SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding
David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: December 7, 2023 TIME: 9:00 A.M.

FOR ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

FOR 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. Civil Local Rule 8C is in the amendment process and will be officially changed in January 2024.

Where to call: 408-882-2430
When to call: Monday through Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV379156	Tewolde Belai vs Amanuel Keleta et al	Defendant's Motion for judgment on the pleadings is DENIED. Please scroll down to line 1 for full tentative ruling. Court to prepare formal order.
2	22CV409134	Jane Doe vs Brad Carothers et al	ESUHSD's demurrer to Plaintiff's fifth cause of action is SUSTAINED WITH LEAVE TO AMEND. Please scroll down to line 2 for full tentative ruling. Court to prepare formal order.
3	23CV410155	Kui Ma vs Hau-Ching Liao et al	Defendants' demurrer to the third cause of action is SUSTAINED WITHOUT LEAVE TO AMEND. Please scroll down to lines 3-4 for full tentative ruling. Court to prepare formal order.
4	23CV410155	Kui Ma vs Hau-Ching Liao et al	Defendants' motion to strike is MOOT. Please scroll down to lines 3-4 for full tentative ruling. Court to prepare formal order.
5	22CV403128	Maritza Bolanos vs Lily Li	Defendant Lily C. Li's Motions to Compel Responses to Form Interrogatories (Set One), Special Interrogatories (Set One), Request for Production of Documents (Set One), and for Sanctions are CONTINUED to February 6, 2024 at 9 a.m. in Department 6. The Court was unable to locate an amended notice of motion with the December 7, 2023 hearing date. The Code of Civil Procedure, Rules of Court and Civil Local Rules require that the moving party serve a written notice of motion with the hearing date and time. (See Code Civ. Proc. §§1005(a), 1010.) A court lacks jurisdiction to hear a motion that has not been properly served, even if the non-moving party had some type of advanced notice. (See *Diaz v. Professional Community Mgmt.* (2017) 16 Cal.App.5th 1190, 1204-1205; *Five-O-Drill Co. v. Superior Court of Los Angeles County* (1930) 105 Cal. App. 232.) Defendant is ordered to serve an amended notice of motion with the February 6, 2024 hearing date and time for these motions. If there is no proof of service demonstrating such service by the next court date, the Court will deny theses motions without prejudice. Court to prepare formal order.
6	22CV403128	Maritza Bolanos vs Lily Li	See line 5, above.
7	22CV403128	Maritza Bolanos vs Lily Li	See line 6, above.
8	17CV314927	Nadira Akbari vs S5 Advisory, inc. et al	Plaintiff's motion to extend the five year statute is DENIED. Please scroll down to line 8 for full tentative ruling. Court to prepare formal order.
9	19CV353354	PMGI Financial LLC vs Truong Dinh	Truong Dinh's Claim of Exemption is GRANTED. The garnishment shall be in the amount of $50 per pay period. Court to prepare formal order.

10	19CV359745	Juan Urias et al vs BMV Hotels, LP et al	BWI's Motion to Lift Stay is DENIED. The parties agree that Plaintiff filed the worker's compensation board claim before filing the present civil action. The authorities are clear that this Court therefore lacks jurisdiction to proceed in the civil action. The Court did not locate authorities permitting a carve out in the stay to adjudicate whether BWI is a proper party to this action—that issue would also appear to be under the board's exclusive jurisdiction. (Labor Code § 5300; *Edwards v. City of Chico* (1972) 28 Cal. App. 3d 148, 104; *Scott v. Industrial Acci. Com.* (1956) 46 Cal. 2d 76.) Court to prepare formal order.
11	22CV403362	Jose Vea Castro et al vs Tacomania Inc et al	Defendants' Motion to Enforce Settlement and Dismiss Action with Prejudice is GRANTED. Notice of this motion was served on Plaintiffs' counsel of record by electronic mail on November 13, 2023. No opposition was filed. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The Court also agrees that this is an exceptional case where the Court should exercise its inherent authority to dismiss this action with prejudice. (See *Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736.) Plaintiffs received their settlement payments then vanished. Their counsel has not heard from them in a year, they have failed to appear at any follow up hearings, and they have thereby failed to comply with the terms of the settlement agreement. The Court will prepare a formal order, but this case is dismissed with prejudice and all future dates are vacated.
12	22CV409353	Silvia Johnson vs Tracy Trinh	The Court orders counsel to appear for a hearing on this motion to withdraw.
13	23CV424797	Matthew Ferranti vs Excite Credit Union	Petitioner's motion to compel arbitration is GRANTED. Although Excite has now paid the JAMS fees, it still materially breached the agreement when it failed to pay those fees within 30 days of the due date as directed by Code of Civil Procedure section 1281.97(a). Excite is further ordered to pay the reasonable fees and costs incurred in pursuing this petition and completing the arbitration. (Code of Civil Procedure §§ 1281.97(b), 1281.97, 1281.99.) Within ten (10) days of service of this formal order Petitioner is ordered to submit a declaration detailing the time spent on preparing this petition. Respondent may submit a short objection within ten (10) days of receipt of that declaration. The Court will issue a tentative ruling in advance of a hearing on January 18, 2024 at 9 a.m. in Department 6. Court to prepare formal order with these rulings.
14	22CV409134	Jane Doe vs Brad Carothers et al	Plaintiff's Motion to Compel is MOOT. The Court appreciates the parties' diligence and cooperation in working together to resolve the outstanding discovery disputes. Plaintiff's motion for sanctions is GRANTED. Defendant's former counsel Holden Green is personally ordered to pay Plaintiff $3,200 within 60 days of service of this formal order. Please scroll down to line 14 for full tentative ruling. Court to prepare formal order.

