

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 6**

**Honorable Evette D. Pennypacker, Presiding**

David Criswell, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2160

**DATE: September 26, 2024      TIME: 9:00 A.M.**

**RECORDING COURT PROCEEDINGS IS PROHIBITED**

**FOR ORAL ARGUMENT:** Before 4:00 PM today you must notify the:

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

**FOR APPEARANCES:** The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**FOR COURT REPORTERS:** The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

[https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml)

**FOR YOUR NEXT HEARING DATE:** Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

<https://reservations.scscourt.org/>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
2	22CV396854	Rajaa Sonai et al vs 3375 Camino City Square, LLC et al	Defendants' motion for attorneys' fees is DENIED WITHOUT PREJUDICE. Defendants' motion ignores that the individual Plaintiff's case remains set for trial in November. The motion does not (and the Court believes could not) differentiate between fees spent defending the dismissed entity Plaintiffs' claims from those spent defending the individual Plaintiff's claims. Instead, the motion appears to seek all fees Defendants have expended to defend the case from its initiation to the present. Thus, the motion is, at best, premature. Court to prepare formal order.
3	22CV403128	Maritza Bolanos vs Lily Li	<p>Defendant's motion for terminating sanctions is DENIED. Code of Civil Procedure section 2031.310(i) provides: "if a party fails to obey an order compelling further [discovery] responses, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." (See also <i>Department of Forestry &amp; Fire Protection v. Howell</i> (2017) 18 Cal.App.5th 154.) The trial court has broad discretion to impose discovery sanctions; a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason." (<i>Rutledge v. Hewlett-Packard Co.</i> (2015) 238 Cal.App.4th 1164, 1191.) However, a sanction should not provide a windfall to the other party by putting that party in a better position than it would have been in if the party had obtained the discovery. (<i>Kwan Software Eng'g, Inc. v. Hennings</i> (2020) 58 Cal.App.5th 57, 74-75.) The basic purpose of a discovery sanction is to compel disclosure of discoverable information. (<i>Rutledge</i>, 238 Cal.App.4th at 1193.) Sanctions may not be imposed solely to punish the offending party. (<i>Id.</i>; <i>Kwan</i>, 58 Cal.App.5th at 74-75.)</p> <p>Here, in the face of this motion, Plaintiff finally came into compliance with the Court's discovery orders and provided a detailed account of the reason for the prior delay. Plaintiff's counsel avers that Plaintiff is in and out of treatment and was homeless and unreachable for a period of time. Thus, the drastic remedy of terminating sanctions would be inappropriate on this record. However, the record is devoid of any evidence that Plaintiff's counsel communicated these problems to Defendant until after this motion was filed. The Court thus finds it appropriate to impose \$950 in sanctions jointly and severally against Plaintiff and Plaintiff's counsel to be paid within 30 days of service of the formal order. Plaintiff is also cautioned that further failure to comply with the Court's discovery orders may result in more severe sanctions. Court to prepare formal order.</p>
4	23CV409691	In re: Quality Loan Service Corp. vs 500 W Middlefield Unit 69, Mountain View, Ca. 94043	Peter T. Cox's motion for claim and distribution of excess surplus proceeds on deposit with the Court is GRANTED. Moving party to prepare formal order.
5	18CV338320	American Express National Bank f/k/a American Express Centurion Bank vs Bao Nguyen	Plaintiff's motion to amend acknowledgement of satisfaction of judgment nun pro tunc is GRANTED. Moving party to prepare formal order.

