SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: June 6, 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.

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

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.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

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

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

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung
Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: June 6, 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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV390943	NRT West, Inc. v. Don Barnes	Order of examination: parties to appear.
LINE 2	20CV375104	Empire Investments, LLC v. Art Mar et al.	OFF CALENDAR
LINE 3	20CV375104	Empire Investments, LLC v. Art Mar et al.	OFF CALENDAR
LINE 4	24CV429320	Adrian Ortiz v. Arturo Froilan Hernandez et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	23CV427742	Anthony Moran v. FCA US, LLC et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	24CV429076	Jane AAY Doe v. Alum Rock Union School District et al.	This is an unopposed motion to compel the deposition testimony of Israel Alejandro Santiago, an inmate at the California State Prison in Corcoran, California. Upon review of the papers, the court finds good cause for the taking of the deposition and GRANTS the motion under Code of Civil Procedure section 1995 and Penal Code section 2623. The moving party will prepare the formal order for the court's signature.
LINE 7	19CV349792	Division of Labor Standards Enforcement v. Capital Mailing Services, Inc. et al.	Click on LINE 7 or scroll down for ruling.
LINE 8	21CV382470	Joseph Milligan v. City of Santa Clara et al.	Click on LINE 8 or scroll down for ruling.

- oo0oo -

Calendar Line 4
Case Name: *Adrian Ortiz v. Arturo Froilan Hernandez et al.*
Case No.: 24CV429320

I. BACKGROUND

This is an action for general negligence and motor vehicle liability brought by plaintiff Adrian Ortiz against several defendants, including Arturo Froilan Hernandez ("Hernandez"). On April 14, 2023, Ortiz was a passenger in a car driven by Hernandez while the latter was allegedly intoxicated. The car struck a parked vehicle and then a house, and Ortiz was allegedly injured.

Ortiz filed his original complaint, a form complaint, on January 16, 2024. He filed the operative first amended complaint ("FAC"), also a form complaint, on February 16, 2024. The FAC states two causes of action: (1) Motor Vehicle Negligence and (2) General Negligence. There is also an exemplary damages attachment. The narrative portion of this attachment (paragraph EX-2) states, in pertinent part:

> A couple of hours before the incident [Hernandez and Ortiz] went to Tostadas Prime restaurant at 3149 Mission College Blvd., Santa Clara, CA 95054, to celebrate said defendant's birthday. Defendant Arturo consumed several alcohol beverages with food. On or about 11 p.m. on April 13, 2023, Defendant Arturo and Plaintiff left Tostadas Prime and headed to San Jose Bar & Grill located at 85 S 2nd Street, San Jose, CA 95113. Plaintiff in that time asked Defendant Arturo multiple times to lower his speed.
>
> On or about 1:45 a.m., Plaintiff and Defendant Arturo, while intoxicated, left San Jose Bar & Grill. At this time, Plaintiff was a front seat passenger. Defendant Arturo then drove from 85 S 2nd Street San Jose, CA 95113 to the intersection of S Third Street and E San Fernando Street, then suddenly turned onto S 3rd Street, which was a one-way street. Plaintiff loudly informed Defendant Arturo that he was driving against the flow of traffic, and he must pull over. Also, Plaintiff asked Defendant Arturo multiple times to stop the car. On information and belief, Defendant Arturo was driving over 70 miles per hour. On information and belief, the speed limit for that area is 30 miles per hour.
>
> On information and belief, Defendant Arturo was driving about eight to ten minutes, against the flow of traffic on S 3rd Street, before he collided into a parked vehicle at the intersection of S 3rd Street and E Humboldt St.
>
> On information and belief, Defendant Arturo intentionally, willfully, and with disregard to Plaintiff's safety, did not stop at any of the seven 4-way intersections on S 3rd Street, while driving over 70 miles per hour and against the flow of traffic. Said Defendant's speed was excessively high [such] that after he collided into a parked vehicle, his car flew into a house located at 106 E Humboldt St. and caused significant damage to its walls.

Currently before the court is Hernandez's motion to strike the FAC's request for punitive damages, filed on March 12, 2024.

II. HERNANDEZ'S MOTION TO STRIKE

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Irrelevant matter includes: (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, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63 (*Turman*) [citing *Clauson v. Super. Ct*. (1998) 67 Cal.App.4th 1253, 1255].)

