**TENTATIVE RULINGS**
**LAW & MOTION CALENDAR**
**Wednesday, June 26, 2024, 3:00 p.m.**
**Courtroom 16 –Hon. Patrick M. Broderick**
**3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN "ZOOM" ONLINE,**
**Courtroom 16**
**Meeting ID: 161-460-6380**
**Passcode: 840359**
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

**TO JOIN "ZOOM" BY PHONE,**
**By Phone (same meeting ID and password as listed above):**
**(669) 254-5252 US (San Jose)**

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 the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

**PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.**

1. **SCV-273680, Gruber v Jones**

Plaintiff Nicholas Gruber ("Plaintiff") filed the complaint (the "Complaint") in this action against defendant Richard Jones ("Defendant") for injuries resulting from a residential lease agreement for a room at the property 2033 Banjo Road, Santa Rosa (the "Property"). The Complaint alleges causes of action for: 1) breach of contract; and 2) violations of Civ. Code §§ 789.3 & 1980.

This matter is on calendar for the motion by the motion by the Defendant for summary judgment or in the alternative adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437c as to the Complaint. Plaintiff has not filed an opposition. For the reasons set forth below, the motion for summary judgment is **DENIED**.

## I. The Burdens on Summary Judgment

### A. *Generally*

Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). A moving defendant meets its initial burden to show that one or more elements of a cause

of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving defendant does not meet its initial burden, the plaintiff has no evidentiary burden. CCP § 437c(p)(2).

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original).

B. *Civil Code § 1980*

Civil Code § 789.3 (b) provides "a landlord shall not, with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence, willfully: . . . or (3) (r)emove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3."

a. Where personal property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property…

b. The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1989 does not protect the landlord from any liability arising from the disposition of property not described in the notice…
c. The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by the tenant. If the former tenant provided the landlord with the tenant's email address, the landlord may also send the notice by email.

Civ. Code, § 1983.

Where a landlord does not sell the personal property as provided under Civ. Code § 1987, and reasonably believes that the property has a resale value of less than $700, they are entitled to dispose of the property or retain it for their own use. Civ. Code § 1988(a). "'Reasonable belief' means the actual knowledge or belief a prudent person would have without making an investigation (including any investigation of public records) except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made." Civ. Code, § 1980(d).

## II. <u>Evidentiary and Pleading Issues</u>

First, while the Court notes that Defendant has requested summary adjudication in the alternative, they have failed to comply with the requirements of Cal. Rule of Court, Rule 3.1350 (b). "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." *Ibid.* Defendant does not present any particular issue for summary adjudication in their notice of motion or their separate statement of facts. As a result, the Court only considers the motion as one for summary judgment.

## III. <u>Facts</u>

Defendant owned and occupied the Property in March of 2021. Defendant's Separate Statement of Undisputed Material Facts, ("DUMF") ¶ 1. Defendant entered into a residential lease agreement with Plaintiff on or round March 30, 2021. DUMF ¶ 2; See Declaration of Richard Jones ("Defendant's Decl."), Exhibit 1 (the "Lease"). Plaintiff and Defendant were the only parties to the

lease. DUMF ¶ 4. The Lease contains a provision stating that the Property is the proper location to provide any notice to Plaintiff. DUMF ¶ 5. Defendant served Plaintiff with a written Notice of Termination of lease on April 30, 2021, terminating Plaintiff's tenancy effective June 1, 2021. DUMF ¶¶ 6-8. Plaintiff was arrested on May 23, 2021. DUMF ¶ 9. Defendant received no direct communications from Plaintiff between his arrest and May 2023. DUMF ¶¶ 11-12. Defendant served Plaintiff with a Notice of Belief of Abandonment to Plaintiff on July 16, 2021. DUMF ¶¶ 12-13. Defendant thereafter served a Notice of Belief of Abandoned Personal Property to Plaintiff at the Property on July 19, 2021, informing Plaintiff that Defendant would dispose of any personal property not reclaimed by August 31, 2021. DUMF ¶¶ 14-15; Defendant's Decl. Exhibit 4 (the "Notice"). Defendant received no response to the notice, and believing that it had a resale value of less than $700, Defendant disposed of Plaintiff's personal property. DUMF ¶ 16.

The Lease provides for an award of attorney's fees to the prevailing party for any action under the contract. DUMF ¶ 17. Plaintiff did not pay rent for the month of July 2021. DUMF ¶ 18.

## IV. <u>Analysis</u>

In reviewing the nature of the evidence provided by Defendant, he has failed to shift his initial burden as to Civ. Code § 1980, *et seq*. There being no opposition, and Defendant having not addressed the elements of Civ. Code § 789.3, the Court's analysis turns to the arguments that were made. Defendant argues that there is no triable issue of material fact as to Plaintiff's claims.

