TENTATIVE RULINGS

LAW AND MOTION CALENDAR

Judge Nathan Vu

Department N15

Hearing Date and Time: April 15, 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. If no tentative ruling is posted, the court will state whether and when one may be posted.

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

SUBMITTING: The court will hear oral argument regarding law and motion matters on the hearing date and time stated above. 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. If all parties do not submit, the court will hear oral argument on the hearing date.

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. **This includes obtaining, testing the functionality of, and learning how to use the Zoom application and all necessary audio and video 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	**Bouzar vs. Valentine** **30-2023-01361847**	<u>Motion for Protective Order</u> Plaintiff Nadia Bouzar's Motion for Protective Order to Facilitate the Exchange of Confidential Information and Documents is GRANTED. The court shall issue the [Proposed] Order Granting Nadia Bouzar's Notice of Motion and Motion for Protective Order to Facilitate the Exchange of Confidential information and Documents with the interlineations handwritten therein. Plaintiff Nadia Bouza moves for a protective order to facilitate the exchange of information and documents which may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights. <u>Standard for Motion for Protective Order</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)(4).) 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:

		. . . (4) That the inspection, copying, testing, or sampling be made only on specified terms and conditions.. (Code Civ. Proc., § 2031.060, subd. (b)(4).) 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. (*Coriell v. Superior Court* (1974) 39 Cal.App.3d 487, 492.) Good Cause Plaintiff asserts there is good cause for the court to enter a protective order in this case because doing so would facilitate the exchange of information and documents. In this case, Plaintiff alleges that Defendant Cody Valentine's vehicle struck and injured Plaintiff. Therefore, discovery regarding the medical treatment Plaintiff received as a result of her injuries and Plaintiff's financial condition may be relevant to this case. At the same time, Plaintiff has a legally protected privacy interest in her medical information and financial information. (See Cal. Const., art. I, § 1; *Love v. State Dep't of Education* (2018) 29 Cal.App.5th 980, 993 ["A person's medical history and information and the right to retain personal control over the integrity of one's body is protected under the right to privacy."]; *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656 ["the right of privacy extends to one's confidential financial affairs as well as to the details of one's personal life"].) Plaintiff's proposed protective order would allow for the production of information and documents relating to Plaintiff's medical information and financial information, while also protecting Plaintiff's privacy rights. Therefore, Plaintiff has demonstrated good cause for the protective order. Defendant did not file an opposition to the instant motion and has waived any arguments on 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"].) Thus, the court will grant the motion for protective order. Plaintiff shall give notice of this ruling.
2	**Diaz vs. Hyundai Motor America** **30-2023-01347185**	Motion to Compel Arbitration Pursuant to the Request for Dismissal with prejudice of the entire action of all parties and all causes of action filed April 4, 2024, (ROA #66), this matter is taken OFF CALENDAR.
3	**Jane Doe 7030 vs. Doe 1** **30-2022-01256000**	Motion for Judgment on the Pleadings. Defendant Newport-Mesa Unified School District's Motion on the Pleadings is DENIED. Defendant Newport-Mesa Unified School District's Request for Judicial Notice is GRANTED. (See Evid. Code, § 452, subds. (a), (h).) Plaintiff Jane Doe 7030's Request for Judicial Notice is GRANTED. (See Evid. Code, § 452, subds. (a), (h).) Defendant Newport-Mesa Unified School District (Defendant School District) moves for judgment on the pleadings with respect to the Second Amended Complaint (SAC) filed by Plaintiff Jane Doe 7030. Standard for Motion for Judgment on the Pleadings A defendant may make a motion for judgment on the pleadings on the ground that the complaint does not state facts sufficient to constitute a cause of action against that defendant. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii); *Stevenson Real Estate Servs., Inc. v. CB Richard Ellis Real Estate Servs., Inc.* (2006) 138 Cal.App.4th 1215, 1219.)

		Thus, a motion for judgment on the pleadings has the same purpose and effect as a general demurrer: the trial court is asked to determine whether the complaint raises an issue that can be resolved as a matter of law, regardless of the existence of other triable issues of fact. (*Brownell v. Los Angeles Unified Sch. Dist.* (1992) 4 Cal.App.4th 787, 793; *Smiley v. Citibank (South Dakota) N.A.* (1995) 11 Cal.4th 138, 146.) The difference is that a motion for judgment on the pleadings may only be made after the answer has been filed and the time to demur has expired. (Code Civ. Proc., § 438, subd. (f).) Like a demurrer, a motion for judgment on the pleadings admits, for purposes of the motion, the truth of all material facts that have been pleaded in the complaint and gives them a liberal construction. (*Consolidated Fire Protection Dist. v. Howard Jarvis Taxpayers' Ass'n* (1998) 63 Cal.App.4th 211, 219; *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515-516.) Although the trial court must accept as true all material facts properly pleaded, it "does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed." (*Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219, citation omitted.) The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or from matters subject to judicial notice, including court records. (Code Civ. Proc., § 438, subd. (d); *Stevenson Real Estate Servs.*, *supra*, 138 Cal.App.4th at p. 1219; *Shea Homes L.P. v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Sykora v. State Dept. of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534; *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1063.) <u>Claims Presentation Requirement</u> "The Government Tort Claims Act (Gov. Code, § 810 et seq.) requires that '[b]efore suing a public

		entity, the plaintiff must present a timely written claim for damages to the entity.'" (*A.M. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257, quoting *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208.) Further, the Government Tort Claims Act provides that: [N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division. (Gov. Code, § 945.4.) "Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) However, "[Government Code] Section 905 enumerates a number of exceptions to the claims requirement, including '[c]laims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual assault' arising out of conduct occurring on or after January 1, 2009." (*Coats v. New Haven Unified School Dist.* (2020) 46 Cal.App.5th 415, 420, quoting Gov. Code, § 905, subd. (m).) Assembly Bill 218 (AB 218) amended Civil Procedure Code section 340.1 to allow plaintiffs to bring claims for childhood sexual assault until January 1, 2023, even where the statute of limitations had expired. (See *id.* at pp. 423-424.) AB 218 also amended Government Code section 905(m) to create an exception to the requirement that claims for money or damages be timely presented, for childhood sexual assault claims that fell under Section 340.1. (See *id.* at p. 424.) AB

		218 also made it clear that these amendments were to apply retroactively. (See *ibid.*.) Defendant contends that AB 218's amendment to Government Code section 905(m), that exempted childhood sexual assault claims from the claims presentation requirement, is unconstitutional under Article XVI, Section 6 of the California Constitution, which states that "[t]he Legislature . . . shall [] have [no] power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever." (Cal. Const., Art. XVI, § 6.) As an initial matter, Article XVI, Section 6 of the California Constitution applies to school districts such as Defendants. (See *Martin v. Santa Clara Unified School Dist.* (2002) 102 Cal.App.4th 241, 253.) However, as the Supreme Court explained: The statute of limitations does not, however, go to the substance of the right, but only to the remedy. When the statute has made the defense available to the debtor, his debt has not been extinguished. It still exists, and may be enforced against him, unless he chooses to avail himself of the defense afforded by the statute, and specially plead it. The payment of such a debt by the debtor is not a 'gift,' in any proper sense of the word, and there is nothing in the constitutional provision invoked that can be held to prohibit the Legislature from paying these claims. (*Bickerdike v. State* (1904) 144 Cal. 681, 692.) Thus, the courts have long held that statutes and other governmental actions that allow a claim to be brought even after the statute of limitations has passed do not violate the Constitutional provision against making a gift. (See *id.* at p. 692; *Mitchell v. County Sanitation Dist. No. One of Los Angeles County* (1957) 150 Cal.App.2d 366, 372, 376 [county sanitation district board's decision to waive statute of limitations defense did not violate prohibition against making gifts]; *In re Thatcher's Estate* (1953) 120 Cal.App.2d 811, 815 [stipulation permitting trial on claims for which

