Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: May 21, 2024

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

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- Civil Court Reporter Pooling; and
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These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling **(657-622-5232)**. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

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

#	Case Name	Tentative
1	**HARDY VS. GENERAL MOTORS LLC. 2022-01257269**	**1. MOTION FOR ATTORNEY FEES** Plaintiffs Brian D. Hardy and Regina Hardy's Motion for Attorneys' Fee is GRANTED in the amount of $30,497.5 for fees and $735.93 in costs/expenses. On August 14, 2023, Plaintiff accepted Defendant's settlement offer for $45,000 with attorney fees, costs, and expenses to be determined by the Court. If a plaintiff prevails in a Song-Beverly action, they "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd. (d).) Courts use the lodestar adjustment method to determine the amount of attorney's fees to award in Song-Beverly actions. (*Reynolds v. Ford Motor Co.* (2020) 47 Cal.App.5th 1105, 1112.) "[T]he lodestar is the basic fee for comparable legal services in the community." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*).) It is based on the careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case. [The California Supreme Court] expressly approved the use of prevailing hourly rates as a basis for the lodestar… In referring to "reasonable" compensation, [the Court] indicated that trial courts must carefully review attorney documentation of hours expended; "padding" in the form of inefficient or duplicative efforts is not subject to compensation. (Id., at p. 1131-1132 [cleaned-up].) "The amount of attorney fees awarded pursuant to the lodestar adjustment method may be increased or decreased. (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 247 [cleaned-up].) The lodestar may be adjusted based on factors which include (1) the complexity of the case, (2) the attorney's skills, (3) the results achieved; (4) whether the case was taken on a contingency. (*Ketchum*, supra, 24 Cal.4th at 1132-1134.) "The prevailing party and fee applicant bears the burden of showing that the fees incurred were ... reasonably necessary to the conduct of the litigation, and were reasonable in amount.… [I]f the prevailing party fails to meet this burden, and the court

finds the time expended or amount charged is not reasonable under the circumstances, then the court must take this into account and award attorney fees in a lesser amount." (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 247 [cleaned-up]; see also *Save Our Uniquely Rural Community* Environment, supra, 235 Cal.App.4th at 1186 [It is not enough merely to state that counsel expended a certain number of hours in representing the client; fees motion must affirmatively demonstrate that the hours spent were reasonable and necessary].)

"'[T]he lodestar method vests the trial court with the discretion to decide which of the hours expended by the attorneys were 'reasonably spent' on the litigation and to determine the hourly rates that should be used in the lodestar calculus." (*Mikhaeilpoor*, supra, 48 Cal.App.5th at 246-247 [cleaned-up].)

Plaintiffs seek $51,865 in attorney's fees. There is no dispute between the parties that Plaintiffs are entitled to fees and costs/expenses. The issue in dispute is the amount of attorney's fees.

Defendant has not objected to the hourly rates charged by Plaintiffs' attorneys or their paralegals. Therefore, the Court finds the hourly rates of Plaintiffs' counsel and their paralegals to be reasonable.

Timekeeper	Total Hours Billed	Total Amount Billed
Jessica Anvar	0.6 x $550/hour	$330.00
Kathy Carreño	2.0 x $200/hour	$400.00
Jordan G. Cohen	86.5 x $525/hour	$45,412.50
Isabel Garcia	0.5 x $200/hour	$100.00
Rodney Gi	1.4 x $475/hour	$665.00
David Gomez	0.2 x 200/hour	$40.00
Iraida Gonzalez	1.0 x $415/hour	$415.00
Diana Rivero	1.7 x $490/hour	$833.00
Richard Ruiz	0.2 x $200/hour	$40.00
Clarence Serrrano	2.4 x $200/hour	$480.00
TOTAL	**96.5 hours**	**$48,715.50**

Time Spent on Tasks

The billing records submitted by Plaintiffs indicate CLE spent 96.5 hours litigating this action. Defendant contends the time spent is excessive.

