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: October 31, 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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV390730	Patricia Yau v. Joe Eustice et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	20CV366393	N.R. Waterloo, LLC v. Dennis Treadaway et al.	Motion to quash: click on LINE 2 or scroll down for ruling.
LINE 3	20CV366393	N.R. Waterloo, LLC v. Dennis Treadaway et al.	Motion to be relieved as counsel: withdrawn and now OFF CALENDAR.
LINE 4	20CV371756	CPT 303 Almaden, LLC v. Anatomage, Inc.	Motion to augment expert witness designation: parties to appear. Click on LINE 4 or scroll down for the court's questions and preliminary thoughts.
LINE 5	22CV396170	Christian Humanitarian Aid, Inc. v. AM Star Construction, Inc. et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	22CV399413	Li Juan Liu v. Kenneth To	Click on LINE 6 or scroll down for ruling.
LINE 7	23CV417262	MB Millennium Builders, Inc. v. Saila Talagadadeevi et al.	Petition to confirm arbitration award: notice is proper, and the petition is unopposed. The court previously considered, and denied, a petition to vacate the arbitration award by plaintiff MB Millennium Builders, Inc. on September 24, 2024. Good cause appearing, the court now GRANTS defendants' petition to confirm. Petitioners/defendants shall submit the proposed order for signature.

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Calendar Line 1
Case Name: *Patricia Yau v. Joe Eustice et al.*
Case No.: 21CV390730

I. BACKGROUND

This is a lawsuit by plaintiff Patricia Yau against several defendants to recover damages for injuries stemming from her alleged exposure to bedbugs while staying at the Hilton Santa Clara Hotel in Santa Clara, California on November 5, 2019.

Yau's original and still-operative complaint, filed on November 4, 2021, names Hilton Worldwide Holdings, Inc., Park Hotels and Resorts, Hilton Santa Clara, Joe Eustice, and various Does as defendants, and it states seven causes of action: (1) Battery; (2) Negligence; (3) Intentional Infliction of Emotional Distress; (4) Fraudulent Concealment; (5) Private Nuisance; (6) Public Nuisance; and (7) Breach of Contract. All seven causes of action are alleged against all defendants.

Two defendants, Hilton Worldwide Holdings, Inc. ("Hilton Worldwide") and Park Hotels and Resorts ("Park Hotels"), brought a joint motion to quash service of summons based on lack of personal jurisdiction on August 17, 2022. Yau did not file any opposition to the motion, and this court (Judge Kirwan) granted it on December 1, 2022. After taking over Judge Kirwan's docket, the undersigned then signed a formal order granting the motion on February 22, 2023, dismissing Hilton Worldwide and Park Hotels.

Yau then brought a motion to vacate the dismissal, or alternatively, for reconsideration of the motion to quash, which Hilton Worldwide and Park Hotels opposed. The court granted the motion to vacate the dismissal on January 11, 2024, based on Code of Civil Procedure section 473(b), and reset the motion to quash for a hearing on February 29, 2024. The moving defendants filed an amended notice of motion and motion on January 30, 2024. Yau filed an opposition to the motion on February 15, 2024.

While the motion to quash was pending, Yau filed three Doe amendments on February 20, 2024, naming Mission Properties LLC as "Doe 1," Harbor View Holdings Inc. as "Doe 2," and Ontario Airport Hotels Corporation as "Doe 3." The complaint does not make any specific reference to any individual Doe defendant.

On February 29, 2024, the court granted the motion to quash—this time after having considered Yau's arguments on the merits—and dismissed Hilton Worldwide and Park Hotels from the case.

Now before the court is a motion to strike portions of the complaint by the new defendants, Mission Properties LLC ("Mission Properties"), Harbor View Holdings Inc. ("Harbor View"), and Ontario Airport Hotels Corporation ("Ontario") as well as original defendant Hilton Santa Clara. On the same day that this motion to strike was filed, Yau filed another Doe amendment, naming Stanford Hotels Corporation ("Stanford Hotels") as "Doe 4." The parties later filed a stipulation, signed by the court on August 29, 2024, dismissing Hilton Santa Clara, Harbor View, Mission Properties, and Joe Eustice from the case. The remaining defendants are Ontario (Doe 3) and Stanford Hotels (Doe 4). On September 17, 2024, Stanford Hotels filed a joinder to Ontario's motion to strike. Yau filed an opposition on October 16, 2024. The court notes that the opposition was accompanied by a proof of service indicating

electronic service but without listing the parties served. (Defendants claim that they were never served and did not see Yau's opposition until October 25, 2024, after their reply brief was already due, leading to a late-filed reply brief on October 28, 2024.)