		statute of limitations had expired did not violate prohibition against making gifts].) Defendant argues that the claim presentation requirement is different from a statute of limitations because it "is not merely procedural, but is a condition precedent to maintaining a cause of action and, thus, is an element of the plaintiff's cause of action." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1236.) A party suing a public entity must allege compliance with this requirement or "the complaint is subject to attack by demurrer." (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374.) *Coats v. New Haven Unified School District* (2020) 46 Cal.App.5th 415 (*Coats*) provides guidance on this issue. In *Coats*, a minor was sexually assaulted by her teacher in 2014. (*Id.* at p. 419.) In 2016, the minor and her mother filed a complaint against the school district, the teacher who allegedly abused her, and others, asserting claims for negligence, breach of statutory duties, and intentional and negligent infliction of emotional distress claims brought by the mother. (*Ibid.*) The minor and her mother argued that they were not required to comply with the claim presentation requirement due to AB 218's amendment to Government Code section 905(m). (*Ibid.*) The trial court granted Defendants' motion for judgment on the pleadings, and the minor and her mother appealed. (*Id.* at p. 420.) The Court of Appeal explained that in this context, there was little difference between the Legislature amending a statute of limitations or a claim presentation requirement, because both actions had the same effect – to revive a claim that had previously been barred: > The present case, of course, involves revival of a cause of action barred by a claim presentation requirement, not a statute of limitations. But we are aware of no reason the Legislature should be any less able to revive claims in this context, as it expressly did in Assembly Bill 218: "Notwithstanding any other provision of law, any claim for damages described in paragraphs (1) through (3), inclusive, of

		subdivision (a) that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, *claim presentation deadline*, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020." (*Id.* at p. 428, quoting Code Civ. Proc., § 340.1, subd. (q), italics original.) Thus, although the claims presentation requirement is an element of the cause of action for purposes of pleading, for purposes of determining when the Legislature may revive an action under the California Constitution, it has the same effect as a statute of limitations. In other words, a plaintiff's failure to timely present his or her claim, the liability of the governmental entity has not been extinguished and the Legislature enacting statutes that allow for payment of such liability is not a "gift" and did not create any new right to payment that the plaintiff did not have before. Defendant also relies upon several cases, all of which are distinguishable. (See *Conlin v. Board of Supervisors* (1893) 99 Cal. 17, 22; *Bourn v. Hart* (1892) 93 Cal. 321; *Powell v. Phelan* (1903) 138 Cal. 271; *Heron v. Riley* (1930) 209 Cal. 507.) Unlike each of these cases, AB 218 does create a new claim or liability that did not exist prior to the legislation. Instead, AB 218 states on its face: "[t]his bill . . . would remove the requirement that the conduct occurred on or after that specified date." (Def.'s Request for Judicial Notice in Supp. of Mot., Exh. B at p. 1.) The court will deny the motion. Plaintiff shall give notice of this ruling.
4	**Escamilla vs. Lara** **30-2023-01353487**	<u>Motion to Deem Vexatious Litigant</u> Respondents Ricardo Lara's and the California Department of Insurance's Motion for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes is GRANTED. The court ISSUES and ENTERS a prefiling order prohibiting Petitioner from filing any new litigation

		in the courts of this state *in propria persona* without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed, pursuant to Civil Procedure Code section 391.7. The court ORDERS that Petitioner Daniel Escamilla furnish security in the amount of $25,000.00 within 30 days of notice of this ruling, without prejudice to Respondents requesting an increase in the security at a later date. Petitioner Daniel Escamilla's Application for Permission to File A Longer Memorandum in Opposition to Defendant's Motion for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes is GRANTED. Respondent Ricardo Lara and California Department of Insurance are ORDERED not to file memoranda in support motions that exceed 15 pages without requesting leave of court. (See Cal. Rules of Court, rule 3.1113(d).) Respondents Ricardo Lara's and California Department of Insurance's Request for Judicial Notice is GRANTED as to Exhibits 1-18 and 21-44, and DENIED as to Exhibits 19 and 20. (Evid. Code, § 452, subds. (c), (d), (h); see *People v. Woodell* (1998) 17 Cal.4th 448, 455-456 [court cannot take judicial notice of the truth of hearsay statements in decisions or court files, but court may take judicial notice of results reached].) Exhibits 19 and 20 contained no documents. Petitioner Daniel Escamilla's evidentiary objections to the Declaration of Leanna Costantini are OVERRULED. The court DECLINES to rule upon Petitioner Daniel Escamilla's evidentiary objections to the Declarations of Larissa Kosits, Debbie De Guzman, and George Teekell as no such declarations were filed with the motion papers. Respondents Ricardo Lara and California Department of Insurance move for a prefiling order prohibiting Petitioner Daniel Escamilla from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed,

		and for an order requiring that Petitioner furnish security in the amount of $50,000 in this case. <u>Standard to Deem Vexatious Litigant</u> The Legislature enacted the vexatious litigant law “to curb misuse of the court system by those acting in propria persona who repeatedly file groundless lawsuits or attempt to relitigate issues previously determined against them.” (*Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 406.) The abuse of the system by such individuals “not only wastes court time and resources but also prejudices other parties waiting their turn before the courts.” (*In re Bittaker* (1997) 55 Cal.App.4th 1004, 1008.) The vexatious litigant law grants the court the authority: [O]n its own motion or the motion of any party, [to] enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. (Code Civ. Proc., § 391.7, subd. (a).) Where such an order has been issued, “[t]he presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay.” (Code Civ. Proc., § 391.7, subd. (b).) In addition, “at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3.” (Code Civ. Proc., § 391.1, subd. (a).) “The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that they will prevail in the litigation against the moving defendant.” (*Ibid.*;

see *Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1170.)

The Civil Procedure Code mandates that:

> [I]f, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

(Code Civ. Proc., § 391.3, subd. (a).)

Further, "[i]f, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed." (Code Civ. Proc., § 391.3, subd. (b).)

If the court orders that security be furnished, and it is not furnished, the court must dismiss the litigation as to the defendant for whose benefit the security was to be furnished. (See Code Civ. Proc., § 391.4.)

The term "vexatious litigant" is defined as a person who does any of the following:

> (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
>
> (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination

		against the same defendant or defendants as to whom the litigation was finally determined. (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence. . . . (Code Civ. Proc., § 391, subd. (b).) "An action is counted as being within the 'immediately preceding seven-year period' so long as it was filed or maintained during that period. The seven-year period is measured as of the time the motion is filed." (*Garcia v. Lacey*, *supra*, 231 Cal.App.4th at p. 406, fn.4, citing *Stolz v. Bank of America* (1993) 15 Cal.App.4th 217, 220, 225.) "An action is 'finally determined adversely' to the litigant under section 391 if they do not win the action or proceeding they began — including appeals they have voluntarily dismissed and those involuntarily dismissed for procedural defects — and the 'avenues for direct review (appeal) have been exhausted or the time for appeal has expired.'" (*Karnazes v. The Lauriedale Homeowners Ass'n* (2023) 96 Cal.App.5th 275, 280, quoting *Garcia v. Lacey*, *supra*, 231 Cal.App.4th at pp. 406-407, fn.5.) "[F]or purposes of section 391, a dismissal — voluntary or not — constitutes an adverse determination; it is the loss that matters, not whether a litigant is satisfied with the result." (*Id.* at p. 281; see also *Tokerud v. Capitalbank Sacramento* (1995) 38 Cal.App.4th 775, 779 ["Plaintiff's contention a voluntarily dismissed action cannot be counted for purposes of the vexatious litigant statute is contrary to the underlying intent of that legislation. . . . A party who repeatedly files baseless actions only to

