Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT N16

**HON. Donald F. Gaffney**

**Counsel and Parties Please Note:**
**Law and Motion in Department N16 is heard on Wednesdays at 9:00 a.m.**

**Date: May 22, 2024**

Tentative Rulings will be posted on the Internet on the day before the hearing by 5:00 p.m. [or earlier] whenever possible. To submit on the tentative ruling, please contact the clerk at (657) 622-5616, after contacting opposing party/counsel. Prevailing party shall give notice of the Ruling and prepare the Order/Judgment for the Court's signature if required.

**NOTE:** After posting of tentative rulings, the Court will not take the motion off calendar and will grant a continuance of the motion only upon stipulation of all affected parties.

**If no appearances are made on the calendared motion date, then oral argument will be deemed to have been waived and the tentative ruling will become the Court's final ruling.**

| # | Case Name | Tentative |
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| 1 | Singh vs. JBT Aerotech Corporation | **TENTATIVE RULING:**<br><br>For the reasons set forth below, Defendant JBT Aerotech Corporation's Demurrer to Plaintiff's First Amended Complaint is OVERRULED. The Motion to Strike Punitive Damages is GRANTED, with leave to amend.<br><br>**Statement of Law for Demurrers**<br><br>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.)<br><br>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.) The complaint must be construed liberally |

by drawing reasonable inferences from the facts pleaded. (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517.) However, the court does not consider conclusions of fact, opinions, or allegations which are either contrary to law or to judicially noticed facts, nor does it accept as true adjectival descriptions or unsupported speculation. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 398.)

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).)

**Statement of Law for Motions to Strike**

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof…." (Code Civ. Proc., § 435.) "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) 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.)

As with a Demurrer, "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc., § 437, subd. (a); see *Atwell Island Water Dist. v. Atwell Island Water Dist.* (2020) 45 Cal.App.5th 624, 628 [in ruling on motion to strike, court reads the allegations of a pleading as a whole, all parts in their context, and assume their truth]; see *South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 655 [grounds for motion to strike must appear on face of complaint, or be admissible by judicial notice].)

**Statute of Limitations**

Defendant demurs to the fourth cause of action for Intentional Infliction of Emotional Distress, arguing it is time-barred.

"Intentional infliction of emotional distress has a two-year statute of limitations. [Citations.] 'A cause of action for intentional infliction of emotional distress accrues, and the statute of limitations begins to run,

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| | | once the plaintiff suffers severe emotional distress as a result of outrageous conduct on the part of the defendant.' [Citation.]" (*Wassmann v. South Orange County Community College District* (2018) 24 Cal.App.5th 825, 852-853, citing Code Civ. Proc., § 335.1.) "The statute of limitations on common law claims is not tolled while DFEH charges are pending because the aggrieved employee can simultaneously pursue statutory and common law remedies. [Citation.] An aggrieved employee may proceed directly to court on common law claims without receiving a right to sue notice from the DFEH. [Citation.]" (*Wassmann, supra,* 24 Cal.App.5th at p. 853.)<br><br>" 'A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. [Citation.]' [Citation.]" (*Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 781; accord, *Schmier v. City of Berkeley* (2022) 76 Cal.App.5th 549, 554.) "It is not sufficient that the complaint *might* be barred. [Citation.] If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment....' [Citation.]" (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324-325.)<br><br>Defendant argues the statute of limitations began to run as early as February 18, 2020, and certainly no later than August 12, 2020. (First Amended Complaint, ¶¶ 23, 26.) However, these two dates relate to the dates Plaintiff was allegedly subjected to discrimination and/or harassment. Plaintiff does not allege he suffered severe emotional distress on those dates. Further, unlike *Wassmann*, Plaintiff does not allege in his First Amended Complaint when his employment was terminated, or when he ceased to have contact with the defendants who subjected him to harassment and/or discrimination. (*Wassmann, supra,* 24 Cal.App.5th at p. 853.)<br><br>While Plaintiff's fourth cause of action *might* be barred, the defect does not clearly and affirmatively appear on the face of the First Amended Complaint. Thus, Plaintiff's Demurrer is overruled.<br><br>Defendant next contends Plaintiff did not begin to exhaust his administrative remedies until September 20, 2022, after the statute of limitations had already run. (Leon Declaration, ¶ 7; Exhibit D to Leon Declaration.) This argument requires the Court to consider extrinsic evidence, which is improper for purposes of ruling on a Demurrer. (See |

*Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 5 [“When analyzing a demurrer, we look ‘only to the face of the pleadings and to matters judicially noticeable and not to the evidence or other extrinsic matter’ ”].)

Finally, Defendant argues the Court should sustain the Demurrer based on the doctrine of laches. “[I]t is well established that the defense of laches may be raised by demurrer if the complaint shows on its face unreasonable delay [p]lus prejudice or acquiescence; only then is the burden of establishing an excuse shifted to the plaintiff [citation.]” (*Duskin v. San Francisco Redevelopment Agency* (1973) 31 Cal.App.3d 769, 774.) “ ‘[U]nreasonable delay by the plaintiff is not sufficient to establish laches. There must *also* be prejudice to the defendant resulting from the delay or acquiescence by the plaintiff.’ [Citation.] For a demurrer to be sustained based on the doctrine of laches, ‘both the delay and the injury must be disclosed in the complaint.’ [Citations.]” (*Kao v. Department of Corrections & Rehabilitation* (2016) 244 Cal.App.4th 1326, 1334.)

Defendant argues the doctrine of laches applies because Plaintiff did not file his original Complaint until nearly three years after the alleged conduct occurred. In Defendant’s view, it “would be prejudiced if it were required to defend against the IIED claim in addition to the other causes of action asserted by Plaintiff after such lengthy delay caused unilaterally by Plaintiff.”

The Court does not find this argument to be persuasive. Plaintiff’s emotional distress claim arises from the same set of facts as his FEHA causes of action. Since Defendant will need to conduct discovery as to these facts, the Court finds Defendant would suffer no prejudice in having to defend against the emotional distress claim. Further, since Defendant does not contend Plaintiff unreasonably delayed in filing his FEHA causes of action, the Court similarly finds Plaintiff did not unreasonably delay in bringing his emotional distress claim.

**Motion to Strike**

“In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.” (Civ. Code, § 3294, subd. (a).)

