

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

**Department 10  
Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408-882-2210

**DATE: October 17, 2023**

**TIME: 9:00 A.M.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling,  
in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

**\*New information\* (please read):** To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date before filing and serving your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, the date will be released to other cases.

**CourtCall is no longer available:** Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml).

**Recording is prohibited:** As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters:** Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See [https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml).

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	20CV372317	Kateryna Pomogaibo v. Yevgeniy Babichev et al.	Click on <a href="#">LINE 1</a> or scroll down for ruling in lines 1-3.
<a href="#">LINE 2</a>	20CV372317	Kateryna Pomogaibo v. Yevgeniy Babichev et al.	Click on <a href="#">LINE 1</a> or scroll down for ruling in lines 1-3.
<a href="#">LINE 3</a>	20CV372317	Kateryna Pomogaibo v. Yevgeniy Babichev et al.	Click on <a href="#">LINE 1</a> or scroll down for ruling in lines 1-3.
<a href="#">LINE 4</a>	22CV396939	Wells Fargo Bank, N.A. v. Christina Nguyen	Motion for summary judgment: notice is proper, and the motion is unopposed. Upon review of the papers, the court concludes that plaintiff has met its initial burden of showing that there is no triable issue of material fact regarding each of the elements of the causes of action. (Code Civ. Proc., § 437c, subd. (p)(1).) The motion is GRANTED. Moving party to prepare formal order for court's signature.
<a href="#">LINE 5</a>	19CV354758	Dujuan Green v. General Motors, LLC	Click on <a href="#">LINE 5</a> or scroll down for ruling.
<a href="#">LINE 6</a>	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Motion for sanctions: <b>parties to appear</b> . It appears that the notice of this hearing was not served until September 29, 2023, which is insufficient. In addition, the court has not received any response from defendants. Click on <a href="#">LINE 6</a> or scroll down for the court's tentative ruling.
<a href="#">LINE 7</a>	22CV400965	John Doe v. Four Points by Sheraton San Jose Downtown et al.	OFF CALENDAR

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<a href="#">LINE 8</a>	23CV412737	The John Stewart Company v. Courtyard at Bay Road et al.	The application of Alexander M. Hagstrom to appear pro hac vice on behalf of defendants is unopposed. Good cause appearing, the court GRANTS the motion. The court intends to sign the proposed order, as filed.
<a href="#">LINE 9</a>	19CV358560	Stacey McCarthy et al. v. Tesla, Inc.	OFF CALENDAR
<a href="#">LINE 10</a>	19CV358560	Stacey McCarthy et al. v. Tesla, Inc.	OFF CALENDAR

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### **Calendar Lines 1-3**

**Case Name:** *Kateryna Pomogaibo v. Yevgeniy Babichev et al.*

**Case No.:** 20CV372317

Three motions are before the court: Plaintiff Kateryna Pomogaibo moves for reconsideration of this court's February 7, 2023 order granting defendant Ekaterina Berman's motion to quash service of summons. Defendant Yevgeniy Babichev demurs to the first and second causes of action in Pomogaibo's complaint. Finally, Babichev moves to strike the punitive damages allegations in the complaint.

As an initial matter, the court notes that notice does not appear to be proper for the motion for reconsideration. Although there is a proof of service dated July 20, 2023 in the file, indicating service of the "motion to reconsider" on Berman by Pomogaibo's husband, Sergey Firsov, there is no amended notice of the October 17, 2023 hearing, as required by the court's local rule. As a result, the court has no way of knowing whether Berman received notice of the hearing date. In addition, the court has not received any response to the motion from Berman, which suggests that she did not. Accordingly, the court will CONTINUE the hearing on the motion for reconsideration to **February 24, 2024 at 9:00 a.m.**, which is the date on which another motion is already scheduled to be heard in this case (Babichev's motion to dismiss). The court also ORDERS the following briefing schedule on this motion for reconsideration: (1) Pomogaibo will file an *affidavit* in support of the motion, as required by Code of Civil Procedure section 1008, by no later than January 25, 2024, explaining why the error by the clerk's office is a "new or different" fact or circumstance that could not have been raised earlier, when the motion to quash was originally heard on February 7, 2023 (Code Civ. Proc., § 1008, subd. (a)); (2) Berman shall file a response to the motion by no later than February 5, 2024; and (3) Pomogaibo's optional reply may be filed no later than February 9, 2024. Note that these deadlines are based on Code of Civil Procedure section 1005, as well as the fact that both February 12 and February 19, 2024 are court holidays.