II. MOTION TO STRIKE PORTIONS OF THE COMPLAINT

A. General Legal 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].)

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."

As with a demurrer, extrinsic evidence cannot be considered, and additional arguments cannot be raised for the first time in a reply brief.

B. The Basis of the Motion

Ontario and Stanford Hotels (hereinafter, "Defendants") seek to strike paragraphs 43, 59, 66, and 80—all of which contain allegations regarding punitive damages—as well as paragraph 2 of the complaint's prayer for relief: "For punitive damages in an amount to be determined at trial."

Defendants argue that the complaint "seeks to initiate a claim for punitive damages with nothing more than a series of broad, boilerplate allegations and legal conclusions directed at Defendants." (Memorandum, p. 1:12-14.)

C. Discussion

1. Threshold Matters

As an initial matter, the court grants Stanford Hotels' joinder in the motion to strike. As a secondary matter, the court notes that Defendants did not comply with Code of Civil Procedure section 435.5, subdivision (a), which requires the party or parties bringing a motion to strike to "meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the motion to strike." Simply sending a letter, as described in the supporting declaration of Sena Hori, does not comply with the statute. Nonetheless, because Code of Civil Procedure section 435.5, subdivision (a)(4), makes it clear 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," the court will consider the motion on the merits.

2. The Pleading Requirements for Punitive Damages

"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, because a pleading is read as a whole, even conclusory allegations may suffice when read in context with other facts, elsewhere in the complaint, that adequately allege a defendant's wrongful conduct. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7.)

To request punitive damages against corporate entities (*e.g.*, both remaining Defendants here), the complaint must allege that an identified officer, director, or managing agent of the corporation was either personally responsible for the allegedly despicable conduct or that an officer, director, or managing agent of the corporation: (1) had advance knowledge of the despicable conduct and consciously disregarded it; or (2) authorized or ratified the despicable conduct. (See Civ. Code, § 3294, subd. (b).) "Corporate ratification in the punitive damages context requires actual knowledge of the conduct and its outrageous nature." (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 726.)

A managing agent is someone who, like a corporate officer or director, exercises "substantial discretionary authority over significant aspects of a corporation's business" and policies. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 577-78.) An employee is not a managing agent simply because he or she bears the title of "manager" and supervises employees. (*Ibid.*; see also *CRST, Inc. v. Super. Ct.* (2017) 11 Cal.App.5th 1255, 1273-75.) "'Rather, the critical inquiry is the degree of discretion the employees possess in making

decisions that will ultimately determine corporate policy.' [Citations.]" (*Myers v. Trendwest Resorts, Inc*. (2007) 148 Cal.App.4th 1403, 1437.) "An individual must be in a corporate policymaking position in order to be considered a managing agent for purposes of imposing punitive damages liability on the employer." (*Ibid*.)

Based on the foregoing general principles, the court grants Defendants' motion to strike paragraphs 43, 59, 66, 80, and the second paragraph of the prayer, for the reasons that follow:

First, the complaint fails to allege any specific conduct by Doe 3 (Ontario) or Doe 4 (Stanford Hotels) that would support a request for punitive damages against either of them. The complaint refers collectively to the Doe defendants in boilerplate allegations at paragraphs 8, 9, 24-32, without any description of their specific conduct.

Second, the complaint (including, specifically, paragraphs 43, 59, 66, and 80) is replete with allegations made *solely on information and belief*, which cannot support a request for punitive damages. In general, a party cannot "by placing the incantation 'information and belief' in a pleading [ ] insulate herself or himself" from the requirement of Code of Civil Procedure section 128.7, irrespective of whether the pleading is verified or unverified. (*Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596, fn. 9.) Even when it is permissible to allege an ultimate fact on the basis of information and belief, a party cannot simply include the phrase "information and belief" without more. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158-59.) To plead an allegation on the basis of information and belief properly, a plaintiff must allege the facts or information that led him or her to infer or believe the truth of the ultimate fact allegation. (*Gomes*, *supra*, 192 Cal.App.4th at pp. 1158-59; see also *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1106-07 ["where factual allegations are based on information and belief, the plaintiff must allege 'information that "lead[s] [the plaintiff] to believe that the allegations are true."'"].) Allegations made on "information and belief" that lack supporting information are not accepted as true on a demurrer or motion to strike.

