SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 5/16/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (5/15/2024) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:
https://reservations.scscourt.org/

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV416863	Angelica Carr vs Hui Liu	Hearing: Order of Examination to Hui Liu by Petitioner Angelica Carr. POS personal service filed 4/4/2024. APPEAR IN PERSON (not by Teams).
LINE 2	23CV425155	Albert Garcia vs AMIR SAFFARIAN, MD et al	Hearing: Demurrer to Plaintiff Albert Garcia's Complaint by Defendants County of Santa Clara and Henry Chua M.D. Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 5/16/2024 TIME: 9:00 A.M.

LINE 3	23CV428095	Brianna Kendall et al vs SF Los Gatos, LLC.	Motion: Strike CTSCH Id: 533. Confirmation: AOEDO5TO. Scheduled online for Defendant SF Los Gatos, LLC. Ctrl Click (or scroll down) on Lines 3-4 for ruling. The court will prepare the order.
LINE 4	23CV428095	Brianna Kendall et al vs SF Los Gatos, LLC.	Hearing: Demurrer to Plt's complaint for damages by Def SF Los Gatos, LLC Ctrl Click (or scroll down) on Lines 3-4 for tentative ruling. The court will prepare the order.
LINE 5	22CV396838	Nationwide Agribusiness Insurance Company vs Rahsa Hubbard	Motion: Admissions Deemed Admitted specifically in Request for Admissions ("RFA"), Set One be deemed admitted filed by Plaintiff Nationwide Agribusiness Insurance Company Ctrl Click (or scroll down) on Line 5 for tentative ruling. The court will prepare the order.
LINE 6	23CV420090	Why Systems LLC vs Emodo, Inc.	Motion: Compel CTSCH Id: 849. Confirmation: QQYHRX5E. Scheduled online for Plaintiff/Cross Defendant Why Systems LLC Ctrl Click (or scroll down) on Line 6 for tentative ruling. The court will prepare the order.
LINE 7	23CV420424	HIEN DANG vs Volkswagen Group of America, Inc.	Motion: Compel Def Volkswagen Group of America, Inc. further responses and documents from Def to Plt's request for production of documents, Set One, by Plaintiff Hien Dang Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.
LINE 8	22CV407623	Shiue-Mei Kuo et al vs Chih-Ling Chou et al	Motion: Order to dismiss or stay proceedings for Forum Non-Convenience, or in the alternative, Stay proceedings under the Court's inherent power by Def Chih-Ling Chou and Sophia Chou Ctrl Click (or scroll down) on Lines 8-10 for ruling. The court will prepare the order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 5/16/2024 TIME: 9:00 A.M.

LINE 9	22CV407623	Shiue-Mei Kuo et al vs Chih-Ling Chou et al	Motion: Leave to File First Amended Complaint c/f 4/18/2024 per m/o Ctrl Click (or scroll down) on Lines 8-10 for ruling. The court will prepare the order.
LINE 10	22CV407623	Shiue-Mei Kuo et al vs Chih-Ling Chou et al	Hearing: Other for Forum Non Convenience **Set per 4/18/2024 order** Ctrl Click (or scroll down) on Lines 8-10 for ruling. The court will prepare the order.
LINE 11	23CV000033	AFFINIA DEFAULT SERVICES, LLC vs IN RE: 1501 DESDEMONA CT, SAN JOSE, CA 95121	Hearing: Other motion to release interpleaded surplus funds with the court by Claimant Anna Yancer Rodriguez, Executor of the [Estate] of Armando Dedano, Estate No. 20PR1888253 OFF CALENDAR. The proof of service ("POS) of this motion only lists Affinia Default Services, LLC, Gibbs & Mason, LLC, and Bad Boy Bail Bonds. According to paragraph 8 of the Petition, there are additional persons entitled to notice (not listed on the POS) including Amando Sedano and TRUMP, ALIOTO, TRUMP & PRESCOTT LLP.
LINE 12	23CV421956	Pshatoia LaRose vs Apple Inc.	Hearing: Other motion for subpoena OFF CALENDAR. No proof of service was filed.

- oo0oo -

Calendar Line 1

- oo0oo -

Calendar Line 2
Case Name: *Albert Garcia v. County of Santa Clara, et al.*
Case No.: 23-CV-425155

Demurrer to the Complaint by Defendants County of Santa Clara (also erroneously sued as Santa Clara Valley Health & Hospital System, St. Louise Regional Hospital, Valley Health Center) and Henry Chua, M.D.

Factual and Procedural Background

This is a medical negligence action brought by plaintiff Albert Garcia, by and through his Litigation Guardian, Renee Libutti ("Plaintiff") against the County of Santa Clara ("County") and other defendants.

According to the complaint, on July 31, 2022, Plaintiff was diagnosed with kidney stones at defendant St. Louise Regional Hospital. (Complaint at ¶ 2.[1]) St. Louis Regional Hospital is operated by defendant Santa Clara Valley Health & Hospital System. (Id. at ¶ 3.) Santa Clara Valley Health & Hospital System is operated by the County. (Id. at ¶ 4.)

On August 1, 2022, defendant Dr. Amir Saffarian ("Dr. Saffarian") implanted a 6x24 double-J stent in Plaintiff's kidney to facilitate stone removal. (Complaint at ¶ 6.) The stent needed to be removed within six weeks to six months. (Id. at ¶ 7.) Plaintiff however did not receive any appointment for stent removal from Dr. Saffarian, St. Louise Regional Hospital or its medical staff. (Id. at ¶ 8.)

On December 14, 2022, Plaintiff went to St. Louise Regional Hospital complaining of generalized weakness, melena, fatigue, lightheadedness, dizziness, and unintentional weight loss. (Complaint at ¶ 9.) Plaintiff was examined by defendants Dr. Anna Nguyen ("Dr. Nguyen") and Dr. Marwan M. Abdelrahim ("Dr. Abdelrahim"). (Id. at ¶ 10.) Neither Dr. Nguyen nor Dr. Abdelrahim diagnosed Plaintiff with complications from the retained stent, who was admitted for two days without any clear diagnosis. (Id. at ¶ 11.)

