SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/26/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 16/34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34(Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-
https://www.zoomgov.com/j/1619504895?pwd=N0V1N3JFRnJ0TEVoSDNrTGRzakF3UT09

ID: 161 950 4895
Password: 812674

Courtroom Clerk's Session

1. 8:31 AM CASE NUMBER: C24-01485
CASE NAME: LAFAYETTE FEDERAL CREDIT UNION VS. SAMUEL FOSTER
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
****TENTATIVE RULING:****

PARTIES TO APPEAR.

Law & Motion

2. 9:00 AM CASE NUMBER: C22-01459
CASE NAME: DECHER YOUNG VS. STEVEN PINZA
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER ANSWERS TO INTERROGATORIES AND DOCUMENT REQUESTS BY DEFENDANTS, AND FOR SANCTIONS**

FILED BY: YOUNG, DECHER
TENTATIVE RULING:

Plaintiff DeCher Young ("Plaintiff") filed a Motion to Compel Further Answers to Interrogatories and Document Requests on November 12, 2024 (the "Motion to Compel Further Responses"). The Motion to Compel Further Responses was set for hearing on February 26, 2025.

Background

The plaintiff filed this action for penalties under the California False Claims Act, codified in Government Code sections 12650-12656, alleging that the defendants falsified documents submitted to the City of Walnut Creek when they renovated several units in an apartment building. Plaintiff alleges that the defendants obtained building permits from the City of Walnut Creek claiming the work on each unit was $4800, and that they paid permit fees based on that amount, when in reality, the renovations cost $30,000-$40,000 per unit. It is alleged that the City of Walnut Creek was deprived of fees to which it was entitled. The plaintiff was a renter in the apartment building and brings this action on behalf of the governmental entities.

The operative complaint in this case is the First Amended Complaint (FAC) filed on September 15, 2023. The FAC alleges a single cause of action under Government Code sections 12650 *et seq*. It alleges that defendant Sekk Investments Walnut Creek, LLC purchased an apartment building in Walnut Creek in February 2021. Defendant Steven Pinza is the CEO of Sekk and defendant Kelsie Trumpf is employed by Sekk Investments as a property manager. In August 2021, defendant Sekk Investments applied for and obtained building permits to do some plumbing and electrical upgrades in five units at the cost of $4800 each. Each application for a permit was signed by Kelsie Trumpf and each application indicated that the work was being done by an owner-builder who was doing the work himself or by employees of the owner-builder, and therefore, the work was exempt from the requirement that it be done by a licensed contractor. Subsequently, six other applications were submitted to the city—all claiming the work would be $4800. The FAC further alleges that the occupants of the units, which included the Plaintiff received notices that they would need to move because the new owner intended to demolish or substantially remodel the building. The plaintiff seeks damages, penalties, and injunctive relief.

Motions to Compel

By its order entered September 10, 2024, the Court granted Plaintiff's previous discovery motion compelling further responses to the same subject discovery requests, observing that the "objection-only responses" were improper. See Order entered September 10, 2024. Monetary sanctions of $500 were imposed. *Id*.

Thereafter, amended responses were provided. See Declaration of David M. Levin ("Levin Decl."), ¶5 and **Exhibit 2** thereto. After attempts to meet and confer regarding asserted defects in the amended responses, this motion followed. *Id*. at ¶6.

The discovery requests referenced in this further motion (collectively, the "Discovery Requests") are the following:

1. Plaintiff's First Set of Requests for Documents to defendant SEKK INVESTMENTS WALNUT CREEK, LLC (the "**RPD to SEKK**");
2. Plaintiff's First Set of Requests for Documents to defendant STEVEN PINZA (the "**RPD to PINZA**");
3. Plaintiff's First Set of Requests for Documents to defendant KELSIE TRUMPF (the "**RPD to TRUMPF**");

4. Plaintiff's First Set of Form Interrogatories-General to defendant SEKK INVESTMENTS WALNUT CREEK, LLC (the "**FROGs to SEKK**");
5. Plaintiff's First Set of Form Interrogatories-General to defendant STEVEN PINZA (the "**FROGs to PINZA**");
6. Plaintiff's First Set of Form Interrogatories-General to defendant KELSIE TRUMPF (the "**FROGs to TRUMPF**");
7. Plaintiff's First Set of Special Interrogatories to defendant SEKK INVESTMENTS WALNUT CREEK, LLC (the "**SROGs to SEKK**");
8. Plaintiff's First Set of Special Interrogatories to defendant STEVEN PINZA (the "**SROGs to PINZA**"); and
9. Plaintiff's First Set of Special Interrogatories to defendant KELSIE TRUMPF (the "**SROGs to TRUMPF**").

A set of opposition papers was filed on February 10, 2025. A reply was filed February 18, 2025.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1). When a motion to compel has been filed, the burden is on responding party to justify any objections made. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

Having considered the moving papers, including the Separate Statement, the opposition and any further pleadings submitted, the Court makes the following findings as to the discovery requests and responses at issue:

I. Timeliness of Motion

Among other things, the defendants contend that the Motion to Compel Further Responses is untimely. See Defendants' Memorandum of Points and Authorities in Opposition filed February 10, 2025 ("Opposition MPA"), p. 3 *et seq*.

The Opposition MPA cites to Paragraph 18 of an opposition declaration in making the argument regarding the timeliness of the motion and contending the responses were "served" on September 30, 2024. See Opposition MPA, p. 3, ln. 8. Defendant Steven Pinza's declaration states that the subject amended responses were "provided" on September 30, 2024. Declaration in Support of Defendants' Opposition to Plaintiff's Motion to Compel filed February 10, 2025 ("Pinza Decl."), ¶18 and **Exhibit 9** thereto. The declaration fails to state the method of service or refer to any attached proof(s) of service. It is not clear to the Court that any proof(s) of service were even attached to the subject amended

responses. *Id*. at **Exhibit 9**. Ascertaining where Exhibit 9 starts and ends was difficult for the Court given that it appears defendants failed to include any slip sheets separating the exhibit and no clear designation of the exhibit identifier.

While defendants are correct that a notice of motion to compel must be served within 45 days after verified responses are served [see e.g. Code Civ. Proc. § 2030.300(c), § 2031.310(c)], they have failed to make a showing that the Motion to Compel Further Responses is untimely. As discussed above, defendants have not demonstrated the timing and method of service of the subject amended responses so as to establish the motion was noticed after the 45 day cutoff.

In any event, the moving party's Reply addresses the matter and contends that the subject amended responses were served by email at 11:04 p.m. on September 30, 2024. See Reply, p. 6. Defendants have not shown otherwise.

If served via email, the 45 day cutoff would have been extended by two court days. Code Civ. Proc. § 1010.6(a)(3)(B). 45 days after September 30, 2024 was Thursday, November 14, 2024 and two court days thereafter fell on Monday, November 18, 2024. The uncontested representation by the moving party is that the motion was filed and served on November 18, 2024. See Reply, p. 6 and fn. 1.

Accordingly, the Court finds that the Motion to Compel Further Responses was timely filed and served.

II. Discovery Requests

RPD to SEKK

RPD to SEKK No. 3. DENIED. The Court finds that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The Court further finds that the moving party has failed to set forth specific facts showing good cause justifying the discovery sought. The request for any conceivable communication with the broadly defined "GOVERNMENT AGENCY" is excessively broad. While a more narrowly tailored request with a greater nexus to the claims at issue may be appropriate, given the timeframe of the request and the potential reach of the request as framed, the Court declines to compel a further response.

RPD to SEKK No. 4. DENIED for the same reasons as No. 3 above.

RPD to SEKK No. 5. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. Defendants are admonished that the attempted resort to a response pursuant to Code of Civil Procedure section 2030.230, as written, is improper. Section 2030.230 relates to responses to an interrogatory, not a demand for the production of documents. See Code Civ. Proc. § 2030.230 (providing a party responding to an interrogatory an option to "specify the writings from which the answer may be derived or ascertained."). Moreover, the response is not code compliant as written. Code Civ. Proc. § 2031.210(a); see *Pollock v. Superior Court* (2023) 93 Cal.App.5th 1348, 1357 (discussing nature of code compliant response to document demand); see also Weil & Brown, *et al*., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024) ("Rutter Civ. Pro.") § 8:1469. The qualifying language and purported observations about what Plaintiff is aware of ("Plaintiff was made aware…") are improper and shall be stricken from any amended responses. All responsive documents shall be produced. Defendants are hereby admonished regarding the scope of their discovery obligations. Defendants are obligated to produce all responsive documents in the responding party's possession, custody or control. Code Civ. Proc. § 2031.010(a); see also Code Civ. Proc. § 2031.220 (as to civil discovery requests for production of documents). Documents under a party's "control" include those

which a party has the legal right to obtain upon demand from third parties. Where the request refers to a specified time period, the responding party has an obligation to produce all responsive documents for the entire time period. Moreover, as discussed below with respect to the Special Interrogatories at issue, no timely served verified responses were served and, therefore, objections were waived. See also Separate Statement, p. 4, lns. 10-17.

RPD to SEKK No. 6. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 7. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 8. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 9. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 10. DENIED. The Court finds that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The Court further finds that the moving party has failed to set forth specific facts showing good cause justifying the discovery sought. The request for any documents regarding any person employed at the property is excessively broad. It may implicate a broad range of employment records without any nexus to the claims at issue. While a more narrowly tailored request focusing on persons involved in construction and/or the nature of the employment records sought may be appropriate, the Court declines to compel a further response to this request as written.

RPD to SEKK No. 11. DENIED for the same reasons as No. 10 above.

RPD to SEKK No. 12. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 13. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 14. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 15. GRANTED. The objections are OVERRULED/STRICKEN and a further amended

response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. For the same reasons as No. 5 above, the Court finds that the response is deficient.

RPD to SEKK No. 16. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. The qualification on the scope of production to the effect that the production is limited to "documents referenced in their responses to special interrogatories *that are not already in Plaintiff's possession*" is improper (italics added). See Code Civ. Proc. § 2031.230. Moreover, as discussed below with respect to the Special Interrogatories at issue, no timely served verified responses were served and, therefore, objections were waived. See also Separate Statement, p. 4, lns. 10-17.

RPD to SEKK No. 18. GRANTED. The objections are OVERRULED/STRICKEN and a further amended response without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. The various qualifications recited (including that "Discovery in this matter is ongoing… " and "Plaintiff has not provided appropriate responses to Defendants' discovery requests") are improper and not code compliant. See Code Civ. Proc. § 2031.230. Moreover, as discussed below with respect to the Special Interrogatories at issue, no timely served verified responses were served and, therefore, objections were waived. See also Separate Statement, p. 4, lns. 10-17.

RPD to PINZA No. 1 and RPD to TRUMPF No. 1. GRANTED for the same reasons as RPD to SEKK No. 16 above.

RPD to PINZA No. 2 and RPD to TRUMPF No. 2. GRANTED for the same reasons as RPD to SEKK No. 16 above.

RPD to PINZA No. 3 and RPD to TRUMPF No. 3. GRANTED for the same reasons as RPD to SEKK No. 18 above.

FROGs to SEKK No. 15.1 and FROGs to PINZA No. 15.1. GRANTED. The objections are OVERRULED and a further amended response without the stated objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. The various qualifications recited (including that "Discovery in this matter is ongoing… " and "Plaintiff has not provided appropriate responses to Defendants' discovery requests") are improper and not code compliant. See Code Civ. Proc. § 2030.220. A party responding to interrogatories is obligated to provide a substantive answer "to the extent possible." *Id*. at § 2030.220(b); see Rutter Civ. Pro., § 8:1046 *et seq*.

While no verified responses were served except as to the **FROGs to TRUMPF**, it is acknowledged that the responses to the **FROGs** were served timely on March 8, 2024. Levin Decl."), ¶5. Therefore, the Court does not strike the objections as waived, but rather, overrules them. See Rutter Civ. Pro., § 8:1113.1 (an unverified response containing both answers and objections is effective to preserve those objections. The lack of verification renders the fact-specific answers untimely; but that only creates a right to move for orders and sanctions).

