**TENTATIVE RULINGS**
**LAW & MOTION CALENDAR**
**Wednesday, January 15, 2025 3:00 p.m.**
**Courtroom 17 – Hon. Rene A. Chouteau for Hon. Jane Gaskell**
**3035 Cleveland Avenue, Santa Rosa**

**PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.**

**CourtCall is not permitted for this calendar.**

**If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.**

**TO JOIN ZOOM ONLINE**:

**D17 – Law & Motion**
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

**TO JOIN ZOOM BY PHONE:**
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

## 1. 23CV01507, Haygooni v. Solairus Aviation LLC

Defendants Sunset Aviation, LLC, and Dan Drohan's ("Defendants") demurrer to Plaintiff Haygooni's entire Third Amended Complaint ("TAC") is **OVERRULED in its entirety**. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

**PROCEDURAL HISTORY**

Defendants previously employed Plaintiff, who is an experienced pilot who worked per diem or part-time for a year, but claims that Defendants refused to hire him full-time and replaced him with younger pilots on his scheduled flight trips when he was around 76 years of age at the time. (Opposition, 2:5-27.)

Plaintiff filed the TAC alleging six causes of action against all defendants for: (1) tortious

interference with contractual relations; (2) tortious interference with prospective economic advantage; (3) age discrimination in violation of the California's Fair Employment and Housing Act ("FEHA"); (4) failure to prevent discrimination; (5) unjust enrichment; and (6) defamation.

The Court previously sustained with leave to amend Defendants' demurrer to Plaintiff's First Amended Complaint. (Demurrer, 10:18-20.) The parties stipulated to the filing of the Second Amended Complaint as well as the Third Amended Complaint. (*Id.* at 10:20-22.) The parties met and conferred regarding Defendants' issues found with the TAC, but they did not resolve their issues. (*Id.* at 10:22-23.) Thus, Defendants filed this demurrer to the TAC and Plaintiff filed an opposition, to which a reply brief was filed.

## REQUEST FOR JUDICIAL NOTICE

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Plaintiff requests pursuant to Evidence Code sections 452 and 453 that this Court take judicial notice of the following records filed with the Court in this action:

1. Plaintiff's First Amended Complaint;
2. Notice of Demurrer and Demurrer to Plaintiff's First Amended Complaint;
3. Plaintiff's Memorandum of Points and Authorities in Support of his Opposition to Defendants' Demurrer to Plaintiff's First Amended Complaint;
4. Order on Defendants' Demurrer to Plaintiff's First Amended Complaint; and
5. Plaintiff's Third Amended Complaint for Damages.

Plaintiff's requests for judicial notice are **GRANTED**.

## ANALYSIS

Legal Standard for Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

First Cause of Action for Intentional Interference with Contractual Relations

In support of Plaintiff's first cause of action for intentional interference with contractual relations, Plaintiff alleges that Defendants intentionally prevented Plaintiff from flying with Jett Group (a temporary service for pilots) by advising them that Plaintiff was "unassignable" and due to an "age 65 rule." (TAC, ¶¶ 31-35.) Plaintiff had signed a one-year employment contract with the Jett Group on January 27, 2023, but Plaintiff alleges that Defendants contracted Jett Group for a pilot the next month and did not approve of Plaintiff as the assigned pilot for the trip. (TAC, ¶¶ 33-34.) After that, Jett Group did not again seek out Plaintiff to fly any trips. (*Id*. at ¶ 36.) Plaintiff claims that Plaintiff suffered and will continue to suffer economic damages in excess of $200,000.00, as well as pain and humiliation, for lost flying opportunities with the Jett Group as a result of Defendants' alleged actions, which were intentional because Defendants should have known that their conduct would result in Plaintiff being unable to fly for the Jett Group and in fact did result in that. (TAC, ¶¶ 40-42.)

Defendants argue that that Plaintiff's new first cause of action exceeds the scope of the Court's leave to amend in the previous demurrer, because Plaintiff did not seek leave of Court to add a new cause of action to the amendment. (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) Defendants also argue that Plaintiff failed to state facts sufficient to state a cause of action against Defendants under Code of Civil Procedure section 430.10(e), because Plaintiff fails to allege that Defendants even knew about the alleged contract between Plaintiff and the Jett Group or adequately allege any requisite intent to disrupt any contract
Per *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, "the elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." Defendants argue that Plaintiff fails to allege whether the contract was at will with Jett Group and is inconsistent with Plaintiff's statements about whether or not his contract was terminated. Defendants also argue that Plaintiff fails to show any actual disruption of his contract with Jett Group because Jett Group had no obligation to select him for any given flight.