The court will now proceed to address the demurrer and motion to strike.

### **I. BACKGROUND**

This is an action for harassment and intentional infliction of emotional distress by Pomogaibo against Babichev and Berman. Babichev is Berman's stepfather. Pomogaibo filed the complaint against defendants on November 2, 2020, alleging that they subjected her to the following treatment from 2019 to 2020: intentional harassment, intentional abuse, stalking, defamation, and threats made through friends. (Complaint, IT-1.) After many delays in service, the court found service by publication to be proper as to Babichev in its February 7, 2023 order.

Babichev filed this demurrer on February 21, 2023, contending that the first and second causes of action fail to state facts sufficient to constitute a cause of action.<sup>1</sup> (Code Civ. Proc.,

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<sup>1</sup> Babichev's demurrer also states that the claims are "ambiguous and unintelligible." (Demurrer, p. 2:14.) But he did not provide notice of a demurrer on uncertainty grounds in his notice of motion; he also does not argue the point in his memorandum of points and authorities. Accordingly, the court disregards this stray statement. (Cal. Rules of Court, rule 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

§ 430.10, subd. (e).) Babichev concurrently filed a motion to strike the prayer for punitive damages from the complaint.

## II. THRESHOLD PROCEDURAL ISSUES

### A. Meet and Confer

In her opposition briefs, Pomogaibo contends that Babichev’s failure to meet and confer adequately constitutes a sufficient ground to overrule his demurrer and deny the motion to strike. Although a failure to meet and confer in good faith, in compliance with Code of Civil Procedure sections 430.41 and 435.5, is strongly disfavored, it is not by itself a ground for overruling a demurrer or denying a motion to strike. (See Code Civ. Proc., § 430.41, subd. (a)(4); § 435.5, subd. (a)(4).) The court will therefore proceed to address the merits.

### B. New Arguments on Reply

A moving party may not raise new issues in the reply memorandum or submit evidence that raises new issues. (See, e.g., *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn. 10 [“Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.”]; *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1089 [“New evidence is generally not permitted with reply papers.”]; *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1538.)

Babichev’s one-page reply asserts that another reason for sustaining the demurrer without leave to amend is because the Presiding Judge of the Santa Clara Superior Court (Judge McGowen) denied Pomogaibo’s Request to File New Litigation on April 21, 2023. Even if the moving papers raised this argument—they could not, as they were filed two months before Judge McGowen’s order—the court does not accept this argument, because Pomogaibo’s complaint is not a “new litigation.” Judicial Council Court Form VL-110, Request to File New Litigation by Vexatious Litigant, defines filing “new litigation” as “commencing any civil action or proceeding” or “filing any petition, application, or motion (except a discovery motion) under the Family or Probate Code.” Pomogaibo commenced this civil action on November 2, 2020, before Judge Kirwan declared her a vexatious litigant on December 14, 2022 in the related but later-filed case (No. 21CV382347) and before Judge McGowen denied Pomogaibo’s request to file new litigation on April 21, 2023.

Although Pomogaibo did ask to “continue” this case in her request to Judge McGowen, the court does not construe the prohibition against filing “new litigation” to apply to *previously filed* litigation, and the motions currently being brought by both sides are not “under the Family or Probate Code.” The court’s interpretation of the law is that due process requires notice and an opportunity to be heard before a vexatious litigant order in a later-filed case (No. 21CV382347) may be applied against that litigant in an earlier-filed case (*i.e.*, this one, No. 20CV372317). There is a vehicle for doing so—a motion under Code of Civil Procedure sections 391.1 and 391.3—but Babichev has not made such a motion.

