

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

**Department 16**

**Judge Eric Geffon is hearing today's matters for**

**Judge Amber Rosen**

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

**DATE: 10-31-23    TIME: 9 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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

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

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

**TO APPEAR AT THE HEARING:** The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

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

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

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3.1312.)**

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	20CV366822 Hearing: Order of Examination	Wilver Castillo vs Russell Stone et al	<p>All parties are to appear in Department 16 at 9:00 AM at which time the appropriate oath will be administered by the courtroom clerk. The parties will thereafter conduct the examination offline and report back to the Court. The parties are to meet and confer on how to conduct the examination whether it be in person, remotely (e.g., Zoom, conference call, etc.) The Court will set a return date to make sure the OEX was completed.</p> <p>If there is no appearance by the moving party, the matter will be ordered OFF CALENDAR.</p>

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<a href="#">LINE 2</a>	20CV365921 Motion: Quash	Nelly Amas vs Weston Miles Architects, Inc.	<p>Plaintiff files a motion to quash defendant's subpoena to AJ Lopez. Plaintiff has filed an amended notice of motion indicating that notice has been given. Plaintiff argues that the subpoena to the third-party accountant of Plaintiff is overbroad and irrelevant. Plaintiff points out that lost profits are not being sought, hence no relevance exists in the materials sought by the subpoena.</p> <p>Defendant has not filed any opposition to this motion. The failure to file an opposition can be considered consent to the granting of the motion. (Cal. Rule of Court, 8.54(c).)</p> <p>It does not appear that the subpoena is "reasonably calculated to lead to the discovery of admissible evidence." (<i>Ameri-Medical Corp. v. Worker's Comp Appeals Board</i> (1996) 42 Cal.App.4<sup>th</sup> 1260.)</p> <p>The motion to quash is GRANTED.</p>
<a href="#">LINE 3</a>	20CV365921 Motion: Quash	Nelly Amas vs Weston Miles Architects, Inc.	See, Line 2
<a href="#">LINE 4</a>	23CV411635 Motion: Strike	John Doe 1 et al vs Kaitlyn Villela et al	<p>Motion to Strike GRANTED with 15 days leave to amend.</p> <p>See, tentative decision below.</p>

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<a href="#">LINE 5</a>	23CV411626 Motion: Compel	GERARDO MALDONADO ROBLES et al vs ANTONIO Aguirre et al	Motion to compel is GRANTED.  See, tentative decision below.
<a href="#">LINE 6</a>	23CV411626 Motion: Compel	GERARDO MALDONADO ROBLES et al vs ANTONIO Aguirre et al	See, Line 5

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3.1312.)**

<a href="#">LINE 7</a>	19CV341095 Motion: Sanctions	Sandy Park vs Nancy Kim et a	<p>Plaintiff Sandy Park, representing herself, brings this motion for sanctions against Defendants Nancy and Timothy Kim pursuant to Code of Civil Procedure section 128.7. Plaintiff claims Defendants filed “multiple frivolous motions for summary judgment.”</p> <p>Defendant, also appearing in pro per, responds with a “countermotion” for sanctions against Plaintiff, including terminating sanctions for what Defendant calls “bad-faith conduct.”</p> <p>Neither motion establishes sufficient facts to justify sanctions. Both parties complain about the behavior of the other, but sanctions are not appropriate simply because one side believes the other is acting inappropriately. Conclusory statements about motions being “frivolous” does not meet the standard required. The fact that a motion was denied does not mean that the bad faith required under CCP section 128.7 is met. Plaintiff has provided no evidence beyond personal opinion that the motions were “frivolous.”</p> <p>Defendant’s motion reveals itself as retaliation as soon as the title of the motion is read. A “countermotion” for sanctions makes clear that the motion is only being sought because Plaintiff moved for sanctions. Defendant’s motives are further revealed by the lack of any substantiation for the request for sanctions.</p> <p>Plaintiff’s request for sanctions, and Defendant’s “countermotion” for sanctions are DENIED.</p>
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3.1312.)**