“An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and

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| | | employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).)<br><br>"For corporate punitive damages liability, section 3294, subdivision (b), requires that the wrongful act giving rise to the exemplary damages be committed by an 'officer, director, or managing agent.' " (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572; see *CRST, Inc. v. Superior Court* (2017) 11 Cal.App.5th 1255, 1273 and *Davis v. Kiewitt Pacific Co.* (2013) 220 Cal.App.4th 358, 366 [managing agents are employees who exercise substantial discretionary authority over significant aspects of a corporation's business]; see *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 723-724 [the corporation's agent must have been employed in a managerial capacity, and must have been acting in the scope of employment, i.e., he or she must be acting as the organization's representative, not in some other capacity].)<br><br>"'Malice' exists when the defendant intends to cause injury to the plaintiff or the defendant engages in despicable conduct with willful and conscious disregard of the rights or safety of others. [Citation.] 'Oppression' exists when the defendant in conscious disregard of a person's rights engages in despicable conduct subjecting that person to cruel and unjust hardship. [Citation.]" (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227-1228; see *Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 511 ["Malice and oppression may be inferred from the circumstances of a defendant's conduct"]; *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.) "Despicable" refers to behavior that is "vile," "base," or "contemptible" that it would be "'looked down upon and despised by ordinary decent people.' [Citation.]" (*Angie M., supra*, 37 Cal.App.4th at pp. 1227-1228.)<br><br>"'"Recklessness" refers to a subjective state of culpability greater than simple negligence, which has been described as a "deliberate disregard" of the "high degree of probability" that an injury will occur [citations]. Recklessness, unlike negligence, involves more than "inadvertence, incompetence, unskillfulness, or a failure to take precautions" but rather rises to the level of a "conscious choice of a course of action ... with knowledge of the serious danger to others involved in it." [Citation.]' [Citation.]" (*Worsham v. O'Connor Hospital* (2014) 226 Cal.App.4th 331, 336-337; see *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405 [plaintiff must prove, by clear and |

convincing evidence, defendant has been guilty of recklessness, oppression, fraud or malice].)

Facts of oppression, fraud, or malice must be alleged, although absence of the labels "willful," "fraudulent," "malicious" and "oppressive" from the complaint does not defeat the claim for punitive damages. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166; *Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 963.) Yet the necessary facts can be stated as ultimate facts or conclusions of law, as long as they are read in context with the other facts alleged as to defendant's conduct so as to "adequately plead the evil motive requisite to recover[] … punitive damages." (*Monge*, *supra*, 176 Cal.App.3d at p. 510.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. [Citations.] In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. [Citations.] In ruling on a motion to strike, courts do not read allegations in isolation. [Citation.]" (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

The First Amended Complaint does not allege any facts that Defendant acted with oppression, fraud or malice. Plaintiff merely alleges that Defendant failed to take appropriate corrective or preventative action and/or failed to adequately investigate Plaintiff's complaints of discrimination and harassment. (First Amended Complaint, ¶¶ 24-25, 27-28, 35-36, 48-49, 55-58, 62-66, 68.)

Moreover, Plaintiff does not identify any officer, director, or managing agent who may have authorized or ratified the conduct, or who may have been personally guilty of oppression, malice or fraud. (See First Amended Complaint, ¶¶ 35-36, 38, 59, 65, 68.)

Instead of alleging facts of oppression, fraud or malice, Plaintiff merely conclusively alleges that the defendants, including Defendant, acted willfully, intentionally, and with oppression, malice and fraud. This is insufficient. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63-64 [mere allegation of sexual discrimination by an employer did not sufficiently plead oppression, fraud, or malice, as required to state a claim for punitive damages].)

The Motion to Strike is granted, with leave to amend. "It is the rule that when a trial court sustains a demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. It gives the pleader an opportunity to cure the defects in the particular causes of action to which

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| | | the demurrer was sustained, but that is all. [Citation.] 'The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend.' [Citation.]" (*Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329.)<br><br>Should Plaintiff desire to file an amended complaint that addresses the issues in this ruling, Plaintiff shall file and serve the amended complaint within 30 days of service of the notice of ruling.<br><br>Moving party to give notice. |
| 2 | Delgado vs. Nexgen Air Conditioning and Heating, LLC | **TENTATIVE RULING:**<br><br>For the reasons set forth below, Defendants Nexgen Air Conditioning and Heating, LLC and Jesus Alberto Vazquez Avila's motions to compel Plaintiff Fernando Delgado to serve responses to their first sets of Form Interrogatories, Special Interrogatories, and Requests for Production of Documents are GRANTED.<br><br>Plaintiff is ordered to serve legally valid, and verified, responses, and to pay a total of $3,000.00 in sanctions, within 30 days of service of the notice of ruling.<br><br>**Statement of Law**<br><br>A party has 30 days from the date of service to respond to written discovery, plus an additional five days if the discovery requests were served by mail. (Code Civ. Proc., §§ 2016.050, 2030.260, subd. (a), 2031.260, subd. (a).) If a party fails to serve timely responses to interrogatories or requests for production of documents, the propounding party may move for an order compelling responses. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300, subd. (b).)<br><br>If a party fails to timely respond to propounded interrogatories and requests for production, it waives all objections, including those based on privilege and work product. (§§ 2030.290, subd. (a), 2031.300, subd. (a).) However, a party may be relieved of these waivers if it brings a motion for relief and subsequently serves responses in substantial compliance with sections 2030.210, et seq. and 2031.210, et seq., and the failure to serve timely responses was the result of mistake, inadvertence, or excusable neglect. (§§ 2030.290, subd. (a), 2031.300, subd. (a).) |

The court "shall" impose a monetary sanction against the losing party on a motion to compel responses to interrogatories and requests for production of documents, unless it finds the losing party acted "with substantial justification," or if other circumstances render the sanction "unjust." (§§ 2030.290, subd. (c), 2031.300, subd. (c), 2031.320, subd. (b).

"If a party provides an untimely interrogatory response that does not contain objections and that sets forth legally valid responses to each interrogatory, the untimely response might completely or substantially resolve the issues raised by a motion to compel responses under section 2030.290," although the court still retains authority to hear the motion. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 407-409; *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1023, fn. 13; see Cal. Rules of Court, rule 3.1348(a) ["The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed"].)