Defendant avers that notice was provided to Plaintiff under Civ. Code § 1983, and therefore Defendant cannot be held liable for the disposal of Plaintiff's personal property. The Notice fails to be effective for two reasons based on the evidence presented. First, Defendant presents evidence that he served Plaintiff with a notice under Civ. Code § 1983 at the Property, and at no other address. Defendant argues that the Lease provides the property as the proper address for service of any notice. Civ. Code § 1983 requires a landlord to provide notice to a tenant at the vacated premises, but also "to any other address known to the landlord where the person may reasonably be expected to receive the notice." Civ. Code, § 1983 (c). The Complaint alleges that Defendant was aware of Plaintiff's incarceration. Defendant offers no evidence contradicting this. Defendant's service only to the Property was not reasonable under this circumstance. That the Lease provides the Property as the address for notice appears immaterial after Defendant had already terminated Plaintiff's tenancy and Defendant knew Plaintiff was incarcerated. The specificity of Civ. Code § 1983 (c) directly addresses this factual circumstance, and Defendant has not shown that the Lease provision overrides his obligations under the statute.

Second, Defendant has not shown that the application of CCP § 1983 is proper, because the description of property provided in the notice does not match the alleged property disposed of by Defendant. Defendant describes the Plaintiff's personal property in the Notice as "Bedroom furniture, framed prints, televisions and miscellaneous clothes". See Notice. Plaintiff alleges that Defendant failed to return personal property, which when listed line by line, is nearly three full

pages in length. Several categories of property averred by Plaintiff are not addressed by the Notice. This raises a deficiency with the Notice. Initially, the Notice is required to describe the property at issue, and as to any property not described "the limitation of liability provided by Section 1989 does not protect the landlord from any liability arising from the disposition of property not described in the notice". Civ. Code, § 1983 (b). It is not persuasive that Defendant had adequately described the various electronics, name brand clothing including full suits, various power tools, name brand watches and jewelry, a pet cat, and other items included in the Complaint beyond those described in the § 1983 Notice. As such, Defendant has not shown that summary judgment is appropriate.

Defendant also avers that he cannot be attributed liability because he reasonably believed the property disposed of had less than $700 resale value. This is not persuasive for two reasons. As an initial matter, the provisions of § 1983 are not obviated by § 1988, and notice under Civ. Code § 1983 must be given before disposal under Civ. Code § 1988. See Civ. Code § 1987(b) (Landlord may sell the property described in the § 1983 notice after expiration of the notice period); Civ. Code § 1988 (a)(landlord is entitled to dispose of "the personal property described in the notice is not released pursuant to Section 1987".). The deficiency in the § 1983 description is equally applicable to the analysis under § 1988.

Second, the value of the property remains a triable issue. Defendant does not provide any evidence that Plaintiff's description of the personal property at issue is not an accurate representation of the property disposed of by Defendant. It is not persuasive that Plaintiff's property enumerated in the Complaint would reasonably appear to have a resale value of less than $700. As was already noted, Defendant described the property at issue as ""Bedroom furniture, framed prints, televisions and miscellaneous clothes". This is adequate to show that Defendant disposed of multiple televisions of unnumbered variety, multiple pieces of furniture, and other property. At summary judgment, in granting Plaintiff the benefit of any inference, Defendant was without "**reasonable** belief" that the property was below $700 in value. Here, a reasonable belief is "the actual knowledge or belief a prudent person would have without making an investigation. Civ. Code, § 1980. The description of property provided by Plaintiff (which it is Defendant's burden to rebut with evidence) involves various electronics, name brand clothing including full suits, various power tools, name brand watches and jewelry, and other items beyond those described in the § 1983 notice and Defendant's declaration. Here, regardless of whether Defendant actually believed that the property was worth less than $700, that belief does not appear reasonable.

Therefore, Defendant has failed to carry his burden to display there is no triable issue of material fact. *Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. The motion is DENIED.

IV. Conclusion

Based on the foregoing, the motion for summary judgment is **DENIED**.

Defendant 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. **SCV-272535, Banuelos v American Honda Motor Co, Inc**

**Motion to Compel Further Discovery Respondents from Defendant, and Request for Sanctions – Set One of Requests for Production of Documents GRANTED** as detailed herein. Sanctions of $1,245 awarded to Plaintiff against Defendant and its counsel.

**Facts**

Plaintiff complains that on or about June 26, 2021, he purchased a 2021 Honda Passport ("the Vehicle") for which Defendant provided warranties ("the Warranties") pursuant to a warranty contract, but the Vehicle was defective and, although she brought it to Defendant's authorized repair facility to cure the defects, Defendant failed either to cure the defects or repurchase or replace the vehicle as required under the Warranties. Plaintiff asserts that Defendant's conduct violated the Song-Beverly Consumer Warranty Act ("Song-Beverly") at Civil Code ("CC") section 1790, et seq. Specifically, Plaintiff complains of various problems related to the Sensing System installed in the Vehicle.

