Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR N18
HON. Scott A. Steiner

Date: April 17, 2024

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Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (Lewis v. Fletcher Jones Motor Cars, Inc. (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department N18 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department N18 at the North Justice Center, located at 1275 N. Berkeley Ave., Fullerton, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) Those procedures and guidelines will be strictly enforced.

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#	Case Name	Tentative
1.	2023-1334802 McCorkle vs. La Habra Convalescent Hospital	The Court denies Plaintiff Liza McCorkle's, individually and as successor in interest, Motion to compel further responses to Special Interrogatories, Set One, Nos. 71-72, 75-78. This is an elder abuse and wrongful death case. Special Interrogatory Nos. 71-72 seek the names and contact information of the Decedent's roommates/their responsible persons at Defendant's facility when he was a resident. Special Interrogatory Nos. 75-78 seek the names and contact information of *any* resident/their responsible parties, at the Defendant facility during the period of Decedent's admission who developed a pressure ulcer and dehydration. (Ramirez Decl., ¶ 3, Exhibit 1.) A party may move to compel further responses to interrogatories on the grounds that the answer is evasive or incomplete. (Code Civ. Proc., § 2030.300, subd. (a)(1).) If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure to fully answer the interrogatories. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) Here, the Court finds that Defendant has met its burden to show its objections have merit.

		Even highly relevant, nonprivileged information may be shielded from discovery if its disclosure would impair a person's "inalienable right of privacy" provided by Calif. Const. Art. 1, § 1. (*Britt v. Sup.Ct. (San Diego Unified Port Dist.)* (1978) 20 C3d 844, 855-856; *Pioneer Electronics (USA), Inc. v. Sup.Ct. (Olmstead)* (2007) 40 C4th 360, 370—right of privacy "protects the individual's *reasonable* expectation of privacy against a serious invasion" (emphasis in original).) In each case, the court must carefully balance the right of privacy against the need for discovery. The showing required to overcome the protection depends on the nature of the privacy right asserted; in some cases, a simple balancing test is sufficient, while in others, a compelling interest must be shown. "Only obvious invasions of interests fundamental to personal autonomy must be supported by a compelling interest." (*Williams v. Sup.Ct. (Marshalls of CA, LLC), supra,* 3 C5th at 557; *Kirchmeyer v. Phillips* (2016) 245 CA4th 1394, 1403; *Lewis v. Sup.Ct. (Medical Bd. of Calif.)* (2017) 3 C5th 561, 572-573—medical board obtaining doctor's prescribing history did not intrude on fundamental autonomy right, so balancing test applied). Here, given the serious privacy invasion, Plaintiff must show a compelling need for this information. In balancing the interests involved, the Court does not find that Plaintiff has so demonstrated. The court also declines to order any compromise that Plaintiff requests. Defendant's objections are sustained. Thus, the Motion is denied. Plaintiff shall serve notice of this Order.
2.	2023-1365896 Meyers vs. Tsaturyan	Motion to Strike is moot. Amended Complaint filed 03/27/2024.
3	2021-1182656 Mukati vs. Green Light District Holdings, Inc.	The Court grants Defendants Jarrod Barakett, Pinnacle Distribution SG LLC, Legacy Holdings SG LLC, and Legacy Holdings SG Events LLC's Motion to enter judgment pursuant to CCP §664.6 as to Plaintiffs Imran Mukati and Jon

		Rosenthal's Complaint. The opposition filed by Plaintiff Jon Rosenthal in pro per exceeds the limits. [CRC 3.1113(d)]. The Court notes that while it admonished Plaintiff as to this same issue on 3/6/24, Plaintiff's opposition to this Motion was filed before that admonition. A. <u>Legal Standard</u> Where the statutory requirements are met, the court may, upon motion, enter judgment pursuant to the terms of a settlement agreement. (CCP §664.6). Before enactment of CCP § 664.6, when a settlement broke down, the party seeking to enforce it either had to (a) file a separate lawsuit for breach of contract or (b) seek leave to file a supplemental pleading (to allege the settlement as a new claim or defense), and then move for summary judgment. But summary judgment would be denied if a "triable issue of material fact" were shown (e.g., regarding the terms of the agreement, authority of counsel, etc.). [*See Weddington Productions, Inc. v. Flick* (1998) 60 CA4th 793, 808.] The statutory procedure under § 664.6 provides a much more efficient alternative to resolution of disputes arising over settlement agreements. The court is empowered to enter judgment where parties to pending litigation stipulate to a settlement either: — orally before the court; or — in a writing signed by the parties or their counsel outside court. [CCP § 664.6(a), (b) (amended eff. 1/1/21) The parties need not agree in the same manner, i.e., some parties may stipulate to the settlement in open court while others stipulate in writing. [*Elyaoudayan v. Hoffman* (2003) 104 CA4th 1421, 1429.] The stipulation must conform to the same requirements necessary for enforcement of the settlement agreement, i.e., it must be made: — *during* pendency of the case (not after the case has been dismissed in its entirety); — if oral, by the parties themselves (not an agent);