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Calendar Line 1
Case Name: *Belai v. Keleta, fdba Ak's In & Out Mini Market*
Case No.: 21CV379156

Before the Court is Defendant's, Amanuel Keleta, dba AK's In & Out Mini Market, motion for judgment on the pleadings. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a personal injury matter. According to the First Amended Complaint ("FAC"), on December 22, 2020, Keleta, owner of AK's In & Out Mini Market ("Market"), negligently and willfully required Belai to perform manual labor by carrying a box upstairs into Market's storage area. (FAC, PLD-PI-001(2) & (4).) The stairs did not have handrails. (*Ibid.*) During Belai's careful descent downstairs, he fell and broke his shoulder. (*Ibid*.) Belai was taken to the hospital. (*Ibid*.)

Belai filed his complaint on April 6, 2021, asserting claims for general negligence and premises liability. Plaintiff filed his FAC on April 8, 2021, asserting the same claims. On April 22, 2022, Keleta filed his answer. Over a year later, on June 9, 2023, Keleta demurred to the complaint, which was overruled on July 28, 2023, for failure to submit the required supporting memorandum of points and authorities.

II. Legal Standard

A defendant may move for judgment on the pleadings when the "complaint does not state facts sufficient to constitute a cause of action against that defendant." (Code of Civ. Pro. §438(b)(1) and (c)(1)(B)(ii).) "A motion for judgment on the pleadings may be made at any time either prior to the trial or at the trial itself. [Citation.]" (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 877.) "A motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed. Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999 (citations omitted); see also, *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057.) The court must assume the truth of all properly pleaded material facts and allegations, but not contentions or

conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Wise v. Pacific Gas and Elec. Co.* (2005) 132 Cal.App.4th 725, 738.)

The standard for ruling on a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law. (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321-322, citing *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (Code Civ. Proc., § 438, subd. (h)(1).) "Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." (*Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852 (emphasis added).)

III. Meet and Confer

Code of Civil Procedure section 439(a) provides: "Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings."

Defendant declares that on September 15, 2023, he contacted Plaintiff's attorney to meet and confer and received no response. It is therefore evident that no meet and confer took place between the parties. However, failure to meet and confer is not grounds to grant or deny a motion for judgment on pleadings. (Code Civ. Proc. § 439(a)(4).

IV. Analysis

Defendant seeks a judgment in his favor, as a matter of law, reasoning that Plaintiff's first, second, and third[1] causes of action fail because at the time of his alleged injury, the store where the

[1] What Defendant perceives as Plaintiff's third cause of action is merely an attachment to the complaint for exemplary damages. As such, there are only two claims before the Court for general negligence and premises liability.

injury occurred had been closed due to fire. As a result, Defendant had no duty to the Plaintiff since he was not in possession and control of the premises.

In opposition, Plaintiff asserts both procedural and substantive issues. Procedurally, Plaintiff argues that the motion is barred because Defendant's previously overruled demurrer was on identical grounds and Defendant has not demonstrated material change in applicable laws since his demurrer. Substantively, Plaintiff argues that his complaint alleges sufficient facts supporting his claims, and that Defendant's ownership argument raises new facts in defense against liability and not defects on the face of the complaint.

A. Procedural Issues

A party generally cannot move for judgment on the pleadings on the same grounds that were raised in an unsuccessful demurrer absent "a material change in applicable case law or statute since the ruling on the demurrer." (Code Civ. Proc., § 438, subd. (g)(1); see also, *Farber v. Bayview Terrace Homeowner's Association* (2006) 141 Cal.App.4th 1007 (*Farber*).)

The Court recognizes that Defendant's current motion is on the same grounds as his previously filed demurrer. Defendant demurred to Plaintiff's claims on the grounds that each claim failed to state facts sufficient to constitute a cause of action against him. This Court overruled Defendant's demurrer on July 28, 2023, because it lacked the required memorandum of points and authorities and was thus procedurally defective. Given the defect, the Court could not and did not consider the merits of Defendant's grounds for the demurrer. Therefore, Defendant can raise his arguments again by motion for judgment on the pleadings against the complaint. (*Farber, supra,* 141 Cal. App. 4th 1007 at 1013 [where the court did not consider standing in overruling a demurrer, defendant/respondent was free to raise it again by motion for judgment on the pleadings against the complaint]).

However, pursuant to Cal. Rules of Ct, Rule 3.1113(a), the Court, ruling on Defendant's demurrer, deemed his failure to file a memorandum of points and authority as an admission that the grounds for his demurrer were not meritorious and a waiver of all grounds not supported. Therefore, the identical grounds on which Defendant bases his current motion for judgment on the pleadings were deemed waived. In the interest of justice, the Court will reconsider the waiver and address the merits of Defendant's current motion.