When a party challenges the reasonableness of the number of hours billed, it has the burden "to point to the specific items challenged, with a sufficient argument and citations to the evidence." (*Premier Med. Mgmt. Sys., Inc. v. Cal. Ins.*

Guarantee Assn. (2008) 163 Cal.App.4th 550, 564). "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (Ibid.)

Defendant submitted a declaration of its counsel, Ryan Kay, which set forth the reasons for reducing the hours billed by Plaintiffs' counsel. The following is a chart summarizing the requested reductions.

ACTIVITY	"BILLED" HOURS	"BILLED" FEES	REASONABLE HOURS "MAX"	REDUCTION
Time Incurred by Paralegals	2.5	$500.00	0	$500.00
Pre-Engagement Work	.3	$165.00	0	$165.00
Preparing Templated Discovery Responses	14.6	$7,665.00	2	$6,515.00
Preparing Templated Discovery Requests to GM	5.1	$2,677.50	1.0	$2,152.50
Reviewing GM's Discovery Responses and Production	31.7	$16,642.50	3	$15,067.50
Templated Meet and Confer Letters and Emails	4	$2,100.00	0.5	$1,837.50
Fee Demand and "anticipated" Reply	15.3	$8,032.50	4.0	$5,932.50
TOTAL	**73.5**	**$ 37,782.50**	**10.5**	**$32,170.00**

1. Time Incurred by Paralegals

Defendant contends the tasks billed by the paralegals was purely clerical or secretarial in nature. (See *Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274, 288 fn. 10 ("purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.").) For example, combined, they repeatedly billed in increments for tasks such as "calendar(ed)," "serve(d)" or "receipt and review." While paralegal fees may be recoverable for any legal work performed such as research or drafting, the ministerial tasks performed by the paralegals here, such as opening mail, calendaring deadlines, and serving documents are not properly considered as such.

Plaintiffs assert all the work billed by the paralegals were non "ministerial." Defendant does not specifically identify which entries are "clerical" in nature. Therefore, Defendant has not met its burden that the claimed fees are unreasonable.

2. Pre-Engagement Work

		Defendant contends Plaintiffs are not entitled to fees related to pre-representation investigation. However, Civil Code § 1794 provides for the recovery of aggregate fees reasonably incurred by the buyer in connection with the "commencement" and "prosecution" of the action. Therefore, Plaintiffs' counsels' review of the subject vehicle's repair history is recoverable. **3. Discovery Responses** Plaintiffs billed 14.6 hours in connection with discovery propounded by Defendant. Plaintiff asserts it generated responses and objections to 58 requests for production, 44 requests for admission, 52 form interrogatories, and 82 special interrogatories, comprising 128 pages of substantive work product. (Supp. Cohen Decl., ¶ 3.) Defendant contends Plaintiffs should be entitled to only 2 hours for such work because the responses are boilerplate, template objections used by counsel in other cases against GM, as evidenced by Exhibits Q-T and U-X to the Kay Declaration. The Court agrees the responses are similar to responses provided in other lemon law cases. Therefore, the Court reduces the number of hours billed by Cohen by 50% or to 7.3 hours. **4. Propounding Discovery** Plaintiffs billed 5.1 hours for propounding discovery to Defendant. Again, these discovery requests are mostly templated and used by counsel in other cases. (See Kay Decl., Exhs. C and D.) Accordingly, the Court reduces the hours billed by Cohen by 1.1 hours. **5. Reviewing Defendant's Discovery Responses** Defendant objects to Cohen's billing for reviewing Defendant's discovery responses and the documents produced as excessive. Cohen billed 31.7 hours for this task. Defendant asserts this was a straightforward lemon law case and nothing novel was raised by this case. On reply, Defendant did not address this argument. The Court agrees 31.7 hours is extremely excessive. This case did not go to trial, there were no depositions, and no motions filed. Spending 31.7 hours to review discovery in this situation

