Superior Court of the State of California
County of Orange

DEPT C18 TENTATIVE RULINGS

Judge Theodore R. Howard

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

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Unless otherwise ordered by the Court, all Unlimited and Complex proceedings may be conducted via Zoom or in person. On the date of your hearing click the Department C18 Link to begin the remote online check in/Zoom appearance process:

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Date: April 25, 2024

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1.	Terhar v.Kinsey 21-1224010	Defendant Suzanne Pauline Kinsey's Motion to Strike is **DENIED.** Defendants bring this motion under *CCP § 436* which provides: The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Emphasis added.) *CCP § 435* provides, that a motion to strike any pleading must be filed "within the time allowed to respond to a pleading. . ." (*Code Civ. Proc. § 435, subd. (b)(1)*.) " The time to file a motion to strike under *CCP § 435* expired in 2021. Thus, the only means to hear this motion to strike at present is within the discretion of the court. The court denies this motion for the reasons stated below. The Complaint was filed 9/30/21. On 11/4/21, Defendant filed her Answer to the Complaint. At the CMC on 3/25/22, trial was initially set for 9/11/23. (ROA 27). On 7/26/23, the trial was subsequently continued from 9/11/23 to 2/20/24, pursuant to stipulation and order. (ROA 41). And on 1/3/24, trial was once again continued from 2/20/24 to 6/17/24. (ROA 62). On 2/26/24, Defendant brought a third attempt to continue trial via ex parte application, which was denied by the Court. Defendant has filed a motion to continue trial set for hearing on 6/13/24, four days before the current trial date. In between the first and second requests to continue trial, on 12/19/23, the instant motion to strike was filed. (ROA 56). The motion to strike had a hearing date of 4/24/24 and at the time the motion to strike was filed, the trial date was 2/20/24. As the timeline of events set forth, trial has been continued on several occasions and is currently set for 6/17/24, only two months away. This case is well beyond

		challenging the pleadings and on the eve of trial. Defendant is not a new party to this action and only now reviewing the pleading but appeared in this action back in 2021. Defendant should have moved to strike well before this motion was filed. Further, permitting a motion to strike at this late stage in the litigation would once again delay trial (for the fourth time) as it would open another round of pleadings and challenges, in this already three-year-old automobile/personal injury case, which the Court declines to do. Accordingly, the motion is **DENIED.** *Moving Party to give notice.*
2.	Alimadadian v. M3Live Bar & Grill, Inc. 15-822570	*(No tentative-will require hearing)*
3.	Kaabinejadian v. Equity Residential 20-1171109	Defendants', LLC Motion for an Order Compelling Plaintiff Massoud Kaabinejadian a Vexatious Litigant and Requiring him to Post Security is **DENIED**. Defendants bring their Motion under *CCP §§391(b)(1)* and *391(b)(2)*. *Under §391(b)(1),* defendants must establish that within the preceding seven years Mr. Kaabinejadian has filed or maintained five actions that have been finally determined against him. They have not done so. Defendants' have offered no admissible evidence. The Declaration of Attorney Karimi lists a number of cases of unauthenticated pleadings for which no judicial notice has been requested along with unauthenticated case dockets for which no judicial notice has been requested, either. Attorney Karimi also submits an unauthenticated newsletter concerning cases purportedly filled by Kaabinejadian. Even if judicial notice had been requested, it would not make the content of these documents admissible to prove either filing dates or the final determination of any action in any defendant's favor. Docket entries are not an order or judgment, but entries made by the Clerk of the Court. The Court cannot necessarily accept the docket entries or Attorney Karimi's representations as proof of the facts asserted. *Under §391(b)(2),* defendants must establish that Kaabinejadian has relitigated issues in some manner against the same defendants as to whom the prior litigation was finally determined in their favor. From the names of the cases stated in Attorney Karimi's declaration, it appears that most, if not all, of the actions