The court cannot consider extrinsic evidence when considering a motion to strike. This includes declarations. The court has considered the declaration of Marc Cordi only to the extent it discusses the meet-and-confer efforts required by Code of Civil Procedure section 435.5. The court has not considered the attached exhibits. The court has also not considered the declaration submitted with the opposition by Mirali Vazirinejad, any of the exhibits attached to that declaration, or any arguments based on this extrinsic evidence.[1]

A motion to strike may be brought against a portion of a cause of action that is purportedly defective—*e.g.*, because it seeks an improper remedy. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680.) At the same time, as Courts of Appeal have emphasized, "[W]e have no intention of creating a procedural 'line item veto' for the civil defendant." (*Id*. at p. 1683.) California Rule of Court 3.1322(a) requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

Finally, "points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Proctor v. Vishay Intertechnology, Inc*. (2013) 213 Cal.App.4th 1258, 1273; see also *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 ["This court will not consider points raised for the first time in a reply brief for the obvious reason that opposing counsel has not been given the opportunity to address those points."].) The court has therefore not considered the second declaration of Heather Cote, submitted with the reply, or any of the attached exhibits.

---

[1] While Code of Civil Procedure section 435.5 requires a declaration from the moving party, there is no authority for the submission of a declaration from the opposing party.

B. Procedural Objections

As an initial matter, Ortiz objects that Hernandez did not comply with Code of Civil Procedure section 435.5 by meeting and conferring in good faith before filing this motion. (Opposition, pp. 2:12-3:10) While the motion to strike is accompanied by a declaration from Hernandez's counsel, Heather Cote, that declaration simply states that a meet-and-confer letter was sent to plaintiff's counsel on February 27, 2024. Code of Civil Procedure section 435.5(a) requires the parties to meet and confer "in person, by telephone, or by video conference." The mere sending of letters is not enough. That said, section 435.5, subdivision (a)(4), also states that "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." Therefore, the court will consider the merits of the motion, despite the inadequate meet-and-confer effort.

Relatedly, Ortiz also contends that the motion to strike was improperly served because it was sent to only one of two email addresses provided by plaintiff's counsel for service. (Opposition, p. 3:12-27.) The court finds this argument to be highly uncompelling. Ortiz does not dispute that the motion was in fact received at one of the addresses provided, nor does he contend that he did not have a sufficient opportunity to oppose the motion. In the clear absence of any prejudice to Ortiz, the court rejects this argument, regardless of whether Hernandez should have made greater efforts to serve opposing counsel. The court focuses on whether service was proper under Code of Civil Procedure section 1010.6, not on whether service complied with any idiosyncratic requirements unilaterally imposed by counsel.

C. Discussion of the Merits

Hernandez seeks to strike the request for "punitive damages" from paragraph 14.a.(2) of the FAC, as well as the vast majority of the exemplary damages attachment. (See Notice of Motion and Motion, p. 2:1-24.) Hernandez argues that Ortiz "has failed to plead specific factual allegations to support a claim of malice and instead pled impermissible conclusions." He also claims that "Defendant has not been convicted of driving under the influence. As a result, there is no evidence of the malice required for a claim of punitive damages in this matter." (Notice of Motion, p. 3:1-4.) These are weak arguments. A conviction is not required for Ortiz to request punitive damages in the FAC, and the state of plaintiff's evidence is irrelevant to a pleading challenge such as a motion to strike.

"In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. These statutory elements include allegations that the defendant has been guilty of oppression, fraud, or malice. 'Malice' is defined in the statute as conduct 'intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.' 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. 'Fraud' is 'an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.'" (*Turman, supra*, 191 Cal.App.4th at p. 63 [internal citations omitted].)

Specific factual allegations are required to support a punitive damages claim. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) At the same time, as a pleading is read

as a whole, even conclusory allegations may suffice when read in context with facts alleged as to defendant's wrongful conduct. (*Perkins v. Sup. Ct*. (1981) 117 Cal.App.3d 1, 6-7.)

It is well established under California law that driving while intoxicated can be considered "malice." As the California Supreme Court noted in *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 896-97 ("*Taylor*"): "There is a very commonly understood risk which attends every motor vehicle driver who is intoxicated. One who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard of the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents . . . . We discern no valid reason whatever for immunizing the driver himself from the exposure to punitive damages given the demonstrable and almost inevitable risk visited upon the innocent public by his violent conduct as alleged in the complaint." (Internal citations omitted.). The *Taylor* Court also noted that Civil Code section 1714, subdivision (b), states that "the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person." (*Id.* at pp. 897-898.) The Court made clear that "aggravating factors [are not] essential prerequisites to the assessment of punitive damages in drunk driving cases." (*Id.* at p. 896).

