September 12, 2025
Dept. 9
Tentative Rulings

1.	**22CV1072**	**ZAMAYA v. HEAGY CONSTRUCTION IMPROVEMENTS**
Motion for Attorney Fees		

Plaintiff Salvador Zamaya was a former employee of Heagy Construction Improvements, Inc. (Heagy). During the course of his employment, Zamaya and Heagy entered into a contract whereby Zamaya borrowed money from his employer and agreed to a repayment plan. The contract contained an attorney's fees provision. Zamaya was later terminated for poor work performance and defaulted on his payments to Heagy. He sued Defendant on May 25, 2022 claiming that he was terminated in retaliation for requesting mileage reimbursement.

Heagy filed a Cross-Complaint on November 9, 2022. The Cross-Complaint was for breach of a contract to repay Heagy for loaning Zamaya money to purchase a car. Zamaya did not repay the loan in the amount of $4,750 plus costs and late fees.

The matter was tried on June 10, 2025, in Dept. 9 of the above-entitled Court. Plaintiff/Cross-Defendant failed to appear and thus waived his right to a jury trial. Defendant and its counsel were present in Court and presented their evidence. The Court issued ruling in Heagy's favor - dismissing the Complaint against them and entering judgment in their favor on the Cross-Complaint against Zamaya. (See Minute Order dated June 20, 2025 attached as Exhibit "A" to the Kramer Decl.)

Cross-Complainant and Defendant Heagy Construction Improvements, Inc. respectfully requests that the Court award it $11,887.50 in attorney's fees and $585 in statutory costs and amend the Judgment (being submitted concurrently with the motion) to reflect its award of fees and statutory costs in the foregoing amounts. The Court finds that Cross-Complainant/Defendant Heagy was the prevailing party and that their fees and costs are reasonable.

TENTATIVE RULING #1:

HEAGY CONSTRUCTION IMPROVEMENTS, INC.'S MOTION FOR ATTORNEY FEES AND COSTS IS GRANTED. PLAINTIFF IS ORDERED TO PAY HEAGY CONSTRUCTION IMPROVEMENTS, INC $11,887.50 IN ATTORNEY'S FEES AND $585 IN COSTS. THESE SHALL BE INCLUDED IN AN AMENDED JUDGMENT, WHICH DEFENDANT IS ORDERED TO PREPARE.

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).

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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**23CV2062**	**DESTINY v. PATRICK K. WILLIS COMPANY**
Preliminary Approval of PAGA Settlement		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be subject to sanctions under Local Rule 7.12.13.

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit 1 to Declaration of Raul Perez, dated July 23, 2025.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$260,000
Attorney's Fees not to exceed one third of Gross Settlement Amount	$86,667
Litigation Costs (not to exceed)	$13,110.96
Administrator Costs (not to exceed)	$4,000
PAGA Payment to Labor Workforce Development Agency	$117,166.53
Net Settlement Amount:	$39,055.51

The class includes approximately 350 aggrieved employees, for the settlement period of September 22, 2022 through December 19, 2024. The Settlement Administrator will perform the following calculation to calculate individual payments: Settlement Payment = (25% of PAGA Penalties Fund) × (pay periods worked by individual Aggrieved Employee during the Settlement Period ÷ total pay periods worked by all Aggrieved Employees during the Settlement Period). The Settlement includes a limited release of PAGA penalties, so no individual wage and hour claims will be extinguished.

TENTATIVE RULING #2: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 12, 2025, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3.	**24CV2106**	**BAZEMORE v. BYC ENTERPRISES et al**
Attorney Withdrawal		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client has rendered it unreasonably difficult for the lawyer to effectively carry out representation and the client has breached a material term of an agreement.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client and parties who have appeared in the case. Proof of service of the motion on counsel for Defendants was filed on July 21, 2025. There is no proof of service showing notice was provided to the client.

A Case Management Conference is currently scheduled on November 18, 2025, and the date is not listed on the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #3:

APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4.	**25CV1130**	**EL DORADO COUNTY ANIMAL SERVICES V. LANSOM**
Motion to Modify Order for Dangerous Dog		

TENTATIVE RULING #4:

APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5.	**PC20180406**	**FLOURNOY v. CJS SOLUTIONS GROUP et al**
Preliminary Approval of Class Action Settlement		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions under Local Rule 7.12.13.

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit A to Declaration of Kevin Mahoney, dated May 14, 2025.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$1,000,000
Attorney's Fees not to exceed one third of Gross Settlement Amount	$333,333.33
Litigation Costs (not to exceed)	$100,000
Administrator Costs (not to exceed)	$4,500
PAGA Payment to Labor Workforce Development Agency	$15,000
PAGA Payment to Class Members	$5,000
Plaintiff's Service Award (one named Plaintiff)	$1,000
Net Settlement Amount:	$541,166.67

The class period covers August 9, 2014 through the date of preliminary approval and the class includes approximately 96 individuals.