**Merits of the Motions**

Defendants have presented evidence that, on October 18, 2023, they electronically served Plaintiff's counsel with their first sets of Form Interrogatories, Special Interrogatories, and Requests for Production of Documents. (Kim Declaration, ¶ 2; Exhibit 1 to Kim Declaration.) On November 21, 2023, the day Plaintiff's responses were due, his counsel asked for a 30-day extension, which Defendants' counsel granted. (Kim Declaration, ¶ 3; Exhibit 2 to Kim Declaration.)

Defendants granted additional extensions, such that Plaintiff's responses were due January 25, 2024. (Kim Declaration, ¶ 3; Exhibit 2 to Kim Declaration.) However, by the time Defendants filed their Motions, Plaintiff had yet to provide any responses. (Kim Declaration, ¶ 4.) While there is evidence Plaintiff eventually served responses on February 19, 2024, and further responses on April 15, 2024 (Bertch Declaration, ¶¶ 10, 14; Kim Reply Declaration, ¶¶ 2, 7; Exhibits 1, 7 to Kim Reply Declaration), neither Plaintiff nor Defendants attached Plaintiff's original or further responses. As a consequence, the Court cannot confirm whether the untimely responses were code-compliant. (See *Sinaiko, supra*, 148 Cal.App.4th at pp. 408-409, 410-411 [while an untimely response might completely or substantially resolve the issues raised by a motion to compel, the trial court is still authorized to determine whether the responses were legally valid, and it may still

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| | | award monetary sanctions]; *Castro, supra,* 116 Cal.App.4th 1010, 1023, fn. 13; *Sinaiko, supra*, 148 Cal.App.4th 390, 408-409.)<br><br>Defendants have taken the position that Plaintiff waived all objections because he did not respond to discovery by the original deadline of November 21, 2023. However, Plaintiff asked for a 30-day extension on November 21, 2023, although Defendants' counsel did not grant the extension until the following day. (Exhibit 2 to Kim Declaration.)<br><br>Defendants have cited to no authority, and the Court is not aware of any, that would support their position that Plaintiff's right to object to written discovery has been waived because he waited until the last day to ask for an extension, or because Defendants did not respond to Plaintiff's request until after the deadline to respond to discovery had passed. Thus, the Court finds Plaintiff has not waived his right to object to the written discovery, although his responses would still be subject to a motion to compel further responses.<br><br>Plaintiff explains the failure to respond to discovery was due to a calendaring error, his counsel's various professional obligations, as well as a contract attorney who had a pre-planned vacation at the time the discovery responses were due. (Bertch Declaration, ¶¶ 3-9.) Plaintiff also places blame on Defendants for refusing to take the motions off-calendar (Bertch Declaration, ¶¶ 10, 15), and for otherwise stonewalling discovery (Bertch Declaration, ¶¶ 12-13).<br><br>However, the evidence shows Defendants extended Plaintiff multiple extensions, and, on January 16, 2024, they explicitly advised Plaintiff the Motions would be filed if responses were not received by January 25, 2024. (Exhibit 2 to Kim Declaration.) Despite Defendants' warning, Plaintiff did not serve responses until February 19, 2024, and he has not presented any evidence that his responses "set forth legally valid responses…." (*Sinaiko, supra,* 148 Cal.App.4th at pp. 408-409.)<br><br>As for the issue of monetary sanctions, Defendants request $1,040.00 for each of the six Motions (four hours at $245.00/hour, plus the $60.00 filing fee), or a total of $6,240.00. Considering the six motions are, in essence, identical, the Court finds this request to be excessive. Thus, Defendants' request for sanctions is granted in the total amount of $3,000.00.<br><br>Plaintiff's request for $3,500.00 in sanctions (Bertch Declaration, ¶¶ 15-16) is denied.<br><br>Moving party to give notice. |

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| 3 | Amaya Perez vs. Nu Care, Inc. | **TENTAIVE RULING:**<br><br>**<u>Motion for Terminating Sanctions</u>**<br><br>Plaintiff Mayra Amaya Perez moves for terminating sanctions against Defendants Nu Care Transport, Inc. and Nu Care, Inc., seeking a judgment by default or an order striking Defendants' answer. For the following reasons, the motion is DENIED.<br><br>**<u>General Principles Re Discovery Sanctions</u>**<br><br>Failing to respond to an authorized method of discovery is a misuse of the discovery process. (Code Civ. Proc., § 2023.010(d).) So, too, is disobeying a court order to provide discovery. (*Id.*, subd. (g); *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516.) Imposition of sanctions for misuse of discovery lies within the trial court's discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991.) Once a party is ordered by the court to provide responses to discovery, continued failure to respond may result in the imposition of more severe sanctions. (See Code Civ. Proc., § 2031.300(c) (requests for production).)<br><br>The moving party need only show the failure to obey the court's earlier discovery orders. Thereafter, the burden of proof shifts to the party seeking to avoid sanctions to establish a satisfactory excuse for his or her conduct. (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 201; *Puritan Ins. Co. v. Sup.Ct. (Tri–C Machine Corp.)* (1985) 171 Cal.App.3d 877, 884.)<br><br>If a party fails to obey an order compelling answers to discovery, the court may impose whatever sanctions are just [Code Civ. Proc., § 2031.300(c)], including any of the following:<br><br>• <u>Issue sanctions</u>—ordering that designated facts be "taken as established" against the party guilty of discovery misuse [Code Civ. Proc., § 2023.030(b)];<br>• <u>Evidence sanctions</u>—prohibiting the party guilty of discovery misuse from introducing designated matters in evidence [Code Civ. Proc., § 2023.030(c)];<br>• <u>Terminating ("doomsday") sanctions</u>—striking pleadings, in whole or in part; or dismissing that party's action, in whole or in part; or staying further proceedings by that party until the order is obeyed; or rendering default judgment against that party [Code Civ. Proc., § 2023.030(d)]; and<br>• <u>Money sanctions</u>—in addition to or in lieu of any other sanction, an award of reasonable costs and fees incurred as a result of the |

failure to obey (including fees on the sanctions motion) [Code Civ. Proc., §§ 2023.030(a); 2030.300(e)].

