

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

**Department 20, Honorable Socrates Peter Manoukian, Presiding**

**Courtroom Clerk: Hien-Trang Tran-Thien**

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

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

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

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

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

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

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

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**DATE: Thursday 13 February 2024**

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

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

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

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

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

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

One tap mobile  
+16699006833,,961 4442 7712#

## APPEARANCES.

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

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

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

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

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

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

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

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

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

## CIVILITY.

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

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

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

## COURT REPORTERS.

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

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

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

#### PROTOCOLS DURING THE HEARINGS.

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

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

#### TROUBLESHOOTING TENTATIVE RULINGS.

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

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

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	21CV381934	A. Shirtazi v. Jamie Sykora; Joseph Sykora and related cross complaint.	<b>Demurrer of Cross Defendant Niloufar Dehkordi to First Amended Cross-Complaint of South Valley Construction, Inc.</b>  The matter appears to be MOOT as a first amended cross-complaint was filed on 31 January 2024.  The matter is set for a further Case Management Conference on 12 March 2024 at 10:00 AM in Department 20  NO FORMAL RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 2	23CV420031	Ebrahim Abedurazek; Luhana Mussa Ebrahim vs County of Santa Clara  Amanda Abedurezak, a minor	<b>Demurrer Of Defendant County Of Santa Clara To Plaintiff's First Amended Complaint.</b>  Defendant's demurrer to the first cause of action [Elder/Dependent Adult Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [ <b>Code Civ. Proc.</b> , § 430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.  Defendant's demurrer to the third cause of action [Wrongful Death] on the ground that the pleading does not state facts sufficient to constitute a cause of action [ <b>Code Civ. Proc.</b> , § 430.10, subd. (e)] is OVERRULED.  Defendant's demurrer to the fourth cause of action [Negligent Hiring] on the ground that the pleading does not state facts sufficient to constitute a cause of action [ <b>Code Civ. Proc.</b> , § 430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.  SEE ATTACHED TENTATIVE RULING.
LINE 3	23CV420031	Abedurazek Ebrahim; Luhana Mussa Ebrahim vs County of Santa Clara  Amanda Abedurezak, a minor	<b>Motion Of Defendant County Of Santa Clara To Strike Plaintiff's First Amended Complaint.</b>  Defendant's motion to strike Plaintiffs' request for punitive exemplary damages as to the first cause of cause of action is SUSTAINED with 10 days leave to amend.  SEE ATTACHED TENTATIVE RULING AT LINE #2.
LINE 4	18CV328417	Kim Huong Trinh v. Thuy Tran et al.	<b>Motion of Plaintiff for Summary Judgment as to the First, Second and Third Causes of Action of the Verified Third Complaint.</b>  NO TENTATIVE RULING. The parties are to appear and argue the matter on the merits. This Court will also revisit the motion to dismiss argued and submitted on 16 January 2024.
LINE 5	20CV364549	Faramarz Kiani vs Tom McNeil and related cross-complaint.	<b>Motion of Defendant/Cross-Complainant Tom McNeil for Summary Judgment.</b>  The motion is not opposed and is GRANTED. All future dates are VACATED. Defendant/Cross-Complainant is entitled to judgment. The matter will be set for Dismissal Review on 11 April 2024 at 10:00 AM in Department 20.  Defendant/Cross-Complainant is to prepare a notice of entry of ruling.  NO FORMAL TENTATIVE RULING.
LINE 6	18CV334153	Bank of America, N.A. vs Christina Owen.	<b>Dismissal after Settlement.</b>  SEE LINE #9.
LINE 7	21CV389732	Thai Quach; T&T California Collision vs Kristine Carash; Julian Carash	SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	17CV317602	Gregory Steshenko vs Foothill-De Anza Community College District; et al.	<p><b>Motion of Plaintiff to Vacate Status Conference.</b></p> <p>The matter is MOOT. Remittitur was issued by the Court of Appeal on 07 November 2024.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 9	18CV334153	Bank of America, N.A. vs Christina Owen.	<p><b>Motion for Entry of Judgment Pursuant to Stipulation of the Parties.</b></p> <p>Motion of the plaintiff to set aside the subtle agreement and entered judgment in favor of plaintiff and against defendant in the sum of \$8,575.09 is GRANTED.</p> <p>Plaintiff is to prepare an appropriate judgment and submit it to this Department via the e-filing queue. Plaintiff should also serve notice of entry of judgment on all parties.</p> <p>The matter will be set for further dismissal review on</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 10	21CV387615	Keenan Lawson vs San Jose Hilton.	<p><b>Motion of Defendants for Order of Dismissal As a Terminating Sanction for Failure to Comply with Lawful Court Order.</b></p> <p>This matter is currently set for trial on 20 February 2024.</p> <p>On 01 February 2024, counsel for plaintiff learns that plaintiff has been incarcerated in Florida since 29 November 2023. He has a hearing on 14 February 2024 but does not currently have a release date.</p> <p>The request for dismissal is DENIED. The current trial date and settlement conference date are VACATED. The parties should appear for further trial setting on 16 April 2024 at 11:00 AM in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 11	22CV401772	Robert Foss vs Cheryl Durzy; Insperity Peo services, LP; Intellidib, Inc.; Liberation Distribution, LLC.	<p><b>Motion of Plaintiff for Leave to File a First Amended Complaint.</b></p> <p>The motion is unopposed.</p> <p>The motion is GRANTED. Plaintiff should e-file a copy to the clerk and serve the file-endorse copy on all parties who will then be given 20 days leave within which to RESPOND.</p> <p>The Court will set a Trial Setting Conference on 17 September 2024 at 11:00 AM in Department 20. The party should meet and confer and agree on a trial date 6 to 8 months after that date.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 12	23CV416606	Zhao Hui Zheng vs Ming Zhang Lin.	<p><b>Motion of Defendant to Dismiss or Transfer the Section to Family Court.</b></p> <p>As this Court understands the request, plaintiff was granted a divorce from defendant in a Chinese court in Wuhan. The current dispute involves partition of a home owned as community property. There is apparently no pending family law case in this county. The Motion is DENIED.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 13	23CV421697	James West vs Gregg Bunker; Silicon Valley Property Management Group Corporation.	<p><b>Motion Of Plaintiff For Extension Of Time To Serve Summons And Complaint.</b></p> <p>The motion is GRANTED, Plaintiff is given leave to serve the defendants by 29 March 2024. The Case Management Conference currently set for 09 April 2024 at 10:00 am in Department 20 will be RESET to 25 June 2024 at 10:00 am in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 14			SEE ATTACHED TENTATIVE RULING.
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
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LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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Calendar Line 2

SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

DEPARTMENT 20

161 North First Street, San Jose, CA 95113

408.882.2320 · 408.882.2296 (fax)

[smanoukian@scscourt.org](mailto:smanoukian@scscourt.org)

<http://www.scscourt.org>

(For Clerk's Use Only)

CASE NO.: 23CV420031

Abedurezak Ebrahim, etc. et al. v. The County of Santa Clara

DATE: 13 February 2024

TIME: 9:00 am

LINE NUMBERS: 02, 03

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 09 February 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on Defendant's Demurrer and Motion to Strike.

I. Statement of Facts.

On or about 16 September 2022 decedent Adeburezak Ebrahim ("Decedent") was admitted to Santa Clara Valley Medical Center (the "Hospital") for hypertension and pulmonary edema. (First Amended Complaint ("FAC"), ¶24.) Defendant County of Santa Clara ("County") operates the Hospital. (*Id.* at ¶6.)

On or about 17 September 2022, Decedent suffered an unwitnessed fall in his room. (*Id.* at ¶24.) The nursing staff's failure to render help for over 30 minutes caused Decedent to go into cardiac arrest and resulted in a profound anoxic brain injury. (*Ibid.*)

Although Decedent's skin was intact at the time of admission, his known medical conditions put him at high risk for developing a pressure sore. (FAC, ¶¶25-26.) Decedent's basic custodial needs were ignored by Hospital staff due to the deliberate decision by County to understaff and underfund the Hospital to maximize profits at the expense of the health and safety of persons entrusted to their care, including Decedent. (*Id.* at ¶27.)