TENTATIVE RULING #5: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 12, 2025, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

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6.	**PC20200191**	**GREEN et al v. SNIPES CONSTRUCTION et al**
Contesting Good Faith Settlement		

On July 8, 2025, Defendant/Cross-Complainant Snipes Construction Inc. and Tim Andrew Snipes ("Defendant") filed an Application for Determination of Good Faith Settlement. The settlement includes all parties except for Bonar Engineering, Inc. ("Bonar"), who opposes the settlement.

On August 26, 2025, Defendant filed a Notice of Withdrawal of Application for Good Faith Settlement, which seemingly would moot the pending motion. That same day, Defendant filed a Motion for Good Faith Settlement to address the same proposed settlement. Then, on September 8, 2025, Plaintiff filed a dismissal of Defendant.

It is not clear to the court what the status of the case is nor whether any motions remain pending, given the dismissal. The court orders appearances to resolve these issues and to determine how to address the good faith settlement, if still pending.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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7.	**25CV0901**	**KIMBRIEL v. CISCOE et al**
Motion to Compel		

Plaintiff Janeen Kimbriel (the "Plaintiff") moves for an Order that Defendant Chelsea M. Cisco (the "Defendant")—(1) provide further responses to the Plaintiffs' First Set of Form Interrogatories, Nos. 15.1, and 17.1; (2) provide further responses to the Plaintiff's First Set of Special Interrogatories Nos. 1, 2, 3, 5, and 6; (3) provide further responses to the Plaintiff's First Set of Requests for Production Nos. 1-7, (4) for reimbursement/sanctions against the Defendant and his counsel, jointly and severally, in the amount of no less than $5,260—under Code of Civil Procedure ("CCP") §§ 2023.010, 2023.030, and 2033.290.

On April 28, 2025, the Plaintiff served the Defendant with her first set of discovery, including Form Interrogatories, Special Interrogatories, Requests for Admission, and Requests for Production. (Underwood Dec., ¶ 5.) Among other things, the Discovery sought documents and information about the Defendant's acquisition of his ownership interests in the Property, monetary contributions to the Property, improvements to the Property, and agreements made related to the Property. Plaintiff argues that such documents and information are directly relevant to the allegations of the Plaintiff's Verified Complaint, essential to resolving this dispute, and probative of the ultimate issues in this matter. Originally, the Defendant's discovery responses were due on May 30, 2025. Later, on May 21, 2025, however, the Plaintiff provided the Defendant with an extension to respond to the discovery to June 13, 2025. (Underwood Dec., ¶ 6, Exh. 2.) Then again, on June 13, 2025, the Plaintiff provided the Defendant with another extension to respond until June 20, 2025. (*Id*.) On June 20, 2025, the Defendant provided their responses to discovery, which included a number of boilerplate objections. (Underwood Dec., Exh. 4-6.) The parties did unsuccessfully engage in meet and confer discussions.

This case involves partition, where Defendant alleges she is the sole 100% owner of the property, but fails to provide documents or evidence supporting her contention. Based on the allegations and the issues involved in this case, the Court finds that Defendant is compelled to provide further responses as requested in the Motion.

Defendant opposes the Motion, arguing that it is untimely as it was not filed within 45 days of service of verified responses. However, the parties were engaged in meet and confer efforts and Plaintiff was seeking to offer extensions to Defendant in order to amend the responses.

Counsel requests sanctions in the amount of $5,260.00, based on a $60 filing fee and attorney's fees of 10.5 hours billed at $500 per hour, for an associate licensed only since 2024. The Court finds that not only is the hourly rate unreasonable, but so is the amount claimed. Counsel requests 5.5 hours for preparing the Motion, 4 hours of anticipated time for reviewing

an Opposition and prepare a Reply, and 1 hour for appearance at the hearing. The Court awards the $60 filing fee, along with 4 hours of attorney time for preparing the Motion at $325 per hour, for a total of $1,360.00.

TENTATIVE RULING #7:

1. **MOTION TO COMPEL IS GRANTED.**
2. **SANCTIONS IN THE AMOUNT OF $1,360.00 AWARDED TO PLAINTIFF, PAYABLE BY DEFENDANT BEFORE NOVEMBER 12, 2025.**

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8.	**PC20210448**	**STUART v. CORDANO**
Determination of Good Faith Settlement		

Upon review of the file, the court finds that the pending motion for good faith settlement is unopposed and that the *Tech-Bilt* factors are sufficiently met. As such, the court finds good cause to grant the motion.

The court notes that the parties also are in court the same day regarding an Issues Conference regarding the upcoming trial on September 23, 2025. The court notes that the Issues Conference originally was set at 1:30 p.m. Due to judicial unavailability in the afternoon, the court has reset the hearing to 8:30 a.m. All parties still remaining in the case are ordered to appear for the Issues Conference on September 12, 2025 at 8:30 a.m. in Dept. 9.

TENTATIVE RULING #8:

THE COURT GRANTS THE MOTION FOR GOOD FAITH SETTLEMENT. APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE REGARDING THE ISSUES CONFERENCE.