		dismiss them is no less vexatious than the party who follows the actions through to completion.”].) A self-represented defendant may be designated a vexatious litigant even if he did not initiate the litigation in the trial court, such as where defendant files an unmeritorious appeal. (*In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 620-621; see *John v. Superior Court* (2016) 63 Cal.4th 91, 99 [“Section 391 does not prohibit a Court of Appeal from declaring a defendant appellant or writ petitioner to be a vexatious litigant . . . .”].) <u>Vexatious Litigant</u> Respondents have presented evidence that Petitioner is a vexatious litigant under section 391, subdivision (b)(1) of the Code of Civil Procedure, i.e., that “[i]n the immediately preceding seven-year period[, Petitioner] has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court have been finally determined adversely to the person.” At Respondent’s request, the court has taken judicial notice of more than 10 litigations that Petitioner has commenced, prosecuted, or maintained in propria persona within the immediately preceding seven-year period, and which were finally determined adversely to Petitioner. (See Request for Judicial Notice in Supp. of Resp.s’ Notice of Motion and Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Resp.s’ RJN), Exh.s 5, 9, 10, 11, 12, 13, 14, 16, 17, 28, 31, 36.) This includes the following: • Petitioner filed a lawsuit in this court on December 4, 2019 that was dismissed after the court granted the defendant’s Anti-SLAPP Motion. (Resp.s’ RJN, Exh. 5.) • Petitioner filed a lawsuit in this court on October 26, 2020 that resulted in a judgment in the defendant’s favor. (*Id.*, Exh. 9.) • Petitioner filed an appeal in the California Court of Appeal on May 4, 2021 that was dismissed after Petitioner failed to file a

		brief after notice of default had been provided. (*Id.*, Exh. 10.) • Petitioner filed an appeal in the California Court of Appeal on July 26, 2021 that was dismissed as untimely. (*Id.*, Exh. 11.) • Petitioner filed a lawsuit in the Alameda County Superior Court on August 30, 2021 that was dismissed after the court granted the defendant's Anti-SLAPP motion. (*Id.*, Exh. 12.) • Petitioner filed a lawsuit in the San Diego County Superior Court on December 6, 2021 that Petitioner dismissed without prejudice. (*Id.*, Exh. 13.) • Petitioner filed an appeal with the United States Court of Appeal for the 9th Circuit on April 14, 2023, in which the trial court's ruling was affirmed. (*Id.*, Exh. 14.) • Petitioner filed a petition for a writ of review in the California Court of Appeal on January 2, 2018 that was denied. (*Id.*, Exh. 16.) • Petitioner filed an appeal in the California Court of Appeal on September 27, 2022, in which the trial court's order was affirmed. (*Id.*, Exh. 17.) • Petitioner filed an appeal with the United States Court of Appeal for the 9th Circuit on December 8, 2021, in which the trial court's ruling was affirmed. (*Id.*, Exh. 28.) • Petitioner filed a petition for review of a Worker's Compensation Appeals Board order in the California Supreme Court on March 13, 2018 that was denied. (*Id.*, Exh. 31.) • Petitioner filed a lawsuit in this court on April 21, 2023 that was dismissed after the court granted the defendants' Anti-SLAPP motion. (*Id.*, Exh. 36.) In his opposition, Petitioner asserts that some of the matters listed in Respondents' Request for Judicial Notice were not decided adversely to him while others were State Bar and not court

		proceedings. However, even disregarding all of these cases, the number of litigations exceeds 10. Thus, there is no dispute that, within the immediately preceding seven-year period, Petitioner commenced, prosecuted, or maintained, in propria persona, at least five litigations that were finally determined adversely to him, pursuant to Section 391(b)(1). Petitioner primarily argues that he is not a vexatious litigant pursuant to Section 391(b)(3). For example, Petitioner states that he has been unfairly targeted by Respondents, that the pleadings and motions he filed were good faith attempts to obtain lawful relief, and that his conduct was not intentionally harassing or done for delay. (See Decl. of Daniel Escamilla in Opp'n to Vexatious Litigant Mot. (Escamilla Decl.), ¶¶ 7-8.) The court understands the situation in which Petitioner is placed as a self-represented litigant attempting to vindicate his rights in complicated legal actions. However, the fact that Petitioner may not be a vexatious litigant under Section 391(b)(3) does not mean that he was not a vexatious litigant under Section 391(b)(1). "A finding that [Petitioner] engaged in tactics that were frivolous or intended to cause unnecessary delay is not required under section 391, subdivision (b)(1)(i); we make no such finding, nor need we. The statute requires only that five qualifying litigations were finally determined adversely to [him] within a specific time period. That standard is satisfied here." (*Karnazes v. The Lauriedale Homeowners Ass'n*, *supra*, 96 Cal.App.5th at pp. 281-282, citations omitted.) There is no dispute that Petitioner is a vexatious litigant pursuant to Section 391(b)(3). The court will issue the prefiling order described in Section 391.3(a). <u>Probability of Prevailing</u> "When considering a motion [] under section 391.1, the trial court performs an evaluative function. The court must weigh the evidence to decide both whether the party is vexatious based on the statutory criteria and whether he or she

		has a reasonable probability of prevailing." (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 635.) Although "[t]he burden on the motion is on the moving party," at the same time, "the court does not assume the truth of a litigant's factual allegations and it may receive and weigh evidence before deciding whether the litigant has a reasonable chance of prevailing." (*Id.* at pp. 635, 640.) To meet its burden of showing that the plaintiff has no reasonable probability of prevailing, the defendant could show that plaintiff has instituted "baseless litigation" that "would ordinarily be disposed of by means of a demurrer, judgment on the pleadings, or summary judgment." (*Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 57-58.) In this case, Petitioner filed a "Petition to Compel Discovery" pursuant to Government Code section 11507.7. That provision states: "Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file *with the administrative law judge* a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6." (Gov. Code, § 11507.7, subd. (a), italics added.) Section 11507.7 of the Government Code is part of the Administrative Procedure Act (APA). "According to the strict language of the APA statutes, the discovery related disputes prior to the actual adjudicative hearing are to be decided either by 'the presiding officer' (Gov. Code, §§ 11450.30, 11507.7), or 'the administrative law judge' (Gov. Code, § 11507.7)." (*Podiatric Medical Board of California v. Superior Court of City and County of San Francisco* (2021) 62 Cal.App.5th 657, 672, fn.10; *Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 646 [amendment to section 11507.7 allows "an administrative law judge (ALJ) to rule on discovery matters," pursuant to Government Code section 11507.7(d)].) Thus, rather than filing the instant action in this court, Petitioner should have sought relief from the Administrative Law Judge assigned to adjudicate the claims asserted in the September 5, 2023 Accusation against Petitioner. In fact,

		Petitioner acknowledges he was advised that "Any motions regarding this matter should be directed to OAH." (Petition, ¶ 5.) Petitioner does not argue that he has a reasonable probability of prevailing on the claims made out in his Petition. (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"].) Instead, Petitioner argues the merits of the claims contained in his First Amended Petition. However, the filing of the instant motion triggered an automatic stay and Petitioner filed the First Amended Petition after the instant motion was filed and the automatic stay was in effect. (See Code Civ. Proc., § 391.6; *Hanna v. Little League Baseball, Inc.* (2020) 53 Cal.App.5th 871, 875-876; *Shalant v. Girardi*, *supra*, 51 Cal.4th at p. 1170.) It would undermine the purposes of the vexatious litigant statute for the court to consider an amended pleading filed in violation of the automatic stay, particularly where the purpose of the amended pleading appears to be to avoid the consequences of the vexatious litigant statute. Thus, Respondents are entitled to an order that Petitioner furnish security for this litigation because they have shown that Petitioner is a vexatious litigant and that there is no reasonable probability Petitioner will prevail in the litigation against Respondents. Respondents request that Petitioner be ordered to furnish security of $50,000, based on the amount Respondents incurred in defending against a separate suit filed by Petitioner. (See Decl. of Leanna C. Costantini in Supp. of Resp.s' Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Costantini Decl.), ¶ 3; Supp. Decl. of Leanna Costantini in Supp. of Resp.s' Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Costantini Supp. Decl.), ¶ 9, Exh. 58.)

