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

Department20@scscourt.org

"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: Tuesday, 27 February 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 bandwith. 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 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	20CV368227	Michelle Espinoza, a minor etc. vs Santa Clara Valley Transportation Authority	**Motion of Plaintiff to Strike or, in the Alternative, to Tax Costs Claimed by the City of San Jose.** Has plaintiff executed the agreement to waive appeal in exchange for a waiver of costs claimed by the City of San José? NO TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise the court whether they wish to submit on the papers presented or appear and argue on the merits.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 2	21CV390848	Kathleen O'Connor, et al. v. Plum Tree Care Center, et al.	**Motion of Defendant Good Samaritan Hospital To Strike Portions of Plaintiff's Second Amended Complaint.** Defendant Good Samaritan's demurrer to the second cause of action [Elder Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is SUSTAINED without leave to amend. Defendant Good Samaritan's demurrer to the third cause of action [Willful Misconduct] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is OVERRULED. Defendant Good Samaritan's motion to strike portions of Plaintiffs' SAC [***Code Civ. Proc.***, § 436, subd. (a)] is GRANTED. Defendant Plum Tree's motion to strike portions of Plaintiffs' SAC [***Code Civ. Proc.***, § 436, subd. (a)] is DENIED. SEE ATTACHED TENTATIVE RULING.
LINE 3	21CV390848	Kathleen O'Connor, et al. v. Plum Tree Care Center, et al.	**Demurrer of Defendant Good Samaritan Hospital to Plaintiff's Causes of Action Of Elder Abuse and Willful Misconduct in the Second Amended Complaint.** SEE LINE #2.
LINE 4	21CV390848	Kathleen O'Connor, et al. v. Plum Tree Care Center, et al.	**Motion of Defendants GHC of Los Gatos and Life Generations Healthcare To Strike Portions of Plaintiff's Second Amended Complaint.** SEE LINE #2.
LINE 5	23CV421116	Daniel Mays vs Got Kickz, LLC; Aidan Louis; Joseph Louis.	**Motion of Plaintiff to Strike a Portion of Defendants' Answer.** Plaintiff filed this motion on 01 December 2024 asserting tht Defendant Got Kickz, LLC., is a California corporation which is barred from representing itself. On 25 January Mr. Roberts substituted in as Counsel for Got Kickz, LLC. At the Case Management Conference of 30 January 2024, plaintiff apparently agreed to take the motion off calendar. OFF CALENDAR AS MOOT.
LINE 6	22CV404833	Imelda Jimenez vs Bledsoe Family Properties, LLC and Robert T. Bledsoe	**Order on Motions of Defendants Bledsoe Family Properties, LLC and Robert T. Bledsoe To Compel Responses to Discovery Requests and Request for Monetary Sanctions.** This Court will GRANT the motion to compel further responses. Plaintiff is to provide code-compliant responses within 20 days of the filing and service of this order. Defense counsel makes a code-compliant request for monetary sanctions and the request is GRANTED. Plaintiff and counsel shall pay to defense counsel the sum of $3,240.00 within 20 days of the filing and service of this Order. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 7	22CV404833	Imelda Jimenez vs Bledsoe Family Properties, LLC and Robert T. Bledsoe	SEE LINE #6.
LINE 8	22CV404833	Imelda Jimenez vs Bledsoe Family Properties, LLC and Robert T. Bledsoe	SEE LINE #6.
LINE 9	22CV404833	Imelda Jimenez vs Bledsoe Family Properties, LLC and Robert T. Bledsoe	SEE LINE #6.
LINE 10	23CV411788	Bernardo Magaña Loya v. General Motors LLC	**Motion of Plaintiff to Compel Defendant to Provide Further Responses To Special Interrogatories etc.** Continued from 07 November 2023. At hearing on that date, this Court ordered the parties to meet and confer on the responses with the limitations of responses pertaining to the production of the make and model of the car in question as well as the particular components, whether they were used only in this year's model or in other model vehicles. The motions were continued to 21 January 2024 and the counsels were to meet and confer regarding any remaining issues. This Court notes that no additional papers have been filed by either party. Are the motions MOOT? NO TENTATIVE RULING.
LINE 11	23CV411788	Bernardo Magaña Loya v. General Motors LLC	**Motion of Plaintiff to Compel Defendant to Produce Further Responses To Request for Production of Documents, Set One etc.** SEE LINE #10.
LINE 12	23CV411788	Bernardo Magaña Loya v. General Motors LLC	**Motion of Plaintiff to Compel Defendant to Provide Further Responses To Special Interrogatories etc.** SEE LINE #10.
LINE 13	23CV418678	Wendy Garcia vs BMW of North America, LLC	**Motion of Plaintiff to Compel Defendant BMW of North America to Provide Further Responses To Request For Production Of Documents, Set One, and for Sanctions.** No party has filed opposition. Is the motion MOOT? NO TENTATIVE RULING. The parties are requested to use the Tentative Ruling Protocol to advise this Court if they wish to appear.
LINE 14	23CV418678	Wendy Garcia vs BMW of North America, LLC	**Motion of Plaintiff to Compel Defendant BMW of North America to Provide Further Responses To Form Interrogatories, Set One, and for Sanctions.** No party has filed opposition. Is the motion MOOT? NO TENTATIVE RULING. The parties are requested to use the Tentative Ruling Protocol to advise this Court if they wish to appear.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 15	23CV418678	Wendy Garcia vs BMW of North America, LLC	**Motion of Plaintiff to Compel Defendant BMW of North America to Provide Further Responses To Special Interrogatories Nos. 2, 3, 5-22, 25-31, and 33-36, Set One, and for Sanctions.** No party has filed opposition. Is the motion MOOT? NO TENTATIVE RULING. The parties are requested to use the Tentative Ruling Protocol to advise this Court if they wish to appear.
LINE 16	19CV357842	Tejinder Singh vs Chung Lee et al	**Hearing on Motion of Plaintiff to Tax Fees and Costs Claimed By Defendants Redfin, Mark Christopher Bennett, and Kimberly Douglas.** No party has filed opposition to this motion. On 31 August 2023, Ms. Deihl stated that she does oppose Plaintff's Motion to Tax Fees and Costs. Ms. Deihl was to prepare and submit a Proposed Order and Dismissal of the cross-complaint via e-filing. On 26 October 2023, Ms. Deihl, on behalf of defendants Redfin, Mark Christopher Bennett, and Kimberly Douglas, presented a proposed order granting “attorneys’ fees in the reduced amount of $2,585.25 from Plaintiff Tejinder Singh.” Is this motion MOOT? NO TENTATIVE RULING. The parties are requested to use the Tentative Ruling Protocol to advise this Court if they wish to appear.
LINE 17	19CV358368	KYC Investment Group, a California Corporation vs Kwok Chan et al	**Motion of Plaintiff KYC Investment Group, and Cross-Defendants Nga Yan "Yoko" Cheng and Suk Wah Ng for Leave to File a First Amended Complaint.** No party has filed opposition to this motion. According to the minutes of 07 November 2023, this hearing was advanced to 16 January 2024. There are no minutes for that date. Odyssey further does not reflect the filing of the FAC and there is no response to it. NO TENTATIVE RULING. The parties are requested to use the Tentative Ruling Protocol to advise this Court if they wish to appear.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 18	21CV376503	State Farm General Insurance Company vs TNT Fire Protection, Inc. And Related Cross-Complaint	**Motion of TNT Fire Protection, Inc. Opposing Sagarchi Enterprises, Inc.'s Application for Determination of Good Faith Settlement.** This Court spend about 2 ½ hours on late Sunday evening reviewing the file in this matter and writing a four-page tentative ruling. On the morning of Monday 26 February 2024 this Court received notice that the case had settled and the motion was being taken off calendar. This Court wishes to think that counsel for we saw it important matter and providing an interesting educational opportunity for this Court because of the well-written papers. OFF CALENDAR.
LINE 19	22CV409112	The Skinner Law Group APC vs Tacomania, Inc. et al	**Motion of Defendant Tacomania, Inc. for Sanctions against Plaintiff and Counsel.** The request of Mr. Rodriguez for monetary sanctions is GRANTED pursuant to ***Code of Civil Procedure***, §§ 2023.010(h) (Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery) and 1008(d) (A violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7). Both the discovery motion of 03 August 2023 and the subsequent motion for reconsideration were made without a reasonable belief that the motions were being made with substantial justification, given that the relationship of Mr. Skinner and his former clients had apparently terminated the previous October or November of 2022. The motions were an unnecessary burden on defendant Tacomania and its counsel. Mr. Skinner is to pay the sum of $5,130.00 within 20 days of the filing and service of this Order. SEE ATTACHED TENTATIVE RULING.
LINE 20	23CV420480	Kyle Widergren vs BWW Resources LLC s.d.a. Buffalo Wild Wings, Inc.; Prince Parag	**Motion of Defendants to Compel Arbitration and Stay Action Pending for Arbitration; Request for Monetary Sanctions.** NO TENTATIVE RULING. The party should use the Tentative Ruling Protocol to advise this Court if they wish to submit on the papers presented or appear and argue the merits of the motion.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
LINE 23			SEE ATTACHED TENTATIVE RULING.
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
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