		were brought against defendants other than the defendants here.
4.	Few-Brewer v. KLC Innovations and Design, Inc. 23-1331520	**A) Defendants Kui Co., Inc., and Terry Daum Motion to Strike** Defendants Kui Co., Inc., and Terry Daum's ("Kui" together) Motion to Strike is **GRANTED** with leave to amend. "Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. . ." (*Civ. Proc. Code § 435(b)(1)*.) "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (*Civ. Proc. Code § 436*.) Kui requests the court strike several portions of plaintiff D'Mario Few-Brewer's ("Plaintiff") First Amended Complaint ("FAC") which contain attempts to allege punitive damages. To proceed with allegations of punitive damages, Plaintiff is required to plead malice, oppression, and/or fraud. (*Civ. Code § 3294*.) Plaintiff failed to allege any acts of oppression or fraud, which leaves only the malice prong at issue here. " ' "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. . ." (*Civ. Code § 3294(c)(1)*.) It is not sufficient to allege merely that a defendant "acted with oppression, fraud or malice." A plaintiff must allege specific facts showing that defendant's conduct was oppressive. (*Smith v. Sup.Ct*. (*Bucher*) (1992) 10 Cal.App.4th 1033, 1041-1042; *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 643.) "Despicable conduct" is conduct that is so "vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715 ("Scott").)

		"When the plaintiff alleges an intentional wrong, a prayer for exemplary damage may be supported by pleading that the wrong was committed willfully or with a design to injure. [Citation.] When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice. [Citations.]" (*Smith v. Superior Ct*. (1992) 10 Cal. App. 4th 1033, 1041.) "Under the statute, "malice does not require actual intent to harm. [Citation.] Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. [Citation.] Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. [Citation.]" ` " (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal. App. 4th 1270, 1299.) There must be a showing of despicable conduct coupled with a conscious disregard for the safety of others. (*Id*., at 1300-01.) As pled, the allegations in the FAC show a nondeliberate injury and no allegations of despicable conduct on the part of Kui coupled with a conscious disregard for the safety of others. As the allegations fail to allege malice as is necessary to support punitive damages, this motion is **GRANTED**. **B) Defendant Kevin Crump Motion to Strike** Defendant Kevin Crump's ("Kevin") Motion to Strike is **GRANTED** with leave to amend. Kevin moved to strike each of the same allegations in the FAC as Kui requested, save for number 6 in the Kui motion. As with the Kui motion, the allegations in the FAC show a nondeliberate injury and no allegations of despicable conduct on the part of Kevin coupled with a conscious disregard for the safety of others. As the allegations fail to allege malice as is necessary to support punitive damages, this motion must be **GRANTED.** Plaintiff is given leave to file an amended complaint within 15-days of written notice of the court's ruling. *Kui to give notice.*
5.	Deen v. Kreditor 18-1022313	*(Off calendar)*
6.	Emery v. Marovic 22-1267207	Before the Court are two motions by Plaintiff. The first is a Motion for Reconsideration of the Court's 3/23/23 Order

		regarding demurrers filed by the defendants as to the FAC. The second is a Motion for Reconsideration of the Court's 9/7/23 Order regarding demurrers filed by the defendants as to the SAC. Both motions are **DENIED**. Neither motion has been properly served on defendants, City of Newport Beach, Newport Beach Police Department and City of Newport Beach Lifeguard Operations Division The City. According to the proof of service attached to the motion, the email address used by plaintiff for the City's counsel is "amanda@kerlegalgroup.com" and the correct email address appears to be "amber@kerlegalgroup.com," based on the Court's records. With regard to the motions for reconsideration, such must be filed within 10 days of service on her of notice of entry of the order in question. (Code Civ. Proc., § 1008(a).) The motion must be accompanied by an affidavit from the moving party that states: (1) what application was previously made; (2) when and to what judge; (3) what order was made; and (4) what new or different facts, circumstances or law are claimed to be shown. (*Code Civ. Proc., § 1008(a)*.) A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. (*New York Times Co. v. Super. Ct.* (2005) 135 Cal.App.4th 206, 213.) The burden under *§ 1008* "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (Rutter *CPBT* §9:328, citing *New York Times Co. v. Sup.Ct*. (*Wall St. Network, Ltd.*) (2005) 135 CA4th 206, 212-213.) **Motion for Reconsideration of 3/23/23 Order** Plaintiff has failed to state new facts justifying reconsideration and has failed to meet her burden of showing why any new facts or evidence could not have been provided at the hearing of the matter. Plaintiff argues that "the judge may have inadvertently forgotten about Emergency Order 9 and the extending/tolling for 180 days." (Motion at 2:16-17) Plaintiff argues that if not for the Court's error, "the Plaintiff's First Amended Complaint would remain standing against the additional Defendants, Newport Beach Police Department and City of Newport Beach Lifeguard Operations Division." (Motion at 2:18-20) These are not new facts but is instead simply an argument that the Court misinterpreted the law. Reconsideration "cannot be granted based on claims the court misinterpreted the law in its initial ruling." (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.)

