TENTATIVE RULINGS
Judge SHEILA RECIO, Dept. W8

Law & Motion is heard on Fridays at 9:30 a.m.

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POSTING TENTATIVES: Department W8 endeavors to post tentative rulings for law and motion hearings by 5 p.m. on Thursdays. **Do NOT call the Department for a tentative ruling if none is posted. The court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

SUBMITTING ON THE TENTATIVE: If ALL sides intend to submit on the tentative ruling, please advise the Department's clerk or courtroom attendant by calling **(657) 622-5908**. If so advised, the tentative ruling shall become the court's final ruling and the prevailing party shall file and serve a Notice of Ruling and if appropriate, prepare a Proposed Order pursuant to Rule 3.1312 of the California Rules of Court. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

NO APPEARANCES: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court will determine if the matter is taken off calendar, the tentative ruling becomes the final ruling, or a different order is issued at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

REMOTE APPEARANCES: Department W8 conducts non-evidentiary proceedings, including law and motion via Zoom through the court's online check-in process available through the court's website at https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings. All counsel and self-represented parties appearing for such hearings **must check-in at least 5 minutes before** the 9:30 a.m. hearing on Friday.

The court encourages the parties and attorneys to take advantage of remote appearances for non-evidentiary hearings to reduce travel time, parking costs, and potential hearing delays. However, keep in mind that potential technological or audibility issues could arise when using remote

technology, which may require a delay of or halt the proceedings. To help avoid such, please log in and test your equipment in advance of the hearing. Also, if technological or audibility issues arise during the proceeding, please call **(657) 622-5908.**

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IN-PERSON: Parties preferring to appear in-person for a law and motion hearing may do so, consistent with Section 367.75 of the Code of Civil Procedure and Orange County Local Rule 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

April 15, 2025

#	Case Name	
1	Vazquez vs. Ashleigh Aiken, in her capacity as mayor of the City of Anaheim	Demurrer The court **OVERRULES** Respondent and Defendant CITY OF ANAHEIM's (the "City") general demurrer to each of the five causes of action in the Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief (the "Petition"). (Code of Civ. Proc., § 430.10(e).) The Petition contains the following five causes of action: (1) writ of mandate – Code of Civ. Proc., § 1085, (2) injunctive relief, (3) declaratory relief, (4) restitution, and (5) violation of Civil Rights – 42 U.S.C. § 1983. ***5th C/A (violation of civil rights)*** First, the court notes that Petitioners dismissed the fifth cause of action on 12/17/24. (Request for Dismissal, filed 12/17/24 [ROA 87].)

As such, **the demurrer to the fifth cause of action is OVERRULED as MOOT**.

Remaining C/As:

All of the remaining causes of action challenge City of Anaheim regulations enacted under Ordinance 6449 § 3. Specifically, the first cause of action (for writ of mandate) alleges that the City breached its duty to carry out their sidewalk vending ordinances in full compliance with Government Code sections 51036 et seq., including a duty "not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038." (Pt'n, ¶¶ 27, 34.) The second cause of action (for injunctive relief) seeks an injunction prohibiting the City from enforcing the Anaheim Municipal Code Chapter 4.52 and 4.10.010, and barring City Code Enforcers and Officers from engaging in harassing conduct related to these portions of the Municipal Code. (Pt'n., ¶ 41.) The third cause of action seeks a judicial declaration that the Anaheim Municipal Code Chapter 4.52 and 4.10.010 sections violate Government Code sections 51036 et seq., that the City has denied Petitioners their rights by adopting and enforcing the challenged Anaheim Municipal Code sections, including, but not limited to, harassing conduct by city officers, citations, and impoundment of personal property. (Pet. ¶ 46.) Finally, the fourth cause of action asserts that Petitioners are entitled to restitution for the goods and wares confiscated by the City. (Pt'n, ¶ 50.)

Rather than addressing each cause of action separately, the City makes the following four arguments as to each cause of action: (1) the cause of action is time-barred, (2) Petitioners failed to exhaust their administrative remedies, (3) the City's provisions are authorized as time, place, and manner regulations to address objective health, safety, and welfare concerns, and (4) Government Code section 51039 applies only to criminal punishments, and does not prohibit purely civil remedies such as impoundment.

