**Superior Court of the State of California**
**County of Orange**

**DEPT C18 TENTATIVE RULINGS**

**Judge Theodore R. Howard**

The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5218. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:00 p.m. on the day before the hearing.

**COURT REPORTERS WILL NO LONGER BE PROVIDED FOR TRIAL AND OTHER HEARINGS WHERE LIVE EVIDENCE WILL BE PRESENTED. IF A PARTY DESIRES A COURT REPORTER FOR ANY HEARING INCLUDING, BUT NOT LIMITED TO, LAW AND MOTION MATTERS, EX PARTE MATTERS AND CASE MANAGEMENT CONFERENCES, IT WILL BE THE RESPONSIBILITY OF THAT PARTY TO PROVIDE ITS OWN COURT REPORTER. PARTIES MUST COMPLY WITH THE COURT'S POLICY ON THE USE OF PRO TEMPORE COURT REPORTERS WHICH CAN BE FOUND ON THE COURT'S WEBSITE AT:** http://www.occourts.org/media/pdf/7-25-2014_Privately_Retained_Court_Reporter_Policy.pdf

**The Orange County Superior Court has implemented administrative orders, policies, and procedures noted on the Court's website to address the limitations and restrictions presented during the COVID-19 pandemic at Civil Covid-19. Due to the fluid nature of this crisis, you are encouraged to frequently check the Court's website at https://www.occourts.org for the most up to date information relating to Civil Operations.**

Unless otherwise ordered by the Court, all Unlimited and Complex proceedings may be conducted via Zoom or in person. On the date of your hearing click the Department C18 Link to begin the remote online check in/Zoom appearance process:

https://acikiosk.azurewebsites.us/?dept=C18

**Date**: May 9, 2024

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| 1. | Au v. Le<br>19-1051464 | The unopposed motion by plaintiff Chung Le for an order striking and dismissing the First Amended Complaint filed by plaintiff V-A Trading, a California Corporation, is **GRANTED**, as set forth herein.<br><br>The complaint states that V-A Trading is a California corporation. On 2/23/24, the Court entered an order granting the counsel for V-A Trading's motion to withdraw. (ROA 438) The order became effective on 2/26/24 when proof of service was filed with the Court. (ROA 443) In the two months since 2/26/24, V-A Trading has not substituted in a new attorney. In fact, to the contrary, on 3/20/24 and 5/2/24, V-A Trading filed copies of its discovery responses "*in pro per*" (ROA 460, 464, 472), thus confirming it is not represented by counsel. "The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court." (*Thomas G. Ferruzzo, Inc. v. Superior Ct.* (1980) 104 Cal.App.3d 501, 503)<br><br>As a result of V-A Trading being a corporation and not being represented by counsel, the plaintiff V-A Trading is unable to proceed with the action. Further, the motion is unopposed which suggests that Plaintiff concedes the motion has merit. (See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.)<br><br>Accordingly, the motion is **GRANTED** and the first amended complaint by V-A Trading as against defendant Chung Le is ordered **DISMISSED**, without prejudice.<br><br>*Counsel for Chung Le is ordered to give notice of this ruling.* |
| 2. | Gomez v. Weisenthal<br>23-1353594 | Required security or bond not filed. Matter **DISMISSED**.<br><br>*Defendant will give notice.* |
| 3. | Kim v. Kia America, Inc.<br>23-1334291 | *(Withdrawn)* |
| 4. | Garcia-Sandoval v. Mazda Motor of America, Inc.<br>23-1338965 | **No tentative ruling**. Lead counsel for each side is ordered to appear at the hearing and be prepared to discuss the case and the discovery matters at issue. |
| 5. | Kaabinejadian v. Equity Residential<br>20-1171109 | Plaintiff Massoud Kaabinejadian's Motion to Compel Further Responses to Plaintiff's Request for Production of Documents, Set No. One, and Request for Monetary Sanctions is **MOOT** and/or **DENIED** as follows.<br><br>Defendant Equity Residential, a Real Estate Investment Trust ("Defendant") presents evidence that it complied with the Court's October 19, 2023 Minute Order by |