SROGs to SEK, SROGs to PINZA and SROGs to TRUMPF. GRANTED. As an initial matter, the Court observes that it found the moving party's Separate Statement confusing and difficult to parse with respect to Special Interrogatories at issue. That paper comingles "groups" of interrogatories by subject

matter and references, in the same sections, different interrogatories by the defendants to which they were propounded. It contains a convoluted grid of "boilerplate" objections vis-à-vis the different Special Interrogatories at issue. See Separate Statement, p. 27 *et seq*. Nonetheless, the Court concludes that it need not parse those objections in rendering any decision. The moving party argues that the propounding parties waived all objections by failing to timely provide verifications. See Separate Statement, p. 29. This point is well taken. It is clear that the responses improperly interpose objections despite such waiver.

Indeed, defendants admitted, in a prior declaration, that their responses to Plaintiff's Special Interrogatories were untimely. See Declaration of Steven Pinza in Support of Defendants' Opposition filed August 15, 2024, ¶¶5-16. No **verified** responses to the SROGs to SEK, SROGs to PINZA and SROGs to TRUMPF were served by the extended and agreed upon due date, March 8, 2024. *Id*.; see also Pinza Decl., ¶¶14-15. The same is true as to the other Discovery Requests, except for the one set of FROGs to TRUMPF. See Separate Statement, p. 4, lns. 10-17.

Accordingly, the Court finds that any objections to the SROGs to SEK, SROGs to PINZA and SROGs to TRUMPF have been waived to the fullest extent permitted by applicable law. See Code Civ. Proc. §§ 2030.290 and 2031.300. **Further amended responses without objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made.**

III. Sanctions

Defendants' failure to timely serve properly verified responses to the Discovery Requests, except as to the one set of FROGs to TRUMPF, and the failure to make full and complete code compliant responses after a subsequent court order was made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).

The Court finds that the foregoing conduct by defendants constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the Discovery Requests and thereafter failing to make full and complete code compliant responses, the Court finds that defendants did not act with substantial justification.

Accordingly, the Court shall consider further the imposition of monetary sanctions upon defendants in an amount to be determined by the Court (the "Monetary Sanctions").

In order to assess and fix the reasonable expenses, including attorney's fees or other costs, incurred by Plaintiff as a result of the foregoing conduct by defendants, the Court makes the following orders:

1. **Plaintiff's Supplemental Declaration regarding Discovery Sanctions.** Within thirty (30) days of notice of entry of this order, Plaintiff shall file and serve a declaration signed under penalty of perjury ("Supplemental Declaration regarding Discovery Sanctions") setting forth any and all reasonable expenses, including attorney's fees or other costs, incurred by Plaintiff as a result of the above discovery misconduct. Such submittal shall include any supporting billing statements.
2. **Contents and Length of Supplemental Filing.** Plaintiff's Supplemental Declaration regarding Discovery Sanctions shall not exceed 5 pages, excluding any evidentiary attachments such as supporting attorney billing statements or other documentation of reasonable expenses. Any redaction of billing statements regarding privilege issues should be as minimal as possible in order to facilitate the Court's review and consideration of the scope of legal services provided.
3. **Meet and Confer.** Within twenty-one (21) days after service of Plaintiff's Supplemental Declaration regarding Discovery Sanctions, the parties shall meet and confer, in good faith, to

attempt to resolve the issue of Monetary Sanctions.

4. **Defendants' Further Response.** Within forty-five (45) days after service of Plaintiff's Supplemental Declaration regarding Discovery Sanctions, defendants shall file and serve any further responsive declaration or other opposition papers regarding the Supplemental Declaration regarding Discovery Sanctions.
5. **No Reply.** No further reply papers shall be submitted regarding the issue of the Monetary Sanctions.
6. **Further Hearing.** The issue of Monetary Sanctions shall be separately set for further hearing.

Disposition

The Court further finds and orders as follows:

1. Motion to Compel Further Responses is GRANTED in PART and DENIED in PART, as set forth above.
2. Amended responses, as ordered above, shall be served by defendants within thirty (30) days of notice of entry of this order.
3. PARTIES TO APPEAR to set the hearing date for determination of the amount of the Monetary Sanctions. The Court reserves jurisdiction regarding the determination and imposition of the Monetary Sanctions and any and all further sanctions as the Court may deem necessary and appropriate pending compliance.

3. 9:00 AM CASE NUMBER: C23-00868
CASE NAME: SONJA STANCHINA VS. CONTRA COSTA WATER DISTRICT
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES AND DOCUMENTS TO PLAINTIFF'S RFAS, INTERROGATORY NO. 217.1, AND SECOND SET OF REQUESTS FOR PRODUCTION FILED BY: STANCHINA, SONJA**
****TENTATIVE RULING:****

Plaintiff Sonja Stanchina ("Plaintiff") filed a Motion to Compel Further Responses and Documents to Plaintiff's CCP § 2031.010 Requests for Production on December 20, 2023 (the "December 2023 Motion to Compel"). The December 2023 Motion to Compel was initially set for hearing on April 3, 2024 and later continued by agreement of the parties several times. Ultimately, it was set for hearing on February 26, 2024, pursuant to a Joint Stipulation and Order entered November 22, 2024.

Plaintiff later filed a Motion to Compel Further Responses and Documents to Plaintiff's RFAs, Interrogatory No. 217.1, and Second Set of Requests for Production on November 8, 2024 (the "November 2024 Motion to Compel"). The November 2024 Motion to Compel was set for hearing on February 26, 2024.

Background

Both the December 2023 Motion to Compel and the November 2024 Motion to Compel are now set for February 26, 2024. Various stipulations were filed in November 2024 relating to these motions. It appears that a number of issues have been worked out by the parties. There is reference to submitting a "comprehensive reply identifying the issues that remain to be decided by the Court." See Joint Stipulation and Order To Continue Hearing entered November 22, 2024. The Court notes that another discovery motion is on calendar for May 7, 2025, brought by defendant Contra Costa Water District.

Analysis

I. December 2023 Motion to Compel

It is not clear to the Court the extent to which any matters remain to be resolved with respect to December 2023 Motion to Compel. The parties are to appear to address the matter.

II. November 2024 Motion to Compel

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1). When a motion to compel has been filed, the burden is on responding party to justify any objections made. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

Having considered the moving papers, including the Separate Statements filed November 8, 2024 (one each as to the subject RFAs and interrogatory), the opposition and any further pleadings submitted, the Court makes the following findings as to the discovery requests and responses at issue:

RFA No. 1. GRANTED. As an initial matter, the Court addresses the challenge to the inclusion of preface language purporting to be in the nature of "general objections." The incorporation of a set of "general objections" does not necessarily render a set of discovery responses deficient or amount to a sanctionable misuse of discovery. The moving party party's citation to *Korea Data Sys. Co. v. Superior Court* is unavailing. That case does not stand for the proposition cited. The case dealt with a trial court's order regarding waiver of the attorney-client privilege for failure to file a privilege log. *Korea Data Sys. Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1515. The appellate court did note, in passing, that "the use of 'boiler plate' objections as were provided in this case may be sanctionable." *Id*. at 1516. Certainly, as noted by the appellate court in *Korea Data*, a responding party that makes objections lacking the specificity mandated by the discovery statutes may be subject to sanctions. Indeed, the leading commentator cites the *Korea Data* case for the observation that "[o]bjections must be specific." See Weil & Brown, *et al.*, *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024) ("Rutter Civ. Pro.") § 8:1071; see also *id*. at § 8:1356 *et seq*. (regarding specificity of objections to requests for admissions). The Code of Civil Procedure is clear as to the specificity required. See Code Civ. Proc. § 2033.210(b) (providing that, as to requests for admissions, "[e]ach response shall answer the substance of the requested admission, or set forth an objection to the particular request.") and § 2033.230(b) ("If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response."). But those provisions are not the same thing as a general proposition that the mere inclusion of a set of "general objections" is, in and of itself, improper and/or sanctionable. Here specific objections were interposed as to each of the requests for admissions at issue. See

Separate Statement (re RFAs), p. 3 *et seq*. It is those objections that the Court considers.

Turning to the merits of the objections interposed to this RFA, the Court has considered each of the objections. **The objections are OVERRULED and an amended response without objections shall be made.** The complaint alleges a pattern of "ongoing disparate treatment," and whether and to extent the creation and filling of the position is Director of People and Culture position is well within the scope of matters relevant to the subject matter involved in the pending action either is itself admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence.

RFA No. 2. GRANTED. For the same reasons discussed above in connection with RFA No. 1, the Court considers only the objections referenced in the body of the response to RFA No. 2. The Court has considered each of the objections. **The objections are OVERRULED and an amended response without objections shall be made.** As noted above, the complaint alleges a pattern of "ongoing disparate treatment," and whether and to extent Plaintiff was more qualified for the role filled by Ms. Cunningham in the timeframe referenced is well within the scope of matters relevant to the subject matter involved in the pending action either is itself admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence.

EMPLOYMENT FORM INTERROGAYORY NO. 217.1. GRANTED. This request seeks information relating to any responses to the companion RFAs that are not unqualified admissions. The objections stated hinge on the same considerations addressed above with response to RFA Nos. 1 and 2. **For the same reasons discussed above**, **the objections are OVERRULED and an amended response to No.217.1 without objections shall be made, as relates to RFA Nos. 1 and 2.**

III. Sanctions regarding November 2024 Motion to Compel

When properly requested, monetary sanctions are mandatory against the party losing on a motion to compel further responses to requests for admissions unless the court finds "substantial justification" for that party's position or other circumstances making the sanction "unjust." Code Civ. Proc. § 2033.290(d); see Rutter Civ. Pro., § 8:1399.1.

Having considered the totality of evidence and arguments, the Court finds that defendant had substantial justification for its position and that the imposition of sanctions would be unjust. While the Court ultimately was not persuaded by defendant's narrow view of the scope of evidence that may be relevant and its positions regarding the ability to respond to the discovery as framed, the Court concludes that defendant engaged in sincere, good faith meet and confer efforts and had a reasoned position for its objections. See e.g. Declaration of Peter O. Glaessner filed February 11, 2025, ¶5 *et seq*.

Disposition

The Court finds and orders as follows:

1. November 2024 Motion to Compel is GRANTED.
2. Amended responses, as ordered above, shall be served by defendant within thirty (30) days of notice of entry of this order.
3. All requests for sanctions regarding the November 2024 Motion to Compel are DENIED.
4. PARTIES TO APPEAR to discuss the necessity for any further proceedings regarding December 2023 Motion to Compel.

4. 9:00 AM CASE NUMBER: C23-01180
CASE NAME: DONALD MCFADIN VS. CHRISTINA PURTELL-WOLF

***HEARING ON MOTION IN RE: FOR ATTORNEY'S FEES AMOUNT TO BE FIXED AND AWARDED AS THE PREVAILING PARTY**
FILED BY: BORGESON, NORMA
****TENTATIVE RULING:****

This matter is on in connection with the determination of prevailing party attorneys' fees and costs. In addition, a third-party Claim of Right to Possession was noticed for hearing.

Background

A Judgment was entered in this matter on November 27, 2024 (the "Judgment"). Among other things, the Judgment provided for the termination and forfeiture of the subject lease and the issuance of a writ of possession for the restoration of possession of the subject property to defendant and cross-complainant Norma Borgeson. A hearing regarding prevailing party attorneys' fees and costs was set for February 26, 2025. The supporting motion papers regarding prevailing party attorneys' fees was filed November 12, 2024 (the "Motion for Attorneys' Fees"). A Memorandum of Costs was filed November 12, 2024. Opposition papers to the Motion for Attorneys' Fees and Costs were filed on February 7, 2025. Reply papers were filed February 19, 2025.

Also, a Claim of Right to Possession and Notice of Hearing was filed on February 19, 2025 (the "Claim of Right to Possession"). The Claim of Right to Possession was filed by claimant Barney McBears, LLC. The claim is based on the contention that Barney McBears, LLC, doing business as "McBears Social Club," has continuously occupied the premises since 2015 and has continuously paid rent to the landlord, Ms. Borgeson. The Claim of Right to Possession was set for hearing on February 26, 2025.