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Demurrers on uncertainty grounds are disfavored, in any event, and it does not appear that the complaint’s allegations are so unintelligible as to be uncertain.

### III. LEGAL STANDARD

In ruling on a demurrer, the court treats it “as admitting all material facts properly pleaded, but not contentions, deductions[,] or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) “A demurrer tests only the legal sufficiency of the pleading. 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.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee*).) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

### IV. ANALYSIS

#### A. Harassment

Babichev contends that the first cause of action for harassment is defective because Pomogaibo is unable to bring a harassment claim under the Fair Employment and Housing Act (FEHA), because Babichev is neither an employer or provider of housing for Pomogaibo. This is a mischaracterization of the first cause of action, which states: “Harassment itself may be [an] intentional tort *or* discrimination under FEHA.” (Complaint, IT-1 [emphasis added].) Thus, the complaint may allege harassment as an intentional tort, separate and apart from any claim under FEHA (which everyone agrees does not apply here).

The court observes that the first cause of action appears to recite the elements of an intentional infliction of emotional distress claim, rather than harassment. (Code Civ. Proc., § 527.6, subd. (b)(3) [defining harassment as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.”]) Nonetheless, the fact that a cause of action misstates the legal standard or is duplicative of another cause of action is not a basis on which a demurrer may be sustained. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890; see *Tracfone Wireless, Inc. v. Los Angeles County* (2008) 163 Cal.App.4th 1359, 1368 [indicating same]; see also Code Civ. Proc., § 430.10 [setting forth the grounds for demurrer].)

Accordingly, the court **OVERRULES** Babichev’s demurrer to the first cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

#### B. Intentional Infliction of Emotional Distress

Babichev argues that the second cause of action for intentional infliction of emotional distress (“IIED”) is deficient because Pomogaibo fails to allege: (1) that Babichev engaged in extreme and outrageous conduct; and (2) that Pomogaibo suffered severe emotional distress.

The tort of intentional infliction of emotional distress (IIED) comprises three elements: “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff’s injuries were actually and proximately

caused by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 (*Hughes*) [citations omitted].)

## **1. Extreme and Outrageous Conduct**

Babichev contends that the complaint fails to assert conduct that is sufficiently "outrageous" for purposes of an IIED claim.

"Conduct, to be 'outrageous,' must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Trerice v. Blue Cross of Cal.* (1989) 209 Cal.App.3d 878, 883 [internal citations omitted].) "In order to avoid a demurrer, the plaintiff must allege with 'great[ ] specificity' the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Yau v. Allen* (2014) 229 Cal.App.4th 144, 160-161 (*Yau*), internal citation omitted.)

Here, the complaint alleges that Babichev wanted Pomogaibo to be deported, urged third parties to threaten Pomogaibo, and personally "stalked" her in a courthouse elevator in a purportedly threatening manner. (Complaint, Second Cause of Action [the pages attached to the complaint are unnumbered].) Pomogaibo insists that Babichev "manipulatively and bluntly" prohibited members of the Russian community from communicating with her. (*Ibid.*) In a separate civil harassment action (Case No. 19CH008613), Babichev allegedly admitted to "working on alienating [Pomogaibo] from the community" and violated the issued restraining order. (*Ibid.*)