**Discovery**

Plaintiff served Defendant on December 29, 2023 with a First Set of Requests for Production of Documents ("RFPs"); Defendant responded on February 13, 2024; Defendant refused to produce a range of documents requested or in some items agreed to produce documents but failed to comply as agreed; Plaintiff attempted in vain to meet and confer by letter and discussion over the telephone in March and April 2024 but Defendant refused to provide any further response or production. Tran Dec. The evidence shows that the meet-and-confer communications included discussion of a possible stipulated protective order but evidently the parties were unable to agree on the full terms, despite Plaintiff's indication of a willingness to stipulate to a standard form protective order.

**Motion**

In is Motion to Compel Further Discovery Respondents from Defendant, and Request for Sanctions – Set One of Requests for Production of Documents, Plaintiff moves the court to compel Defendant to provide further responses to RFPs 30, 33, 37, 44, and 46, and for an award of monetary sanctions of $2,035 against Defendant and its attorneys.

Defendant opposes the motion. It argues that Plaintiff has no right to conduct discovery because he has no valid claim for violation of Song-Beverly on the basis that Defendant cannot be liable when given only one chance to cure the defect; evidence of other people's problems with the System in the Passports is not relevant; the information is not necessary for Plaintiff to demonstrate knowledge or willfulness and that nothing in the law "requires" Plaintiff to rely on evidence of other vehicles and consumer complaints.

Plaintiff has filed a reply, reiterating his position. He stresses that the information and documents sought are relevant, including materials on other customers and materials produced in another, similar lawsuit.

**Judicial Notice**

Plaintiff requests judicial notice of two complaints filed in other court proceedings. As court records, these are judicially noticeable. The court may judicially notice these documents, the contents, and the purported legal effect but may not judicially notice the truth of factual assertions made therein. With this limitation, the court grants the request.

**Applicable Authority**

When a propounding party is dissatisfied with responses to interrogatories or requests for production or inspection ("RFP"), that party may move to compel further responses. Code of Civil Procedure ("CCP") section 2031.310. The moving party must make adequate attempts to meet and confer. Ibid. Generally, once a timely, proper motion to compel further responses has been made, the responding party has the burden to justify objections or incomplete answers. *Coy v. Sup.Ct.* (1962) 58 Cal.2d 210, 220-221.

A party moving to compel further responses to a production request must demonstrate "good cause" for seeking the items. CCP section 2031.310(b)(1). This requires a showing that the items are relevant to the subject matter of the litigation and a showing of specific facts justifying discovery. *Glenfed Develop. Corp. v. Sup.Ct.* (1997) 53 Cal.App.4th 1113, 1117. Once the moving party demonstrates good cause, the responding party must justify objections. See *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168.

Requests must identify the documents sought by describing a category with "reasonable particularity" CCP section 2031.030(c)(1). This description must be particularized from the point of view of the person on whom the demand is made, such as by describing categories which bear some relationship to the manner in which the documents are kept. See *Calcor Space Facility, Inc. v. Sup.Ct.* (1997) 53 Cal.App.4$^{th}$ 216, 222.

The court in *Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4$^{th}$ 138, found evidence about vehicles "other" than the specific one at issue in a case regarding consumer warranties to be relevant and proper to consider at trial.

Defendant unpersuasively argues that *People v. Sanchez* (2016) 63 Cal.4th 665 "effectively" overrules *Donlen*. It cites the statement in People v. Sanchez, at 686,

> What an expert cannot do is relate as true case-specific facts asserted in hearsay statements unless they are independently proven by competent evidence or are covered by a hearsay exception. [...]
>
> In sum, we adopt the following rule: When any expert relates to the jury case specific out-of-court statements and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate testimonial hearsay, there is a

> confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination or forfeited that right by wrongdoing

This, however, has absolutely no bearing on the validity of *Donlen* with respect to whether a plaintiff in a Song-Beverly or consumer-warranty action may obtain evidence of other consumers' problems. Defendant offers no explanation as to how this statement from Sanchez even bears on this analysis, as facially it does not. It therefore hardly "overrules" *Donlen*.

Defendant's knowledge regarding the Vehicle or defects, and its policies and procedures for handling such issues are relevant to claims under Song-Beverly and particularly the bases for civil penalties. *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1104-1105; *Kwan v. Mercedes-Benz of North America* (1994) 23 Cal.App.4th 174, 185.