Analysis

I. Motion for Attorneys' Fees and Costs

The Court has determined that Ms. Borgeson is the prevailing party and entitled to recover her reasonable attorneys' fees and costs in these consolidated matters. Ms. Borgeson seeks an award of attorneys' fees in the total amount of $192,089.00, plus additional sums spent on the proceedings regarding fixing the fees and costs.

A supporting declaration was submitted by Ms. Borgeson's attorneys. See Declaration of Jessica Garcia (the "Garcia Decl."); see also Declaration of Randy Sullivan (the "Sullivan Decl."). The declarations included copies of billing statements rendered for the legal services provided in connection with the litigation of the consolidated matters. Garcia Decl., ¶3 and **Exhibit B** thereto. The experience and billing rates of the involved attorneys and other billing staff are set forth. *Id*. at ¶¶5 and 6; see also Sullivan Decl., ¶2 *et seq*.

The extensive nature and extent of the litigation in the consolidate matters is described and reflected in the detailed billing statements. *Id*. at ¶7 *et seq*. and **Exhibit B** thereto. Significant amounts for legal services provided were written off and not charged. Sullivan Decl., ¶6.

The Court finds that, except as noted below, the attorneys' fees and costs were necessary and reasonable, including in terms of the nature and extent of the legal services performed, the number of hours expended and the billing rates per hour.

The Court has considered and rejects the contention that Ms. Borgeson is not the prevailing party. First, the Court has made the determination already and this motion is focused on fixing the amount of recoverable attorneys' fees and costs. See Judgment, ¶10. Second, even if open to reconsideration, that some requests for affirmative relief sought by Ms. Borgeson were denied does not prevent her from

being a prevailing party. It is evident that she was party who obtained the greater relief. See *Zintel Holdings, LLC v. McLean* (2012) 209 Cal.App.4th 431, 439 (the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract). She substantially prevailed on the dispute over the parties' lease, which was declared forfeit due to Mr. McFadin's breaches and the Judgment includes a net monetary recovery in her favor. See Final Statement of Decision entered October 7, 2024; see also Judgment, ¶¶5-8.

Notwithstanding the general arguments that a large fee award will "crush" Mr. McFadin and his business, the Court is not persuaded that the fees, on the whole, were unreasonable (though the Court does make some minor reduction as discussed below). The evidence proffered by plaintiff and cross-defendant Donald Scott McFadin fails to dispute or even address the reasonableness of any particular item of work performed. See Declaration of Donald Scott Mcfadin re: Opposition to Motion for Attorney Fees, ¶¶1-10. No particular billing statement entry or entries—or item or items of cost—are challenged with specificity. The general arguments made by Mr. McFadin are unavailing as well. Characterizing this matter as a "non-complex lease dispute" is misleading. See Plaintiff/Cross-Defendant's Opposition to Defendant/Cross-Complainant's Motion for Attorney Fees, p. 6. Indeed, Mr. McFadin himself filed six separate motions in limine in advance of trial, consisting of nearly 150 pages of materials. See Motions in Limine Nos. 1 through 6 filed July 30, 2024. The dispute resulted in a multiple day trial and a 23 page written Statement of Decision by the Court.

Having reviewed the evidence and considered the arguments presented, the Court finds that some reduction time is warranted. This includes consideration of the totality of the evidence and hours expended, some duplication of time and efforts reflected and work of marginal import including items such as extra review of pleadings, meetings, internal communication in the law firm, and other less essential work and tasks. See e.g. Garcia Decl., **Exhibit B** (12/11/2023 entry re 7.9 hours for review of opposing party mediation brief and other work, 7/29/2024 entry re 7.70 hours including time to "debrief Mr. Sullivan").

The Court concludes that an award of $188,000.00 in prevailing party attorneys' fees is just and reasonable.

II. Claim of Right to Possession

A judgment for possession of real property may be enforced by a writ of possession of real property. See Code Civ. Proc. § 715.010. Unless a prejudgment claim of right to possession was previously served along with the summons, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action:

> (d) Notwithstanding subdivision (c), unless the person is named in the writ, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action. However, if the summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, no occupant of the premises, whether or not the occupant is named in the judgment for possession, may object to the enforcement of the judgment as prescribed in Section 1174.3.

Code Civ. Proc. § 715.020(d).

If such a claim to a right to possession is made and not barred by proper service of prejudgment claim of right to possession, the claim to a right to possession must be adjudicated in accordance with the provisions of Code of Civil Procedure section 1174.3.

Code of Civil Procedure section 1174.3 provides that the court issuing the writ of possession of real property shall set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment. See Code Civ. Proc. § 1174.3(b). The court must, at the hearing, determine whether there is a valid claim of possession by the claimant who filed the claim. *Id*. at § 1174.3(d). The court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. *Id*. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. *Id*.

Disposition

The Court finds and orders as follows:

1. Ms. Borgeson, as the prevailing party, shall recover the sum of $188,000.00 from the plaintiff and cross-defendant Donald Scott McFadin. Costs shall be fixed in the sum of $11,465.80. The Judgment herein shall be amended to set forth said sums. Prevailing party to prepare the amended Judgment.
2. As to the pending Claim of Right to Possession, all parties and the claimant shall APPEAR for purposes of conducting the hearing pursuant to Code of Civil Procedure section 1174.3.

5. 9:00 AM CASE NUMBER: C23-02578
CASE NAME: DAVID HAMMOND VS. U.S. BANK NATIONAL ASSOCIATION
***HEARING ON MOTION IN RE: FOR ORDER FOR SERVICE OF SUMMONS AND FIRST AMENDED COMPLAINT BY PUBLICATION - CONTINUED FROM 1/15/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: HAMMOND, DAVID
****TENTATIVE RULING:****

Plaintiff David Hammond filed an Amended Motion for Order for Service of Summons and First Amended Complaint by Publication October 16, 2024 (the "Motion for Leave to Serve by Publication"). The Motion for Leave to Serve by Publication was initially set for hearing on January 15, 2025 and subsequently continued by the Court to February 26, 2025.

Background

The Motion for Leave to Serve by Publication seeks leave of the Court to serve the "All Persons Unknown" defendant(s), as more fully named in the operative First Amended Complaint, by publication, pursuant to Code of Civil Procedure sections 763.010 *et seq*.

Disclosure and Continuance

This matter is presently assigned to Department 16, the Honorable Benjamin T. Reyes. Department 16's calendars are presently being called and heard by Department 34, the Honorable Leonard E. Marquez.

Judge Marquez makes the following disclosure. Judge Marquez was formerly a partner with the law firm of Wendel, Rosen, Black & Dean LLP ("Wendel Rosen"), and practiced in its civil litigation department. It appears that Wendel Rosen was former counsel for a party to this case and represented such party in connection with the substance of the matters at issue at least as far back as 2020. See Declaration of Daniel J. Zarchy, ¶4. While Judge Marquez has no present recollection of having had direct involvement

with the substance of such matters, he was involved with and consulted internally, sometimes without being assigned counsel, on many of the firm's real estate related litigation matters up until early 2018. In addition, another involved party is DeEtte R. Sipos. *Id*. at ¶2. During his time with Wendel Rosen, Judge Marquez served as co-counsel with Richard Alan Sipos on various matters. Out of an abundance of caution, this matter is continued for hearing before Department 16. The clerk of the Court shall give notice of the continued hearing date to all parties.

6. 9:00 AM CASE NUMBER: C23-02974
CASE NAME: STATE FARM GENERAL INSURANCE COMPANY VS. BSH HOME APPLIANCES CORPORATION
***HEARING ON MOTION IN RE: TO REQUEST AN EXTENSION OF TIME TO OBTAIN A DEFAULT JUDGMENT AGAINST CROSS-DEFENDANT MFZ TRANSPORT, LLC CRC3.110(H)**
FILED BY: APEX INSTALLATIONS, LLC
TENTATIVE RULING:

Defendant and Cross-Complainant APEX INSTALLATIONS, LLC ("Cross-Complainant") filed a Motion to Request an Extension of Time to Obtain a Default Judgment against Cross-Defendant MFZ TRANSPORT, LLC Pursuant to CRC3.110(h) on November 7, 2024 (the "Motion to Extend Time"). The Motion to Extend Time was set for hearing on February 26, 2025.

Background

On September 25, 2024, a default was entered herein against MFZ Transport, LLC ("MFZ") on Cross-Complainants' Cross-Complaint.

A party requesting a default judgment must do so within forty-five days of entry of default or request an extension from the Court. See Rule 3.110(h) of the California Rules of Court ("CRC") ("When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time.).

Cross-Complainant seeks an extension of time pursuant to CRC 3.110 to obtain a default judgment against MFZ because no judgment or other disposition of the primary claims herein have been reached so as to enable Cross-Complainant to pursue any indemnification in a default judgment against MFZ.

Analysis

The Motion to Extend Time is unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion to Extend Time is GRANTED.
2. Cross-Complainant's time to obtain a default judgment against defaulting party MFZ is hereby extended to sixty (60) days after determination of any liability on the part of Cross-Complainant for the underlying claims, whether by settlement, court adjudication or otherwise.
3. Moving party shall prepare and submit the order after hearing.

7. 9:00 AM CASE NUMBER: C24-00382
CASE NAME: BARBARA GILBERT VS. FREEDOM FOREVER, LLC
HEARING ON SUMMARY MOTION
FILED BY: FREEDOM FOREVER, LLC
TENTATIVE RULING:

Before the Court is Defendants Freedom Forever, LLC and Freedom Forever California, LLC's Motion for Summary Judgment, or in the Alternative Summary Adjudication ("MSJ").

Defendant's MSJ is denied **without prejudice** as set forth below. Counsel are ordered to appear to discuss resetting trial and other procedural matters outlined below.

General Factual and Procedural Background

Plaintiff Barbara Gilbert filed her initial Complaint on February 13, 2024. It alleges three causes of action for: (1) breach of contract, (2) breach of good faith and fair dealing, and (3) declaratory relief. Defendants filed their Answer on April 9, 2024.

A case management conference was held on August 9, 2024. The parties appeared, gave an update on the case, and a further CMC was scheduled for November 7, 2024. Plaintiff filed a CMC statement on November 4, 2024. At the November 7 CMC, Plaintiff's counsel requested a trial date. Defense counsel requested time to file a motion for summary judgment. As such, the Court set trial for March 17, 2025.

Thereafter, on November 18, 2024, Defendants filed their MSJ. Counsel for Plaintiff Barbara Gilbert filed an opposition on January 28, 2025. The Opposition was brought specifically on behalf of Barbara Gilbert. ("COME NOW Plaintiff Barbara Gilbert ("Plaintiff" or "Gilbert"), in opposition to ….")

Just over two weeks later, on February 13, 2025, Plaintiff's counsel filed a "Motion for Substitution of Successor in Interest for Deceased Plaintiff." The Motion indicates that Plaintiff Barbara Gilbert "passed away on July 29, 2024." This means that Plaintiff passed away over a week before the first CMC, three months before the second CMC, and over six months ***before*** Plaintiff's counsel filed an opposition to the MSJ on behalf of Plaintiff.

Plaintiff's CMC Statement filed November 4, 2024 made reference to an anticipated "[m]otion to appoint decent's [sic] successor in interest as Plaintiff in this matter." It is not clear to the Court why the trial was set when it was, in light of the knowledge that plaintiff had passed away. Nor is it clear to the Court why this issue was not addressed before the MSJ proceedings were initiated and opposed.

Analysis

The death of a party generally terminates the authority of the attorney to represent that party. (*See* Civ. Code § 2356(a)(2) [agency terminates on death of principal]; *Deiter v. Kiser* (1910) 158 Cal. 259, 262; *Herring v. Peterson* (1981) 116 Cal.App.3d 608, 612; *Swartfager v. Wells* (1942) 53 Cal.App.2d 522, 527-528.)

"Since the authority of retained counsel generally does not survive the death of his client [citation],

plaintiff's death here left no person or entity to prosecute the underlying action on her behalf, and any proceedings taken in the absence of her personal representative would have been subject to being declared void." (*Pham v. Wagner Litho Mach. Co.* (1985) 172 Cal.App.3d 966, 973 citations omitted.)

