

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 11, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1-3. 23CV01882, Ramirez v. Reeds Trailer Sales, Inc.

This is a joint ruling on Defendant’s three discovery motions. Defendant moves to compel further responses to its Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One.

This action arises out of Plaintiff’s purchase of a 2021 Thor Ace 30.3 Coach and a vehicle service contract from Defendant. Plaintiff alleges that after purchasing the coach and driving it off the dealership lot, the ABS warning indicator illuminated. Plaintiff immediately returned the coach to Defendant whose technicians attempted repairs. After being repaired and returned to Plaintiff, the ABS indicator continued to illuminate. Defendant again attempted to repair the issue. This occurred 4 times. Plaintiff alleges the coach continues to exhibit nonconformities that existed at the time the coach was sold to him and that it is subject to repurchase pursuant to the Song-Beverly Consumer Warranty Act.

Defendant propounded discovery requests on Plaintiff on May 3, 2024. Plaintiff provided timely responses. However, Defendant submits that some of Plaintiff’s responses were incomplete, evasive, or contained unjustifiable objections. Defendant sent Plaintiff a detailed meet and confer

letter that described the purported deficiencies in Plaintiff's responses. Plaintiff responded by letter promising further responses to some items of discovery and stating that further responses would not be provided for the others. Plaintiff never propounded supplemental responses. These motions follow.

I. Interrogatories

A party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." (CCP § 2030.220(a)-(b).) "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (CCP §2030.220(c).)

Upon receipt of a response to interrogatories, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. (CCP §2030.300(a).) When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. (*Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.) The burden on the propounding party of showing good cause does not exist in the case of interrogatories. (*Coy v. Superior Ct. of Contra Costa Cnty., supra*, at 220–21.)

A. Form Interrogatories

i. Nos. 2.3, 2.4, 2.8, 2.11, 2.12, 2.13, 10.1, 10.2, and 10.3

Plaintiff has objected to each of these form interrogatories on the ground that it seeks information that is irrelevant and is not likely to lead to evidence to be used at trial. Regarding numbers 2.3, 2.4, and 2.8, Plaintiff also objects on the basis that the interrogatory is asked to harass and/or intimidate the responding party. Plaintiff has provided argument regarding why Plaintiff believes these interrogatories seek irrelevant information and, in some instances, has argued that the Defendant has not made a showing as to relevance or why Defendant is entitled to the information. Plaintiff has provided no explanation for the objection on the basis of harassment or intimidation.

As noted above, in the case of interrogatories, unlike inspection demands, the Defendant has no burden to show good cause for seeking an answer to an interrogatory. The burden of proof on a motion to compel further responses to interrogatories is on the responding party to justify their objections or incomplete responses. Plaintiff has not adequately done so here.

Defendant's counsel explained the relevance of these items in the meet and confer letter sent to Plaintiff's counsel prior to filing these motions. The arguments made by Plaintiff in this opposition why these matters are irrelevant are not compelling. The scope of discovery is broad. It is broader

than the scope of admissibility. Plaintiff has not sufficiently justified his objections to these form interrogatories. Plaintiff shall provide further responses.

ii. Nos. 2.6, 12.2, 12.4, 12.5, 12.6, and 13.1

Defendant seeks further responses to these form interrogatories because Plaintiff responded with objections in addition to substantive responses. Defendant argues that the inclusion of objections with the substantive responses leaves the door open for the existence of other damages for which the defendant is entitled to discovery. In so arguing, Defendant is not requesting *further* answers be provided. Defendant is requesting *different* answers be provided. However, the operative and legally significant portion of Plaintiff's response is the substantive answer. Since the interrogatories have been answered, and since Defendant has not argued that the substantive answers are insufficient or evasive, the request for further response to these interrogatories is denied.

The Court will note that Plaintiff's relevance objections to these interrogatories are without justification.

iii. Nos. 4.1 and 4.2

In Defendant's opposition, Defendant lists numbers 4.1 and 4.2 as form interrogatories for which it seeks further response. However, these form interrogatories are not included in Defendant's separate statement. Thus, Defendant has not provided the necessary information this Court needs to grant the motion as to those interrogatories. Accordingly, the motion is denied as to form interrogatories numbers 4.1 and 4.2.

iv. Nos. 7.1, 7.2, and 7.3

In response to form interrogatory number 7.1, Plaintiff stated "Plaintiff objects to the term 'incident' in the context of his claims, as it creates a confusing interrogatory. Plaintiff objects to this interrogatory on the basis that it seeks information that is irrelevant and not likely to lead to evidence to be used at trial."

The term "incident" is defined in the form interrogatories as including "the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding." (Decl. David R. Sidran, Ex. A, p. 1.) Neither the definition of "incident" nor its use in the interrogatory is confusing. Plaintiff argues that this interrogatory is "designed to apply to a personal injury matter." The Court disagrees. The term "incident" is also explicitly intended to include any "other occurrence" which in this instance easily applies to the purchase of the 2021 Thor Ace 30.3 Coach or even a "breach of contract" claim, which is what Plaintiff is effectively contending in the instant matter. Plaintiff could still provide a substantive answer. Plaintiff shall provide further response.

Plaintiff responded to form interrogatories numbers 7.2 and 7.3 by simply stating "N/A." This is not a code compliant response. It neither objects to the interrogatory nor attempts to provide a substantive answer. Plaintiff simply argues in opposition that these interrogatories are "designed

to apply to a personal injury matter.” As with number 7.1, Plaintiff could still provide a substantive response.

v. Nos. 9.1 and 9.2

Plaintiff provided a substantive response to form interrogatory number 9.1. However, the response is incomplete. The response refers the propounding party to documents that were produced in response to Defendant’s First Set of Requests for Production of Documents. Aside from generally naming the documents referred to, the response provides no further identifying information.

Answers must be complete and responsive. Thus, it is not proper to answer by stating, “See my deposition”, “See my pleading”, or “See the financial statement”. Indeed, if a question does require the responding party to make reference to a pleading or document, the pleading or document should be identified and summarized so the answer is fully responsive to the question.

(Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783–84.) Accordingly, Plaintiff shall provide further response to this interrogatory.

Form interrogatory number 9.2 requests a description of the documents supporting Plaintiff’s answer to number 9.1. Plaintiff responded “Yes. See response to 9.1.” Since Plaintiff’s response to 9.1 is insufficient, his response to 9.2 is also insufficient. Further response shall be provided that specifically identifies those documents which are responsive to this interrogatory.

vi. No. 12.1

Plaintiff provided a substantive response to this form interrogatory, but the response is incomplete. The interrogatory requests the name, address, and telephone number of each individual referred to. Plaintiff simply provided the names and stated, “Contact through Plaintiff’s counsel.” This is insufficient unless Plaintiff’s counsel is representing all individuals for this which this response applies to and has authority to accept service of deposition notices on their behalf. Answers to interrogatories should be complete and responsive. This is not a complete and responsive answer. Plaintiff is to provide an amended response that either affirms the above representations or provides complete contact information for the identified individuals.

vii. No. 12.3

Plaintiff answers this interrogatory substantively by referring the propounding party to documents produced in response to Defendant’s First Set of Requests for Production of Documents. For the same reasons explained above regarding form interrogatory number 9.1 and 9.2, this answer is incomplete.

viii. No. 12.7

Plaintiff objects to this form interrogatory on the basis that it seeks information that is irrelevant and not likely to lead to evidence to be used at trial and on the basis that the term “scene of the incident,” in context, renders the interrogatory unintelligible in the context of Plaintiff’s claims.

Plaintiff's explanation for these objections is that it "is designed to apply to a personal injury matter, and makes little sense in this context." This explanation is not compelling as the Court outlined in its discussions of interrogatories 7.1 – 7.3 above. Plaintiff could provide a substantive response to this interrogatory. Further response shall be provided.

ix. No. 13.2

Plaintiff responded to this form interrogatory by stating "N/A." This is not a code compliant response. It neither objects to the interrogatory nor attempts to provide a substantive answer. Plaintiff simply argues in opposition that these interrogatories are "designed to apply to a personal injury matter." Though Plaintiff's answer to form interrogatory number 13.1 was "no" and this interrogatory is derivative of 13.1, Plaintiff must still provide a substantive answer, even if Plaintiff believes the interrogatory to be inapplicable.

x. No. 14.1

This interrogatory requests that Plaintiff identify each individual whom Plaintiff contends violated any statute, ordinance or regulation by stating the name, address and telephone number of that person and the statute, ordinance, or regulation violated. Plaintiff responded with "Yes. Vehicle Code § 11713.5..." This is an incomplete answer. It does not identify any individual, nor list that person's name, address or phone number. Furthermore, the ellipses at the end of the answer suggests Plaintiff suspects further code sections were violated, but Plaintiff did not list them. Plaintiff also fails to justify his objection to the term "incident" as being confusing.

xi. No. 17.1

This interrogatory relates to Plaintiff's answers to Defendant's requests for admissions. The interrogatory requests the following information for each response that is not an unqualified admission: (a) the number of the request; (b) all facts upon which the response is based; (c) the names, addresses, and telephone numbers of all persons who have knowledge of the facts; and (d) all documents or other tangible things that support the response and the name address and telephone number of all persons who have each document or thing.