		is unreasonable and excessive. A more reasonable amount of time spent is 8 hours. Therefore, the Court reduces the number of hours billed by Cohen for such task by 23.7 hours. **6. Meet and Confer Letters** Plaintiffs' counsel requests 4 hours for drafting the meet and confer letters. Defendant objects to the fees billed on the ground the meet and confer letters are nearly identical to meet and confer letters counsel has sent in other cases. As evidence, Defendant has attached examples to the Kay declaration. The Court agrees the request is excessive in light of counsel's use of the same meet and confer in other cases. The Court reduces the fees billed by Cohen by 2 hours. **7. Fee Demand** Defendant objects to the 9.3 hours billed by Cohen for this motion, and the 6.0 hours of anticipated fees to prepare a reply and attend the hearing. Again, Defendant asserts this motion is similar to other fee motions filed by Plaintiffs' counsel. As for the 9.3 hours billed by Cohen, the Court reduces the hours billed by 2.3 hours given that it is similar to other fee motions filed by Plaintiffs' counsel. On reply, Cohen submits a supplemental declaration stating he spent 4.1 hours on the reply. The Court finds the amount spent to be reasonable and adds an additional 1 hour for the attending the hearing for a total of 5.1 hours. Accordingly, the time billed by Plaintiffs' counsel (15.3 hours) is reduced by 3.2 hours. **Summary of Lodestar** In sum, the hours billed by Cohen should be reduced by the following hours: Discovery Responses: 7.3 Propounding Discovery: 1.1 Reviewing Discovery Responses: 23.7 Meet and Confer: 2.0 Fee Demand: 3.2 Total Reduction: 37.3

		Accordingly, the total amount to be subtracted from the fees requested is $19,582.50 (37.3 x Cohen's rate of $525/hour). Therefore, the total fees to be awarded is $32,282.50 ($51,865 - $19,582.50). **Costs** On February 7, 2024, Plaintiffs filed a Memorandum of Costs seeking $735.93 in costs. (ROA 69) CRC Rule 3.1700(b)(1) provides as follows: "Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum. If the cost memorandum was served by mail, the period is extended as provided in Code of Civil Procedure section 1013. If the cost memorandum was served electronically, the period is extended as provided in Code of Civil Procedure section 1010.6(a)(4)." Here, Defendant did not file a motion to tax costs, but opposed the costs claimed in opposition to the instant motion. Such opposition is not timely. Therefore, I would award the $735.93 in costs to Plaintiffs. In sum, Plaintiffs' motion for attorney fees is GRANTED in the amount of $32,282.50 in fees and $735.93 in costs/expenses, for a total of $33,018.43. Plaintiff to give notice.
3	**DASCANIO VS. ARSENIAN 2022-01257590**	**MOTION TO STRIKE – ANTI – SLAPP** The Motion to Strike the Cross-Complaint of Benjamin Arsenian and Law Offices of Benjamin Arsenian (collectively "Arsenian") under Code of Civil Procedure section 425.16 by Cross-Defendants Dennis Dascanio and The Law Offices of Dennis Dascanio, APC (collectively "Dascanio") is DENIED. **Legal Standard** "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the

		plaintiff will prevail on the claim." (CCP § 425.16(b)(1).) An "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: . . . any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or . . . any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest. (Code Civ. Proc. § 425.16(e).) "Section 425.16 posits [] a two-step process for determining whether an action is a SLAPP." (*Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." (*Id*.) "A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)." (*Id*.) "If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Id*.) "[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have 'stated and substantiated a legally sufficient claim.'" (*Navallier*, 29 Cal. 4th at 88.) "Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" (*Id*. at 88-89.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute-i.e., that arises from protected speech or petitioning and lacks even minimal merit-is a SLAPP, subject to being stricken under the statute." (*Id*.) The anti-SLAPP statute "is to be construed broadly" to protect the valid exercise of constitutional rights. (*Crossroads Investors, L.P. v. Federal National Mortgage Assn.* (2017) 13 Cal.App.5th 757, 775.) **<u>Prong One – Protected Activity</u>** Code of Civil Procedure section 425.16(e) provides in part, "(e) As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any

written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law…" "A statement is 'in connection with' an issue under consideration by a court in a judicial proceeding within the meaning of clause (2) of section 425.16, subdivision (e) if it relates to a substantive issue in the proceeding and is directed to a person having some interest in the proceeding." (*Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1167.)

