TENTATIVE RULINGS
DEPARTMENT C13 - LAW AND MOTION CALENDAR

Judge Jonathan Fish

April 29, 2024

LAW AND MOTION IS HEARD ON MONDAYS AT 1:30 P.M.

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it must provide a court reporter. Parties must comply with the Court's policy on the use of privately-retained court reporters, which can be found at:

- Civil Court Reporter Pooling;
- Please see the Court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

Tentative Rulings: The Court endeavors to post tentative rulings on the Court's website by 5 p.m. on the preceding Friday. Do NOT call the Department for a tentative ruling if none is posted. Tentative rulings may not be posted on every case – or may be posted the morning of the hearing – due to the Court's other commitments or the nature of a particular motion. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5213. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature, if appropriate under Cal. R. Ct. 3.1312.

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 might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Remote and In-Person Proceedings. Parties are referred to the Court's "Appearance Procedures and Information – Civil Unlimited and Complex" and "Guidelines for Remote Appearances" available on the Public Website.

#	Case Name	

1	**23-01324737** **Ahmad v. Garay**	**Demurrer to Complaint** Defendant Daniel J. Hyun's general demurrer to Plaintiff Shehzad Ahmad's Complaint is sustained with 15 days leave to amend. Defendant Jose Garay's joinder to Defendant's demurrer is granted. Defendant Hyun's request for judicial notice is granted. Defendants' special demurrer is overruled. A special demurrer is warranted only where the complaint is so bad that defendant *cannot reasonably* respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) The allegations in the FAC are not so confusing that Defendants cannot determine what to respond to. (*Id*., see also *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139.) <u>General demurrer</u> A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. Although California courts take a liberal view of inartfully drawn complaints, it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) On demurrer, a complaint must be liberally construed. (CCP § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-67.) <u>1st cause of action for breach of contract</u> The elements of breach of contract are (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*Miles v. Deutsche Bank National Trust Company* (2015) 236 Cal.App.4th 394, 402.)

		Plaintiff alleges that Defendants breached their agreement to pay Plaintiff 25% of the fee award in the underlying class action suit that Plaintiff referred to Defendants. (Complaint, ¶¶ 14-17.) The fee-splitting agreement is stated in the Retainer Agreement between Hyun, Garay and their client Jose Ramos. (Ex. A-B to RJN, Ex. 2.) Plaintiff was not a party to the Contract, and therefore, Defendant contends that Plaintiff's claim for breach of contract fails. Defendant also cites to California Rule of Professional Conduct 1.5.1 ("Rule 1.5.1") which requires a written agreement for the division of fees, as well as client consent in writing. The Retainer agreement includes the necessary client consent as it confirms the client is in agreement with the division of fees. Plaintiff contends that he should be allowed to enforce the fee splitting agreement as a third-party beneficiary to the retainer agreement. (See Civ. Code § 1559 ("[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.").) At this time, the Court declines to make a determination as to whether this argument is legally tenable. Regardless, Plaintiff's standing as a third-party beneficiary is not pled in the Complaint. Additionally, Defendant argues that Plaintiff is alternatively precluded from asserting this claim as the agreement was never presented to the underlying class action court as required by CRC, Rule 3.769(b). Plaintiff notes that he was not a party to the underlying class action and thus could not himself have presented the agreement to the Court. Plaintiff distinguishes the case that Defendant relies on - *Mark v. Spencer* (2008) 166 Cal. App. 4th 219 – which involved attorneys who were both counsel of record and thus had standing to present their attorney fee application to the class action court and were subject to the rule of res judicata. He further notes that the purpose of the rule requiring disclosure of a fee agreement in class actions is to protect the class members, a concern that is not really present with respect to Plaintiff's current claims. (*Id*. at 228) Plaintiff additionally argues, citing to *Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, that Defendant(s) should be equitably estopped from relying on CRPC 1.5.1 and CRC, Rule 3.769. In *Barnes, et al.* the Court reversed the lower court's judgment in favor of class counsel, holding that CRPC 2-200 (the former version of 1.5.1) did not foreclose inquiry into the