The skin on Decedent's sacrococcygeal region started breaking down due to lack of care. (*Id.* at ¶28.) Hospital staff concealed Decedent's pressure sore from his family and others. (FAC, ¶29.) Decedent endured months of unnecessary pain and suffering before passing away on 18 December 2022, due, in part, to the pressure sore. (*Id.* at ¶30.)

On 27 July 2023<sup>1</sup>, plaintiffs Amanda Abedurezak Mussa and Luhana Mussa Ebrahi, individually and as successors in interest to Decedent (hereafter collectively, "Plaintiffs") filed a complaint against defendant County asserting causes of action for:

- (1) Dependent Adult Abuse [*Welf. & Inst. Code* §§ 15600, et seq.]

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

- (2) Medical Negligence
- (3) Wrongful Death
- (4) Negligent Hiring and Supervision

On 7 September 2023, Plaintiffs filed the FAC against defendant County asserting causes of action for:

- (1) Dependent Adult Abuse [*Welf. & Inst. Code* §§ 15600, et seq.]
- (2) Medical Negligence
- (3) Wrongful Death
- (4) Negligent Hiring and Supervision

On 12 October 2023, defendant County filed the two motions now before the court: a demurrer and a motion to strike portions of the FAC.

## II. Legal Standards

### A. Demurrers in General

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

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

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

### B. Motions to Strike in General

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (*Code Civ. Proc.*, § 436, subd. (a).) A court may also strike out all or any part of a pleading not filed in conformity with the laws of the State of California. (*Code Civ. Proc.*, § 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (*Code Civ. Proc.*, § 437, subd. (a).)

Irrelevant matter includes “immaterial allegations.” (*Code Civ. Proc.*, § 431.10, subd. (c).) “An immaterial allegation in a pleading is any of the following: (1) An allegation that is not essential to the statement of a claim or defense; (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” (*Code Civ. Proc.*, § 431.10, subd. (b).)

“As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice.” (*Weil & Brown*, et al., California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶7:168, p. 7(l)-77 (*Weil & Brown*) [citing *Code Civ. Proc.*, § 437].) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic

evidence showing that the allegations are ‘false’ or ‘sham.’ Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable.” (*Id.* at ¶ 7:169, pp. 7(l)-75 to 7(l)-76.)

“In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth.” (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) “In ruling on a motion to strike, courts do not read allegations in isolation.” (*Ibid.*)

### III. Analysis.

#### A. Defendant County’s Demurrer To The First Cause Of Action [Elder/Dependent Adult Abuse] Is SUSTAINED.

Defendant County demurs to the first cause of action [Elder/Dependent Adult Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action.

“The purpose of the [Elder Abuse and Dependent Adult Civil Protection Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 (*Delaney*)). “The elements of a cause of action under the Elder Abuse Act [*Welfare and Institutions Code* sections 15600, et seq.] are statutory, and reflect the Legislature’s intent to provide enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect.” (*Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82.)

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

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

*Welfare and Institutions Code* section 15610.57 goes on to state:

(a) “Neglect” means either of the following:

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

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

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- (3) Failure to protect from health and safety hazards.
- (4) Failure to prevent malnutrition or dehydration.
- (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

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

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

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

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

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

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

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

Defendant County contends that there are insufficient allegations of recklessness and that Plaintiffs simply repeat conclusory allegations without including specific supporting facts. According to defendant County, Plaintiffs are attempting to take advantage of the heightened remedies available under the Elder Abuse Act without stating facts sufficient to support a claim of elder abuse. In opposition, Plaintiffs cite to *Fenimore v. Regents of the University of California* (2016) 245 Cal.App.4th 1339 (*Fenimore*) for the proposition that recklessness may be inferred from a pattern and practice of understaffing in violation of staffing regulations. “We must assume the [plaintiffs] can prove by clear and convincing evidence that the Hospital was understaffed at the time [Decedent] fell, that this understaffing caused [Decedent] to fall or otherwise harmed him, and that this understaffing was part of a pattern and practice. If they do so, we cannot say as a matter of law that the Hospital should escape liability for reckless neglect. The trier of fact should decide whether a knowing pattern and practice of understaffing in violation of applicable regulations amounts to recklessness.” (*Fenimore, supra*, 245 Cal.App.4th at p. 1349.)

