TENTATIVE RULINGS

Judge Michael J. Strickroth

DEPT C15

Department C15 hears Law and Motion matters on Mondays at 1:45 pm

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 will be the party's responsibility to 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; and**

- **For additional information, 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 10:00 am in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. <u>Please do not call the department for tentative rulings if tentative rulings have not been posted.</u> The court will not entertain a request to continue a hearing 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) 622-5215. 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: Department C15 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/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)1.)

PUBLIC ACCESS: In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. 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.

TENTATIVE RULINGS

Date: May 13, 2024

#	Case Name	Tentative
1	**Callas vs Callas** **2024-01372357**	**Case Management Conference** This Case Management Conference will be heard at the same time as the related case--#2.
2	**Callas vs Callas** **2022-01270782**	**Demurrer to Amended Complaint** **The Demurrer of Defendant Dustin Michael Benjamin Callas to the First Amended Complaint (FAC) of Plaintiff Susan Rae Abourezk Callas is OVERRULED.** <u>Legal Standard</u> "The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled. We not only treat the demurrer as admitting all material facts properly pleaded, but also give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer. [¶] The courts of this state have long since departed from holding a plaintiff strictly to the form of action that has been pleaded and

		instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. Where, as here, the demurrer is based on a claim that the pleading does not state facts sufficient to constitute a cause of action, if it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. [¶] In reviewing the legal sufficiency of a demurrer, we are not concerned with plaintiff's ability to prove the allegations of the complaint, or the possible difficulties in making such proof. Neither are we bound by the trial court's construction of the pleadings; instead, we exercise our independent judgment in determining whether the complaint states a cause of action." *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1268. At the pleading stage, the Court must liberally construe the complaint, drawing all reasonable inferences in favor of Plaintiffs' asserted claims. *Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 919. <u>First Cause of Action – Fraud:</u> Plaintiff alleges she was the spouse of James Callas (Decedent), who died on 12/20/21. (FAC, ¶¶ 3-5.) Defendant, Decedent's son from a prior marriage, is allegedly the personal representative and/or successor trustee of Decedent. (¶¶ 7, 17.) Plaintiff alleges Decedent learned of a terminal illness in the summer of 2020, after which Defendant encouraged Decedent to take actions to "illegally invade, if not eliminate in its entirety, [Plaintiff's] share of

		the community estate," including preventing Plaintiff from pursuing a divorce, transferring property from the community estate without Plaintiff's knowledge, and conspiring/aiding and abetting Decedent in obtaining an agreement from Plaintiff regarding the community property which Decedent did not intend to abide by. (¶¶ 16, 23-39.) In the first cause of action, Plaintiff alleges Defendant and Decedent conspired regarding a scheme to alter the community estate while Decedent informed Plaintiff he would not do so. (¶ 47.) Plaintiff alleges liability for conspiracy and aiding/abetting Decedent's fraudulent representations, which she relied upon in deciding whether to take steps to preserve her community property interests prior to Decedent's death. The elements of fraud are (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. "To prove a claim for civil conspiracy, [a plaintiff is] required to provide substantial evidence of three elements: (1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct. As is well established, civil conspiracy is not an independent tort. Rather, civil conspiracy is a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581.

		"A civil conspiracy, however atrocious, does not give rise to a cause of action unless a civil wrong has been committed resulting in damage. A bare agreement among two or more persons to harm a third person cannot injure the latter unless and until acts are actually performed pursuant to the agreement. Therefore, it is the acts done and not the conspiracy to do them which should be regarded as the essence of the civil action. [¶] We have summarized the elements and significance of a civil conspiracy: The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design. In such an action the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity. [¶] By its nature, tort liability arising from conspiracy presupposes that the coconspirator is legally capable of committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511. Defendant contends this cause of action is an untimely attempt to pursue a creditor's claim against Decedent/Decedent's estate under *Probate Code* section 9002 and *Code of Civil Procedure* section 9002, and that this Court lacks jurisdiction to adjudicate such a claim under the Probate Code. Defendant has not shown Plaintiff's allegations in the first cause of action arise exclusively under the Probate Code. At the pleading stage, Plaintiff has adequately alleged a basis for

		individual tort liability against Defendant based on allegations Decedent and Defendant entered into a conspiracy in which Decedent made fraudulent representations to benefit Defendant, which Plaintiff relied upon by agreeing not to pursue certain actions regarding the community property prior to Decedent's death. As a result of her reliance on Decedent's representations made for Decedent's benefit, Plaintiff alleges she has been harmed by interference with her community property rights. Plaintiff has adequately alleged the elements of fraud and facts which could support Defendant's liability under a theory of conspiracy or aiding/abetting. Therefore, the demurrer is overruled as to the first cause of action. <u>Second Cause of Action – Breach of Fiduciary Duty:</u> "The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately caused by that breach." *Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1405. The factual basis for Plaintiff's second cause of action lacks clarity. Paragraph 58 of the FAC states, "As incorporated by reference, each of these elements are alleged herein." Paragraphs 60-62 allege Decedent spent extravagant amounts of community property on other women, and Defendant stated he was "not oblivious" to this spending, which Plaintiff alleges must be accounted for. The California Supreme Court has held that conspiracy to commit breach of fiduciary duty requires an underlying fiduciary duty by the alleged conspirator:

		"The invocation of conspiracy does not alter this fundamental allocation of duty. Conspiracy is not an independent tort; it cannot create a duty or abrogate an immunity. It allows tort recovery only against a party who already owes the duty and is not immune from liability based on applicable substantive tort law principles." *Applied Equipment, supra,* at 514; see also *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102, 1107–1108. However, the Court of Appeal has held this rule applies to a conspiracy theory, not an aiding and abetting theory. In *Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1145, footnote two, the Fourth District, Division Three of the Court of Appeal held: "The banks assert an additional argument, likewise unmeritorious, effectively contending the Trustee is legally incapable of stating a cause of action against the banks for aiding and abetting breach of fiduciary duty. The banks assert that because they did not owe an independent fiduciary duty to DFJ, a non-depositor, they cannot be held liable for aiding and abetting the DFJ Fiduciaries' breach of fiduciary duty. The banks argue this result flows from case law holding that a person cannot be liable for conspiracy to commit a tort unless that person is capable of committing the underlying tort. (Applied Equipment Corp. v. Litton Saudi Arabia LTD. (1994) 7 Cal.4th 503, 514, 28 Cal.Rptr.2d 475, 869 P.2d 454.) In Neilson, supra, 290 F.Supp.2d at pages 1133–1136, the court rejected this very argument, explaining that under California law liability for aiding and abetting a tort differs fundamentally from liability based on conspiracy to commit a tort. For the reasons articulated so well in the *Neilson* opinion, we reject the banks' attempt to overlay the civil conspiracy 'independent duty'