<a href="#">LINE 8</a>	20CV366329 Motion: Withdraw as attorney	Farid Shahrivar vs City of San Jose et al	<p>Attorney Dylan Hackett moves to be relieved as counsel for Plaintiff Farid Shahrivar. Counsel has filed a Substitution of Attorney signed by himself and the Plaintiff.</p> <p>The motion to be relieved is GRANTED. The court did not locate a proposed order in the file. Counsel is to provide an order for court signature.</p> <p>The matter is also set on today's date for an OSC re: dismissal based on Plaintiff's failure to appear at the May 16, 2023 case management conference.</p> <p>Plaintiff is required to be present at today's court date. The court will take up the OSC when the case is called.</p>
<a href="#">LINE 9</a>	23CV412463 Motion: Order Expunge Lis Pendens	Celia Estillore et al vs Gloria Estillore	<p>Petitioners motion to expunge Lis Pendens and for Attorney Fees is GRANTED.</p> <p>See, tentative decision below.</p>

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3.1312.)**

<a href="#">LINE 10</a>	23CV415224 Motion hearings for Preference on Trial Setting	Lingsen Leung vs Tawa Supermarket, Inc. et al	Plaintiffs' motion for preference on trial setting is GRANTED.  See, tentative decision below.
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			

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#### **Calendar line 4**

**Case Name:** *Doe 1, et al. v. Villela, et al.*

**Case No.:** 23CV411635

### **I. Factual and Procedural Background**

On February 7, 2023, plaintiffs John Doe 1, John Doe 2, Jane Doe 1, Jane Doe 2, and Jane Doe 3 (collectively, “Plaintiffs”) filed a form complaint against defendants Kaitlyn Rose Villela (“Villela”) and Tiffany Marie Marra (“Marra”) (collectively, “Defendants”).

On or around December 21, 2021, Plaintiffs allege that Villela negligently operated a motor vehicle “in an extreme departure from what a reasonably careful person would do in the same situation” causing injuries to Plaintiffs. (Complaint, p. 4, ¶ 2.) Specifically, Villela drove over 85 miles per hour while swerving between other vehicles traveling north on Highway 101. (*Ibid.*) Marra was the owner of the vehicle driven by Villela. (*Id.* at p. 5, ¶ 2.) Plaintiffs further allege that Marra knew, or should have known, that Villela was incompetent or unfit to drive the vehicle but still permitted her to drive. (*Ibid.*)

Plaintiffs assert the following two causes of action:

- 1) Negligence [against Villela]; and
- 2) Negligent Entrustment of Motor Vehicle [against Marra].

On July 12, 2023, Defendants filed a motion to strike Plaintiffs’ Prayer for punitive damages. Plaintiffs oppose the motion.

### **II. Motion to Strike**

#### **A. Legal Standard**

A court may strike out any irrelevant, false, or improper matter asserted in a pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436, subd. (a).) The grounds for a motion to strike must 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).) In ruling on a motion to strike, a court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (*Clauson v. Superior Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

#### **B. Analysis**

Defendants move to strike Plaintiffs’ Prayer for punitive damages on p. 3, section 14 of Plaintiffs’ Form Complaint.

“[T]o state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294.” (*Turman v.*



*Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63.) The statutory elements include allegations that defendant is guilty of oppression, fraud, or malice. (*Ibid.*) Malice is conduct intended by defendant to cause injury to plaintiff or despicable conduct which is carried on by defendant with a willful and conscious disregard of the rights or safety of others. (*Ibid.*; Cal. Civ. Code, § 3294, subd. (c).) Oppression is despicable conduct that subjects plaintiff to cruel and unjust hardship in conscious disregard of plaintiff's rights. (Cal. Civ. Code, § 3294, subd. (c)(2).) Fraud is an intentional misrepresentation, deceit, or concealment of a material fact known to defendant with the intention of depriving plaintiff of property or legal rights or otherwise causing injury. (Cal. Civ. Code, § 3294, subd. (c)(3).) Simply pleading the terms malice, oppression or fraud by themselves is insufficient to support a claim for punitive damages; a plaintiff must allege sufficient facts supporting that existence of malice, oppression, or fraud. (*Blegen v. Superior Ct.* (1981) 125 Cal.App.3d 959, 963.)

Defendants argue the complaint is devoid of specific factual support to establish malice, fraud, or oppression. (MTS, p. 2:8-16.) Defendants additionally assert that merely operating a motor vehicle negligently does not support a claim for punitive damages. (MTS, p. 4:12-15.) Defendants rely on *Lackner v. North* (2006) 135 Cal.App.4th 1188 (*Lackner*), *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82 (*Dawes*), and *Gombos v. Ashe* (1958) 158 Cal.App.2d 517 (*Gombos*) to support their arguments.