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| | | providing the requested documents to Plaintiff on October 30, 2023 and subsequently provided the Verifications to Plaintiff as of April 16, 2024. (See Karimi Decl., ¶¶ 4 and 7, Exhs. A and B.) Defendant also provides evidence that the failure to serve the Verification was due to inadvertence, mistake and excusable neglect as Defendant believed the responses had already been verified. (Id., ¶ 5.)<br><br>The Court **DENIES** both Plaintiff and Defendant's request for monetary sanctions.<br><br>*Defendant is to give notice.* |
| 6. | Glickman v. Krolikowski<br>19-1049771 | Before the Court at present is the Motion for Reconsideration of the Court's January 11, 2024, Order, filed on 2/9/24 by defendants Charles Krolikowski and Newmeyer & Dillion LLP ("Defendants"). The Motion is **GRANTED**.<br><br>In this Motion, Defendants seek reconsideration of the Court's 1/11/24 Order under *C.C.P. § 1008(a*), as to ¶ 2 and ¶ 3 therein.<br><br>The Opposition filed by Plaintiff William Glickman ("Plaintiff") asserts that the Motion does not meet the requirements for relief under *C.C.P. § 1008(a).* However, the Motion appears to be timely (see Markow Decl. at ¶ 23, in ROA 574), which the Opposition does not dispute. It is also based on "new or different facts, circumstances, or law" sufficient to support the Motion. (*Id*. at ¶ 24.) It also would in any event support reconsideration on the Court's own Motion, based on what has been presented. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107.)<br><br>On the merits, the evidence presented demonstrates that:<br><br>(a) the Discovery Referee was appointed pursuant to a Stipulation and Order filed on 3/8/23 (ROA 376) which stated that the appointment was to be pursuant to *C.C.P. §§ 638, 644,* and *645.1*, but did not specify whether the reference was to be a general reference under *§638(a)* or a special reference under *§638(b).* The references to *C.C.P. § 644* and *645.1* also did not clarify the intended scope, as neither applies solely to a general or special reference.<br><br>However, on 5/25/23, Plaintiff submitted an "Order Appointing Referee" as ROA 418, signed by the Referee, for Court approval. The parties were required to clearly state therein whether the scope of the requested reference included all issues or was limited to specified issues to comply with *C.R.C. 3.901(b)(1)* and *C.R.C.* |

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| | | *3.902(2).* The Court approved and entered that Order on 6/9/23 (ROA 424). That Order clearly reflects that the parties agreed to a special reference under *§638(b),* as it states in both ¶ 4 and in ¶ 8(b) that the Referee was to make *recommendations* on the merits of disputed discovery issues and as to allocation of payment. As that is what the parties had agreed to, the Order entered on 1/11/24 erroneously included ¶ 2, which incorrectly stated that the reference was made under *C.C.P. § 638(a)*. The Court therefore will modify ¶ 2 in the 1/11/24 Order, to refer instead to *C.C.P. § 638(b)*.<br><br>With regard to ¶ 3 of the Order, which imposed sanctions, the Court finds that in light of the correction above, the Defendants and their attorneys of record, as listed in the 1/11/24 Order, <u>should not have been subject to those sanctions.</u> The Court therefore will modify ¶ 3 to **DENY** that request for sanctions in its entirety. It appears that this ruling will also render the Motion filed as ROA 595 on 2/13/24 [for reconsideration of the 1/11/24 Order as to those sanctions] MOOT. That Motion will thus be taken off of this Court's 6/20/24 calendar. Moving counsel on that Motion is to promptly be given notice of this ruling.<br><br>In light of the foregoing rulings, Plaintiff's sanctions request, as presented with the Opposition to this Motion, is **DENIED**.<br><br>Plaintiff's Evidentiary Objections, as filed with the Opposition in ROA 684, are **SUSTAINED** on Obj. No. 7 [foundation] but otherwise **OVERRULED**.<br><br>Defendant's Request for Judicial Notice filed as ROA 688 is **GRANTED** under *Ev. Code §452(d)* as to the existence of those records. (*Fontenot v. Wells Fargo Bank, NA* (2011) 198 Cal.App.4th 256, 264; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)<br><br>Finally, in light of the foregoing rulings, counsel is directed to confer as to what objections to what recommendations from the Discovery Referee require further consideration by this Court and submit a Joint Statement which identifies (by filing date and ROA numbers) those recommendations and all papers submitted by both sides related thereto, so that hearing dates may be set accordingly.<br><br>*Counsel for Defendants is to give notice of this ruling, and is to submit a proposed order in accordance with C.R.C. 3.1312, which comports with the foregoing.* |
| 7. | Smart Source of Boston, LLC v. Source Connect LLC | **A) Motion to Strike/Tax Plaintiff's Costs** |