		requirement onto an aiding and abetting claim." See also *Nasrawi v. Buck Consultants LLC* (2014) 231 Cal.App.4th 328, 345. To the extent Plaintiff incorporates her allegations of breach of fiduciary duty based on the fraud allegations set out above, these allegations are sufficient at the pleading stage to support liability for aiding and abetting breach of fiduciary duty. Therefore, the demurrer is overruled as to this cause of action. <u>Third Cause of Action – Declaratory Relief:</u> The elements of a claim for declaratory relief are (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546. Defendant contends this claim is based on the first and second causes of action and fails for the same reasons. However, for the reasons set out above under the first and second causes of action, Plaintiff has adequately alleged an actual controversy sufficient to state a claim for declaratory relief. Therefore, the demurrer is overruled as to the third cause of action. Responding party plaintiff to give notice. ## Case Management Conference Regardless whether the parties submit on the tentative and/or the tentative becomes the order of the court, the parties through counsel are required to attend the Case Management Conference, either remotely or in the courtroom.

3	**Mitre & Bevel, Inc. vs Sentinel Insurane Company, LTD** **2020-01171587**	**Motion to Strike Complaint** **Defendant The Village Shopping Center at Indian Wells, LLC's Motion to Strike portions of the Third Amended Complaint is GRANTED without leave to amend.** Defendant moves again to strike punitive damages allegations from paragraphs 42-46, 51-55 and the prayer paragraph 3 of the TAC regarding Plaintiffs' second and third causes of action. "The court may, upon a motion . . . or at any time in its discretion, and upon terms it deems proper: (a) [s]trike out any irrelevant, false, or improper matter inserted in any pleading[;] . . . [and/or] (b) [s]trike 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 of Civil Procedure* § 436. An "irrelevant matter," or "immaterial allegation," means: (1) an allegation that is not essential to the statement of a claim or defense; (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; or (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. *Code Civ. Proc.* § 431.10(b). A plaintiff may seek punitive damages only "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." *Civil Code* § 3294(a).) "Malice" means "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." *Civil Code* § 3294(c)(1). "Oppression" means "despicable conduct that subjects a person to

		cruel and unjust hardship in conscious disregard of that person's rights." *Civil Code* § 3294(c)(2). "Fraud" means "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." *Civ. Code* § 3294(c)(1). "Despicable conduct" is conduct that is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210. *Civil Code* section 3294(b) states, "An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." Regarding the second and third causes of action for trespass and nuisance, Plaintiffs' opposition identifies allegations in the TAC which they contend support the claim for punitive damages. The TAC removes the time period in which the Landlord failed to attenuate the mold. (See TAC ¶¶ 42(c), 51(c).) In the motion for leave to amend to file the TAC, Plaintiffs stated they erroneously pled Defendant failed to remediate the premises for ten days – October 18-28, 2018. This fact was added to the SAC, and apparently

		included as the result of incorrect work of a paralegal. The TAC removes these allegations to return the pleading back to prior vague allegations apparently on the grounds the time frame was incorrect. (See ROA 136). The "corrected" allegations in the TAC resemble Plaintiffs' FAC, against which the Court granted Defendant's Motion to Strike. (See ROA 85) Additionally, the TAC alleges [Defendant] was aware of the flood and refused to take any action to restore Plaintiffs' premises despite the [Defendant's] knowledge of the negative health consequences of floor water. The [Defendant] in "conscious disregard of the health, safety, and rights of Plaintiffs" refused to take steps to attenuate the mold. (TAC ¶¶ 42(d), 51(d).) The [Defendant's] failure to repair the damage caused damages to Plaintiffs' property. (TAC ¶¶ 42(e, 51(e).) The [Defendant's] property manager forcibly shut down Plaintiffs' business for three months because of the dangerous conditions caused by the flood, and eventually closed permanently because of the [Defendant's] refusal to replace Plaintiffs' lost revenue. (TAC ¶¶ 42(f) and (g), 51(f) and (g).) "To support an award of punitive damages on the basis of conscious disregard of the safety of others, a plaintiff 'must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.'" *Penner v. Falk* (1984) 153 Cal. App. 3d 858, 867. In cases involving injury to tenants, when "pleadings sufficiently allege facts setting forth long existing physical conditions of the premises which portend danger for the tenants," "set out that [defendant] knew of those conditions for up to two years, had power to make changes, but failed to take corrective and curative measures," then "these allegations would support an award of punitive

		damages." *Id.* In *Penner*, "[w]ithin two years before [the plaintiff] was assaulted, [defendant landlords] were aware that acts of trespass, robbery, burglary, physical assault, battery and rape had been committed on the premises and in the apartments," and "knew of tenant complaints that unauthorized persons were often in the building but respondent refused to exclude them or prevent their access*." Id.* at 866-867. The new allegations in the TAC are not substantially different than the allegations in the SAC, or prior complaints, and are not sufficient to support Plaintiffs' claim for punitive damages. There are no facts Defendant was aware of problems with the water heater and plumbing before it burst. Plaintiffs' new allegations regarding Defendant's knowledge of "negative health consequences" does not add anything substantive to Plaintiffs' prior allegations. Likewise, the subtraction of the timeframe for when Defendant allegedly failed to prevent the inundation of water does nothing to support Plaintiffs' claim for punitive damages. Plaintiffs do not cite any legal authority holding a landlord's delay in remediating property damage similar to the delay alleged in this case is sufficient to demonstrate malice, oppression, or fraud. *McDonnell v. Am. Tr. Co.* (1955) 130 Cal.App.2d 296, 299 [holding that allegations that "defendant, aware of the defective condition of the roof and drains and knowing they could cause damage, refused to repair them" was insufficient to state a claim for punitive damages]. Moreover, Plaintiffs now allege Defendant's property management company, and not actually Defendant, forcibly closed Plaintiff's business without any facts that Defendant directed the property management company to act in a certain way that indicates malice. The TAC also