Plaintiffs argue they have alleged a similar “pattern and practice” of conscious understaffing from which recklessness can be inferred. Plaintiffs point to their allegations that defendant County “systematically and continuously just flat out ignored [Decedent’s] needs day in and day out, hour by hour, and wrongfully withheld necessary care and services” (FAC, ¶31), and that “understaffing” is alleged throughout the pleading at paragraphs 8, 11, 27, 36, 39, 53, 54, 55, and 63. (See Plaintiffs’ Opposition, p. 7:5-13.) Although the court acknowledges the FAC’s repeated reference to understaffing, weighing heavy on the court’s mind is the decidedly general nature of the understaffing allegations as well as their lack of supporting facts specific to the Decedent. Put differently, the court is unable to infer recklessness as to Decedent based on the FAC’s general allegations relating to a pattern and practice of understaffing. (See *Mittenhuber*, *supra*, 142 Cal.App.3d at p. 5 [“[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]”].)

Plaintiffs contend that there are allegations throughout the FAC of systemic regulatory violations that caused injury to Decedent. (Plaintiff’s Opposition, pp. 5:24-6:8.) Indeed, in support of the first cause of action, the FAC alleges that defendant County had advanced knowledge of malfeasance in the form of lawsuits and deficiency citations, and further that County caused injury to Decedent by failing to meet its duties to him under a host of regulations. (FAC, ¶¶45-52, 63-65.) However, the FAC fails to identify any specific lawsuit or deficiency citation, let alone multiple such lawsuits or deficiency citations that would demonstrate a pattern and practice. These allegations are insufficient to allege that a pattern and practice existed, sufficient to infer recklessness, at the time Decedent was in defendant County’s care.

Plaintiffs also assert they have alleged sufficient allegations of fraud. (See Plaintiffs’ Opposition, p. 8:1-10.) Plaintiffs point to their allegations that defendant County “failed to report [Decedent’s] pressure sores ... to the California Department of Public Health,” that defendant County held itself out as “experts” in treating elderly and infirm patients, and that defendant County “fraudulently” endangered Decedent’s health. (FAC, ¶¶ 33, 40, 67.) The court finds these allegation insufficient.

As County points out in reply, Plaintiffs’ allegations of fraud are conclusory because they fail to allege specific facts stating how Decedent was harmed by any alleged fraud. (See *Carter*, *supra*, 198 Cal.App.4th at p. 409 [allegations that hospital intentionally falsified medical records and covered up blood tests results were insufficient to allege fraudulent neglect; allegations did not explain how the elder detrimentally relied on these alleged cover-ups, or how they caused him harm]; see also *Fenimore*, *supra*, 245 Cal.App.4th at p. 1351 [finding allegations of fraud were insufficient for failing to state how concealment caused harm].)

Accordingly, defendant County’s demurrer to the first cause of action [Elder/Dependent Adult Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [*Code Civ. Proc.*, § 430.10, subd. (e)] is SUSTAINED with 10 days’ leave to amend<sup>2</sup>.

**B. Defendant County’s Demurrer To The Third Cause Of Action [Wrongful Death] Is OVERRULED.**

Defendant County demurs to the third cause of action [Wrongful Death] on the ground that the pleading does not state facts sufficient to constitute a cause of action.