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Calendar Line 2

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)
smanoukian@scscourt.org
http://www.scscourt.org

(For Clerk's Use Only)

CASE NO.: 21CV390848 **Kathleen O'Connor, et al. v. Plum Tree Care Center, et al.**
DATE: 27 February 2024 **TIME: 9:00 am** **LINE NUMBERS: 02, 03, 04**

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 26 February 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on
1. Motion of Defendant Good Samaritan Hospital To Strike Portions of Plaintiff's Second Amended Complaint;
2. Demurrer of Defendant Good Samaritan Hospital to Plaintiff's Causes of Action Of Elder Abuse and Willful Misconduct in the Second Amended Complaint; and
3. Motion of Defendants GHC of Los Gatos and Life Generations Healthcare To Strike Portions of Plaintiff's Second Amended Complaint.

I. Statement of Facts

On or about 25 October 2020, decedent Dorothy Elaine O'Connor ("Decedent") was admitted to Good Samaritan Hospital in San Jose ("Good Samaritan") for generalized weakness and further care following multiple falls.[1] (Second Amended Complaint ("SAC"), ¶13.) Upon her admission, Decedent was diagnosed with multiple health conditions, including atrial fibrillation and acute decompensated heart failure. (*Ibid*.)

Based on Decedent's medical history, Good Samaritan knew or should have known that Decedent was at high risk of developing pressure sores. (SAC, ¶15.) Decedent presented with wounds in her right and left legs. (*Ibid.*) Pressure sore protocol should have been instituted and followed at Good Samaritan. (*Id.* at ¶16.) Decedent suffered the development and/or worsening of pressure sores while at Good Samaritan. (Ibid.) Good Samaritan failed to document or treat Decedent's pressure sores during her stay from 25 October 2020 to 31 October 2020. (*Id.* at ¶17.)

On or about 31 October 2020, Decedent was admitted to Plum Tree Care Center ("Plum Tree") for skilled nursing rehabilitation. (SAC at ¶19.) She had multiple pressure sores at the time of her admission. (*Id.* at ¶20.) Based on Decedent's medical history, Plum Tree knew or should have known that Decedent was at high risk of developing pressure sores. (*Id.* at ¶22.) Pressure sore protocol should have been instituted and followed at Plum Tree, but it was not. (*Id.* at ¶23.) While at Plum Tree, Decedent suffered the development and/or worsening of pressure sores. (*Id.* at ¶¶23-24.) Plum Tree failed to document or treat Decedent's pressure sores during her stay at the care center from 31 October 2020 to 11 November 2020. (*Id.* at ¶24.)

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[1] Defendants Good Samaritan Hospital and Good Samaritan Hospital, LP are referred to collectively as "Good Samaritan."

Due in part to inadequate staffing and monitoring, Decedent suffered a fall at Plum Tree on 4 November 2020. (SAC, ¶27.) As documented on 1 November 2020, Decedent had recently suffered a new onset of decrease in strength and functional mobility before the 4 November 2020 fall. (*Ibid.*) On 11 November 2020, Decedent had the onset of dry gangrene in her left great toe. (*Id.* at ¶34.)

On or about 11 November 2020, Decedent was admitted to Good Samaritan. (SAC, ¶36.) She was diagnosed with, among other things, stage IV ulcers on her lower leg. (*Ibid.*) On or about 14 November 2020, Decedent's left lower leg had frank gangrene, and the following day it was determined she may need amputation. (Id. at ¶38.) On 28 November 2020, Decedent died. (*Id.* at ¶41.) Gangrene of her left foot was noted as a significant condition contributing to her death. (*Id.* at ¶41.) She was 97 years old. (*Id.* at ¶50.)

On 25 October 2022, plaintiffs Kathleen O'Connor and Jerome O'Connor, individually and as successors in interest to Decedent (collectively, "Plaintiffs"), filed a complaint against defendants alleging causes of action for (1) negligence; (2) elder abuse/willful misconduct; and (3) wrongful death.[2]

On 14 February 2022, defendants GHC of Los Gatos, LLC dba Plum Tree Care Center (erroneously sued as separate entities) and Life Generations Healthcare LLC (collectively, "GHC Defendants") filed a demurrer and motion to strike portions of the complaint. On 22 February 2022, defendant Good Samaritan filed a demurrer and motion to strike portions of the complaint. In an order filed on 8 June 2022, the court sustained the demurrers to the second cause of action but otherwise overruled the demurrers. The court denied the motions to strike in part and otherwise deemed them moot.

On 27 June 2022, Plaintiffs filed the first amended complaint (FAC) alleging causes of action for (1) negligence; (2) elder abuse; (3) willful misconduct; and (4) wrongful death. The GHC defendants and defendant Good Samaritan filed demurrers to the second and third causes of action as well as motions to strike portions of Plaintiffs' FAC.

In an order filed on 14 December 2022, the court sustained the demurrers with leave to amend, and the court granted in part and denied in part the motions to strike. Plaintiffs sought clarification of the 14 December 2022 order. The court addressed this request with its order filed on 12 October 2023, explaining that the demurrers to the FAC were sustained with leave to amend and that motions to strike were granted in part and denied in part.

On 24 October 2023, Plaintiffs filed the operative SAC, alleging causes of action for:

(1) Negligence

(2) Elder Abuse

(3) Willful Misconduct

(4) Wrongful Death.

On 22 November 2023, defendant Good Samaritan filed two of the three motions now before the court: a demurrer and a motion to strike portions of Plaintiffs' SAC.

On 29 November 2023, the GHC Defendants file the third motion now before the court: a motion to strike portions of Plaintiffs' SAC.

II. Legal Standards

A. Demurrers in General

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See ***Williams v. Beechnut Nutrition Corp.*** (1986) 185 Cal.App.3d 135, 139, fn. 2.)