		does not allege facts to support ratification of Defendant's directors, officers, or managing directors. Accordingly, the motion to strike is GRANTED. The Motion is granted **without leave to amend** because the Court has previously granted motions to strike punitive damages from three prior iterations of the complaint, and Plaintiffs have not demonstrated a reasonable possibility that further amendment will cure the deficient punitive damages claim. *Calvo v. HSBC Bank USA, N.A.* (2011) 199 Cal.App.4th 118, 121 [demurrer properly sustained without leave where there is no "reasonable possibility that the defect can be cured by amendment"]; *Nast v. State Bd. of Equalization* (1996) 46 Cal.App.4th 343, 346 [demurrer may be sustained without leave to amend if facts are not in dispute, nature of the plaintiff's claim is clear but, under substantive law, no liability exists]. Village to give notice. **Case Management Conference** Regardless whether the parties submit on the tentative and/or the tentative becomes the order of the court, the parties through counsel are required to attend the Case Management Conference, either remotely or in the courtroom.
4	**Jones-Jackson vs OC Patrol, Inc.** **2023-01332000**	**Demurrer to Complaint** **Defendants OC Patrol, Inc. and Jared Endresen's Demurrer to the Complaint is SUSTAINED in part and OVERRULED in part**.

		The hearing was continued to allow the parties to meet and confer as Defendant failed to meet and confer prior to filing the demurrer. The parties submitted a statement basically stating they were unable to reach any agreement. Defendants file this demurrer to the first through ninth causes of action on the grounds the Complaint fails to state facts sufficient to constitute a cause of action against Defendant and is "uncertain." **Defendant Endresen** The Code provides that unless the grounds for a demurrer are distinctly specified, it may be disregarded. *Code of Civil Procedure* § 430.60. In the introduction to the points and authorities Defendants argue Endresen is not a proper party because there are no allegations he exceeded the scope of his employment with OC Patrol. This was not identified as grounds for the demurrer nor is there any legal authority provided to support this assertion. Accordingly, the Court will not rule on whether Endresen is a proper party to this action. **Uncertainty** "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." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616. A party attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where that uncertainty can be found in the challenged pleading. *Fenton v. Groveland Community*

		Services Dept. (1982) 135 Cal.App.3d 797, 809 (disapproved on other grounds.) Defendants do not specify how the TAC is uncertain. A reading of the TAC reveals it is not so uncertain as to prevent Defendants from responding. Therefore, the special demurrer is OVERRULED. **Failure to Exhaust Administrative Remedies** "Courts have interpreted sections 12960, subdivision (c) and 12965, subdivision (b) to require that [b]efore filing a civil action alleging FEHA violations, an employee must exhaust his or her administrative remedies with DFEH. [By] fil[ing] "an administrative complaint with DFEH identifying the conduct alleged to violate FEHA." *Clark v. Superior Court*, (2021) 62 Cal.App.5th 289, 301. FEHA claims include complaints of harassment, discrimination, and/or retaliation based on a protected characteristic such as age, gender, disability, etc. Defendants contend Plaintiff failed to file an administrative complaint with the DFEH now known as the Civil Rights Department (CRD). However, Plaintiff has not alleged any violations of the FEHA. Plaintiff's claims involve various violations of the Labor Code. Therefore, there is no requirement to exhaust administrative remedies for non-FEHA claims. **First Cause of Action – Whistleblower Violations (*Labor Code* § 1102.5)** *Labor Code* Section 1102.5(b) reads, in pertinent part: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee

		disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." To come within the provisions of section 1102.5, "the activity disclosed by an employee must violate a federal or state law, rule or regulation." *Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 821-822. Here, Plaintiff alleges the following complaints prior to her termination: --On or about, May 31, 2022, after Plaintiff reported that she had worked seven consecutive days without time off, Defendants Supervisor Carson egregiously threatened Plaintiff by stating, "We can just cut your hours and hire more people!" --On or about November 11, 2022, Plaintiff reported the presence of marijuana in or around the guardhouse to Defendants Property Management Michelle Demark and Supervisor Desiree. --On or about November 11, 2022, Plaintiff reported to Defendants Michelle Demark and Supervisor Desiree that several employees were falling asleep on the job, leaving Plaintiff to man her post alone. --On or about November 18, 2022, Plaintiff reported the presence of empty beer bottles in the guardhouse to Defendants Supervisor Desiree.

		--On or about November 19, 2022, Defendants Supervisor Carson, following the receipt of Plaintiff's several complaints, exclaimed to her, "You're suspended!" Plaintiff, however, does not identify what laws were violated by such misconduct or which laws she believes to have been violated. Accordingly, the demurrer to the first cause of action is SUSTAINED. **Second Cause of Action - Unsafe Workplace Violations** *Labor Code* section 6400 requires every employer to "furnish employment and a place of employment that is safe and healthful for the employees therein." Courts have found that section 6400 establishes a general public policy requiring employers to provide a safe and secure workplace. *Franklin v. The Monadnock Co.* (2007) 151 Cal.App.4th 252, 259. Plaintiff relies on the same complaints alleged in her first cause of action for whistleblower to support her claim for violation of section 6400. Plaintiff does not indicate any employees were intoxicated at work or were the source of the beer bottles and marijuana. Plaintiff only states she saw empty beer bottles and "the presence of marijuana" around the guardhouse. Such allegations are simply insufficient to state a claim under Section 6400. Accordingly, the demurrer to the second cause of action is SUSTAINED. **Third Cause of Action – Failure to Provide Meal and Rest Periods** Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there

		is no such requirement for non-FEHA claims. Accordingly, the demurrer to the third cause of action is OVERRULED. **Fourth Cause of Action – Failure to Pay Wages** Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there is no such requirement for non-FEHA claims. Defendants also claim the cause of action contains only self-serving, conclusory statements but does not provide how, when and in what specific manner Defendants filed to provide Plaintiff her wages. Defendants, however, have cited no legal authority such claims must be pled with specificity. Plaintiff contends she was entitled to pay for meal and rest breaks, and Defendant failed to pay her such wages. Such allegations are sufficient to state a claim under the Labor Code. Accordingly, the demurrer to the fourth cause of action is OVERRULED. **Fifth Cause of Action – Waiting Time Penalties** Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there is no such requirement for non-FEHA claims. Again, the allegations in the Complaint are sufficient to state a claim for waiting time penalties. Such penalties apply if an employer fails to timely pay wages at termination. *Labor Code* § 203(a). Because Plaintiff has stated a claim for failure to pay wages, she has also stated a claim for waiting time penalties.