Wrongful death is a statutorily created cause of action for pecuniary loss brought by heirs against a person who causes the death of another by a wrongful act or neglect. It is original in nature and does not represent a right of

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<sup>2</sup> The court notes that, based on the meet and confer declaration of County’s counsel, it appears that the parties have not actually met and conferred as required. (*Code Civ. Proc.*, §§ 430.41, subd.(a) [“Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.”] and 435.5, subd. (a) [meet and confer requirement for motion to strike].) However, because insufficient meet and confer is not a ground to overrule a demurrer (or deny a motion to strike), the court has considered the merits of County’s motions. (*Code Civ. Proc.*, §§ 430.41, subd. (a)(4), and 435.5, subd. (a)(4).) The court reminds counsel for County to comply with the Code of Civil Procedure and specifically, meet and confer requirements, with respect to future motions.

action that the deceased would have had if the deceased had survived the injury. [Citations.] It is a cause of action for the heir who recovers for the pecuniary loss suffered on account of the death of the relative. [Citation.] In any action for wrongful death resulting from negligence, the complaint must contain allegations as to all the elements of actionable negligence. [Citation.] Negligence involves the violation of a legal duty imposed by statute, contract or otherwise, by the defendant to the person injured, e.g., the deceased in a wrongful death action.” (**Jacoves v. United Merchandising Corp.** (1992) 9 Cal.App.4th 88, 105.)

“Under the common law ... ‘all causes of action for personal torts abated on the death of either the injured party or the tortfeasor.’ [Citation omitted.] This was the law in California until 1949, when our Legislature enacted this state’s first statute allowing for the survival of personal tort actions.” (**County of Los Angeles v. Superior Court** (1999) 21 Cal.4th 292, 295; see also **Code Civ. Proc.**, §§ 377.60-377.62.) Since Decedent died, “his or her injury cause of action ‘survives’ to the estate and may be prosecuted by a duly appointed executor or administrator for the estate. (If there is no executor or administrator, the action may be prosecuted directly by the victim’s ‘successor in interest’—i.e., the beneficiary of the victim’s estate or other person who succeeds to the cause of action.” (See **Code Civ. Proc.**, § 377.11 and § 377.30; see also **Parsons v Tickner** (1995) 31 Cal.App.4th 1513, 1521-1524.)

In demurring to the third cause of action, defendant County contends that Plaintiffs have not alleged sufficiently particularized facts to state a claim. County contends Plaintiffs must identify a statutory basis for the claim and plead every material fact with particularity because County is public entity. County further asserts the claim is nonsensical boilerplate because it refers to the Decedent as the minor children’s mother when he was their father. In opposition, Plaintiffs assert they have stated allegations as to all elements of actionable negligence.

Here, the court finds Defendant County’s arguments unpersuasive. County does not dispute that the FAC states the elements of a claim for professional negligence (the unchallenged second cause of action). Nor does County argue that Plaintiffs may not properly bring this claim as the Decedent’s successor in interest. Also, the court does not find inadvertent reference to the Decedent by the incorrect gender to be a basis for demurrer.

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

**C. Defendant County’s Demurrer To The Fourth Cause Of Action [Negligent Hiring/Supervision] Is SUSTAINED.**

Defendant County demurs to the fourth cause of action [Negligent Hiring] on the ground that the pleading does not state facts sufficient to constitute a cause of action.

As a general matter, “[e]xcept 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 a 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 a cause of action against that employee or his personal representative.” (**Gov. Code**, § 815.2, subd. (a).)

An employer may be liable to a third person for the employer’s negligence in hiring or retaining an employee who is incompetent or unfit. Liability for negligent hiring ... is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees. Negligence liability will be imposed on an employer if it knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.

(**Phillips v. TLC Plumbing, Inc.** (2009) 172 Cal.App.4th 1133, 1139, internal punctuation and citations omitted; see also **Federico v. Superior Court** (1997) 59 Cal.App.4th 1207, 1213-1214.)

“Liability for negligent supervision and/or retention of an employee is one of direct liability for negligence, not vicarious liability. [Citation.]” (**Delfino v. Agent Technologies, Inc.** (2006) 145 Cal.App.4th 790, 815 (**Delfino**).) “[A] direct claim against a government entity asserting negligent hiring and supervision, when not grounded in the breach

of a statutorily imposed duty owed by the entity to the injured party, may not be maintained.” (*de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 255-256 (*de Villers*).) “We find no relevant case law approving a claim for direct liability based on a public entity’s alleged negligent hiring and supervision practices.” (*Id.* at p. 252.)