Thus, which of the various sanctions above may be imposed for disobedience of court orders, or even whether sanctions will be granted at all, lies entirely within the court's discretion. The court is not required to grant any particular sanction or any sanctions at all. (See *Pember v. Sup.Ct.* (1967) 66 Cal.2d 601, 604 (dealing with similar provision of former statute).) Moreover, the trial court's choice of sanctions is subject to appellate review only for abuse of discretion. (*Sauer v. Sup.Ct. (Oak Industries, Inc.)* (1987) 195 Cal.App.3d 213, 228.)

The trial court should tailor the sanction for such conduct to "fit the crime." (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.) The court cannot impose sanctions as punishment; the choice of sanctions should not give the moving party more than it would have gotten had the discovery been responded to**.** (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992; *Caryl Richards, Inc. v. Superior Court,* 188 Cal.App.2d at 303.**)** Before issuing terminating sanctions, the court should usually grant lesser sanctions such as orders staying the action until the derelict party complies, or orders declaring matters as admitted or established if answers are not received by a specified date, often accompanied with costs and fees to the moving party. (*Doppes*, 174 Cal.App.4th at 99.) It is only when a party persists in disobeying the court's orders that the ultimate sanctions of dismissing the action or entering default judgment, etc. are justified. (See *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771.)

The burden of proof is on the moving party to show (by declarations) the facts essential to an award of sanctions.

**Merits**

Imposition of sanctions for misuse of discovery lies within the trial court's discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991.) The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. (*Id.* at 992.) Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. (*Id.*)

Plaintiff filed the motion on January 31, 2024, regarding Defendants' failure to comply with the Court's December 20, 2023, Order, in which the Court granted Plaintiff's motion to compel further responses to requests for production of documents and ordered Defendants to provide

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| | | further responses within 30 days and pay sanctions of $2,465 within 30 days.<br><br>Defendants did not timely comply with the December 20, 2023, Order. However, Defendants provided the Court-ordered discovery responses and the $2,465 sanctions payment. (Barahmand Reply Dec., ¶ 5; Hayden Dec., ¶¶ 3, 5, Exs. 1 and 2.) Thus, Defendants have now shown compliance with the December 20, 2023, Order.<br><br>After this motion was filed, the Court issued an order on February 21, 2024, requiring Defendants to pay sanctions of $1,260 to Plaintiff. Defendants contend they have done so, but Plaintiff disputes this contention.<br><br>Insofar as Defendants have not paid any prior sanctions awarded by the Court, sanctions orders are enforceable as money judgments unless the court orders otherwise. Thus, the remedy to enforce payment of monetary sanctions is to obtain and levy a writ of execution on assets of the debtor. (*Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615.) "[A] terminating sanction issued solely because of a failure to pay a monetary discovery sanction is never justified." (Ibid.)<br><br>Terminating sanctions are not warranted at this juncture. Terminating sanctions are generally reserved for when a party persists in disobeying court's orders, but here Defendants have complied (albeit untimely) with the only order at issue at the time Plaintiff filed this motion. Further, Plaintiff does not request any lesser sanction.<br><br>Defendants to give notice. |
| 4 | Gross vs. Lucik | **TENTATIVE RULING:**<br><br>Defendant James P. Lucik moves for an award of attorney fees in the amount of $29,433 against Plaintiffs. For the reasons set forth below, the motion is GRANTED.<br><br>Attorney's fees are not recoverable as costs unless expressly authorized by statute or contract. (*Real Property Services Corp. v. City of Pasadena* (1994) 25 Cal.App.4th 375, 379–380.)<br><br>Civil Code section 5975(c) provides a "prevailing party shall be awarded reasonable attorney's fees and costs" in an action to enforce the CC&Rs. Although the Davis-Stirling Common Interest Development Act does not define "prevailing party," it "is well established that '[t]he analysis of who is a prevailing party under the fee-shifting provisions of the Act focuses on who prevailed 'on a practical level' by achieving its main litigation |

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| | | objectives.'" (*Champir, LLC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 590; see also *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94 [affirming trial court's determination that an association was the prevailing party because "[o]n a 'practical level' [citation], [it] 'achieved its main litigation objective' "]; *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773 ["[T]he test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives."].)<br><br>The court may employ the lodestar method in determining the reasonableness of the fees sought. (*Nash v. Aprea* (2023) 96 Cal.App.5th 21, 26 [affirming order granting fee motion under section 685.040 utilizing the lodestar analysis].) A court assessing attorney fees begins with a touchstone or lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) "In determining hourly rates, the court must look to the 'prevailing market rates in the relevant community." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009, internal citations omitted.) The rates of comparable attorneys in the forum district are usually used. (*Id*.) In making its calculation, the court should also consider the experience, skill, and reputation of the attorney requesting fees. (*Id*.) It is within the court's discretion to decide which of the hours expended by the attorneys were "reasonably spent" on the litigation. (*Meister v. Regents of Univ. of California* (1998) 67 Cal.App.4th 437, 449.) A trial court has broad discretion to determine the amount of reasonable attorney's fees, as an experienced trial judge is in the best position to decide the value of professional services rendered in court. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)<br><br>Where a fee motion is supported with declarations from counsel and billing records to establish the hours of work, the party opposing the motion can either "attack the itemized billings with evidence that the fees claimed were not appropriate, or obtain the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 563–564.) "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence." (*Id*.) "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Id*.)<br><br>The court finds that the motion is adequately supported with a declaration from counsel and billing records to establish the hours of work performed. |