		enforceability of a fee sharing agreement by equitable estoppel. The Court of Appeal held: > No doubt the [superior] court felt that its hands were tied by existing precedent. Indeed, *Chambers, Margolin,* and *Mark* hold that an attorney who willfully or negligently violates rules 2–200rules 2–200 and 3.769 will be denied judicial enforcement of a fee-sharing agreement. These cases serve the important public policy objectives of (1) motivating attorneys to comply with the rules' disclosure and consent requirements, and (2) protecting clients from excessive fees and unfavorable litigation tactics. But those objectives are circumvented when one attorney refuses to comply with the rules' disclosure and consent requirements and inequitably blocks the other attorney from doing so. In such a case, the offending attorney is equitably estopped from wielding rule 2–200rule 2–200 as a sword to obtain unjust enrichment. Defendants assert "there is no 'bad guy' exception to" rule 2–200rule 2–200. Under the unique circumstances presented by this case, defendants are wrong. (*Id.* at 186.) Here, Defendant acknowledged that the alleged fee-splitting agreement was never presented to the class action court in the moving papers. Like with respect to Plaintiff's third-party beneficiary claim, the defense of equitable estoppel is not pled in the Complaint. Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Sup.Ct. (Hiemstra)* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup.Ct. (API Auto Ins. Services)* (1999) 75 Cal.App.4th 594, 601.) It is an abuse of discretion for the court to deny leave to amend where there is any *reasonable possibility* that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court therefore sustains the demurrer to this cause of action with leave to amend. 2nd cause of action for fraud in the inducement The elements of fraud are "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d)

		justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Allegations of fraud must be alleged with specificity. (See *Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* (1976) 57 Cal.App.3d 104, 109-110.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar, supra,* 12 Cal.4th 631, 645, citing *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered." (*Id.*) In cases against corporate employers, "the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.'" (*Id*., citing *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) Plaintiff alleges in ¶ 19: "The named Defendants made the promise to pay to Plaintiff his 25% which was a material matter and at the time that promise was made, they intended not to perform the promise. The promise was made with the intent to defraud the Plaintiff, that is, they made the promise for the purpose of inducing Plaintiff to rely thereon. Plaintiff was not aware of the named Defendants' intention not to perform the promise and acted in reasonable reliance upon the promise and was justified in such reliance." Defendant argues that this is conclusory and there are no facts describing what was communicated, when the alleged promise was made, where it was made, and how the alleged promise was communicated. (See generally, RJN, Ex. 2.) The Court agrees. Given the requirement that fraud be pled with specificity the demurrer to this cause of action is sustained with leave to amend as well. Defendant Daniel J. Hyun shall give notice.
3	**23-01301099** **Batched Merchant Services, LLC v. Batched LLC DAO LLC**	**Motion to Strike Complaint** The Court denies Defendants Oscar Garcia's Motion to "strike" the first three causes of action in Plaintiffs Batched Merchant Services LLC, Savvy Wallet LLC, and Gregory "Tuffy" Baum's First Amended Complaint.

		Defendant Garcia has 20 days to answer the First Amended Complaint. This ruling moots Defendant's Motion for leave to file a "Late Answer" to the Amended Complaint set for hearing on 8/12/24. (See ROA 301). As an initial matter, a motion to strike cannot be used to challenge an entire cause of action for failure to state a claim. Motions to strike can be used to reach defects in or objections to pleadings that are not challengeable by demurrer. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 7:156.) A "motion to strike" for failure to state a cause of action (ground for general demurrer), however, *may b*e treated by the court as a motion for judgment on the pleadings and granted accordingly. (*Pierson v. Sharp Memorial Hosp., Inc*. (1989) 216 Cal.App.3d 340, 342-343.) But even if the Cour treated this Motion as one for judgment on the pleadings, Defendant provides significant extrinsic facts to support his arguments. This is not the function of a pleadings-motion. The grounds for a motion for judgment on the pleadings (as with a demurrer and motion to strike) must appear on the face of the challenged pleading or be based on facts the court may judicially notice. (CCP § 438(d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759.) Thus, the Motion is denied. Defendant "BATCHED LLC DAO LLC", is not represented by counsel, which is not permitted. (ROA 230.) The fundamental rule is that "[a] person who is not an attorney authorized to practice law in this state cannot represent anyone other than himself." (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898; *Roddis v. Strong* (1967) 250 Cal.App.2d 304, 311; see also *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724 that "[t]he qualifications of the human representing a corporation—or for that matter any other person or entity—in court is one of vital judicial concern. Such person is clearly engaged in the practice of law in a representative capacity.") Defendant "BATCHED LLC DAO LLC" is not a moving party to this Motion and appears to be in default. If default is not entered, the LLC must retain counsel to represent it in this lawsuit. Mr. Garcia is ordered to serve notice of this ruling.

