SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16
JUDICIAL OFFICER: BENJAMIN T REYES, II
HEARING DATE: 05/14/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 16

The tentative ruling will become the ruling of the Court unless by 4:00 P.M. 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 16 (Dept16@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 4:00 P.M. 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
www.zoomgov.com
ID: 161 950 4895
Password: 812674

Courtroom Clerk's Session

1. 9:00 AM CASE NUMBER: C24-02203
CASE NAME: KAREN COLEMAN VS. UNITED STATES FIRE INSURANCE COMPANY
***CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:
This hearing is a case management conference (CMC) that trails the hearing on the Motion for Leave to File 2nd Amended Complaint and Hearing on Demurrer (See Lines 7 and 8). If the tentative rulings for Lines 7 and 8 are not contested, then this CMC will be continued to October 7, 2025 at 8:30 a.m. via Zoom. Counsel are ordered to file an updated case management conference statement.

2. 9:00 AM CASE NUMBER: MSC21-02445
CASE NAME: NIST VS FARRELL
***FURTHER CASE MANAGEMENT CONFERENCE CONTINUED FROM 4/30/25**
FILED BY:
TENTATIVE RULING:
This hearing is a case management conference (CMC) that trails the hearing on the demurrer (See Line 17). If the tentative ruling for Line 17 is not contested, then this CMC will be continued to October 3, 2025 at 8:30 a.m. via Zoom. Counsel are ordered to file an updated case management conference statement.

Law & Motion

3. 9:00 AM CASE NUMBER: C23-02710
CASE NAME: WALNUT CREEK BROADWAY PLAZA I, LLC VS. LEMONADE RESTAURANT GROUP, LLC
HEARING IN RE: AND HEARING FOR RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT RE: BAY BREAD, LLC
FILED BY: WALNUT CREEK BROADWAY PLAZA I, LLC
TENTATIVE RULING:

Summary

Plaintiff Walnut Creek Broadway Plaza I, LLC's ("Plaintiff") Application for a Right to Attach Order and for Issuance of a Writ of Attachment re Defendant Bay Bread LLC ("Bay Bread") is **granted** as unopposed.

Background

On January 31, 2025, Plaintiff filed an Application for a Right to Attach Order and for Issuance of a Writ of Attachment regarding Bay Bread ("Application") which was supported by a Memorandum of Points and Authorities, and the Declarations of David Kram (Landlord) and Counsel David Tillotson. Plaintiff seeks attachment in the amount of $398,319.00, plus $21,850.00 in attorney's fees and costs against Bay Bread as guarantor for its tenant, Lemonade Restaurant Group, LLC, that breached the lease for premises located at 1342 Broadway Plaza, Walnut Creek, CA. A timely opposition was not filed with the Court.

Analyses

California Rules of Court ("CRC"), Rule 8.54(c) states, "A failure to oppose a motion may be deemed a consent to the granting of the motion."]; see *Cravens v. State Bd. of Equalization* (1997) 52 Cal. App. 4th 253, 257; *Gwaduri v. I.N.S*. (9th Cir. 2004) 362 F.3d 1144, 1146 [Where a party fails to file timely opposition to a motion, it is "well-within" the court's discretion to determine that such failure is "tantamount to a concession that its position in the litigation was not substantially justified."] (citing *Weil v. Seltzer,* 873 F.2d 1453, 1459 (D.C. Cir. 1989) [holding that a party who fails to file an opposition to a motion is deemed to have waived opposition and may not be heard to complain.]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue.]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779,784–785 [failure to support a point with reasoned argument and citations to relevant authority constitutes waiver].) Applied here, the Court finds a failure to timely oppose the Application is a deemed to be consent to the granting of the Application.

After review of the papers submitted by counsel in conjunction with the relevant statutory and decisional authority, the Court finds goods cause to grant the following findings and orders.

Ruling

Plaintiff Walnut Creek Broadway Plaza I, LLC's ("Plaintiff") Application for Right to Attach Order and for Issuance of a Writ of Attachment re Defendant Bay Bread LLC ("Bay Bread") are **granted** as unopposed. The Court hereby issues the Right to Attach Order and Order for Issuance of Writ of Attachment for $398,319.00, plus $21,850.00 in attorney's fees and costs. Plaintiff shall prepare proposed orders and the proper form of writ and e-file with the Court within five (5) days of this order.

4. 9:00 AM CASE NUMBER: C24-00232
CASE NAME: ZOHREH SALEK VS. MARINE EMPORIUM BOAT WORKS, INC.
***HEARING ON MOTION FOR DISCOVERY FOR AN ORDER COMPELLING RESPONSES TO FORM INTERROGATORIES - SET TWO**
FILED BY: SALEK, ZOHREH
****TENTATIVE RULING:****

Vacated. The motion was withdrawn by the moving party.

5. 9:00 AM CASE NUMBER: C24-01216
CASE NAME: SAM CHELLAKAN VS. JOHN SATHRI
***HEARING ON MOTION FOR DISCOVERY TO COMPEL JOHN E. SATHRI'S FURTHER RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUEST FOR MONETARY SANCTIONS**
FILED BY: CHELLAKAN, SAM
****TENTATIVE RULING:****

Summary

Plaintiff Sam Chellakan's ("Plaintiff") Motion to Compel Defendant John E. Sathri's ("Defendant") Further Responses to First Set of Request for Production of Documents Set No. 1, Requests Nos. 1-19, and Request for Monetary Sanctions ("Motion") is granted in part and denied in part as set forth below.

Background

In this business tort case, Plaintiff alleges that Defendant committed acts that support causes of action for a breach of contract, promissory estoppel, breach of fiduciary duty among others. Specifically, Plaintiff claims that Defendant promised that Plaintiff would receive an ownership interest in property purchased by Defendant in exchange for a $348,889 investment.

On February 5, 2025, Plaintiff Sam Chellakan ("Plaintiff") filed a Motion to Compel Defendant John E. Sathri's ("Defendant") Further Responses to First Set of Request for Production of Documents Set No. 1, Requests Nos. 1-19, and Request for Monetary Sanctions ("Motion.") The Motion was supported by a Notice, a Memorandum of Points and Authorities, a Separate Statement and Declaration of Counsel Seth W. Weiner. The Motion also seeks sanctions against Defendant and Defense Counsel in the amount of $3,635.00. The motion seeks further responses to a request for documents dated

September 16, 2024, designed to discover evidence concerning the claims and Defendant's defenses. Plaintiff takes issue with Defendant's "boilerplate objections" and failure to provide code-compliant responses along with the production of documents.

On May 1, 2025, Defendant John E. Sathri filed an Opposition to Plaintiff's Motion. The Opposition was supported by a Memorandum of Points and Authorities, separate statement and Declaration of Counsel Connor M. Day. In summary, the Opposition maintains a position that Defendant has already produced documents in response to Request Nos. 1, 2,4,10,13,17, 18 and 19 or has stated that Defendant has no responsive documents. Defendant further argues that his objections are proper and with legal justification.

Counsel for both parties present cross-arguments that they failed to meet and confer with each other to resolve this discovery dispute before this Motion was filed.

Analyses

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 Consultant*s (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.

Under Cal. Code of Civ. Proc. § 2023.010(e),(f),(h), (i) it is a misuse of discovery to make, "without substantial justification, an unmeritorious objection to discovery, " to make "an evasive response to discovery" and to make or oppose "unsuccessfully without substantial justification a motion to compel or to limit discovery," or to fail to meet and confer to resolve discovery disputes informally.

Boilerplate objections fail to satisfy the level of specificity mandated by statute, and the use of boilerplate objections may be sanctionable. (*Korea Data Systems Co. v. Super. Court* (1997) 51 Cal.App.4th 1513, 1516.) See also Cal. Code of Civ. Proc. §§ 2023.010(e),(f) and (h), and Cal. Code of Civ. Proc. §§ 2030.210, 2030.220 (b)(c). It is wholly improper for a party to respond to discovery by making unmeritorious objections and then refusing to provide any documents and/or responsive answers. California's Discovery act was "intended to take the 'game' element out of trial preparation," considering that "a lawsuit should be an intensive search for the truth, not a game to be determined

in outcome by considerations of tactics and surprise." (*Greyhound Corp. v. Super. Court In and For Merced County* (1961) 56 Cal.2d 355).

If a responding party does not have documents response to a request, it must specifically, adequately and completely state a response that includes: (1) An affirmation that a diligent search and reasonable inquiry have been made in an effort to comply with the demand; (2) A statement that it has an inability to comply because the item or category has never existed, has been destroyed, is lost, misplaced, stolen or is not in the possession, custody or control or the responding party; and (3) the name and address of the person or organization known or believe to have possession, custody or control of the item or category of the item. (Cal. Code of Civ. Proc. §§ 2031.310(a)(2) and 2031.230. Absent these representations, a response is defective.

In exercising its discretion in ruling on discovery motions, the trial court relies on the Civil Discovery Act and the legislative purpose of avoiding surprise and preventing fabrication of evidence at trial. *Glenfed Dev. Corp. v Superior Court* (1997) 53 Cal.App.4th 1113, 1119. The principles of eliminating gamesmanship in discovery practice in California has been in place for over sixty years. The California Supreme Court in the seminal case of *Greyhound Corp. v Superior Court* (1961) 56 Cal.2d 355, 376, remain applicable today. "That is, the Legislature intended to take the "game" element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away "with the sporting theory of litigation—namely, surprise at the trial." *Chronicle Pub. Co. v. Superior Court,* 54 Cal.2d 548, 561. See also page 572 of the same opinion wherein we adopted from *United States v. Proctor & Gamble Co*., 356 U.S. 677, the phrase that discovery tends to "make a trial less a game of blindman's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."

After considering the moving papers, including the declarations submitted to the Court, the arguments of Counsel, and after applying the relevant statutory and decisional authorities, the Court makes the following findings and orders.