In the opposition, Plaintiff points out that the Court granted Plaintiff with the ability to amend the complaint and also change the title of the cause of action to "intentional interference with contract." Plaintiff also argues that all the required elements required for this cause of action were alleged in the TAC, specifically that: (1) there was a one-year contract with Jett Group, which could only be terminated by Jett Group for default; (2) Defendants, knowing of Jett Group's contractual relationship with Plaintiff, denied Jett Groups request for permission to assign Plaintiff to pilot a flight for Defendants; (3) Jett Group found another pilot for the flight and mentioned that Defendants denied Jett Groups request because Plaintiff was "unassignable" and because of an "age 65 rule"; (4) Jett Group never asked Plaintiff to pilot any flights at all after that; and (5) Plaintiff's contract with Jett Group was severed.

In the reply, Defendants deny that the Court allowed leave to amend to add a new cause of action and was merely summarizing Plaintiff's argument in the tentative ruling, including adding the change of title to the cause of action. Defendants otherwise reaffirm the arguments made in the Demurrer.

In the Demurrer, Defendants stated that the parties stipulated to the filing of the TAC, which included the new cause of action, so a motion for leave to amend was not filed for that reason. As the parties essentially stipulated to the new cause of action being in the TAC, the Court does not find Defendants'

arguments persuasive that the Court should not allow the TAC to include the new cause of action. Furthermore, the Court finds that Plaintiff has alleged facts sufficient to state a cause of action because Plaintiffs have alleged every element necessary for tortious interference with contractual relationship. The first element needed is that there was a valid contract between Plaintiff and a third party and Plaintiff alleged that he had a valid contract with Jett Group. The second element needed is that Defendants had knowledge of this contract and Plaintiff alleged that Defendants were informed by Jett Group of their contractual relationship with Plaintiff by receiving and denying Jett Group's request for permission to assign Plaintiff to pilot the plane for Defendants. The third element required is that Defendants intentional act disrupted the contraction relationship; here, Plaintiff alleges that Defendants intentionally told Jett Group that Plaintiff was "unassignable" due to an "age 65 rule." The fourth required element is an actual breach or disruption of the contractual relationship and Plaintiff alleges that he was never assigned any flight again by Jett Group after Defendants denied permission to assign Plaintiff, and Plaintiff's contract was severed with Jett Group. Finally, Plaintiff must allege resulting damage, and Plaintiff alleged resulting damages of $200,000.00 due to loss of flight assignments on his contract with Jett Group and severance of his contract with Jett Group.

Based on the foregoing, the Court finds that Plaintiff has sufficiently alleged facts to support a cause of action for tortious interference with contractual relations. Therefore, the demurrer is **OVERRULED** as to the first cause of action.

Second Cause of Action for Tortious Interference with Prospective Economic Advantage

Plaintiff alleges the same facts in support of his second cause of action that he alleged to support his first cause of action. Plaintiff argues he suffered and continues to suffer economic damages of $200,000.00 due to his loss of contract with Jett Group as a result of Defendants actions as discussed above. (TAC, ¶¶ 43-53.) Plaintiff hoped to renew his contract with the Jett Group, but his contract was not renewed and he never received any notice as to why Jett Group never assigned him any other flight after Defendants denied permission for him to pilot the planes they managed. (*Id*. at ¶¶ 45-46.) However, Plaintiff believes that the main reason was because Defendants told Jett Group Plaintiff was "unassignable" by the "age 65 rule." (*Id*. at ¶¶ 46-47.) Plaintiff alleges in the TAC that he had a reasonable expectation to continue his relationship with Jett Group and pilot for its clients as opportunities became available before Defendants denied permission for Jett Group to let Plaintiff fly Defendants' planes. (*Id*. at ¶ 49.)

Defendants argue that Plaintiff's second cause of action fails because Plaintiff admitted in opposition to the Demurrer to the First Amended Complaint that he brought the wrong cause of action and could not meet the require elements for the cause. Defendants argue that Plaintiff is still unable to establish in the TAC all elements for this cause of action. As cited in the motion, "intentional interference with prospective economic advantage has five elements: (1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) Defendants argue that Plaintiff fails to establish that Plaintiff had a qualifying relationship, that Defendants knew of any such relationship, or that Defendants had the requisite intent required for this type of claim. Defendants also claim that Plaintiff also failed to adequately allege that Defendants committed any independently wrongful act. Finally, Defendants argue that this cause of action is uncertain because the facts alleged are ambiguous and unintelligible as to what relationship existed with Jett Group and between which entities.