In *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, holds, "a statement is 'in connection with' litigation under section 425.16, subdivision (e)(2) if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation. (*Id*. at 1266.)

"Assertions that are 'merely incidental' or 'collateral' are not subject to section 425.16." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 394.)

Here, Dascanio moves to strike Arsenian's Cross-Complaint which alleges causes of action for (1) tortious interference with contract and (2) declaratory relief. Arsenian's allegations include the following at ¶¶ 12-14:

"12. In or about September 2023, Arsenian became aware the Dascanio and Joyce have
embarked upon a campaign to steal Arsenian's clients and/or interfere with his contractual relationship
with them. To that end, Dascanio and Joyce have called multiple of Arsenian's clients.
13. Arsenian is informed and believes and, on that basis, alleges that Dascanio and Joyce
are, among other things, making the following false representations to Arsenian's clients:

a. That Dascanio, not Arsenian, is their attorney;
b. That Arsenian is not working on his clients' cases;
c. That Arsenian is not communicating with Dascanio; and,
d. That Arsenian is refusing to provide necessary case information to Dascanio in order that he may protect their rights; and that the clients should immediately forward whatever case information they have to Dascanio;

14. Dascanio and Joyce have contacted at least 8 of Arsenian's clients in violation of Rule of Professional Conduct 4.2. In each case, Arsenian has a signed retainer agreement with the client

		and is actively representing the client on pending matters. None of Arsenian's clients have an active case with Dascanio. The clients Cross-Defendants are contacting are not limited to old clients of Dascanio. Indeed, in at least one case, Dascanio never represented the client contacted." Arsenian's first cause of action asserts the following at ¶ 17: "Arsenian and third parties entered into retainer agreements that Cross-Defendants are aware of. Cross-Defendants' conduct is preventing performance of those agreements and/or making performance more expensive or difficult. Cross-Defendants intended to disrupt the performance of the agreements, and their actions were a substantial factor in causing Arsenian's harm, as described above. As a result, Arsenian has and will incur damages to be proven at trial." Dascanio asserts the cross-complaint arises from his protected activity in "carrying out an essential part of litigation – interviewing his clients who are part of this lawsuit." (Motion, 14:13-14.) He cites *Timothy W. v. Julie W.* (2022) 85 Cal.App.5th 648 (*Timothy W.*), in which the Court of Appeal held that a wife's disclosure of sensitive information to a private investigator during divorce proceedings, which the investigator then shared with others, was protected litigation activity. *Timothy W.* holds, "it has been widely held that conduct concerning litigation that takes place outside of court may be protected under the anti-SLAPP statute. In the anti-SLAPP context, any act includes communicative conduct such as the filing, funding, and prosecution of a civil action. This includes conduct ranging from filing an insurance claim as a prerequisite to litigation, to counseling a tenant in anticipation of litigation, to soliciting litigation by others, to communications in the course of settlement negotiations. (*Id.* at 658 [cleaned up].) Here, Dascanio presents evidence that shows, in summary, (1) there is a dispute as to whether Dascanio and/or Arsenian represent certain clients, (2) Dascanio and his counsel hired an investigator who contacted certain of the disputed clients to determine if Arsenian was interfering with Dascanio's contractual rights, (3) Arsenian has refused to produce evidence establishing his relationships with the disputed clients. Arsenian responds that Dascanio is entitled to investigate his claims in this case, but that the alleged statements to his clients