		Accordingly, the Motion for Reconsideration of the 3/23/23 Order is **DENIED**. **Motion for Reconsideration of 9/7/23 Order** On 9/7/23, the Demurrer by Marovic was **SUSTAINED WITHOUT LEAVE TO AMEND** as to the following causes of action in the SAC: 2nd cause of action for Negligent Maintenance, 5th cause of action for Violation of *CC §52.1* - Bane Act, 9th cause of action for Slander and 10th cause of action for Libel. On 9/8/23, Marovic served notice of the Court's 9/7/23 order by email. On 9/29/23, plaintiff plaintiff files the subject motion for reconsideration of the Court's 9/7/23 order. The motion was required to be filed within 10 days "after service upon the party of written notice of entry of the order." (*CCP §1008*) The motion is therefore untimely. In addition, the motion fails to state "what new or different facts, circumstances or law are claimed to be shown" or why they were not provided at the hearing, as required by *CCP §1008.* Accordingly, the Motion for Reconsideration of the 9/7/23 Order is **DENIED.** *Counsel for the Marovic defendants is ordered to give notice of this ruling.*
7.	Tavik Industries, LLC v. Incipio Technologies, Inc. 19-1087170	Before the Court at present are four motions to compel further responses to discovery, all filed on 12/28/23 by Defendant Monroe Capital Holdings, LLC ("Monroe"), seeking further responses from Plaintiff Tavik Industries, L.L.C. for certain discovery. All four motions are **DENIED** as untimely. The undisputed evidence shows that the parties agreed to extend the statutory deadline for any such motions to compel until 12/27/23. (See e.g. ROA 344, Moreno Decl., ¶ 9, Ex. F; ROA 377, p. 5; ROA 381, pp. 11-12.) These Motions were not filed until 12/28/23. That Monroe's counsel began the process of transmitting them for filing and service prior to midnight on 12/27/23 does not make them timely. They are all untimely as filed and were evidently also untimely as served. (See *C.C.P. § 1010.6(a)(4); CRC 2.251(i)*; Cruz Decl. ¶¶ 2-7.) The Court lacks jurisdiction to consider a motion to compel further responses which has been filed after the statutory period has passed. (*Vidal Sassoon, Inc. v. Sup.Ct.* (1983) 147 Cal.App.3d 681, 685; *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409.) All four motions are therefore **DENIED** as untimely.