In the opposition, Plaintiff claims the cause of action sufficiently alleged wrongful conduct because Plaintiff contracted with the Jett Group, because Defendants were one of Jett Group's clients and learned of Plaintiff's relationship with Jett Group when Jett Group requested permission for Plaintiff to fly the planes Defendants managed, and knowing that, Defendants intentionally denied Jett Group's request to let Plaintiff fly stating he was unassignable due to an "age 65 rule." Plaintiff believes he was never assigned by Jett Group again as a pilot after this interaction between Defendants and Jett Group because of what Defendants said to Jett Group. Thus, Plaintiff claims he lost all flying opportunities with Jett Group because in the area where Plaintiff resided, most of the planes were managed by Defendants in that geographic area. Plaintiff's contract with Jett Group could otherwise only have been terminated if Plaintiff defaulted on the contract terms, but Jett Group never notified him of any default and Plaintiff claims he did not commit any default as to that contract. So, Plaintiff had a reasonable expectation of continuing the relationship and to pilot for the Jett Group even after his one year contract expired.

Defendants reaffirm the arguments made in the demurrer in reply to the opposition.

To establish the second cause of action in the TAC, Plaintiff must allege that there was an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff. Here, Plaintiff has alleged that he had a one-year contract with Jett Group, which was not severed due to his own default of the contract terms and which he reasonably expected to be renewed. Second, Plaintiff must establish that Defendants knew of this economic relationship. In the TAC, Plaintiff alleged that Defendants were Jett Group's clients and that they came to know of the economic relationship between Defendants and Jett Group because Jett Group requested permission to let Plaintiff fly Defendants' managed planes. Third, Plaintiff must allege an intentional act designed to disrupt the economic relationship. Plaintiff alleges in the TAC that Defendants told Jett Group that he was "unassignable" due to an "age 65 rule," knowing that Plaintiff was contracted to pilot for Jett Group. Fourth, Plaintiff must allege that the conduct of Defendants resulted in an actual disruption of the relationship. Here, Plaintiff has alleged that after Defendants advised Jett Group that Plaintiff was unassignable, Plaintiff did not receive any further assignment from Jett Group for the remainder of his contract with them and that they did not renew their contract with Plaintiff. Finally, Plaintiff must allege economic harm was cause by Defendants' wrongful conduct. In the TAC, Plaintiff alleges that were it not for Defendants advising Jett Group that he was unassignable, then Jett Group would have continued to assign Plaintiff to pilot flights as they were doing before that interaction occurred between Defendants and Jett Group.

For these reasons, the Court finds that Plaintiff has sufficiently alleged the third cause of action in the TAC. The demurrer is **OVERRULED** as to this cause of action.

Third Cause of Action for Age Discrimination in Violation of FEHA

Plaintiff alleges that he applied to a full-time position to pilot Defendants' planes, but was denied the position due to his age (which was 76 at the time of application), and also alleges that Defendants generally do not assign older pilots the same number of hours and trips that they assign to younger pilots. (TAC, ¶¶ 55-68.) Plaintiff was told by Defendants' Assistant Chief Pilot that they did not hire him because he was "unassignable" and "not eligible to work." (*Id.* at ¶ 61.) Plaintiff alleges that Defendants actions were motivated by animus towards Plaintiff based on his age and that he was humiliated and saddened due to Defendants' conduct, which adversely affected his livelihood. (*Id.* at ¶¶ 69-71.)

Defendants argue Plaintiff fails to establish that any action taken by Defendants was motivated by Plaintiff's age. Plaintiff did not establish that age was a substantial motivating factor for why Plaintiff was

not offered the full-time position, especially when Defendants produced a list of over 100 pilots that are older than the age of 65 and some older than Plaintiff that continue to be employed by Defendants.

Plaintiff argues that the age discrimination cause is viable because he was dismissed when he was already contemplating retirement and because he was replaced by younger pilots after he was told that he was not a good fit for the position. Plaintiff also argues that the Defendants refused to identify in the list of older pilots employed by Defendants when each was hired, how often they flew, when each last flew, and whether they worked per diem or regularly.