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| | 20-1175969 | Defendants Source Connect LLC, 33 Degrees LLC ("33D" individually), Michael Hamontree, David Allen, and Phi Ngo's ("Defendants" all together) Motion to Strike/Tax plaintiff Smart Source of Boston, LLC's ("Plaintiff") memorandum of costs after judgment is **GRANTED** in part and **DENIED** in part.<br><br>The prevailing party in a lawsuit is entitled to recover certain costs and fees as permitted by *Civ. Proc. Code §§ 1032* and *1033.5.* Plaintiff was the prevailing party at trial against each of the defendants other than 33D. (ROA #574.) "The mere filing of a motion to tax costs may be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. [Citation.] However, "[i]f the items appear to be proper charges the verified memorandum is *prima facie* evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (*Nelson v. Anderson* (1999) 72 Cal. App. 4th 111, 131.) "The court's first determination, therefore, is whether the statute expressly allows the particular item, and whether it appears proper on its face. [Citation.] If so, the burden is on the objecting party to show them to be unnecessary or unreasonable." (*Id*.)<br><br>Defendants request the court strike/tax certain requested costs from Item Nos. 1, 4, 5, 12, 14, and 16. Defendants have largely not produced any cases/code sections that support objecting to the majority of the items they requested to be struck/taxed.<br><br><u>As to Item No. 1</u>, the requested amounts are largely permissible. The court will however strike a $20 fee for what appears to be a repeat filed stipulation, one of which was rejected by the court. The court will also strike the two $60 filing fees for motions to compel 33D's discovery responses as 33D was the prevailing party between it and Plaintiff. Plaintiff did not produce any evidence or valid arguments showing why the 33D motions should be charged to Defendants.<br><br>The motion is granted as to Item No. 1 in the amount of $140. Plaintiff may recover the remaining $1,495 under this section.<br><br><u>Item No. 2</u> is fully recoverable. (*Civ. Proc. Code § 10335.(a)(3)(A)*.) Plaintiff also produced evidence supporting the full amount requested. The motion is denied as to Item No. 4. Plaintiff may recover the full $12,775.30 requested under this section. |

