Superior Court of the State of California
County of Orange

DEPT C18 TENTATIVE RULINGS

Judge Theodore R. Howard

The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5218. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:00 p.m. on the day before the hearing.

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Date: April 18, 2024

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1.	Doe v. Smith 23-1324888	*(Continued)*
2.	Starr v. Ashbrook 22-1246349	The motion of Plaintiff Jonathan Starr, as Trustee of the Arnold Starr Revocable Trust ("Plaintiff") to compel Defendant M. Thomas Ashbrook ("Ashbrook") to appear for deposition is DENIED without prejudice. *Code of Civil Procedure section 2025.450(a)* provides that if a party fails to appear for examination, without having served a valid objection, the noticing party may move for an order compelling the deponent's attendance and testimony. The motion to compel deposition "shall be accompanied by a meet and confer declaration under *Section 2016.040*, or, when the deponent fails to attend the deposition…by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (*Code Civ. Proc., § 2025.450(b)(2)*.) This motion was filed on January 30, 2024, before the date noticed for Ashbrook's deposition, which was February 19, 2024. Thus, at the time this motion was filed, Ashbrook had not failed to appear for deposition and, as such, this motion was filed prematurely. In addition, Plaintiff did not satisfy the requirement of *Code of Civil Procedure section 2025.450(b)(2)*, which indicates that in the case of a failure to appear, the motion shall be accompanied by a declaration showing petitioner has contacted the deponent to inquire about the nonappearance. In this case, the requirement could not have been satisfied because the motion was filed prematurely. Based on the foregoing, the motion is **DENIED** without prejudice. *Counsel for Plaintiff is ordered to give notice of this ruling.*
3.	Rock Advantage, Inc. v. The 12 Irv., Inc. 22-1276021	*(Withdrawn)*
4.	Morinello v. Traut 20-1160454	Allan E. Perry's motion to be relieved as counsel for Plaintiff Joseph Morinello is CONTINUED TO May 16, 2024. Moving party apparently failed to serve Plaintiff with the proposed order and failed to serve Defendant with all the moving papers. (*Rules of Court, rule 3.1362(d)*.) Moving party to serve a notice of continued hearing date and all required moving papers on Plaintiff and Defendant, and file a proof of service at least 10 court days before the continued hearing date. *Moving party shall give notice of ruling.*

5.	Lo v. The Great Park Neighborhoods Community Assn. 23-1339745	*(Continued)*
6.	Bautista v. Hebeish 21-1181205	The motion by defendants The Driving Academy LLC dba Varsity Driving Academy, Sean Collens and Mayah Grace Hebeish for an order compelling the plaintiff Michael Bautista to submit to additional exams by a neurologist and neurosurgeon is **GRANTED** as to the neurologist and **DENIED** as to the neurosurgeon. *Code of Civil Procedure Section 2032.220(a)* provides that any defendant may demand one physical examination of the plaintiff seeking damages for personal injuries. A party desiring to obtain discovery by a second physical examination or mental examination must obtain leave of court. (*Code Civ. Proc., § 2032.310(a)*.) The motion must be accompanied by a meet and confer declaration. (*Code Civ. Proc., § 2032.310(b)*.) The Court "shall" grant the motion only upon a showing of good cause. (*Code Civ. Proc. §2032.320(a)*.) The within action arises from an auto accident that occurred on 8/20/20. The complaint was filed 1/15/21 and on 10/18/21, plaintiff submitted to an exam by defendants' orthopedic surgeon, Dr. David Ashkenaze. Based on plaintiff's deposition and discovery responses, the defendants submit that plaintiff is claiming neurological injuries including headaches, concussion, post-concussion migraine, and post-concussion syndrome that are ongoing. Part of his treatment has included a brain MRI and anti-seizure medications. Further, plaintiff is apparently claiming memory loss. Plaintiff does not dispute that he contends these complaints are ongoing. The plaintiff's claims appear to implicate neurological complaints. Plaintiff argues that these are "foreseeable outcroppings of the original, extremely severe injuries." In light of the alleged continuing complaints, the Court disagrees with plaintiff's argument that such should have been anticipated 2 ½ years ago when Dr. Ashkenaze examined the plaintiff. In consideration of the papers submitted by both parties, the Court finds good cause for an exam by Dr. Chow. Accordingly, the motion to compel Mr. Bautista to appear for examination by Neurologist, Dr. George Chow is **GRANTED** in the limited manner as follows: Dr. Chow's examination of the plaintiff may include the taking plaintiff's medical history and a description of the mechanics of the incident. The exam may also include testing of Mr. Bautista's mental status, cranial nerves, motor, sensory, reflexes, coordination, gait and stance.