7	21CV381925	San Jose Demolition, Inc. vs Silicon Valley Group, Inc.	Joseph M, Sweeny, William M. Kaufman, and Sweeny Mason LLP's motion to withdraw as counsel for SV Group, Inc. and SVG Contractors, Inc. are GRANTED for this case. A company, regardless of corporate form, cannot represent itself in civil litigation in California. (See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 (“[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent.”); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 (“The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court.”); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978) 21 Cal. 3d 724, 727 (“the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.”) Accordingly, on February 27, 2025 at 10:00 a.m. in Department 6, SV Group, Inc. and SVG Contractors, Inc. are ordered to appear and show cause why their answers should not be stricken and default be entered against them for failure to obtain counsel. Court to use proposed orders on file.
8	21CV390954	Brenda Reyes vs Rosie McCann's, Inc	Defendant Rosie McCann's, Inc.'s motion for summary judgment is GRANTED. A notice of motion with this hearing date and time was served on Plaintiff by electronic mail on June 26, 2024. Plaintiff did not oppose the motion. “[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious.” ( <i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Unbiased third party evidence from first responders establishes that Plaintiff did not sustain injuries in Defendant's premises; to the extent Plaintiff sustained injuries, such injuries were sustained outside of Defendant's establishment. Accordingly, summary judgment against Plaintiff and for Defendant is appropriate. Moving party to promptly prepare formal order and form of judgment.
9	22CV393667	Republic Metropolitan LLC vs City of Santa Clara	Defendant City of Santa Clara's motion for attorneys' fees is GRANTED. The Court's findings in its July 18, 2023 order that (a) the City is entitled to attorneys' fees under the parties' agreement and Civil Code section 1717 and (b) that counsel's rates are appropriate for this County and case type are equally applicable here. Thus, the only issue is the amount of fees sought. After review of the billing entries attached to the Declaration of Brendan F. Macaulay and the appellate record, the Court finds that they are. Plaintiff heavily litigated this matter on appeal, including soliciting amicus briefs. However, the Court finds the amount sought for the briefing on the attorneys' fee motion inappropriate both because it is based in part on estimates and the number of hours spent was excessive. Accordingly, the Court awards the City \$196,175.45 in attorneys' fees. Court will prepare formal order. Moving party to promptly prepare amended judgment.
11-12	23CV413225	Bejac Corporation vs SV Group, Inc. et al	Joseph M, Sweeny, William M. Kaufman, and Sweeny Mason LLP's motion to withdraw as counsel for SV Group, Inc. and SVG Contractors, Inc. are GRANTED for this case. A company, regardless of corporate form, cannot represent itself in civil litigation in California. (See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 (“[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent.”); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 (“The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court.”); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978) 21 Cal. 3d 724, 727 (“the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.”) Accordingly, on February 27, 2025 at 10:00 a.m. in Department 6, SV Group, Inc. and SVG Contractors, Inc. are ordered to appear and show cause why their answers should not be stricken and default be entered against them for failure to obtain counsel. Court to use proposed orders on file.

14	23CV421136	Louie Ranch vs. SVG Contractors, Inc.	Joseph M, Sweeny, Scott A. Mangum, and Sweeny Mason LLP's motion to withdraw as counsel for SV Group, Inc. and SVG Contractors, Inc. are GRANTED for this case. A company, regardless of corporate form, cannot represent itself in civil litigation in California. (See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 (“[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent.”); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 (“The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court.”); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978) 21 Cal. 3d 724, 727 (“the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.”) Accordingly, on February 27, 2025 at 10:00 a.m. in Department 6, SV Group, Inc. and SVG Contractors, Inc. are ordered to appear and show cause why their answers should not be stricken and default be entered against them for failure to obtain counsel. Court to use proposed orders on file.
15	23CV422193	Rachael Menchaca vs. Kayla Chong-Flores, et. al.	Stacey R. Cutting and Bish & Cutting APC's motion to withdraw as counsel for Rachel Menchaca is GRANTED. A case management conference is set for January 7, 2025 at 10:00 a.m. in Department 6. Court to use form of order on file.
18	24CV431624	Gilberto Gurrola vs. Joseph Giberson	Defendant's motion to strike is GRANTED WITH 20 DAYS LEAVE TO AMEND. Scroll to line 18 for complete ruling. Court to prepare formal order.
19	24CV433453	Laura Seto vs. Jacob Midkiff	Plaintiff's motion to reclassify from limited to unlimited jurisdiction is GRANTED. Case law teaches a party seeking to reclassify “must present evidence to demonstrate a <i>possibility</i> the damages will exceed \$ 25,000. The trial court, without adjudicating the merits of the underlying case, should review the record to determine whether a judgment in excess of \$ 25,000 is obtainable. If a jurisdictionally appropriate verdict may result, (i.e., if such a verdict is not virtually unobtainable) the court should grant the motion to reclassify the case as “unlimited.” Concomitantly, the court may deny the motion only where it appears to a legal certainty that the plaintiff's damages will <i>necessarily be</i> \$ 25,000 or less.” ( <i>Ytuarte v. Superior Court</i> (2006) 129 Cal. App. 4th 266, 279.) Applying this standard, the Court finds it would be error to deny this motion. Plaintiff's declaration explains that her pain has increased since first filing the lawsuit. This, coupled with the claimed damages thus far, prevents the Court from finding a verdict in excess of \$25,000 is “virtually unobtainable.” Accordingly, Plaintiff's motion is granting. Court to prepare formal order.