4	**23-01317103** **BKC Entertainment LLC v. K1 Speed Franchising, Inc.**	**Motion to Compel Production** Defendant/Cross-Complainant K1 Speed Franchising, Inc.'s motion to compel Plaintiff/Cross-Defendant BKC Entertainment, LLC's further responses to its requests for production of documents is granted in part and denied in part as set forth below. With respect to motions to compel further responses to requests for production of documents, Code Civ. Proc., § 2031.310(b)(1) requires the moving papers to set forth specific facts showing good cause justifying the discovery sought by the inspection demand. To establish "good cause," the burden is on the moving party to show both: (1) relevance to the subject matter (e.g., how the information in the document would tend to prove or disprove some issue in the case); and (2) specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Superior Court (National Union Fire Ins. Co. of Pittsburgh, Pa.)* (1997) 53 Cal.App.4th 1113, 1117.) On 4/15/24, Plaintiff served supplemental responses to Nos. 1, 3-10, 13-18, 20-27, 29- 31, 40-41. (Ngai Decl. ¶ 4, Exhibit 2.) The motion is thus moot as to these requests. The remaining requests still at issue are Nos. 2, 11, 12, 19, 28, and 32-39. Nos. 11-12, and 32-39 requests financial information of Cross Defendant's members Babak Forooghi and Michelle Kim, including tax returns, and income and bank statements for the years 2020, 2021, 2022, and 2023. Cross-Defendant argues that this information is private and confidential and that Cross-Complainant has not shown good cause to compel further responses. While it is true that even highly relevant, non-privileged information may be shielded from discovery if its disclosure would impair a person's "inalienable right of privacy" as provided by Calif. Const. Art. 1, § 1 and the U.S. Constitution, these privacy protections are qualified and not absolute. (*Britt v. Sup.Ct.* (1978) 20 Cal. 3d 844, 855–56; *Pioneer Electronics (USA), Inc. v. Sup.Ct.* (2007) 40 Cal. 4th 360, 370.) Courts must carefully balance the right of privacy against the need for discovery. Disclosure may be ordered if a "compelling public interest" would be served thereby. (*Britt, supra*,

		20 Cal. 3d at 855–56; *John B. v. Sup.Ct. (Bridget B.)* (2006) 38 Cal. 4th 1177, 1199.) For example, personal financial records are subject to privacy protections. (See *Fortunato v. Sup.Ct. (Ingrassia)* (2003) 114 Cal. App. 4th 475, 480 (confidential financial information given to a bank by a customer is protected by the right to privacy: the right to privacy in confidential customer information remains whatever form it takes, whether tax returns, checks, statements, or other account information).) A party must show a particularized need where private confidential information is sought; specifically, that the information is *directly relevant* to a cause of action or defense - i.e., that it is *essential* to determining the truth of the matters in dispute. (*Britt, supra,* 20 Cal. 3d at 859–62; *Harris v. Superior Court* (1992) 3 Cal. App. 4th 661, 665; *see also Hinshaw, Winkler, Draa, Marsch & Still v. Superior Court* (1996) 51 Cal. App. 4th 233, 241 (confidential settlement agreements entitled to privacy protection: plaintiffs did not make a sufficient showing *of compelling need* for the information to be entitled to invade that protection).) Here, Defendant contends that this information is relevant to its fraudulent inducement claims, as Defendant alleges that Cross-Defendants misrepresented their financial position and capability to meet Defendant's high liquidity and net worth standards for becoming a franchisee. Specifically, in the First Amended Cross-Complaint, Defendants allege that "[i]n or about 2021,…B. Forooghi and Kim repeatedly represented to Danglard and others at K1 Franchising that Forooghi met the standards set by K1 Franchising to become a K1 Speed franchisee, including, without limitation, that Forooghi had liquid assets and access to capital sufficient to cover an initial investment of up to $3,195,000.00 per location, and was more than capable of paying the initial and ongoing franchisee fees as well as ongoing business expenses of the franchise." (FAXC, ¶ 17.) Defendants also claim that "these statements were materially false when B. Forooghi and Kim made them. In fact, BKC immediately began to fall behind in payments and attempted to cut costs in the operation of the franchises from the onset, indicating B. Forooghi, Kim and BKC were never adequately capitalized." (FAXC, ¶ 18.) The Court finds that this information is mostly relevant to Cross-Complainants' claims in the First Amended Cross-Complaint and that Cross-Complainants have shown good cause to compel responses. The Court notes that there is a Stipulated Protective

