TENTATIVE RULINGS

DEPT. C-16
(657-622-5216)

Judge David A. Hoffer
April 29, 2024

These are the Court's tentative rulings. They may become orders if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If a party intends to submit on the Court's tentative ruling, please call the Court Clerk to inform the court. If both parties submit, the tentative ruling will then become the order of the Court.

APPEARANCES: Department C16 conducts non-evidentiary proceedings, such as law and motion, remotely by Zoom videoconference. All counsel and self-represented parties appearing for such hearings should check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also posted online at https://www.occourts.org/media-relations/aci.html. A party choosing to appear in person can do so by appearing in the courtroom on the date/time of the initial appearance.

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#	Case Name	Tentative
1	30-2020-01154149 Puglisi vs. Hillstone Restaurant Group, Inc.	The motion for protective order filed by Defendant Hillstone Restaurant Group, Inc. ("Hillstone") is **GRANTED IN PART** and **DENIED IN PART** as set forth below. "Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order." (Code Civ. Proc., §

		2025.420 (a).) The court, for good cause shown, may make any order that justice requires to protect any party "from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2025.420(b).) At issue here are two depositions which Hillstone seeks to prevent Plaintiff, Georgina Puglisi ("Plaintiff") from conducting. The first is the deposition of Hillstone's custodian of records with a request to produce at deposition videos of former defendant Mario Jaramillo ("Jaramillo") engaging in kissing and sexual acts with McKenna Goodwin ("Goodwin") on Hillstone property, and Goodwin's separation agreement and write-up related to the above videos. The second deposition sought is the deposition of Hillstone's former employee, Amanda Bellamy ("Bellamy"). As an initial matter, Hillstone's argument that the request for this discovery is untimely because Plaintiff sought the same discovery in January 2021, but did not file a timely motion to compel fails. A waiver of the right to compel further response to inspection demand by a party who has missed the deadline provided by statute does not prescribe a waiver of the party's right to use other discovery methods for obtaining the same documents or information. (*Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 995-996.) Thus, Plaintiff is permitted to seek the same documents via a custodian of records deposition. In addition, Hillstone's argument that the discovery is inadmissible is misplaced. Admissibility at trial is *not* required in order for discovery to be deemed permissible. Rather, the test is whether the information sought might reasonably lead to *other evidence that would be* admissible. (Code Civ. Proc., § 2017.010; see *Davies v. Sup.Ct. (State of Calif.)* (1984) 36 Cal.3d 291, 301; *Volkswagen of America, Inc. v. Sup.Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1490-1491.) With regard to the videos of Jaramillo engaging in kissing and sexual acts with Goodwin, in the Court's March 2023 discovery ruling, the Court found that information pertaining to dating relationships between managers and employees was probative of Plaintiff's claims of sexual favoritism. However, the Court limited such discovery to the time period between January 1, 2017, and January 17, 2020, which is up to the time of Plaintiff's termination.

		Thus, consistent with the Court's prior ruling, the subject video evidence, which purportedly depicts a manager and employee engaged in a dating relationship, would also be probative of Plaintiff's claims of sexual favoritism, as long as the incidents occurred prior to Plaintiff's termination. The two incidents of Jaramillo engaging in kissing with Goodwin on Hillstone property occurred on January 5th and January 8th, 2020, which is prior to Plaintiff's termination, and thus video evidence of those incidents must be produced. (Altfest Decl., ¶ 5.) However, the incident where Goodwin performed oral sex on Jaramillo occurred on January 19, 2020, which is after Plaintiff's termination, and thus video evidence of said incident need not be produced. (*Id*.) Moreover, Hillstone's argument that production of the January 19, 2020 video would violate the right to privacy of Jaramillo and Goodwin is well-taken. (See *Vinson v. Superior Court* (1987) 43 Cal. 3d 833, 841 [California's right to privacy protects "both the marital relationship…and the sexual lives of the unmarried…[and] similarly embraces sexual relations."].) Disclosure of private information may be ordered if a "compelling public interest" would be served thereby. (*Britt v. Sup.Ct.* (1978) 20 Cal.3d 844, 855–856; *John B. v. Sup.Ct. (Bridget B.)* (2006) 38 Cal.4th 1177, 1199.) A compelling need is demonstrated where the information is "directly relevant" and "essential to the fair resolution" of the lawsuit. (*Britt v. Sup.Ct. (San Diego Unified Port Dist.)* (1978) 20 Cal.3d 844, 859, and *Alch v. Sup.Ct. (Time Warner Entertainment Co.)* (2008) 165 Cal.App.4th 1412, 1427.) Such discovery will not be ordered if the information sought is available from other sources or through less intrusive means. (*Allen v. Sup.Ct. (Sierra)* (1984) 151 Cal.App.3d 447, 449, and *Britt v. Sup.Ct.* (1978) 20 Cal.3d 844, 856 [discovery "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved"].) Here, Plaintiff failed to show a compelling need for the January 19, 2020 video, especially considering the two earlier videos already depict Jaramillo engaging in a workplace romantic relationship with the same employee that is the subject of the January 19 video. Thus, evidence of Jaramillo engaging in a workplace relationship with Goodwin is available through less intrusive means via the January 5th and January 8th videos. Plaintiff also contends there is no privacy right here because there is no evidence that the encounter was consensual. This argument ignores Hillstone's evidence