		There will be no procedures causing pain or undue discomfort. The examination will not include any diagnostic test or procedures that are painful, protracted, or intrusive. Mr. Bautista will not be required to complete any written exams or questionnaires. Mr. Bautista will not be required to complete any psychological or psychiatric tests. Although Dr. Chow can ask specific questions about plaintiff's prior treatment, Plaintiff will not be required to give a history of his prior course of treatment as that can be obtained from plaintiff's medical records. Plaintiff will be allowed to have an observer present. The exam will be limited to 90 minutes. Next is the proposed examination by Dr. Martin Cooper, a neurosurgeon. Here, the defendants have not distinguished the second exam from the prior exam by Dr. Ashkenaze. The description of the proposed exam to be performed by Dr. Cooper is identical to the description of the exam performed by Dr. Ashkenaze. (Compare Exh. A to Opp. and Exh. 6 to Motion) The only difference between the two exams is the doctor performing the exams. Defendants argue that Dr. Ashkenaze is not a spine surgeon. (See, e.g., Reply at 3:19) However, there is no declaration from Dr. Ashkenaze that he is not qualified to testify regarding the conditions of which plaintiff complains. In fact, in Dr. Ashkenze's CV, he states that he did a fellowship in spine surgery at USC and was board certified in spine surgery. (Exh 1 to Reply) It is quite clear from Dr. Ashkenaze's CV that he is a surgeon and that he treats spine injuries. On the other hand, there is no evidence as to Dr. Cooper's background other than that defense counsel describes him as a neurosurgeon. There is also no evidence as to how Dr. Cooper's exam would be different. There is no declaration from Dr. Cooper as to how his exam will be different from the exam by Dr. Ashkenaze or why Dr. Cooper needs an additional exam. Finally, there is no evidence as to how the passage of time constitutes good cause for a second exam in this instance. Although it has been 2 ½ years since the plaintiff's initial exam, there is insufficient evidence that anything has changed to justify a second exam by another doctor who also treats spine injuries. Accordingly, the motion is **DENIED**, without prejudice, as to the exam by Neurosurgeon, Dr. Martin Cooper. *Counsel for Defendants is ordered to give notice of this ruling.*

7.	Cervantes v. 4Wall Entertainment, Inc. 23-1336103	Here, the two actions arise from a car accident which occurred on April 19, 2023. The Plaintiffs in This Action and the Related Action allege they sustained damages when Defendant MORALES' truck hit their vehicle, that Defendant MORALES was an employee of Defendant W4 and acting within the course and scope of the employment relationship, and that Defendant W4 entrusted the vehicle to MORALES. The actions, however, are not identical and involve somewhat different factual scenarios. This Action involves a 3-car collision—Plaintiffs' vehicle was hit by a vehicle driven by Marciela Angeles whose vehicle was hit by Defendant MORALES' vehicle. This Action did not name Marciela Angeles and Tanya Angeles Aguilar as parties to their action. The Related Action is a 2-car collision involving only MORALES' vehicle rear ending Plaintiffs Maricela Angeles and Tanya Angeles Aguilar's vehicle. The parties are against consolidation. They contend that consolidation would not be in the interest of justice or judicial economy; that consolidation of the cases would result in a 20-25 day jury trial; that a 20-25 day jury trial would be prejudicial to the individual defendants, the plaintiffs, and counsel (one of plaintiffs' counsels are sole practitioners); that Plaintiffs in This Action have at least 10 treating facilities/doctors; that the medical records for 4 plaintiffs would be voluminous and confusing for the jury; that consolidation would be prejudicial to defendants as the jury would hear testimony concerning 4 plaintiffs; that there will be 8-10 experts total for both cases; and that the Related Action does not wish to be subjected to the delays and discovery disputes in This Action. Here, consolidation would be proper to avoid inconsistent rulings as to the cause of the accident, *i.e*., why Defendant MORALES's vehicle crashed into Plaintiffs Angeles' vehicle thereby causing that vehicle to crash into the related Plaintiffs' vehicle. However, consolidation should only be for trial purposes since the two lawsuits arise from the car accident caused by Defendant MORALES. However, trial should be bifurcated as to issues of liability and damages as the damages sustained by the Plaintiffs would be different. There is no reason why the Plaintiffs in both actions will need to appear for the damages portion of the other Plaintiffs. Trial is currently set for 3/10/2025 in This Action. There is no trial date in the Related Action. The Court designates this Action as the Lead matter and set trial for the same date.

