TENTATIVE RULINGS

LAW AND MOTION CALENDAR

Judge Nathan Vu

Department N15

Hearing Date and Time: May 20, 2024 @ 08:30 AM

TENTATIVE RULINGS: The court will endeavor to post tentative rulings on this website by 3:00 p.m. on the day before the hearing. However, ongoing proceedings may prevent posting by that time or the court may have no tentative ruling on a matter.

Once a tentative ruling has been posted, the court may not entertain requests for continuance and may not consider additional papers.

ORAL ARGUMENT: The court will hear oral argument regarding law and motion matters on the hearing date and at the time stated above, unless all parties submit on the tentative ruling. Parties are not required to give notice of intent to appear.

If you wish to submit on the tentative ruling and do not intend to appear at the hearing, please inform opposing counsel and the court clerk by electronic mail n15@occourts.org or by telephone (657) 622-5615. If all parties submit on the tentative ruling or no parties or counsel appear for the hearing, then the tentative ruling shall become the final ruling.

APPEARANCES: Parties and counsel may appear at the law and motion hearing in-person or via Zoom. Persons appearing in-person shall come to Department N15 at the North Justice Center, 1275 N. Berkeley Avenue, Fullerton, CA 92832.

Persons appearing remotely must check-in online through the court's website at **https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings** and then clicking on the button entitled "Department N15 Judge Nathan Vu".

Anyone having difficulty appearing remotely may contact the court clerk at (657) 622-5615.

All persons appearing remotely must abide by all applicable laws and rules, including Local Rule 375, and must obtain, test the functionality of, and learn how to use the Zoom application and all necessary equipment prior to the remote hearing. More information is available at https://www.occourts.org/media-relations/civil.html.

COURT REPORTERS: Court reporters employed by the court are NOT normally provided for law and motion matters in civil courtrooms. If a party desires a record of a law and motion proceeding, it is the party's responsibility to arrange for a privately-retained court reporter, who may appear in-person or remotely. Parties must comply with the Court's policy on the use of privately-retained court reporters, available at https://www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf.

1	**Cliq, Inc. vs. Capital Managers, LLC** **30-2021-01220754**	<u>Motion to Disqualify</u> Plaintiff Cardflex, Inc. dba Cliq's Motion to Disqualify Defendants' Counsel is taken OFF CALENDAR as moot. Plaintiff Cardflex, Inc. dba Cliq's request for monetary and evidentiary sanctions is DENIED without prejudice. Plaintiff Cardflex, Inc. dba Cliq moves to disqualify the law firm Kutak Rock LLP as counsel of record for Defendants Capital Managers, LLC; Eventus Holdings, LLC; Sabin Burrell; and John Hynes (collectively, Defendants). <u>Withdrawal of Motion</u> After the filing of this motion, the law firm Kutak Rock LLP was removed as Defendants' Counsel. Defendants contends that the Motion to Disqualify is now moot and, in its reply, Plaintiff withdraws the motion. Therefore, the court will take the Motion to Disqualify off calendar as moot. <u>Sanctions</u> In its reply, Plaintiff also requests monetary sanctions based on alleged misrepresentations or omissions of material facts in Defendants' opposition to the motion. Plaintiff further requests evidentiary sanctions, contending that Defendants mishandled privileged documents. However, the notice of motion did not state that Plaintiff was seeking such relief. A party may not raise new issues in its reply, particularly where the issues raised in the reply brief "are not merely elaboration of issues raised in his opening brief or rebuttals to [the opposition] briefing." (*Richardt v. Hoffman* (1997) 52 Cal.App.4th 754, 763-764.) "Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument." (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.)

		The relief requested by Plaintiff in the reply seeks new and different relief on a different basis than what was requested in the notice of motion and motion. Further, Defendants were not given an opportunity to respond to these new requests and contentions. Thus, the court will deny the request for monetary and evidentiary sanctions without prejudice. <u>Motion to Quash Subpoena</u> Defendants John Hynes' and Sabin Burrell's Motion to Quash Subpoenas to American Express, or in the Alternative, for Protective Order, is GRANTED in part and DENIED in part. The Deposition Subpoena for Production of Business Records served upon American Express is QUASHED as to Demand for Production Numbers 2, 3, and 4. The court ORDERS that American Express shall comply with Deposition Subpoena for Production of Business Records, Demand for Production Number 1, with respect to documents dated or created on or after September 1, 2017. Defendants John Hynes' and Sabin Burrell's evidentiary objections to the Declaration of Adam Spencer are SUSTAINED as to evidentiary objection number 3 as to "a duty of loyalty" only and evidentiary objection number 4 as to "Therefore setting himself up as a Vendor, in his estimation would provide more coverage for him to receive monies owed to him. that would pay directly into his AMEX Card." only. The remainder of the evidentiary objections to the Declaration of Adam Spencer are OVERRULED. Defendants John Hynes and Sabin Burrell (Moving Defendants) move to quash a subpoena served on third-party American Express by Plaintiff Cardflex, Inc. dba Cliq, or in the alternative, for a protective order commanding that the discovery sought not be produced. <u>Standard to Quash Deposition Subpoena</u> Any party may obtain discovery by taking in California the oral deposition of any person. (See Code Civ. Proc., § 2025.010.)

		A nonparty may be required to appear to give oral testimony in a deposition and/or to produce documents by serving the nonparty with a subpoena with sufficient time in advance to allow the nonparty a reasonable opportunity to travel to the place of deposition and/or to locate and produce any designated documents. (See Civil Procedure Code, §§ 1985, 1987, 2020.220.) "If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things . . . at the taking of a deposition, the court, upon motion reasonably made . . . may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders." (Code Civ. Proc., § 1987.1, subd. (a).) In general, the burden of establishing good cause for issuance of an order denying or limiting discovery falls on the shoulders of the party seeking the protection, who must make this showing by a preponderance of the evidence. (*Coriell v. Superior Court* (1974) 39 Cal.App.3d 487, 492; *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1145.) <u>Standard for Protective Order for Deposition Subpoena</u> Civil Procedure Code section 2030.090 provides that: (b) The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions: . . . (4) That the response be made only on specified terms and conditions. . . . (Code Civ. Proc., § 2030.090, subd. (b).)