		Accordingly, the demurrer to the fifth cause of action is OVERRULED. **Sixth Cause of Action – Failure to Furnish Compliant Wage Statements** Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there is no such requirement for non-FEHA claims. Defendants argue the Complaint contains no specific facts as to how, when, and in what specific manner Defendants failed to provide accurate, itemized statements. Defendants, however, have cited no legal authority such claims must be pled with specificity. The allegations in the Complaint are sufficient to state a claim for violation of the Labor Code. Therefore, the demurrer to the sixth cause of action is OVERRULED. **Seventh Cause of Action – Unfair Business Practices** Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there is no such requirement for non-FEHA claims. Accordingly, the demurrer to the seventh cause of action is OVERRULED. **Eighth Cause of Action – Retaliation and Wrongful Termination in Violation of Public Policy** Defendants argue Plaintiff failed to exhaust her administrative remedies. Plaintiff's claim of retaliation and wrongful termination. As stated above, there is no such requirement for non-FEHA claims. Accordingly, the demurrer to the eighth cause of action is OVERRULED.

		Ninth Cause of Action – Failure to Provide Employee Personnel File Defendants argue Plaintiff failed to exhaust her administrative remedies. As stated above, there is no such requirement for non-FEHA claims. Moreover, Plaintiff alleges she requested her wage statements pursuant to *Labor Code* § 226 and Defendants failed to provide them. This is sufficient to state a claim. Accordingly, the demurrer to the ninth cause of action is OVERRULED. Plaintiff has 20 days leave to amend the complaint. **Case Management Conference** If the parties submit on the tentative and/or the tentative becomes the order of the Court, the Case Management Conference is continued to 11/04/2024 at 1:45 PM in Department C15. If the parties do not submit on the tentative or the tentative does not become the order of the Court, counsel for the parties are required to attend the Case Management Conference either remotely or in the courtroom.
5	**City of Costa Mesa vs Hrubovcak** **2023-01340223**	**Motion to Appoint Receiver** **The Petition of City of Costa Mesa ("City") for an Order to Abate Substandard Building and for Appointment of Richardson C. Griswold as receiver is CONTINUED to July 1, 2024, at 1:45 PM in Department C15.**

		"Sections 17980.6 and 17980.7 of the Health and Safety Code compose a statutory scheme providing certain remedies to address substandard residential housing that is unsafe to occupy. Pursuant to section 17980.6, an enforcement agency may issue a notice to an owner to repair or abate property conditions that violate state or local building standards and substantially endanger the health and safety of residents or the public. Section 17980.7 provides that, if the owner fails to comply with the notice despite having been afforded a reasonable opportunity to do so, the enforcement agency may seek judicial appointment of a receiver to assume control over the property and remediate the violations or take other appropriate action." *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 912. *Health and Safety Code* section 17980.6 states, in pertinent part, "If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit."

		Section 17980.7 provides, in pertinent part, "If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6 . . . (c) The enforcement agency . . . may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was posted in a prominent place on the substandard building and mailed first-class mail to all persons with a recorded interest in the real property upon which the substandard building exists not less than three days prior to filing the petition. The petition shall be served on the owner pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. [¶] (1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation." Appointment of a Receiver: "In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation." *Health & Safety Code* § 17980.7(c)(1). The City relies on *City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458 (*Reddy*), to argue that the Owner was afforded a "reasonable opportunity" to correct the violations. In *Reddy*, the notice and order to abate or repair gave the property owner 30 days to correct 76 violations. *Id.* at p. 466. The city sought appointment of a receiver 18 months later, which the court found was "unquestionably a reasonable time within

		which to bring the property into compliance." *Ibid.* Here, the City has shown it has been attempting to gain compliance on the real property located at 374 Woodland Place, Costa Mesa, California 92627, identified by Assessor's Parcel Number 426-232-02 ("Subject Property") since April 2019. (Jimenez Decl., ¶¶ 4, 8.) On April 17, 2023, Code Enforcement Officer Rene Jimenez conducted a full inspection of the Subject Property which is a multi-family residential structure with three units. (Jimenez Decl., ¶ 5.) The inspection was conducted pursuant to an Inspection Warrant issued by the Court. (Jimenez Decl., ¶ 27.) Jimenez states that: "The inspection revealed several violations of State and local law on the Subject Property including, but not limited to, the following: upon entering the downstairs unit (Unit A) believed to be occupied by the Owner, the living room was cluttered with couches, desks, chairs, and pet items. I was able to observe that the interior construction work on the living room window was incomplete. The hallways were blocked from safe egress due to an accumulation of excessive storage of personal property items. The first bedroom appeared unlived in and used for storage. Many different items were stacked on top of one another almost touching the ceiling in some areas creating a risk of collapse and creating further danger by blocking egress during a fire or other emergency. The second bedroom was similar, but it appeared to be an office or workstation for someone, but once again many boxes and computer-related items were stacked on top of each other. I did not enter the master bedroom because it was momentarily occupying the owners' pets for purposes of the inspection. The kitchen again was similar to the bedrooms. Many boxes and computer parts

		were scattered over the kitchen table and countertops. The back patio was littered with spare or used housing parts and/or construction items such as screen doors, sliding doors, lawn chairs, a hot tub, and a water fountain. While observing everything in the back patio, I observed that an extension cord was altered/spliced and wrapped up in electrical tape to connect two ends to provide power to a lighting fixture. The extension cord was plugged in from an outlet originating from the central heating closet. The heating unit appeared outdated and possibly nonfunctional. I observed that the Owner only had access to two middle garages (out of three) and they were full of construction equipment and items. There was no additional space for vehicles to park." (Jimenez Decl., ¶ 27.) Jimenez also inspected Unit B upstairs, and discovered it was vacant and appeared unaltered. (Jimenez Decl., ¶ 28.) As to Unit C upstairs, a key could not be located, and the tenant was not present to unlock it. (Jimenez Decl., ¶ 28.) An inspection through the sliding glass door revealed the unit appeared unaltered and well-taken care of but was not fully inspected. (Jimenez Decl., ¶ 28.) Before walking downstairs, Jimenez observed that the railings on the balcony were flimsy because he was able to wiggle them without applying excess force and while checking the railings, he was able to see degrading floor plastering and substandard weatherproofing. (Jimenez Decl., ¶ 28.) The laundry room on the Subject Property appeared unaltered, but the water heater was not properly elevated off the ground and there was no dripping pan underneath it. (Jimenez Decl., ¶ 29.) The utility connections also appeared substandard. (Jimenez Decl., ¶ 29.)