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9.	**24CV2788**	**GEORGETOWN DIVIDE v. ALL PERSONS INTERESTED**
Motion for Entry of Judgment		

Pursuant to Government Code section 53739, subdivision (a) and (b), and Code of Civil Procedure sections 860 et seq., Plaintiff Georgetown Divide Public Utility District moves for an entry of a validation judgment against ALL PERSONS INTERESTED IN THE MATTER OF RESOLUTION NO. 2024-50, A RESOLUTION OF THE GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT ADOPTING RATES AND CHARGES FOR WATER AND WASTEWATER SERVICE, AND TAKING OTHER ACTIONS RELATING THERETO ("Defendants"). The Motion is unopposed.

TENTATIVE RULING #9:

APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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10.	**24CV0344**	**MORRIS v. MATAGRANO et al**
Attorney Withdrawal & Issue Sanctions		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown of the attorney-client relationship and the attorney has been unable to locate the client.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. There is no proof of service on file.

A Case Management Conference is currently scheduled on December 9, 2025, and the date is not listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e), as it was not yet scheduled at the time the Order was filed. Counsel is required to file an amended proposed Order.

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At the hearing on August 1, 2025, the Court denied Defendant's Motion for Terminating Sanctions, and upon its own Motion, the Court set the case for a hearing on Issue Sanctions.

TENTATIVE RULING #10:

APPEARANCES REQUIRED ON FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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11.	24CV0536	RANDOLPH v. AMERICAN HONDA MOTOR
Motion for Summary Judgment		

Pursuant to Code of Civil Procedure section 437c, defendant American Honda Motor Company, Inc. ("defendant") moves for summary judgment or, in the alternative, summary adjudication, on plaintiff Bryan Randolph's ("plaintiff") complaint.

The hearing on defendant's motion was originally set for May 2, 2025. On April 17, 2025, the court granted plaintiff's ex parte application to continue the hearing to July 11, 2025, and ordered that any responsive pleadings to defendant's motion must be filed and served by May 14, 2025. On June 27, 2025, plaintiff filed an untimely opposition,[1] wherein plaintiff requested another continuance under Code of Civil Procedure section 437c, subdivision (h) on the grounds that certain discovery responses from defendant remained outstanding. On June 30, 2025, defendant filed a timely reply.

At the hearing on July 11, the court granted plaintiff's request for a continuance under Code of Civil Procedure section 437c, subdivision (h). On July 28, 2025, the parties selected a new hearing date and the court set a supplemental briefing schedule. To date, neither party has filed any supplemental briefing.

1. Preliminary Matter

A party opposing a summary judgment or summary adjudication motion must file with the opposition papers a separate statement that responds to each of the material facts the moving party contends are undisputed. (Code Civ. Proc., § 437c, subd. (b)(3).) The statement must indicate whether the opposing party agrees or disagrees that those facts are undisputed and must set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each of these material facts must be followed by a reference to the supporting evidence. (*Ibid.*) The separate statement is not merely a technical requirement but is an indispensable part of the summary judgment or summary adjudication process. (*Whitehead v. Habig* (2008) 163 Cal.App.4th 896, 901–902.)

When the opposing party files a deficient separate statement, the judge may treat the opposing party's failure to comply with the requirement of a separate statement as a sufficient ground for granting the motion for summary judgment or adjudication. (Code Civ. Proc., § 437c, subds. (b)(3), (f)(2).)

In this case, defendant submitted a total of 40 proposed undisputed facts with its moving papers. With respect to 35 of the proposed undisputed facts, plaintiff failed to indicate whether he agrees or disagrees that those facts are undisputed. For these 35 proposed undisputed facts,

[1] Defendant objected to the untimely opposition. However, on June 11, 2025, the court overruled defendant's objection and exercised its discretion to consider the untimely opposition on the merits.

plaintiff responds with blanket objections and legal argument only. (See *California Sch. Of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22 [a separate statement that consists only of legal conclusions, unsupported assertions, and the attorney's opinions, and that purports to dispute the moving party's statement of material facts without reference to any evidence, is totally deficient].) Because plaintiff does not cite to any supporting evidence that would dispute the 35 proposed material facts, the court deems such facts as undisputed. (Code Civ. Proc., § 437c, subd. (b)(3).)

2. Background

Plaintiff's "Lemon Law" complaint asserts four causes of action against defendant for breach of express and implied warranties under the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq.)

On May 3, 2020, plaintiff bought a new 2019 Honda Ridgeline from Mistlin Honda. (Def.'s Separate Stmt. of Undisputed Material Fact ("UMF") No. 1.) The vehicle was accompanied by (1) a three-year 36,000-mile basic overage, (2) a three-year 50,000-mile California Emissions basic coverage, and (3) a five-year 60,000-mile powertrain coverage. (Def.'s UMF No. 2.)