(1) Statute of Limitations

First, the City contends each of Petitioners' claims is barred by the three-year statute of limitations in Code of Civil Procedure section 338(a) because the City's obligation to comply with SB 946 is a statutory obligation that accrued in 2018, when the City last amended its vending ordinance in 2018 relating to the Resort Area prohibition.

"[F]or a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed. [Citation.]" (*Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 420.)

Code of Civil Procedure section 338(a) provides a three-year statute of limitations for cases asserting liability created by statute. (Code Civ. Proc., § 338(a).) A liability is "created by statute" within the meaning of section 338 "[w]here a statutory scheme has been adopted that gives rise to newly created rights." (*Winick Corp. v. General Ins. Co.* (1986) 187 Cal.App.3d 142, 145.)

Preemption claims accrue on the effective date of the assertedly preempted statute. (*County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1326 [holding where the gravamen of the plaintiff's action is a challenge to the validity of an ordinance, the claim accrues upon the effective date of the ordinance]; *see also Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 773 [preemptive statute]; *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815 [holding that generally, a cause of action accrues upon the occurrence of the last element essential to the cause of action].)

Here, Petitioners' claims are not clearly and affirmatively time-barred on the face of the Petition. As the court noted in its prior ruling, Petitioners here challenge the City's authority to impound street vendors' property. (*See* ROA # 123 [citing Petition at ¶¶ 22, 32, 35, 46].) Judicially noticeable facts show the relevant ordinance was adopted in 2024 (*see* RJN, Exs. E, I), and Petitioners filed this action later the same year.

Re Reconsideration: Petitioners argue that the demurrer is an improper motion for reconsideration, as some of the issues were previously addressed when the court ruled on Petitioners' motion for reconsideration.

The court disagrees. The City is not requesting that the court reconsider the motion for preliminary injunction. As such, there is no apparent requirement that Defendant must comply with Section 1008 of the Code of Civil Procedure.

(2) Exhaustion of Administrative Remedies

Next, the City argues that Petitioners failed to exhaust the administrative remedies provided in Anaheim Municipal Code sections 4.52.080 and 4.52.080.101 prior to filing suit.

Generally, the Government Claims Act requires plaintiffs to file a written claim with the public entity within six months of the accrual of the cause of action, as a prerequisite to filing a civil claim. (Gov. Code, § 911.2.) Exhaustion of administrative remedies is a prerequisite to jurisdiction in the courts. (*See, e.g., Campbell v. Regents of Univs. of Calif.* (2005) 35 Cal.4th 311, 321-322.)

As this court previously ruled, failure to exhaust administrative remedies does not bar the Petition to the extent the claims combine a facial constitutional challenge with an as-applied challenge. (See 1/24/25 Minute Order (ROA 123) ruling on motion for preliminary injunction, citing *Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1077-1078 ["However, to the extent this is a facial challenge to the constitutionality of Prop. A, through the medium of the cause of action for violation of federal civil rights (42 U.S.C. § 1983), there is no bar of exhaustion of administrative remedies"]; *see also J.L. Thomas, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 916, 924 [person has standing to challenge facial validity of statute in declaratory relief without exhausting administrative remedies].)

The City appears to concede that the causes of action include a facial constitutional challenge. (See, e.g., Am. Dem. Mem. of Pts. & Auth. at 1:6-10.) As such, the City cannot show these causes of actions are barred by failure to exhaust administrative claims.

(3) Expressly Authorized Regulations

Third, the City argues that the Petition fails as a matter of law because the challenged municipal code provisions are not preempted by SB 946, as SB 946 expressly authorizes time, place, and manner regulations.

Here, the Petition alleges facts to support an as-applied challenge. Specifically, the Petition alleges the regulations are enforced to prevent all sidewalk vending in certain areas and constitute harassment. (See Ptn., ¶¶ 21, 27, 41, 46.) As such, these allegations raise questions of fact that cannot be resolved on demurrer.

(4) Impoundment

Finally, the City argues that Petitioners are mistaken that the City's impoundment provision constitutes "punishment" that is prohibited by Section 52039.

The argument however is not proper for a general demurrer.

Accordingly, the demurrer to each cause of action is OVERRULED.

