SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 09-03-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	17CV315072 Motion: Compel	Gary Christensen et al vs Intero Real Estate Services Inc. et al	See Tentative Ruling. Plaintiff shall submit the final order.
LINE 2	23CV410157 Motion: Strike	Jane Doe vs Support Systems Homes, Inc. et al	See Tentative Ruling. The Court will prepare the final order.
LINE 3	21CV389030 Hearing: Motion Summary Judgment	Jonathan Faulkner vs The Leland Stanford Junior University et al	Off calendar. Notice of settlement has been filed.
LINE 4	19CV359201 Hearing To Amend Judgment to Foreclose and Order of Sale	Casa Blanca Homeowners Association vs Betty Chuck	It does not appear that Plaintiff filed the actual motion to amend the judgment, such that it is denied without prejudice. Plaintiff shall prepare the final order.

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LINE 5	20CV375092 Motion: Set Aside	Maria Ramos vs General Motors, LLC	Defendant GM brings a motion to set aside and vacate this Court's order of April 30, 2024 granting attorney's fees and costs to Plaintiffs. Defendant claims it did not get notice of the motion, and thus did not oppose it, because the emailed version did not include the hearing date and that it was surprised to receive the court's order. Defendant does not dispute, however, that it received personal service of the motion with the proper hearing date ("the personally served copies contained the requisite time and date of the hearing on the Motion" MPA, p1). Moreover, GM counsel Mr. Kay appeared at the hearing on March 7, 2024 where the upcoming hearing of April 30, 2024 was discussed. Receiving personal service and being explicitly told of the motion and hearing date at a court hearing demonstrates that Defendant received actual and sufficient notice of the hearing, such that its failure to respond does not constitute excusable neglect. "Excusable neglect exists when 'a reasonably prudent person in similar circumstances might have made the same error.'" *County of San Bernardino v. Mancini* (2022) 83 Cal. App. 5th 1095, 1103 (citation omitted). That is not the case here. The motion is DENIED. Plaintiff shall submit the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 6	23CV424771 Motion: Sanctions	Tuan Tran vs Pinnacle Property Management Services, LLC et al	Plaintiff brings a motion for sanctions pursuant to CCP §§ 128.5(a) and 128.7, claiming that Defendants' motion to compel arbitration was frivolous. Under that provision, the Court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. Section 125.5(b)(2) explains that "frivolous," for the proposes of this provision, "means totally and completely without merit or for the sole purpose of harassing an opposing party. Similarly, California Code of Civil Procedure section 128.7 provides a basis for the imposition of sanctions where a party presents papers to the court, "… primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" or where such pleadings or other papers contain legal contentions unwarranted by "existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law…" *See* C.C.P. 128.7(b)(1)-(2). Here, Defendants' motion was found meritorious. As such it was not frivolous. Plaintiff's motion is DENIED. Defendants shall submit the final order.

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Calendar Line 1
Case Name: *Christensen, et al. v. Intero Real Estate Services Inc., et al.*
Case No.: 17CV315072

Background

Plaintiffs Gary and Trish Christensen ("Plaintiffs") brought a Second Amended Complaint ("SAC") against Intero Real Estate Services, Inc. and NRT West, Inc. ("NRT").

Defendant NRT is a licensed real estate broker doing business as Coldwell Banker Residential Brokerage ("Coldwell"). Paul Bertoldo ("Bertoldo") is a licensed real estate salesperson employed by Coldwell. Bertoldo acted as Plaintiffs' agent and represented them during the purchase and transaction of their property, giving rise to the action. The action involves legal access to the property purchased by Plaintiffs.

On April 8, 2024, Plaintiffs filed their SAC, asserting the following causes of action:

1) Negligent Misrepresentation [against Intero];
2) Intentional Misrepresentation and Concealment [against Intero];
3) Intentional Infliction of Emotional Distress [against Intero];
4) Professional Negligence [against Intero]; and
5) Professional Negligence [against Coldwell].

On May 22, 2024, NRT filed a motion to compel further responses to special interrogatories ("SI"), set one. Plaintiffs oppose the motion.

Meet and Confer Efforts

A motion to compel further discovery responses must be accompanied by a meet and confer declaration pursuant to Code of Civil Procedure section 2016.040. (Code Civ. Proc., § 2030.300, subd. (b)(1) [interrogatories].) Section 2016.040 requires a moving party to make a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion." A determination of whether an attempt at informal resolution was adequate depends upon the particular circumstances and involves the exercise of discretion. (See *Obregon v. Superior Ct*. (1998) 67 Cal.App.4th 424, 431; see also *Stewart v. Colonial Western Agency, Inc*. (2001) 87 Cal.App.4th 1006, 1016 [meet and confer rule is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order].)

NRT indicates it attempted to meet and confer with Plaintiffs' counsel through a detailed meet and confer letter. (See Motion, p. 4:2-4, Fiske Decl., ¶¶ 5-6, Ex. 3.) Additionally, Plaintiffs' opposition indicates the parties met and conferred via telephone. (See Opposition, p. 1:19-20; Prince Decl., ¶ 3.) Thus, the parties have sufficiently met and conferred.

Motion to Compel SIs

A responding party must provide non-evasive answers to interrogatories that are "as complete and straightforward . . . to the extent possible," and, if after a reasonable and good faith effort to obtain the information they still cannot respond fully to an interrogatory, the responding party must so state in its response. (Code Civ. Proc., § 2030.220, subds. (a), (b).) If the responding party provides incomplete or evasive answers, or objections without merit, the

propounding party's remedy is to seek a court order compelling a further response to the interrogatories. (Code Civ. Proc., § 2030.300, subd. (a)(1).)

NRT moves to compel further responses to SI Nos. 1-36, 59-63, 68-71, and 73 against plaintiff Gary Christensen ("Plaintiff") only. (See Motion, p. 2:3-4.) NRT contends that the due process principles of the Discovery Act require Plaintiff to disclose the costs and amounts that he is aware of regarding the construction and development of Plaintiffs' home. (See Motion, p. 3:11-13.) NRT asserts that Plaintiff's responses are incomplete and evasive.

SI Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73

Plaintiff indicates that on August 20, 2024, he amended and served his responses to the above SIs and that the motion to compel is now moot as to those requests. (Opposition, p. 4:20-22, citing Hannon Decl., ¶ 2, Ex. A [attachment of amended responses to SI Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73].) In light of Plaintiff's service of the amended responses to these SIs, the motion to compel is MOOT, in part, as to SI Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73 only.

SI Nos. 2, 4, 6, 14, 16, 18, 26, and 69

SI Nos. 2, 4, 6, 14, 16, 18, 26, and 69 seek calculations explaining the responses to the above SI requests (Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73). They state: "Describe how the amount(s) stated in YOUR answer to the directly preceding Special Interrogatory is/are calculated." For each of these requests, Plaintiff responded: The amount is calculated by adding the total costs described in Mr. Christensen's response to Special Interrogatory . . ." NRT argues that it cannot do these calculations because no numerical responses were provided. Plaintiff has now provided numerical responses to the preceding requests. Thus, Plaintiff's responses are now sufficient. The motion to compel SI Nos. 2, 4, 6, 14, 16, 18, 26, and 69 is DENIED.

SI Nos. 7-12, 19-24, 27-36

In SI Nos. 7-12, 19-24, and 27-36, NRT requests the cost of future construction expenses as a proximate result of the delay in construction on Plaintiffs' property and an explanation of how Plaintiffs calculated those costs. Plaintiff objects to these requests on the grounds they are subject to expert testimony and seek premature disclosure of such testimony. Plaintiff also provides a substantive response as to how the costs will be calculated. (See e.g., Plaintiff's Separate Statement, pp. 7-8, Response to SI No. 7.)

NRT asserts that further responses should be compelled because Plaintiff fails to disclose anticipated future estimated numerical amounts. Additionally, NRT argues that the requests are not code compliant because, if Plaintiff does not know the numerical amount of future expenses, he should so state. (See Motion, p. 5:24-25; see also Code Civ. Proc., § 2030.220, subd. (c).) The Court finds that Plaintiff has adequately responded to these requests by indicating how future expenses will be calculated and additionally, the requests do not specifically require Plaintiff to provide a numerical amount. Moreover, as NRT acknowledges, trial in this case is set for September 16, 2024, less than two weeks from the September 3, 2024 hearing on this motion. At this point, NRT should have had the opportunity to depose any of Plaintiff's experts.