On December 30, 2022, plaintiff presented the vehicle to defendant at the Shingle Springs Honda facility. (Def.'s UMF Nos. 4–5; Pltf.'s UMF No. 15.) Plaintiff reported that the check emissions and transmission problem lights were on and that the vehicle had a hard time shifting from first to second gear (the "Stalling Issue").[1] (Def.'s UMF No. 4; Pltf.'s UMF No. 15.) During this visit, defendant checked the vehicle's system and found Diagnostic Trouble Code P0848 and replaced the third gear pressure switch. (Def.'s UMF No. 5.) Defendant completed the replacement of the third gear pressure switch within four days of December 30, 2022. (Def.'s UMF No. 38.)

Other than the December 30, 2022, repair visit, no other warranty repairs were performed on the vehicle during plaintiff's ownership of the vehicle. (Def.'s UMF No. 26.) And, after the December 30, 2022, repair visit, plaintiff did not complain of or experience the Stalling Issue. (Def.'s UMF No. 7.)

Plaintiff makes the blanket claim that, "Defendant attempted warranty repairs on at least two (2) occasions" (Pltf.'s UMF No. 17), without specifying the dates. According to plaintiff's UMF, the only two dates that plaintiff presented the vehicle to defendant were June 27, 2020 (see Pltf.'s UMF No. 14), and December 30, 2022 (see Pltf.'s UMF No. 15). Regarding the June 2020 visit, plaintiff claims, "with 1,543 miles on the odometer, Plaintiff presented the Vehicle to Defendant's authorized repair facility for repairs to a punctured passenger rear tire. The technician removed the road hazard and patched and reinstalled the tire." (Pltf.'s UMF No. 14.)

[1] The Stalling Issue is the only complaint pertaining to the vehicle that plaintiff alleges in this lawsuit. (Def.'s UMF No. 37.)

Plaintiff also claims he "observed that the issue referenced immediately above [the Stalling Issue referenced in plaintiff's RJN No. 12] occurred dozens of times, particularly during a roughly four-week period about two years after he purchased the Vehicle." (Pltf.'s RJN No. 13.)

3. Evidentiary Objections

Plaintiff raises the same objections (without providing any supporting argument or citation to legal authority for said objections) to all but five of defendant's 40 proposed undisputed facts: rule of completeness, best evidence rule, hearsay, and "speaks for itself" (i.e., plaintiff's complaint speaks for itself; plaintiff's purchase agreement speaks for itself). The court overrules each and every objection.

4. Legal Principles

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*) There is a triable issue of material fact if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of plaintiff. (*Ibid.*)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

5. Discussion

5.1. First C/A for Violation of the Replace or Reimburse Provisions of Civil Code Section 1793.2(d)

"A plaintiff pursuing an action under the [Song-Beverly Warranty] Act has the burden to prove that (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not

repair the nonconformity after a reasonable number of repair attempts (the failure to repair element). [Citations.]" (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101.)

A minimum of two opportunities must be given to qualify as satisfying the presentation element (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1208–1209), unless only a single attempt at repair was possible because of a subsequent malfunction and destruction of the vehicle, or where the manufacturer refuses to attempt to repair the vehicle. (See *Bishop v. Hyundai Motor America* (1996) 44 Cal.App.4th 750, 753–754 [manufacturing defect resulted in a fire damaging the vehicle beyond reasonable repair]; *Gomez v. Volkswagen of America, Inc.* (1985) 169 Cal.App.3d 921, 923 [defendants refused to repair a fire-damaged vehicle, contending that the fire was not the result of a "defect" within the meaning of the warranty].)

Defendant argues it is entitled to judgment as a matter of law because plaintiff did not present the vehicle to defendant for repair at least two times. The court finds the defendant has met its initial burden on this issue. Thus, the burden shifts to plaintiff to show a triable issue of material fact.

Plaintiff makes the blanket claim that, "Defendant attempted warranty repairs on at least two (2) occasions" (Pltf.'s UMF No. 17), without specifying the dates. But this is a conclusory statement. According to plaintiff's UMF, the only two dates that plaintiff presented the vehicle to defendant were June 27, 2020 (see Pltf.'s UMF No. 14), and December 30, 2022 (see Pltf.'s UMF No. 15). Regarding the June 2020 visit, plaintiff claims, "with 1,543 miles on the odometer, Plaintiff presented the Vehicle to Defendant's authorized repair facility for repairs to a punctured passenger rear tire. The technician removed the road hazard and patched and reinstalled the tire." (Pltf.'s UMF No. 14.)

The court finds plaintiff has not shown a triable issue of material fact. There is no evidence that the June 2020 visit was a warranty-repair visit, let alone related to the reported malfunctions during the December 2022 repair visit.

Alternatively, plaintiff argues that the single repair visit in December 2022 satisfies the presentation requirement because defendant refused to attempt to repair the vehicle. Plaintiff's opposition states: "a jury could easily find that Defendant refused to perform repairs that could actually fix the Subject Vehicle, given that the Vehicle continued to suffer from defects after Defendant's purported repair attempt on June 27, 2020, and that Plaintiff continued to fear that the Vehicle suffered from defects even after the second repair attempt beginning on or around December 30, 2022. [Citations.] Thus, even if the Court were to conclude that the June 27, 2020 Vehicle repair visit does not qualify as an opportunity to repair the Vehicle counting toward the presentation requirement …, the second visit on December 30, 2022 on its own satisfies the presentation requirement because the Vehicle thereafter was reasonably viewed by Plaintiff as hazardous and lacking all value." (Opp. at 10:6–15.) Again, there is no evidence that the tire repair in June 2020 was related to the alleged malfunction in December 2022. There is also no evidence that Defendant refused to attempt to repair plaintiff's vehicle. The court is not persuaded by plaintiff's argument.

