**TENTATIVE RULINGS**
**LAW & MOTION CALENDAR**
**Wednesday, September 27, 2023 3:00 p.m.**
**Courtroom 17 – Hon. Bradford DeMeo**
**3035 Cleveland Avenue, Santa Rosa**

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

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

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

**TO JOIN ZOOM ONLINE**:

**D17 – Law & Motion**
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123?pwd=eHRoZTRvaHhoR25Ec21sVVdGem1Tdz09

**TO JOIN ZOOM BY PHONE:**
By Phone (same meeting ID and password as listed for each calendar):
+1 669 900 6833 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** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

**1. MCV-254527, Looney v. Hyperion Public Capital Limited Partnership, a California Limited Partnership**

**Motion to Appoint Receiver to Take Possession and, if Necessary, Sell Judgment Debtor's Liquor License GRANTED.**

**Facts and History**

Plaintiff complains that Defendants, operating a business called Hyperion Public at 2538 Hyperion Ave, Los Angeles, California, entered into a written contract with Plaintiff's assignor, Youngs Market Company ("Youngs") to purchase alcoholic beverages but that although Youngs performed, Defendants breached the contract by failing to pay the amount owed. Plaintiff filed this action to collect the debt, allegedly $6,934.96, plus interest.

Defendants failed to appear, so Plaintiff took their default on April 8, 2021, and obtained a default judgment against them on April 12, 2021, for $9,284.92.

Plaintiff then brought a motion to appoint a receiver to take control of, and sell, Defendants' liquor license. The court denied the motion without prejudice on the basis that Plaintiff had failed to show that less drastic, more conventional methods of collecting on the judgment had been unsuccessful. The court noted, among others, that Plaintiff had shown that Defendants had failed to respond to post-judgment discovery, but Plaintiff had not brought a motion regarding that discovery.

Plaintiff subsequently brought a Motion to Compel Answers to Post Judgment Discovery; and for Award of Monetary Sanctions, which the court granted after the hearing of March 8, 2023.

Plaintiff then once more brought a Motion to Appoint Receiver to Take Possession and, if Necessary, Sell Judgment Debtor's Liquor License. At the original hearing on the motion on July 19, 2023, the court noted that there may be valid basis for granting it but that Plaintiff had failed to provide information regarding any discovery in the wake of the court's order compelling responses to post-judgment discovery. The court continued the receiver motion to August 23, 2023, in order to allow Plaintiff an additional opportunity to provide that information.

At the hearing of August 23, 2023, the court indicated that Plaintiff still had not cured the defects and that the court would deny the motion without prejudice unless Plaintiff cured the defects, however it ultimately continued the motion once more, to September 27, 2023.

**Motion**

This matter has once more come on calendar for Plaintiff's second Motion to Appoint Receiver to Take Possession and, if Necessary, Sell Judgment Debtor's Liquor License, which this court continued from August 23, 2023. Plaintiff moves the court to appoint a receiver to take over and sell Defendants' liquor license #521912 in order to satisfy the judgment entered against Defendants.

The court may appoint a receiver "[a]fter judgment, to carry the judgment into effect." Code of Civil Procedure ("CCP") §564(b)(3). The court may do so to enforce a judgment "where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment." CCP §708.620.

According to CCP §708.630, a judgment debtor's interest in a liquor license may be applied to the money judgment as provided in the section, and the court may appoint a receiver for the purpose of transferring the debtor's interest.

**The Receiver**

The motion is unclear regarding the identity of the proposed receiver. The Notice of Motion states that Plaintiff requests the court to appoint Michael Brewer ("Brewer") but the actual motion states that he wishes to appoint Landon McPherson ("McPherson"), a consultant and broker with CAL ABC License Services ("CALS") as the receiver. The body of the papers also discusses McPherson and Plaintiff attaches a declaration of McPherson as the proposed receiver.

At this point, the court interprets the motion as requesting McPherson be appointed as receiver. The court finds the confusion to be a minor drafting error not material to the outcome of this motion, with no effect on the notice and creating no threat of prejudice. Unless Plaintiff demonstrates otherwise to the court, the court will address this motion as seeking the appointment of McPherson, not Brewer, as receiver.

**Basis for the Receivership**

Plaintiff contends that the license is the primary known asset of Defendants and that efforts to enforce the judgment so far have been in vain. He provides the declaration of himself and McPherson. Looney Dec.; McPherson Dec.