Since plaintiff died before the opposition to the MSJ was filed, such filing is improper and void. It would also be improper to rule on the MSJ given the lack of a proper plaintiff. A "judgment cannot be rendered for or against a decedent, nor can it be rendered for or against a personal representative of a decedent's estate, until the representative has been made a party by substitution." (*Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957.)

Conclusion

Based on the above, Defendants' MSJ is **denied** as there is no proper plaintiff presently before the Court. The denial is without prejudice to Defendants bringing a new motion if and when a proper party has been substituted in to proceed with this action.

As noted above, the trial is scheduled for March 17, 2025. There is an issue conference scheduled for March 7, 2025. Plaintiff's Motion for Substitution is not scheduled to be heard until May 21, 2025. Obviously, the issue conference and trial cannot proceed as scheduled.

Given the above issues, counsel for both parties are **ordered to appear** to discuss the following issues:

1) Why was there an over six-month delay in notifying Defendants and the Court as to the death of Plaintiff?

2) Why did counsel for Plaintiff file an opposition to the MSJ over six months after Plaintiff had passed away?

3) Why, over three months after Plaintiff died, did Plaintiff's counsel request a trial date?

4) Should the trial date be vacated or re-scheduled, allowing time for Defendants to address the Motion for Substitution, any additional issues related to the death of Plaintiff, and re-file their MSJ?

8. 9:00 AM CASE NUMBER: C24-01114
CASE NAME: A. B. VS. LITTLE BLUE TRUCK, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEFENDANT LITTLE BLUE TRUCK, INC. TO PROVIDE FURTHER RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION; REQUEST FOR SANCTIONS AGAINST DEFENDANT AND ITS COUNSEL FOR $3,560**
FILED BY: B., A.
****TENTATIVE RULING:****

Plaintiff A.B. ("Plaintiff") filed a motion to compel further responses to special interrogatories (Set One) on November 12, 2024. Plaintiff filed a separate motion to compel further responses to a request for production of documents (Set One) on November 12, 2024. Collectively, these motions are referred to herein as the "Motions to Compel Further Responses." The Motions to Compel Further Responses were

set for hearing on February 26, 2025.

Background

First, the Court notes that the moving papers fail to attach a copy of the subject discovery requests and only attach the responses served. See Hani Ganji's Declaration filed November 12, 2024 ("Ganji Decl."). While the Court could, in its discretion, deny the motion on that ground alone, the Court exercises its discretion to consider the matters given the relatively small number of requests at issue and because the dispute does not turn on review of the totality of the initial discovery request documents themselves. For purposes of the disputes here, the filed Separate Statements suffice.

The discovery requests at issue in this motion (collectively, the "Discovery Requests") are the following:

1. Plaintiff's Request for Production, Set One (the "**RPD**"); and
2. Plaintiff's Special Interrogatories, Set One (the "**SROG**").

A set of opposition papers was filed on February 11, 2025. Reply papers were filed February 19, 2025.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1). When a motion to compel has been filed, the burden is on responding party to justify any objections made. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

Having considered the moving papers, including the Separate Statements, the opposition and any further pleadings submitted, the Court makes the following findings as to the discovery requests and responses at issue:

SROG No. 15. DENIED. The Court finds that the burden and intrusiveness of this interrogatory outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The scope of the request ("all children who have been injured at PROPERTY") sweeps in an extraordinarily broad universe of persons covered and has little nexus to the nature and degree of injury at issue in the litigation. This overbreadth is compounded by the time range of the request, "…in the last ten years." A more narrowly tailored request focusing on injuries more similar in kind and degree may well be appropriate, especially if the time frame were shorted. However, as framed, the Court declines to compel a further response and SUSTAINS the objection based on undue burden. Code Civ. Proc. § 2017.020(a).

RPD No. 8. DENIED. The Court finds that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible

evidence. The Court further finds that the moving party has failed to set forth specific facts showing good cause justifying the discovery sought. For similar reasons as discussed in connection with SROG No. 15 above, this request is excessively broad in as much as it fails covers all injuries of all children without any delineation regarding the nature, extent of the injuries ("All reports of children getting injured at the PROPERTY in the last five years."). The probative value of the circumstances of what may well be hundreds—if not substantially more—minor injuries, including every minor incident scrape, bump or bruise, is substantially outweighed by the burden and intrusiveness of the prospect of finding, compiling and producing all of the documents relating to such matters. While a more narrowly tailored request with a greater nexus to the claims at issue may be appropriate, given the potential reach of the request as framed, the Court declines to compel a further response. Code Civ. Proc. § 2017.020(a).

RPD No. 34. DENIED. The Court finds that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The Court further finds that the moving party has failed to set forth specific facts showing good cause justifying the discovery sought. This request is grossly overbroad. It purports to demand production of every conceivable "notice" or "mailing" from any government agency, without limitation on the nature of such communication ("All DOCUMENTS regarding notices or mailings received from all governmental agencies, over the last ten years, relating to the services YOU provide at PROPERTY."). The overbreadth is compounded by the excessive ten-year time frame. While a more narrowly tailored request with a greater nexus to the claims at issue may be appropriate, given the potential reach of the request as framed, the Court declines to compel a further response. Code Civ. Proc. § 2017.020(a).

RPD No. 35. DENIED for the same reasons as RPD No. 34 above. The request fails to have any reasonable nexus to the claims at issue such that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence ("All DOCUMENTS regarding fines, sanctions, or penalties assessed by governmental agencies upon YOU over the last ten years.")**.**

RPD No. 36. DENIED for the same reasons as RPD No. 34 above. The request fails to have any reasonable nexus to the claims at issue such that the burden and intrusiveness of this document production request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence ("All COMMUNICATIONS between YOU and any governmental agency, in the last ten years, RELATING TO the services YOU provide at the PROPERTY.").

<u>Sanctions</u>

When properly requested, monetary sanctions are mandatory against the party losing on a motion to compel further responses to interrogatories and/or document production requests unless the court finds "substantial justification" for that party's position or other circumstances making the sanction "unjust." Code Civ. Proc. §§ 2031.310(h) and 2030.300(d).

Having considered the totality of evidence and arguments, the Court finds that Plaintiff had substantial justification for its position and that the imposition of sanctions would be unjust. While the Court ultimately was not persuaded by Plaintiff's position on the discoverability of the information and documents as framed, the Court concludes that Plaintiff engaged in sincere, good faith meet and confer efforts and had a reasoned position for its arguments regarding the discoverability of the information and documents sought. See e.g. Ganji Decl., ¶4 *et seq*.

<u>Disposition</u>

The Court further finds and orders as follows:

1. The Motions to Compel Further Responses are DENIED in full.

9. 9:00 AM CASE NUMBER: C24-01114
CASE NAME: A. B. VS. LITTLE BLUE TRUCK, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEFENDANT LITTLE BLUE TRUCK INC. TO PROVIDE FURTHER RESPONSES TO PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES AGAINST DEFENDANT AND ITS COUNSEL FOR $2,560**
FILED BY: B., A.
****TENTATIVE RULING:****

SEE LINE 8 ABOVE

10. 9:00 AM CASE NUMBER: C24-01485
CASE NAME: LAFAYETTE FEDERAL CREDIT UNION VS. SAMUEL FOSTER
***HEARING ON MOTION IN RE: FOR JUDGMENT ON THE PLEADINGS**
FILED BY: LAFAYETTE FEDERAL CREDIT UNION
****TENTATIVE RULING:****

Plaintiff Lafayette Federal Credit Union ("Plaintiff") filed a Motion for Judgment on the Pleadings on November 7, 2024. The Motion for Judgment on the Pleadings was set for hearing on February 26, 2025.

Background

The Motion for Judgment on the Pleadings is based on the contention that operative complaint asserts and defendant's Answer admits liability for breaching the contract and failing to pay the debt at issue.

Analysis

A motion for judgment on the pleadings may be brought by a plaintiff where the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. Code Civ. Proc. § 438(c); see Weil & Brown, *et al*., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024) ("Rutter Civ. Pro.") § 7:290. The grounds for a motion for judgment on the pleadings must appear on the face of the pleadings or be based on facts that a court may judicially notice. Civ. Proc. § 438(d); Rutter Civ. Pro., § 7:291.

Plaintiff's Complaint alleges a first cause of action for breach of contract based on the allegation that defendant Samuel Foster ("Defendant") entered into a loan agreement and failed to make payments pursuant to the terms of the agreement. See Complaint filed June 6, 2024, p. 3, ¶¶ BC-1 through BC-2. The Complaint alleges a principal unpaid balance of $42,120.25. See *id*. at p. 3, ¶ BC-4. Plaintiff's Complaint alleges a second cause of action, also for breach of a loan agreement, with a principal unpaid balance of $71,912.57. See *id*. at p. 4, ¶¶ BC-1 through BC-4.

Defendant's Answer was filed July 8, 2024. The Answer does not deny any of the allegations of the Complaint. See Answer filed July 8, 2024 [neither box 3.a. (general denial) nor box 3.b. (admission with specific denials) checked]. Rather, Defendant affirmatively acknowledged liability for the debt and the amount owed:

I agree of the amount of the debt…

Answer, p. 2.

The only other substantive information in the Answer were statements regarding the circumstances impacting Defendant's ability to pay and statements to the effect that Defendant wants "to bring [his] account current and continue to make the monthly payments as agreed in the original contract." *Id*. Box 4 regarding any affirmative defenses is blank. *Id*.

Even liberally construing the pleading filed by a self-represented litigant, it is evident that Defendant admits the fact of the debt and does not state any cognizable defense to the liability. Indeed, the Answer expressly agrees to the amount of the debt as pled.

While the expressed desire to want to work about a payment arrangement is a laudable one, that does not change the plain conclusion that the Answer does not state facts sufficient to constitute a defense to the Complaint.

The Motion for Judgment on the Pleadings was unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion for Judgment on the Pleadings is GRANTED.
2. PARTIES TO APPEAR to address the form and content of order and judgment.

11. 9:00 AM CASE NUMBER: C24-01608
CASE NAME: MATTHEW BLOMQUIST VS. MACKENZIE SWEETIN
***HEARING ON MOTION IN RE: TO SUBSTITUTE REFEREE**
FILED BY: BLOMQUIST, MATTHEW
****TENTATIVE RULING:****

Plaintiff Matthew Blomquist ("Plaintiff") filed a Motion to Substitute Referee on November 5, 2024 (the "Motion to Substitute Referee"). The Motion to Substitute Referee was set for hearing on February 26, 2025.

Background

The Motion to Substitute Referee seeks to vacate the order appointing Michael S. Pecherer (the "Referee") as partition referee and to substitute a new person as the partition referee.

The supporting declaration of Plaintiff's counsel, Sandy Sikavi, outlines the history of the appointment of Mr. Pecherer and describes Mr. Pecherer's involvement in communications regarding settlement. See Sikavi Declaration filed November 5, 2024 ("Sikavi Decl."), ¶5 *et seq*. In particular, it is noted that the Referee relayed a settlement offer from the opposing party and expressed opinions about the merits of such offer. See Sikavi Decl., ¶17 ("the Defendant would buy out the Plaintiff for $70,000, and stating that the Plaintiff would be an 'absolute idiot' not to accept that offer.") and **Exhibit 10** thereto. It is also observed that the Referee expressed views on the merits of discovery efforts initiated by Plaintiff and affirmatively sought a court order to stay discovery proceedings. *Id*. at ¶22. That motion was granted by the Court. See Order on Referee's Petition for Instruction entered October 18, 2024; see also Minute Order dated January 9, 2025 (regarding January 8, 2025 hearing denying discovery motions based on October 18, 2024 orders).

The Referee filed opposition papers, including a declaration. Among other things, the Referee describes his views on the procedural posture, the progress of the litigation and his thinking behind his involvement in communicating the settlement offer and taking action vis-à-vis the discovery issues. See Declaration of Michael S. Pecherer ("Pecherer Decl."), ¶3 *et seq*. The Referee also rebuts the assertions regarding his neutrality and following of the operative appointment order. See e.g. Pecherer Decl., ¶18 *et seq*. The Referee seeks sanctions of $3,500 against Plaintiff's counsel. *Id*. at ¶25.

