SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/14/25 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: 05/14/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002972

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: AHMAD ALI MOHYEE vs. DEFENDANT: DOUGLAS C. QUAN, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants Douglas and Livia Quan's ("Defendants") Demurrer to the Second Amended Complaint ("SAC") is SUSTAINED with leave to amend. Defendants' Motion to Strike is GRANTED with leave to amend.

BACKGROUND

This is a landlord tenant case concerning a single-family home located at 31 Elmview Way in Novato, California ("Rental Property"). Plaintiff Ahmad Ali Mohyee ("Plaintiff") and his wife, who is not a party to this action, entered into a lease agreement on June 15, 2022, with Defendants, the owners of the Rental Property. Plaintiff and his wife lived in the Rental Property for one year. At the expiration of the fixed term in the initial lease, Defendants wanted Plaintiff to enter into another fixed term lease, while Plaintiff preferred to continue on a month-to-month tenancy. Plaintiff also advised Defendants that he made improvements/repairs during his tenancy and requested the rent be decreased rather than increased. Defendants advised him they required a one-year lease. Plaintiff's wife executed another term lease with Defendants, while Plaintiff moved out into a residence closer to his ailing mother.

Plaintiff filed the initial Compliant in this matter on May 30, 2024 and filed a First Amended Complaint on November 30, 2024. Shortly thereafter, Defendants' counsel met and conferred with Plaintiff regarding alleged deficiencies of the FAC. The parties executed a Stipulation that was filed and entered by the Court on December 30, 2024, to withdraw certain allegations and the parts of the prayer for punitive damages. (Olivieri Dec. at ¶ 4, Ex. A.)

Plaintiff filed the SAC on February 6, 2025. Defendants then filed this Demurrer and Motion to Strike. Defendants demur to the First and Fifth Causes of Action in the SAC (Fraudulent Inducement and Intentional Infliction of Emotional Distress) and seek to strike allegations regarding punitive damages.

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

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) 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 that justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

DISCUSSION

Demurrer

Defendants demur to the First and Fifth Causes of Action in the SAC (Fraudulent Inducement and Intentional Infliction of Emotional Distress) on the grounds that they do not state facts sufficient to constitute a cause of action.

Fraudulent Inducement

The elements of a cause of action for fraudulent inducement are (1) misrepresentation or concealment a material fact, (2) knowledge of the falsity of the fact or lack of reasonable grounds for believing it to be true, (3) an intent to induce reliance, (4) justifiable reliance by the contracting party, and (5) resulting damages. (*Engalla v. Permanente Med. Grp., Inc.* (1997) 15 Cal.4th 951, 973–74, *as modified* (July 30, 1997); *Garamendi v. Golden Eagle Ins. Co.* (2005) 128 Cal.App.4th 452, 470, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

The Fraudulent Inducement Cause of Action pleads as follows:

> "28. Defendants induced Plaintiff to sign a 12-month lease with a provision for conditional conversion to a monthly rental agreement without intending to honor that provision even after Plaintiff and Defendants satisfied the conditions for the conversion.
> 29. Defendants omitted the legally required notice of AB 1482 either in the original lease agreement, or in the one that Plaintiff was required to sign to avoid eviction.
> 30. By omitting the notice of plaintiff's legal rights and including the conditional provision for conversion of the annual lease to a monthly rental agreement, Defendants induced Plaintiff to sign the original lease agreement, which he would not have signed if Defendants had indicated that a new lease or an extension of the original would be an absolute requirement of his continued tenancy after one year. Defendants included that requirement in the lease agreement that Plaintiff had to sign to avoid eviction but did not include it in the original lease. Plaintiff's reliance on the provision for conversion was rooted in many years of experience as a tenant, having entered into several such lease agreements, which had invariably converted to a monthly rental agreement after the first year."

(SAC, ¶¶ 28-30.)