		— if in writing, by the parties or their counsel; or if a party is an insurer, by an agent who is authorized in writing by the insurer to sign on the insurer's behalf. [CCP § 664.6(a), (b) (amended eff. 1/1/21).] B. Merits Here, Defendants provide a written, fully executed Settlement Agreement, which Plaintiffs admit that reached after "months of arduous negotiations" during the pendency of this lawsuit resolving this Complaint. (See Moving Exhibits A and B; see Opp., p. 4:4-5.) Plaintiffs argue in opposition that Defendants breached the Settlement Agreement. But the court is authorized to enter judgment pursuant to the settlement regardless of whether the settlement's obligations were performed or excused. (*Hines v. Lukes* (2008) 167 CA4th 1174, 1184-1185.) Defendants are ordered to submit a proposed judgment for the Court to sign. Defendants shall serve notice of this Order.
4.	2023-1318579 Selter vs. California Eastern Star Foundation	Defendants Jo Dee Gibson and Eastern Star Homes dba Senior Living Community's motion for order striking from the complaint of plaintiff Christopher Selter, as Successor in Interest, on Behalf of Decedent Charleta "Sherie" Marie Cunningham ("Decedent"), and as Trustee of the Sherie Marie Cunningham Trust, and Individually, punitive damage allegations and prayer, is granted with 15 days leave to amend. A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Code Civ. Proc. § 436. "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not support by the allegations of the complaint. Code Civ. Proc. § 431.10(b). The same liberal policy regarding amendments that applies to the sustaining of demurrers applies for motions to strike. If a defect may be correctible, leave to amend should usually be given. *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 168.

		Punitive Damages Allegation and Prayer Civil Code § 3294 provides that punitive damages may be awarded in an action for breach of an obligation not arising from contract, if the plaintiff proves by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. "Malice" means conduct that is intended to cause injury or despicable conduct that is carried on with a willful and conscious disregard of the right and safety of others. Civ. Code § 3294(c)(1). Punitive damages may not be recovered in an action for wrongful death. *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal. 4th 788, 796. But punitive damages may be recovered in a survival action brought by the decedent's personal representative or successor in interest. Code Civ. Proc., § 377.34. At the pleading stage, the complaint must allege facts supporting circumstances of oppression, fraud, or malice. *See Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 ("The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. [Citation]. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. [Citation].").]."). Here, Plaintiff has alleged the *conclusion* of collective malice or oppression and ratification by all defendants jointly but has not alleged *facts* showing that Defendant Gibson acted with malice or oppression or that Defendant Eastern Star authorized or ratified such acts. [*See* Complaint, ¶¶ 25, 40-41.] The motion to strike is therefore granted.
5.	2021-1180035 Shim vs. Deanda	**Motion to Tax and/or Strike Costs** Defendants Salvador Deanda, erroneously sued as Salvador de Andra, aka Salvador Deandra, Service First, Joe Laymon dba Service First (collectively, "Defendants") seek an order taxing and/or striking witness fees in the amount of $20,250 from the memorandum of costs filed by plaintiff Younghun Shim ("Plaintiff"). There is no dispute that Plaintiff is the prevailing party, and that Plaintiff is entitled to expert witness fees reasonably and necessarily incurred after 8/9/2023, the day Plaintiff served Plaintiff's CCP section 998 statutory offer to compromise.

