SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have 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

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

- oo0oo –

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV428722	Maribel Duran Carrillo et al vs UNIVERSAL PROTECTION SERVICE, LP et al	**Demurrer** Scroll down to Lines 1 and 2 for Tentative Ruling.
LINE 2	24CV428722	Maribel Duran Carrillo et al vs UNIVERSAL PROTECTION SERVICE, LP et al	**Motion to Strike** Scroll down to Lines 1 and 2 for Tentative Ruling.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 3	21CV381960	Ana Galindo vs Hudson Pacific Properties, Inc. et al	**Motion for Summary Judgment/ Adjudication** Defendant Hudson Pacific Properties, Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication as to Plaintiff Ana C. Galindo's Complaint is unopposed. Defendant filed its proof of service of the Motion on July 9, 2024. Any opposition was due to be filed on September 17, 2024, and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (California Rules of Court, Rule 8.54(c); *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) Where a responding party does not file an opposition to a motion for summary judgment, the moving party must still meet its initial burden of proof. (*Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1086-1087, *CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239, fn. 2). A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subdivision (c)). Defendant has shown sufficient evidence to justify the grant of summary judgment in its favor; the Motion for Summary Judgment is GRANTED. Moving party to prepare order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 4	19CV360733	Edward Kellar et al vs Central Investments et al	**Motion to Modify Injunction** Plaintiffs' motion to modify the November 29, 2022 injunction, pursuant to Code Civ. Proc., §533. Plaintiffs argue that they and the partnership will suffer irreparable harm if the injunction is not modified prior to the upcoming trial. Defendants oppose the motion. The Court has reviewed the entire history of the multiple hearings and briefings, both pre- and post-issuance of the injunction. In the present motion, Plaintiffs again argue that their "response to Defendant's injunction was not considered" by the court (Hon. Manoukian) and they now ask this Court to modify the injunction by repeating and rehashing arguments that were already made and considered – this Court declines to revisit the same arguments that have already been rejected. Although Plaintiffs argue that "the factual landscape ... has materially changed" "demanding modification" of the injunction, their motion does not present sufficient facts to support this. Instead, Plaintiffs' motion is an attempt to change the court's previous ruling and terms of the injunction, asserting the same arguments that have *already been presented and denied.* Good cause has not been shown; the motion is DENIED. The issue of whether any sanctions should be awarded because of Defendants having to oppose this motion, is to be addressed by the trial judge at the time of *in limine* motions. Defendants to prepare the formal order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 5	19CV360733	Edward Kellar et al vs Central Investments et al	**Motion to File Late Cross-Complaint** Defendant Central Investments LP's motion, pursuant to Code Civ. Proc., §426.50, for leave to file a cross-complaint against Plaintiffs Edward and Janeen Kellar, even though it failed to allege its causes of action at the time it served its Answer to Plaintiffs' Second Amended Complaint. The motion is opposed by Plaintiffs. The proposed Cross-Complaint alleges that that the sale was ineffective based on various codes and the provisions of the partnership agreement. Given Defendant's explanation, the Code Civ. Proc., §426.50 mandate to grant the motion notwithstanding the moving party's "oversight, inadvertence, mistake, neglect, or other cause" as long as the moving party "acted in good faith" (and, based on the Declaration of Mr. Keegan, it spears Defendant has acted in good faith) and the requirement in this section that such a request for leave "shall be liberally construed to avoid forfeiture of causes of action," there is good cause to grant the motion. No bad faith has been shown. Good cause appearing, the motion is GRANTED. Defendant shall file the Cross-Complaint attached as Exhibit C to Defendant's Memorandum, no later than October 5, 2024. Moving party is instructed to prepare the formal order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 6	19CV360733	Edward Kellar et al vs Central Investments et al	**Motion to Compel (Payment for Expert Depositions)** Defendants' motion to compel Plaintiffs to pay the full amount billed by Defendants' expert witnesses for the time they spent in depositions noticed by Plaintiffs and a request for sanctions of no less than $1,700 for the attorney's fees incurred in bringing this motion. The motion was filed on July 16, 2024, and properly noticed. Plaintiffs opposed the motion. The experts' invoices were outstanding since at least May 23, 2024 (and one later invoice). Despite (1) repeated requests for payment, (2) that experts deposition fees are to be paid by the deposing party either with the deposition notice or at the deposition or (3) within five days of receipt of an itemized statement, Plaintiffs failed to make any such payment. (Code Civ. Proc., §§2034.450 subdivisions (a) and (c)). Plaintiffs' response on July 5, 2024 that "[a]ll experts will be paid" is wholly insufficient and not code compliant. Plaintiffs' claim that all experts were paid "weeks before or the day of" the filing of this motion and "nearly all" the amounts due were paid, is unavailing and not supported by the evidence. Indeed, there is no evidence as to *when* the payment checks were actually mailed. Good cause appearing, the motion is GRANTED. Sanctions in the amount of $1,700 are to be paid to, and *received by*, Defendants no later than October 8, 2024. (Code Civ. Proc., §2023.010). Moving party to prepare formal order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 7	19CV354973	Muzaffer Guloz vs Serkan Karabacak et al	**Motion to Withdraw as Attorney** Motion of Attorney Michelle Porumbescu to be relieved as counsel for Plaintiff Muzaffer Guloz. Notice of hearing was given to Plaintiff Guloz by mail service on July 19, 2024, at his last known address. No opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. The failure to oppose a motion leads to the presumption that Plaintiff client has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) Moving party has met her burden of proof. Good cause appearing, the motion is GRANTED. The Order will take effect upon the filing and service of the executed order of this Court. This matter is set for a Case Status Review re: Dismissal on October 31, 2024, at 10a.m. in Department 18b. Moving party to prepare the formal order after hearing, which shall include notification of the Case Status Review re: Dismissal hearing date.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 8	23CV419558	Shannon Williams vs FCA US LLC	**Motion for Attorney's Fees** A Notice of Settlement of Entire Case was filed on August 14, 2024. This motion is therefore MOOT and ordered OFF CALENDAR. The Case Status Review re: Dismissal after Settlement shall REMAIN AS SET on February 6, 2025, at 10 a.m. in Department 18b.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 1, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