In reply, NRT expresses the following concern: "When the defense moves at trial (beginning on September 16, 2024) to exclude evidence of such speculative future damages, surely Plaintiff will then argue that his existing construction budgeting plan (that must be in his mind, as no written budget plan has been produced) is non-speculative evidence of future anticipated increased construction charges and construction financing expenses." (Reply, p. 3:6-10.) If this were the case, any motion to exclude this evidence at trial would likely be granted. Accordingly, the motion to compel SI Nos. 7-12, 19-24, 27-26 is DENIED.

SI Nos. 59-63

SI Nos. 59-63 involve promissory notes between Plaintiffs and their neighbor in exchange for the neighbor's conveyance of real property rights that Plaintiffs did not receive due to NRT's conduct. The Court is not persuaded by NRT's speculative arguments that Plaintiff's response to SI No. 59 "*may be* an incomplete and evasive answer" (Motion, p. 8:5-7 [emphasis added]), or that the remaining SI requests do not answer the specific questions asked. Plaintiff has provided a sufficient response to each of the requests. The motion to compel SI Nos. 59-63 is DENIED.

Sanctions

The Court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2030.300, subd. (d).)

NRT's counsel's declaration in support of the motion states it is seeking $2,400 in monetary sanctions against Plaintiff for three hours spent on the motion and an anticipatory three hours on the reply brief, at a billable rate of $400 an hour.

Here, a majority of the motion to compel has been denied and the Court declines to issue $2,400 in sanctions. The Court does find persuasive NRT's argument that Plaintiff's initial responses to SI Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73 warrant monetary sanctions. Plaintiff filed his amended responses to those requests on the same day the opposition to the motion to compel was filed. While the Court determined the motion was moot as to those requests, the Court does finds that NRT was justified in bringing its motion to compel as to those requests. Accordingly, the Court will award sanctions in the amount of $400 (1 hr. x $400/hr.). The Court will not award anticipated expenses as to NRT's reply. (See *Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th 1548, 1551.)

Conclusion and Order

The motion to compel is MOOT as to SI Nos. 1, 3, 5, 13, 15, 17, 25, 68, 70-73. The motion to compel is DENIED as to SI Nos. 2, 4, 6-12, 14, 16, 18-24, 26-36 and 59-63, and 69. The request for monetary sanctions is GRANTED, in part. Counsel for Plaintiff shall pay $400 to NRT's counsel within 10 calendar days of this Order.

Plaintiff shall prepare the final order.

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Calendar Line 2
Case Name: *Doe v. Support Systems Homes, Inc., et al.*
Case No.: 23CV410157

This is a sexual assault case brought by Jane Doe ("Plaintiff") against Support Systems Homes, Inc. ("Defendant") and its employee.

I. Background

According to the operative first amended complaint ("FAC"), in September 2021, Plaintiff sought rehabilitative services at one of Defendant's residential treatment facilities ("Facility"). (FAC, ¶¶ 13-14; 19-22.) During her stay, Plaintiff received counseling and one-on-one treatment from one of the Facility's employees. (FAC, ¶¶ 41-43.) That same employee sexually abused Plaintiff and ultimately "impregnated" her "while she was in crisis" and undergoing treatment. (FAC, ¶¶ 43-44.) Despite knowing that the employee was "targeting" female clients in the Facility, Defendant failed to supervise or follow up with him. (FAC, ¶ 40.)

Plaintiff initiated this action on January 19, 2023, and subsequently filed the FAC on March 19, 2024, alleging causes of action for declaratory relief, negligence, improper hiring and supervision ("improper retention"), and intentional infliction of emotional distress ("IIED"). Defendant filed a motion to strike the punitive damages allegations from the FAC. Plaintiff filed a late opposition on August 22, 2024, and Defendant filed a reply on August 26, 2024.

II. Preliminary Matters

A. Late-Filed Papers

Defendant argues that the opposition is untimely. (Defendant's Reply in Support of its Motion to Strike Allegations in Plaintiff's FAC ("Reply"), p. 2:1-8.) Indeed, the opposition was filed on August 22, 2024, and it was due nine court days prior to the hearing which was August 20, 2024. Plaintiff's opposition is two days late. (See Code Civ. Proc. § 1005, subd. (b).) However, as Defendant has not demonstrated any prejudice from consideration of the opposition, the Court will consider it. (See Cal. Rules of Court, rule 3.1300(d).) For the same reason, this Court will consider the motion to strike even if it is untimely as well. (Memorandum of Points and Authorities in Opposition to Defendant's Motion to Strike ("Opp."), p. 12:16-28.)