		showing that the encounter was indeed consensual. (See Jaramillo Decl., ¶ 3; Altfest Decl., ¶ 5; Ex. I to Labaste Decl.) Plaintiff offered no evidence to the contrary. Accordingly, the motion is **GRANTED** to the extent it seeks to prevent the production of the January 19, 2020 video, and **DENIED** to the extent it seeks to prevent the custodian of records deposition and production of the January 5, 2020 and January 8, 2020 videos. With regard to the personnel records of Goodwin, Hillstone's manager, Amy Sanchez, testified that she wrote up Goodwin after viewing the video of Goodwin performing oral sex on Jaramillo, i.e., the January 19, 2020 video, and that Goodwin was terminated a short period thereafter. (Hane Decl., Ex. B.) Thus, the sought after personnel records pertain to an incident and termination that occurred after Plaintiff's termination and are thus outside the scope of the Court's prior ruling limiting discovery to the time period up to January 17, 2020. In addition, Plaintiff failed to show how Goodwin's personnel records are relevant to Plaintiff's claims. Plaintiff contends Goodwin's write-up and separation agreement is vital "me too" evidence and proves Defendant promoted and perpetuated a pattern and practice of sexual harassment and retaliation. Plaintiff appears to contend Goodwin was sexually harassed by Jaramillo. However, as discussed above, the only evidence before the Court is that the encounters between Goodwin and Jaramillo were consensual. It is unclear how Goodwin's write-up and termination related to consensual sexual activity is relevant to Plaintiff's claims that she was sexually harassed by Jaramillo. As Hillstone points out, the "me-too" doctrine does not permit a plaintiff to present evidence of discrimination against employees outside of the plaintiff's protected class to show discrimination or harassment against the plaintiff. (*Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55, 96.) Accordingly, the motion is **GRANTED** to the extent it seeks to prevent the production of Ms. Goodwin's write-up and separation agreement. With regard to the deposition of Bellamy, The court will permit the deposition to go forward but only to the extent it involves incidents other than Bellamy's viewing of the subject videos and incidents that occurred during Plaintiff's

		employment. Although Plaintiff's claim that Bellamy witnessed Jaramillo sexually harassing subordinate female servers is unsupported, such support is not a necessary prerequisite to deposing her. If she knows of no other incidents, then the deposition will be a short one. But plaintiff has a right to see that for herself. Accordingly, the motion is **DENIED** to the extent it seeks to prevent Plaintiff from deposing Bellamy. Plaintiff's objection to the additional deposition testimony submitted with Hillstone's reply is **SUSTAINED**. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38.) Plaintiff's objection to the proposed order submitted with the reply is **OVERRULED**. Counsel for Hillstone is ordered to give notice of this ruling.
2	30-2020-01166796 Hamado vs. Warren Dzima	**Continued to June 3, 2024 to be taken up pre-trial**
3	30-2021-01222268 VAOC Newport Plaza, LP vs. Rodeen	The motion to vacate dismissal filed by Defendant/Cross-Complainant Mark Ike ("Cross-Complainant") is **CONTINUED** to June 3, 2024, at 1:30 p.m. in this department. As an initial matter, the Court notes that no proof of service was filed for this motion. While this defect was waived due to Cross-Defendant Cheryl Donnelly ("Cross-Defendant") responding on the merits (see *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697), Cross-Complainant is admonished to timely file proofs of service for all future filings. Cross-Complainant moves to set aside the dismissal of the Cross-Complaint pursuant to Code of Civil Procedure section 473(b) on the ground of Cross-Complainant's attorney's neglect. C.C.P. § 473(b) provides, in pertinent part: (b)… Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her