		Plaintiff did not meet Plaintiff's shifted burden to show all the expert witness fees were incurred after Plaintiff's statutory offer. (Code Civ. Proc., § 998, subd. (c)(1).) Plaintiff showed $15,950 of expert witness fees out of the $20,250 requested expert witness fees were incurred after Plaintiff's 998 offer. Accordingly, Defendants' motion is granted in part. Plaintiff is awarded costs in the total amount of $25,265.50. Plaintiff may submit an amended judgment including this amount. Plaintiff shall give notice.
6.	2017-927161 Amezcua-Moll & Associates, P.C. vs. Modarres	**MSJ/A** Defendants John D. Thomas ("Thomas") and Mission Hills Opportunity Fund, LLC ("MHOF") move for summary judgment or alternatively, summary adjudication as to Plaintiff Amezcua-Moll & Associates, P.C.'s Third Amended Complaint ("TAC"). The motion is denied in its entirety as to Defendant MHOF. Defendant Thomas' motion for summary judgment is denied. His motion for summary adjudication is denied as to the 8th and 10th causes of action and granted as to the 11th cause of action. Defendants' objections are sustained as to nos. 1, 6, 7, 11, 16, and 17- 19 and overruled as to nos. 2- 5, 8- 10, and 12- 15. Plaintiff's request for judicial notice is granted. A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at 851.) A defendant seeking summary judgment meets the burden of showing that a cause of action has no merit by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc. § 437c(p)(2); *Villacres v. ABM Industries, Inc.* (2010) 189 Cal. App. 4th 562, 575.) The scope of this burden is determined by the allegations of the plaintiff's complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 381–82 (pleadings serve as the outer measure of materiality in a summary judgment motion); *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal. App. 3d 1, 18–19 (respondent only required to defeat allegations reasonably contained in the complaint).)

		A cause of action "cannot be established" if the undisputed facts presented by the defendant prove the contrary of the plaintiff's allegations as a matter of law. (*Brantley v. Pisaro* (1996) 42 Cal. App. 4th 1591, 1597.) Once the defendant's burden is met, the burden shifts to the plaintiff to show that a triable issue of fact exists as to that cause of action. (*Aguilar, supra,* 25 Cal. 4th 826 at 849.) In making this determination, the moving party's affidavits are strictly construed while those of the opposing party are liberally construed. (*Villacres v. ABM Industries, Inc.*, 189 Cal. App. 4th at 575.) The facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences therefrom must be accepted as true. (*Id.*) The instant motion was filed on 1/17/24. MHOF seeks summary judgment/adjudication as to the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Causes of Action and Defendant Thomas seeks Summary Judgment as to the Eighth, Tenth, and Eleventh Causes of Action. <u>Defendant Mission Hills Opportunity Fund, LLC</u> Defendant MHOC's status pursuant to the Secretary of State's website is currently suspended. It is noted that Defendant has been inactive since 1/4/22. (RFJN, Ex. A.) A suspended corporation may not prosecute or defend an action. (See *Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1306.) While the corporation is suspended, it is "disabled from participating in any litigation activities." (*Palm Valley Homeowners Ass'n, Inc. v. Design MTC* (2000) 85 Cal.App.4th 553, 560.) In other words, the corporation is "disqualified from litigation and all other activities," as "*[a]ll* its 'corporate powers, rights, and privileges' are suspended; the only exceptions provided by statute are to change the name of the corporation, and to cure the default by filing the missing statement." (*Id.* at 561.) Accordingly, the Court denies the motion as to Defendant MHOC. <u>Defendant John D. Thomas</u> <u>8th cause of action for intentional interference with contractual relations</u>