The parties here also discuss *Doppes v. Bentley Motors, Inc*. (2009) 174 Cal.App.4th 967. Plaintiff in his moving papers actually only lists this as an authority without discussion. Defendant, confusingly, singles this out for discussion because it claims, incorrectly, that it is one of the main authorities on which Plaintiff relies. Plaintiff only discusses this case in his reply to Defendant's analysis of it. In *Doppes*, an action for violation of Song-Beverly regarding a vehicle, the matter went to trial, during which it was discovered that defendant had still not complied with orders regarding discovery and production of documents. The court of appeal explained that it was making "the extraordinary, yet justified, determination that the trial court abused its discretion by failing to impose terminating sanctions against defendant for misuse of the discovery process. The record demonstrates defendant engaged in repeated and egregious violations of the discovery laws that not only impaired plaintiff's rights, but threatened the integrity of the judicial process." In that action, among other things, the defendant failed to comply with discovery orders, including an order that it produce all documents of any description referring or relating to the odor problems or complaints of odors in defendant's automobiles for model years 1999 to 2006, not just the plaintiff's vehicle. Although this court ordered production of those files to plaintiff, defendant failed to produce those files, except for the file on plaintiff. The court found defendant's failure to comply with discovery orders so egregious that it was error not to impose terminating sanctions. Plaintiff in his reply contends that the court in *Doppes* found the information about other customers to be relevant and discoverable, but in fact the appellate court made no such finding and did not even address the issue. The appellate court described, and partly quoted, the decisions of the trial court and referee, which did find the matters sought to be discoverable and relevant, but the appellate decision did not actually reach that issue. Instead, it addressed the propriety of terminating sanctions for defendant's failure to comply with the orders on that discovery. *Doppes* itself, accordingly, does not support this contention. The court notes that the analysis is *Doppes* is of minimal application to this motion since it did not actually address the issues now before the court.

Privacy protection for certain information in discovery is rooted in Cal. Const., Art.1, section 1. *Roberts v. Gulf Oil Corp*. (1983) 147 Cal.App.3d 770, 790-791. This provision states, in full, "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

The right to privacy, including that regarding financial matters, belongs only to natural persons, not business entities. *Roberts v. Gulf Oil Corp*. (1983) 147 Cal.App.3d 770, 791. There

are some possible, limited protections for privacy related to business entities, such as with regards to financial or personnel records under limited circumstances, but those are not the same as the constitution-based right to privacy which natural persons possess and they are not implicated here. See *Ameri-Medical Corp. v. WCAB* (1996) 42 Cal.App.4th 1260, 1286-1289; *Roberts, supra,* 796-797.

The right to privacy generally protects confidential employment, financial, and medical or health-related information. See, e.g., *Cobb v. Sup.Ct.* (1979) 99 Cal.App.3d 543, 550; *Valley Bank of Nevada v. Sup.Ct.* (1975) 15 Cal.3d 652, 658; *Solberg, Robinson, Goldberg & Bagley v. Sup.Ct.* (2006) 137 Cal.App.4th 579, 595-596.

The protection is not necessarily absolute. See *Britt v. Sup.Ct.* (1978) 20 Cal.3d 844, 859-862; *Solberg, Robinson, Goldberg & Bagley v. Sup.Ct.* (2006) 137 Cal.App.4th 579, 595-596. Even very personal, confidential matters may need to be disclosed if "essential to a fair determination of the lawsuit." *Morales v. Sup.Ct.* (1979) 99 Cal.App.3d 283, 288. The right of privacy generally attaches to, and protects, a customer's account and similar information at a bank. *Fortunato v. Sup.Ct*. (2003) 114 Cal.App.4th 475, 480.

The burden rests on the party seeking discovery to show that it is "directly" relevant, or essential, to the lawsuit. *Britt, supra,* 20 Cal.3d 859-862. If the information can be obtained in less intrusive means, the court should not allow discovery of the private matters. *Allen v. Sup.Ct.* (1984) 151 Cal.App.3d 447, 449. "[G]iven the private nature of a confidential settlement of a lawsuit, the burden rests on the proponents of discovery of this information… to justify compelling production of this material. They must do more than show the possibility it may lead to relevant information. Instead they must show a compelling and opposing state interest." *Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court* (1996) 51 Cal.App.4th 233, 239 [disapproved on other grounds by *Williams v. Sup. Ct.* (*Marshalls of CA, LLC*) (2017) 3 Cal. 5th 531, 557 & fn. 8].

The court must balance the interests, weighing the privacy right at issue against the public interest in obtaining just results. *Valley Bank of Nevada v. Sup.Ct.* (1975) 15 Cal.3d 652, 657. The court should consider 1) the purpose of the information sought; 2) the effect that disclosure will have on the parties and the trial; 3) the nature of the objections to disclosure; 4) whether the court may make an alternative order granting partial disclosure, disclosure in another form, or disclosure only if the party seeking the information undertakes certain appropriate burdens. *Valley Bank of Nevada, supra,* 15 Cal.3d 658.

CCP section 2017 allows parties to discover the identity and location of possible witnesses, etc., while the court in *Union Mut. Life Ins. Co. v. Sup.Ct.* (1978) 80 Cal.App.3d 1, at 11, indicated that under the broad discovery rules, it is basically proper for a plaintiff to obtain discovery in order to determine whether one should plead a cause of action, and this includes discovery of information about possible class members.