		mistake, inadvertence, surprise, or neglect, vacate any…resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The law favors judgments on the merits. Thus, on a motion for relief from dismissal, "doubts must be resolved *in favor of relief*, with an order denying relief scrutinized [on appeal] more carefully than an order granting it." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134 [emphasis in original].) Here, the Cross-Complaint was dismissed with prejudice on March 5, 2024, after counsel for Cross-Complainant failed to appear at the OSC hearing on said date. The memorandum of points and authorities clearly shows that counsel for Cross-Complainant failed to appear at the OSC hearing due to counsel's mistake, inadvertence, surprise, or neglect in that counsel failed to properly calendar the hearing. However, Cross-Defendant is correct that the attorney affidavit submitted in support of the motion is insufficient. The affidavit states only the following: "On March 5, 2024, I failed to appear at the scheduled OSC hearing in this matter." The affidavit does not explain that the failure to appear was due to counsel's mistake, inadvertence, surprise, or neglect, as explained in the memorandum. Because the law favors judgments on the merits, the Court will continue the hearing to the above date to permit counsel an opportunity to submit a supplemental attorney affidavit of fault. Counsel's supplemental declaration is to be filed and served at least 9 court days prior to the June 3, 2024 hearing. Any response to the supplemental declaration is to be filed and served at least 5 court days prior to the hearing. Counsel for Cross-Complainant is ordered to give notice of this ruling.
4	30-2022-01243055 Gazcon vs. R.D. Olson Construction, Inc.	Defendant California Access Scaffold, LLC's ("CAS") Motion for Summary Judgment, or in the alternative, for Summary Adjudication ("Motion") to plaintiffs Nicolas Gazcon ("Nicolas" individually) and Raquel Gazcon's ("Raquel" individually; Plaintiffs" together with Nicolas) Complaint is **DENIED**.

		"(p) For purposes of motions for summary judgment and summary adjudication: . . . (2) A defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Civ. Proc. Code § 437c(p)(2).) CAS requests summary adjudication as to the only causes of action ("COA") pled against it, which are COA Nos. 2 and 4. **1) COA No. 2 – Negligence** "The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.' " (*Ladd v. Cty. of San Mateo* (1996) 12 Cal. 4th 913, 917.) CAS seeks to negate the causation element of the negligence COA. "The question, therefore, is whether there is evidence supporting [Plaintiffs'] claim that [CAS's] negligence was the legal cause of her injuries. If there is none, the summary judgment must be affirmed as a matter of law." (*Leslie G. v. Perry & Assocs*. (1996) 43 Cal. App. 4th 472, 481.) "In other words, plaintiff must show some substantial link or nexus between omission and injury." (*Saelzler v. Advanced Grp. 400* (2001) 25 Cal. 4th 763, 778.) "Accompanying every contract is a common-law duty to perform with care, skill, reasonable expedience, and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract." The rule which imposes this duty is of universal application as to all persons who by contract

		undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement." (*Roscoe Moss Co. v. Jenkins* (1942) 55 Cal. App. 2d 369, 376.) CAS contends cross-defendant G Brothers Construction, Inc. ("GBC"), which employed Nicolas, was hired by defendant R.D. Olson Construction, Inc. ("Olson"). GBC in turn hired CAS for metal scaffolding labor and rental. (Def. Sep. Statement ("DSS") No. 3.) CAS's tasks between 10/04/19 and 02/17/20 included erecting metal stairwell scaffolding, periodically dismantling and relocating stair towers, raising platform levels, installing elevator shafts, and dismantling and bringing down the materials. (DSS No. 4.) CAS contends it was not hired to install, maintain, alter, or have any involvement with the wooden guardrail and did not have any involvement with any wooden guardrail components. (DSS Nos. 5-6.) CAS contends the wooden guardrail was installed by defendant Superior Construction, Inc. ("Superior"). (DSS No. 7.) Nicolas stepped onto the guardrail, it broke or gave way, and he fell three floors down an elevator shaft (from the fifth to the second floor). (Lee Decl., Ex. C at 27:14-25.) Superior was hired by Olson and included in the scope of Superior's work was: "Provide and maintain safety covers/railings at all pits, shafts, floor openings, stairwell and elevator openings at all elevated levels. Includes fully protected elevator shafts at each floor level. At all floors provide handrails and opening protection at each level including elevator pits. Provide handrail, mid rail and toe railing at all wood floors per OSHA and DOSH standards. If removed by other subcontractor, to be reinstalled to OSHA standards by subcontractor who removed." (DSS No. 8; Lee Decl., Ex. E at p. 77 ¶ 9.) CAS's duty under the contract was only regarding the metal scaffolding. It was Superior's duty under contract to provide safety railings. CAS has produced evidence that negates the element of duty of CAS to Nicolas pertaining to the safety railings. CAS has met its initial burden on the Motion pertaining to the *safety railings* only. The burden transfers to Plaintiffs to show triable issues of material fact remain.

		Plaintiffs produced the declaration of John Davis, CHST ("Davis") wherein Davis opined as to a variety of issues and causes of CAS's potential liability regarding the scaffolding. CAS argued Plaintiffs' expert declaration contradicts and exceeds the issues set forth in the complaint and contradicts Nicolas's deposition testimony and discovery responses as to the cause of the subject incident. Although CAS is correct that Davis' declaration goes beyond the one specific defect listed in the complaint (the broken safety railing), the expert declaration and arguments are within the scope of the issues encompassed by the more general allegations of the complaint. Plaintiffs' pled the defendants: "[H]ad a non-delegable duty to perform services in a careful, skillful, diligent and workmanlike manner and in compliance with all applicable *OSHA regulations relating to scaffolding*." [Emphasis added.] (Complaint ¶ 21.) "[N]egligently, carelessly, recklessly, wantonly, and unlawfully operated, maintained, constructed, owned, leased, controlled or otherwise exercised dominion over the scaffolding that PLAINTIFF was working on at the SITE, causing it to be in a dangerous, defective, deteriorated, and/or otherwise unsafe condition and in violation of OSHA regulations and other standards relating to the proper construction of scaffolding and safety on the SITE." (Complaint ¶ 27.) "[K]new, or through the exercise of reasonable care should have known, of the existence of the aforementioned dangerous, defective and unsafe condition, and had the opportunity to make the condition safe, but failed to take appropriate measures to correct and/or warn of the condition and/or avoid the condition causing PLAINTIFF's injuries. At all times herein mentioned, the dangerous condition created a reasonably foreseeable risk of the kind of injury which PLAINTIFF sustained, as herein mentioned." (Complaint ¶ 28.) "The pleadings play a key role in a summary judgment motion and " ' "set the boundaries of the issues to be resolved at summary judgment." ' " [Citation.] "[T]he scope of the issues to be properly addressed in [a] summary judgment motion" is generally "limited to the claims framed by the pleadings. [Citation.] A moving party seeking summary judgment or

		adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal. App. 5th 438, 444.) The Motion made only arguments regarding CAS's negligence related to the installation and maintenance of the guardrail. There are no arguments regarding the scaffolding itself, which, again, are part of Plaintiffs' more general allegations in the complaint. While the breaking of the guardrail may have been the initial step leading to Nicolas's fall, the alleged issues with the scaffolding, such as it being constructed in a manner that would permit an individual to fall three stories and be injured, were not addressed. To that extent, CAS did not meet its initial burden on the Motion on the scaffolding allegations. While CAS argues Plaintiffs' expert testimony is beyond the scope of what Plaintiffs provided in deposition and in written discovery responses, a layperson may not necessarily be aware of safety violations such as those opined by Davis. CAS's argument that Plaintiffs did not provide similar statements/arguments as Davis did in deposition and discovery responses does not consider that CAS never asked, nor did Plaintiffs ever assert, that Plaintiffs would not be able to obtain additional information regarding CAS's liability. (*Weber v. John Crane, Inc*. (2006) 143 Cal. App. 4th 1433, 1442.) Plaintiffs' counsel also provided a declaration stating that he was not in possession of Davis's declaration until shortly before the opposition filing deadline. (Gleason Sur-Reply Decl. ¶ 2.) Although the court is sympathetic with CAS's predicament in receiving the Davis declaration only after it had filed its motion, this does not mean that the court can ignore the Davis declaration. "[A] rule precluding the use of evidence not previously disclosed in supplemental discovery responses to oppose a summary judgment motion would be inconsistent with case law holding that "factually void" discovery responses can be relied upon to shift the burden of proof to the opposing party. [Citations.] If a party who fails to amend or supplement interrogatory responses can be categorically precluded from offering undisclosed information in opposition to a later filed summary judgment motion, the need for a burden-shifting rule would be eliminated. In its place would be