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[2] 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).)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to "state facts sufficient to constitute a cause of action." (***Code Civ. Proc.***, §430.10, subd. (e).) "[C]onclusionary allegations . . . without facts to support them" are insufficient on demurrer. (***Ankeny v. Lockheed Missiles and Space Co.*** (1979) 88 Cal.App.3d 531, 537.) "It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued." (***Yolo County Dept. of Social Services v. Municipal Court*** (1980) 107 Cal.App.3d 842, 846-847.)

"It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading." (***Committee on Children's Television, Inc. v. General Foods Corp.*** (1983) 35 Cal.3d 197, 213.) "It 'admits the truth of all material factual allegations in the complaint . . .; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.' [Citation.]" (***Id.*** at pp. 213-214; see ***Cook v. De La Guerra*** (1864) 24 Cal. 237, 239 ["[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to."].)

B. Motions to Strike in General.

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).)

"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 2023) ¶7:168, p. 7(l)-77 (***Weil & Brown***) [citing ***Code Civ. Proc.***, § 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.)

"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.***)

III. Analysis.

Defendant Good Samaritan demurs to the second and third causes of action and moves to strike portions of Plaintiffs' SAC. Defendant Plum Tree also moves to strike portions of Plaintiffs' SAC. The Court will defer comment on the quality of the "meet & confer" that did or did not take place prior to the filing of this motion.

A. Defendant Good Samaritan's demurrer to the second cause of action [Elder Abuse] is SUSTAINED.

Defendant Good Samaritan demurs to the second cause of action [Elder Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action.

"The purpose of the [Elder Abuse and Dependent Adult Civil Protection Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect." (***Delaney v. Baker*** (1999) 20 Cal.4th 23, 33 (***Delaney***).) "The elements of a cause of action under the Elder Abuse Act [***Welfare and Institutions Code*** section 15600, *et seq*.] are statutory, and reflect the Legislature's intent to provide enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect." (***Intrieri v.***

Superior Court (2004) 117 Cal.App.4th 72, 82.) Because we test for liability under the Elder Abuse Act, a statutory cause of action, we apply "the general rule that statutory causes of action must be pleaded with particularity." (***Covenant Care, Inc. v. Superior Court*** (2004) 32 Cal.4th 771, 790 (***Covenant Care***).) "[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]" (***Mittenhuber v. City of Redondo Beach*** (1983) 142 Cal.App.3d 1, 5 (***Mittenhuber***).)

Welfare and Institutions Code section 15610.07, subdivision (a)(1) states, "Abuse of an elder or a dependent adult" means … "[p]hysical abuse, ***neglect***, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering." (Emphasis added.)

Welfare and Institutions Code section 15610.57 goes on to state:

(a) "Neglect" means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

(See also, ***CACI***, No. 3103.)

In short, neglect as a form of abuse under the Elder Abuse Act refers "to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." (***Delaney v. Baker*** (1999) 20 Cal.4th 23, 34, 82 Cal.Rptr.2d 610, 971 P.2d 986 (***Delaney***).) Thus, when the medical care of an elder is at issue, "the statutory definition of 'neglect' speaks not of the *undertaking* of medical services, but of the failure to *provide* medical care." (***Covenant Care, Inc. v. Superior Court*** (2004) 32 Cal.4th 771, 783, 11 Cal.Rptr.3d 222, 86 P.3d 290 (***Covenant Care***); see also *id.* at p. 786, 11 Cal.Rptr.3d 222, 86 P.3d 290 ["statutory elder abuse may include the egregious withholding of medical care for physical and mental health needs"].)

(***Carter v. Prime Healthcare Paradise Valley LLC*** (2011) 198 Cal.App.4th 396, 404-405 (***Carter***); italics original.)

…we distill several factors that must be present for conduct to constitute neglect within the meaning of the Elder Abuse Act and thereby trigger the enhanced remedies available under the Act. The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [citations]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations]; and (3) ***denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs***, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or ***with conscious disregard of the high probability of such injury*** (if the plaintiff alleges recklessness) [citations]. The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. [Citations.] Finally, the facts constituting the neglect and

establishing the causal link between the neglect and the injury "must be pleaded with particularity," in accordance with the pleading rules governing statutory claims. [Citation.]

(***Carter***, *supra*, 198 Cal.App.4th at pp. 406–407; emphasis added.)

"In order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages. (Compare ***Welf. & Inst. Code***, § 15657 [requiring "clear and convincing evidence that a defendant is liable for" elder abuse and "has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse"] with ***Civ. Code***, § 3294, subd. (a) [requiring "clear and convincing evidence" that the defendant has been guilty of oppression, fraud, or malice].)" (***Covenant Care***, *supra*, 32 Cal.4th at p. 789.)

" 'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations.]" (***Delaney***, *supra*, 20 Cal.4th at pp. 31–32; see also ***Cochrum v. Costa Victoria Healthcare, LLC*** (2018) 25 Cal.App.5th 1034, 1045.) Recklessness, unlike negligence, involves more than "inadvertence, incompetence, unskillfulness, or a failure to take precautions" but rather rises to the level of a "conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it." (***Ibid***.)

Here, the parties agree on the question presented: whether the SAC sufficiently alleges understaffing to establish defendant Good Samaritan's recklessness and resultant liability under the Elder Abuse Act. (See Dem., 7:5-8; Opp., p. 10:5-6.) Good Samaritan argues the understaffing allegations are essentially identical to those appearing in the FAC, which this Court already deemed insufficient. (Dem., p. 4:17-20.) Plaintiffs assert the demurrer should be overruled because the SAC adds extensive facts to support the recklessness allegation. (Opp., p. 10:6-8.) As addressed by this Court previously in these proceedings, two cases analyzing the adequacy of understaffing allegations have reached opposite conclusions on similar facts: ***Worsham v. O'Connor Hospital*** (2014) 226 Cal.App.4th 331 (***Worsham***) and ***Fenimore v. Regents of the University of California*** (2016) 245 Cal.App.4th 1339 (***Fenimore***). The distinction between ***Worsham*** and ***Fenimore*** is discussed in a leading treatise on elder abuse litigation:

> Two cases have recently ruled on the sufficiency of allegations of inadequate understaffing to establish liability for Elder Abuse. In [***Worsham***, *supra*, 226 Cal.App.4th 331], the court examined the plaintiff's allegations that the nursing facility failed in its duty to maintain sufficient staff to address the needs of patients and to ensure compliance with legal requirements. Plaintiff also alleged that the nursing facility was 'chronically understaffed, and did not adequately train the staff it did have.' ***Worsham*** characterized the allegations as insufficient to render the nursing facility's failure to provide staffing as nothing more than professional negligence. The failure to provide staff demonstrates negligence in the undertaking of medical services, and not a 'fundamental failure to provide medical care for physical and mental health needs.' (citing [***Delaney***, *supra*, 20 Cal.4th at p. 34].) On the face of the ***Worsham*** opinion, the court seems to have described a rule that inadequate staffing can only lead to a finding of negligence, even if inadequate staffing was the result of an intentional decision to increase profitability of the facility operation with the knowledgeable and intended result that patients would suffer, sicken or die.
>
> A closer look at [***Worsham*** *supra*, 226 Cal.App.4th 331] shows plaintiff alleged the defendant acted "recklessly" by deliberately understaffing and undertraining, these allegations of culpability which are essential to an Elder Abuse claim, were not sufficiently supported with particular facts. In other words, ***Worsham*** appears to have turned on the lack of specificity in support of allegations that in understaffing, the defendant acted recklessly.
>
> In [***Fenimore***, *supra*, 245 Cal.App.4th 1339], the court reviewed allegations similar to those in ***Worsham***. Accordingly, the defendant argued that the failure to have adequate staff amounted to no more than negligence. ***Fenimore*** responded: '***Worsham's*** determination that understaffing constitutes no more than negligence may be true, *absent* further allegations showing recklessness. But the Fenimores have alleged more than a simple understaffing here. The FAC identified the staffing regulation the Hospital allegedly violated and suggested a knowing pattern of violating it constituted recklessness.' [***Fenimore***, *supra*, 245 Cal.App.4th at p. 1350.]