Defendant has not provided the Court with a copy of its requests for admissions. Therefore, the Court cannot determine if Plaintiff adequately provided all facts upon which the responses are based. Nonetheless, the Court is able to determine that Plaintiff's responses fail to provide the addresses and phone numbers of the identified witnesses and fail to adequately identify the various documents referenced. Therefore, Plaintiff is ordered to provide further identifying information for the witnesses and documents.

xii. Nos. 20.9, 20.10, 20.11

Plaintiff responded to each of these interrogatories with "Plaintiff objects to this interrogatory on the basis that it seeks information that is irrelevant, not likely to lead to evidence to be used at trial. Plaintiff further objects to the undefined term 'caused the incident,' as the incident was caused by the misrepresentations of the sale of the vehicle." Plaintiff justified this response by simply stating

that the interrogatory is designed to apply to a personal injury matter, thus makes little sense in this context. This justification is not compelling. Plaintiff could provide substantive responses to these interrogatories. Thus, Plaintiff is ordered to do so.

B. Special Interrogatories

i. No. 1

Defendant seeks further response to this interrogatory because Plaintiff included an objection to the term “trailer” in addition to substantively responding. Thus, Defendant does not seek a further response, Defendant seeks a different response. Plaintiff provided a substantive answer to this interrogatory and Defendant has not argued that the substantive answer is incomplete or evasive. Plaintiff will not be ordered to provide further response to this interrogatory.

However, as explained in further detail below, the Court finds each of Plaintiff’s objections to the term “trailer” to be without justification because it is clear that Plaintiff knew or should have known that the term “trailer” as used by the Defendant referred to the “coach” or “vehicle” purchased by Plaintiff from the Defendant.

ii. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12

Defendant seeks further response to these interrogatories because Plaintiff responded to all of them by stating “Plaintiff did not purchase a trailer.” Given that Plaintiff was able to provide a substantive response to special interrogatories 6 and 12 notwithstanding Plaintiff’s purported misunderstanding of the term “trailer” as used by Defendant, it is clear to the Court that Plaintiff understood these interrogatories to be referring to the “coach” or “vehicle” purchased from Defendant. Thus, the Court finds Plaintiff’s response of “Plaintiff did not purchase a trailer” to be evasive. Plaintiff could have provided a substantive response regarding the coach purchased as Plaintiff did elsewhere. Plaintiff is ordered to provide further responses to these interrogatories.

iii. No. 14

This interrogatory requests that Plaintiff identify all misrepresentations made by Defendant or its agents regarding the Vehicle Service Contract, including the date of the misrepresentation, the individual who made the representation, and the specific language or terms of the misrepresentation. Plaintiff’s response is not complete. Plaintiff simply stated that the contract itself contains misrepresentations and referred the Defendant to storage receipts produced in response to Defendant’s request for production of documents. Plaintiff did not identify which portions of the contract are alleged to be misrepresentations. Furthermore, as explained in detail above, Plaintiff’s general reference to documents produced in discovery as being responsive is not sufficient. Plaintiff shall provide further response.

iv. Nos. 16, 18, and 20

Plaintiff responded to each of these interrogatories by referring the Defendant to the storage receipts produced in response to Defendant’s request for production of documents. The Court has

explained in detail above why such responses are insufficient. Plaintiff shall provide further responses to each of these interrogatories.

II. Request for Production of Documents

A motion to compel further responses to a request for production of documents must “set forth specific facts showing ‘good cause’ justifying the discovery sought by the demand.” (CCP § 2031.310(b)(1).) Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing ‘good cause’ simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. (See also *Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98.) Once good cause is shown, the burden shifts to the responding party to justify its objections. (See *Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 220-221.)

i. Inadequate Labeling (Nos. 1-16)

Defendant argues that Plaintiff should be required to re-submit his document production with proper labeling because Plaintiff failed to provide a means by which Defendant could determine which documents were responsive to which document request. While a responding party is required to do as such, Defendant has not shown that Plaintiff failed to do this. Defendant did not provide a copy of Plaintiff’s document production, presumably because it would be voluminous. However, Defendant also did not provide foundation for Defendant’s claims by means of a declaration. The declaration submitted in support of this motion only states that the “responses were inadequate and evasive.” This does not provide foundation for Defendant’s claims that Plaintiff failed to adequately relate the documents to the request for production. Accordingly, this request is denied.

ii. Nos. 6, 7, 8, and 15

Defendant seeks further responses for these requests for production of documents because Plaintiff included an objection to the phrase “pertaining to” in Plaintiff’s response. However, Plaintiff also provided a substantive code-compliant response for each of these requests for production of documents. Defendant has not argued that the substantive responses were inadequate, nor that Plaintiff failed to produce the promised documents. Insofar as Defendant argues that Defendant cannot decipher which of the documents produced by Plaintiff are responsive to these requests, the Court has explained that Defendant has failed to support this allegation with foundation.

However, the Court will note that the term “pertaining to” is not overly broad nor does it create an undue burden on Plaintiff. Thus, this objection by Plaintiff is without justification.

iii. No. 9

Plaintiff responded to this document request by stating, “Plaintiff did not purchase a trailer from Reed’s Trailer Sales.” This is not a code-compliant response. It is neither an objection nor an agreement to comply or statement of inability to comply. Furthermore, as explained below, the

Court finds Plaintiff's purported inability to understand the term "tailer" as referring to the vehicle Plaintiff purchased from Defendant to be disingenuous. The term "tailer" is defined in Request for Production of Documents No. 1 as "the 2021 Thor Ace 30.3 Coach with VIN 1F65F5DNXL0A18228 is the 'Trailer'." Plaintiff is ordered to provide further response to this inspection demand.

iv. Nos. 10, 11, 12, 13, 14,

Plaintiff responded to these requests by stating, "This responding party object [sic] on the basis that the interrogatory fails to identify which, if any, trailers that may have been owned by Plaintiff they are seeking sale documents for." For the reasons explained under request number 9, the Court finds these objections to be without justification. Plaintiff shall provide further response to these inspection demands.

III. Sanctions

Plaintiff argues that Defendant should not be awarded any amount in sanctions because Defendant did not meet and confer in good faith. The Court does not agree. Defendant sent a detailed meet and confer letter that explained each of Defendant's concerns and provided a deadline for further production. The Court finds that Defendant met and conferred in good faith.

On the other hand, the Court does not find that Plaintiff met and conferred in good faith. Plaintiff's responsive meet and confer letter made promises to produce further responses, but Plaintiff did not ever produce those supplemental responses. Plaintiff did not attempt to clear up any ambiguities that Plaintiff may have perceived from the language of the discovery requests. Plaintiff refused to provide further responses even after Defendant explained in its meet and confer letter that the term "trailer" universally referred to the 2021 Thor Ace 30.3 Coach with VIN 1F65F5DNXL0A18228 purchased by Plaintiff from Defendant.

The Court also finds that Plaintiff's purported inability to understand the term "tailer" is evasive and disingenuous. This is because Plaintiff selectively answered certain discovery requests that included the term "trailer" with responses that referred to the coach in question. Furthermore, while the term "trailer" was not specifically defined in the form interrogatories, it was defined in Defendant's special interrogatory number 1 and request for production of documents number 1 as referring to the 2021 Thor Ace 30.3 Coach with VIN 1F65F5DNXL0A18228. According to Defendant, it was also defined in Defendant's request for admissions, but Defendant did not provide a copy of those, so this could not be confirmed. Nonetheless, it is clear to the Court that Plaintiff either knew that the term "trailer" referred to the vehicle he purchased from Defendant or should have known that it did. Even if Plaintiff did not, Defendant explained in its meet and confer letter that the term "trailer," as used by Defendant in its discovery requests, referred to the 2021 Thor Ace 30.3 Coach with VIN 1F65F5DNXL0A18228. If this was still not clear to Plaintiff, Plaintiff could have sought clarification from Defendant. Thus, Plaintiff has no justifiable excuse for refusing to provide supplemental responses to questions regarding the "trailer."