		On June 13, 2023, the City issued a Notice to Abate pursuant to *Health and Safety Code* section 17980.6. (Moy Decl., ¶ 4, Ex. 2.) While the Notice gave the Owner only three (3) days to abate all violations cited in the Notice to Abate, the Court finds this was a sufficiently reasonable opportunity to correct. On June 21, 2023, the City gave Notice of Intent to File an Action with the Court Petitioning for the Appointment of Receiver and Order to Abate Substandard Building. (Moy Decl., ¶ 5, Exs. 3, 4.) On July 12, 2023, Officer Jimenez re-inspected the Subject Property with the Owner and found that while the Owner had removed some of the excess clutter, other violations remained. (Jimenez Decl., ¶ 33.) Thereafter, on July 31, 2023, the City filed its action. The Owner filed opposition on August 24, 2023, in which he avers he has been working five to six days a week on cleaning the property and has hired another individual to assist with the remediation. (Hrubovcak Decl., ¶ 3.) The Owner further states he has prepared a proposed remediation plan, which should be completed within 90 days. (Hrubovcak Decl., ¶ 4.) In its reply, the City states "[f]ull compliance cannot be verified without an inspection by Code Enforcement." (Reply, p. 3, lns. 18-19.) The City has also filed a declaration of Code Enforcement Officer Jonathon Jennings who inspected the Subject Property recently on April 10, 2024, from the street. (Jennings Decl., ¶ 6.) Jennings observed no change to the exterior conditions previously observed. (Jennings Decl., ¶ 6.) Jennings also confirmed in the City's permit system that no permits have been applied for or obtained for the windows as required by law. (Jennings Decl., ¶ 7.) The Owner appears to be making an effort to correct the violations, but at this time, it is unclear

		to what extent the Owner has already remediated the property. Since the Owner has had 11 months to remediate the property, the court finds that it would be appropriate to appoint a Receiver if the Owner has not already substantially remedied the violations. To determine the extent of remediation the Owner has already undertaken, the Court ORDERS a re-inspection of the entire Subject Property by City's Code Enforcement to take place between 05/28/2024 and 06/14/2024. The Owner of the Subject Property is ORDERED to fully cooperate with the City in the inspection. The City is to submit the inspection report which lists the violations that Owner has remediated and all violations that still exist no later than 9 court days before the CONTINUED hearing. Moving party to give notice.
6	**Fredricks vs Honick** **2022-01264846**	**Motion to Compel Deposition** **Defendant Lesa Honick's Motion to Compel the Deposition of Plaintiff Julie Fredricks is DENIED in part and GRANTED in part. Ms. Fredricks deposition took place on March 24, 2024. Therefore, the motion is moot as to compelling her deposition.** The Motion is GRANTED as to Defendant's request for sanctions against Plaintiff and her counsel. *California Rules of Court*, Rule 3.1348(a) provides in pertinent part: The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested

		discovery was provided to the moving party after the motion was filed. Here, Plaintiff's deposition was originally noticed for May 24, 2023, but did not go forward until March 21, 2024, despite Defendant's multiple attempts to obtain alternative dates for the deposition. As a result of Plaintiff's counsel's delay in providing dates and failing to appear at the deposition as noticed, Defendant has incurred $839.95 in costs (non-appearance deposition transcript) and $2,908.75 (8.95 hours x $325/hour) in attorney's fees. Therefore, the Court orders sanctions in the amount of $3,749.70 against Plaintiff and her counsel, joint and several. Defendant to give notice.
7	**Pine Tree Home Inc. vs Yu** **2022-01270603**	**Motion to Quash Discovery Subpoena** Off Calendar. Notice of withdrawal filed 5/6/2024.
8	**Lang Van, Inc. vs Bihaco Communication Trading & Service Corporation** **2022-01271713**	**Motion to Compel Production** **Motion to Compel Production** Off Calendar. Notices of withdrawal filed 05/02/2024.
9	**Patterson vs Jamaica Bay Inn**	**Motion to Compel Answers to Form Interrogatories**

	2020-01148437	**Defendant Pacifica Hotel Management, LLC's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Pacifica Hotel Management's Form Interrogatories, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California Rules of Court*, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. **Motion to Compel Answers to Form Interrogatories** **Defendant Jamaica Bay Inn's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Jamaica Bay Inn's Form Interrogatories, Set One (1) is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California*

		Rules of Court, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. **Motion to Compel Answers to Form Interrogatories** **Defendant Pacific Hotel Company's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Pacific Hotel Company's Form Interrogatories, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California Rules of Court*, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. **Motion to Compel Answers to Special Interrogatories** **Defendant Pacifica Hotel Management, LLC's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to**

		Defendant Pacifica Hotel Management's Special Interrogatories, Set One (1), is MOOT. After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California Rules of Court*, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. ## Motion to Compel Answers to Special Interrogatories **Defendant Jamaica Bay Inn's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Jamaica Bay Inn's Special Interrogatories, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California Rules of Court*, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. **Motion to Compel Answers to Special Interrogatories** **Defendant Pacific Hotel Company's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Pacific Hotel Company's Special Interrogatories, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *California Rules of Court*, rule 3.1348, subd. (a) ["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.]. Moving Defendant to give notice. **Motion to Compel Production** **Defendant Pacifica Hotel Management, LLC's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Pacifica Hotel Management's Request for Production of Documents, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the

		Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *Cal. Rules of Court*, rule 3.1348, subd. (a). Moving Defendant to give notice. **Motion to Compel Production** **Defendant Jamaica Bay Inn's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Jamaica Bay Inn's Request for Production of Documents, Set One (1), is MOOT.** After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *Cal. Rules of Court*, rule 3.1348, subd. (a). Moving Defendant to give notice. **Motion to Compel Production** **Defendant Pacific Hotel Company's motion to compel plaintiff Arleen J. Patterson, to provide responses, without objection, to Defendant Pacific Hotel Company's Request for Production of Documents, Set One (1), is MOOT.**