		Similarly, Civil Procedure Code section 2031.060 states that: (b) The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions: (1) That all or some of the items or categories of items in the demand need not be produced or made available at all. . . . (4) That the inspection, copying, testing, or sampling be made only on specified terms and conditions. . . . (Code Civ. Proc., § 2031.060, subd. (b).) In addition, the court has the authority to "limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a). A party may seek this relief "pursuant to a motion for protective order". (*Ibid.*) As noted above, the burden of establishing good cause for issuance of an order denying or limiting discovery falls on the shoulders of the party seeking the protection, who must make this showing by a preponderance of the evidence. (*Coriell v. Superior Court* (1974) 39 Cal.App.3d 487, 492; *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1145.) <u>Privacy and Confidentiality</u> Moving Defendants contend that the subpoena seeks private, confidential, and personal information that is protected from discovery. The California Constitution expressly grants

		Californians a right of privacy. (Cal. Const., art. I, § 1.) Protection of informational privacy is the central concern of this provision. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35.) Personal financial information is protected by an individual's right to privacy. (*Fortunato v. Superior Court* (2003) 114 Cal.App.4th 480-81; see also *Valley Bank of Nevada V. Superior Court* (1975) 15 Cal.3d 562, 656 [individual has right to privacy in his or her confidential financial affairs].) As the Court of Appeal has explained: > The state has two substantial interests in regulating pretrial discovery. The first is to facilitate the search for truth and promote justice. The second is to protect the legitimate privacy interests of the litigants and third parties. "The interest in truth and justice is promoted by allowing liberal discovery of information in the possession of the opposing party. The interest in privacy is promoted by restricting the procurement or dissemination of information from the opposing party upon a showing of 'good cause.'" (*Stadish v. Superior* Court, *supra*, 71 Cal.App.4th at p. 1146, citations omitted, quoting *Westinghouse Electric Corp. v. Newman & Holtzinger* (1995) 39 Cal.App.4th 1194, 1208.) If the trial court determines that both of these interests are found in a case, it then must "balance the interests of the public, the petitioners, and the [respondents], and reach a decision as to whether dissemination of the documents should be restricted." (*Stadish v. Superior* Court, *supra*, 71 Cal.App.4th at p. 1146.) As the Supreme Court subsequently explained: > The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may

		identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 556.) "In other words, courts place the burden on the party asserting the privacy right to establish the extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies. (*Id.* at p. 557.) "What suffices to justify an invasion will . . . vary according to the context. Only obvious invasions of interests fundamental to personal autonomy must be supported by a compelling interest . . . ." (*Ibid.*) When "lesser interests are at stake . . . the strength of the countervailing interest sufficient to warrant disclosure of private information vary according to the strength of the privacy interest itself, the seriousness of the invasion, and the availability of alternatives and protective measures. (*Id.* at p. 556.) Here, the subpoena issued to American Express seeks the production of all documents, electronically-stored information, and communications that refer or relate to any account(s) that refer or relate to Defendant Sabin Burrell (Defendant Burrell), Defendant John Hynes, Defendant Jon Beckman, and non-party Kayla Jantz aka Kayla Burrell. (See Decl. of Rudy R. Perrino in Supp. of Moving Def.s' Mot. to Quash Subpoenas to American Express (Perrino Decl.), ¶ 3, Exh. A.) In this case, Moving Defendants have presented evidence that they conduct financial transactions with American Express so that the documents requested include financial information, which is protected by the right to privacy. (See Decl. of Sabin Burrell in Supp. of Moving Def.s' Mot. to Quash Subpoenas to American Express (Burrell Decl.), ¶ 3; Decl. of John Hynes in Supp. of Moving Def.s' Mot. to Quash Subpoenas to American Express (Hynes Decl.), ¶ 4.)

		Moving Defendants also present evidence that the documents relate to personal financial matters that are not relevant to this case. (See Burrell Decl., ¶¶ 3-4; Hynes Decl., ¶¶ 4-5.) In response, Plaintiff contends that it has a compelling need for the financial information sought, which is directly relevant to Plaintiff's claims in this lawsuit. The Complaint in this lawsuit alleges that sometime beginning in or after October 2017, Defendants solicited customers from Plaintiff and Defendants are now receiving residual income from this alleged misconduct. (See Compl. ¶¶ 17-29.) Plaintiff submits the declaration of Adam Spencer, who worked with Defendant Burrell at four different companies. (See Decl. of Adam Spencer in Supp. of Pltf.'s Opp'n to Moving Def.s' Motion to quash Subpoenas to America Express (Spencer Decl.), ¶ 3.) Spencer declares that Defendant Burrell "would set himself or one of his shell companies up as a vendor of Capital Managers. Then [he] would have his backend interest payable to AMEX as a Monthly Payable for the company . . . ." (Spencer Decl., ¶ 6.) Plaintiff has shown a compelling need for the account statements for all accounts that refer or relate to Defendant Burrell. However, Plaintiff does not show a compelling need for any of the other information relating to Defendant John Hynes, Defendant Jon Beckman, or non-party Kayla Jantz. <u>Overbreadth</u> Moving Defendants also argue that the subpoena is overbroad in that there is no limit to its scope – it simply seeks of all documents, electronically-stored information, and communications that refer or relate to Defendant Burrell, without any other limitations. Here, Plaintiff has alleged that Defendants' wrongful conduct, for which they seek evidence, began in or after October 2017. Plaintiff has not shown that they have a compelling need for all documents, electronically-stored information, and communications prior to that time.