Even now, Plaintiff is resisting discovery by arguing that further responses should not be ordered because Defendant's discovery requests and meet and confer letter contained trivial typographical errors.

The Court finds that sanctions are warranted for Plaintiff's evasive conduct and failure to provide code-compliant answers to many of Defendant's form interrogatories, special interrogatories, and request for production of documents. Defendant has filed three motions and, in each motion, has requested the exact sanctions amount of \$5,685. It is not entirely clear from the motions or the attached declarations whether Defendant is requesting \$5,685 for each individual motion or as a total amount of sanctions. Since \$17,055 (\$5,685 x 3) would be a grossly inflated sanctions request, the Court will assume that Defendant is requesting a total sanctions amount of \$5,685. The Court finds that a total amount of \$5,685 in sanctions is reasonable.

IV. Conclusion

Defendant's motion to compel further responses to Defendant's Form Interrogatories General Set One is GRANTED in part and DENIED in part. The motion is DENIED as to form interrogatories numbers 2.6, 4.1, 4.2, 12.2, 12.4, 12.5, 12.6, and 13.1. It is GRANTED as to all the rest.

Defendant's motion to compel further responses to Defendant's Special Interrogatories Set One is GRANTED in part and DENIED in part. The motion is DENIED as to special interrogatory number 1. It is GRANTED as to all the rest.

Defendant's motion to compel further responses to Defendant's Request for Production of Documents, Set One is GRANTED in part and DENIED in part. The motion is DENIED as to request for production of documents numbers 6, 7, 8, and 15. It is GRANTED as to all the rest.

Defendant's request for sanctions is GRANTED in the total amount of \$5,685 to be paid by Plaintiff within 30 days of notice of an order on this motion.

Plaintiff shall provide the supplemental responses herein ordered within 30 days of notice of an order on this motion. Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

4. 24CV00017, Looney v. YN Liquor, Inc.

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), assignee of Young's Market Company, obtained a default judgment against defendants YN Liquor, Inc, DBA R&R Liquor ("Defendant"), Young N. Kim ("Guarantor", together with Defendant, "Defendants"). This matter is on calendar for Plaintiff's motion to compel answers to special interrogatories ("SIs") against Defendants under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Defendants under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendants shall pay \$60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is “as complete and straightforward as the information reasonably available to the responding party permits” and “[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible.” Code Civ. Proc. (“CCP”) §2030.220(a)-(b). “If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.” CCP §2030.220(c). If a party fails to serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and “[t]he party making the demand may move for an order compelling [a] response to the demand.” CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of “good cause” is required. CCP §2031.300.

When a party serves response after a motion to compel is filed, the court maintains jurisdiction within its discretion to determine the sufficiency of the response. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction “shall” be imposed against the party losing a motion to compel further responses unless the court finds “substantial justification” for that party’s position or other circumstances making sanctions “unjust.”

II. Analysis

Plaintiff served their SIs and RPODs on May 29, 2024. Defendants have served no responses.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Plaintiff's motion to compel responses to SIs and RPODs GRANTED. Defendants will serve code compliant, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

Plaintiff requests sanctions of his actual costs of filing fees of \$60. Filing fees of \$60 is appropriate. The Court **GRANTS** Plaintiff's request for monetary sanctions in the amount of \$60. Defendants shall pay \$60 to Plaintiff within 30 days' notice of this order.

IV. Conclusion

Plaintiff's motion to compel responses to SIs and RPODs is GRANTED. Defendants will serve code compliant, objection-free responses within 30 days of notice of this order. The request for sanctions is granted and Defendants shall pay \$60 to Plaintiff within 30 days' notice of this order.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. **24CV00922, County of Sonoma v. Does 1 through 30 Incl**

Defendant Mark Lund's counsel Richard Paris has filed a motion to be relieved because his client has passed away. Counsel has contacted the only next of kin of whom he is aware, and their trustee has refused to take over as personal representative or successor in interest for Defendant. Counsel has served the County.

Counsel has served the only party remaining to serve. Therefore, Attorney Richard Paris's motion to be relieved as counsel for Defendant Mark Lund, is **GRANTED**.

It does not appear proper for the County to litigate an empty action. "A pending action or proceeding does not abate by the death of a party if the cause of action survives." CCP, § 377.21. "On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made." CCP § 377.41. The Court notes that "a creditor may file a petition to probate a debtor's estate and a creditor's claim against the estate." *Dawes v. Rich*

(1997) 60 Cal.App.4th 24, 36. With Mr. Paris's relief granted, it appears that the burden is on the County to ensure that this action can proceed against Defendant's estate. The County should be prepared to address relevant issues at the Case Management Conference currently set for January 9, 2025.

6. 24CV01845, Looney v. 8737 Santa Monica BI LLC

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), assignee of Young's Market Company, obtained a default judgment against defendants 8737 Santa Monica BL, LLC ("Defendant"), Jay F Krymis ("Guarantor", together with Defendant, "Defendants"). This matter is on calendar for Plaintiff's motion to compel answers to special interrogatories ("SIs") against Defendants under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Defendants under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendants shall pay \$60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c). If a party fails serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and "[t]he party making the demand may

move for an order compelling [a] response to the demand.” CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of “good cause” is required. CCP §2031.300.

When a party serves response after a motion to compel is filed, the court maintains jurisdiction within its discretion to determine the sufficiency of the response. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction “shall” be imposed against the party losing a motion to compel further responses unless the court finds “substantial justification” for that party’s position or other circumstances making sanctions “unjust.”

II. Analysis

Plaintiff served their SIs and RPODs on August 19, 2024. Defendants have served no responses.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Plaintiff’s motion to compel responses to SIs and RPODs GRANTED. Defendants will serve code complaint, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

Plaintiff requests sanctions of his actual costs of filing fees of \$60. Filing fees of \$60 is appropriate. The Court **GRANTS** Plaintiff’s request for monetary sanctions in the amount of \$60. Defendants shall pay \$60 to Plaintiff within 30 days’ notice of this order.

IV. Conclusion

Plaintiff’s motion to compel responses to SIs and RPODs is GRANTED. Defendants will serve code complaint, objection-free responses within 30 days of notice of this order. The request for sanctions is granted and Defendants shall pay \$60 to Plaintiff within 30 days’ notice of this order.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. 24CV01964, Cannistra v. Aragon

Plaintiff Robyn Cannistra (“Plaintiff”) individually and on behalf of Jordan Cannistra (“Minor”) as his guardian in fact, filed the currently operative first amended complaint (the “FAC”) in this action against defendants Tomas Aragon (“Aragon”) in his official capacity as the Department of Public Health (the “Department”) director and as the State Public Health Officer, Petaluma City Schools (“PCS”, together with Aragon, “Defendants”), and Does 1-20, for multiple alleged causes of action arising out a controversy related to vaccination requirements under Health & Saf. Code (“HSC”) § 120335.

This matter is on calendar for the Aragon’s demurrer to causes of action one through five within the Complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10(e) for failure to state facts sufficient to constitute a cause of action. PCS has filed a joinder thereon. The Demurrer is **SUSTAINED with leave to amend as to the First through Fifth causes of action.**

I. Legal Standards

A. General Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint’s defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. “The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree.” *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Constitutional Issues

Federally, “it is within the police power of a state to provide for compulsory vaccination.” *Zucht v. King* (1922) 260 U.S. 174, 176. In California, however, “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district. . .” Cal. Const., art. IX, § 5. Subsequent cases have interpreted this in California as “the distinctive and priceless function of education in our society warrants, indeed compels, our

treating it as a ‘fundamental interest,’” subject to constitutional protections. *Serrano v. Priest* (1971) 5 Cal.3d 584, 608–609. “‘The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State's interest in protecting the health and safety of its citizens, and particularly, school children,’” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146–1147; quoting *Whitlow v. California* (S.D. Cal. 2016) 203 F.Supp.3d 1079, 1091.