B. Substantive Issues

The elements for a negligence claim are duty, breach, causation, and damages. (*Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 662.) The elements of a cause of action for premises liability are the same as those for negligence. i.e.: duty, breach, causation, and damages. (*McIntyre v. The Colonies-Pacific, LLC* (2014) 228 Cal.App.4th 664, 671.) Those who own, possess, or control property generally have a duty to exercise ordinary care in managing the property to avoid exposing others to an unreasonable risk of harm. (*Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 37.) Consequently, the "duty to exercise reasonable care can be inferred from the assertion of the fact that defendant owned and managed the property." (See *Pultz v. Holgerson* (1986) 184 Cal.App.3d 1110, 1117 .) The rules of premises liability "govern a land possessor's duty to third parties when a dangerous condition exists on the property." (*Zuniga v. Chery Avenue Auction, Inc*. (2021) 61 Cal.App.5th 980, 992.)

In his FAC, Plaintiff alleges that at the time of his injury Defendant owned, maintained, managed, and operated the Market. This allegation, if true, which the Court must assume on a motion for judgment on the pleadings, would impose a duty upon Defendant to exercise ordinary care in managing and maintaining the premises to avoid harm to others. Plaintiff further alleges a staircase without the required safety rails was a dangerous condition for which Defendant failed to guard or warn him against. As a result, Plaintiff fell while descending the stairs and was injured. (FAC, PLD-PI-001(2) & (4).)

Defendant asserts that Plaintiff has failed to plead that he was the prior owner of the Market until it closed on September 15, 2019, due to fire. Defendant has not provided any supporting documents or evidence of his ownership status for which the Court can take judicial notice. It is evident that ownership and control of the premises, at the time of Plaintiff's injury, is a disputed fact. However, nothing in the complaint points to this dispute. Lack of ownership or control over the premises is a factual defense that Defendant can raise in a motion for summary judgment or trial. For the purposes of this motion, the Court is required to assume the truth of all facts properly alleged in the FAC even if Plaintiff may be unable to prove their truth at trial. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166; *Collier v. Superior Court* (1991) 228 Cal.App.3d 1117, 1120.)

As it stands, Plaintiff pleads sufficient facts to satisfy the elements of each claim. Accordingly, Defendant's motion for judgment on the pleadings is DENIED.

Calendar Line 2
Case Name: *Jane Doe v. Brad Carothers et.al.*
Case No.: 22CV409134

Before the Court is Defendant, East Side Union High School District's ("ESUHSD") demurrer to Plaintiffs' first amended complaint ("FAC"). Pursuant to California Rule of Court, Rule 3.1308, the Court issues its tentative ruling.

I. Background

This action arises out of the alleged sexual abuse suffered by Plaintiff while she was a student at Evergreen Community College ("Evergreen"). According to the FAC, in fall 2012, Plaintiff, who was sixteen years old at that time and participating in cooperative program between ESUHSD and the College District, began taking general psychology course at Evergreen taught by Defendant Brad Carothers. (FAC, ¶ 22.)

Carothers began paying special attention to Plaintiff, including frequent late night phone calls and text messages. (FAC, ¶¶ 23, 25.) In April 2013, the conversations between Plaintiff and Carothers veered into inappropriate territory when he told Plaintiff that he was in love with her. As a consequence of Carothers' apparent confession, Plaintiff requested space from him. (FAC, ¶ 27.) As Plaintiff prepared to apply for college, Carothers offered her a job as his teaching assistant ("TA") under the guise that it would benefit her college applications, and Plaintiff accepted. (FAC, ¶ 28.) In addition to being Carothers' TA, Plaintiff began going to his home on regular basis. (FAC, 29-30.)

In April 2013, Carothers sexually assaulted Plaintiff at his home. (FAC, ¶ 31-33.) Carothers assaulted Plaintiff on several other occasions in the months that followed. (FAC, ¶¶ 42-47.) As result of Carothers' actions, Plaintiff began suffering from emotional distress and missing school, causing her school performance to suffer. (FAC, ¶ 48.)

One of the coordinators and supervisors of the cooperative program, Cathy Broussard, noticed the shift in Plaintiffs behavior, confronted her and learned that Plaintiff had been working as Carothers TA. (FAC, ¶ 50) Ms. Broussard contacted Carothers about Plaintiff's TA position but he refused to respond to her inquiries. Although Ms. Broussard allegedly observed symptoms of abuse in Plaintiff, she did not investigate the matter any further. (FAC, ¶¶ 51, 52.)

Plaintiff filed her Complaint on December 22, 2022, and later amended it asserting: (1) sexual assault and battery (Civil Code 1708.5) (against Carothers); (2) sexual harassment by teacher (Civil Code 51.9(a)(1)(E)) (against Carothers); (3) intentional infliction of emotional distress (against Carothers); (4) gender violence (Civil Code 52.4) (against Carothers); (5) negligence and negligence per se (against ESUHSD and the College District); (6) negligent supervision (against the College District); and (7) negligent hiring/retention (against the College District).

The Court sustained Defendant San Jose/Evergreen Community College District's and ESUHSD's demurrer and granted their motion to strike by order dated August 16, 2023 after which Plaintiff filed her first amended complaint, to which ESUHSD now demurrers.

II. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).) A demurrer for uncertainty will be sustained only where the complaint is so deficient that the defendant cannot reasonably respond – i.e., the defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against them. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).)