Defendants point out in the reply that Plaintiff was hired by Defendants when he was 75 years old. Defendants also state that Plaintiff fails to articulate why Plaintiffs are entitled to the private information of over a hundred employees beyond their age, which is the relevant point of concern for this cause of action.

The Court finds that Plaintiff sufficiently alleged that age was a substantial factor in Defendants' rejecting Plaintiff for the full-time position due to his age as age was mentioned to Jett Group later when Defendants stated Plaintiff was unassignable. Plaintiff further alleged that Defendants replaced Plaintiff with younger pilots for the full-time position for which he was rejected. (*McDonnell Douglas Corp. v Green* (1973) 411 US 792.)

As a result, the Court will **OVERRULE** the demurrer as to this cause of action.

Fourth and Fifth Causes of Action for Failure to Prevent Discrimination and Unjust Enrichment

Plaintiff alleges that Defendants breached their duty to protect Plaintiff from discrimination based on his age and unjust enrichment from failure to prohibit unfair business practices by not stopping their employees from terminating his per diem employment, refusing to hire him full-time, and interfering with his employment with the Jett Group. (TAC, ¶¶ 72-75, 79-83.)

For the reasons that Defendants demurred to the third cause of action for age discrimination, Defendants argue that Plaintiffs fail to state facts sufficient to constitute a cause of action for Plaintiff's derivative claims because the underlying age discrimination claim fails for a lack of finding actual discrimination, harassment, or retaliation under FEHA.

Plaintiff opposes the demurrer and argues that the derivative claims are valid because his factual allegations support his cause of action for age discrimination. Defendants reply to the opposition to reaffirm the arguments made in the demurrer.

For the same reasons the Court has overruled the demurrer as to Plaintiff's third cause of action for age discrimination, the demurrer is **OVERRULED with leave to amend** as to Plaintiff's derivative fourth and fifth causes of action.

Sixth Cause of Action for Defamation

Plaintiff alleges defamation against Defendants because Defendants stated Plaintiff was "unassignable" and "not eligible to work with Solairus" as reasons why he was not hired full-time with Defendants, and because of the statements Defendants made to Jett Group in denying permission for Plaintiff to fly their planes. (TAC, ¶¶ 84-96.)

Defendant argues that Plaintiff's defamation cause of action fails to state facts sufficient to state a cause of action because of the statements at made, none was provably false or had a natural tendency to injure or cause special damages and one was not even published to a third party. As stated in the demurrer, defamation "involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.) To be sure, the statement must not only be false but "provably false." (*Moyer v. Amador Valley J. Union High School Dist.* (1990) 225 Cal.App.3d 720, 724.) Defendants argue that Plaintiff fails to establish how telling a Sunset employee or client that a particular pilot is "unassignable" and "not eligible to work with [Sunset]" would expose Plaintiff to ridicule, contempt, or any other reputational injury, when Defendants never claimed that Plaintiff was a bad pilot, too old to fly, or anything else that would reflect on his character or abilities.

Plaintiff argues that the statements that Plaintiff is "unassignable" due to his age are provably false because Plaintiff continues to fly still and was recently awarded the Wright Brothers Master pilot Award by the Federal Aviation Administration. Plaintiff argues that being deemed as "unassignable" meant that Plaintiff was unreliable, unqualified, unsafe, couldn't pilot or fly the plane and was unable to work with others, thus the statements are not harmless and do have an impact on Plaintiff's reputation.

In the reply, Defendants argue that the statements at issue are demonstrably not defamatory. Defendants gave instructions not to assign Plaintiff to any flights, which made him "unassignable" by rule. Defendants disagree that the word means what Plaintiff claims in the aviation world.

To state a cause of action for defamation, Plaintiff must show that Defendants made a publication that was false, defamatory, unprivileged, and had a natural tendency to injury or cause special damage to Plaintiff. Here, Plaintiff alleged that Defendants made several statements to others that resulted in Plaintiff losing job opportunities and contracts because of what being deemed as "unassignable" means for a pilot in the aviation world. Plaintiff also alleged that it was false that he was generally "unassignable" as he continues to fly and has won a prestigious pilot's award. The Court finds that even if the literal meaning of "unassignable" was that Defendants instructed others that Plaintiff would not be assigned to pilot Defendants' planes, it could easily be interpreted by others as meaning that Plaintiff was an unreliable pilot and it would have a great impact on Plaintiff's career when Plaintiff has alleged that Defendants manage most of the planes in Plaintiff's geographic area.

