Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: May 7, 2024

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must 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 instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

All hearings are open to the public.

If you desire a transcript of the proceedings, you must provide your own court reporter (unless you have a fee waiver and request a court reporter in advance). 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; and
- Court Reporter Interpreter Services

These are the Court's tentative rulings. They may become an order 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 the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling **(657-622-5232)**. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

#	Case Name	Tentative
2	**TANASESCU VS. COOL SMILES ORTHODONTICS 2019-01100016**	**MOTION TO COMPEL DEPOSITION** Defendants' Motion to Compel the Deposition of Plaintiff S.T. is CONTINUED to 6/25/24, to be heard concurrently with Plaintiffs' Motion for Protective Order regarding the deposition. No later than 5/17/24, the parties shall engage in further efforts to meet and confer to complete the deposition of S.T. without Court intervention pursuant to the Code of Civil Procedure. No later than 5/31/24, Plaintiffs shall file and serve a declaration, not to exceed three pages, describing their efforts to meet and confer with Defendants' counsel regarding the deposition of S.T. The Court will impose substantial monetary sanctions against Plaintiffs if it finds Plaintiff S.T. has refused to appear for deposition without substantial justification or has failed to meet and confer with Defendants' counsel in good faith. (Code Civ. Proc. § 2025.450(g)(1).) The Court will also consider imposing issue, evidence, or terminating sanctions against Plaintiffs if Plaintiffs fail to comply with Defendants' attempts to complete discovery. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.)
3	**SANGSTER VS. FORD MOTOR COMPANY 2023-01337689**	**1. MOTION TO COMPEL ARBITRIATION** Defendant Santa Margarita Ford's Motion to Compel Arbitration is GRANTED. Defendant Ford Motor Company's Motion to Compel Arbitration is DENIED. The entire action is stayed pending the resolution of the arbitration between Plaintiff and Santa Margarita Ford. "A nonsignatory to an agreement to arbitrate may be required to arbitrate, and may invoke arbitration against a party, if a preexisting confidential relationship, such as an agency relationship between the nonsignatory and one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory." (*Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co.* (2005) 129 Cal.App.4th 759, 765.) Whether a nonsignatory has rights under an arbitration agreement through some agency relationship is dictated by the ordinary principles of contract and agency law. (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 860, (*Cohen*).) Ford may not invoke the arbitration provision in the RISC because Plaintiff's agency allegations are insufficient to establish

		a nexus between the agency relationship and the RISC. "Nonsignatory agents were entitled to enforce a contract's arbitration provision where the plaintiff sued them in their capacities as agents for the signatory and the significant issues in the dispute arose out of the contractual relationship between the parties." (*Cohen, supra*, 31 Cal.App.5th 840, 863-864, citing *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 418.) Plaintiff alleges "due to the contract that existed between Ford and [SMF], all of [SMF]'s statements and omissions are imputed to Ford." (Compl. ¶ 106.) However, in *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1342 (*Ochoa*), the court ruled even if the plaintiffs' allegations adequately established an agency relationship between the dealerships and manufacturer "in misrepresenting the qualities of the vehicles prior to sale, any nexus with the sale contracts, and thus the right to compel arbitration, is lacking." Thus, allegations of agency must relate to the executing the sale contract. (*Id* at 1343.) Plaintiff's agency allegations are limited to misrepresenting the qualities of the vehicles prior to sale. Therefore, there are insufficient allegations of an agency relationship with a nexus to the RISC and Ford cannot invoke the arbitration provision in the RISC.
4	**CREATIVE HEALTH CONCEPTS, INC. VS. HUNTER LANDSCAPE, INC. 2023-01335811**	**1. DEMURRER TO COMPLAINT** The Demurrer of Defendants Hunter Landscape, Inc., Dana Hunter and Clint Hunter to the Complaint of Plaintiff Creative Health Concepts, Inc. dba Lido Interiors is OVERRULED. Defendants demur to the entire complaint on the grounds that (1) the basis for Plaintiff's breach of written and oral contract claim is unclear, and (2) there are no grounds for liability as to Hunter Landscape, Inc. and Dana Hunter, who are not identified as parties to the Contractor Agreement attached as Exhibit A to the complaint. Plaintiff has adequately alleged the existence of a contract based on the Exhibit A Contractor Agreement between Plaintiff and Clint Hunter. The fact that Plaintiff alleges oral agreements which may involve change orders or other aspects of Plaintiff's work does not render the breach of contract claim unduly vague. Although Hunter Landscape, Inc. and Dana Hunter are not identified as parties to the Contractor Agreement, Plaintiff has alleged alter ego liability which is sufficient to include them as parties at this stage. (See *Zoran Corp. v. Chen* (2010) 185

