

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

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"Every case is important" "No case is more important than any other." –
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." – Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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DATE: Thursday, 25 January 2024

TIME: 9:00 A.M.

**This Department uses Zoom for Law and Motion
and for Case Management Calendars. Please use the Zoom link below.**

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are
outlined in Local Civil Rule 8(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument,
oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00
p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by
telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative
ruling being the final order in the matter.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal
Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09>
Meeting ID: 961 4442 7712
[Password: 017350](#)

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California **Rules of Court**, rule 3.672.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit

photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	21CV380356	Zenith Insurance Company; Maria Domingue Jimenez vs Valley Fabrication, Inc. and related cross-complaints.	Motion Of Defendant Valley Fabrication Inc. To Strike Portions Of Plaintiff’s Complaint. Defendant VFI’s motion to strike portions of plaintiff Zenith’s FAC is GRANTED with 10 days’ leave to amend. SEE ATTACHED TENTATIVE RULING.
LINE 2	22CV404456	Northeast Securities Company Limited vs Que Wenbin, et al.	Motion of Defendants Specialized Loan; First Franklin Mortgage etc.; US Bank, N.A as successor, etc; to Quash Service of the Summons and Complaint and to Dismiss for Lack of Personal Jurisdiction. On its own motion, this Court will determine the matters to be “related for pretrial purposes only.” Both cases should be reassigned to Judge Monahan in Department 3 for hearing on the motions. NO TENTATIVE RULING.
LINE 3	22CV409322	Rajiv Behl vs Specialized Loan Servicing, LLC, et al.	Demurrer of Defendants to Plaintiff’s Complaint. Please check back at 3:30 PM