In *Lackner*, the plaintiff sued a high school student after she sustained personal injuries at a ski resort. (*Lackner, supra*, 135 Cal.App.4th at p. 1188.) The student sped down a run on his snowboard, headed directly towards plaintiff at a high rate of speed and crashed into her, causing severe injuries. (*Ibid.*) On summary judgment/adjudication, the trial court ruled in favor of defendant, stating plaintiff's claim for punitive damages failed as a matter of law because the evidence was insufficient to show that the student's conduct was despicable and that he acted with evil intent. (*Ibid.*) The trial court relied on the student's undisputed facts that he 1) did not intentionally try to run into plaintiff; 2) he attempted to avoid the accident; 3) he was in control as he descended; and 4) just prior to the collision, he threw his snowboard aggressively sideways in an effort to slow down quickly, but was unable to do so and collided with plaintiff. (*Id.* at pp. 1188-1189.) From these facts, the court determined that no reasonable juror could find the student's conduct was despicable and thus, plaintiff's claim failed as a matter of law. (*Id.* at p. 1209.)

On a motion to strike, however, the Court looks only to the pleadings to determine whether a claim for punitive damages has been stated. Further, at the pleading stage, the Court is not concerned with a plaintiff's ability to prove her allegations. (See e.g., *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.) In this case, there is currently no evidence before the court that Villela did not intentionally run into Plaintiffs, attempted to avoid the accident, or was in control at the time of the accident, such that this Court may determine, as a matter of law, Plaintiffs' claim for punitive damages fails. Thus, *Lackner* is inapposite.

Defendants rely on *Dawes* and *Gombos* to argue Plaintiffs' request for punitive damages is inadequate because they have alleged mere negligence. (MTS, p. 5:1-22.)

In *Dawes*, a minor was walking his bicycle when he was injured by defendant driver. (*Dawes, supra*, 111 Cal.App.3d at p. 86.) The minor sued for compensatory and punitive damages and the trial court struck the claim for punitive damages, holding that the minor could only recover punitive damages in a personal injury action if defendant's conduct amounted to a

conscious disregard of the safety of others and probable injury to other persons. (*Ibid.*) The Court of Appeal determined that the minor's amended complaint contained such allegations, where Plaintiff alleged the driver, "with knowledge that probable serious injury would result to persons in the area[.]" ran a stop sign and was zigzagging through traffic at 65 miles per hour in a 35 miles per hour zone at the entrance to a popular recreation area at a time when many pedestrians were in the immediate vicinity. (*Id.* at p. 85.) The Court of Appeal held, that based on these allegations, the trial court erred by granting defendant's motion to strike. (*Ibid.*) The Court of Appeal explained that "since 1974 at the latest, and probably since a much earlier date, the term 'malice' as used in Civil Code section 3294 has been interpreted as including a conscious disregard of the probability that the actor's conduct will result in injury to others." (*Id.* at p. 88.)

In *Gombos*, the Court of Appeal explained that "[m]ere negligence, even gross negligence, is not sufficient to justify such an award [of punitive damages]." (*Gombos, supra*, 158 Cal.App.2d at p. 527.) California cases typically hold that negligence-based causes of action will not support a claim for punitive damages. (See e.g., *Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 285-286; *Dawes, supra*, 111 Cal.App.3d at p. 87.)

Here, Plaintiffs allege two negligence causes of action. However, California courts have also held that "[e]ven 'nonintentional torts' may form the basis for punitive damages when the conduct constitutes conscious disregard of the rights or safety of others . . . 'Nonintentional conduct comes within the definition of malicious acts punishable by the assessment of punitive damages when a party intentionally performs an act from which he knows, or should know, it is highly probable harm will result.'" (*SKF Farms v. Superior Ct.* (1984) 153 Cal.App.3d 902, 907; see also *Taylor v. Superior Court of Los Angeles County* (1979) 24 Cal.3d 890, 907 ["punitive damages have been awarded on a theory of conscious disregard of the plaintiff's rights where although injury to the plaintiff was uncertain, it was *probable* that the outrageous conduct would result in injury to someone"] [emphasis original].)

In this case, Plaintiffs' allegation that Villela's conduct was an extreme departure from what a reasonably careful person would do is an unsupported conclusion of law which is insufficient to state a claim for punitive damages. (*Perkins v. Superior Ct.* (1981) 117 Cal.App.3d 1, 6.) While courts have permitted allegations which include conclusions of law where the complaint as a whole contains sufficient facts to apprise the defendant of the basis upon which relief is sought (*ibid.*), Plaintiffs' only additional allegation is that Villela was driving over 85 miles per hour while swerving between other cars. The Court does not find Plaintiffs' allegations, on their own, are sufficient to allege either a conscious disregard for the rights and safety of others or that Villela was aware of the probable consequences of her actions sufficient to permit punitive damages for a nonintentional tort.