In 1980, the Legislature amended Civil Code section 3294 to add the definition of "malice" stated in *Taylor*. (See *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1211.) In 1987, the Legislature further amended the definition of "malice" by requiring proof that the defendant's conduct is "despicable" and "willful." (See Stats. 1987, ch. 1498, § 5, p. 5780.) This did not add pleading requirements and did not alter *Taylor*'s holding that an allegation that a defendant willfully became intoxicated knowing that he or she would later operate a motor vehicle is sufficient to support a request for punitive damages based on malice and that no aggravating factors are necessary. As noted in *Taylor*, driving while intoxicated can be understood as despicable conduct carried on with a willful or conscious disregard for the rights or safety of others. "'Despicable conduct' has been described as conduct which is '. . . so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.'" (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050, quoting *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.) "Such conduct has been described as having the character of outrage frequently associated with crime." (*Id*. [quoting *Taylor*, *supra*, 24 Cal.3d at p. 894].) In sum, under *Taylor* and Civil Code section 3294, drunk driving is despicable conduct carried out with a conscious disregard for the safety of others and constitutes "malice."

Rather than address the Supreme Court's holding in *Taylor*, Hernandez focuses on a decision of the Court of Appeal in *Dawes v. Superior Court* (1980) 111 Cal App 3d 82 (*Dawes*), but *Dawes* does not support Hernandez's position and does not limit the scope of the holding of *Taylor* in any way. In *Dawes*, an intoxicated individual wove in and out of traffic at high speed in a crowded beach recreation area. (*Dawes*, *supra*, 111 Cal.App.3d at pp. 85-87.) The trial court granted a motion to strike the punitive damages allegations, but the Court of Appeal reversed. The Court in *Dawes* contrasted the risk created by what it termed "ordinary" drunk driving—which it classified as "foreseeable but not probable"—with the type of driving engaged in by the defendant, which made risk to others "probable." (*Id*. at p. 89.) The court stated: "[W]e do not agree that the risk created generally by one who becomes intoxicated and decides nevertheless to drive a vehicle on the public streets is the same as the risk created by an

intoxicated driver's decision to zigzag in and out of traffic at 65 miles per hour in a crowded beach recreation area at 1:30 in the afternoon on a Sunday in June." (*Ibid*.) It then found that the specific facts alleged showed a conscious disregard for probable injury to others, and the defendant's driving consequently showed malice. (*Id*. at p. 90.) Of course, the Court of Appeal in *Dawes* had no ability to restrict or condition the Supreme Court's holding in *Taylor*, and *Taylor* controls over *Dawes*.

Whether viewed through the controlling lens of *Taylor* or through *Dawes*, the allegations in the FAC, accepted as true for purposes of this motion, are sufficient to support the request for punitive damages. The FAC alleges that Hernandez, knowing he was intoxicated, chose to operate a motor vehicle, drove the wrong way down a one-way street at 70 miles an hour, and collided with a parked vehicle with such force that the vehicle he was driving then struck a nearby house are more than sufficient to show "malice," as they show that "the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Taylor, supra*, 24 Cal.3d at pp. 895-896.) They also constitute sufficiently "specific facts from which the conscious disregard of probable injury to others may reasonably be inferred." (*Dawes, supra*, 111 Cal.App.3d at p. 90.)

The court DENIES Hernandez's motion to strike.

- oo0oo -

Calendar Line 5
Case Name: *Anthony Moran v. FCA US, LLC et al.*
Case No.: 23CV427742

Plaintiff Anthony Moran moves to compel responses to his first set of form interrogatories from defendant FCA US, LLC. ("FCA"). FCA admits (in an untimely opposition) that it failed to serve timely responses to the interrogatories (and other discovery requests) but argues that this was the result of "mistake, inadvertence, or excusable neglect"—essentially, a "calendaring error" (Declaration of Vanessa Dao, ¶ 5)—and that FCA has now served verified responses to Moran's discovery.

In reply, Moran points out that even though he now has FCA's responses to the form interrogatories, FCA did not provide any substantive answers to Form Interrogatories Nos. 50.1 and 50.6. He therefore asks the court to compel answers to these items.

The court has reviewed Form Interrogatory No. 50.1 and concludes that it is not the type of interrogatory that is well-suited to a Song-Beverly Consumer Warranty Act case, where there are unlikely to be any factual questions regarding the applicable warranties. The court therefore DENIES the motion to compel a further response to Form Interrogatory No. 50.1.