Although the conduct described in the complaint may well have been mean-spirited and harsh, it is not "outrageous" as a matter of law. (*Hughes, supra*, 46 Cal.4th at p. 1051 ["Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."].) First, very little of it—apart from the unexplained allegation that Babichev "stalked" her in a courthouse elevator (the court does not quite understand how it is possible to stalk someone in a courthouse elevator), the vague allegation that he told her she needed to "reform" herself, and the conclusory claim that he wrote "defamatory messages" about her (the court has no information about the actual content of these messages)—appears to have been committed directly by Babichev against Pomogaibo. Rather, the complaint focuses on direct conduct by Berman and other third parties. Apart from the elevator stalking claim, the "reform" claim, and the defamatory messages claim (which are not made with "great specificity"), the allegations against Babichev appear to be made entirely upon information and belief, rather than exact knowledge by Pomogaibo of what he did or said, which means that they *also* lack "great specificity." (*Yau, supra*, 229 Cal.App.4th at p. 161.) Further, Pomogaibo does not allege any aggravating circumstances that would make Babichev's words or conduct sufficiently outrageous to support the cause of action. (*Alcorn v. Anbro Engineer, Inc.*, 2 Cal.3d 493 [finding aggravated circumstances where defendant had a position of authority over plaintiff and insulted plaintiff for his race].)

The court therefore SUSTAINS Babichev's demurrer to the second cause of action and grants Pomogaibo 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

## **2. Extreme Emotional Distress**

In addition, Pomogaibo does not adequately plead facts regarding her resulting injuries. (See *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227 [“[Plaintiff] pleaded no facts demonstrating the nature, extent or duration of her alleged emotional distress.”]) Her statements about “emotional stress and depression” remain conclusory. Babichev notes that the complaint does not allege a substantial or enduring quality that “no reasonable person in civilized society should be expected to endure.” (Demurrer, p. 10:6-8.) Severe emotional distress has “such substantial quantity or enduring quality that no reasonable [person] in a civilized society should be expected to endure it.” (*Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397) Courts have consistently set a high bar in requiring plaintiffs to plead severe emotional distress. (*Hughes, supra*, 46 Cal.4th at p. 1051; see also *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1377 (*Wong*).)

In *Hughes*, the Supreme Court held that “severe emotional distress” had not been adequately pled where a plaintiff asserted that “she has suffered discomfort, worry, anxiety, upset stomach, concern, and agitation as the result of defendant's comments.” (*Hughes, supra*, 46 Cal.4th at p. 1051.) In *Wong, supra*, the Court of Appeal held that allegations of stomach upset, loss of sleep, and generalized anxiety were insufficient to establish “severe emotional distress.” (*Wong*, 189 Cal.App.4th 1354, 1377.)

Here, the complaint alleges generally that Pomogaibo suffered severe emotional distress and depression and sought medical therapy because of Babichev’s actions. (Complaint, IT-1.) While Pomogaibo appears to allege in her opposition brief that the offensive conduct continued for years, which may potentially indicate an “enduring quality,” the allegation does not appear anywhere in her complaint; nor do any other pertinent details relating to her claimed distress appear in the complaint. (*Committee, supra*, 35 Cal.3d at pp. 213-214.)

Accordingly, the court again SUSTAINS the demurrer to the second cause of action with 10 days’ leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

## **V. CONCLUSION**

The court CONTINUES the hearing on Pomogaibo’s motion for reconsideration to February 20, 2024 at 9:00 a.m., with the briefing schedule set forth above.

The court OVERRULES Babichev’s demurrer to the first cause of action on the ground of insufficient facts. (Code Civ. Proc., § 430.10, subd. (e).)

The court SUSTAINS Babichev’s demurrer to the second cause of action under section 430.10, subdivision (e), with 10 days’ leave to amend.

In light of the court’s ruling on the demurrer, the court GRANTS Babichev’s motion to strike the prayer for punitive damages, as the court finds that the complaint’s allegations are insufficient to sustain a claim for punitive damages, just as they are insufficient to allege IIED. The harassment allegations (first cause of action) are conclusory and do not sufficiently allege “malice, oppression, or fraud.” Nevertheless, the court also grants Pomogaibo 10 days’ leave to amend as to any prayer for punitive damages.



Pomogaibo is reminded that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action (or prayer) to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.)