In his own primary declaration, Plaintiff explains that the License is the only asset or Defendants which he can locate. He states that he has searched for, but been unable to find, any bank or deposit accounts or real property in Defendants' names. He states that a search on October 5, 2022, at the time of the prior motion to appoint receiver, indicated that Defendants' business was still open but that a more recent search indicates that it has since closed and that the phone number has been disconnected. He notes that he obtained a writ of execution on February 22, 2022, and another on May 3, 2023, but has been unable to collect on the judgment.

He shows that he sent Defendants letters informing them of the judgment and asking them to pay the judgment, but that he has received no response. He further details that law enforcement agencies will not sell liquor inventory while he adds that in the current state of affairs, restaurant equipment is of reduced value.

McPherson explains his experience brokering liquor licenses in California and working with California Alcoholic Beverage Control, adding that CALS's exclusive business is brokering liquor licenses. He opines that Defendants' license has an estimated value of about $90,000 to $95,000. He also explains his process, which includes posting a bond if required, advising the judgment debtor of the judgment and warning once more that he will seize the license if they do not pay but that if the debtors pay the judgment, he will not seize the license. If he seizes the license, he states, he will file an accounting with the court for approval of the sale and costs and seek an order exonerating the bond and discharging the receiver.

**Concerns and Post-Judgment Discovery**

As this court noted at the original hearing, it had some concerns regarding the value of the license compared to the debt and the results of post-judgment discovery. The court continued the motion to allow Plaintiff to provide information addressing the concerns.

The estimated value of the license, about $90,000, greatly exceeds the total debt of $11,493.64, which includes interest and costs, and Plaintiff had not provided sufficient information to justify the receivership in light of this. Plaintiff now explains that he has completed a thorough search of the judgment debtors and their assets, finding that the business is closed and that the debtors have no real property or other assets which Plaintiff could locate. Looney Dec., ¶¶7-12. Plaintiff shows that it has received no response to several letters sent to the judgment debtors regarding the collection on the judgment.

Plaintiff has now addressed the court's concerns regarding the post-judgment discovery. Plaintiff earlier obtained an order compelling Defendants to respond to the post-judgment interrogatories. In the new papers, Plaintiff demonstrates that it has still received no response to the discovery despite the court order compelling the judgment debtors to respond. Looney Dec., ¶7.

In the end, the court finds granting the motion to be appropriate. The court GRANTS the motion. 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 counsel shall inform the preparing counsel 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.

**2. MCV-259728, Looney v. Family Market, LLC**

**Motion to Compel Answers to Post Judgment Discovery; and for Award of Monetary Sanctions GRANTED.** Sanctions of $60 awarded to the moving party against Defendants.

**Facts and History**

Plaintiff complains that Defendants, operating Family Market at 7475 Bancroft Ave, Oakland, California, entered into a written contract with Plaintiff's assignor, Youngs Market Company ("Youngs") to purchase alcoholic beverages but that although Youngs performed, Defendants breached the contract by failing to pay the amount owed. Plaintiff filed this action to collect the debt, allegedly $2,312.27, plus costs, legal fees, and interest.

Defendants failed to appear, so Plaintiff took their default on January 3, 2023, and obtained a default judgment against them on March 6, 2023, for $3,047.15.

**Post-Judgment Discovery**

Plaintiff served Defendants by mail with post-judgment discovery on March 27, 2023; the discovery included one set of production demands and one set of interrogatories; responses were due on May 3, 3023, within the standard 30 days; however, Defendants have not responded even though plaintiff made efforts to meet and confer.

**Motion**

Plaintiff moves the court to compel Defendants to respond to the post-judgment discovery. Plaintiff also seeks monetary sanctions of $60 in costs.

There is no opposition.

**Substantive Discussion**

Judgment creditors may propound written post-judgment interrogatories and demands for production on judgment debtors. CCP §§708.020(a), 708.030. These may be enforced in the same manner as regular discovery. CCP §§708.020(c), 708.030(a). This applies any time that "a money judgment is enforceable." CCP section 708.010. One limitation is that the judgment creditor may not serve this discovery on a judgment debtor if the latter has, within the preceding 120 days, responded to such discovery previously served under the provisions, or been examined. CCP §§708.020(b), 708.030(b).