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	22CV404456	Northeast Securities Company Limited vs Que Wenbin, et al.	<p>Motion of Defendant Mike Que to Quash Service of the Summons and Complaint and to Dismiss for Lack of Personal Jurisdiction.</p> <p>On its own motion, this Court will determine the matters to be “related for pretrial purposes only.” Both cases should be reassigned to Judge Monahan in Department 3 for hearing on the motions.</p> <p>NO TENTATIVE RULING. He</p>
LINE 5	22CV395429	Melissa Pocek vs Apple, Inc.	<p>Motion of Plaintiff to Compel the Deposition of Defendant’s Person Most Qualified and Document Production Without Redaction.</p> <p>Is this motion moot? In the nominal opposition papers, Apple states that it “ Has since agreed to redacted versions of the 476 [pages] in produced documents in question that will allow Plaintiff to obtain the names of any purported percipient witnesses while still protecting third-party privacy rights.”</p> <p>Have the documents been produced?</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 6	23CV413750	Angel Muñoz vs Henry Cord; Danny Torres; Claudia Barron Zúñiga	<p>Motion of Defendant Henry Cord to Compel Plaintiff to Respond to Request for Production of Documents etc. and for Monetary Sanctions.</p> <p>Plaintiff did not file opposition to this motion.</p> <p>The motion is GRANTED. Plaintiff is to respond to the Request for Production within 10 days of the filing and service of this Order. The request for monetary sanctions is code compliant and is GRANTED. Plaintiff and his attorney are to pay the sum of \$160 to defense counsel within 10 days of the filing and service of this Order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	23CV413750	Angel Muñoz vs Henry Cord; Danny Torres; Claudia Barron Zúñiga	<p>Motion of Defendant Henry Cord to Compel Plaintiff to Respond to Form Interrogatories and Special Interrogatories and for Monetary Sanctions.</p> <p>Plaintiff did not file opposition to this motion.</p> <p>The motion is GRANTED. Plaintiff is to respond to the Form and Special Interrogatories within 10 days of the filing and service of this Order. The request for monetary sanctions is code compliant and is GRANTED. Plaintiff and his attorney are to pay the sum of \$160 to defense counsel within 10 days of the filing and service of this Order.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	19CV345499	Sergey Firsov vs Yevgeniy Babichev; Ekaterina Berman; Kitanoff Group International; Omar Kitanoff;	<p>Motion of Plaintiff To Disqualify Attorney etc.</p> <p>Plaintiff seeks to disqualify Andrei Romanenko, counsel for Yevgeniy Babichev.</p> <p>This Court has previously declared Mr. Firsov to be a vexatious litigant. On 08 November 2023, he presented to the Presiding Judge a request for leave to file new litigation. That request was denied by the presiding judge and filed on 21 November 2023.</p> <p>This Court will order the matter OFF CALENDAR WITHOUT PREJUDICE should he obtain leave to file new litigation.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 9	21CV390050	Holt-Pacific Associates vs Subway Real Estate, LLC et al. and related cross-complaints.	<p>Motion of Plaintiff for Leave to File a Second Amended Complaint.</p> <p>The motion is unopposed. The motion is GRANTED. Plaintiff is to present a copy of this proposed second amended complaint to the clerk via the e-filing queue. Plaintiff should then serve the pleading on interested parties who will have 20 days leave within which to RESPOND.</p> <p>It appears that plaintiff tried to obtain a stipulation for leave to do so but was unable. A stipulation would have relieve the court and counsel of additional labor. . . .</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 10	22CV398119	Nathaniel Villareal; Envia Holdings, LLC vs Robin Silvera-Vasquez; Richard Vasquez; The Foreclosure Company, Inc.	<p>Motion of Tyler P. Kreuger and Rusconi, Foster & Thomas, APC to Withdraw As Counsel for Richard Vasquez.</p> <p>Defendant Robin Silvera Vasquez opposes the motion. She contends that until Mr. Kreuger can confirm the address of Richard Vasquez, he should remain as Mr. Vasquez's agent for mail service in this proceeding. In support of this proposition she cites Code of Civil Procedure, § 1015 and Reynolds v. Reynolds (1943) 21 Cal.2d 580.</p> <p>There is a notation in Odyssey filed by the Clerk that the hearing on the document motion to be relieved does not match court records.</p> <p>The declaration in support of the motion states that the client was served by mail at the last known address but has not otherwise confirmed in the past 30 days that the address was current.</p> <p>If counsel for Robin Silvera Vasquez has some insight as to where Richard Vasquez might be residing at the current time, it would be helpful to share that with Mr. Kreuger.</p> <p>In the meantime, the Court will continue further hearing on this motion to 06 February 2024 at 9:00 AM to be heard in connection with Ms Silvera Vasquez's pending discovery motion.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 11	22CV398269	Astrofel Escorido; ACCA 2 LLC vs Hazel Valera; Veritas Prime Co.; 11 22 Enterprises, LLC	<p>Motion of Yuri Voronin, Esq. to Withdraw As Counsel for ACCA 2 LLC.</p> <p>On 23 January 2024, Mr. Voronin appeared at a duly-noticed Case Management Conference. No other party appeared. Noting that there was no opposition to this motion filed, and good cause appearing, this Court ADVANCED this motion and Line #12 to the Case Management Conference and GRANTED the motion.</p> <p>Counsel is to prepare an appropriate order and submit it to this Department via the e-filing queue. The proposed order should refer to the next court date as 18 April 2024 (Dismissal Review) at 10:00 AM in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 12	22CV398269	Astrofel Escorido; ACCA 2 LLC vs Hazel Valera; Veritas Prime Co.; 11 22 Enterprises, LLC	<p>Motion of Yuri Voronin, Esq. to Withdraw As Counsel for Astrofel Escorido.</p> <p>SEE LINE #11.</p>
LINE 13	23CV415992	Kurt Cocking vs Intuitive Surgical, Inc.; US Tech Solutions, Inc.	<p>Petition of Defendants to Stay Proceedings and to Compel Arbitration.</p> <p>The petition is GRANTED. The Court does not believe that plaintiff met the required test of unconscionability test of proving oppression and surprise.</p> <p>"[T]he terms of the agreement are binding, even if the user did not actually review the agreement, provided that. . . [t]he website put a reasonably prudent user on notice of the terms Of the contract." (See <i>Garcia v. Enterprise Holdings, Inc.</i> (N.D. Cal. 2015) 78 F.Supp.3d 1125, 1137.)</p> <p>This Court can sever any offending provisions concerning any topic under the agreement' for the beautiful yard ornament and the Rose. I have placed it on a phase on my desk and I will stare at it until Valentine's Day where I will s severance clause and under established case law without rewriting the contract.</p> <p>Therefore, this Court concludes that the agreement provides due process to both parties. (<i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> (2000) 24 Cal.4th 83 at 106, 107; .</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 14	23CV415992	Kurt Cocking vs Intuitive Surgical, Inc.; US Tech Solutions, Inc.	<p>Petition of Prabhkaran S. Bedi to Appear As Counsel Pro Hac Vice for Defendants.</p> <p>The petition is GRANTED.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 15	23CV417169	JPMorgan Chase Bank, N.A. vs Pedro J. Maiz, II	<p>Motion of Crosby Connolly, Esq. to withdraw as counsel for defendant Pedro J. Maiz, II.</p> <p>Counsel for defendant seeks to withdraw as counsel due to a breakdown of the attorney-client relationship. Communication between client and counsel has deteriorated due to an irreconcilable breakdown of the attorney-client relationship (<i>Estate of Falco v. Decker</i> (1987) 188 Cal.App.3d 1004, 1014.) Therefore, counsel is filing this motion to withdraw as counsel. Counsel alleges that his client will not be prejudiced by the withdrawal.</p> <p>The motion to be relieved as counsel is GRANTED. The Order will take effect upon the filing and service of the executed order of this Court and an order that is written on Form MC-053 and that otherwise complies with California <i>Rules of Court</i>, rule 3.1362(e). Counsel should add the next court date (court trial) on ¶ 8 of the proposed order and submit it to this Department via the Clerk's efilings queue.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
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LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20**