		Order in place that governs the use of such confidential information. (ROA 56.) Plaintiff requests that if the Court is inclined to order further responses, it limit the timeframe to records dated from January 2021 to June 7, 2021 (the date the franchise agreement was signed). Instead, the Court finds that it is appropriate to limit the time-frame to records from 2020, 2021 and 2022. Records from the year prior, 2020, would be potentially relevant to Cross-Defendant's financial condition in 2021. In addition, in the FAXC, Defendants in the 5th cause of action (fraudulent inducement of continued performance) allege that Cross-Defendants falsely represented in 2022 that they secured financing to pay back K1 Franchising. (FAXC ¶ 78.) Thus, records from 2022 would also be relevant. But as Defendants do not allege that the fraud continued past 2022, no good cause has been shown to compel records from 2023. Accordingly, Cross-Complainant's motion to compel further responses to Nos. 11-12, and 32-39 is granted, with the exception being documents from the year 2023. Cross-Defendant shall serve further verified responses to these requests within 20 days of the notice of ruling. Nos. 2, 19 and 28 ask for "any writing or communication which relates or refers to" K1, Plaintiff MB Racing LLC and other K1 franchises. Defendant states that these requests are attempts to gather relevant information from communications where BKC would likely discuss its breaches or other improper actions taken against K1 Franchising and the other Defendants. This reasoning is vague and unpersuasive. Good cause has not been shown to compel this information as the requests are not reasonably calculated to lead to the discovery of admissible evidence as they are overly broad. The motion is thus denied as to Nos. 2, 19 and 28. Defendant's request for sanctions is denied. Defendant shall give notice.
5	**23-01315920** **Coley v. Bauer**	**Motion to Compel Deposition (Oral or Written)** Defendant Diane Bauer's Motion for Order Compelling the Response of Christina Reyes MA LMFT to Subpoena for Production of Business Records is denied.

		A deposition subpoena for production of business records commands the deponent to produce business records for inspection and copying, without attending an oral or written deposition. Generally, *personal delivery* of a deposition subpoena is effective to require a person who is a resident of California to produce the business records specified in the subpoena. (Code Civ. Proc. § 2020.220, subd. (c)(2); see also Cal. Prac. Guide Civ. Pro. Before Trial at ¶ 8:569.) A deponent who fails to obey a deposition subpoena "may be punished for contempt," without the necessity of a prior order of court directing compliance, and also subject to other forfeiture and damage penalties set forth in section 1992. (Code Civ. Proc., § 2020.240.) Defendant claims the subject subpoena has been personally served on the non-party deponent, Christina Reyes, MA, LMFT. However, the proof of service attached to the subpoena clearly strikes out the language, "personally delivering," and is interlineated with, "EMAIL." Further, the box next to the deponent's address has not been checked off. Instead, the proof indicates the "address where served" is an email address, "CHRISTINA@CHRISTINAREYESMFT.COM." Thus, despite counsel's attestation that the deponent "was personally served" with the subpoena, (Leeper Decl. at ¶ 3), the Court is unable to find that defendant's evidence of service of the subpoena was effective to compel the deponent's compliance. Defendant shall give notice of the ruling.
6	**23-01339165** **Grant v. Wildvank**	**1) Demurrer to Complaint** Defendants Craig Wildvank and Roseli Wildvank, as Trustees of The Craig and Roseli Wildvank Living Trust Dated 2013 (collectively, "Defendants") demur generally to the four causes of action alleged in the complaint filed by plaintiffs Gary Grant and Sue Grant, as Trustees of the Coffre A Jouets Trust (collectively, "Plaintiffs"). Defendants also demur specially to the first cause of action on the ground that the City of Newport Beach ("City") is an indispensable party. Defendants' unopposed requests for the Court to take judicial notice of a notice of violation (warning only) issued by the City of Newport Beach Harbor Department and a notice that the warning was rescinded are granted. (Evid. Code, § 452, subd. (c).) <u>First cause of action for declaratory relief</u>