		On the OSC re Why These Two Actions Should Not Be Consolidated, the Court finds the cases are to be consolidated for purposes of trial only with This Action as the "Lead Case." *Moving Party is to give notice.*
8.	Rodriguez v. Ring 23-1328791	The Motion for Preliminary Injunction by plaintiffs Anthony and Tracy Rodriguez is **DENIED**. The plaintiffs and defendants are neighbors. The layout of the two properties is such that the plaintiffs' garage wall is three feet from the property line of the defendants' property. At some point more than 38 years ago, the defendants' prior owners began using this three-foot strip along plaintiff's garage as part of their back yard. As a result, the plaintiff's garage wall forms part of the defendants' back yard wall. The plaintiffs recently purchased the house and obtained a survey whereupon they discovered that the three-foot area in plaintiff's back yard is actually their property. Plaintiffs submit evidence that their detached garage has experienced repeated water intrusion as a result of dirt being up against the side of their garage to a level approximately 1.5 feet above their garage floor. Plaintiffs allege that "although located on Plaintiffs' Property, access to the outside of the northern garage wall and the planter bed is blocked by a wall. Plaintiffs cannot access this portion of their property without either crossing over Defendants' Property or climbing over the wall blocking access." (Complaint at ¶9) Plaintiffs state in the Motion that "due to a common wall separating the properties, Plaintiffs cannot gain access to the outside of their own northside garage wall without either knocking down the wall or trespassing upon Defendants' property." (Motion at 5:16-18) By way of the subject motion, the plaintiffs seek an order to: "(1) prohibit Defendants Richard G. Ring and Gloria E. Ring from trespassing upon Plaintiffs' property by maintaining any dirt plater and/or irrigation lines, and/or any other landscaping that is causing repeated, ongoing property damage to Plaintiffs' garage in the form of water damage, termite infestation, flooding, and toxic levels of mold growth; and (2) prohibit Defendants from preventing Plaintiffs from performing remediation repairs to Plaintiffs' garage and any other property within Plaintiffs' property line." "[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and

