TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 6, 2025, 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) 521-6725**, 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. 23CV01431, Friedman v. Forces of Nature, Inc., a corporation

Cross-Defendant Peter Friedman, CPA ("Friedman"), moves for summary adjudication of the Cross-Complaint filed by Cross-Complainant FON, Inc. ("FON") and Peter Klapper ("Klapper")(together "Cross-Complainants") on the grounds that the causes of action therein have no merit. **The motion is DENIED.**

1. Cross-Complaint

On March 21, 2024, Cross-Complainants filed their Cross-Complaint against Friedman alleging that Friedman was hired by Cross-Complainants to serve as an expert witness, handle FON's accounting needs after an extensive IRS audit, to serve as FON's accountant, and eventually as its defacto CFO. Cross-Complainants allege that Friedman filed an Offer-in-Compromise ("OIC") for FON's principal, Klapper, that was badly botched and ultimately rejected, causing $2.2 million in damages to Klapper. The Cross-Complaint further alleges that Friedman failed to follow through on a FOIA request, causing further damages; and that he grossly overbilled FON while

hiding it from Klapper. The Cross-Complaint contains causes of action for breach of contract and breach of fiduciary duty.

2. Undisputed Facts

Friedman is a licensed CPA in California and owns an accounting practice, Peter H. Friedman CPA, of which he is the principal. (Cross-Complainants' Undisputed Material Fact ["UMF"] 1.) FON, Inc. ("FON") is a pharmaceutical corporation which manufactures and retails over-the-counter homeopathic medicine. (UMF 2.) Klapper is the founder and President of FON. (UMF 3.)

From at least 2005 to 2016, Klapper held offshore accounts subject to IRS foreign tax reporting requirements. (UMF 4.) In 2009, Klapper had at least two calls with tax attorneys at Farella Braun + Martel, LLP to discuss his IRS foreign reporting obligations. (UMF 5.) In 2012, the IRS began an audit of Cross-Complainant's tax forms, particularly as it related to Cross-Complainant's foreign reporting obligations. (UMF 6.) The IRS audit concluded in 2017, with Klapper being assessed approximately $6,000,000 in tax and penalties. (UMF 7.) For all the years of the audit, Klapper's tax filings were prepared by accounting firm, Shea Labagh Dobberstein, CPA, Inc. ("SLD"). (UMF 8.) SLD defended Klapper before the IRS. (UMF 9.)

Friedman did not represent Klapper at audit. (UMF 10.) Following the IRS determination, Klapper brought an action against SLD in San Francisco Superior Court Case No.: CGC- 17-563176 for, *inter alia*, professional negligence ("SLD Litigation"). (UMF 11.) Klapper was represented in the SLD Litigation by Gregory Rougeau, Esq. and Christopher Holland, Esq. (UMF 12.)

As part of the research for his expert report, Friedman submitted a Freedom of Information Act ("FOIA") Request on July 25, 2018 to the IRS for all documents and records related to Klapper. (UMF 16.) The IRS produced documents in response on December 11, 2018. (UMF 17.)

Friedman was paid for his services through Klapper's retainer to Mr. Holland and Mr. Rougeau. (UMF 19.) After the retainer was exhausted, Friedman billed Klapper directly for his services. (UMF 20.)

In March 2022, Klapper assigned to Friedman check writing authority for FON to pay monthly bills. (UMF 25.) Friedman prepared Klapper's personal tax returns, but did not ever have check writing authority for Klapper. (UMF 26.)

After years of Klapper making payments to the IRS in accordance with his installment agreement, Friedman prepared an Offer In Compromise ("OIC") between Klapper and the IRS to settle Klapper's outstanding debt to the IRS. (UMF 28.)

Klapper did not make the required payments for either July 2023 or August 2023. (UMF 31.)

Within the month, Klapper had retained the services of Bob Withrow, CPA. (UMF 36.) Friedman submitted an invoice to Klapper on July 6, 2023. Klapper did not approve payment or pay this invoice or any subsequent invoice for Friedman's work. (UMF 37.)

Prior to July 6, 2023, Klapper had approved payment for Friedman's invoices for Friedman's work. (UMF 38.)

Klapper provided verified responses to Friedman's Special Interrogatories on April 8, 2025. In response to Friedman's request that Klapper state all facts in support of Klapper's cause of action for breach of contract, Klapper responded: "Between May of 2018 and July of 2023, Friedman breached his oral agreement with Mr. Klapper to manage his Offer-in-Compromise ("OIC") with the IRS by failing to inform Mr. Klapper about the terms of OIC with the IRS, the periodic payment plan as part of the OIC, and the results of Friedman's Freedom of Information Act ("FOIA") request to the IRS on behalf of Mr. Klapper. Freidman signed Mr. Klapper up for a periodic payment plan with the IRS as part of Mr. Klapper's OIC without first consulting or advising Mr. Klapper, and then subsequently failing to pay Mr. Klapper's monthly payments and associated fees for two months while Friedman was still in control of Mr. Klapper's finances and was still managing his OIC on Mr. Klapper's behalf. Friedman also made numerous errors on the paperwork he submitted to the IRS on behalf of Mr. Klapper. As a result, the IRS dismissed the OIC due to Friedman's failure to pay the period payment, leaving Mr. Klapper liable for the full amount of his outstanding tax obligation(s) to the IRS. As to FON, Friedman agreed to provide bookkeeping services to FON at a rate of $80/hour, and instead billed FON at a rate of $300/hour for his bookkeeping services."

On April 8, 2025, Klapper responded to Friedman's Request for Statement of Damages stating :"General Damages: (at least) $7,600,000.00 Peter Friedman – Overbilled invoices – (at least_ $500,000.00SLD Litigation – Excessive Retainer – (at least) $500,000.00Tax Liability, Fees, and Penalties from Missed OIC Payments – (at least) $4,500,000.00 Mishandling FOIA Request – (at least) $2,000,000.00Professional Fees to Cure Friedman's Accounting Errors – (at least)

$100,000.00 Punitive Damages – (at least) $10,000,000.00 Attorneys' Fees – (at least) $120,000.00." (UMF 40.)