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| | | Item No. 5 is also permissible except for the $157.67 in costs incurred for service on 33D. The motion is granted as to Item No. 5 in the amount of $157.67. Plaintiff may recover the remaining $1,419.33 under this section.<br><br>Item No. 12 is recoverable. (*Civ. Proc. Code § 1033.5(a)(11)*.) The motion is **DENIED**, the late cancellation fees are permitted as they were costs incurred by Plaintiff, which are recoverable by the prevailing party. The court permits full recovery of the requested amount of $11,939.90.<br><br>Item No. 14 is recoverable. (*Civ. Proc. Code § 1033.5(a)(14)*.) Plaintiff produced evidence the amount requested was incurred. The motion is denied as to this section. Plaintiff may recover the full $1,172.19 requested under this section.<br><br>Item No. 16 is recoverable. Fees paid to the JAMS discovery referee are recoverable. (*Homeowner's Assn. v. Centex W., Inc.* (1989) 213 Cal. App. 3d 282, 293.) However, the discovery referee heard issues related to six discovery motions, two of which were directed to 33D and the court will apportion 1/3 of the costs to 33D. (*Charton v. Harkey* (2016) 247 Cal. App. 4th 730, 735.) Defendants produced no case/statute indicating the pro hac vice fee or telephonic appearance fee are not recoverable.<br><br>The motion is **GRANTED** as to Item No. 16 in the amount of $841.14. Plaintiff may recover the remaining $1,897.87 under this section.<br><br>Plaintiff may recover a total of $30,849.59 from non-prevailing Defendants.<br><br>**B) Motion to Strike/Tac 33 Degree's Costs**<br><br>Plaintiff's Motion the Strike/Tax 33D's memorandum of costs after judgment is **CONTINED** to 06/13/24.<br><br>"When less than all of a group of jointly represented parties prevail, these limitations require the trial court to apportion the costs among the jointly represented parties based on the reason for incurring each cost and whether the cost was reasonably necessary to the conduct of the litigation on behalf of the prevailing parties." (*Charton, supra,* 247 Cal. App. 4th at 735.) "The court may not make an across-the-board reduction based on the number of jointly represented parties because doing so fails to consider the reason for incurring the costs and whether they were |

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| | | reasonably necessary for the prevailing party." (*Id*.)<br><br>Plaintiff's objection regarding lack of apportionment between 33D and the non-prevailing party is a valid and proper objection. In such instances, the burden of proof transfers back to the party claiming the costs. (*Ladas v. California State Auto. Assn*. (1993) 19 Cal. App. 4th 761, 774.) Here, 33D did not produce any evidence or sufficient arguments regarding apportionment and the court may not arbitrarily make an across-the-board reduction based upon the number of jointly represented parties.<br><br>The hearing is continued to 06/13/24 for parties to produce additional briefings and evidence on the proper apportionment of the requested amounts between 33D and non-prevailing parties. To be clear, the court holds apportionment is necessary, but needs briefing and evidence on proper apportionment between the Defendants.<br><br>33D is permitted to file a supplemental brief no greater than 6 pages (not including documentary evidence) no later than 05/23/24. Plaintiff is permitted to file a response no greater than 6 pages (not including documentary evidence) no later than 05/30/24.<br><br>*Plaintiff to give notice.* |
| 8. | Emery v. City of Newport Beach<br>23-1304970 | *(Off calendar)* |
| 9. | Garduno v. P.C. & RS Chao Family Limited Partnership, LP<br>23-1340712 | **A. Demurrer**<br><br>Defendants', The Walt Disney Company; Walt Disney Parks and Resorts U.S. Inc., Demurrer to the Amended Complaint is **OVERRULED** as to the 1st cause of action for Negligence, 2nd cause of action for Nuisance and the 4th cause of action for Breach of Contract.<br><br>It is **SUSTAINED** as to the 3rd cause of action for Intentional Infliction of Emotional Distress on the ground of failure to state a cause of action, *CCP S430.10(e).* Plaintiffs allege that defendants know about the bedbug infestation in their room and failed to completely eradicate it. [Complaint, ¶¶90-91] From this, the reckless disregard of the probability of emotional injury is alleged. [Complaint, ¶94] These allegations are sufficient to state two of the elements. However, defendants have not alleged "severe" emotional distress. |

"Severe emotional distress [is] emotional distress of substantial or enduring quality that no reasonable man in a civilized society should be expected to endure it." [*Fletcher v. Western Life Insurance Co.* (1970) 10 Cal.App.3rd 376, 397]

Severe emotional distress has not been alleged here. Plaintiffs allege "permanent scarring," "humiliation, stress, discomfort, annoyance, depression, fear of safety and/or physical pain and injury, frustration and anxiety", and "many sleepless nights." [Complaint, ¶¶93-94] No attempt is made to quantify the level of distress. There are no allegations that any particular symptom required medical treatment. For example, how bad are the bug bite scars? As alleged, the emotional injuries claimed cannot be said to rise to the level of "severe."