		The elements of this cause of action are: "(1) a valid and existing contract with a third party; (2) defendant had knowledge of this contract; (3) defendant committed intentional and unjustified acts designed to interfere with or disrupt the contract; (4) actual interference with or disruption of the relationship; and (5) resulting damages." (*Little v. Amber Hotel Co.* (2011) 202 Cal. App. 4th 280, 291–92.) Defendant fails to meet his burden as the moving party for summary judgment to show there are no triable issues of material fact as to Plaintiff's claim for intentional interference with contractual relations. In the operative Second Amended Complaint, Plaintiff alleges that by accepting Defendant Modarres' rights in the underlying case she had against Thomas, Defendant intended to disrupt the performance of Plaintiff's agreements with Modarres and deprive her of payment for costs and services rendered to Modarres. (TAC, ¶¶ 31, 32, 40-48, 102-105.) Plaintiff alleges that Modarres received settlement funds but failed to abide by Plaintiff's lien on her recovery and that since then, Defendant MHOC filed a stipulation and order to set aside judgment and request for dismissal. (TAC, ¶¶ 55-57.) Defendant fails to demonstrate that any of these allegations lack merit. Defendant alleges that Modarres as the client had an absolute right to discharge her counsel, Amezcua-Moll, at any time and for any reason, and also had the right to decide whether to settle her case and for how much. (UMF 34, 36.) But the fact that a client can discharge their attorney at any time and decide on settlement is not at all relevant to Plaintiff's specific claims. And the fact that Plaintiff assigned her rights in her lawsuit to MHOC, without more, does not disprove Plaintiff's allegations. (See UMF 35.) <u>10th cause of action for unfair business practices</u> Cal. Business & Professions Code section 17200 ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Under the unlawful prong, a violation of law may be actionable as unfair competition under Cal. Business & Professions Code section 17200. *Lueras v. BAC Home Loans Servicing, Inc.* (2013) 221 Cal.App.4th 49, 81. "An unfair business practice occurs when that practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers…An unfair business practice also means the

		public policy which is a predicate to the action must be tethered to specific constitutional, statutory or regulatory provisions." *Id*. (internal citations omitted.) A fraudulent practice "require[s] only a showing that members of the public are likely to be deceived and can be shown even without allegations of actual deception, reasonable reliance and damage." *Id*. (internal citations omitted.) As Defendant argues, this claim is derivative of Plaintiff's other causes of action. Aside from the claim for Accounting, Defendant fails to establish that summary judgment/adjudication is warranted. As a result, triable issues of material fact exist as to whether Defendant is liable under Cal. Bus. & Prof. Code § 17200 et seq. 11th cause of action for accounting The court in *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 910, described this cause of action as follows: > An action for an accounting may be brought to compel the defendant to account to the plaintiff for money or property (1) where a fiduciary relationship exists between the parties, or (2) where, even though no fiduciary relationship exists, the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable. (5 Witkin, Cal. Procedure, *supra,* Pleadings, § 819, p. 236.) A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. Pursuant to *Tesselle v. McLoughlin* (2009) 173 Cal. App. 4th 156, 179, "an action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." Here, Plaintiff alleges just that. In the TAC, Plaintiff claims that "Pursuant to the Thomas Agreement and upon execution of the Agreement, Modarres agreed that if AMA was successful in recovering any money, the FIRM shall be entitled to receive thirty percent after reimbursement of costs and expenses disbursements." (TAC, ¶ 31.)

		Plaintiff disputes this, citing broadly to her declaration in her separate statement. She contends it will be a question of fact for the trier of fact to determine whether or not her and her firm are entitled to contingency fee, or quantum meruit fees. There is nothing in Plaintiff's declaration addressing this, except for her statement that the retainer agreement called for a contingency fee and addressed fees based in quantum meruit. (Amezcua-Moll Decl., ¶ 4.) But, based on the Court's review, the retainer agreement does not address fees based in quantum meruit. Plaintiff's claim for accounting is not supported by the facts or evidence. Thus, the motion for summary adjudication is granted as to the 11th cause of action against Thomas. Plaintiff shall give notice. **<u>Motion to Tax Costs</u>** Defendant Mission Hills Opportunity Fund, LLC ("Fund") seeks an order taxing costs in the total amount of $8,883.51 set forth in Cross-Defendant Amezcua-Moll & Associates, P.C.'s Memorandum of Costs filed on 12/21/2023. As an initial matter, the Court notes Fund did not serve the notice of motion and moving papers on all parties who appeared in this action. (Code Civ. Proc., § 1014; *but see, Caruthers Bldg. Co. v. Johnson* (1916) 174 Cal. 20, 24 ["The failure to serve a given party will not deprive the court of jurisdiction to grant the motion in so far as it can be granted without affecting the rights of the party not served."].) Fund has been suspended by the FTB since 2/1/2022. (Dahl Decl., ROA No. 828, ¶ 3.) Fund did not show its status has been reinstated. Accordingly, the motion is denied. In the alternative, the Court would be amenable to continuing the matter while defendant seeks to reinstate.
7.	2022-1262279 Corral vs. Rojas Valdez	*No tentative ruling. Counsel should be prepared to discuss notice defects that prevent the Court from ruling, at present, on the motion to compel deposition.*
8.	2022-1290262 Garcia vs. Elmore Motors	Continued to 05/01/2024.