		Counsel for Monroe is to give notice of this ruling.
8.	Americor Funding, LLC v. Symple Lending LLC 23-1322931	Before the Court are four motions. The first is a motion by Plaintiff/Cross-Defendant Americor Funding, LLC ("Americor") for an order sealing three documents filed in connection with its Motion to Disqualify which is on calendar for 5/2/24. That motion is **DENIED**. The other three motions are brought by Defendant/Cross-Complainant Symple Lending, LLC ("Symple") and seek an order compelling further responses to form interrogatories, special interrogatories and requests for production. Those three motions are **CONTINUED** as set forth below. **MOTION TO SEAL** A party requesting that a court record be filed under seal "must file a motion or an application for an order sealing the record." *CRC 2.551(b)(1).* "The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." (*Id*.) Here, Americor submits the declaration of John Keeney ISO Motion to Seal (ROA 240) The Keeney Decl. only sets forth facts showing compliance with *Rule 2.551(d). Rule 2.551(d)* sets forth the "Procedure for lodging of records." The Keeney declaration states Americor had served and lodged copies of the Motion to Disqualify, Keeney declaration and Vahdat declaration ISO the MTDQ. (Keeney Decl. at ¶2.) However, the Keeney declaration filed in support of the Motion to Seal <u>does not contain facts as to why the Motion to Disqualify and supporting declarations should be sealed.</u> The Court notes that Americor contends it has complied with *Rule 2.551(b)* because the Keeney declaration attaches the declaration of Nima Vahdat which was filed in support of the Motion to Disqualify that is set for 5/2/24. However, the Vahdat declaration does not state that it was being submitted to comply with *Rule 2.551(b)* and instead states the contrary. While the Vahdat declaration does discuss the confidential nature of the Independent Wholesale Partner Agreement, Americor makes it clear that the Vahdat declaration was filed in support of the Motion to Disqualify and not the Motion to Seal. Specifically, the caption describes the document as: "Declaration of Nima J. Vahdat in Support of Plaintiff and Cross-Defendant Americor funding, LLC's Motion To Disqualify Defendants/Cross-Complainants' Counsel, Angelo White, a Professional Corporation." (Exh. A to Keeney Declaration.) The declaration filed in support of the Motion to Seal does not state that contents of the Vahdat declaration were intended to meet the

		requirements of *Rule 2.551(b)* so as to give Symple on notice and an opportunity to respond. Americor's objections to the declaration of Alyssa White are **OVERRULED**, in their entirety. Accordingly, Americor's Motion to Seal is DENIED, without prejudice. **DISCOVERY MOTIONS** Symple has filed three discovery motions seeking further responses from Americor to Form Interrogatories, Special Interrogatories and Requests for Production. The motions and oppositions comprise over 2,500 pages of documents. There are 111 special interrogatories, 30 requests for production and a full set of form interrogatories. The bulk of the pages are from the separate statements which are extremely voluminous. Part of the volume arises from Americor's assertion of numerous objections to each discovery request. Americor asserts that there has been an inadequate meet and confer regarding the discovery objections. Based on the Court's review of the documents submitted, the Court finds that a further meet and confer is required so that the parties can narrow or resolve the issues. Accordingly, the hearing is **CONTINUED** to 5/30/23 at 1:30 p.m. to allow for a further meet and confer. The parties have now exchanged substantial writings in connection with their briefs for these three motions and therefore the parties are ORDERED to conduct the meet and confer either in person or via live media such as Zoom or Teams. For each discovery request that cannot be resolved, the parties are ORDERED to file a joint statement not later than 5/16/24, which lists each discovery request and basis upon which Americor is unwilling to provide an answer. Additionally, concurrently with filing the joint statement, Symple is ORDERED to separately file a supplemental declaration for each motion which attaches a copy of the actual discovery requests and responses. *Counsel for Americor is ordered to give notice of this ruling.*
9.	Denton v. Illusions Unlimited, Inc. 21-1211860	Before the Court are the following motions: (1) Motion for Determination of Good Faith Settlement filed by Defendant, Henkel US Operations Corp. ("Henkel"); (2) Motion for Determination of Good Faith Settlement filed by Defendant, Marianna Industries, Inc. ("Marianna"); (3)