Defendant Mackenzie Sweetin has joined in the opposition. See Joinder to Referee's Opposition to Plaintiff's Motion to Substitute Partition Referee filed January 30, 2025. Opposing counsel, Marie G. Quashnock, submitted a declaration observing that the Referee's communications have been "customary and appropriate in a partition action" and that the Referee has discharged his obligations with a view toward minimizing undue litigation costs and achieving the Referee's appointed purpose. See Declaration of Marie Quashnock, ¶2 *et seq*.

Analysis

The Referee was appointed herein pursuant to the Court's Order on Interlocutory Judgment, and Appointment of Referee entered August 20, 2024 (the "Judgment and Appointment Order").

The Court has considered and rejects the contention that the Referee has engaged in any conduct rising to the level that would cause this Court to remove the Referee and substitute a new one.

While interjecting oneself into settlement discussions might conceivably lead the Court to conclude that a Referee ought to be removed, the Court does not conclude the Referee's conduct here warrants the Court taking such action. The action of passing along a settlement offer, even with a comment as to its desirability, is not tantamount to abandoning the Referee's neutral role. There is no credible evidence that the Referee otherwise engaged in substantial conduct to coerce a settlement or took adverse action against a party because of a refusal to agree to a particular proposal.

Indeed, the Referee's actions demonstrate a good faith effort to achieve the Referee's appointed purpose and to preserve the greatest net corpus for future distribution to both parties. Moreover, the Court does not conclude that the Referee has deviated from any statutory obligations or the Referee's authority under the operative reference in any material way.

It is also worth noting that given the apparent approximate numbers involved, the net sale proceeds will likely be just over six figures, leaving each party a net recovery on the rough order of magnitude of $50,000. See Pecherer Decl., ¶¶4-7. Even if the sale nets a higher amount, the modest figures involved mitigate against a change in the Referee at this stage which would substantially increase the costs to both parties and result in a further decrease in the net to the parties.

No authority is presented for the imposition of sanctions against a party's attorney payable to an appointed referee. See Memorandum of Points and Authorities in Opposition to Motion to Remove Referee filed November 22, 2024, p. 7, ln. 5, *et seq*.

Disposition

The Court finds and orders as follows:

1. Motion to Substitute Referee is DENIED.
2. Sanctions are DENIED.
3. The parties are admonished to confer and cooperate with the Referee, in a reasonable and timely fashion, to conclude the Referee's appointed purpose, including facilitating a sale and presenting to the Court a proposed Order of Distribution of the proceeds of sale.

12. 9:00 AM CASE NUMBER: C24-01897
CASE NAME: GERALD WHITE VS. PROVIDENCE GROUP, INC.
***HEARING ON MOTION IN RE: TO COMPEL ARBITRATION AND REQUEST TO STAY ACTION**
FILED BY:
****TENTATIVE RULING:****

The Motion of Defendants Pleasant Hillidence OPCO, LLC, Providence Group, Inc. and Providence Group North, LLC (defendants) to Compel and for a Stay, filed on October 9, 2024, is **granted in part and denied in part**. Arbitration of Gerald White's cause of action for elder abuse is **granted**. Arbitration of plaintiff David White's claims against the moving defendants is **granted**. Arbitration of the claims of plaintiffs Scott White and Deon Rohrig is **denied**.

This case is **stayed** pending the completion of arbitration, except the court sets an ADR review hearing on **June 26, 2025 at 8:30 a.m. in Department 16**. The parties are to file a **joint** status report no later than **June 18, 2025**.

I. Background and Summary of Arguments

Pleasant Hill Post-Acute is a skilled nursing facility (the Facility) located in Pleasant Hill, California, that offers nursing and rehabilitation custodial care services to the elderly. The Facility is owned and/or operated by defendants Pleasant Hillidence OPCO, LLC, Providence Group, Inc. and Providence Group North, LLC. (See 1/6/25 First Amended Complaint [FAC] ¶¶ 7-10.) Plaintiffs David White (David), Scott White (Scott) and Deon Rohrig (Deon) are the family of Plaintiff Gerald White, deceased (Gerald), who was admitted to the Facility in or around May of 2023. (FAC ¶¶ 3-6; Exh. B to the Declaration of Katherine Juntilla [Juntilla Decl.] at p. 5.) Gerald was 90 years old at the time of his admission with a significant health history, including a history of dementia and a history of falls. (FAC ¶¶ 22-26.)

Before being admitted to the Facility, Gerald had suffered a fall at Defendant Heavenly Care, LLC (a residential care facility for the elderly) in which he fractured his hip, requiring surgery. (FAC ¶¶ 14, 24.) Also prior to his admission, Gerald entered into an arbitration agreement with the Facility. The arbitration agreement was executed on the Gerald's behalf by his son David, pursuant to a Durable Power of Attorney signed by Decedent on July 25, 2017 (DPOA). (See Declaration of Alaina T. Dickens [Dickens Decl.] in Support of Reply, Exh. A.)

In the arbitration agreement, David acknowledged that he was legally authorized to make decisions–including signing pertinent agreements–on his father's behalf. (Juntilla Decl., Exh. A at p. 4.) The arbitration agreement was voluntary; its execution was not a pre-requisite to Gerald's admission to the Facility. (Juntilla Decl., Exh. A.) Gerald also had 30 days to revoke his acceptance of the arbitration agreement. (Juntilla Decl., Exh. A at ¶ 11.)

The arbitration agreement provided as follows:

1. It is understood that any dispute as to medical

malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered or not rendered, will be determined by submission to arbitration as provided by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq. ("F.A.A."), and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration. The Parties agree that any such action or claim must be brought within the statute of limitations established in the applicable state or federal law pertaining to the underlying claim.

2. It is understood that any and all other disputes, controversies, demands, or claims that relate to or arise out of the provision of services by the Facility to Resident, including, but not limited to, any action for injury or death arising from negligence, wrongful death, intentional tort, or statutory causes of action, including, but not limited to, the Elder Abuse and Dependent Adult Civil Protection Act, the Unfair Competition Act, the Consumer Legal Remedies Act, and Health & Safety Code Section 1430, will be determined by submission to arbitration as provided by the F.A.A., and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration. The Parties agree that any such action or claim must be brought within the statute of limitations established in the applicable state or federal law pertaining to the underlying claim.

(Juntilla Decl., Exh. A at ¶¶ 1- 2.)

The arbitration agreement further provided separate sections for the resident or resident's legal representative to agree to the terms of 1 and/or 2 separately, as follows:

NOTICE: BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE I OF THIS AGREEMENT.

> NOTICE: BY SIGNING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ANY CLAIM OTHER THAN A CLAIM FOR MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE II OF THIS AGREEMENT.

(Juntilla Decl., Exh. A at pp. 3-4.)

The arbitration agreement also stated, directly above two signature lines for David:

> By virtue of Resident's consent, instruction and/or durable power of attorney, I hereby certify that I am authorized to act as the Resident's agent in executing and delivering this Agreement. I acknowledge that the Facility is relying on this representation. I also acknowledge that pursuant to the terms of this Agreement, any claims that I may assert in my personal capacity, including all persons authorized to bring a claim on behalf of the Resident, including the legal representative, responsible party, power of attorney, guardian, surrogate, executor, administrator, or agent of the Resident, including any person or heir who has signed this Agreement on behalf of the Resident, that arise out of or relate to the provision of or failure to provide any services (medical or otherwise) or goods by the Facility to the Resident or the admission agreement are governed by this Agreement.

(Juntilla Decl., Exh. A at p. 4.)

David signed in in both places, agreeing to arbitrate claims. On July 19, 2024, David, individually, and as Gerald's successor in interest, and Scott and Deon, individually, filed a complaint alleging causes of action for (1) Elder Abuse/Neglect; (2) (3) Negligence; (4) Negligent Hiring, Supervision, and Retention; (5) Violation of the Patient Bill of Rights; and (6) Wrongful Death. (Dickens Decl., Exh. C.) The complaint has since been amended and, in the operative FAC, plaintiffs allege issues related the provision of custodial care and services to residents (FAC ¶¶ 7, 70-73) after Gerald was transferred to the SNF following surgery on his right hip necessitated by a fall at Heavenly Care, LLC. (FAC ¶24.) Plaintiffs then allege that Gerald suffered a fall upon admission to the Facility in which he suffered a left hip fracture, left humerus fracture, and subdural hematoma. (FAC ¶ 29.) Plaintiffs allege that the fall was due to inadequate or nonexistent fall precautions at the Facility. (FAC ¶¶ 26-28, 73-75.) Plaintiffs further allege that defendants were to provide assistance with ambulation, dementia, and depression and that decedent suffered a fall due to defendants' alleged failure to provide such assistance, its withholding of care, and the failure protect decedent from health and safety hazards. (FAC ¶¶ 25, 71-75.)

Defendants Pleasant Hillidence OPCO, LLC, Providence Group, Inc. and Providence Group North, LLC now move to compel arbitration of plaintiffs' claims against them. Defendant Heavenly Care neither joins in, nor opposes, the motion.

Defendants argue that all claims asserted by plaintiffs are within the scope of the arbitration agreement, which applies to elder abuse, and "any and all other disputes, controversies, demands, or claims that relate to or arise out of the provision of services by the Facility to Resident." (Juntilla Decl., Exh. A at ¶ 2.) Defendants further argue that Gerald is bound by the arbitration agreement because

David had the authority to execute it on Gerald's behalf, pursuant to a Durable Power of Attorney dated July 25, 2017 (DPOA). (See Reply Declaration of Alaina T. Dickens [Dickens Reply Decl.] at Exh. A.) Defendants additionally argue, albeit on reply, that non-signatories Scott and Deon are bound to arbitrate their claims as well. In arguing that the non-signatory heirs are bound to arbitrate, defendants cite to *Herbert v. Superior Court* (1985) 169 Cal.App.3d 718 (Herbert), a medical malpractice case in which the court relied on Code of Civil Procedure section 1295 to compel arbitration of the claims of non-signatory heirs.

Plaintiffs make three arguments in opposition. First, plaintiffs argue that David could not bind Gerald to arbitration because, assuming David held a valid healthcare power of attorney, it could not have authorized him to make decisions regarding Gerald's legal affairs, including whether to submit claims to arbitration. (See Opp. pp. 5-6, citing to, inter alia, *Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 966-967 [elderly patient's relative had been granted a written power of attorney to make health care decisions but agreeing to arbitration was not within the scope of the relative's authority, because "agreeing to an optional, separate arbitration agreement with a skilled nursing facility is not a health care decision."].) Second, plaintiffs argue that Scott and Deon did not sign the arbitration agreement and did not waive their right to bring wrongful death claims in court. Third, plaintiffs argue that arbitration should be denied outright because if their wrongful death claims (as well as claims against Heavenly Care) cannot be compelled to arbitration, there is a risk of inconsistent rulings. (See Code Civ. Proc. § 1281.2(c); and see, *Birl v. Heritage Care, LLC* (2009) 172 Cal.App.4th 1313, 1319–1321 [arbitration properly denied where there was the potential for conflicting rulings on common questions of law or fact].)

While defendants referenced the DPOA in their moving papers (referring to it as a "power of attorney for healthcare decisions"), they did not attach the DPOA as an exhibit to their motion. Predictably, plaintiffs devoted much of their opposition to the claim that there was no power of attorney, or if there was, it was for healthcare decisions and did not authorize David to bind Gerald to legal matters like arbitration. After defendants attached a copy of the DPOA to their reply – claiming the evidence had been inadvertently omitted (Dickens Reply Decl. ¶ 3) – the Court continued the motion to give plaintiffs the opportunity to file a supplemental brief responding to the new evidence and adjusting their arguments, if necessary. (See 12/28/24 Minute Order.) Plaintiffs apparently chose not to file a supplemental brief as none appears in the docket.