		do not relate to the substantive issues in this case and unduly interfere with his client relationships. Arsenian presents evidence which shows, in summary, that (1) certain of the disputed clients have been contacted by Dascanio or his agents, (2) Dascanio misrepresented to the disputed clients his role as their attorney including whether Dascanio or Arsenian was their primary attorney. Dascanio has not shown that Arsenian's cross-complaint is based on protected activity. The parties agree that investigation of their claims in this case constitutes protected activity, but the scope of the cross-complaint is narrower: it alleges specific misrepresentations to Arsenian's alleged clients regarding the parties' representation of those clients in a manner that has allegedly harmed Arsenian's relationships with his clients. (Cross-Complaint at ¶¶ 12-14, 17.) The cross-complaint does not seek to prevent Dascanio from contacting his clients as witnesses; rather it seeks damages for misrepresentations allegedly made during such contacts. This case is distinguishable from *Timothy W.*, in which the investigation occurred during a marital dissolution case. Here, there are ongoing contractual relationships between the parties and third-party clients, the scope of which remain in dispute. Therefore, unlike in *Timothy W.*, Arsenian is alleging that the disputed statements by Dascanio to the disputed clients directly interfered with the client relationships which are the subject of this lawsuit. For purposes of this motion, Arsenian has presented sufficient evidence to support a factual basis for his allegations of misrepresentations made by Dascanio or Dascanio's agents to the disputed clients. The cross-complaint is not attempting to impose liability or otherwise preclude Dascanio from conducting his investigation, including contacting the disputed clients, with the exception of alleged misrepresentations to the disputed clients. Therefore, Dascanio has not shown the cross-complaint arises from protected activity under the anti-SLAPP statute. **<u>Prong Two – Probability of Prevailing</u>** Although Dascanio has not demonstrated the cross-complaint arises from protected activity, the Court will address prong two below.

		"[U]nder the second prong (if the moving party met its burden), the responding party has the burden to establish that its challenged claims have at least minimal merit." *Third* (*Laguna Hills Mutual v. Joslin* (2020) 49 Cal.App.5th 366, 371 (internal punctuation omitted); see *Baral v. Schnitt* (2016) 1 Cal.5th 376, 390.) "To show a probability of prevailing, the opposing party must demonstrate the claim is legally sufficient and supported by a sufficient prima facie showing of evidence to sustain a favorable judgment if the evidence it has submitted is credited." (*Mitchell v. Twin Galaxies, LLC* (2021) 70 Cal.App.5th 207, 217.) "In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant; though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. We accept as true the evidence favorable to the plaintiff. A plaintiff must establish only that the challenged claims have minimal merit to defeat an anti-SLAPP motion. (*Id*. at 217–218 [cleaned up].) Here, Dascanio contends his alleged conduct is protected by the litigation privilege under Civil Code section 47(b), which generally provides that statements made in a judicial proceeding may not form the basis for civil liability. While section 425.16(e)(2) and section 47(b) are not coextensive, they serve similar policy interests and are to be construed broadly. (*Neville*, *supra*, 160 Cal.App.4th at 1263.) "The principal purpose of the privilege is to afford the utmost freedom of access to the courts without fear of being subsequently harassed by derivative tort actions." (*Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1146.) "The usual formulation of the litigation privilege is that it applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. The principal purpose of the litigation privilege "is to afford litigants and witnesses the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. The litigation privilege "promotes the effectiveness of judicial proceedings by encouraging 'open channels of communication

		and the presentation of evidence' in judicial proceedings. However, republications to nonparticipants in the action are generally not privileged under the litigation privilege, and are thus actionable unless privileged on some other basis." (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 152 [cleaned up].) However, case law has "expanded the scope of [the litigation privilege to include publication to nonparties with a substantial interest in the proceeding." (*Ibid*.) Here, while Dascanio's alleged contacts with the disputed clients were made during the course of this litigation, Arsenian has presented evidence sufficient to show, for purposes of this motion, that the specific misrepresentations alleged in the cross-complaint were not reasonably intended to achieve the objects of the litigation and lack a connection or logical relation to the action. Therefore, the motion to strike is denied.
4	**NILES VS. HEREDIA 2023-01340130**	**MOTION TO STRIKE** Defendant the City of Costa Mesa's Motion to Strike the Doe Amendment naming the City of Costa Mesa as a defendant is GRANTED. "When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, … when his true name is discovered, the pleading or proceeding must be amended accordingly …." (Code Civ. Proc., § 474.) Doe amendments require genuine ignorance of the defendant's true name or facts rendering the defendant liable at the time the complaint is filed. (*McClatchy v. Coblentz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 371-372.) Plaintiff was not ignorant of Costa Mesa's true name or the facts rendering it liable at the time she filed her Complaint because she sent a government claim form to Costa Mesa. Plaintiff argues that Code Civ. Proc., § 475 allows the Doe Amendment because her counsel erred in typing Orange County as the named Defendant and Heredia's employer instead of Costa Mesa. "The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties." (Code Civ. Proc., § 475.) First, Code Civ. Proc., § 475 is not an exception to

		Code Civ. Proc., § 474 which requires genuine ignorance. Second, Costa Mesa's rights are substantially affected. The Doe Amendment caused Costa Mesa to be a defendant to the lawsuit. Plaintiff also argues that Code Civ. Proc., § 473(b) allows for the amendment. However, Section 473(b) requires a separate motion to be filed and thus, is inapplicable here. Thus, Costa Mesa's Motion to Strike the Doe Amendment adding it as a defendant is granted.
6	**TRINIDAD VS. TRIBBLE 2023-01325837**	**MOTION TO COMPEL FURTHER RESPONSES** Plaintiff Mary G. Trinidad's motion to compel defendant Lori Ann Tribble to provide further responses to Request for Admissions, Set One, Nos 1-38, without objection, is CONTINUED to 07/02/2024 at 9:00am in Dept. C32. Code of Civil Procedure section 2033.290 provides in pertinent part: "(a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: [¶] (1) An answer to a particular request is evasive or incomplete. [¶] (2) An objection to a particular request is without merit or too general. [¶] (b)(1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040." Section 2016.040 provides: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." The rule requiring a good faith effort to meet and confer about discovery disputes "is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . [t]his, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) Plaintiff has failed to show a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Specifically, Plaintiff's counsel sent Defendant's counsel a meet and confer letter on December 14, 2023. (Seuthe Decl. ¶ 7.)

		Defendant provided further responses to the Request for Admissions on December 19, 2023. (Seuthe Decl., ¶ 9.) The same day, Plaintiff's counsel sent an email to Defendant's counsel stating: "michael .... these are just terrible answers/responses you are forcing a motion ... is this your final effort? we will assume it is we will get the motion filed next week merry xmas." (Seuthe Decl., ¶ 9, Ex. 6.) Plaintiff's counsel's email does not show a good faith attempt to meet and confer. The following day, on December 20, 2023, without engaging in any additional meet and confer, Plaintiff filed the instant Motion. Plaintiff is ordered to engage in additional attempts to meet and confer, including a telephonic or in-person conference (not email). No later than 9 court days prior to the continued hearing, the parties are to file a Joint Statement which shall (1) describe the parties' attempts to meet and confer pursuant to this order, (2) identify each discovery request that remains in dispute, and (3) each party's position on the discovery request that remains in dispute. The court expects the parties to engage in a good faith meet and confer effort to resolve the issues that are the subject of this Motion. Plaintiff to give notice.
8	**SAHEL VS. PALLADIUM AUTO LEASING, LLC. 2022-01289850**	**MOTION TO SET ASIDE/VACATE DEFAULT** Defendants Palladium Auto Leasing, LLC, Scott Thorpe, Victor Bonilla, Elliot Broidy, and Javier Dominguez's motion to set aside and vacate default entered on October 20, 2023, is GRANTED. Defendant requests discretionary relief under Code of Civil Procedure Section 473(b). Section 473(b) provides: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