As for Form Interrogatory No. 50.6, the court finds this to be a closer call and observes that FCA's May 27, 2024 document appears to have omitted any response to this interrogatory entirely. There should be a response on the bottom of page 18 or top of page 19, but there is nothing. Accordingly, the court GRANTS the motion to compel a *response* to Form Interrogatory No. 50.6 and orders FCA to provide a substantive answer within 15 days of notice of entry of this order.

FCA would be well advised to pay closer attention to deadlines and details—it has blown multiple deadlines, and its papers in this case have been careless.

Although Moran is correct that a motion to compel initial discovery responses does not need to be accompanied by a declaration attesting to any meet-and-confer efforts, it is obvious to this court that motion practice could have been obviated if Moran had attempted to meet and confer with FCA before filing this motion. As a result, the court DENIES Moran's request for monetary sanctions.

- oo0oo -

Calendar Line 7
Case Name: *Division of Labor Standards Enforcement v. Capital Mailing Services, Inc. et al.*
Case No.: 19CV349792

This is a motion to recover expenses incurred in proving matters not admitted in responses to requests for admissions ("RFAs"). (Code Civ. Proc., § 2033.420.) Cross-defendant Eric Kozlowski argues that he propounded six RFAs that defendants/cross-complainants Capital Mailing Services, Inc. and Perice Sibley (collectively, "Cross-Complainants") refused to admit, that he incurred costs in proving what was denied in these RFAs, and that he is now entitled to an award of $73,500 in fees and costs for having prevailed on summary judgment. For the reasons that follow, the court denies the motion.

Under Code of Civil Procedure section 2033.420, a prevailing party can obtain fees and costs reasonably incurred in proving matters denied in RFA responses if the matters denied were of substantial importance and the responding party had no reasonable basis for denying them. (*City of Glendale v. Marcus Cable Associates, LLC* (2015) 235 Cal.App.4th 344, 354.) Although this is typically accomplished after a trial and judgment, an award under section 2033.420 can also be obtained after a successful summary judgment motion. (See *Barnett v. Penske Truck Leasing Co.* (2001) 90 Cal.App.4th 494, 498-499.)

In this case, although Kozlowski prevailed at summary judgment, there is a disconnect between the court's summary judgment ruling and the RFAs that Kozlowski propounded. The court's October 26, 2023 order was based on two failures in the cross-complaint. The first was a failure to state an adequate claim for conversion, because the cross-complaint improperly made critical allegations solely on information and belief. This was the basis for a prior summary judgment in favor of two other cross-defendants (Andrew Cody and Redstone Print & Mail, Inc.), and cross-complainants never amended the cross-complaint to cure this material defect. Second, the court concluded that the conversion claim was barred by the three-year statute of limitations, notwithstanding cross-complainant Sibley's last-ditch effort to oppose the motion with a declaration asserting a "delayed discovery" theory that was not supported by the cross-complaint itself.[2]

By contrast, the RFAs focused on whether Kozlowski "removed," "possess[ed]," "prevented . . . access to," or "destroyed" cross-complainants' alleged personal property, or whether Kozlowski had contact with cross-complainants or the premises at issue. There is nothing in these RFAs about the adequacy of cross-complainants' pleading, and there is nothing in these RFAs about the possibility that the conversion claim might be time-barred.

As a result, the court finds that Kozlowski's RFAs were of "no substantial importance" to the outcome of the case, regardless of whether cross-complainants had a reasonable basis to deny them. (Code Civ. Proc., § 2033.420, subd. (b)(2).) For this reason alone, the court must deny the motion.

---

[2] In opposing the present motion, cross-complainants have adopted a curious strategy of repeatedly blaming the court for "erroneously" granting the summary judgment motion, instead of taking responsibility for their own negligence in preparing their pleadings and their failure to grasp the basic legal standards that apply on a motion for summary judgment. Nevertheless, the court ultimately rules in cross-complainants' favor on this motion.

In addition, and for similar reasons, the court finds that Kozlowski has not shown that the attorney's fees and costs that he incurred in litigating this case were the costs of *proving what was denied in the RFAs* under section 2033.420. Because he ultimately prevailed on summary judgment for reasons other than what was contained in these RFAs, there is no nexus between his $73,500 figure and the question of whether he "removed," "possess[ed]," "prevented . . . access to," or "destroyed" cross-complainants' "equipment, machines, copiers, papers, envelopes and other various chattel." It appears that this $73,500 figure represents the fees and costs incurred by Kozlowski in litigating *the entire case*, based on monthly block billing of $3,500/month. The court ultimately agrees with cross-complainants that the motion does not adequately specify—because it does not specify at all—what parts in Kozlowski's "94-page comprehensive breakdown of billing entries" were devoted to proving the subject matter of the RFAs, as opposed to the grounds upon which summary judgment was ultimately granted. (Reply, p. 4:4-5.)