Under CCP §§2030.290 and 2031.300, when no response has been made, the propounding party may move to compel responses. The moving party need simply demonstrate that the interrogatories were served, the time has expired, and no response has been made. There is no meet-and-confer requirement for a motion to compel response where none has been made. Nor is there a deadline other than the discovery cut-off, prohibiting the court from hearing a discovery motion within 15 days of trial, which logically would not apply to post-judgment discovery. CCP §§2024.010, 2024.020.

Plaintiff has met its burden. In addition to showing that Defendants have failed to respond to properly served discovery, it meets the requirements for post-judgment discovery in §§708.020(b), 708.030(b). The court GRANTS the motion.

**Sanctions**

According to CCP §§2030.290, 2031.300, 2023.010, and 2023.030, if a party has failed to respond to interrogatories and a production request, the court may impose sanctions of the reasonable costs. If the moving party asks for sanctions that appear reasonably related to the filing costs and the opponent does not refute the reasonableness, the sanctions should be granted. *Ghanooni v. Super Shuttle* (1993) 20 Cal.App. 4th 256.

The sanctions which pro-per litigants may recover is limited to out-of-pocket costs such as paying for legal research, copies, transportation, and the like. *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179.

Plaintiff requests sanctions for the actual out-of-pocket expense of the filing fee, $60. This is reasonable and proper. The court AWARDS Plaintiff $60 as requested.

**Conclusion**

The court GRANTS the motion and AWARDs Plaintiff $60 in costs. 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 counsel shall inform the preparing counsel 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-270354, Hansen v. Tognalda**

**Motion to Compel Plaintiff's Responses to Defendant's Form Interrogatories, Special Interrogatories and Requests for Production of Documents, Set One CONTINUED** to the law and motion calendar in this department on October 25, 2023, at 3:00 p.m. The only proof of service for the motion is attached to the moving papers and shows service had already occurred, prior to the moving party receiving a hearing date. As further explained herein, after the original hearing on this motion, which this court continued due to inadequate notice, the moving party filed only an unsigned, incomplete proposed order, with proof of service. Accordingly, nothing shows that Plaintiff was served with, or otherwise received, notice of the hearing. Prior to the new hearing date, the moving party, must file and serve complete, sufficient proof of service at least 10 court days prior to the new hearing, showing service of a notice of the new hearing date, time, and place.

**Facts and History**

Plaintiff complains that Defendants negligently, and in breach of a contract, allowed a dog to run free on the WTBar Ranch at 156 San Antonio Road, Petaluma (the "Premises"), where Plaintiff was boarding horses, thereby allowing the dog to attack and scare Plaintiff's horses. She alleges that she had entered into a contract (the "Contract") with Defendant Barbara Tognalda ("Barbara") by which Plaintiff paid "Defendants" $200 a month in return for "Defendants" providing safe boarding for Plaintiff's horses on the Premises, but Defendant Janet Payne ("Payne") improperly brought a dog off leash on to the Premises, the other Defendants allowed it in breach of the Contract, and the dog attacked Plaintiff's horses on the Premises, injuring one of the horses, Stellatura, so badly that it had to be euthanized.

**Discovery**

Payne served Plaintiff with first sets of form interrogatories, special interrogatories, and requests for production ("RFPs") on February 23, 2023; Plaintiff was required to respond by March 30, 2023; and, despite Payne's efforts to contact Plaintiff in order to meet and confer, Plaintiff has failed to respond or request an extension. Lee Dec.

Payne moved the court to compel Plaintiff to respond to the discovery and to pay monetary sanctions. The motion was heard on August 16, 2023 and the court continued the motion to September 27, 2023 because Payne had failed to show that she had served a notice of the hearing date. Payne only demonstrated that she had served the moving papers prior to the court setting a hearing date.

**Motion**

This matter has come on calendar for Payne's continued motion to compel discovery responses. Payne moves the court to compel Plaintiff to respond to the discovery and to pay monetary sanctions of $1,900.

There is no opposition.

**Service**

As the court noted at the original hearing, the only proof of service for the motion at the time was the one attached to the moving papers. This shows service had already occurred, prior to Payne receiving a hearing date. Accordingly, nothing showed that Plaintiff was served with, or otherwise received, notice of the hearing. The court continued the motion due to this.