The court treats a demurrer "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 on Children's*

Television).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Leave to amend must be allowed where there is a reasonable possibility of successful amendment. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [court shall not "sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment"]; *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1037 ["A demurrer should not be sustained without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment."].) The burden is on the complainant to show the Court that a pleading can be amended successfully. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

III. Analysis

ESUHSD Demurrers to Plaintiff's fifth cause of action for negligence and negligence per se on the grounds that the FAC (1) fails to state sufficient facts negating its immunity under Education Code section 44808 and (2) pleads contentions and legal conclusions rather than facts.

A. Liability Against Public Entity Generally and Immunity Under Education Code Section 44808

"Except as otherwise provided by statute[, … a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or public employee or any other person." (Gov. Code, 815, subd. (a).) "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to cause of action against that employee or his personal representative." (Gov. Code, 815.2, subd. (a).) "In the context of public schools, the Legislature has established different liability rules for injuries occurring during required school-sponsored, off-premises activities, on the one hand (Ed. Code, 44808), and field trips or excursions on the other hand (Ed. Code, 35330)." (*Myricks v. Lynwood Unified Sch. Dist.* (1999) 74 Cal.App.4th 231, 238.)

Education Code section 44808 "renders school district not 'responsible or in any way liable for the safety of any pupil at any time when such pupil is not on school property' unless the district has 'undertaken to provide transportation for such pupil to and from the school premises,' 'undertaken school-sponsored activity off the premises,' 'otherwise specifically assumed responsibility or liability' or 'failed to exercise reasonable care under the circumstances.'" (*Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4'h 126, 130.) In other words, Section 44808 "grants district immunity unless student was (or should have been) directly supervised during specified undertaking." (*Id*.) For the purposes of Section 44808, "a school-sponsored activity" is defined as an activity "that requires attendance and for which attendance credit may be given ...." (*Castro v. Los Angeles Bd. of Education* (1976) 54 Cal.App.3d 232, 236, fn. 1.)

Pursuant to Section 44808, ESUHSD asserts immunity against Plaintiff's claims and argues that the FAC fails to allege facts showing that Plaintiff's injuries occurred during a required school-sponsored, off-premises activity or during an activity for which ESUHSD specifically assumed liability. The Court agrees. None of Carothers' alleged actions are alleged to have taken place on high school property. Therefore, to overcome a demurrer, Plaintiff needed to allege facts that implicate the exceptions to Section 44808 immunity.

The FAC alleges:

- Plaintiff was enrolled in a cooperative program between ESUHSD and SJECCD, which enabled her to take college-level courses at San Jose-Evergreen Community College (FAC, ¶ 15);
- The cooperative program between ESUHSD and SJECCD was jointly held on the Evergreen College Campus. ESUHSD and SJECCD accordingly assumed responsibility for the cooperative student's safety, including Plaintiff's, during their enrollment in the program. This required ESUHSD and SJECCD to take reasonable steps to supervise their students while enrolled in the program and present on the Evergreen Campus (FAC, ¶ 17);
- At no time Plaintiff was informed of times or locations she was not allowed to be on the Evergreen College Campus. Neither ESUHSD nor SJECCD had policies or procedures in place to properly supervise minor high school students enrolled in the cooperative program despite assuming responsibility for their safety (FAC, ¶ 18);

- The approval of part-time work was required by the cooperative program to ensure that working hours did not interfere with the school schedule and courseload (FAC, ¶ 20);
- Ms. Broussard and Ms. Flournoy were responsible for ensuring that all working students in the program had the proper work authorization and that it was approved (FAC, ¶ 20);
- Certain jobs students enrolled in the cooperative program would qualify for "credit" that could be applied to graduation requirements. Such jobs included teaching assistants (FAC, ¶ 20);
- Ms. Broussard and Ms. Flournoy assumed responsibility for ensuring that all students that were known to be working received the proper authorization to do so and to ensure that any part-time work would not interfere with their courseload. (FAC, ¶ 21.)

Plaintiff's allegations fail to establish that Plaintiff's employment with Carothers was part of the cooperative program, and that Plaintiff was required to attend or received credit for her work. Merely alleging that certain jobs, such as teaching assistant, would qualify for credit or could be applied to graduation requirements is insufficient. What the FAC does allege is that the Plaintiff's TA position was unauthorized, and she was paid from Carothers' personal account. (FAC, ¶¶ 234-35.) The FAC thus fails to allege that employment with Carothers was part of the cooperative program and/or a "school-sponsored activity" such that Plaintiff was or would have been expected to be under the immediate and direct supervision of ESUHSD's employees like Ms. Broussard.

The FAC also fails to allege how ESUHSD assumed liability for Plaintiff. Conclusory allegations that (1) ESUHSD and SJECCD assumed liability for the cooperative's students' safety because the program was jointly held on Evergreen College Campus and (2) Ms. Broussard and Ms. Flournoy assumed responsibility for ensuring that all students that were known to be working received the proper authorization to do so and that their work did not interfere with their courseload, are insufficient. There are also no allegations in the FAC that anyone informed Ms. Broussard that Carothers was sexually assaulting Plaintiff, only the conclusory allegation that Ms. Broussard was aware of Plaintiff's symptoms of abuse and continued work with Carothers. (FAC, ¶ 52.)

In sum, Plaintiff fails to plead facts to support bringing her claims out of Section 44808 immunity.