Requests for Judicial Notice:

City's RJN:

The City requests the court take judicial notice of the following:

- Ex. A: certified copy of City Ordinance No. 5750 (2000)
- Ex. B: certified copy of the Staff Report for the December 12, 2000 City Council Meeting
- Ex. C: certified copy of the 07/13/2000 pedestrian study referred to in the staff report

		- Ex. D: certified copy of the City Ordinance No. 6449 (2018) - Ex. E: certified copy of the Staff Report for the 11/13/2018 City Council meeting - Ex. F: certified copy of City Ordinance No. 6568 (2024) - Ex. G: certified copy of the Staff Report for the 02/13/2024 City Council meeting - Ex. H: certified copy of the 05/16/2023 Orange County Report referred to in the 02/13/2024 Staff Report - Ex. I: certified copy of the Anaheim Municipal Code section 4.52.080 and 4.52.080.101 providing administrative remedies for violations of the City's vending regulations and impoundment remedy - Ex. J: certified copy of the 06/28/2018 Report of the Assembly Committee on Local Government, included within the legislative history of SB 946.[1] The court **GRANTS in part, and DENIES in part,** the City's Request for Judicial Notice. Specifically, the court GRANTS the request as to the City Ordinances and Municipal Code Sections (i.e., Exhs. A, D, F, I) and DENIES as unnecessary the request as to the remaining exhibits. (Evid. Code, § 452(b)-(c); *Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1474, fn. 5 [noting a court may deny a request for judicial notice, where the material referenced is not "necessary, helpful, or relevant"].) <u>Petitioners' RJN</u>: Petitioners request the court take judicial notice of previous filings and orders in this case, including: - Tab 1: 01/06/2025 Minute Order re ex parte application - Tab 2: 01/24/2025 Order re Plaintiffs' motion for preliminary injunction - Tab 3: City's opposition to the motion for preliminary injunction.

[1] The court took judicial notice of this document in ruling on Petitioners' motion for preliminary injunction. (*See* ROA # 123.)

		The court **GRANTS** Petitioners' request, albeit unnecessary. It is unnecessary to ask the court to take judicial notice of materials previously filed in this case. "[A]ll that is necessary is to call the court's attention to such papers." (Weil & Brown, Cal. Prac. Guide: Civil Proc. Before Trial (The Rutter Group 2024) ¶ 9.53.1a.) The City to Answer the Petition For Writ Of Mandate And Complaint For Injunctive And Declaratory Relief within 30 days. Petitioners to give notice. **7/21/25 CMC:** The action is not yet at issue. **The court sets Case Management Conference to Monday, July 21, 2025, at 10:00 am in Dept W8.** All appearing parties SHALL file and serve a new and timely case management statement <u>at least 15 calendar days prior</u> to the hearing as required by the rules, including California Rules of Court rule 3.725 and Local Rule 369. Petitioners to give notice.
2	Stevenson vs. FCA US, LLC	<u>Demurrer</u> The court **SUSTAINS** Defendant FCA US LLC's general demurrer to the third and fifth cause of action of the Complaint filed by EUGENE LANDERS STEVENSON. (Code of Civ. Proc., § 430.10(e).) Under the circumstances explained below, **30 days leave to amend is granted as to the third cause of action only.** **Should Plaintiff fail to timely amend, then Defendant SHALL have 30 days thereafter to file its Answer.** The Complaint asserts five causes of action. The third cause of action is for a violation of Civil Code section 1793.2(a)(3). The fifth cause of action is for "fraudulent inducement – concealment."

3rd C/A (violation of Civ. Code § 1793.2(A)(3))

Defendant argues that the third cause of action merely states generalized recitations of the Civil Code and improper conclusions of law, without alleging any facts whatsoever.

In his opposing papers, Plaintiff argues that Defendant essentially wants more specificity in the pleadings, that less specificity is required here because Defendant necessarily has those facts in its possession, and that details can be worked out in discovery.

As Defendant notes, statutory causes of action generally must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) Here, the Complaint essentially merely repeats the language of a statute, Civil Code section 1793.2(a)(3), leaving Defendant (and the court) in the dark as to the factual basis for the third cause of action. As such, the court SUSTAINS Defendant's demurrer to the third cause of action, with 30 days leave to amend.

5th C/A (fraudulent inducement – concealment)

Defendant argues that this fraud claim is not pled with the requisite specificity, especially against a corporate defendant. Defendant also argues that the economic loss rule bars the fifth cause of action.

Plaintiff argues that the fifth cause of action is "non-existent" and "[t]here is no fraud cause of action pled in this case". (See, e.g., Opp'n Br. at p. 1, lines 15-16, 18.)

