TENTATIVE RULINGS

LAW AND MOTION CALENDAR

Judge Nathan Vu

Department N15

Hearing Date and Time: April 29, 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	**Castaneda vs. Gen Cord** **30-2021-01232801**	Motion to Compel Discovery Defendant Gen Cord.'s Second Motion for Order to Compel Plaintiff's Further Responses to Defendant's Form Interrogatories — General, Set One is GRANTED. Plaintiff Monica Castaneda is ORDERED to serve full, complete, and verified responses to Form Interrogatories—General, Set One, Number 2.8 within 30 days of service of the notice of ruling. Plaintiff Monica Castaneda is ORDERED to pay to Defendant Gen Cord. sanctions in the amount of $645 hours x $195 per hour in reasonable attorney's fees and $60 in motion filing fees) within 30 days of service of the notice of ruling. Defendant Gen Cord. moves to compel further responses to Form Interrogatories – General, Set One, Number 2.8 propounded on Plaintiff Monica Castaneda. Standard to Compel Further Responses to Interrogatories The Civil Procedure Code instructs that: (a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits. (b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible. (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party. (Code Civ. Proc., § 2030.220) In addition, "[p]arties must state the truth, the whole truth, and nothing but the truth in

		answering written interrogatories." (*Scheiding v. Dinwiddie Const. Co.* (1999) 69 Cal.App.4th 64, 76; see Code Civ. Proc., § 2023.010, subd. (f) [making evasive response to discovery is misuse of discovery process].) Where the question is specific and explicit, it is improper to provide only a portion of the information sought or "deftly worded conclusionary answers designed to evade a series of explicit questions." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) "If a person cannot furnish details, he should set forth the efforts made to secure the information. He cannot plead ignorance to information which can be obtained from sources under his control." (*Id.* at p. 782.) Once a party has received responses to its interrogatories, the party may move for an order compelling further responses on the grounds that: (1) an answer to a particular interrogatory is evasive or incomplete; (2) an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate; or (3) an objection to an interrogatory is without merit or too general. (Code Civ. Proc., § 2030.300, subd. (a).) <u>Form Interrogatory Number 2.8</u> Form Interrogatory Number 2.8 asks if the responding party has ever been convicted of a felony. If the answer is yes, Form Interrogatory Number 2.8 also requests, with respect to each conviction, the following information: (a) the city and state where responding party was convicted; (b) the date of the conviction; (c) the offense; and (d) the court and case number. Plaintiff's initial response to Form Interrogatory Number 2.8 consisted of objections on relevancy and privacy grounds. (See Decl. of Colleen J. Downes in Supp. of Def's Mot. for Order to Compel Pltf.'s Further Responses to Form Interrogatories – General, Set One (Downes Decl.), ¶ 6, Exh. E.) After the parties met and conferred regarding the initial responses, Plaintiff served supplemental responses, which disclosed information about two felony convictions. (See *id.*, ¶¶ 7-9, Exh. H.)

		Defendant contends that the supplemental response to Form Interrogatory Number 2.8 is deficient and further met and conferred with Plaintiff regarding this issue and agreed on deadlines for Plaintiff to provide further responses. (See *id.*, ¶¶ 11-13.) However, as of February 23, 2024, Plaintiff has not provided further responses. (See *id.*, ¶ 14.) With this motion, Defendant submitted evidence that Plaintiff has not disclosed some convictions that are reflected in court records obtained by Defendant's Counsel. (See Downes Decl., ¶¶ 10-11, Exh. I.) Defendant has met its initial burden by demonstrating that Plaintiff's supplemental response to Form Interrogatory Number 2.8 is incomplete. Plaintiff did not file a response to the instant motion and, therefore, waives any argument regarding this issue. (See *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue]; see also *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion"].) The court therefore will grant the motion. <u>Sanctions</u> The Civil Procedure Code requires the court to impose monetary sanctions against a party, person, or attorney who unsuccessfully makes or opposes a motion to compel further responses, "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., §§ 2030.300, subd. (d), 2031.310, subd. (h), 2033.290 subd. (d).) [Interrogatories, Requests for Production, and Requests for Admission] California Rules of Court rule 3.1348(a) further provides that "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the

		requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, rule 3.1348(a).) Here, Plaintiff has not shown that she acted with substantial justification or that other circumstances make the imposition of the sanction unjust, although reduced to reflect the fact that Plaintiff was not required to review or respond to an opposition from Defendant. Defendant shall give notice of this ruling.
2	**Hughes vs. Orange County** **30-2023-01313697**	Demurrer Defendants Orange County's and Orange County Sheriff's Department's Demurrer to Plaintiff's First Amended Complaint is SUSTAINED without leave to amend as to the 1st, 2nd, and 3rd Causes of Action, and SUSTAINED with 14 days leave to amend as to the 4th, 5th, 7th, 8th, and 9th Causes of Action. If Plaintiff Albert Hughes III does not amend the First Amended Complaint within the period of time stated above, Defendants Orange County and Orange County Sheriff's Department shall file an answer or other pleading in response to the First Amended Complaint within 10 days of the expiration of the period of time to amend. (See Cal. Rules of Ct. rule 3.1320(j).) Defendants Orange County and Orange County Sheriff's Department demur to the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th, and 9th Causes of Action of the First Amended Complaint (FAC) filed by Plaintiff Albert Hughes III. Standard for Demurrer 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). 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>1st Cause of Action (Intentional Third-Party Spoliation) and 2nd Cause of Action (Negligent Third-Party Spoliation)</u> In *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1*,* the Supreme Court held that there was no tort remedy for the intentional spoliation of evidence. (*Id.* at pp. 17-18). The Supreme Court held that the relationship between a patient and a hospital did not support a duty to preserve evidence despite the allegation that the hospital intentionally destroyed the plaintiff's medical records to defeat the plaintiff's malpractice claim. (*Ibid.*) The Supreme Court also ruled that a medical provider owes no duty in tort to preserve a patient's medical records as evidence. (*Ibid.*) Later appellate decisions have extended this rule and refused to recognize a cause of action for either first party or third party *negligent* spoliation based on the same reasoning discussed in *Cedars-Sinai Medical Center v. Superior Court*. (See *Coprich v. Superior Court* (2000) 80 Cal.App.4th 1081, 1089–1090 [""We therefore conclude there is no tort remedy for first party or third party

		negligent spoliation of evidence."]; *Farmers Ins. Exchange v. Superior Court* (2000) 79 Cal.App.4th 1400, 1404 ["The policy considerations that led the Supreme Court to refuse to recognize tort causes of action for both first party and third party intentional spoliation apply with equal force when the loss or destruction of evidence was the result of negligence."]; *Forbes v. County of San Bernardino* (2002) 101 Cal.App.4th 48, 52 [even though court reporters owe a statutory duty to maintain their notes, no claim for negligent spoliation of evidence existed against defendant county where court reporter lost his notes making them unavailable for appeal].) Defendants contend that the 1st and 2nd Causes of Action for spoliation of evidence because California does not recognize spoliation of evidence to constitute a tort. In light of the precedent, Defendants are correct and Plaintiff's 1st and 2nd Causes of Action fail as a matter of law. Plaintiff urges this court to ignore the above precedent, arguing that the reasoning behind those decisions do not apply here. However, this court must follow Supreme Court and Court of Appeal decisions and is without power to create a tort duty contrary to controlling authority. The court will sustain the demurrer to the 1st and 2nd Causes of Action. <u>3rd Cause of Action (Violation of the Unruh Civil Acts Right)</u> The Unruh Civil Rights Act (Unruh Act) states: > All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civil Code §51, subd. (b).) The Unruh Act was enacted to "create and preserve a nondiscriminatory environment in