For these reasons, the Court will **OVERRULE** the demurrer as to Plaintiff's sixth cause of action.

Sanctions

Plaintiff's counsel claims that she worked 40 hours on the single opposition to Defendants' "frivolous" demurrer to the TAC and requests sanctions of $22,000.00. While the Court is overruling Defendants' demurrer, the Court does not find that the demurrer was brought with intent to interfere with and cause delay in this action and does not find that the demurrer was frivolous. The Court also finds that the amount requested is excessive and the claimed number of hours worked on a single opposition is unreasonable. The Court denies Plaintiff's request for sanctions.

## CONCLUSION

Based on the foregoing, Defendants' demurrer to the TAC is **OVERRULED in its entirety**. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## 2. 24CV01091, Lincoln v. Solutions Plan LLC

Plaintiffs Kirk and Theresa Lincoln's motion for leave to file the First Amended Complaint ("FAC") is **GRANTED**. Plaintiff shall file and serve the FAC within ten (10) days of service of the notice of entry of order on this motion. Plaintiffs shall prepare and serve a proposed order consistent with this tentative ruling and in accordance with California Rules of Court, Rule 3.1312.

### FACTS & PROCEDURE

This action involves claims regarding the alleged defective design and manufacturing of custom cabinets that Plaintiffs ordered from Defendant. (Motion, 3:18-19.) The Complaint alleges six causes of action for breach of contract, negligence, breach of express warranty, breach of implied warranty and merchantability, breach of implied warranty of fitness, and unfair business practices. (*Id*. at 3:20-23.) Plaintiffs now seek to file the FAC to allege additional facts and a new cause of action. (*Id*. at 3:24-27, 4:1.) Defendant refused Plaintiffs' request to stipulate to the filing of the FAC, so now Plaintiffs move for leave to file the FAC. (*Id*. at 4:12-14.) Defendants oppose the motion and Plaintiffs filed a reply.

### ANALYSIS

Motions for leave to amend pleadings are in discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, the court may allow the amendment of any pleading at any time before or after trial begins if it is in the furtherance of justice. (C.C.P. § 576.) C.C.P. section 473 and California Rules of Court, rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted. When the plaintiff is the moving party, proximity to the trial date is not a ground for denial absent a showing of prejudice to defendant. (See *Mesler v Bragg Mgt. Co.* (1985) 39 Cal.3d 290, 297.) Even if some prejudice is shown, leave to amend may be permitted upon conditions imposed by the Court, such as, continuation of the trial date, reopening discovery, or ordering the party seeking amendment to pay opposing party's costs and fees incurred in preparing for trial. (C.C.P. §§ 473, 576; *Fuller v Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400.)

Plaintiffs request leave to file the proposed FAC, which includes additional allegations to the Song-Beverly Consumer Warranty Act causes of action, a new cause of action under the Consumer Legal Remedies Act, and revisions to the cause of action for Unfair Business Practices under Business and Professions section 17200 et seq. (Motion, 3:24-27, 4:1.) Plaintiffs argue that the changes proposed in the FAC further justice because they allow disputes between the involved parties to be resolved on the merits and because no delay or prejudice will result. (*Id*. at 5:16-22.)

Defendant opposes the motion arguing that prejudice will result from the filing of the FAC because trial is seven months away. Defendant argue that the requested relief in the FAC is an attempt to manufacture an additional source to recoup attorney's fees and costs. Defendant also argues adding a new cause of action will prejudice Defendant because it will waste additional time and resources and it will require a demurrer because the cause of action is not viable on its face. In the reply, Plaintiffs point out that whether or not a proposed amended complaint is subject to a demurrer is not proper grounds to prevent its filing. Plaintiffs argue that Defendant has not shown any prejudice will result when discovery is still open and trial is in late July.

Overall, the Court is not persuaded that Defendant will be prejudiced by the filing of the FAC. Discovery is still ongoing and there is still enough time for Defendant to evaluate Plaintiffs' additional allegations and claims. Not allowing Plaintiffs to file the FAC will bar Plaintiffs from bringing the new cause of action in the future. Thus, it will further justice to allow leave to file the FAC so that the parties can resolve all of their claims in one matter efficiently.