As mentioned above, the Complaint contains five causes of action, and the fifth cause of action is clearly for "fraudulent inducement – concealment". See Complaint, paragraphs 54 through 62 and the heading at page 9, lines 1-3, which states in bold lettering,

"FIFTH CAUSE OF ACTION
BY PLAINTIFF AGAINST DEFENDANT FCA
(Fraudulent Inducement - Concealment)"

		As Plaintiff concedes there is no fraud, the court SUSTAINS the demurrer to the fifth cause of action without leave to amend. (See, e.g., *Setliff v. E. I. Du Pont de Nemours & Co*. (1995) 32 Cal.App.4th 1525, 1536 ["Plaintiff's papers in opposition are reliable indications of his position on the facts and we may use these statements as admissions against him"].) Defendant to give notice.
3	Skarlat vs. Hoag Memorial Presbyterian	<u>Demurrer</u> <u>Motion to Strike</u> **OFF-CALENDAR.** Defendant HOAG MEMORIAL HOSPITAL PRESBYTERIAN filed a demurrer and a motion to strike on 9/26/24, both directed at the *original* Complaint. Plaintiff MICHAEL SKARLAT filed a First Amended Complaint (FAC) on 9/17/24. The filing of the FAC renders the demurrer and motion to strike moot since the original Complaint has been superseded and the FAC is now the operative pleading. (See, e.g., *State Comp. Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 ["Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint."]; *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 ["the filing of an amended complaint renders moot a demurrer to the original complaint"].) Moving Defendant to give notice.
7	Blancas vs. Kimco Staffing Services, Inc.	<u>Motion to Compel Arbitration</u> The court **GRANTS** the Motion to Compel Arbitration filed by Petitioners RAFAEL BLANCAS, LIZET DE LA ROSA, CESAR CASIANO, ALAN CABANAS, CHRISTOPHER DRAKE, SCOTT MORENO, CRISTAL ESTRADA, ROBERT MEINHARDT, DEBBIE HERNANDEZ, and JOSE CAMACHO, as against Respondent KIMCO STAFFING SERVICES INC.

Based upon the documents presented, the court finds that the parties entered into a written agreement to arbitrate and that the claims are covered by that agreement.

Respondent does not dispute the existence of the arbitration agreements or dispute that the agreements cover the claims at issue. Rather, Respondent argues that arbitration should not be compelled based upon exceptions in the arbitration statute (Code of Civ. Proc., § 1281.2). More specifically, Respondent first argues that the motion (and entire Petition for Order Appointing Arbitration) is moot because Petitioners are members of a pending class settlement in class action JCCP 5321 involving the same claims. Second, Respondent argues that Petitioners explicitly waived arbitration by agreeing to stay their arbitration then proceeding to file a litigation as members of a class seeking relief for the same data breach in state court.

Section 1281.2 of the Code of Civil Procedure provides,

> "the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> "The right to compel arbitration has been waived by the petitioner; or
> …
> "A party to the arbitration is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact."

(Code of Civ. Proc., § 1281.2(a), (c).)

(1) Mootness based upon JCCP 5321?

Respondent's first argument re mootness appears to be based upon Subsection (c) of Section 1281.2. That provision however does not appear to apply here. Subsection (c) concerns another pending action "with a

third party". Respondent does not show that any such third party is involved here.

Moreover, Respondent does not show that Petitioners are parties in the other action. None of the Petitioners in the instant action appear to be named Plaintiffs in the other action. Respondent simply highlights that the same counsel represents the named class action plaintiff (Pittman) and the 69,688-employee class would include Petitioners. Respondent proffers the Class Action Complaint filed on 12/21/23 (Balatero Decl., ¶9, Exh. 3) but Respondent did not argue or show that any class has been certified by the court. Moreover, "[u]named parties may be considered 'parties' for the limited purpose of discovery, but those same unnamed parties are not considered 'parties' to the litigation." (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 266-267 [also explaining that "[u]nnamed class members may become parties of record to class actions in one of two generally acceptable ways" – to wit, by (1) filing a timely complaint in intervention or (2) by filing an appealable motion to set aside and vacate the class judgment].)

Further, that Petitioners have not "opted out" of a class is also of no avail, as Respondent admits the matter has not yet been approved for settlement. Generally, putative class members are not presented with the option to "opt out" until a settlement has been reached and approved, and the settlement notices have been distributed. Respondent has produced no evidence that Petitioners were presented with any opportunity to opt out of the *Pittman* class action.