Klapper provided verified responses to Friedman's Special Interrogatories on April 8, 2025. In response to Friedman's request that Klapper state all facts in support of Klapper's cause of action for breach of fiduciary duty, Klapper responded: "While the IRS produced thousands of pages of documents in response to Friedman's FOIA request, most of those records were heavily redacted, and the IRS withheld hundreds more documents. Friedman failed to contest the IRS's document withholdings or timely appeal their production, and in doing so deprived Mr. Klapper of crucial information and data for the SLD litigation." (UMF 41.)

The OIC was for approximately $1.85 million. (UMF 42.)

In or about May of 2023, FON switched its human resources software from ADP to Trinet. FON continues to use Trinet to this day. (UMF 44.)

Friedman and Heilig attended demonstrations by Trinet sales representatives. (UMF 45.) Friedman did not receive any compensation from Trinet for referring FON to Trinet. (UMF 46.)

Walsh Carter & Associates ("Walsh Carter") is the insurance brokerage which procured commercial general liability, automobile liability, and umbrella liability insurance for FON. Friedman requested FON admit that Friedman did not receive wine or other gifts from Walsh Carter. In its verified response, FON stated: "Friedman received kickbacks from FON's vendors, at FON's expense. Friedman switched FON's insurance carrier without obtaining any other competitive bids from other insurance companies. For his referral, Friedman received a case of wine and other gifts from Walsh Carer, FON's insurance broker. FON later discovered that the new insurance carrier overbilled FON over $15,000 for their services." FON identified Friedman, Klapper, and Rick Virk of Walsh Carter as witnesses and identified the following documents as support" "FON's invoices from Walsh Carter." (UMF 47.)

Michael Frazho was a former COO of FON. (UMF 49.) Patricia Schneider was a former COO of FON. (UMF 50.)

Klapper provided verified responses to Friedman's Special Interrogatories on April 8, 2025. In response to Friedman's request that Klapper state all facts in support of Klapper's contention that Friedman received compensation from Trinet for referring FON Klapper responded: "Friedman was responsible for switching FON's payroll service from ADP to Trinet, although FON had not had

any prior issues with using ADP. Trinet's payroll service proved to be riddled with problems, which created massive billables for Peter Freidman to rectify. Peter Klapper later learned from visiting Trinet's website that Trinet offered a referral fee for referring new clients, and that Friedman had likely received this fee for referring FON to Trinet." (UMF 51.)

FON provided verified responses to Friedman's Form Interrogatories, Set One. On September 30, 2024. In its responses, FON states: "Cross-Defendant Friedman's rate sheet listed in his Engagement Letters with FON included his standard rate of $300/hour for tax preparation services. However, Defendant Friedman verbally agreed with FON that for standard bookkeeping services, he would only charge $80/hour. After a reasonable search and diligent inquiry, FON is unable to identify any documents responsive to this request in its custody, possession, or control. There are no written documents memorializing Friedman's verbal agreement with FON to provide bookkeeping services at $80/hr. (UMF 53.)

Klapper provided verified responses to Friedman's Form Interrogatories, Set One, On September 30, 2024. In his responses, Klapper states:"Mr. Klapper was damaged by Friedman's failure to act as a reasonably careful accountant would have with respect to informing Mr. Klapper about the terms of his Offer-in-Compromise ("OIC") with the IRS, the periodic payment plan as part of the OIC, and the results of Friedman's Freedom of Information Act ("FOIA") request to the IRS on behalf of Mr. Klapper. Freidman signed Mr. Klapper up for a periodic payment plan with the IRS as part of Mr. Klapper's OIC without first consulting or advising Mr. Klapper, and then subsequently failing to pay Mr. Klapper's monthly payments and associated fees for two months while Friedman was still in control of Mr. Klapper's finances and was still managing his OIC on Mr. Klapper's behalf. Friedman also made numerous errors on the paperwork he submitted to the IRS on behalf of Mr. Klapper. As a result, the IRS dismissed the OIC due to Friedman's failure to pay the period payment, leaving Mr. Klapper liable for the full amount of his outstanding tax obligation(s) to the IRS. Friedman never advised Mr. Klapper that he had signed him up for a periodic payment plan, and never disclosed the amount or terms of the payment plan. Moreover, Friedman grossly mismanaged his FOIA request on behalf of Mr. Klapper. Mr. Friedman filed a FOIA request on Mr. Klapper's behalf in 2019 after the IRS audit, to gain information to assist in the SLD litigation and evaluate how SLD performed during Mr. Klapper's IRS audit. While the IRS produced thousands of pages of documents in response to Friedman's FOIA request, most of those records were heavily redacted, and the IRS withheld thousands more documents. Friedman failed to

contest the IRS's document withholdings or timely appeal their production, and in doing so deprived Mr. Klapper of crucial information and data for the SLD litigation." Klapper identified "Mr. Klapper's and Mr. Friedman's correspondence regarding the IRS Offer-in-Compromise" as all supporting documents. (UMF 54.)

On April 27, 2023, Friedman emailed Klapper proposed Offer-In-Compromise terms which estimated Klapper's net worth at $2,505,500 and estimated the settlement from the SLD litigation at $2,000,000. (UMF 55.)

On November 30, 2020, FON filed a lawsuit against Michael Frazho in Sonoma Superior Court Case No.: SCV 267461 for, inter alia, breach of contract and breach of fiduciary duty. (UMF 57.)

Klapper threatened to sue attorney Jay Weil and law firm Sideman Bancroft at the end of his professional relationship with them. (UMF 58.) Klapper settled with Sideman Bancroft before filing formal legal action for approximately $40,000. (UMF 59.)

