April 4, 2025
Dept. 9
Tentative Rulings

1.	**22CV1735**	**HILTON v. GLUECK**
Motions to Compel		

Plaintiff Brook Hilton filed two separate Motions – (1) Motion to Compel Compliance with Responses to Requests for Form Interrogatories ("RFI") Set No. 1, and (2) Motion to Compel Compliance with Responses to Requests for Production ("RFP") of Documents Set No. 1.

Plaintiff served the RFI and RFP on Defendants Jack Glueck and Bear Ridge Ranch, LLC ("Defendants") on October 1, 2024. No responses have been received. Plaintiff's counsel attempted to meet and confer with defense counsel on numerous occasions by e-mail. It seems no efforts were made to meet and confer by telephone. However, no responses were ever provided and both motions are unopposed.

CCP §2030.260(a) Within 30 days after service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

CCP §2030.290 If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The party propounding the interrogatories may move for an order compelling response to the interrogatories.
>
> (c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with

substantial justification or that other circumstances make the imposition of the sanction unjust…

CCP §2031.260(a) Within 30 days after service of a demand for inspection, copying, testing, or sampling, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

CCP §2031.300. If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The party making the demand may move for an order compelling response to the demand.

(c) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Plaintiff requests sanctions in the amount of $1,860.00 per Motion, based on three hours billed at $450/hour, along with the $60 filing fee, and an anticipated hour to draft a reply. Each Motion is barely over one page, consisting mostly of standard, canned language, so three hours is not reasonable. Neither motion necessitated a reply either. The Court awards one hour of attorney time per motion, along with both $60 filing fees, for a total of $510 per Motion.

TENTATIVE RULING #1:

1. **MOTION TO COMPEL COMPLIANCE WITH RESPONSES TO REQUESTS FOR FORM INTERROGATORIES SET NO. 1 IS GRANTED. DEFENDANTS TO COMPLY BY PROVIDING WRITTEN RESPONSES TO THE REQUESTS FOR FORM INTERROGATORIES BEFORE FRIDAY, APRIL 18, 2025.**
2. **MOTION TO COMPEL COMPLIANCE WITH RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS SET NO. 1 IS GRANTED. DEFENDANTS TO COMPLY WITH THE DEMANDS BY PROVIDING WRITTEN RESPONSES AND THE PRODUCTION OF THE SPECIFIED DOCUMENTS BEFORE FRIDAY, APRIL 18, 2025.**
3. **SANCTIONS IN THE AMOUNT OF $1,020 AWARDED TO PLAINTIFF, PAYABLE BY DEFENDANTS BEFORE FRIDAY, MAY 2, 2025.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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2.	**22CV0411**	**SANDOVAL v. REED et al**
Leave to File First Amended Cross-Complaint		

Cross-Complainant brings this Motion for Leave to File First Amended Cross-Complaint ("FACC") to add a party, address typos, grammar and sentence structure, and provide factual or pleading clarification/correction. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading[.]" (Civ. Proc. Code I]473(a)(1); see Civ. Proc. Code § 576 ["Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order."].)

A copy of the proposed FACC is included as a red-line version in Exhibit A and final version in Exhibit B. Exhibits C and D outline the changes and reasons for the changes.

The Motion is unopposed.

TENTATIVE RULING #2:

MOTION GRANTED.

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3.	**23CV0395**	**VELLA v. PELA**
Compliance Review		

TENTATIVE RULING #3:

APPEARANCES REQUIRED ON FRIDAY, APRIL 4, 2025, AT 8:30 AM.

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4.	**23CV2000**	**SOMMER v. LEMONADE INSURANCE CO.**
Motion to Stay		

The Notice does not comply with Local Rule 7.10.05.

Plaintiff Zackery Sommer ("Plaintiff") brings this Motion to Stay prosecution of the Complaint for Breach of Contract and Declaratory Relief. This case involves Plaintiff's home, which sustained damage during a winter storm, and is insured by Lemonade Insurance Co. ("Defendant").

After the storm damage, Plaintiff made an insurance claim. Defendant wanted to patch the sided and Plaintiff demanded it be replaced, since the pre-existing siding was no longer being manufactured, and a patch job would not comply with HOA rules or building codes.