Based on the above, the court finds defendant is entitled to judgment in its favor on this cause of action as a matter of law.

5.2. Second C/A for Violation of the Service or Repair Provisions of Civil Code Section 1793.2(b)

Civil Code section 1983.2, subdivision (b) provides in relevant part: "Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days." (*Ibid.*)

Defendant has met its initial burden by showing the single warranty repair performed on plaintiff's vehicle on December 30, 2022, was completed within four days. (Def.'s UMF, No. 38.)

The burden shifts to plaintiff to show a triable issue of material fact. Plaintiff argues that defendant's motion addresses the 30-day requirement only and fails to address the second requirement under Civil Code section 1793.2, subdivision (b), that the repairs be commenced within a reasonable amount of time. (Opp. at 11:9–15.) The court finds no triable issue of material fact. By completing the repair within four days of presentation, the court finds as a matter of law that defendant commenced the repairs within a reasonable amount of time. Plaintiff attempts to argue that the vehicle was initially presented in June 2020, but as previously discussed, there is no evidence that the June 2020 tire-repair visit was related to the alleged malfunctions presented on December 30, 2022.

The court finds defendant is entitled to judgment in its favor on this cause of action as a matter of law.

5.3. Third C/A for Violation of the Service Literature and Replacement Parts Provisions of Civil Code Section 1793.2(a)(3)

Plaintiff's complaint alleges Defendant violated Civil Code section 1793.2, subdivision (a)(3), which requires a manufacturer to "make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (*Ibid.*)

Defendant claims there is no evidence that defendant failed to provide adequate parts or literature to its dealer. Defendant's motion states: "there was one warranty repair that was completed at the first repair attempt, in less than four (4) days, and with no future presentations on the same issue. [Citations.] A reasonable inference from the brevity of this visit is that Shingle Springs Honda had adequate parts and literature to perform the single warranty issue – the Stalling Issue. Moreover, at his deposition, Plaintiff testified that dealership personnel were

'courteous, polite, and professional,' that he never had to escalate a concern to a manager at the dealership, and that there was never a time that he was not satisfied with the service at the dealership. [Citations.]" (Mtn. at 6:28–7:7.)

However, the court finds that defendant has not met its initial burden of showing it is entitled to judgment as a matter of law. Defendant argues a "reasonable inference" can be made that Shingle Springs Honda had adequate parts and literature to perform work on the Stalling Issue. But that is not the standard on a motion for summary judgment. In fact, the evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed.

Because defendant has not met its initial burden, the court finds it is not entitled to judgment as a matter of law on this cause of action.

5.4. Fourth C/A for Breach of Implied Warranty of Merchantability

Plaintiff's complaint alleges defendant breached the implied warranty of merchantability because plaintiff's vehicle contained one or more latent defects at the time of sale. (Compl., ¶ 51.) The elements for this claim are lack of merchantability, causation, and damages. (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1246–1247; CACI No. 3210; Civil Code, § 1794.)

Civil Code section 1792 provides in relevant part, "Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable." (*Ibid.*) " 'Implied warranty of merchantability' or 'implied warranty that goods are merchantable' means that the consumer goods meet each of the following: (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of fact made on the container or label." (Civ. Code, § 1791.1, subd. (a)(1)–(4).) Breah of the implied warranty of merchantability "means the product did not possess even the most basic degree of fitness for ordinary use. [Citation.]" (Mocek v. Alfa Leisure, Inc. (2003) 114 Cal.App.4th 402, 406.) The maximum duration of the implied warranty of merchantability is one year following the sale of new consumer goods to the retail buyer. (Civ. Code, § 1791.1, subd. (c).) However, a latent defect present at the time of sale may toll the statute of limitations. (See *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 646.)

In this case, Plaintiff purchased the vehicle on May 3, 2020. Thus, the implied warranty of merchantability expired no later than May 2, 2021. (Civ. Code, § 1791.1, subd. (c).) Defendant claims there is no evidence of any defect amounting to a breach of the implied warranty of merchantability within the first year after plaintiff purchased the vehicle, arguing that the only visit to the dealership within plaintiff's first year of purchase involved the patching of the rear passenger tire when it was discovered to be punctured. (Mtn. at 7:18–21, citing Def.'s UMF No. 40.)

The court finds Defendant has met its initial burden.

In opposition, Plaintiff argues that repair visits are not a requirement of an implied warranty claim. (Opp. at 13:26–14:9.) And, plaintiff claims, the defects to his vehicle were latent within the vehicle at all times, including during Plaintiff's first year of ownership. (Opp. at 14:10–11.)