Klapper provided verified responses to Friedman's Special Interrogatories on April 8, 2025. In response to Friedman's request for all documents which support Klapper's contention that Friedman received payment from Trient in the form of a referral fee, Klapper responded: "Responding Party designates the following documents as responsive to this interrogatory: See Trinet's website (https://assessment.trinet.com/w3qtpjc3?L=Owned+Web&JC=External). (UMF 60.)

As discussed below the above facts fail to establish there is no triable issue of material fact and that Friedman is entitled to judgment as a matter of law.

3. First Cause of Action - Breach of Contract (FON against Friedman)

The first cause of action is for breach of contract brought by FON against Friedman alleging they entered into written contracts for Friedman to provide bookkeeping services for $80 an hour and expert witness services at $300 per hour. FON alleges Friedman charged $300 per hour for simple work. Friedman's wife charged $85 per hour but Friedman admitted to doing most of the work for $300 per hour. (Klapper Decl. Exh. 2 - *Invoices to FON*; Young Decl., Exh. 6 - 2/12/25 Friedman Dep. 102:2-104:10; Young Decl., Exh. 8, Klapper Dep. - 28:19-30:24.)

Friedman argues that the written engagement letters for 2018 through 2022 for accounting services bely Defendants' allegations that Friedman agreed to charge $80 an hour. At his

deposition, Friedman testified that he did not have an agreement with Klapper personally for accounting not connected to tax preparation. (Friedman's Exhibit L, 59:1-12.) As a principal of his firm, Friedman's contract with FON to prepare its tax returns indicates he would earn $300 to $425 per hour. (*Id.,* Exhibit Q.)

In opposition, Cross-Complainants argue that Friedman had a separate oral agreement for Friedman to provide financial services, including serving as an interim CFO, and to provide HR services. At his deposition, Friedman testified that he sent emails to various clients as the interim CFO of FON. (Young Decl., Exhibit 6.) At Klapper's deposition, he testified that he and Friedman agreed that Friedman should have been charging $80 per hour for bookkeeping services and that Friedman had agreed to lower the rate but never did. (*Id.,* Exhibit 8.) Friedman's engagement letter does not address general bookkeeping or CFO services.

The court does not weigh evidence on a motion for summary judgment. Here there is competing evidence creating triable issues of material fact regarding the agreed upon hourly wage.

4. Third Cause of Action – Breach of Contract (Klapper against Friedman)

The third cause of action is for breach of contract brought by Klapper against Friedman. It alleges Friedman signed Klapper up for a $77,000 per month periodic payment without telling him, and then failed to pay that amount for two months while Friedman still had total control of accounts payable. Klapper alleges the IRS involuntarily dismissed the OIC due to Friedman's failure to pay the periodic payment and other errors within the OIC paperwork.

i. FOIA

Friedman argues that Klapper's cause of action for breach of contract is barred by the four-year statute of limitations. However, Friedman argues over the FOIA request, which was submitted on July 25, 2018 to the IRS for all documents and records related to Klapper. (UMF 16.) The IRS produced documents in response on December 11, 2018. (UMF 17.) Klapper's cause of action is based upon the OIC, not on the FOIA request.

ii. OIC

Cross-Complainants allege that following FON's $6 million tax liability, they sued their former accountants SLD. Cross-Complainants intended to recover the amount owed to the IRS because of SLD's failures. That amount was to be paid to the IRS in an OIC, which Friedman handled. The OIC was an offer to pay $1.85 million on the $6 million due, which was paid down to

$4 million. If accepted, the OIC would have saved Klapper $2.2 million. Cross-Complainants allege that Friedman made numerous errors, including sloppy errors like spelling Klapper's name wrong. In Friedman's negotiations, he agreed with the IRS on FON's behalf to pay a $77,000 periodic payment without advising Klapper on the difference between periodic payments and lump sum payments. Cross-Complainants allege Friedman did not inform Klapper of the periodic payments, which were missed after Friedman left FON. As a result, Klapper owed over $345,000 in back payments, which he could not afford to pay, which resulted in the OIC being withdrawn. Klapper alleges he is now facing the full $4 million tax liability.

Friedman also argues that he did not breach any contract regarding the management of the OIC. He acknowledges that a breach of contract is usually a question of fact but argues here summary judgment is appropriate because reasonable minds cannot differ on the material facts at issue.

Friedman's memorandum contains multiple expansionary statements about the evidence provided. For example, it states: "Friedman prepared the initial OIC offer paperwork to the IRS and submitted it in June 2023. [UMF 13,15.]" (Memo, 9:14-15.) UMF 13 states: "In spring 2018, Mr. Rougeau contacted Friedman to potentially prepare an installment agreement between Klapper and the IRS." UMF 15 states: "The scope of Friedman's assignment under the Kovel agreement expanded to expert services, including the preparation of an expert report." Friedman's deposition testimony states that in spring 2018, Mr. Rougeau contacted Friedman to potentially prepare an installment agreement between Klapper and the IRS. (Gopal Decl. ¶ 4, Exhibit L, Friedman Depo. 41:9-13.) The scope of Friedman's assignment under the Kovel agreement was expanded to expert services, including the preparation of an expert report. (Gopal Decl. ¶ 4, Exhibit L, Friedman Depo. 78:11-25.) This evidence indicates that Friedman probably prepared the OIC but it doesn't establish when the OIC was submitted. Nor does it establish that the OIC offer was approximately $1.8 million as stated in the memo. (Memo., 9:15.)

UMF 43 states: "At the time the OIC was submitted, Klapper did not have the funds to make the $1.85 million dollar payment." In the cited deposition testimony, Friedman states that at this time, it was unsure if Klapper would accept the settlement and he had not gotten the cash yet on the settlement. (Friedman's Exhibit L, 173:22-25.) It is not clear if other assets were available.