		mandatory if it compels performance of an affirmative act that changes the position of the parties." (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446) A mandatory injunction requires a person to take affirmative action that changes the parties' position. (See, *e.g., Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572 [injunction requiring removal of structure].) Here, the plaintiffs seek a mandatory injunction. Where the requested injunction is mandatory, it changes the status quo, and therefore is scrutinized "more closely" for abuse of discretion. (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1047–1048.) "A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal. The granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625 [internal quotations omitted]. Before an injunction is issued, a party has the burden of showing that irreparable harm will be suffered if the injunction is not issued. (See *Tiburon v. Northwestern Pacific Railroad Co.* (1970) 4 Cal.App.3d 160, 179.) Plaintiff bears the burden to satisfy this requirement. (*Loder v. City of Glendale* (1989) 216 Cal. App. 3d 777, 782–83.) Under California law, "if monetary damages afford adequate relief and are not extremely difficult to ascertain, an injunction cannot be granted." (See *Thayer Plymouth Center Inc. v. Chrysler Motor Corp.* (1967) 255 Cal.App.2d 300, 306.) Moreover, "[t]he determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court." (*14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) The plaintiffs assert that the water intrusion caused by the dirt remaining up against their garage has made them unable to use their detached garage. As a result of the water intrusion, the plaintiffs will have to park their vehicles on their driveway and will not be able to use the garage for storage or other uses. The Court does not find the remedy at law to be inadequate as the value of a parking space, or a storage space, or the use of a detached garage, is calculable and it is anticipated to be an issue for the upcoming trial. Further, in balancing the harms, the Court finds the balancing favors the defendants. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678 – Court must balance relative harm and likelihood of success.) Here, since this is a mandatory injunction, there is a higher

		level of scrutiny. While the likelihood of success favors the plaintiffs, balancing the harm weighs in favor of the defendants. What plaintiffs seek is a substantial alteration to the plaintiff's property that has existed for more than 38 years and therefore presumably been an ongoing issue. (See Gloria Ring Decl. at ¶6 – "When we originally purchased the Ring Property in June 1986, there was already in existence a planter, which ran along the perimeter of the Ring Property."). The proposed construction and intrusion upon plaintiffs' property is substantial. Further, to the extent plaintiffs want to remove mature trees, the alteration is permanent. Also, the process of making the changes will cause significant interference with the plaintiffs' use of the property. The harm to the defendants is apparent and significant. On the other hand, the harm to the plaintiffs is that they will not be able to use their detached garage and a condition that has existed for 38 years will continue to exist for another 8 months until the matter comes to trial. Defendants' Objections to the declaration of Rogelio Romero are **OVERRULED**. Accordingly, the motion for preliminary injunction is **DENIED**. *Counsel for plaintiffs is ordered to give notice of this ruling.*
9.	Turner v. Peraton, Inc. 23-1313331	Defendant, Insight Global, LLC ("Defendant") moves, pursuant to *Code Civ. Proc. § 1008*, for reconsideration of the Court's January 11, 2024 Order denying Defendant's motion to compel arbitration of the claims of Plaintiff, Jon Turner ("Plaintiff"). For the reasons set forth below, the motion is **DENIED**. The burden under *CCP section 1008* "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Sup.Ct.* (*Wall St. Network, Ltd*.) (2005) 135 Cal.App.4th 206, 212-213.) The party seeking reconsideration must also provide a satisfactory explanation for failing to present the information at the first hearing; *i.e*., a showing of reasonable diligence. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690; *California Correctional Peace Officers Ass'n v. Virga* (2010) 181 Cal.App.4th 30, 47, fn. 15 (collecting cases).) The Court finds the motion does not meet the requirements of *section 1008(a).* A good portion of this

		motion is dedicated to rearguing Defendant's contentions made in its motion to compel arbitration and reply brief. (See Mtn. at 8:10-11:18.) However, the Court fully considered those arguments when rendering its decision. (See Minute Order dated January 11, 2024; see also, *Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 846; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 167-168.) The Court, in its January 11, 2024 Order, engaged in a detailed discussion of the relevant authorities and Defendant's evidence, and found that Defendant's evidence failed to properly authenticate the arbitration agreement and Plaintiff's purported signature on the agreement. (See Minute Order dated January 11, 2024.) Thus, to the extent Defendant simply reiterates its arguments made in its motion to compel arbitration and reply brief, the Court previously fully considered those arguments, and the requirements of *section 1008* are thus clearly not met. Defendant also contends new facts warrant reconsideration of the prior order. These "new" facts consist of declarations from Defendant's Senior Solutions Analyst (Daniel Kutka), a Professional Recruiter employed by Defendant (Tara Abdi), and Defendant's Manager of Security Operations (Christopher Wood). Defendant fails to offer a satisfactory explanation for why the foregoing evidence was not submitted during the initial proceedings. Defendant claims that it learned for the first time on December 28, 2023, when Plaintiff filed its opposition to the motion to compel arbitration, that Plaintiff was contesting the authenticity of his signature. However, there is no indication that Defendant could not have obtained these declarations to be submitted with its reply brief or prior to the January 11, 2024, hearing. Defendant also states that because Plaintiff did not contest his signature, its initial evidence was sufficient to authenticate Plaintiff's signature. Thus, it appears Defendant made a decision to forego obtaining any additional evidence. These circumstances do not show that Defendant could not, with reasonable diligence, have produced the additional declarations in connection with the initial proceedings. Defendant cites to *Film Packages, Inc. v. Brandywine Film Prods., Ltd.* (1987) 193 Cal.App.3d 824, for the proposition that a motion to reconsider is permitted not only when there are "new facts, in the sense of