		Cal.App.4th 799, 811 ["Whether a party is liable under an alter-ego theory is normally a question of fact.") Therefore, the demurrer is overruled. **2. MOTION TO STRIKE** Defendants' Motion to Strike Portions of the Complaint is GRANTED as to the prayer for attorney fees in the first cause of action and DENIED as to the prayer for attorney fees in the second cause of action. Plaintiff fails to plead a basis for recovery of attorney fees under the first cause of action because the Contractor Agreement does not include an attorney fees provision. (Civ. Code § 1717 [contract must "specifically provide" for attorney fees].) Therefore, the motion is granted as to the request for attorney fees in paragraph BC-5. However, Plaintiff adequately pleads grounds for recovery of attorney fees for its common counts claim under Civil Code section 1717.5, which provides for limited recovery of attorney fees for recovery of an open book account. At this stage, Plaintiff has adequately pled the existence of an open book account reflected in Exhibit B to the complaint. Therefore, the motion is denied as to Plaintiff's request for attorney fees subject to section 1717.5.
5	**ASOAU VS. TRAN 2023-01305906**	**1. MOTION TO COMPEL DEPOSITION (ORAL OR WRITTEN** The Motion of plaintiffs Anne Asoau, Jayne Faalafua, John Utu, and Elva Utu, individually and as the successor-in-interest and personal representative of Lucy Utu, to compel defendant Manor Care of Fountain Valley CA, LLC dba Manor Care Health Services ("MCFV") to produce for deposition Denise Lorenzo, Director of Nursing, is GRANTED. Code of Civil Procedure section 2025.450 provides in pertinent part: "(a) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document,

		electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." Plaintiffs have shown that Defendant's deposition was properly noticed multiple times. Specifically, on August 21, 2023, Plaintiffs served a Notice of Deposition and Request for Production to Denise Lorenzo. On September 1, 2023, MCFV served objections to Plaintiffs' Notice of Deposition, including objections on the grounds that the notice was procedurally deficient because Lorenzo's motion to quash service of summons was currently pending before the court, she had not yet made an appearance, and therefore not consented to the court's jurisdiction. (Daveler Decl., ¶ 3, Ex. 1.) On October 13, 2023, Plaintiffs served another notice of deposition for Lorenzo and request for production of documents, which set October 26, 2023 as the deposition date. (Daveler Decl., ¶ 5.) Defendant served objections on October 19, 2023, which restated its prior objections. (Daveler Decl., ¶ 5, Ex. 3.) After Lorenzo's motion to quash was heard by the court, the parties agreed to April 18, 2024, for the deposition of Lorenzo, however Lorenzo could not appear for the scheduled deposition due to an illness. (Develer Decl., ¶¶ 10-11.) Defense counsel avers that he is actively seeking alternative dates for the deposition of Lorenzo. (Develer Decl., ¶ 12.) Plaintiffs are entitled to depose Lorenzo and although Defendant's counsel states that he is seeking alternative dates for the deposition of Lorenzo, no dates have been confirmed. Accordingly, the Motion is GRANTED. MCFV is ORDERED to produce Lorenzo for her deposition within 15-days of the hearing. Plaintiffs seek sanctions pursuant to section 2025.450(g)(1) which provides, "if a motion under subdivision (a) is granted, the court shall impose a monetary sanction . . . in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

MCFV has shown that it refused to produce Lorenzo because Lorenzo's motion to quash service of summons was currently pending before the court, she had not yet made an appearance, and therefore not consented to the court's jurisdiction. The court finds that MCFV acted with substantial justification and denies the request for sanctions.

Plaintiff to give notice.

2. MOTION TO COMPEL FUTHER RESPONSES TO SPECIAL INTERROGATORIES

The Motion of plaintiffs Anne Asoau, Jayne Faalafua, John Utu, and Elva Utu, individually and as the successor-in-interest and personal representative of Lucy Utu, to compel defendant Manor Care of Fountain Valley CA, LLC dba Manor Care Health Services ("MCFV") to serve a further response to the first set of special interrogatories that contains supplemental answers to special interrogatories 1, 2, 3, 5, 6, 7, 9, 10, 13, 14, 17, 18, 21, 24, 25, 26, 28, 29, 31, 32, and 33 is MOOT in part, GRANTED in part and DENIED without prejudice in part.