9.	2022-1264619 Kamell vs. Habashi	**Plaintiff Rafik Y. Kamell's ("Kamell") Motion to Compel Defendant Yvette I. Habashi's ("Habashi") Deposition is granted in part.** On December 20, 2023, the Court ordered granted Kamell's motion to compel Habashi's deposition, in part, and ordered Habashi "to appear for her deposition within 15 days *of notice of ruling*, or on any such later date as agreed to in writing by Plaintiff." The Court further ordered, "Plaintiff shall give notice of the ruling." (ROA 150 [12/20/23 Minute Order].) There is no indication that Kamell served the notice of ruling that would have triggered the "15 days" for Habashi to appear for her deposition. Instead, Kamell served a "Third Amended Notice of Taking Deposition of Defendant Yvette I. Habashi," on December 20th, setting the deposition for December 22nd. (Kamell Decl. at ¶ 2, Exh. 2.) Habashi served her objections that same day, including an objection that "two days is insufficient notice," that she was "unavailable during this time period," and that she "would be available after 1/10/2024." (Kamell Decl. at ¶ 3, Exh. 2.) Because Kamell considered the time period Habashi offered to be outside of the "15 day" period, Kamell filed the instant motion on January 31, 2024, (ROA 169). It appears that, despite the passage of nearly four months since the 12/20/23 Minute Order, the parties have done **nothing** to resolve this impasse, and, instead, **continue to request court intervention** in a matter that should be capable of informal resolution. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402 ["Civil discovery is intended to operate with a minimum of judicial intervention. '[I]t is a 'central precept' of the Civil Discovery Act ... that discovery 'be essentially self-executing.'"] [citation omitted].) "The trial court has a wide discretion in granting discovery and ... is granted broad discretionary powers to enforce its orders." (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.) To enforce the 12/20/23 Order, the Court orders the parties to appear at this hearing, (remotely), on April 17, 2024, at 10:00 am in Dept. N18, and to be prepared to discuss available dates for Habashi's deposition, within the time period of April 18th to May 3rd. Further unnecessary entreaties to the Court will result in counsel being ordered personally present. If constant intervention is sought, it will be sought with counsel present in court to explain why. The Court denies Kamell's request for sanctions because, again, he did not submit admissible evidence of the time he attributes to "outside counsel." (See ROA 150 [12/20/23 Minute

		Order, citing *Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, 14-15].) Additionally, Kamell did not show he complied with the court's order to give notice of the 12/20/23 ruling, which triggers the 15-day period for Habashi to appear for her deposition.
10.	2023-1317339 Maldonado vs. General Motors, LLC	Defendant General Motors, LLC's demurrer to the second amended complaint ("SAC") of plaintiff Sergio Maldonado is overruled. Defendant's motion to strike punitive damages (prayer at 17:12) from the SAC is granted without prejudice to Defendant bringing a motion to amend after he has had an opportunity to conduct discovery on this issue. **Demurrer** Previously, Defendant demurred to the same causes of action in Plaintiff's first amended complaint on the same grounds it now demurs on as to the SAC. The court overruled Defendant's prior demurrer. [ROA #95.] There is a split of authority among case law on the question whether a defendant may demur to an amended complaint on the grounds that were overruled on a demurrer to the prior complaint. *See Bennet v. Suncloud* (1997) 56 Cal. App. 4th 91, 96-97; *Pacific States Enterprises, Inc. v. City of Coachella* (1993) 13 Cal. App. 4th 1414, 1420, n. 3. More recently, a court of appeal has said: > Read together, *Bennett* and *Le Francois* stand for the unremarkable proposition that a party cannot seek to dismiss the same claim based on a previously rejected argument without seeking reconsideration. In *Bennett*, specifically, the defendant improperly sought to raise the same demurrer to causes of action that had not been previously dismissed. (*Bennett*, *supra*, 56 Cal.App.4th at pp. 96–97, 65 Cal.Rptr.2d 80.) *Goncharov v. Uber Technologies, Inc.* (2018) 19 Cal.App.5th 1157, 1167. Code Civ. Proc. § 430.41, effective 1/1/16, expressly provides, however, that a party demurring to an amended complaint after having demurred to the prior complain shall not demur to the amended complaint on a ground that could have been raised as to the prior complaint. Code Civ. Proc. § 430.41(b).