**CONCLUSION**

Plaintiffs' motion is **GRANTED**. Plaintiff shall file and serve the FAC within ten (10) days of service of the notice of entry of order on this motion. Plaintiffs shall prepare and serve a proposed order consistent with this tentative ruling and in accordance with California Rules of Court, Rule 3.1312.

## 3-6. 24CV01898, Kehoe v. Borcher

Plaintiff Aurelian Bricker's motions to compel further responses from Defendants Michael J. Miller, James F. Galvin, Colleen A. Galvin, and Christian Borcher (together "Defendants") to Requests for Production of Documents, Set One are **GRANTED**. Defendants shall serve further responses to the discovery within 20 days of receipt of the notice of entry of this Court's order on these motions. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

For all four motions, the Court awards sanctions of **$7,661.66 in fees** and **$240.00 in filing costs** as requested.

**PROCEDURAL HISTORY**

This action involves the parties' rights and obligations under a private roadway known as Maple Glen Road that serves eight real properties in Glen Ellen, all of which are benefited and burdened by an easement that provides access over the roadway. (Memorandum of Points and Authorities in Support of Motions against Defendants ["MPA"], 4:15-20.) The easement was damaged during the Nuns Fire and the parties' dispute over a PG&E Claim made relating to the damage. (*Id*. at 6:13-21.)

Plaintiff Bricker served Defendants with identical copies of Set One of Requests for Production of Documents on June 13, 2024. (*Id*. at 5:21-23.) Defendants served identical responses to the discovery requests on August 15, 2024, containing standard objections and the statement that: "Responding Party will produce all non-privileged documents in its possession, custody, or control that are responsive to this request." (*Id*. at 5:23-28.) On August 20, 2024, Defendants produced 84 pages containing multiple copies of the same Road Maintenance Agreement, the PG&E Claim submitted by Defendant Borcher, and a recorded description of the easement. (*Id*. at 6:1-5.) In the email accompanying the production, Defendants' counsel specified that they were produced in response to Request for Production No. 1. (*Id*. at 6:6-7.) Plaintiff's counsel met and conferred with Defendants' counsel requesting documents responsive to Requests for Production Nos. 2-17, but Defendants counsel responded that the documents produced were intended as responsive documents to all of Plaintiff's requests. (*Id*. at 6:8-13.) After further attempts to meet and confer, Defendants refused to produce anything further asserting that Plaintiffs had no right, title, or interest in Trust Funds received from PG&E Claim as a result of damage the easement sustained by the Nuns Fire. (*Id*. at 6:13-21.) Plaintiff Bricker's position is that whether Defendants are obligated to respond to discovery or not is not based on Defendants' belief regarding what the result of this matter will be, but rather on whether the information sought is reasonably calculated to lead to the discovery of admissible evidence directly relevant to the parties' claims in dispute. (*Id*. at 6:21-28, 7:1-3.)

Plaintiff Bricker now now moves to compel Defendants further responses, further production of responsive documents, and requests sanctions. Defendants only oppose the sanctions requests in the motions arguing that the motions are moot because Defendants have since served all previously withheld documents Bates stamped as Defendants 85 through 1455 after Plaintiff filed the motions to compel. Plaintiff replied to the opposition.

## ANALYSIS

Legal Standard

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) The statement shall also specify "whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party," and shall also set forth "the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (*Ibid*.) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (C.C.P. § 2031.240.)

Per section 2031.320(b), "the court shall impose a monetary sanction…against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Plaintiff Bricker's Motions to Compel

Plaintiff Bricker moves to compel further responses and production to the discovery requests arguing that Defendants' responses are evasive and incomplete with meritless objections. (MPA, 8:4-19.) Plaintiff argues that the information sought by the discovery requests is both relevant and discoverable because it is directly related to the parties' claims. (*Id*. at 8:21-27, 9:1-19.) As to Defendants' arguments about assignment, Plaintiff argues that they are unavailing because Defendants' premature conclusion as to Plaintiff's claims do not prevent Plaintiff from seeking relevant information through discovery and Plaintiff contends that the Road Maintenance Agreement did not assign or transfer Plaintiffs' predecessor-in-interest's personal property. (*Id*. at 12:4-28, 13:1-24, 14:1-15.)

