TENTATIVE RULINGS
Judge SHEILA RECIO, Dept. W8

Law & Motion is heard on Fridays at 9:30 a.m.

CIVIL COURT REPORTERS: Department W8 does not provide the services of an official court reporter for law and motion hearings. Please see the court's website at http://www.occourts.org/directory/cris/availability.html for rules and procedures for court reporters obtained by the parties.

POSTING TENTATIVES: Department W8 endeavors to post tentative rulings for law and motion hearings by 5 p.m. on Thursdays. Do NOT call the Department for a tentative ruling if none is posted. **The court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

SUBMITTING ON THE TENTATIVE: If ALL sides intend to submit on the tentative ruling, please advise the Department's clerk or courtroom attendant by calling **(657) 622-5908**. If so advised, the tentative ruling shall become the court's final ruling and the prevailing party shall file and serve a Notice of Ruling and if appropriate, prepare a Proposed Order pursuant to Rule 3.1312 of the California Rules of Court. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

NO 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 will determine if the matter is taken off calendar, the tentative ruling becomes the final ruling, or a different order is issued at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

REMOTE APPEARANCES: Department W8 conducts non-evidentiary proceedings, including law and motion via Zoom through the court's online check-in process available through the court's website at https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings. All counsel and self-represented parties appearing for such hearings **must check-in at least 5 minutes before** the 9:30 a.m. hearing on Friday.

The court encourages the parties and attorneys to take advantage of remote appearances for non-evidentiary hearings to reduce travel time, parking costs, and potential hearing delays. However, keep in mind that potential technological or audibility issues could arise when using remote

technology, which may require a delay of or halt the proceedings. To help avoid such, please log in and test your equipment in advance of the hearing. Also, if technological or audibility issues arise during the proceeding, please call **(657) 622-5908.**

All remote video participants shall comply with the court's **"Guidelines for Remote appearances"**, found at https://www.occourts.org/system/files/guidelinesforremoteproceedings.pdf .

IN-PERSON: Parties preferring to appear in-person for a law and motion hearing may do so, consistent with Section 367.75 of the Code of Civil Procedure and Orange County Local Rule 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

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.

May 10, 2024

#	Case Name	
2	Bitech Technologies Corporation vs. Cao	Motion to Dismiss (re jurisdiction) Demurrer (re Complaint) Motion to Strike (re treble damages) Motion to Strike (re punitive damages) (Case Management Conference) 1. ***Motion to Dismiss (re jurisdiction)*** (ROA 103) The court **DENIES** Defendant MICHAEL CAO's ("Cao") motion to dismiss for lack of subject matter jurisdiction. Cao's motion argues that the court should dismiss this action under Code of Civil Procedure section 581 (without identifying the subsection under which Cao is moving) for lack of subject matter jurisdiction. The motion appears to conflate the concepts of subject matter jurisdiction, personal jurisdiction, and proper forum as Cao cites caselaw on all three doctrines. The crux of Cao's motion

		appears to be based on dismissing this action based on a forum selection clause in a shareholder's agreement between the parties—i.e., the doctrine of forum non-conveniens. The moving papers, however, are insufficient to meet the standard to dismiss for forum non-conveniens. Forum non conveniens is an equitable doctrine under which a trial court has discretion to decline to exercise jurisdiction over a transitory cause of action that it believes may be more appropriately and justly tried elsewhere. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751.) California has codified this principle in section 410.30, which provides: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Civ. Proc. Code, § 410.30(a), see also Civ. Proc. Code, § 418.10.) In determining whether to grant a motion based on forum non conveniens, courts usually apply a two-step process. (*Stangvik,* 54 Cal.3d at 751.) In the first step, the court must determine whether the alternate forum is a suitable place for trial. (*Ibid*.) If it is, the next step is to decide whether the private and public interests, on balance, favor retaining the action in California. (*Ibid*.; *Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 473 (*Animal Film*).) The motion is addressed to the trial court's discretion and the court retains a "'flexible power' to consider and weigh all the factors." (*Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191, 198.) The moving party bears the burden of proof. (*Stangvik*, 54 Cal.3d at 751.) A motion based on a forum selection clause is a special type of forum non conveniens motion. (*Quanta Computer Inc. v. Japan Communications Inc.* (2018) 21 Cal.App.5th 438, 444; *Berg v. MTC Electronics Technologies Co.* (1998) 61 Cal.App.4th 349, 358.) Consistent with the modern trend, California favors enforcement of a forum selection clause appearing in a contract entered into freely and voluntarily by parties negotiating at arm's length. (*Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1679.

When a case involves a mandatory forum selection clause, the traditional forum non conveniens analysis does not apply. (*Intershop,* 104 Cal.App.4th at 198; *Cal-State Business Products,* 12 Cal.App.4th 1679, 1682-1683.) Instead, a mandatory forum selection clause is presumed valid and will be enforced unless enforcement of the clause would be unreasonable under the circumstances of the case. (*Quanta Computer Inc. v. Japan Communications Inc.* (2018) 21 Cal.App.5th 438, 444.) *Smith,* 17 Cal.3d at 496; *Intershop*, 12 Cal.App.4th at 198.)

In contrast to a motion on traditional grounds of forum non conveniens, the burden of proof is on the party challenging enforcement of the forum selection clause. (*Intershop*, 12 Cal.App.4th at 198.)

Thus, the threshold question in a case involving a forum selection clause is whether the clause is mandatory or permissive. (*Animal Film,* 193 Cal.App.4th at 471.) If the clause is mandatory, it is presumed valid and will be enforced unless the party opposing the motion proves enforcement of the clause would be unreasonable. (Intershop, 104 Cal.App.4th at 198.) In contrast, if the clause is permissive, the traditional forum nonconveniens analysis applies and the existence of the clause is merely one factor to be considered in determining whether the action should be heard in a different forum. (*Animal Film*, 193 Cal.App.4th at 471.)

Here, Cao does not specifically identify the clause at issue for the court to interpret. Exhibit A to Cao's declaration on the motion (ROA 99), contains a clause at section 4.5 on page 4 that states:

> This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wyoming, U.S.A., applicable to the performance and enforcement of contracts made wholly within such Country, without given effect to the law of conflicts of law applied thereby. In the event that either party shall be forced to bring any legal action in arbitration or litigation to protect or defend its

rights hereunder, then the prevailing party in such proceeding shall be entitled to reimbursement from the non-prevailing party of all fees, costs, and other expenses (including, without limitation, the reasonable cots and expenses of its attorneys) in bringing or defending against such action. ***Any action for specific performance, injunctive, or other equitable relief may be brought directly in the appropriate Court***.

(Emphasis added). While this clause contains a choice-of-law provision and an attorneys' provision, it does not contain a mandatory forum selection clause.

Choice-of-law refers to which jurisdiction's law should apply in a given case. On the other hand, a forum selection clause chooses a court from among different states. (*Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286, 1291, n4.) Thus, whereas a choice-of-law clause provides what law should apply, a forum selection clause chooses the state that a case must be filed.

Cao's sole argument is because Plaintiff sought relief that Defendants not transfer their shares of Bitech until the conclusion of this litigation and return all the shares in their control back to Plaintiff, the Shareholder's Agreement should apply. That relief, however, would constitute "specific performance, injunctive, or equitable relief," such that even under the Shareholder's Agreement, the parties agreed that such an action may be brought "in the appropriate Court." The Shareholder's Agreement does not designate any specific court.

In sum, the court does not find that a mandatory forum selection clause has been identified by Cao. Cao's papers fail to address the traditional factors for the court to grant a permissive motion to dismiss for forum non conveniens.

Cao's motion to dismiss is therefore DENIED.

Plaintiff to give notice.

		2. Demurrer (re Complaint) (ROA 166) The court **OVERRULES in part, and SUSTAINS in part,** Defendants MICHAEL CAO ("Cao") and B&B INVESTMENT HOLDING, LLC's ("B&B") demurrer to the Complaint, **with 30 days leave to amend.** 1st C/A (fraud) - SUSTAINED Defendants argue that Plaintiff has not sufficiently pled fraud with the requisite specificity. The court agrees. The elements of an intentional misrepresentation or concealment claim are: "(a) misrepresentation, false representation, concealment, or nondisclosure; (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184.) "[T]he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp*. (1992) 6 Cal.App.4th 603, 612-613.) Concealment is a species of fraud, and "[f]raud must be pleaded with specificity *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 878; *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248. General and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645). However, the requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy.'" (*Tarmann v. State Farm* (1991) 2 Cal.App.4th 153, 158.)