		Motion to Seal filed by Henkel; and (4) Motion to Seal filed by Marianna. For the reasons set forth below, the motions are GRANTED. **Motion 1: Henkel's Motion for Good Faith Settlement** Henkel moves for an order determining that the settlement between Henkel and Plaintiff Mischa Denton ("Plaintiff") was entered into in good faith pursuant to California *Code of Civil Procedure section 877.6*. There is no precise yardstick for measuring "good faith" of a settlement with one of several tortfeasors. But a court must harmonize the public policy favoring settlements with the competing public policy favoring equitable sharing of costs among tortfeasors. To accomplish this, the settlement must be within the "reasonable range" (within the "ballpark") of the settling tortfeasor's share of liability for the plaintiff's injuries. (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499.) The California Supreme Court in Tech-Bilt set forth the factors to determine good faith, which include: (1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) the allocation of settlement proceeds among plaintiffs; (4) the recognition that a settlor should pay less in settlement than he would if he were found liable after a trial; (5) the financial conditions and insurance policy limits of settling defendants; and (6) the existence of collusion, fraud or tortious conduct aimed to injure the interests of nonsettling defendants. (Tech-Bilt, supra, 38 Cal.3d at 499-500.) The Court has reviewed the arguments and evidence in support of and in opposition to the motion and has determined that an application of the *Tech-Bilt* factors supports granting Henkel's motion. As to the first and second factors, the Court finds that the amount paid in settlement is within the "reasonable range" of Henkel's share of liability. The third *Tech-Bilt* factor is inapplicable as this matter involves one plaintiff with a single injury suing multiple defendants and, thus, no allocation is necessary at the settlement stage. (*Alcal Roofing & Insulation v. Superior Court* (1992) 8 Cal.App.4th 1121, 1124.) The fourth factor favors approving Henkel's motion. The fifth *Tech-Bilt* factor is neutral. Henkel did not provide evidence of its financial condition, but because

		the settlement is not disproportionately low, this factor is not necessary to the Court's determination of good faith. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 968.) As to the sixth factor, there is no evidence presented of collusion, fraud or tortious conduct aimed to injure the interest of non-settling defendants. The Court thus finds the evidence sufficient to support a finding that the settlement between Henkel and Plaintiff was made in good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1263-1265; see, generally, Higgs Decl.) The Court finds defendant Illusions Unlimited Inc., dba Illusions Unlimited Salon ("Illusions") failed to meet its burden of demonstrating lack of good faith. (*C.C.P. § 877.6(d)*.) Accordingly, the motion is **GRANTED.** Henkel is dismissed from Plaintiff's complaint and from the cross-complaints filed in this matter with prejudice. (*C.C.P. § 877.6(c)*.) *Counsel for Henkel is ordered to give notice of this ruling.* **Motion 2: Marianna's Motion for Good Faith Settlement** Marianna moves for an order determining that the settlement between Marianna and Plaintiff was entered into in good faith pursuant to California Code of Civil Procedure section 877.6. The Court has reviewed the arguments and evidence in support of and in opposition to the motion and has determined that an application of the *Tech-Bilt* factors supports granting Marianna's motion. As to the first and second factors, the Court finds that the amount paid in settlement is within the "reasonable range" of Marianna's share of liability. The third *Tech-Bilt* factor is inapplicable as this matter involves one plaintiff with a single injury suing multiple defendants and, thus, no allocation is necessary at the settlement stage. (*Alcal Roofing & Insulation v. Superior Court* (1992) 8 Cal.App.4th 1121, 1124.) The fourth factor favors approving Marianna's motion. The fifth *Tech-Bilt* factor is neutral. Marianna did not provide evidence of its financial condition, but because the settlement is not disproportionately low, this factor is not necessary to the Court's determination of good faith. (See *Cahill v. San Diego Gas & Electric Co*.