		California business establishments by 'banishing' or 'eradicating' arbitrary, invidious discrimination by such establishments." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167.) "The purpose and legislative history of the Unruh Civil Rights Act — and its predecessor statute — make clear that the focus of the Act is the conduct of *private business establishments*." (*Brennon B. v. Superior Court* (2022) 13 Cal.5th 662, 675, italics original.) Defendants contend that the 3rd Cause of Action fails because they are governmental entities and not private business establishments. As the Court of Appeal has explained: > [T]here is nothing in the legislative history of the Unruh Civil Rights Act, itself, that suggests the Act was intended to reach discriminatory conduct by state agents, such as public school districts, and, again, there is much to indicate otherwise. (*Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367, 379.) Thus, the courts have ruled that government entities are not business establishments for purposes of liability under the Unruh Act. (See *Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 175 [city not acting as business establishment in amending municipal code to increase age of person "responsible" for short-term rental]; *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 764 [city "not functioning as a 'business establishment'" in enacting legislation regulating medical marijuana]; *Burnett v. San Francisco Police Department* (1995) 36 Cal.App.4th 1177, 1191–1192, [city ordinance restricting young adults from after-hours clubs not actionable under Unruh Act].) While Plaintiff argues that Defendant Orange County requires payments for its services and, therefore, functioned as a business, that argument would create an exception that would swallow the rule. Most, if not all, government entities may charge fees for providing services. Defendants Orange County and Orange County Sheriff's Department clearly were not functioning

		as a business establishments as it relates to Plaintiff's allegations — namely, their alleged failure to investigate a death, and their alleged failure to retain, preserve, and provide county records. The Unruh Act was not intended to and does not apply to Defendants in this case. The court will sustain the demurrer to the 3rd Cause of Action. <u>4th Cause of Action (Violation of the Tom Bane Act)</u> The Tom Bane Act states: > If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars ($25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated. (Civil Code, § 52.1, subd. (b).) In order to make out a claim under the Tom Bane Act, "[a] plaintiff must show (1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation, and coercion." (*Allen v. City of Sacramento* (2015) 234 Cal. App. 4th 41, 67.)

		Defendants contend that the 3rd Cause of Action is deficient because it fails to plead that Defendants used threats, intimidation, or coercion in this case. The FAC fails to allege that Defendants interfered with Plaintiff's ability to obtain records through the use of threats, intimidation, and coercion, and Plaintiff fails to point to any such allegations. The court will sustain the demurrer to the 4th Cause of Action. <u>5th Cause of Action Intentional Infliction of Emotional Distress), 7th Cause of Action (Conversion), and 8th Cause of Action (Trespass to Chattels)</u> "It is a well-settled rule that 'there is no common law governmental tort liability in California; and except as otherwise provided by statute, there is no liability on the part of a public entity for any act or omission of itself, a public employee, or any other person.'" (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 441–442, quoting *Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 761.) Specifically, Government Code section 815 states: Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (Gov. Code, § 815.) As the Court of Appeal has explained: [B]ecause under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795, quoting *Peter W. v. San*

		Francisco Unified School Dist. (1976) 60 Cal.App.3d 814, 819; *Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585.) Therefore, a complaint must allege "a mandatory statutory duty as required by Government Code section 815." (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 410 n.2.) Where "[n]either [the] complaint actually alleges any duty on the part of the City . . . nor . . . any facts in support of the purported duties," the complaint is subject to demurrer. (*Ibid.*) Defendants argue that the FAC is deficient because the 5th, 7th, and 8th Causes of Action plead torts against Defendants but do not specify the statutory basis for Defendants' liability. The FAC fails to plead the statutes under which Defendants are liable for these claims and Plaintiff fails to point to any provisions of the FAC that do so. The court will sustain the demurrer to the 5th, 7th, and 8th Causes of Action. <u>9th Cause of Action (Breach of Contract)</u> As noted above, the Supreme Court and Court of Appeal have determined that a spoliation of evidence claim may not be brought in this state because there is no general tort duty to preserve evidence. However, the Supreme Court has recognized that a duty to preserve evidence may exist independent of general tort law: > We observe that to the extent a duty to preserve evidence is imposed by statute or regulation upon the third party, the Legislature or the regulatory body that has imposed this duty generally will possess the authority to devise an effective sanction for violations of that duty. To the extent 3rd parties may have a contractual obligation to preserve evidence, contract remedies, including agreed-upon liquidated damages, may be available for breach of the contractual duty.