**Calendar Line:** 18

**Case Name:** *Gilberto Morale Gurrola v. Joseph Bruce Giberson*

**Case No.:** 24CV431624

Before the Court is Defendant, Joseph Bruce Giberson’s (“Giberson”) motion to strike punitive damage allegations and prayer from Plaintiff’s first amended complaint (“FAC”). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

## **I. Background**

This action arises from an automobile accident. According to the FAC, on March 11, 2022, both parties were travelling southbound on highway 101, where Defendant rear-ended Plaintiff’s vehicle. Plaintiff alleges Defendant was operating his vehicle while intoxicated and at excessive speeds. (FAC, ¶¶ 8-9.) Plaintiff further alleges that, prior to the collision, Defendant consumed quantities of alcohol knowing that he had to operate his vehicle for a substantial distance, and Defendant’s BAC exceeded the limit to operate a motor vehicle. (FAC, ¶¶ 36-37.)

Plaintiff initiated this action on February 22, 2024, and filed his FAC on July 8, 2024, alleging causes of action for (1) negligence, (2) willful misconduct, and (3) intentional infliction of emotional distress.

## **II. Legal Standard**

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. (Code Civ. Proc., § 436.) 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.) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are ‘false’ or ‘sham.’” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

### III. Analysis

Defendant moves to strike Plaintiff's punitive damages claim and prayer.

First, the following statement in Plaintiff's opposition is incorrect: "Upon considering both Plaintiff's motion and Defendant's opposition, this Court granted Plaintiff's Motion for Leave to File a First Amended Complaint, holding that 'the proposed First Amended Complaint alleges conduct by Defendant which is the type of conduct necessary for the imposition of punitive damages as a matter of law.'" This is the Court's complete July 2, 2024 ruling:

Plaintiff's motion for leave to file a first amended complaint came on for hearing before the Court on July 2, 2024. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on July 1, 2024. No party appeared to contest the tentative and it is accordingly formally adopted below. Plaintiff's motion for leave to file a first amended complaint adding causes of action for willful misconduct and intentional infliction of severe emotional distress and to seek punitive damages is GRANTED.

"It is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (*Guidery v. Green*, 95 Cal. 630, 633; *Marr v. Rhodes*, 131 Cal. 267, 270. If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson v. Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton v. Bassett*, 158 Cal. 425, 427.)" (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend).

Here, the parties have not attended the initial case management conference. The request is therefore timely and will not prejudice **Defendant, who is still able to challenge the amended pleading.**

Plaintiff is ordered to file the amended complaint as a separate document within 10 calendar days of service of this formal order. (Emphasis added.)