		a rule that compels the granting of a motion for summary judgment based on factually void discovery responses, because any attempt to fill the void with new evidence would be precluded." (*Biles v. Exxon Mobil Corp*. (2004) 124 Cal. App. 4th 1315, 1328–29.) The court notes CAS's sur-reply opposition went beyond the scope of what was permitted by the court. Furthermore, even if the court were to consider CAS's evidence from its new expert Donald McCuskey, PE, the effect of this consideration would be to show a triable issue of material fact as to the competing expert testimony, which is not proper for summary adjudication. As CAS failed to, as a matter of law, negate the allegations with the scaffolding itself, and as Davis's declaration sufficiently put forth triable issues of material fact, the Motion is **DENIED** as to this COA. **2) COA No. 4 – Loss of Consortium** "There are four elements to a cause of action for loss of consortium: "(1) a valid and lawful marriage between the plaintiff and the person injured at the time of the injury; [¶] (2) a tortious injury to the plaintiff's spouse; [¶] (3) loss of consortium suffered by the plaintiff; and [¶] (4) the loss was proximately caused by the defendant's act." ' " (*Vanhooser v. Superior Ct*. (2012) 206 Cal. App. 4th 921, 927.) CAS's only argument is that since the underlying negligence claim failed, the loss of consortium claim also fails. However, as noted with the negligence COA, there are triable issues of material fact as to that COA. Since the Motion fails as to the negligence COA, so to it must fail as to the loss of consortium claim. The Motion is **DENIED** as to this COA. **3) Request to Take Judicial Notice and Objections** **<u>Plaintiffs' Request to Take Judicial Notice</u>** Grant as to Nos. 2-3 (Evid. Code § 452(c); 4-6 (Evid. Code § 452(a)-(b)); 7 (Evid. Code § 452(h).)

		Deny as to Nos. 1 as the document does not fall under any category in Evid. Code §§ 452-453.) **<u>CAS Objections:</u>** Sustained as to Nos. 2 (Exs. 2 and 3 – no foundation or authentication, irrelevant as not cited in opposition; 15 and 17 irrelevant as not cited); and 3 (Exs. 4 and 5 irrelevant as not cited in the opposition; 16 irrelevant). Overruled as to Nos. 1 (Davis – expert testimony with foundation provided;); 2 (Exs. 1 – relevant for basis of expert experience.); and 3 (Exs. 7-9 – documents produced by defendants; 10-13 each are CA Code Regs, which are properly before the court). CAS is ordered to give notice of this ruling.
5	30-2022-01248823 Munoz vs. Pacific Woods, LLC	Defendant J Hock Pool Plastering, Inc.'s demurrer to the 1st, 5th, 6th, and 7th causes of action in the complaint is **SUSTAINED IN PART (with 20-days leave to amend) and OVERRULED IN PART**. The motion to strike portions of the complaint is **MOOT**. Defendant's request for judicial notice of the contents of Exhibit 1 is **DENIED** but **GRANTED** as to Exhibits 2 and 3. <u>Demurrer to the 1st cause of action for premises liability</u> "The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury. [Citations.] Premises liability '"is grounded in the possession of the premises and the attendant right to control and manage the premises" '…" (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) "However, '[a] defendant cannot be held liable for the defective or dangerous condition of property which it [does] not own, possess, or control.' [Citation.]" (*Moses v. Roger - McKeever* (2023) 91 Cal.App.5th 172, 179.) The 1st cause of action alleges that the named defendants and Does 1-100 "owned, installed, maintained, repaired, altered, inspected the jacuzzi" and essentially knew it was dangerous, that it should not have been on the property, did not repair it, allowed it to be accessed by its tenants and visiting guests, and