		However, it is unclear that this litigation will entail as much in fees and costs as the prior litigation, particularly in light of the fact that Respondent contends that it has produced the documents requested by Petitioner and the fact that the First Amended Petition appears to be substantially different than the original Petition. The court will order that Petitioner furnish security of $25,000.00 within 30 days, without prejudice to Respondents requesting an increase in the security if warranted by the course of proceedings in this case. Respondents shall give notice of this ruling.
5	**Escamilla vs. Lara** **30-2023-01353817**	<u>Motion to Deem Vexatious Litigant</u> Respondents Ricardo Lara's and the California Department of Insurance's Motion for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes is GRANTED. The court ISSUES and ENTERS a prefiling order prohibiting Petitioner from filing any new litigation in the courts of this state *in propria persona* without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed, pursuant to Civil Procedure Code section 391.7. The court ORDERS that Petitioner Daniel Escamilla furnish security in the amount of $30,000.00 within 30 days of notice of this ruling, without prejudice to Respondents requesting an increase in the security at a later date. Petitioner Daniel Escamilla's Application for Permission to File A Longer Memorandum in Opposition to Defendant's Motion for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes is GRANTED. Respondent Ricardo Lara and California Department of Insurance are ORDERED not to file memoranda in support motions that exceed 15 pages without requesting leave of court. (See Cal. Rules of Court, rule 3.1113(d).) Respondents Ricardo Lara's and California Department of Insurance's Request for Judicial Notice is GRANTED as to Exhibits 1-18 and 21-44, and DENIED as to Exhibits 19 and 20. (Evid. Code,

		§ 452, subds. (c), (d), (h); see *People v. Woodell* (1998) 17 Cal.4th 448, 455-456 [court cannot take judicial notice of the truth of hearsay statements in decisions or court files, but court may take judicial notice of results reached].) Exhibits 19 and 20 contained no documents. Petitioner Daniel Escamilla's evidentiary objections to the Declaration of Leanna Costantini are OVERRULED. The court DECLINES to rule upon Petitioner Daniel Escamilla's evidentiary objections to the Declarations of Larissa Kosits, Debbie De Guzman, and George Teekell as no such declarations were filed with the motion papers. Respondents Ricardo Lara and California Department of Insurance move for a prefiling order prohibiting Petitioner Daniel Escamilla from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed, and for an order requiring that Petitioner furnish security in the amount of $50,000 in this case. <u>Standard to Deem Vexatious Litigant</u> The Legislature enacted the vexatious litigant law "to curb misuse of the court system by those acting in propria persona who repeatedly file groundless lawsuits or attempt to relitigate issues previously determined against them." (*Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 406.) The abuse of the system by such individuals "not only wastes court time and resources but also prejudices other parties waiting their turn before the courts." (*In re Bittaker* (1997) 55 Cal.App.4th 1004, 1008.) The vexatious litigant law grants the court the authority: > [O]n its own motion or the motion of any party, [to] enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed.

		(Code Civ. Proc., § 391.7, subd. (a).) Where such an order has been issued, "[t]he presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay." (Code Civ. Proc., § 391.7, subd. (b).) In addition, "at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3." (Code Civ. Proc., § 391.1, subd. (a).) "The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that they will prevail in the litigation against the moving defendant." (*Ibid.*; see *Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1170.) The Civil Procedure Code mandates that: [I]f, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix. (Code Civ. Proc., § 391.3, subd. (a).) Further, "[i]f, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed." (Code Civ. Proc., § 391.3, subd. (b).) If the court orders that security be furnished, and it is not furnished, the court must dismiss the litigation as to the defendant for whose benefit the security was to be furnished. (See Code Civ. Proc., § 391.4.)

		The term “vexatious litigant” is defined as a person who does any of the following: (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined. (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence. . . . (Code Civ. Proc., § 391, subd. (b).) “An action is counted as being within the ‘immediately preceding seven-year period’ so long as it was filed or maintained during that period. The seven-year period is measured as of the time the motion is filed.” (*Garcia v. Lacey*, *supra*, 231 Cal.App.4th at p. 406, fn.4, citing *Stolz v. Bank of America* (1993) 15 Cal.App.4th 217, 220, 225.)

"An action is 'finally determined adversely' to the litigant under section 391 if they do not win the action or proceeding they began — including appeals they have voluntarily dismissed and those involuntarily dismissed for procedural defects — and the 'avenues for direct review (appeal) have been exhausted or the time for appeal has expired.'" (*Karnazes v. The Lauriedale Homeowners Ass'n* (2023) 96 Cal.App.5th 275, 280, quoting *Garcia v. Lacey*, *supra*, 231 Cal.App.4th at pp. 406-407, fn.5.)

"[F]or purposes of section 391, a dismissal — voluntary or not — constitutes an adverse determination; it is the loss that matters, not whether a litigant is satisfied with the result." (*Id.* at p. 281; see also *Tokerud v. Capitalbank Sacramento* (1995) 38 Cal.App.4th 775, 779 ["Plaintiff's contention a voluntarily dismissed action cannot be counted for purposes of the vexatious litigant statute is contrary to the underlying intent of that legislation. . . . A party who repeatedly files baseless actions only to dismiss them is no less vexatious than the party who follows the actions through to completion."].)

A self-represented defendant may be designated a vexatious litigant even if he did not initiate the litigation in the trial court, such as where defendant files an unmeritorious appeal. (*In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 620-621; see *John v. Superior Court* (2016) 63 Cal.4th 91, 99 ["Section 391 does not prohibit a Court of Appeal from declaring a defendant appellant or writ petitioner to be a vexatious litigant . . . ."].)

<u>Vexatious Litigant</u>

Respondents have presented evidence that Petitioner is a vexatious litigant under section 391, subdivision (b)(1) of the Code of Civil Procedure, i.e., that "[i]n the immediately preceding seven-year period[, Petitioner] has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court have been finally determined adversely to the person."

At Respondent's request, the court has taken judicial notice of more than 10 litigations that Petitioner has commenced, prosecuted, or maintained in propria persona within the

		immediately preceding seven-year period, and which were finally determined adversely to Petitioner. (See Request for Judicial Notice in Supp. of Resp.s' Notice of Motion and Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Resp.s' RJN), Exh.s 5, 9, 10, 11, 12, 13, 14, 16, 17, 28, 31, 36.) This includes the following: • Petitioner filed a lawsuit in this court on December 4, 2019 that was dismissed after the court granted the defendant's Anti-SLAPP Motion. (Resp.s' RJN, Exh. 5.) • Petitioner filed a lawsuit in this court on October 26, 2020 that resulted in a judgment in the defendant's favor. (*Id.*, Exh. 9.) • Petitioner filed an appeal in the California Court of Appeal on May 4, 2021 that was dismissed after Petitioner failed to file a brief after notice of default had been provided. (*Id.*, Exh. 10.) • Petitioner filed an appeal in the California Court of Appeal on July 26, 2021 that was dismissed as untimely. (*Id.*, Exh. 11.) • Petitioner filed a lawsuit in the Alameda County Superior Court on August 30, 2021 that was dismissed after the court granted the defendant's Anti-SLAPP motion. (*Id.*, Exh. 12.) • Petitioner filed a lawsuit in the San Diego County Superior Court on December 6, 2021 that Petitioner dismissed without prejudice. (*Id.*, Exh. 13.) • Petitioner filed an appeal with the United States Court of Appeal for the 9th Circuit on April 14, 2023, in which the trial court's ruling was affirmed. (*Id.*, Exh. 14.) • Petitioner filed a petition for a writ of review in the California Court of Appeal on January 2, 2018 that was denied. (*Id.*, Exh. 16.)

		• Petitioner filed an appeal in the California Court of Appeal on September 27, 2022, in which the trial court's order was affirmed. (*Id.*, Exh. 17.) • Petitioner filed an appeal with the United States Court of Appeal for the 9th Circuit on December 8, 2021, in which the trial court's ruling was affirmed. (*Id.*, Exh. 28.) • Petitioner filed a petition for review of a Worker's Compensation Appeals Board order in the California Supreme Court on March 13, 2018 that was denied. (*Id.*, Exh. 31.) • Petitioner filed a lawsuit in this court on April 21, 2023 that was dismissed after the court granted the defendants' Anti-SLAPP motion. (*Id.*, Exh. 36.) In his opposition, Petitioner asserts that some of the matters listed in Respondents' Request for Judicial Notice were not decided adversely to him while others were State Bar and not court proceedings. However, even disregarding all of these cases, the number of litigations exceeds 10. Thus, there is no dispute that, within the immediately preceding seven-year period, Petitioner commenced, prosecuted, or maintained, in propria persona, at least five litigations that were finally determined adversely to him, pursuant to Section 391(b)(1). Petitioner primarily argues that he is not a vexatious litigant pursuant to Section 391(b)(3). For example, Petitioner states that he has been unfairly targeted by Respondents, that the pleadings and motions he filed were good faith attempts to obtain lawful relief, and that his conduct was not intentionally harassing or done for delay. (See Decl. of Daniel Escamilla in Opp'n to Vexatious Litigant Mot. (Escamilla Decl.), ¶¶ 7-8.) The court understands the situation in which Petitioner is placed as a self-represented litigant attempting to vindicate his rights in complicated legal actions. However, the fact that Petitioner may not be a vexatious litigant under Section 391(b)(3) does not mean that he was not a vexatious litigant under Section 391(b)(1).