		substantive occurrences which were not previously known" but also when there is "new evidence of the meaning of those facts" that may "shed new light on the case" as by providing "subtle nuances and subjective impressions." (*Film Packages, Inc.,* 193 Cal.App.3d at 829.) Defendant argues that the new evidence "shines new light on facts already before the Court." *Film Packages, Inc*., which involved reconsideration of an application for a right to attach order and which was decided based on a prior version of *section 1008*, is distinguishable. In that matter, the court explained that the evidence could not have been presented earlier because the plaintiff in attachment proceedings typically has "no reasonable opportunity to undertake the meaningful discovery which can occur later." (*Film Packages, Inc., supra,* 193 Cal.App.3d at 829-830.) The court further stated: "We do not find that the new information could have been readily available earlier." (*Ibid*.) By contrast, here, there is no indication the evidence was not readily available earlier or that Defendant did not have an opportunity to obtain said evidence. Rather, there appears to have been a decision by Defendant not to obtain further evidence because it (mistakenly) believed it had met its burden on the prior motion. In addition, in *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, the court of appeal confirmed that a later amendment to section 1008 – made after the holding in *Film Packages, Inc*. – does not "dispense[] with the court-declared need to show a satisfactory explanation for failing to provide the evidence earlier, which can only be described as a strict requirement of diligence." (*Id*. at p. 690.) Here, Defendant made no such showing of diligence. Because the "new" information Defendant relies on could have been presented at the initial hearing and Defendant failed to offer a satisfactory explanation for not doing so, this information does not provide a basis for reconsideration of the Court's January 11, 2024, Order. (See *Hennigan v. White* (2011) 199 Cal.App.4th 395, 406.) Defendant's alternate argument that the January 11, 2024, Order should be reversed based on the Court's inherent authority to reconsider its rulings is also rejected because the Court finds the prior order was not erroneous

		based on the evidence originally submitted. (See Minute Order dated January 11, 2024; see also, *Marriage of Ankola* (2020) 53 Cal.App.5th 369, 383.) Based on the foregoing, the motion is **DENIED**. The parties' requests for judicial notice are **GRANTED** as to the existence of and legal effects of the records, but not as to the truth of any disputed facts asserted therein. (*Ev. Code §452(d); Fontenot v. Wells Fargo Bank, NA* (2011) 198 Cal.App.4th 256, 264; *Arce v. Kaiser Foundation Health Plan, Inc*. (2010) 181 Cal.App.4th 471, 482.) The parties' evidentiary objections are **OVERRULED**. *Counsel for Plaintiff is ordered to give notice of this ruling.*
10.	Hayes v. Hillstone Restaurant Group, Inc. 21-1210269	Before the Court are motions to compel responses to Request for Production of Documents, Set Two, and Special Interrogatories, Set Two, filed by Defendant Hillstone Restaurant Group ("Defendant") against Plaintiff Amanda Hayes ("Plaintiff"). The motions are **GRANTED.** Initially, as the instant motions are set to be heard 25 days prior to trial, the motions comply with *Code of Civil Procedure section 2024.020*, which provides that motions concerning discovery shall be heard on or before the 15th day before the date initially set for trial. (*Code Civ. Proc. § 2024.020, subd. (a)* ["Except as otherwise provided in this chapter, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action"].) Moreover, while the above provision provides for the completion of discovery at least 30 days prior to trial, it would appear that completion may nonetheless occur following a timely motion. In addition, the discovery at issue here was served on August 29, 2023. Thus, responses were due well in advance of the discovery cutoff and, as such, Defendant appears entitled to the discovery responses at issue. Moreover, as noted, these motions were timely filed to be heard prior to the cutoff for discovery motions. Therefore, the Court will rule on the merits of the motions. A party propounding interrogatories or requests for production of documents may seek a court order compelling answers if the party to whom the