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| | | Plaintiffs do not contest the reasonableness of defense counsel's rates. Thus, the court finds that the billing rates defense counsel charged were reasonable.<br><br>Plaintiffs only contest the following time entries:<br><br>• 12/11/2023 EA Travel to and attend trial call; met with client after hearing (5.1); call with court clerk regarding assignment for trial, research… call with clerk to accept assignment (.50). 5.60 hours $2,800.00<br>• 12/11/2023 EA Attend conference with Judge and opposing counsel regarding trial .50 hours $250.00<br>• 12/11/2023 EA Continued trial preparation including further research related to statute of limitations; review of documents and continued witness testimony preparation. 2.40 hours $1,200<br>• 12/12/2023 EA Continued Preparation for, travel to and attendance at trial. 10.50 hours $5,250.00<br><br>Plaintiffs argue that defense counsel spent 8.5 hours on 12/11/2023, when Plaintiffs' counsel only spent 3.0 hours that day. Plaintiffs also argue that defense counsel spent 10.50 hours on 12/12/2023, when Plaintiffs' counsel only spent 7.0 hours. As such, Plaintiffs ask for a reduction in fees of $4,250 for these entries.<br><br>The court overrules Plaintiffs' objections to these time entries. "By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1111.) That Plaintiffs' counsel and Defendant's counsel decided to spend a different amount of time preparing for trial is not the test for reasonableness. The court finds that the amount of time spent on 12/11/2023 and 12/12/2023 was reasonable.<br><br>Finally, Plaintiffs object to Defendant's recovering $1,000 in anticipated fees for time to file a reply and attend a hearing on the motion. The court finds that an additional two hours (one hour to prepare a reply and one hour to attend a hearing) is reasonable. This objection is overruled.<br><br>As such, Defendant's motion is granted in full. Defendant is awarded an attorneys' fees award of $29,433.00. Further, in addition to the costs set forth in Defendant's memorandum of costs, Defendant is also awarded an additional $72.27 in costs related to filing fees for this motion.<br><br>Defendant to give notice. |

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| 5 | Sendero Neighborhood Corporation vs. Meyer | **TENTATIVE RULING:**<br><br>Plaintiff moves for an award of attorney fees in the amount of $8,169.50 and $990.00 in litigation costs. For the reasons set forth below, Plaintiff's unopposed motion is GRANTED.<br><br>Attorney's fees are not recoverable as costs unless expressly authorized by statute or contract. (*Real Property Services Corp. v. City of Pasadena* (1994) 25 Cal.App.4th 375, 379–380.)<br><br>Civil Code section 5975(c) provides a "prevailing party shall be awarded reasonable attorney's fees and costs" in an action to enforce the CC&Rs. Although the Davis-Stirling Common Interest Development Act does not define "prevailing party," it "is well established that '[t]he analysis of who is a prevailing party under the fee-shifting provisions of the Act focuses on who prevailed 'on a practical level' by achieving its main litigation objectives.'" (*Champir, LLC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 590; see also *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94 [affirming trial court's determination that an association was the prevailing party because "[o]n a 'practical level' [citation], [it] 'achieved its main litigation objective' "]; *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773 ["[T]he test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives."].)<br><br>In *Champir*, homeowner Plaintiffs filed a suit against Defendant association to enforce the CC&Rs. *Champir, LLC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 594. Having obtained that compliance, Plaintiffs voluntarily dismissed their action against the association. (*Id*.) The association argued that Plaintiffs were not the prevailing party given Plaintiff's voluntary dismissal of the action without any finding that Defendant was liable. (*Id*.) The trial court determined that the Plaintiffs were the prevailing part and awarded Plaintiffs attorney fees. (*Id*. at 596.) The court of appeal affirmed, holding that the award was warranted because the homeowners' objective was to require the association to comply with the CC&Rs before installing a traffic signal. (*Id*.) The homeowners succeeded in their objective by obtaining a temporary restraining order (TRO) and preliminary injunction compelling the association to obtain written consent of members for the traffic signal, and although homeowners voluntarily dismissed the action, they did so only after association came into compliance with the CC&Rs. (*Id*.)<br><br>Similarly, here, Plaintiff has sufficiently established that Plaintiff has met its litigation objective by compelling Defendant to comply with the |

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| | | CC&Rs. Prior to filing this lawsuit, Plaintiff sent Defendant multiple demand letters to inspect her property to ensure that it was structurally sound, given Defendant's unapproved modifications. Plaintiff specifically indicated in those letters that if Plaintiff were forced to file a lawsuit, it would seek attorneys' fees. The crux of the relief Plaintiff sought by the complaint was compliance with the CC&Rs. Plaintiff sought relief that would compel Defendant to allow Plaintiff to inspect her property and perform a structural inspection. To the extent that there was any structural damage that compromised the integrity of the property or building, Plaintiff sought relief that would compel Defendant to restore the property at Defendant's cost. After this lawsuit was initiated and default was entered, Plaintiff attempted to communicate with Defendant multiple times to gain an inspection. Defendant finally agreed, and Plaintiff was able to inspect and find no structural compromise—i.e., Defendant complied with the CC&Rs. As such, the court finds that Plaintiff is the prevailing party in this action under section 5975(c).<br><br>Further, the court has reviewed the hours and work that Plaintiff's attorneys have performed. The court finds that the hourly rates charged were reasonable for this market ($295- $320 per hour). The court also finds that the work performed was reasonable and necessary. But for Defendant's refusal to allow an inspection, none of these fees and costs would have been necessary.<br><br>Plaintiff's prior moving papers did not contain a proof of service. At the initial February 7, 2024, hearing, the court, therefore, continued the hearing to March 27, 2024, to allow Plaintiff time to provide sufficient notice of the motion to Defendant. Plaintiff served notice by mail on March 1, 2024, for the continued March 27, 2024, hearing.<br><br>At the March 27, 2024, hearing, the court found that Plaintiff's March 1, 2024, mail service was insufficient to give Defendant the requisite 16 court-day notice plus five calendar days for mailing. The court, therefore, continued the hearing again to May 22, 2024.<br><br>On March 26, 2024, Plaintiff gave notice of the continued hearing on this motion to May 22, 2024. The court finds that Defendant has now received requisite notice of the motion, but failed to file an opposition.<br><br>The court, therefore, grants the motion and awards Plaintiff an attorney's fee award of $8,169.50 and cost award of $990.00 against Defendant Stephanie C. Meyer.<br><br>Plaintiff to give notice. |