		"A finding that [Petitioner] engaged in tactics that were frivolous or intended to cause unnecessary delay is not required under section 391, subdivision (b)(1)(i); we make no such finding, nor need we. The statute requires only that five qualifying litigations were finally determined adversely to [him] within a specific time period. That standard is satisfied here." (*Karnazes v. The Lauriedale Homeowners Ass'n*, *supra*, 96 Cal.App.5th at pp. 281-282, citations omitted.) There is no dispute that Petitioner is a vexatious litigant pursuant to Section 391(b)(3). The court will issue the prefiling order described in Section 391.3(a). <u>Probability of Prevailing</u> "When considering a motion [] under section 391.1, the trial court performs an evaluative function. The court must weigh the evidence to decide both whether the party is vexatious based on the statutory criteria and whether he or she has a reasonable probability of prevailing." (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 635.) Although "[t]he burden on the motion is on the moving party," at the same time, "the court does not assume the truth of a litigant's factual allegations and it may receive and weigh evidence before deciding whether the litigant has a reasonable chance of prevailing." (*Id.* at pp. 635, 640.) To meet its burden of showing that the plaintiff has no reasonable probability of prevailing, the defendant could show that plaintiff has instituted "baseless litigation" that "would ordinarily be disposed of by means of a demurrer, judgment on the pleadings, or summary judgment." (*Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 57-58.) In this case, Petitioner filed a Petition seeking to challenge the California Department of Insurance's September 5, 2023 Accusation (Accusation) that Petitioner failed to report certain "background information" as that term is used in Insurance Code section 1729.2. However, before Petitioner filed the Petition, he was required to exhaust his administrative

		remedies. Specifically, Petitioner is required to defend against the Accusation before the Office of Administrative Hearings. Only after the administrative law judge issues final decision may Petitioner file the Petition. (See *Contractors' State License Board v. Superior Court* (2018) 28 Cal.App.5th 771, 778-782.) Because Petitioner has not exhausted his administrative remedies, the Petition is subject to dismissal on demurrer. (See *id.* at pp. 784-785 [Court of Appeal issued peremptory writ of mandate directing trial court to vacate its order overruling Contractors' State License Board's demurrer and to enter new order sustaining demurrer where no final administrative decision had been issued].) Petitioner does not argue that he has a reasonable probability of prevailing on the claims made out in his Petition. (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"].) Instead, Petitioner argues the merits of the claims contained in his First Amended Petition. However, the filing of the instant motion triggered an automatic stay and Petitioner filed the First Amended Petition after the instant motion was filed and the automatic stay was in effect. (See Code Civ. Proc., § 391.6; *Hanna v. Little League Baseball, Inc.* (2020) 53 Cal.App.5th 871, 875-876; *Shalant v. Girardi*, *supra*, 51 Cal.4th at p. 1170.) It would undermine the purposes of the vexatious litigant statute for the court to consider an amended pleading filed in violation of the automatic stay, particularly where the purpose of the amended pleading appears to be to avoid the consequences of the vexatious litigant statute. Thus, Respondents are entitled to an order that Petitioner furnish security for this litigation because they have shown that Petitioner is a vexatious litigant and that there is no reasonable

		probability Petitioner will prevail in the litigation against Respondents. Respondents request that Petitioner be ordered to furnish security of $50,000, based on the amount Respondents incurred in defending against a separate suit filed by Petitioner. (See Decl. of Leanna C. Costantini in Supp. of Resp.s' Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Costantini Decl.), ¶ 3; Supp. Decl. of Leanna Costantini in Supp. of Resp.s' Mot. for Prefiling Order and Order Requiring Security Pursuant to Vexatious Litigant Statutes (Costantini Supp. Decl.), ¶ 9, Exh. 58.) However, it is unclear that this litigation will entail as much in fees and costs as the prior litigation, particularly if the Petition and Amended Petition are subject to dismissal on demurrer. The court will order that Petitioner furnish security of $30,000.00 within 30 days, without prejudice to Respondents requesting an increase in the security if warranted by the course of proceedings in this case. Respondents shall give notice of this ruling.
6	**MAXVI I, LLC vs. El Paso Oil d/b/a El Paso Oil, Inc.** **30-2022-01284113**	<u>Motion to Be Relieved as Counsel and Order to Show Cause</u> No party or counsel has filed any papers to show cause why the court should not deny Counsel Scott Allen Miller, Esq.'s Motion to Be Relieved as Counsel for El Paso Oil due to prejudice to the parties. Therefore, there is no tentative ruling on this matter and the court will hear from parties and counsel as to the prejudice, if any, related to the Motion to Be Relieved as Counsel for El Paso Oil.
7	**Mora vs. Tu** **30-2022-01290163**	<u>Motion to Continue Trial</u> Pursuant to the Request for Dismissal with prejudice of the entire action of all parties and all causes of action filed April 8, 2024, (ROA #47), this matter is taken OFF CALENDAR.
8	**Ordonez-Bass vs. RFG Document Center, Inc.**	<u>Motion for Terminating Sanctions</u>

	30-2022-01281599	Plaintiff Dayse Leonor Ordonez-Bass' Motion for Terminating and Monetary Sanctions for Violation of This Court's Orders is GRANTED in part and DENIED in part. Defendant Roberto Francisco Gallegos is ORDERED to pay to Plaintiff Dayse Leonor Ordonez-Bass monetary sanctions in the amount of $2,450 (4.9 hours x $500 per hour) within 30 days of service of the notice of ruling. Plaintiff Dayse Leonor Ordonez-Bass moves for terminating sanctions and monetary sanctions against Defendant Roberto Francisco Gallegos (Defendant Gallegos). <u>Standard for Monetary and Non-Monetary Discovery Sanctions</u> The court may impose monetary, issue, evidence, terminating, or contempt sanctions against any person engaging in any misuse of the discovery process. (See Code Civ. Proc., § 2023.030, subds. (a)-(e).) Misuse of the discovery process includes, but is not limited to, using a discovery method in a manner that does not comply with its specified procedures; employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden; failing to submit or to respond to an authorized method of discovery; and disobeying a court order to provide discovery. (See Code Civ. Proc., §§ 2023.010, 2030.300, subd. (e) [interrogatories], 2031.310, subd. (i) [requests for production of documents], 2033.290, subd. (e) [requests for admissions].) Terminating sanctions are one of the most severe forms of sanctions and are imposed by: (1) striking out the pleadings, or parts of the pleadings, of any party engaging in the misuse of the discovery process, (2) staying further proceedings by that party until an order for discovery is obeyed, (3) dismissing the action, or any part of the action, or (4) rendering judgment by default against that party. (Code Civ. Proc., § 2023.030, subd. (d).) "The trial court may order a terminating sanction for discovery abuse 'after considering the totality

		of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery.'" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390, quoting *Lang v. Hochman* (2000) 77 Cal.App.4th 1225,1246.) In order to impose terminating sanctions, the party subject to sanctions must have failed to comply with previously issued court orders and the failure must be willful. (See *Calvert Fires Ins. Co. v. Cropper* (1983) 141 Cal.App.3d 901, 904; *R.S. Creative. Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; see also *Lee* v. Lee (2009) 175 Cal.App.4th 1553, 1559 ["[A]bsent unusual circumstances, such as repeated and egregious discovery abuses, two facts are generally prerequisite to the imposition of a nonmonetary sanction. There must be a failure to comply with a court order and the failure must be willful"].) However, "[s]ome courts have held that the more serious sanctions may be imposed . . . even where no specific order has been violated, but those cases have involved repeated and willful refusals to permit discovery or produce documents over a lengthy period of time which resulted in evidence becoming unavailable." (*Maldonado v. Superior Court* (2002) 94 Cal.App.4th 1390, 1399.) As the Court of Appeal has explained: > [T]he courts have long recognized that the terminating sanction is a drastic penalty and should be used sparingly. A trial court must be cautious when imposing a terminating sanction because the sanction eliminates a party's fundamental right to a trial, thus implicating due process rights. The trial court should select a sanction that is "tailor[ed] . . . to the harm caused by the withheld discovery." (*Lopez v. Watchtower Bible and Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604, citations omitted, quoting *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.)

| | | “Discovery sanctions ‘should be appropriate to the dereliction, and should not exceed that which is required to protect the interest of the party entitled to but denied discovery.’” (*Doppes v. Bentley Motors, Inc.*, *supra*, 174 Cal.App.4th at p. 992, quoting *Laguna Autobody v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487.)