II. Analysis of Motion

The Existence and Scope of Arbitration Agreement

Preliminarily, there is no dispute as to the existence of an agreement to arbitrate that is broad enough to encompass the allegations of the operative FAC (if binding). The arbitration agreement states that "any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered or not rendered, will be determined by submission to arbitration as provided by the Federal Arbitration ACT, 9 U.S.C. 1 et seq. (FAA), and not be a lawsuit...," and that "any and all other disputes, controversies, demands or claims that relate or arise out of the provision of services by the Facility to Resident, including, but not limited to, the Elder Abuse and Dependent Adult Civil Protection Act, the Unfair Competition Act, the Consumer Legal Remedies Act, will be determined by submission to arbitration as provided by the F.A.A. and not by a lawsuit...." (Juntilla Deci., Exh. A, ¶¶ 1

and 2.)

The court determines that these provisions are broad enough to apply to the elder abuse and other causes of action alleged in the FAC. The court also finds that the DPOA, which is considerably broader than a power of attorney for healthcare decisions, authorized David to agree to arbitration on Gerald's behalf. Plaintiffs were given the chance to make a contrary argument and they did not do so.

Arbitrability of Claims Asserted by Non-Signatory Plaintiffs Scott and Deon

Plaintiffs' opposition is based primarily on their argument that the fifth cause of action for wrongful death – asserted by Gerald's heirs - is not subject to the arbitration agreement.

First, as plaintiffs observe, the wrongful death claim is not asserted by or on behalf of Gerald, but is instead a separate cause of action asserted by his heirs, some of whom (Scott and Deon), are not signatories to the arbitration agreement and thus did not agree to waive their right to bring a wrongful death claim in civil court. (See Opp. pp. 6-7.)

In response, Defendants cite to a medical malpractice case to argue that non-signatory heirs can be bound (Reply p. 3, citing, Herbert at pp. 722-727), so the court's starting point for the analysis is *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 841 (Ruiz). The California Supreme Court in *Ruiz* held that "all wrongful death claimants are bound by arbitration agreements entered into pursuant to [Code of Civil Procedure] section 1295, at least when, as here, the language of the agreement manifests an intent to bind these claimants." As discussed in *Ruiz*, section 1295 specifies the form and content of "[a]ny contract for medical services which contains a provision for arbitration of any dispute as to professional negligence of a health care provider...." (Code Civ. Proc. § 1295(a).)

Here, as in *Ruiz*, the arbitration agreement appears to comply with the form and content of section 1295. More specifically, it was signed in connection with Gerald's admission into an SNF, which is a "health care provider" as defined in Code of Civil Procedure section 1295(g)(1). (See *id*. ["Health care provider" includes a "health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code."].) Further, the first paragraph of the arbitration agreement contains the language required in section 1295(a), and pp. 3-4 (immediately above David signature) contains the language required by section 1295(b). Also similar to the agreement in *Ruiz*, the arbitration agreement in this case purports to bind relatives.

Nevertheless, there are distinctions between this case and *Ruiz*. The wrongful death claim in *Ruiz* was expressly based on professional negligence of a physician. The decedent (Ruiz) signed the arbitration agreement when he attended an appointment with an orthopedic surgeon, and the wrongful death claim alleged that the physician and other medical professionals "failed to adequately identify and treat Ruiz's hip fracture resulting in complications, and eventually his death." (*Ruiz*, 50 Cal.4th at p. 842.) In contrast, plaintiffs do not allege the negligent rendition of a medical diagnosis by a physician but instead that "Defendants 'neglected' Gerald White as that term is defined in Welfare and Institutions Code § 15610.57 in that Defendants themselves, as well as their employees, failed to exercise the degree of care that reasonable persons in a like position would exercise by denying or withholding goods or services necessary to meet the basic needs of Gerald White as is more fully alleged herein" and, as a result, "David White, Scott White, and Deon Rohrig sustained loss of love, companionship, comfort, care, assistance, protection, affection, society and moral support of Gerald

White." (FAC ¶¶ 112, 153.) None of the allegations describe medical or professional negligence, and instead the claims are based on elder abuse based on a neglect of custodial care duties as defined in Welfare & Institutions Code section 15610.57.

Decisions since *Ruiz* have found its rationale inapplicable in cases involving wrongful death claims based on elder abuse rather than professional negligence. For example, in *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674 (Daniels), a wrongful death plaintiff sued a residential care facility in her individual capacity, alleging the facility failed to properly care for her 92-year-old mother and caused her mother's death. The facility sought to compel arbitration under a clause in a residency agreement which, as here, was signed on her mother's behalf pursuant to a durable power of attorney. (*Daniels*, 212 Cal.App.4th at p. 678.) The clause, like the one here, purported to bind the patient's heirs. (*Id*.) The Court of Appeal affirmed the denial of the petition, rejecting the argument that *Ruiz* required arbitration of the wrongful death claim, stating: "*Ruiz* is based squarely on section 1295, which governs agreements to arbitrate professional negligence and medical malpractice claims in medical services contracts with health care providers." (Id., at p. 682.) The court noted that in *Ruiz*, the Court stated: "'Section 1295 was enacted as part of the Medical Injury Compensation Reform Act of 1975 (MICRA).... The purpose of section 1295 is to encourage and facilitate arbitration of medical malpractice disputes,' because the arbitration of these disputes 'furthers MICRA's goal of reducing costs in the resolution of malpractice claims and therefore malpractice insurance premiums.'" (*Id*.) The *Daniels* court noted that, in contrast to Ruiz, the arbitration clause with the facility "is not manifestly intended to bind third party wrongful death claimants" and "does not mention or allude to wrongful death or other third party claims." (*Id*., at p. 683.) Instead, "the statement that the arbitration clause 'binds all parties to the Agreement and their spouse, heirs, representatives, executors, administrators, successors, and assigns as applicable,' means only that the clause is binding on persons who would assert survivor claims on behalf of [the decedent]." (*Id*.)

Somewhat more recently, *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, held that a wrongful death claim based on elder abuse, as opposed to medical malpractice, is not arbitrable under an arbitration provision of an admissions agreement to a SNF that was not signed by the decedent's heirs in their individual capacity. (See *Avila*, *supra*, 20 Cal.App.5th at pp. 842-843.) In *Avila*, a decedent's son (who had power of attorney) signed an admissions form on his father's behalf upon his admission to a long-term acute care hospital. (*Id*., at p. 838.) The agreement provided for arbitration of "any dispute as to medical malpractice" as well as "any legal claim or civil action arising out of or relating to your hospitalization." (*Id*.) As here, however, the wrongful death claim was based largely on allegations custodial "neglect" as defined in Welfare & Institutions Code § 15610.57. (*Id*., at pp. 838 and 842-843.) The court was 'persuaded that section 1295, construed in light of its purpose, is designed to permit patients who sign arbitration agreements to bind their heirs in wrongful death actions.' (*Id*. at p. 849.) Not only did 'section 1295, subdivision (a) contemplate[] arbitration 'of any dispute as to professional negligence of a health care provider [,]' including wrongful death, but it 'was part of MICRA's efforts to control the runaway costs of medical malpractice ... by promoting arbitration of malpractice disputes....' (*Ibid*.)"

After discussing *Daniels*, *supra*, the *Avila* court stated: "Defendants argue vociferously that Daniels is irrelevant because the defendant in that case was not a licensed health care provider. We disagree. What matters is not the license status of the defendant, but the basis of the claims as pleaded in the complaint. If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary

basis is under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) (the Act), then section 1295 does not apply and neither does *Ruiz's* exception to the general rule that one who has not consented cannot be compelled to arbitrate." (*Avila*, 20 Cal.App.5th at p. 842.) The court continued: "Plaintiffs, within the limits of established law, are essentially free to plead their case as they choose. They chose to plead a cause of action under the Act, and they did so successfully. . . . Accordingly, we conclude the plaintiffs' claim is not one within the ambit of section 1295, and therefore, Ruiz's holding does not apply." (*Id*., at p. 843.)

The court finds the foregoing analysis applicable to this case. Thus, the court will deny the motion to compel arbitration of claims brought by plaintiffs Scott and Deon. (*Avila*, pp. 841-842; see also, *Williams v. Atria Las Posas* (2018) 24 Cal.App.5th 1048, 1053 [following *Avila* and holding that wife was not bound to arbitration agreement as to her loss of consortium claim, as there was "no evidence [that she] signed the Agreement to Arbitrate Disputes, or otherwise agreed to its terms."].)

Arbitrability of Claims Asserted by Plaintiff David White

As also relevant here, *Avila* addressed whether, independent of the *Ruiz* holding based on Code of Civil Procedure section 1295, the evidence showed that the wrongful death claimant (the son who signed the admissions agreement) had contractually agreed to arbitrate. Noting that "a wrongful death claim is an independent claim," the court rejected the claim that signing an arbitration agreement as agent gave the agent's consent to arbitrate independent claims, including a claim for wrongful death. (*Id*., at p. 844, citing *Daniels*, *supra*, 212 Cal.App.4th at p. 681, and *Fitzhugh v. Granada Healthcare & Rehabilitation Center, LLC* (2007) 150 Cal.App.4th 469, 474.) The court stated: "There is simply no evidence that when Alex signed the agreement as his father's agent, he had any intent to waive his right to a jury trial for any personal claims. Accordingly, we find the trial court did not err by finding that no agreement to arbitrate existed as to Alex." (*Avila*, *supra*, 20 Cal.App.5th at p. 845.)

What distinguishes this case from *Avila* is that while David signed the Arbitration Agreement with a power of attorney on Gerald's behalf, he also signed in the signature lines stating: "I also acknowledge that pursuant to the terms of this Agreement, any claims that I may assert in my personal capacity…that arise out of or relate to the provision of or failure to provide services (medical or otherwise) or goods by the Facility to the Resident or the admission agreement are governed by this Agreement." (Juntilla Decl., Exh. A, p. 4.) There is also language in the arbitration agreement expressly referring to a "wrongful death" claim and giving up the right to a jury trial as to such a claim. (Juntilla Decl., Exh. A, ¶ 2.)

As in *Avila*, the court determines that Scott and Deon did not agree to waive their right to jury trial on their claims and are not bound by the arbitration agreement. However, because the arbitration agreement clearly states directly above both signature lines for David that he was signing the agreement in his individual capacity, the court also determines that David did agree to be bound on his individual claims.

The Arbitration Agreement Precludes Reliance on Code of Civil Procedure Section 1281.2 (c)

Plaintiffs next assert that, if the arbitration agreement is enforceable, the individual and successor claims, as well claims against Heavenly Care, should nevertheless remain together in the

trial court in order to avoid conflicting rulings. Code of Civil Procedure section 1281.2, subdivision (c), vests discretion in the trial court to deny arbitration if "[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc., § 1281.2.) Plaintiffs are correct that there is a possibility of inconsistent rulings if arbitration and litigation are permitted to proceed. (See *Daniels*, *supra*, 212 Cal.App.4th at 680, and *Fitzhugh*, *supra*, 150 Cal.App.4th at 476.)

However, "[i]n accordance with choice-of-law principles, the parties may limit the trial court's authority to stay or deny arbitration under the CAA by adopting the more restrictive procedural provisions of the FAA." (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 345.) Where, as here, "an agreement provides that [it] shall be governed by the FAA, the FAA governs a party's motion to compel arbitration." (*Id*. at p. 346; see also, *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376 at 394 [sanctioning FAA selection].)

The arbitration agreement in this case selects the FAA as its governing law and specifically states that section 1281.2(c) of the Code of Civil Procedure does not apply. Paragraph 4 of the arbitration agreement states: "the parties . . . acknowledge and agree that this Agreement shall be construed and enforced in accordance with . . . the F.A.A." and "the parties further acknowledge and agree that the procedures set forth in the F.A.A. shall govern any petition to compel arbitration." Paragraph 5 states: "the parties agree that California Civil Code of Procedure § 1281.2(c) is excluded" and further, "[t]he parties do not want any claims not subject to arbitration to impede any and all other claims from being ordered to binding arbitration." (See Juntilla Decl. Exh. A, ¶¶ 4, 5; see also ¶¶ 1, 2.) It is reasonably clear from the language of the arbitration agreement that the parties intended the FAA to both substantively and procedurally govern. (See *Eminence Healthcare, Inc. v. Centuri Health Ventures, LLC* (2022) 74 Cal.App.5th 869, 880 [plain language controls].)