"The implied warranty of merchantability may be breached by a latent defect undiscoverable at the time of sale." (*Mexia v. Rinker Boat, Inc.* (2009) 174 Cal.App.4th 1297, 1304.)

Defendant cites to *Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, for the proposition that "a latent defect that does not manifest within the implied warranty period–and does not pose a serious safety risk–cannot support a claim for breach of the implied warranty under the Song-Beverly Act." (Reply at 6:9–12.) But, in *Carver*, the court did not decide whether the implied warranty of merchantability was breached; it merely found that the plaintiff in that case could not satisfy the damages element. (See *Carver*, *supra*, at p. 546–547.)

Here, given the evidence regarding the Stalling Issue, and viewing the evidence in the light most favorable to plaintiff, the court finds there is a reasonable inference that the Stalling Issue was due to a latent defect present at the time of the sale.

Because plaintiff has shown a triable issue of material fact, defendant is not entitled to judgment on this cause of action as a matter of law.

TENTATIVE RULING #11: THE MOTION FOR SUMMARY JUDGMENT IS DENIED. HOWEVER, THE COURT GRANTS SUMMARY ADJUDICATION IN DEFENDANT'S FAVOR ON THE FIRST AND SECOND CAUSES OF ACTION IN PLAINTIFF'S COMPLAINT. THE COURT DENIES DEFENDANT SUMMARY ADJUDICATION ON THE THIRD AND FOURTH CAUSES OF ACTION.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES

ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12.	**PC20210040**	**FLYNN v. NICHOLSON et al**
Motion for Summary Judgment (2)		

On June 18, 2025, Defendant/Cross-Complainant Discovery Hills Evangelical Free Church ("Discovery Hills") filed and served a Notice of Motion for Summary Judgment or in the Alternative, Summary Adjudication, and supporting documents thereto.

On August 22, 2025, Cross-Defendant Christ Like Services filed an Opposition to Cross Complainant Discovery Hills Evangelical Free Church's Motion for Summary Judgment Or, in the Alternative, Summary Adjudication, and supporting documents thereto.

On August 29, 2025, Cross-Complainant filed their Reply in Support of Motion for Summary Judgment Or, in the Alternative, Summary Adjudication.

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On June 26, 2025, Defendant/Cross-Defendant Christ Like Services ("CLS") filed and served a Notice of Motion for Summary Judgment or in the Alternative, Summary Adjudication, and supporting documents thereto. Any opposition was due 20 days in advance of the hearing. Neither Plaintiff nor Discovery Hills filed an Opposition.

Motion for Summary Judgment/Adjudication

Defendants bring their motion as a Motion for Summary Judgment or, in the Alternative, Summary Adjudication. The legal standard is the same for each form of relief in all material respects. A motion for summary judgment or adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro* (1996) 42 Cal. App. 4th 1591, 1601.

The moving party bears the initial burden of making a prima facie case for summary judgment. *White v. Smule, Inc.* (2022) 75 Cal. App. 5th 346. In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital* (2018) 23 Cal. App. 5th 653, 661. Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. *Zoran Corp. v. Chen* (2010) 185 Cal. App. 4th 799, 805. "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable

trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850.

Discovery Hills' Motion

Issue #1 – There is No Triable Issue of Material Fact That CLS Breached its Duty to Defend.

Issue #2 – There is No Triable Issue of Material Fact That CLS Has an Obligation to Indemnify.

1. The Disclaimer Signed by CLS is an Enforceable Indemnification Agreement

2. Discovery Hills Has Suffered Damages Due to CLS' Failure to Accept Tender of the Defense

3. Because The Only Liability Alleged Against Discovery Hills is Derivative Liability, Discovery Hills is Entitled to Full Indemnification.

Issue #3 – In the Alternative, There is No Triable Issue of Material Fact That CLS Has a Duty to Contribute to Damages Incurred in this Action.

Issue #4 – In the Alternative, Discovery Hills is Entitled to Declaratory Relief.

There is no request for judicial notice.

In or around the fall of 2018, CLS began operating a nomadic shelter on Thursday nights at Discovery Hills. (Separate Statement of Undisputed Material Facts, "SSUMF" 1.) Discovery Hills alleges that CLS provided a disclaimer to Discovery Hills, signed and acknowledged by CLS Director of Operations Robert ("Bob") Deruelle, that CLS accepted full responsibility of any and all persons who attend the nomadic shelter while at Discovery Hills on Thursday nights. At no time prior to February 14, 2019 were there any instances of physical altercations on the property while CLS ran the nomadic shelter at Discovery Hills. (SSUMF 5.)