		(*Temple Community Hospital v. Superior Court* (1999) 20 Cal.4th 464 477.) Thus, the FAC alleges in the 9th Cause of Action that Defendants breached a contract when they failed to preserve the investigatory files of Plaintiff's mother. (See FAC, ¶ 84.) Specifically, Plaintiff alleges that he sent a letter to Defendants asking for records and specifically asked Defendants not to tamper with, or destroy evidence or records on October 21, 2020. (FAC, ¶ 10; Exh. G). Further, Plaintiff alleges that Defendants, in responding to discovery in the related action (*Albert Hughes III v. Albert Hughes Jr.,* Case No. 30-2022-01239731), issued a revised declaration stating that they no longer had any files because "the Orange County Coroner's Office deleted Serette's death investigatory files 'sometime in 2021.'" (FAC, ¶ 24, underline original; Exh. L.) However, Defendants contend that the demurrer to the 9th Cause of Action should be sustained because the FAC fails to plead the existence of an contract or contractual duty. Here, the FAC does not allege the existence of any agreement by Defendants to preserve the investigatory records. And while Plaintiff argues that the 9th Cause of Action is based on a theory of promissory estoppel, the FAC does not contain sufficient allegations that the Defendants made any promises or representations that they would preserve the records. For example, there is no allegation that Defendants made "a promise clear and un ambiguous in its terms," (*Laks v. Coast Fed. Sav. & Loan Ass'n* (1976) 60 Cal.App.3d 885, 890), or an "express promise to preserve the [evidence]," *Cooper v. State Farm Mutual Automobile Ins. Co.* (2009) 177 Cal.App.4th 895.) The court will sustain the demurrer to the 9th Cause of Action. Leave to Amend

		"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* (22 Cal.App.5th 564, 579.) Plaintiff has requested leave to amend the FAC, but with respect to the 1st through 3rd Causes of Action, Plaintiff does not explain and the court is unable to discern how those causes of action could be amended to withstand a demurrer. The court will sustain the demurrer as to those claims without leave to amend. However, the 4th, 5th, 7th, 8th, and 9th Causes of Action are deficient because the FAC fails to plead an essential element of each claim. Thus, there is a reasonable possibility that those causes of action can be amended by adding additional allegations. The parties are instructed to be mindful of the rule that, when leave to amend is granted on sustaining a demurrer, 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."].) The parties also are reminded that "statutory causes of action must be pleaded with particularity." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) Defendants shall give notice of this ruling.
3	**Hullinger vs. Euclid Best Bargain, Inc.** **30-2023-01350691**	Motion for Protective Order Defendant Euclid Best Bargain, Inc.'s Motion for Discovery Protective Order is GRANTED as to Special Interrogatories (Set One), Numbers 36 through 85 and Requests for Admission (Set One), Numbers 36 through 62, and DENIED as to the remainder of the discovery requests. Defendant Euclid Best Bargain moves for a protective order relieving it of the obligation to respond to Form Interrogatories (Set One), Special Interrogatories (Set One), Request for Admissions (Set One), and Request for Production of Documents (Set One.) Standard for Protective Order 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: (1) That the set of interrogatories, or particular interrogatories in the set, need not be answered.