Defendants argued the applicability of the FAA to this dispute in their moving papers. Plaintiffs did not address the applicability of the FAA or the language in the arbitration agreement purporting to exclude reliance on CCP section 1281.2(c) in their opposition.

III. Disposition

Based on the foregoing, the court orders as follows:

Defendants' motion to compel arbitration is **granted in part and denied in pa**rt. Arbitration of Gerald White's cause of action for elder abuse is **granted**. Arbitration of plaintiff David White's claims against the moving defendants is **granted**. Arbitration of the claims of plaintiffs Scott White and Deon Rohrig is **denied**.

Litigation of this case is **hereby stayed** pending the completion of arbitration except the court sets an ADR review hearing on **June 26, 2025 at 8:30 a.m. in Department 16**. The parties to the arbitration shall file a joint status report no later than **June 18, 2025**.

This matter is hereby reassigned for all purposes to the Honorable Leonard E. Marquez, Department 34.

13. 9:00 AM CASE NUMBER: L23-05353
CASE NAME: ABSOLUTE RESOLUTIONS INVESTMENTS LLC VS. ELEANOR REYES
***MOTION/PETITION TO COMPEL ARBITRATION MTN TO DISMISS AND COMPEL ARBITRATION, MEMORANDUM IN SUPPORT**
FILED BY: REYES, ELEANOR
****TENTATIVE RULING:****

Defendant Eleanor Reyes ("Defendant") filed Motion to Dismiss and Compel Arbitration on October 17, 2024 (the "Motion to Compel Arbitration"). The Motion to Compel Arbitration was set for hearing on February 26, 2025.

Background

There is no opposition on file.

The parties advised at the recent Case Management Conference (CMC) conducted on February 3, 2025 that a settlement has been reached in the matter and that settlement documentation is being finalized. Accordingly, the Court continues this matter *sua sponte* to a later date to allow for the settlement to be concluded.

Disposition

The Court finds and orders as follows:

1. Motion to Compel Arbitration is continued to June 6, 2025, 8:30 am, in Department 34.
2. This matter is hereby reassigned for all purposes to the Honorable Leonard E. Marquez, Department 34.
3. When and if the settlement is concluded, the parties are directed to contact the Court to take the matter off-calendar and/or file the appropriate dismissal.

14. 9:00 AM CASE NUMBER: L24-03854
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. KELI UPDEGRAFF
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE DEEMED ADMITTED FILED BY JPMORGAN CHASE BANK, N.A. ON 10/10/24**
FILED BY:
****TENTATIVE RULING:****

The clerk of the court will give notice of a continued hearing date on this matter. Hon. Leonard E. Marquez is disqualified from hearing the matter.

15. 9:00 AM CASE NUMBER: MSC12-03011
CASE NAME: WILSON VS WELLS FARGO
***HEARING ON MOTION FOR DISCOVERY MOTION TO COMPEL FURTHER RESPONSES TO WRITTEN DISCOVERY OF CROSS-COMPLAINANT BANK OF AMERICA, N.A. AND REQUEST FOR SANCTIONS**
FILED BY: FPI MANAGMENT, INC
****TENTATIVE RULING:****

Defendant and Cross-Defendant FPI MANAGEMENT, INC. ("FPI") filed a Motion to Compel Further

Responses to Written Discovery of Cross-Complainant Bank of America, N.A on May 29, 2024 (the "Motion to Compel Further Responses"). The Motion to Compel Further Responses was initially set for hearing on September 4, 2024. The motion sought further discovery responses from cross-complainant BANK OF AMERICA, N.A. ("BofA"). Pursuant to the stipulation of FPI and BofA, the motion was continued several times, first to November 6th, then to December 4th, and finally to February 26, 2025.

Background

The discovery requests at issue in this motion (collectively, the "Discovery Requests") are the following:

1. FPI's Form Interrogatories—General, Set One, to BofA ("FROG");

2. FPI's Special Interrogatories, Set One, to BofA (the "SROG"); and

3. FPI's Demand for Production of Documents, Set One, to BofA (the "RPD").

See Declaration of Suzanne M. Nicholson filed May 29, 2024 ("Nicholson Decl."), ¶5 *et seq*. and **Exhibits A through C** thereto.

After a series of extensions of time to respond, a final agreed upon deadline was set, April 12, 2024. Nicholson Decl., ¶6. On that date, unverified responses were served consisting of partial responses and a large number of objections. *Id*. at ¶7 and **Exhibits E through G** thereto. No documents were produced at that time. *Id*. at ¶7.

A set of opposition papers was filed on February 11, 2025. Reply papers were filed February 19, 2025.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1). When a motion to compel has been filed, the burden is on responding party to justify any objections made. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

Having considered the moving papers, including the Separate Statement, the opposition and any further pleadings submitted, the Court makes the following findings as to the discovery requests and responses at issue:

Notwithstanding BofA's extended discussion of its efforts to comply with discovery, it appears to overlook its most obvious and basic obligation—to provide verified responses. Whatever else has happened, that it has failed to provide verified responses is not contested. Nowhere in the submitted declaration of its counsel does BofA assert that it served **verified** responses to the Discovery Requests.

See Declaration of Beth L. Kaufman ("Kaufman Decl."), ¶¶1-11. BofA admits receiving FPI's meet and confer letter raising the lack of proper verifications. *Id*. at ¶8 and **Exhibit 1** thereto. Despite the promise to provide verified responses, it appears that has not occurred to date. *Id*., **Exhibit 2** (Response to meet and confer letter from the propounding party); Supplemental Declaration of Suzanne M. Nicholson, ¶4 (FPI has not received verifications to any of the discovery responses).

For this reason alone, the Court grants the Motion to Compel Further Responses.

In addition, the Court makes the following further rulings:

FROG No. 1.1. GRANTED. The objections are OVERRULED and a further amended response without the stated objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written.

FROG No. 4.1. GRANTED. The objections are OVERRULED and a further amended response without the stated objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. In addition to being unverified, the substantive response is improperly qualified and conditioned on stated supposed limitations ("…Additionally, BANA's discovery…" etc.). A party responding to interrogatories is obligated to provide a substantive answer "to the extent possible." *Id*. at § 2030.220(b); see Rutter Civ. Pro., § 8:1046 *et seq*.

FROG No. 4.2. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 9.1. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 9.2. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.1. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.2. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.3. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.4. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.5. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.6. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 12.7. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 13.1. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 13.2. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 14.1. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 14.2. GRANTED for the same reasons as to FROG No. 4.1 above.

FROG No. 50.1. GRANTED. The objections are OVERRULED and a further amended response without the stated qualifying language ("…Additionally, BANA's discovery…" etc.) shall be made. Any applicable privilege objections shall be accompanied by a proper privilege log. The Court finds the response is not code compliant as written.

FROG No. 50.2. GRANTED for the same reasons as to FROG No. 50.1 above.

FROG No. 50.3. GRANTED for the same reasons as to FROG No. 50.1 above.

FROG No. 50.4. GRANTED for the same reasons as to FROG No. 50.1 above.

FROG No. 50.5. GRANTED for the same reasons as to FROG No. 50.1 above.

FROG No. 50.6. GRANTED for the same reasons as to FROG No. 50.1 above.

SROG No. 1. The objections are OVERRULED and a further amended response without the stated objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. In addition to being unverified, the substantive response is improperly qualified and conditioned on stated supposed limitations ("…Additionally, BANA's discovery…" etc.).

In addition, the reference to Code Civ. Proc., § 2030.230 is without merit. That provision relates to circumstances involving an answer to an interrogatory that would "necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed…" See Code Civ. Proc. § 2030.230. First, the responding party has not made a sufficient showing that answering the subject interrogatory requires "preparation or the making of a compilation, abstract, audit, or summary" of any particular universe of documents, much less what those specific documents are. Second, even if arguably applicable here, the resort to this response option is deficient. As pointed out by the leading commentators, exercising the right to make a response pursuant to Section 2030.230 is "equivalent to a statement under oath that the record identified actually exist and that they contain the information necessary to provide a "complete and straightforward" answer to the interrogatory. See Rutter Civ. Pro., § 8:1065. The answer as written fails to properly exercise this option and is plainly deficient on its face. See *id*. at § 8:1066 *et seq*.

SROG Nos. 2 through 31. GRANTED for the same reasons as to SROG No. 1 above.

RPD No. 1. The objections are OVERRULED and a further amended response without the stated objections, except any applicable privilege objections accompanied by a proper privilege log, shall be made. The Court finds the objections without merit and the response is not code compliant as written. In addition to being unverified, the substantive response is improperly qualified and conditioned on stated supposed limitations ("…Additionally, BANA's discovery…" etc.).

The Court notes that the moving party's supporting Separate Statement erroneously identifies this subject document request as "DEMAND FOR PRODUCTION NO. 3" instead of RPD No. 1. However, read in context, the item plainly refers to RPD NO. 1 ("All DOCUMENTS evidencing WELLS FARGO's ownership of the PROPERTY at any time."). Moreover, the discussion as to the reasons for compelling further response refers to the correct identifier number contained in the as-served request and response. This numbering error persists throughout the remainder of the document, but the Court concludes, as with RPD No. 1, the Separate Statement is sufficient and the discovery items at issue are readily ascertainable from the document and supporting materials.

RPD Nos. 2 through 50. GRANTED for the same reasons as to RPD No. 1 above.

RPD Nos. 51 through 56. GRANTED. A further amended response without the stated qualifying language ("…Additionally, BANA's discovery…" etc.) shall be made. Any applicable privilege objections shall be accompanied by a proper privilege log. The Court declines to rule on the stated objections at this time. The parties are ordered to meet and confer within thirty (30) days of notice of entry of this order regarding the stated objections. If not resolved after the further amended response and additional meet and confer between the parties, the Court can consider the objections on further motion. These production requests seek documents implicating attorney client privilege and work product, including documents such as fee agreements and billing invoices. The Court encourages the

parties to confer and to come to a mutually agreeable scope of production and method for the production of responsive documents, including by redaction and/or protective order.

Sanctions

BofA's failure to timely serve properly verified responses to the Discovery Requests and the failure to make full and complete code compliant responses constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).

The Court finds that the foregoing conduct by BofA constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to make timely verified responses to the Discovery Requests and failing to make full and complete code compliant responses, the Court finds that BofA did not act with substantial justification.

Accordingly, the Court shall consider further the imposition of monetary sanctions upon BofA in an amount to be determined by the Court (the "Monetary Sanctions").

In order to assess and fix the reasonable expenses, including attorney's fees or other costs, incurred by FPI as a result of the foregoing conduct by BofA, the Court makes the following orders:

1. **FPI's Supplemental Declaration regarding Discovery Sanctions.** Within thirty (30) days of notice of entry of this order, FPI shall file and serve a declaration signed under penalty of perjury ("Supplemental Declaration regarding Discovery Sanctions") setting forth any and all reasonable expenses, including attorney's fees or other costs, incurred by FPI as a result of the above discovery misconduct. Such submittal shall include any supporting billing statements.
2. **Contents and Length of Supplemental Filing.** FPI's Supplemental Declaration regarding Discovery Sanctions shall not exceed 5 pages, excluding any evidentiary attachments such as supporting attorney billing statements or other documentation of reasonable expenses. Any redaction of billing statements regarding privilege issues should be as minimal as possible in order to facilitate the Court's review and consideration of the scope of legal services provided.
3. **Meet and Confer.** Within twenty-one (21) days after service of FPI's Supplemental Declaration regarding Discovery Sanctions, the parties shall meet and confer, in good faith, to attempt to resolve the issue of Monetary Sanctions.
4. **BofA's Further Response.** Within forty-five (45) days after service of FPI's Supplemental Declaration regarding Discovery Sanctions, BofA shall file and serve any further responsive declaration or other opposition papers regarding the Supplemental Declaration regarding Discovery Sanctions.
5. **No Reply.** No further reply papers shall be submitted regarding the issue of the Monetary Sanctions.
6. **Further Hearing.** The issue of Monetary Sanctions shall be separately set for further hearing.