		interrogatories or requests for production are directed fails to respond. (*Code Civ. Proc., §§ 2030.290(b); 2031.300(b)*.) Here, the moving papers show that on August 29, 2023, Defendant served Plaintiff with Request for Production of Documents, Set Two, and Special Interrogatories, Set Two, but Plaintiff failed to provide responses. (Miller Decls., ¶¶ 3-4 and Exs. A thereto.) As no responses were timely provided, all objections thereto have been waived, and responses may be compelled. (*Code Civ. Proc., §2030.290(a)-(b) & §2031.300(a)-(b)*.) Accordingly, the motions are **GRANTED**. Plaintiff is ordered to serve verified responses without objections within 10 days. *Counsel for Defendant is ordered to give notice*
11.	Roberts v. General Motors, LLC 22-1269250	Plaintiff Terry Rand Roberts' motions to compel GM's further responses to: (1) Special Interrogatories, Set Two, Nos: 19-22; and (2) Requests for Production of Documents, Set Two, Nos. 39, 40, 41, 42, 43, 44, 45, and 46 are **GRANTED** as set forth below. GM to provide verified further responses to Special Interrogatory, Set Two, Nos. 19-22 for vehicles the same vehicle year, make, and model, purchased in California and subsequently repurchased by GM in California from the time the subject vehicle was purchased and the date this lawsuit was filed. To the extent any information is withheld, a privilege log that complies with the Civil Code of Procedure should be provided. GM to provide verified further responses to Requests for Production of Documents, Set Two, Nos. 39, 40, 41, 42, 43, 44, 45, and 46 for vehicles the same vehicle year, make, and model, purchased in California from the time the subject vehicle was purchased and the date this lawsuit was filed. To the extent any documents are withheld, a privilege log that complies with the Civil Code of Procedure should be provided. GM is to provide verified further responses to the extent ordered above on each motion, and for the motion re: RFPs, any additional responsive documents for the responses to be supplemented and a privilege log for any otherwise responsive documents withheld on privilege grounds, within 30 days after service of notice of these rulings.

		Plaintiff's evidentiary objections, filed with the Reply, are **SUSTAINED** on Obj. No. 1 [relevance]; No. 2 [foundation]; and No. 4 [foundation; speculation]. The objections are otherwise **OVERRULED**. *Counsel for Plaintiff is to give notice.*
12**.**	Angeles v. 4Wall Entertainment, Inc. 23-1345488	See the Cervantes v. *4Wall Entertainment* tentative, above
13.	Daniels, etc., v. Orange County Board of Education 23-1358283	*(Continued)*
14.	Doe v. Hawkeye Wrestling Club 23-1324446	Before the Court is a demurrer and motion to strike filed by Defendants, Cliff Jarmie ("Jarmie") and Hawkeye Wrestling Club ("HWC") (collectively, "Moving Defendants") directed to the complaint of Plaintiff, John SKC Doe, by and through his guardian ad litem, Jane SKK Doe ("Plaintiff"). For the reasons set forth below, the demurrer is **OVERRULED**. The motion to strike is **DENIED**. Moving Defendants are to file an answer to the complaint within 15 days. **Demurrer** Moving Defendants demur to the fifth and sixth causes of action in the complaint on the ground said causes of action fail to state a claim and are uncertain. "In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) A demurrer for uncertainty will be sustained only where the complaint is so poorly pled that a defendant cannot reasonably respond—*i.e.*, he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because