		Further, "'[a] plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." ' " (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.) Plaintiff's allegations conflate Defendants and fail to identify who made the alleged misrepresentations to Plaintiff, when those alleged misrepresentations were made, how those alleged misrepresentations were made, and the specific misrepresentations that were allegedly made. While Plaintiff appears to frame this cause of action as concealment of material facts as set forth in paragraph 50 of the Complaint, the allegations are too general and conclusionary without any context as to what was actually represented to Plaintiff. For example, Plaintiff alleges that Defendants failed to disclose that the Tesdison technology was significantly behind the timeline that Defendants would be produced and would never be commercialized. (Complaint, ¶ 50(a)). To have context as to what was concealed, Defendants would need to know what was represented to Plaintiff at the time of the contract. What was the timeline that Defendants gave to Plaintiff? Did Defendants never intend to commercialize the Tesdison technology *at the time of the Licensing Agreement*? Did Defendants represent that the Tesdison technology was *already* capable of commercialization at the time of the Licensing Agreement? Or that it *would be* commercialized? Without more, it appears that many of the "concealments" about which Plaintiff alleges are breaches of promises to perform—i.e., Defendants could not get the Tesdison technology to perform. It appears that these are promises of future promises. To the extent that these concealments occurred after Plaintiff signed the Licensing Agreement, it would be unclear the basis of Plaintiff's justifiable reliance as Plaintiff had already signed the Licensing Agreement.

		Plaintiff cites to *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761 for the proposition that exceptions exist to the general rule that misrepresentations must be of existing fact and not an opinion or prediction of future events. In Brakke, however, the court held that a trial court correctly sustained a demurrer without clients failed to allege that statements by pension plan marketing company regarding favorable tax treatment of pension plan were false *when made*. (*Id*. at 768.) While an exception may arise "(1) where a party holds himself out to be specially qualified and the other party is so situated that he may reasonably rely upon the former's superior knowledge; (2) where the opinion is by a fiduciary or other trusted person; (3) where a party states his opinion as an existing fact or as implying facts which justify a belief in the truth of the opinion," Plaintiff has not sufficiently alleged each of these elements with the requisite specificity. (*Id.* at 769.) Indeed, as alleged by Plaintiff, this exception would not arise because Defendants did not become a fiduciary to Plaintiff until *after and as a result of,* the Licensing Agreement. That special relationship of trust did not exist at the time of the alleged misrepresentations. For these reasons, the demurrer to the first cause of action is sustained with leave to amend. 2nd C/A (breach of contract) - SUSTAINED "To state a cause of action for breach of contract, it is required that there be a pleading of the contract, plaintiffs' performance (or excuse for nonperformance), defendant's breach, and damage to plaintiff therefrom." (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 305.) Furthermore, in an action founded upon a contract, a party must be able to ascertain from the pleading whether the contract was written, oral, or implied by conduct. (Code Civ. Proc., § 430.10(g).) A written contract must be pleaded either by its terms, set out verbatim in the complaint or copy of the contract attached to the complaint and incorporated therein by reference, or by its legal effect. (*Heritage Pacific Financial*

		LLC v. Monroy (2013) 215 Cal.App.4th 972). For oral contracts, a party must allege that a promise was definite enough to "determine the scope of the duty and the limits of performance." (*Ladas v. Cal. State Auto. Assn*. (1994) 19 Cal. App.4th 761, 770). A complaint should provide a Plaintiff with sufficient notice of Plaintiff's claims, the scope discovery, and the scope of the issues in this case. (See e.g., *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444 ["The pleadings play a key role in a summary judgment motion and set the boundaries of the issues to be resolved at summary judgment."].) Defendants argue that Plaintiff's allegations are unclear because Plaintiff fails to attach the contract at issue. Plaintiff argues that Plaintiff has cited the terms of the contract verbatim. The court finds that the allegations in the Complaint do not sufficiently allege the terms of the contract at issue verbatim or the legal effect of the contract. It appears as though multiple contracts make up the relationship between the parties and/or that Plaintiff relied on some oral representations and/or the conduct of the parties as well. While the Complaint references the Licensing Agreement, it fails to attach the Licensing Agreement. To the extent that Plaintiff's cause of action for breach of contract is exclusively limited to the Licensing Agreement, the Complaint fails to so allege. Further, while Plaintiff alleges that Cao, Dao, and B&B were intended beneficiaries of the Licensing Agreement, the terms that one would need to interpret whether or not Defendants actually are third party beneficiaries are not recited. The Complaint fails to allege which provisions of the Licensing Agreement were breached, Defendants' duties under that Agreement, and/or the basis of Plaintiff's performance. Without a copy of the agreement at issue, this cause of action is vague and ambiguous. The demurrer to the second cause of action is therefore sustained with leave to amend. <u>3rd C/A (breach of fiduciary duty) and 4th C/A (duty of good faith and duty of undivided loyalty)</u> - OVERRULED

		The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach and damage caused by that breach. (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395.) Defendants argue that Plaintiff failed to sufficiently allege these causes of action because Defendants, as shareholders, cannot be fiduciaries. "A director is a fiduciary.... So is a dominant or controlling stockholder or group of stockholders." (*Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 108–109.) "Majority shareholders, either singly or acting in concert to accomplish a joint purpose, have a fiduciary responsibility to the minority and to the corporation to use their ability to control the corporation in a fair, just, and equitable manner." (*Id*. at 108.) "Majority shareholders may not use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority." (*Id*.) "Any use to which they put the corporation or their power to control the corporation must benefit all shareholders proportionately and must not conflict with the proper conduct of the corporation's business." (Id.) "The essence of the test is whether or not under all the circumstances the transaction carries the earmarks of an arm's length bargain." (Id.) "He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency and honesty." (Id.) The court finds that Plaintiff has sufficiently alleged causes of action for breach of fiduciary duties. Plaintiff has alleged that Cao and B&B are majority shareholders and, therefore, had a fiduciary duty the corporation to not put their interest before the corporation. Plaintiff has alleged that Defendants attempted to license the technology to other third-parties without consent. (Compl, ¶ 32.) Plaintiff has also alleged that Cao misappropriated $172,000 in corporate funds. (Compl., ¶ 31.) These allegations are sufficient. The demurrers to the third and fourth causes of action are overruled.

		5th C/A (conversion) - SUSTAINED The basic elements of a tort claim for conversion are: "(1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181.) "Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved." (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.) California cases that permitted an action for conversion of money involved an amount of money that was "readily ascertainable." (*Id*. at 396.) Further, "a mere contractual right of payment, without more, will not suffice." (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 452 [failure to reimburse under insurance policy was not conversion].) Here, Plaintiff argues that the following allegations are sufficient to allege a specific sum capable of identification: (1) Cao was paid a monthly salary of $6,000.00; (2) Defendants were provided stock compensation/shares of Plaintiff (not money); (3) referral fees; and (4) cash withdrawals and expenses in excess of $172,000.00. (Compl. ¶¶14, 18, 19, 27, 31, 35.) These allegations, however, do not allege that Defendants did not have a possessory right to these sums. While Plaintiff may believe that these amounts were unearned, such does not mean that Plaintiff had paid these amounts to Defendants in trust. Plaintiff relies on *SP Investment Fund I LLC, supra,* in which the court found that the plaintiff had adequately stated a cause of action for conversion by alleging that the defendant received monetary distributions from the partnership that, under the agreement, he held in trust for the plaintiff's benefit but refused to turn over to the plaintiff. (*SP Investment Fund I LLC,* 18 Cal.App.5th at 907.) However, what is missing from Plaintiff's allegations is an allegation that Plaintiff had specifically given a specific, identifiable sum of money to Defendants in trust for the benefit of Plaintiff that Defendants refused to turn over. It is unclear what that specific identifiable sum of money was

and whether or not Defendants were entitled to possess that money versus Defendants merely holding that money for Plaintiff's benefit.

The demurrer to the fifth cause of action is sustained with leave to amend.