Home addresses, etc., are considered protected private information. *Planned Parenthood Golden Gate v. Sup.Ct.* (2000) 83 Cal.App.4th 347, 358-359. A party must therefore "do more than satisfy the [CCP] section 2017 standard" *Ibid*., citing other cases. However, such information may be disclosed where the public interest in obtaining the information outweighs privacy concerns. *Ibid*.; *Palay v. Sup.Ct.* (1993) 18 Cal.App.4th 919, 933; *Valley Bank of Nevada v. Sup.Ct.* (1975) 15 Cal.3d 652, 657.

**<u>Requests and Responses</u>**

As noted above, Plaintiff seeks further responses to RFPs 30, 33, 37, 44, and 46. RFP 30 requests all surveys, reports, summaries, and other documents in which owners of 2021 Hona Passport vehicles ("Passports") have reported to Defendant any Honda Sensing Defects (the Defects"). RFP 33 seeks all documents evidencing quality problems which Defendant identified in the Honda Sensing System (the "System") used in the Passports. RFP 37 seeks all documents evidencing agenda or minutes of Defendant's board of directors or committee meetings at which any quality concern of the System used in the Passports. RFP 44 seeks all documents evidencing complaints by owners of Passports regarding any of the complaints for which Plaintiff presented the Vehicle. RFP 46 seeks all documents which Defendant produced in a specified lawsuit, the complaint in which is one of the documents subject to judicial notice discussed above.

With a few minor variations, Defendant provided essentially the same response and the same objections, almost entirely verbatim, to each of these RFPs. It objected to the requests "as vague, ambiguous, overly broad, harassing, and as asking
for information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence"; on the basis that each "misrepresents and/or does not take into consideration the statutory construct of" Song-Beverly"; Plaintiff's claim is unrelated to complaints by other owners Passports; the definition of the term "HONDA SENSING DEFECT" is vague, ambiguous, and overly broad, "Considering" Plaintiff's definition of the term "HONDA SENSING
DEFECT," this request is overly broad and fails to describe with reasonable
particularity the documents or categories of documents requested; Defenant 'also objects to those symptoms included in Plaintiff's definition of "HONDA SENSING DEFECT" for which the SUBJECT VEHICLE was never presented or otherwise did not exhibit'; each RFP is "argumentative and misleading to the extent it improperly assumes a defect"; Plaintiff seeks information concerning different complaints, circumstances, and consumers, which are different from the alleged facts of this case; they seek information within the right to privacy and or which is confidential, commercially sensitive, and proprietary or a trade secret; and Defendant objects to the extent this request asks AHM to respond on behalf of any other entity.

In its opposition, as noted above, Defendant focuses on only a few of these points. It argues that Plaintiff has no right to conduct discovery because he has no valid claim for violation of Song-Beverly on the basis that Defendant cannot be liable when given only one chance to cure the defect; evidence of other people's problems with the System in the Passports is not relevant; the information is not necessary for Plaintiff to demonstrate knowledge or willfulness and that nothing in the law "requires" Plaintiff to rely on evidence of other vehicles and consumer complaints.

These objections are wholly unpersuasive, even groundless, and some are nonsensical. The RFPS on their face seek information which is clearly, much even directly, relevant and discoverable under the authority discussed above.

Defendant's objections and arguments that the requests "assume" there to be a defect within the ambit of Song-Beverly, and Plaintiff has no valid claim are unequivocally groundless and, in fact, nonsensical. Plaintiff is seeking the information in order to determine if, in fact, there was such a defect and if there is a valid claim. Plaintiff may therefore conduct discovery accordingly in order to investigate this. Defendant is essentially relying in its denial of Plaintiff's substantive allegations in order to argue that Plaintiff has no right to discovery because Plaintiff has no valid claims. This is not the standard for discovery and quite obviously it never could be.

As noted above, information regarding other vehicles with the same or similar system and defects, as well as Defendant's knowledge thereof, is discoverable. The authority is clear on this point and simple logic indicates that such evidence is relevant, even directly relevant, to Defendant's knowledge and thus intent, as well as alleged fraud. Defendant may be correct in its opposition that it is not "required" for a plaintiff to present such evidence in order to win, but the long-established standard for what is discoverable based on whether it may reasonably lead to admissible evidence makes it patently clear that evidence need not be "required" for proof in order to be discoverable.

Defendant's arguments based on its denial of plaintiff's claims and on what proof is "required" at trial are without any possible, much less reasonable, basis in the law. In fact, it is so utterly groundless and so obviously in conflict with both simple common sense and long-established law that it is baffling that Defendant could even think of making such an argument.

With respect to privacy rights, Defendant does not, even in its opposition, clarify exactly what privacy rights are at stake here. It does not explain whether it means the privacy of it or of consumers, or others. The court can identify only a possible privacy concern regarding other consumers' contact information, such as addresses, as a possible issue in this regard, and nothing on the face of the requests implicates this. Plaintiff makes no request for such information in these items and it is merely possible that some of the responsive documents could contain such information. To the extent that any responsive documents contain specific contact information of customers, the documents must be redacted absent a sufficient showing by Plaintiff that she requests and needs such information. It is clear that this is not a basis for completely refusing to produce the documents. Otherwise, Defendant must respond further and agree to, and actually, produce the documents requested.