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| 6 | Village Walk Townehomes Association vs. Stevenson | **TENTATIVE RULING:**<br><br>**<u>Motion to Set Aside Default</u>**<br><br>Defendant Charles Stevenson ("Defendant") moves to set aside the default entered against him on August 9, 2023, and for leave to file Defendant's Proposed Answer. For the following reasons, Defendant's motion is GRANTED.<br><br>"It is well settled that appellate courts have always been and are favorably disposed toward such action upon the part of the trial courts as will permit, rather than prevent, the adjudication of legal controversies upon their merits." (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 255 [citation omitted].) "Thus, the provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits." (*Id*. [citation and internal quotation marks omitted].)<br><br>Code of Civil Procedure Section 473(b) ("Section 473(b)") permits a court to grant relief from a judgment, dismissal, order or other proceeding taken against a party on the grounds of "mistake, inadvertence, surprise or excusable neglect." (*Leader v. Health Industries of Am., Inc*. (2001) 89 Cal.App.4th 603, 615.) "Section 473, subdivision (b) provides for two distinct types of relief." (*Id*.) A court may grant discretionary relief upon the moving party's showing of mistake, inadvertence, surprise or excusable neglect. (*Id*. at 615-616.) A court must grant mandatory relief upon a showing by an attorney declaration of mistake, inadvertence, surprise or neglect. (*Id*. at 616.)<br><br>A motion seeking relief under Section 473(b) must be brought within 6 months of entry of the judgment. (Civ. Proc. Code § 473(b).) Here, Default was entered on August 9, 2023. (ROA # 15.) Plaintiff filed the instant Motion to Set Aside Default on February 9, 2024, exactly six months after Default was entered. (ROA # 25.) Defendant also submitted a copy of the proposed answer as required by Code Civ. Proc. § 473(b). (See ROA # 25.) Therefore, as a preliminary matter, the court finds the Motion was filed timely in terms of Section 473(b) based on the relevant dates in the ROA.<br><br>David A. Gerlt is counsel of record for Defendant Charles Stevenson. Defendant was personally served with the Complaint on April 3, 2023. (ROA # 13 [Proof of Service].) On April 25, 2023, Attorney Gerlt left a voicemail and sent an email to Plaintiff's counsel, Brian Moreno, to request a 15-day extension to file a responsive pleading and to prepare a response to the December 22, 2022, letter ("Demand Letter") which |

rejected the architectural application previously filed by Defendant. (Gerlt Decl. ¶ 3.) Plaintiff's counsel granted Defendant's request for an extension. (*Id*. at ¶ 4.)

On or about May 24, 2023, Attorney Gerlt spoke to Plaintiff's counsel regarding Defendant's position and inquired about a possible settlement. (*Id*. at ¶ 5.) Attorney Gerlt requested a further extension to June 7, 2023, to file a responsive pleading. (*Id*.) Gerlt also requested that he be warned of any plans to take Defendant's default. (*Id*.) Attorney Gerlt failed to properly calendar the June 7, 2023, deadline and also to respond to a subsequent June 24, 2023, email from Plaintiff's counsel. (*Id*. at ¶¶ 6-7.) Attorney Gerlt prepared a reply to the Demand Letter and sent it to Plaintiff's counsel on August 15, 2023. (*Id*. at ¶¶ 8-9.) Attorney Gerlt was unaware that Defendant's default had been entered and believed that the matter was on a path to settlement. (*Id*. at ¶ 10.) A second demand letter, dated December 23, 2023, was misplaced by Attorney Gerlt's office and was discovered on February 6, 2024. (*Id*. at ¶ 12.) After reviewing the December 23, 2023, Demand Letter, Attorney Gerlt reviewed the court's file and discovered the Entry of Default. (*Id*. at 13.)

The mandatory relief provision of Code of Civil Procedure section 473, subdivision (b), states:

> "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect."

When a complying affidavit is filed relief is mandatory, even if the attorney's neglect was inexcusable. (*Bailey v. Citibank, N.A.* (2021) 66 Cal.App.5th 335, 349, citing *Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1033.) However, relief may be denied if the court finds the default was not in fact the attorney's fault, for example when the attorney is simply covering up for the client's neglect. (*Bailey,* 66 Cal.App.5th at 349 [citations omitted].) Similarly, where a party inexcusably allows default to be entered and then afterwards hires an attorney, the provision does not apply because the default must in fact be caused by the attorney's mistake. (*Id*.)

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| | | Here, Attorney Gerlt submitted an attorney affidavit of fault. (See Gerlt Decl. ¶¶ -12.) There is no contention or evidence that Defendant's failure to file a timely response to the Amended Complaint was not Attorney Gerlt's fault. Defendant's motion to set aside the default entered on August 9, 2023, is granted. Proof of attorney fault by means of an affidavit is an explicit statutory condition for mandatory relief.<br><br>A court granting mandatory relief *must* direct the attorney to pay "*reasonable* compensatory legal fees and costs to opposing counsel or parties." (Code Civ. Proc., § 473(b) [emphasis added].) It is an ethical obligation for opposing counsel to warn of an impending default prior to taking any action. (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 701-702.) Moreover, the Court of Appeal has concluded that counsel has not only an ethical obligation but a legal obligation to do so. (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 132-141.) Here, the record does not demonstrate that Plaintiff's counsel complied with this obligation. Accordingly, the court finds that legal fees and costs incurred in connection with the default judgment are not reasonably incurred. Plaintiff's request for attorney's fees and costs is denied.<br><br>Plaintiff requests that the court order Defendant to post security in the amount of $50,000.00 to cover the attorney fees and costs award that will be entered against Stevenson. Plaintiff's request is denied without prejudice to Plaintiff filing a noticed motion so that the issue may be more fully briefed and developed.<br><br>Defendant is ordered to file and serve the Answer attached as Exhibit A to the Declaration of David A. Gerlt by May 31, 2024.<br><br>Defendant to give notice. |
| 7 | Henry vs. Black Knight Patrol Inc. | **TENTATIVE RULING:**<br><br>**<u>Motion to Quash</u>**<br><br>Defendant Black Knight Patrol, Inc. moves to quash the subpoena Plaintiffs Kara Henry and Mackenzie Andrade served on AT&T National Subpoena Compliance & Court Order Center. For the following reasons, the motion is GRANTED.<br><br>Motions to quash subpoenas seeking the production of consumer records are governed by Code of Civil Procedure sections 1985.3 and 1987.1.<br><br>The subpoena at issue seeks the subscriber information (including the billing address) for the cell phone number, all "call originations, call |

terminations, call attempts, voice and text message transactions, data communications, SMS and MMS communications, voice communications, LTE and/or IP sessions and destinations with cell site information," all stored SMS and MMS content and browser cache, and multiple other categories of documents from AT&T.