B. Failure to State Sufficient Facts Supporting Negligence Claim

In her fifth cause of action, Plaintiff alleges Defendants breached their duty to her by: (1) failing to properly supervise her and address her falling grades and absences while she was enrolled in the cooperative program, (2) allowing Carothers to come into contact with her without supervision, (3) knowingly allowing Plaintiff to continue working for Carothers without the required authorizations, and (4) failing to investigate or report their reasonable suspicions about Carothers' sexual abuse. (FAC, ¶¶ 90-95.)

"California law has long imposed on school authorities the duty to 'supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection. [Citations.]'" (*C.A. v. William S. Hart Union High School District* (2012) 53 Cal.4th 861, 869.) "Either total lack of supervision [citation] or ineffective supervision [citation] may constitute lack of ordinary care on the part of those responsible for student supervision," and [u]nder section 815.2, subdivision (a) of the Government Code, school district is vicariously liable for injuries proximately caused by such negligence." (*Id*.) "In addition, school district and its employees have special relationship with the district's pupils, relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel "analogous in many ways to the relationship between parents and their children." ([Citations].) Because of this special relationship, imposing obligations beyond what each person generally owes others under Civil Code section 1714, the duty of care owed by school personnel includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally." (*C.A.*, 53 Cal.4th at 869-870.) Therefore, to state claim for negligent supervision, plaintiff must plead facts demonstrating the person in a supervising role with the school district/school knew or should have known about its employee's conduct towards the plaintiff. (*Doe v. Capital Cities*, *supra*, 50 Cal.App.4th at 1054-1055; also see *Z. V. v. County of Riverside* (2015) 238 Ca1.App.4th 889, 902.)

The FAC contains conclusory allegations that Defendants knew or had reason to know that Carothers was capable of sexually, physically, and mentally abusing Plaintiff. (FAC, ¶ 93.) The mere fact that Plaintiff was working as Carothers' TA and Ms. Broussard was aware of that work does not, without more, sufficiently allege that ESUHSD should have known that Carothers was sexually abusing

Plaintiff, even while also taking into account Plaintiff's allegation that her behavior at school underwent noticeable shift.

Plaintiff now further alleges: (1) Carothers admitted to and informed Ms. Rowe, a member of Carothers' tenure review committee, about his sexual relationship with Plaintiff (FAC, ¶ 37, 38), (2) Mr. Naverson, a division chair and history instructor and other SJECC faculty saw Plaintiff inside Carothers' office on numerous occasions and failed to take any steps to ensure that their relationship was appropriate, and (3) Plaintiff applied to Mr. Gonzales for a TA position and informed him that she was working for Carothers as his teaching assistant (FAC, ¶ 40). While these allegations may impute knowledge to the College District, they do not charge ESUHSD with the same. As it is pleaded, there are no facts showing that ESUHSD knew or should have known about Carothers' alleged abuse.

Finally, absent allegations that Plaintiff's purported employment as TA was part of the cooperative program, there is no basis to conclude that ESUHSD breached a duty to supervise Plaintiff while she maintained such position. Liability for negligent supervision also requires that the defendant be the employer of the individual alleged to have been negligently supervised. (See CACI No. 426; *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1187-1188.) There are no allegations that ESUHSD hired Carothers and in fact, Plaintiff alleges that Carothers was employed by the College District. (FAC, ¶ 5.) In the absence of an employer-employee relationship, no claim for negligent supervision can be stated against ESUHSD.

Accordingly, ESUHSD's demurrer to Plaintiff's fifth cause of action is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

Calendar Lines 3-4
Case Name: *Kui Ma v. Hau-Ching Liao, et al.*
Case No.: 23CV410155

Before the Court is Defendants' Hau-Ching Liao and LHC Design, Inc. ("LHC Design") (collectively, "Defendants") demur to and motion to strike portions of Plaintiff Kui Ma's first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises out of a contract for architectural services. In 2021, Ma searched for an architect to provide designs and obtain permits for a new clinic he was planning on opening at 1378 El Camino Real in Santa Clara. (FAC, ¶ 8.) On October 31, 2021, Ma retained Defendants to complete the drawings and obtain the permits. (*Ibid*.) The parties agreed that Ma would pay $7,000 and Defendants would provide schematic designs, design development, and construction documents for the space, which would have three treatment rooms with a reception area, a Chinese medicine room, a laundry area, a break room, an ADA-compliant bathroom, and an attic light storage area. (FAC, ¶¶ 9-10.) Ma paid $2,000 upfront, in cash. (FAC, ¶ 11.) Upon receipt of the initial payment, Defendants began to drag and delay the process. (FAC, ¶ 12.)

On January 14, 2022, Defendants informed Ma they had submitted the plans to the City for approval, however, Ma was unable obtain the permit until August 20, 2022. (FAC, ¶ 13.) Ma discovered the plans under the permit were full of mistakes, and he sought corrections from Defendants, to no avail. (FAC, ¶ 14.) Ma had to seek out another architect to correct the mistakes, and on November 18, 2022, he obtained an amended permit. (FAC, ¶ 15.) As a result of Defendants' conduct, Ma suffered emotional distress, loss of income, and unnecessary business expenses. (FAC, ¶ 16.)