		(2) That, contrary to the representations made in a declaration submitted under Section 2030.050, the number of specially prepared interrogatories is unwarranted. . . . (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. . . . (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.*) In general, the burden of establishing good cause for issuance of a protective 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.) Defendant contends that there is good cause for a protective order because "[t]his is a simple trip and fall incident involving a plaintiff claiming she

		tripped and fell over a box on the floor of Defendant's store," yet Plaintiff has "85 Special Interrogatories, 89 Requests for Production of Documents, along with 62 Requests for Admissions for which Form Interrogatory 17.1 is also served plus a set of Judicial Council Form Interrogatories." (Mem. P.s&A.s Mot. for Discovery Protective Order at p. 4:9-13.) However, the number of discovery requests alone, without more, is not sufficient to meet Defendant's burden to show good cause and that the expense or intrusiveness of the discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Defendant argues that Civil Procedure Code section 2033.080 "most specifically demonstrates the legislature's intent that normally more than 35 Requests for Admission that do not relate to genuineness of documents are by implication likely to be an abuse of discovery and the code therefore requires a Declaration of Counsel for Additional Discovery." (*Id.* at p. 4:4-7.) However, nothing in Section 2033.080(b) limits or shows an intent to limit the number of requests for admission. Defendant may have intended to refer to Civil Procedure Code section 2033.030, which limits a party to propounding only 35 requests for admission that do not relate to the genuineness of documents, unless the propounding party makes a declaration of necessity. (See Code Civ. Proc., §§ 2033.030, subd. (a), 2033.040, subd. (a), 2030.050.) In addition, Civil Procedure Code section 2030.30 places similar limits and requirements on special interrogatories.. (See Code Civ. Proc., §§ 2030.030, subd. (a)(1), 2030.040, subd. (a), 2030.050.) Absence of a declaration of necessity may be challenged by a motion for a protective order. (See Code Civ. Proc., §§ 2030.040, subd. (b), 2030.090, subd. (b)(2), 2033.040, subd. (b), 2030.080, subd. (b)(2).) Where special interrogatories or requests for admission are missing a declaration of necessity, the responding party need only respond to the

		first 35 special interrogatories or 35 requests for admission. (See Code Civ. Proc., §§ 2030.030, subd. (c), 2033.030, subd. (b).) Plaintiff's Special Interrogatories (Set One) includes 85 special interrogatories and Plaintiff's Requests for Admission (Set One) includes 62 requests for admission, but neither appears to include the required declaration of necessity. (See Decl. of Aman A. Lal, Exh.s B, D.) Therefore, the court will grant the protective order as to Special Interrogatories (Set One), Numbers 36 through 85 and Requests for Admission (Set One), Numbers 36 through 62. Defendant need not provide responses to these discovery requests. With respect to the remainder of the discovery requests, the only other argument that Plaintiff makes is to assert short, one word objections such as that the discovery requests are "Duplicative," "Cumulative", "Harassing" or "irrelevant." This is not sufficient, by itself, to meet Defendant's burden. Therefore, the court will deny the protective order as to the remainder of the discovery requests. <u>Sanctions</u> The Civil Procedure Code requires the court to impose monetary sanctions against a party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2017.020, subd. (b).) If the results of the motion to compel are mixed, the trial court has the discretion to apportion sanctions or award no sanctions on any terms as may be just. (See *Mattco Valley Forge v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1437.) In this case, the results were mixed. Both parties unsuccessfully opposed portions of the motion for protective order. If the court were to award sanctions, they would essentially offset each other. The court therefore will deny all requests for sanctions.