On March 26, 2024, the court continued the hearing on the Motion and directed counsel for Defendant to provide a verification for Defendant's further supplemental responses before the hearing on the continued motion. (ROA No. 409.) The court also directed the parties to meet and confer regarding Special Interrogatory Nos. 18 and 29 and the request for sanctions. (ROA No. 409.)

On April 30, 2024, counsel for Defendant served on Plaintiffs a verification to Defendant's Further Supplemental Responses to Special Interrogatories (Set One). (Daveler Supp. Decl., ¶ 3, Ex. A.) The Motion is therefore MOOT as to Special Interrogatories Nos. 1, 2, 3, 5, 6, 7, 9, 10, 13, 14, 17, 21, 24, 25, 26, 28, 31, 32, and 33.

As to Special Interrogatory No. 29, Defendant has agreed to further supplement its response. (Daveler Supp. Decl., ¶ 4, Ex. B; Pick Supp. Decl., ¶ 4.) Since Defendant has not yet supplemented its response, the Motion is GRANTED as to Special Interrogatory No. 29. Defendant is ordered to provide a supplemental response within 5 days of the hearing.

		Although the parties met and conferred as ordered by the court, they were unable to resolve their dispute as to Special Interrogatory No. 18. Special Interrogatory No. 18 states: "Please provide the last known address/phone number of ANY employee that cared for PLAINTIFF that no longer works at the FACILITY." The interrogatory is overbroad in that it seeks to elicit information for a 12-year period while Plaintiff was a resident of MCFV, which is too attenuated from Plaintiffs' actual claims against Defendant from the two alleged incidents on May 13, 2021 and April 6, 2022. (FAC, ¶¶ 20, 22.) Accordingly, the court DENIES the request to compel a further response without prejudice to a more narrowly drafted interrogatory. "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though…the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, Rule 3.1348(a).) Although Defendant served further supplemental responses to the majority of the Special Interrogatories (Set One) at issue in this Motion, most responses were not served until after Plaintiff filed this Motion. Defendant is ordered to pay $1,060 in sanctions to Plaintiff within 30 days of the notice of this ruling. Plaintiff to give notice.
6	**FORESPAR PRODUCTS CORPORATION VS. FORESMAN 2018-01024718**	**MOTION FOR LEAVE TO AMEND** Cross-Defendant Scott Foresman's Motion for Leave to Amend Answer to First Amended Cross-Complaint is GRANTED. Movant's request for judicial notice of various court records (ROA 626) is granted. Code of Civil Procedure section 473(a)(1) states, "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice

		to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." "Generally, leave to amend must be liberally granted [citations], provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation." (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) Cross-Defendant seeks leave to file a First Amended Answer to the First Amended Cross-Complaint. Cross-Complainant filed the First Amended Cross-Complaint on 5/20/22 and Cross-Defendant attempted to file a First Amended Answer on 12/14/22. On 6/28/23, the Court struck the First Amended Answer because it was filed without leave of Court. On 11/8/23, Cross-Defendant filed the present motion. Cross-Defendant's motion complies with California Rules of Court, Rule 3.1324. Counsel has filed a declaration describing the circumstances and effect of the amendment, and the proposed First Amended Answer is attached to the motion as Exhibit D. Although the motion should have been filed earlier, Cross-Complainant has not demonstrated the amendment will unduly prejudice his ability to prosecute the Cross-Complaint. Trial is set for September 6, 2024 and Cross-Complainant has not shown he will be unable to adequately prepare for trial based on the new affirmative defenses pled in the First Amended Answer. Cross-Defendant shall file the First Amended Answer within five days.
7	**RAMINFARD VS. ARMIJO 2022-01246540**	**MOTION FOR ATTORNEY FEES** Defendant North County Community College District's Motion for Attorney's Fees is GRANTED in part and DENIED in part. Defendant North County Community College District brings this motion for attorney's fees following the Court's granting of summary judgment on October 3, 2023. The District seeks an award of $73,301.50 in attorney's fees pursuant to Govt. Code § 12965(c)(6) and CCP § 1038. **FEHA Claims**