Ma initiated this action on January 19, 2023 asserting: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) breach of fiduciary duty; and (4) unfair competition under Business and Professions Code section 17200. On March 30, 2023, Defendants filed a demurrer and motion to strike. On July 14, 2023, the Court issued its order (the "Order") sustaining the demurrer, which rendered the motion to strike moot. On August 2, 2023, Ma filed his FAC, asserting the same claims. Defendants demur to the third cause of action on the basis that it fails to allege sufficient facts to

state a claim (Code Civ. Proc., § 430.10, subd. (e)) and move to strike portions of the FAC. Ma opposes.

II. Demurrer

A. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "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 on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

B. Third Cause of Action: Breach of Fiduciary Duty

"In order to plead a cause of action for breach of fiduciary duty, there must be shown the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. The absence of any one of these elements is fatal to the cause of action." (*Brown v. California Pension Administrators & Consultants, Inc.* (1996) 45 Cal.App.4th 333, 347 – 348; see also CACI, No. 605.) "While breach of fiduciary duty is a question of fact, the existence of legal duty in the first instance and its scope are questions of law." (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d

784, 790.) A claim for breach of fiduciary duty can be based on the failure to use reasonable care, the duty of undivided loyalty, or the duty of confidentiality. (See CACI, §§ 4101-4103.)

In its Order sustaining the demurrer to the Complaint, the Court explained:

> The Court was unable to locate a case discussing an architect's fiduciary duty that did not involve an element of fraud and deceit. And there are no allegations in the Complaint concerning fraud—Ma does not allege Defendants misrepresented their qualifications, the costs of the project or even the amount of time it would take to obtain a permit. Nor does Ma allege the types of conflict present in *Edward Barron Estate Company v. Woodruff Company* (1912) 163 Cal. 561, 575 (*Barron*) and *Palmer v. Brown* (1954) 127 Cal.App.2d 44, 59 (*Palmer*), where the architect had divided loyalties between an owner and builder. Rather, Ma alleges Defendants failed to perform on the contract.

(The Order, p. 5:13-19.)

The FAC cites to *Barron* and *Palmer* in support of Ma's assertion that there is a fiduciary duty. *Palmer* addressed conflict of loyalty in a case where the architect was paid by the owner and the builder, which is not at issue here. In *Barron*, the architect misrepresented his qualifications, skill, and experience. (See *Barron, supra*, 163 Cal. at 565.) The defendants also repeatedly promised the project would not exceed $300,000, however, they knew the project would actually cost $600,000. (*Id*. at 569.) That court's decision was based on an agency relationship between the parties that began after the parties entered an agreement. The court reasoned that architects have superior knowledge the plaintiff was seeking to utilize by entering the contract, thus the plaintiff was entitled to rely on the defendants' representations because of the relationship of trust and confidence. (*Id*. at 576.)

Here, Ma does not allege Defendants misrepresented their qualifications or the overall cost of the project, that Defendants made any representations after the parties entered into the agreement, or that he had an agency relationship with Defendants. Rather, Ma's fiduciary duty claim rests on the allegation that Defendants intentionally misrepresented that the City officers were their schoolmates or friends, and thus they could obtain all necessary permits within two to four months. (FAC, ¶¶ 31, 33.) These allegations differ from those in *Barron* and *Palmer*. Those cases involved fraud cutting to the core of the architect's alleged qualifications to practice their craft, and, in the case of *Palmer* to the basic duty of

loyalty and not being paid by both the owner and the contractor. Ma fails to allege any similar facts. Ma also fails to provide authority to support the imposition of a *fiduciary duty* on Defendants, which exceeds the duty owed in a commercial relationship—nor could the Court locate any California appellate case or statute imposing a fiduciary duty on an architect other than *Barron* and *Palmer*. As a result, Ma fails to allege sufficient facts to state this claim.

"Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [citations omitted] (*Goodman*).) "Plaintiffs have the burden to show how they could further amend their pleadings to cure the defects. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 411 [citations omitted] (*Carter*).) Here, Ma requests leave to amend but fails to show in what manner he would do so. Moreover, it does not appear that Ma can sufficiently amend this claim. Thus, the demurrer to the third cause of action is SUSTAINED without leave to amend.

III. Motion to Strike

Defendants move to strike the following portions of the FAC:

(1) Page 6, Paragraph 35, Lines 21-23: "[d]efendants' breach of his fiduciary duties was willful, malicious, oppressive, and in conscious disregard of plaintiff's interest. Accordingly, punitive damages shall be assessed."; and

(2) Page 8, Prayer 2 Paragraph 2: "[p]unitive damages of $500,000 or in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct."

Ma's allegation and request for punitive damages relate to his claim for breach of fiduciary duty. Defendants' demurrer to the claim has been sustained. Thus, the motion to strike is MOOT.

Calendar Line 8
Case Name: *Nadira Akbari vs S5 Advisory, inc. et al*
Case No.: 17CV314927

Before the Court is Plaintiff's motion to extend the five year statute. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

Code of Civil Procedure section 583.310 states: "an action shall be brought to trial within five years after the action is commenced against the defendant." Dismissal of cases not brought to trial within this timeframe is mandatory. Code of Civil Procedure section 583.360, titled "Dismissal", states:

> (a) An action *shall be dismissed* by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.
>
> (b) The requirements of this article are *mandatory* and are not subject to extension, excuse, or exception except as expressly provided by statute. (Emphasis added.)