		A defendant may demur to the complaint on the ground that there is a defect or misjoinder of parties. (Code Civ. Proc., § 430.10(d).) CCP section 389 provides, in pertinent part, as follows: (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. Although Defendants contend Plaintiffs conceded during the meet and confer process that City should be joined, which Plaintiffs do not dispute, Plaintiffs no longer concedes City is an indispensable party. Based on the allegations in the complaint, Defendants have not shown City is an indispensable party. Accordingly, Defendants' special demurrer is overruled. Pursuant to CCP section 1060, any person "interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." To state a cause of action for declaratory relief, Plaintiffs must allege: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the party's rights or obligations. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.) Plaintiffs alleged sufficient facts to state this cause of action. (Complaint, ¶¶ 1-3; 8-12, and 23-28.) Accordingly, the general demurrer is overruled. <u>Second cause of action for permanent injunctive relief</u>

		"Injunctive relief is a remedy and not, in itself, a cause of action." (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159; *see, Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.) Defendants' demurrer is sustained. To the extent Plaintiffs seek injunctive relief in connection with a cause of action alleged in their complaint, Plaintiffs are granted 15 days leave to amend. <u>Third cause of action for encroachment</u> The parties appear to agree that Plaintiffs' third cause of action sounds in trespass. (Memorandum, 14:22-15:2; Opposition, 8:7-8; *see, Christensen v. Tucker* (1952) 114 Cal.Capp.2d 554.) "'Trespass is an unlawful interference with possession of property.' (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406, 235 Cal.Rptr. 165.) The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (See CACI No. 2000.)" (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 261-262.) Plaintiffs alleged sufficient facts to state this cause of action. (Complaint, ¶¶ 36-41.) Accordingly, the demurrer is overruled. <u>Fourth cause of action for private nuisance</u> As outlined by the California Supreme Court in *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938, the elements of an action for private nuisance are: (1) an interference with his use and enjoyment of his property; (2) the invasion of the plaintiff's interest in the use and enjoyment of the land must be substantial, i.e., that it causes the plaintiff to suffer substantial actual damage; (3) the interference with the protected interest must not only be substantial, but it must also be unreasonable, i.e., it must be of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938; *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1176; *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262–263.)

		Plaintiffs have not alleged sufficient facts to show Defendants' alleged invasion is substantial and unreasonable. Accordingly, the demurrer is sustained with 15 days leave to amend. Defendants shall give notice. **2) Case Management Conference** **Continued to June 24, 2024 at 9:00 a.n.**
7	**23-01300583** **Nanula v. Bivens**	**1) Motion to Compel Further Responses to Form Interrogatories** Plaintiff Holly Nanula ("Plaintiff") seeks an order compelling further responses to Plaintiff's First Set of Form Interrogatories, specially, numbers 16.1-16.6 and 16.9-16.10, propounded on Defendants Joseph Bivens, M.D. ("Doctor") and Optimal Plastic Surgery, P.C. ("Optimal") (collectively, "Defendants"). Plaintiff also seeks monetary sanctions against Defendants in the amount of $1,461.65. There is no dispute that Plaintiff's motion is timely filed, or that Defendants served supplemental responses. The Court notes Defendants only submitted a copy of the Doctor's supplemental responses in opposition to Plaintiff's motion, but Plaintiff conceded Defendants served supplemental responses in Plaintiff's reply. Accordingly, the motion is moot. No sanctions are warranted at this time against any party. Plaintiff shall give notice.
8	**23-01335514** **Nguyen v. Lim**	**Motion to Strike Answer** The motion by Plaintiff Kieu Thi Nguyen ("Plaintiff") to strike the verified Answer of defendants Tuyen Nguyen, Khammy Lim, and Ameresource Financial Corporation (collectively, "Defendants") is denied. Plaintiff's motion is untimely. (Code Civ. Proc., §§ 430.40, subd. (b) and 435, subd. (b)(1); Cal. Rules of Ct., Rule 3.1322(b).) Defendants served their verified answer by mail on 9/20/2023.