		In actions brought under FEHA, "the court, in its discretion, may award to the prevailing party…reasonable attorney's fees and costs…except that…a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so." (Gov. Code, § 12965(c)(6); *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 115.) "The FEHA fee provision is designed to encourage plaintiffs of limited means to bring a meritorious suit; assessing attorney fees *against* such plaintiffs in nonfrivolous cases merely because they do not ultimately prevail would have a major chilling effect on potential plaintiffs and thereby undermine the Legislature's intent to promote the enforcement of FEHA." (*Lopez v. Routt* (2017) 17 Cal.App.5th 1006, 1014.) The District argues Plaintiff had no basis for bringing her FEHA claims because any reasonable attorney would have known the claims were time barred. In *Linsley v. Twentieth Century Fox Film Corp.* (1999) 75 Cal.App.4th 762, the plaintiff filed a lawsuit against his former employer, alleging, inter alia, age and disability discrimination in violation of FEHA. Prior to filing the lawsuit, however, the plaintiff agreed to a general release of all claims against defendant arising from the termination of this employment and was advised of this fact by defendant's counsel prior to service of the complaint. (Id. at 768.) Plaintiff continued to litigate the case despite this knowledge. Under such circumstances, there was no legal basis to pursue the unlawful discrimination cause of action. (Id. at 770.) On appeal, the plaintiff argued the award of attorney's fees was improper because there was no determination of the merits of his discrimination claim, citing *Hon v. Marshall* (1997) 53 Cal.App.4th 470. In *Hon*, the court reversed an award of attorney's fees where the plaintiff's FEHA claims were dismissed for failure to exhaust administrative remedies. The *Linsley* court found that *Hon* was not controlling because it dealt with the jurisdictional issue of exhaustion and not the substantive issue of a valid release. (*Linsley*, supra, 75 Cal.App.4th at 771.) Therefore, the Court of Appeal upheld the trial court's award of attorney's fees. The District, asserts, the instant case is more in line with *Linsley* than *Hon* because both cases involve substantive rights which

		previously arose and on which a suit could have been maintained were extinguished. The Court follows *Hon* and finds that "a defendant who is granted summary judgment because of a jurisdictional defect does not qualify as a 'prevailing party' entitled to an attorney fee award under Gov. Code § 12965, since the defendant did not prevail over the plaintiff on any issue central to the litigation." (*Han*, supra, 53 Cal.App.4th at 470.) In this case, there is no evidence that suggests the circumstances surrounding Plaintiff's delayed filing of her complaint was such as to render her FEHA claims frivolous, vexatious, or otherwise an act of bad faith. Plaintiff had filed three claims with the DFEH and believed later filed claims to be controlling. Plaintiff presented an argument in opposition to the summary judgment motion which suggested her counsel believed her case to be meritorious. After engaging in a fairly complex legal analysis, although the Court ultimately disagreed with Plaintiff's position, there is no evidence Plaintiff, or her counsel, believed her case to be groundless at the time it was filed or thereafter. Accordingly, the Court DENIES the request for attorney's fee under Govt. Code § 12965. **Defamation Claims** Code of Civil Procedure, section 1038 provides: "(a) In any civil proceeding under the Government Claims Act ... the court, upon motion of the defendant ... shall, at the time of the granting of any summary judgment, ... determine whether or not the plaintiff, ... brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, ... If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party." Defense costs under this section includes reasonable attorneys' fees. (CCP § 1038(b). In granting the MSJ, the Court found Plaintiff's claim for defamation was barred because she did not present a claim for damages prior to bringing the lawsuit. Government Code,