On December 31, 2022, Plaintiff again went to St. Louise Regional Hospital with complaints including an altered mental status, generalized weakness, and whole-body pain. (Complaint at ¶ 12.) Plaintiff was examined by defendant Dr. Duc Minh Tran ("Dr. Tran") who concluded he was suffering from a urinary tract infection ("UTI"). (Id. at ¶ 14.) Dr. Tran however failed to diagnose Plaintiff with complications from the retained stent. (Id. at ¶ 15.)

On February 2, 2023, Plaintiff went back to St. Louis Regional Hospital complaining of dark bloody stools, increased confusion and nausea. (Complaint at ¶ 16.) Plaintiff was examined by defendants Dr. Lubna Farooq Husain and Dr. Kimberly D. Pham who failed to diagnose his condition as a complication due to the retained stent. (Id. at ¶¶ 17-19.)

On March 13, 2023, Plaintiff again visited St. Louise Regional Hospital with complaints of vomiting and increased confusion. (Complaint at ¶ 20.) Plaintiff was examined by defendant Nurse Patricia Evelyn Biddle ("Nurse Biddle") whose examination was signed

[1] The factual allegations are taken from the "General Allegations" section of the complaint beginning on page 5 of the pleading.

off by defendant Dr. Mark S. Penner ("Dr. Penner"). (Id. at ¶¶ 21, 23.) Both Nurse Biddle and Dr. Penner failed to diagnose Plaintiff's condition as a complication due to the retained stent. (Id. at ¶¶ 22, 24.)

On March 23, 2023, Plaintiff went to St. Louise Regional Hospital where he was examined by defendant Dr. Rogelio Sebastian Dawkins and diagnosed with a UTI. (Complaint at ¶¶ 25-28.)

On April 6, 2023, Plaintiff visited Dr. Peter Elliot who ordered an X-ray for Plaintiff which disclosed a calcified stent in place. (Complaint at ¶¶ 29-31.)

On April 27, 2023, Plaintiff underwent a CT scan of his abdomen, which disclosed a calcification in his right kidney. (Complaint at ¶ 32.) But, no action was taken to treat Plaintiff's right kidney calcification. (Id. at ¶ 33.)

On May 29, 2023, Plaintiff visited St. Louise Regional Hospital complaining of nausea, vomiting, diarrhea, confusion and insomnia. (Complaint at ¶¶ 34-35.) Dr. Penner again examined Plaintiff and concluded he was suffering from sepsis due to a UTI. (Id. at ¶¶ 36-37.) But, Dr. Penner noted that, per Plaintiff's urinalysis, the lab results were not consistent with a UTI. (Id. at ¶ 38.) Nevertheless, Dr. Penner did not investigate why Plaintiff's lab results were not consistent with a UTI, nor did he take action to discover the true cause of Plaintiff's complaints. (Id. at ¶ 39.)

Plaintiff also alleges that his primary care provider, defendant Dr. Henry Chua ("Dr. Chua") failed to note that the temporary double-J stent had not been timely removed, though he was aware it had been implanted and Plaintiff routinely met with him. (Complaint at ¶ 40.)

As a result of defendants' negligence and wrongful conduct, Plaintiff suffered injury, damage, and loss. (Complaint at ¶ 42.)

On October 31, 2023, Plaintiff filed a complaint against defendants for: (1) Health Care Provider Negligence leading to Injury or Death per California Civil Code section 3333.1; and (2) Corporate Negligence.

On March 8, 2024, defendants County (also erroneously sued as Santa Clara Valley Health & Hospital System, St. Louise Regional Hospital, Valley Health Center) and Dr. Chua (collectively, "Public Entity Defendants") filed the motion presently before the court, a demurrer to the complaint. Plaintiff filed written opposition. Public Entity Defendants filed reply papers.

Demurrer to the Complaint

Legal Standard

"In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.' " (*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.)

"The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. … [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Erroneously Sued Defendants

The Public Entity Defendants first contend that Santa Clara Valley Health & Hospital System, St. Louise Regional Hospital, and Valley Health Center are not proper defendants in this action as they constitute departments of the County. (See Demurrer at p. 11:1-12.) In support, the moving papers cite *Vance v. County of Santa Clara* (N.D. Cal. 1996) 928 F.Supp. 993 which provides in relevant part:

> "While the parties do not raise an objection, the Court finds, sua sponte, that suing the Santa Clara Department of Corrections is improper. The Department of Corrections is an agency of the County of Santa Clara. The County is a proper defendant in a § 1983 claim, an agency of the County is not. The Department of Corrections of Santa Clara County is DISMISSED with prejudice as a Defendant in the Third Cause of Action." (*Id.* at p. 996; see *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1432, fn. 6 [although not binding, courts may consider unpublished federal district court opinions as persuasive].)

In opposition, Plaintiff suggests that, if these parties are not involved, then the Public Entity Defendants can submit a motion with supporting evidence for resolution by the court. (See OPP at p. 2:24-25.) But, if the parties are improperly named, as pointed out in the moving papers, the more expedient route would be to simply dismiss these parties at the pleading stage rather than delay that option to a later date by a defense motion. Nor does Plaintiff offer any contrary legal authority in opposition which would preclude dismissal of these parties at the pleading stage.

Accordingly, the demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim as to defendants Santa Clara Valley Health & Hospital System, St. Louise Regional Hospital, and Valley Health Center.

Demurrer for Uncertainty - Violation of California Rules of Court, rule 2.112

The Public Entity Defendants also argue the complaint is subject to demurrer for violating California Rules of Court, rule 2.112 which states:

Each separately stated cause of action, count, or defense must specifically state: (1) Its number;

(2) Its nature;

(3) The party asserting it if more than one party is represented on the pleading; and
(4) The party or parties to whom it is directed. (Cal. Rules of Court, rule 2.112.)

A failure to comply with Rule 2.112 renders a complaint subject to a motion to strike or a special demurrer for uncertainty. (See *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014; Code Civ. Proc., § 430.10, subd. (f).)

According to the caption on the front page of the complaint, the operative pleading sets forth causes of action titled: (1) Health Care Provider Negligence leading to Injury or Death per California Civil Code section 3333.1; and (2) Corporate Negligence. But, the body of the complaint contains multiple headings including, among others, professional negligence, corporate negligence, negligence of facility operator, and liability of treating doctor. None of the causes of action are numbered or identified in a manner consistent with the caption on the front page against defendants. For example, to the extent that Plaintiff intended to allege a cause of action for professional negligence and/or corporate negligence against the County or Dr. Chua, he should specify in an amended pleading in accordance with the requirements of Rule 2.112.