Since then, the moving party has only filed has only filed a proposed order cover sheet with attached proposed order continuing this motion, with proof of service showing service of the proposed order. Nothing shows that the moving party served Plaintiff with an actual notice of the motion with the new hearing date. Service of an unsigned, incomplete, proposed order is insufficient even if it includes the new hearing date.

Accordingly, the court again CONTINUES this motion. Prior to the new hearing date, Payne, the moving party, must file and serve proof of service at least 10 court days prior to the new hearing, showing service of a notice of the new hearing date, time, and place.

**Substantive Discussion**

Where a party seeks to compel responses under Code of Civil Procedure ("CCP") sections 2030.290 and 2031.300, the moving party need only demonstrate that the discovery was served, the time has expired, and the responding party failed to provide a timely response. See *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906. Failure to provide a timely response waives objections, "including one based on privilege or on the protection for work product…." CCP sections 2030.290, 2031.300. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP §2030.290, 2031.300. Where a party has failed to respond on time to a request for production, the first step is not to compel production but, as with interrogatories, to compel a response. CCP section 2031.300.

The responding party must verify substantive responses. CCP §§ 2030.250, 2031.250, 2033.240. Where a response is unverified, the response is ineffective and is the equivalent of no response at all. See *Appleton v Sup.Ct.* (1988) 206 Cal.App.3d 632, 636. However, a party need not verify responses consisting solely of objections, which only the attorney must sign. CCP section 2030.250(a), (c), 2031.250; *Blue Ridge Ins. Co. v. Sup.Ct.* (1988) 202 Cal.App.3d 339, 344.

Moving party has met the burden here. The court will GRANT the motion in the event it finds service and notice to be sufficient and therefore reaches the merits.

**Sanctions**

For compelling responses to interrogatories and production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP §§2023.010, 2023.030, 2030.290, 2031.300.

In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP § 2023.040. The 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.

Payne requests monetary sanctions of $1,900, as specified in the notice of motion and motion. This is based on the claim that Payne is incurring "in excess of" the requested amount for six hours spent and three and a half anticipated, at an unspecified hourly rate. If the $1,900 specifically reflects the hours claimed, this results in an hourly rate of $200. The court finds this rate to be reasonable. Six hours is at the high end for this motion, but it does include one hour meeting and conferring. The time anticipated is not yet recoverable because it has not actually been incurred. The court, should it grant the motion, will award Payne, against Plaintiff, $1,200 for the fees actually incurred, unless Payne demonstrates that she has reasonably incurred additional expenses.

**4. SCV-271139, Bolster v. Lasecke**

All four discovery motions are **CONTINUED** to October 25, 2023, at 3:00 p.m. in Dept. 17 for calendar control. The Court is finalizing the section 639 Discovery Referee referral and these matters will be addressed in that setting.

**5. SCV-271239, Wilson v. Cream's Dismantling Inc**

**Demurrer and Motion to Strike CONTINUED** to the law and motion calendar in this department on October 25, 2023, at 3:00 p.m. Nothing demonstrates service of notice of the hearing date and the moving party must cure this defect as explained below. Defendant must file proper and timely proof of service prior to the new hearing, showing proper service of the new hearing date and information. It must file and include the new notice showing the information in the notices served on Plaintiff. It must also serve Plaintiff by proper means, not electronically unless it shows that Plaintiff has affirmatively agreed to electronic service.

**Facts and History**

Plaintiff complains that Defendant, who had previously towed her motorhome (the "Motorhome"), unlawfully and without her permission or notice to her, dismantled the Motorhome with all of her possessions inside. She seeks damages for the loss of the Motorhome and her other property.

After filing the complaint on July 25, 2022, Plaintiff filed proof of service ("POS") for the summons and complaint on January 19, 2023. The POS shows that she served Defendant at its business location, 3621 Copperhill Lane, Santa Rosa, by personally serving them on one Kyle Abe ("Abe") at Defendant's address on July 25, 2022.

On January 25, 2023, Plaintiff obtained the default of Defendant. Defendant, appearing as Cream's Dismantling, Inc., erroneously sued as "Cream's Dismantling & Scrap," subsequently moved the court to set aside the default based on Code of Civil Procedure ("CCP") §§ 473(b) and 473.5. The court granted that motion after the hearing of June 23, 2023.