(Balisok, **Elder Abuse Litigation** (The Rutter Group 2022) ("Balisok"), section 9:24.)

In support of its demurrer, defendant Good Samaritan cites ***Worsham*** for the proposition that an Elder Abuse claim must be based on more than inadequate staffing, and Good Samaritan contends the allegations here lack sufficient specificity to establish anything more than professional negligence. (Dem., p. 9.) In opposition, Plaintiffs cite to ***Fenimore*** for the proposition that recklessness may be inferred from a pattern and practice of understaffing in violation of staffing regulations. (Opp., pp.10-11.) The appellate court in ***Fenimore*** found that "a violation of staffing regulations here may provide a basis for finding neglect," but then went to explain that more was required to state a claim for Elder Abuse:

> Of course, the Fenimores still had to allege facts showing the Hospital acted recklessly, oppressively, fraudulently, or maliciously in the commission of neglect. [***Welf. & Inst. Code***, § 15657.] The FAC supplied allegations that may show recklessness. It alleged the Hospital had a pattern and knowing practice of improperly understaffing to cut costs, and had the Hospital been staffed sufficiently, George would have been properly supervised and would not have suffered injury. On a demurrer, we must accept the allegations as true and express no opinion on whether the Fenimores can ultimately prove these allegations. We must assume the Fenimores can prove by clear and convincing evidence that the Hospital was understaffed at the time George fell, that this understaffing caused George to fall or otherwise harmed him, and that this understaffing was part of a pattern and practice. If they do so, we cannot say as a matter of law that the Hospital should escape liability for reckless neglect. The trier of fact should decide whether a knowing pattern and practice of understaffing in violation of applicable regulations amounts to recklessness.

(***Fenimore***, *supra*, 245 Cal.App.4th at p. 1349.)

Plaintiffs argue they have alleged a similar "pattern and practice" of conscious understaffing from which recklessness may be inferred. (Opp., p. 16:16.) Plaintiffs point to a section of the SAC under the heading: "New Facts that Support Claims of Understaffing (New Allegations in SAC)." (See SAC, ¶¶125-154.) These new facts are based on documents from the California Department of Public Health ("CDPH"), incorporated into the SAC. (See Opp., pp: 12:27-17:4; Notice of Errata to Plaintiffs' Second Amended Complaint, p. 2, Exs. 1-5.) As summarized in the SAC, the new allegations based on CDPH documentation include the following:

- March 2019 surveys showing a failure to comply with the 1:2 nurse-to-patient ratio in the Labor and Delivery unit. (SAC, ¶126.)
- April 2019 survey showing a failure to report a pressure injury in a timely manner. (*Id.* at ¶127.)
- June 2019 survey showing a patient was overmedicated. (*Id.* at ¶128.)
- August 2019 survey showing a patient was left on a bedpan for 6 hours. (*Id.* at ¶129.)
- September 2019 survey showing a failure to comply with the 1:2 nurse-to-patient ratio in the Labor and Delivery unit. (*Id.* at ¶130.)
- February 2020 survey showing a failure to report a pressure injury in a timely manner. (*Id.* at ¶132.)
- September 2020 survey showing a failure to assure the availability of medical records for 1 patient. (*Id.* at ¶133.)
- October 2020 survey showing a failure to ensure the ICU was free from insects; maggots were found in 1 patient. (*Id.* at ¶134.)
- November 2020 survey showing the hospital failed to ensure staff followed the hospital policy on wound assessment with respect to 1 patient: staff did not add photographic documentation of wound to chart; every dressing did not include the wound description and measurements; and a wound assessment was not completed two emergency department registered nurses. (*Id.* at ¶135.)
- June 2021 survey showing failures by the governing body to (1) ensure that nursing services were provided to meet the needs of patients, and (2) carry out an effective, system-wide quality assessment program. This survey stated, "the governing body failed to address serious, systemic, and recurring issues, placing 13 of 37 sampled patients at risk for adverse events." (*Id.* at ¶136-141, Ex. 3.)

- August 2021 survey showing failures by the governing body to (1) ensure that nursing services were provided to meet the needs of patients, and (2) carry out an effective, system-wide quality assessment program. This survey stated, "the governing body failed to fully address serious and recurring issues, placing 15 and 37 sampled patients at risk for adverse events." (*Id.* at ¶136-141, Ex. 3.)
- November 2021 survey showing a failure to follow internal policies and procedures with respect to 1 patient on an involuntary psychiatric hold. (*Id.* at ¶150.)
- December 2021 survey showing a failure to ensure nursing staff followed the hospital's policies, including a lack of charge nurses in the Neurosurgical Intensive Care Unit, Emergency Department, and Labor and Delivery unit. (*Id.* at ¶¶151-154, Ex. 5.)

(Opp., pp. 13-17; SAC ¶¶125-154.)

Defendant Good Samaritan contends the new facts again fail to show a pattern and practice from which recklessness can be inferred. (Mot., pp. 7-10.) Good Samaritan asserts that the CDPH surveys completed *after* the time the Decedent stayed at the hospital (in October and November 2020) cannot be used to show a pattern and practice of understaffing in existence during her stays. In addition, Good Samaritan points to qualifying language in some of the CDPH documents that are provided: "Inspection was limited to the specific complaints and does not represent the findings of a full inspection of the facility." (SAC, Exs. 1 and 2, pp. 4, 6, 8, 12 of 138-page PDF of combined exhibits.)

Defendant Good Samaritan also points out that Plaintiffs have not provided all of the CDPH documents referenced in the SAC, and that documents from 2020, the year of the allegedly reckless care of Decedent, are conspicuously absent. (Dem., p. 2:14-16.) Plaintiffs explain that they did not attach all of the records cited in the SAC because the exhibits would be too voluminous, arguing that the records are presumably within Good Samaritan's possession. (Opp., 14:28-15:5.)

The court acknowledges the new facts alleged by Plaintiffs in an effort to establish an inference of defendant Good Samaritan's recklessness. But, as this court has stated previously, it believes the facts of this case are more analogous to those in ***Worsham*** than those in ***Fenimore***. For the reasons discussed below, the supplemental facts found in the SAC do not change the court's mind.

The ***Fenimore*** decision "did not explain what sort of pattern or practice would suffice, nor how drastic the understaffing would have to be to amount to recklessness." (***Cochrum***, 25 Cal.App.5th at p. 1048.) But, the decision effectively identified three elements in the case before it which it concluded were sufficient to state a claim for Elder Abuse based on understaffing: (1) that the facility was understaffed at the time of the injury or harm to the patient; (2) that the understaffing caused the injury or harm to the elder; and (3) that the understaffing was part of a pattern and practice. (See ***Fenimore***, *supra*, 245 Cal.App.4th at p. 1349 ["We must assume the Fenimores can prove by clear and convincing evidence that the Hospital was understaffed at the time George fell, that this understaffing cause George to fall or otherwise harmed him, and that this understaffing was part of a pattern and practice. If they do so, we cannot say as a matter of law that the Hospital should escape liability for reckless neglect."].)

Here, based on this court's review of the second cause of action as alleged in the SAC, those three elements are not met, rendering ***Fenimore*** distinguishable. The absence of any CDPH records from 2020 is conspicuous, particularly when the SAC references several records from 2020 and the Plaintiffs found room to include approximately 122 pages of CDPH records dated *after* the alleged harm here.

However, a plaintiff is not required to meet an evidentiary standard at the pleading stage, and the court finds the CDPH records to be relevant to the understaffing claim. The SAC's allegations are sufficient to meet the first and third elements identified in ***Fenimore***, i.e., that Good Samaritan was understaffed during the Decedent's stays in October and November of 2020, and that this understaffing was part of a pattern and practice.

What the court finds lacking is sufficient specificity in support of allegations that understaffing caused injury or harm to the Decedent. As in ***Worsham***, the allegations here concern defendant Good Samaritan's alleged "negligent undertaking of medical services, rather than a failure of those responsible for attending to [the Decedent's] basic needs and comforts to carry their custodial or caregiving obligations. (***Worsham***, *supra*, 226 Cal.App.4th at p. 337.)

In ***Fenimore***, there was a clear connection between the alleged understaffing and the alleged injury to the elder. There, the family of the elder (George) admitted him to a hospital on a psychiatric hold, and then transferred him to Resnick Neuropsychiatric Hospital to protect him from falls and wandering. (***Fenimore***, *supra*, 245 Cal.App.4th at pp. 1342-1343.) The hospital knew that George was an extreme fall risk, was being transferred from an involuntary psychiatric hold, and required special care and assistance to prevent further falls. (***Id.*** at p. 1343.)

"Just minutes after entering the Hospital, George was left unattended and fell." (***Ibid***.) X-ray results later revealed that he had a hip fracture, and he never recovered from the ensuing hip surgery. (***Id.*** at p. 1344.) The plaintiffs alleged that the hospital knowingly violated nursing staff regulations applicable to psychiatric hospitals, and that "[h]ad there been sufficient staff at the Hospital, George would have received proper supervision and assistance and would not have suffered his injuries." (***Id.*** at p. 1345.) The ***Fenimore*** court stressed that the plaintiffs alleged not only a knowing pattern and practice of improperly understaffing to cut costs, but also that "had the Hospital been staffed sufficiently, George would have been properly supervised and would not have suffered injury." (***Id.*** at p. 1349.)

Here, by contrast, the SAC does not specify how the alleged understaffing led to an injury to the Decedent in particular. The new allegations identified in the SAC do not appear to make any reference to injury or harm suffered by Decedent. (See SAC, ¶¶125-154.) The only direct reference to Decedent the court is able to locate within the new allegations is the following:

> ¶125. Those responsible for attending to the DECEDENT'S basic needs and comforts failed to carry out their custodial and caregiving duties, due, in part, to chronic understaffing of the facilities and deficiencies regarding the quality of care/treatment and nursing services, as shown by California Department of Public Health (CDPH) records evidencing numerous incidents and complaints and violations by the Defendants, as summarized in part below.

As to the GHC Defendants, the SAC alleges the Decedent suffered a fall while at the Plum Tree nursing facility, and that Plum Tree staff knew that she required supervision, particularly in light of a documented new decrease in strength and mobility just days prior to the fall. (SAC, ¶¶26-27.) Though relevant to an Elder Abuse claim against the GHC Defendants, particularly considering ***Fenimore***, these facts do not help Plaintiffs with respect to defendant Good Samaritan's demurrer to the second cause of action.

In the court's view, the connection between defendant Good Samaritan's alleged understaffing and resulting injury to Decedent is alleged at best generally in the SAC. It cannot be determined from the SAC specifically how more staff members assigned to Decedent's care would have prevented injury. Thus, the court is unable to infer recklessness as to Decedent based on the FAC's general allegations of understaffing. (See ***Mittenhuber***, *supra*, 142 Cal.App.3d at p. 5 ["[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]"].) A plaintiff has the burden to show in what manner they can amend a pleading and how that will change its legal effect. (***Goodman v. Kennedy*** (1976) 18 Cal.3d 335, 349.) Plaintiffs have not met that burden here.

Accordingly, defendant Good Samaritan's demurrer to the second cause of action [Elder Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is SUSTAINED without leave to amend.

B. Defendant Good Samaritan's demurrer to the third cause of action [Willful Misconduct] is OVERRULED.

Defendant Good Samaritan demurs to the third cause of action [Willful Misconduct] on the ground that the pleading does not state facts sufficient to constitute a cause of action.

"Willful misconduct is an aggravated form of negligence." (***Carlsen v. Koivumaki*** (2014) 227 Cal.App.4th 879, 895.) "The concept of willful misconduct has a well-established, well-defined meaning in California." (***New v. Consolidated Rock Products Co.*** (1985) 171 Cal.App.3d 681, 689.) "Three essential elements must be present to raise a negligent act to the level of willful misconduct: (1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril." (***Id.*** at pp. 689-690, internal quotation marks and citations omitted.)

In demurring, defendant Good Samaritan contends this claim fails because Plaintiffs have not sufficiently alleged a pattern and practice of understaffing that amounted to reckless conduct. (Mot., p. 11:23-27.) However, Good Samaritan offers no authority in support of its apparent position that a claim for willful misconduct against can only be based upon recklessness arising from understaffing. In opposition, Plaintiffs argue the SAC sufficiently alleges the three required elements. (Opp., p. 17:27-28.)

In contrast to the Elder Abuse claim, this cause of action is not rooted in statute and can be based on the alleged substandard medical treatment of Decedent, rather than on the alleged neglect of her more basic custodial needs. The SAC alleges that defendants knew the Decedent presented heightened risks, particularly as to impaired skin integrity, and that such peril made further injury probable. (SAC, ¶¶183-184.) The SAC further alleges that defendants consciously failed to act to avoid the peril, including by not ordering proper medication and nutrition plans, and not sufficiently training staff. (*Id.* at ¶¶186-188.) It also alleges that the defendants failed to comply with the applicable standards of care, including by failing to institute and follow pressure sore protocol and would care preventative measures. (*Id.* at ¶¶189-193.) These allegations are sufficient to withstand demurrer.

Defendant Good Samaritan cites ***Snider v. Whitson*** (1960) 184 Cal.App.2d 211, 214, for the proposition that pleading willful misconduct requires specificity. "Where a plaintiff relies upon wilful misconduct there are sound reasons why he should be required to state the facts more fully than in ordinary negligence cases so that it may be determined whether they do constitute wilful misconduct rather negligence or gross negligence. The distinction is often difficult to determine." (***Ibid.***) Here, Plaintiffs have stated the facts more fully than would be required in an ordinary negligence case. Further, this claim itself is not statutory and Plaintiffs need not meet the heightened requirements for statutory claims as described in ***Mittenhuber***, discussed previously.

Accordingly, defendant Good Samaritan's demurrer to the third cause of action [Willful Misconduct] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is OVERRULED.

C. Defendant Good Samaritan's motion to strike portions of Plaintiffs' SAC is GRANTED.

Defendant Good Samaritan moves to strike Plaintiffs' requests for punitive damages, attorney's fees, and pain and suffering damages. Good Samaritan asserts that in the absence of properly pleaded facts showing recklessness, the Elder Abuse and Willful Misconduct claims fail, and Plaintiffs are not entitled to punitive damages, attorney's fees, or pain and suffering damages. (Mot., p. 3:12-18.)

1. Punitive Damages.

Defendant Good Samaritan contends Plaintiffs are not entitled to an award of punitive damages because the SAC fails to sufficiently allege the pattern and practice of understaffing to support a finding of recklessness. (Mot., p. 3, p. 12-18.) In opposition, Plaintiffs argue they have sufficiently alleged such a pattern and practice of understaffing to show recklessness and have alleged malice and oppression. (Opp., pp. 4, 6-10.)

For the reasons discussed previously, the court has found insufficient allegations of a pattern and practice of understaffing to support an inference of recklessness by defendant Good Samaritan as to the Decedent. Therefore, it likewise finds that Plaintiffs are not entitled to punitive damages against Good Samaritan.[3] Accordingly, defendant Good Samaritan's motion to strike the request for punitive damages from Plaintiff's SAC is GRANTED without leave to amend.

2. Attorney's Fees.

Defendant Good Samaritan contends the SAC improperly requests attorney's fees based on the Elder Abuse claim because that claim lacks merit. (Mot., pp. 3-4.)

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[3] The court notes that the SAC seeks punitive damages under both the Elder Abuse and Willful Misconduct causes of action. (SAC, p. 58:21-22.) The court's prior order (filed on 12 December 2022 following the motions to strike portions to the FAC) discussed the issue of compliance of with Code of Civil Procedure, section 425.13, when seeking punitive damages against a healthcare provider. While neither defendant Good Samaritan nor Plaintiffs appear to address this issue here, the court finds that Plaintiffs have not cured this defect previously identified by the court.

In opposition, Plaintiffs assert they may seek attorney's fees under the Elder Abuse Act. (Opp., pp. 4-6.) The requests for attorney's fees stated in the SAC expressly rely upon the Elder Abuse claim. (See SAC, p. 58.) As discussed elsewhere, this court has found the Elder Abuse claim does not withstand demurrer.

Accordingly, defendant Good Samaritan's motion to strike the request for attorney's fees from Plaintiff's SAC is GRANTED without leave to amend.

3. Pain and Suffering.

Defendant Good Samaritan contends the SAC improperly requests pain and suffering damages because ***Code of Civil Procedure*** section 377.24, subdivision (a), does not permit such damages in a wrongful death action. (Mot., p. 4.) In opposition, Plaintiffs assert they may seek such damages under the Elder Abuse Act. (Opp., pp. 4-6.) The request for pain and suffering damages stated in the SAC expressly relies upon the Elder Abuse claim. (See SAC, p. 58.) As discussed elsewhere, this court has found the Elder Abuse claim does not withstand demurrer, and therefore, the motion to strike the request for pain and suffering damages is GRANTED.

Accordingly, defendant Good Samaritan's motion to strike portions of Plaintiffs' SAC is GRANTED without leave to amend.

3. The GHC Defendants' Motion to Strike Portions of Plaintiffs' SAC is DENIED.

The GHC Defendants move to strike paragraphs 155-161 of Plaintiffs' SAC. (Mot., p. 2:6.) This is the portion of the section titled, "New Facts that Support Claim of Understaffing (New Allegations in SAC" that pertains to the Plum Tree Care Center. (SAC, pp. 125, 155-161.) The allegations in question are based upon CDPH records.

In moving to strike these allegations from the SAC, the GHC defendants reply upon ***Health and Safety*** code section 1280, subdivision (f), which states:

> In no event shall the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction, be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the ***Evidence Code*** against the health facility, its licensee, or its personnel.

The GHC Defendants assert that, because this matter is a "legal action," all references to CDPH documents must be stricken from the SAC. (MPA, p. 3:16-20.) In support, they cite two decisions (***Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC*** (2013) 221 Cal.App.4th 102; ***California Assn. of Health Facilities v. Dept. of Health Services*** (1997) 16 Cal.4th 284), neither of which addresses a motion to strike. (MPA, p. 4:5-14.) The GHC Defendants also submitted supplemental briefing in which they assert that a motion to strike is within the discretion of the trial court, and that the court may strike facts pleaded as mere surplusage when ultimate facts are sufficiently alleged. (Reply, p. 7:1-4.) The GHC Defendants contend the CDPH documents are irrelevant because they do not pertain to the 12 days during which the Decedent was at Plum Tree. (*Id.* at p. 7:5-11.)

In opposition, Plaintiffs contend allegations relating to CDPH records are properly included in the SAC because the records support their claim of understaffing. (Opp., pp. 6-10.) Plaintiffs further argue that ***Health and Safety Code*** section 1280, subdivision (f), does not prevent the inclusion of the CDPH allegations because no "plan of correction" is at issue and because the admissibility of material at trial under the ***Evidence Code*** does not determine the scope of what may be alleged in a pleading. (Opp., pp. 10-14.) Finally, Plaintiffs assert they included these additional facts in response to the court's order finding that further facts were required to withstand demurrer. (*Id*., p. 14:6-10.)

Here, the court finds the allegations in question to be relevant to the Elder Abuse claim against the GHC Defendants.[4] The question of admissibility at trial is not before the court on demurrer. The GHC Defendants offer no authority stating the allegations must be stricken, and the court declines the invitation to strike the allegations in its discretion.

Accordingly, the GHC Defendant's motion to strike portions of Plaintiffs' SAC is DENIED.

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[4] GHC Defendants have not demurred to the SAC and the cause of action remained intact as to them.

IV. Order.

Defendant Good Samaritan's demurrer to the second cause of action [Elder Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is SUSTAINED without leave to amend.

Defendant Good Samaritan's demurrer to the third cause of action [Willful Misconduct] on the ground that the pleading does not state facts sufficient to constitute a cause of action [***Code Civ. Proc.***, § 430.10, subd. (e)] is OVERRULED.

Defendant Good Samaritan's motion to strike portions of Plaintiffs' SAC [***Code Civ. Proc.***, § 436, subd. (a)] is GRANTED.

Defendant Plum Tree's motion to strike portions of Plaintiffs' SAC [***Code Civ. Proc.***, § 436, subd. (a)] is DENIED.

_____ _____

DATED: **HON. SOCRATES PETER MANOUKIANN**
Judge of the Superior Court
County of Santa Clara

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Calendar Line 6

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)
smanoukian@scscourt.org
http://www.scscourt.org

(For Clerk's Use Only)

CASE NO.: 22CV404883 Imelda Jimenez v. Bledsoe Family Properties, LLC; Robert T. Bledsoe
DATE: 27 February 2024 TIME: 9:00 am LINE NUMBER: 06-10

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 26 February 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Motions of Defendant Bledsoe Family Properties, LLC
To Compel Responses to Discovery Requests
and Request for Monetary Sanctions.

I. Statement of Facts.

Plaintiff filed this complaint on 29 September 2022.[1]

The complaint alleges that in December 2019, plaintiff and her son moved into the premises at 6255 Hopi Circle, San Jose, paying monthly rent of $3060.00 a month. According to defendants, plaintiff was one of four named tenants on the lease and the rent per month was $3000.00.

Apparently prior to moving onto the property, plaintiff acknowledged that the defendants were going to construct an Accessory Dwelling Unit.

Plaintiff alleges that immediately upon moving into the property, plaintiff experienced issues with the property that impacted her ability to live there:

- Defendants performed construction work on the property and used plaintiff's water and utilities and Shartzer for the water use. Defendants only reimbursed about $60-$90 for the water use.
- The property became infested with cockroaches and the landlord fails to abate the cockroach condition.
- On 21 July 2022, the city code enforcement team inspected the property and found several violations of the Municipal Code. These included Rhoden and Cockrell's infestation, garbage and construction material over the rear and side yards, a hole in the yard covered by plywood, and a hole in the porch floor near the front door.
- Instead of addressing the habitability issues, defendants sent to plaintiff a notice of nonrenewal dated 06 July 2022. Defendants assert that on 21 July 2022, after the notice of nonrenewal was already sent to plaintiff, the city inspected the property but did not serve any abatement order on the defendants.

[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).

On or about November 30, 2022, Plaintiff filed the First Amended Complaint. After Defendant's Demurrer to the First Amended Complaint was sustained, Plaintiff filed the Second Amended Complaint on or about May 17, 2023. The Second Amended Complaint states causes of action as follows:

1. Violations of San Jose Municipal Code;

2. Unlawful Business Practices;

3. Breach of Warranty of Habitability;

4. Breach of Covenant of Quiet Enjoyment;

5. Breach 0f Covenant of Good Faith and Fair Dealing;

6. Negligence;

7. Negligent Infliction of Emotional Distress; and

8. Constructive eviction.

II. Motion To Compel Discovery Responses.

Defendant filed the four discovery motions on 21 November 2023**.**

On 14 July 2023, defendants propounded requests for production of documents, requests for admissions, form interrogatories and special interrogatories pertaining to the second amended complaint.

Responses to the discovery requests were due on 16 August 2023. Defendants assert that they had by letter dated 21 August 2023 inquired about the lack of discovery responses. Counsel for plaintiff did not engage in any communication with counsel for defendants before the motions were filed.

These motions were calendared for 23 January 2024. As of that date, plaintiff had not filed any opposition papers. There was discussion that counsel for plaintiff had personal issues and that responses were served on the day of the hearing. These cases were continued to 27 February 2024 to allow plaintiff to file a formal opposition to the motions and for the parties to sort out the status of the responses.

Plaintiff filed formal opposition to this motion on 13 February 2024. In the opposition, counsel for plaintiff states:

> "The only unresolved issue with the motions to compel before the court is the question of monetary sanctions. To be sure, Defendant received full, code-compliant responses to all the underlying discovery more than 45 days ago." (Opposition papers, page 1, lines 20-22.)

Plaintiff asserts in the opposition papers that he has been dealing with several significant personnel matters, including serious illness of an immediate family member, as well as other personal challenges. He has hired additional staff and made arrangements including arrangements with other attorneys.

Defendants filed reply papers on 20 February 2024. Defense counsel states that the opposition is nothing more than a declaration of counsel for plaintiff which is rife with factual misstatements and attacks on defense counsel.

III. Analysis.

A. "Meet & Confer."

The purpose of the "Meet & Confer" requirement is to force lawyers to reexamine their positions, and to narrow their discovery disputes to the irreducible minimum, before calling upon the court to resolve the matter. It also enables parties and counsel to avoid sanctions that are likely to be imposed if the matter comes before the court. (***Stewart v. Colonial Western Agency, Inc.*** (2001) 87 Cal.App.4th 1006, 1016-1017.)

Failing to engage in a proper "Meet & Confer" session is a misuse of the discovery process. (***Code of Civil Procedure***, § 2023.010(i).)

However, if no response has been made to discovery requests within the time permitted by the ***Code of Civil Procedure***, the "meet and confer" rule does not come into play, and compliance therewith is not prerequisite to a motion to compel answers. (See ***Code of Civil Procedure***, § 2030.290(b); see ***Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*** (2007) 148 Cal.App.4th 390, 404; ***Leach v. Superior Court*** (1980) 111 Cal.App.3d 902, 906.)

Although section 2023.020 authorizes an award of sanctions against a party or attorney for failure to satisfy a meet and confer obligation, the offending party must have been required to have the meet and confer obligation in the first place. But even where no meet and confer is required for any particular discovery motion, the parties are always encouraged to work out their differences informally so as to avoid the necessity for a formal order. (***McElhaney v. Cessna Aircraft Co.*** (1982) 134 Cal.App.3d 285, 289.)

B. Defendants Are Entitled to Discovery Responses.

In continuing the motions to the current date, this Court hopes that plaintiff would square up with defendant and provide meaningful and full responses. Apparently, that did not happen.

A party is entitled to demand answers to discovery as a matter of right unless the responding party has stated valid objections. (See ***Durst v. Superior Court of Los Angeles County*** (1963) 218 Cal.App.2d 460, 464.)

Since plaintiff failed to serve timely responses to the four discovery requests, defendants were entitled to move for an order compelling responses. In such an event, all that needs be shown by the moving party is that discovery was properly served on the opposing party, that time to respond has expired, and that no response of any kind has been served. (See ***Leach v. Superior Court*** (1980) 111 Cal.App.3d 902.)

Failure by a party to respond to legitimate discovery requests "waives any objection to the demand, including one based on privilege or the protection for work product. All that defendants needed to show was that discovery was properly served on the opposing party, that time to respond has expired, and that no response of any kind has been served. (See Leach v. Superior Court, supra.)

C. Mootness?

Does the serving of the deficient responses moot the current motions?

In ***Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*** (2007) 148 Cal.App.4th 390, 408-409, the Court recognized that, in exercise of its discretion and based on the circumstances of the particular case, the trial Court is in the best position to determine whether action taken subsequent to the filing of a discovery motion renders that motion moot.

Routinely, on motions to compel responses where response is were served after the filing of the motions to compel, there is an insufficient basis in this action to determine whether the responses were in substantial compliance with statutory requirements. In those situations, this Court has not ordered responses or further responses because without copies of the unverified responses, the Court does not have sufficient information before it to grant the motion.

This situation is different because it seems that there is an abject failure to provide any responses that could be deemed posted being code-compliant.

Plaintiff filed this complaint and in doing so represented that it had probable cause to do so based on ascertainable facts. At a minimum, those facts should have been provided in discovery responses.

Therefore, good cause appearing, this Court will GRANT the motion to compel further responses. Plaintiff is to provide code-compliant responses within 20 days of the filing and service of this order.

Defense counsel makes a code-compliant request for monetary sanctions and the request is GRANTED. Plaintiff and counsel shall pay to defense counsel the sum of $3,240.00 within 20 days of the filing and service of this Order.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

This Court will set a Trial Setting Conference on 21 May 2024 at 11:00 AM in this Department.

VI. Order.

This Court will GRANT the motion to compel further responses. Plaintiff is to provide code-compliant responses within 20 days of the filing and service of this order.

Defense counsel makes a code-compliant request for monetary sanctions and the request is GRANTED. Plaintiff and counsel shall pay to defense counsel the sum of $3,240.00 within 20 days of the filing and service of this Order.

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

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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)
smanoukian@scscourt.org
http://www.scscourt.org

(For Clerk's Use Only)

CASE NO.: 22CV409112 **The Skinner Law Group APC vs Tacomania, Inc. et al**
DATE: 27 February 2024 **TIME: 9:00 am** **LINE NUMBER: 19**

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 26 February 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Motion of Defendant Tacomania, Inc.
for Sanctions against Plaintiff and Counsel.

I. Statement of Facts.

Plaintiff Skinner Law Group APC filed this complaint on 27 December 2022, seeking damages asserting three distinct causes of action against Tacomania, Inc.and its owners: (1) intentional interference with prospective economic relations; (2) negligent interference with prospective economic relations; and (3) intentional interference with contractual relations. Specifically, Mr. Skinner contended that defendant Tacomania disrupted his professional relationship with his clients. ¶1 of the Complaint alleges:

> "This is an action for damages resulting from Defendants' apparent settlement with Plaintiff's clients without Plaintiff's knowledge after Plaintiff had filed a complaint on behalf of the clients and served Defendants with said complaint."

The genesis of Mr. Skinner's lawsuit and the current motion for sanctions by defendant against Skinner Law Group APC was a wage claim by Messrs. Loredo Valle and Vea Castro against their former employer. In a parallel universe, namely Judge Pennypacker in Department 6, these Gentlemen were plaintiffs in the case bearing case number 22CV403362 entitled Loredo Valle and Vea Castro v. Tacomania, Inc.[1] Mr. Skinner was their attorney.

Mr. Rodriguez and Tacomania comprehensively settled 22CV403362 entitled Loredo Valle and Vea Castro v. Tacomania, Inc. directly with Messrs. Loredo Valle and Vea Castro on 25 October 2022.

The catalyst for the current chain of events was a motion filed by plaintiff in case number 22CV409112, this tortious interference with contract claim, to compel defendant Tacomania to respond to a request for production of documents, set one, and for monetary sanctions. That motion was calendared on 03 August 2023. Mr. Skinner argued that the purpose of the motion was to obtain records of Tacomania that were generated in the related action

[1] The alleged causes of action were: (1) Failure to Pay Overtime Wages in Violation of California Law (Labor Code , §§ 510, 1194, 1198); (2) Failure to Maintain Records (Labor Code, § 1174, 1174.5); (3) Failure to Furnish Accurate Wage Statements (Labor Code, § 226); (4) Failure to Provide Meal Periods (Labor Code, § 226.7); (5) Failure to Provide Rest Breaks (Labor Code, § 226.7); (6) Violation of Cal. Business and Professions Code, §§ 17200 et seq.; (7) Waiting Time Penalties (Labor Code, and §§ 201-203); (8) Failure to Allow Inspection of Personnel File and Payroll Records (Labor Code, §§ 1198.5).

bearing case number 22CV403362 entitled Loredo Valle and Vea Castro v. Tacomania, Inc.[2] in furtherance of his claim that defendants interfered with his contractual relations with the plaintiffs in case number 22CV403362.

The hearing on 03 August 2023 in this case, 22CV409112, centered on Mr. Skinner's claim that Messrs. Loredo Valle and Vea Castro v. Tacomania, Inc. claim for attorney's fees in action number 22CV403362. Compounding all of this is the issue raised at the hearing by Mr. Rodriguez, as set forth in his opposition papers as well as in response to the question of this Court during argument, that Mr. Skinner has not had contact with his clients since October of 2022 and the clients, in effect, terminated Mr. Skinner's services. Mr. Skinner admitted as much in a Case Management Conference Questionnaire with the statement that he has been unable to contact the clients since October of 22 and that it planned to officially withdraw as counsel for that case.

Mr. Skinner further argued that the settlement in the underlying case was unconscionable, even though there was no attack or reference as to the terms of the settlement itself. Therefore, for purposes of that motion, this Court opined that it "believes that settlement is what it is."

Mr. Rodriguez asserted in his papers and at oral argument that this motion was one by plaintiff to compel the defendants to produce private information that two of Mr. Skinner's former clients that the clients refused permission to Mr. Skinner to obtain the records in question since he was no longer counsel for the plaintiffs. Mr. Rodriguez claimed in the opposition to the motion to compel, and this Court was inclined to agree, that when an attorney enters into a contingency fee agreement with the client and is later terminated by that client, with or without cause (as what apparently happened in the earlier case), the measure of damages is determined based on the reasonable value of services rendered up to the time of termination. (***Francasse v. Brent*** (1972) 6 Ca|.3d 784, 789: ***Salopek v. Schoemann*** (1942) 20 Cal.2d 150, 153; and ***Brown v. Connolly*** (1972) 6 Cal.App.3d 784, 870.) Therefore, this Court believed that the income records would be irrelevant to the present case.

In its order filed in THIS case on 07 August 2023, this Court denied the motion of Mr. Skinner to compel production of records and issued monetary sanctions against him in the amount of $2,475.00, payable within 20 days of the filing and service of the order.

On 05 September 2023, Mr. Skinner filed a motion for reconsideration of that order. He offered new facts to show the increased likelihood that the defendants were violating tax laws while compensating Messrs. Vea Castro and Laredo Valle. He claimed that if this Court did not reconsider its order, it would prejudice "Plaintiff's ability to prove the independently wrongful element of the tortious interference claims." At this point the Court queries just who is the plaintiff to whom Mr. Skinner is referring, himself or his former clients?

The motion for reconsideration was calendared by this Court for 23 January 2024. Mr. Rodriguez filed opposition to that motion on 09 January 2024. In opposing the motion, Mr. Rodriguez claimed that there were no new facts or law raised in the motion.

A Case Management Conference in this case, 22CV409112, was held on 23 January 2024. Counsel for plaintiffs filed a Case Management Conference Questionnaire on 19 January 2024. The filing date of the CMCQ is 31 October 2023. The document states that the complaint was filed on 27 December 2023. Counsel for plaintiff represented the case as being that "Plaintiff represented two workers in wage and hour claims against Defendants. After Plaintiff filed suit for the workers and after serving Defendants at their personal residence, Defendants claim to have settled with the workers without Plaintiff's presence or knowledge [sic]."

Plaintiffs' counsel withdrew the 23 January 2024 motion for reconsideration without providing notice to defendants despite multiple communications in the close to five months case that was pending. Attorney Skinner did not inform Mr. Rodriguez that plaintiff's motion for reconsideration was taken off calendar until 22 January 2024, the day before the hearing. At the hearing, Mr. Rodriguez, as noted above, filed opposition and requested sanctions within the opposition. This Court ordered counsel to file supplemental declarations regarding the sanctions request.

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[2] That case was settled on 18 July 2023 and a dismissal review date was set for 30 November 2023. At that hearing, Mr. Rodriguez appeared, and Mr. Skinner failed to appear. Judge Pennypacker set an Order to Show Cause for Mr. Skinner to appear to explain why he should not have been sanctioned for failing to appear. On 08 December 2023 Judge Pennypacker granted a motion to enforce the settlement in 22CV403362 and dismissed the case with prejudice.

The hearing was continued to this date only for the purpose of considering the request of defendants for monetary sanctions.

Mr. Rodriguez filed a supplemental declaration stating that Mr. Skinner had ample opportunities to notify Mr. Rodriguez of his withdraw its Motion for Reconsideration. There was frequent correspondence between 05 September 2023 to 22 January 2024 between counsel. Additionally, Mr. Skinner was also served electronically with the defendant's opposition to plaintiff's motion for reconsideration, as noted above, on January 9, 2024. Despite these interactions, there was no indication from Mr. Skinner regarding his intention to withdraw his motion for reconsideration.

On behalf of his defense, Mr. Skinner only states that he did not provide an amended notice of the date of the motion.

Neither party cited authority for the proposition that a moving party may take a motion off calendar without notice to the responding party, especially when the opposing party filed opposition and requested monetary sanctions.

II. Order.

The request of Mr. Rodriguez for monetary sanctions is GRANTED pursuant to ***Code of Civil Procedure***, § 2023.010(h) (Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery) and 1008(d) (A violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7). Both the discovery motion of 03 August 2023 and the subsequent motion for reconsideration were made without a reasonable belief that the motions were being made with substantial justification, given that the relationship of Mr. Skinner and his former clients had apparently terminated the previous October or November of 2022. The motions were an unnecessary burden on defendant Tacomania and its counsel.

Mr. Skinner is to pay the sum of $5,130.00 within 20 days of the filing and service of this Order.

DATED:

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

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