Third, Defendants are correct that the complaint does not adequately plead oppressive, fraudulent, or malicious conduct against any corporate entity. The only individual defendant named in the complaint, Joe Eustice, has been dismissed, and the allegations in the complaint do not identify any other person who is an officer, director, or managing agent of any of the Doe defendants, much less one from both Ontario and Stanford Hotels. Nor do the allegations state how any officer, director, or managing agent of either defendant (or both) was personally responsible for, had advanced knowledge of, or authorized or ratified any allegedly despicable conduct.

For the most part, Yau's opposition simply repeats the inadequate allegations of the complaint. While the opposition requests leave to amend if the court grants the motion, it fails to indicate how Yau could actually amend her allegations to support a request for punitive damages against Ontario or Stanford Hotels. (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].)

Nevertheless, given that this is the first challenge to the sufficiency of the pleadings to be considered by the court, the court will grant 10 days' leave to amend. The court reminds Yau that she may not add new causes of action or parties without prior leave of court.

The motion to strike the punitive damages allegations is GRANTED with 10 days' leave to amend.

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Calendar Line 2
Case Name: *N.R. Waterloo, LLC v. Dennis Treadaway et al.*
Case No.: 20CV366393

Defendants FPI Management, Inc. ("FPI") and Dennis Treadaway move to quash a third-party subpoena issued by plaintiff N.R. Waterloo ("Waterloo") to Bank of America. Defendants filed this motion nearly 10 months ago, and it was originally scheduled to be heard on April 18, 2024. The parties stipulated to a continuance of the hearing to July 30, 2024, and then they stipulated to a further continuance to October 31, 2024.

Waterloo's subpoena broadly seeks account documents at Bank of America for both FPI and Treadaway, from 2002 to the present. Defendants argue that the subpoena is overbroad, but the court finds that it appears to seek information that is directly relevant to the allegations of financial malfeasance contained in the amended complaint. While it may well be the case that the subpoena casts a somewhat wider net than is strictly necessary, the court also concludes that it is not so unduly overbroad as to necessitate a court order to quash. Waterloo argues in its opposition that defendants' productions of bank documents are incomplete, and defendants do not sufficiently rebut this argument in their reply. For example, Waterloo argues that under the parties' agreement, FPI was required to maintain "segregated accounts," and no documentation relating to these segregated accounts has been produced by defendants. Defendants have no response to this in their reply.

The court finds defendants' argument regarding their "privacy rights" to be entirely unconvincing. The bank records that defendants wish to protect from disclosure appear to be directly relevant to the causes of action in this case. To the extent that there is any confidentiality or privacy interest to be protected, that can be addressed in a stipulated protective order between the parties.[1]

With their reply, defendants have asserted two objections to the declaration of Waterloo's counsel, Julie Bonnel-Rogers, that was submitted with the opposition. The court sustains the first objection based on a lack of foundation—Bonnel-Rogers does not indicate how she has personal knowledge of the authenticity of the parties' Management Agreement. The court overrules the second objection, as it is directed to a description of the breach of fiduciary duty and negligence allegations in the case. In this motion, the court's focus is on the relevance of the requested discovery to the *allegations* in the case, not to the supposedly established evidence. In any event, the court finds the objected-to evidence to be immaterial to the outcome of this motion.

The motion is DENIED, and defendants' request for monetary sanctions is DENIED.

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[1] Similarly, the court rejects defendants' argument that Waterloo failed to send a "consumer" notice to Treadaway. The purpose of the consumer notice requirement in Code of Civil Procedure section 1985.3 is to ensure that any consumer whose records are being sought by subpoena is given an opportunity to object, and Treadaway has plainly been given such an opportunity here. (Reply, p. 5:6-18.) Moreover, this argument is improper, as it has been raised for the first time in reply.