		failed to provide adequate warnings or signs. [Complaint, ¶ 18-28] Here, the judicially noticeable facts in Exhibit 2 show that the property is owned by Defendant Pacific Woods, LLC. Plaintiffs argues that ownership alone is not determinative and that they have alleged Defendant installed, maintained, repaired, altered, and inspected the jacuzzi. However, those allegations involve a product – but not the premises. As Exhibit 2 shows that Defendant Pacific Woods owns the property, there are no other facts alleged against Defendant to show how it was able to otherwise allow the jacuzzi to remain on the property. The demurrer to the 1st cause of action for premises liability is sustained. <u>Demurrer to the 5th-7th causes of action for strict products liability</u> "Under California law, strict products liability has been invoked for three types of product defects: (1) manufacturing defects, (2) design defects, and (3) 'warning defects.' [Citation.]" (*Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 577.) "'The elements of a strict products liability cause of action are a defect in the manufacture or design of the product or a failure to warn, causation, and injury.' [Citation.] More specifically, plaintiff must ordinarily show: ' "(1) the product is placed on the market; (2) there is knowledge that it will be used without inspection for defect; (3) the product proves to be defective; and (4) the defect causes injury ...." ' [Citation.] " (*Nelson v. Superior Court* (2006) 144 Cal.App.4th 689, 695.) The 5th cause of action is for strict products liability - manufacturing and design defect and alleges that the named defendants and Does 1-100 (which includes moving party) were "involved in the design, manufacture, assembly, marketing, inspections, distribution, and sale of the Subject Drain Cover (Model SDX) for sale to the and use by members of the general public, and as part of their business, defendants designed, manufactured, assembled, marketed, inspected, distributed, and sold to Defendants Pacific Woods, LLC, Jamboree Realty Corp., the subject drain cover involved in the incident which caused Decedent's entrapment, drowning, and death." [Complaint, ¶ 50]

		Defendant cites to paragraph 55 and 56 to argue that the 5th cause of action fails to plead facts that it manufactured or caused the subject drain cover to enter the stream of commerce. Those paragraphs allege that Defendants Hayward, Paramount, GSG, and LDAG knew that the drain cover was defective and dangerous [paragraph 55] and placed the covers in the market without warning and that they would be sold without inspection for defects [paragraph 56]. However, paragraph 50 alleges that Does 1-100 designed, manufactured, assembled, marketed, inspected, distributed, and sold the subject drain cover. Although this distinction between the paragraphs creates some ambiguity, the required allegations are contained in the complaint. Therefore, the demurrer to the 5th cause of action for strict products liability - manufacturing and design defect is overruled. The 6th cause of action is for strict products liability - failure to warn and is against the named defendants and Does 1-100. While it incorporates the other allegations, there are no allegations against Does 1-100 in that cause of action. [See Complaint, ¶ 60-69] As such, the demurrer to the 6th cause of action for strict products liability - failure to warn is sustained. The 7th cause of action is for strict products liability - breach of implied warranties. Like the 6th cause of action, it is against the named defendants and Does 1-100 and incorporates the other allegations, but does not contain any allegations against Does 1-100. [Complaint, ¶ 70-74] Furthermore, breach of implied warranties is not a products liability cause of action. The demurrer to this cause of action is sustained as Plaintiffs may wish to restate this as a warranty cause of action. Plaintiffs have 20 days from the date of notice of this ruling to amend. Defendant is ordered to give notice of this ruling.
6	30-2023-01303892 DJ Sky Park, LLC vs. Student Financial Help Consultants, Inc.	Plaintiff DJ Sky Park LLC's ("Plaintiff") Motion to Compel ("Motion") defendant Ariyo Mackay's ("Mackay") further responses to Form Interrogatories, Set One ("FROG"), is **GRANTED in part and DENIED in part**. The court must start with the improper meet and confer efforts on the part of Plaintiff. The meet and confer letter sent by

		Plaintiff only identified FROG Nos. 2.1 – 2.10, none of which were at issue in this Motion. (Maestre Decl., Ex. 3.) This is not a good faith meet and confer effort on the part of Plaintiff as it failed to apprise Mackay of any FROG at issue. Mackay's failure or refusal to amend FROG No. 2.1 – 2.10 would appear proper as he substantively responded to those FROG. (Maestre Decl., Ex. 2.) Plaintiff then proceed to file the present Motion seeking further responses to FROG Nos. 15.1, 17.1, and 50.1 – 50.6, again, none of which were part of the meet and confer letter. The court also notes Plaintiff provided minimal substantive arguments regarding the FROG at issue in the Motion or separate statement. As Plaintiff failed to make a reasonable and good faith effort at meeting and conferring prior to filing the Motion, the court levies a $500 monetary sanction against Plaintiff's counsel for the above issues, payable to Mackay (through Mackay's attorney of record) within 60-days of notice of this ruling. (Civ. Proc. Code §§ 2016.040, 2023.010(i), and 2030.300; *Golf & Tennis Pro Shop, Inc. v. Superior Ct.* (2022) 84 Cal. App. 5th 127, 138.) The above being stated, the court will proceed on the merits of the Motion. The court **GRANTS** the motion as to FROG Nos. 15.1 and 50.1 – 50.6 as Mackay's responses were incomplete, evasive, and/or were not responsive to the substantive issues contained within those FROG. (Civ. Proc. Code §§ 2030.220 and 2030.300.) The **DENIES** the motion as to FROG No. 17.1 as, from the face of the responses, it appears that Mackay provided substantive responses as required under the code. Plaintiff failed to identify any specific issue with any specific request for admission ("RFA"), failed to produce the underlying RFA, and failed to produce Mackay's responses. Plaintiff therefore did not meet its initial burden on the Motion as to FROG No. 17.1. Monetary sanctions requested by Plaintiff are denied as both parties were somewhat successful on the Motion. The court also notes Mackay requested monetary sanctions in differing amounts ($4,950 – Notice; $3,025 – Body of opposition). The court denies Mackay's request aside from the $500 issued for abuse of the discovery process above.

		Further responses are due within 15-days' written notice of the ruling. Plaintiff is ordered to give notice of this ruling.
7	30-2023-01324154 Buezo Flores vs. Ross	The Motion for Nunc Pro Tunc Order filed on 12/15/23 by Plaintiff Martina Aracely Buezo Flores ("Plaintiff") is **DENIED**. As a preliminary matter, an order may be made *nunc pro tunc* to correct clerical error, but may not be used as a vehicle to review an order for legal or judicial error by "correcting" the order in order to enter a new one. (*Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890.) This Motion does not seek correction of a clerical error: it seeks an order changing the filing date for the Complaint based on the assertion that the court should not have rejected Plaintiff's 5/2/23 submission. That is not a basis for a *nunc pro tunc* order. Nor does the Motion establish that such relief is warranted here in any event. The Motion asserts that the Complaint as presented on 5/2/23 was rejected because: "All parties must be listed in the case caption on the Complaint, or you may use the attachment and indicate there is an attachment with the remaining parties' names. Et al will not be accepted." (Motion, Ex. B.) Plaintiff argues that this was error, as all defendants were specifically named therein. However, the caption on the Complaint as presented on 5/2/23 identified the plaintiff as "*Martina Aracely Buezo Flores v. Victoria Ross, et al*." (Id.) Under C.C.P. § 422.40, the complaint caption must include the names of all parties. According to Black's Law Dictionary (11th ed. 2019), the latin phrase "et al." is short for et alia and means "and other persons." Hence, plaintiff's caption indicated there were other plaintiffs who were not named therein. The fact that, in reality, there were no other plaintiffs is not something the clerk's was, or could have been, aware of. Thus, under § 422.40, the clerk's office acted correctly in rejecting the complaint for filing. The Motion is therefore denied. Counsel for Plaintiff is ordered to give notice of this ruling.