“A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” Cal. Const., art. I, § 7. “It needs no argument to show that, when it comes to preventing the spread of contagious diseases, children attending school occupy a natural class by themselves, more liable to contagion, perhaps, than any other class that we can think of. This effort ... was for the benefit and protection of all the people It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147 (“*Brown*”), quoting *French v. Davidson* (1904) 143 Cal. 658, 662.

C. Statutory Interpretation, Preemption and Conflict of Laws

Interpretation of statutes is a question of law, not one of fact. *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.

In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) “Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.” (*Ibid.*) “ ‘If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.’ ” (*California Teachers, supra*, 28 Cal.3d at p. 698, 170 Cal.Rptr. 817, 621 P.2d 856.) In other words, we are not free to “give words an effect different from the plain and direct import of the terms used.” (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297; see § 1858.) However, “ ‘the “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.’ ” (*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 943, 64 Cal.Rptr.2d 814, 938 P.2d 876.) To determine the most reasonable interpretation of a statute, we look to its legislative history and background. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559 (*Doe*).)

(*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332)

“(I)t is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by

express declaration or by necessary implication. (Citation). Wherever possible, a statute is to be construed in a way which will render it reasonable, fair and harmonious with its manifest purpose, and which will conform with the spirit of the act.” *Los Angeles County v. Frisbie* (1942) 19 Cal.2d 634, 644. “(W)hen a suggested construction of a statute in any given case necessarily involves a decided departure from what may be fairly said to be the plain purpose of the enactment, such construction will not be adopted to the exclusion of a possible, plausible interpretation which will promote and put in operation the legislative intent.” *People v. Merrill* (1914) 24 Cal. App. 206, 210. “(O)nce a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.” *Kagy v. Napa State Hospital* (1994) 28 Cal.App.4th 1, 6. “(W)here two statutes appear to be in conflict, a more specific statute controls over a more general one.” *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396, 401.

The party claiming that state law preempts that of local ordinances bears the burden of demonstrating that presumption. *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149. “(W)hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.” *Ibid.* “A pure legal issue of preemption is properly handled by demurrer.” *Washington Mutual Bank v. Superior Court* (2002) 95 Cal.App.4th 606, 612.

D. Writ of Mandate

Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such proceedings, the trial court's review “shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” CCP § 1094.5(b). An abuse of discretion can occur three different ways: (1) “the respondent has not proceeded in the manner required by law,” (2) the “decision is not supported by the findings,” or (3) “the findings are not supported by the evidence.” *Ibid.*

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.” Code Civ. Proc., § 1085. “There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty.” *California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704. “A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists.” *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 495. “Section 1085 is the proper vehicle for challenging a ministerial act of an agency, such as a mandatory duty to issue regulations.” *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1481. “Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is plain and *unmixed with*

discretionary power or the exercise of judgment.” County of San Diego v. State of California (2008) 164 Cal.App.4th 580, 596. “When there is no ministerial duty and review is for abuse of discretion, such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that ‘[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible....’ (Citation.) It also recognizes that a challenged administrative agency action comes before the court with a strong presumption that the agency's official duty has been regularly performed and the burden is on appellants to show the agency's action is invalid. (Citation.)” *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

A party may move for writ of mandate under both CCP § 1085 and CCP § 1094.5 if both are applicable to the facts. *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751. Declaratory relief is not the proper vehicle for reviewing an administrative decision. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. In contrast, declaratory relief is an appropriate remedy if the petitioner seeks a determination that a statute controlling a particular function is unconstitutional. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263.

"The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, 'quasi-judicial' or 'adjudicative acts,' that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final 'determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency" *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482 (*California Water*).

Where a public entity's enactment of a rule "constitutes a [legislative or] 'quasi-legislative' act and is reviewed by ordinary [or traditional] mandate [under Code of Civil Procedure section 1085]. [Citations.] A petition for traditional mandamus is appropriate in . . . actions brought to attack, review, set aside, or void a quasi-legislative . . . or ministerial determination, or decision of a public agency. [Citations.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." *California Water, supra*, 161 Cal.App.4th at 1483 (fn. omitted).

"The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action." *California Water, supra*, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 ["[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as those involving 'the formulation of a rule to be applied to all future cases,' while

administrative mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve ' "the actual application of such a rule to a specific set of existing facts." ' "] .) Traditional mandamus under Code of Civil Procedure section 1085 "may be employed to compel the performance of a duty which is purely ministerial in character; it cannot be applied to control discretion as to a matter lawfully entrusted to [a public entity]" *State v. Superior Court* (1974) 12 Cal.3d 237, 247. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700–701.

"A proceeding in mandamus is generally subject to the general rules of pleading applicable to civil actions." *Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 271. "Therefore, it is necessary for the petition to allege specific facts showing entitlement to relief upon one of the grounds just mentioned. If such facts are not alleged, the petition is subject to general demurrer. . ." *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573

E. School Health

"(T)he governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." Ed. Code, § 35160. "The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions." Ed. Code, § 35160.1 (a). A school has the obligation to provide a safe and healthy environment for students, and actions taken in promotion of this obligation are to be balanced against the individual rights of the students. *In re William G.* (1985) 40 Cal.3d 550, 571. Furthermore, a school has other health related obligations to students, as "the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in schoolage children." Ed. Code, § 49403(a).

"The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized." Health & Saf. Code ("HSC") § 120335 (b). "The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered." HSC § 120335 (e).

Parties may submit requests for exemption from immunization requirements. HSC § 120372. Each request for exemption shall include "(a) description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought." HSC § 120372 (a)(2)(F). "The department shall identify those medical exemption forms that do not meet applicable CDC,

ACIP, or AAP criteria for appropriate medical exemptions.” HSC, § 120372 (d)(3)(A). Thereafter, a reviewing department physician may revoke the medical exemption. HSC, § 120372 (d)(3)(C). A parent or guardian of the minor at issue may then appeal. HSC § 120372.05.

“The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department until that pupil has been fully immunized against all of the diseases listed in Section 120335, unless the pupil is exempted under Section 120370 or 120372.” HSC, § 120375 (b). “The governing authority **shall** exclude any pupil who does not meet the requirements for admission or continued attendance as specified in Article 2 of this subchapter and Health and Safety Code section 120335.” Cal. Code Regs., tit. 17, § 6055.

II. Procedural and Evidentiary Issues

Defendants request judicial notice of a wide variety of public records related to either legislative history, or this case in particular. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Ibid.* Judicial notice is GRANTED as to the existence of the documents and their legal function as to RFJN Exhibits 1-9. No conclusion as to the truth of their contents is taken. Judicial notice is GRANTED as to Exhibits 10-16 in full.

III. Analysis

“On a demurrer a court’s function is limited to testing the legal sufficiency of the complaint. [Citation.] ‘A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.’ [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]”). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. Plaintiff’s complaint is entitled to liberal factual construal. Where facts are open to different interpretations, Plaintiff receives the benefit of the most beneficial interpretation of those facts. However, Plaintiff is not entitled to any form of legal liberality. Plaintiff still must plead adequate facts to meet viable legal theories. Where Plaintiff’s legal theories are flawed, causes of action may be fatally deficient.

PCS has not filed a demurrer, only Aragon. However, PCS has filed a joinder to Plaintiff’s allegations which are comingled between the Defendants, and therefore the Court must address the sufficiency of the first five causes of action as to both Defendants in order to render thorough analysis as to Aragon. Therefore, PCS’s joinder to the motion appears proper.

Plaintiff avers several causes of action predicated on preemption and statutes that themselves are not causes of action. The only coherent reading of these causes of action are for declaratory relief, based on Plaintiff’s various prayers for declaratory relief in statutory interpretation.

Preemption is a term of art in this instance applicable to state law overriding local ordinance (or federal overriding state), and is not a cause of action. The Court proceeds to the legal issues in a piecemeal manner in order to adequately lay the appropriate legal framework and identify causes of action cognizable from the pleadings.

A. “Immunization”

Plaintiff’s arguments are largely predicated on Plaintiff attempts to draw a distinction between immunizations as required by HSC § 120335 and vaccinations. Given that the Department and PCS sit at different levels of the administrative process, Plaintiff’s arguments must be weighed in two stages. However, Plaintiff’s own citation to HSC § 120335 and CCR, tit. 17, § 6025 are self-defeating. HSC § 120335 clearly delegates substantial authority to the Department in creating the requirements within the regulations. The language thereon cannot be construed as foreclosing vaccinations as the method of immunization under the statute. Indeed, the language clearly contemplates the opposite. “The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.” HSC § 120335 (e). The statute delegates substantial power to the Department in promulgating the regulation defining what “immunizing agents” are appropriate. Plaintiff cannot display, as a matter of statutory interpretation that the Department is not entitled to promulgate a regulation determining that the only appropriate immunizing agents are vaccinations. As to the Department, Plaintiff can display no error if the regulations were to come to such a conclusion.