UMF 29 states: "The OIC terms included a payment of $1,850,000 and a monthly payment of $77,000 while the offer was being considered. Klapper was informed of and agreed to these

terms." In his memo, Friedman represents that this same evidence shows that, "while the OIC was being considered by the IRS, Friedman included in the terms of the OIC that Klapper would make $77,000 in monthly installment payments to this outstanding tax, penalty, and interest owed to the IRS." In his cited testimony, Friedman stated that the OIC terms included an initial payment of $37,000 and subsequent monthly payments of about $77,000. (Exhibit L, Friedman Depo, 173:2-13.) Friedman testified that Klapper consented to the arrangement with the understanding about the SLD settlement proceeds. (*Ibid*.)

Klapper missed the July 2023 and August 2023 payments. (UMF 31.) Friedman sent letters terminating his services with Cross-Complainants on August 31, 2023. (Friedman's Exhibits F, G.) The termination letter to Klapper stated Friedman would be sending a thumb drive with the OIC documentation. (Friedman's Exhibit F.)

Friedman argues that his only duty to Klapper was to file the OIC. However, Friedman has not established he did not make errors in the OIC paperwork and that he properly informed Klapper of required payments, or was not required to make necessary payments either by requesting checks from Klapper or otherwise.

In his memo, Friedman states he did not have check writing authority for Klapper, and Klapper acknowledged his responsibility to make the payments. In deposition, Friedman testified he only had check writing and signing privileges for FON. (UMF 26.)

In opposition, Klapper provides the transaction history showing that on June 22, 2023, Friedman submitted the OIC to the IRS with the application, the initial payment, and supporting documentation. (Friedman Decl. ¶ 10, Exhibit I; Klapper Decl. Exh. 3 - *6/29/23 OIC Payments*.) Friedman states that he requested this check from Klapper. UMF 30 cites to the Friedman deposition "11-13." Pages 11 to 13 have not been provided.

Friedman also argues that Klapper has failed to produce evidence of damage as a result of the OIC. Friedman's argument shifts the burden to Klapper to prove damages. He argues, "Klapper provides no basis for the $4.5 million damages claim, no admissible evidence to support this figure, no proof of any payments made, nor penalties assessed arising out of the OIC. Klapper's interrogatory responses are devoid of any facts to support the amount claimed so the burden shifts to Klapper to show there is a triable issue of material fact sufficient to defeat summary judgment/adjudication." This is not the standard. The burden on a motion for summary judgment or

adjudication requires the movant to affirmatively stablish the lack of damages through legal authority and evidence. The movant cannot just argue no evidence has been produced in order to shift that burden; the movant must make a showing no evidence was produced.

Klapper states that Friedman was first retained to serve as an expert witness in Klapper's case against SLD. (Klapper Decl. ¶4.) In addition, he objects that Friedman's evidence is based upon Friedman's deposition and not the actual Kovel agreement. The objection based upon best evidence is SUSTAINED.

Klapper testified that he only learned about the $77,000 payments when he received notices from the IRS in October of 2023 looking for the payments. (Cross-Complainants' Exhibit 8, Klapper Depo., p. 100-102.) Klapper testified that, as a result, he made about three payments but because he had missed some payments the OIC was withdrawn. (*Ibid*.)

Friedman also testified that at the time the OIC was submitted, it was unsure if Klapper would accept the settlement and he had not gotten the cash yet on the settlement agreement. (Friedman Depo., 174:22-25.) Friedman construes this to mean that Klapper did not have the funds to make the $1.85 million dollar lump sum payment.

Klapper disputes this. He cites an April 27, 2023 email in which Friedman calculated that Klapper had $2,505,550 in cash, equity in a Thailand condo, and in the value of FON. (Friedman's Exhibit H.) This calculation included $2 million in cash from the settlement. (*Ibid*.)

Friedman's evidence and authority does not establish he did not have a duty to make sure the OIC settlement payments were made to the IRS while he worked for Klapper. In addition, Klapper provides contrary evidence. Therefore, a triable issue remains.

3. Second and Fourth Causes of Action – Breach of Fiduciary Duty

The second cause of action is for breach of fiduciary duty brought by FON against Friedman. It alleges Friedman acted on FON's behalf for purposes of tax, accounting, bookkeeping, accounts payable, and accounts receivable as the CFO of FON. FON alleges Friedman failed to act as a reasonably careful accountant or CFO would have acted with respect to maintaining FON's financial health.

The fourth cause of action is for breach of fiduciary duty brought by Klapper against Friedman. It alleges Friedman failed to act as a reasonably careful accountant would have acted

with respect to informing Klapper about the OIC, the periodic payment plan, and following up on the results of the FOIA request.

Friedman argues that he never had a fiduciary duty to either FON or Klapper and that nothing he did or did not do caused either of them damage. Friedman argues he was merely an accountant which does not fall into any of the traditional categories that give rise to a fiduciary duty.

A corporate officer exercising some discretionary authority is a fiduciary. (*GAB Business Services, Inc. v. Lindsey & Newsom Claim Services, Inc.* (2000) 83 CA4th 409, 421 (disapproved on other grounds by Reeves v. Hanlon (2004) 33 C4th 1140, 1154, 17 CR3d 289, 299-300).)

Friedman denies he ever held an officer position in FON, citing the engagement letters to prepare Klapper's personal tax returns, which do not mention the CFO position.

Klapper argues Friedman prepared annual tax returns for FON, managed FON's Quickbooks accounts, and paid FON's monthly bills. (UMF 24.) He ran payroll, handled sales tax payments, and handled employment issues. (Resp. to UMF 24.) He had check-writing authority for FON. (UMF 25.) Friedman represented himself as the CFO, signing his emails with Peter H. Friedman, "interim CFO." (Resp. to UMF 24.) In addition, FON hired a firm to conduct a forensic audit of Friedman's records. (Klapper Decl. Exh. 5 - *Evolution Legal Report*.) The firm found evidence of overbilling, including overbilling resulting from incompetence. (*Ibid*.) The firm also found that Friedman did not properly categorize expenses from his own invoices, indicating that Friedman or his staff did not know how to use Quickbooks or they were trying to hide fraudulent actions. (*Ibid*.) Based upon evidence presented by Cross-Complainants, even if Friedman had met his burden, a triable issue remains.