Plaintiff filed his Complaint on November 15, 2023. Defendant Answered and demanded that Plaintiff participate in policy appraisal – a system that sets the value of a claim through a three-person panel consisting of one-party appraiser for each side, and an umpire. When one side demands appraisal, the other side must participate or be accused of breach of policy. Defendant demanded appraisal on May 21, 2024, and according to Plaintiff, Defendant's designated appraiser, Julian Barba ("Barba") inspected the property in August 2024 and has does nothing else, including refusing to meet with Plaintiff's appraiser. The appraisers are supposed to deliberate and see if they can agree on an award, if they cannot, then the umpire gets involved.

Once an appraisal award is rendered and paid, the contractual damages for the claim are determined and all that remains in litigation is whether the insurance company breached the covenant of good faith and fair dealing during the claim process. Plaintiff states that if the appraisal award matches what Defendant offered to pay prior to the lawsuit, then the bad faith case would "appear" to be over. Plaintiff states that by demanding appraisal, Defendant basically stated that a lawsuit was not necessary; however, now Defendant insists on conducting discovery before the appraisal award is rendered.

Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489). Under California law, insurance appraisals are treated similarly to arbitration proceedings and are generally subject to the same rules. (*Lee v. California Capital Ins. Co.* (2015) 237 Cal.App.4th 1154).

Plaintiff argues that a key component of the lawsuit is what Defendant will have to pay in order to repair Plaintiff's house – which is an issue that will be decided in the appraisal – and that there is no good reason to force Plaintiff into the cost of discovery and litigation, unless the appraisal award fails to resolve the claim in its entirety.

Defendant opposes, arguing several delays by Plaintiff's prior counsel and selected appraiser. Defendant argues that a stay will cause extreme prejudice to Defendant, because trial is set for August 12, 2025, and if the 6-month stay is granted, then there will be very little time to complete discovery. Defendant further argues that Plaintiff will suffer no undue hardship if the Motion is denied.

As argued by Defendant, Plaintiff is the one who chose to file a lawsuit, while admitting that the policy contains a mandatory appraisal process once invoked. Despite that, Plaintiff made the decision to start litigation, which necessarily involves discovery. While the Court agrees, the Court retains the authority to stay proceedings to promote judicial efficiency. Considering how large of a role the appraisal will play in any ongoing litigation; the Court finds it proper to stay the proceedings until that process is completed.

The court grants a 6-month stay of the proceedings. The Mandatory Settlement Conference on June 2, 2025 and the trial on August 12, 2025 are vacated. The August 1, 2025 hearing at 1:30 p.m. in Department 9 is converted to a status conference to determine whether it is appropriate to life the stay and reset the MSC and trial dates.

TENTATIVE RULING #4:

MOTION FOR A 6-MONTH STAY OF THE PROCEEDINGS IS GRANTED. THE MANDATORY SETTLEMENT CONFERENCE ON JUNE 2, 2025 AND THE TRIAL ON AUGUST 12, 2025 ARE VACATED. THE AUGUST 1, 2025 HEARING AT 1:30 P.M. IN DEPARTMENT 9 IS CONVERTED TO A STATUS CONFERENCE TO DETERMINE WHETHER IT IS APPROPRIATE TO LIFE THE STAY AND RESET THE MSC AND TRIAL DATES.

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5.	**24CV0108**	**DIGUIRCO v. MARSHALL MEDICAL**
MSJ		

Defendant Michael Wilhelm, PA-C ("moving Defendant") moves for summary judgment, or in the alternative, summary adjudication, of Plaintiff's Complaint, which alleges professional negligence. This Motion is made pursuant to Code of Civil Procedure ("CCP") §437c, on the grounds that the care and treatment provided by moving Defendant was appropriate and within the standard of care.

In ruling on a summary judgment motion, the issues which are material are limited to the allegations of the complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.) "The burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability as alleged in the complaint. A 'moving party need not '. . . refute liability on some theoretical possibility not included in the pleadings." [Citation.]' (*Cochran v. Linn* (1984) 159 Cal.App.3d 245, 250.)" (*Tsemetzin v. Coast Federal Savings and Loan Association* (1997) 57 Cal.App.4th 1334, 1336.)

To recover damages in a suit alleging medical negligence, a plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606.) (Citations omitted.) An action for medical negligence cannot be maintained unless plaintiff proves, through expert testimony, that the defendant was negligent in his care and treatment and that such negligence was a legal cause of injuries to plaintiff. (*Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1071; *Keen v. Prisinzano* (1972) 23 Cal.App.3d 275, 279.)

Defendant relies on the Declaration of Sam Shen, M.D., who is a board-certified emergency medicine physician. Dr. Shen opines that moving Defendant's care of Plaintiff was appropriate and within standard procedure.