The regulations do just that, providing “Table B” which contains “the required immunizations and number of doses for admission to and attendance at a school. . .” Cal. Code Regs., tit. 17, § 6025 (c). Given the use of “doses” of immunization, and that the regulation repeatedly interchanges the use of “vaccine” (see Table B, fn. 4), § 6025 clearly supports an interpretation that four polio vaccinations are required to display the required four doses of “immunization” required by the regulation. There is no support for Plaintiff’s contention that PCS has misapplied Cal. Code Regs., tit. 17, § 6025 by requiring proof of vaccination to meet the unconditional admission requirements. This represents the clearest possible meaning of the regulation. Plaintiff has not displayed an error of law in this interpretation.

Indeed, every case on the subject promulgates the same supposedly erroneous conflation. See *Let Them Choose v. San Diego Unified School Dist.* (2022) 85 Cal.App.5th 693, 703 (HSC § 120335 creates “a comprehensive state procedure to determine the compulsory vaccinations for school attendance...”); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1139 (“Senate Bill No. 277 eliminated the personal beliefs exemption from the requirement that children receive vaccines for specified infectious diseases before being admitted to any public or private elementary...”). For the purposes of HSC § 120335, there does not appear to be a distinction between “immunizing agents” and “vaccines”, therefore there can be no error in the Department’s subsequent reinforcement of that through regulation. Neither the Department nor PCS committed error in their construal of the statute.

B. Writ of Mandate and Declaratory Relief

Plaintiff alleges several causes of action which do not conform to those available under statute. Plaintiff alleges no local “ordinance” at issue, and therefore preemption is not the appropriate legal principle. Nor is it a local “mandate”. Plaintiff underwent an administrative process in determination of the exemption. As is explored below, the statute and regulations create clear standards which Plaintiff has conceded are not met. Plaintiff may not do an end run around the administrative mandamus process by arguing that there is some local “mandate” which they fail to identify beyond the quasi-judicial proceeding. To the degree that Plaintiff argues that PCS has misapplied the exemption process based on the first, second and third “causes of action”, these are merely legal posturing which can only be appropriately posed as a writ of administrative mandamus under CCP § 1094.5. Therefore, Plaintiff has failed to state any claim for a conflict of laws as applied to PCS. PCS has merely applied applicable statutes and regulations in the context of a quasi-judicial proceeding. No other action alleged against PCS appears to be anything more than their mandatory duties under the applicable statutes. As the facts are currently pled, only a claim for administrative mandamus is posturally viable against PCS.

Without venturing into the consideration of what is true under the judicially noticeable documents, it is clear that Plaintiff’s FAC concedes the key factual issue. Plaintiff’s entire case is predicated on argued immunity regardless of vaccination status. Plaintiff has conceded that Minor *cannot* display immunity from Polio Type 2 due to the titer test being unavailable. FAC ¶ 41. Plaintiff merely alleges that the vaccine contains all three strains of Polio vaccine, and that Minor displays immunity markers to Types 1 and 3. FAC ¶ 40. Plaintiff draws no factual nexus between immunity to Types 1 and 3, and immunity to Type 2. The subsequent allegations that Minor is immune appears generalized and conclusory given this admission. Given that Plaintiff avers that PCS abused its discretion in the administrative process, Plaintiff must elucidate how that discretion was abused.

Moreover, CCR, tit. 17, § 6025 provides no elucidated basis for titer testing as an exemption to immunization requirements. Plaintiff admits to having only three doses of immunization for Polio. FAC ¶ 33. CCR, tit. 17, § 6025, Table B, requires four. Facial non-compliance with CCR, tit. 17, § 6025 does not display an abuse of discretion on the part of PCS. Therefore, Plaintiff has failed to plead an abuse of discretion, and administrative mandamus will not lie.

As to Aragon and the Department, Plaintiff’s administrative mandamus turns on the very same considerations. Plaintiff cannot display compliance with the express terms of CCR, tit. 17, § 6025. Those terms are clearly within the authority granted by HSC § 120335(e). Even had there been a ministerial duty, it is clearly strongly mixed with discretion. *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596. Defendants should be capable of exercising their obligations without “judicial interference”. *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. Plaintiff’s factual pleading is insufficient to display an abuse of discretion.

Nor can Plaintiff state a claim for mandamus under CCP § 1085. The Department may only be compelled to actions which are within a ministerial duty, such as to define immunizing agents. *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. The Court may not compel how that discretion is exercised absent an abuse of discretion. *Ibid*. Given the discussion above, Plaintiff has pled no abuse of discretion in the promulgation of the regulations. Plaintiff has not pled a basis for either form of writ of mandate.

C. Declaratory relief

Plaintiff may not obtain declaratory relief for an administrative action. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. Plaintiff's citation to *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 648 is entirely misplaced, as it deals with contractual rights as contemplated by CCP § 1060, and not any declaratory relief in a writ of mandate context. Despite this, the Court finds support for declaratory relief in writ of mandate cases where the petitioner seeks declaration that a statute is invalid. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263. On this basis, the Court examines the FAC facts sufficient to show statutory invalidity.

D. Constitutional Claims

Plaintiff asserts two causes of action predicated on the California Constitution, claiming that Defendants cannot meet either strict scrutiny nor a rational basis test for their policies. Plaintiffs aver that the exclusion of Minor due to his vaccination status is a violation of both the equal protection clause under Cal. Const. Art. I § 7, and a violation of the right to education under Cal. Const., Art. IX, § 5.

The most applicable case to the instant matter is *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1143, and Plaintiff posits no response to its absolute and clear foreclosure of their constitutional claims.¹ *Brown* in turn takes significant persuasive value from *Whitlow v. California* (S.D. Cal. 2016) 203 F.Supp.3d 1079 (“*Whitlow*”). *Whitlow* is persuasive, and *Brown* controlling. Plaintiff fails to distinguish from these applicable cases.

First, to Plaintiff's claims of a right to education under the California Constitution, Plaintiff overstates the bounds of the constitutional right at issue. As our state's Supreme Court stated over a hundred years ago, “effort to prevent the spread of contagion in a direction where it might do the most good (is) for the benefit and protection of all the people, and there is in it no element of class legislation. It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” *French v. Davidson* (1904) 143 Cal. 658, 662. Each subsequent case has found it within the power of the legislature to mandate vaccination. HSC § 120335, and its associated regulations, implicate no “suspect classification”. *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146. Therefore, there does not appear to be a rationalization provided for why strict scrutiny applies, as opposed to rational basis. Despite this, the cases are clear that Defendants *can* meet strict scrutiny were it necessary. “The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State's interest in protecting the health and safety of its citizens, and particularly, school children,’ and ‘removal of the [personal beliefs exemption] is necessary or narrowly drawn to serve the compelling objective of SB 277.” *Brown*, *supra*, 24 Cal.App.5th at 1146–1147, quoting *Whitlow*, *supra*, 203 F.Supp.3d at 1091. Plaintiff displays no excess in how the statute and regulations are tailored given the substantial interest of the state in public health. As is fully addressed above, no action by PCS appears implicated, as PCS has only effectuated

¹ Plaintiff fails to address this case anywhere within their opposition.

HSC § 120335 and the Department’s regulations thereon. Plaintiff has pled no constitutional violation to the right to education, as the case law weighs in favor of the state’s interest.

Plaintiff avers that the disparate treatment attributable to other categories of children is a violation of equal protection under Cal. Const., art. I, § 7. Plaintiff particularly raises exceptions for production of records applicable to homeless children, children in foster care, and children of military families. While *Brown* does not directly address the categories of exceptions raised by Plaintiff, the logic expressed therein on equal protection statutes remains applicable. “The statutory classifications and exemptions plaintiffs dispute do not involve similarly situated children, or are otherwise entirely rational classifications. For a discussion delineating, and rejecting, equal protection claims based on these categories, see *Whitlow, supra*, 203 F.Supp.3d at pages 1087-1088.” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147. The categories of students at issue do not implicate students dealing with the same struggles or disadvantages. The distinction created by the exception for homeless children, children in foster care, and children of military families is rational. The exception fulfills a compelling state interest in ensuring education for disadvantaged groups, an analysis thoroughly covered in the applicable legislative histories.