"The purpose of the five-year rule is to 'promote the trial of cases before evidence is lost, destroyed, or the memory of witnesses becomes dimmed . . . [and] to protect defendants from being subjected to the annoyance of an unmeritorious action remaining undecided for an indefinite period of time.'" (*Hill v. Bingham* (1986) 181 Cal.App.3d 1, 5 (internal citations and quotations omitted.)) Courts have recognized implied exceptions where going to trial was impossible. *Id.* "The purpose of the statute is. . .to prevent *avoidable* delay for too long a period. It is not designed arbitrarily to close the proceeding at all events in five years. . ." *Id.* (emphasis in original.)

"What is impossible, impracticable or futile must be determined in light of all the circumstances in the individual case, including the acts and conduct of the parties and the nature of the proceedings themselves. *The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case*." (*Hill*, 181 Cal.App.3d at 6 (internal citations and quotations omitted; emphasis in original.))

Court procedures and calendar control are not considered circumstances amounting to impracticality. Thus, in *Hill*, the court affirmed the trial court's dismissal under the five year statue where the court set a trial date beyond five years, since plaintiff there did not alert the court to the

approaching deadline and plaintiff could have corrected the timing issue by requesting that the trial be held within the last remaining two months of the five year period. (*Hill*, 181 Cal.App.3d at 9-10.) *Hill* states:

> "[Reasonable] diligence places on a plaintiff the affirmative duty to make every reasonable effort to bring a case to trial within five years, even during the last months of its statutory life. One means by which this duty may be fulfilled is a motion to specially set the case for trial pursuant to rule 375(b) of the California Rules of Court.. . . If the plaintiff could have acted to bring the case to trial on time and failed to do so, relief will not be given even if the plaintiff claims to have relied on the performance of an official duty. [Where] the delay in going to trial was caused by [plaintiff's] own miscalculation rather than circumstances beyond [one's] control" the exceptions do not apply. (*Id.*)

Plaintiff argues Defendant's delays in completing discovery and the COVID-19 pandemic made it impossible to bring this case to trial any sooner. Plaintiff claims the court is in control of calendaring, and there was nothing else Plaintiff could have done. The Court is not convinced.

First, this case was filed in 2017—the pandemic began to impact the courts years later. Next, in April 2020, the Judicial Council enacted emergency rules that added six months to the five year rule: "Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total of five years and six months." (Cal. R. Court Emergency Rule 10(a).) Thus, the effects of the pandemic were already accounted for by the addition of this six month period. The court handled hundreds of cases filed before April 6, 2020 that were brought to a conclusion through default, settlement or trial. Plaintiff offers no reason why this case should be treated any differently.

Plaintiff's complaints regarding Defendant's discovery responses is not a sufficient reason to grant an extension of time. A "plaintiff has an obligation to monitor the case in the trial court, to keep track of relevant dates, and to determine whether any filing, scheduling or calendaring errors have occurred. This obligation of diligence increases as the five-year deadline approaches. (*Jordan v. Superstar Sandcars* (2010) 182 Cal.App.4th 1416, 1422.) Plaintiff simply did not fulfill his obligation here—even if it is true that Defendants were not complying with discovery obligations, the authorities make clear that it is up to Plaintiff to make sure that the Defendants' behavior is addressed by the Court in a timely manner.

Finally, Plaintiff already secured an agreed to extension from the Defendants that increased the deadline by an entire year. On this record, there is no basis for the Court to take the extraordinary measure of giving the Plaintiff even more time beyond the five year statute.

Accordingly, Plaintiff's motion to extend is DENIED.

Calendar Line 14
Case Name: *Jane Doe v. Brad Carothers et.al.*
Case No.: 22CV409134

Before the Court is Plaintiff's Motion to Compel Defendant Brad Carothers to produce additional discovery responses and for Sanctions.

I. Background

This motion originally came on for hearing before the Court on November 28, 2023. The Court continued the hearing to December 7, 2023, the same date as the hearing on East Side Union High School District's demurrer, to permit Mr. Carothers's new counsel to continue meeting and conferring with Plaintiff. In its November 28, 2023 order, the Court ordered "the parties to submit on or before December 5, 2023 a joint letter brief (a) listing the discovery requests that still require Court intervention and (b) providing authority for the Court to sanction prior counsel to pay for Plaintiff's attorney fees and costs incurred in bringing this motion."

The Court received the joint letter brief, which states the parties have resolved their outstanding discovery disputes, Mr. Carothers has produced supplemental responses, and the parties will now be able to resolve any other issues that arise with that supplementation. The parties also argue the Code of Civil Procedure provides the Court with ample discretion and authority to sanction Mr. Carothers's former counsel, Holden Green, for causing this motion practice to be necessary. Mr. Green also submitted a seven page document, which he signed under oath, urging the Court not to issue sanctions ostensibly because he could not have answered discovery any better than he did and because new counsel supplemented discovery to Plaintiff's satisfaction, so the entire matter is now moot.

The matter is not moot. It remains the case that Plaintiff had to file this motion to compel to obtain sufficient discovery responses because Mr. Green failed to serve appropriate discovery responses or to meet and confer as required by the Code of Civil Procedure.

On June 19, 2023, Plaintiff served the discovery on Mr. Carothers through Mr. Green. (Declaration of Eleno Nunez Gonzalez, Ex. A.) The requests included Form Interrogatories-General (1.0, 13.2, 17.1); Special Interrogatories (1-8), Requests for Production of Documents (1-22), and Requests for Admission (1-7).