6th C/A (violation of Penal Code 496) - SUSTAINED

Penal Code section 496 provides:

> "(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.
> …
> (c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees."

The elements of this cause of action are: "(1) that the particular property was stolen, (2) that the accused received, concealed or withheld it from the owner thereof, and (3) that the accused knew that the property was stolen. (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 213.) A violation of the statute requires some form of criminal intent. (See *Siry Investment LP v. Farkenhondehpour* (2022) 13 Cal.5th 333, 361-62 (discussing the criminal intent requirement under Penal Code section 496 and contrasting violations of the statute to "ordinary commercial defaults" caused innocently or inadvertently).) In general, statutory causes of action must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

		The court finds that Plaintiff has failed to sufficiently allege a cause of action under Penal Code section 496. Given that Plaintiff does not attach the agreement at issue (which defines the scope of the parties' relationship) and due to the same deficiencies as Plaintiff's conversion cause of action, Plaintiff has failed to allege this statutory cause of action with the requisite particularity. It is unclear what corporate funds Defendants allegedly stole, how they stole it, when they allegedly stole it, etc. The demurrer to the sixth cause of action is sustained with leave to amend. Moving Defendants to give notice. ***3. Motion to Strike (re treble damages)*** (ROA 110) The court **GRANTS in part (with 30 days leave to amend), and DENIES in part,** Defendant MICHAEL CAO's "motion to strike the entirety of Plaintiff's Complaint" on the ground that "Bitech's prayer for treble damages is improper as Bitech does not allege any facts indicating that Michael willfully or maliciously committed fraud. (Code 3 Civ. Proc. § 436 (b).)" The motion **is GRANTED as to Paragraph 6 of the Prayer for Relief** (concerning treble damages based on a Penal Code section 496 claim). Because the court found that Plaintiff failed to sufficiently plead a cause of action under Penal Code section 496, treble damages would not be available. The motion is **otherwise DENIED**. There is no proper basis to strike the entire Complaint. Moving Defendant to give notice. ***4. Motion to Strike (re punitive damages)*** (ROA 143) The court **GRANTS** Defendants MICHAEL CAO ("Cao") and B&B INVESTMENT HOLDING, LLC's ("B&B") motion to strike

portions of the Complaint related to punitive damages, **with 30 days leave to amend**.

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63; Cal. Civ. Code § 3294(a); See also, *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 ("In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff").)

"Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294(c)(1).) Despicable conduct is "conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. Such conduct has been described as 'having the character of outrage frequently associated with crime.'" (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.) "'Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) "Mere negligence, even gross negligence, is not sufficient to justify such an award" for punitive damages. (*Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 958.)

Accordingly, a plaintiff must allege facts to support allegations of malice, oppression, or fraudulent intent--conclusionary allegations that the defendant's conduct was wrongful, wanton, reckless, or unlawful" do not support a basis for seeking punitive damages. (*Smith v. Super. Ct.* (1992) 10 Cal.App.4th 1033, 1041-1042.)

To hold a corporate employer liable for punitive damages, the following applies:

> 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***.

(Civ. Code, § 3294(b)).

As to Cao, the court finds that the Complaint fails to sufficiently allege fraud and/or conduct by Cao that rises to malice or oppression. As to B&B, the court finds that the Complaint fails to sufficiently allege facts to satisfy California Civil Code section 3294(b).

The motion to strike punitive damages is therefore granted with leave to amend.

Moving Defendants to give notice.

5. Case Management Conference

The case is not yet at-issue. Therefore, **the court CONTINUES the Case Management Conference to 8/12/24 at 10:00 am in Dept. W8**.

All appearing parties **SHALL** file and serve a new timely case management conference statement at least 15 calendar days prior to the continued hearing as required by the rules, including California Rules of Court rule 3.725 and Local Rule 369. Failure to do so will result in the imposition of monetary sanctions.

Plaintiff to give notice.

3	Freeman vs. Dugas	Motion to Compel Arbitration and/or to Stay The court **GRANTS** Defendants RAYMOND G. DUGAS and MARGUERITE A. DUGAS's Motion to Compel Arbitration and to Stay Proceedings. It is undisputed that parties' dispute is governed by various governing documents, including a Declaration of Covenants, Conditions, and Restrictions recorded on 6/22/87 (the "CC&Rs"). (Compl. ¶ 9, Exh. A; Dugas Decl. ¶ 1, Exh. 1.) The CC&Rs contain the following arbitration provision: 6.11 Arbitration: In the event of a disagreement between Owners and in order to break a tie vote, the issue or issues, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of the AAA. In the event of referral to arbitration, the Owner requesting arbitration shall remit the fee to initiate the arbitration. However, the final costs of said arbitration shall ultimately be borne as determined by the arbitrator. (Compl. ¶ 9, Exh. A; Dugas Decl. ¶ 1, Exh. 1.) Essentially, Defendants read this provision broadly while Plaintiffs read it narrowly. As explained below, the court agrees with Defendants' interpretation. While conceding that arbitration is favored, Plaintiffs argue that because this is an enforcement action, Plaintiffs are not required to arbitrate. Plaintiffs primarily rely on portions of the CC&Rs (Section 6.1 and 3.2) that discuss an owner's right to enforce the CC&Rs "at law". After reading the CC&Rs as a whole, the court disagrees. "The same rules that apply to interpretation of contracts apply to the interpretation of CC&Rs." (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1377.) Courts read contracts as a whole, "so as to give

effect to every part, if reasonably practicable, [with] each clause helping to interpret the other." (Civ. Code, § 1641.) Thus, courts "interpret contractual language in a manner which gives force and effect to *every* provision, and not in a way which renders some clauses nugatory, inoperative or meaningless." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.)

Here, Plaintiffs interpretation would nullify the arbitration provision. Reading the CC&Rs as a whole, as required, the general enforcement provisions appear to apply if the parties do not proceed with arbitration.

Next, Plaintiffs argue that the arbitration provision makes clear that it is limited to disputes involving deadlock votes. Plaintiffs stress the use of the conjunctive word "and" in the arbitration provision:

> "Arbitration: In the event of a disagreement between Owners **and** in order to break a tie vote, …"

(Compl. ¶ 9, Exh. A and Dugas Decl. ¶ 1, Exh. 1, Section 6.11, emphasis added.)

At the same time, Plaintiffs state,

> "The Arbitration clause was clearly intended to address deadlock votes, which is foreseeable given that only two units are involved, and votes are necessary for a homeowners association to do business…. An arbitration clause actually makes sense in the context of a deadlock vote…"

(Opp'n Br. at p. 8, lines 1-7.)

The CC&Rs apply to a two-unit residential condominium. It appears undisputed, and according to the Complaint, Defendants are the owners of Unit 1 and Plaintiffs are the owners of Unit 2. The parties' dispute involves the patio area between Unit 1 and Unit 2. Defendants contend that the patio area is Defendants' restricted area and Plaintiffs argue that the patio is a common area intended for use by the owners of both Unit 1 and Unit 2.

		The CC&Rs provide that "Unit 1 shall have two votes in the Association and Unit 2 shall have one vote in the Association." (Compl., ¶ 9, Exh. A and Dugas Decl. ¶ 1, Exh. 1, Section 2.4.) As such, the CC&Rs are set up to avoid a "tie vote". Plaintiffs' interpretation would unreasonably render the arbitration clause "a nullity". (See *United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32 Cal.App.5th 478, 495 ["[Courts] strive to 'give effect to all of a contract's terms, and to avoid interpretations that render any portion superfluous, void or inexplicable.'"].) Here, reading the CC&Rs as a whole, the phrase "and in order to break a tie vote" appears to be merely a descriptive phrase rather than a conditional one. Moreover, both sides appear to agree that a functional deadlock exists here. (See, e.g., Opp'n Br, at p. 9, lines 26-27 ["This situation would inevitably lead to a deadlock, …"].) It makes little sense to go through procedural hurdles to simply get back to the same place, especially given the policies favoring arbitration. Further, Plaintiffs previously threatened arbitration and as such, waived the arguments challenging arbitrability. Plaintiffs argue that "nothing in the record supports the notion that the Plaintiffs ever intended to participate in Arbitration." (Opp'n Br., p. 12, lines 15-16.) But Defendants proffered a letter wherein Plaintiffs threatened to "immediately move forward with initiating arbitration pursuant to the CC&Rs." (See Dugas Decl., ¶ 4, Exh. 2 [8/12/22 letter, p. 1].) Finally, Plaintiffs request to stay arbitration pursuant to a third-party litigation exception and/or until Plaintiffs' pending motion for preliminary injunction is decided. First, the court notes that Plaintiffs have failed to file the required notice of related case. **Plaintiffs are ordered to file a Notice of Related Case no later than 5/13/24, which notice SHALL include Case No. 2023-01310206.** According to Plaintiffs, they filed the related action before filing the instant action and the related action is currently in arbitration with third parties but is on hold pending the outcome of the instant action.