On February 14, 2019, Plaintiff and Co-Defendant Nicholson presented to Discovery Hills to volunteer with assisting guests staying at CLS' nomadic shelter. Plaintiff searched the guests while Co-Defendant Nicholson assisted with the check-in process. (SSUMF 7.) Discovery Hills alleges that on February 14, 2019, while Co-Defendant Nicholson checked in a nomadic shelter guest, witnesses observed the guest throw a sleeping bag at Plaintiff's face and witnesses observed a verbal altercation between Plaintiff and the shelter guest erupt, as well as a verbal altercation between Plaintiff and Co-Defendant Nicholson. Discovery Hills alleges that witnesses observed the verbal altercation between Plaintiff and Co-Defendant Nicholson escalate, which culminated in Co-Defendant Nicholson striking Plaintiff in the face.

Code of Civil Procedure § 428.10 permits a party against whom a cause of action has been asserted to file a cross-complaint for any cause of action arising out of the same transaction or occurrence. A cross-complainant meets their burden by proving each element of

the cause of action, shifting the burden to the cross-defendant to show a triable issue of material fact. (Code of Civ. Proc., § 437c.)

In arguing that CLS owed Discovery Hills a duty to defend, Discovery Hills relies on an undated letter provided by CLS to Discovery Hills, which states: "Christ Like Services will be taking full responsibility of any and all persons who attend the nomadic shelter while at Discovery [Hills] Church on Thursday nights… We will be in charge of setting up and cleaning up the facility. Discovery Hills Church has a copy of our 3-million-doollar liability policy as well…" (Exhibit C). While Discovery Hills argues the letter is an indemnity contract, the Motion fails to establish any case law where this type of letter is held to being considered a binding indemnity contract, especially in light of the fact that it is only signed by one party, and does not use any variation of indemnity.

CLS opposes the Motion, arguing that not only is the letter not a binding indemnity contract, but that the Cross-Complaint fails to allege any written agreement for defense or indemnity as a basis for their Cross-Complaint against CLS and therefore is an attempt to expand the pleadings. The pleadings define the scope of the issues on a motion for summary judgment. (*FPI Dev. Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382; *Tsemetzin v. Coast Federal Sav. & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) Because a motion for summary judgment is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal.App.4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. A court cannot consider an unpleaded issue in ruling on a motion for summary judgment. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541; *Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663-1664.) While the letter is not referenced in the initial pleadings, the overall issue is raised in the pleadings.

CLS further argues that the letter cannot be considered an indemnity agreement as a matter of law, because under Civil Code § 2772, indemnity is "a contract by which one engages to save another from the legal consequences of the conduct of one of the parties, or of some other person." California courts have consistently held that indemnity provisions must be clear and explicit, especially when they impose obligations beyond the indemnitor's own acts or omissions. (See, e.g., *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265; *Ralph M. Parsons Co. v. Combustion Equipment Associates, Inc.* (1985) 172 Cal.App.3d 211.) The Court finds this argument most persuasive, and finds that there is at least a triable issue of material fact as to whether the letter constituted an indemnity contract and who is included – whether it is just for people staying at the shelter, or volunteers as well.

CLS' Motion

CLS requests that the Court take judicial notice of Plaintiff's Complaint filed in this case. Under Evidence Code section 452(d), the Court may take judicial notice of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." CLS' request for judicial notice is hereby granted.

This action arises out of an alleged criminal act (battery) of Plaintiff by Defendant Nicholson on February 14, 2019. Plaintiff asserts two causes of action against CLS – general negligence and premises liability. CLS argues that Plaintiff cannot prevail on either of those causes of action because: (1) CLS did not have a duty to protect Plaintiff from the unforeseeable alleged criminal conduct of Defendant Nicholson; (2) CLS did not breach any duty with respect to Plaintiff; (3) no breach of CLS was the proximate or legal cause of Plaintiff's injuries; and (4) CLS is not vicariously liable for alleged acts of Defendant Nicholson as a matter of law.

CLS is a nonprofit Public Benefit Corporation, organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. (Separate Statement of Undisputed Material Facts in Support of Defendant Christ Like Services' Motion for Summary Judgment Or, Alternatively, Summary Adjudication ("UMF") 1.) The purpose of CLS is to provide job training, homeless placement, and new life for people in need. (UMF 2.) As of February 2019, Hangtown Haven, Inc., a 501(c)(3) organization separate and apart from CLS (hereinafter "Hangtown Haven"), operated a Nomadic Shelter Program ("the Shelter Program") that provided sleeping shelter, food, and other services to the homeless at different church locations in El Dorado County at night. (UMF 3.) Hangtown Haven provided the equipment and supplies needed for the Shelter Program. (UMF 4.) As of February 2019, CLS was assisting the Shelter Program in providing such services on Thursday nights at Discovery Hills, including on February 14, 2019. (UMF 5.)

Plaintiff and Defendant Nicholson were at Discovery Hills on February 14, 2019 assisting with the services being provided. (UMF 8.) As of February 2019, neither Plaintiff nor Defendant Nicholson were employees of CLS and CLS did not pay Plaintiff or Defendant Nicholson for any services performed by them for or on behalf of CLS, including for services performed on February 14, 2019. (UMF 9, 10.) On February 14, 2019, a physical altercation occurred between Plaintiff and Defendant Nicholson at Discovery Hills that Plaintiff alleges was an "intentional, reckless, and unlawful striking and/or battering of Plaintiff by Defendant [Nicholson]." (UMF 11.)