Plaintiff also argues that this implicates distinguishing classes between vaccinated and unvaccinated school children. FAC ¶ 109. As is addressed thoroughly above, cases *have* addressed this distinction, and found that constitutional rights are not infringed by this justified classification. Plaintiff has pled no cause of action predicated on equal protection.

The Court will not speculate on what factual allegations Plaintiff may make in light of this ruling. As a result, it appears appropriate for Plaintiff to have an opportunity to state their claims under the appropriate causes of action. Therefore, the Demurrer to the fourth and fifth causes of action is SUSTAINED with leave to amend.

E. Conflict of Law

Plaintiff predicates the first, second and third causes of action on alleged conflicts of law. The interpretation in the first cause of action is fully disposed of in section III(A) above. The demurrer to that cause of action is SUSTAINED with leave to amend.

Plaintiff also argues that there is preemption by Cal. Code Regs., tit. 5, § 11700 (the second cause of action), and Education Code §§ 51746 and 51747 (the third cause of action). The Court again construes these as causes of action for declaratory relief or writ of mandate. Writ of mandate fails for the reasons above. Declaratory relief as to the invalidity of the statutes and regulations also fails.

Plaintiff’s argument regarding Cal. Code Regs., tit. 5, § 11700 is simply incorrect. As was noted above, Plaintiff’s construal of HSC § 120335 was inconsistent with the very language of the statute. The exclusion of children who are not immunized from traditional on campus instruction is statutory. HSC, § 120375 (b). Plaintiff may not override the Legislature’s statute through citation to regulation. The demurrer to the second cause of action is SUSTAINED with leave to amend.

As to the conflict between the Health and Safety Code and the Education Code, it is clear that the interest of public health regularly overrides educational principles. *Brown, supra*, 24 Cal.App.5th at 1146–1147. The exclusion of children from educational institutions who are not immunized in accordance with state law has been repeatedly upheld. The reasonable, non-antagonistic interpretation of this interplay of laws is that Minor is not “required” to participate in independent study. Minor is required, like almost every school age child not subject to an exemption, to be fully immunized. It is the failure of Plaintiff to comply with the requirements of the statute which foreclose the opportunity to attend public school. As discussed above, Plaintiff identifies no “local” mandate, but rather an intersection of state laws and regulations, which must be read to avoid absurd results while effectuating the legislative intent. HSC § 120335 is the more specific statute. It therefore controls. *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396, 401. Minor is required to display immunization in accordance with regulations in order to attend campus. Minor is not required to participate in independent study.

Plaintiff also argues that Minor cannot be accorded the requirements of independent study, as the school cannot provide him the same resources as other students as required under Education Code § 51746 due to his exclusion. If anything, this is an argument for why Minor is ineligible for independent study through PCS, not an argument for why he is allowed to attend campus while non-complaint with HSC § 120335. Given that Minor’s actual enrollment in independent study is not before the Court, it makes no determination as to the propriety thereon. The demurrer to the third cause of action is **SUSTAINED** with leave to amend.

Once Plaintiff’s exemption is adversely determined, it seems that exclusion is mandatory. Cal. Code Regs., tit. 17, § 6055 (children not meeting the requirements of HSC § 120335 “shall” be excluded). Plaintiffs may not obtain their requested relief absent a showing that there has been a legal error on the part of Defendants. No such error has been shown.

IV. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend.**

Aragon’s counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. 24CV03208, Joost, III v. Joost, JR.

Plaintiff Wendell Joost, III (“Plaintiff”), both individually and derivatively on behalf of JoostFamily Development Company (the “Company”) initiated this action on May 24, 2024 by filing the complaint against defendants Wendell Joost, Jr. (“Defendant”) and nominal defendant the Company, with causes of action for breach of fiduciary duty, breach of the covenant of good faith and fair dealing, false promise, accounting, conversion, concealment, UCL violations, and a derivative cause of action for breach of fiduciary duty (the “Complaint”). This matter is on calendar for Plaintiff’s Motion to Enforce Inspections Rights under Corp Code § 1602 and §1603 is **GRANTED** but the request for sanctions is **DENIED**.

I. Governing Authorities

“Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.” Corp. Code, § 1602. “Upon refusal of a lawful demand for inspection, the superior court of the proper county, may enforce the right of inspection with just and proper conditions or may, for good cause shown, appoint one or more competent inspectors or accountants to audit the books and records kept in this state and investigate the property, funds and affairs of any domestic corporation or any foreign corporation keeping records in this state and of any subsidiary corporation thereof, domestic or foreign, keeping records in this state and to report thereon in such manner as the court may direct.” Corp. Code § 1603. Absent particular exceptions, the right of a director to inspect records is “absolute”. *Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205, 211. “(T)he mere possibility that information could be used adversely to the corporation is not by itself sufficient to defeat a director's inspection rights. Rather, any exception to the general rule favoring unfettered access must be limited to extreme cases, where enforcing an “absolute” right of inspection would produce an absurd result. . .” *Ibid.* “All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation.” Corp. Code, § 1603.

II. Analysis

Defendant filed an opposition on November 28, 2024. The opposition was mislabeled, and therefore was rejected by the court clerk. While the clerk should not have rejected the filing, as to this motion the opposition was clearly tardy due to the Thanksgiving holiday. Opposition was due on November 26, 2024. Therefore, even had the opposition been appropriately filed by the clerk, it would have been late and in the discretion of the Court to ignore the late filing.

Defendant, through his counsel's May 6 and 15, 2024 letters, concedes that Plaintiff has inspection rights as a director. Hilliard Declaration in Support (“Hilliard Decl.”), Exhibits 5 & 6. Plaintiff has been making inspection requests since January 8, 2024. Hilliard Decl., Ex. 2. To date, Defendant has produced none of the required documents. Plaintiff's right to inspect corporate records is “absolute” absent some proven exception. There being no timely opposition, no exception has been displayed.

Plaintiff's Motion is GRANTED.

1. Defendant and Company will produce all corporate documents from 2014 to present within 30 days of notice of this order.
2. Plaintiff, through counsel, may inspect all of the Company's documents and records and to inspect any and all real or tangible property owned by the Company.

Plaintiff's request for costs is not included in the notice of motion. The Notice of Motion must enumerate "the nature of the order being sought and the grounds for issuance of the order." Cal. Rule of Court, Rule 3.1110. The general policy regarding additional costs is that a party should be adequately apprised of that request in the notice. See, e.g., CCP § 2023.040. Furthermore, even had notice been properly given, based on the language of the statute, this matter appears entirely discretionary. Plaintiff would have been obligated to absorb the costs of inspection had the motion not been made necessary. There are no special factors identified justifying a deviation from that norm.

Plaintiff's request for costs is DENIED.

III. Conclusion

Plaintiff's request for inspection of corporate records is GRANTED. Plaintiff's request for costs is DENIED.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. SCV-273094, Allen v. Pride M.D.

Plaintiff Lucy Allen ("Plaintiff") filed the complaint ("Complaint") in this action against defendants Sutter Santa Rosa Regional Hospital ("Sutter SR"), Mathew Barry Pride, M.D. ("Pride"), Sutter Health ("Sutter"), Sutter Lakeside Hospital ("Sutter Lakeside"), University of California, San Francisco ("UCSF") (all together "Defendants"), and Does 1-100 for a cause of action for medical malpractice.

Sutter SR and Sutter Lakeside are the same business entity, Sutter Bay Hospitals ("Sutter Bay"). This matter is on calendar for motions by Sutter Bay for summary judgment or, in the alternative, adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Sutter Bay's motion for summary judgment is **GRANTED**.

I. Evidentiary and Procedural Issues

Plaintiff has filed a non-opposition to Sutter Bay's motion. The analysis as to whether Sutter Bay has shifted their burden therefore proceeds without evidentiary or legal challenge.