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## **Calendar Line 5**

**Case Name:** *Dujuan Green v. General Motors, LLC*

**Case No.:** 19CV354758

This is a motion for attorney's fees by plaintiff Dujuan Green against defendant General Motors, LLC ("GM"). The parties entered into a settlement of this Song-Beverly Act case, under which Green was deemed the prevailing party, GM would pay Green \$170,000.00, and GM would also pay reasonable attorney's fees and costs. Green now requests \$68,285.00 in attorney's fees and \$4,086.10 in costs. GM argues that Green waited too long to bring this motion, and that the amounts he seeks are excessive. Having reviewed the parties' submissions, as well as prior orders of the court in this case (of which the court takes judicial notice under Evidence Code section 452, subdivision (d)), the court GRANTS the motion in part and DENIES it in part.<sup>2</sup> The court awards attorney's fees in the amount of \$56,702.00, as well as costs in the amount of \$3,932.76, for a total of \$60,634.76.

### **1. Timeliness**

GM argues that Green did not file his motion "within the 180-day statutory deadline," citing Rule of Court 8.104(a)(1) for the proposition that the "deadline ordinarily falls 60 days after notice of entry of judgment, or 180 days after entry of judgment, whichever is first." (Opposition at p. 4:16-21.) The problem with this argument is that no "judgment" has ever been entered in this case, and so GM's reliance on Rule 8.104 (and Rule 3.1702) is inapt. While it is true that Green did wait an awfully long time to file this motion, there is no "statutory" bar that applies here. Therefore, the court will consider the merits of the motion.

### **2. Application of the "Lodestar"**

The court applies the lodestar method to evaluate Green's request, which involves computing "the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096.) GM does not appear to contest any of the hourly rates for Green's counsel, which are summarized on the last page of Green's opening brief. Instead, GM takes issue with the number of hours expended by Green's counsel on various activities in the case. The court addresses these arguments in turn:

#### **a. The Fraud Claim**

First, GM argues that there should be no compensation related to Green's fraud claim, and it focuses on the time entries for counsel's work in opposing GM's demurrer. GM claims that this is a "discrete portion of the litigation that was focused solely on fraud," because its demurrer "was solely filed to combat Counsel's fraud claim totaling 18 hours . . . . This time was related to the fraud claim and the fraud claim alone." (Opposition at p. 6:19-24 (citing *Santana v. FCA US, LLC* (2020) 56 Cal.App.5th 334, 349).) The court does not understand this argument at all. The court has reviewed Judge Barrett's April 27, 2020 order overruling GM's demurrer, and it clearly addresses three of Green's causes of action, only one of which was for fraud. The other two causes of action were for breach of express written warranty and a violation of Civil Code section 1793.2, both of which are warranty claims, not fraud claims. Because GM appears to have mischaracterized the nature of its own demurrer (which Judge

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<sup>2</sup> The court denies Green's request for judicial notice of attorney's fees rulings by other courts in other cases, as they are unnecessary to the present ruling.

Barrett overruled in its entirety), and because it appears that the warranty and fraud claims were “inextricably intertwined” in the briefing and argument for that demurrer, the court agrees with the approach of the federal district court in *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation* (C.D. Cal. July 22, 2021, No. ML1802814ABPVCX), 2021 U.S. Dist. LEXIS 138090, at \*6-7, which found that because “the defendant did not present any practical method of apportioning fees,” further apportionment was “impractical.” The court denies GM’s request to disallow plaintiff’s counsel’s fees associated with GM’s unsuccessful demurrer.

#### **b. Pre-Engagement and Prefiling Activities**

The court also disagrees with GM’s argument that counsel’s pre-engagement and pre-filing activities should be excluded. The handful of hours (3.8) that Green’s counsel spent on these activities—including discussions with Green and pre-engagement research—were reasonable and appropriate.

#### **c. Counsel’s “Templated” and “Canned” Papers**

GM takes issue with the discovery and motions prepared by Green’s counsel, arguing that nearly all of them were heavily based on templates rather than original work product. While it is apparent that Green’s counsel did rely on templates for their work, many of the time entries are for minimal amounts of time, which would have been necessary to tailor any templates to the present case. For example, 4.1 hours to prepare a complete set of discovery requests (November 2019) is not so totally unreasonable as to reflect “padding” by counsel, as GM alleges. GM’s argument that counsel should not have taken any longer than *30 minutes* to tailor these discovery documents to this case is unrealistic. (Opposition at p. 9:16-22.)