“The discovery statutes thus ‘evince an incremental approach to discovery sanctions, starting with *monetary* sanctions and *ending* with the ultimate sanction of termination. Although in extreme cases a court has the authority to order a terminating sanction as a first measure, a terminating sanction should generally not be imposed until the court has attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective.” (*Lopez v. Watchtower Bible and Tract Society of New York, Inc.*, *supra*, 246 Cal.App.4th at pp. 604-605, quoting *Doppes v. Bentley Motors, Inc.*, *supra*, 174 Cal.App.4th at p. 992, italics original; see also *Los Defensores, Inc. v. Gomez*, *supra*, 223 Cal.App.4th at p. 390 [“[A] decision to order terminating sanctions should not be made lightly.”].)

“The purpose of discovery sanctions ‘is not to provide a weapon for punishment, forfeiture and the avoidance of a trial on the merits’ but to prevent abuse of the discovery process and correct the problem presented.” (*Parker v. Wolters Kluwer U.S., Inc.* (2007) 149 Cal.App.4th 285, 301, citations omitted, quoting *Caryl Richards Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 303; see *In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 109 [“In exercising its broad discretion to sanction discovery abuses, the trial court may impose any sanction authorized by statute that will enable the party seeking discovery to obtain the objects of the discovery sought.”].)

Thus, “[a] discovery sanction may not place the party seeking discovery in a better position than it would have been in if the desired discovery had been provided and had been favorable.” (*Rail Services of America v. State Compensation Ins. Fund* (2003) 110 Cal.App.4th 323, 332.)

For example, terminating sanctions are warranted where a party repeatedly failed to respond to |

		discovery responses for nearly one year, and disregarded two court orders, including one order warning that terminating sanctions would be the next step. (*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1069.) On the other hand, willfulness is not required for the imposition of monetary sanctions. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878; *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1286.) A trial court has "every right to impose a monetary sanction to compel obedience to its lawful orders, or to punish disobedience and disrespect of the court's processes." (*20th Century Ins. Co. v. Choong* (2000) 79 Cal.App.4th 1274, 1278.) <u>Proceedings</u> On July 31, 2023, the court ordered Defendant Gallegos to serve his responses to Plaintiff's Form Interrogatories – General, Form Interrogatories – Employment Law, Special Interrogatories, and Requests for Production of Documents, within 30 days of service of the notice of ruling. (See ROA #76 at p. 3.) Defendant Gallegos was ordered to pay sanctions of $3,250.00 within the same timeframe. (See *ibid.*) Plaintiff gave notice of the Court's ruling the same day. (Decl. of Dolores Y. Leal (Leal Decl.), ¶ 5, Exh. B.) However, on September 12, 2023, Defendant Gallegos had not complied with the Court's order, so Plaintiff served a meet-and-confer letter, which requested compliance by September 22, 2023. (See *id.*, ¶ 6, Exh. C.) In the letter, Plaintiff warned that she would notify the court of Defendant Gallego's non-compliance should he fail to comply with the September 22, 2023 deadline. (See *id.*, Exh. C.) Plaintiff contends that Defendant Gallegos did not respond to the letter. The court's records reflect that Defendant filed his responses to the Requests for Production of Documents with the court on April 4, 2024 and his responses to Form Interrogatories on April 8, 2024. (See ROA #119, #122.) It also appears Defendant Gallegos attempted to file some type of document relating to the interrogatory responses on April 4, 2024, although that document was rejected. (See ROA #120.)

		Although the discovery responses are untimely and incorrectly filed with the court rather than served on Plaintiff, they do appear to be attempts to comply with Defendant Gallegos' discovery obligations and the court's orders. Thus, Defendant Gallegos' failure to abide by the court's orders to serve discovery responses does not appear to be willful. Further, the court recognizes that terminating sanctions are a drastic penalty and that courts should take an incremental approach that attempts to use less severe sanctions first. The court's approach here should be focused on ensuring compliance rather than punishing parties. In light of this, terminating sanction are not warranted at this juncture. Defendant Gallegos has made some attempts to serve discovery responses. However, given the passage of nearly nine months since the court's July 31, 2023 order and the fact that Plaintiff was required to send meet and confer letters and bring the instant motion to get a response from Defendant Gallegos, additional monetary sanctions are justified. (See *20th Century Ins. Co. v. Choong* (2000) 79 Cal.App.4th 1274, 1278 [trial court has "every right to impose a monetary sanction to compel obedience to its lawful orders, or to punish disobedience and disrespect of the court's processes."].) Plaintiff shall give notice of this ruling.
9	**Raile vs. Williams** **30-2023-01304903**	Motions to Compel Discovery Defendants Tryal Edmundson's, Osbelia Edmundson's, and Daniel Perales' Motion to Compel Further Answers to Form Interrogatories to Abir Cohen Treyzon Salo, LLP is GRANTED. Defendant Daniel Perales' Motion to Compel Further Answers to Daniel Parales' Special Interrogatories to Abir Cohen Treyzon Salo, LLP is GRANTED in part and DENIED in part. Defendant Abir Cohen Treyzon Salo, LLP is ORDERED to serve full, complete, and verified responses to Form Interrogatories – General, Set

		One, Number 17.1 within 21 days of service of the notice of ruling. Defendant Abir Cohen Treyzon Salo, LLP is ORDERED to serve full, complete, and verified responses to Special Interrogatories from Special Interrogatories from Defendant Daniel Perales to Defendant Abir Cohen Treyzon Salo, LLP, Numbers 1, 2, 3, 4, 13, 21, and 23, as amended, within 21 days of service of the notice of ruling. Defendant Abir Cohen Treyzon Salo, LLP is ORDERED to serve full, complete, and verified responses to Special Interrogatories from Special Interrogatories from Defendant Daniel Perales to Defendant Abir Cohen Treyzon Salo, LLP, Numbers 5, 7, 8, 11, 12, 14, 15, 22, 24, 25, 26, and 28, within 21 days of service of the notice of ruling. The court DENIES all requests for sanctions in relation to these motions to compel. Defendants Tryal Edmundson, Osbelia Edmundson, and Daniel Perales (collectively, Moving Defendants) move to compel further responses from Defendant Abir Cohen Treyzon Salo, LLP (Defendant ACTS) to Form Interrogatories – General, Set One, Number 17.1. Defendant Daniel Perales (Defendant Perales) also moves to compel further responses from Defendant ACTS to Special Interrogatories from Defendant Daniel Perales to Defendant Abir Cohen Treyzon Salo, LLP, Numbers 1-8, 10-16, 18, and 21-26. <u>Meet and Confer Requirement</u> A motion to compel further responses must include a meet and confer declaration consistent with Civil Procedure Code section 2016.040. (Code Civ. Proc., § 2030.300, subd. (b)(1).) In turn, Civil Procedure Code section 2016.040 requires that the moving party have made “a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (Code Civ. Proc., § 2016.040.) The meet-and-confer requirement “is designed ‘to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . .’ This, in turn, will lessen the burden on

		the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, quoting *McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289.) This "requires that there be a serious effort at negotiation and informal resolution" and "that counsel attempt to talk the matter over, compare their views, consult, and deliberate." (*Townsend v. Superior Court*, *supra*, 61 Cal.App.4th at pp. 1438-1439.) As the Court of Appeal has explained: A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the "reasonable and good faith attempt" standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The . . . nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. . . . A single letter, followed by a response which refuses concessions, might in some instances be an adequate attempt at informal resolution, especially when a legitimate discovery objective is demonstrated. The time available before the motion filing deadline, and the extent to which the responding party was complicit in the lapse of available time, can also be relevant. An evaluation of whether, from the perspective of a reasonable