Therefore, the demurrer to the complaint based on violations of California Rules of Court, rule 2.112 is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND. Having sustained the demurrer on this ground, the court declines to address the remaining arguments on general demurrer. Following the filing and service of a first amended complaint, if the Public Entity Defendants believe the pleading to be deficient, they may file the appropriate motion for demurrer, motion to strike, or motion for judgment on the pleadings after meet and confer in compliance with the Code of Civil Procedure.

Disposition

The demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim as to defendants Santa Clara Valley Health & Hospital System, St. Louise Regional Hospital, and Valley Health Center.

The demurrer to the complaint based on violations of California Rules of Court, rule 2.112 is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND.

The court will prepare the Order.

- oo0oo -

Calendar Lines 3-4
Case Name: *Kendall et al. v. SF Los Gatos, LLC et al.*
Case No.: 23CV428095

I. Factual and Procedural Background

Plaintiffs Brianna Kendall, Liam Kendall Turkoglu, Mabel Kendall Turkoglu, and Kamron Turkoglu (collectively, "Plaintiffs") bring this action against defendant SF Los Gatos, LLC ("Defendant").

On or around March 12, 2023, Plaintiffs entered into a hotel rental agreement with Defendant to stay as guests at Hotel Los Gatos ("the Hotel"). (Compl., ¶ 27.) Plaintiffs planned to stay at the Hotel from on or around March 12, 2023 until March 25, 2023. (*Id.* at ¶ 29.) However, due to a severe bug infestation at the Hotel, they were forced to vacate on March 20, 2023. (*Ibid*.)

Plaintiffs noticed the bed bug infestation and complained to Defendant's managers or employees about the uninhabitable conditions in their hotel room, Room 126, but the bed bugs were not abated. (Compl., ¶¶ 30, 32.) After multiple complaints, Defendant moved Plaintiffs to Room 139, but the bed bugs continued to exist in that room as well. (*Id.* at ¶ 33.) The bed bugs forced Plaintiffs to vacate the Hotel early on March 20, 2023. (*Ibid*.) Plaintiffs were exposed to painful and disgusting bed bugs, suffered physical injuries, and emotional distress. (*Id*. at ¶ 35.) The bed bugs latched onto Plaintiffs while they slept, and Plaintiffs suffered numerous bites requiring them to seek medical care on multiple occasions including immediately after staying at the Hotel. (*Id*. at ¶¶ 38, 39.)

Prior to Plaintiffs' stay at the Hotel on March 12, 2023, Defendant had notice of the bed bug infestation, including in Rooms 126 and 139, because numerous prior hotel guests had written reviews about how the Hotel was contaminated with bed bugs for years. (Compl., ¶ 34.)

On December 21, 2023, Plaintiffs filed their Complaint against Defendant, asserting the following causes of action:

1) Habitability (Negligence/Negligence Per Se/Premises Liability);
2) Nuisance;
3) Intentional Infliction of Emotional Distress;
4) Breach of Contract; and
5) Fraudulent Concealment.

On March 27, 2024, Defendant filed a demurrer and motion to strike portions of the Complaint. Plaintiffs oppose both motions. Defendant filed a reply to both oppositions.

II. Demurrer

a. Legal Standard

In ruling on a demurrer, the court 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.)

b. Analysis

Defendant argues Plaintiffs' third cause of action for intentional infliction of emotional distress ("IIED") fails because it does not allege facts showing intentional extreme and outrageous conduct that causes severe emotional distress.

"The elements of a prima facie case for the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 593 [superseded by statute on other grounds].)

i. Extreme and Outrageous Conduct

Defendant first asserts that Plaintiffs fail to allege facts demonstrating any extreme or outrageous conduct and the Complaint admits that when Plaintiffs notified Defendant's employees about the bed bugs, they were switched to another room, demonstrating that Defendant responded to Plaintiffs' concerns and took action to rectify the situation. (Demurrer, p. 8:15-18.)

"A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.'" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051 (*Hughes*).)

In this case, Plaintiffs allege Defendant failed to put them on notice of the bed bugs, despite being aware of the bed bugs, intentionally failed to remedy the bed bug infestation, and "intentionally, willfully and recklessly disregarded their knowledge" of the bed bugs. (Compl., ¶¶ 86, 88, 89, 92, 95.) Plaintiffs additionally allege that two employees, "Ashley" and "Isis," were notified about the bed bugs and eventually moved Plaintiffs to a different hotel room, which was also infested. (*Id.* at ¶¶ 32, 33, 87.) The Complaint asserts that Defendants were aware of the bed bug infestation at the Hotel because "numerous prior hotel guests have written reviews about [the Hotel] and Hotel Rooms contaminated with bed bug[] infestation over years, through Yelp review platform." (*Id.* at ¶ 34.)

The Court finds that Plaintiffs' allegations that Defendant knew about the bed bug infestation "over years" including in the room that Plaintiffs were occupying, coupled with the allegation that Plaintiffs had to make multiple complaints before being moved to a different room, that was also infested with bed bugs, are sufficient allegations of outrageous conduct for purposes of a demurrer or, at the very least, the Court declines to sustain demurrer on a question of fact. (See *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the "plaintiff's ability to prove . . . allegations, or the possible difficulty in making such proof"]; see also *Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 356 [whether conduct is in fact outrageous is usually a question of fact].)

Accordingly, the Court declines to sustain the demurrer on the ground Plaintiffs fail to allege extreme and outrageous conduct.

ii. Intent to Inflict Severe Emotional Distress

Defendant next contends that Plaintiffs fail to allege Defendant intended to inflict severe emotional distress. Specifically, Defendant argues the Complaint merely repeats conclusory buzz words such as outrageous, willful, and intentional, and does not include any specific factual allegations showing Defendant acted with the requisite intent to inflict Plaintiffs' emotional distress. (Demurrer, p. 8:24-28.)