		(2011) 194 Cal.App.4th 939, 968.) As to the sixth factor, there is no evidence presented of collusion, fraud or tortious conduct aimed to injure the interest of non-settling defendants. The Court thus finds the evidence sufficient to support a finding that the settlement between Marianna and Plaintiff was made in good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1263-1265; see generally, Pistol Decl.) The Court finds Illusions failed to meet its burden of demonstrating lack of good faith. (*C.C.P. § 877.6(d)*.) Accordingly, the motion is **GRANTED.** Marianna is dismissed from Plaintiff's complaint and from the cross-complaints filed in this matter with prejudice. (*C.C.P. § 877.6(c)*.) *Counsel for Marianna is ordered to give notice of this ruling.* **Motions 3 and 4: Henkel's and Marianna's Motions to Seal** Because the motions seek to seal the same matter and raise essentially the same arguments, the Court will address both motions together. Henkel and Marianna each move, pursuant to *California Rules of Court, Rules 2.550* and *2.551*, for an order sealing portions of their motions for determination of good faith settlement, specifically those portions of the motions referencing the amount of the settlement to be paid to Plaintiff. The Court determines that an overriding interest exists that overcomes the right of public access to the records at issue, as the materials to be sealed contain confidential information pertaining to the terms of a confidential settlement agreement between the parties, and a substantial probability exists that the overriding interest will be prejudiced if the records at issue are not sealed. Appropriately redacted versions of the documents which are narrowly tailored to seal only the confidential materials at issue have been filed, and there are no less restrictive means that exist to achieve the overriding interest. (*C.R.C. 2.550(d); McGuan v. Endovascular Technologies, Inc*. (2010) 182 Cal.App.4th 974, 988.)

		Accordingly, the unopposed motions to seal are **GRANTED.** *Counsel for Henkel is ordered to give notice of this ruling.*
10.	Lo v. Great Park Neighborhoods Community Association 23-1339745	The Demurrer to Defendant Great Park Neighborhoods Community Association ("Defendant")'s Answer is **SUSTAINED** with 20 days leave to amend as to the fifth and eight affirmative defenses and **OVERRULED** as to the remaining affirmative defenses. Unlike the general demurrer to a complaint, on a demurrer to an answer, the inquiry is not into the statement of a cause of action but whether the answer raises a defense to the plaintiff's stated cause of action. (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-880.) As to the first, second, third, fourth, and ninth affirmative defenses, Plaintiffs merely assert that they do not qualify as affirmative defenses because they are simply denials of elements of the causes of action in the Complaint. However, Plaintiffs provide no authority for the idea attacking specific elements of a cause of action is not grounds for a defense, nor that allegedly mis-named affirmative defenses must be stricken. Indeed, the case language argued by Plaintiffs indicates only that such matters "need not be specifically alleged", not that they cannot be specifically alleged and the cited case does not contain the language quoted. Accordingly, the demurrer to these affirmative defenses is **OVERRULED**. As to the fifth affirmative defense for unclean hands, the Answer asserts that the claims should be barred because "Plaintiffs antagonized the neighboring homeowner, in that they continue to invade the neighbor's privacy in violation of State law and the governing documents." While this does plead some facts, it does not sufficiently plead facts that support a defense of unclean hands, as no connection is alleged between the conduct and the claims. Accordingly, the demurrer to this defense is **SUSTAINED** with leave to amend. As to the sixth defense, the business judgment rule, the Answer asserts that Defendant "acted in a manner in which they believed to be in the best interest of the community and its members" and that the decision to approve the application at issue here was made considering the governing documents. Defendant has sufficiently pled facts supporting the affirmative defense, and the demurrer is **OVERRULED**.

		As to the seventh affirmative defense that Plaintiffs are subject to Covenants, etc., Plaintiffs assert that the defense fails as a matter of law. They claim that the defense alleges that Plaintiff's consented to illegal noise, however the Answer makes no reference to noise in this defense. It states that by purchasing the property "Plaintiffs submitted to and agreed to follow the Association's governing documents and accept and abide by its committee's decisions." Though Plaintiffs narrow their own Complaint down to a simple dispute over illegal noise, the causes of action claimed are more expansive than just the fourth cause of action for nuisance. The defense that Plaintiffs are bound to the governing documents and the committee's decisions provide a defense to the various causes of action in the Complaint. Accordingly, the demurrer is **OVERRULED** as to this defense. As to the eighth affirmative defense that the Rules, Policies, and Regulations are reasonable, Defendant merely states that they are such, as evidenced by other homeowners' compliance. There is no connection between any alleged reasonableness of rules and policies with the causes of action or explanation how the reasonableness would preclude claims for breaching those regulations. Accordingly, the demurrer to the eighth defense is **SUSTAINED** with leave to amend. *Moving party to give notice.*
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