		person in the position of the discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances, the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431-433, citations omitted.) Even if the moving party failed to attempt an informal resolution, a trial court must still consider the appropriate remedy, whether it be an outright denial of the motion, or some lesser sanction, such as "specify[ing] additional efforts which will be required before the court will turn to the merits of the discovery dispute." (*Obregon v. Superior Court*, *supra*, 67 Cal.App.4th at pp. 433-435.) Defendant ACT argues that the motions are deficient because the Moving Defendants failed to meet in confer in good faith. Here, the Moving Defendants supplied draft separate statements regarding discovery responses that they contended were deficient. (Decl. of Sondra S. Sutherland in Supp. of Mot.s to Compel Further Discovery Responses from Abir Cohen Treyzon Salo, LLP (Sutherland Decl.), Exh.s 21, 24.) Counsel for the parties then exchanged electronic mails regarding the issues, which ended when Defendant ACTS' counsel refused to have a telephone conference. (Sutherland Decl., ¶ 9, Exh. 20.) The parties' meet and confer communications consisted primarily of bickering, with both parties failing to make a good-faith effort to resolve the issues in a reasonable manner. While Moving Defendants' and Defendant ACTS' meet and confer efforts fell short of what the court would expect from counsel, the court cannot say that the meet and confer efforts were wholly deficient or that further meet and confer communications would be fruitful. Defendant ACTS initial responses contained mostly

		objections but it then served supplemental responses. The tenor of the parties' communications indicated that neither side was likely to change their position. The court will therefore exercise its discretion and consider the motions on the merits. <u>Standard to Compel Further Responses to Interrogatories</u> 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).) If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure fully to answer the discovery requests. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221; *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) <u>Objections</u> In their responses to the form interrogatories and special interrogatories, Defendant ACTS interpose numerous objections, including attorney-client privilege, work-product doctrine, mediation privilege, right to privacy, unduly burdensome, oppressive, harassing, not full and complete in and of itself, compound, vague, overbroad, irrelevant, assumes facts, equally available to propounding party, and unreasonably cumulative or duplicative. Where discovery is withheld on the basis of a privilege claim or a claim that the information sought is protected work-product, the party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise. (F*iduciary Trust Int'l of California v. Klein* (2017) 9 Cal.App.5th 1184, 1195). Further, "[i]f an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." (Cal. Civ. Proc. Code § 2031.240(c)(1).) However, Defendant ACTS did not present facts to show that any privilege or the attorney work-

		product doctrine applied. In addition, Defendant ACTS failed to provide a privilege log. Therefore, any objections based on privilege or attorney work-product are overruled. The same is true with respect Defendant ACTS' objections that the information sought is protected by the right of privacy. Defendant ACTS fails to meet its burden to justify this objection and it is overruled. If a party asserts an objection based on burden, oppression, or harassment, that party bears the burden of "showing the quantum of work required" to respond to discovery and articulate that burden that is being imposed on that party. (*West Pico Furniture Co. v. Los Angeles v. Superior Court* (1961) 56 Cal.2d 407, 417-418). Here, the Defendant ACTS offers no evidence of the burden that would be required for it to provide this information. The court, therefore, overrules all such objections. With respect to the remaining objections, they do not appear to apply on the face of the interrogatory. In addition, Defendant ACT has failed to meet its burden to justify the objections or explain how these issues prevented Defendant ACT from "answer[ing] to the extent possible." <u>Form Interrogatory Responses</u> Form Interrogatory 17.1 asks if a defendant responded to each request for admission with an unqualified admission, and for each response which was not an unqualified admission, for the defendant to identify the facts upon which the response was based, contact information for persons with knowledge of these facts, and documents that support these facts. Defendant ACTS' responses to subsection (c), which requests the names, address, and telephone numbers of all persons who have knowledge of these facts, is incomplete and evasive. Specifically, the responses are inadequate as they relate to Request for Admission Number 28 regarding Defendant Osbelia Edmundson and Request for Admissions Numbers 2, 4, 6, and 25 regarding Defendant Daniel Perales. <u>Special Interrogatory Responses</u>

		Special Interrogatory Numbers 1, 2, 3, 4, 13, 21, and 23 request information with respect to "Law Offices of Treyzon & Associates, A Professional Corporation." Defendant ACTS contends that "Treyzon & Associates" is a distinct legal entity from "Treyzon & Associates, A Professional Corporation," and its responses to these interrogatories take advantage of this distinction and are intentionally obtuse. At the same time, Moving Defendants could have resolved the issue by specifying that "Law Offices of Treyzon & Associates, A Professional Corporation" also refers to "Treyzon & Associates." Had the parties made a good-faith effort to meet and confer, they could and should have done away with the need for this part of the motion. The court amends each of these special interrogatories to define "Law Offices of Treyzon & Associates, A Professional Corporation" to mean "Treyzon & Associates and/or any other predecessor of the responding party" and will order Defendant ACTS to respond to these interrogatories with that amendment. In response to Special Interrogatories Numbers 5, 7, 8, 11, 12, 14, 15, 22, 24, 25, 26, and 28, Defendant ACTS provided either no substantive responses or responses that are evasive, conclusionary, evasive, and obstructionist, and that simply fail to answer the complete question asked. The court will order that Defendant ACTS provide full and complete responses to these interrogatories. Defendant ACTS responses to Special Interrogatory Numbers 6, 10, 16, and 18 are adequate. The court will not order further responses to these interrogatories. <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).)

		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.) A party's sincere belief in their position is not sufficient to avoid sanctions. (See *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1286-1287 [even if responding party did not intend to be evasive in its discovery responses, its intent is not relevant, as there is no requirement that misuse of discovery process be willful in order to impose sanctions].) In this case, neither party fully met and conferred in good-faith as to all of the issues. In addition, each party took unreasonable positions that exacerbated the disputes. Further the results of the motions are mixed. While the court could impose sanctions against both parties, such sanctions would merely offset each other. Had either party acted more reasonably to resolve discovery disputes where they could, the court would have been inclined to grant the full amount of the attorney's fees required to bring or oppose the motions. The court encourages the parties to consider meeting and conferring further on the remaining pending discovery motions with this ruling in mind. Moving Defendants may wish to consider amending discovery questions to be more precise and Defendant ACTS may wish to consider serving supplemental responses that remove meritless objections and that substantively respond. Moving Defendants shall give notice of this ruling.
10	**Silva vs. Sunrise Floor Systems LLC** **30-2023-01355185**	<u>Motion for Leave to Intervene</u> Proposed Plaintiff-In-Intervention Sedgwick's Motion for Leave to File Complaint-In-Intervention is GRANTED. Proposed Plaintiff-In-Intervention Sedgwick is ORDERED to file the Complaint-In-Intervention, attached as Exhibit A to the Declaration of Peter V. Fitzpatrick in Support of Motion for Leave to File Complaint-In-Intervention, within 15 days of this

		ruling. Proposed Plaintiff-In-Intervention Sedgwick is ORDERED to serve the Complaint-In-Intervention upon all parties within 30 days of filing the Complaint-In-Intervention. Proposed Plaintiff-In-Intervention Sedgwick moves for leave to file a Complaint-In-Intervention. <u>Standard for Intervention</u> A non-party, who is referred to as an "intervenor," may become a party to an action or proceeding between other persons by: (1) Joining a plaintiff in claiming what is sought by the complaint; (2) Uniting with a defendant in resisting the claims of a plaintiff; or (3) Demanding anything adverse to both a plaintiff and a defendant. (Code. Civ. Proc., § 387, subd. (b).) The non-party must request leave to intervene from the court "by noticed motion or ex parte application," which "shall include a copy of the proposed complaint in intervention or answer in intervention and set for the grounds upon which intervention rests." Code. Civ. Proc., § 387, subd. (c).) The court must grant leave to intervene if either of the following requirements are met: (A) A provision of law confers an unconditional right to intervene; or (B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. (Code. Civ. Proc., § 387, subd. (d)(1).) This is referred to as mandatory intervention.