		After Defendant filed this Motion, Plaintiff served responses to the request. Therefore, the Motion is MOOT to the extent it seeks to compel responses to the discovery request at issue. The Court, however, awards a monetary sanction against Plaintiff in the amount of $300 payable to Defendant no later than 30 days from the date of the service of notice of this order. *Cal. Rules of Court*, rule 3.1348, subd. (a). Moving Defendant to give notice. **Case Management Conference** Regardless whether the parties submit on the tentatives and/or the tentatives become the order of the court, the parties through counsel are required to attend the Case Management Conference, either remotely or in the courtroom.
10	**Rendon vs County of Orange** **2021-01228590**	**Motion for Summary Judgment and/or Adjudication** **Defendants', County of Orange, Keith Franklin and Ever Zelaya, Motion for Summary Judgment is GRANTED.** Defendants' evidentiary objections in reply are overruled as the evidence contained within are not material to the disposition of the motion. *Code of Civil Procedure*, § 437c(q). Plaintiff's claims are barred by res judicata. "'Res judicata' describes the preclusive effect of a final judgment on the merits." *Association of*

		Irritated Residents v. Department of Conservation (2017) 11 Cal. App. 5th 1202, 1218. "Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." *Ibid*. "[I]f a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action." *Id*. at 1218-1219. "Three elements must exist for res judicata (or claim preclusion) to apply: '(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding.'" *Id*. at 1219. "Only a final judgment on the merits between the same parties or their privies and upon the same cause of action is entitled to the res judicata effect of bar or merger." *Ibid*. "A party who asserts claim or issue preclusion as a bar to further litigation bears the burden of proving that the requirements of the doctrine are satisfied." *Hong Sang Market, Inc. v. Peng* (2018) 20 Cal. App. 5th 474, 489. Defendants' motion to dismiss in Rendon II was based on Plaintiff's failure to state a claim. (UDMF 29.) The court granted Defendants' motion to dismiss in Rendon II. (UDMF 37.) The dismissal was affirmed on appeal. (UDMF 42.) Thus, the judgment is final. "A dismissal for failure to state a claim (Fed. Rules Civ. Proc., rule 12(b)) is ordinarily treated as an adjudication on the merits. (*Bell v. Hood* (1946) 327 U.S. 678, 682; *Federated Department Stores, Inc. v. Moitie* (1981) 452 U.S. 394, 399, fn. 3; *Bobby Jones Garden Apartments, Inc. v. Suleski* (5th Cir. 1968) 391

		F.2d 172.)" *Boccardo v. Safeway Stores, Inc.* (1982) 134 Cal.App.3d 1037, 1042. "The statutory term with prejudice clearly means the plaintiff's right of action is terminated and may not be revived. A dismissal with prejudice bars any future action on the same subject matter." *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 810. Here, Defendants' motion to dismiss in Rendon II was based on Plaintiff's failure to state a claim. Plaintiff's failure to timely oppose the motion was deemed consent to grant the motion. (RJN, Ex. 19.) Thus, Rendon II was dismissed for failure to state a claim. Therefore, for the purposes of res judicata, Plaintiff's state law claims asserted in this case were adjudicated on the merits. Accordingly, Plaintiff's claims are barred by res judicata. The Motion for Summary Judgment is GRANTED. Defendants are to prepare, file and serve a Proposed Judgment no later than 05/23/2024. The Court schedules this matter for an Order to Show Cause Hearing Re: Submission of the Proposed Judgment for 06/03/2024 at 8:30 AM in Department C15. If the Proposed Judgment is timely submitted, the Order to Show Cause will go off calendar. Defendants to give notice.
11	**Doe vs Doe 2** **2022-01260556**	**Motion for Summary Judgment and/or Adjudication** **Defendant Doe 2's Motion for Summary Judgment is GRANTED.** Defendant request for judicial notice of Plaintiff's complaint is granted.

		Based on the evidence/objections before the Court as contained in the papers, the Court rules as follows on Plaintiff's Evidentiary Objections: Objection Nos. 1-5 to Declaration of Michael W. Caspino: **Sustained** Objections Nos. 6-8 to Declaration of Laurie Peterson: **Sustained** Based on the evidence/objections before the Court as contained in the papers, the Court rules as follows on Defendant's Evidentiary Objections to Exhibit 2, excerpts from Plaintiff's deposition transcript: Objection Nos. 1-5: **Sustained.** Objection No. 6: **Sustained in part and Overruled in part.** Sustained as to "Several times at the movie theater." To the extent DOE 2 is answering the preceding question at p. 73:21-24 "the only time you ever heard him say, 'I'm with the Big Brothers Big Sisters program,' was one time at a movie thereafter where he was trying to get a discounted ticket; is that correct?" Overruled as to "We went to the movies a lot." *Code of Civil Procedure* section 437c(c) provides: The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all

		inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact. Section 437c(f)(1) provides, A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Section 437c(o) provides: A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. Section 437c(p) provides as follows for purposes of motions for summary judgment and summary adjudication:

		(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant 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. (2) A defendant or cross-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. Initially, Defendant's motion for summary judgment/adjudication is procedurally deficient. A party moving for summary judgment or summary adjudication must support the motion with a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. *Code*

		Civ. Proc., § 437c, subd. (b)(1). The separate statement must separately identify each cause of action that is the subject of the motion and each supporting material fact claimed to be without dispute with respect to the cause of action. *California Rules of Court,* Rule 3.1350(d). Denial or acceptance of a defective separate statement is within the court's discretion. *Code Civ. Proc.*, § 437c(b)(1); *Wilson v. Blue Cross of Southern Calif.* (1990) 222 Cal.App.3d 660, 671, abrogation on other grounds recognized by *Mintz v. Blue Cross of Calif.* (2009) 172 Cal.App.4th 1594, 1607 [where only one of several codefendants filed separate statement, and it made no mention of others, summary judgment could not be granted in their favor]; *Holt v. Brock* (2022) 85 Cal.App.5th 611, 619-620, [court had discretion to consider separate statement where issue of defense not set out in statement nor in notice of motion, where court ruled based on undisputed relevant facts and prior court rulings that were subject to judicial notice]. Here, while Defendant moves for summary judgment, and in the alternative summary adjudication, of Issue No. 3 regarding the third cause of action for Negligent Hiring/ Retention, Defendant's separate statement omits any mention of Issue No. 3. Re Negligent Hiring/Retention. However, since the entire motion is based upon the same argument concerning a lack of relationship between Plaintiff and DOE 2 and the same material facts, the court should exercise its discretion and consider the motion as it relates to the third cause of action for Negligent Hiring/Retention despite omission of the third cause of action from the separate statement. Plaintiff seeks to hold DOE 2 liable in this case based on the contention DOE 5 was Plaintiff's "big brother" from DOE 2's Big Brothers program. In its motion, Defendant argues the undisputed evidence shows Plaintiff and DOE 5