As for confidential or proprietary information, nothing about the requests clear implicates such concerns. It is possible that the requests could encompass such information, but not necessarily. The documents and information are otherwise relevant and discoverable. Moreover, Plaintiff discussed with Defendant a stipulated protective order. Should Defendant wish to protect such information, it must enter into a standard protective order. Failing the parties' ability to agree to one, the parties may, of course, move the court to impose one.

Plaintiff also discusses objections of attorney-client privilege or work product but Defendant has not asserted either in the responses at issue. Defendant also does not appear to address these in its opposition. They are therefore inapplicable here.

The court GRANTS the motion as set forth above.

**<u>Sanctions</u>**

For compelling further responses, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP sections 2023.010, 2023.030, 2031.310. In order to obtain sanctions, the moving party must state in the notice of motion that the party is seeking sanctions, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. Sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

In discovery, the court may impose the monetary sanctions against the party, person, or attorney. CCP section 2023.030(a). It is appropriate to award sanctions against a party's attorney if the court finds that the attorney decided to engage in, or recommend, the behavior at issue. CCP section 2023.030(a); *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261. If sanctions are sought against an attorney, the burden shifts to the attorney to demonstrate that he or she did not recommend that conduct. *Corns v. Miller* (1986) 181 Cal.App.3rd 195, 200-201.

Plaintiff seeks monetary sanctions against both Defendant and its attorneys for two hours spent plus three anticipated for the hearing and reply, at $395 an hour, plus the $60 filing fee. Tran Dec., ¶¶12-15.

Defendant's responses and its opposition arguments are wholly without merit or justification. Plaintiff is entitled to monetary sanctions. The amount which Plaintiff seeks is reasonable but the court may include in the award only sanctions for expenses actually incurred, not those which are merely anticipated. Plaintiff's moving papers claim three hours anticipated for the reply and hearing but, although Plaintiff later filed a reply, the reply provides no further evidence. The court finds one additional hour to be reasonable for the reply. The court awards sanctions to Plaintiff for the two hours spent originally, a total of $790, plus the $60 filing fee, plus one hour for the reply, a total of $1,245. Plaintiff may obtain additional sanctions in the event that he properly demonstrates that he has actually and reasonably incurred additional expenses related to this motion.

The court AWARDS sanctions of $1,245 against Defendant and its counsel, given that it is apparent from the face of the matters presented that Defendants' counsel clearly decided to engage in the behavior at issue. CCP section 2023.030(a); *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261.

**Conclusion**

The motion is GRANTED and sanctions are awarded to Plaintiff as explained above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

### 3. SCV-271800, Bango Corporation v County of Sonoma

County of Sonoma's ("County") unopposed motion to enforce the stipulated judgement against Bango Corp. ("Petitioner") is **GRANTED.** The Court finds that Petitioner has breached the stipulated judgment filed on August 21, 2023. Petitioner is ordered to pay County $15,200 in civil penalties and $3,550 in attorney's fees.

The proposed order submitted by County with its moving papers is deficient in several respects, including the fact that the text "County requests the Court" does not belong in an order. County

shall prepare a written order consistent with this ruling and compliant with California Rules of Court, rule 3.1312.

## I. Background

Petitioner, a cannabis grower, was a participant in the Sonoma County Penalty Relief Program, which permitted unlicensed growers to continue operating while bringing their businesses into compliance with the Cannabis Land Use Ordinance, adopted on December 20, 2016. On September 13, 2022, County issued an administrative order assessing monetary penalties for code violations on property used by Petitioner (the "Property") and removing him from the Penalty Relief Program. On October 3, 2022, Petitioner petitioned for a writ of mandate preventing County from enforcing the September 13 order. The Court issued a TRO on October 26, 2022, but vacated it and denied a preliminary injunction on January 5, 2023.

On June 27, 2023, County and Petitioner entered into the stipulated judgment that gives rise to the instant motion (the "Judgment"). The Court signed the Judgment on August 21, 2023. (Rickett Dec., Exh. A.) As relevant here, it provided that Petitioner would demolish an unpermitted barn on the Property by May 30, 2023. (Rickett Dec. ¶9 and Exh. A, ¶¶ 1(b), 1(c).) It also provided that Petitioner would be subject to a penalty of $100 per day for each code violation that continued to exist on the Property after any breach of the Judgment by Petitioner. (Rickett Dec., Exh. A, ¶ 4(a).)

In mid-May of 2023, the owner of the Property (the Rosemarie B. Barnwell Trust, not a party to this litigation) requested a time extension to bring the barn into code compliance. (Rickett Dec., ¶ 10.) The County agreed to forbear any enforcement activities until August 21. (*Ibid.*) When the owner had not taken any action by August 28, County notified the owner and Petitioner that no further time would be granted, and that Petitioner "now must meet that term of the 2023 Stipulated Judgment and demolish [the barn], immediately, with the proper demolition permit in place." (Rickett Dec., ¶¶ 11-12 and Exh. B.) Petitioner applied for a demolition permit on August 31, 2023; it was issued on September 8. (Rickett Dec., ¶¶ 13-14.) However, Petitioner took no further action to demolish the barn. (Rickett Dec., ¶ 24.)