		The court therefore will limit production to documents, electronically-stored information, and communications dated on or after September 2017. Defendants shall give notice of these rulings.
2	**Baldwin & Sons, Inc. vs. California Regional Water Quality Control Board San Diego Region** **30-2022-01291447**	<u>Motion to Seal</u> Petitioners Baldwin & Sons, Inc.'s; Sunranch Capital Partners, LLC's; Sunrise Pacific Construction, Inc.'s; SRC-PH Investments, LLC's; Baldwin & Sons, LLC's; Shawn M. Baldwin's; Randall G. Bone's; and Jose Capati's and Respondent California Regional Water Control Board San Diego Region's Motion to Seal Portions of Administrative Record is GRANTED. The court ORDERS that the following portions of the administrative record shall be filed or lodged under seal: 1. Defense Confidential Exh. No. 1: AR075319-AR075362; 2. Defense Confidential Exh. No. 2: AR075363-AR075403; 3. Defense Confidential Exh. No. 3: AR075404-AR075415; 4. Defense Confidential Exh. No. 4: AR075416-AR075424; 5. Defense Confidential Exh. No. 5: AR075425-AR075465; 6. Defense Confidential Exh. No. 6: AR075466-AR075472; 7. Defense Confidential Exh. No. 7: AR075473-AR075477; 8. Defense Confidential Exh. No. 8: AR075478-AR075501; 9. Defense Confidential Exh. No. 9: AR075502-AR075503; 10. Defense Confidential Exh. No. 10: AR057504-AR075523; 11. Defense Confidential Exh. No. 11: AR075524-AR075525; 12. Defense Confidential Exh. No. 12: AR075526-AR075562; 13. Defense Confidential Exh. No. 13: AR075563-AR075587; 14. Defense Confidential Exh. No. 14: AR075588-AR075590;

		15. Defense Confidential Exh. No. 15: AR075591-AR075609; 16. Defense Confidential Exh. No. 16: AR075610-AR075627; 17. Defense Confidential Exh. No. 17: AR075628-AR075630; 18. Defense Confidential Exh. No. 18: AR075631-AR075656; 19. Defense Confidential Exh. No. 19: AR075657-AR075658; 20. Prosecution Team Rebuttal to Confidential Brief of Baldwin & Sons, Inc. et al.: AR075711-AR075729; 21. Confidential Brief of Baldwin & Sons, Inc., et al.: AR075253-AR075298; 22. Baldwin & Sons, Inc., et al.'s Confidential Exhibit List: AR075299-AR075301; 23. Declaration of Alfred E. Baldwin in Support of Confidential Brief of Baldwin & Sons, Inc. et al.: AR075302-AR075305; 24. Declaration of Randall G. Bone in Support of Confidential Brief of Baldwin & Sons, Inc. et al.: AR075306-AR075310; 25. Declaration of Shawn M. Baldwin in Support of Confidential Brief of Baldwin & Sons, Inc.: AR075311-AR075312; 26. Declaration of Gary Berger in Support of Confidential Brief of Baldwin & Sons, Inc. et al.: AR075313-AR075314; 27. Declaration of William G. Bone in Support of Confidential Brief of Baldwin & Sons, Inc. et al.: AR075315-AR075316; and 28. Declaration of Jose Capati in Support of Confidential Brief of Baldwin & Sons, Inc. et al.: AR075317-AR075318. The parties to this action jointly move to seal portions of the administrative record in this case, including 28 documents comprising approximately 400 pages. <u>Standard for Motion to Seal</u> "Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c); see *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1078 [public's right of access to court records is based on both common law right of access to public documents, as well as constitutional right grounded in the First Amendment].)

		To seal a record, the moving party must file a motion for such relief, along with a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, Rule 2.551, subd. (b)(1).) The motion must be served on all parties, and unless the court orders otherwise, a complete copy of the document must be served on all other parties that already possess copies, along with the redacted version. (Cal. Rules of Court, Rule 2.551, subd. (b)(2).) To grant a motion to seal, the court must expressly find that: 1. an overriding interest exists that overcomes the right of public access to the record; 2. the overriding interest supports sealing the records; 3. a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; 4. the proposed sealing is narrowly tailored; and 5. no less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, Rule 2.550, subd. (d); *McGuan v. Endovascular Technologies, Inc*. (2010) 182 Cal. App. 4th 974, 988.) Examples of documents that may qualify to be sealed are: • Documents containing trade secrets, (see *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 300; *McGuan v. Endovascular Tech., Inc.*, *supra*, 182 Cal.App.4th at p. 988 [business' quality control records and complaint handling procedures may be sealed]); • Documents containing material protected by a privilege, (see *Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 108 [documents protected by attorney-client privilege may be sealed]); • Confidential settlement agreement, (see *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1283). A sealing order must: (a) specifically state facts supporting the above findings; and (b) be narrowly tailored (*i.e.*, it should direct sealing of

		only those documents and pages that contain material that needs to be placed under seal; all other portions of each document or page must remain in the public file). (See Cal. Rules of Court, rule 2.550(e)(1); Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial (Rutter 2017) ¶ 9:418.1.) Here, the requirements of Rule 2.550 have been met. The parties have shown an overriding interest exists in the confidential financial and business information contained in the documents that overcomes the right of public access. In fact, Petitioners previously established their privacy interest in these categories of documents as a protective order was issued by the San Diego Superior Court in prior related action. (See Decl. of Stephen F. Tee in Supp. of Joint Mot. to Seal Portions of Administrative Record, Exh. 2.) In addition, the law is clear that a business' interest in confidential financial and business information is sufficient to support the sealing of documents. The parties also have shown that a substantial probability exists that the overriding interest will be prejudiced if the records are not sealed, that the proposed sealing is narrowly tailored, and there are no less restrictive means to achieve the overriding privacy interest. In addition, the requirements of Rule 2.551 have been met. No other party to this action or third-party has opposed the motion or shown that the requirements of Rule 2.550 or Rule 2.551 have not been met. The court therefore will grant the motion. Petitioners shall give notice of this ruling.
3	**James Worldwide, Inc. vs. Kim** **30-2023-01300574**	<u>Demurrer</u> Defendants Sung Yoon Kim's and Omniq, Inc.'s Demurrer to Plaintiff's Second Amended Complaint is OVERRULED as to the 4th Cause of Action against Defendant Sung Yoon Kim, and the 5th and 8th Causes of Action in their entirety, and SUSTAINED as to the 4th Cause of Action against