In demurring to the fourth cause of action, defendant County contends the FAC fails to identify a statutory basis for direct liability against the County on alleged hiring and supervision. (Defendant’s MPA, pp. 15:24-16:20.) County further asserts the claim is deficient for failing to identify any employees directly involved or that supervising employees knew or had reason to know of such employees’ dangerous propensities. (*Id.* at p.16:21-17:13.)

In opposition, contends the FAC states all required facts for alleging a negligent hiring claim. (Plaintiff’s Opposition, pp. 10:21-11:12.) Further, Plaintiffs acknowledge that they are barred from asserting a direct liability claim against a public entity for negligent hiring but assert that **Government Code** section 815.2 provides a statutory basis for vicarious liability against a public entity for negligent hiring.

The Court does not find Plaintiff’s argument’s persuasive. The FAC names a hospital director and administrator as the employees in question, then adds to this “many certified nursing assistants (CNAs), registered nurses (RNs), licensed vocational nurses (LVN) and others whose names are presently unknown but will be sought via discovery.” (FAC, ¶ 92.) While **Government Code** section 815.2, subdivision (a), provides that a public entity may be liable “for injury proximately caused by an act or omission of an employee of the public entity,” it also states that the particular act or omission must be “within the scope of [the employee’s] employment.” But here, the fourth cause of action does not identify any particular act or omission or refer to the scope of any particular employee’s employment.

To the extent the FAC alleges that defendant County is *vicariously* liable for its own employee’s hiring, and thus for its own hiring, Plaintiff has failed to support this theory with applicable legal authority. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [court need not consider point unsupported by legal authority].) As stated previously, “[l]iability for negligent supervision and/or retention of an employee is one of **direct** liability for negligence, not vicarious liability. [Citation.]” (*Delfino, supra*, 145 Cal.App.4th at p. 815, emphasis added; see also *de Villers, supra*, 156 Cal.App.4th 238, 255-256 [“a direct claim against a government entity asserting negligent hiring and supervision, when not grounded in the breach of a statutorily imposed duty owed by the entity to the injured party, may not be maintained”].)

Accordingly, defendant’s County demurrer to the fourth cause of action [Negligent Hiring] on the ground that the pleading does not state facts sufficient to constitute a cause of action [**Code Civ. Proc.**, § 430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

#### **D. Defendant County’s Motion To Strike Portions Of Plaintiffs’ FAC is SUSTAINED.**

Defendant County moves to strike Plaintiffs’ claim for punitive and exemplary damages as to the first cause of action [Elder/Dependent Adult Abuse]. In view of the court’s ruling above as to the demurrer to the first cause of action, defendant County’s motion to strike these claims is SUSTAINED with 10 days leave to amend.

#### **IV. Tentative Ruling.**

The tentative ruling was duly posted.

#### **V. Case Management.**

The Case Management Conference currently set for 28 May 2024 at 10:00 AM shall REMAIN AS SET. The parties should commence discovery if they have not done so.<sup>3</sup>

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<sup>3</sup> Deficiencies in the pleadings do not affect either party’s right to conduct discovery. (See *Budget Finance Plan v. Superior Court* (1973) 34 Cal.App.3d 794, 798; *Union Mutual Life Ins. Co. v. Superior Court* (1978) 80 Cal.App.3d 1, 12; *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1436.) “[I]t is well established that relevancy of the subject matter does not depend upon a legally sufficient pleading, nor is it restricted to the issues formally raised in the pleadings. Relevancy of the

**VI. Order.**

Defendant's demurrer to the first cause of action [Elder/Dependent Adult Abuse] on the ground that the pleading does not state facts sufficient to constitute a cause of action [**Code Civ. Proc.**, § 430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

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

Defendant's demurrer to the fourth cause of action [Negligent Hiring] on the ground that the pleading does not state facts sufficient to constitute a cause of action [**Code Civ. Proc.**, § 430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

Defendant's motion to strike Plaintiffs' request for punitive exemplary damages as to the first cause of cause of action is SUSTAINED with 10 days leave to amend.