LINE 9	23CV421714	THE DANVILLE GROUP vs SOLARJUICE AMERICAN, INC. et al	**Motion to Enforce Settlement** Plaintiff The Danville Group d/b/a Rootstock Software's motion to enforce the Confidential Settlement Agreement and Release between Plaintiff and Defendants Solarjuice American Inc. and Phoenix Motorcars Expansion d/b/a Phoenix Motorcars. The parties signed and entered into a Confidential Settlement Agreement and Release on May 17, 2024. Defendants have failed to adhere to the terms of the settlement agreement, by failing and/or refusing to pay the amounts agreed upon. The Court has jurisdiction to hear this motion as judgment has not been entered and the case has not yet been dismissed. Plaintiff also seeks $9,095.00 in attorney's fees and costs relying on section 19 of the settlement agreement between the parties. Good cause appearing, the Motion to Enforce Settlement is GRANTED. Plaintiff's request for $9,095 in attorney's fees is DENIED. Plaintiff failed to provide any information as to hours worked, hourly rate or nature of work completed in order for the Court to properly evaluate its request. A one-line statement in the Declaration of Daniyal M. Habib that $9,095 has been incurred is insufficient to satisfy Plaintiff's burden. Moving party to prepare formal order.

Calendar Lines 1 & 2
Case Name: *Carillo, et al. v. Universal Protection Service, LP, et al.*
Case No.: 24CV428722

Before the Court is Defendants The Irvine Company and Tesoro Crescent Village LLC's Demurrer and Motion to Strike the Complaint of Plaintiffs Reyna Pantoja Chanon, Maritza Pantoja Chanon, Daisy Pantoja, Kimberly Pantoja, Salvador Pantoja Jr., and Ramiro Panjoja, through their guardian ad litem, Isabel Chanon, as well as Maribel Duran Carillo, Adrian Carral Duran, Ferdinanda Neri Duran, and Fernando Neri Duran. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

This action arises out of the death of Decedents Erica Darlene Pantoya ("Decedent Pantoya") and Marco Carral-Duran ("Decedent Carral-Duran"). Decedent Pantoya was a resident of Crescent Village, a multi-unit apartment complex, owned by Defendants The Irvine Company ("Defendant Irvine Company") and Tesoro Crescent Village LLC ("Defendant Tesoro") (collectively "Defendants"). (Complaint at ¶ 8.) Decedent Carral-Duran was a security guard employed by Defendant Universal Protection Service, contracted by Defendants Irvine Company and Tesoro. (*Id.* at ¶ 9.)