		Defendant Omniq, Inc., and the 6th, 7th, and 9th Causes of Action in their entirety, with 10 days leave to amend. If Plaintiff James Worldwide, Inc. does not amend the First Amended Complaint within the period of time stated above, Defendants Sung Yoon Kim and Omniq, Inc. shall file answers or other pleadings in response to the Second Amended Complaint within 10 days of the expiration of the period of time to amend. (See Cal. Rules of Ct. rule 3.1320(j).) Defendant Sung Yoon Kim (Defendant Kim) and Defendant Omniq, Inc. (Defendant Omniq) demur to the 4th through 9th Causes of Action of the Second Amended Complaint (SAC) filed by Plaintiff James Worldwide, Inc. <u>Standard for Demurrer</u> 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.) For this reason, the court will not decide questions of fact on demurrer. (See *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Instead, the court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law . . . ." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, citation omitted; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318). Therefore, the court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 fn.7.) Although courts should take a liberal view of inartfully drawn pleadings, (see Code Civ. Proc., § 452), it remains essential that a pleading set forth the actionable facts relied upon with sufficient precision to inform the responding party of the matters that the pleading party is alleging, and what remedies or relief is being sought, (see *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413).

		Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; see Code Civ. Proc., § 425.10, subd. (a).) <u>4th Cause of Action (Breach of Fiduciary Duty)</u> Defendants contend that the 4th Cause of Action fails because it is preempted by the California Uniform Trade Secret Act (CUTSA) and because there is no fiduciary relationship between Plaintiff and Defendants. Common law claims that are "based on the same nucleus of facts as the misappropriation of trade secrets claim for relief" are preempted by the CUTSA. (*K.C. Multimedia, Inc. v. Bank of America Tech. & Operations, Inc.* (2009) 171 Cal. App. 4th 939, 958 [CUTSA preempts common law claims including breach of confidence, tortious interference with contract, and unfair competition.) However, CUTSA does not preempt claims based upon other California statutes regulating trade secrets. (See Civil Code, § 3426.7.) Nor does CUTSA undermine "contractual remedies, whether or not based upon misappropriation of a trade secret," or "other civil remedies that are not based upon misappropriation of a trade secret." (*Angelica Textile Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, 507 [CUTSA did not preempt claims for breach of fiduciary duty, unfair competition, interference with business relations and conversion that had basis independent of trade secret misappropriation]; *Silvaco Data Systems v. Intel Corp.*, *supra*, 184 Cal.App.4th at pp. 241-242 [Unfair Competition Law claim not preempted where claim did not depend on existence of a trade secret].) Thus, Defendants two arguments are intertwined. If Defendants owed Plaintiff a statutory or contractual duty separate and apart from the duties imposed by CUTSA, then claims that those duties were violated are not preempted by CUTSA. If on the other hand, Defendants owed Plaintiff no such statutory or contractual duties, then other claims arising from the same nucleus of facts are preempted by CUTSA.

		"In general, employment-type relationships are not fiduciary relationships." (*O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 811.) However, "corporate officers and directors" have been found to "stand in a fiduciary relation to the corporation and its stockholders." (*Bancroft-Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 345.) In addition, persons "employed . . . as managing agents" also owe a duty of loyalty to those employing them. (*Huong Qu, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 410-411.) The employee's title is not determinative – "something more than bare title, and less than control, is required." (*GAB Business Services, Inc. v. Lindsey & Newsom Claim Services, Inc.* (2000) 83 Cal.App.4th 409, 420, disapproved on other grounds, *Reeves v. Hanlon* (2004) 33 Cal.4th 1140.) As the Court of Appeal explained: > [A]n officer who participates in management of the corporation, exercising some discretionary authority, is a fiduciary of the corporation as a matter of law. Conversely, a 'nominal' officer with no management authority is not a fiduciary. Whether a particular officer participates in management is a question of fact. (*Id.* at pp. 420-421.) In addition, a duty of loyalty is imposed by Labor Code section 2863, which provides that any employee "who has business to transact on his own account, similar to that intrusted to him . . . shall always give the preference to the business of the employer." (Labor Code, § 2863.) Here, the SAC alleges that Defendant Kim was appointed as Plaintiff's Senior Manager of its Latin American Division. (See SAC, ¶ 9.) The SAC also asserts that Defendant Kim entered into an employment agreement with Plaintiff in which Defendant Kim promised not to disclose confidential information and that Defendant Kim disclosed such information while Defendant Kim was employed with Plaintiff. (See SAC, ¶¶ 10-15, 17.)