		In any event, Defendant has not provided any new argument or pointed to anything new in the SAC that persuades the court to reconsider its prior ruling. Defendant's demurrer is therefore overruled. **Motion to Strike** A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Code Civ. Proc. § 436. "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not support by the allegations of the complaint. Code Civ. Proc. § 431.10(b). Civil Code § 3294 provides that punitive damages may be awarded in an action for breach of an obligation not arising from contract, if the plaintiff proves by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. "Civ. Code § 3294(a). "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code, § 3294(c)(1)-(3). At the pleading stage, the complaint must allege facts supporting circumstances of oppression, fraud, or malice. *See Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 ("The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. [Citation]. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. [Citation].").]."). A corporate defendant may not be liable for punitive damages based on the acts of its employees unless the plaintiff alleges and proves that an officer, director or managing agent of the corporation: (1) was personally guilty of oppression, fraud, or malice; or (2) had advance knowledge of, authorized, or ratified

		the wrongful conduct for which the damages are awarded. Civ. Code § 3294(b). For his SAC, Plaintiff has now the *conclusions* of intentional conduct and ratification. [*See* SAC, ¶¶63, 64, and 66.] He has not, however, alleged *facts* showing intentional conduct and ratification. Accordingly, the motion to strike Plaintiff's prayer for punitive damages is granted. **Motion to Compel Further Responses to Requests for Production** **Motion to Compel Deposition and Document Production** Plaintiff Sergio Maldonado ("Plaintiff") seeks an order compelling Defendant General Motors LLC ("Defendant") to provide verified, further responses to Request for Production of Documents numbers 1, 3, 9, 17, 31, 37-90, and 98 and to produce responsive documents. Plaintiff also seeks an order compelling Defendant to produce its Person(s) Most Knowledgeable for deposition, as well as to produce documents pursuant to Code of Civil Procedure section 2025.450(a). On 3/6/2024, the Court continued the hearing on Plaintiff's motion to compel deposition and document production at the deposition. The Court ordered the parties to meet and confer in good faith, either by telephone or in person, regarding each category and each document request, within 15 days. On 3/13/2024, the Court continued the hearing on Plaintiff's motion to compel further responses to RFPs. The Court ordered the parties to meet and confer in good faith, either by telephone or in person, regarding each document request, within 15 days. The Court noted Defendant previously offered to and continued to offer to supplement Defendant's production subject to a protective order. For both motions, the Court ordered the parties to submit a joint statement regarding their meet and confer efforts and showing which categories and which requests remain at issue, if any, no later than 4/10/2024. No joint statement has been provided. The parties have not shown they met and conferred in good faith or explained why they have not met and conferred. The parties are once again ORDERED to meet and confer in good faith, either by telephone or in person, regarding each

		category and each document request, within 15 days. No later than May 22, 2024, the parties shall submit a joint statement regarding their meet and confer efforts and showing which categories and which requests remain at issue, if any. If the parties resolve the issues raised in this motion, Plaintiff shall file a notice of withdrawal as early as practicable to avoid the unnecessary expenditure of judicial resources. The hearing on these motions is continued to June 26, 2024 at 10:00 AM in Department N18. The Court schedules an Order to Show Cause: Re Sanctions for failing to comply with the Court's 3/6/2024 and 3/13/2024 Orders to be heard on May 2, 2024, at 9:30 AM in Department N18. Plaintiff shall give notice.
11.	2024-1385933 Capital Win Corporation vs. Calculated Risk Analytics LLC	Plaintiff, Capital Win Corporation's Application for Appointment of Receiver and Preliminary Injunction is DENIED. Plaintiff has not shown by competent evidence that grounds for appointment of a receiver under CCP §564(b)(6) exist. Further, the Court declines to appoint Anna Martinez as the receiver her apparent conflicts with the interests of defendants as an agent of the Court. With respect to a preliminary injunction, defendants have not shown that the balance of harms favors them. The ex parte temporary restraining order entered on April 2, 2024, is dissolved. The Undertaking on Temporary Restraining Order filed April 4, 2014 is exonerated. Moving party to give notice.