It is **SUSTAINED** as to the 5th cause of action for Fraudulent Concealment on the ground of failure to state a cause of action.

An action for concealment may exist where the facts are known only to the defendant and defendant knows they are not known to or reasonably discoverable by a plaintiff [*Warner Construction Corp. v. L.A.* (1970) 2 Cal. 3rd 285, 294] This is the allegation of plaintiffs' 5th COA. [Complaint, ¶112] However, this is not enough. There must have been a representation about the condition of the room that was incomplete because the presence of bedbugs was concealed. A failure to speak, standing alone, is not sufficient. [*Marketing West, Inc. v. Sanyo-Fisher (USA) Corp*. (1992) 6 Cal.App.4th 603, 613] There are no allegations about statements made about the condition of the room by any of defendants' agents, one way or the other. The demurrer to the 5th COA is **SUSTAINED.**

*Plaintiffs are granted 10 days' leave to amend. Defendant to give notice.*

**B. Motion to Strike**

Defendants', The Walt Disney Company; Walt Disney Parks and Resorts U.S. Inc., Motion to Strike is **DENIED**.

The issue cited by defendants is allegations of and prayer for punitive damages. However, by seeking to strike entire paragraphs rather than specific allegations applicable to punitive damages, it has sought to broadly strike language that is relevant to general and special

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| | | damages as well. The Court is not required to parse the language of the Complaint to identify specific language supporting punitive damage.<br><br>Further, the argument that the 2nd cause of action is one for negligence is not correct. When facts warrant, exemplary or punitive damages may be recovered in a nuisance case." *Hutcherson v. Alexander* (1968) 264 Cal.App.2nd 126, 136. |
| 10. | Schrom v. General Motors LLC<br>23-1364182 | On calendar are the Demurrer and Motion to Strike by General Motors, LLC ("GM"), challenging the original complaint of Plaintiff Gregory Schrom.<br><br>In response to the demurrer, Plaintiffs timely attempted to file a first amended complaint (FAC) on 4/26/24 (ROA 31)(nine court days prior to the hearing). However, the clerk's office rejected the FAC because defendant Simpson Irvine, Inc. had filed an answer to the original complaint. (ROA #25.)<br><br>"A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer . . . is filed but before the demurrer . . . is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike. . ." (*Code Civ. Proc., § 472(a)*.)<br><br>"'[T]he purpose of the statute permitting amendments as of right before an answer is filed or a demurrer is ruled upon is to promote judicial efficiency and reduce the costs of litigation.' [Citation.] 'The filing of the first amended complaint rendered [the defendant]'s demurrer moot since "'an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.'"'" (*People ex rel. Strathmann v. Acacia Rsch. Corp*. (2012) 210 Cal.App.4th 487, 505–06.)<br><br>The Court finds, in the interest of judicial efficiency and pursuant to *Code of Civil Procedure section 472*, that Plaintiff should be permitted to file the FAC. The Court hereby grants Plaintiff leave to file the FAC, and orders Plaintiff to file the FAC within 7 days of this ruling. Plaintiff is also ordered to serve a conformed copy of the FAC on all parties. |

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| | | Based on the foregoing, the court deems GM's demurrer and motion to strike as to the original complaint **MOOT** and therefore will order them **OFF CALENDAR**. Responses to the FAC are due pursuant to code.<br><br>*Counsel for plaintiff is ordered to give notice of this ruling*. |
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