Here Plaintiff alleges that Defendants included a provision in the contract regarding conversion of a month-to-month rental agreement without intending to honor it. (SAC, ¶ 28.) Plaintiff further alleges that Defendants induced Plaintiff to sign the lease by making this representation (SAC, ¶ ¶ 28, 30), and that Plaintiff would not have done so without relying on the representation (SAC, ¶ 30). However, Plaintiff does not clearly allege how he was damaged by this inducement/reliance. He only pleads that his wife, who is not a party to this action, executed a new fixed term lease for the Rental Property and that he vacated and moved elsewhere in order care for his mother. (SAC, ¶¶ 20-21.) This is insufficient to allege damages.

For these reasons, the demurrer to the First Cause of Action for Fraudulent Inducement is SUSTAINED with leave to amend.

Intentional Infliction of Emotional Distress

A cause of action for IIED requires proof of: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the severe emotional distress. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050, superseded on other grounds in *Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 698, as modified (Nov. 12, 2024), as modified on denial of reh'g (Dec. 11, 2024), review denied (Feb. 11, 2025).) A defendant's conduct is considered to be outrageous if it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Id.*, at p. 1051.) In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–61, *citing Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

Plaintiff has failed to allege facts which demonstrate acts that are so extreme as to exceed all bounds of that usually tolerated in society. (SAC, ¶ 41.) Plaintiff describes landlord tenant lease negotiations: namely disagreements over whether the parties should enter into a new fixed term lease or remain on a month-to-month basis after the expiration of the initial fixed term and the amount of rent. (*Ibid.*) This is insufficient to allege extreme and outrageous conduct.

For these reasons, the demurrer to the Fifth Cause of Action for Intentional Infliction of Emotional Distress is SUSTAINED with leave to amend.

Motion to Strike

Defendants seek to strike allegations relating to exemplary and punitive damages. Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) "Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code § 3294, subd. (c)(1).) An award of punitive damages requires "despicable conduct," meaning behavior that is "vile," "base," or contemptible" and that would be "looked down upon and despised by ordinary decent people," in addition to willful and conscious disregard for the rights and safety of others. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "'Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including facts showing that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

Defendants contend that Plaintiff has not adequately pled facts specifically showing malice, oppression, or fraud. This Court agrees. The Motion to Strike is 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.

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: 05/14/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003923

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: CHRISTIAN LEGNITTO and DEFENDANT: TOWN OF FAIRFAX	

NATURE OF PROCEEDINGS: DEMURRER

RULING

The Town of Fairfax's demurrer to the Complaint is sustained with leave to amend.

Procedural Deficiency

The Court draws the Town's attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

Allegations in Plaintiff's Complaint

Plaintiff alleges that he is a former resident of Marin County who moved away for college but who intends to return to the area where his family still resides. (Complaint, ¶2.)[1] Plaintiff alleges that he has standing to bring this action as a potential future resident and homeowner. (*Id.*, ¶7.) He alleges that he is interested in purchasing residential property which includes approximately 100 acres of land referred to as the "Wall Property", which is currently zoned for residential use. (*Id.*, ¶¶1, 2.) However, the Town has expressed an intent to acquire the Wall Property to convert the land into public space, which Plaintiff contends is biased by the personal interests of Mayor Coler and Council member Chance Cutrano, both of whom have a long history of advocacy for environmental preservation and open space. (*Id.*, ¶3.) In September 2023, the Town Council appointed a subcommittee to work with the Marin Open Space Trust ("MOST") to acquire the Wall Property for open space. The Council's subcommittee included Mayor Coler, who also serves on MOST's advisory board, and the Council's deliberations were conducted behind closed doors. (*Id.*, ¶¶12, 13.) In November 2023, MOST entered into an agreement with the owners of the Wall Property to secure funding for its acquisition as open space. (*Id.*, ¶14.) The price offered by the Town is reportedly higher than a previous starting auction price of $1 million, indicating a lack of diligence and possible waste of public funds.

[1] The caption page of the Complaint reflects that Plaintiff currently resides in Puerto Rico. (*Id.*, p. 1.)

(*Id.*, ¶¶5-17.) The Town has designated the Wall Property as open space for over 20 years in its General Plan and has resisted efforts to develop the land for housing, in violation of state law. (*Id.*, ¶19.)