5. Unclean Hands

Friedman also argues that the entire action is barred by the doctrine of unclean hands. The facts and authority presented are insufficient to grant summary judgment on this issue.

6. Conclusion and Order

The motion is DENIED.

Cross-Complainants' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. 24CV04580, Dormayr v. Black Oak Ranch, LLC

Defendant Black Oak Ranch, LLC ("Defendant") moves for an order permitting the filing of a cross-complaint, which is attached to the motion as Exhibit A. **The unopposed motion is GRANTED.**

Defendant's cross-complaint is against third-party Shooting Star Events, LLC ("SSE"). Defendant alleges causes of action for indemnity, breach of contract, contribution, and declaratory relief. The proposed cross-complaint arises out of the same facts as alleged in the complaint filed by Plaintiff Leo Dormayr.

This action was filed on August 2, 2024. Trial is currently set for March 13, 2026, leaving sufficient time for SSE to become a party to this action.

The motion is GRANTED. Defendant's counsel is directed to submit a written order to the court consistent with this ruling.

3. 24CV07184, Wittman v. Codding

Plaintiff Krishna Wittman ("Plaintiff") moves for an order compelling Defendant Lisa Codding ("Defendant") to provide further responses to Plaintiff's Form Interrogatories, Set One, propounded on January 17, 2025. Plaintiff seeks sanctions in the amount of $2,085.00. **Except for the issue of sanctions, the motion is MOOT. Sanctions are granted in the amount of $1,185.00.**

1. Interrogatories

Specifically, Plaintiff seeks further responses to Form Interrogatory, Set One, Numbers 2.2, 2.5, 2.6, 2.7, and 2.11. Plaintiff argues that Defendant's responses are improperly evasive and their boilerplate objections are meritless.

The interrogatories in question seek Defendant to provide her state, date, and place of birth; her current and past addresses; the name, address, and telephone number of her current and past employers; the name and addresses of schools she has attended starting with high school; and

whether she was acting as an agent or employee for any person at the time of the incident along with a description of her duties.

In opposition, Defendant argues she is an improper party and that the interrogatories violate her right to privacy as she, as a corporate officer, does not incur personal liability for the torts of a corporation. This is a personal injury action arising out of a slip and fall at the Coddingtown Mall that occurred on a Saturday. Defendant states she was not working on that day and had no authority for supervising the mall that day. She also argues that the information sought is irrelevant.

However, Defendant has also provided amended responses. She has now provided responses to the subject interrogatories.

2. Sanctions

Plaintiff seeks $2,085 in sanctions for having to bring this motion.

The sanctions request is brought pursuant to CCP sections 2023.030 and 2030.300(d). Subsection (a) of section 2023.300 provides: "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction 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." (Code Civ. Proc., § 2023.030(a).)

CCP section 2030.300(d) pertains to a motion to compel further responses to interrogatories. It provides: "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, 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." (Code Civ. Proc., § 2030.300(d).)

Here, Defendant provided a further response subsequent to Plaintiff filing the motion, which seems to concede that she should have provided substantive responses. Moreover, her opposition

does not provide authority that such minimally invasive information, that is covered by form interrogatories approved by the judicial council, should be protected by privacy rights because it is her position that she is not personally liable in this action. As such, Defendant has not shown substantial justification for failing to provide responsive information.

Plaintiff's counsel states he spent 2.5 hours preparing this motion. (Henderson decl., ¶11.) His billing rate is $450 per hour. (*Ibid*.) He estimates time spent on any reply and attending the hearing. (*Ibid*.) Based upon this information, sanctions are granted in the amount of $1,185.00.

3. Conclusion and Order

Except for the issue of sanctions, the motion is MOOT. Sanctions are granted in the amount of $1,185.00.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

4. <u>25CV01169, Creekmore v. Town of Tiburon</u>

Defendant Town of Tiburon ("Tiburon") moves pursuant to CCP sections 396b(a) and 397 to transfer this case to Marin County. Tiburon requests $7,650 in attorney fees pursuant to CCP section 396b(b). **The motion is GRANTED. This action shall be transferred to Marin County.**

1. Allegations

Plaintiff Suzanne Creekmore ("Plaintiff") alleges in her complaint that she was hired as a Management Analyst for Tiburon in October 2014. She excelled in her position and was promoted in March 2019 to Director of Administrative Services. In July 2022, Plaintiff learned she was pregnant and informed her supervisor, Town Manager Greg Chanis, that it was a high-risk pregnancy due to the IVF process she had undergone. Plaintiff alleges that after learning of her pregnancy, Tiburon's Finance Manager Troy Bassett began harassing Plaintiff for being pregnant and for scheduling maternity leave the following January. Plaintiff alleges Tiburon's Director of Community Development Dina Tasini soon joined in the harassment. Plaintiff alleges both Bassett and Tasini made disparaging remarks about her physical appearance caused by the pregnancy, her ability to return to work after having the baby, and other inappropriate comments. Plaintiff alleges

that due to the toxic work environment she suffered an acute mental health crisis and her doctor placed her on medical leave. At that time, Deborah Bucci-Muchmore ("Muchmore") of defendant Muchmore Than Consulting, LLC ("MTC") began acting as Tiburon's Interim Human Resources Manager. Muchmore allegedly falsely claimed accommodations were not available to Plaintiff and that Plaintiff's only options were to cooperate with Tiburon's application for disability retirement or to be involuntarily terminated. Plaintiff's complaint alleges various violations of the Fair Employment and Housing Act.

2. Motion to Transfer

CCP section 396b and 397 require transfer of the action if it appears that the action was not commenced in the proper court.

"Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court." (CCP section 396b(a).)

"The court may, on motion, change the place of trial in the following cases: (a) When the court designated in the complaint is not the proper court." … "(c) When the convenience of witnesses and the ends of justice would be promoted by the change." (CCP section 397.)

i. Venue – Joint Employer

Tiburon first argues that MTC is not a proper party to this action as it was not Plaintiff's employer; therefore, that MTC's principal place of business is located in Sonoma County should be disregarded.