In sum, Respondent has not shown that any of the Petitioners in the instant action are parties to another action that would warrant denying the motion to compel arbitration.

(2) Waiver of Arbitration?

Respondent's second argument is that Petitioners have waived their right to arbitrate. Respondent contends that because Petitioners agreed to stay arbitration pending settlement discussions, they waived their right to compel

arbitration by filing this Petition roughly seven months later.

A court will find waiver when the party seeking to enforce a known contractual right has intentionally relinquished or abandoned that right. (*Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 475).

While Respondent suggests that Petitioners stayed the arbitration to proceed in the class action lawsuit, they fail to show such and Petitioners refute such. Petitioners also argue that any delay was only three months, and not seven months as argued by Respondent.

In any case, the evidence presented does not show that Petitioners waived any right to arbitrate.

Accordingly, the court GRANTS the Petitioners' motion to compel arbitration.

Appointment of Arbitrator

Petitioners filed a Petition for Order Appointing Arbitrator. Later, based upon the parties' stipulation, the court ordered consolidation of the Petition for Order Appointing Arbitrator with the motion to compel arbitration, for hearing on 4/18/25. (See Stip. & Order, filed 1/7/25 [ROA 43].)

Petitioners contend that Respondent has refused to engage in any arbitrator selection process without court intervention, and Respondent appears to concede such.

The arbitration agreement provides that the arbitrator "shall be a retired California Superior Court Judge, or an otherwise qualified individual to whom the parties mutually agree, and shall be subject to disqualification on the same grounds as would apply to a judge of such court." The arbitration agreement, however, does not appear to otherwise provide a *method* of appointing an arbitrator.

The court therefore ORDERS the parties to meet and confer on the method for appointing an arbitrator. If

		within 10 calendar days of the 4/18/25 hearing, the parties agree in writing to a method for appointing an arbitrator, then that method SHALL be followed. **If the parties do not agree in writing, then consistent with Section 1281.6 of the Code of Civil Procedure, the court ORDERS Petitioners and Respondent to provide a joint list of persons for nomination by this court within 10 calendar days.** The list SHALL be presented in alphabetical order by last name with no indication of which party/ies have nominated the person(s). The court will thereafter nominate five persons from this list in accordance with Section 1281.6 of the Code of Civil Procedure. **The court also sets an ADR Review Hearing for September 22, 2025, at 9:00 am in Dept. W8.** Counsel are to submit a status report regarding the arbitration no later than 10 court days prior to the hearing. Petitioners shall give notice.
8	Turner vs. Wyndham Destinations, Inc.	Motion to Dismiss or Alternatively, Quash Service of Summons ***No Tentative.***
9	Robert Allen, as Trustee of the 1989 Allen Family Revocable Trust vs. Lewis-Grenz	Motion to Strike or Tax Costs Motion for Sanctions Motion for Attorneys' Fees and Costs **Disregarded Filings:** Before completing the court's tentative rulings, the court noticed that the court file now contains several documents that were recently filed. They were filed after the last day to file reply papers. April 11 was the last day for filing a brief regarding the matters on calendar April 18. (See Code of Civ. Proc., § 1005(b).) As such, **the court DISREGARDS any briefing or other documents filed after 4/11/25 for these motions**.

		1. Motion to Strike/Tax Costs The court **GRANTS** the motion to strike filed by Plaintiff ROBERT ALLEN, as Trustee of the 1989 Allen Family Revocable Trust and Cross-Defendants ROBERT ALLEN, individually and Robert Allen, as Trustee of the 1989 Allen Family Revocable Trust (hereinafter "Plaintiff"). The motion to strike is directed at the Cost Memorandum filed on 9/3/24 by Defendants and Cross-Complainants KEVIN LEWIS-GRENZ and JULIE LEWIS-GRENZ (hereinafter "Defendants"). Plaintiff's alternative request to tax costs is therefore **MOOT**. Among other things, Plaintiff argues that Defendants filed an untimely cost memorandum. The argument is meritorious. It's undisputed that the cost memorandum was untimely filed, and there is no apparent written agreement between the parties to extend the time for serving and filing the cost memorandum. (See Cal. Rules of Court, rule 3.1700 [authorizing parties to extend the time for serving and filing the cost memorandum, which agreement must be in writing].) The time provisions relating to the filing of a cost memorandum are mandatory; and the failure to timely file and serve a cost bill may result in waiver of costs. (See *Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 929 ["The time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory."]; *Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 425-426 [same; court erred in granting costs where defendants' memorandum of costs was untimely].) In response to the motion, defense counsel states that the failure to file a timely cost memorandum was due to a miscommunication because of an unexpected family emergency for counsel. Not much information is provided as to the miscommunication or the emergency. Based on the information presented, the court does not exercise any discretion to permit the untimely cost memorandum here. The court also notes that Defendants did not file a motion