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**DATED:**

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

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subject matter is determined by the potential as well as actual issues in the case [citation omitted]; discovery is proper if it would be material to any possible issue raised by new allegations in an amended complaint." (*Union Mut. Life Ins. Co. v. Superior Court* at 10.)



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

**DEPARTMENT 20**

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

*(For Clerk's Use Only)*

**CASE NO.: 21CV389732**

**Thai Quach; T&T California Collision vs Kristine Carash; Julian Carash**

**DATE: 13 February 2024**

**TIME: 9:00 am**

**LINE NUMBER: 07**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 09 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order on Motion of Defendants to Quash Subpoena  
Issued to Bank of America, N.A.**

**I. Statement of Facts.**

Plaintiff filed this complaint on 22 of August 2022.<sup>4</sup> Plaintiffs contend that defendant Kristine Carash embezzled hundreds of thousands of dollars from T & T California Collision, Inc., her former employer. Mrs. Carash admits that she withdrew cash from her employer's bank account.

**II. Motion To Quash Subpoena.**

Plaintiff issued a subpoena to Bank of America seeking Kristine Carash's bank account statements and transaction documents from 2017 through February of 2021. Plaintiff seeks these documents on a belief that they would reveal if Mrs. Carash deposited any of those cash withdrawals into her own personal bank account.

Defendants seek to quash the subpoena, objecting that the records of every deposit and every check written on the account would reveal all income deposited by Julian Carash as well as revelation of personal interest and conduct, including medical expenses and other highly personal matters. Since the contention behind the subpoena is that cash embezzled from the plaintiffs was indeed deposited into defendants' bank account, the subpoena should be limited to documentation of any cash deposits. Defendants contend that last April they provided a declaration by counsel that the bank records did not reflect any cash payments that could be attributed to any claim of misappropriation.

**III. Analysis.**

**A. Right to Discovery.**

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<sup>4</sup> This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).

“Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, “Our discovery statute recognizes that “the identity and location of persons having [discoverable] knowledge” are proper subjects of civil discovery. (Code of Civil Procedure, § 2017.010; see Judicial Council of Cal. Form Interrogatories Nos. 12.1–12.7.)” (**Pioneer Electronics (USA), Inc. v. Superior Court** (2007) 40 Cal.4th 360, 374.)

In exercising its discretion in determining what is relevant for purposes of discovery, this Court follows the approach articulated in **Norton v. Superior Court** (1994) 24 Cal.App.4th 1750, 1761 and **Volkswagen of America, Inc. v. Superior Court** (2006) 139 Cal.App.4th 1481, 1497:

“In accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence. As a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial. Therefore, the party seeking discovery is entitled to substantial leeway. Furthermore, California’s liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery. In doing so, the courts have taken the view if an error is made in ruling on a discovery motion, it is better that it be made in favor of granting discovery of the nondiscoverable rather than denying discovery of information vital to preparation or presentation of the party’s case or to efficacious settlement of the dispute. The courts have also taken the view that wherever possible objections to discovery should be resolved by protective orders addressing the specific harm shown by the respondent as opposed to a more general attack on the ‘relevancy’ of information the proponent seeks to discover.”

“[T]he claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes. Should the so-called fishing expedition be subject to other objections, it can be controlled.” (**Greyhound Corp. v. Superior Court of Merced County** (1961) 56 Cal.2d 355, 386).

“[F]ishing expeditions are permissible in some cases. (**Greyhound Corp. v. Superior Court** (1961) 56 Cal. 2d 355, 385 [although fishing may be improper or abused in some cases, that “is not of itself an indictment of the fishing expedition per se”].)” (**Gonzalez v. Superior Court** (1995) 33 Cal.App.4th 1539, 1546.)

“[T]he court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs and expenses, including attorney’s fees, as the court may deem reasonable.” (**Greyhound Corp. v. Superior Court of Merced County**, supra at 370-371.)