In opposition, Plaintiffs argue they have properly pled intentional and/or reckless disregard of the probability of causing emotional distress. (Opp., p. 6:2-4.) For example,

Plaintiffs assert they allege Defendant had knowledge of the bed bug infestation, Defendant failed to disclose the presence of the infestation, and intentionally and willfully failed to abate the bed bugs, so the problem persisted. (*Id.* at p. 6:6-15, citing Compl., ¶¶ 90, 91, 95.)

"The defendant must have engaged in 'conduct intended to inflict injury or engaged in with the realization that injury will result.' It is not enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." (*Christensen v. Superior Ct.* (1991) 54 Cal.3d 868, 903 [internal citations omitted].)

While the Complaint does contain numerous "buzz" words, taking the Complaint as a whole, Plaintiffs allege facts that Defendant knew of the bed bug infestation over a period of years, Defendant knew there were bed bugs in the rooms that Plaintiffs were staying in, Plaintiffs complained multiple times about the bugs, and Defendant did nothing to abate the issue. These allegations are sufficient at the pleading stage to allege Defendant acted with the intent or reckless disregard of the probability of causing Plaintiffs' emotional distress. As such, the Court declines to sustain the demurrer on the ground Plaintiffs have not alleged an intent to inflict severe emotional distress.

iii. Plaintiffs' Severe Emotional Distress

Finally, Defendant contends Plaintiffs fail to allege "severe" emotional distress, Plaintiffs must allege facts regarding the nature, extent, and duration of the severe emotional distress, and that Plaintiffs' pleading "fails to present evidence of any emotional injury, let alone a severe one." (Demurrer, p. 9:6, 13-14, citing *Holden v. Target Corp.*, 2016 U.S. Dist. LEXIS 95490, at *7-8 (*Holden*).)

As an initial matter, the Court notes that on demurrer it is not concerned with Plaintiffs' evidence or their ability to prove their allegations. (See e.g., *Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1406 [demurrer tests only the legal sufficiency of the pleading and the court does not concern itself with plaintiff's ability to prove factual allegations].) Additionally, "while federal authority may be regarded as persuasive, California courts are not bound by decisions of federal district courts and courts of appeals." (*People v. Uribe* (2011) 199 Cal.App.4th 836, 875.) There are numerous California decisions addressing IIED and therefore, the Court declines to rely on *Holden*.

In opposition, Plaintiffs argue they have pled that as a direct and proximate cause of Defendant's actions, they endured sleepless nights and ongoing emotional and mental distress coupled with other physical conditions. (Opposition, p. 8:12-15, citing, Compl., ¶¶ 95-96.)

As Defendant notes, the California Supreme Court "has set a high bar" "with the respect to the requirement that a plaintiff show severe and emotional distress." (*Hughes, supra,* 46 Cal.4th at p. 1051.) "Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it." (*Ibid.* [internal quotations omitted].) For example, in *Hughes*, the Supreme Court determined that the plaintiff's assertions that she suffered "discomfort, worry, anxiety, upset stomach, concern, and agitation as the result of defendant's [conduct] . . . do not comprise emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it." (*Ibid.*, citing *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004 [internal quotations omitted]; see also *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227 [plaintiff failed to allege severe emotional distress and pled no facts demonstrating the nature, extent, or duration of her alleged emotional distress].) Given this high bar, the Court does not find that Plaintiffs' allegations are sufficient to allege "severe emotional distress." As such, the demurrer to the third cause of action may be sustained for failing to sufficiently allege severe emotional distress.

Accordingly, the demurrer to the third cause of action is SUSTAINED with 10 days' leave to amend.

III. Motion to Strike

Defendant moves to strike allegations pertaining to Plaintiffs' request for punitive damages related to their IIED cause of action, including the following portions of the Complaint:

1) Paragraph 1:6;
2) Paragraph 40:15;
3) Paragraph 47:21-22;
4) Paragraph 48:3-4;
5) Paragraph 75:13-19;
6) Paragraph 97 in its entirety;
7) Paragraph 120 in its entirety; and
8) Paragraph 125 in its entirety.

As explained in detail above, the demurrer is sustained and therefore, the motion to strike is MOOT.

IV. Conclusion and Order

The demurrer to the third cause of action is SUSTAINED with 10 days leave to amend. The motion to strike is MOOT. The Court shall prepare the final order.

- oo0oo -

- oo0oo –

Calendar Line 5
Case Name: *Nationwide Agribusiness Insurance Company vs Rahsa Hubbard*
Case No.: 22CV396838

MOTION TO COMPEL FURTHER RESPONSES TO RFA, SET ONE

Good cause appearing, plaintiff Nationwide Agribusiness Insurance Company ("Plaintiff")'s motion to compel further responses to request for admissions ("RFA") set one served upon defendant Rasha Hubbard ("Defendant") or to have them deemed admitted is GRANTED IN PART.

Where responses have been timely served but are deemed deficient by the requesting party (e.g., because of objections or evasive responses), that party may move for an order compelling a further response. (Cal. Code of Civ. Proc. ("CCP") § 2033.290, [subd. (a)(1) and (2)]; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636.)

Plaintiff's motion to compel further responses to RFA set one served upon Defendant is GRANTED. Defendant shall provide verified code-compliant further responses to RFA set one, Nos. 1-9, within 60 days.

Plaintiff's motion to have RFA, set one, deemed admitted by Defendant is DENIED WITHOUT PREJUDICE.

Plaintiff's request for monetary sanctions against Defendant and/or defense counsel is GRANTED IN PART.

Monetary sanctions are recoverable against the party engaging in discovery misconduct. (CCP section 2023.030(a).) Misuses of the discovery process include [making without substantial justification, an unmeritorious objection to discovery] and making an evasive response to discovery. (CCP section 2023[.010, subd. (e) and (f)].)

Plaintiff's request for monetary sanctions [for the motion to compel further responses to RFA set one] against Defendant in the reasonable amount (of 4.5 hours at $350 per hour plus $60 filing fee for a total of) $1,635 is GRANTED. Defendant shall pay this amount to Plaintiff within 60 days.

Plaintiff's request for monetary sanctions against defense counsel is DENIED. There are other circumstances that make the imposition of sanctions against defense counsel unjust.