Ruling

A. **Specific Discovery Requests and Responses**

Request No. 1: **Granted**. Defendant's boilerplate objections are **overruled**. See the above authorities. While Defendant claims in his separate statement that he produced documents (bates stamped as SATHRI – 0029, 0035, 0040-0043, 0050-0071, 0073-0077, 0079-0087, and 0095-0166,) this is an insufficient response. Defendant shall identify each document it has produced with particularity in the written response, and not just refer to an unspecified set of documents. If Defendant intends to invoke any applicable privilege, Defendants shall produce a privilege log specifying each document subject to the privilege, the date it was created, the author, and which privilege applies.

If Defendant does not have documents response to a request, it must specifically, adequately and completely state a response that includes: (1) An affirmation that a diligent search and reasonable inquiry have been made in an effort to comply with the demand; (2) A statement that it has an inability to comply because the item or category has never existed, has been destroyed, is lost, misplaced, stolen or is not in the possession, custody or control or the responding party; and (3)

the name and address of the person or organization known or believe to have possession, custody or control of the item or category of the item. (Cal. Code of Civ. Proc. §§ 2031.310(a)(2) and 2031.230. Absent these representations, a response is defective and further responses must be compelled.

Request No. 2. **Granted**. Defendant's boilerplate objections are **overruled** for the same reasons set forth in No. 1.

Request No. 3. **Granted**. Defendant's boilerplate objections are **overruled** for the same reasons set forth in No. 1.

Request No. 4. **Granted** in part; **Denied** in part. Defendant's boiler plate objections are **overruled**. Plaintiff's Motion to compel further response is **denied**. Defendant set forth a response that it has conducted a diligent search and reasonable inquiry and is unable to comply as the documents have never existed.

Request Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, **Granted**. Defendant's boilerplate objections are **overruled** for the same reasons set forth in No. 1.

Request No. 15 **Granted**. Defendant's boilerplate objections are **overruled** for the same reasons set forth in No. 1.

B. **Time For Production**

Defendants shall prepare further code-compliant verified responses to all discovery and must produce responsive documents, if not already produced, pursuant to this order by no later than fifteen (15) days from the date of this order.

C. **Sanctions**

1. Defendant's use of boilerplate objections is a misuse of the discovery process pursuant to the authorities cited above, and specifically Cal. Code of Civ. Proc. 2023.10(e) and (f)
2. Defendant's failure to list specific documents responsive to the request for production of documents, failure to make the required representation under Cal. Code of Civ. Proc. § 2031.230, and failure to submit a privilege log when claiming privilege is a misuse of the discovery process pursuant to the authorities cited above, and specifically, Code of Civil Procedure section 2023.010(d).
3. The Court finds such conduct warrants the imposition of monetary sanctions and that Defendant did not act with substantial justification.

The Court therefore awards sanctions to Plaintiffs and against Defendant in the amount of $3,635.00, which it finds to be reasonable and supported by declaration. Said sanctions are due and payable within thirty (30) days or pursuant to a payment plan entered by stipulation between Plaintiff and Defendant. Absent a stipulated payment plan, the sanctions shall be paid within 30 days.

Sanctions are not imposed on Defendant's counsel. However, both counsel are admonished that Cal. Bus. & Prof. Code § 6086.7(a)(3) requires this Court to notify the State Bar of "the imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary

sanctions of less than one thousand dollars ($1,000.)" Cal. Bus. & Prof. Code § 6086.7(b) and Rule No. 10.609 also requires the court to notify the attorney involved that the matter has been referred to the State Bar. The Court interpret these rules liberally to mean that when the Court grants a discovery motion and sanctions and fees exceed $1,000 against an attorney, the Court is required to report counsel to the State Bar. This is consistent with California Rules of Court Rule No. 10-609, Cal. Bus. & Prof. Code § 6086.7 and California Judges Association Formal Ethics Opinion No. 74, which summarizes the mandatory duty to report the imposition of sanctions to the State Bar, as they exceed $1,000.

Plaintiff's counsel is ordered to prepare and e-file a conforming order, approved as to form by Defendant, within five (5) days of this Order.

6. 9:00 AM CASE NUMBER: C24-01216
CASE NAME: SAM CHELLAKAN VS. JOHN SATHRI
HEARING ON DEMURRER TO: FIRST AMENDED COMPLAINT
FILED BY: SATHRI, JOHN E.
TENTATIVE RULING:

Before the Court is Defendant John E. Sathri's Demurrer to First Amended Complaint. The FAC alleges seven causes of action: (1) Breach of Written, Oral or Implied-in-Fact Contract; (2) False Promise; (3) Promissory Estoppel; (4) Breach of Fiduciary Duty; (5) Money Had and Received; (6) Breach of Written Promissory Note; and (7) Money Lent.

Defendant demurrers to the first five causes of action on the grounds that the FAC fails to allege facts sufficient to constitute a cause of action against Defendant. (Cal. Code Civ. Proc. § 430.10 (e).)

Defendant's demurrer is **sustained in part and overruled in part** as discussed below.

Meet and Confer

Before filing a demurrer, the "demurring party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the demurrer…." (California Code of Civil Procedure ("CCP") §430.41(a). "The demurring party shall file and serve with the demurrer a declaration stating either" (1) the parties properly meet and conferred and could not reach agreement, or that (2) the party that filed the pleading being demurred to failed to respond to the meet and confer request or did not meet and confer in good faith. (CCP §430.41(a)(3).)

Defendants filed the requisite declaration outlining their meet and confer efforts which consisted of a series of emails between the parties discussing their various positions. In the declaration, Defendant's counsel indicates that they "were not able to meet and confer via telephone because Mr. Wiener [Plaintiff's counsel] refused to discuss the matter over the phone and asked to keep all communications in writing." (¶ 6.) The Court would like to remind Plaintiff's counsel that the Code states that the parties "shall" meet and confer in person, by phone, or video conference. While initial written correspondence outlining the issues is advisable to guide those discussions, the parties are still ***required*** to talk through their positions.

The Court generally continues hearings on demurrers where the parties failed to properly meet and

confer. As Defendants did all they were required to and acted in good faith, the Court will rule on the demurrer at this time. The Court reminds Plaintiff's counsel, however, that it expects counsel to comply with the requirements of the Code going forward.

Factual Allegations

This matter pertains to a purported agreement to purchase real property located at 30-32 Century Oaks, in San Ramon, California (the "Property"). In May 2019, Defendant informed Plaintiff that he was considering acquiring the Property to establish a church. (¶ 11.)

"In May 2019, Defendant orally proposed an investment to Plaintiff and a third unidentified individual wherein they would acquire and jointly own the Property. Under the proposal, which was later put in writing on June 7, 2019, Sathri would make a $628,000.00 investment for a 50% ownership interest in the Property, Chellakan would make a $348,889.00 investment for a 27.78% ownership interest in the Property, and the third individual would make a $279,111.00 investment for a 22.22% ownership interest in the Property. In late 2019, the third individual withdrew from the investment, such that Sathri was supposed to have a 72.22% interest in the Property." (¶ 12.)

Between May 2019 to May 2021, Plaintiff paid a total of $400,450 to Defendant as consideration for Plaintiff's 27.78% ownership interest in the Property and for various expenses purportedly incurred by Defendant with respect to the Property. (¶ 13.) On November 17, 2021, a Grant Deed was recorded granting title to the Property to Defendant and his wife. (¶ 14.) Since December 2021, Plaintiff has made numerous oral and written requests to have his name added to the title – which has not occurred. (¶¶ 15-16.)

There are additional allegations relating to a promissory note, which are not relevant to this demurrer.

Standard for Demurrer

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.)

The allegations in the complaint must be construed "liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A demurrer should be "overruled if any cause of action is stated by the plaintiff." (*Amacorp Industrial Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 237 Cal.App.2d 724, 727.)

Legal conclusions are insufficient. (*Id*. at 1098–99; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v.*

William S. Hart Union High School Dist. (2012) 53 Cal.4th 861, 872.)

Analysis

Scope of Demurrer

"A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint … are taken. Unless it does so, it may be disregarded." (Cal. Code Civ. Proc. § 430.60.) "Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint … or to specified causes of action or defenses." (Cal. R. Ct. 3.1320 (a).)

Defendant's Demurrer specifies that he is demurring to the first five causes of action because each of the causes of action "fails to state sufficient facts to constitute a cause of action against Sathri. Cal. Civ. Proc. Code § 430.10(e)." (Demurrer.) The Demurrer does not indicate that Defendants are demurring on the ground that that pleading is uncertain pursuant to subdivision (f). As such, the Court will only address the Defendant's arguments made with respect to the claim that the causes of action fail to allege sufficient facts.

Breach of Contract

"The standard elements of a claim for breach of contract are '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom.'" (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178, citations omitted.) The first element is the existence of a contract.

The essential elements of a contract are (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration. (Cal. Civ. Code § 1550.) The consent required must be mutual. (*Donovan v. Rrl Corp.* (2001) 26 Cal.4th 261, 270-71.) "Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror." (*Ibid.*) "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." (*Ibid.* quoting *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930.) "Consent is not mutual, unless the parties all agree upon the same things in the same sense." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.)

Per the FAC, Defendant proposed an investment to Plaintiff and an unidentified third-party wherein the three of them would jointly purchase the Property. (¶ 12.) Under the proposal (i.e. the offer), Defendant would invest $628,000 for a 50% ownership interest; Plaintiff would invest $348,889 for a 27.78% ownership interest; and the unnamed third-party would invest $279,111 for a 22.22% ownership interest. (¶ 12.) "In late 2019, the third individual withdrew from the investment…." In other words, the unnamed third-party rejected the offer – ending the viability of that offer.

"An acceptance must be absolute and unqualified" (*American Aeronautics Corp. v. Grand Cent. Aircraft Co.* (1957) 155 Cal.App.2d 69, 79.) "An acceptance, to result in the formation of a binding contract, must meet exactly, precisely, and unequivocally the terms proposed in the offer." (*Ibid.*) "It is fundamental that an offer imposes no obligation until it is accepted ***according to its terms*****.**" (*Kahn v. Lischner* (1954) 128 Cal.App.2d 480 emphasis added.)

Here, the offer proposed by Defendant was not accepted in accordance with its terms. While the FAC alleges that the "third party withdrew from the investment, such that Defendant was supposed to have a 72.22% interest in the Property," there are no allegations that Defendant offered and/or agreed to pick up the responsibility to purchase the third-party's 22.22% investment. The offer was for him to pay for 50% ownership and the two others to cover the other 50% ownership. Once the unnamed third-party rejected that offer, the offer was at an end.

There are no allegations indicating that a new offer was made wherein Defendant would invest $907,111 for a 72.22% interest in the Property. Nor any allegations that Plaintiff made such a proposal and Defendant accepted. The allegations of the FAC indicate that there was a proposal made by Defendant for three parties to invest in the Property. The unnamed third-party rejected that offer. At that time, there was no pending offer to accept, and thus no contract was entered into.

Based on the above, Defendant's demurrer is **sustained** as to the first cause of action for breach of contract.

False Promise and Promissory Estoppel

While the Demurrer indicates that Defendant is demurring to the second and third causes of action for False Promise and Promissory Estoppel, the points and authorities do not actually address this case of action. The only mentions of 'False Promise' and "Promissory Estoppel" in the moving papers are when Defendant lists the causes of action alleged in the FAC. (Memo at 3:12-14.) Defendant provides no legal authority, nor any argument at all related to the False Promise or Promissory Estoppel causes of action. Instead, there is a general argument that the 'second through fifth' causes of action fail because they are all based on the same invalid agreement alleged in the first cause of action. The only legal authority cited by Defendant in that section is to a case setting forth the elements of a breach of contract cause of action, *Oasis West Realty v. Goldman* (2011) 51 Cal.4th 811. *Oasis* does not mention or discuss false promise or promissory estoppel causes of action.

Every memorandum of points and authorities "must contain a statement of facts, *a concise statement of the law*, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." (Cal. R. Ct. 3.1113 (b).) Rule 3.1113 prevents the "trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide." (*Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 934.)

Defendant fails to offer any legal authority nor any substantive arguments supporting his position. Defendant's demurrer is **overruled** as to these two causes of action.

Breach of Fiduciary Duty

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086 citing *Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1101.)

The FAC alleges that Defendant "owed a fiduciary duty to [Plaintiff] by reason of their business

partnership to co-own the Property." (¶ 37.) There are no other mentions of a partnership in the FAC.

"A partnership is an association of two or more persons to carry on a business for profit as coowners." (*Greene v. Brooks* (1965) 235 Cal.App.2d 161, 165.) "The ultimate test of the existence of a partnership is the intention of the parties to carry on a definitive business as coowners." (*Id.* at 166.) "A partnership need not be evidenced by writing." (*Ibid.*) "Some degree of participation by partners in management and control of the business is one of the primary elements of partnership." (*Ibid.*) "Absent such right, the mere fact that one party is to receive benefits in consideration of services rendered or for capital contribution does not, as a matter of law, make him a partner or joint venturer." (*Simmons v. Ware* (2013) 213 Cal.App.4th 1035.)

The mere mention of the term 'partnership' in the FAC does not sufficiently allege that the parties agreed to enter into a partnership. There are no allegations that the venture (the purchase of the Property) was intended to be a business venture for profit. Instead, the allegations reasonably read appear to be just the opposite since it is alleged that the Property was to be purchased to start a church. (¶ 11.) There are also no allegations regarding the management or control of the business, nor any profit sharing. The FAC, at most, alleges nothing more than a plan to jointly purchase the Property. That alone is insufficient to establish a partnership.

The FAC does not allege any other basis for the breach of fiduciary duty claim. Defendant's demurrer to the fourth cause of action for breach of fiduciary duty is **sustained**.

Money Had and Received

As with the False Promise and Promissory Estoppel causes of action, Defendant provides no legal authority, nor any argument at all related to the Money Had and Received cause of action. Instead, there is a general argument that the 'second through fifth' causes of action fail because they are all based on the same invalid agreement alleged in the first cause of action.

Defendant's demurrer to the fifth cause of action for Money Had and Received is **overruled** on the same basis as the False Promise and Promissory Estoppel claims.

Conclusion

Defendant's demurrer is **sustained** as to the first (Breach of Contract) and fourth (Breach of Fiduciary Duty) causes of action. It is **overruled** as to the second (False Promise), third (Promissory Estoppel), and fifth (Money Had and Received) causes of action.

"Our Supreme Court has observed that where "plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 412 quoting (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) As this is the first time the Court has addressed the sufficiency of the complaint in this matter, Plaintiff is **granted leave to amend**.

7. 9:00 AM CASE NUMBER: C24-02203
CASE NAME: KAREN COLEMAN VS. UNITED STATES FIRE INSURANCE COMPANY
***HEARING ON MOTION IN RE: FOR LEAVE TO AMEND 2ND COMPLAINT**
FILED BY: COLEMAN, KAREN
****TENTATIVE RULING:****

Before the Court is a motion by plaintiff Dr. Karen Coleman to file a second amended complaint. For the reasons stated, the hearing on the motion is continued to **9:00 a.m. on June 18, 2025**.

Duty to Meet and Confer on U.S. Fire Insurance Company's Demurrer Set Concurrently

Plaintiff's motion to file a second amended complaint appears to have been filed in response to defendant U.S. Fire Insurance Company's written notice to Plaintiff of its intention to file a demurrer to her first amended complaint. (Zakaria Decl. ISO U.S. Fire Dem. to FAC ¶¶ 2, 3 and Exh. A.) In support of the demurrer, set for hearing concurrently, U.S. Bank filed a declaration of its counsel stating that counsel sent a letter to Plaintiff notifying her of the deficiencies in her first amended complaint. (Zakaria Decl. ISO U.S. Fire Dem. to FAC ¶ 2 and Exh. A.) The letter asked Plaintiff explicitly to notify counsel "whether [she would] dismiss the Complaint or file an Amended Complaint addressing the deficiencies in the causes of action alleged against US Fire Insurance Company." (Zakaria Decl. ISO U.S. Fire Dem. to FAC ¶ 2 and Exh. A [emphasis added].) It also asked Plaintiff to advise of her availability for a telephone call on January 7 or January 8. (Zakaria Decl. ISO U.S. Fire Dem. to FAC ¶ 2 and Exh. A.) Plaintiff apparently responded by leaving a voicemail advising U.S. Fire that she would file a second amended complaint, which was one of the alternatives suggested by U.S. Fire, but U.S. Fire filed the demurrer in any case, stating that she had not filed the second amended complaint and "she could not do [s] in any event since she already used up her one amended complaint prerogative." (Zakaria Decl. ¶ 3.) U.S. Fire filed its demurrer February 3, 2025, and Plaintiff filed her motion for leave to file a second amended complaint the next day on February 4, 2025.

Code of Civil Procedure section 430.41(a) imposes a duty on the "parties" to meet and confer by telephone, in person, or videoconference (Code Civ. Proc. § 430.41(a)(1) and (2).) The duty applies to both Plaintiff and Defendant. The record does not indicate that Dr. Coleman failed or refused to meet and confer but rather that she left a voicemail message indicating an intention to file a second amended complaint in response to U.S. Fire's letter setting forth what it contends are the deficiencies in the current first amended complaint. On this record, the Court does not find that Dr. Coleman failed or refused to meet and confer (*see* Code Civ. Proc. § 430.41(a)(3)(B)), but rather, the record indicates a willingness by Dr. Coleman to address the issues U.S. Fire raised regarding the first amended complaint through the filing of a second amended complaint, which was a solution offered by U.S. Fire itself to avoid the demurrer. Indeed, if the parties stipulated to Plaintiff filing a second amended complaint to cure the defects raised, both the demurrer and the motion for leave to file the second amended complaint could become moot and unnecessary, or the issues in dispute could be narrowed.

The Court requires that the parties engage in a meaningful attempt to meet and confer under the circumstances, as Code of Civil Procedure section 430.41(a) requires, rather than through a letter and telephone message in response. The Court therefore directs Dr. Coleman and U.S. Fire to conduct a "meet and confer" conference, by telephone, in person, or by videoconference, by **May 30, 2025**, and

directs U.S. Fire to file a supplemental declaration regarding the meet and confer efforts by **June 9, 2025**.

Failure to Serve Motion, and Missing Exhibit from Plaintiff's Motion

Defendant's opposition to the motion states the moving papers were not served on him, and the Court's file does not include a proof of service on the motion showing service as required by Code of Civil Procedure section 1005. Plaintiff's motion for leave to file a second amended complaint states "A copy of the Amended Complaint is attached hereto as Exhibit A" (Mot. p. 2, ll. 8-9); however, no proposed second amended complaint is attached as an exhibit to the pleading. There is no indication in the Court's records that the exhibit was filed with any supplemental pleading in support of the motion.

California Rules of Court, Rule 3.1324 addresses motions for leave to amend, and the rule requires a copy of the proposed amended pleading to be attached to the moving papers, among other requirements. If Plaintiff intends to pursue this motion, Plaintiff shall serve a copy of all moving papers on counsel for Defendant, and Plaintiff shall file and serve on U.S. Fire an amended supplemental pleading in support of the motion with a copy of the proposed second amended complaint by no later than **May 23, 2025**.

Plaintiff is not excused from compliance with applicable law, procedures, and rules merely because she is a self-represented litigant. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284-1285 ["in propria persona litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure. [Citation omitted.]"].)

8. 9:00 AM CASE NUMBER: C24-02203
CASE NAME: KAREN COLEMAN VS. UNITED STATES FIRE INSURANCE COMPANY
HEARING ON DEMURRER TO: 1ST AMENDED COMPLAINT
FILED BY: UNITED STATES FIRE INSURANCE COMPANY
TENTATIVE RULING:

Before the Court is a demurrer by defendant U.S. Fire Insurance Company to plaintiff's first amended complaint. For the reasons set forth, the hearing on the demurrer is continued to **9:00 a.m. on June 18, 2025**.

Duty to Meet and Confer on U.S. Fire Insurance Company's Proposed Demurrer

See Line 7 above. For the reasons stated, the Court directs Dr. Coleman and U.S. Fire to conduct a "meet and confer" conference, by telephone, in person, or videoconference, by **May 30, 2025**, and directs U.S. Fire to file a supplemental declaration regarding the meet and confer efforts by **June 9, 2025**.

Missing Exhibits from Plaintiff's Opposition; Lack of Proof of Service

Plaintiff's opposition does not show that it was served on counsel for the Defendant. Plaintiff's opposition to the demurrer refers to exhibits attached to the pleading, but there are no exhibits attached to the Court-filed copy of the pleading. If Plaintiff intends to include exhibits as part of her opposition, she should file and serve on counsel for Defendant an amended opposition with the

exhibits by **June 5, 2025.** Plaintiff is not excused from compliance with applicable law, procedures, and rules merely because she is a self-represented litigant. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284-1285 ["in propria persona litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure. [Citation omitted.]"].)

9. 9:00 AM CASE NUMBER: C24-02486
CASE NAME: TODD SARAN VS. ANDRES BERGERO
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEF BANK OF MONTREAL'S FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**
FILED BY: SARAN, TODD
****TENTATIVE RULING:****

See No. 10, below.

10. 9:00 AM CASE NUMBER: C24-02486
CASE NAME: TODD SARAN VS. ANDRES BERGERO
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEFENDANT BANK OF THE WEST'S FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**
FILED BY: SARAN, TODD
****TENTATIVE RULING:****

Summary

This tentative ruling applies to both Lines 9 and 10. Plaintiffs Todd and Mayra Saran ("Plaintiffs") Motion to Compel Defendant Bank of the West ("Defendant" or "Bank of the West") Further Responses to Plaintiff's Request for Production of Documents, Set One and a Request for Monetary Sanctions in the amount of $10,520 ("Motion") is granted as set forth below.

Background

In this case, Plaintiff Todd Saran, a former employee of Bank of the West ("BOTW"), claims that he was wrongfully terminated by Defendant after defendant Bank of Montreal and its subsidiary, BMO Harris Bank, N.A. ("BMO") had acquired BOTW. Defendant claims that the termination was part of a merger-related reduction in force that affected similarly situated employees. There was an initial dispute about whether Plaintiff has sued the right defendants. Subsequent to filing this motion, the pleadings were resolved by Plaintiff filing a first amended complaint on March 20, 2025, which was answered by BOTW, Bank of Montreal, and Andres Bergero on April 22, 2025. The Court assumes that the new rebranded entity, BMO (formerly BMO Harris Bank NA) which was formerly the entity that acquired BOTW is now represented by Defense Counsel Seyfarth Shaw. The Court now presumes that Counsel for Bank of the West, Bank of Montreal and BMO's collectively responds to this Motion on behalf of all Defendants.

On February 6, 2025, Plaintiffs Todd and Mayra Saran ("Plaintiffs") filed a Motion to Compel

Defendant Bank of the West's (BOTW) Further Responses to Plaintiff's Request for Production of Documents, Set One and a Request for Monetary Sanctions in the amount of $10,520 ("Motion"). The Motion was supported by a Notice, Memorandum of Points and Authorities, a Separate Statement, and Declaration of Counsel Britt Karp, including *errata* filed on February 10, 2025. As part of its Motion, Plaintiffs claim that they have requested documents from two defendants, which Defendants claim are separate legal entities. However, Defendants provided a single, undifferentiated document production, making it impossible to ascertain which documents were produced by which entity.

On May 1, 2025, Defendants filed an opposition, supported by a Memorandum of Points and Authorities, a separate statement and the Declaration of Counsel Jennifer Fearnow. The opposition is based, in part, on arguments that (1) the Motion is procedurally defective, (2) Plaintiff did not meet and confer prior to filing this motion; and (3) the Issues are Moot, re-serving the document productions, along with an updated privilege log, and appropriate identifications for all documents produced.

On May 7, 2025, Plaintiffs filed their reply brief. The Court has briefly reviewed the dizzying 404 pages of documents, including meet and confer correspondence, submitted by counsel in support of and in opposition to this Motion.

Analyses

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 Consultant*s (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.

Under Cal. Code of Civ. Proc. § 2023.010(e),(f),(h), (i) it is a misuse of discovery to make, "without substantial justification, an unmeritorious objection to discovery, " to make "an evasive response to discovery" and to make or oppose "unsuccessfully without substantial justification a motion to compel or to limit discovery," or to fail to meet and confer to resolve discovery disputes informally.

Boilerplate objections fail to satisfy the level of specificity mandated by statute, and the use of boilerplate objections may be sanctionable. (*Korea Data Systems Co. v. Super. Court* (1997) 51

Cal.App.4th 1513, 1516.) See also Cal. Code of Civ. Proc. §§ 2023.010(e),(f) and (h), and Cal. Code of Civ. Proc. §§ 2030.210, 2030.220 (b)(c). It is wholly improper for a party to respond to discovery by making unmeritorious objections and then refusing to identify responsive documents and producing them. California's Discovery act was "intended to take the 'game' element out of trial preparation," considering that "a lawsuit should be an intensive search for the truth, not a game to be determined in outcome by considerations of tactics and surprise." (*Greyhound Corp. v. Super. Court In and For Merced County* (1961) 56 Cal.2d 355).

If a responding party does not have documents response to a request, it must specifically, adequately and completely state a response that includes: (1) An affirmation that a diligent search and reasonable inquiry have been made in an effort to comply with the demand; (2) A statement that it has an inability to comply because the item or category has never existed, has been destroyed, is lost, misplaced, stolen or is not in the possession, custody or control or the responding party; and (3) the name and address of the person or organization known or believe to have possession, custody or control of the item or category of the item. Cal. Code of Civ. Proc. §§ 2031.310(a)(2) and 2031.230. Absent these representations, a response is defective.

If a responding party seeks to assert the Attorney Client Privilege or Work Product Doctrine Privilege, it shall provide a privilege log specifying in detail each document being withheld, the date of the document, the author, and what privilege applies. (Cal. Code of Civ. Proc. § 2031.240(c)(1).

In exercising its discretion in ruling on discovery motions, the trial court relies on the Civil Discovery Act and the legislative purpose of avoiding surprise and preventing fabrication of evidence at trial. *Glenfed Dev. Corp. v Superior Court* (1997) 53 Cal.App.4th 1113, 1119. The principles of eliminating gamesmanship in discovery practice in California has been in place for over sixty years. The California Supreme Court in the seminal case of *Greyhound Corp. v Superior Court* (1961) 56 Cal.2d 355, 376, remain applicable today. "That is, the Legislature intended to take the "game" element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away "with the sporting theory of litigation—namely, surprise at the trial." *Chronicle Pub. Co. v. Superior Court,* 54 Cal.2d 548, 561. See also page 572 of the same opinion wherein we adopted from *United States v. Proctor & Gamble Co*., 356 U.S. 677, the phrase that discovery tends to "make a trial less a game of blindman's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."

After considering the moving papers, including the declarations submitted to the Court, the arguments of Counsel, and after applying the relevant statutory and decisional authorities, the Court makes the following findings and orders.

Ruling

A. Ruling on Motions to Compel Further Response to Request for Production of Documents

Request No. 1: **Granted**. Pursuant to the foregoing authorities (see above), Defendant's boilerplate objections are **overruled**. Defendant failed to produce a privilege log properly identifying which documents are being withheld. Although Defendant represents that it produce responsive documents between the relevant time period of 2018 and September 20, 2023, the response is insufficient. Defendant fails to identify, with specificity, which documents are being produced. Defendants shall

produce the requested documents without further objection. Where Defendants do not have documents, they must prepare a response consistent with Cal. Code of Civ. Proc. §§ 2031.310(a)(2) and 2031.230.

Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 are **Granted**. Defendant's objections are **overruled** for the same reasons articulated in Request No. 1.

Request No. 20. **Denied**. Defendant's objection is **sustained** on the ground that this request is a substantively a duplicate request to No. 12)

Request No. 29. **Granted** in part. **Denied** in part. Defendant's objections are **overruled**. The Court finds that Defendant's response that it had conducted a diligent search and a reasonable inquiry and is unable to locate any responsive documents substantially complies with Cal. Code of Civ. Proc. §§ 2031.310(a)(2) and 2031.230.

D. **Time For Production**

Plaintiff shall prepare further code-compliant verified responses and all responsive documents to all discovery, without further objections, pursuant to this order by no later than fifteen (15) days from the date of this order.

E. **Sanctions**

1. Defendant's use of boilerplate objections are a misuse of the discovery process pursuant to the authorities cited above, and specifically Cal. Code of Civ. Proc. 2023.10(e) and (f)
2. Defendant's failure to list specific documents responsive to the request for production of documents, failure to make the required representation under Cal. Code of Civ. Proc. § 2031.230, is a misuse of the discovery process pursuant to the authorities cited above, and specifically, Code of Civil Procedure section 2023.010(d).
3. The Court finds such conduct warrants the imposition of monetary sanctions and that Defendant did not act with substantial justification.
4. The Cour issues sanctions to Bank of Montreal, Bank of the West, BMO and Andres Bergero in the amount of $10,520, which amount is reasonable. The sanctions are <u>not</u> imposed on Counsel but on the Defendants.

Counsel are admonished as follows. Cal. Bus. & Prof. Code § 6086.7(a)(3) requires this Court to notify the State Bar of "the imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000.)" Cal. Bus. & Prof. Code § 6086.7(b) and Rule No. 10.609 also requires the Court to notify the attorney involved that the matter has been referred to the State Bar. The Court interpret these rules liberally to mean that the Court grants a discovery motion and sanctions and fees exceed $1,000 against an attorney, the Court is required to report counsel to the State Bar. This is consistent with California Rules of Court Rule No. 10-609, Cal. Bus. & Prof. Code § 6086.7 and California Judges Association Formal Ethics Opinion No. 74, summarizing the mandatory duty to report the imposition of sanctions to the State Bar, as they exceed $1,000.

Plaintiffs are ordered to prepare and e-file a conforming order, approved as to form by Defendants,

within five (5) days of this Order.

F. **Appointment of Discovery Referee**

Defendant's Motion to Compel Further Responses to Form Interrogatories scheduled for August 6, 2025, and any other discovery motion filed in this case after the date of this order, is vacated and referred to a Discovery Referee. The Court grants its motion, *sua sponte*, for the appointment of a Discovery Referee pursuant to Cal. Code of Civ. Proc. §§ 639(a)(5) and 640.

The Court finds, in its discretion, that such an appointment is necessary. The Court finds that the multiple discovery motions, the existing disputes raised by the pending motions, the volume of discovery to be reviewed by the Court and complexity of such issues require discovery reference. (Cal. Code of Civ. Proc. Section 639(a)(5) which states: "When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon."

The Parties are ordered to meet and confer pursuant to Cal. Code of Civ. Proc. § 640(a) or (b) and shall submit a stipulation and proposed order listing the proposed discovery referee to the Court along with the proposed referee's *curriculum vitae* and fee schedule by no later than May 28, 2025. If the Parties are unable to jointly agree to a proposed Discovery Referee by May 28, 2025, the Parties each shall submit the name of one proposed Discovery Referee and fee schedule along with his/her/their *curriculum vitae* to the Court by letter, e-mailed to dept16@contracosta.courts.ca.gov by Friday, May 30, 2025. The Court will select one of the proposed referees by unreported minute order. The Discovery Referee will be requested to sign the Judicial Council ADR-110 form. Upon receipt of the executed form by the Discovery Referee, the Court will sign the ADR-110 form.

This Discovery Referee is appointed to hear and determine the pending discovery motion calendared for August 6, 2025 and any and all further discovery matters filed in this case. The Discovery Referee shall prepare a Report and Recommendation to this Court with proposed rulings and order regarding all motions.

The initial retention costs of the Discovery Referee shall be apportioned 50% to Plaintiff and 50% to Defendants, except that the costs and fees attributable to any motion to compel discovery and any sanctions shall be subject to allocation and proposed award pursuant to the discretion of the Discovery Referee.

Plaintiff's Counsel shall prepare and electronically e-file a proposed order conforming to this ruling, approved as to form by Plaintiff's Counsel, no later than five (5) days from the date of this order.

11. 9:00 AM CASE NUMBER: C24-02510
CASE NAME: KIRK HULL VS. VOLKSWAGEN GROUP OF AMERICA, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL PLAINTIFF'S FURTHER DEPOSITION**
FILED BY: VOLKSWAGEN GROUP OF AMERICA, INC.
****TENTATIVE RULING:****

This Motion is withdrawn. The Parties filed a Notice of Settlement of this case.

12. 9:00 AM CASE NUMBER: C24-02510
CASE NAME: KIRK HULL VS. VOLKSWAGEN GROUP OF AMERICA, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEFENDANT'S FURTHER RESPONSES TO SPECIAL INTERROGATORY NOS. 14, 40-43, AND 55**
FILED BY: HULL, KIRK
****TENTATIVE RULING:****

This Motion is withdrawn. The Parties filed a Notice of Settlement of this case.

13. 9:00 AM CASE NUMBER: C24-02510
CASE NAME: KIRK HULL VS. VOLKSWAGEN GROUP OF AMERICA, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL DEFENDANT'S FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS NOS. 1-3,9,13-16,37-42, AND 52-57**
FILED BY: HULL, KIRK
****TENTATIVE RULING:****

This Motion is withdrawn. The Parties filed a Notice of Settlement of this case.

14. 9:00 AM CASE NUMBER: C24-02597
CASE NAME: BRYAN RANCH HOMEOWNERS' ASSOCIATION, INC. VS. GAIL FUGERE
***HEARING ON MOTION IN RE: SET ASIDE DEFAULT**
FILED BY: FUGERE, GAIL
****TENTATIVE RULING:****

The hearing on this Motion is continued to May 28, 2025.

Defendants move to set aside the default and default judgment entered against them pursuant to Code of Civ. Proc. § 473 (b), which requires that "Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein." Defendants have not submitted their proposed answer or other pleading.

Defendants are instructed to file a further declaration providing their proposed answer or other proposed pleading pursuant to this provision no later than May 21, 2025.

15. 9:00 AM CASE NUMBER: C24-03123
CASE NAME: CHRISTOPHER MARTINEZ VS. CITY OF ANTIOCH
***HEARING ON MOTION IN RE: TO STRIKE PLAINTIFF'S COMPLAINT FOR DAMAGES**
FILED BY: CITY OF ANTIOCH
****TENTATIVE RULING:****

Summary

The City of Antioch's special motion to strike is **denied.**

Plaintiff is suing the City of Antioch and the Antioch Police Department for (1) disability discrimination, (2) retaliation, (3) wrongful refusal to hire, (4) failure to engage in the interactive process, (5) failure to prevent discrimination and (6) infliction of emotional distress. Plaintiff also sued Concentra Health Services, Inc. and Occupational Health Centers of California for disability discrimination and infliction of emotional distress.

The City of Antioch filed this special motion to strike all causes of action in the complaint. After this motion was filed, Plaintiff dismissed the emotional distress claim against the City and the Police Department.

Procedural issues

Plaintiff argues that this motion is untimely. A special motion to strike "may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." (Code Civ. Proc. § 425.16 (f).) The City was served on November 21, 2024. Here, this motion was filed and served on January 31, 2025. An amended notice of motion including the hearing date was then served on February 4, 2025. To file this motion within 60 days of service, the City needed to file the motion by January 21, 2025 (the 60th day is January 20, which is a holiday). This motion was not filed within 60 days and the City has not offered a good explanation for the delay. Still, the Court exercises its discretion to consider the motion.

Plaintiff also argues that a special motion to strike should be heard within 30 days after service of the motion. Code of Civil Procedure section 425.16 (f) state that "[t]he motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing." Here, the court's docket required that the hearing be set beyond 30 days.

Plaintiff also argues that only the City of Antioch filed this motion and thus, Plaintiff's claims against the Antioch Police Department can proceed regardless of the Court's ruling here. This motion was brought by the City of Antioch without including the Antioch Police Department as one of the parties. The Court takes no position on whether the Antioch Police Department is a separate entity from the City of Antioch. The parties are ordered to meet and confer before the next case management conference on whether the Antioch Police Department is an entity separate from the City of Antioch.

Anti-SLAPP Standard

"Resolution of an anti-SLAPP motion [or special motion to strike] involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16.

[Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a 'summary-judgment-like procedure.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385.)

"At this first step, courts are to 'consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.' (*Park, supra*, 2 Cal.5th at p. 1063.) The defendant's burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity. (*Wilson, supra*, 7 Cal.5th at p. 884.)" (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009.)

"A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] Critically, 'the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech.' [Citations.]… [T]he focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.' [Citation.] 'The only means specified in section 425.16 by which a moving defendant can satisfy the ["arising from"] requirement is to demonstrate that the defendant's conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) … .' [Citation.] In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1063.)

The "gravamen" approach in analyzing a claim to determine the essence or gist of a cause of action is no longer used. Some courts have still used the "gravamen" approach appropriately when it is used "to determine whether particular acts alleged within the cause of action supply the elements of a claim (see *Park, supra*, 2 Cal.5th at p. 1063) or instead are incidental background [Citations]." (*Bonni, supra,* 11 Cal.5th at 1012.)

Code of Civil Procedure section 425.16(e) lists four ways that conduct can constitute protected activity "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16 (e).)

<u>Protected Activity</u>

Here, the City brings this motion arguing that the gravamen of all the claims is protected activity under sections 425.16(e)(1)-(2) and (4).

Under section (e)(1) and (2), written or oral statements made before or in connection with an official proceeding are protected activity. Here, the City's decision to rescind Plaintiff's job offer and not engage in the interactive process involve official proceedings. (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 201 (peer review proceedings are "official proceeding[s]" within the meaning of section 425.16(e)(2).) However, *Kibler* addressed only the protected activity issue and did not

address when a claim arises from such protected activity. (See, *Park, supra,* 2 Cal.5th at 1069; *Bonni, supra,* 11 Cal.5th at 1014.)

Here, all of Plaintiff's claims are based upon the following allegations: the Police Department and the City extended a job offer to Plaintiff as a police trainee contingent upon the completion of a pre-placement physical. (Comp. ¶10.) Plaintiff went to have his physical done at Concentra, but the doctor at Concentra refused to finish the physical examination once he learned that Plaintiff had a congenital heart defect. (Comp. ¶¶14-15.) Plaintiff provided the requested medical clearance from his personal doctor, however, the doctors at Concentra refused to complete the physical examination and would not clear Plaintiff to work as a police trainee. (Comp. ¶¶16, 17.) The City then rescinded Plaintiff's job offer due to the decision made by Concentra. (Comp. ¶20.)

The City's communication to Plaintiff rescinding his job offer is protected activity. The key issue here is whether Plaintiff's employment claims arise from the protected activity.

In *Park*, the plaintiff worked at a public university and was denied tenure. (*Park, supra,* 2 Cal.5th 1057.) He sued for employment discrimination. The university filed an anti-SLAPP motion, arguing that the lawsuit arose from the university's decision to deny the plaintiff tenure and on the communications that led to that decision. The University argued that communications were protected activity because they were communications in the tenure decision, which was an official proceeding. (*Id.* at 1061.) *Park* held that the communications were not the basis of liability as the plaintiff's claims were based on the denial of tenure and not on statements made in connection with that process. (*Id*. at 1068.) "The elements of Park's claim, however, depend not on the grievance proceeding, any statements, or any specific evaluations of him in the tenure process, but only on the denial of tenure itself and whether the motive for that action was impermissible. The tenure decision may have been communicated orally or in writing, but that communication does not convert Park's suit to one arising from such speech." (*Ibid*.) The statements could, however, provide evidence to support elements of the claim. (*Ibid*.)

In *Bonni*, a physician alleged that the defendant hospitals and members of its medical staff unlawfully retaliated against him for raising concerns about patient care. (*Bonni, supra,* 11 Cal.5th 995.) *Bonnie* found that threats of unfavorable changes in medical privileges by the hospitals were statements made in connection with an official proceeding. While some of Bonni's claims arose from the statements themselves, the claims based upon the disciplinary actions by the hospital did not arise from protected activity. *(Id*. at 1019.)

Here, the Court must consider the elements of each of the alleged claims to determine whether they arise from protected activity. (Although the City did not do this analysis and instead relied on the gravamen approach, the Court must still go through the elements of each claim to determine whether that particular claim arises from protected activity.)

As to causes of action one and five, Plaintiff alleges disability discrimination and the failure to prevent such discrimination. "To establish a prima facie case under the FEHA on grounds of physical disability, [plaintiff] had to present evidence showing he suffered a physical disability within the meaning of the FEHA, he was otherwise qualified for his job, and he suffered an adverse employment action because of the physical disability." (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1006.) In addition, the employer has a duty to prevent discrimination. (*Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 1021, 1035; Gov. Code, § 12940 (k).) Here, the Court finds that Plaintiff's claims arise from the City's actions in rescinding Plaintiff's job offer. The City's

communications may be used as evidence to support Plaintiff's claims, but the City's communications to Plaintiff do not convert these claims into ones arising from protected speech.

As to cause of action two for retaliation, "a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.) Here to, the Court finds that Plaintiff's claim arises from the City's actions in rescinding that job offer and not from the City's communication of its decision.

As to cause of action three for wrongful refusal to hire, Plaintiff needs to show that (1) the City was an employer or other covered entity; (2) Plaintiff applied to the City for a job; (3) the City refused to hire plaintiff; and (4) plaintiff's disability was a motivating reason for the City's refusal to hire. (Gov't Code § 12940(a).) Again, the Court finds that Plaintiff's claim arises from the City's actions in rescinding that job offer and not from the City's communication of its decision.

Finally, in cause of action four Plaintiff brings a claim for the failure to engage in the interactive process. "Under section 12940, subdivision (n), it is an unlawful employment practice '[f]or an employer … to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical … disability. …'" (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 61.) Here, Plaintiff's claim arises from the City's lack of action in failing to engage with Plaintiff once his heart condition became known. Plaintiff's claim is not based upon the City's communications.

The Court finds that causes of action one through five all arise from the City's action related to rescinding Plaintiff's employment offer. Therefore, the City has failed to show that these claims arise from protected activity under sections 425.16(e)(1) and (2).

The City also argues that Plaintiff's claims constitute protected activity under section 425.16(e)(4) because the City's decision implicates a matter of public interest.

For the "analysis under the catchall provision, subsection 425.16(e)(4), 'First, we ask what "public issue or … issue of public interest" the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest,' a question we answer by examining the speech's context. (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149–150.)

Assuming that there is a matter of public interest here, the City has not shown a connection between the public interest and the context in which the City's speech was made. There are no allegations that the City made a public statement regarding Plaintiff's ability to become a police officer or that the City otherwise engaged in some public conversation about this issue. Nor has the City shown a connection between its decision here and its ability to speak or petition on public issues. (See, *Bonni, supra,* 11 Cal.5th at 1022.) As the court in *Bonni* explained, "disciplining a doctor based on the view that the doctor's skills are deficient is not the same thing as making a public statement to that effect. The latter is, or may be, speech on a matter of public concern. The former is not speech at all. [Citation.]" (*Id.*at 1021.)

The Court finds that the City has not met its burden of showing that causes of action one through five arise from protected activity and therefore this motion is denied.

The Court declines to rule on the City's objections to evidence as it did not reach the second prong in the analysis.

16. 9:00 AM CASE NUMBER: MSC21-00881
CASE NAME: ESPINOZA VS PACIFIC HIGHWAY RENTALS, LLC
***HEARING ON MINOR'S COMPROMISE AS TO DANIEL ZARATE**
FILED BY: ZARATE, DANIEL
TENTATIVE RULING:

Summary Petitioner Antonia Espinoza Bautista's Petition for Approval of Compromise of Minor's Claim ("Petition"), filed on January 28, 2025, is granted, as set forth below.

Background

On January 28, 2025, Petitioner Antonia Espinoza Bautista filed the Petition on behalf of Minor Daniel Zarate ("Minor") to compromise the claim that Minor had against Pacific Highway Rental, LLC and Alex Todorovics related to an accident on May 1, 2019 in Martinez, California. In that accident, Minor sustained an abrasion at the base of the neck. His medical examination with his health care providers revealed spinal segmental dysfunction. However, Petitioner represents that Minor has recovered and there are no permanent injuries. The compromised settlement is in the amount of $15,000. After costs, the Minor will receive $14,285.61. This amount will be invested into an annuity with a payment schedule for Minor's benefit in 2036 and 2037.

Ruling

After careful examination of the Petition and proposed orders, the Court finds good cause to approve the Petition. Accordingly, the Petition is **granted**. The Court will execute the Proposed Order Approving Compromise of Minor's lodged on January 28, 2025.

17. 9:00 AM CASE NUMBER: MSC21-02445
CASE NAME: NIST VS FARRELL
HEARING ON DEMURRER TO: 4TH AMENDED COMPLAINT
FILED BY: FARRELL, SHANNA M.
TENTATIVE RULING:

Before the Court is Defendant Shanna M. Farrell ("Defendant" or "Farrell")'s Demurrer. The Demurrer relates to Plaintiff William G. Nist and Plaintiff Sara J. Nist (collectively, "Plaintiffs")'s Fourth Amended Complaint ("4thAC") for (1) intentional infliction of emotional distress; (2) negligent infliction of emotional distress; (3) harassment; (4) interference with an easement interest; (5) negligence (general); (6) trespass to land; (7) trespass to chattel; (8) private nuisance; (9) preliminary and permanent injunctions; and (10) declaratory relief.

Defendant demurs to all Plaintiffs' causes of action for pursuant to Code of Civil Procedure ("CCP")

§ 430.10(e) and (f) on several grounds.

For the following reasons, the Demurrer is **sustained-in-part**, without leave to amend (as to the causes of action for intentional infliction of emotional distress, negligent infliction of emotional distress, harassment, and negligence), and **overruled-in-part** (as to the causes of action for interference with an easement interest, trespass to land, trespass to chattel, private nuisance, preliminary and permanent injunctions, and declaratory relief).

Request for Judicial Notice

Plaintiffs request judicial notice of this Court's prior order on Defendant's Demurrer to Plaintiffs' Second Amended Complaint, as well as Plaintiffs' red-lined document illustrating the differences between their Second Amended Complaint and Fourth Amended Complaint (Exhibit A to Plaintiffs' Reply Brief in Support of Motion for Leave to File Fourth Amended Complaint). The unopposed request is **granted**. (Evid. Code §§ 452, 453.)

Legal Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) Legal conclusions are insufficient. (*Id*. at 1098–1099; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Brief Factual Background

This is a neighbor dispute. Plaintiffs own and maintain a water-well on Defendants' property, with a related easement right. (4thAC at ¶ 10.) The 4thAC alleges generally loud and disruptive construction activities on the part of Defendants. (4thAC at ¶¶ 22-23.) Plaintiffs also allege that Defendants erected a fence within their road access easement, restricting their access. (4thAC at ¶ 26.) Specifically, Plaintiffs allege that this restriction "left only six feet by which plaintiffs could access their home" and that at times the fencing "completely blocked the well easement, thereby completely cutting off Plaintiffs ability to obtain access to and water from their well." (4thAC at ¶¶ 27, 28.)

Analysis

As a threshold issue, the Court declines to award Plaintiffs sanctions. As the Court sustains the Demurrer in part as described more fully below, it finds that it has merit.

(1) intentional infliction of emotional distress

Defendant demurs to this cause of action on the grounds that the Fourth Amended Complaint fails to allege any "'ultimate facts' that Farrell engaged in any 'extreme and outrageous' conduct." (Dem. at 4:5-6.)

A cause of action for intentional infliction of emotional distress requires Plaintiff to allege (1) extreme and outrageous conduct by Defendants with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) that Plaintiff suffered severe or extreme emotional

distress; and (3) actual and proximate causation of the emotional distress by Defendants' outrageous conduct. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.)

To satisfy the first element, conduct "must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Potter v. Firestone Tire & Rubber Co*. (1993) 6 Cal. 4th 965, 1001 [quoting *Christensen v. Superior Ct.* (1991) 54 Cal. 3d 868, 903]; see also *McMahon v. Craig* (2009) 176 Cal. App. 4th 1502, 1515-16 ["Generally, conduct will be found actionable where the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!"].)

In opposition, Plaintiffs argue that "[t]he following supports the facts indicating Intentional Infliction of Emotional Distress (IIED). {4AC Pp 12-25 L17-28}." This citation embraces the entirety of their allegations under the first cause of action for intentional infliction of emotional distress. The only new allegations to this cause of action are found in paragraphs 56 through 58. However, these paragraphs largely allege a legal conclusion that the foregoing paragraphs, when taken together, are sufficient to support a cause of action for IIED. The Court cannot agree.

Plaintiffs have failed to allege facts sufficient to state a cause of action for IIED against Defendant. The Demurrer to this cause of action is **sustained**, without leave to amend.

(2) negligent infliction of emotional distress

Defendant demurs to Plaintiffs' cause of action for negligent infliction of emotional distress on the grounds that the 4thAC's alleged special relationship is not legally recognized and does not support a cause of action for NIED. In opposition, Plaintiffs argue (without citation to authority) that "there is in fact a duty by Defendants to not purposely act or do things which would inflict emotional distress on a reasonable person." (Opp. at 6:25-26.)

Negligent infliction of emotional distress is not a separate tort. It is a species of negligence. (*Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc.* (1989) 48 Cal.3d 583, 588.) Because NIED is a form of negligence, the traditional elements of duty, breach of duty, causation and damages apply. (*Arista v. County of Riverside* (2018) 29 Cal.App.5th 1051, 1062-1063.) To support relief the defendant must owe a duty to the plaintiff "that is 'assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.' [Citation.]" *Plotnik v. Meihaus* (2012) 208 Cal. App. 4th 1590, 1608 [quoting *Burgess v. Sup. Ct.* (1992) 2 Cal. 4th 1064, 1073].)

"In determining a duty's existence and scope, our precedents call for consideration of several factors: ' "[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." ' " (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213, quoting *Rowland v. Christian* (1968) 69 Cal.2d 108, 113.) "Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other *Rowland* factors may be determinative of the duty analysis." (*Castaneda*, at p. 1213.)

Plaintiffs plead in the 4thAC that "Defendants and Farrell undertook a special duty and relationship, among others, by sharing the water source and utilities easement with Plaintiffs[.]" (4thAC at ¶ 61.) This legal conclusion is not supported by any authority. Additionally, it is unclear if the shared water source to which Plaintiffs refer is the underground water table, as the Court understands the well at

issue in this case to owned by Plaintiffs exclusively. (See, e.g., 4thAC at ¶ 10.) The relationship between the parties (adjoining property owners) does not appear to fall within the types of preexisting relationships which give rise to a duty of care. (See *Sher v. Leiderman* (1986) 181 Cal.App.3d 867, 884 ["[m]ere ownership of adjoining lots, however, does not give rise to a heightened duty of care[.]"].)

Plaintiffs have failed to allege facts sufficient to state a claim for NIED. The 4thAC fails to allege facts demonstrating the existence of a legal duty of care Defendant owed Plaintiffs which the Defendant subsequently breached.

The Demurrer to this cause of action is **sustained**, without leave to amend.

(3) harassment

Defendant demurs to Plaintiffs' cause of action for harassment on the grounds that Plaintiffs have not alleged extreme and outrageous conduct.

"Harassment" is defined as:

> [U]nlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

Cal. Code Civ. P. § 527.6(b)(3). For purposes of CCP § 527.6, "course of conduct" is defined as:

> [A] pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."

Cal. Code Civ. P. § 527.6(b)(1).

Under California law, "substantial emotional distress" under CCP § 527.6(b) is analogous to the tort of intentional infliction of emotional distress. (See *Schild v. Rubin* (1991) 232 Cal. App. 3d 755, 762-763.) Toward that end, the 4thAC must plead: "(1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Yau v. Santa Margarita Ford, Inc*. (2014) 229 Cal. App. 4th 144, 160.)

Here, the Court finds that the 4thAC does not state facts demonstrating extreme and outrageous conduct on Defendant's part, i.e., conduct that is "so extreme as to exceed all bounds of that usually tolerated in a civilized community" and "of a nature which is especially calculated to cause, and does cause, mental distress." (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal. 4th 965, 1001; *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal. 3d 148, 155, fn. 7.)

The Demurrer to this cause of action is **sustained**, without leave to amend.

(4) interference with an easement interest

Defendant demurs to this cause of action on the grounds that the Plaintiffs "fail to allege in their 4AC

that Farrell's conduct somehow 'unreasonably impedes' the Nists' easement rights that are not 'justified by needs of the servient estate' owned by Farrell. (See *Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419, 429-430 (emphasis in original, internal quotations omitted).)" (Dem. at 10:2-5.)

To prevail on a claim for interference with easement, plaintiffs must plead and prove (1) the existence of a valid easement benefitting plaintiffs, and (2) conduct by defendants that unreasonably interferes with plaintiffs' use and enjoyment of the easement. (*Metzger v. Bose* (1957) 155 Cal.App.2d 131, 133.)

The Fourth Amended Complaint alleges that Defendants erected a fence and lock that "completely blocked access to the road leading to the well of Plaintiffs and was offset from the adjacent access road of Plaintiffs to access their home." (4thAC at ¶ 76.) The Fourth Amended Complaint also includes a diagram illustrating the fence location over their easement. (See 4thAC at p. 33.) Additionally, the Fourth Amended Complaint further alleges that Defendants "regularly [put] a lock and chain on the easement … further preventing Plaintiffs' access to said easement and easement access road…" (4AC at ¶ 47(c).) They allege that Defendants repeatedly tampered with Plaintiffs' well and called the sheriff to report Plaintiffs as trespassers any time they attempted to access their well or easement. (*Id*. at ¶ 47 (k), (l).) Plaintiffs also allege that Defendants hired armed security guards to prevent them from accessing their easement both physically and by way of intimidation. (*Id*. at ¶¶ 51(kk), (ww), (xx).) Plaintiffs assert that they (Plaintiffs) never did anything to impede or otherwise interfere with the non-exclusive, shared easement. (*Id*. at ¶ 36.)

Plaintiffs have alleged facts sufficient to state a cause of action for interference with an easement interest. The Demurrer to this cause of action is **overruled**.

(5) negligence (general)

Defendant demurs to Plaintiffs cause of action for negligence on the grounds that Plaintiffs have not alleged a duty and California does not recognize a cause of action for negligent interference with contractual relations. (See also *Davis v. Nadrich* (2009) 174 Cal. App.4th 1, 9, citing Fifield Manor v. Finston (1960) 54 Cal. 2d 632.) Defendant also argues that Plaintiffs' claim is precluded by the "economic loss rule," as they have not alleged any bodily injury or other actionable tortious injury.

Plaintiffs do not engage with this authority in opposition; instead, they argue (without citation to authority, that "[t]here is a general duty in the state of California not to cause harm to others such as damaging roads and preventing equipment from being utilized." (Opp. at 10:22-24)

As discussed above with respect to Plaintiffs' claim for negligent infliction of emotional distress, to support relief the Defendant must owe a duty to the Plaintiffs. The Fourth Amended fails to allege facts demonstrating the existence of a legal duty of care Defendant owed Plaintiffs which the Defendant subsequently breached.

The Demurrer to this cause of action is **sustained**, without leave to amend.

(6) trespass to land

Defendant demurs to this cause of action on the ground that California does not recognize a cause of action for trespass on an easement. (Demurrer at 12:22-23.)

The elements of a trespass to land claim are: (1) Plaintiff owned or controlled the property; (2) Defendant intentionally, recklessly, or negligently entered the property; (3) Defendant lacked permission for the entry or exceeded the scope of permission; (4) Plaintiff was harmed; and (5) Defendant's conduct was a substantial factor in causing the harm. (See *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 261-262.)

Plaintiffs allege that Defendants "intentionally, willfully, and maliciously plac[ed] items onto Plaintiff's property physically encroaching onto Plaintiff's land." (4thAC at ¶ 105.) Specifically, Plaintiffs allege that "Defendants caused debris, items and to person to enter into Plaintiff's property outside or that interest in the easement." (*Id*. at ¶ 106.) Plaintiffs further allege that "Defendants have entered onto Plaintiffs' property which they had no right to do so, without express or implied consent." (*Id*. at ¶ 108.) Finally, Plaintiffs allege damage to their property. (*Id*. at ¶ 111.)

Plaintiffs have alleged facts sufficient to state a cause of action for trespass to land. The Demurrer to this cause of action is **overruled**.

(7) trespass to chattel

Defendant demurs to Plaintiffs trespass to chattel claim on the grounds that there are no allegations that Defendants intentionally interfered with any personal property to which the Plaintiffs held a possessory interest.

Trespass to chattels "lies where an intentional interference with the possession of personal property has proximately caused injury" (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1566), but the interference is "'not sufficiently important to be classed as conversion'" (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1350). "Though not amounting to conversion," in an action for trespass to chattels "the defendant's interference must … have caused some injury to the chattel or to the plaintiff's rights in it." (*Ibid*.; see *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1605, 1606–1608 (*Plotnik*) [owner of dog could sue for trespass to chattels for the intentional striking of the dog with a bat].)

Critically, trespass to chattels is for interferences with personal property. (See *Intel Corp.* at p. 1350.) Here, Plaintiffs allege "molestation of the underground piping on the utilities easement deeded to Plaintiffs." (4thAC at ¶ 116.) Plaintiffs further allege Defendants "specific placement of the fencing and posts to align directly over where Defendants ha[d] been advised water lines exist" was intended to cause harm and dispossess Plaintiffs of their property. (*Id*. at ¶ 127.) Plaintiffs have sufficiently alleged "an intentional interference with the possession of personal property [that] has proximately caused injury." (See *Plotnik*, *supra*, at p.1606.)

Plaintiffs have alleged facts sufficient to state a cause of action for trespass to chattel. The Demurrer to this cause of action is **overruled**.

(8) private nuisance

Defendant demurs to Plaintiffs' cause of action for private nuisance on the grounds that the 4thAC fails to adequately plead a substantial and unreasonable interference with the Plaintiffs' property.

The elements of private nuisance include the following: "First, the plaintiff must prove an interference with his use and enjoyment of its property. Second, the invasion of the plaintiff's interest in the use and enjoyment of the land must be substantial, i.e., it caused the plaintiff to suffer substantial actual damage. Third, the interference with the protected interest must not only be substantial, it must also be unreasonable, i.e., it must be of such a nature, duration, or amount as to constitute unreasonable interference with the use and enjoyment of the land." (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1176.)

"[In] California, it is settled that where negligent conduct, i.e., conduct that violates a duty of care toward another, also interferes with another's free use and enjoyment of his property, nuisance liability arises." (*Lussier v. San Lorenzo Valley Water Dist.* (1988) 206 Cal.App.3d 92, 101.)

In opposition, Plaintiffs argue that "[t]here are instances of extreme conduct on the part of Defendant

Farrell" and cite generally to the entirety of the allegations within their private nuisance cause of action. (See Opp. at 13:2-4.) New in the Fourth Amended Complaint, Plaintiffs allege damages to their property that they further allege "'lessened the[ir] quiet enjoyment of property' by making Plaintiffs property less useful, less enjoyable and less valuable, as the detritus released into the air, the reflection of direct light from the needlessly reflective spite fence erected and noxious sounds direct at Plaintiffs parcel have made enjoyment not possible." (4thAC at ¶ 141.) This is sufficient at the pleading stage.

The Demurrer to Plaintiffs' cause of action for private nuisance is **overruled**.

(9) preliminary and permanent injunctions; and (10) declaratory relief

Finally, Defendant demurs to Plaintiffs' causes of action for preliminary and permanent injunctions as well as declaratory relief on the grounds that they are remedies and not causes of action.

As the Court previously noted, these causes of action are derivative of Plaintiffs other claims. However, as described further above, Plaintiffs have now alleged causes of action for interference with an easement interest, trespass to chattel, and private nuisance. The Demurrer to Plaintiffs' causes of action for preliminary and permanent injunctions and declaratory relief is **overruled**.