Because the subpoena seeks the private cell phone records of Defendant, Plaintiff must satisfy a heavy burden. Defendant unquestionably has a constitutional right to privacy in the contents of his cell phone. It is well established that individuals retain a constitutionally protected expectation of privacy in the contents of their computers and other similar electronic devices, including the immense volumes of data and information stored on modern cell phones. (See Cal. Const., art. I, § 1 [inalienable right to privacy, among others]; *People v. Appleton* (2016) 245 Cal.App.4th 717, 724 ["It is well established that individuals retain a constitutionally protected expectation of privacy in the contents of their own computers," including cell phones]; *In re Malik J.* (2015) 240 Cal.App.4th 896, 902 ["the threat of unfettered searches of [the defendant's] electronic communications significantly encroaches on his and potentially third parties' constitutional rights of privacy"]; see also *Riley v. California* (2014) 134 S. Ct. 2474, 2489-2490, 2495, 573 U.S. 373, 393-396, 403 [cell phones "are in fact minicomputers that also happen to have the capacity to be used as a telephone[,]" and "hold for many ... 'the privacies of life,'"; '[t]he fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought."].)

However, that right is not absolute, and disclosure may be ordered when the information is directly relevant and essential to the fair resolution of the lawsuit, and where the need for disclosure outweighs privacy concerns. "The scope of any disclosure must be narrowly circumscribed, drawn with narrow specificity, and must proceed by the least intrusive manner. [Citation.]" (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014; see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552 (providing a framework for privacy analysis).) The party seeking disclosure of the constitutionally protected information bears the burden of establishing direct relevance. (*Davis, supra*, 7 Cal.App.4th at p. 1017.)

Plaintiffs have not met their burden. The entirely unfettered digital inspection and collection of data from a cell phone, even if "limited" to a 24-hour time period, unquestionably constitutes a significant intrusion on Defendant's constitutional right to privacy. Plaintiffs do not explain how this significant intrusion is essential to the fair resolution of the

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| | | lawsuit, or why they cannot obtain the information they seek in a less intrusive manner or from other sources.<br><br>It appears to the court that Plaintiffs are attempting to engage in an impermissible fishing expedition. Plaintiffs contend the cell phone records are relevant to Defendant's credibility given that he has made a false 911 call to Costa Mesa Police Department, but the deposition testimony provided by Plaintiffs does not establish that Defendant made a false 911 call. (Kenney Dec., Ex. 1.) Plaintiffs also contend that the cell phone records may be relevant because Defendant might have been communicating with others about the incident, but this contention is based on pure speculation. Further, this contention is not supported by a declaration or other evidence attesting to the need for this information. Insofar as Plaintiffs are pursuing the subpoena to obtain discovery on whether Defendant called Marty Kish or other security guards who were at the scene on the night of the incident, Plaintiffs can obtain such information via deposition.<br><br>Defendant to give notice. |
| 8 | Allen vs. Rogers Gardens Newport Beach | **OFF CALENDAR** |
| 9 | Bledsoe vs. Remus | **TENTATIVE RULING:**<br><br>**<u>Motion for Summary Judgment or Summary Adjudication</u>**<br><br>Defendant Inland Top Soil Mixes, Inc., moves for summary judgment or summary adjudication on the Complaint of Plaintiffs Aiyahna Bledsoe, D'Aandre Bledsoe, and Andrew Bledsoe, through their respective Guardians ad Litem and as successors-in-interest to Decedent Andre Rashad Bledsoe. For the following reasons, Defendant's motion for summary judgment is DENIED. Defendant's alternative motion for summary adjudication is GRANTED as to the second cause of action only.<br><br>A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact . . . ." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at 851.) The parties must set forth admissible evidence. (Code Civ. Proc., § 437c, subd. (d).) |

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| | | A defendant moving for summary judgment or summary adjudication satisfies his or her initial burden by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) The scope of this burden is determined by the allegations of the plaintiff's complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381–82 [pleadings serve as the outer measure of materiality in a summary judgment motion]; *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18–19 [respondent only required to defeat allegations reasonably contained in the complaint].) A cause of action "cannot be established" if the undisputed facts presented by the defendant prove the contrary of the plaintiff's allegations as a matter of law. (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1597.)<br><br>Once the moving party meets that burden, the burden shifts to the party opposing summary judgment to show, by reference to specific facts, the existence of a triable issue as to an affirmative defense or cause of action. (*Aguilar, supra*, 25 Cal.4th at p. 855; *Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 575.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* 25 Cal.4th at p. 850, fn. omitted.) To meet this burden, the opposing party must present substantial and admissible evidence creating a triable issue. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) Theoretical, imaginative, or speculative submissions are insufficient to stave off summary judgment. (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144-1145; *Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481; *Bushling v. Fremont Med. Center* (2004) 117 Cal.App.4th 493, 510.)<br><br>In ruling on a motion for summary judgment or summary adjudication, the court must "consider all of the evidence" and all of the "inferences" reasonably drawn therefrom [citing Code Civ. Proc., § 437c, subd. (c)] and must view the evidence and inferences "in the light most favorable to the opposing party." (*Aguilar, supra*, 25 Cal.4th at p. 843.) A court may not make credibility determinations or weigh the evidence on a motion for summary judgment or adjudication, and all evidentiary conflicts are to be resolved against the moving party. (*McCabe v. American Honda Motor Corp.* (2002) 100 Cal.App.4th 1111, 1119.) The moving party's papers are to be strictly construed, while the opposing party's papers are to be liberally construed. (*Committee to Save Beverly Highland Homes Ass'n v. Beverly Highland* (2001) 92 Cal.App.4th 1247, 1260.) |

**First Cause of Action (Negligence)**

The Complaint alleges that Defendant Remus negligently operated a dump-trailer vehicle (the "Subject Vehicle"), resulting in the incident, injuries and death of Decedent Bledsoe (Compl. ¶¶ 13, 17) and that Defendant Inland Top Soil is vicariously liable for Defendant Remus's negligence (Compl. ¶¶ 16-17). The first cause of action also alleges that Defendant Inland Top Soil is directly liable for its negligent inspection or failure to inspect and/or maintain the dump-trailer in a safe and operable condition. (Compl. ¶ 18.)