		Defendant will give notice of this ruling.
4	**Larson vs. Freedline** **30-2020-01127166**	Motions to Compel Discovery Pursuant to the Notice of Withdrawal of Motions to Compel Further Responses to Special Interrogatories filed April 19, 2024, (ROA #523); Notice of Settlement of Entire Case filed April 11, 2024, (ROA #527); and the court's Minute Order filed April 23, 2024, (ROA #535), these matters are taken OFF CALENDAR.
5	**Mathis vs. Seabrook Apartments, LLC** **30-2023-01322510**	Motion to Strike Plaintiff Michelle C. Mathis' Motion to Strike Defendant's Answer Form (PLD-C-010) is DENIED without prejudice. Plaintiff Michelle C. Mathis moves to strike the answer filed by Defendant Kimberly Conklin (Defendant Conklin). Filing and Service of the Motion Plaintiff initially filed the instant motion as an *ex parte* application. (See ROA #55.) The court heard the *ex parte* application on December 4, 2023, and at that time, set the Motion to Strike to be heard on April 29, 2024. (See ROA #59.) The court also ordered that "[t]he Ex-Parte Application will stand as the moving papers" and "Plaintiff to serve the moving papers on all parties". (*Ibid.*) Further, Civil Procedure Code section 1005 requires that all moving papers be served on all parties at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (d).) In addition, "[p]roof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." (Cal. Rules of Court, rule 3.1300(c).) Here, there is no proof of service attached to the moving papers nor is there a proof of service in the court files. In addition, Defendant Conklin has not filed an opposition to the motion, implying that

		she was not given notice of the motion or served with the motion papers. The court will deny the motion on that basis. <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.) A party moving to strike "shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion to strike for the purpose of determining if an agreement can be reached that resolves the objections to be raised in the motion to strike." (Code Civil Proc., § 435.5, subd. (a).) As part of that process, "the moving party shall identify all of the specific allegations that it believes are subject to being stricken and identify with legal support the basis of the deficiencies" and "[t]he party who filed the pleading shall provide legal support for its position that the pleading is legally sufficient, or, in the alternative, how the pleading could be amended to cure any legal insufficiency." (Code Civil Proc., § 435.5, subd. (a)(1).) The motion to strike must include a declaration stating either: (A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion to strike, and that the parties did not reach an agreement resolving the objections raised by the motion to strike. (B) That the party who filed the pleading subject to the motion to strike failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith. (Code Civil Proc., § 435.5, subd. (a)(3).) The Motion to Strike in this case did not include the meet and confer declaration required by

		Section 435.5 nor did Plaintiff provide any evidence that she met and conferred or attempted to meet and confer with Defendant Conklin either in person or by telephone. (See Code Civ. Proc. § 435.5, subs. (a).) While the court is not denying the Motion to Strike on the basis of the failure to meet and confer, the court does note that had Plaintiff made an attempt to meet and confer, this might have resolved the issue or at least, resolved the issue of Plaintiff's failure to serve Defendant Conklin with the moving papers. The court clerk shall give notice of this ruling.
6	**Redwood Fire & Casualty Insurance Company vs. Pacific Life Insurance Company** **30-2022-01256353**	Motion for Leave to File Amended Complaint Pursuant to the Notice of Withdrawal of Motion for Leave to File Amended Cross-Complaint filed April 23, 2024, (ROA #98); Notice of Settlement of Entire Case filed April 23, 2024, (ROA #91); and the court's Minute Order filed April 23, 2024, (ROA #95), this matter is taken OFF CALENDAR.
7	**Shasta Growers, LLC vs. Speedy Weedy Santa Ana, LLC** **30-2023-01348613**	Motions to Be Relieved as Counsel of Record Counsel Guillermo Cabrera's Motion to Be Relieved as Counsel for Defendant Speedy Weedy Santa, LLC is CONTINUED to August 29, 2024. Counsel Guillermo Cabrera's Motion to Be Relieved as Counsel for Defendant Welcome the Healing Touch, LLC is CONTINUED to August 29, 2024. The court ORDERS that, within 30 days of this ruling, Counsel Gillermo Cabrera shall serve Defendant Speedy Weedy Santa, LLC and Defendant Welcome the Healing Touch, LLC with all moving papers and notice of this ruling, in the manner described in Rules of Court rule 3.1362(d). The court ORDERS that, within 45 days of this ruling, Counsel Gillermo Cabrera shall file a proper proof of service showing that service has been effectuated as ordered above. Counsel Guillermo Cabrera (Counsel) move to be relieved as counsel for Defendant Speedy Weedy