		section 945.4 prohibits a suit for money or damages against a public entity unless a claim for damages has been properly presented to the public entity. Under this statute, "failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (State of California v. Superior Court (2004) 32 Cal.4th 1234, 1239.) Here, Plaintiff filed her lawsuit on 2-22-22. The Claim for damages was not presented to the District until July 2022. Because plaintiff did not present a claim for damages prior to bringing this lawsuit for defamation, her defamation claim is barred. (*Lowry v. Port San Luis Harbor District* (2020) 56 Cal.App.5th 211, 219 [affirming the trial court's granting of judgment on the pleadings concluding the plaintiff "failed to comply with the Act because he filed a complaint before his claim was rejected."].) Under these facts, the Court finds Plaintiff did not have good cause to include the defamation claim in the Complaint. Plaintiff's opposition fails to address the District's claim for attorney's fees under Section 1038. The next issue to determine is the reasonable attorney's fees to be awarded to the District. Courts apply a lodestar method to calculate reasonable attorney's fees. (*Meister v. U.C. Regents* (1998) 67 Cal.App.4th 437, 448-449.) The Court determines a lodestar figure based on a careful compilation of the time spent and reasonable hourly compensation of each attorney involved. (*Serrano v. Priest* (1977) 20 Cal.3d 25.) A reasonable fee is determined in the trial court's discretion. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084.) To determine reasonable attorney's fees, the Court should consider the nature of the litigation, its difficulty, the amount involved, the skill required and employed in handling the matter, the attention given, the success of the attorney's efforts, the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659 [disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53].) The District claims it expended 36.7 hours totaling $6,410 in fees related to Plaintiff's claim for defamation. Some of the billing entries identified by the District as related to the defamation

		claim, relate to the case as a whole. The defense to Plaintiff's defamation claim was not complex. Plaintiff failed to file her government claims prior to filing the Complaint, in violation of the Government Claims Act. A substantial amount of hours should not have been expended on this claim, especially as it relates to the MSJ as the District had already addressed this argument in a prior demurrer. In light of the foregoing, the Court reduces the amount of hours expended to 20 hours at a rate of $175/hour (which is the rate for Michael Storti, the primary biller on this case). Accordingly, the Court GRANTS the motion for attorney's fees per CCP § 1038 in the amount of $3,500.
8	**GLOBAL FINANCIAL DATA, INC. VS. WEEKS 2022-01296119**	**1. DEMURRER TO AMENDED COMPLAINT** **Defendant's (Joshua Silverman) Demurrer to First Amended Complaint (Demurrer), filed on 11/22/23 under ROA Nos. 113, 117 and 121, is OVERRULED in part and SUSTAINED in part.** "A demurrer tests the pleading alone, and not the evidence or the facts alleged. . . . To the extent there are factual issues in dispute, however, this court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint. [Citations.]" (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.) Code of Civil Procedure section 452, states, "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." *Perez v. Golden Empire Transportation Transit District* (2012) 209 Cal.App.4th 1228, 1238, provides, "This rule of liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant. [Citations.]" *C.A. v. William S. Hart Union High School Distric*t (2012) 53 Cal.4th 861, 872 (*C.A.*), provides, "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. [Citation.]" " ' "[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." ' [Citations.] ' "A demurrer for

		uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." ' [Citations.]" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.) The Demurrer challenges the third, eighth and ninth causes of action contained in Plaintiffs' (Global Financial Data, Inc. and Michelle Kangas) First Amended Complaint (FAC), filed on 10/27/23 under ROA No. 96, pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f). As to all three causes of action, Defendant argues, "Plaintiffs did not name Silverman as a Defendant within the FAC. Silverman is not moving for a Judgement on the Pleadings, but technically, no allegations of any COA pertain to Silverman and Silverman should be dismissed from this lawsuit. This is because Plaintiffs filed an original Complaint, then added Silverman to the original Complaint as a doe Defendant, but then filed the FAC without naming Silverman. "It has long been the rule that an amended complaint that omits defendants named in the original complaint operates as a dismissal … as to them. Lee v. Kim (2019) 41 Cal.App.5th 705, 720 footnote 8 *citing* Dye v. Caterpillar, Inc. (2011) 195 Cal.App.4th 1366, 1382, fn. 11." (Demurrer; 8:25-28, fn. 2.) Plaintiffs' argue, "because Plaintiffs were ordered to file an amended complaint as a result of the demurrer filed by Mr. Rodriguez, Mr. Silverman's demurer and motion to strike the initial complaint were never heard, and ruled upon prior to Plaintiffs' filing of the FAC. [citation] Thus, contrary to what Mr. Silverman stated in his demurrer, the complaint was not amended to address his demurrer and motion to strike, but only Mr. Rodriguez's demurrer, as shown in the Court's tentative ruling of October 16 2024 [sic], that became the final ruling and the Court's docket. [citation]" (Opposition; 1:22-2:6.) Plaintiffs are correct. The Court only ruled on Defendant Rodriguez's Demurrer; therefore, that FAC could only address the deficiencies of the Complaint as they related to Defendant Rodriguez. Additionally, at the hearing the parties stipulated that Defendant would withdraw his motions without prejudice to him raising the *same* issues as to any subsequent amended pleading filed by Plaintiffs.