Calendar Line 4
Case Name: *CPT 303 Almaden, LLC v. Anatomage, Inc.*
Case No.: 20CV371756

This is an eleventh-hour motion to augment CPT's expert witness designation, based on the sudden unavailability of CPT's sole testifying expert, Christopher Phillips. Trial is currently set for November 12, 2024.

Phillips was apparently involved in a serious snowboarding accident in April 2024 but expected to have recovered by now. He has submitted a declaration saying that he still cannot walk and that his "medical team" has advised him that he still cannot work. According to his declaration, he did not notify CPT's counsel of his situation until October 1, 2024, just six weeks before the trial in this case. CPT's counsel then notified Anatomage's counsel on October 3, 2024. The parties have since been unable to agree on CPT's proposal to replace Phillips with a colleague at Phillips's firm, Thomas Koch.

On October 10, 2024, CPT filed an ex parte application to have this motion heard on shortened time; Anatomage submitted a nine-page opposition to the application. On October 11, 2024, the court set the hearing for October 31, 2024, noting that if Anatomage wished to oppose the motion on the merits, it could file an opposition by October 24, 2024. Anatomage has filed a 15-page opposition.

Although the court said that it would not issue a tentative ruling, the court has considered the parties' papers now and has the following preliminary thoughts, as well as two questions for the parties:

Question No. 1: How long was Phillips's deposition? (The court has received excerpts from the transcript but does not know how many hours were taken on the record.)

Question No. 2: Is there any good reason why Koch cannot be deposed on November 4, 5, or 6?

Preliminary thoughts: Even though this motion has been brought extremely late, the court is inclined to find "exceptional circumstances" warranting an eleventh-hour amendment of the expert witness designation and list. CPT would suffer extreme prejudice if it is not allowed to substitute Mr. Phillips with Mr. Koch. It appears that Anatomage will also suffer some prejudice as a result of being subjected to this last-minute switch, but it is not as extreme as the prejudice to CPT if Mr. Koch is not allowed to testify.

The court also believes that the prejudice to Anatomage can be mitigated if: (1) CPT immediately offers Koch for deposition on at least two out of the following three dates—November 4, 5, or 6—and Anatomage picks one of these dates; and (2) Anatomage is permitted to designate Phillips's deposition testimony for trial, to be used as affirmative evidence at its own election (with CPT counterdesignating testimony under the rule of completeness). The court finds that this latter remedy will mitigate any potential prejudice to Anatomage if Koch materially deviates from Phillips's prior deposition testimony.

The parties are requested to appear to discuss.

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Calendar Line 5
Case Name: *Christian Humanitarian Aid, Inc. v. AM Star Construction, Inc. et al.*
Case No.: 22CV396170

This is a motion to tax costs, filed by defendant and cross-complainant AM Star Construction, Inc. ("AMS") against a memorandum of costs from cross-defendants St. Michael Preschool and Infant Care (the "Preschool") and Archangel Michael & Saint Mercurius Coptic Orthodox Church (the "Church"). The challenged costs fall into three categories: (1) filing and motion fees, (2) deposition costs, and (3) "other," which in this case consists of a share of the fees incurred by the parties for a mediation that occurred on February 7, 2024 with a JAMS mediator.

1. Filing and Motion Fees

Cross-defendants' memorandum of costs seeks a portion of the actual filing fees (1/3) incurred during the time they were involved in the case, a total of $930.92. (The other two-thirds of the fees are attributed to the other parties on the same side, including the plaintiff.) AMS does not dispute that filing fees are generally recoverable costs, but it takes issue with the incidental charges by electronic service providers and fees incurred for "electing to pay by credit card." (Motion, p. 7:21-24.) Given that these were the actual costs incurred by cross-defendants for court filings, backed up by invoices (see Declaration of Kaveh Badiei, Exhibits 1-4), the court denies AMS's request to tax these filing fees.

Nevertheless, the court will strike the $153.24 for deposition service fees that have been incorrectly included in this line item, for the reasons discussed below. Thus, the correct amount for line item 1 should be $777.68, not $930.92.

2. Deposition Costs

The court grants AMS's request to tax the costs associated with a deposition that occurred on April 25, 2024. Although the Preschool and the Church argue that the scope of the deposition was broader than simply the mechanics lien cause of action in the cross-complaint (the third cause of action), the court has reviewed the PMQ notice for the deposition and sees that the topics were expressly limited to AMS's mechanics lien. Thus, even if other matters were discussed at the deposition, it was noticed as a PMQ deposition to focus solely on the mechanics lien cause of action. The court therefore strikes the $995.13 that is included in this line item.