In the First Cause of Action, Plaintiff contends that the Town violated SB 330, which prohibits local governments from enacting policies or taking actions that reduce the number of housing units that can be built in a jurisdiction. In the Second Cause of Action, Plaintiff alleges that the Town violated SB 9, which allows for the development of additional housing units on single-family parcels, increasing housing density throughout California. In the Third Cause of Action, Plaintiff alleges that the Town violated SB 35, which requires cities that have not met their regional housing needs assessment goals to streamline the approval of certain housing projects. In the Fourth Cause of Action, Plaintiff alleges that the Town violated the Brown Act, Gov. Code §§ 54950 et seq., by conducting its initial discussions regarding acquisition of the Wall Property behind closed doors. In the Fifth Cause of Action, Plaintiff alleges that the Town violated Government Code Section 1090 by allowing Mayor Coler and Council member Cutrano to participate in the decision-making regarding the spending of public funds despite their personal and professional interests in open space preservation. In the Sixth Cause of Action, Plaintiff alleges that that the Town violated Government Code Sections 54220-54232 by negotiating the purchase of the property through a third party (MOST) without a competitive public bidding process.

Plaintiff's prayer for relief seeks: (1) a declaration that the Town violated SB 330, SB 9, SB 35, the Brown Act, and Government Code Sections 1090 and 54220-54232; (2) an injunction preventing the Town from using public funds to acquire the Wall Property for open space purposes; (3) an order compelling the Town to comply with state housing laws and prioritize housing development on the Wall Property; (4) an order mandating that future deliberations and decisions regarding the Wall Property be conducted in accordance with the Brown Act's transparency requirements; (5) a declaration that the Town's decision was improperly influenced by Council member Cutrano and Mayor Color's professional and personal interests; (6) an injunction barring Mayor Coler and Council member Cutrano from participating in any future Town Council decisions or deliberations relating to open space; (7) an injunction prohibiting the Town from engaging in retaliatory actions against Plaintiff if Plaintiff purchases the property; (8) an order allowing Plaintiff to appear remotely for hearings in this matter as Plaintiff resides outside of California; and (9) costs of suit and any other relief the Court deems just and proper. [2]

Request for Judicial Notice

The Town's request for judicial notice of the Council Member Report of the Fairfax Town Council Special Meeting from May 22, 2024 (Exhibit 1), the Town of Fairfax-Fairfax Open Space Committee Memorandum dated December 11, 2018 re: Marina Heights Development (Exhibit 2), the Meeting Minutes for the May 22, 2024 Fairfax Town Council Meeting (Exhibit 3), and the Marinda Heights Development PowerPoint (Exhibit 4), is denied.

[2] While both parties refer in their papers to a writ petition, the Court's file reflects that Plaintiff attempted to file one on September 18, 2024 but that it was rejected by the Clerk on September 20, 2024. The only pleading addressed in this Order is the Complaint filed on September 10, 2024.

Plaintiff's request for judicial notice of the Memorandum of Understanding between the Town of Fairfax and the Marin Open Space Trust, dated May 21, 2024 (Exhibit 1), the Grant Deed from Miranda Heights, LLC to the Town of Fairfax for the property at 400 Miranda Drive (Exhibit 2), and the Resolution regarding the assignment from the Marin Open Space Trust (Exhibit 3) is also denied. None of these documents is relevant to the Court's ruling. (See *AL Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 310 n. 4 ["a court must decline to take judicial notice of material that is not relevant"].)

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), 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 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th 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.)

Discussion

"Standing is the threshold element required to state a cause of action and, thus, lack of standing may be raised by demurrer." (*Martin v. Bridgeport Community Ass'n* (2009) 173 Cal.App.4th 1024, 1031.)

The Town argues that Plaintiff does not have standing because his interest is hypothetical only. Specifically, the Town argues that Plaintiff concedes he does not currently reside in Marin County and alleges only that he intends to return and has a desire to purchase the Wall Property. The Town points out that Plaintiff does not allege he has any actual interest in the property other than a desire to do something in the future.