		The court finds that under the circumstances, the third-party litigation exception does not apply here and even if applicable, the court does not exercise its discretion to stay arbitration here. The possibility of conflicting rulings appears unlikely and the actions arise out of different transactions, although all apparently related to Plaintiffs' purchase of Unit 2. Further, Plaintiffs fail to cite to any authority requiring a stay of arbitration until a motion for preliminary injunction can be decided or that an arbitrator lacks authority or ability to determine the issue. In sum, Defendants have shown the existence of a valid and enforceable arbitration provision and Plaintiffs have not shown any basis for denying the motion. To be clear, the court compels the parties to engage in the arbitration already commenced before Arbitrator Wendy J. Fassberg (AAA Case No. 01-23-0001-9293), unless the parties agree otherwise in writing to another arbitrator. The court further stays the instant Superior Court action and vacates all hearing dates (including the motion for preliminary injunction set for 6/28/24 and the 8/11/25 jury trial), except that **the court sets a Status Conference re ADR for November 18, 2024, at 9:00 am in Dept. W8**. Defendants to give notice.
4	Pham vs. Hernandez Reyes	Motion to Compel (re form interrogatories) Motion to Compel (re special interrogatories) Motion to Compel (re RFPs) Motion to Deem Facts Admitted Motion to Deem Facts Admitted The court **DENIES without prejudice** all five discovery motions. By way of these five motions, Plaintiff CINDY PHAM seeks to compel Defendant JUAN HERNANDEZ REYES ("Defendant Reyes") to respond to Plaintiff's (1) Form Interrogatories, Set One; (2) Special Interrogatories, Set Two; and (3) Request for Production of Documents, Set

		One; and for orders deeming that Defendant Reyes has admitted facts from Plaintiff's (4) Request for Admissions, Set One, and (5) Request for Admissions, Set Two. There is nothing before the court showing that Plaintiff served any of the motions on Defendant Reyes, which is required under the Code of Civil Procedure. (Code Civ. Proc., §§ 1005, 1005.5, 1010.) The failure to serve Defendant Reyes violates not only statutory requirements, but fundamental principles of due process. (*Jones v. Otero* (1984) 156 Cal.App.3d 754, 757.) In this action, Intervenor LOYA CASUALTY INSURANCE COMPANY filed a document entitled, "Answer in Intervention on behalf of Defendant Juan Hernandez Reyes" on 5/17/23. An answer was authorized pursuant to a Stipulation and Order filed 5/15/23, which occurred after the court had set an Order to Show Cause re Dismissal for Failure to Proceed based on the failure to request entry of default against Defendant Reyes. (See 3/20/23 and 5/15/23 Minute Orders; Stip. and Order filed 5/15/23.) Plaintiff previously filed a Proof of Service of Summons on 1/17/23, indicating personal service of the Summons and Complaint on Defendant Reyes on 1/13/23. Importantly, Intervenor's counsel made clear that "he only represents the intervenor at this time as they have been unable to communicate with Defendant Juan Hernandez Reyes." (5/15/23 Minute Order.) Plaintiff served only the Intervenor with the motions. Such is insufficient. Section 1010 of the Code of Civil Procedure requires that the notice and other moving papers be served on the party, or the attorney for the party to whom the motions are directed. (Code Civ. Proc., § 1010; see also, Code Civ. Proc., § 1005.5 [motion is made "upon the due service and filing of the notice of motion"], and Code Civ. Proc., § 1005 [all moving and supporting papers shall be served].) Here, the motions are directed at Defendant Reyes. While Intervenor may have a direct interest in the matter in litigation, it is an independent party to the action and its interest in the litigation is independent of Defendant

		Reyes. (See *Deutschmann v. Sears, Roebuck, & Co*. (1982) 132 Cal.App.3d 912, 915-916 [status as an intervener does not reduce the independence of its claim, and an intervenor is not limited by its insured's procedural decisions].) On 7/11/23, this court erroneously discharged the OSC re Dismissal for Failure to Proceed. (See 7/11/23 Minute Order.) As such, the **court sets a new OSC re Dismissal for Failure to Proceed based on the failure to request entry of default against Defendant Reyes, for hearing on 6/17/23 at 9:00 am in Dept. W8.** At least 10 court days before the hearing, Plaintiff is ordered to request entry of default or dismiss Defendant Reyes (leaving Intervenor in the action). If Plaintiff fails to do so, the court will dismiss Defendant Reyes unless Plaintiff appears and shows good cause otherwise. Plaintiff to give notice.
5	Klein vs. Parks	<u>Motion – Other (re attorney-client privilege claim)</u> <u>Motion to Compel Deposition and Production</u> <u>Motion to Compel (re RFPs)</u> On 5/1/24, Plaintiff and Cross-Defendant DAVID KLEIN filed a Notice of Stay of Proceedings "[w]ith regard to all parties", in connection with David Louis Klein's Notice of Chapter 13 Bankruptcy Case. (ROA # 409). Klein is the subject of all three motions on calendar – to wit: 1. Defendants/Cross-Complainants RICHARD PARKS and LUCIA PARKS' motion concerning Plaintiff DAVID KLEIN's assertion of attorney-client privilege as to documents (ROA 356); 2. Defendant/Cross-Complainant RICHARD PARKS' motion for order compelling Plaintiff/Cross-Defendant Klein to appear for deposition and produce documents (ROA 362); and

		3. Defendant LUCIA PARKS' motion for an order compelling responses from Plaintiff Klein to Requests for Production of Documents (ROA 380). Pursuant to the Notice of Stay, **this action is STAYED**. The scope of an automatic bankruptcy stay is broad, and all judicial proceedings related to it are stayed. (*Thomas v. Gordon* (2000) 85 Cal. App. 4th 113, 119 ["When a debtor files a bankruptcy petition, an automatic stay immediately arises. The scope of the stay is quite broad."].) "An automatic stay usually precludes 'any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case...."' (*Cavanagh v. Cal. Unemployment Ins. Appeals Bd.* (2004) 118 Cal.App.4th 83, 90 [quoting 11 U.S.C. § 362(a)(6)].) Accordingly, the court declines to consider the calendared motions at this time and takes them **OFF-CALENDAR**, subject to re-filing or reinstatement after the stay is lifted. The parties SHALL comply with California Rules of Court, rule 3.650 by notifying this Court when the stay is vacated or no longer in effect. Failure to comply with this rule may subject counsel/party to sanctions. Notices regarding disposition of case or relief from stay are to be filed with this court. **The court sets a Status Conference re Bankruptcy as to Plaintiff and Cross-Defendant David Klein for August 12, 2024, at 9:00 am in Dept. W8.** Defendants to give notice.
6	The People of the State of California vs. Empire	<u>Motion for Continuance of Trial</u> <u>Motion to Compel (re RFPs)</u> ***1. Motion to Continue Trial***

	Equipment Services, Inc.	The court **DENIES** Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA's motion to continue the trial date and have all discovery deadlines track the new date. Good cause is not shown for another continuance or extension of discovery. A bench trial is currently set for 7/1/24. Plaintiff filed this action on 4/25/22, more than two years ago. The court previously granted a lengthy trial continuance of nearly seven months, continuing trial from 12/4/23 to 7/1/23. (See 7/14/23 Minute Order.) For that continuance, Plaintiff had requested a 12-month continuance of trial, arguing that trial in a related civil action was continued and Plaintiff needs a continuance "so that Plaintiff will be afforded a reasonable time period to conduct discovery in this action *after* the completion of discovery in the related action, when Plaintiff can determine what follow-up discovery is needed in the enforcement action." (Pl's Not. Of Mot. to Cont. Trial, filed 5/16/23, p. 2, lines 20-23 [ROA 97].) The court continued trial primarily based on its congested calendar at the time. (See 7/14/23 Minute Order.) Importantly, the court stated the following when granting the six-month continuance of trial: "To be clear, the parties should be conducting discovery notwithstanding the developments in the related action." (7/14/23 Minute Order.) Plaintiff apparently did not heed the court's instruction and as such, Plaintiff now seeks another lengthy continuance based on apparently waiting to conduct much discovery until the related action was resolved. Plaintiff requests a continuance of another twelve months.