## **B. Subpoenas.**

California **Code of Civil Procedure**, §1987.1 provides: “When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by the party, the witness, or any consumer described in Section 1985.3, or upon the court’s own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.”

## **C. Privacy.**

The right of privacy established by the California Constitution protects an individual’s “reasonable expectation of privacy against a serious invasion.” (**Pioneer Electronics (USA), Inc. v. Superior Court** (2007) 40 Cal.4th 360, 370, citing **Hill v. National Collegiate Athletic Assn.** (1994) 7 Cal.4th 1, 40.)

“The right of privacy may be invoked by a litigant as justification for refusal to answer questions which unreasonably intrude on that right. (footnote and citations omitted.) [¶] The right of privacy does not come into play

simply because the litigant would rather not reveal something.” (*Fults v. Superior Court* (1979) 88 Cal.App.3d 899, 904.)

In addressing a privacy objection, the Court must carefully balance the right of privacy, on the one hand, and the right of civil litigants to discover relevant facts, on the other. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 657.) The Court should consider its ability to make an alternative order which may grant partial disclosure or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances. (*Id.* at 658.)

Where a serious invasion of a reasonable expectation of privacy is shown, the proponent of discovery must demonstrate that information sought is “directly relevant” to a claim or defense, and “essential to the fair resolution of the lawsuit.” (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 859; *Harris v. Superior Court* (1992) 3 Cal.App.4<sup>th</sup> 661, 665.) Where these criteria are satisfied, some courts have stated that the opposing party has “waived”<sup>5</sup> his or her privacy rights in the information at issue. (See *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842 [“Plaintiff’s present mental and emotional condition is directly relevant to her claim and essential to a fair resolution of her suit; she has waived her right to privacy in this respect by alleging continuing mental ailments.”].) However, such “waiver” is narrowly construed, and does not authorize probing into areas that are not directly relevant to the party’s claim. (*Id.*)

If direct relevance is shown, the court must “carefully balance” the right of privacy, on the one hand, and the right of civil litigants to discover relevant facts, on the other. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 657.) The court should consider its ability to make an alternative order which may grant partial disclosure or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances. (*Id.* at 658.)

When an objection involves the right of privacy the party seeking discovery must show a particularized need for the information. “The court must be convinced that the information is directly relevant to a cause of action or defense . . . i.e., that it is essential to determining the truth of the matters in dispute.” (Weil & Brown, *Civil Procedure Before Trial*, § 8:320 citing *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862.)

#### **D. Discussion.**

This Court agrees with plaintiffs that the discovery sought by this subpoena is directly relevant to the claims in this case and this motion to quash should be denied. However, this Court also agrees with defendants that the subpoena could be overbroad and invades their rights of privacy.

The Court will limit the subpoena to cash transactions between 01 January 2017 through 28 February 2021. Furthermore, the Court will order that the documents be kept confidential to protect any perceived privacy concerns limited at this time to “Attorneys’ and Clients Eyes Only.”

#### **IV. Tentative Ruling.**

The tentative ruling was duly posted.

#### **V. Case Management.**

The Trial Setting Conference currently set for 14 May 2024 at 11:00 AM in this Department will REMAIN AS SET.

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<sup>5</sup> The Court notes, however, that a privacy objection is not “waived” in the same fashion as absolute privileges, even where the information requested was put at issue by the plaintiff. Under these circumstances, the plaintiff retains a privacy interest in the information at issue, and the court must balance the need for discovery against the need for confidentiality as described above. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2013) ¶ 8:305.1, p. 8C-93-94 [comparing physician-patient privilege to privacy right in medical information ].)

**VI. Order.**

The motion of defendants to quash the subpoena issued to Bank Of America, N.A. is GRANTED and DENIED as follows: The Court will limit the subpoena to cash transactions between 01 January 2017 through 28 February 2021. Furthermore, the Court will order that the documents be kept confidential to protect any perceived privacy concerns limited at this time to "Attorneys' and Clients Eyes Only."

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**

*Judge of the Superior Court  
County of Santa Clara*

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