The Court did not rule that Plaintiff's proposed amended complaint stated a claim for punitive damages as a matter of law. In fact, as plainly seen above in the highlighted text, the Court ruled Defendant could challenge this pleading. The Court cautions Plaintiff to be more assiduous about their representations of the record in the future.

Next, "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.)

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages." (*Monge v. Super. Ct.* (1986) 176 Cal.App.3d 503, 510.)

"Where nonintentional torts involve conduct performed without intent to harm, punitive damages may be assessed 'when the conduct constitutes conscious disregard of the rights or safety of others.' '[A] conscious disregard of the safety of others may [thus] constitute malice within the meaning of section 3294 of the Civil Code. In order to justify an award of punitive damages on this

basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.’ Consequently, to establish malice, ‘it is not sufficient to show only that the defendant’s conduct was negligent, grossly negligent, or even reckless.’” (*Bell v. Sharp Cabrillo Hosp.* (1989) 212 Cal.App.3d 1034, 1044 (*Bell*).

The California Supreme Court addressed the issue of punitive damages in the context of drunk driving in *Taylor v. Superior Court* (1979) 24 Cal.3d 890 (*Taylor*), which involved a defendant who was intoxicated when he hit another car and injured the driver. (*Id.* at p. 893.) The allegations included defendant’s other drunk driving accidents, arrests, and incidents. (*Ibid.*) Additionally, at the time of the accident, the defendant had just completed a period of probation for a drunk driving conviction. (*Ibid.*) The court found the allegations sufficient to support a claim for punitive damages because they supported knowledge and disregard of probable injury to others. (*Id.* at p. 900.) However, the *Taylor* Court did not hold that punitive damages are always appropriate in cases involving driving while intoxicated as it noted, “we have concluded that the act of operating a motor vehicle while intoxicated *may* constitute an act of ‘malice’ under [Section 3294] *if* performed *under circumstances* which disclose a conscious disregard of the probable dangerous consequences.” (*Id.* at p. 892, emphasis added.)

The rationale in *Taylor* was discussed and interpreted in *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 88 (*Dawes*). In *Dawes*, the defendant drove at a high speed, while zigzagging through traffic, in the middle of the afternoon, and in locations of high pedestrian and vehicle traffic. (*Id.* at p. 88.) The appellate court found the circumstances constituted more than “ordinary driving while intoxicated.” (*Id.* at p. 89.) It reasoned, “[t]he risk of injury to other from ordinary driving while intoxicated is certainly foreseeable, but it is not necessarily probable,” and punitive damages may be warranted where the circumstances surrounding the defendant’s decision to drive while intoxicated made the risk of harm to others probable. (*Ibid.*)

Based on *Taylor* and *Dawes*, it is clear not every collision involving driving after drinking alcohol will support malice and oppression. Malicious and oppressive conduct in such a circumstance can be alleged where there are sufficient supporting facts pleaded which demonstrate that “the



defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (*Taylor, supra*, 24 Cal.3d at p. 895-896.) Malice can be alleged expressly or implicitly through specific facts showing dangerous driving, such as driving at high speeds near pedestrians. (*Dawes, supra*, 111 Cal.App.3d at p. 90.)

The FAC fails to meet the required standard here. Plaintiff repeatedly alleges Defendant “knowingly and intentionally consumed quantities of alcohol prior to operating his vehicle”. Plaintiff also alleges Defendant drove too fast, failed to brake or take other precautions, and Defendant “knew that he was substantially physically and mentally impaired by reason of alcohol consumption and/or ingestion of controlled substances. Defendant’s BAC exceeded the limit to operate a motor vehicle.” These conclusory allegations fall far short of those in *Taylor* and *Dawes*. Plaintiff fails to allege what “quantities of alcohol” means or how Defendant “knew he was substantially physically and mentally impaired by reason of alcohol consumption and/or ingestion of controlled substances” as in *Taylor*. Nor does Plaintiff allege the type of driving alleged in *Dawes*.

Accordingly, Defendant’s motion to strike is GRANTED with 20 days leave to amend.