**161 North First Street, San Jose, CA 95113
408.882.2320 · 408.882.2296 (fax)
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*http://www.scscourt.org***

(For Clerk's Use Only)

CASE NO.: 21CV380356

Zenith Insurance Company v. Valley Fabrication, Inc., et al.

DATE: 25 January 2024

TIME: 9:00 am

LINE NUMBER: 1

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 24 January 2024. Please specify the issue to be contested when calling the Court and Counsel.

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**Order On Valley Fabrication, Inc.'s
Motion To Strike Portions Of Plaintiff's [First Amended] Complaint.**

I. Statement of Facts.

Carlos Jimenez Cruz ("Decedent") sustained fatal injuries as a direct result of one or more defects in a spinach harvesting machine manufactured, assembled, and/or sold by defendant Valley Fabrication, Inc. ("VFI"). (First Amended Complaint ("FAC"), ¶¶ Prod.L-1 and Prod.L-4.)

Plaintiff Zenith Insurance Company ("Zenith") is the workers compensation insurer for Decedent's employer and asserts its subrogation rights to recover compensation paid to or on behalf of one or more injured workers. (FAC, ¶¶ 11(g), Prod.L-1, and Prod.L-3.)

On 11 March 2021¹, plaintiff Zenith filed a Judicial Council form complaint against defendant VFI asserting a single cause of action for Products Liability.

On 22 June 2021, defendant VFI filed an answer to plaintiff Zenith's complaint.

On 23 February 2023, pursuant to stipulation, the court issued an order consolidating plaintiff Zenith's action with *Maria Dominga Jimenez v. Valley Fabrication*, case number 22CV406565.

On 17 April 2023, plaintiff Zenith filed a motion for leave to file the FAC. On 1 August 2023, the court granted plaintiff Zenith's motion for leave to file the FAC.

On 4 August 2023, plaintiff Zenith filed the operative FAC in which plaintiff Zenith continues to assert a single cause of action for Products Liability, but now includes an exemplary damages attachment.

On 24 August 2023, defendant VFI filed the motion now before the court, a motion to strike the exemplary damages attachment from plaintiff Zenith's FAC.

¹ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

II. Motions to Strike in General.

“The court may, upon a motion made pursuant to [**Code of Civil Procedure**, § 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (**Code of Civil Procedure**, § 436.)

“A notice of motion to strike must be given within the time allowed to plead, and if a demurrer is interposed, concurrently therewith, and must be noticed for hearing and heard at the same time as the demurrer.” (**Rules of Court**, rule 3.1322(b).)

“A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively.” (**Rules of Court**, rule 3.1322(b).)

Under general rules of civil procedure, a motion to strike may be brought on the following two grounds:

- a. Strike out any irrelevant, false, or improper matter inserted in any pleading.
- b. Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (**Code of Civil Procedure**, § 436.)

Irrelevant matter includes “immaterial allegations.” (**Code of Civil Procedure**, § 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 of Civil Procedure**, § 431.10, subd. (b).)

“As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice.” (Weil & Brown, et al., California Practice Guide: **Civil Procedure Before Trial** (The Rutter Group 2020) ¶7:168, p. 7(l)-75 citing **Code of Civil Procedure**, § 437.) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are ‘false’ or ‘sham.’ Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable.” (*Id.* at ¶7:169, pp. 7(l)-75 to 7(l)-76.)