II. Underlying Facts

Plaintiff contends that defendants were negligent in their care of her following delivery of her child wherein placenta was retained which became infected resulting in removal of her uterus, fallopian tubes and ovaries. Sutter Bay's Separate Statement of Material Facts ("SBMF") ¶ 2. Plaintiff alleges that Sutter SR failed to provide proper facilities, failed to ensure the competence of medical staff, and failed to maintain adequate records. SBFM ¶ 3. Plaintiff also alleges that Sutter Lakeside failed to provide proper facilities, failed to ensure the competence of medical staff, and failed to maintain adequate records. SBFM ¶ 4. Plaintiff was admitted to Sutter SR on

December 1, 2021. SBMF ¶ 6. On December 4, 2021, Plaintiff vaginally delivered a preterm female infant. As the placenta did not spontaneously deliver, manual extraction was required. Following manual extraction of the placenta by Dr. Pride, moderate bleeding continued. A bedside ultrasound was done revealing a possible placental fragment. A bedside curettage was performed under ultrasound guidance. A small fragment of placenta was obtained but bleeding resolved. SBMF ¶ 7. “Plaintiff was discharged with her infant two days later. SBMF ¶ 8. On January 21, 2022, Ms. Allen presented to Dr. Pride at his office for her first post-partum examination. She was now 6 weeks postpartum and reported that although she was down to just spotting, the past week she had increased to light flow. On ultrasound, however, the uterus, although normal size, had a thickened, hyperechoic, heterogenous and cystic appearing endometrium measuring up to 2.4 cm. Dr. Pride’s assessment included delayed post-partum hemorrhage likely secondary to retained placental material and scheduled her for a D&C and IUD insertion under ultrasound guidance.” SBMF ¶ 9.

“Ms. Allen returned to SSRRH on January 24, 2022, to undergo her planned procedure. She was taken to the operating room where Dr. Pride performed a D&C and IUD insertion under ultrasound guidance. A “large amount of heterogenous material consistent with retained products of conception, which did have blood flow” was noted on ultrasound and subsequently removed with suction D&C and confirmed with sharp curettage. On ultrasound the retained products of conception appeared to be completely removed. There appeared to be good hemostasis and her uterus sounded to 9 cm, following which the IUD was placed. However, Ms. Allen started to bleed again and ultrasound revealed some clot formation and active bleeding in the mid uterus. Targeted sharp curettage was performed. Monsel’s, a topical hemostatic agent, was applied which was partially effective. The decision was then made to administer Tranexamic Acid (“TXA”), an antifibrinolytic agent, followed by Methergine and ultimately Pitocin both uterotonic agents. With the combination of these medicines, her bleeding stopped. Repeat ultrasound revealed a 2-3 x 4 cm clot without active bleeding. The decision was made to leave the clot in place. Plaintiff was discharged that evening.” SBMF ¶ 10. “On January 28, 2022, Plaintiff began experiencing heavy vaginal bleeding and she presented via ambulance to SLH. Upon arrival at SLH at 0714, she was met by ER physician Jan Paul Vobecky, M.D. Ms. Allen reported that she was dizzy and lightheaded and was experiencing uterine pain. She was pale, diaphoretic, hypotensive and tachycardic. Dr. Vobecky estimated 500 cc blood loss in her underwear and bedside commode. Labs were ordered and blood typed and cross matched. Dr. Vobecky consulted the OB on call, Jeannie Pflum, DO who recommended TXA and blood transfusion and she would be in to see the patient emergently.” SBMF ¶ 11. “Dr. Pflum saw the patient at 0835. More blood (100 cc) was quickly lost on speculum exam. She was unable to see the cervix due to bleeding despite entire boat of sponges. As she was unable to see or stop the bleeding, Dr. Pflum recommended urgent transfer to the OR for further evaluation. She estimated approximately 1000 cc blood loss prior to taking her to the OR. She discussed the need for possible hysterectomy for life threatening blood loss but the patient preferred not to have her uterus removed.” SBMF ¶ 12.

“At 0906, Dr. Pflum took the patient to the OR for exam under anesthesia, removal of IUD, endometrial curettage and placement of an intrauterine Foley balloon to tamponade the bleeding. She was transfused with 2 units of PRBCs.” SBMF ¶ 13. “Pathology from the specimen removed weighed 8.5 grams and consisted of 4.7 x 3.8 x 1.4 cm aggregate red-brown clot admixed with

tan fragments of membranous tissue. No chorionic villae, fetal somatic gestational tissue nor vesicles were identified.” SBMF ¶ 14. “Although the Foley appeared to control the bleeding, definitive treatment was necessary along with a higher level of ICU care for when the Foley was removed. SLH was capable of hysterectomy but not uterine artery embolization and the patient did not want a hysterectomy.” SBMF ¶ 15. “UCSF agreed to accept transfer of plaintiff. Ms. Allen was airlifted to UCSF at 2122.” SBMF ¶ 16.

Plaintiff admits in discovery responses she has no facts supporting her allegation that Sutter SR was negligent as alleged in the complaint. SBMF ¶ 20-22. Plaintiff has also admitted in discovery responses she has no facts supporting her allegation that Sutter Lakeside was negligent as alleged in the complaint. SBMF ¶ 24-26. Plaintiff admits that she has no evidence Pride was an employee of Sutter SR. The care and treatment provided to plaintiff, during her December 1 - 6, 2021, admission or during her January 24, 2022, admission at Sutter SR and its staff all times complied with the standard of care. SBMF ¶ 27. The care and treatment provided to plaintiff during her January 28, 2022, admission at Sutter Lakeside and its staff at all times complied with the standard of care. SBMF ¶ 29. No act or failure by Sutter Bay or its employees caused or contributed to any injury to Plaintiff during her December 1-6 2021 or January 28, 2022 admissions. SBMF ¶¶ 28, 30.

III. The Burdens and Standards on Summary Judgment and Adjudication

A. Generally

Summary judgment or adjudication “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (“*Aguilar*”).

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

A moving party does not meet its initial burden if some “reasonable inference” can be drawn from the moving party’s own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp.* (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.

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

B. Medical Malpractice

To prevail on a claim for medical malpractice, a plaintiff must establish: 1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; 2) a breach of that duty; 3) a proximate causal connection between the negligent conduct and the resulting injury; and 4) loss or damages caused by the professional’s negligence. *Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th 870, 877. “Mere error of judgment, in the absence of a want of reasonable care and skill in the application of his medical learning to the case presented, will not render a doctor responsible for untoward consequences in the treatment of his patient [citations], for a doctor is not a ‘warrantor of cures’ [citation] or ‘required to guarantee results’ [citations].” *Custodio v. Bauer* (1967) 251 Cal.App.2d 303, 311-12 (internal citation omitted). Ordinarily, the question as to whether a physician or nurse has failed to exercise the requisite care, diligence, and skill must be based on expert medical testimony. *Landeros v. Flood* (1976) 17 Cal.3d 399, 410. Additionally, such a breach in the standard of care must be a substantial factor in the cause of the injury. *Espinosa v. Little Co. of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1314. Expert testimony must demonstrate that the defendants’ negligence was the probable cause-in-fact of the complained injury. *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1118; *Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 509.

IV. Analysis

Sutter Bay, in moving for summary judgment, presents evidence that the conduct alleged in the complaint does not breach the standard of care. In support they offer expert opinion establishing that the care did fall within the applicable standard of care. See Sutter Bay’s Declaration in Support, Exhibit G, ¶ 14. This is sufficient to shift the burden at summary judgment, as it negates the actual negligence required to prove a cause of action for medical malpractice. Plaintiff has filed no opposition, and therefore has not met the shifted burden.

Sutter Bay’s motion for summary judgment or adjudication is GRANTED.

V. Conclusion

Sutter Bay’s motion for summary judgment and adjudication is **GRANTED**.

Sutter Bay shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

10-13. SCV-273578, County of Sonoma v. Cupp

Cupp’s motion to compel further responses to his form interrogatories is **GRANTED** with respect to FROGs no. 13.1, 13.2, 14.1, and 14.2, and otherwise **DENIED**. Cupp’s motions to compel further responses to his special interrogatories and requests for admissions are both **DENIED**. County’s motion for a protective order is **GRANTED** with respect to excusing County from responding to Cupp’s RPD Set 2, and otherwise **DENIED**. Sanctions are awarded to County in the amount of \$2,982.00.

County’s counsel shall submit a written order consistent with this ruling and compliant with California Rules of Court, rule 3.1312.

I. Procedural background

This is an abatement action by the County of Sonoma (“County”) against defendant Ronald Cupp (“Cupp”), the owner of the 20-acre property at 4640 Arlington Avenue in Santa Rosa (the “Property”).