In opposition, Plaintiffs do argue that nonintentional torts can form the basis for punitive damages when a party intentionally performs an act from which he knows or should know it is highly likely harm will result. (Opposition, p. 3:7-13.) Plaintiffs then assert that Villela was aware of her dangerous conduct and the probable consequences of such conduct in conscious disregard of the rights and safety of Plaintiffs, specifically because she was not intoxicated. (Opposition, p. 4:22-28.) However, these assertions are not actually alleged in the pleading. As such, the motion to strike the Prayer for punitive damages is GRANTED with leave to amend. (See *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360 [regarding

motions to strike, leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question].)

### **III. Conclusion and Order**

The motion to strike punitive damages is GRANTED with 15 days' leave to amend.

The Court will prepare the final Order.

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**Calendar Lines 5 and 6**

**Case Name:** *Gerardo Maldonado Robles, et. al vs Antonio Aguirre, et. al*  
**Case No.:** 23CV411626

Plaintiff's Gerardo Maldonado and Jesus Cano each bring a motion to compel Defendant Defense Protection Group, Inc.'s Responses to request for Production of Documents, Set One, and for Monetary Sanctions.

Defendant has not filed any opposition to this motion. The failure to file an opposition can be considered consent to the granting of the motion. (Cal. Rule of Court, 8.54(c).)

Plaintiff's motion to compel responses is GRANTED. Defendant is ordered to provide responses, without objection, to Plaintiff's request for production of documents, set one, within 30 days of the service of this order.

Plaintiff seeks monetary sanctions of \$1,160 for the time spent pursuing and obtaining this order. The declaration of Attorney Skinner sets forth his time spent drafting and bringing this motion, 2.7 hours, and his hourly rate of \$400. Plaintiff also incurred costs of \$60.00 for the filing of the motion. Defendant is ORDERED to pay monetary sanctions of \$1,160 to Plaintiffs.

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## Calendar line 9

**Case Name:** *Celia Estillore et. al vs Gloria Estillore*  
**Case No.:** 23CV412463

### I. Introduction

Petitioners Celia Estillore and Sunny Garcia bring the instant motion to expunge the lis pendens recorded on November 9, 2010 against the property “located at 1711 Marshall Court, No.’s A & B, Los Altos, CA 94024 APN 318-26-023 in the County of Santa Clara” and for attorney fees in the amount of \$6,750 along with costs of \$465.11.

The lis pendens was filed under case two dockets: No. 2009-1-CV-159921 and No. 2010-1-CV-178708. Petitioner has provided, and requested the court take judicial notice of, documents from that court file showing the cases were dismissed on July 10, 2010 and February 7, 2012, respectively.

Respondent has filed an “Objection to Notice of Motion for Order of Expungement Lis Pendens From Verified Petition,” in which she states, without supporting documentation, that “there is a pending lawsuit involving the property.”

### II. Legal Standard and Analysis

“A lis pendens is a recorded document giving constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.” (*Urez Corp. v. Superior Court* (1987) 190 Cal. App. 3d 1141, 1144.) “A lis pendens may be filed by any party in an action who asserts a ‘real property claim.’ (Code Civ. Proc., § 405.20.) “Section 405.4 defines a ‘Real property claim’ as ‘the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property ... .’” (*Kirkeby v. Superior Court* (2004) 33 Cal. 4th 642, 647.) Code of Civil Procedure section 405.31 mandates expungement of the Lis Pendens if the pleading does not contain a real property claim. (*Id.*)

“Unlike most other motions, when a motion to expunge is brought, the burden is on the party opposing the motion to show the existence of a real property claim.” (*Kirkeby v. Superior Court* (2004) 33 Cal. 4th 642, 647, citing Code Civ. Proc., § 405.30.) “[T]he practical effect of a recorded lis pendens is to render a defendant’s property unmarketable and unsuitable as security for a loan. The financial pressure exerted on the property owner may be considerable, forcing him to settle not due to the merits of the suit but to rid himself of the cloud upon his title. The potential for abuse is obvious. [Citations.]” (*Kirkeby v. Superior Court* (2004) 33 Cal. 4th 642, 651 (internal citations and quotations omitted).) Thus, “[t]he history of the lis pendens legislation indicates a legislative intent to restrict rather than broaden the application of the remedy.” (*Id.* (internal citations and quotations omitted).)