The Complaint alleges that on June 12, 2022 around 1:00 a.m. in the parking lot near Decedent Pantoya's residence in the Crescent Village Apartment Complex, located at 310 Crescent Village Circle, San Jose, CA, (the "premises" or "subject property") Decedent Pantoya's estranged husband of 17 years, Salvador Pantoya ("Mr. Pantoya"), confronted her "in a threatening and menacing manner, having stalked ERICA for hours, days and weeks prior to said time and place, said stalking believed to have been known to Defendants and each of them during the hours, days and/or weeks prior to June 12, 2022 . . . ." (Complaint at ¶ 10.) The Complaint further alleges that Mr. Pantoya's stalking of Decedent Pantoya posed as an imminent threat of violence not only to her, but also their 6 children. (*Id.* at ¶ 11.)

During the confrontation that occurred on June 12, 2022, the Complaint alleges that Decedent Carral-Duran intervened and "attempted to remind Salvador Pantoya that he was not permitted to enter the Crescent Village Apartment Complex and that he needed to allow Decedent Erica Darlene Pantoya and her six children, who occupied a nearby car, to peacefully

and safely enter the Crescent Village Apartment Complex and to be left alone." (Complaint at ¶ 11.) However, at that point, Mr. Pantoya shot and killed Decedents Pantoya and Carral-Duran in full view of their minor children. (*Id.* at ¶ 12.)

The Complaint alleges that Defendants failed to implement adequate protective and safety measures inside Crescent Village Apartment Complex and its parking lot in the hours, days, or weeks leading up to the incident, and that Defendants could have instead taken the following reasonable measures:

> a. The advance and fully briefed presence of multiple security personnel and or uniformed law enforcement officers, prepared to apprehend and arrest Salvador Pantoya before he could do harm to himself and others;
> b. Refusal to grant access to the premises and parking lot of the Crescent Village Apartment Complex;
> c. Development of a plan for the specific protection of Decedent ERICA DARLENE PANTOYA and others, including but not limited to Decedent MARCO CARRAL-DURAN, in light of the continued stalking of Decedent ERICA DARLENE PANTOYA by Salvador Pantoya.

(Complaint at ¶ 13.) The Complaint alleges that these measures would have imposed a small burden on Defendants "in comparison to the magnitude of the harm that ultimately occurred." (*Id.* at ¶ 31.)

This action is brought by Plaintiffs Reyna Pantoja Chanon, Maritza Pantoja Chanon, Daisy Pantoja, Kimberly Pantoja, Salvador Pantoja Jr., and Ramiro Panjoja, Decedent Pantoya's minor children with Salvador Pantoya through their guardian ad litem, Isabel Chanon, as well as the mother and minor son of Decedent Marco Carral-Duran, Maribel Duran Carillo, Adrian Carral Duran, Ferdinanda Neri Duran, and Fernando Neri Duran (collectively "Plaintiffs"). (Complaint at ¶ 1.) Plaintiffs allege that "the Defendants and each of them, had prior specific knowledge that Defendants and each of them, had specific knowledge that Decedent ERICA DARLENE PANTOYA was in imminent danger of death or great bodily injury at the hand of Salvador Pantoya and that, indeed ANYONE, confronting Salvador Pantoya while engaged in his vicious stalking and menacing of Decedent ERICA DARLENE PANTOYA was in similar imminent danger of death or great bodily injury at the hand of Salvador Pantoya, including the Decedent MARCO CARRAL-DURAN." (*Id.* at ¶ 14.)

The Complaint was filed on January 5, 2024 and alleges four causes of action for (1) negligence (wrongful death); (2) premises liability; (3) negligent hiring, retention, and supervision; and (4) negligent infliction of emotional distress (bystander theory). Plaintiffs allege Defendants acted with "malice, oppression, and/or a willful and conscious disregard of the rights and safety of Plaintiffs herein," and accordingly seek punitive damages under California Civil Code section 3294. (Complaint at ¶ 15.) Defendant Universal Protection Service filed its Answer on March 22, 2024. On April 15, 2024, Defendant Irvine Company moved to compel arbitration, which was denied by the Court on June 4, 2024. Defendants Irvine Company and Tesoro filed their Demurrer and Motion to Strike with respect to the entirety of the Complaint on July 11, 2024. Plaintiffs filed their opposition on September 17, 2024. Defendants filed their replies on September 23, 2024. The Court considers the parties' arguments raised therein.