for relief pursuant to Section 473(b) of the Court of Civil Procedure, which requires a motion be filed "within a reasonable time, in no case exceeding six months".

Plaintiff to give notice.

2. Motion for Sanctions

The court **DENIES** Plaintiff's Motion for Sanctions against Defendants, made pursuant to Section 128.7 of the Code of Civil Procedure.

Plaintiff primarily argues that Defendants Cost Memorandum is improper and frivolous. Defendants primarily argue that the judgment was silent on the issue of costs and fees and that Plaintiff's sanction motion is improper because the proper method to challenge a cost memo is a motion to strike or tax costs.

Sanctions under Section 128.7 is discretionary. (Code of Civ. Proc., § 128.7(c).)

The court finds no basis to grant issue sanctions here. Based on the circumstances, the court does not find that Defendants Cost Memorandum was improper or frivolous. There is no showing, for example, that Defendants filed the Cost Memorandum of any improper purpose, such as to harass or cause unnecessary delay or increase the cost of litigation. (Code of Civ. Proc., § 128.7(b)(1).) Also, it was not frivolous for Defendants to submit a memorandum of costs even though the judgment provided for $0 in recovery for all parties. The judgment did not explicitly write $0 next to the entries for attorney fees or costs and its reasonable under the circumstances to believe a memorandum of costs was justified.

Defendants to give notice.

3. Motion for Attorney Fees

The court **DENIES** Defendants Motion for Attorneys' Fees and Costs.

The lease agreement at issue provides, "In any action or proceeding arising out of this Agreement the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 39A." (Compl, Exh. 1.) Paragraph 39A states,

> Landlord and Tenant agree to mediate any claim or dispute between them arising out of this Agreement, or any resulting transaction, before resorting to court action. If, for any dispute or claim to which this paragraph applies, commences an action to without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, that party may not claim attorney's fees if it was otherwise entitled to fees.

(Compl., Exh. 1.)

Civil Code section 1717(b) states, (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract.

The court's ruling on 6/11/24 states that Defendants breached the lease agreement, but Plaintiff's damages were covered by Defendants' $5,000 security deposit, which Plaintiff had retained after Defendants vacated the property. (ROA 262.) The court also found that Plaintiff (i.e., Cross-Defendants) do not owe anything to Defendants (i.e., Cross-Complainants) on the Second Amended Cross-Complaint. (Id.)

The evidence before the court shows that Defendants failed to comply with the mediation requirement in the lease agreement and as such, is not entitled to fees.

The court also finds that costs are not appropriate based on the 998 Offer presented. Code of Civil Procedure section 998 establishes a cost-shifting procedure when a prevailing

		party receives a less favorable judgment than a pretrial offer submitted by the opposing party. To obtain costs, the party making a Section 998 offer has the burden of demonstrating that the offer complied with the statutory requirements, and a judge is required to strictly construe the offer in the offeree's favor. (See, e.g., *Burchell v. Faculty Physicians & Surgeons Etc.* (2020) 54 Cal.App.5th 515, 533.) First, Defendants merely proffered the first page of a 998 Offer. (Pearson Decl., ¶ 21, Exh. B, p. 2 [ROA 327].)A 998 Offer was however included among the documents proffered by Plaintiff in its motion for sanctions. (Pl's Mot. for Sanctions [ROA 319], Digiuseppe Decl., ¶ 40, Exh. 8.) Even if the court considered such, it appears that the offer is defective. For example, it was not written in a manner that would require Defendants to pay any money to Plaintiff. While it states that Defendants make an offer to compromise, and that (if accepted) Plaintiff agrees to settle for $20,000.01, the 998 Offer does not require Defendants to pay anything as a result. Plaintiff to give notice.