Continuances of trial are disfavored and the court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Here, Plaintiff has not been diligent. This action was not stayed during the pendency of the related action and the parties were specifically instructed to proceed with discovery notwithstanding the related action. In sum, Plaintiff has not shown good cause for a continuance.

Defendant to give notice.

2. Motion to Compel

No Tentative. To assist with oral argument, the court notes the following:

Plaintiff filed a motion to compel Defendant EMPIRE EQUIPMENT SERVICE, INC.'s responses to Plaintiff's Request for Production Set Four – specifically as to Nos. 200-257 and 259-347; and for Sanctions. Thereafter, Defendant served supplemental responses and in its Supplemental Declaration of counsel filed 4/17/24 and its Reply Brief filed 5/2/24, Plaintiff appears to agree that the motion is ***MOOT except as to Request No. 206***.

Request No. 206 requests,

> "All DOCUMENTS that are either responsive to, or identified by YOU at any time in a response to, Plaintiff's Special Interrogatory No. 32 served on YOU in this action."

Defendant's supplemental response states,

> "Subject to, and without waiving, the foregoing objections, Responding Party identifies photographs of the work performed by Responding Party (see Empire 001578-001583 and 000088-000222). Please also refer

to Baldwin's production in response to your subpoena which includes records of work performed by the general contractor that may be responsive to this request."

Special Interrogatory No. 32 requested Defendant to

> "IDENTIFY all DOCUMENTS RELATING TO whether the dates of YOUR work at the PROJECT during the RELEVANT TIME PERIOD differed from the planned dates specified in the contractual DOCUMENTS RELATING TO the PROJECT, including NE-150 attached as Exhibit C."

After asserting various objections based on vagueness and being overly broad, Defendant's supplemental response to Special Interrogatory No. 32 included the following:

> "Subject to, and without waiving the foregoing objections, Responding Party states that ***it is not in possession*** of any specific document, or group of documents, that would yield this information. While ***it is theoretically possible that some of the information could be ascertained through billing records***, that would require an inordinate amount of time and resources to compile, if possible at all, and isn't likely to yield any clear answers."

(Emphasis supplied.)

Defendant's response specifically identified billing records as possible documents containing the information sought.

Defendant's supplemental response to Request No. 206 begins with general objections and then states,

> "Subject to, and without waiving, the foregoing objections, Responding Party identifies photographs of the work performed by Responding Party (see

		Empire 001578-001583 and 000088-000222). Please also refer to Baldwin's production in response to your subpoena which includes records of work performed by the general contractor that may be responsive to this request." In its Reply Brief filed 5/2/24, Plaintiff contends that there are more billing records than those that were provided – including no invoices for 2018 work conducted by Defendant's employees in excavations. In its Reply Brief, Plaintiff requests $2,610.22 against Defendant and its counsel (Pacheco & Neach PC), with each to pay half of the total. In its Notice of Motion, however, Plaintiff requested $2,198.08 (i.e., a lessor amount) against Defendant and its counsel "in equal proportion" for attorney's fees and costs incurred, apparently calculated at the rate of $137.38 per hour for 16 hours. Defendant has not responded to the Reply Brief. As such, ***Defendant's counsel should be prepared to discuss at the hearing whether or not more billing records exist than those that have been provided to Plaintiff thus far***.
7	Pacific Attorney Group, Professional Law Corporation vs. Shiraz	<u>Motion for Discovery Sanctions</u> The court **GRANTS in part, and DENIES in part**, Plaintiff PACIFIC ATTORNEY GROUP, PROFESSIONAL LAW CORPORATION's Motion for Terminating Sanctions and Additional Monetary Sanctions against Defendant AZADEH NEJAD SHIRAZI. Preliminarily, the court notes that it's not clear from the file whether Defendant has filed an opposition brief to Plaintiff's motion. Defendant has filed the following documents related to the issue of sanctions: 1. "Opposition to the request for any sanction", filed on 1/10/24;

2. "Motion Petition to waive the Sanction on 10/20/2023 due to Medical Condition", filed on 1/26/24; and

3. "Motion: Withdrawal of Motion – Petition to Waive Sanction due to Medical Condition", filed on 5/8/24 (which refers to a hearing date of 5/10/24).

There is no motion/petition to waive sanctions properly *calendared for hearing on 5/10/24*. The court further notes that no Proof of Service has been filed concerning Items 2 and 3 listed above – i.e., the documents filed on 1/26/24 and 5/8/24. A proof of service was filed however for the document filed on 1/10/24.

As such, the court considers the "Opposition to the request for any sanction" filed on 1/10/24 to be Defendant's opposition to Plaintiff's motion but disregards the Motion: Withdrawal of Motion – Petition to Waive Sanction due to Medical Condition" filed on 5/8/24.

Failing to respond to an authorized method of discovery is a misuse of the discovery process. (Code Civ. Proc., § 2023.010(d).) So, too, is disobeying a court order to provide discovery. (Code Civ. Proc., § 2023.010(g); *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516.) If a party fails to obey an order compelling answers to discovery, the court may impose whatever sanctions are just including issue sanctions, evidentiary sanctions, monetary sanctions, or terminating sanctions.

The discovery statutes, however, evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.) Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. (*Id*.)

Before issuing terminating sanctions, the court usually grants lesser sanctions such as orders staying the action

until the derelict party complies, or orders declaring matters as admitted or established if answers are not received by a specified date, often accompanied with costs and fees to the moving party. (*Doppes*, 174 Cal.App.4th at 99.) It is only when a party persists in disobeying the court's orders that the ultimate sanctions of dismissing the action or entering default judgment, etc. are justified. (See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771.)

Monetary sanctions awarded by the court are enforceable as money judgments unless the court orders otherwise. Therefore, the remedy to enforce payment of monetary sanctions is to obtain and levy a writ of execution on assets of the debtor. (*Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615.)

On 10/20/23, this court granted Plaintiff's motions to compel and ordered the following:

- Defendant to serve verified responses to Plaintiff's first set of **form interrogatories** and first set of **requests for production of documents** without objection within 30 days;

- Defendant to **appear for deposition** and **produce documents** on 12/18/2023;

- Defendant is deemed to have admitted each matter in Plaintiff's first set of requests for admission; and

- Defendant to **pay monetary sanctions** of $1,840.00 within 30 days.

(See 10/20/23 Minute Order.) Plaintiff served notice of the court's order on Defendant on 10/20/23, by U.S. mail and by e-mailing the document. (Notice of Ruling, filed 10/20/23 [ROA 64].)

According to Plaintiff, and undisputed by Defendant, Defendant has not complied with the court's 10/20/23 orders. (Hollomon, Jr. Decl., ¶ 10.)