II. DISCUSSION

A. DEMURRER

1. *TIMELINESS*

"A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint." (Code Civ. Proc., § 430.40, subd. (a).)[1] Even if a demurrer is untimely filed, the Court has discretion to hear the demurrer so long as its action ". . . 'does not affect the substantial rights of the parties.' [Citations.]" (See *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281-282.)

Here, Defendants obtained an extension of the responsive pleading deadline and filed a motion to compel arbitration on April 15, 2024. (Declaration of James C. Truxaw in Support of Demurrer ["Truxaw Decl."] at ¶ 5.) The court denied Defendants' motion to compel arbitration on or about May 28, 2024. (Truxaw Decl. at ¶ 6.) Counsel for Defendants provides that after the Court denied the motion to compel arbitration, Plaintiffs granted Defendants another extension of time to file the responsive pleading until July 12, 2024. (Truxaw Decl. at

[1] All further undesignated statutory references are to the Code of Civil Procedure.

¶ 7.) As noted above, Defendants filed their Demurrer on July 11, 2024. Given the extension of time provided by Plaintiffs, the Court finds the Demurrer timely.

2. ***MEET AND CONFER***

"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." (§ 430.41, subd. (a).) "As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies." (§ 430.41, subd. (a)(1).) "Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (§ 430.41, subd. (a)(4).)

Counsel for Defendants provides that on July 3, 2024, he sent Plaintiffs' counsel "a meet and confer letter laying out the grounds for which Defendants planned to move to strike allegations in Plaintiffs' Complaint." (Truxaw Decl. at ¶ 8.) Although Defendants' counsel does not indicate whether he spoke with Plaintiffs' counsel over the phone, his declaration indicates that he requested a time for a telephonic met and confer. (*Ibid.*) Defendants' counsel further attaches the correspondence sent to Plaintiffs' counsel as Exhibit B to his declaration. (*Id.* at ¶ 8, see Ex. B.) The Court finds these meet and confer efforts sufficient, and it would not be fruitful to require Defendants to do more.

3. ***LEGAL STANDARD***

A demurrer must distinctly specify the grounds upon which a pleading is objected to; a demurrer lacking such specification may be disregarded. (§ 430.60.) Defendants object to the Complaint pursuant to Code of Civil Procedure section 430.10, subdivision (e).

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 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." (§ 430.10, subd. (e).) 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. (§§ 430.10, 430.50, subd. (a).)

The court in ruling on a demurrer treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) 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.)

4. ***ANALYSIS***

Defendants Irvine Company and Tesoro argue Plaintiffs' Complaint fails to state a duty of care and that the issue of third-party criminal conduct can be resolved on the pleadings. (Demurrer at p. 12:13-15.) Plaintiffs respond that stalking and threatening are prior similar acts and sufficient to establish foreseeability under the duty analysis. (Opposition at p. 8:6-7.)[2]

"An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673.) "The issue of whether a legal duty exists is an issue of law, not an issue of fact for the jury." (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.) This is true even at the pleading stage.

One who has not created a peril normally has no duty to affirmatively act so as to prevent harm to third persons. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213

[2] In their papers, the parties extensively discuss *Lopez v. McDonald's Corp.* (1987) 193 Cal.App.3d 495 and *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190. In both cases, the Court of Appeal ultimately held that the defendant owed no duty of care on foreseeability grounds and relied on the authorities stated herein. However, the Court notes that these cases were decided well past the pleading stage. The Court has reviewed these authorities and considers them to the extent that they are relevant.

(*Brown*); *Regents of Univ. of Calif. v. Sup.Ct.* (2018) 4 Cal.5th 607, 663-664.) Generally, "'one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.'" (*Regents of Univ. of Calif., supra,* 4 Cal.5th at p. 619.) A legal duty to affirmatively act to protect someone may be found if there is a "special relationship" between defendant and the person in danger or the third person creating the danger. (*Brown, supra,* 11 Cal.5th at p. 215; *Regents of Univ. of Calif., supra,* 4 Cal.5th at p. 619.) The existence of a special relationship does not create a duty of care. "Special relationship" is simply a label expressing the conclusion that the facts, considered in light of the pertinent legal considerations, support the existence of a duty of care. (See *Todd v. Dow* (1993) 19 Cal.App.4th 253, 259.)