		Santa, LLC and Defendant Welcome the Healing Touch, LLC. <u>Standard to Be Relieved as Counsel</u> "The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination . . . [u]pon the order of the court, upon the application of either client or attorney, after notice from one to the other." (Code Civ. Proc., § 284.) The notice of motion and motion to be relieved as counsel under Civil Procedure Code section 284 shall be directed to the client and shall be made on the Judicial Council's Notice of Motion and Motion to Be Relieved as Counsel-Civil form (Form MC-051). (Cal. Rules of Ct., rule 3.1362(a).) No memorandum is required for the motion. (See Cal. Rules of Ct., rule 3.1362(b).) However, "[t]he motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel – Civil (Form MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (Cal. Rules of Court, rule 3.1362(c).) If the motion is served by mail, it shall be accompanied by a declaration stating facts showing either that (1) the service address is the current residence or business address of the client or (2) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days prior to filing the motion. (Cal. Rules of Ct., rule 3.1362(d).) "As used in this rule, 'current' means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current." (*Ibid.*)

		The motion may be brought on various grounds, some of which include the client's failure to pay attorney fees, (*People v. Prince* (1968) 268 Cal.App.2d 398, 406); the client's insistence on an action that is not justified under existing law or by good faith argument, (*Estate of Falco v. Decker* (1987) 188 Cal.App.3d 1004, 1015); and a conflict of interest between counsel and the client, (*Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592.) However, under the Rules of Professional Conduct, "a member shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e)." (Rules Prof. Conduct, rule 1.16(d); see *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915.) Thus, the court has discretion to deny a motion to be relieved as counsel where discharging counsel would result in "undue prejudice to the client's interests, " (*Ramirez vs. Sturdevant* (1994) 21 Cal.App.4th 904, 915), or "an unreasonable disruption of the orderly processes of justice," (*People v. Ortiz* (1990) 51 Cal.3d 975, 979). The court may also deny an attorney's request to withdraw "where such withdrawal would work an injustice or cause undue delay in the proceeding". (*Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4.) However, such discretion is to be exercised reasonably. (*Ibid.*) Civil Procedure Code section 1005 requires that all moving papers be served on all parties at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (d).) In addition, "[p]roof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." (Cal. Rules of Court, rule 3.1300(c).) In this case, moving papers and the court files include no proof of service showing that Defendant Speedy Weedy Santa, LLC and Defendant Welcome the Healing Touch, LLC were served with the Motions to Be Relieved As Counsel. It is especially important to give proper notice and service here because both clients are limited liability companies that cannot represent

		themselves and must retain counsel to act on their behalf in court. (See *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284 n.5; *Rogers v. Sonoma County Municipal Court* (1988) 197 Cal.App.3d 1314, 1318.) While the ban on self-represented artificial legal entities does not prevent the court from granting the motion to withdraw, it will place pressure on Defendant Speedy Weedy Santa, LLC and Defendant Welcome the Healing Touch, LLC to obtain new counsel or risk forfeiting important rights through non-representation, such as having a default entered. (See *Rogers v. Sonoma County Municipal Court*, *supra*, 197 Cal.App.3d at p. 1318; *Ferruzzo v. Superior Court* (1980) 104 Cal.App.3d 501, 504.) Therefore, it is incumbent upon the court and Counsel to advise the representatives of Defendant Speedy Weedy Santa, LLC and Defendant Welcome the Healing Touch, LLC of the necessity of obtaining representation or to ensure that the representatives are aware of the need. (See *Rogers v. Sonoma County Municipal Court*, *supra*, 197 Cal.App.3d at p. 1318.) The court therefore will order that Defendant Speedy Weedy Santa, LLC and Defendant Welcome the Healing Touch, LLC be properly served with the moving papers and this notice of ruling, which will apprise them of the critical need to obtain representation. Counsel Guillermo Cabrera shall give notice of this ruling as ordered above.
8	**Zhao vs. Wei** **30-2022-01277656**	<u>Motion to Compel Arbitration</u> There is no tentative ruling in this case. The court will hear from parties and/or counsel regarding this matter.
9	**Cliq, Inc. vs. Capital Managers, LLC** **30-2021-01220754**	<u>Motion to Compel Deposition</u> Defendant Capital Managers, LLC's Motion to Compel Further Deposition of Plaintiff's President and Chief Executive Officer Andy Phillips is GRANTED.