3. Mediation Costs

Finally, the Preschool and the Church seek one-third of the costs incurred in mediating this case ($1,000). They are correct that mediation costs are neither expressly included nor expressly excluded as allowable costs under Code of Civil Procedure section 1033.5. Therefore, an award of such costs is discretionary. (See *Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal.App.5th 1133, 1140.) The court ultimately finds that it was reasonable for the Preschool and the Church to participate in the mediation with the other parties in this case, and that a good-faith effort at narrowing this case during mediation could very well have resulted in the dismissal of these cross-defendants, rather than having to go through multiple demurrers to reach that result. Even though the mediation did not result in the dismissal of the Preschool and the Church, the court finds that their participation was

reasonably necessary to the conduct of the litigation. The court therefore denies the request to tax these costs.

In short, the motion is GRANTED IN PART and DENIED IN PART. The court ultimately strikes a total of **$1,148.37** from the memorandum of costs ($153.24 + $995.13).

It is so ordered.

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Calendar Line 6
Case Name: *Li Juan Liu v. Kenneth To*
Case No.: 22CV399413

This is a motion to set aside a default, filed by defendant Kenneth To. The motion was originally scheduled to be heard on August 1, 2024. At the August 1 hearing, the court continued the hearing to September 24, 2024, to ensure that notice was proper for the motion. Then, on the morning of the September 24 hearing, a friend of Liu, Julia Ning, emailed the court with a photograph of a handwritten note from Liu, stating that Liu was unable to appear at the continued hearing for medical reasons. Ning copied both Liu and To on the email. Although the court was reluctant to continue the hearing yet again, it continued the motion to October 31, 2024 out of an abundance of caution.

Since that time, the court has not received any further filings from the parties, including no opposition brief from Liu, and so the court now re-posts the tentative ruling that it posted on the eve of the September 24, 2024 hearing, as follows:

> Defendant Kenneth To has filed this motion to set aside a default, based on "mistake, inadvertence, surprise, or excusable neglect" under Code of Civil Procedure section 473, subdivision (b). The clerk's office of the court previously entered a default on May 2, 2023, as a result of To's failure to file a responsive pleading. No default judgment has been entered yet, as plaintiff Li Juan Liu has not yet filed a request for entry of default judgment.
>
> The court grants the motion to set aside the default.
>
> This motion was original scheduled to be heard on August 1, 2024, but the court continued it because there was no proof of service on Liu, and the court wanted to ensure that Liu had an adequate opportunity to file an opposition brief. At the hearing on August 1, 2024, at which both parties were present (along with a Mandarin Chinese interpreter for Liu), Liu requested more time to respond to the motion. The court decided to reset the hearing for September 24, 2024, with an opposition brief due on September 11, 2024.
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> Later that same day (August 1, 2024), the court received an ex parte application from Liu "to dismiss and deny defendant's invalid and defective motion to set aside default." This application consisted of eight pages of text and 11 pages of exhibits. On August 2, 2024, the court denied the application, stating that if Liu wished to oppose the motion on the merits, "she should file an opposition brief, not an ex parte application."
>
> On September 11, 2024, the due date for Liu's opposition to this motion, the court received another ex parte application from Liu, requesting more time to respond to the motion—until November 2024—which would necessitate a continuance of the September 24, 2024 hearing. This application consisted of 11 pages of text plus 15 pages of exhibits. On the same day (September 11, 2024), the court denied the application, finding that the request was unreasonable. (See September 11, 2024 Order, p. 2:3-20.) Nevertheless, the court further extended Liu's time to file an opposition to September 16, 2024.

As of September 23, 2024, the eve of the hearing, the court still has not received any substantive opposition to this motion. The court finds that To has shown that his previous failure to file a responsive pleading was the product of "mistake" and "excusable neglect," and so he is entitled to be relieved from the default.

The motion is GRANTED, and the default is set aside. Defendant To must file his response to the complaint by no later than October 14, 2024.

Unless the court hears good reasons not to adopt the foregoing tentative ruling on October 31, 2024, the court will do so, with the only modification being that To's response to the complaint is now due on November 20, 2024.

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