		ambiguities can be clarified under modern discovery procedures." (*Ibid*.) *Fifth Cause of Action – Intentional Infliction of Emotional Distress ("IIED")* "The elements of the tort of intentional infliction of emotional distress are: '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.) "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Ibid*.) Moving Defendants argue that the IIED cause of action fails because the first element, *i.e.,* outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress, is not met. The Court finds the cause of action is adequately pled. The Complaint alleges that HWC President Jarmie intentionally concealed from Plaintiff, his parents, and other wrestlers and their parents, that defendant Mills was a convicted sex offender and had prior allegations of sexual misconduct. (Compl., ¶ 18.) The Complaint alleges Jarmie and his co-defendants attempted to cover up Mills' sexual harassment of Plaintiff by suggesting that Plaintiff may have misidentified Mills and that it was another coach who had touched him. (Compl., ¶ 24.) The Complaint then alleges that in retaliation for Plaintiff reporting the abuse, HWC, the District and Jarmie did not allow Plaintiff to return to HWC practices or events. (*Ibid*.) The Complaint also alleges that HWC, the District and Jarmie knew or should have known that Mills was a convicted sex offender with a history of sexual misconduct allegations who posed a danger to Plaintiff. (Compl., ¶ 28.) The foregoing allegations are sufficient to plead outrageous conduct by Moving Defendants undertaken with, at minimum, a reckless disregard of the probability of causing emotional distress to Plaintiff. (See*, e.g., Crouch v. Trinity Christian Center of Santa Ana, Inc.* (2019) 39 Cal.App.5th 995, 1011.)

Accordingly, Moving Defendants' demurrer to the fifth cause of action is **OVERRULED**.

Sixth Cause of Action – Sexual Harassment (Civil Code § 51.9)

Moving Defendants contend the sixth cause of action fails because the Complaint does not allege that they are any persons described in *Civil Code section 51.9*, subdivision (a)(1), and the Complaint does not allege that Defendants performed any of the acts described in subdivision (a)(2). (See *Civil Code § 51.9(a)*.)

These arguments are not well-taken. As to the first argument, the Complaint properly pleads a business, service, or professional relationship between Moving Defendants and Plaintiff in that Plaintiff was a paying participant in Moving Defendants' youth wrestling program. Moving Defendants failed to cite any authority to support their apparent contention that such relationship does not fall within the parameters of subdivision (a)(1).

As to the second argument, as Plaintiff points out, the basis for liability against Moving Defendants with respect to the sixth cause of action is that Moving Defendants ratified defendant Mills' conduct. (See Compl., ¶¶ 25-26, 103-106.) "Principals of ratification apply to a *section 51.9* cause of action." (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1111.) Moving Defendants argument that they cannot be liable under *section 51.9* because they are not alleged to have committed any of the acts described in subdivision (a)(2) fails to take the foregoing into account.

Accordingly, Moving Defendants demurrer to the sixth cause of action is **OVERRULED.**

Motion to Strike

Moving Defendants move to strike the allegations of and prayer for punitive damages in the Complaint.

In ruling on a motion to strike, "judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Sup.Ct.* (*Pedus Services, Inc*.) (1998) 67 Cal.App.4th 1253, 1255.)

		Here, contrary to Moving Defendants' argument, the complaint pleads sufficient facts to support punitive damages against Moving Defendants. Moving Defendants conduct of intentionally concealing from Plaintiff that defendant Mills was a convicted sex offender, their attempted cover-up of Mills' sexual harassment of Plaintiff, and their alleged retaliation against Plaintiff for reporting the abuse appears sufficient at the pleading stage to demonstrate that Moving Defendants acted with the requisite malice or oppression to support an award of punitive damages. (See *Civil Code § 3294(c)*; *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715.) Based on the foregoing, the motion is **DENIED**. *Counsel for Plaintiff is ordered to give notice of this ruling*.
15.	Refaie v. Villa Siena 21-1190391	*(Continued)*
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