Defendant's request to continue the motion for 60 days to allow defense counsel adequate time to locate Defendant and respond is DENIED. However, the court has allowed Defendant 60 days to provide further responses and pay monetary sanctions considering the circumstances.

The court will prepare the order.

- oo0oo -

Calendar Line 6
Case Name: *Why Systems LLC, et al vs Emodo, Inc, et al.*
Case No.: 23CV420090

Plaintiff Why Systems LLC ("Plaintiff")'s motion to compel further responses to form interrogatories—general ("FI"), Set One, Nos. 12.6, 15.1, 17.1, 50.1, 50.2, 50.3, 50.4 and 50.5 is MOOT. After this motion to compel was filed by Plaintiff on 4/2/2024, Defendant Emodo, Inc. ("Defendant") served further responses to these interrogatories on 4/19/2024. This MOOT order is without prejudice to Plaintiff filing another motion to compel further responses (after a good faith meet and confer) regarding the further responses Defendant served on 4/19/2024 (if they are not code-compliant).

Plaintiff's request for monetary sanctions against Defendant is GRANTED in the reasonable amount of 5 hours at $675 per hour for a total of $3,000. Defendant shall pay this amount to Plaintiff within 20 days of this order.

Plaintiff's request for monetary sanctions against Defendant's "attorney" is DENIED. Plaintiff's notice of motion only says, "Defendant and its attorney" but it did not specify the name of the attorney it sought monetary sanctions against.

Defendant's request for monetary sanctions with respect to this motion is DENIED. Plaintiff (and its counsel) acted with substantial justification in bringing this motion.

The court will prepare the order.

- oo0oo -

Calendar Line 7
Case Name: *HIEN DANG vs Volkswagen Group of America, Inc.*
Case No.: 23CV420424

Plaintiff Hien Dang ("Plaintiff")'s Motion to Compel Volkswagen Group of America ("Defendant")'s Further Responses and Documents to Plaintiff's Requests for Production of Documents ("RPD"), Set One

Plaintiff's motion to compel further responses and production of documents relating to vehicles of the same "make, model, and year" (as Plaintiff's vehicle) and have the same "ELECTRICAL DEFECT" (RPD, set one Nos. 16, 19, 20 and 21) is DENIED. Plaintiff's definition of "ELECTRICAL DEFECT" which includes terms such as "including but not limited to" with ten distinct subparts for alleged "symptoms" ---violate the "reasonable particularity" requirement. (Cal. Code Civ. Proc. ("CCP") § 2031.030(c)(1).) Such definitions are "vastly overbroad" and "make it virtually impossible for the responding party to understand" what documents to produce. (*Putman v. BMW of N. Am., LLC* (C.D. Cal. May 14, 2018) 2018 U.S. Dist. LEXIS 227126 at *4.)

Similarly, Plaintiff's motion to compel further responses and production of documents relating to vehicles of the same "make, model, and year" (as Plaintiff's vehicle) and have the same "DOOR DEFECT" (RPD, set one Nos. 57, 60, 61 and 62) is DENIED. Plaintiff's definition of "DOOR DEFECT" which includes terms such as "including but not limited to" with six distinct subparts for alleged "symptoms"—violate the "reasonable particularity" requirement. (CCP § 2031.030(c)(1).) Such definitions are "vastly overbroad" and "make it virtually impossible for the responding party to understand" what documents to produce. (*Putman v. BMW of N. Am., LLC* (C.D. Cal. May 14, 2018) 2018 U.S. Dist. LEXIS 227126 at *4.)

Moreover, the requested documents (in RPD, set one, Nos. 16, 19, 20, 21, and 57, 60, 61, and 62) are not relevant and proportional for garden variety Lemon Law claims. (See e.g., *Kooner v. BMW of N. Am. LLC* (S.D. Cal. Aug. 17, 2018) 2018 WL 3956021, at *3) [Beverly-Song actions focus "not on other vehicles, [but] on a defendant's conduct towards the subject vehicle")]; *Putman*, 2018 U.S. Dist. LEXIS 227126, 2018 WL 6137160, at *4 ["Under California Law []the relevant evidence need to prove liability under the Song-Beverly Act are records concerning a plaintiff's specific vehicle." (citing *Krotin v. Porche Cars N. Am., Inc*. (1995) 38 Cal.App.4th 294, 303; *Koeper,* 2018 U.D. Dist. LEXIS 227558, 2018 WL 6016915 at *1-2 [requesting all documents related to cars nationwide of same make, model, and year as plaintiff's vehicle overburdensome given limited relevance)].)

Plaintiff's citation to *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138 and *Doppes v. Bently Motors, Inc.* (2009) 174 Cal.App.4th 967 does not change this analysis. Neither of those cases directly addressed a trial court's discovery orders in a lemon law case. *Donlen* finds the trial court did not commit error when it denied the manufacturer's motion in limine to exclude evidence of other customer complaints about the same transmission model in plaintiff's vehicle at issue in that case. *Doppes* examined the trial court's granting of terminating sanctions against the manufacturer for its repeated failure to comply with the trial court's discovery orders. Neither opinion examines a trial court's need to weigh the amount

at issue in any given case against the cost of expansive discovery sought, which this Court is called to do on a motion to compel. (CCP § 2019.030(a)(2) ["The court shall restrict the frequency or extent of use of a discovery method. . . if it determines. . . The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation."].)

Plaintiff's motion to compel further responses and production of documents relating to RPD, set one, Nos. 32, 35, 38, 39 and 42 is DENIED as MOOT. Defendant contends that responsive documents were produced once the protective order was in place. It is unclear what Plaintiff still needs with respect to these requests.

Both sides' Separate Statement are full of boilerplate repetition rather than specific information tailored to each request making them very unhelpful to the court.

Furthermore, this motion may have been avoided if Plaintiff's counsel would call and talk to Defense counsel to meet and confer in good faith, rather than just sending boiler plate letters.

The court will prepare the order.