		At this juncture, however, terminating sanctions do not appear warranted. This is the first motion concerning Plaintiff's failure to comply with a court order. Plaintiff has not requested any specific lesser sanction other than monetary sanctions. The court finds that Defendant has failed to comply with its 10/20/23 orders. As such, the court **ORDERS** Defendant AZADEH NEJAD SHIRAZI to: • serve verified responses to Plaintiff's first set of form interrogatories and first set of requests for production of documents without objection **by May 20, 2024**; • appear for deposition and produce the documents previously requested in Plaintiff's Notice of Taking the Deposition and Request for Production of Documents, dated 6/14/23, **on May 20, 2024 at 10:00 am** via online virtual meeting, with a link to be provided by Plaintiff's counsel at least 5 days prior, or at a mutually agreeable time and place if placed in writing before 5/20/24; and • pay additional monetary sanctions of $1,840.00 **by July 8, 2024**. A 5-day jury trial is currently scheduled for 5/20/24. This court department is not likely to be available on that date due to scheduled trials in older cases. As such, and to give Defendant additional time to comply with the court's orders, **the court on its own motion CONTINUES trial to 7/8/24 at 8:45 am in Dept. W8.** Plaintiff to give notice.
9	Turner vs. Wyndham Destinations, Inc.	Motion to Vacate Dismissal ***No tentative.*** The court notes the following however: This action was filed on 2/8/21, over three years ago. On 4/15/21, the court set a jury trial for 5/23/22. On the date

		originally set for trial (5/23/22), trial was continued to 1/9/23 because Plaintiffs had not yet served a single defendant. (See 5/23/22 Minute Order [ROA 20].) Also on that date, with Plaintiffs' attorney Ilan N. Rosen Janfaza appearing, the court set **an Order to Show Cause re Monetary Sanctions pursuant to CRC rule 3.110 against Plaintiff's counsel and the Plaintiffs for failing to serve the Defendants.** (Id.) Attorney Janfaza represented to the court that he would get the Defendants served as soon as possible. The OSC was set for 7/28/22. (Id.) When Mr. Janfaza did not appear at the 7/28/22 OSC (another attorney appeared) and still none of the Defendants were served, the court ordered Attorney Janfaza to personally appear at a continued OSC hearing date of 9/29/23. (7/28/22 Minute Order.) Thereafter, Attorney Janfaza filed a Declaration, wherein he provided explanations and requested a continuance to serve the defendants. (Janfaza Decl., filed 12/12/22 [ROA 47].) In response, the court continued the OSC hearing to 2/16/23, and made clear that Attorney Janfaza was ordered to personally appear for that hearing. (12/14/22 Minute Order [ROA 49].) The case was thereafter transferred to this department. This court vacated the 1/9/23 trial because the case was still not at issue. In fact, no defendant had apparently been served. (1/9/23 Minute Order [ROA 61].) Atty Janfaza filed another declaration in response to the OSC, wherein he represented to the court that Defendants TRAVELODGE BY WYNDHAM BUENA PARK and MANDIRA INVESTMENTS, LLC have been served, and requested to vacate the OSC or continue the hearing for 60 days. (Janfaza Decl., filed 2/22/23 [ROA 63].) At the 2/27/23 OSC, Attorney Janfaza appeared, the court noted there are still no proofs of service on file, but

		nonetheless stated it would grant "one last continuance". (2/27/23 Minute Order [ROA 65].) The OSC was continued to 3/20/23. (Id.) On 3/15/23, Attorney Janfaza filed another Declaration in response to the OSC, which was nearly identical to the declaration filed on 2/22/23, adding nothing new. (Janfaza Decl., filed 3/15/23 [ROA 70].) At the 3/20/23 OSC, the court noted the lack of any proof of service, including for Travelodge by Wyndham Buena Park and Mandira Investments, LLC. Hesitant to dismiss at this juncture, the court yet again continued the OSC, continuing it to 5/22/23. (3/20/23 Minute Order [ROA 68].) The court again ordered counsel to file a declaration at least 5 court days before the 5/22/23 hearing. At the 5/22/23 OSC, Attorney Janfaza appeared and stated that Plaintiffs need to re-serve all defendants with a Statement of Damages. (5/22/23 Minute Order [ROA 72].) The court noted a declaration was not filed as ordered previously. (Id.) The court ultimately granted yet another continuance of the OSC, to 7/3/23, and again ordered a declaration re Status before the next hearing. (Id.) No one appeared at the 7/3/23 OSC and no proof of service had been filed (or answer/response to complaint), and the court dismissed the entire action without prejudice. (7/3/23 Minute Order [ROA 74].) Thereafter, on 12/29/23, Plaintiff filed the instant motion to vacate the dismissal, which attaches several proofs of service.
11	Edalat vs. Cahill	<u>Motion to Appear Pro Hac Vice</u>

		The court **GRANTS** Plaintiffs' unopposed Application for Attorney TUCKER H. BYRD to Appear as Counsel Pro Hac Vice for Plaintiffs. The court finds that the requirements for pro hac vice admission have been met here. (See Cal. Rules of Court, rule 9.40.) Plaintiffs to give notice.
12	De La Torre vs. Santa Ana Unified School District	<u>Demurrer (re First Amended Complaint)</u> <u>Motion to Strike</u> ***1. Demurrer*** The court **SUSTAINS** the demurrer of Defendant SANTA ANA SCHOOL DISTRICT (the "District") to each of the four causes of action in the First Amended Complaint (FAC), **with 20 days leave to amend** if Plaintiffs can correct the deficiencies. <u>1st C/A (negligence)</u> The first cause of action alleges that the District negligently acted or failed to act by allowing non-party JASON CARLOS GUZMAN to leave the Taft Elementary School campus in his vehicle. (FAC, ¶¶ 3, 26.) As a result, Guzman drove erratically and unlawfully in a school zone and struck Plaintiffs with his vehicle. (FAC, ¶¶ 8, 26) To prevail in a negligence action, a plaintiff must show the defendant owed a legal duty to him or her, the defendant breached that duty, and the breach proximately caused injury to the plaintiff. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1145.) A school district "owes a duty of care to its students because a special relationship exists between the students and the district." (*Guerrero v. South Bay Union School Dist.* (2003) 114 Cal.App.4th 264, 268, 7 Cal.Rptr.3d 509.)

However, that special relationship does not create liability on its own. (*Id*.)

"School districts and their employees have never been considered insurers of the physical safety of their students, but rather are placed under a general duty to supervise the conduct of children on school grounds during school sessions, school activities, and lunch periods." (*Bartell v. Palos Verdes Peninsula School District.* (1978) 83 Cal.App.3d 492, 498; see *Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932-933 [duty to supervise students].) Early California cases consistently held that a school district has no duty to safeguard students traveling, on their own, to and from school. (E.g., *Gilbert v. Sacramento Unified School Dist.* (1968) 258 Cal.App.2d 505, 506, 510 [student killed by train while walking home from school]; *Wright v. Arcade School Dist.* [1964] 230 Cal.App.2d 272, 275, 277–280 [student injured by motorist while walking to school]; *Girard v. Monrovia City School Dist.* (1953) 121 Cal.App.2d 737, 739, 741-743 [student killed by motorist while walking home from school].) Subsequently, the California Legislature enacted a law endorsing the common law principle that a school district is not legally responsible for accidents to students on their way to and from school. (Ed. Code, § 44808; *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal.3d 508, 516–517.) A school district's liability is limited by Education Code section 44808. (*Bassett v. Lakeside Inn, Inc.* (2006) 140 Cal.App.4th 863, 870.)

Education Code section 44808 provides: "Notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances. [¶] In the event of such a specific undertaking, the district, board,

or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district or board."

Section 44808 has been interpreted as imposing liability on school districts for a student's off-campus injury only when "the student is involved in activities supervised or undertaken by the school." (*Ramirez v. Long Beach Unified School Dist.* (2002) 105 Cal.App.4th 182, 190, 129 Cal.Rptr.2d 128.) In fact, the "consensus of decisions from the Court of Appeal is that 'section 44808 limits the liability of schools for after-hours, off-campus activity, absent a specific undertaking'" by the school during which a student is injured. (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1356.) Thus, courts have "interpreted section 44808 to provide that school districts are not responsible for the safety of students outside school property absent a specific undertaking by the school district and direct supervision by a district employee." (*Cerna,* 161 Cal.App.4th at 1356-1357; see also *Bassett*, 140 Cal.App.4th at 871 ["reasonable care" phrase "does not create a common law form of general negligence; it refers to the failure to exercise reasonable care during one of the mentioned undertakings"].)

Cases in which schools have been held to have a duty of care for the safety of students off campus arise from circumstances where school personnel did something on campus or failed in their supervisory duties of students on campus. *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal.3d 508 involved the school's failure to adequately address the process of keeping students on school grounds during the school day. *Perna v. Conejo Valley Unified School District* (1983) 143 Cal.App.3d 292 involved a teacher who kept the children after school to grade papers knowing that crossing guards would not be available and that the children would have to cross a busy street.