In support of his first cause of action for General Negligence, Plaintiff states only the following conclusory allegations: that on or about February 14, 2019, "Defendants . . . so negligently, carelessly, recklessly, unlawfully, and proximately caused serious injuries, harm, and damages to Plaintiff" and that "[t]he negligence of Defendants . . . as described in this Complaint, was a substantial factor in causing Plaintiff's harm"; that "As a proximate result of the negligence, carelessness, recklessness, and unlawfulness of Defendants" Plaintiff was injured; that "As a further proximate result of the Negligence of Defendants" Plaintiff incurred and will continue to incur medical and incidental expenses and was prevented from attending his usual occupation; and that "Defendant[] Christ Like Services . . . knew, or had reason to know, that Defendant Garrett R. Nicholson had a propensity for violence and owed a duty of care to Plaintiff to warn and protect him from said violence." (Exhibit 1, p. 4.)

In support of his third cause of action for Premises Liability, Plaintiff alleges that Defendant Nicholson "intentionally, recklessly, and unlawfully struck and/or battered Plaintiff," causing him injury (Exhibit 1, p. 6), then alleges, again in conclusory fashion, that "Defendants . . . knew, or had reason to know, that Defendant GARRETT R. NICHOLSON had a propensity for violence and posed a danger to Plaintiff, yet they allowed Defendant GARRETT R. NICHOLSON on the premises while taking no action to protect, warn, or shield Plaintiff from the harm and danger he posed to Plaintiff" (Exhibit 1, p. 6). Plaintiff further alleges that Defendant Nicholson, CLS, and Discovery Hills were the agents and employees of the other defendants and acted within the scope of that agency.

Both causes of action that Plaintiff asserts against CLS require Plaintiff to prove all of the following elements: (1) that CLS owed a legal duty of care to Plaintiff; (2) that CLS breached that duty of care (i.e., a negligent act or omission); (3) that the breach was the proximate or legal cause of Plaintiff's injury; and (4) that Plaintiff suffered damage. (See, e.g., Rest.2d Torts,§ 281; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 656, 673 (disapproved of on other grounds) (*Ann M*.); *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998, *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917; *Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421, 426; *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205 [premises liability cause of action].) For premises liability, Plaintiff must also establish that CLS negligently owned, possessed, or controlled the premises. (See CACI No. 1000.)

The existence of a legal duty depends on (1) the foreseeability of the risk and (2) a weighing of policy considerations for and against imposition of liability. (See *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213; *Erlich v. Menezes* (1999) 21 Cal.4th 543, 552; *Rowland v. Christian* (1968) 69 Cal.2d 108, 112-13 [balancing of factors including foreseeability of harm, degree of certainty that plaintiff will suffer injury, closeness of connection between conduct and injury, moral blame, public policy of preventing harm, extent of burden to defendant, consequences to community of imposing duty, and the availability of insurance].)

Plaintiff claims that CLS ". . . knew, or had reason to know, that Defendant Garrett R. Nicholson had a propensity for violence and owed a duty of care to Plaintiff to warn and protect him from said violence." (Exhibit 1, p. 4.) A duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated. (See *Ann M., supra*, 6 Cal.4th at 675.)

CLS argues that there is no evidence of prior similar incidents at Discovery Hills during the operation of the Shelter Program; to the contrary, prior to February 14, 2019, there were no instances of physical altercations on any occasion during which CLS assisted the Shelter Program. (UMF 16.) Further, as of February 14, 2019, CLS argues that no one at CLS knew or anticipated that a physical altercation would occur while CLS was assisting the Shelter Program, and no one at CLS had any reason to know or anticipate that such would occur. (UMF 14, 15.) Lastly, CLS argues that there is also no evidence that anyone at CLS was aware, prior to February 14, 2019,

of any acts of violence by Defendant Nicholson (or Plaintiff) or of any dangerous propensities of Defendant Nicholson (or Plaintiff); to the contrary, the evidence shows that no one at CLS had any such knowledge. (UMF 12, 13.)

CLS argues that because CLS had no duty to prevent the unforeseeable alleged criminal acts of Defendant Nicholson, Plaintiff's causes of action against CLS fail, and the Court agrees. Since the Court finds CLS had no duty, the Court does not need to address the arguments that CLS did not breach any duty and no breach by CLS was the proximate or legal cause of Plaintiff's injuries.

CLS finishes by arguing it is not vicariously liable for the alleged acts of Defendant Nicholson, as he was not an employee. A defendant is only vicariously liable for the torts of its employees committed within the scope of the employment. (See *Rodgers v. Kemper Construction Company* (1975) 50 Cal.App.3d 608, 617.) The Court agrees.

TENTATIVE RULING #12:

1. **DISCOVERY HILLS EVANGELICAL FREE CHURCH'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**
2. **CHRIST LIKE SERVICES' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
3. **CHRIST LIKE SERVICES' MOTION FOR SUMMARY JUDGMENT IS GRANTED.**

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.