Nevertheless, the court does agree with GM that some of the time entries for certain motions and briefs seem rather high. For example, the court finds that Green’s opening memorandum of points and authorities for *this motion* consists of large swaths of generic arguments and boilerplate. Accordingly, the court will reduce the \$5,639 incurred in May and June 2023 by 50 percent, to \$2,819.50. Similarly, the 26.7 hours spent on “templated” motions to compel is also awfully high. The court will reduce this amount by 50 percent, as well, from \$7,743 to \$3,871.50. The court finds that GM has not shown that any of the other time entries for discovery and motions filed and/or served in this case were necessarily unreasonable.

#### **d. Other Minor Reductions**

The court agrees with GM that the entries for an ex parte application and motion to exclude GM’s expert should not be included. The court is not aware of this ex parte application and motion ever having been submitted to the court (the court does not see it anywhere in the file), and so the court disallows this \$1,400 amount. Similarly, Green’s counsel’s entries for drafting unfiled “trial documents” at the time of the parties’ settlement discussions (\$2,100) should not be included. These trial documents are nowhere in the record.

Finally, the court agrees with GM that 4.8 hours for traveling to the demurrer hearing in 2020 should be disallowed (\$1,392). The court agrees that travel time is often not billed to clients, and the fact that counsel is located in Southern California instead of Northern California should not ordinarily be a basis for increasing the amount of attorney’s fees awarded

in a case. As noted above, the court does not disallow the time for the legal work that actually went into this demurrer.

**e. Costs**

The court rejects GM's objections to Green's costs, with the exception of travel and parking (\$153.34). GM's arguments against the mandatory jury fees and court reporter fees are not well taken.

**3. Conclusion**

In short, the court reduces the requested attorney's fees by \$11,583.00, from \$68,285.00 to \$56,702.00, and it reduces the requested costs by \$153.34, from \$4,086.10 to \$3,932.76. The total fees and costs awarded on this motion are **\$60,634.76**.

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**Calendar Line 6**

**Case Name:** *Henry Lippincott v. Arash Hassibi et al.*

**Case No.:** 22CV393460

Code of Civil Procedure section 1005, subdivision (b), and the court's local rules require that a notice of hearing for a motion be served 16 court days in advance of the hearing. In this case, plaintiff's proof of service indicates that the amended notice of the hearing on plaintiff's motion for sanctions was served on September 29, 2023, which is only 12 court days before October 17, 2023.<sup>3</sup> As such, notice is not proper. Although there may be instances in which notice may be waived, it does not appear that this is one of them, as the court has not received any response to the motion from the defendants. The court requests the **parties to appear**. The court is inclined to continue the hearing on this motion to November 28, 2023 at 9:00 a.m. (Department 10), when other motions are already scheduled to be heard in this case.

In the meantime, the court is aware that it ordered plaintiff to respond to defendants' discovery requests by November 1, 2023 "unless the court orders otherwise on October 17, 2023." The court is not inclined to order "otherwise" at this time. At the time the court issued that order last week, it was not aware of the notice problem with the present motion and the absence of an opposition brief from defendants. The court expresses no views regarding the merits of plaintiff's sanctions motion—including its request to deny discovery and to issue a terminating sanction—until it has had an opportunity to review defendants' opposition. At the same time, the court does not find a compelling basis to stay discovery pending a resolution of the sanctions motion, particularly given plaintiff's failure to notice this motion properly. Therefore, plaintiff shall provide substantive discovery responses to defendants by November 1, 2023, consistent with the October 17, 2023 order.

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<sup>3</sup> Although October 9, 2023 is still a federal holiday, it is no longer a holiday in the State of California. Because the court was open that day, it counts as a "court day."