"To have standing to seek a writ of mandate, a party must be 'beneficially interested' . . . i.e., have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361-362 [citations omitted].) "The beneficial interest must be direct and substantial." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.) The petitioner bears the burden of demonstrating this beneficial interest, and must show either some benefit "could accrue to him if the writ were issued" or some detriment would be suffered by him if it were denied. (*Parker v. Bowron* (1953) 40 Cal.2d 344, 352.) "The beneficial interest standard is equivalent to the federal injury in fact test, which requires a party to prove by a preponderance of the evidence that it has suffered an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Thus, the writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct

detriment if it is denied." (*Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552, 568 [citations and internal quotations omitted].)

Plaintiff does not sufficiently allege that he is "beneficially interested", i.e., that he has some special interest to be served or some particular right to be protected beyond that held in common with the public at large. The only interest he alleges is hypothetical and not "actual or imminent". Plaintiff does not allege he resides in this county, or even this state, and alleges no current, personal claim to the property beyond something that is on his wish list for when he may return sometime in the future. This conclusion applies to Plaintiff's request for an order compelling the Town to comply with state law, as well as his request for injunctive and declaratory relief based on the same factual allegations. (See *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748 ["To obtain an injunction, a party must show injury *as to himself.* 'To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large'"] [citation omitted] [emphasis in original]; *California Department of Consumer Affairs v. Superior Court* (2016) 245 Cal.App.4th 256, 259 ["This scenario is too conjectural for us to conclude real parties in interest have a beneficial interest that is concrete and actual so as to provide them individual standing to bring an action for declaratory relief"].)

Plaintiff argues that he has standing to seek a writ of mandate under the public interest exception. This exception applies "'where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty.'" (*Green v. Obledo* (1981) 29 Cal.3d 126, 144 [citation omitted].) Under this exception, the party "'need not show . . . any legal or special interest in the result, since it is sufficient that [the party] is interested as a citizen in having the laws executed and the duty in question enforced.'" (*Ibid.* [citation omitted]. To determine public interest standing, the "'courts balance the applicant's need for relief (i.e., his beneficial interest) against the public need for enforcement of the official duty. When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced.'" (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1174 [citation omitted].) However, "where the claim of 'citizen' or 'public interest' standing is driven by personal objectives rather than 'broader public concerns,' a court may find the litigant to lack such standing." (*SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1057 [citation omitted].) Further, "[n]o party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception . . . . 'Judicial recognition of citizen standing is an exception to, rather than repudiation of, the usual requirement of a beneficial interest. The policy underlying the exception may be outweighed by competing considerations of a more urgent nature.'" (*Save the Plastic Bag*, 52 Cal.4th at p. 170, fn. 5 [citations omitted])

Plaintiff does not sufficiently allege public interest standing because he alleges he is driven by personal objectives, i.e., the desire to purchase the property for himself. (See *Citizens*, 28 Cal.App.5th at 1174 ["When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant *who shows no greater personal interest than that of a citizen who wants the law enforced*"] [citation omitted]; *SJJC Aviation Services*, 12 Cal.App.5th at p. 1057 ["where the claim of citizen or public interest standing is *driven by*

personal objectives rather than broader public concerns, a court may find the litigant to lack such standing"] [emphasis added]; Steelgard, Inc. v. Jannsen (1985) 171 Cal.App.3d 79 n. 8].) Further, the case law indicates that this exception is available to citizens of the state. (See *Bd. of Social Welfare v. County of L.A.* (1945) 27 Cal.2d 98, 100–101 ["[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced"] [citation and internal quotation omitted]; *Citizens for Amending Proposition L*, 28 Cal.App.5th at 1173-1174 ["This public right/public duty exception to the requirement of a beneficial interest for a writ of mandate promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. We refer to this variety of standing as public interest standing. It is also known as citizen standing"] [citations and internal quotations omitted].) Plaintiff here does not allege he is a citizen of California.

The demurrer is sustained, with leave to amend, on the ground that Plaintiff fails to allege standing. If Plaintiff chooses to amend, he may include his petition for writ of mandate as part of his amended pleading as the petition is based on the same facts and allegations regarding the Town's alleged failure to comply with state law.