Motions to strike must be utilized cautiously and sparingly because they are not procedural “line item vetoes” for the civil defendant. (**PHII, Inc. v. Superior Court (Ibershof)** (1995) 33 Cal.App.4th 1680, 1683 .) “A motion to strike may be used as a scalpel—to cut out any irrelevant, false, or improper matters inserted therein.” (Weil & Brown, California Practice Guide: **Civil Procedure before Trial** (The Rutter Group 2019) §7:177, p. 7-61 citing **Code of Civil Procedure**, § 436(a) (internal punctuation modified.) “This includes allegations not essential to the claim or defense; allegations neither pertinent to nor supported by an otherwise sufficient claim or defense; or a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” *Id.* at §7:178 citing **Code of Civil Procedure**, § 431.10(b).) (internal punctuation modified.)

“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. Superior Court** (1998) 67 Cal.App.4th 1253, 1255.) “In ruling on a motion to strike, courts do not read allegations in isolation.” (**Clauson**, 67 Cal.App.4th at 1255.)

As there is no legal basis for further amendment, leave to amend is DENIED. (See **Hoffman v. Smithwoods RV Park, LLC** (2009) 179 Cal.App.4th 390, 401 “[W]here the nature of the plaintiff’s claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result.”.)

"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. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) "In ruling on a motion to strike, courts do not read allegations in isolation." (*Ibid.*)

III. Analysis.

A. Defendant VFI's motion to strike portions of plaintiff Zenith's FAC is GRANTED.

1. Compensation insurer's right to pursue punitive damages.

In this motion to strike, defendant VFI contends plaintiff Zenith cannot recover punitive damages because, as a workers' compensation insurer, plaintiff Zenith can recover only that which it has paid to the injured worker.

An employer who has paid compensation to an employee injured by the negligent conduct of a third person **may recover such payments** against the negligent third person (Lab. Code, § 3852). As used in the Labor Code, the term "employer" includes the employer's compensation insurer. (Lab. Code, § 3850.) In *Witt v. Jackson*, 57 Cal.2d 57, 69 [17 Cal.Rptr. 369, 366 P.2d 641], the Supreme Court pointed out that: "There are three ways in which an employer who becomes obligated to pay compensation to an employee **may recover the amount so expended** against a negligent third party. He may bring an action directly against the third party (Lab. Code, § 3852), join as a party plaintiff or intervene in an action brought by the employee (Lab. Code, § 3853), or allow the employee to prosecute the action himself and subsequently apply for a first lien against the amount of the employee's judgment, less an allowance for litigation expenses and attorney's fees (Lab. Code, § 3856, subd. (b))."

(*Harrison v. Englebrick* (1967) 254 Cal.App.2d 871, 873-874; emphasis added.)

Of these three methods of recovery by a workers' compensation insurer, plaintiff Zenith has chosen the first which is to bring an action directly against the third party, here defendant VFI, pursuant to Labor Code section 3852. That section states, in relevant part:

The claim of an employee, including, but not limited to, any peace officer or firefighter, for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. ***Any employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation, or who pays or becomes obligated to pay an amount to the Department of Industrial Relations pursuant to Section 4706.5, may likewise make a claim or bring an action against the third person. In the latter event the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other emolument paid to the employee or to his or her dependents.***

(Emphasis added.)

The court found the following explanation elucidating:

The California workers compensation scheme not only fixes the right of an employee who suffers a job-related injury to recover compensation from his or her employer or fellow employees (see Lab. Code, §§ 3600, 3601) but also significantly defines the rights of action of both an employee and an employer in the event that a third party is responsible for the employee's injury. These statutory provisions are "primarily procedural." (*Roe v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 884, 889 [117 Cal.Rptr. 683, 528 P.2d 771].) They seek to insure, first, that, regardless of whether it is the employee or the employer who sues the third party, both the employee and the employer recover their due, and, second, that, as far as possible, the third party need defend only one lawsuit.

To these ends, the workers compensation statutes set up procedures which guarantee an employee and an employer notice of each other's action, authorize the employee and the employer to intervene in each other's lawsuit, provide for mandatory consolidation of separate employee and employer actions, and grant the employee and the employer the right to share in each other's judgment or settlement. The procedures governing notice, intervention, and mandatory consolidation are relatively straightforward. Labor Code section 3853 provides: "If either the employee or the employer brings an action against such third person, he shall forthwith give to the other written notice of the action, and of the name of the court in which the action is brought by personal service or registered mail. Proof of such service shall be filed in such action. If the action is brought by either the employer or employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently."