		The SAC also pleads that Defendant Kim's disclosure of confidential information breached his duty of loyalty, even if the confidential information was not a trade secret under CUTSA. (See SAC, ¶ 25.) Reading the SAC liberally and in context, it sufficiently alleges that Defendant Kim had management authority or was acting as a managing agent. The SAC also pleads that Defendant Kim owed Plaintiff a fiduciary duty of loyalty separate and independent from CUTSA. Thus, a claim that this duty was breached is not preempted by CUTSA. However, the SAC fails to allege that Plaintiff and Defendant Omniq had any type of relationship that would give rise to a duty, particularly a duty separate and independent duty from CUTSA. Thus, the court will overrule the demurrer as to the 4th Cause of Action against Defendant Kim, and sustain the demurrer as to the 4th Cause of Action against Defendant Omniq. <u>5th Cause of Action (Intentional Interference with Contractual Relations)</u> Defendants argue that the 5th of Cause of Action fails because it is preempted by CUTSA. However, as stated above, CUTSA does not preempt a claim that has its own separate and independent contractual basis. Here, the 5th Cause of Action is premised on intentional interference with a contractual relationship. Defendants also assert that an intentional interference with contractual relations claim does not lie against a party to that contract. Here, Defendant Kim was a party to an employment agreement with Plaintiff in which Defendant Kim promised not to disclose confidential information. Defendants misconstrue the 5th Cause of Action. Plaintiff does not plead that Defendants interfered with the employment agreement between Plaintiff and Kim, but rather, with Plaintiff's contracts other customers. (See SAC, ¶ 62.) The SAC alleges that Defendants knew about Plaintiff's contracts with these third-party

		customers and nonetheless interfered with these contractual relations, which caused damages to Plaintiff. (See *id.*, ¶¶ 64-70.) The SAC also pleads that Defendants' conduct was wrongful even if it did not involve trade secrets under CUTSA. (See *id.*, ¶ 65.) The 5th Cause of Action thus sufficiently alleges the elements of an intentional interference with contractual relations claim. (See *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 [elements of cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage].) The court will overrule the demurrer as to the 5th Cause of Action. <u>6th Cause of Action (Intentional Interference with Prospective Economic Advantage) and 7th Cause of Action (Negligent Interference with Prospective Economic Advantage)</u> Defendants again contend that CUTSA preempts these causes of action. The elements of a cause of action for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional and wrongful conduct designed to interfere with or disrupt this relationship; (4) interference with or disruption of this relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful conduct. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) The elements of a cause of action for negligent interference with prospective economic advantage are: (1) an economic relationship existed between the plaintiff and a third party, which contained a reasonably probable future economic benefit or

		advantage to the plaintiff; (2) the defendant knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care its actions would interfere with this relationship; (3) the defendant was negligent; and (4) such negligence caused damage to the plaintiff in that the relationship was actually interfered with or disrupted. (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786.) In the 6th Cause of Action, the SAC alleges that Defendants interfered with Plaintiff's prospective economic advantage by intentionally "soliciting Plaintiff's customers and converting them into Plaintiff's competitors for their personal gains." (SAC, ¶ 75). However, the SAC pleads inconsistently that 1) Defendants' "conduct was independently wrongful in that it was achieved by means of tortious acquisition of Trade Secrets" and 2) Defendants' "acts were wrongful in and of themselves independent of the fact that Defendants also misappropriated trade secrets." (*Id.*, ¶¶ 76-77.) If the former is true and Defendants' interference with prospective economic advantage arose from the tortious acquisition of trade secrets, then the cause of action arises from the same nucleus of facts and the common law claim is preempted by CUTSA. The 7th Cause of Action alleges that Defendants "negligently interfered" with Plaintiff's expectation of profit but does not state how, except to vaguely state that Defendants "engag[ed] in conduct that was wrongful and was reasonably known by them to cause interference with such expectation of profit." (*Id.*, ¶ 86.) The SAC also pleads that "Such conduct was independently wrongful in that it was achieved by means of tortious acquisition of Trade Secrets." (*Id.*, ¶ 87.) Plaintiff fails to plead any specific facts to show that Defendants negligently interfered with Plaintiff's prospective economic advantage. Plaintiff also fails to plead that Defendants' negligent conduct was not part of the nucleus of facts from which the CUTSA claims arise. If anything, Plaintiff appears to alleging that the negligent conduct was achieved by means of the acquisition of trade secrets in violation of CUTSA.

		The court will sustain the demurrer as to the 6th and 7th Causes of Action. <u>8th Cause of Action (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)</u> Defendants argue that the 8th Cause of Action is derivative of the other causes of action and must fail if they fail. The Unfair Competition Law (UCL) prohibits "unfair competition," which is defined to include "any unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising," as well as any act prohibited by Business and Professions Code section 17500, *et seq.* (Bus. & Prof. Code, § 17200.) The UCL was written with sweeping language in order to cover a broad range of conduct because "'the Legislature . . . intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur [and] to enable judicial tribunals to deal with the innumerable new schemes which the fertility of man's invention would contrive." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 181, quoting *American Philatelic Soc'y v. Claibourne* (1935) 3 Cal.2d 689, 698.) Here, the 4th and 5th Causes of Action are sufficiently plead. In light of the sweeping language of the UCL, these claims provide a sufficient basis to support this claim. The court will overrule the demurrer as to the 8th Cause of Action. <u>9th Cause of Action (Accounting)</u> "An action for an accounting has two elements: (1) 'that a relationship exists between the plaintiff and defendant that requires an accounting' and (2) 'that some balance is due the plaintiff that can only be ascertained by an accounting.'" (*Sass v. Cohen* (2020) 10 Cal.5th 861, 869, quoting *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179, 92.)

