motion for Attorney's Fees is GRANTED.** Plaintiff moves for attorney's fees in the amount of $25,355.00, pursuant to Civ. Proc. Code §§ 1033.5(a)(10)(A) and 1033.5(c)(5)(B). Plaintiff is the prevailing party in this action following a motion for

		summary adjudication as to Plaintiff's causes of action for breach of written agreement, claim and delivery, and breach of personal guarantee. (ROA 70, 77.) Plaintiff has produced a copy of the financing agreement signed by Defendant Coollid Corporation, and the personal guaranty by Defendant Michael Milan, as well as the assignment of the agreement to Plaintiff. (Decl. of Jacqueline James, Exhibits A, B, and C). Plaintiff submitted counsel's billing entries in support of its motion. (Decl. of James, Exhibit D). Defendants have not opposed the motion nor challenged the reasonableness of the billing entries submitted by Plaintiff. Accordingly, the court grants the motion and awards Plaintiff $25,355.00 in attorneys' fees. Plaintiff shall give notice.
10	Ohmer v. Focus Signs and Graphics, Inc.	Plaintiff Gerald Ohmer moves to compel Defendant Cogent Signs & Graphics, Inc. to provide further responses to form interrogatories (set one) numbers 4.1, 4.2, 15.1, 16.2, 16.3. For the following reasons, the motion is GRANTED. Form interrogatories 4.1 and 4.2 seeks information about an insurance apply that might apply for the claims arising from the incident at issue in the lawsuit. Defendant responded to form interrogatory 4.1 with one word – "INSURANCE" – and did not respond to form interrogatory 4.2. Form interrogatory 15.1 seeks information about Defendant's denials of the material allegations of the Complaint and about the affirmative defenses asserted by Defendant. Defendant did not respond to subparts (b) or (c) to this interrogatory, nor did Defendant respond to any part of form interrogatory 15.1 as to the affirmative defenses asserted by Defendant. Form interrogatory 16.2 asks whether Defendant contends that Plaintiff was not injured in the incident and if so, it seeks a variety of related information. Defendant did not respond to any of the subparts to this interrogatory. Form interrogatory 16.3 asks whether Defendant contends that Plaintiff's claimed injuries were not caused by the incident and, if so, it seeks related information. Defendant has not responded to subparts (b) and (d) to this interrogatory. Defendant is ordered to provide further verified responses within 20 days of this ruling. Defendant is ordered to pay sanctions in the amount of $1,410 (3 hours at $450/hour + $60 filing fee), payable by May 23, 2024. (Code Civ. Proc. § 2030.300.) Plaintiff to give notice.
11	Terry v. Volkswagen Group of America, Inc.	Off Calendar.