The procedures which the workers compensation statutes set up to enable employers and employees to share in each other's recoveries are inevitably more complex. To the extent that the damages which the employee recovers from a third party simply duplicate the benefits which the employee has already received from the employer, the employee's own recovery provides a fund from which the employer may draw. ***It is, however, necessary to authorize the employer, in the event that the employee does not sue, to recover the damages which the third party owes to both the employer and the employee:*** read together, Labor Code sections 3852, 3853, 3854, and 3859 provide such authorization.

It also is necessary to set up procedures whereby an employee may share in an employer's recovery, and vice versa. Labor Code section 3856 provides for such procedures in the event that an employee or an employer recovers a judgment. Labor Code section 3860 sets out analogous procedures to govern settlements. (See also Lab. Code, § 3859.)

Labor Code sections 3856 and 3860 make it possible for the third party to be held liable "for all the wrong his tortfeasance brought about" (Smith v. County of Los Angeles, supra, 276 Cal.App.2d at p. 162), regardless of whether it is the employee or the employer who brings suit. Taken together with the notice, intervention, and consolidation procedures set out in Labor Code section 3853, these statutes attempt to insure that "[in] either case, single or joint plaintiffs, there results but the one total action, and the defendant is put to his defense but once with the totality of recovery for his tortfeasance at issue." (Id., at p. 164 [italics in original].)

(County of San Diego v. Sanfax Corp. (1977) 19 Cal.3d 862, 872-873; emphasis added.)

As the court understands the authorities, plaintiff Zenith may plead and pursue punitive damages against defendant VFI even if the employee (or his representatives) choose not to do so. However, by plaintiff Zenith's own recognition, it is not entitled to keep any such punitive damages for itself. Plaintiff Zenith itself cites *State Compensation Ins. Fund v. Matulich* (1942) 55 Cal.App.2d 528, 530-531 where the court stated:

Section 3854 still retains the provision for an action by the employer alone. It permits evidence of any amount the employer has "paid or become obligated to pay" and provides that such expenditures shall be considered as proximately resulting from the injury in addition to "any other items of damage proximately resulting therefrom"; and that "After recouping himself for such special damages, together with a reasonable attorney's fee fixed by the court, the employer shall pay any excess to the injured employee or other person entitled thereto."

(Italics original.)

When compensable injury is the result of a third party's tortious conduct our statutes preserve a right of action against the tortfeasor. The compensation system was not designed to extend immunity to strangers. ***To avoid a double recovery by the employee our statutes provide a system with the general effect of reimbursing the employer, or his substituted insurance carrier, for compensation outlay and of giving the employee the excess of the damage recovery over the amount of compensation.*** (2 Larson's Workmen's Compensation Law, § 71,

p. 165 "Theory of Third Party Actions.") Labor Code, section 3852, declares that the claim of an employee for compensation does not affect his claim or right for damages proximately resulting from injury or death against any person other than the employer and further provides that any employer who pays or becomes obligated to pay compensation may likewise make a claim or bring an action against such third person in the nature of subrogation.

(*Sanstad v. Industrial Acci. Com.*, 24 Cal. Comp. Cases 139, 140, 1959 Cal. Wrk. Comp. LEXIS 191, *3, 171 Cal. App. 2d 32, 35, 339 P.2d 943, 944 (Cal. App. 3d Dist. June 1, 1959).)

This result comports with general rules regarding subrogation. What defendant VFI incorrectly assumes in making this motion to strike is that plaintiff Zenith seeks total and complete subrogation when, in reality, plaintiff Zenith is entitled to partial subrogation.

Under the doctrine of subrogation, when an insurer pays money to its insured for a loss caused by a third party, the insurer succeeds to its insured's rights against the third party in the amount the insurer paid. (*Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 633–634 [119 Cal.Rptr. 449, 532 P.2d 97].) Upon subrogation, the insurer steps into the shoes of its insured. (*Allstate Ins. Co. v. Mel Raption, Inc.* (2000) 77 Cal.App.4th 901, 908 [92 Cal.Rptr.2d 151] (*Mel Raption*).) “ ‘Subrogation is the insurer's right to be put in the position of the insured, in order to recover from third parties who are legally responsible to the insured for a loss paid by the insurer.’ ” (*Plut v. Fireman's Fund Ins. Co.* (2000) 85 Cal.App.4th 98, 104 [102 Cal.Rptr.2d 36] (*Plut*).) Partial payment to the insured results in partial subrogation; **the insurer is subrogated in the amount of the insurance proceeds.** (*Ferraro v. Southern Cal. Gas Co.* (1980) 102 Cal.App.3d 33, 43 [162 Cal.Rptr. 238] (*Ferraro*).)