- oo0oo -

Calendar Lines 8-10

Case Name: *Shiue-Mei Kuo v. Chih-Ling Chou, et al.*
Case No.: 22-CV-407623/23-CV-426568 (consolidated action)

Lines 8 and 10: Motions to Dismiss or Stay Proceedings for Forum Non Conveniens, or in the Alternative, Stay Proceedings under the Court's Inherent Power by Defendants Chih-Ling Chou and Sophia Chou

Line 9: Motion for leave to file First Amended Complaint by plaintiff Shiue-Mei Kuo

Factual and Procedural Background

Case No. 22CV407623 (Lead Case)

This is an action primarily for defamation and emotional distress brought by plaintiff Shiue-Mei Kuo ("Kuo") against defendants Chih-Ling Chou ("Chih-Ling") and Sophia Chou ("Sophia") (collectively, "Defendants").[2]

According to the complaint, plaintiff Kuo, a resident of Taiwan, was employed as a professor at Mingshin University of Science and Technology, a private college also located in Taiwan. (Complaint at ¶¶ 1, 3.) Defendants are residents of Los Altos, California in Santa Clara County. (Id. at ¶¶ 4-5.) Beginning in March 2022, Defendants disseminated various false and misleading statements about Kuo to third parties regarding Kuo's alleged adulterous relationship and describing her as a "bad woman" and a "home-wrecker." (Id. at ¶ 10.) Such statements were sent via text message to her son and posted publicly to the teacher's bulletin board. (Ibid.) As a result of the statements, Kuo was put on an indefinite leave of absence from her duties as a teacher and began suffering depression, anxiety, and other forms of stress. (Id. at ¶¶ 11-12.)

On November 18, 2022, plaintiff Kuo filed a complaint against Defendants alleging causes of action for: (1) defamation; (2) intentional infliction of emotional distress; and (3) tortious interference of contractual relations.

On January 12, 2023, Defendants filed an answer generally and specifically denying allegations of the complaint and asserting affirmative defenses.

Case No. 23CV426568 (Subordinate Case)

This is a related action brought by plaintiffs Cheng-Yuan Hsu ("CY") and Will Hsu ("Will") (collectively, the "HSUs") against Defendants (same defendants as the other action).[3]

According to the FAC, the HSUs are residents of Taiwan and Will is a student attending high school there. (FAC at ¶ 4.) Beginning in March 2022, Defendants disseminated

---

[2] At times, the court refers to some parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

[3] CY is married to Kuo and Will is their son. (First Amended Complaint ["FAC"] at ¶¶ 1, 3.) Defendant Chih-Ling is the mother of defendant Sophia. (Id. at ¶ 2.)

vulgar oral and written statements no less than 50 times relating to his family. (Id. at ¶ 10.) These statements alleged that Kuo interfered in Defendants' marriage and family and that plaintiff CY is not Will's biological father. (Id. at ¶ 11.) Defendants sent these messages with the intent of humiliating and harassing plaintiff Will and his family. (Id. at ¶ 12.)

On February 27, 2024, the HSUs filed a FAC against Defendants setting forth causes of action for: (1) civil harassment; (2) cyberstalking; (3) negligence per se; (4) intentional infliction of emotional distress; and (5) negligent infliction of emotional distress.

Motion to Consolidate

On February 23, 2024, Defendants filed a motion to consolidate the two cases. On April 18, 2024, this court (Hon. Monahan) granted the motion for consolidation designating case number 22CV407623 as the lead case. The action is consolidated for purposes of discovery, hearings, and trial only.

Motions Before the Court

Currently before the court are Defendants' motions to stay or dismiss the proceedings based on forum non conveniens.[4] In the alternative, Defendants request a stay of the proceedings under the court's inherent power. Defendants filed requests for judicial notice in support of the motion. The plaintiffs filed written oppositions. Defendants filed reply papers and objections to evidence.

Also before the court is plaintiff Kuo's motion for leave to file a First Amended Complaint filed on February 28, 2024, in case no. 22CV407623 which was opposed by Defendants.

A further case management conference is scheduled for August 20, 2024.

Motion to Dismiss or Stay Based upon Forum Non Conveniens (case no. 22CV407623)

Defendants move for an order dismissing or staying this action based upon forum non conveniens because the case should be heard in Taiwan, not California.

Timeliness/Prejudicial Delay

In opposition, plaintiff Kuo argues the motion is untimely filed and should be denied. She however concedes there is no law that imposes a time limit on a party's forum non conveniens motion. (See OPP at p. 2:9-10.) This concession is reflected in California law as a defendant who has generally appeared may make a forum non conveniens motion at any time, not only on or before the last day to plead. (*Britton v. Dallas Airmotive, Inc.* (2007) 153 Cal.App.4th 127, 133.)

In the alternative, plaintiff Kuo contends she is prejudiced by the motion as Defendants engaged in discovery prior to filing its motion to challenge California as an inconvenient

[4] Defendants filed separate motions in each case prior to this court's order consolidating the action on April 18, 2024.

forum. (See OPP at pp. 2:20-3:3.) In support, she relies on *Martinez v. Ford Motor Co.* (2010) 185 Cal.App.4th 9 (*Martinez*) for the proposition that:

> "A party abuses the discovery process when it takes advantage of California's laws and legal processes to propound discovery beyond the scope of establishing the grounds for a forum non conveniens motion and then, after getting its discovery, asserts California is an inconvenient forum." (*Martinez, supra*, 185 Cal.App.4th at p. 18.)

Martinez however is distinguishable as defendants in that case propounded more than 1400 pages of written discovery on plaintiffs, whose responses spanned more than 650 pages. (*Martinez, supra,* 185 Cal.App.4th at pp. 12-16.) By contrast, this action involves minimal discovery including only a single set of requests for admissions ("RFA") propounded on plaintiff Kuo back in June 2023. (See Hsu Decl. at ¶ 5, Ex. A.) While these RFA do not assist Defendants in establishing grounds for the instant motion for forum non conveniens, the court finds such requests do not rise to the level of abuse outlined in *Martinez*. Nor does plaintiff Kuo articulate any such prejudice beyond engaging in this limited discovery. Beyond that, any further delay of the motion appears reasonable given efforts by defense counsel to settle this litigation which ultimately proved unsuccessful. (See Yeager Decl. at ¶ 6.) And, this court has a policy of addressing cases on the merits whenever possible. (See *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 [courts have a policy favoring disposition of cases on the merits rather than on procedural grounds].)

Based on the foregoing, the court will address the motion on its merits.

Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support, Defendants request judicial notice of the following:

(1) The original judgment and certified translation from the publicly available August 18, 2023 Civil Judgment of the Taiwan Hsinchu District Court in the case of *Chou v. Kuo et al.* – [2021] S.Z. No. 1048 (Ex. 1);
(2) A publicly available Fact Sheet from the U.S. Department of State dated May 28, 2022, entitled "U.S. Relations With Taiwan" (Ex. 6); and
(3) The fact that Taiwan is a leading democracy, the United States and Taiwan share similar values, and have deep commercial links.

Defendants rely on Evidence Code sections 451, subdivision (f), 452, subdivisions (f)-(h) and 453 in support of their request and contend the request is relevant to arguments raised in connection with the motion. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].) No opposition has been filed to the request.

Accordingly, the request for judicial notice is GRANTED.

Objections to Evidence

In reply, Defendants object to portions of a declaration from plaintiff Kuo's expert, Chi-Jian Sun (aka George Sun) ("Sun"), included with the opposition papers. But, there is no authority for the proposition that a court must rule on evidentiary objections made in connection with a motion other than a motion for summary judgment or an anti-SLAPP motion.

Therefore, the court declines to rule on the evidentiary objections.

Legal Standard

"The doctrine of forum non conveniens is rooted in equity. It allows a court to decline to exercise its jurisdiction over a case when it determines that the case 'may be more appropriately and justly tried elsewhere.' [Citation.]" (*Fox Factory, Inc. v. Super. Ct.* (2017) 11 Cal.App.5th 197, 203 (*Fox Factory*).) The doctrine is reflected in Code of Civil Procedure section 410.30, subdivision (a), which states: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just."

"In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California." (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*).)

"On a motion for forum non conveniens, the defendant, as the moving party, bears the burden of proof. The granting or denial of such a motion is within the trial court's discretion, and substantial deference is accorded its determination in this regard." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

Suitability of Taiwan as a Forum for Trial

In evaluating a forum non conveniens motion, the trial court must make the "threshold" determination of "whether the alternate forum is a 'suitable' place for trial." (*Stangvik, supra,* 54 Cal.3d at pp. 751, 752, fn. 3.) "The availability of a suitable alternative forum for the action is critical… 'In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.' [Citation.]" (*American Cemwood Corp. v. American Home Assurance Co.* (2001) 87 Cal.App.4th 431, 435.)

" '[A] forum is suitable where an action "can be brought," although not necessarily won.' [Citations.]" (*Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1187 (*Hahn*).) "The law does not require that California courts become the depository for nonresident plaintiffs' cases involving causes of action which are not recognized or would not be successful in those plaintiffs' home states. Having been assured of jurisdiction over [defendants] and that there

will be no statute of limitations bar, plaintiffs' remedy is to pursue their causes of action in their home forums and to persuade the trial or appellate courts there to recognize their claims." (*Shiley Inc. v. Super. Ct.* (1992) 4 Cal.App.4th 126, 134.)

"It is well settled under California law that the moving parties satisfy their burden on the threshold suitability issue by stipulating to submit to the jurisdiction of the alternative forum and to waive any applicable statute of limitations." (*Hahn, supra,* 194 Cal.App.4th at p. 1190; see *Stangvik, supra,* 54 Cal.3d at p. 752.) "[W]hen the defendants meet this burden, a burden of production falls on the plaintiffs if they wish to show the alternative forum is nonetheless unsuitable because the action cannot actually be brought there despite the defendants' stipulations." (*Hahn, supra,* at p. 1191.) "If the plaintiffs produce competent and persuasive evidence showing that despite the defendants' stipulations the action cannot be brought in the alternative forum, it is then the defendants' burden to respond with countervailing evidence as they have the ultimate burden of persuasion. [Citation.]" (*Ibid*.) Notably, "by staying the action rather than dismissing it, the court retains the power to verify both that the [foreign] courts accept jurisdiction of the action and that defendants abide by their stipulations. If, for any reason plaintiffs cannot bring their action in [the alternative forum], they may return to California and request that the court lift the stay. [Citations.]" (*Id*. at p. 1192.)

In support, Defendants each submit declarations, signed under penalty of perjury, stating they are citizens of Taiwan, willing to consent to jurisdiction and litigate an action in Taiwan and waive any statute of limitations defense in Taiwan. (See Chih-Ling Decl. at ¶¶ 3, 17; Sophia Decl. at ¶¶ 3, 5.) Defendants also submit an expert declaration from Meng-Han Tsai ("Tsai"), an attorney licensed to practice law in Taiwan. According to her declaration, again signed under penalty of perjury, attorney Tsai opines that: (1) plaintiff Kuo could bring an action in Taiwan for claims alleged in the complaint; (2) Taiwan has laws to address claims for tortious conduct causing injury to someone's reputation, health, and rights; and (3) any such claims brought by Kuo in Taiwan would not be barred by the statute of limitations. (Tsai Decl. at ¶¶ 1, 8, 9, 13, 14, 16, 23.)

In opposition, plaintiff Kuo submits an expert declaration from Sun, an attorney licensed to practice law in Taiwan. (Sun Decl. at ¶ 1.) According to his declaration, signed under penalty of perjury, he states that Taiwan courts would not have jurisdiction even if Defendants consent to jurisdiction in Taiwan. (Id. at ¶¶ 14-21.) In support, Sun directs the court to Taiwan Civil Procedure Law Articles 1 and 15 which govern jurisdictional issues in Taiwan and provide:

> Taiwan Civil Procedure Law Article 1: "A defendant may be sued in the court for the place of the defendant's domicile or, when that court cannot exercise jurisdiction, in the court for the place of defendant's residence.
>
> Taiwan Civil Procedure Law Article 15: "In matters relating to torts, an action may be initiated in the court for the location where the tortious act occurred." (Id. at ¶ 14.)

Attorney Sun also states the statute of limitations would likely bar an action in Taiwan and that courts in Taiwan would be unlikely to agree and enforce any waiver by Defendants. (Sun Decl. at ¶¶ 22-29.)