		"However, a fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting." (*Teselle v. McLoughlin*, *supra*, 173 Cal.App.4th at p. 179). Defendants argue that the FAC fails to allege any relationship upon which either Defendant Kim or Defendant Omniq would owe a duty to provide an accounting to Plaintiff. Plaintiff contends that the fiduciary relationship between Plaintiff and Defendant Kim is sufficient to support a duty of accounting. However, although the SAC may sufficiently plead facts that show Defendant Kim owed Plaintiff a duty of loyalty, the SAC does not allege any facts that would establish a duty to provide an accounting. Thus, the court will sustain the demurrer to the 9th Cause of Action. <u>Leave to Amend</u> "It is an abuse of the trial court's discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the plaintiff can amend the complaint to allege any cause of action." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) However, it is the plaintiff's "burden to establish how the complaint can be amended to state a valid cause of action." (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044.) In order to meet this burden, a plaintiff may submit a proposed amended complaint or enumerate facts and demonstrate how those facts establish a cause of action. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890.) The trial court properly sustains a demurrer without leave to amend where plaintiff fails to meet its burden. (*Jensen v. Home Depot* (2018) 24 Cal.App.5th 92, 97.) "[N]otwithstanding the liberal policy favoring amendment of complaints,

		upon sustaining a demurrer to a first amended complaint, the court may deny leave to amend when the plaintiff fails to demonstrate the possibility of amendments curing the first amended complaint's defects." (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.) Here, Plaintiff requests lave to amend, but does not submit a proposed amended complaint nor explain how the complaint could be amended to state a valid cause of action. The court will grant leave to amend, but in light of the fact that Plaintiff has already amended the complaint twice and failed to submit any specific viable proposed amendments this time, the court is unlikely to grant leave to amend in the future unless Plaintiff submits a proposed amended complaint or explains in detail how the complaint could be amended to state a valid cause of action. The parties are reminded that, when leave to amend is granted upon the sustaining of a demurrer or the granting of a motion to strike, amendments are limited to the issues addressed in the court's ruling and generally may not include amendments to causes of action not addressed on demurrer or the addition of new causes of action. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 ["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 the demurrer was sustained, but that is all."].) <u>Motion to Strike</u> Defendants Sung Yoon Kim's and Omniq, Inc.'s Motion to Strike Portions of Plaintiff's Second Amended Complaint is DENIED as to Paragraphs 57 and 71 and the prayer for punitive damages of the Second Amended Complaint, and GRANTED as to Paragraph 81 of the Second Amended Complaint, with 10 days leave to amend, and GRANTED as to Paragraph 102 of the Second Amended Complaint, without leave to amend. Defendants Sung Yoon Kim and Omniq, Inc. move to strike allegations relating to and the prayer for

		punitive damages contained in the Second Amended Complaint (SAC) filed by Plaintiff James World, Inc. <u>Standard for Motion to Strike</u> A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim, or a demand for judgment requesting relief not supported by the allegations of the complaint. (Code Civ. Proc., § 431.10, subd. (b).) A motion to strike also may strike legal conclusions. (Weil & Brown, Cal. Prac. Guide, Civil Proc. before Trial, ¶ 7:179 (2010).) Conclusory allegations are permitted, however, if they are supported by other factual allegations in the complaint. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) A defendant may seek to strike punitive damages allegations or requests in a complaint lacking factual foundation. (*Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.) However, pleadings are to be construed liberally with a view to substantial justice. (Code Civ. Proc., § 452; Weil & Brown, Cal. Prac. Guide, Civil Proc. before Trial, ¶ 7:197 (2010).) The allegations of the complaint are presumed true and are to be read as a whole and in context. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) "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. In ruling on a motion to strike, courts do not read allegations in isolation." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255, citations omitted.)

		Defendants contend that the SAC fails to plead sufficient facts to support punitive damages. However, the court has ruled that the SAC sufficiently plead a cause of action for breach of fiduciary duty, for which punitive damages are available. (See *Michelson v. Hamada*, 29 Cal. App. 4th 1566, 1582 (punitive damages available for breach of fiduciary duty claim); *Asahi Kasei Pharma v. Actelion Ltd.*, 222 Cal. App. 4th 945, 956 (jury awarded punitive damages for interference with contractual relations claim). Thus, the court will deny the motion to strike with respect to Paragraphs 57 and 71 of the SAC, which relate to the 4th and 5th Causes of Action, as well as the prayer for punitive damages. Defendants also seek to strike Paragraph 81 of the SAC, which is part of the 7th Cause of Action. The court has sustained the demurrer to this claim so that Paragraph 81 should be stricken. Defendants move to strike Paragraph 102 of the SAC, in which Plaintiff alleges discovery abuse by Defendant's counsel and alleges that Defendant made bad faith motions. These allegations have no relevance to any elements of any causes of action asserted in the SAC. The court will grant the motion to strike as to Paragraph 102. <u>Leave to Amend</u> In ruling on a motion to strike, the court employs the same liberality to amend as used for demurrers. As long as there is a reasonable possibility that plaintiffs can cure the defects, leave to amend is appropriate. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 168; *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360.) However, it is the plaintiff's "burden to establish how the complaint can be amended to state a valid cause of action." (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044.) In order to meet this burden, a plaintiff may submit a proposed amended complaint or enumerate facts and demonstrate how those facts establish a cause of action. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890.)

		The trial court properly sustains a demurrer without leave to amend where plaintiff fails to meet its burden. (*Jensen v. Home Depot* (2018) 24 Cal.App.5th 92, 97.) "[N]otwithstanding the liberal policy favoring amendment of complaints, upon sustaining a demurrer to a first amended complaint, the court may deny leave to amend when the plaintiff fails to demonstrate the possibility of amendments curing the first amended complaint's defects." (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.) In this case, Plaintiff requests leave to amend the SAC. The court already has granted Plaintiff leave to amend the 7th Cause of Action and will grant leave to amended Paragraph 81 as well. However, Plaintiff has not explained how Paragraph 102 can be made relevant to any of the causes of action of the complaint nor is the court able to do so. The court therefore will grant the motion without leave toa mend as to Paragraph of the SAC. The parties are reminded that, when leave to amend is granted upon the sustaining of a demurrer or the granting of a motion to strike, amendments are limited to the issues addressed in the court's ruling and generally may not include amendments to causes of action not addressed on demurrer or the addition of new causes of action. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 ["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 the demurrer was sustained, but that is all."].) Defendants shall give notice of these rulings.
4	**National Funding, Inc. vs. Glick** **30-2022-01278671**	<u>Motion for Summary Judgment</u> There is no tentative ruling at this time. The court will hear oral argument from counsel or the parties.
5	**Phillips vs. Nesbit**	<u>Demurrer and Motion to Strike</u>

	30-2022-01284894	Defendant Alan Nesbit's Demurrer to Third Amended Complaint is taken OFF CALENDAR as moot. Defendant Alan Nesbit's Motion to Strike Portions of Third Amended Complaint is taken OFF CALENDAR as moot. Defendant Alan Nesbit (Defendant Nesbit) demurs to the 1st and 2nd Causes of Action of the Third Amended Complaint (TAC) filed by Plaintiffs Thomas Phillips, Fashion Island Surgery Center LLC, and Thomas J. Phillips, M.D. Defendant Nesbit also moves to strike the 2nd Cause of Action, the prayer for attorney's fees, and the prayer for punitive damages contained in the TAC. <u>Amending the Complaint</u> On March 4, 2024, the Court granted Plaintiffs' Motion for Leave to File Fourth Amended Complaint. (ROA #95.) On March 18, 2024, Plaintiffs filed the Fourth Amended Complaint (FAC) pursuant to the court's ruling. "The filing of [an] amended complaint render[s] [a] demurrer moot since 'an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.'" (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, quoting *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) When a plaintiff files an amended complaint in response to a demurrer, the demurrer should be taken off calendar since the amended complaint superseded the complaint to which the demurrer was directed. (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 505-506.) Here, Plaintiffs have filed the FAC, which supersedes the Third Amended Complaint (TAC). Thus, the Defendant Nesbit's instant demurrer and motion to strike, which relate to the TAC, are moot and should be taken off calendar.

		In fact, Defendant Nesbit has already filed a demurrer and motion to strike with respect to the FAC, which has already been set for hearing. The court clerk shall give notice of this ruling.
6	**Vasquez vs. Largo Concrete, Inc.** **30-2022-01278859**	<u>Motion to Strike</u> Defendant Reliant Immediate Care Medical Group, Inc.'s Motion to Strike Portions of Plaintiff's Second Amended Complaint is DENIED in part and GRANTED in part, without leave to amend but without prejudice to Plaintiff filing a motion seeking leave to amend. The following portions of the Second Amended Complaint are ORDERED STRICKEN: 1. "As a consequence of the aforesaid oppressive, malicious, and despicable conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to proof pursuant to California *Government Code* §§ 12965 & 12970." (SAC, ¶¶ 125, 142.) 2. "As a consequence of the aforesaid oppressive, malicious, and despicable conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to proof at trial." (SAC, ¶¶ 156.) 3. The 7th Cause of Action for Aiding and Abetting Failure to Reasonably Accommodate in Violation of FEHA; 4. The 8th Cause of Action for Aiding and Abetting an Unlawful Medical Inquiry in Violation of FEHA. Defendant Reliant Immediate Care Medical Group, Inc. (Defendant Reliant) moves to strike portions of the Second Amended Complaint (SAC) filed by Plaintiff Jonathan Vasquez relating to punitive damages and the prayer for punitive damages contained in the SAC. <u>Standard for Motion to Strike</u> A party may move to strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not

		drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim, or a demand for judgment requesting relief not supported by the allegations of the complaint. (Code Civ. Proc., § 431.10, subd. (b).) A party may also request to strike legal conclusions. (Weil & Brown, Cal. Prac. Guide, Civil Proc. before Trial, ¶ 7:179 (2010).) Specifically, conclusory allegations that are not supported by factual allegations in the complaint may be stricken. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) <u>Civil Procedure Code Section 425.13</u> On October 19, 2023, this court granted Defendant Reliant's Motion to Strike Portions of Plaintiff's First Amended Complaint (FAC) on the grounds that, among other things, Plaintiff had not complied with Civil Procedure Code section 425.13(a). (ROA #154 at pp. 4-5.) That provision states that: > In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code. (Code Civ. Proc. § 425.13, subd. (a).) This court then held that "Section 425.13 applies to Plaintiff's claims that are based on Defendant Reliant's alleged misdiagnosing, under-diagnosing, and minimizing the extent of Plaintiff's disabilities,

		because they relate to the manner in which professional services were provided to Plaintiff. Plaintiff must seek leave of the court before including a prayer for punitive damages based on those claims." (ROA #154 at p. 5.) The court specifically struck the punitive damages allegations of the FAC's 7th Cause of Action for Aiding and Abetting in Violation of FEHA, 9th Cause of Action for Violation of California Labor Code § 432.6, and the 10th Cause of Action for Violation of Constitutional Right to Privacy. (See ROA #154 at pp. 4-5; ROA #77 at p. 2.) Despite the court's ruling, Plaintiff then filed the SAC, which contains allegations that Plaintiff is entitled to punitive damages with respect to the 8th Cause of Action for Aiding and Abetting an Unlawful Medical Inquiry in Violation of FEHA, 10th Cause of Action for Violation of California Labor Code § 432.6, and the 11th Cause of Action for Violation of Constitutional Right to Privacy. (See SAC, ¶¶ 125, 142, 156.) Defendant Reliant contends that the SAC therefore contains the same allegations of punitive damages that were stricken from the FAC. Plaintiff argues that the allegations of the 7th Cause of Action of the SAC comport with the court's ruling. However, Defendant Reliant does not seek to strike any allegations of the 7th Cause of Action. Plaintiff also contends that the 8th, 10th, and 11th Causes of Action make no mention of any misdiagnosis of Plaintiff and/or are not claims "arising out of the professional negligence of a health care provider" and thus, Section 425.13 does not apply to them. However, this was an argument that Plaintiff made and the court rejected in its prior ruling. (ROA #154 at pp. 4-5.) Plaintiff also points out that it has filed a Motion for Leave to Amend and File Plaintiff's Third Amended Complaint, which may render this motion moot. (See ROA #236.)

		However, Section 425.13 requires that the plaintiff file its motion and obtain leave from the court *before* amending the complaint to request punitive damages based on claims "arising out of the professional negligence of a health care provider". Plaintiff's motion for leave to amend has not been heard nor has Plaintiff obtained leave of the court. Thus, it was improper and inconsistent with the court's orders for the SAC to contain allegations of punitive damages with respect to the 8th, 10th, and 11th Causes of Action. However, Plaintiff may properly include a general prayer for punitive damages as Plaintiff is seeking punitive damages with respect to other causes of action. <u>7th Cause of Action (Aiding and Abetting Failure to Reasonably Accommodate in Violation of FEHA) and 8th Cause of Action (Aiding and Abetting an Unlawful Medical Inquiry in Violation of FEHA)</u> Defendant Reliant also contends that Plaintiff improperly added two new causes of action – the 7th and 8th Causes of Action of the SAC. Plaintiff contends that it properly pleaded the actions of Dr. Lebow in order to cure the defects noted by the court. However, Defendant Reliant does not seek to challenge the addition of allegations regarding Dr. Lebow. Plaintiff also argues that it merely split the FAC's 7th Cause of Action for Aiding and Abetting in Violation of FEHA into two claims without adding any new facts or new defendants. According to Plaintiff, the 7th and 8th Causes of Action of the SAC simply allege two different ways in which Defendant Reliant aided and abetted Defendant Largo Concrete, Inc. However, Plaintiff misconstrues the case law and the court's prior ruling, which stated: In addition, when leave to amend is given upon granting a motion to strike, amendments are limited to the issues addressed in the court's ruling and generally may not include amendments to causes of action not addressed on the

		motion to strike or the addition of new causes of action. (See Community Water Coalition v. Santa Cruz County Local Agency Formation Com. (2011) 200 Cal.App.4th 1317, 1329 ["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 the demurrer was sustained, but that is all."].) (ROA #156 at p. 6.) The court previously granted Reliant's Motion to Strike Portions of Plaintiff's First Amended Complaint on the grounds that the allegations of the FAC could not support the allegations of and prayer for punitive damages. The court did not find that the 7th Cause of Action was deficient in alleging aiding and abetting. Thus, the court's grant of leave to amend was only to cure defects in pleading for punitive damages (e.g., adding allegations that specific employees of Defendant Reliant acted in a manner that would support punitive damages) but not to amend as to the allegations of aiding and abetting. Plaintiffs note Defendant has not shown any prejudice from this amendment and that leave to amend should be liberally granted. This is true, but this does not dispense with the requirement that Plaintiff must request leave to amend in the first place. Plaintiff cannot amend without obtaining leave of the court and then support his actions after the fact by arguing that leave to amend would have been granted or that Defendant was not prejudiced. The court will grant the motion as to the allegations of punitive damages and the 7th and 8th Causes of Action, but not the general prayer for punitive damages. <u>Leave to Amend</u> In ruling on a motion to strike, the court employs the same liberality to amend as used for demurrers. As long as there is a reasonable

		possibility that plaintiffs can cure the defects, leave to amend is appropriate. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 168; *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360.) However, it is the plaintiff's "burden to establish how the complaint can be amended to state a valid cause of action." (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044.) In order to meet this burden, a plaintiff may submit a proposed amended complaint or enumerate facts and demonstrate how those facts establish a cause of action. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890.) The trial court properly sustains a demurrer without leave to amend where plaintiff fails to meet its burden. (*Jensen v. Home Depot* (2018) 24 Cal.App.5th 92, 97.) "[N]otwithstanding the liberal policy favoring amendment of complaints, upon sustaining a demurrer to a first amended complaint, the court may deny leave to amend when the plaintiff fails to demonstrate the possibility of amendments curing the first amended complaint's defects." (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.) Here, Plaintiff requests leave to amend but fails to explain how he would amend so that the complaint would be consistent with the court's rulings. The issue arises from Plaintiff's failure to file a motion and obtain leave to amend. Thus, Plaintiff cannot rectify the deficiencies by amending the complaint in a particular manner. Rather, Plaintiff must file a motion and obtain leave to amend. Thus, the court will not grant leave to amend but will grant the motion without prejudice to Plaintiff filing a motion seeking leave to amend. Defendant Reliant shall give notice of this ruling.
7	**Wright vs. General Motors LLC** **30-2023-01353319**	<u>Demurrer and Motion to Strike</u> Pursuant to the Notice of Withdrawal of Defendant General Motors LLC's Demurrer and Motion to Strike, (ROA 64), these matters are taken OFF CALENDAR.

		The court clerk shall give notice of this ruling.
8	**Yang vs. OC Nutwood 2010 LLC** **30-2023-01361202**	Motion to Strike Defendant OC Nutwood 2010 LLC's Motion to Strike Portions of Plaintiff's Complaint is taken OFF CALENDAR as moot. Defendant OC Nutwood 2010 LLC (Defendant OC Nutwood) moves to strike portions of the Complaint filed by Plaintiff Benjamin Yang related to punitive damages and the prayer for punitive damages. Amending the Complaint Moots the Demurrer (or Motion to Strike) On May 7, 2024, Plaintiff filed the First Amended Complaint (FAC). (See ROA #25.) "The filing of [an] amended complaint render[s] [a] demurrer moot since 'an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.'" (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, quoting *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) When a plaintiff files an amended complaint in response to a demurrer, the demurrer should be taken off calendar since the amended complaint superseded the complaint to which the demurrer was directed. (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 505-506.) Here, Plaintiff has filed the FAC, which supersedes the original Complaint. Thus, Defendant OC Nutwood's motion to strike portions of the original Complaint is moot and should be taken off calendar. The court clerk shall give notice of this ruling.