For both of the foregoing reasons—the failure to show that proof of the matters denied in the RFAs was of "substantial importance" and the failure to delineate the *costs of proof* under section 2033.420—the motion is DENIED.

- oo0oo -

Calendar Line 8
Case Name: *Joseph Milligan v. City of Santa Clara et al.*
Case No.: 21CV382470

Cross-defendant Lishan Tekle moves for an order determining a good-faith settlement with plaintiff Joseph Milligan. Defendants and cross-complainants Raymond Boales, Zachary Wright, and the City of Santa Clara (collectively, "Defendants") oppose. For the reasons that follow, the court grants the motion.

This is the second time that Tekle has moved for a good-faith determination. The first time, the matter was scheduled for a hearing on September 6, 2022, and the court (Judge Kirwan) found that Tekle had submitted material evidence for the first time *on reply*. Judge Kirwan therefore continued the hearing to September 22, 2022, so that Defendants could address this new evidence in a surreply. At the subsequent hearing, the court (Judge Rosen, covering for Judge Kirwan) found that Tekle's evidence was still insufficient. Judge Rosen applied the factors set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499 and found that Tekle "has provided no evidence regarding what plaintiff's general damages may be." In addition, she stated: "Tekle provides no information regarding his income, any bank accounts, or his employment. But for this information, the Court would be inclined to grant Tekle's motion. Defendants appear to agree with this assessment as they suggest [i]f the Court is inclined to grant this Motion, Defendants request leave to conduct a deposition of Tekle to be limited to 30 minutes to explore his financial situation." (September 22, 2022 Minute Order, p. 2 [citing Sur-Reply, p. 3].) Accordingly, the court denied the motion "unless and until Tekle allows defendants[']counsel to depose him for 30 minutes on the limited issue of his financial situation. If after such deposition he can establish he is insolvent or basically judgment proof, the Court will be inclined to find his settlement is in good faith, pursuant to CCP 877 and 877.6." (*Ibid.*)

The current motion contains many of the same arguments as last time, and Defendants oppose Tekle's motion with many of the same arguments, as well, but the court finds that there is now sufficient information in the record regarding the *Tech-Bilt* "ballpark" to find that a policy-limits settlement of $15,000 is within a reasonable range of Tekle's share of liability for Milligan's injuries. Although Defendants argue that Milligan's medical bills are at least $83,671.50 for multiple herniated disks and injuries to his spine, Tekle points out that the collision in this case was "relatively minor," that many of Milligan's lower back issues were pre-existing injuries before the collision, and that the special damages under *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541 in this case are closer to $9,700.93 than to $83,671.50.

More critically, Tekle has provided more information regarding his financial circumstances, in accordance with Judge Rosen's ruling. Tekle states that he is "currently employed as a car dealer at Enterprise Holding," is "paid $20.00 per hour," works "40 hours per week with occasional opportunity for overtime," earns "between $3,200.00 and $3,600.00 per month," and has monthly expenses of "approximately $3,100.00 per month." (Declaration of Lishan Tekle, ¶¶ 10-13.) Notwithstanding this declaration, Defendants argue that Tekle "has not provided information as to his financial condition at the time of the incident in 2020 through the current date nor has he provided any information about his current employment and income." (Opposition, p. 7:12-14.) In addition to being factually wrong, the court finds this argument to be unpersuasive—the declaration *does* set forth Tekle's current employment

and income, and Tekle has shown that his financial circumstances are indeed quite limited. Defendants also "request a continuance of this hearing to allow a brief leave to conduct some financial discovery of Tekle"—namely, the 30-minute deposition that Judge Rosen granted on September 22, 2022. (*Id.* at p. 7:22-23.) Defendants provide no good explanation for why they have not taken any steps to conduct this half-hour deposition *in the last year and a half*. Indeed, they had more than two months to try to schedule this deposition between the time this motion was filed (March 8, 2024) and the time the opposition brief was filed (May 15, 2024), and they do not appear to have done anything. The court denies Defendants' last-ditch, baseless request for a continuance.

For the foregoing reasons, the court GRANTS the motion for an order determining a good-faith settlement between Tekle and Milligan.

- oo0oo -