Defendant MTC is a limited liability company with its principal place of business in Sonoma County. (Complaint, ¶7.) The complaint alleges that Tiburon and MTC were joint

employers. (Complaint, ¶8.) Plaintiff alleges Tiburon was Plaintiff's "direct" or "general" employer while MTC was Plaintiff's "indirect" or "special" employer. (*Ibid*.) Tiburon argues that MTC was not Plaintiff's employer, arguing that MTC was improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in this county.

Tiburon argues that, as it was Plaintiff's employer, MTC would have to be a "joint employer" to qualify as an employer under the alleged FEHA causes of action. Tiburon cites a *Martinez v. Combs* (2010) 49 Cal.4th 35, for three types of employer relationships. *Martinez* involved Labor Code violations for failure to pay the minimum wage. That court referred to the Industrial Welfare Commission's ("IWC's") definition of the employment relationship, as contrasted with the common law definition. (*Id.,* at 52.) It found that the applicable IWC wage order's definitions of employment relationship do not apply in actions under Labor Code section 1194. (*Id.,* at 66.) The IWC's definition of "employer" does not impose liability on individual corporate agents acting within the scope of their agency. (*Ibid*.)

In *Martinez,* the appellate court looked to an applicable wage order to define "employer." "Employer" meant "any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. (*Id.,* at p. 62.) The appellate court noted it had previously applied the common law definition for a claim under Labor Code section 1194. (*Id.,* at p. 63.) When a statute refers to employees without defining the term, courts generally apply the common law test. (*Ibid*.) As defined in wage orders, "employer" means any person who employs or exercises control over the wages, hours, or working conditions of any person," and "employ" means to engage*,* suffer, or permit to work. (*Id.,* at p. 64.) The IWC definition was broad enough to cover straw men or other sham arrangements to impose liability for wages on the actual employer. (*Id.,* at p. 71.) However, in that case, the produce merchant did not exercise control over wages and hours of seasonal agricultural workers who picked strawberries and was thus not their employer. (*Id.,* at p. 72.) This, despite that the merchant unilaterally decided the amount of estimated net proceeds to advance to the strawberry farmer. (*Ibid*.) As noted in *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, using the "suffer or permit to work" definition, a payroll processing service was not a joint employer even though the payroll service exercised control over workers' wages by calculating their pay and tax withholding and by issuing paychecks.

Plaintiff's causes of action are applicable to an employer under the FEHA. Tiburon argues that MTC was not Plaintiff's employer; the complaint itself alleges Tiburon hired MTC to provide management and oversight of Tiburon's human resources functions. (Complaint, ¶29.) Additional allegations only describe MTC's role as human resources support for Tiburon. Tiburon made the ultimate decisions while MTC made recommendations. Tiburon decided to separate Plaintiff from her employment. (Complaint ¶51.) MTC recommended closure of Plaintiff's reasonable accommodation case file. (Complaint, ¶55.) Tiburon submitted an employer-initiated application to CalPERS. (Complaint, ¶56.)

There are no facts alleged in the complaint that show that MTC actually employed Plaintiff. Rather, MTC worked for Tiburon and managed Plaintiff's employment on Tiburon's behalf. MTC did not pay Plaintiff. Nor could it control Plaintiff's work or fire Plaintiff without Tiburon's approval. Therefore, there are no causes of action alleged against MTC that would withstand a demurrer because each requires the defendant to be the plaintiff's employer. As such, pursuant to CCP section 395(a), this court must not consider MTC's residence for the purposes of this motion.

ii. Venue – Residence and Location of Injury

"[T]he superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action." (CCP section 395(a).)

Tiburon argues that virtually all of the alleged unlawful conduct occurred at Tiburon. Plaintiff was employed at Tiburon, which is located in Marin County. In addition, with the exception of Muchmore, the hired consultant, all of the witnesses and the employer identified in the Complaint were based in Marin County. Tiburon argues the convenience of the witnesses and the ends of justice would be promoted by transferring this action to Marin County Superior Court.

iii. Government Code section 12965

In opposition, Plaintiff argues that special venue rules are applicable to FEHA causes of action.

The "general rule" of venue has effect only when no other venue provision applies. Wherever there is a more specific venue statute, the "general rule" is subordinated. (*Brown v. Sup.Ct. (C.C. Myers, Inc.)* (1984) 37 Cal. 3d 477, 483.)

Government Code section 12965 provides: "The superior courts of the State of California shall have jurisdiction of actions brought pursuant to this section, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office." (Gov. Code, § 12965.)

Plaintiff does not argue how this code section supports venue in Sonoma County. Rather, she argues that Tiburon has not met its burden on this motion because it has not addressed this code section.

The plain language of Government Code section 12965 supports venue in Marin County as that is the location of the alleged unlawful practices, where relevant records are maintained and administered, where Plaintiff would have worked or would have had access to the public accommodation but for the alleged unlawful practice.

In its opposition, Plaintiff argues that defendants cannot provide argument regarding Government Code section 12965 because it was not presented in Tiburon's notice of motion as the basis for this motion and because generally new argument is not allowed on reply.

The basis of the motion was for improper venue pursuant, in part, to CCP section 397. "This motion is made on the grounds that this action should proceed in Marin County Superior Court because the injuries alleged in the Complaint occurred while Plaintiff Suzanne Creekmore ("Creekmore" or "Plaintiff") was employed by Tiburon in Marin County, California." The arguments made in Tiburon's memorandum apply equally to section 12965—that Tiburon is located in Marin County and all alleged unlawful conduct occurred there. To require Tiburon to either re-file or re-notice the motion puts form over substance especially since Tiburon notified Plaintiff of the reason for the request and Plaintiff's counsel is fully informed about the applicability of

Government Code section 12965. In addition, Tiburon may respond to Plaintiff's arguments made in opposition.