Plaintiffs allege in paragraph 21 of the Complaint that a special relationship existed between Defendants and the Decedents named in this lawsuit. (Complaint at ¶ 21.) In opposition, Plaintiffs further specify that both Decedents were employed by Defendants and that Decedent Pantoya also resided at Crescent Village Apartment Complex owned by Defendants Irvine Company and Tesoro. (Opposition at pp. 6:18-21.) However, even if Plaintiffs have alleged a special relationship between Decedents and Defendants, as explained below, Plaintiffs' Complaint nevertheless fails to state a duty of care under negligence as argued in Defendants' reply. (Reply at pp. 3:6-4:18.)

It is well established that California law treats "third party criminal acts differently from ordinary negligence, and require [the court] to apply a heightened sense of foreseeability before [it] can hold a defendant liable for the criminal acts of third parties. There are two reasons for this: first, it is difficult if not impossible in today's society to predict when a criminal might strike. Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal." (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1149-1150, internal citations omitted.) "In each case . . . the existence and scope of a property owner's duty to protect against third party crime is a question of law for the court to resolve." (*Casteneda v. Olsher* (2007) 41 Cal.4th 1205, 1213 (*Castaneda*).)

"In assessing whether the facts show 'heightened foreseeability' of third party crimes, our precedents have focused on whether there were prior similar incidents from which the

property owner could have predicted the third party crime would likely occur, though we have recognized the possibility that 'other indications of a reasonably foreseeable risk of violent criminal assaults' could play the same role. (*Casteneda, supra,* 41 Cal.4th at pp. 1220-1221; see also *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 536-538 (*Melton*) [stating " '[i]n the case of criminal conduct by a third party, an extraordinarily high degree of foreseeability is required to impose a duty on the landowner' for the resulting harm. . . . When the court engages 'in any analysis of foreseeability, the emphasis must be on the specific, rather than more general, facts of which a defendant was or should have been aware.'"; also stating that "in cases involving liability for third party criminal conduct, 'the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents.' . . . Common sense is not the standard for determining duty. Nor is hindsight."])

Plaintiffs' Complaint alleges that Mr. Pantoya stalked Decedent Pantoya and confronted her in a threatening and menacing in the hours, days, and weeks leading up to the incident. (Complaint at ¶¶ 10, 11.) Plaintiffs allege Defendants were aware of this behavior and that the confrontation was "readily apparent to all who had seen and heard "ERICA DARLENE PANTOYA and Salvador Pantoya on that night and for many days and nights prior thereto . . . ." (Complaint at ¶ 11.) However, the Complaint does not allege that Defendants were aware of prior similar incidents involving a shooting or any other type of assault at the subject property. The Complaint also does not state whether Defendants were fully aware of the danger posed by Mr. Pantoya, such as whether they knew he had a gun or was capable of committing homicide based on prior similar acts of his own. In fact, apart from Defendants' knowledge of the ongoing conflict between Decedent Pantoya and Mr. Pantoya, the Complaint fails to allege other crimes of any nature not just limited to Mr. Pantoya that may have occurred on the subject property and that Defendants specifically should have been aware of.

The court in *Lopez v. McDonald's Corp.* (1987) 193 Cal.App.3d 495, 509 made clear that "the theft-related and property crimes of the type shown by the history of its operations, or the general assaultive-type activity which had occurred in the vicinity bear no relationship to purposeful homicide or assassination." As stated above, " 'the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents.' "

(*Melton, supra,* 183 Cal.App.4th at 538.) Thus, in the absence of any facts as to prior similar incidents involving homicide, the Court is unable to find that a duty of care has been alleged as a matter of law. Even if " 'other indications of a reasonably foreseeable risk of violent criminal assaults'' could play the same role, none have been alleged here. (*Casteneda, supra,* 41 Cal.4th at p. 1213.)

Instead, the Complaint concedes that Decedent Carral-Duran attempted "to do his job" as a security guard. (Complaint at ¶ 12.) The Complaint alleges that Decedent Carral-Duran attempted to de-escalate the situation, by reminding Mr. Pantoya that he was not permitted to enter the apartment complex, and that he needed to allow Decedent Pantoya and her children to peacefully enter the apartment complex and leave them alone. (Complaint at ¶ 11.) While Decedent Carral-Duran's efforts proved unsuccessful, Defendants Irvine Company and Tesoro were not required to do more under the law, based on the face of the Complaint. Here, as pled in the Complaint, Defendants provided the most burdensome preventative measure of hiring security even though a heightened degree of foreseeability has not been alleged. Although Decedent Carral-Duran's efforts to do his job tragically cost him his life, without the requisite degree of foreseeability alleged as explained above, the allegations in the Complaint are insufficient to show that Defendants owed Decedents a duty of care.