In reply, attorney Tsai submits a second declaration disputing points raised by attorney Sun in his opposing declaration. Specifically, she states Taiwan would have jurisdiction to hear claims raised by plaintiff Kuo and directs the court to additional portions of Taiwanese law. (Tsai Reply Decl. at ¶¶ 6-19.) Of note, she cites to Article 25 of the Taiwan Code of Civil Procedure which provides: "A court obtains jurisdiction over an action where the defendant proceeds orally on the merits without contesting lack of jurisdiction." (Id. at ¶ 16.) In addition, attorney Tsai reiterates that any claims brought by Kuo in Taiwan would not be barred by the statute of limitations and a waiver of the statute of limitations would be acceptable to courts in Taiwan. (Id. at ¶¶ 20-28.)

Based on the expert declarations, the parties clearly have a difference of opinion on both the interpretation and application of Taiwanese law to the instant action. For example, on the issue of jurisdiction according to Taiwan Civil Procedure Law Article 15, jurisdiction applies to the location where the tortious acts occurred. On the one hand, the alleged defamatory statements occurred in California when Defendants allegedly sent the defamatory messages electronically. On the other hand, the tortious act also occurred in Taiwan as plaintiff Kuo suffered harm as a result of those messages in Taiwan. That said, there is competent evidence before the court that Defendants are willing to consent to jurisdiction in Taiwan and waive any statute of limitations. And, while it is not clear how a court in Taiwan would ultimately resolve those waiver issues, this court, in an abundance of caution, will conclude that the sutitable forum element has been satisfied and now consider the private and public interest factors in connection with the motion.

Private Interest Factors

"The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

As to the private interest factors, Defendants submit a declaration from their counsel which summarizes their position as follows:

> "If this case remains in this California Court, it will be expensive and challenging for Defendants to take depositions and get documents from individual witnesses and institutions in Taiwan—including Mingshin University and Plaintiff's physicians and medical records—because they are not subject to this Court's jurisdiction or subpoena power, because the geographic distance between Taiwan and Santa Clara County is substantial, and also because of the language barrier requiring document translations and interpretation for witnesses." (Yeager Decl. at ¶ 7.)

Here, the court does agree with plaintiff Kuo that some of the deposition costs can be alleviated through the use of videotaped depositions and that both sides would be impacted by expensive translation costs. (See OPP at pp. 10:20-11:5.) But, even though the case would likely involve witnesses and evidence in Taiwan and California, Kuo has not proffered any competent evidence of third-party witnesses and providers in California. (See *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590 ["Matters set forth in points and authorities are not evidence."].) Also, on the issue of enforceability of a judgment coming out of Taiwan, defendant Chih-Ling has admitted in a reply declaration that she has assets in

Taiwan and both Defendants have agreed to be bound a judgment from a court in Taiwan. (See Chih-Ling Reply Decl. at ¶ 8; Chih-Ling Decl. at ¶ 17; Sophia Decl. at ¶ 5.)

Thus, based on the evidence submitted, the court finds the private interest factors weigh in favor of Defendants.

Public Interest Factors

"The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

Here, Defendants contend a jury has little interest in deciding a case about alleged harm by a Taiwan resident, employed in Taiwan based on alleged statements made in Chinese. (See Motion at p. 12:16-19.) In opposition, plaintiff Kuo asserts that California has an interest in deterring misconduct on the part of its residents even when that harm affects a foreign resident. (See OPP at p. 8:1-12.) But, even though Defendants were California residents during events surrounding this litigation, Kuo, as a foreign resident, is not entitled to a presumption of convenience.[5] (*Fox Factory, supra,* 11 Cal.App.5th at p. 205.) Where, as here, a plaintiff resides in a foreign country, the plaintiff's choice of forum is much less reasonable and is not entitled to the same preference as a resident of the state where the action is filed. (*Stangvik, supra,* 54 Cal.3d at p. 755; see *Piper v. Aircraft Co. v. Reyno* (1981) 454 U.S. 235, 255-256 [approving of distinction between a resident plaintiff's choice of home forum and a foreign plaintiff's choice, which "deserves less deference"].) Furthermore, "California courts…have little or no interest in litigation involving injuries incurred outside of California by nonresidents. It seems unduly burdensome for California residents to be expected to serve as jurors on a case having so little to do with California." (*Hansen v. Owens-Corning Fiberglas Corp.* (1996) 51 Cal.App.4th 753, 760 ; accord, *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1467.) Thus, the public factors also weigh in favor of Defendants.

As a final point, the court recognizes that both sides may suffer a degree of inconvenience and expense from litigating the case in the forum preferred by the other side. But, as the California Supreme Court has previously made clear, "these problems are implicit in many cases in which forum non conveniens motions are made, and it is for the trial court to decide which party will be more inconvenienced." (*Stangvik, supra,* 54 Cal.3d at p. 763.)

Because the balancing in this case does not clearly favor California, the motion to dismiss or stay based on forum non conveniens is GRANTED. Rather than dismiss the action, the court stays the consolidated action to allow for litigation to be filed in Taiwan. If plaintiff Kuo is unable to bring her action in Taiwan, she may return to California in order to lift the stay. Having granted the motion, the court declines to consider the alternative motion for stay under the court's inherent power.

Plaintiff's Request to Conduct Discovery

[5] Defendant Sofia currently resides in the State of Maryland. (Sophia Decl. at ¶ 3.)

Plaintiff Kuo's request to conduct discovery is DENIED. The request fails to explain exactly what discovery is needed and how it will impact the motion to dismiss or stay based on forum non conveniens.

Motion to Dismiss or Stay Based upon Forum Non Conveniens (case no. 23CV426568)

The motion to dismiss or stay based on forum non conveniens is GRANTED for the same reasons stated above.

Motion for Leave to File Fist Amended Complaint (case no. 22CV407623)

Considering the above rulings, plaintiff Kuo's motion for leave to file a First Amended Complaint is MOOT.

Disposition

The motions to dismiss or stay based on forum non conveniens are GRANTED. The consolidated action is hereby STAYED to allow for litigation to be filed in Taiwan. If plaintiffs are unable to bring an action in Taiwan, they may return to California in order to lift the stay.

The requests to conduct discovery are DENIED.

Considering the above rulings, plaintiff Kuo's motion for leave to file a First Amended Complaint is MOOT.

The court will prepare the Order.

- oo0oo -- oo0oo -- oo0oo -

Calendar line 11

- oo0oo -

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -