SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001356

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: CASCADE SETTLEMENT SERVICES LLC vs. DEFENDANT: BLUE STURGEON HOLDINGS LLC	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM
2) MOTION – SANCTIONS; DISCOVERY FACILITATOR PROGRAM
3) MOTION – COMPEL ANSWERS TO INTERROGATORIES; DISCOVERY FACILITATOR PROGRAM
4) MOTION – ADMISSIONS; DISCOVERY FACILITATOR PROGRAM
5) MOTION – COMPEL ANSWERS TO INTERROGATORIES; DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff's Motion to Compel Responses to Requests for Production, Set Two is GRANTED as to Nos. 56, 58-64, and 80. (Code of Civil Procedure, § 2031.300.[1]) Defendant Blue Sturgeon Holdings, LLC ("Defendant") must pay $1,460 in sanctions. (§§ 2023.030, 2023.050.) Plaintiff's Motion to Compel Responses to Special Interrogatories, Set Two is GRANTED as to Nos. 28-29, 31, 36, 38, and 41. (§ 2030.290.) Defendant must pay $460 in sanctions. (§ 2030.030, subd. (a); § 2023.010, subd. (d).)

Plaintiff's Motion to Compel Responses to Form Interrogatories, Set Two is DENIED as moot.

As to Plaintiff's Motion to Compel Responses to Requests for Admission, Set One, which is mistitled and is in fact a motion to deem matters admitted, appearances are required.

As to Plaintiff's motion for evidence sanctions, appearances are required. Parties shall appear and Defendant shall inform the court whether Defendant has complied with the prior order to pay sanctions.

[1] All further statutory references are to the Code of Civil Procedure.

BACKGROUND

Plaintiff filed these motions to compel Defendant's response to four sets of discovery (all served March 7, 2025), and to obtain certain evidence sanctions, after Defendant failed to respond to the discovery by the April 8, 2025 deadline. (Taylor Dec. [requests for production], ¶¶ 2-4; Taylor Dec. [special interrogatories], ¶¶ 2-4; Taylor Dec. [form interrogatories], ¶¶ 2-4; Taylor Dec. [requests for admission], ¶¶ 2-4.) While the motion was pending, Defendant served responses to all four discovery requests. Plaintiff took issue with some aspect of each of Defendant's initial responses. After meeting and conferring, the parties agreed to the following: (1) As to the requests for production ("RFPs"), Defendant would "withdraw objections" and "provide all responsive documents" and would do so on or before April 28, 2025 (Will Dec.,[2] ¶¶ 7-8; Opp. [RFPs], p. 2 [clarifying that Defendant means it agreed to withdraw *all* objections]); (2) As to the special interrogatories ("SROGs"), Defendant would "withdraw all objections and answer the questions" by the same date (Opp. [SROGs], p. 2; Will Dec., ¶¶ 7-8); (3) As to the form interrogatories ("FROGs"), Defendant would "parse out and separately state its responses . . . and revise its responses to include the names, addresses, and telephone numbers of all persons with knowledge of the facts asserted, as well as identification of all supporting documents and tangible things, including the name, address, and telephone number of the person in possession of each item" by the same date (Opp. [FROGs], p. 2; Will Dec., ¶ 8); and as to the requests for admission ("RFAs"), Defendant would "parse out and separately state its responses" and serve those revised responses by the same date. (Opp. [RFAs], p. 2.)

Defendant served its amended responses as promised. (See Taylor Reply Dec. [RFPs], Ex. B; Taylor Reply Dec. [SROGs], Ex. A; Taylor Reply Dec. [FROGs], Ex. A; Taylor Reply Dec. [RFAs], Ex. A.) Defendant contends that this moots the four motions tied to specific discovery requests. Plaintiff states that each of Defendant's four amended responses remains at least partially deficient and asks the Court to review them.

As the Court has previously observed, "[w]hen amended discovery responses are served after a motion to compel is filed, the Court has substantial discretion in deciding how to rule in light of the particular circumstances presented." (Mar. 28, 2025 Order on Mot. to Compel, p. 3 [citing *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 408-409].) "Through this discretion, the Court might deny the motion to compel as moot, take the matter off-calendar, order the parties to meet and confer, impose sanctions, or examine the responses to determine if they are code-complaint." (*Ibid.*) *Sinaiko* rejected the idea that when discovery requests go unanswered, the propounding party files a motion to compel responses, and the responding party submits responses while the motion is pending, the moving party must meet and confer as to the untimely responses in order for the court to consider them. (*Sinaiko*, *supra*, 148 Cal.App.4th 390, 408; see also *id.* at p. 409 [court might "determine that further answers are required, *or* order the propounding party to 'meet and confer' "] [emphasis added].)

Trial in this case is set to begin in approximately one month. Accordingly, the Court will address the sufficiency of Defendant's operative responses.

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[2] Defendant submitted an identical declaration, merely retitled, as to all of Plaintiff's motions except the Motion to Compel Further Responses to RFAs and the Motion for Evidentiary Sanctions, for which Defendant did not submit opposing declarations at all.

Motion to Compel Responses to RFPs, Set Two

LEGAL STANDARD

"The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following: (1) A statement that the party will comply with the particular demand for inspection . . . by the date set[;] (2) A representation that the party lacks the ability to comply with the demand[;] [or] (3) An objection to the particular demand[.]" (§ 2031.210, subd. (a).) "A statement that the party . . . will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, will be allowed either in whole or in part, *and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.*" (§ 2031.220 [emphasis added].)

"The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (§ 2023.030, subd. (a).) "Misuse[] of the discovery process" includes "[f]ailing to respond or submit to an authorized method of discovery." (§ 2023.010, subd. (d).) Monetary sanctions for misuse of the discovery process are mandatory unless the court "finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (§ 2023.030, subd. (a); *Shiheiber v. JPMorgan Chase Bank, N.A.* (2022) 81 Cal.App.5th 688, 703.) "The party subject to sanctions bears the burden to establish it acted with substantial justification or other circumstances make the imposition of the sanction unjust." (*Padron v. Watchtower Bible & Tract Society of New York, Inc.* (2017) 16 Cal.App.5th 1246, 1269.) Also, "in addition to any other sanctions imposed pursuant to this chapter," the court "shall" impose a $1,000 sanction if "the court finds . . . [that] the party to be sanctioned "did not respond in good faith to a request for the production of documents . . . or to an inspection demand[.]" (§ 2023.050, subd. (a).)

DISCUSSION

Merits

Plaintiff requests that the Court review Defendant's amended responses to RFP Nos. 56, 58-64, and 80 and impose sanctions of $1,460. (Notice of Motion, p. 1; Reply, p. 1.)

Defendant's responses to RFP Nos. 56 and 58-64 are not code-compliant because they fail to state that all documents described in the particular demand that are in Defendant's possession, custody, or control are being produced. Defendant's response to RFP No. 80 states that "[a]ll documents responsive to the Request for Production No. 80 that are under Responding Party's possession, custody or control have been produced[,]" so it contains the required language, but then it states that "[a]dditional documents, Bates-labeled BSH00891-BSH00941, are being produced herewith as CONFIDENTIAL pursuant to the protective order" and that there are "[a]dditional responsive documents to be produced on Monday, April 28, 2025[.]" (Taylor Reply Dec. [RFPs], Ex. B .) The response does not make clear whether the "additional responsive documents to be produced" will include *all* responsive documents available to Defendant.

The motion is granted as to RFP Nos. 56, 58-64, and 80. Defendant must amend its responses to these RFPs to state that it will produce all responsive documents in its possession, custody, or control.

Plaintiff also requests that the Court order Defendant to make the actual production described in its responses (as amended) within ten days of the Court's order. Plaintiff does not cite any authority permitting the Court to award this relief.

Finally, Plaintiff "anticipates that [Defendant] will withhold responsive documents." (Reply, p. 3.) The Court reads Plaintiff to mean that it predicts Defendant will rely on various objections to withhold responsive documents even though Defendant has concededly waived its objections. (*Id.*; Will Dec., ¶ 7.) Plaintiff accordingly requests that the Court "order [Defendant] to produce all responsive documents in its possession, custody, or control." (Reply, p. 3 [emphasis in original].) This is a request for an order addressing an injury that has not yet occurred and may not occur at all. The Court cannot grant relief based on speculation that the relief may become appropriate in the future.

Sanctions

Plaintiff requests $460 in sanctions under Section 2023.030 and $1,000 under Section 2023.050, with both awards premised on Defendant's failure to submit any timely response to the RFPs. Defendant argues[3] that sanctions are inappropriate because it "has made diligent and reasonable efforts to comply with its discovery obligations" and "any delay or perceived deficiency" was "the result of genuine logistical constraints and the need to review and designate sensitive information under the governing protective order." (Opp. [RFPs], pp. 3-4.) Defendant has not offered any evidence of this. (See *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224 ["In law and motion practice, factual evidence is supplied to the court by way of declarations."]; *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 139 ["Statements and arguments by counsel are not evidence."] accord *Villacorta v. Cemex Cement, Inc.* (2013) 221 Cal.App.4th 1425, 1433.) As a result, Defendant has not carried its burden to demonstrate that it was substantially justified in failing to respond to RFPs, Set Two until after Plaintiff filed a motion to compel, or that other circumstances make imposing sanctions unjust. (§ 2023.030, subd. (a); *Padron, supra*, 16 Cal.App.5th 1246, 1269.) Under these circumstances, an award of monetary sanctions under Section 2023.030 is mandatory. (*Ibid.*; *Shiheiber, supra*, 81 Cal.App.5th 688, 703.) The Court cannot conclude that Defendant's untimely responses to the RFPs were made "in good faith" (§ 2023.050, subd. (a)) when the evidence presented suggests that Defendant simply ignored the discovery request until it was faced with a motion to compel. Accordingly, Plaintiff is awarded $1,460 in sanctions.

Motion to Compel Responses to SROGs, Set Two

LEGAL STANDARD

"The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: (1) An answer containing the information sought to be discovered. (2) An exercise of the party's objection to produce writings. (3) An objection to the particular interrogatory." (§ 2030.210, subd. (a).) "Each answer in a

[3] All of Defendant's opposition materials were several days late. The Court exercises its "broad discretion" to consider these late-filed papers. (*Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 262.)

response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits." (§ 2030.200, subd. (a).)

DISCUSSION

Merits

Plaintiff requests that the Court review Defendant's amended responses to Special Interrogatory Nos. 28-29, 31, 36, 38, and 41, contending that they all suffer from the same defect. All of these ask Defendant to identify or describe certain people, things, or processes, sometimes by reference to specific details. (See generally Taylor Reply Dec. [SROGs], Ex. A.) For example, Special Interrogatory No. 38 asks that Defendant "IDENTIFY all bank accounts, credit accounts; or financial accounts used by [Defendant], including the name of the account holder, financial institution, account number (last four digits only) and the names of all individuals authorized to access or use each account." (*Ibid.*) Defendant's answer to all of these states that Defendant is producing, concurrently with the response, documents responsive to the interrogatory. All of the responses except the one to No. 38 adds that Defendant intends to produce additional responsive documents on April 28, 2025. Each response cites a Bates range for the concurrently-produced responsive documents, which is BSH00891-BSH00941 in every case, even though some of the Special Interrogatories at issue seek very different information.

Defendant's answers to these interrogatories are not "as complete and straightforward as the information reasonably available to [Defendant] permits." (§ 2030.200, subd. (a).) Defendant concedes that the answers are "reasonably available" by stating that they can be found in specific documents, but then does not actually provide the requested information, instead merely referring to the same 50-page range of documents. Under certain circumstances, a party may rely on a writing to answer an interrogatory. (See § 2030.230.) However, Defendant waived its right to exercise that option when it failed to serve a timely response to Plaintiff's Special Interrogatories, Set Two. (§ 2030.290, subd. (a).)

The motion is granted. Defendant must provide complete, straightforward, and code-compliant responses to Special Interrogatory Nos. 28-29, 31, 36, 38, and 41 and may not rely on producing documents in lieu of answering the questions.

Sanctions

Defendant's argument against sanctions is identical to the one it made in its opposition to Plaintiff's motion to compel a response to the RFPs and is likewise not supported by any evidence. Defendant has not carried its burden to demonstrate that it was substantially justified in failing to respond to Special Interrogatories, Set Two until after Plaintiff filed a motion to compel, or that other circumstances make imposing sanctions unjust. (§ 2023.030, subd. (a); *Padron*, *supra*, 16 Cal.App.5th 1246, 1269.) Under these circumstances, an award of monetary sanctions is mandatory. (*Ibid.*; *Shiheiber*, *supra*, 81 Cal.App.5th 688, 703.) Plaintiff is awarded $460 in monetary sanctions. (§ 2030.030, subd. (a); § 2023.010, subd. (d); Taylor Dec. [SROGs], ¶ 5.)

Motion to Compel Responses to FROGs, Set One

Plaintiff asks that the Court review Defendant's response to Form Interrogatory No. 17.1(d). This asks that for each of Defendant's responses to the RFAs served alongside the FROGs that is not an unqualified admission, Defendant identify all documents and other tangible things supporting

its response and state the name, address, and telephone number of the person who has each document or thing. (Taylor Dec. [FROGs], Ex. A.)

If the court determines that Defendant's responses to the request for admissions warrant an order that the requests be deemed admitted, this request will become moot. If, on the other hand, the court finds that Defendant's responses to the RFA's are substantially compliant, the responses to Form Interrogatory 17.1 are not code compliant and must be amended. Additionally, sanctions should issue. Appearances required.

Motion to Compel Responses to RFAs, Set One

LEGAL STANDARD

As is clear from the Notice of Motion and the brief itself, this motion is mistitled and is actually a motion to deem admitted.[4] "If a party to whom requests for admission are directed fails to serve a timely response, . . . [t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction[.]" (§ 2033.280, subd. (b).) "The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (§ 2033.280, subd. (c).) This requires the court to evaluate the response as a whole to determine whether it is substantially compliant overall and, if the answer is no, deem *all* of the RFAs admitted. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 780.) The court may not deem those RFAs that are not substantially code-compliant admitted and then deny the motion as to the rest. (*Id.* at pp. 779-780.) "It is mandatory that the court impose a monetary sanction . . . on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (§ 2033.280, subd. (c).)

"Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits." (§ 2033.220, subd. (a).) "Each answer shall: (1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party. (2) Deny so much of the matter involved in the request as is untrue. (3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge." (§ 2033.220, subd. (b).) "If a responding party gives lack of information or knowledge as a reason for failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (§ 2033.220, subd. (c).)

DISCUSSION

Plaintiff requests that all 28 RFAs in this discovery request be deemed admitted. The Court must grant that request unless the responses Defendant served while the motion was pending substantially comply with Section 2033.220. (§ 2033.280, subd. (c).)

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[4] The Court disregards Plaintiff's request in its reply that the Court "order [Defendant] to provide complete, straightforward, and Code-compliant answers to [RFAs] Nos. 9-11, 14-15, 20, and 22-28." (Reply, p. 1.) An order compelling responses or further responses was not the relief requested in Plaintiff's moving papers.

Plaintiff argues that 13 of Defendant's 28 responses (those to RFA Nos. 9-11, 14-15, 20, and 22-28) remain deficient. (Reply, p. 1.) All of these asked Defendant to admit that it has no evidence for various propositions (e.g., "Admit that YOU have no evidence that [Plaintiff] knowingly made a false statement of fact to YOU" [RFA No. 9]) or defenses (e.g., "Admit that YOU have no evidence to support YOUR affirmative defense of statute of limitations" [RFA No. 22]). (See generally Taylor Reply Dec., Ex. A.) To all of them, Defendant responded, "Responding Party is without sufficient knowledge or information to either admit or deny, and therefore denies the same." (*Ibid.*)

That is not a code-compliant response. Where a party relies on lack of information or knowledge for failure to admit all or part of a request for admission, its answer must state "that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (§ 2033.220, subd. (c).) None of the responses at issue here do this. The same problem infects Defendant's responses to RFA Nos. 13 and 17, although Plaintiff did not mention these.

"[Each objective or purpose of a statute must be achieved in order to satisfy the substantial compliance standard, but this language cannot properly be understood to require 'actual compliance' with every specific statutory requirement." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1017, fn. 24; accord *Southern Pac. Transportation Co. v. State Bd. of Equalization* (1985) 175 Cal.App.3d 438, 442 ["Where there is compliance as to all matters of substance[,] technical deviations are not to be given the status of noncompliance. Substance prevails over form."] (*Southern Pac.*, *supra*, 175 Cal.App.3d 438, 442.) A response to RFAs may be substantially compliant with Section 2033.220 even when it technically does not satisfy all the statutory requirements, provided the response "is facially a good-faith effort to respond to RFAs in a manner that is substantially code-compliant." (*St. Mary*, *supra*, 223 Cal.App.4th 762, 782.) In *St. Mary*, *supra*, 223 Cal.App.4th 762, the Court found a party's untimely RFA responses substantially compliant with Section 2033.220 where comfortably over half of the RFAs (64 of 105) were "unquestionably code-compliant"; most of the remainder consisted of "meaningful, substantive responses"; and the response as a whole was "facially a good-faith effort to respond to RFAs in a manner that is substantially code-compliant." (223 Cal.App.4th 762, 782.) Here, more than half (15) of Defendant's 28 responses are technically compliant with Section 2033.220 (the Court disregards RFA Nos. 13 and 17 because Plaintiff did not take issue with those responses). The remaining, technically not code-compliant responses are concerning. Approximately half of Defendant's answers consist of Defendant making the claim that 5 weeks before trial, it does not know whether it has *any* evidence to support basic elements of its claims and defenses.

"The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; [RFAs] are aimed at expediting trial." (*Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 509.) That purpose is frustrated if the responding party is permitted to effectively answer "I don't know" without doing anything to acquire knowledge, because then the parties may be forced to trial on issues that basic investigation would have revealed are not actually disputed. For this reason, the Court views compliance with this portion of Section 2033.220 as critical to the "objective or purpose" of that provision. (*Costa*, *supra*, 37 Cal.4th 986, 1017, fn. 24.)

As to whether the court issue deem responses to the Request for Admissions as admitted, appearances are required. Plaintiff is awarded $460 in sanctions. (Taylor Dec. [RFAs], ¶ 5; § 2033.280.) The Court does not award the additional $400 requested in Plaintiff's reply because it is not supported by evidence.

Motion for Evidence Sanctions

On December 17, 2024, Plaintiff filed a motion to compel Defendant to further respond to Plaintiff's Special Interrogatories, Set One, and for $2,000 in sanctions. On March 28, 2025, the Court granted the motion in part, ruling that Defendant was to provide "further complete, straightforward, and code compliant responses to Special Interrogatory Nos. 4, 5, 7, and 13 within 10 calendar days from the date of service of this Order." (Taylor Dec., ¶ 2 & Ex. A, p. 5.) The Court additionally awarded Plaintiff $2,000 in sanctions, due concurrently with the amended responses. (*Ibid.*) The Court served its order on March 28, 2025. (Taylor Dec., ¶ 3.) As of April 14, 2025, Defendant still had not served the required further responses or paid the sanction. (*Id.* at ¶ 4.) Plaintiff requests that the Court impose three evidence sanctions for violation of that court order.

First, Plaintiff requests that Defendant be precluded from introducing evidence of any as-yet-unidentified asset it claims to have purchased from Plaintiff. This is based on Defendant's failure to comply with the March 28, 2025 order as to Special Interrogatory, Set One, No. 5, which asked Defendant to "IDENTIFY each asset YOU claim to own under the terms of the MOSA." (Sep. Stmt. in Supp. of Pltf.'s Mot. to Compel [filed Dec. 17, 2024], p. 8.) Second, Plaintiff requests an evidence sanction prohibiting Defendant from introducing any evidence of misrepresentations Defendant did not identify in response to Special Interrogatory, Set One, No. 7 ("IDENTIFY each and every misrepresentation that YOU claim [PLAINTIFF] has made as to the right, title, and interest in the claims purchased by [DEFENDANT] under the MOSA" [Sep. Stmt. in Supp. of Pltf.'s Mot. to Compel (filed Dec. 17, 2024), p. 11]) in violation of the Court's order. Finally, Plaintiff requests an evidence sanction prohibiting Defendant from "presenting any evidence of damages not identified in discovery even after the Court's order." This is tied to Defendant's disobedience of the order as to Special Interrogatory Set One, No. 13 ("IDENTIFY all damages suffered by [Defendant] to date as a result of [Plaintiff's] conduct . . . along with all facts to support such damages." [Sep. Stmt. in Supp. of Pltf.'s Mot. to Compel (filed Dec. 17, 2024), p. 18]).

LEGAL STANDARD

"If a party . . . fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)." (§ 2030.300, subd. (e).)

An evidence sanction consists of an order "prohibiting [a] party engaging in the misuse of the discovery process from introducing designated matters in evidence." (§ 2023.030, subd. (c).) "Misuse[] of the discovery process" specifically includes "[d]isobeying a court order to provide discovery." (§ 2023.010, subd. (g).) An "absolute prerequisite" to imposition of an evidence sanction is that there was a willful failure to comply with a court order. (*Valencia v. Mendoza* (2024) 103 Cal.App.5th 427, 447 [quoting *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525,

1545]; see also *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) The party that disobeyed a discovery order shoulders the burden of establishing his own lack of willfulness in doing so. (*Motown Record Corp. v. Superior Court* (1984) 155 Cal.App.3d 482, 489.) This is consistent with the general rule that a moving party does not have the burden of proving a fact essential to the relief requested where that fact is peculiarly within the knowledge of the opposing party. (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 200.)

"The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination." (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.) "Discovery sanctions 'should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.'" (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487 [disapproved on unrelated grounds by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4] [quoting *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793]; see also *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293 [discovery sanctions should be tailored to fit the "crime"].) "If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse." (*Doppes*, *supra*, 174 Cal.App.4th 967, 992.)

DISCUSSION

Merits

Defendant states that it "has provided multiple rounds of amended responses[.]" However, Defendant's vague statement does not make clear whether Defendant is saying it actually took any action required by the March 28, 2025 order (relevant) or, alternatively, merely that it has provided many amended responses to various discovery requests throughout the course of this case (irrelevant). In any event, a statement in a brief is not evidence. (*Gdowski*, *supra*, 175 Cal.App.4th 128, 139.)

Defendant argues that "[a]ny delay was not willful but due to complexity in tracing historical asset information and ensuring accurate, verified responses." (Opposition, p. 2.) *Deyo*, *supra*, 84 Cal.App.3d 771, 797, stated that a court should consider whether "the unanswered questions sought information which was difficult to obtain" as one of many factors in deciding whether to impose *terminating* sanctions based on unsatisfactory responses to interrogatories. Even assuming this case law applies to this motion, which concerns only *evidence* sanctions, the Court is not entirely persuaded that answers to Special Interrogatories Nos. 4, 5, 7, and 13 are "difficult to obtain." These questions asked about the basic details of Defendant's allegations against Plaintiff and are so fundamental that Defendant should have been able to provide substantial answers to them from the moment it filed its cross-complaint. Yet as the Court understands it, Defendant claims that it is still unable to offer Plaintiff *any* information on something as basic as what Defendant's damages are.

Next, Defendant insists that Plaintiff's "allegation that [Defendant] failed to submit adequate, code-compliant responses to Special Interrogatories Nos. 4, 5, 7 and 13" is "inaccurate." (Opposition, p. 3.) Defendant concedes that it "did not directly answer these specific interrogatories," but maintains that it still complied with its discovery obligations because "the requested information was disclosed through [Defendant's] responses to subsequent discovery

requests – including production demands, admissions, form interrogatories, and a Second Set of Special Interrogatories – which, while not identical, sought overlapping details[.]" (*Ibid.*)

The only way Plaintiff's "allegation that [Defendant] failed to submit adequate, code-compliant responses to Special Interrogatories Nos. 4, 5, 7 and 13" – i.e., that Defendant violated the March 28, 2025 order – is "inaccurate" is if Defendant in fact "provide[d] further complete, straightforward, and code-compliant responses to Special Interrogatory Nos. 4, 5, 7, and 13 within 10 calendar days from the date of service of [the] Order." (Mar. 28, 2025 Order, p. 5.) "Directly answer[ing] these specific interrogatories" is exactly what the Court ordered Defendant to do. (*Ibid.*) Defendant's admission that it "did not" do that is dispositive of the truthfulness of Plaintiff's allegation.

Defendant presents no authority for the idea that a litigant can simply decline to answer proper and straightforward interrogatories on the basis that the answers came out in responses to other discovery requests propounded throughout the case, and it is the opponent's responsibility to go hunting for them. To the extent Defendant is relying on discovery responses it served before the Court issued its March 28, 2025 order, the place to argue that Defendant already provided sufficient responses to Plaintiff's Special Interrogatories, Set One before the March 28 order was in Defendant's opposition to Plaintiff's December 2024 motion to compel. The Court already decided this issue against Defendant, and that argument is moot now.

The Court has concerns regarding whether Defendant has ignored the March 28, 2025 order, which ordered Defendant to pay $2,000 in monetary sanctions. (Taylor Dec. [Evidence Sanctions], ¶ 4; see also *Doppes*, *supra*, 174 Cal.App.4th 967, 992 [that lesser sanctions were ineffective to curb discovery abuse is relevant to whether harsher sanctions are proper].) In determining whether evidentiary sanctions should issue, this court must turn to whether the prior sanctions have been paid, or whether prior monetary sanctions have been ineffective. The parties shall appear and respond to this Court's inquiry regarding the payment of prior sanctions.

Sanctions

Plaintiff requests a $2,000 monetary sanction under Section 2031.300. That section authorizes a monetary sanction for unsuccessfully making or opposing a motion to compel a response to an inspection demand. It has nothing to do with a motion for evidentiary sanctions, and the Court has already awarded a sanction in connection with Plaintiff's motion to compel a response to the RFPs. This sanctions request is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for May, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001997

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: LEONARDO RENDEROS vs. DEFENDANT: HOG ISLAND OYSTER COMPANY, A CALIFORNIA CORPORATION	

NATURE OF PROCEEDINGS: MOTION – STAY

RULING

Defendant Hog Island Oyster Company filed a motion for stay of proceedings pending resolution of earlier filed class actions. A stipulation and order was filed on April 7, 2025, acknowledging the motion to stay, and requesting a continuance of the case management conference. The stipulation did not address the motion to stay. However, Plaintiff did not file an opposition to the stay.

A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by Garcia v. McCutchen (1997) 16 Cal.4th 469, on other grounds.)

Based on the above, the court grants the motion to stay pending resolution of two previously-filed class actions: (1) *Jens Hiersemann v. Hog Island Oyster Company*, Inc., Marin County Superior Court Case No. CV0000309, and (2) *Hernandito Perez-Perez v. Hog Island Oyster Company, Inc.*, San Francisco Superior Court Case. No. CGC23-609836.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for May, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002328

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: WELLS FARGO BANK, N.A. and DEFENDANT: MARC E. OLIVER	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The unopposed motion for summary judgment by plaintiff Wells Fargo Bank, N.A. ("Plaintiff") is GRANTED. (Code Civ. Proc., § 437c, subds. (c) and (p)(1).) Plaintiff has met its burden showing no triable issues of material fact exist as to any of the alleged causes of action.

Facts

Plaintiff filed this action on March 22, 2024, against defendant Marc E. Oliver ("Defendant") alleging causes of action for breach of contract and common counts (money lent, money paid, open book account, and account stated). Defendant filed his answer on May 21, 2024.

Defendant applied to Plaintiff for a credit card account and entered into a written agreement with Plaintiff to be bound by the terms and conditions set forth in the Customer Agreement ("Agreement"), including that use of the issued card constituted acceptance of the Agreement. (Plaintiff's Separate Statement of Undisputed Material Facts ("SS") Nos. 1-3.)[1] Pursuant to the terms of the Agreement, Plaintiff would extend credit to Defendant whereby Defendant could use the credit card, making charges and Defendant would make payments plus any interest incurred. (SS Nos. 4-6.) Plaintiff provided Defendant with monthly statements reflecting all charges, payments, minimum payments due, including fees and interest incurred during that billing period. (SS Nos. 7-8.) There is no record of any unresolved disputes on the account or record of any active lawsuits against Plaintiff for unresolved disputes on the account at issue. (SS Nos. 9-10.)

[1] The Court refers only to the facts supporting Issue No. 1 regarding breach of contract allegations for simplicity, unless otherwise noted. Those facts likewise apply to Issue Nos. 2 -5 as set forth in the SS when applicable, but are numbered differently.

The last payment applied to the account or transaction made by Defendant was on April 7, 2023. (SS No. 11.) No further payments were made by the Defendant and Defendant was in default pursuant to the terms of the Agreement. (SS No. 12.) The balance due on Defendant's account is $22,023.00, resulting in damages to the Plaintiff in the amount of the same. (SS Nos. 13-14.) In addition to Defendant's failure to dispute any of the facts set forth by Plaintiff, Defendant has admitted all of the facts proffered. (SS No. 15.)

Standard for Summary Judgment

A plaintiff moving for summary judgment meets his or her burden of proof by showing there is no defense to each cause of action by proving each element of the cause of action. (Code Civ. Proc., § 437c(p)(1); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 ["summary judgment law in this state no longer requires a plaintiff moving for summary judgment to disprove any defense asserted by defendant as well as prove each element of his own cause of action. . . . All that the plaintiff need do is to 'prove [ ] each element of the cause of action' "].) Once a plaintiff meets this burden, the burden shifts to defendant "to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c(p)(1).)

Discussion

Plaintiff claims it is entitled to summary judgment against Defendant on the grounds that there is no triable issue of material fact or issue of liability entitling it to summary judgment. (Amended Notice of Motion, pp. 1:28-2:2.) Plaintiff alleges a breach of contract based upon common counts of money lent, money paid, open book account, and account stated against Defendant.

The elements of a breach of contract cause of action are: (1) the existence of a contract; (2) the plaintiff's performance or excuse for nonperformance of the contract; (3) defendant's breach; and (4) damage to plaintiff resulting from the breach. (*State Compensation Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449 ("*ReadyLink*").)

"A common count alleges in substance that the defendant became indebted to the plaintiff in a certain stated sum, for some consideration such as 'money had and received by the defendant for the use of the plaintiff,' or 'for goods, wares and merchandise sold and delivered by plaintiff to defendant,' or 'for work and labor performed by plaintiff'; and that no part of the sum has been paid." (4 Witkin, Cal. Procedure (5th ed. 2008), Pleading §557, p. 685; *Pike v. Zadig* (1915) 171 Cal. 273, 275.) The only essential allegations are the statement of indebtedness in a certain sum, the consideration—e.g. goods sold, work done, etc., and nonpayment. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.)

An account stated is "an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing." (*Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 752.)

A "book account" is "a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary

relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner." (Code Civ. Proc., § 337a) A book account is "open" where a balance remains due on the account. (*Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708; *Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 579, fn. 5.)

Here, Plaintiff proffers evidence of the agreement for the credit card, that Plaintiff performed its obligation under the terms of the agreement by extending funds to Defendant for various goods, services, and cash advances, that Defendant failed to honor the obligations under the terms of the credit card agreement by failing to pay the sums owed to Plaintiff, and that Plaintiff is owed a sum certain in the amount of $22,023.00. (SS Nos. 1-14.) All of these facts are admitted by Defendant. (SS No. 15.)

The Court finds that Plaintiff has met its burden establishing each element of its causes of action. (SS Nos. 1-15 as to breach of contract, SS Nos. 16-23 as to money lent, SS Nos. 24-30 as to money paid, SS Nos. 31-40 as to open book account, SS Nos. 41-49 as to account stated.) Without controverting evidence from Defendant, the Court grants Plaintiff's motion for summary judgment.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004550

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: STEVEN FRIEDMAN vs. RESPONDENT: WAFA SAAD	

NATURE OF PROCEEDINGS: MOTION – ATTORNEY'S FEES

RULING

Respondent Wafa Saad's motion for attorney's fees is granted.

Procedural Background

On November 20, 2024, Petitioner Steven Friedman ("Friedman") filed a Request for Civil Harassment Restraining Order under Code of Civil Procedure Section 527.6 ("CHRO") against his neighbor Respondent Wafa Saad ("Saad"), alleging that Saad's smoking on her deck or garage has caused second-hand smoke to come into Friedman's home, directly impacting Friedman and his family's health. Saad filed her Response on January 8, 2025.

At the first scheduled hearing date on December 5, 2024, the Court continued the hearing to January 9, 2025. At the hearing on January 9, 2025, the parties agreed to another continuance so they could discuss settlement. On January 24, 2025, Friedman dismissed his Request for a CHRO without prejudice.

Saad now requests an award of $12,285 in attorney's fees under Section 527.6(s).

Standard

Saad seeks an award of attorney's fees under Code of Civil Procedure Section 527.6(s), which provides: "The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any."

Because Section 527.6 does not define "prevailing party", the general definition of "prevailing party" in Code of Civil Procedure Section 1032 may be used. (See *Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1777; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1443.) Section 1032(4) provides in part: "'Prevailing party' includes the party with a net monetary

recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc. § 1032(4).)

Discussion

The Court applies the definition of "prevailing party" in Section 1032 here. Saad is the prevailing party as he was a "defendant in whose favor a dismissal is entered."

Saad argues that while this case may appear simple on its face, Friedman's Petition included a 33-page expert report, data analysis from a UC Berkeley environmental pollutants lab, medical records, and data from a passive nicotine detection device that Friedman had placed in his home. Saad's Response included five exhibits. To prepare for the hearing, Saad's counsel prepared witnesses to testify, including an expert. At the hearing on January 9, 2025, counsel for both parties gave an opening statement while five witnesses were waiting to testify. Saad's counsel Michael Coffino states in his declaration that he spent 27.3 hours at $450 per hour preparing Saad's defense, totaling $12,285.

In the Opposition, Friedman's counsel appears to argue that because the Section 527.6 harassment claim asserted by his client (who filed the Petition pro per, before he retained counsel) was so clearly without merit, Saad's counsel should have realized as much and not have spent that much time preparing an Opposition. (Opp., p. 3:6-13.) This is hardly grounds for denying a fee award to Saad, who attempted to settle the case and whose counsel still had to prepare for the hearing when the parties did not come to an agreement. Friedman also argues that the hours spent were excessive, but does not point to any specific work or time he claims was unreasonable or excessive.

The Court grants Saad's motion. Mr. Coffino's hourly rate of $450 is reasonable and the number of hours he spent preparing Saad's defense is reasonable. Saad is awarded the entire amount of fees she seeks, $12,285.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004902

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MAR EAST REALTY LLC vs. DEFENDANT: MAGDALENA YESIL	

NATURE OF PROCEEDINGS: DEMURRER – MOTION TO STRIKE

RULING

Defendant Magdalena Yesil's ("Defendant") demurrer to the Complaint is SUSTAINED. As to the first cause of action, the demurrer is sustained without leave to amend. As to the second and fourth causes of action, the demurrer is sustained with leave to amend. Defendant's Motion to Strike the prayer for attorneys' fees is GRANTED with leave to amend.

BACKGROUND

Plaintiff Mar East Realty LLC ("Plaintiff") is the owner of real property located at 2308 Mar East Street in Tiburon. Defendant owns the neighboring property located at 2306 Mar East Street. On the boundary between these two properties there is a fence. Plaintiff and Defendant share ownership of a portion of the fence. The remainder of the boundary fence is located on Defendant's property. Plaintiff alleges that the fence is a nonconforming structure. (See Tiburon Municipal Code, § 16 62.030(B).) Accordingly, Plaintiff argues, any work on the structure is generally limited to "routine maintenance and repairs," with alterations or enlargements prohibited unless the property owner obtains special approval from the Town. (Id., § 16-62.030(B)(1)&(2).)

While Plaintiff and Defendant generally agree that the fence is in need of repair or removal, the parties have been unable to agree on exactly what should be done. Since early 2024, Defendant has conducted work on the fence, which Plaintiff argues is in violation of the above referenced Code requirements.

LEGAL STANDARD

Demurrer

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

Motion to Strike

On noticed motion, the Court may strike out "any irrelevant, false, or improper matter inserted in any pleading," and "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) The basis for granting the motion to strike must appear on the face of the challenged pleading or else be judicially noticeable. (Id., § 437, subd. (a).) When the defect is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

DISCUSSION

Demurrer

Defendant's Demurrer maintains that Plaintiff's first cause of action under Tiburon Town Code is invalid as there is no private right of action for enforcement of Tiburon's building code; that Plaintiff's second cause of action for Trespass is defective in that it alleges only potential and speculative harm; and that Plaintiff's fourth cause of action for Slander to Title is defective in that it fails to properly allege publication without privilege or justification or immediate pecuniary loss.

a. First Cause of Action

Defendant is correct that Cohen v. Superior Ct. (2024) 102 Cal.App.5th 706, as modified (June 18, 2024) ("Cohen") stands for the proposition that the statute granting right to redress violations of municipal ordinances via either criminal prosecution or civil action does not authorize a private right of action.

While review of Cohen has been granted to address that specific issue, in the meantime, trial courts are permitted to cite to Cohen not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (Cohen v. S.C. (2024) 555 P.3d 503, 504, citing Standing Order Exercising Authority Under California Rules of Court, rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

Here, this Court agrees with Cohen that no private right of action has been authorized. As this issue is purely a legal one, it is appropriate for resolution on demurrer. As a matter of law, the first cause of action fails to state a claim upon which relief may be granted. The demurrer to the first cause of action is SUSTAINED without leave to amend.

b. Second Cause of Action

In the demurrer, Defendant argues that Plaintiff's cause of action for trespass rests on the allegation that "[t]he new wood structure pictured is not fastened to the shared portion of the Boundary Fence, but is placing direct, and/or indirect pressure on the existing shared portion of the Boundary Fence, which constitutes a trespass because any new contact or pressure on the existing structure will significantly increase the risk that the fence will fail and fall onto Plaintiff's property." (Compl., ¶ 33). Defendant contends that even if accepted as true for the purpose of demurrer, the alleged risk that the fence may fall onto Plaintiff's property does not constitute a present trespass, only the amorphous risk of a future trespass and such speculative injury does not provide Plaintiff standing to bring suit.

Plaintiff counters that trespass to chattel is adequately pled because the pressure Defendant's structures place on the shared portion of the fence makes it less stable and so more likely to fail and fall onto Plaintiff's property. (See Compl., ¶ 33.) Plaintiff also cites to allegations that Defendant replaced boards on the shared portion of the fence, asserting that this rises to the level of both dispossession and physical damage. (Id., ¶ 34.)

The tort of trespass to chattels allows recovery for interferences with possession of personal property "not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered." (Intel Corp. v. Hamidi (2003) 30 Cal.4th 1342, 1350.) To be actionable, the defendant's interference must have caused some injury to the chattel or to the plaintiff's rights in it. (*Id.*)

Here, Plaintiff has not clearly pled an actual injury. The demurrer is therefore sustained as to this cause of action with leave to amend.

c. Fourth Cause of Action

To establish slander of title, a plaintiff must show: "(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." (*Klem v. Access Ins. Co.* (2017) 17 Cal.App.5th 595, 612.) "If the publication is reasonably understood to cast doubt upon the existence or extent of another's interest in land, it is disparaging to the latter's title. [Citation.]" (*Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030.) Direct pecuniary loss may include either the loss in market value to the plaintiff's property or attorney fees and costs where "litigation is necessary 'to remove the doubt cast' upon the vendibility or value of plaintiff's property," or both. (*Id.* at 1030-1031; see also *Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 865.) Defendant demurs on the ground that the Complaint fails to adequately plead the elements of publication without privilege and direct pecuniary loss.

Plaintiff counters that privilege does not apply to the circumstance of the case and that the allegations in the Complaint show that a clouded title over the fence and property line has resulted in diminution of Plaintiff's overall property value. Although privilege is usually viewed through the lens of an affirmative defense, here the lack of privilege or justification appears as an element of the claim itself. The Complaint does not allege that the statement was made without privilege or justification. It therefore fails to plead the required elements of a slander to title cause of action. The demurrer to the fourth cause of action is also sustained with leave to amend.

Motion to Strike

Defendant also moves to strike Plaintiff's prayer for attorneys' fees. Plaintiff relies on its first cause of action to justify the fees under Code of Civil Procedure sections 1021.5. Because the demurrer to that cause of action has been sustained without leave to amend, the prayer for fees under section 1021.5 is properly stricken. However, the Court notes that Plaintiff also provides authority that attorneys' fees may be recovered as part of the damages for the slander of title cause of action. The Court sustained the demurrer to the slander of title cause of action with leave to amend. For these reasons the Motion to Strike is also granted with leave to amend.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/07/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004985

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JULIA VAN DER RYN and DEFENDANT: DARIO MARCHETTI/VAN DER RYN FAMILY TRUST, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

On April 23, 2025, the court held a hearing on Defendant MICAH VAN DER RYN's demurrer to Plaintiff Julia Van Der Ryn's second, third, fourth and fifth cause of action on the basis that they failed to state a cause of action in that the Probate Court has exclusive jurisdiction over these causes of action. Defendant had requested that the court sustain the demurrer without leave to amend. Plaintiff was served with a copy of these pleadings and did not file an opposition. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) The court, therefore, issued a tentative ruling sustaining the demurrer without leave to amend.

On the evening prior to the hearing, Plaintiff filed an attorney affidavit of fault in support of and order "vacating the tentative ruling and allowing the filing of first amended complaint." Plaintiff asserted that counsel had filed the amended complaint just prior to the deadline but blamed the filing on an electronic filing system. The attorney affidavit confirmed that minutes prior to the deadline, Plaintiff had submitted it to the third-party electronic filing system. Thus, it was not filed, but sent to a third-party service for filing. Compounding this last-minute filing is the fact that although counsel for Plaintiff asserts he served this amended complaint, counsel for Defendant states they have never been served. Plaintiff's counsel asserts surprise, but it is unclear how he could have realistically been surprised by the court's rejection, or the fact that the amended complaint would have been filed through a third-party service minutes before the clock struck midnight on April 11, 2025.

Since then, Plaintiff's counsel has filed a dismissal without prejudice of the third, fourth and fifth causes of action in the complaint. Demurrer is, therefore, moot as to these causes of action. As to the second cause of action, the court sustains the demurrer with leave to amend only as to that cause of action. Any such amended complaint shall eliminate the third, fourth and fifth cause of action in conformity with Plaintiff's dismissal of these causes of action, and shall

otherwise only be amended as to the second cause of action. The amended complaint shall be filed within ten days of service of this order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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