		Plaintiff Cardflex, Inc. d/b/a Cliq is ORDERED to produce its President and Chief Executive Officer, Andy Phillips, to sit for a second day of deposition at a mutually agreeable time and date on or before May 9, 2024. Unless the parties agree in writing otherwise, the total length of both days of the deposition of Andy Phillips shall not be less than the total length of both days of the deposition of John Hynes, and the second day of the deposition of Andy Phillips shall be held in the same location as the first day of the deposition. Defendant Capital Managers, LLC may ask questions at the second day of the deposition of Andy Phillipos on any subject matter allowed by the Evidence Code, the Civil Procedure Code, or other applicable law. However, Counsel for Plaintiff Cardflex, Inc. d/b/a Cliq and/or Andy Phillips may make any objections and may instruct the witness in any manner allowed by the Evidence Code, the Civil Procedure Code, or other applicable law. Defendant Capital Managers, LLC (Defendant Capital Managers) moves to compel Plaintiff Cardflex, Inc. d/b/a Cliq's to produce its President and Chief Executive Officer, Andy Phillips, to sit for a second day of deposition. <u>Standard to Compel Further Deposition</u> Any party may obtain discovery by taking in California the oral deposition of any person, including any party to the action. (See Code Civ. Proc., § 2025.010.) A party desiring to take an oral deposition of a person who is under the jurisdiction of the court shall give written notice of the deposition. (See Code Civ. Proc., § 2025.220, subd. (a).) "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization . . ., without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, . . . the party giving the notice may move for an order compelling the deponent's attendance and testimony . . . ." (Code Civ. Proc., § 2025.450 subd. (a); see *Robbins v. Regents of University of California* (2005) 127 Cal.App.4th 653, 659.)

		In addition, "[i]f a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production." (Code Civ. Proc., § 2025.480, subd. (a).) The parties to an action may take only one deposition of each natural person. (Code Civ. Proc., § 2025.610, subd, (a).) However, upon a showing of good cause, the court may allow a subsequent deposition or the parties and the deponent may stipulate to a subsequent deposition. (See Code Civ. Proc., § 2025.610, subd, (a).) "[A] deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to seven hours of total testimony." (Code Civ. Proc., § 2025.290, subd. (a).) Nonetheless, "[t]the court shall allow additional time, beyond any limits imposed by this section, if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination." (*Ibid.*) Defendant Capital Managers asserts that the parties previously agreed that each of their corporate representatives would sit for a second day of deposition but that Plaintiff has not confirmed a date for the second day of deposition of its corporate representative, Andy Phillips. Plaintiff does not dispute that it agreed to a second day of depositions for each side's corporate representatives, including Andy Phillips, and does not oppose the motion or the relief requested. (See Pltf.'s Response to Def.'s Mot. to Compel Further Deposition of Pltf.'s President and Chief Executive Officer Andy Phillips at p. 1.) The parties are reminded that civil discovery is intended to operate with a minimum of judicial intervention, particularly where the parties ostensibly agree. "[I]t is a central precept of the Civil Discovery Act . . . that discovery be essentially self-executing." (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402.)

		However, to assist in avoiding future problems and to allow for the fair examination of the deponent, the court will issue orders regarding the basic guidelines of the deposition. Defendant Capital Managers shall give notice of this ruling.