Defendant subsequently filed a demurrer to the complaint and motion to strike portions of the complaint. At the hearing on August 23, 2023, this court continued both the demurrer and motion to strike to September 27, 2023, on the basis that Defendant had failed to demonstrate notice to Plaintiff of the hearing date. It directed Defendant to file new, timely proof of service showing service of the new hearing date and information.

**Demurrer and Motion to Strike**

This matter is once again on calendar for Defendant's Demurrer to Plaintiff Diana Wilson's Complaint and Moton to Strike Portions of Plaintiff's Complaint.

Defendant demurs to every cause of action in Plaintiff's complaint on the grounds that it fails to state facts sufficient to constitute a cause of action. It contends that Plaintiff fails to plead standing because she does not allege that she was the legal owner of the Motorhome, the causes of action all appear duplicative and to be for the same injury and conduct, and the allegations are contradictory.

Defendant also moves to strike specified pages of the complaint as well as the prayer for punitive damages, causes of action 2 and 4 "as duplicative" and cause of action five "as false."

There is no opposition to either the demurrer or the motion to strike. Defendant has filed a reply and statement that it has received no opposition.

**Service and Notice**

Defendant has now filed new proofs of service, showing notice of the demurrer and motion to strike. However, although the proofs of service reference the current hearing date, Defendant has neither filed nor attached to the proofs of service the notices of the demurrer and motion. It is thus impossible for the court to determine what Defendant served on Plaintiff and whether the notices included the correct hearing information. Moreover, the proofs of service show only service by e-mail, but Plaintiff is self-represented and not an attorney. Electronic service on a self-represented party is not sufficient absent an affirmative consent to such service. California Rule of Court ("CRC") 2.251(c)(3)(B); Code of Civil Procedure ("CCP") section 1010.6. CRC 2.251(c)(3)(B) states that self-represented parties, and other parties who otherwise are not required to file or serve documents electronically, may only be served electronically if they "affirmatively consent to electronic service."

The court will give Defendant one more opportunity to cure the notice defect properly. The court therefore CONTINUES the demurrer and motion to strike to October 25, 2023. Defendant must file proper and timely proof of service prior to the new hearing, showing proper service of the new hearing date and information. It must file and include the new notice showing the information in the notices served on Plaintiff. It must also serve Plaintiff by proper means, not electronically unless it shows that Plaintiff has affirmatively agreed to electronic service.

**Demurrer**

A demurrer can only challenge a defect appearing on the *face* of the complaint, exhibits thereto, and judicially noticeable matters. CCP section 430.30; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The grounds for a demurrer are set forth in CCP section 430.10. One of the grounds, in subdivision (e), is the general demurrer that the pleading fails to state facts sufficient to constitute a cause of action.

The demurring party must *separately* state each demurrer ground in a separate paragraph and must expressly state whether each demurrer is to the whole complaint or only part of it. CRC 3.1320(a). The demurrer grounds must also be distinctly specified, or the court may disregard them. CCP section 430.60 states, "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." If a complaint has several causes of action and a party directs a demurrer to the entire complaint, the court may properly overrule the demurrer if any one cause of action is valid. *Warren v. Atchison, Topeka & Santa Fe Ry.Co.* (1971) 19 Cal.App.3d 24, 36.

Demurrer for failure to state facts sufficient to constitute a cause of action is a general demurrer, which must fail if there is *any* valid cause of action. CCP §430.10(e); *Quelimane Co., Inc. v. Steward Title Guar. Co.* (1998) 19 Cal.4th 26, 38; *Fox v. JAMDAT Mobile, Inc*. (2010) 185 Cal.App.4th 1068, 1078 ("as long as a complaint consisting of a single cause of action contains any well-pleaded cause of action, a demurrer must be overruled even if a deficiently pleaded claim is lurking in that cause of action as well"). For example, if a party directs a general demurrer against a cause of action labelled "fraud" based on failure to state that cause of action, the demurrer will fail if the complaint sets forth a valid cause of action for malpractice. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.