		Further, Plaintiffs' failure to name Defendant as a defendant in the FAC did not act as a voluntary dismissal. (See, e.g., *Contract Engineers, Inc. v. California-Doran Heat Treating Co.* (1968) 258 Cal.App.2d 546, 550 [no voluntary dismissal where second amended complaint persisted in identifying defendant by the fictious name Doe I Corporation where plaintiff, upon learning defendant's true name, had previously caused first amended complaint to be served on defendant as Doe I Corporation].) Neither of the cases Defendant relies upon, *Lee v. Kim* (2019) 41 Cal.App.5th 705, 720 footnote 8 *citing Dye v. Caterpillar, Inc*. (2011) 195 Cal.App.4th 1366, 1382, fn. 11, concern an amended pleading that fails to make a previously identified Doe defendant a named defendant. Therefore, the Demurrer is **OVERRULED** to the extent it alleges Defendant should be dismissed from the action because the FAC does not identify him as a named defendant. Defendant also argues as to all three causes of action that the FAC fails to include any specific allegations of wrongdoing against him. (Demurrer; 1-26:27, 3:17-18, 5:1-4, 6:1-2.) Plaintiffs argue the Demurrer should be overruled because Plaintiffs' amendment pursuant to Code of Civil Procedure Section 474 is sufficient to state valid claims against this Doe defendant. Defendant was added as a Doe 1 defendant to the Complaint; thus, the same set of facts that are alleged against Defendant Weeks are also alleged against all Doe defendants, including this Defendant. (Opposition; 2:18-20, 3:2-5.) Code of Civil Procedure section 474 states, in part: "When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, or the affidavit if the action is commenced by affidavit, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly; . . . ." (Code Civ. Proc. § 474.) *Winding Creek v. McGlashan* (1996) 44 Cal.App.4th 933, 941-942 (*Winding Creek*), explains, "Even if a plaintiff meets the other requirements of Doe pleading, an amended pleading will not relate back unless the original complaint set forth or attempted to set forth some cause of action against fictitiously

named defendants. [Citations.] 'It is not enough, of course, simply to name 'Doe' defendants. Rather, the complaint must allege that they were *responsible* in some way for the acts complained of.' [Citations.] As another commentator explains, 'Although the ironclad rule that the original complaint must contain charging allegations against the fictitious defendants may trap the unwary, compliance is relatively simple. The addition of "s" to "defendant" in the charging allegations will suffice as long as the complaint does not limit the word "defendants" to those sued by their correct names." [Citations.] [¶] The allegations of the first amended complaint satisfy this requirement. As noted above, every single cause of action stated in that pleading incorporated by reference plaintiffs' allegation that ' . . . each of the fictitiously named Defendants is responsible in some manner for the occurances [*sic*] herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.' Also incorporated in each cause of action was the allegation that ' . . . each Defendant acted as agent for their co-Defendants and were acting in that capacity at all times herein mentioned, or were in the employment of said other Defendants acting within the course and scope of their employment.' The prayer for relief requests judgment 'against Defendants and each of them . . . .' The complaint thus alleges that defendants, whose identities or culpable acts were unknown at the time of filing, are in some way responsible for the acts of which plaintiffs complain." (Italics in *Winding Creek*; Footnotes 8 and 9 omitted.)

Paragraph 5 of the FAC sufficiently complies with *Winding Creek* by alleging, ". . . each Doe defendant is legally responsible in some manner or by means for the events and happening referred to herein and proximately caused Plaintiffs' damages, either through their own conduct or that of their agents . . . ." Although the FAC does not plead any specific facts against Defendant Silverman,
Plaintiffs are not required to do so in order to name Defendant as a doe defendant pursuant to Code of Civil Procedure section 474. Paragraph 5 of the FAC sufficiently complies with *Winding Creek* in terms of alleging Defendant's responsibility as a Doe defendant. Therefore, the Demurrer is **OVERRULED** to the extent it alleges the FAC does not adequately allege Defendant's liability as a Doe defendant.