		"The term 'surprise,' as used in section 473, refers to ' "some condition or situation in which a party ... is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." ' [Citation.]" (*State Farm Fire & Cas. Co. v. Pietak* (2001) 90 Cal.App.4th 600, 611.) Defendants have shown that they were previously represented by counsel, Omid J. Shirazi. (Dominguez Decl., ¶ 7; Bonilla Decl., ¶ 7; Thorpe Decl., ¶ 7; Norell Decl., ¶ 6; Broidy Decl., ¶ 6.) <u>Defendants Javier Dominguez and Victor Bonilla</u>: On 10-17-23, Shirazi filed Motions to Be Relieved as Counsel for both defendants Dominguez and Bonilla. (ROA Nos. 419, 446.) The hearing on the motions was set for 4-16-24. (*Id.*) Three days after later, on 10-20-23, while the Motions to Be Relieved as Counsel were still pending, Plaintiff filed requests for entry of default against both Defendants. (ROA No. 452, 463.) Both Dominguez and Bonilla aver that they were not informed that Shirazi was seeking to be relieved as their counsel until November 2023 after default had been entered against them. (Dominguez Decl., ¶ 10; Bonilla Decl., ¶ 10.) Defendants reasonably expected that their interests were being handled by their counsel. Accordingly, Defendants Dominguez and Bonilla have made a sufficient showing that they were surprised by the entry of default against them. This is sufficient to warrant relief. <u>Defendant Scott Thorpe</u>: On 11-7-23, Shirazi filed a Motion to Be Relieved as Counsel for Thorpe. (ROA No. 479.) While Shirazi was still Thorpe's counsel, on 10-23-23, Plaintiff filed a request for entry of default against Thorpe. (ROA No. 451.) Thorpe avers that he was not informed that Shirazi was seeking to be relieved as counsel until November 2023 after default had been entered against him. (Dominguez Decl., ¶ 10; Bonilla Decl., ¶ 10.) Defendant reasonably expected that his interests were being handled by his counsel. Accordingly, defendant Thorpe has made a sufficient showing that he was surprised by the entry of default against him. This is sufficient to warrant relief. <u>Palladium Auto Leasing, LLC and Elliot Broidy</u>: On 10-13-23, Defendants' current counsel, Troy Schell from Schell Nuelle LLP, initially filed a Substitution of Attorney for defendants Elliot Broidy and Palladium Auto Leasing. (ROA No. 417.) However, Plaintiff's counsel informed Schell that the Substitution of Attorney was defective. (Schell Decl., ¶ 3, ROA

		Nos. 460, 462.) Before the new Substitution of Attorney forms were filed, on 10-20-23, Gardinia Montero from Defendants' current counsel's office appeared at a Case Management Conference on behalf of defendants Palladium Auto Leasing and Broidy and requested and was granted a 30-day continuance to get up to speed on the case and obtain files on the case. (ROA No. 456; Schell Decl., ¶ 7.) On that same day, Plaintiff filed an entry of default against both Palladium Auto Leasing and Broidy. (ROA No. 453, 454.) Plaintiff filed the request for defaults despite knowing that Defendants were in the process of retaining new counsel. Defendants were granted a 30-day continuance to get up to speed on the case by the court, therefore, it was reasonable for the Defendants to be surprised by the entry of default against them. Based on the foregoing, Defendants have made a sufficient showing of surprise to warrant relief. The application for relief is also timely. The Default Judgment was entered on 10/20/23, and Defendants timely filed their application on 1/3/24, within 6 months of the entry of default. Defendants are ordered to file and serve the proposed Answer within 10 days of the notice of this ruling. Moving Defendants to give notice.
9	**QUEZADA VS. STERLING MOTORS, LTD. 2023-01338219**	**MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES** Defendant Sterling Motors, LTD's Motion to Compel Further Responses to Requests for Admissions, Set One, is MOOT in light of Plaintiff's counsel's declaration that further responses were served on 5/2/2024. Defendant's request for sanctions is granted in the amount of $2,852.00 against Plaintiff only, payable within 30 days of this order. (Code Civ. Proc. §2030.300(d). See also Code Civ. Proc. §2023.040; *Blumenthal v. Sup.Ct.* (1980) 103 Cal.App.3d 317, 320 [when sanctions are sought against a party's attorney, the notice of motion must identify the attorney and state that sanctions are being sought against the attorney personally].) Defendant to give notice.

12	**LAGUNA CREST ENTERPRISE, INC. VS. SCINTO 2021-01211808**	**1. MOTION TO COMPEL ARBITRATION** The Motion to Compel Arbitration by Defendant Chapwood, L.P. is MOOT based on the parties' representation the disputed claims have been settled at mediation.