Mr. Green served Mr. Carothers's responses on July 12, 2023. (Nunez Gonzalez Decl., Ex. B.) The document containing the responses does contain some substantive information, but it is also confusing and non-compliant with the Code of Civil Procedure. For example, it contains the following language for virtually every request:

> ATTORNEY PROTEST: The question is overly broad and unduly vague. This question falls outside CCP 2030.210 and 220 et seq. The questions are uncertain, ambiguous, and confusing. For this reason the client is not legally compelled to provide a response therein.

(Nunez Gonzalez Decl., Ex. B.) Mr. Green sometimes adds to this protest: "This question is also in the form of a narrative." (*Id.*) Mr. Green then ends the document with this:

> NOTE: Attorney also ascertains that there was not an accompanying declaration to legally move outside the scope [sic] pf CCP code 2030.210 and .220. The submitted list of questions are more appropriate for other proceedings and not in a form or special interrogatory format which are limited. These volume of questions are presented in such a way as to harass, intimidate or slander the client which is a standing objection in the State of California.

(*Id.*) Mr. Green does not include a verification, but had Mr. Carothers sign this statement: "I Brad Carothers answered each question to the best of my knowledge and abilities. These responses were drafted in good faith[.]" (*Id.*)

Plaintiff sought to meet and confer by letter on July 26, 2023. Here is that email exchange:

> Plaintiff: Mr. Green: Attached you will find a Meet & Confer letter on this matter from Eleno Nunez Gonzalez. Please let me know if you have any questions.
>
> Mr. Green: He has answered the best he could. I knew your side would not accept ANYTHING he writes even if the pope signs off. This is an [sic] harassing tactic.

> However [sic] I forwarded the attachment to him. Its [sic] as if you have objected to EVERY RESPONSE. Coming from your firm it is expected. Sad.

(Nunez Gonzalez Decl., Ex. D.) Given this response, Plaintiff did not believe further meet and confer would be fruitful and this motion accordingly followed.

II. Legal Standard and Analysis

Case law teaches it is up to judges to make sure that the discovery process is not abused. (*See Calcor Space Facility, Inc*. v. *Superior Court* (1997) 53 Cal. App. 4th 216, 221 (discovery abuse is a spreading cancer; judges must be aggressive in curbing abuse; discovery statutes are prone to misuse absent judicial consideration for burden; courts must insist that discovery be used to facilitate litigation rather than as a weapon); *accord Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 43.)

"To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose. . . sanctions against anyone engaging in conduct that is a misuse of the discovery process." (Code Civ. Proc. § 2023.030.) This includes "a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (Code Civ. Proc. § 2023.030(a) (emphasis added).) "Misuses of the discovery process include, but are not limited to. . . (e) Making, without substantial justification, an unmeritorious objection to discovery; (f) Making an evasive response to discovery; [and] (i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery." (Code Civ Proc § 2023.010.)

The trial court has broad discretion to impose discovery sanctions; a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason." (*Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1191.) For example, the trial court's sanction was upheld in *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1285, 1291-1293 where the party made objections that were "unreasonable, evasive, lacking in legal merit and without justification."

Code of Civil Procedure section 2023.020 also states: "the court *shall* impose a monetary

sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as result of that conduct." (Emphasis added; see also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448 (failure to participate in meet and confer process in good faith is independent discovery abuse for which sanctions are authorized by statute); *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 843, 879-880 (substantial monetary sanction appropriate for failure to cooperate in setting protocol for expert inspection as ordered).) This monetary sanction is mandatory regardless of how the court rules on the offending party's motion. (Code Civ. Proc. §2023.020.)

Here, Mr. Green made numerous legally unsupportable objections to the discovery requests, the responses were disorganized and difficult to follow, and none of them were Code compliant. And, while on a cold record, it may appear as though Plaintiff could have pressed harder to meet and confer, the all-caps tone of Mr. Green's email responding to Plaintiff's meet and confer letter was understandably read to mean that meaningful meet and confer would not be forthcoming. The undersigned Court has more than once experienced Mr. Green's raised voice in the courtroom in response to the Court's attempt at patient explanations for rulings. Moreover, the practice of law is a profession; it is work. All involved, including opposing counsel, should be addressed with courtesy and professionalism. The type of email Mr. Green sent in response to Plaintiff's meet and confer letter was neither courteous nor professional.

The fact that new counsel was so quickly able to meet and confer with Plaintiff to reach amicable resolution of <u>all</u> outstanding discovery issues further supports that the reason this motion was necessary, causing Plaintiff to incur attorneys' fees, was <u>Mr. Green's</u> discovery approach. The Court does not reach the conclusion lightly. However, the Court finds it would be inappropriate for Mr. Carothers, who was following the advice of his attorney, or his current counsel, who promptly resolved the outstanding discovery matters immediately after substituting into the case, or Plaintiff who was merely trying to obtain discovery responses, to foot the bill for Mr. Green's discovery conduct.

Accordingly, the Court grants Plaintiff's motion for sanctions and orders Mr. Green to pay to Plaintiff $3200 within 60 days of service of this formal order. Although the $400 hourly rate is reasonable for this market and case type, the Court finds 12.5 hours spent on this straight-forward

motion to compel to be more than necessary, and reduces the hours to 8.