Plaintiff filed a notice of non-opposition. None of the other Defendants filed an opposition.

TENTATIVE RULING #5:

MOTION FOR SUMMARY JUDGMENT GRANTED.

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6.	24CV2106	BAZEMORE v. BYC ENTERPRISES
Motion to Strike		

Defendants BYC Enterprises, LLC ("BYC"), Jarrod Zehner ("Zehner"), and d/b/a Backyard Customs Landscaping ("BYC Landscaping") (collectively "Defendants") bring this Motion pursuant to California Code of Civil Procedure ("CCP") §435, to strike portions of the unverified Complaint filed by Plaintiff. This case involves a contract wherein Defendants were to provide labor, materials, and services to construct an outdoor basketball court and outdoor exercise gymnasium at Plaintiff's house.

Code of Civil Procedure § 436 authorizes a court, in its discretion, to "strikeout any irrelevant, false, or improper matter inserted in any pleading," or "any 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."

Defendant's motion seeks to strike:

1. Paragraph 18 from Plaintiff's Complaint;
2. Paragraph 33 from Plaintiff's Complaint;
3. Paragraph 2 of the prayer for relief from Plaintiff's Complaint; and,
4. Paragraph 8 of the prayer for relief from Plaintiff's Complaint.

Defendants request judicial notice of certain pleadings. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453). Defendants' request for judicial notice is granted.

According to the Declaration of Anthony Valenti, the parties engaged in meet and confer efforts pursuant to CCP §435.5.

Defendants argue that the Complaint does not plead facts supporting a claim for punitive damages, and therefore the request for punitive damages must be struck because it was not pled in conformity with the laws of the state. (CCP §436(b)). In order to establish a claim for punitive damages, a plaintiff must allege facts that establish, by clear and convincing evidence, that the defendant has engaged in oppression, fraud, or malice that constitutes despicable conduct. (Civ. Code §3294; *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Auth.* (2022) 83 Cal.App.5th 1137, 1193).

Plaintiff opposes, arguing that paragraph 18 is part of his conversion claim, which alleges intentional wrongdoing[1]. However, upon a reading of the Complaint, the Court agrees that there are no factual allegations showing oppression, fraud, or malice constituting despicable conduct. The facts alleged are merely general statements and not specific allegations of Defendants' oppression, fraud, or malice. Motion to strike paragraph 18 is granted.

Plaintiff further opposes, arguing that paragraph 33 is tied to his claim for fraud/concealment. "Fraud" means 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. (Code Civ. Proc. § 3294(c)(3).) Here, Plaintiff does allege sufficient facts. (Compl. ¶31). Motion to strike paragraph 33 is denied. Motion to strike paragraph 2 of the prayer for relief is denied.

Defendants further argue that the Contract does not provide a fee-shifting provision, and that the Complaint does not cite any statutory basis for awarding attorneys' fees. Plaintiff opposes, arguing that CCP § 1029.8 provides for treble damages and attorney fees against "[a]ny unlicensed person" whose work injures another person. (*Karton v. Ari Design & Constr., Inc.,* (2021) 61 Cal. App. 5th 734, 740, 276 Cal. Rptr. 3d 46, 50, *as modified on denial of reh'g* (Mar. 29, 2021).) Further, Plaintiff argues that he may be eligible to claim attorneys' fees under the private attorney general doctrine as part of his UCL claim. Although the UCL does not provide for attorney fees, a prevailing plaintiff may seek attorney fees as a private attorney general under CCP § 1021.5. (*Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 600; see also *Zhang v. Superior Ct.* (2013) 57 Cal. 4th 364, 371.) However, the Court agrees with Defendants that the Complaint fails to cite any statutory basis for an award of attorneys' fees. Motion to strike paragraph 8 of the prayer for relief is granted.

TENTATIVE RULING #6:

1. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **MOTION TO STRIKE PARAGRAPH 18 IS GRANTED.**
3. **MOTION TO STRIKE PARAGRAPH 33 IS DENIED.**
4. **MOTION TO STRIKE PARAGRAPH 2 OF THE PRAYER FOR RELIEF IS DENIED.**
5. **MOTION TO STRIKE PARAGRAPH 8 OF THE PRAYER FOR RELIEF IS GRANTED.**

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[1] Plaintiff also argues that the first cause of action was not challenged by Defendants' Demurrer and therefore the allegations must be presumed to be sufficient and proper. This is not accurate, as the first cause of action was challenged.

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