In this case, it appears that the litigation on which the lis pendens was filed has been concluded. Respondent does not sustain their burden of proof by an unsubstantiated statement that “litigation is pending” without more.

Petitioner seeks award of attorney fees and costs pursuant to Code of Civil Procedure section 405.38, which states,

The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Petitioner includes a declaration indicating eleven hours spent "working with Respondent" and her attorney, and on preparing and filing the motion. Petitioner "anticipates" an additional four hours to "file any additional motion, appearances and documentation regarding the Order to Expunge." Petitioner also seeks costs of \$465.11.

The court grants the motion for attorney fees and costs, but will reduce the number of hours to thirteen (13). The court finds it reasonable to reduce the four hours of anticipated work to two, given the filings in this case and the anticipated length of any hearing. Attorney fees totaling \$5,850 and costs of \$465.11 are ordered.

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## Calendar line 10

**Case Name:** *Lingsen Leung vs Tawa Supermarket, Inc. et al*  
**Case No.:** 23CV415224

### I. Introduction

Plaintiffs Lingsen Leung and Hang Leung bring this motion for preference on trial setting pursuant to Code of Civil Procedure (CCP) section 36. Plaintiffs' counsel has filed a declaration in support of the motion in which he states that both Plaintiffs are 84 years of age, Lingsen Leung has "high blood pressure and chronic kidney disease," and Hang Leung "has just completed chemotherapy" and has a diagnosis of Non-Hodgkin lymphoma and chronic liver disease.

Defendant Tawa Supermarket, Inc., has filed an opposition to Plaintiff's motion, in which they take the position that Plaintiffs have failed to meet their burden under CCP §36 because the declaration of counsel does not contain any documentation concerning current medical diagnoses, and that a preferential trial date would deprive defendant of their due process right to conduct a thorough investigation. Defendant further states that the request fails to meet the requirements of Rules of Court 3.1335 and 3.729.

### II. Legal Standard and Analysis

CCP section 36 reads in pertinent part,

(a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:

- (1) The party has a substantial interest in the action as a whole.
- (2) The health of the party is such that a preference is necessary to prevent the party's interest in the litigation.

.....

(e) Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.

There is no question but that both Plaintiffs are substantially above the minimum age for receiving preference in trial setting. Both Plaintiffs are currently 84 years of age. Subdivision (a) of CCP 36 makes clear that the court "shall" grant the preference if both findings in that subdivision are made. Subdivision (e) gives the court broader authority to grant a motion for preference anytime "the interests of justice will be served" by granting of the preference.

Here, assuming *arguendo* that Defendant is correct about the lack of corroborating documentation about health concerns, Plaintiffs' age alone makes a priority setting appropriate. Both Plaintiffs are substantially past the minimum age to request a priority, and delay of the

proceedings substantially increases the possibility that one or both Plaintiffs would be deprived of their ability to participate.

As for the Defendant's claim that a preferential trial date would violate their due process rights by depriving them of the ability to prepare, the court finds that claim lacking. This case was initially filed in April, 2023. It has been pending for six months. Even with a trial preference, the parties will have an additional 120 days to prepare. Nothing in the opposition to the motion indicates this case is particularly complicated. In fact, Defendant claims there is a video which conclusively shows that Plaintiff's version of the events (that she tripped on a pallet left on the floor) did not occur.

Defendants indicate their desire to bring a motion for summary judgment, and express concern that the motion cannot be heard if trial preference is granted. That is not the case. CCP 437c requires that a motion for summary judgment be heard "no later than 30 days before the trial, unless the court for good cause orders otherwise." Without prejudging any issue not before the court, the existence of a trial preference would certainly provide good cause to shorten the normal time period between the summary judgment motion and the trial, should counsel act expeditiously to place the matter on calendar.

Additionally, the court finds that California Rule of Court 3.1335 and 3.729 do not dictate a different outcome. Rule 3.1335 simply states that any request to "advance, set or reset a trial date" must be accompanied by a showing of "good cause based on a declaration" served with the motion, and Rule 3.729 simply states factors the court should consider in making such a decision. Neither Rule of Court was intended to overrule CCP 36, and nothing in the Rules is inconsistent with the court making the findings necessary to give trial preference to a particular matter.

### **III. Conclusion**

For the reasons stated above, the motion for trial preference is GRANTED.