On October 16, 2023, County informed Petitioner, through his counsel, that Petitioner was deemed late in demolishing the barn as of October 1. (Rickett Dec., Exh. D.) County issued several invoices for a civil penalty accruing at $100 per day starting on October 1. (Rickett Dec., Exhs. E and F.) On March 4, 2024, County conducted an inspection and "confirmed the barn violation had been abated." (Rickett Dec., ¶ 20.) County's final invoice to Petitioner, sent on that same day, is for $15,200, for a "Start Date" of October 1, 2023 and a "Daily Penalty" of "$100.00 per day until the abatement verification inspection." (Rickett Dec., Exh G.)

No payment has been made. (Rickett Dec., ¶ 24.) By the instant motion, County seeks an order requiring Petitioner to pay the outstanding civil penalty and reimburse County's attorney's fees arising from its steps to enforce the Judgment.

## II. The motion is unopposed.

The moving papers in the instant motion were served by email on Petitioner's counsel on April 29, 2024, at the email address that appears on counsel's page on the California State Bar website. Opposition was due on June 12, 2024. (CCP § 1005(b) [nine court days before June 26 hearing; June 19 was court holiday].) No opposition was filed as of June 21.

## III. Analysis

### A. Civil penalties

The Judgment provides that "Petitioner shall demolish the unpermitted barn." (Rickett Dec., Exh. A, ¶ 1(c).) It also provides, in pertinent part:

> "If Petitioner fails to meet any of the deadlines to Legalize any Code Violations as set forth in Paragraph 1, and/or in the manner set forth therein, then Petitioner will be in Breach of this Stipulated Judgment and Petitioner shall pay the County a penalty of $100, per day ('the Penalty Payment'), per violation, that exists on the Property as of the date of the Breach, and continuing to accrue daily until that violation is legalized and abated. The Penalty Payment for the violation(s) will end only when the County has verified the violation(s) has been abated."

(Rickett Dec., Exh. A, ¶ 4(a).) By failing to remit the penalty payment described in that paragraph to County, Petitioner has breached the Judgment.

County's choice of October 1, 2023 as "the date of the Breach" – that is, as the start date of the period for which it seeks the $100/day penalty – is somewhat arbitrary. County's counsel explains that it was "approximately 30 days after the August 28, 2023, notification to Petitioner that Owner was not going to take the necessary steps to legalize the barn," and that is certainly true. (Rickett Dec., ¶ 15.) However, counsel also states that "[i]t was also 6 weeks after the demolition permit had been issued to Petitioner, allowing it plenty of time to actually demolish the barn." (*Ibid.*) That is inconsistent with counsel's declaration that "[t]he permit was issued to Petitioner on September 8, 2023." (Rickett Dec., ¶ 14.) From September 8 through October 1, inclusive of both dates, was 24 days, or a bit over three weeks. However, whether or not 24 days was "plenty of time to actually demolish the barn," the Court finds that it was plenty of time to *start* demolishing the barn, or at the very least to take some affirmative step directed at doing so, for example moving demolition equipment onto the Property. But counsel declares that after the permit was issued, "no known action was forthcoming by Petitioner." (Rickett Dec., ¶ 14.) As there is no indication that Petitioner took any action suggesting that it so much as intended to demolish the barn within 24 days of acquiring the permit, the Court finds the October 1, 2023 date to be a reasonable estimate of when Petitioner breached paragraph 1(c) of the Judgment. (Rickett Dec., Exh A.)

The $15,200 figure is the total amount reflected by the final invoice County sent to Petitioner on March 4, 2024, after the demolition was complete. (Rickett Dec., Exh. G.) The invoice indicates that the "Start Date" was October 1, 2023, and that it represents 152 days of non-compliance at "$100 per day until the abatement verification inspection." County's counsel declares that the inspection

occurred on March 4, 2024, the same day as the invoice date. (Rickett Dec., ¶ 20.) From October 1, 2023 through March 4, 2024, inclusive of both dates, is 156 days. However, the Court will grant County's request for an order that Petitioner pay County $15,200 in civil penalties. (NOM at pp. 1-2.)

**B. Attorney's fees and costs**

The Judgment provides, in pertinent part:

> "In the event Petitioner breaches this Stipulated Judgment and the County files any action to enforce this Judgment, nothing in this Stipulated Judgment shall be construed as to limit the County's right and ability to seek recovery of its attorney's fees incurred in this litigation, and/or its attorney's fees incurred in any enforcement action commenced to enforce this Judgment."

(Rickett Dec., Exh. A, ¶ 10.) Pursuant to this provision, County requests recovery of its attorney's fees connected with the instant motion.