In pleading, the actual content of the allegations is more important than the express title or identification of causes of action. Accordingly, even a complaint which fails to allege the elements necessary for the cause of action expressly labeled in the complaint is sufficient to state any cause of action which the pleaded facts actually support, as long as "the pleaded facts state a cause of action on any available legal theory." *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908. For example, therefore, if a party directs a general demurrer against a cause of action labelled "fraud" based on failure to state that cause of action but instead pleads malpractice, the demurrer will fail if the complaint sets forth a valid cause of action for malpractice. *Saunders, supra*, 224 Cal.App.3d 908. The *Saunders* court explained,

> Saunders's first cause of action was labeled "fraud." Cariss responded to this cause of action by alleging it failed to contain elements of a traditional fraud cause of action. Instead of fighting the battle on this field, we believe it proper to take the more constructive approach of examining the factual allegations of Saunders's complaint as stated above. Our task is to determine whether the pleaded facts state a cause of action on any available legal theory.

Plaintiff's complaint is sufficient to state a cause of action for, at the very least, negligence, conversion, or trespass to chattel. The court is making no determination as to whether the allegations may set forth other causes of action; for the purposes of this ruling, it is sufficient for the court to explain that the allegations are sufficient to state some valid cause of action. Despite the evident imperfections in the pleading, it contains the necessary elements of all these causes of action. Plaintiff alleges that Defendant unlawfully and without her permission or notice to her, dismantled the Motorhome with all of her possessions inside, either intentionally or negligently. As a result, she has lost these items, or they have been damaged, and accordingly she has suffered damage as alleged.

The elements for negligence are, of course, defendant owed a legal duty to plaintiff to use due care, defendant breached that duty, actual and proximate causation, and resulting damage to

plaintiff. See *County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 318; *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.

The elements of trespass to chattel are intentional interference with the possession of personal property which causes injury. *Intel Corp. v. Hamidi* (2003) 30 Cal. 4th 1342, 1350-1351.

The elements of conversion are 1) Plaintiff's ownership or right to possession of personal property; 2) interference with plaintiff's "dominion" over the property, i.e., defendant's disposition of the property inconsistent with plaintiff's rights; and 3) resulting damages. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119 *Fischer v. Machado* (1996) 50 Cal.App.4th 1069, 1072; *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal. App. 4th 445, 451. There must be actual interference with the plaintiff's rights regarding the property. *Zaslow v. Kroenert* (1946) 29 Cal.2d 541, 550; *Farmers Ins. Exchange, supra,* 53 Cal. App. 4th 451.

As the court explained in *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, at 1066, "[c]onversion is a strict liability tort…. [T]he tort consists in the breach of an absolute duty; the act of conversion itself is tortious." See also 5 Witkin, Summary of Cal. Law (11th Ed.2017, May 2023 Update) Torts, section 825. Thus, the "action rests neither in the knowledge nor the intent of the defendant" with the result that not only is intent not an element but mistake, good faith or due care are generally irrelevant to the cause of action and will not alone constitute a defense. *Burlesci, supra*; see also *Chatterton v. Boone* (1947) 81 Cal.App.2d 943, 94; *Beverly Finance Co. v. American Cas. Co. of Reading, Pennsylvania* (1969) 273 Cal.App.2d 259, 264.

Nonetheless, a plaintiff may seek to recover punitive damages for conversion as long as the plaintiff demonstrates the required oppression, fraud, or malice. *McNulty v. Copp* (App. 1 Dist. 1954) 125 Cal.App.2d 697; *Ferraro v. Pacific Finance Corp.* (App. 1 Dist. 1970) 8 Cal.App.3d 339. Intent and knowledge are thus relevant for determining if the plaintiff may recover punitive damages.

Plaintiff's allegations, as summarized above, demonstrate all of the elements for these causes of action.

Contrary to Defendant's argument, Plaintiff does allege that the Motorhome and possessions were hers, stating that Defendant "unlawfully dismantled my motorhome with everything I owned inside...." Comp., page MV-1 (as marked in the complaint), ¶MV-1; page 36 (as marked in the complaint). She includes as attachments photographs purportedly of the Motorhome showing the license plate, a State of California Department of Motor Vehicles vehicle report identifying her as "Registered Owner," of the Motorhome with the same license plate, and a "Settlement Summary" from an insurer regarding a collision involving the Motorhome, again the same license plate, identifying her as "Owner."

That the causes of action may be duplicative or improperly titled or named by Plaintiff's choice of marking boxes on the form complaint, are in of themselves immaterial. These issues do not alter the fundamental allegations or the fact that the allegations set forth the elements of valid causes of action as explained above.