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: 05/14/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004667

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ALEXANDER L. BERNARDINI vs. DEFENDANT: LCMSD, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM
2) DEMURRER
3) MOTION – STRIKE
4) MOTION – PROTECTIVE ORDER; DISCOVERY FACILITATOR PROGRAM

RULING

Defendants' demurrer is sustained and their motion to strike is granted. Plaintiff is granted leave to amend to the extent he cures the defects with his pleadings discussed below. Defendants' motion for protective order is granted. Defendants' request for sanctions is denied. Plaintiff's motion to compel is taken off calendar.

Procedural Background

On December 3, 2024, Plaintiff Alex, in pro per and through his mother Yulia Bernardini, filed a Complaint against Defendants Larkspur Corte Madera School District ("LCMSD"), Dr. Brett Geithman ("Geithman"), Dr. Toni Brown ("Brown"), and Daniel Norbutas ("Norbutas"). Plaintiff alleges that Defendants acted in conspiracy to knowingly mischaracterize words spoken by Alex, a 13-year old middle school student, to falsely accuse him of engaging in hate speech. Specifically, Alex used a word that was misheard as "Kike" and a student reported it to the school office. Defendants portrayed the incident as antisemetic and Alex was suspended for hate violence. The First Cause of Action alleges violation of due process under the 14th Amendment, the Second Cause of Action seeks declaratory relief, the Third Cause of Action alleges negligence, the Fourth Cause of Action alleges "intentional tort and actual malice", and the Fifth Cause of Action alleges breach of the IDEA and IEP Special Education Law.

On December 13, 2024, Yulia Bernardini was appointed Alex's guardian ad litem. Plaintiff filed a "Notice of Errata" on January 6, 2024 regarding Yulia's status on the pleadings.

On February 4, 2025, Plaintiff filed a First Amended Complaint. On February 13, 2025, Plaintiff filed an "Amendment to Complaint" to name Annie Sherman ("Sherman") and Megan Dunn ("Dunn") in the place of Doe defendants. Plaintiff also filed a "Complaint for Personal Injury", which appears to be a Second Amended Complaint and which includes the two newly named defendants. The Second Amended Complaint asserts the same five causes of action as the original Complaint.

Motion to Strike and Demurrer

A. Procedural Deficiency

The Court draws Defendants' attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the motion to strike and demurrer.

B. Discussion

The Court sustains the demurrer to all causes of action in the Second Amended Complaint because Plaintiff is a minor who is unrepresented by legal counsel. Yulia Bernardini, the guardian ad litem who is not an attorney, cannot represent Plaintiff because doing so would constitute the unauthorized practice of law. (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 965; *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409; Bus. & Prof. Code § 6125.) The cases cited by Plaintiff (*Williams*, *In re Guardianship of Christiansen*, *Chui*, *Cole*), do not address this specific issue and therefore do not support a contrary result. The Court also grants the motion to strike on this basis, and because Plaintiff failed to obtain leave of court before filing the Second Amended Complaint. (Code Civ. Proc. § 472; Edmon & Karnow, The Rutter Group: Civil Procedure Before Trial (2024), ¶¶6:602, 6:612.)

Because the demurrer is sustained and the motion to strike is granted on the grounds discussed above, the Court does not address Defendants' additional arguments in support of their demurrer and motion to strike.

Motion for Protective Order and Motion to Compel

Defendants LCMSD, Geithman, Brown and Norbutas have moved for a protective order with respect to seven sets of written discovery that have been served on them by Plaintiff. Plaintiff has moved to compel responses to the same sets of discovery.

The motion for protective order is granted. Ms. Bernardini, who prepared and served the discovery, is not an attorney and is not authorized to practice law in California. Defendants' request for sanctions is denied. While generally sanctions may be available in connection with the granting of a protective order (see Code Civ. Proc. §§ 2030.090(d), 2031.060(h)), the Court declines to do so here at this stage of the proceedings.

For the reasons discussed herein, Plaintiff's motion to compel is taken off calendar.

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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