(*Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 548; emphasis added.)

For the reasons stated above, the court rejects defendant VFI's initial argument in support of its motion to strike plaintiff Zenith's exemplary damages attachment.

2. ***White v. Ultramar.***

Alternatively, defendant VFI relies upon *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 566 (*White*) to argue that plaintiff Zenith has not sufficiently identified an individual within defendant VFI's corporate structure to support liability for punitive damages. In 1980, the California Legislature:

added subdivision (b) to section 3294. (Stats. 1980, ch. 1242, § 1, p. 4217.) Following subsequent minor amendments, the statute now states in pertinent part: "An employer shall not be liable for [punitive] 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.*" (§ 3294, subd. (b), italics added.) The drafters' goals were to avoid imposing punitive damages on employers who were merely negligent or reckless and to distinguish ordinary respondeat superior liability from corporate liability for punitive damages. (See *Weeks v. Baker & McKenzie* (1998) 63 Cal. App. 4th 1128, 1150-1151 [74 Cal. Rptr. 2d 510]; see also *College Hospital, Inc. v. Superior Court* (1994) 8 Cal. 4th 704, 712-713 [34 Cal. Rptr. 2d 898, 882 P.2d 894] [noting that, after 1979, the Legislature limited circumstances under which an employer could be held liable for punitive damages].) **Section 3294 is no longer silent on who may be responsible for imputing punitive damages to a corporate employer. For corporate punitive damages liability, section 3294, subdivision (b), requires that the wrongful act giving rise to the exemplary damages be committed by an "officer, director, or managing agent."**

(*White v. Ultramar* (1999) 21 Cal.4th 563, 571-572; emphasis added.)

In opposition, plaintiff Zenith cites *Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1230 where it is written: "Marketing a product that is known to be defective and dangerous to consumers supports an inference of malice for purposes of punitive damages." The issue raised by defendant VFI is not whether the alleged conduct here qualifies as malice, but rather whether the FAC attributes such an act of malice to an officer, director, or managing agent of defendant VFI. To that point, plaintiff Zenith asserts in opposition, "[i]t is a wholly fair and rational inference from the alleged facts that this machine was sold with the permission of the officers, directors or managing agents of VFI."² However, plaintiff Zenith does not point to any such allegations from which the court might derive such an inference. There is no allegation regarding the corporate structure of defendant VFI. "A corporation is, of course, a legal fiction that cannot act at all except through its employees and agents." (*Black v. Bank of America* (1994) 30 Cal.App.4th 1, 6.) Other than the allegation that defendant VFI is a corporation (see FAC, ¶15), the court cannot identify any allegation from which the court can infer that the malicious act was committed, authorized, or ratified by an officer, director, or managing agent versus some non-officer, non-director, non-managing agent employee of defendant VFI.

For that reason, defendant VFI's motion to strike portions of plaintiff Zenith's FAC is GRANTED with 10 days' leave to amend.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The Court is aware that defendant Willoughby Farms Inc. has filed an application for a stay of proceedings as Willoughby Farms and one of its principals, David Willoughby, have been criminally charged by indictment with a violation of **Penal Code**, § 192(b), involuntary manslaughter, a felony. Willoughby Farms, Willoughby Brothers, LLC, and David Willoughby have been indicted on charges of violating of a felony violation of **Labor Code**, § 6425(a), "Causing Death Of Employee," a felony.

Zenith has filed opposition to the request for a stay.

This Court does not believe that the matter can be disposed of properly on an ex parte application and will set the matter for further hearing at 11:00 AM on 13 February 2024 in Department 20, the same time and place as the Trial Setting Conference currently set in this matter. The parties may e-file additional papers by the close of business of 09 February 2024.

VI. Order.

Defendant VFI's motion to strike portions of plaintiff Zenith's FAC is GRANTED with 10 days' leave to amend.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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² See page 10, lines 2 – 4 of Plaintiff Zenith Insurance Company's Opposition to Defendant's Motion to Strike Portions of Plaintiff Zenith's First Amended Complaint.

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