B. Plaintiff's Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support, Plaintiff requests judicial notice of the FAC in this action. (See Request for Judicial Notice ("RFJN") in Support of Opp. to Defendant's Motion to Strike ("Str.MPA"); Exh. 1.) The FAC is subject to judicial notice as a record of the superior court under Evidence Code section 452, subdivision (d). (See *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the

court may take judicial notice of its own file].) But, judicial notice in this instance is not warranted as the court must necessarily consider allegations of the FAC in ruling on the motion to strike. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 ["Judicial notice is unnecessary because, in our review of the demurrer ruling, we accept the allegations in the complaint and the facts in the exhibits as true."].)

Therefore, the request for judicial notice is DENIED.

III. Motion to Strike

A. Legal Standard

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (Code Civ. Proc., § 436, subd. (a).) A court may also strike out all or any part of a pleading not filed in conformity with the laws of the State of California. (Code Civ. Proc., § 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).)

Irrelevant matter includes "immaterial allegations." (Code Civ. Proc., § 431.10, subd. (c).) "An immaterial allegation in a pleading is any of the following: (1) An allegation that is not essential to the statement of a claim or defense; (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint." (Code Civ. Proc., § 431.10, subd. (b).)

"In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "In ruling on a motion to strike, courts do not read allegations in isolation." (*Ibid.*)

B. Punitive Damages Allegations

Defendant moves to strike the following punitive damages allegations of the FAC, arguing they are not supported by factual allegations establishing malice, oppression or fraud:

(1) **Page 12, Paragraph 93:** "DEFENDANTS are also liable for punitive damages because said DEFENDANTS had advance knowledge of the unfitness of their employee, FILIPPOS MARKOLEFAS, and continued to employ him with a conscious disregard of the rights and safety of others, including PLAINTIFF, and said DEFENDANTS were otherwise personally guilty of oppression, fraud, or malice, and otherwise ratified FILIPPOS MARKOLEFAS' acts."

(2) **Page 14, Paragraph 101:** "DEFENDANTS are also liable for punitive damages because said DEFENDANTS had advance knowledge of the unfitness of their employee, FILIPPOS MARKOLEFAS, and continued to employ him with a conscious disregard of the rights and safety of others, including PLAINTIFF, and said DEFENDANTS were otherwise personally

guilty of oppression, fraud, and malice, and otherwise ratified FILIPPOS MARKOLEFAS' acts."

(3) **Page 14, Line 11** as to Plaintiff's prayer for punitive damages: "On the Fourth Cause of Action: punitive damages."

"In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. These statutory elements include allegations that the defendant has been guilty of oppression, fraud, or malice. 'Malice' is defined in the statute as conduct 'intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.' 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. 'Fraud' is 'an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.' " (*Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, internal citations omitted.)

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages." (*Monge v. Super. Ct.* (1986) 176 Cal.App.3d 503, 510.)

"Where nonintentional torts involve conduct performed without intent to harm, punitive damages may be assessed 'when the conduct constitutes conscious disregard of the rights or safety of others.' [Citations.] ' "[A] conscious disregard of the safety of others may [thus] constitute malice within the meaning of section 3294 of the Civil Code. In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.' " [Citations.] Consequently, to establish malice, 'it is not sufficient to show only that the defendant's conduct was negligent, grossly negligent or even reckless.' [Citation.]" (*Bell v. Sharp Cabrillo Hosp.* (1989) 212 Cal.App.3d 1034, 1044.)

"When a defendant must produce evidence in defense of an exemplary damage claim; fairness demands that he receive adequate notice of the kind of conduct charged against him." (*G.D. Searle & Co. v. Super. Ct.* (1975) 49 Cal.App.3d 22, 29.)

As stated above, the operative complaint alleges claims for declaratory relief, negligence, improper hiring, and IIED. As an initial matter, the Court cannot consider extrinsic evidence in ruling on a motion to strike. (See Code Civ. Proc., § 437.) Accordingly, the Court has not considered the declaration of Plaintiff's counsel, Mark Hooshmand, or any opposition arguments based on such extrinsic evidence, for the purpose of determining the sufficiency of the allegations in the complaint. Additionally, as noted in Defendant's reply, fruitless meet and confer efforts are not a basis to deny a motion to strike.