Plaintiffs were injured while walking to school. (FAC ¶¶ 3, 8, 26.) Apparently, at the time of the incident, neither the District nor its employees had specifically undertaken responsibility or liability for Plaintiffs. Plaintiffs, however, contend that section 44808 immunity does not apply

because the District had a duty ensuring its students were not exposed to dangers off campus for dangers that originate and spill over due to campus activities. (FAC ¶ 5.) The FAC alleges the danger Guzman posed originated on the school grounds. (*Id*. at ¶ 4.) The FAC further alleges the school's security measures were not in place. (*Id*. at ¶ 5.)

These conclusory allegations are insufficient to overcome the District's section 44808 immunity. Additionally, the FAC lacks factual allegations to support the contention that the danger Guzman posed was foreseeable. The demurrer to the first cause of action is therefore sustained.

2nd C/A (breach of mandatory duty)

Plaintiff asserts the District failed to discharge the nondelegable, mandatory duties it has pursuant to Education Code section 44807, Vehicle Code section 40802 and Penal Code section 626.9. (FAC ¶¶ 36-38.)

Government Code section 815.6 provides that "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

Courts use a three-prong test to determine whether an entity is liable under Section 815.6: "(1) an enactment must impose a mandatory, not discretionary duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability; and (3) breach of the mandatory duty must be the proximate cause of the injury suffered." (*State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854.)

Education Code section 44807 provides, in pertinent part, that "[e]very teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess." As noted by the California Supreme Court, California Education Code Section 44807 imparts a duty on

individuals but not on a public entity such as a school district. (*Hoff v. Vacaville Unified School District* (1998) 19 Cal.4th 925, 939.) Additionally, section 44807 pertains to student conduct, which is not at issue here.

Vehicle Code section 40802 defines a "speed trap". (Veh. Code, § 40802.) Penal Code section 626.9 is the "Gun-Free School Zone Act". (Penal Code, § 626.9.) Neither of these enactments imposes a mandatory duty on the District. The demurrer is therefore sustained as to the second cause of action.

<u>3rd C/A (negligent supervision, hiring, and retention)</u>

The third cause of action alleges the District hired employees to provide educational training, security, and safety measures to its students, including Plaintiffs. (FAC ¶ 42.) The FAC further alleges that the employees were unfit and incompetent to perform the work. (FAC, ¶ 43.) Specifically, Plaintiffs allege the employees were unfit and incompetent to ensure the safety of the students on campus and for foreseeable dangers originating on its campus but posing danger off campus. (*Id*.)

California courts and federal courts have consistently held that a public entity cannot be subject to a direct claim for negligent hiring or supervision practices. (*de Villers*, 156 Cal.App.4th at p. 252; *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1113; disapproved on other grounds of by *Hayes v. County of San Diego* (2013) 57 Cal.4th 662.) Accordingly, there can be no direct claim for negligent hiring, supervision, or retention against the District or the School. The demurrer is sustained as to the third cause of action.

<u>4th C/A (NIED)</u>

The fourth cause of action alleges the following: Plaintiffs were related as either sibling, cousins, grandparents, and husband and wife (FAC ¶ 48); and Plaintiffs were present and in the zone of danger when each was injured and each observed the other being injured as a result of the District's negligence (FAC ¶ 49).

Negligent infliction of emotional distress ("NIED") is a form of negligence and the elements of the cause of action are the same: (i) duty; (ii) breach of that duty by the defendant; (iii) breach as the proximate cause of harm to the plaintiff; and (iv) the plaintiff's damages. (*Huggins v. Longs Drug Stores Cal., Inc.* (1993) 6 Cal.4th 124, 151.) In determining "duty" in NIED cases, California courts typically analyze the issue by reference to two theories of recovery: the "bystander" theory and the "direct victim" theory. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1071.) The distinction between the bystander and direct victim cases is found in the source of the duty owed by the defendant to the plaintiff. Direct victim cases involve the breach of a duty owed the plaintiff that was assumed by the defendant, imposed on the defendant as a matter of law, or arose out of a preexisting relationship between the two. (*Huggins*, 6 Cal.4th at 129–130.)

"Bystander" claims are typically based on breach of a duty owed to the public in general (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 884), whereas a right to recover for emotional distress as a "direct victim" arises from the breach of a duty that is assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of the defendant's preexisting relationship with the plaintiff. (*Huggins, supra,* 6 Cal.4th at pp. 129–130, citing *Burgess, supra,* 2 Cal.4th at pp. 1073–1074; *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 590.)

The demurrer to the fourth cause of action is sustained. As discussed above, the District is immune from liability for Plaintiffs' injuries under section 44808.

<u>5th C/A (loss of consortium)</u>

The fifth cause of action alleges Plaintiffs Jesus De La Torre and Anabelle De La Torre were married as husband and wife and, as a result of the District's negligence, have sustained damages due to a loss of love, companionship, comfort, care, assistance, protection, affection, society and moral support for each other. (FAC ¶¶ 52-53.)

		The elements of a loss of consortium claim are: "(1) a valid and lawful marriage between the plaintiff and the person injured at the time of the injury; [¶] (2) a tortious injury to the plaintiff's spouse; [¶] (3) loss of consortium suffered by the plaintiff; and [¶] (4) the loss was proximately caused by the defendant's act." (*LeFiell Manufacturing Co. v. Superior Court* (2012) 55 Cal.4th 275, 284–285, citing *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 746, fn. 2.) "A cause of action for loss of consortium is, by its nature, dependent on the existence of a cause of action for tortious injury to a spouse." (*Hahn,* 147 Cal.App.4th at 746.) Without sufficient allegations to support Plaintiffs' negligence claims, Plaintiffs Jesus De La Torre and Anabelle De La Torre's loss of consortium claims fail. The demurrer is sustained as to the fifth cause of action. Defendant to give notice. ***2. Motion to Strike*** The motion to strike is **MOOT** in light of the ruling on demurrer. Defendant to give notice.
13	Murray vs. Marriott International, Inc.	<u>Demurrer (re Complaint)</u> <u>Motion to Strike</u> ***1. Demurrer*** The court **SUSTAINS in part, and OVERRULES in part**, Defendant INTERSTATE-RIM MANAGEMENT COMPANY, LLC's demurrer to the 1st, and 3rd through 9th causes of action in the complaint, with **30 days leave to amend** (unless otherwise stated below). <u>1st C/A (negligence)</u> - OVERRULED Defendant demurs to the 1st cause of action on the ground that it contains two separate counts, negligence and negligence per se. Defendant argues that there is no separate cause of action for negligence per se and that the

		negligence per se portion should be sustained without leave to amend. "'Ordinarily, a general demurrer does not lie as to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the demurrer will be overruled.' [Citation.]" (*Elder v. Pacific Bell Telephone Co*. (2012) 205 Cal.App.4th 841, 856, n.14.) Defendant generally demurs to the 1st cause of action but does not argue that the negligence portion is insufficient. Because a demurrer cannot be had to a part of the cause of action, the demurrer to the 1st cause of action for negligence is OVERRULED. <u>3rd C/A (IIED)</u> – SUSTAINED with leave to amend The elements of an IIED cause of action are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the severe emotional distress. [Citation.]" (Cr*ouch v. Trinity Christian Center of Santa Ana, Inc*. (2019) 39 Cal.App.5th 995, 1007.) "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.) In order for conduct to be outrageous, there must be (1) a specific intent to injure, or (2) a reckless disregard of the substantial certainty of a severe emotional injury. (*Id*. at 210 ["Absent an intent to injure, such inaction is not the kind of 'extreme and outrageous conduct' that gives rise to liability under the 'intentional infliction of emotional distress' tort"]; *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903 ["substantially certain to cause extreme emotional distress"].) "Discomfort, worry, anxiety, upset stomach, concern, and agitation" as the result of defendant's conduct do not constitute emotional distress of "such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." (*Hughes*, *supra*,