8	30-2023-01325824 Bohm Wildish & Matsen, LLP vs. Melendez	The Motion for Summary Judgment, etc., filed on 10/10/23 by Plaintiff Bohm, Wildish & Matsen, LLP ("**Firm**") on its action against defendant Salvador A. Melendez ("**Melendez**"), is **GRANTED**. Where a plaintiff seeks summary judgment, its burden is to produce admissible evidence to prove each element of the cause of action entitling the party to judgment, and to show that there is no defense thereto. (C.C.P. § 437c(p)(1).) If plaintiff meets its initial burden, the burden shifts to the defendant "to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Id.) Here, the gravamen of Firm's claim is breach of contract. The elements of a breach of contract claim are: (1) existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) resulting damage to plaintiff. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Firm here has shown the existence of a contract, and Firm's performance pursuant thereto. (UF 4-6; Smith Decl. ¶¶ 5-7, 9, 11-13; ROA 29, Exs. 1 -4, 6 and 7.) Defendant's breach and the resulting damages, including offsets, are also shown. (UF 7, 8, 10-13; Smith Decl. at ¶¶ 8, 9, 11-13.) The burden thus shifts to Melendez to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. As Melendez has filed no Opposition whatsoever, he has failed to meet that burden. Firm has thus shown that it is entitled to judgment on its contract claim, which renders the Second and Third Causes of Action moot. The Motion for Summary Judgment is therefore **GRANTED**. The Request for Judicial Notice, filed with the Motion as ROA 29, is **GRANTED** as to the existence of and any legal effect of the records identified as Exs., 2, 3, 6 and 7. (*Fontenot v. Wells Fargo Bank, NA* (2011) 198 Cal.App.4th 256, 264; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) Counsel for Firm is ordered to submit a proposed order which comports with the foregoing, and is to give notice of this ruling.

9	30-2023-01336742 Jones vs. Alimadadian	The unopposed motion by Defendants Mohammad Alimadadian dba PCH Motors ("PCH") and Westlake Financial Services, LLC ("Westlake") to compel arbitration of plaintiff Tatiana Jones' claims is **GRANTED** in part as set forth herein. PCH moves to compel arbitration under CCP §1281.2. A petition to compel arbitration must allege both (1) a "written agreement to arbitrate" the controversy, and (2) that a party to that agreement "refuses to arbitrate" the controversy. (Code Civ. Proc., § 1281.2.) The Court shall grant the petition unless the petitioner waived the right to compel arbitration or other grounds exist for rescission of the agreement. (Id.) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The party seeking arbitration can meet its initial burden by attaching a copy of the arbitration agreement purporting to bear the plaintiff's signature. (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543) Here, PCH has established the existence of a written agreement to arbitrate with plaintiff and that plaintiff refuses to arbitrate. (Alimadadian Decl. at Exh. 1; Brigham Decl. at ¶2) With PCH having met their burden, the burden shifts to the party opposing arbitration to show that the contract cannot be interpreted to cover the claims, and any doubt as to whether plaintiff's claims come within the arbitration clause must be resolved in favor of arbitration. (See *EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1320.) Here, the plaintiff has not filed an opposition and therefore has not met her burden. Accordingly, the motion is granted as to PCH. As to Westlake, the Arbitration Provision ("Agreement") is contained within the Conditional Sale Contract and Security Agreement. The Sale Contract attached to the Alimadadian Decl is between PCH as "seller" and Tatiana Devette Jones as "buyer." It is signed on 7/8/22 by Jones and Mohammad Alimadadian, owner of PCH. Westlake has failed to meet its burden to show the existence of an agreement to arbitrate

		between itself and the plaintiff or that it is entitled to enforce the Agreement as a non-signatory. Accordingly the motion is denied as to Westlake. With regard to PCH's request for a stay, CCP §1281.4 provides, in relevant part: "If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order to arbitrate a controversy which is an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies." The request for a stay is granted and the Court orders that the plaintiff's action against Westlake, Hudson Insurance Company and DOES 1-50 is stayed pending completion of arbitration. PCH and plaintiff are ordered to proceed with arbitration as set forth in the Arbitration Provision contained in the Sale Contract. PCH's request for costs is **DENIED**. The trial and mandatory settlement conference dates are vacated. The Court sets an Arbitration Status Review Hearing for December 3, 2024 at 9:00 a.m. Counsel for PCH is ordered to give notice of this ruling.
10	30-2023-01337468 Rodriguez vs. Priorityworkforce, Inc.	**Continued to 5/13/24**
11	2023-01357526 Sidney Chan vs. Does 1 to 100	**Off Calendar**