Disposition

The Court finds and orders as follows:

1. Motion to Compel Further Responses is GRANTED, as set forth above.
2. Amended responses, as ordered above, shall be served by BofA within forty-five (45) days of notice of entry of this order.
3. PARTIES TO APPEAR to set the hearing date for determination of the amount of the Monetary Sanctions. The Court reserves jurisdiction regarding the determination and imposition of the

Monetary Sanctions and any and all further sanctions as the Court may deem necessary and appropriate pending compliance.

16. 9:00 AM CASE NUMBER: N24-0935
CASE NAME: PETITION OF:ALBERT SEENO
HEARING ON DEMURRER TO: PETITION FOR WRIT OF ADMINISTRATIVE MANDATE
FILED BY:
TENTATIVE RULING:

Introduction

Before the Court is Petitioner Albert Seeno JR's Writ of Mandate concerning restoration of gun rights ("Writ") to find that he is not disqualified under Penal Code § 26202.

For the following reasons, **Petitioner's Writ is denied**.

Statement of Facts

Mr. Seeno originally hired his son as CEO of certain companies owned and controlled by Mr. Seeno. The son, Albert D. Seeno III (Seeno III) and his various companies, were employed pursuant to written contacts beginning in 2020. One of those written contracts permitted Seeno III and his companies' employees to have offices in a building owned by Mr. Seeno located in Concord, California. In September 2022 Seeno III was terminated from his employment by Mr. Seeno. Seeno III and his employees were asked to vacate the offices owned by Mr. Seeno. Some originally refused to leave the premises. Mr. Seeno was forced to file suit enforcing the terminations. Ultimately Seeno III and his employees vacated the Concord, California offices.

Multiple lawsuits and other court actions were filed by Seeno III and his companies as a result of the terminations. Relevant to this Petition, Seeno III attempted unsuccessfully three times to have a permanent workplace restraining order issued pursuant to section 527.8 of the California Code of Civil Procedure against Mr. Seeno. First, a former employee of Mr. Seeno's company, Tae Kim, on September 13, 2022, filed a request for civil harassment restraining order in Contra Costa County Superior Court (N22-1751). The request for a temporary restraining order was denied on September 14, 2022, and the case was dismissed by petitioner Tae Kim on October 3, 2022.

Second, on September 14, 2022, counsel for Seeno III and his company Discovery Builders Inc. ("DBI") filed a Petition for Workplace Violence Restraining Order in Contra Costa County Superior Court (N22-1768) on behalf of Tae Kim, among others, alleging that "on September 12, 2022 [a]t approximately 1:30 pm, Mr. Seeno came into my office… pulling my arm and trying to force me to leave my office." (N22-1768). An ex-parte TRO issued after the filing of that petition on September 14, 2022. As a function of the TRO Mr. Seeno was required to "File a receipt with the Court within 48 hours of receiving this [TRO] that proves your guns or firearms have been turned in, sold or stored." Mr. Seeno complied. The TRO was scheduled to expire October 3, 2022. Six days of hearing on that petition were conducted by the Honorable Gina Dashman, who on February 3, 2023, issued a denial of the DBI petition (the second matter) finding the allegations unsubstantiated and the testimony

"controverted."

In the third matter, Seeno III's company Discovery Builders Inc. filed yet another claim against Mr. Seeno on September 16, 2022, in Contra Costa County Superior Court (C22-01885) containing a request for an ex-parte order against Mr. Seeno for similar allegations. The ex-parte application was denied, and the case dismissed on January 4, 2023. Notwithstanding the express denial of a restraining order in N22- 1768 and the noted other failures of Seeno III to obtain a section 527.8 workplace restraining order against his father, Seeno III also appended the withdrawn, dismissed, unsubstantiated and "controverted" Tae Kim petition to a multitude of other motions made in the various cases between himself and Mr. Seeno. In sum, no permanent section 527.8 workplace violence restraining order has ever been issued against Mr. Seeno, but only a temporary one issued ex-parte which was later found by Judge Dashman to be unsubstantiated after six days of hearing.

Procedural History

Petitioner filed his Verified Petition for Writ of Mandate on May 13, 2024. On September 18, 2024, the Court overruled Respondent's Demurrer to Petitioner's Writ on the basis that Petitioner alleged that there was no other plain, speedy or adequate legal remedy afforded to him. At the Demurrer hearing, the Court noted the procedural irregularities that had occurred. See Minute Order dated September 19, 2024. The Demurrer was overruled and the Court also set a hearing pursuant to Penal Code section 26206 for November 8, 2024, to consider the denial of the subject application for a firearms permit. *Id*. The Court also set a hearing on the writ of mandate for November 13, 2024. (*Id*.) The Penal Code section 26206 hearing was later continued to December 6, 2024. See Stipulation and Order entered October 25, 2024.

On December 6, 2024, the Court held the Penal Code section 26206 statutory hearing. Present at the hearing was a representative from the Contra Costa District Attorney's Office, Contra Costa Sheriff's Counsel, and Petitioner with his Counsel. The District Attorney bore the burden to show by a preponderance of the evidence that the applicant is a disqualified person in accordance with Section 26202. (Pen. Code § 26206(e).) The Court found that the Contra Costa District Attorney met their burden by showing that Petitioner applicant was a disqualified person pursuant to Penal Code section 26202.

Legal Standard

Under Code of Civil Procedure section 1085 ("traditional mandamus"), writ of mandate will issue to compel the performance of an act that is enjoined by law as duty resulting from office. (Civ. Proc. Code, 1085(a).) Mandate is available only if there is no other, adequate remedy at law. (*300 DeHaro Street Investors v. Department of Housing Community Development* (2008) 161 Cal.App.4th 1240, 1254.) To obtain relief, petitioner must demonstrate (1) no 'plain, speedy, and adequate' alternative remedy exists; (2) clear, present ministerial duty on the part of the respondent; and (3) clear, present and beneficial right in the petitioner to the performance of that duty. (*Kern County Hosp. Auth. v. Department of Corrections Rehabilitation* (2023) 91 Cal.App.5th 1313, 1325.) "In order to obtain writ relief, a party must establish (1) [a] clear, present and usually ministerial duty on the part of the respondent … ; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty …." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 868 (internal citations

omitted).) "A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act." (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340.)

"In traditional mandamus actions, the agency's action must be upheld upon review unless it constitutes an abuse of discretion." (*O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Ca1.App.4th 568, 585, citing *Shapell Industries, Inc. v. Governing Board* (1991) Ca1.App.4th 218, 230.) "When reviewing the exercise of discretion, '[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency.'" (*O.W.L. Foundation v. City of Rohnert Park* at 586.) "In general … the inquiry is limited to whether the decision was arbitrary, capricious or entirely lacking in evidentiary support..." (Id.) When making that inquiry, the "'court must ensure that an agency has adequately considered all relevant factors, and has demonstrated rational connection between those factors, the choice made, and the purposes of the enabling statute.'" (*O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Ca1.App.4th at pp. 585-86, quoting *American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Ca1.App.4th 534, 547-548, fn. Omitted.) Petitioner bears the burden of proof to establish abuse of discretion. (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Ca1.App.4th 914, 934.)

Petitioners' complaint for declaratory relief is governed by Section 1060 of the Code of Civil Procedure. Declaratory relief is available to a party "who desires a declaration of his or her rights or duties with respect to another …." (Code Civ. Proc., § 1060.) "Declaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs. In short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them." (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909 (internal citations omitted).) Where it would be redundant of other claims, declaratory relief may be denied. (*Id*. at pp. 909-910; see also Code Civ. Proc., § 1061.)

Analysis

Petitioner's Writ is Moot at the Trial Court Level

Petitioner seeks, in this petition, to have this Court decide that he is not disqualified under Penal Code section 26202 from issuance of a concealed carry weapons permit under Penal Code section 26155. (Writ at pp. 4: ¶ 11, 5: 2-3.)

On December 6, 2024, this Court provided Petitioner with his statutorily guaranteed Penal Code § 26206 hearing to determine if the District Attorney can prove by the preponderance of the evidence that Petitioner is an unqualified person according to Penal Code section 26202. This Court found that the District Attorney was able to meet their burden of proof and deemed Petitioner an unqualified person under the statute.

Even if the matter is not strictly speaking moot and the writ proceeding presents a larger question of the entitlement to the issuance of an administrative writ of mandate beyond what the Court ruled upon in the initial Penal Code section 26206 hearing, that adverse ruling effectively ends the inquiry as to the issuance of a writ by this Court, as the Court does not conclude that there is a clear and present ministerial duty to issue the permit given the Court's prior determination regarding the

Petitioner's disqualification under the relevant statutes.

Conclusion

For the reasons mentioned above, **Petitioner's Writ and Declaratory Relief is denied**.

17. 9:00 AM CASE NUMBER: N24-1353
CASE NAME: SAM CLEARE VS. KENNETH HURST
***HEARING ON MOTION IN RE: FOR NEW TRIAL**
FILED BY: CLEARE, SAM
TENTATIVE RULING:

Petitioners filed a Motion for New Trial on December 23, 2024, following this Court's denial of the subject petition for a writ of mandate after a hearing on October 11, 2024. The Motion for New Trial was set for hearing on February 26, 2025.

Background

Petitioners' Motion for New Trial contends that the Court's previous decision was based on an error of law "invited by Respondents' misstatements." The motion also asserts that there is newly discovered evidence that was not available at the time of the prior hearing. See Motion for New Trial and MPA in support thereof filed December 23, 2024, p. 7 *et seq*.

A Supplemental Declaration of Karissa A. D. Provenza was filed on February, 19, 2025 by Petitioners (the "Supplemental Declaration"). A Statement Regarding Absence of Opposition to Petitioners' Motion for New Trial was filed on the same day, February, 19, 2025. That pleading, in addition to advising that opposition has not been filed, requests that the Court consider the Supplemental Declaration. The Supplemental Declaration includes statement regarding "several relevant factual developments" described and includes a number of addition exhibits. See Supplemental Declaration, ¶7 and the exhibits thereto.

Disposition

The Court finds and orders as follows:

1. Given the Supplemental Declaration filed shortly before the scheduled hearing, the Court *sua sponte* shall continue the matter to a subsequent hearing date.
2. The Court shall issue a separate order with notice of the continued hearing date.

18. 9:00 AM CASE NUMBER: N24-2024
CASE NAME: CLAIM OF:CHEYENNE QUINTERO
***HEARING ON MINOR'S COMPROMISE PETITION FOR APPROVAL OF COMPROMISE OF CLAIM**
FILED BY MIQUEL QUINTERO ON 11/8/24
FILED BY:
TENTATIVE RULING:

Petitioner Miguel Quintero filed a petition seeking of the compromise of a minor's disputed claim on November 8, 2024 (the "Minor's Compromise Petition"). The Minor's Compromise Petition was set for hearing on February 26, 2025.

Analysis

A petition for court approval of a compromise of a minor's disputed claim must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise, covenant, settlement, or disposition. Rule 7.950 of the California Rules of Court ("CRC").

The claimant minor is Chevenne Quintero. The minor's claim arises out of a vehicle accident in which it is contended that "Tiffany Howell was driving at an erratic speed on westbound San Pablo Road and crossed the line to crash head on with Miguel Quintero's vehicle and swerved at the last minute causing a major side swipe incident with full airbag deployment at an explosive rate and all parties were injured." The scope and nature of the minor's injuries and treatment were described in the petition. See Minor's Compromise Petition, ¶6 *et seq*. The total proposed compromise is $12,500 (the "Compromise"), which is sufficient to cover the stated medical expenses totaling $5,450, leaving a balance of settlement proceeds of $7,050. *Id*. at ¶¶14-16. It is represented that the claimant has recovered completely from the effects of the injuries and there are no permanent injuries. *Id*. at ¶8. Attorneys' fees and costs are waived. *Id*. at ¶13. The petition is verified by Petitioner.

Disposition

The Court finds and orders as follows:

1. The Minor's Compromise Petition is GRANTED and the Compromise is APPROVED.
2. The Court shall sign and file the lodged Order Approving Compromise of Claim (Judicial Council Form MC-351) and Order to Deposit Funds in Blocked Account (Judicial Council Form MC-355).