		46 Cal.4th at p. 1051.) The complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct." (*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal. App. 4th 1093, 1114.) "Bare conclusions devoid of any supporting facts … are insufficient to withstand demurrer." (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481.) Here, Plaintiff has grouped all defendants together with conclusory allegations that "Defendants" knew that Plaintiff's room had a bedbug infestation, allowed it to continue, rented it to Plaintiff with the knowledge that she would take the infestation home with her and cause her emotional distress. While knowingly renting an infested room may be outrageous, the factual allegations are insufficient against moving defendant to show that it acted intentionally or recklessly to cause Plaintiff harm. Indeed, as Defendant was doe'd in, it's not apparent what role this defendant played. <u>4th C/A (NIED)</u> – SUSTAINED without leave to amend "[T]here is no independent tort of negligent infliction of emotional distress. [Citation.] The tort is negligence, a cause of action in which a duty to the plaintiff is an essential element. [Citations.] That duty may be imposed by law, be assumed by the defendant, or exist by virtue of a special relationship. [Citation.] [¶]…[U]nless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. [Citations.]" (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984-985.) Defendant argues that the 4th cause of action fails to allege a duty to support an NIED cause of action. Plaintiff concedes in her opposition and does not oppose the

		demurrer to this cause of action. Therefore, the demurrer to the 4th cause of action for NIED is SUSTAINED WITHOUT LEAVE TO AMEND. <u>5th C/A (fraud) and 6th C/A (negligent misrepresentation)</u> – each SUSTAINED with leave "The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.]… [¶] Fraud must be pleaded with specificity rather than with ' "general and conclusory allegations." ' [Citation.] The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made. [Citation.]" (*West v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 780, 792-793.) "Each element must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff. [Citation.]" (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 211.) The elements of an action for fraud and deceit based on a concealment are: "(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must

		have sustained damage. (*Boschma v. Home Loan Center, Inc*. (2011) 198 Cal.App.4th 230, 248.) "The elements of a cause of action for fraud and a cause of action for negligent misrepresentation are very similar. Pursuant to Civil Code section 1710, both torts are defined as deceit. However, the state of mind requirements are different… Negligent misrepresentation lacks the element of intent to deceive. Therefore, [w]here the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit. [Citation.] [Citations.] [Citations.]" (*Moncada v. West Coast Quartz Corp*. (2013) 221 Cal.App.4th 768, 781.) Like fraud, negligent misrepresentation must be pled with particularity. (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028.) Defendant combined its demurrer to the 5th and 6th causes of action. Both causes of action allege affirmative misrepresentations and nondisclosure or concealment. They do not meet the specificity requirement, especially since Defendant is an entity. Although less specificity is required when a defendant has greater knowledge than the plaintiff, Plaintiff bought Defendant into this case as a doe defendant, there are no specific facts alleged against it, and it is lumped in together with the other defendants. At this time, without knowing anything about who Defendant is and what Defendant's role is in this case, it cannot be ascertained whether Defendant has greater knowledge and Plaintiff is required to plead more. The demurrer to the 5th and 6th causes of action for fraud and negligent misrepresentation is SUSTAINED WITH LEAVE TO AMEND. <u>7th C/A (breach of contract) and 9th C/A (breach of the duty of good faith and fair dealing)</u> – each SUSTAINED with leave The elements for breach of contract are "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) "A written

		contract is usually pleaded by alleging its making and then setting it out verbatim ('in haec verba') in the body of the complaint or as a copy attached and incorporated by reference." (4 Witkin, Cal. Procedure (6th ed. 2024) Pleading, § 526.) Alternatively, a plaintiff may plead the legal effect of a contract instead of the precise language. (*Miles v. Deutsche Bank National Trust Co*. (2015) 236 Cal.App.4th 394, 401-402.) "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. [Citation.] The covenant thus cannot ' "be endowed with an existence independent of its contractual underpinnings." ' [Citation.]" (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349.) While the 7th cause of action for breach of contract alleges a basic contract - the payment of money in exchange for a room - it does not attach a copy of the contract, such as a copy of reservation, or allege who the contract was with. It just alleges that Plaintiff had a contract with all the defendants. However, the complaint alleges that the named defendants and the doe defendants "owned, leased, occupied, possessed, controlled, operated, managed, maintained, and/or were responsible for the Property." [Complaint, ¶ 9] As such, the allegations include the possibility of defendants who did not contract with Plaintiff, e.g., a defendant who maintains the Property for the owner. Defendant was named as a doe defendant and there are no specific allegations against it. Its demurrer to the breach of contract cause of action on the grounds of uncertainty and failure to state sufficient facts are well taken and is SUSTAINED WITH LEAVE TO AMEND. As for the demurrer to the 9th cause of action for breach of the duty of good faith and fair dealing, because that cause of action hinges on the existence of a contract between Plaintiff and Defendant, the demurrer to it is also SUSTAINED WITH LEAVE TO AMEND. <u>8th C/A (unfair and fraudulent business practices)</u> - OVERRULED

		Business and Professions Code section 17200 *et seq* prohibits unfair competition, which is defined "'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.' [Citation.]" (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 370.) "Because the UCL is written in the disjunctive… An act can be alleged to violate any or all of the three prongs of the UCL—unlawful, unfair, or fraudulent. [Citation.]" (*Aton Center, Inc. v. United Healthcare Inc. Co.* (2023) 93 Cal.App.5th 1214, 1248, internal quotation marks omitted.) "'[A] business practice is "unfair" if (1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) the injury could not reasonably have been avoided by consumers themselves.' [Citation.]" (*Rubenstein v. The Gap, Inc*. (2017) 14 Cal.App.5th 870, 880.).) "'A business practice is "fraudulent' within the meaning of [the UCL] if it is 'likely to deceive the public. [Citations.] It may be based on representations to the public which are untrue, and '"also those which may be accurate on some level, but will nonetheless tend to mislead or deceive.... A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under"' the UCL. [Citations.] The determination as to whether a business practice is deceptive is based on the likely effect such practice would have on a reasonable consumer."' [Citation.]" (*Id*., at 876-877.) Defendant argues that the 8th cause of action for unfair and fraudulent business practices suffers from the same defects as the fraud causes of action. However, the 8th cause of action also alleges unfair business practices and incorporated the allegations that Defendants rented a room to Plaintiff that was infested with bedbugs, and that Plaintiff was not the only person they did that to. The allegations are sufficient to allege an unfair business practice. The demurrer to the 8th cause of action is OVERRULED. Moving Defendant to give notice.

		2. Motion to Strike Defendant INTERSTATE-RIM MANAGEMENT COMPANY, LLC moves to strike portions of the Complaint – specifically, • paragraph 61 (re 3rd C/A for IIED), • paragraph 80 (re 5th C/A for fraud), • paragraph 103 (re 8th C/A for Bus. & Prof. Code, § 17200), • paragraph 110 (re 9th C/A (breach of duty of GF&FD), • Prayer paragraph 112(h) (re attorney's fees), and • Prayer paragraph 112(i) (re punitive damages). The motion to strike is **MOOT** as to paragraphs 61, 80 and 110 in light of the ruling on demurrer. The motion is **GRANTED** as to the remaining paragraphs: 103, and Prayer paragraph 112(h) and (i). Insufficient allegations are pled to support a claim for punitive damages and there is no apparent basis for the request for attorney's fees. Moving Defendant to give notice.
14	OC Civic Center Development, LLC vs. Ohio Security Insurance Company	<u>Motion to Compel (re Special Interrogatories)</u> The court **GRANTS** Defendant OHIO SECURITY INSURANCE COMPANY's unopposed Motion to Compel Responses to Special Interrogatories, Set One. Moving Defendant shows that Plaintiff was served with the discovery at issue on 10/31/23, including by US Mail, and that Plaintiff has not responded despite multiple communications and extensions from defense counsel. (Boos Decl., ¶¶ 2-8, Exhs. A-B.) Monetary sanctions are warranted but the amount requested ($1,660) appears somewhat excessive in light of

		the straightforward nature of the motion and lack of opposition. **Plaintiff OC CIVIC CENTER DEVELOPMENT, LLC SHALL serve code-compliant responses to Defendant's Special Interrogatories, Set One, without objections, within 30 days** of notice of the court's ruling. **Plaintiff OC CIVIC CENTER DEVELOPMENT, LLC and its attorney LAWRENCE HOODACK SHALL pay, jointly and severally, to Defendant Ohio Security Insurance Company monetary sanctions totaling $1,245.00 (3 hours @ $415/hour) within 30 days** of notice of the court's ruling. (Code Civ. Proc., §§ 2023.030(a) and 2030.290(c).) Moving Defendant to give notice.