Plaintiff Bricker requests sanctions in the amount $1,975.00 per motion to compel for all six motions to compel filed plus fees of $360.00 for the filing costs of each motion. At this time, the Court will only consider sanctions for the four motions set to be heard January 15, 2024. Sanctions requested are broken down into 13.5 hours of work at a rate of $475.00 done by Counsel Giannini, 4 hours of meet and confer efforts by Counsel Coryell, a partner at the firm, at a rate of $635.00, and an anticipated 4 hours for Counsel Coryell's review of the opposition, preparation of a reply brief, and preparation for the hearings on the motions.

Defendants' Opposition to Sanctions

Defendants only oppose the sanctions requested. They argue that the motions are otherwise moot because, after a re-evaluation of Defendants' position regarding Plaintiffs' documents requests, Defendants produced all previously withheld financial documents. Defendants did not justify their actions with sufficient legal authority, but argue that they do not believe there is any basis on which they should be ordered to provide further responses and that sanctions be denied.

Reply to Opposition

Plaintiff requests the Court to reject Defendants argument because the opposition was untimely and was not based on any facts or legal authority. Plaintiff also notes that no amended, code-compliant responses have ever been provided, so the motions to compel are not moot.

Application

The Court finds that Defendants' opposition is both untimely and unsupported by any authority. Defendants filed the opposition on January 3, 2025, which is 8 court days prior to the January 15, 2024, hearing. Per C.C.P. section 1005(a), an opposition must be filed 9 court days before the hearing. Per section 1005(a), the opposition is late and is considered an opposition even if it is labeled as a "non-opposition" because Defendants still oppose the sanctions requested.

Even if the Court were to consider the late-filed opposition, Defendants did not support their arguments with any legal authority that justifies Defendants' failure to timely produce documents that were relevant and responsive to Plaintiff's requests. Defendants' position regarding the validity of Plaintiff's claims neither precludes Plaintiff from seeking discovery regarding those claims nor absolves Defendants of their obligation to respond to those discovery requests and produce any relevant, non-privileged information sought. Though Defendants claimed financial privacy as a reason for withholding the documents, Defendants provided all of the documents anyways after Plaintiff had filed the motions to compel conceding the claimed privilege.

As Defendants have not made any persuasive argument supported by legal authority to justify the delay in producing responsive documents to Plaintiff and for never providing any further amended responses, the Court will grant Plaintiff's motions and award sanctions and fees. Costs are awarded in the amount of $240.00 for four motions. Counsel Giannini's requested $6,412.50 13.5 hours of work at a rate of $475.00 on six motions, so proportionally, the Court will award $1,068.75 per motion. Counsel Coryell's requested $5,080.00 for 8 hours of work at a rate of $635.00 as partner at the firm for the six motions, so proportionally, the Court will award $846.66 per motion. In total, the Court awards $7,661.66 in attorney's fees for the four motions.

## CONCLUSION

Based on the foregoing, Plaintiff's motions are **GRANTED.** For all four motions, the Court awards sanctions of **$7,661.66 in fees** and **$240.00 in filing costs** as requested. Defendants shall serve further responses to each discovery request within 20 days of receipt of the notice of entry of this Court's order on these motions. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

# 7. 24CV05683, Jones v. Deutsche Bank National Trust Company

Defendant Deutsche Bank National Trust Company, as Trustee, on behalf of the holders of the Washington Mutual Mortgage Securities Corp ("Deutsche") demurs to Plaintiff Jone's entire Complaint. The demurrer is **SUSTAINED with leave to amend**. Plaintiff shall file the first amended complaint within 20 days of receiving notice of the entry of the Court's order on the demurrer. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## PROCEDURAL HISTORY

On or about December 9, 2004, obtained a mortgage loan in the principal amount of $388,000.00 from Washington Mutual Bank, FA ("WMB"), which is secured by a Deed of Trust recorded in the County of Sonoma Recorder's Office against Plaintiff's real property. (Demurrer, 5:23-24, 6:1-2.) The Loan was assigned from WMB to JPMorgan Chase Bank in 2014, and then from JPMorgan Chase to Deutsche Bank on the same date, making Deutsche Bank the current beneficiary of the Loan. (*Id*. at 6:3-5.) Plaintiff defaulted on the loan, so Deutsche Bank issued a Notice of Default and a Notice of Trustee's Sale on her property. (*Id*. at 6:6-8.) The notice attached as Exhibit 1 to the complaint states that Plaintiff is in default under a deed of trust dated December 9, 2004, and unless she takes action to protect her property, it may be sold at a public sale. (*Id*. at Exhibit 1.) Per the notice, the Trustors are Plaintiff and her husband Robert L. Jones as community property owners with right of survivorship and the duly appointed trustee was National Default Servicing Corporation. (*Ibid*.) Per Exhibit 2 to the complaint, Deutsche Bank National Trust Company is trustee on behalf of the Washington Mutual defendants named in this action. (Complaint, Exhibit 2.) Plaintiff commenced this action against Defendants in this matter arguing that they are not entitled to enforce a promissory note or deed of trust because they are non-existent entities that have no standing to maintain an action. (Complaint, ¶¶ 28-38.)