		were not part of DOE 2's Big Brothers program at the time of the sexual abuse and, therefore, Plaintiff cannot prove essential elements of each of the causes of action alleged against it, e.g., duty, outrageous conduct, a business, service, or professional relationship, a fiduciary relationship or causation. Defendant has met its initial burden. First, Plaintiff acknowledges DOE 5's deposition testimony indicating he did not volunteer as a big brother through DOE 2 is admissible evidence. Plaintiff argues DOE 5's testimony is inconsistent with other statements DOE 5 made at the time of the abuse that Plaintiff was his Little Brother as part of DOE 2's Big Brother program and that staff members of Albert Sitton Home informed Plaintiff DOE 5 was to be his Big Brother as part of the program. However, as noted above, these statements are inadmissible under *Evidence Code* 1200. Further, DOE 5's mere pointing out the Big Brothers building does not tend to prove one way or the other whether he was part of the program. Second, Defendant has shown Plaintiff does not presented admissible evidence proving Plaintiff was part of the Big Brothers program. Plaintiff states he and DOE 5 were part of DOE 2's Big Brother Program because someone from DOE 1's Albert-Sitton Hall introduced DOE 5 to Plaintiff as his "Big Brother." But Plaintiff also testifies he in fact could not recollect anyone using such words-only that he had that impression. Further, as stated above, the statements regarding the introduction are inadmissible under *Evidence Code* 1200. Plaintiff also testified that DOE 5's statements to third parties, namely movie theaters, that DOE 5 was Plaintiff's "Big Brother." Again,

		these statements are inadmissible under *Evidence Code* 1200. Third, Plaintiff offers the testimony of Jeffrey Schilling to establish that DOE 5 was part of the Big Brothers program. According to Mr. Schilling, he volunteered with DOE 5 at the Albert Sitton home and Plaintiff offers Mr. Schilling's testimony to establish that DOE 5 was part of the Big Brothers program. However, Mr. Schilling's testimony makes it clear he does not remember what volunteer organization he signed up with; nor does he mention anything about DOE 5 having any connection to DOE 2. Since Defendant has met its initial burden, the burden shifts to Plaintiff to establish a triable issue of material fact. However, as discussed above, Plaintiff has failed to rebut DOE 2's evidence as reflected in the papers submitted. Based on the foregoing, the motion is GRANTED. Moving party is to prepare, file and serve a Proposed Judgment consistent with this ruling. The Court sets an Order to Show Cause Hearing Re: Submission of the Proposed Judgment for 06/03/2024 at 8:30 AM in Department C15. If the Proposed Judgment is submitted prior to that date, the Order to Show Cause will go off calendar. Moving party to give notice.
12	**Vasquez-Penaloza vs 5 Park Plaza** **2020-01176303**	**Motion for Summary Judgment and/or Adjudication** **The Motion for Summary Judgment or Adjudication by Defendant Mesquemai, Inc.,**

		sued as Olympique Façade Access Consulting, is DENIED. Defendant moves for summary judgment as to the first cause of action for negligence and the second cause of action for premises liability in Plaintiff's complaint. Defendant also moves for summary judgment as to the substantially similar causes of action in the Complaint-in-Intervention by Intervenor Applied Risk Services, Inc., which provided workers compensation insurance to Plaintiff's employer. The Court declines to consider the opposition filed by Defendant The Irvine Company LLC, because Defendant does not have standing to oppose the motion under *Code of Civil Procedure* section 437c(p)(2), which provides that the burden shifts to "the plaintiff or cross-complainant" in opposing a motion for summary judgment. The summary judgment statute does not provide for a Co-Defendant to oppose a motion for summary judgment when the motion is not directed at the pleading of the Co-Defendant. **Summary of Undisputed Facts** Plaintiff, a window cleaner, fell while working at 5 Park Plaza in Irvine. Plaintiff fell from the parapet, a low protective wall at the top of the building, onto the roof – an approximately eight-foot fall. Plaintiff needed to access the parapet to reach the swing stage, a lowering platform used to clean the exterior windows of the multi-story building. Moving Defendant (Mesquemai, Inc. dba Olympique Façade Access Consulting) is a consulting company retained by Defendant The Irvine Company to ensure compliance with OSHA regulations for window cleaning.

		Defendant prepared a February 2010 Façade Access Code Compliance Assessment in which it recommended the Irvine Company acquire a ladder with a platform 42 inches below the top of the parapet to comply with OSHA regulations. Plaintiff alleges Defendant negligently recommended a ladder which was dangerous and did not meet the applicable standards under the California Code of Regulations. (Complaint, ¶ 13.) Plaintiff alleges the ladder used to access the parapet wall was too short, "light and flimsy," lacking the appropriate grip on the bottom of its legs, requiring Plaintiff to "hop onto and off" the parapet wall and "dangerously climb onto the ladder's slippery rails". (Complaint, ¶ 11.) Plaintiff also alleges Defendant was negligent with regard to providing instructions/warnings for use of the ladder. (Complaint, ¶¶ 14-15.) Defendant asserts there is no triable issue as to its breach of duties, which it states included, "providing a recommendation to [The Irvine Company] to obtain a ladder with a landing height compliant with Cal OSHA standards and authoring the OPOS for accessing the parapet." (Reply at 1:9-11.) **<u>First Cause of Action - Negligence:</u>** "To succeed in a negligence action, the plaintiff must show that (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the duty, and (3) the breach proximately or legally caused (4) the plaintiff's damages or injuries." *Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 662. Here, Defendant contends there is no triable issue as to its duties related to recommending the subject ladder and providing instructions for its use. Because there is a triable issue as to whether Defendant breached a duty

		regarding providing instructions for use of the ladder, the motion is denied as to the first cause of action. <u>There is a Triable Issue as to Whether the OPOS met Applicable Standards:</u> Plaintiff and Intervenor seek to hold Defendant liable for providing insufficient instructions which caused Plaintiff to fall while attempting to descend from the parapet to the roof, while Defendant contends Plaintiff is solely at fault for improper use of the ladder despite Defendant's instructions. Defendant contends Plaintiff failed to follow the Operating Procedures Outline Sheet (OPOS) by positioning the ladder parallel to the parapet rather than perpendicular as depicted in its instructions. (Reply, 4:20-23.) In support of the motion, Defendant cites the testimony of its expert witness Mr. Garcia, who opines, "Plaintiff failed to follow the procedure outlined in the OPOs, which caused him to fall from the ladder." (Garcia Decl., ¶ 6.) However, in the supplemental brief, Plaintiff contends Mr. Garcia conceded in deposition that the OPOS procedure cited in paragraph six of his declaration did not discuss how to get down from the parapet. (Supp. Brief, 3:1-8; Garcia Depo., 29:19-30:3.) Plaintiff and Intervenor have presented expert witness testimony that the OPOS provided by Defendant was not compliant with applicable regulations and standards. (Tinker Decl., ¶ 17; Hughes Decl., ¶ 8.) Plaintiff's expert witness Mr. Tinker, who has several decades' experience in occupational safety and exterior building access, opines the OPOS was deficient for the following reasons:

		"a. The OPOS fails to detail how to safely reposition the suspended scaffold in relation to the parapet. b. The OPOS fails to direct safe access and egress in relation to the top of the parapet. c. The OPOS fails to identify anchorage points for personal fall arrest systems and building maintenance equipment in relation to accessing the top of the parapet. d. The OPOS fails to identify fall protection requirements to prevent a worker from falling inboard of the parapet during prescribed operating procedures. e. The OPOS fails to identify dangerous areas on the roof related to preventing a worker from falling inboard of the parapet during prescribed operating procedures. f. The OPOS fails to identify equipment limitations, load ratings and special use conditions related to the subject access ladder. g. The OPOS fails to identify pre-operational, operation and maintenance inspections related to the subject ladder. h. The OPOS fails to identify the danger zone at the top of the parapet related to preventing a worker from falling inboard the parapet during prescribed operating procedures." (Tinker Decl., ¶ 17.) Intervenor's expert Mr. Hughes similarly opines the procedures provided by Defendant were insufficient. (Hughes Decl., ¶¶ 8-15.) In reply, Defendant contends it provided a pictorial instruction regarding use of the ladder in compliance with *California Code of Regulations* § 3298(a)(4), which provides, "Pictorial methods of instruction may be used in

		lieu of written work procedures, if employee communication is improved using this method." Defendant further contends Cal OSHA did not issue a citation regarding the OPOS, and that pictorial instructions were likely more effective because Plaintiff stated in discovery that he speaks Spanish and does not speak English with ease. Defendant has not established it is entitled to summary judgment because it provided pictorial instructions. Defendant has not presented expert testimony or other undisputed evidence showing the pictorial instructions were sufficient as a matter of law. Based on the expert testimony cited by Plaintiff and Intervenor, there is a triable issue as to whether the instructions provided by Defendant were sufficient and compliant with applicable regulations. Defendant also has not established it is entitled to summary judgment because Plaintiff cannot speak English with ease. Defendant has not presented evidence that Plaintiff was specifically unable to understand the OPOS or that Plaintiff's employer could not have shared the information in the OPOS with Plaintiff. There is a triable issue as to whether the insufficiencies of the OPOS pointed out by Plaintiff's expert caused or contributed to the incident. Finally, Defendant has not cited any legal authority showing Cal OSHA's apparent decision not to issue a citation to Defendant regarding the OPOS is dispositive of its liability for purposes of this civil lawsuit. Defendant also contends Plaintiff and his employer had a duty to ensure Plaintiff was adequately trained based on the manufacturer's recommendations under CCR Appendix C. However, in light of the evidence that Defendant's instructions were insufficient, Defendant has identified an issue of comparative

		fault, which is not adequate grounds for summary judgment. <u>The Court Declines to Decide Whether the Ladder Violated Applicable Regulations:</u> In the motion, Defendant contends its recommended ladder complied with *California Code of Regulations*, Title 8, section 3294. (Motion, p. 6.) In opposition, Plaintiff submits the declaration of expert Gregg Tinker, who declares the ladder recommended by Defendant was not in compliance with section 3294. (Tinker Decl., ¶ 14.) In reply, Defendant responds by arguing section 3294 does not apply because the building was constructed in 1987, and the ladder did comply with the applicable regulations for buildings constructed prior to 1993. (Reply, pp. 3-5.) The Court provided Plaintiff the opportunity to file a supplemental brief responding to Defendant's reply arguments, which Plaintiff filed on 5/6/24. Intervenor filed a notice of joinder of Plaintiff's supplemental brief. Plaintiff's supplemental brief does not address the issue regarding applicability of section 3294, and Plaintiff apparently concedes this issue for purposes of this motion. However, Defendant did not move separately for adjudication of the issue of its duty regarding the ladder versus its duty regarding the OPOS. *Code Civ. Proc*. § 437c(f)(1); *California Rules of Court*, Rule 3.1350(b). Because there is a triable issue as to Defendant's liability regarding the OPOS, the Court declines to determine the issue of Defendant's duty regarding its recommendation of the subject ladder at this stage. Therefore, the motion is denied as to the first cause of action.

		<u>Second Cause of Action – Premises Liability:</u> The elements of premises liability are the same as those for negligence. *Jones v. Awad* (2019) 39 Cal.App.5th 1200, 1207. However, a "defendant cannot be held liable for the defective or dangerous condition of property which it did not own, possess, or control. Where the absence of ownership, possession, or control has been unequivocally established, summary judgment is proper." *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 134. Here, Defendant contends it cannot be liable for premises liability because it only provided recommendations regarding safe access and did not own/control the subject premises. (Motion, 9:3-19.) Plaintiff does not dispute Defendant's lack of ownership of the property or address the second cause of action in its opposition. (Plaintiff's Response to Fact 1.) However, Intervenor contends Defendant "had control of the subject premises while it was assessing the premises for OSHA compliance and maintained that control by and through its recommendations." (Intervenor's Response to Fact 1.) Intervenor cites case law holding that control of the premises is alone sufficient to support premises liability. (Intervenor's Opp. at 15:21-28.) In reply, Defendant does not respond to Intervenor's contention Defendant may be liable for premises liability due to its alleged control of the premises via its recommendations. Therefore, Defendant apparently concedes the existence of a triable issue as to control of the premises for purposes of this motion. For this reason and the reasons stated above regarding evidence of Defendant's negligence, the motion is therefore denied as to the second cause of action.

		Plaintiff to give notice.