		Plaintiff served and filed this motion on 10/25/2023, 35 days after service of the answer. In addition, Plaintiff did not provide proper notice of Plaintiff's request to strike certain specified paragraphs of the answer in the alternative. (Cal. Rules of Ct., Rule 3.1322 (a).) Plaintiff also did not show any attempt to comply with CCP section 435.5. Finally, Plaintiff did not show Defendants' answer in its entirety is subject to strike. (Code Civ. Proc., § 436.) Defendants shall give notice
9	**23-01328860** **Peck v. Jaguar Land Rover Newport Beach**	**Motion to Compel Production** Plaintiff Michelle Peck's motion for order compelling defendant Jaguar Land Rover North America, LLC to provide further responses to requests for production, set one ("RFPs") is continued to July 29, 2024. The parties are ordered to meet and confer further. If after meeting and conferring further and in good faith, items remain in dispute, Plaintiff and Defendant are to file a joint statement describing the items in dispute and the parties' positions no later than nine days before the hearing. If the parties resolve all their disputes, Plaintiff is to promptly file a notice of withdrawal of the motion. To aid the parties' meet and confer efforts, the court provides the following information. This is not intended to limit the issues to be discussed; nor is it an exhaustive list of the issues noted by the court in reviewing the parties' papers. First, the court finds that requests described in terms of all documents "regarding," or "relating to," something are likely to be overbroad and even ambiguous as to the scope of the request. Good faith meet and confer efforts would seek an agreed scope of such requests. Second, it is Plaintiffs' responsibility to identify the conditions, defects, or nonconformities that are put in issue by their complaint and to propound RFPs that describe these defects with particularity. Again, meet and confer efforts would seek specification of the defects for which documents are sought and an agreement on the definition to be used. Third, once the conditions, defects and nonconformities complained of by Plaintiff are clearly defined, information of similar complaints by other owners or lessors of the same make, model,

		and year of vehicle as Plaintiff's is likely to be relevant for purposes of discovery.
10	**23-01337620** **Wang v. San Jose DMV Driver Safety**	**Demurrer to Complaint** Defendant Department of Motor Vehicles' Demurrer to Amended Complaint by Plaintiff Angel Wang is sustained with leave to amend. Defendant DMV generally demurs to the Amended Complaint in its entirety. Defendant contends Plaintiff fails to state a claim because: (1) the DMV is immune from injuries caused by its discretionary suspension of her license; (2) the gravamen of Plaintiff's claims sound in tort but Plaintiff has not alleged compliance with the Government Claims Act; and (3) the request for a court order to reinstate her license is duplicative of the relief she is seeking through her pending writ action (case no. 30-2023-01337943). The Court agrees DMV is entitled to immunity under Government Code section 818.4. (*Richardson v. Department of Motor Vehicles* (2018) 25 Cal.App.5th 102, 109.) Additionally, the Court agrees Plaintiff's claims sound in tort, but the Amended Complaint fails to allege compliance with the Government Claims Act. (Gov. Code 911.2, subd. (a).) And, lastly, Plaintiff has another action pending against the DMV for the reinstatement of her license. (Code Civ. Proc., § 430.10.) Plaintiff has not opposed the demurrer, much less explained how she could amend to state a viable claim. (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1609 ["Plaintiff has the burden to show a reasonable possibility the complaint can be amended to state a cause of action"].) Nevertheless, the Court will provide Plaintiff with an opportunity to amend in response to the challenge to her pleading. (See *Tarrar Enterprises, Inc. v. Associated Indemnity Corp.* (2022) 83 Cal.App.5th 685, 688.) Plaintiff shall file and serve her amended pleading within 30 days of the notice of ruling. Defendant shall give notice of the ruling.