Deutsche Bank now demurs to the entire Complaint, and Plaintiff has filed an opposition.

## REQUEST FOR JUDICIAL NOTICE

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Deutsche Bank requests judicial notice of:

1. Deed of Trust, No. 2004188431;
2. Corporate Assignment of Deed of Trust, No. 2014039966;
3. Corporate Assignment of Deed of Trust, No. 2014039967;
4. Notice of Default, Recorded under No. 2016096493; and
5. Notice of Trustee's Sale, Recorded under No. 20204025537;

Plaintiff requests judicial notice of:

1. Form 13F from the SEC for Deutsche Bank;
2. SEC Notice of Application 2006-12-28;
3. FDIC Resolution Plan 2018-12-20;
4. Federal Reserve Board Cease and Desist Order against Deutsche Bank AG 2017-05-26;
5. Case Summary regarding Suspended Corporations under California Law;
6. California Secretary of State listing showing no results for Deutsche Bank National Trust Company;
7. Excerpts of 231 pages of an SEC 424B5 Prospectus Supplement for "WaMu Mortgage Pass-Through Certificates, Series 2005-AR6"; and
8. Federal Rules 26 U.S. Code § 860G.

The above requests are **GRANTED**.

## DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Deutsche Bank's Demurrer

Deutsche Bank demurs to each cause of action in Plaintiff's complaint for failure to state sufficient facts to constitute a viable cause of action per Code of Civil Procedure section 430.10(e). As to the first cause of action, Deutsche Bank that it does not need to actually possess the promissory note that Plaintiff executed in order to foreclose under the power of sale contained in the deed of trust for to loan, to which Deutsche Bank is currently the beneficiary. (Demurrer, 7:5-24.) Deutsche Bank also argues that the second cause of action fails as a matter of law because judicially noticeable public records demonstrate that Deutsche Bank is the current beneficiary to Plaintiff's mortgage loan under the deed of trust which is inseparable from Plaintiff's promissory note. (Demurrer, 8:4-21.) Deutsche Bank states that the third cause of action fails because Deutsche Bank is not time barred from foreclosing on the property where the statute of limitation on enforcing a deed of trust is 10 years after the maturity date of the secured debt. (*Id.* at 9:5-10.) As the maturity date of Plaintiff's mortgage loan is 2035, Defendant is not yet barred from bringing this claim. (*Ibid.*) Finally, Deutsche Bank argues that the claim for declaratory relief in the Complaint is derivative and Plaintiff has failed to allege facts sufficient to show the existence of any actual controversy here when Plaintiff has failed to demonstrate the invalidity of the Deed of Trust or the promissory note attached to the Complaint. (Demurrer, 9:15-27, 1-6.)

Plaintiff's Opposition

Plaintiff argues that the Court should reject the demurrer because Deutsche Bank is a non-party and cannot demur to the Complaint. Plaintiff claims that Deutsche Bank is not one of the parties that were named in the Complaint, even though "Deutsche Bank National Trust Company" is a named defendant in the Complaint. Plaintiff offers only the allegations made in the Complaint to support her opposition to the demurrer as to each cause of action.

Application

Plaintiff has not clearly explained how Deutsche Bank is a non-party when Plaintiff herself named Deutsche Bank as a defendant in the Complaint. Plaintiff has not sufficiently addressed any of the arguments made in the Demurrer. As a result, the Court will sustain Deutsche Bank's demurrer. However, it is public policy to liberally allow leave to amend when there is any possibility that a party may cure the defect through amendment. Thus, the Court will allow Plaintiff leave to amend the Complaint if there is any possibility that she can allege facts to invalidate the deed of trust to which Deutsche Bank has already demonstrated it is a beneficiary through recorded assignment.

## CONCLUSION

Based on the foregoing, the demurrer is **SUSTAINED in its entirety with leave to amend**. Plaintiff shall file a first amended complaint within 20 days of notice of this order. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).