(See Defendant's Reply in Support of Defendant's Str.MPA ("Reply"), p. 4:4-6.) Although the moving party is required to engage in meet and confer efforts prior to the filing of a motion to strike, (Code. Civ. Proc., § 435.5., subd. (a)), "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." (Code Civ. Proc., § 435.5, subd. (a)(4).) Thus, the Court will disregard Plaintiff's meet and confer arguments in ruling on the instant motion. (Opp., p. 14.)

Contrary to Plaintiff's contention that the motion to strike fails to address "specific allegations" of her FAC, Defendant seeks to strike all punitive damage allegations from the FAC on the ground the allegations do not meet the requisite specificity required under Civil Code section 3294. (Str.MPA, p. 7:4-10; Opp., p. 13:17-18.) To support its motion, Defendant argues Plaintiff fails to allege any facts showing malice, oppression, or fraud by clear and convincing evidence. (Str.MPA, p. 7:4-10.) Specifically, it contends Plaintiff provides no specific facts as to how Defendant failed to act, how its acts constituted a conscious disregard of Plaintiff's rights, or how Defendant's actions endangered the safety of consumers. (*Ibid*.) Defendant further contends that Plaintiff's allegation that Defendant "acted intentionally," without more, is inadequate for purposes of seeking punitive damages. (Str.MPA, p. 7:11-13.)

In opposition, Plaintiff argues that her FAC "includes extensive facts of wrongdoing" of Defendant, including its owner, that would warrant punitive damages. (Opp., p. 13:13-19.) Plaintiff asserts that she alleges the following in her FAC:

> [T]he FACILITY knew that Markolefas was unfit and ratified his behavior by keeping him as an employee. Plaintiff also alleges the FACILITY was woefully mismanaged and that Norton directly interfered with the treatment of disabled individuals who were relying on SSH for help. Plaintiff also alleges that the FACILITY knew of wrongdoing happening at the FACILITY and that it did not take steps to protect its clients. All of the extensive facts are in the statement of facts above. In addition, the FACILITY is a small FACILITY and Plaintiff alleges that it knew of all the problems, yet it did nothing. Plaintiff has alleged oppression and fraud where the FACILITY where it concealed its knowing unfitness of Markolefas and where it knew that its clients, including the PLAINTIFF were suffering and being harmed by the FACILITY's mismanagement.

(Opp., p. 13:19-28.)

The Court finds that the allegations in the FAC related to the third and fourth causes of action are insufficient to support a claim for punitive damages. While the FAC contains general and conclusory allegations, (e.g., "Defendants engaged in despicable conduct"), it does not allege how Defendant knew its employee created an unreasonable risk of serious bodily injury, or how it should have known this information especially given that Defendant operated multiple facilities. (See e.g., *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1042 [basis for punitive damages must be pled with specificity; conclusory allegations devoid of any factual assertions are insufficient]; see also FAC, ¶¶ 8, 46, 100,)

Next, Defendant argues Plaintiff has not alleged facts to allege ratification or its "advance knowledge" of the employee's actions under a vicarious liability theory. (Str.MPA, p. 7:18-26.) Specifically, Defendant contends that the employee was not a managing agent for

Defendant and thus Defendant did not have knowledge of the employee's misconduct and did not authorize it. (*Ibid.*)

"An employer shall not be liable for [punitive damages], 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." (Civ. Code, § 3294, subd. (b).)

Plaintiff fails to address Defendant's contention regarding the inadequacy of her vicarious liability allegations and simply restates said allegations, in opposition. (Opp., p. 13:19-29.) Accordingly, Plaintiff has conceded this point. (See *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"]; see also *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 529 [failure to challenge a contention, results in the concession of that argument].) The court finds this concession to be well taken. For example, there are no allegations demonstrating Defendant had "advance knowledge" of employee's fitness or that his misconduct was specifically ratified by Defendant.

In sum, Defendant correctly concludes that the FAC lacks any specific factual allegations of the type required to support a request for punitive damages. Nevertheless, the Court will afford Plaintiff an opportunity for leave to amend. (See *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360 [regarding demurrers and motions to strike, leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question].)

Accordingly, the motion to strike punitive damages allegations in the FAC is GRANTED WITH 20 DAYS' LEAVE TO AMEND.

IV. Conclusion and Order.

The motion to strike punitive damages allegations in the FAC is GRANTED WITH 20 DAYS' LEAVE TO AMEND.

The Court will prepare the final order.

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