County's counsel declares that she has spent 12.5 hours on this matter, including time spent reviewing the case file, communicating with Petitioner's counsel and County staff, and preparing the moving papers. (Rickett Dec., ¶ 25.) The Court agrees that all of these items relate to an "enforcement action commenced to enforce this Judgment," and that counsel's billing rate, $284/hour, is reasonable.

Counsel requests compensation for an additional two hours for oral argument. Since the instant motion is unopposed, it is likely that there will be no oral argument. Accordingly, the Court will not award the additional compensation at this time. If oral argument takes place, counsel may ask the Court to revisit this issue.

Attorney's fees are awarded in the amount of $3,550.

**IV. Conclusion**

The motion is GRANTED. The Court finds that Petitioner has breached the Judgment by failing to pay the civil penalty. Petitioner shall pay County $18,750, consisting of $15,200 in civil penalties (Rickett Dec., Exh. A, ¶¶ 4(a) and 4(b)), and $3,550 in attorney's fees (Rickett Dec., Exh. A, ¶¶ 4(c) and 10).

**4. <u>SCV-271089, Garcia v Ortega</u>**

Plaintiff Elizabeth Garcia ("Plaintiff") moves for an order granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement") reached between Plaintiff and Defendants Lola's Market, Inc. and David Ortega ("Defendants"); approving the proposed Notice of Class Action Settlement; provisionally certifying the proposed class for settlement purposes; appointing Plaintiff as the class representative; appointing Matern Law Group, PC as Class Counsel; appointing Phoenix Class Action Administration Solutions as the settlement administrator; directing Defendants to furnish certain information about proposed class members; and scheduling the final approval hearing. The motion is DENIED. Due to the lack of opposition, the Court's minute order shall constitute the order of the Court.

The hearing on this motion was continued to allow Plaintiff to submit supplemental briefing addressing several concerns posed by the Court in the Court's February 16, 2024 Minute Order. The Court incorporates that minute order into this ruling. Plaintiff's counsel submitted a supplemental declaration which provides further information in response to some of the concerns raised by the Court. However, the information provided is still insufficient to satisfy the Court that the investigation and discovery are sufficient to permit counsel and the court to act intelligently or that this settlement is within the ballpark of reasonableness.

Plaintiff's counsel has not provided sufficient information regarding the extent of discovery conducted or reviewed, nor has counsel explained the evidence relied upon to determining the validity of Defendants' defenses and the strength of Plaintiff's causes of action. Plaintiff's counsel makes general representations about what the Defendants "argue" and "claim" in defense, but has provided no explanation regarding whether these arguments and claims were supported by evidence.

Plaintiff's counsel makes similar generalized statements regarding the contemplated risks associated with moving forward with this matter. Counsel has simply explained to the Court that counsel contemplated certain risks which are associated with most litigation, such as extensive document review, witness cooperation, and the potential for not succeeding all claims. However, counsel has not substantiated these representations with evidence supporting counsel's analysis of how these potential risks are anticipated to manifest in this particular case. Moreover, counsel has stated "the Class Representative and MLG are confident of the merits of this case and their ability to prevail at both class certification and trial…" (Plaintiff's MPA, p. 11.) There is insufficient evidentiary support of these representations for the Court to effectively determine the reasonableness of this settlement.

Counsel's representations regarding the fairness of this settlement are based on an analysis of a small, randomized sample consisting of only 25% of Defendants' payroll and punch data. The analysis chart of this data provides the raw numbers, which is beneficial when determining reasonableness, but is not alone enough of an investigation into the strength and weaknesses of the case to support preliminary approval of the settlement. Based on the lack of evidence supporting this motion, a reasonable conclusion is that counsel's investigation into the strengths and weaknesses of this case did not go much further than analysis of this 25% sample of data.

Counsel requests $228,333.33 in attorney's fees, but represents that counsel spent 90.4 hours on this matter, totaling $49,707.50 in billable time. There is no explanation provided for how designating $228,333.33 for only 90.9 hours of time is reasonable or fair. That would equate to $2,511.92 per hour. This amount does not include counsel's claimed costs, which is an additional $14,765.40.

There is still insufficient evidence provided to the Court for the Court to apply the presumption of fairness. Plaintiff's counsel has still not articulated the specific reasons why the settlement amount sufficiently addresses the grievances in the complaint. The Court's previous statement remains true: "The bulk of Plaintiff's motion consists of generalized statements and conclusions that can be made in any wage and hour litigation. MLG has not provided specific reasons why this particular litigation presents challenges, beyond the general uncertainty, risk, and cost of litigation." Furthermore, designating one third of the settlement to attorney's fees does not appear fair given counsel's actual time spent on this matter. Counsel has failed to show how a

settlement of $685,000 when Defendants' maximum liability was calculated at over one hundred million dollars is within the ballpark of reasonableness.

## 5. <u>Calderon v Kia Motors America</u>

Matter is dropped from calendar at request of moving party.