To state a claim for negligence, plaintiff must allege that: (i) the defendant owed a duty to the plaintiff, (ii) that the defendant breached that duty, and (iii) that the breach proximately caused the plaintiff's injuries. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1159.)

It is undisputed that on 12/16/2020 Decedent Andre Rashad Bledsoe sustained fatal injuries when the minibike he was operating collied with a commercial truck and trailer driven by Defendant Steven Remus. (Pltf.'s Sep. St. [ROA 172] No. 1.) It is also undisputed that at the time of the incident, Defendant Remus was operating a 2008 Peterbilt truck with dump trailer while in the course of his employment with Moving Defendant Inland Top Soil Mixes, Inc. ("Inland"). (Pltfs.' Sep. St. [ROA 172] No. 2.)

Defendant Inland Top Soil does not meet its initial burden, as the moving papers address only the theory of vicarious liability stated in Plaintiffs' complaint. Moving Defendant does not address the allegations that Moving Defendant was negligent in its inspection and/or maintenance of the Subject Vehicle. (Compl. ¶ 18; *see generally* Def.'s Sep. St.) In addition, there are disputed material facts as to whether Moving Defendant is vicariously liable for the negligence of its employee Defendant Remus.

Moving Defendant contends it cannot be vicariously liable for any negligence by driver Defendant Remus because the undisputed facts show Remus breached no duty and that his actions were not a substantial factor in causing the accident with Decedent Bledsoe. Specifically, Moving Defendant argues the video evidence shows Defendant Remus drove in compliance with all relevant statutes, having engaged the right turn signal indicator for more than the required 100 feet prior to turning.

Plaintiff contends there remain disputed material facts as to whether Defendant Remus breached his duty of care to the decedent. Specifically, Plaintiff argues that Defendant Remus made a "super-

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| | | wide" or "extra-wide" right turn, causing a "Right Turn Squeeze Crash," and failed to properly check his mirrors and/or appreciate Decedent's positioning within the roadway. Plaintiffs also dispute whether Defendant Remus signaled his intention to make a right turn, noting that Moving Defendant's own video evidence does not show the right turn signal indicator to be engaged.<br><br>Here, the court finds disputed facts exist as to the Plaintiffs' negligence action. Specifically, the court record shows conflicting evidence as to Defendant Remus's activating the right turn signal on the Subject Vehicle—including whether the surveillance video footage shows Remus had activated the signal. (*See* Pltfs.' Sep. St. [ROA 172] Nos. 4, 5, 17; Pltfs.' Add. Sep. St. [ROA 188] Nos. 12, 16.) Plaintiff also submits evidence showing that Defendant Remus's position at the time he initiated the turn does not meet the standard of care for commercial trucking (Pltfs.' Add. Sep. St. [ROA 188] at Nos. 5-7, 15, 23 [and evidence cited therein]), and that Defendant Remus failed to check his mirrors and appreciate Decedent's positioning in the roadway (Pltf.'s Add. Sep. [ROA 188] Nos. 13, 21 [and evidence cited therein].)<br><br>For the foregoing reasons, the MSJ /MSA as to the First Cause of Action for negligence is denied.<br><br>**<u>Second Cause of Action (Negligent Entrustment)</u>**<br><br>The Complaint alleges Defendant Inland Top Soil negligently entrusted the Subject Vehicle to Defendant Remus. (Compl. ¶ 27.)<br><br>Plaintiffs do not oppose Defendant Inland Top Soil's motion for summary adjudication as to this cause of action, and Plaintiffs stipulate to its dismissal. (Opp. at 17:11-15.) Thus, the MSJ/MSA as to the Second Cause of Action for negligent entrustment is granted, and that cause of action is dismissed.<br><br>Plaintiffs' evidentiary objection no. 46 is OVERRULED. The remainder of the evidentiary objections submitted were not material to the disposition of this motion. (Code Civ. Proc., § 437c, subd. (q) [providing that: "[i]n granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion"].)<br><br>Moving Defendant to give notice. |

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| 10 | Wells Fargo Bank vs. Hellman | **TENTATIVE RULING:**<br><br>**Motion to Vacate**<br><br>Plaintiff Wells Fargo Bank, N.A. moves to vacate the dismissal and enter judgment against Defendant Cheyenne Hellman pursuant to the parties' stipulation. For the following reasons, the motion is DENIED without prejudice.<br><br>Plaintiff served the motion on Defendant at 1010E Yorba Linda Blvd, Apt 1083, Placentia, CA 92870. According to the most recent document filed by Defendant, a Case Management Statement filed on June 23, 2022, Defendant is represented by Daniel S. March in Tustin. No substitution of attorney has been filed.<br><br>The Court continued this hearing from April 17, 2024, to May 22, 2024, for Plaintiff to show service on Defendant's counsel. Defendant has not done so.<br><br>Clerk to give notice. |
| 11 | Pruitt vs. FCA US, LLC | **CONTINUED TO 6/26/24** |
| 12 | Aztec Leasing Inc vs. Baronhr, LLC | **TENTATIVE RULING:**<br><br>**Motion to Deem Requests for Admission Admitted**<br><br>Plaintiff Aztec Leasing Inc. moves to deem admitted the truth of each matter specified in the Requests for Admission served on Defendant Baronhr, LLC on December 15, 2023. For the reasons set forth below, Plaintiff's unopposed motion is GRANTED.<br><br>A propounding party may ask the court for an order that deems the matters contained in the requests for admission admitted if the receiving party fails to respond to the requests for admission. (Code Civ. Proc. § 2033.280(b).) The court shall grant the order unless it finds that the party to whom the requests were directed has served responses in conformance with Code Civ. Proc. § 2033.220 before the hearing on the motion. (Code Civ. Proc. § 2033.280(c).)<br><br>The requests for admission were served by mail on December 15, 2023. (Minassian Decl. ¶ 2, Exh. 1.) Defendant has not served any responses to the discovery requests. (*Id*. at ¶ 4.) 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).) Thus, the Motion is granted, and the court deems admitted the truth of each matter specified |

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| | | in the Requests for Admission served on Defendant Baronhr, LLC on December 15, 2023.<br><br>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 Baronhr, LLC to pay $900.00 to Plaintiff Aztec Leasing Inc. within 30 days of service of notice of ruling.<br><br>Plaintiff to give notice. |
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