18. 9:00 AM CASE NUMBER: MSC22-00537
CASE NAME: NACELLI VS. AGAPITO
***HEARING ON MOTION IN RE: TO VACATE JUDGMENT AND ORDER CCP 473(B) AND REQUEST FOR TIME TO LOCATE COUNSEL**
FILED BY: NACELLI, LOLITA B
****TENTATIVE RULING:****

Summary

Plaintiff Lolita Nacelli's Motion to Vacate Judgment ("Motion") and to reinstate the Lis Pendens filed on January 28, 2025, with an amended notice filed on March 20, 2025, is granted as unopposed.

Background

By her motion January 28, 2025, Plaintiff Lolita Nacelli ("Plaintiff") moves to vacate the Judgment entered against her on December 31, 2024 by Defendants Josephine and Arnel Agapito concerning claims regarding real property located at 1012 Park St., Hercules, CA and to reinstate the *Lis Pendens*. The amended motion, dated March 20, 2025, includes a Notice, Memorandum of Points and Authorities, and Plaintiff's declaration of Plaintiff asserting under Cal. Code of Civ. Proc. § 473(b) that she never received notice of the entry of judgment, order to show cause, or the substitution of counsel from her prior counsel. No timely opposition was filed.

Analyses

California Rules of Court ("CRC"), Rule 8.54(c) states, "A failure to oppose a motion may be deemed a consent to the granting of the motion."]; see *Cravens v. State Bd. of Equalization* (1997) 52 Cal. App. 4th 253, 257; *Gwaduri v. I.N.S*. (9th Cir. 2004) 362 F.3d 1144, 1146 [Where a party fails to file timely opposition to a motion, it is "well-within" the court's discretion to determine that such failure is

"tantamount to a concession that its position in the litigation was not substantially justified."] (citing *Weil v. Seltzer,* 873 F.2d 1453, 1459 (D.C. Cir. 1989) [holding that a party who fails to file an opposition to a motion is deemed to have waived opposition and may not be heard to complain.]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue.]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779,784–785 [failure to support a point with reasoned argument and citations to relevant authority constitutes waiver].) Applied here, the Court finds a failure to timely oppose the Motion is a deemed to be consent to the granting of the Motion.

After review of the Motion and supporting documents in conjunction with the relevant statutory and decisional authorities, the Court finds good cause to make the following findings and orders.

Ruling

Plaintiff's Motion to Vacate the Judgment is **granted**. The Judgment is set aside. The *Lis Pendens* entered against the property commonly known as 1012 Park St., Hercules, CA is reinstated. Plaintiff's counsel is ordered to prepare a proposed order that conforms to this ruling, attaching the Court's ruling by e-file approved as to form by opposing counsel within five (5) days from the date of this order.

19. 9:00 AM CASE NUMBER: MSN19-0232
CASE NAME: BAYVIEW BUILDERS, INC. VS GREEN VALLEY STRUCTURAL
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS**
FILED BY: J.R. DRYWALL, INC.
****TENTATIVE RULING:****

J.R. Drywall, Inc. [JR Drywall] bring this Motion to Quash Service of Summons [Motion] of the Cross-Complaint in Intervention of Bayview Builders, Inc. [Bayview]. The Motion is opposed by Bayview.

For the following reasons, the Motion is **denied**.

Background

This matter began as a petition to submit the dispute to judicial reference. (See Petition filed 02/07/2019) and Court Order dated 04/04/2019.) The parties then stipulated to proceed with a Special Master and have the matter returned to the Court. (See Stipulation and Order of Reference to Special Master file 12/10/2020.) Bayview Builders filed its Amended Petition/Complaint for Breach of Contract and Indemnity Claims on February 8, 2021. Thereafter, the homeowners filed a Complaint in Intervention on March 8, 2021, and Bayview filed a Cross-Complaint in intervention on December 27, 2021. (Dec. M. Wheeler, ¶ 4.) Pre-Trial Order No. 2 was filed August 23, 2023 and provides that the stay on discovery was lifted effective September 1, 2023. Within the year after the stay was lifted the parties began discovery and conducted expert investigations that implicated JR Drywall in the claims. (Pre-Trial Order No. 2 filed 08/23/23; Dec. M. Wheeler, ¶ 6.) JR Drywall was added by Poe Amendment to the Cross-Complaint in Intervention on October 23, 2024 and served on November 24, 2024. (Dec. M. Wheeler, ¶¶ 4, 7.) Trial is currently set for October 13, 2025 and there is a pending

motion to continue the trial date.

JR Drywall brings this Motion based on Code of Civ. Proc. § 474, which allows for naming of a defendant by a fictious name, and on the grounds that (1) Bayview was aware of the identity of JR Drywall since before the complaint was filed on February 8, 2021 (4 years ago). (2) Bayview knew there were specific claims against the work of JR Drywall since the homeowners' complaint in intervention was filed on March 8, 2021 (4 years ago). (3) JR Drywall is prejudiced by the late notice of this lawsuit. JR Drywall presents two declarations of counsel, which set forth the pleadings history for this matter and state that counsel was retained on February 24, 2025 and was able to retain an expert and attend a site inspection on March 4, 2024, and participate in mediation on March 13, 2024, prior to filing this Motion on April 4, 2024. (Dec. C. Henry; Dec. J. McElroy, ¶ 3-6.)

Bayview opposes the Motion on the grounds that (1) JR Drywall was timely and appropriately served as a "Poe" Defendant. (2) Judicial policy favors amendments. (3) There is no prejudice JR Drywall due to delay in amending the Cross-Complaint. Bayview presents a declaration of counsel Michael Wheeler to demonstrate that it included JR Drywall when it had the opportunity to conduct investigations with its consultants and determine that JR Drywall was an appropriate party to be added to the case. (Dec. M. Wheeler, ¶ 6.) Counsel also advises that he provided extensions of time for appearance of JR Drywall so that it could obtain counsel and that he has also provided counsel with information relating to the basis of the claims. (*Id*., ¶¶ 5, 9.)

Standard

Code of Civ. Proc. § 474 allows a cross-complainant who is ignorant of a cross-defendant's identity to designate the defendant in a complaint by a fictitious name, and to amend the pleading with the cross-defendants true name when it is known. "The question is whether [the plaintiff] knew or reasonably should have known that he had a cause of action against [the defendant]." (*McClatchy v. Coblentz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 372.) "'Ignorance of the facts giving rise to a cause of action is the "ignorance" required by section 474, and the pivotal question is, 'did plaintiff know facts', not 'did plaintiff know or believe that [she] had a cause of action based on those facts.'" (*Ibid*.; see also *Hazel v. Hewlett* (1988) 201 Cal.App.3d 1458, 1464-1465).

"Although courts are bound to apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings … this policy should be applied only where no prejudice is shown to the adverse party." (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761 [citations and internal quotes omitted]; *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345.) In the matter of *P&D Consultants*, the appellate court found that denying leave to amend was not an abuse of discretion because, "P&D did not seek leave to amend until after the trial readiness conference, an amendment would require additional discovery and perhaps result in a demurrer or other pretrial motion, and P&D offered no explanation for the delay." (*P&D Consultants, Inc.*, *supra*, 190 Cal.App.4th at 1345.) However, where the amendment has not misled or prejudiced the other side, the liberal policy of allowing amendments prevails, even if sought as late as the time of trial. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565.)

Analysis

JR Drywall brings this Motion based on Code of Civ. Proc. § 474 arguing that Bayview is not entitled to use the Doe defendant procedure under section 474 because it was aware of JR Drywall's identity and

scope of work, as well as allegations of defects in drywall at the time it filed its Cross-Complaint in Intervention. “Section 474 allows a plaintiff who is ignorant of a defendant's identity to designate the defendant in a complaint by a fictitious name (typically, as a ‘Doe’), and to amend the pleading to state the defendant's true name when the plaintiff subsequently discovers it.” (*McClatchy*, *supra*, 247 Cal.App.4th at 371.)

Bayview’s Cross-Complaint in Intervention alleges general claims for breach of contract and indemnity arising from the homeowner’s claims of defects in the Complaint in Intervention. As discussed in *McClatchy*, the question is whether Bayview knew of the facts giving rise to the cause of action against JR Drywall. Thus, the question is not whether Bayview knew of the identity of JR Drywall, but whether it knew of the facts that formed the basis for its claims against JR Drywall. Bayview has presented its declaration of counsel that demonstrates Bayview learned of the facts that gave rise to its claims against JR Drywall through expert investigation, as counsel initially understood that the claims arose from water intrusion rather than defective drywall installation. (Dec. M. Walker, ¶ 5.) Bayview’s counsel states that JR Drywall was named as a Poe Cross-Defendant as soon as Bayview gathered sufficient facts to allege that it was entitled to damages arising from breach of contract and indemnity from JR Drywall as a result of the defects at issue in the Complaint in Intervention. (*Id*., ¶ 6.)

Bayview’s counsel provides an Affidavit of Due Diligence showing that Bayview’s process server made multiple attempts at service on Jose Ramirez, the registered agent for service of process, at various times of day prior to service being effectuated on Mr. Ramirez on November 24, 2024. (*Id*., ¶ 12, Ex. A.) As JR Drywall was served November 24, 2024 via substituted service, its responsive pleading was due approx. January 4, 2025. Such timing provided sufficient time to meet the discovery deadlines listed in Pre-Trial Order No. 3, or for JR Drywall to request a short continuance to accommodate its recent appearance. However, JR Drywall delayed approx. three months in appearing in this action, and, then, after receiving several extensions from Bayview, it filed this Motion instead of an appearance. In the interim, JR Drywall has had the opportunity to participate in site inspections and mediation and obtain information regarding the basis for the claims against it. (Dec. J. McElroy, ¶¶ 4-5; Dec. M. Walker, ¶ 9.)

This court does not find that JR Drywall has shown that it was prejudiced by being added to this action in October 2024. Key discovery activities were not set to begin until the end of January 2025 and trial is currently set for October 2025. JR Drywall was given adequate time to participate in discovery and prepare for trial when it was served on November 24, 2024. If anything, JR Drywall’s limited participation in discovery to date appears to result from its own delay in both obtaining counsel and responding to the summons.

For such reasons, the Motion is **denied**.