Accordingly, because Plaintiff's employment and alleged injury causing unlawful employment conduct occurred in Marin County, venue is proper there.

i. Convenience of Witnesses

"The court may, on motion, change the place of trial in the following cases:" … "(c) When the convenience of witnesses and the ends of justice would be promoted by the change."

"'Before the convenience of witnesses may be considered as a ground for an order granting a change of venue it must be shown that their proposed testimony is admissible, relevant and material to some issue in the case as shown by the record before the court.' [Citation.] The declaration or declarations supporting the motion should 'set forth the names of the witnesses, the nature of the testimony expected from each, and the reasons why the attendance of each would be inconvenient.' [Citation.] The purpose is 'so that the court may, from the issues, judge of the materiality of their testimony and afford opposing counsel an opportunity to stipulate to the testimony proposed.'" (*Rycz v. Superior Court of San Francisco County* (2022) 81 Cal.App.5th 824, 836.)

"Convenience of witnesses is shown by the fact that the residence of all the witnesses is in the county to which the transfer of the cause is requested. [Citation.] A conclusion that the ends of justice are promoted can be drawn from the fact that by moving the trial closer to the residence of the witnesses, delay and expense in court proceedings are avoided and savings in the witnesses' time and expenses are effected." (*Id.,* at p. 837.)

Here, the declaration filed by Tiburon states: "This Motion is made in good faith because Town of Tiburon was Plaintiff's employer and is located in Marin County." (Jacob decl., ¶3.)

In emails attached to the declaration of Renee Corona filed with MTC's joinder to the motion, MTC's counsel argued that Marin County is the proper venue because that is where Plaintiff was employed, where her alleged injuries occurred, and where a significant amount of witnesses reside.

Plaintiff argues that Defendants cannot seek to transfer venue under section 397 because they have not answered the complaint.

A motion for change of venue on the ground of the convenience of witnesses will not be entertained when defendant has appeared by demurrer only and has not filed an answer for the obvious reason that until the issues are joined the court cannot determine what testimony will be material. (*Pearson v. Superior Court, City and County of San Francisco* (1962) 199 Cal.App.2d 69, 75.)

In *Gordon v. Perkins* (1928) 203 Cal. 183, the Madera County Superior Court granted the defendant's motion to change venue to Contra Costa County based upon the defendant's residence. Defendant filed a demurrer to the complaint, a motion to change venue, and affidavit of merits in support thereof, alleging his residence was in Contra Costa County. (*Id.,* at p. 184-185.) In opposition, the plaintiff filed his counter-affidavit alleging that the convenience of witnesses and ends of justice would be promoted by retention of the cause in Madera County. (*Id.,* at p. 185.)

The appellate court stated: "When in opposition to a motion for a change to the residence of defendant the convenience of witnesses is alleged, and requires that an action be tried in the county where it was brought, the place of trial will not ordinarily be changed. This rule, however, is subject to the exception that, unless answer has been filed at the time the demand for change of venue is made, a counter-motion to retain the case on such ground will not lie, for the obvious reason that until the issues are settled the court cannot determine what testimony will be material. [Citations.] The court therefore properly granted defendant's motion changing the place of trial to Contra Costa County." (*Ibid*.) Thereafter, defendant filed his answer in Contra Costa County and plaintiff made his motion to change venue back to Madera County, which was granted based upon the convenience of witnesses. (*Ibid*.)

Here, as the pleadings are not settled, a motion to transfer venue based upon the convenience of witnesses is premature.

3. Attorney Fees

"In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that

order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard." (CCP § 396b(b).)

In his declaration, counsel for Tiburon, Morin Jacob, states: "On March 27, 2025, I met and conferred with Plaintiff's counsel, Ms. Seibert, by telephone. During the meet and confer call, I stated my reasons for seeking a motion to change venue (i.e., that facts had not been stated to establish a joint employer relationship between Town of Tiburon and MTC to make venue in Sonoma County proper) and asked counsel for Plaintiff to agree to move venue to Marin County (i.e., the location of the employer, Town of Tiburon). Counsel did not agree to change venue, forcing Defendant to file this motion for change of venue." (Jacob decl., ¶2.) Mr. Jacob states he has spent 7 hours to research and prepare the motion for transfer, including the time spent on meet and confer efforts. (*Id.* at ¶4.) He estimates another 10 hours to review and respond to opposition. (*Ibid*.) His hourly rate is $450. (*Ibid*.)

In addition, counsel for MTC, Renee Corona, states on April 22, 2025, "I held a telephone conversation with Shannon Seibert of Plaintiff's counsel's office wherein we discussed venue. During the call, Plaintiff's counsel denied that venue was improper in Sonoma County and declined to transfer venue to Marin County." (Corona decl., ¶3.)

Ms. Corona states on April 23, 2025, she further summarized in an email to Plaintiff's counsel that Sonoma County was improper venue. (*Id.,* ¶4.) She notified Plaintiff's counsel again that if Plaintiff was unwilling to transfer venue to Marin County, MTC would file a motion to transfer venue and seek attorney fees. (*Ibid,* Exhibit A.) Ms. Corona does not request attorney fees in the joinder.

Plaintiff's counsel had adequate opportunity to stipulate to the transfer of this action. However, based upon Tiburon's failure to cite the applicable venue statute, premature argument over section 397, failure to provide the necessary affidavits for such an argument to succeed, and

failure to clearly explain the connection between Tiburon's argument against MTC being a joint employer and the improper venue, this court exercises its discretion against awarding attorney fees.

4. Conclusion and Order

Based upon the above, venue is proper in Marin County. Accordingly, the motion is GRANTED.

Tiburon's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. MCV-234736, Discovery v. Halvorsen

Plaintiff Discover Bank moves for an order to set aside the judgment entered on April 16, 2015, and the renewal of judgment issued on October 14, 2024, and to dismiss this case without prejudice. **The motion is GRANTED.**

After judgment was entered in this case, information was provided to Plaintiff regarding the underlying account. Following investigation, Plaintiff determined that in the interest of justice and fairness, and also in accordance with Section 473(d), that the Default and Default Judgment entered against Defendant should be set aside, and the matter be dismissed without prejudice. (Declaration of Counsel for Plaintiff, ¶7).