As to the third and eighth causes of action for cause of action for fraud and defamation, Defendant's arguments similarly argue a lack of heightened specificity as to him. Regarding the fraud

		claim, Defendant argues the FAC does not plead the claim with the requisite specificity because they "do not allege with particularity any misrepresentation made by Silverman, that Silverman had knowledge of the falsity, that Silverman intended to induce reliance, that Plaintiffs were justified with respect to the reliance, and that Plaintiffs suffered damages as a result of Silverman's misrepresentation." (Demurrer; 5:1-4.) Regarding the defamation claim, Defendant argues the FAC does not plead the defamation claim with the requisite specificity, which requires the words constituting an alleged libel be specifically identified, if not pleaded verbatim, in the complaint because "the FAC identifies nothing specific that Silverman actually verbally stated or wrote." (Demurrer; 6:1-2.) Plaintiffs argue as to each cause of action that because Defendant was added as a Doe 1, the same allegations that apply to Defendant Weeks also apply to Defendant as Doe 1. (Opposition; 3:8-12, 5:22-24.) As discussed above, since the FAC sufficiently complies with *Winding Creek* in terms of alleging Defendant's responsibility as a Doe defendant, the FAC is not required to plead any specific facts against Defendant Silverman. As to the ninth cause of action for Intentional Infliction of Emotional Distress (IIED), instead of arguing the FAC fails to allege specific misconduct by Defendant, he argues that the FAC is devoid of specific allegations regarding the nature and extent of the severe emotional distress Plaintiff claims she suffered. Defendant contends the FAC makes only general and conclusory assertions Plaintiff suffered "humiliation, mental anguish, anxiety, and depression." (Demurrer; 7:11-13.) Plaintiffs argues only that if the allegations are sufficient against Defendant Weeks, they are also sufficient against Defendant since he is a Doe defendant (Opposition; 6:1-2.) However, this does not address the issue raised by the Demurrer. "To state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Conduct, to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized society. In order to avoid a demurrer, the plaintiff

must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–161 [cleaned up].)

With respect to the nature and extent of Plaintiff's emotional distress, the FAC alleges:

- "Defendant's disclosure of such details undermined Kangas' authority with the GFD employees, injured her professional and personal reputation, and caused her humiliation, embarrassment, and mental and emotional distress." (FAC, ¶ 15.)

- "Plaintiff Kangas has been consumed with humiliation, embarrassment, restlessness, self-doubt, and anxiety over Defendant's acts." (FAC, ¶ 35.)

- "Plaintiff Kangas has suffered, and continues to suffer, humiliation, embarrassment, restlessness, self-doubt, stress, anxiety, mental and emotional distress because of Defendant's actions, and her trust in others has been significantly and irreparably impaired." (FAC, ¶ 37.)

- "As a direct and proximate result of the acts alleged above, Plaintiff suffered humiliation, mental anguish, emotional and physical distress, embarrassment, hurt feelings, mental anguish, anxiety, and depression." (FAC, ¶ 133.)

These allegations do not allege with sufficient specificity the nature and extent of the emotional distress Plaintiff claims to have suffered. The allegations are conclusory and general in nature. Therefore, the Demurrer to the ninth cause of action is **SUSTAINED** with leave to amend.

To the extent the Demurrer relies on Code of Civil Procedure section 430.10, subdivision (f), to challenge the above causes of action, the court **OVERRULES** the Demurrer. Under *Fistes* and *Winding Creek*, the FAC is not so uncertain as to prevent Defendant from providing an informed response. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 (*Fistes*.)

		2. MOTION TO STRIKE **Defendant's (Joshua Silverman) Motion to Strike Portions of Plaintiffs' First Amended Complaint (Motion), filed on 11/22/23 under ROA No. 127, is DENIED.** "Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof…." (Code Civ. Proc., § 435.) "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) Defendant Joshua Silverman moves to strike all references of punitive and exemplary damages from the FAC. Defendant makes the same arguments in the Motion to Strike as he does in his Demurrer, i.e., that the FAC does not allege any specific wrongdoing against any Doe, including Defendant. Accordingly, for the same reasons the Demurrer to the third, eighth, and ninth causes of action is overruled to the extent it alleges the FAC does not adequately allege Defendant's liability as a Doe defendant, the Motion to Strike is **DENIED**.
9	**SHORT LOAD CONCRETE, INC. VS. GENERAL MOTORS, LLC.**	**MOTION TO COMPEL PRODUCTION** Plaintiffs Short Load Concrete, Inc., Ryan Vanderhook, and Ryan Vanderhook Jr.'s motion to strike Defendant's objections, and compel further responses and documents to Plaintiffs' Requests for Production of Documents, Set No. One, Nos. 16, 18, 21-22, 24, 27, and 74-88 is CONTINUED to 06/04/2024 at 9:00am in Dept. C-32. The rule requiring a good faith effort to meet and confer about discovery disputes "is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . [t]his, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants

		through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) "The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice." (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.) The parties did not sufficiently meet and confer prior to the filing of this Motion. On 11-29-23, Plaintiffs' counsel sent an email to Defendant's counsel stating "Your response deadline to my November 8, 2023, e-mail further meeting and conferring regarding Defendant's discovery responses was due on November 22, 2023 (see e-mail exchange below). However, I have yet to receive any response other than re: our stipulation to extend the MTC deadline. Plaintiffs remain willing to further meet and confer regarding the disputed discovery. However, Plaintiffs will comply with their Motion to Compel deadline (as extended) if no response is received." (Kornely Decl., ¶ 31, Ex. N.) Defendant failed to respond to the email, therefore, on 12-28-23, Plaintiffs' counsel sent another email to Defendant's counsel inquiring whether Defendant would be amenable to an additional extension of their Motion to Compel deadline. (Kornely Decl., ¶ 32, Ex. O.) But Defendant again failed to respond. (*Id.*) Defendant did not act in good faith by failing to continue to meet and confer regarding the disputed discovery responses. The parties are ordered to engage in additional attempts to meet and confer, including a telephonic or in-person conference (not email). No later than 9 court days prior to the continued hearing, the parties are to file a Joint Statement which shall (1) describe the parties' attempts to meet and confer pursuant to this order, (2) identify each discovery request that remains in dispute, and (3) each party's position on the discovery request that remains in dispute. The court expects the parties to engage in a good faith meet and confer effort to resolve the issues that are the subject of this Motion. Plaintiff to give notice.

10	**STC GARDENWALK, LLC VS. RUMBA ROOM LIVE ANAHEIM, LLC 2023-01322744**	**APPLICATION FOR RIGHT TO ATTACH ORDER/WRIT OF ATTACHMENT** Plaintiff's Writs of Attachment are CONTINUED to 06/18/2024 at 9:00 in Department C32. Defendants have filed an untimely opposition, however, the Court, in its discretion, will consider the opposition. (See Rules of Court, Rule 3.1300(d).) However, the Court will continue the hearing to allow Plaintiff to file a reply. Plaintiff is to file any reply by 06/11/2024.
12	**SARKISYAN VS. JLR NEWPORT BEACH LLC 2023-01328543**	**MOTION TO COMPEL PRODUCTION** Defendant JLR Newport Beach LLC's Motion to Compel Plaintiff Irina Sarkisyan's Further Responses to Request for Production of Documents, Set One is DENIED as MOOT. Just prior to this hearing, Plaintiff served further responses to Defendant's Request for Production of Documents, Set One. Therefore, because there is no separate statement as to those issues, and no meet and confer, the Court cannot rule on the motion. If Defendant finds Plaintiff's further responses to be deficient, it must bring another motion to compel. However, "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though…the requested discovery was provided to the moving party after the motion was filed." (CRC Rule 3.1348.) Here, Plaintiff waited almost five months after the filing of this motion to provide further responses. Plaintiff offers no explanation for this delay. Accordingly, the Court grants Defendant's request for sanctions in the amount of $1,062.50. Moving party to give notice.
13	**ZHEJIANG QUNYING VEHICLE CO LTD. VS. CHO INTERNATIONAL INC. 2023-01306529**	**1. MOTION TO BE RELIEVED AS COUNSEL OF RECORD** The motion of attorney Thomas Pedersen of Pedersen & Cheung LLP to withdraw as attorney of record for Defendant Cho International Inc., XICAI LI is **DENIED** pending in-camera review. (Code Civ. Proc. § 284, CRC 3.1362.) Counsel's declaration in support of his Motion is insufficient because it

		lacks any facts for this Court to determine whether withdrawal is appropriate. Counsel may be heard in-camera if the necessary facts to support his claim that his continued representation will violate the State Bar Act is confidential. Further, Counsel failed to file the requisite Proposed Order. Moving attorney is to give notice.