Plaintiffs propose additional preventative measures Defendants could have taken to prevent these fatalities including fully briefing multiple security personnel and uniformed law enforcement officers to apprehend Mr. Pantoya before he could cause harm, refusing to grant access to the premises and parking lot, and developing a plan for the specific protection of Decedents Pantoya and Carral-Duran. (Complaint at ¶ 13(a)-(c).) The Court is to consider the vagueness and efficacy of the proposed security measures, the specific actions plaintiff claims defendant had a duty to undertake, and then analyze " 'how financially and socially burdensome these proposed measures would be to a landlord, which measures could range from minimally burdensome to significantly burdensome under the facts of the case.'" (*Castaneda, supra,* 41 Cal.4th at p. 1214 [quoting *Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 280].)

To the extent Plaintiff proposes hiring additional security guards and retaining law enforcement, "the facts of this case do not support the imposition of a duty to do so" as explained above. (*Melton, supra,* 183 Cal.App.4th at p. 539.) Simply put, Plaintiffs have not pled facts establishing a duty on the part of Defendants to undertake such measures. In any event, the Court finds Plaintiffs' suggested measures to be unduly burdensome. Plaintiffs' other proposed security measures would require a significant dedication of resources and personnel to screen all persons entering the premises, refuse access to the parking lot, and provide for the specific protection of the Decedents, at the expense of using these resources to also protect the other residents and employees there. There is no basis for finding that the proposed security measures would be effective in preventing the harm as "no one really knows why people commit crime, hence no one really knows what is 'adequate' deterrence in any given situation." (7735 *Hollywood Blvd. Venture v. Superior Court* (1981) 116 Cal.App.3d 901, 905.)

In the absence of any facts alleging a duty of care, Plaintiffs cannot state their claims for the negligence-based causes of action. The Court need not address Defendants' arguments concerning the application of the *Privette*[3] doctrine, as no underlying causes of action for negligence have been sufficiently stated for the doctrine or any of its exceptions to apply. Accordingly, Defendant Irvine Company and Defendant Tesoro's Demurrer to Plaintiffs' Complaint as to all four causes of action is SUSTAINED.

Plaintiffs bear the burden of proving an amendment would cure the defect identified on demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; see also *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112 fn. 8 (*Medina*) ["As the Rutter practice guide states 'It is not up to the judge to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading.'"]; *Drum v. San Fernando Valley Bar Ass'n*. (2010) 182 Cal.App.4th 247, 253 [citing *Medina*].)

---

[3] *Privette v. Superior Court* (1993) 5 Cal.4th 689.

"[W]here the plaintiff requests leave to amend the complaint, but the record fails to suggest how the plaintiff could cure the complaint's defects, 'the question as to whether or not [the] court abused its discretion [in denying the plaintiff's request] is open on appeal … .' (Code Civ. Proc., § 472c, subd. (a).) Because the trial court's discretion is at issue, we are limited to determining whether the trial court's discretion was abused as a matter of law. Absent an effective request for leave to amend the complaint in specified ways, an abuse of discretion can be found 'only if a potentially effective amendment were both apparent and consistent with the plaintiff's theory of the case.'" (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal App 4th 497, 507, disapproved on another ground in *Yvanova v. New Century Mortg. Corp*. (2016) 62 Cal.4th 919, 934, 939, fn. 13.).

Here, Plaintiffs request leave to amend but fail to state how exactly the Complaint can be amended. (Opposition at pp. 13:24-14:6.) However, since Plaintiffs have not yet amended their Complaint and the Court's disposition affects the entirety of Plaintiffs' Complaint, the Court will exercise its discretion to grant 20 DAYS' LEAVE TO AMEND.

Plaintiff is reminded that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (See also *Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023 ["Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend."].) The Court's order does not authorize the addition of any new claims or parties.

B. **MOTION TO STRIKE**

Defendants move to strike Plaintiffs' request for punitive damages. Given the ruling on the demurrer, Defendants' motion to strike is MOOT.

III. CONCLUSION

Defendants The Irvine Company and Tesoro Crescent Village LLC's Demurrer to Plaintiffs' Complaint is SUSTAINED with 20 days' leave to amend, and the Motion to Strike is deemed MOOT.

The Court will prepare the formal order.

- oo0oo -