The motion is GRANTED. Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

6. MCV-253670, Looney v. Singh

The unopposed motion of the court-appointed receiver for an Order (i) Approving Final Report and Accounting; (ii) Discharging the Receiver; (iii) Terminating the Receivership, and (iv) Abandoning Books and Records is **GRANTED**. The Court will sign the proposed order lodged with the moving papers.

The receiver has represented that Defendant paid the judgment amount. The receiver seeks approval of his fees and costs in the amount of $2,000. His time was billed at a rate of $300 per hour. The fees and costs are approved.

7. SCV-265109, County of Sonoma v. Stavrinides

Defendant Elias Stavrinides ("Defendant") moves for an order vacating the (Proposed) Order Granting Motion/Petition to Appoint Receiver filed on January 16, 2025. **The motion is DENIED.**

1. Health & Safety Code section 17980.7

Upon review of the memorandum of points and authorities, it appears Defendant's main point of contention is a portion of the January 16, 2025 order appointing a receiver which grants the county's fees and costs on an equal footing with the receiver's fees and costs. Defendant specifically notes paragraph 20 on page 4; paragraph N on page 9; paragraphs 6 and 7 on page 11.

Paragraph 20 on page 4 states: "Petitioner is the prevailing party in this matter and as such is entitled to its attorneys' fees and costs pursuant to Health & Safety Code §§ 17980.7(c)(11) and 17980.7(d)(1)."

Paragraph N on page 9 orders: "To pay the County its attorneys' fees and costs, as the prevailing party, out of the Receivership Estate with the same priority as the Receiver's lien(s), pursuant to Health & Safety Code §§17980.7(c)(11) and 17980.7(d)(1)."

Paragraph 6 on page 11 provides: "IT IS FURTHER ORDERED: that the County, as the prevailing party under California Health and Safety Code section 17980.7(c)(11), California Code of Civil Procedure section1033.5(A)(10), California Government Code section 38773.5(B), and Sonoma County Code 1-7; and is the enforcement agency under California Health and Safety Code section 17980.7 (d), is, subject to Court approval, entitled to recover all of its hard costs; administrative enforcement costs and attorney's fees; and administrative fines and penalties (collectively, the "County's Fees and Costs").

"The County's Fees and Costs also includes fees, costs and expenses incurred before the Receiver was appointed if related to the abatement case on the Property; during the Receiver's appointment; or after the Receiver was appointed if related to the abatement case on the Property; or in the defense or prosecution of any appeal of any order, judgment or other ruling or determination related to or arising out of the receivership case, regardless of whether the appeal is instituted by the

Receiver, Respondents, or any other party, including appeals related to: this Order; any order approving the rehabilitation plan or financing plan for the Property; any order authorizing the sale of the Property; any order approving the Receiver's Fees and the County's Fees and Costs; and any order discharging the Receiver."

Paragraph 7 on page 11 provides: "IT IS FURTHER HEREBY ORDERED that the Receiver may enforce and recover the County's Judgment debt through the same mechanisms and at the same time as the receiver's fees and costs, and may be paid out of the Receivership Estate, as approved by the Court."

Citing *County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657 ("*Quail*"), Defendant raises the issue of the County's payment of fees and costs on a "superpriority" basis. *Quail* involved Health & Safety Code section Health & Safety Code §17980.7, which was amended effective January 1, 2025. Subsection (c)(4)(G) now provides: "(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:" … "(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the enforcement agency or the receiver for services performed pursuant to this article with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located." Therefore, the January 2025 order complies with Health & Safety Code section 17980.7.

2. Notice

Defendant also argues that no proof of service was ever filed showing that equitable interest lienholders, the IRS, Lakeview Loan Servicing, LLC, or TCF Bank were provided notice of the November 20, 2024 hearing. Defendant argues this is contrary to the January 16, 2025 order, which states they received proper notice.

The declaration of Diana Gomez filed on September 3, 2024, shows that service was made upon these lienholders. In addition, Defendant provided any authority of what effect either improper service or an improper proof of service could have on the January 2025 order.

3. Conclusion and Order

The motion is DENIED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

8. SCV-270405, Creditors Adjustment Bureau, Inc. v. Bathe

Defendant David Loyd Bathe ("Defendant") moves to strike paragraph numbers 17 and 23, and item 4 of the prayer with respect to the second, third, and fourth causes of action from the complaint filed March 17, 2022, by Plaintiff Creditors Adjustment Bureau ("Plaintiff"), on the grounds that (1) Section 1717.5 expressly precludes the award of attorney's fees in this action, in which Plaintiff sues as the assignee of an insurance company, State Compensation Insurance Fund ("SCIF"), and (2) the fees are sought pursuant to a written contract, the insurance policy, that does not authorize such fees. **The motion is GRANTED.**

Plaintiff's complaint alleges it is the assignee of insurance company State Compensation Insurance Fund ("SCIF") and is suing Defendant to collect insurance premiums that SCIF claims were due under an insurance policy that SCIF sold to Defendant. The complaint seeks attorney fees under Civil Code section 1717.5.

Subsection (c) of 1717.5 provides: "This section does not apply to any action in which an insurance company is a party nor shall an insurance company, surety, or guarantor be liable under this section, in the absence of a specific contractual provision, for the attorney's fees and costs awarded a prevailing party against its insured."

As the assignee, Plaintiff stands in the shoes of its assignor. As the assignor is an insurance company, section 1717.5 is inapplicable unless the parties' written agreement contains an attorney fee provision. The complaint does not attach a copy of the agreement or otherwise state the parties' written contract contains such a provision. Accordingly, the exception has not been shown to be applicable.

The motion is GRANTED.

Defendant's counsel is directed to submit a written order to the court consistent with this ruling.