		The court may grant leave to intervene, at its discretion, "if the [non-party] has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." (Code. Civ. Proc., § 387, subd. (d)(2).) This is referred to as permissive intervention. In general, the party seeking to intervene must have a direct and immediate interest in the outcome of the litigation (i.e., he or she must stand to gain or lose by direct operation of the judgment). (See *Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal.App.3d 299, 303-305.) "A person has a direct interest justifying intervention in litigation where the judgment in the action of itself adds to or detracts from his legal rights without reference to rights and duties not involved in the litigation." (*Continental Vinyl Prods. Corp. v. Mead Corp.* (1972) 27 Cal.App.3d 543, 549.) In general, Section 387 should be construed liberally in favor of intervention. (See *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1201.) Whether intervention should be allowed in a particular case "is best determined by a consideration of the facts of that case" and the decision is ordinarily left to the sound discretion of the trial court. (*Fireman's Fund Ins. Co. v. Gerlach*, *supra*, 56 Cal.App.3d 299, 302.) <u>Basis for Intervention</u> Under the workers' compensation statutes, an employee who suffers an industrial injury may recover compensation benefits from his or her employer without regard to the negligence of either party. (Labor Code, § 3600.) An injured employee's compensation claim against the employer constitutes an exclusive remedy, with specified exceptions. (Labor Code, §§ 3601, 3602.) However, when the tort of a third party causes injury to an employee, Labor Code section 3852 permits the employee to sue the tortfeasor for all damages proximately resulting from the injury even though he or she has received from his or

		her employer workers' compensation benefits covering some of the same injuries and resulting disability. To prevent an employee from retaining damages paid by third-parties and workers' compensation benefits for the same injuries and disabilities, the Labor Code permits an employer to recover workers' compensation benefits it has become obligated to pay and/or has paid by: (1) bringing an action directly against the tortfeasor, (see Labor Code, § 3852), (2) joining as a plaintiff or intervening as a plaintiff in an action brought by the employee, (see Labor Code, § 3853), or (3) allowing the employee to prosecute the action and then applying for a first lien against the resulting judgment or settlement, (Labor Code, § 3856, subd. (b)). (*Abdala v. Aziz* (1992) 3 Cal.App.4th 369, 374-375, 377; *Bailey v. Reliance Ins. Co.* (2000) 79 Cal.App.4th 449, 454.) Proposed Plaintiff-In-Intervention Sedgwick has submitted evidence that it is the workers' compensation insurance carrier for Plaintiff Martha Silva's employer, The Kroger Company dba Ralph's Grocery Company. (See Decl. of Peter V. Fitzpatrick in Supp. of Mot. for Leave to File Compl.-In-Intervention (Fitzpatrick Decl.), ¶ 6.) Proposed Plaintiff-In-Intervention Sedgwick also presents evidence that it has paid workers' compensation benefits to Plaintiff Martha Silva in the total amount of $76,582.65, including $31,749.27 for indemnity (loss of earnings) and $44,833.83 for medical payments. (*Id.*, ¶ 7.) Proposed Plaintiff-In-Intervention Sedgwick has shown that it has a direct and immediate interest in the outcome of the litigation and that the disposition of the action may impair or impede its ability to protect that interest. All of the requirements of Section 387 have been met. Further, there is nothing to indicate that the motion is untimely or that allowing intervention will unduly prejudice any other party. (See Labor

		Code, § 3853.) Proposed Plaintiff-In-Intervention Sedgwick shall give notice of this ruling.
11	**Young vs. Seabreeze Management Company, Inc.** **30-2023-01326864**	<u>Demurrer and Motion to Strike</u> Defendants Seabreeze Management Company, Inc.'s; Estela Alday's; Heidi Speare's; Eric James'; Fred Olsen's; and Todd Hunter's Demurrer to the Amended Complaint of Plaintiff, Randell Young is CONTINUED to May 13, 2024, at 8:30 a.m. in Department N15. Defendants Seabreeze Management Company, Inc.'s; Estela Alday's; Heidi Speare's; Eric James'; Fred Olsen's; and Todd Hunter's Motion to Strike Portions of the Amended Complaint of Plaintiff, Randell Young is CONTINUED to May 13, 2024, at 8:30 a.m. in Department N15. Defendants Seabreeze Management Company, Inc.; Estela Alday; Heidi Speare; Eric James; Fred Olsen; and Todd Hunter are ORDERED to serve all demurrer and motion to strike moving papers and reply papers upon Plaintiff Randell Young properly by mail service on or before April 16, 2024, and file a proof of service on or before April 19, 2024. Plaintiff Randell Young is ORDERED to serve all demurrer and motion to strike opposition papers upon Defendants Seabreeze Management Company, Inc.; Estela Alday; Heidi Speare; Eric James; Fred Olsen; and Todd Hunter properly by electronic mail service upon at least 3 of Defendants' Counsel on or before April 17, 2024, and file a proof of service on or before April 19, 2024. Defendants Seabreeze Management Company, Inc.; Estela Alday; Heidi Speare; Eric James; Fred Olsen; and Todd Hunter are ORDERED to meet and confer with Plaintiff Randell Young by telephone or in person regarding the demurrer and motion to strike as required by Civil Procedure Code section 435.5 on or before April 26, 2024, and shall file and serve the declaration required by Civil Procedure Code section 435.5(a)(3) on or before April 29, 2024. Plaintiff Randell Young may file amended demurrer and motion to strike opposition papers, but shall

		properly file and serve said papers on or before May 1, 2024. Defendants Seabreeze Management Company, Inc.; Estela Alday; Heidi Speare; Eric James; Fred Olsen; and Todd Hunter may file amended demurrer and motion to strike reply papers, but shall properly file and serve said papers on or before May 8, 2024. Any amended papers shall completely replace the original papers, and shall not be in addition to or supplemental to the original papers. Failure to serve the demurrer and motion to strike papers and file proofs of service as ordered above may result in the related papers being stricken by the court. Defendants Seabreeze Management Company, Inc.; Estela Alday; Heidi Speare; Eric James; Fred Olsen; and Todd Hunter (collectively, Defendants) demur to the 1st Cause of Action of the Amended Complaint (AC). Defendants also move to strike portions of the AC relating to punitive damages. <u>Improper Service of Demurrer and Motion to Strike Papers</u> Defendants served their moving papers and reply papers with respect to the demurrer and the motion to strike upon Plaintiff by electronic mail. (See ROA #49, #53, #76, #78.) However, service by electronic mail may only be effectuated on an unrepresented party if that party consents. (See Code Civ. Proc., § 1010.6, subd. (c); Cal. Rules of Court, rule 2.251(b).) Here, Plaintiff is an unrepresented party and no evidence has been submitted to show that he has consented to service by electronic mail. Thus, it appears that Plaintiff has not been properly served with the moving papers and reply papers with respect to the demurrer and the motion to strike. In addition, Plaintiff did not file a proof of service showing service of his opposition to the demurrer and motion to strike upon Defendants or their counsel. (See ROA #74.) Further, Defendants assert in their replies that Plaintiff failed to serve the opposition to the demurrer and motion to strike upon them. (See ROA #76 at p. 3, #78 at

		p. 3.) Therefore, it appears that Plaintiff failed to properly serve the opposition as required by the Civil Procedure Code. (See Code Civ. Proc., §§ 1005, subd. (b), 1010.6, subd. (b).) <u>Meet and Confer</u> Prior to filing a demurrer, the demurring party is required to meet and confer in good faith with the opposing party. (See Code Civil Proc., § 430.41, subd. (a).) The demurrer papers must include a declaration stating that the demurring party has complied with this requirement. (Code Civ. Proc., § 430.41, subd. (a)(3).) In addition, 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).)

		In order to rectify these issues, the court will order that the hearing on the demurrer and motion to strike be continued, that Plaintiff and Defendants properly serve all demurrer and motion to strike papers, that Plaintiff and Defendants have an opportunity to file amended opposition and reply papers. The court will also order that Plaintiff and Defendants properly meet and confer, and the Defendants file and serve the required declaration. Defendants shall give notice of this ruling.