In the event that the court reaches the merits of the demurrer, it will OVERRULE the demurrer.

**Motion to Strike**

A motion to strike may attack any "irrelevant, false, or improper matter" in any pleading, or to strike a pleading that is "not drawn or filed in conformity with the laws of this state." CCP section436. As with demurrers, the defect must appear on the face of the pleading or in matters judicially noticeable. CCP section 437. The policy is to construe pleadings liberally "with a

view to substantial justice." CCP section 452. A motion to strike may be based on failure to comply with form or procedures applicable to pleadings. *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.

Punitive Damages

Civil Code ("CC") 3294 describes the requirements for punitive damages in civil cases such as this one. That provision states that a party may recover punitive damages "[i]n an action for the breach of an obligation not arising from contract," where the party demonstrates "clear and convincing evidence" of oppression, fraud, or malice.

To plead adequately a claim for fraud and punitive damages, Plaintiffs must state more than mere conclusions or recitations of statutory labels such as "willful." *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1042; *McDonell v. American Trust Company* (1955) 130 Cal.App.2d 296. Plaintiff must also plead ultimate facts. *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317. However, while plaintiffs must plead facts, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632. Furthermore, there is a general policy to construe pleadings liberally. CCP §452. *Cyrus*, at 317, states that one cannot plead malice only in "conclusionary terms," and simply characterize actions as willful without alleging ultimate facts.

According to section 3294(c)(1), "malice" is conduct intended "to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." "Oppression" is "despicable conduct" subjecting one "to cruel and unjust hardship in conscious disregard of that person's rights." CC section 3294(c)(2). Subsection (c)(3) defines "fraud" as intentional misrepresentation deceit or concealment of fact with the intent to induce reliance. Plaintiff must show *intent* to injure *or* a conscious disregard of another's safety or rights *and despicable conduct*. *College Hospital, Inc. v. Sup.Ct. (Crowell)* (1994) 8 Cal.4th 704; *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 317.

A "conscious disregard" for others' rights requires a showing that the Defendant was aware of "the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences" and recklessness can reveal that. *Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1044.

Recklessness is insufficient to meet the standard for punitives under CC section 3294. *G.D. Searle & Co. v. Sup.Ct.* (1975) 49 Cal.App.3d 22, 30, 31; see also 6 Witkin, Summary of Cal.Law (9th Ed.1988) Torts, section 1337. The showing must include some sort of "evil motive." *G.D. Searle, supra*. "Reckless disobedience of traffic laws" or the like thus will not support a claim of malice normally. *Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1044; *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899.

In other words, plaintiff must plead specific facts showing oppression, fraud, or malice, that defendant acted with ill will and intent to injure plaintiff or take or destroy plaintiff's property. See *Smith v. Sup.Ct.* (1992) 10 Cal.App.4th 1033, 1041-1042; *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 643.

Plaintiff here alleges that Defendant knowingly and wittout her permission dismantled her Motorhome with all of her possessions inside. This may, at the least, amount to conversion which, as noted in the ruling on the demurrer, may support a claim for punitive damages.

The court DENIES the motion on this point.

"Duplicative" Causes of Action

The court denies the motion as to striking supposedly "duplicative" causes of action. Either they state different causes of action from others pleaded, or they do not, and inherently

they thus either will provide another basis for liability or they will not. Simply being "duplicative" is an insufficient basis for striking allegations or purported causes of action and, in the end, such a request has no meaningful purpose. It is also not evident to what extent anything is duplicative. As this court has noted in the ruling on the demurrer, Plaintiff's allegations on their face are sufficient to support at least three different causes of action.

"False" Cause of Action

Defendant contends that cause of action 5 is "false" because an attachment refers to a different towing company. This does not necessarily mean, on the face of the complaint and attachments, that the allegations are false and in fact the court discerns no definite falsity on the face of the complaint.

Various Pages and Attachments

Defendant moves to strike various pages and attachments as improperly presented, or unclear, or incomplete. This is not persuasive. The pages do create some lack of clarity and some of the pages appear unclear in import, but this is not a sufficient basis in this instance for striking them, nor would striking them have any material result.

Conclusion: Motion to Strike

The court, should it reach the merits, will DENY the motion to strike in full.

**Conclusion**

The court CONTINUES the demurrer and motion to strike due to the defect in notice set forth above.