A. The inspections and the administrative hearing

Following an inspection of the Property conducted on February 15, 2019, County filed a notice of abatement proceedings on June 13, 2019. County obtained a warrant for a further inspection on July 20, 2020 (case no. SCV-266746), and conducted a search of the Property pursuant to the warrant on July 30. On the same day, County’s inspector issued notices and orders for violations of several building and use codes. On September 22, Cupp requested an abatement hearing.

The hearing was conducted on January 22, 2021, and the hearing officer issued a Statement of Decision and Administrative Order on February 11. The decision confirmed seven instances of unpermitted construction, an unpermitted cannabis grow, unpermitted occupancy of a travel trailer, and “junkyard conditions.” It imposed abatement costs of \$37,116.44, a \$7,000 penalty for the unpermitted cannabis grow, and a \$225 daily penalty commencing on July 30, 2020, to continue accruing until Cupp remediated the unpermitted conditions.

The Statement of Decision notified Cupp that he could seek judicial review pursuant to CCP § 1094.6 within 90 days. He did not do so. Accordingly, the decision of the Administrative Hearing Officer is now final.

B. The instant lawsuit

County initiated the instant lawsuit by a complaint filed on June 23, 2023 (the “Complaint”). The Complaint seeks the accrued civil penalties ordered by the hearing officer after the January 22, 2021, hearing for the building code and zoning violations, as well as an injunction ordering Cupp to abate the violations.

1. Cupp’s Discovery at Issue

On December 1, 2023, Cupp propounded his first set of discovery demands on County, consisting of form interrogatories (“FROGs”), 132 special interrogatories (“SROGs”), 55

requests for admissions (“RFAs”), and 55 document production requests (“RPDs”). After initially objecting to the volume of the demands, County served timely responses on January 2, 2024. A mail exchange ensued wherein County granted Cupp several extensions of time to move to compel further responses.

On April 2, 2024, Cupp served a second set of RPDs on County. On April 17, he filed the three instant motions to compel further responses to the FROGs, SROGs and RFAs (collectively the “MTCs”).

On May 1, 2024, County filed the instant motion for a protective order (the “PO Motion”). The PO Motion seeks orders limiting the discovery demands propounded by Cupp on December 1, 2023; excusing County from responding to the second set of RPDs propounded on April 2, 2024; and barring Cupp from serving any further demands for written discovery without advance approval of the Court.

2. Cupp’s cross-complaint and County’s Demurrer

Cupp filed a cross-complaint (the “Cross-Complaint”) on June 24, 2024, by leave of court. Cupp was unrepresented at that time, as he had been since the inception of this case. Cupp’s current counsel substituted in on July 2. On the same day, Cupp filed an Omnibus Reply to County’s opposition to the instant MTCs. The Omnibus Reply argued that the discovery demands addressed by the instant motions were justified, in part, by the allegations in the cross-complaint. County demurred to the Cross-Complaint on July 18 (the “Demurrer”). On November 26, the Court sustained the Demurrer as to all causes of action, granting leave to amend only one of them. The effect of that ruling is discussed below in the section addressing County’s PO Motion.

3. Hearings on the instant motions

Hearing on the PO Motion was initially set for August 7, 2024. Hearing on the MTCs had originally been set for July 10. On that date, the Court continued the hearings on the MTCs to August 7 so that they could be heard along with the PO Motion, which presented many similar issues. On August 7, the Court continued the hearings on all four motions to November 6 on the basis that they should be heard after the Demurrer, then set for hearing on October 23, because the outcome of the Demurrer could fundamentally alter the analysis of the PO Motion and the MTCs. However, on October 22, the parties stipulated to continuing the hearing on the Demurrer to November 6. Accordingly, hearing on four instant motions was continued to December 11. The four motions now come on calendar for hearing.

I. Governing law

“California law provides parties with expansive discovery rights.” (*Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591.) The scope of discovery is one of reason, logic and common sense. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.) The right to discovery is generally liberally construed. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 540; *Davies v. Superior Court* (1984) 23 Cal.2d 291, 300.)

Specifically, “any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (CCP § 2017.010; see also *Garamendi v. Golden Eagle Ins. Co.* (2004) 116 Cal.App.4th 694, 712, fn. 8.) “For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement . . . [Citation.] Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence. [Citation.] These rules are applied liberally in favor of discovery [citation], and (contrary to popular belief), fishing expeditions are permissible in some cases.” (*Garamendi, supra*, at p. 712, fn. 8, internal quotation marks omitted; see also *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) However, even where a “fishing expedition” is permitted, a party seeking discovery must provide sufficient identification of the requested information to acquaint the other party with the nature of information desired. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 225.) Relevancy is determined by the allegations of the pleadings. (*John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1185.)

II. Analysis

A. Requests for admissions

Each of Cupp’s 55 RFAs consists of “ADMIT YOU have no EVIDENCE supporting YOUR allegation in paragraph X of YOUR Complaint,” where X is a number ranging from 18 to 77. County answered each RFA, with one exception, with:

“Objection, not separately set forth; not full and complete in and of itself; overbroad; vague and ambiguous; compound, and contains subparts. Without waiving, deny.”

The single exception is RFA No. 3, to which County responded with the same objection, but without the final sentence; that is, with neither an admission nor a denial.

There is nothing here to compel other than a response to RFA no. 3. County has denied all of the others. A denial of all or any portion of an RFA must be unequivocal, but a denial following “without waiving these objections” is unequivocal. (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist. of Southern Calif.* (2005) 126 Cal.App.4th 247, 268.) The Court construes each denial as an affirmation that County has at least some evidence supporting at least one of the allegations in the paragraph of the Complaint identified by the corresponding RFA. (As discussed below, many paragraphs contain multiple allegations.) Those are proper responses.

RFA No. 3 refers to paragraph 20 of the Complaint, which, like paragraphs 19 and 21, contains part of the narrative of Inspector Andrew Smith’s activities surrounding the February 15, 2019, inspection of the Property. County has no more basis for refusing to either admit or deny that it lacks evidence supporting paragraph 20 than it does regarding paragraphs 19 or 21. The Court assumes that County’s failure to either admit or deny RFA No. 20 was inadvertent. However, the

Court will not order County to respond substantively to RFA No. 20 because it is objectionable for the reasons discussed next.

County's objections to each RFA on the grounds that it is not full and complete in and of itself (CCP § 2033.060(d)) are sustained. Each RFA refers to a paragraph of the Complaint by its number, but a request "is not 'full and complete in and of itself' when resort must necessarily be made to other materials in order to complete the question." (*Catanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1164 [addressing same rule in the context of SROGs].)

County's objections on the grounds that the RFAs are compound and contain subparts are also sustained. (CCP § 2033.060(f).) Any RFA that refers to a paragraph of the complaint containing multiple allegations is ipso facto compound. For example, RFA No. 2 asks COUNTY to admit that it has no evidence supporting "YOUR allegation in paragraph 19 of YOUR Complaint." Paragraph 19 of the complaint reads:

"On January 29, 2019, Sonoma County Code Enforcement Inspector Andrew Smith ("Inspector Smith") sent a courtesy letter to the property owner as reflected in the most recent tax roll. The letter provided notice to that owner that Permit Sonoma had received a complaint alleging unpermitted construction on the Property and wished to schedule an inspection to verify the validity of the complaint. A response was not received. "

Therefore, RFA No. 2 asks COUNTY to admit that it has no evidence supporting the contention that Smith sent a letter to Cupp on January 29, 2019, or the contention regarding the content of that letter, or the contention that no response was received. This is in effect a "disjunctive request," and is therefore prohibited by CCP § 2033.060(f). County's "not full and complete" and "compound and contains subparts" objections are sustained.

Cupp's motion to compel further responses to the RFAs is DENIED, based on the sustained objections discussed above. The further effect of that ruling is discussed below in connection with FROG no. 17.1.

B. Form interrogatories

1. Definition of "INCIDENT"

Each of the FROGs to which Cupp moves to compel further responses refers to an "INCIDENT": for example, FROG no. 9.1 asks "Are there any other damages that you attribute to the INCIDENT?" Cupp used Judicial Council form DISC-001 which gives the propounding party the option of a stated definition for "INCIDENT(which) includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding" (§ 4(a)(1)), or providing his own definition (§ 4(a)(2).) Because neither party has submitted a copy of the actual interrogatories, the Court does not know which of those options Cupp selected, and therefore cannot be sure what "INCIDENT" means.

The Court will assume Cupp exercised the former option since the discovery is targeted toward County's allegations in the Complaint. Therefore, "occurrence . . . giving rise to this action or proceeding" is Cupp's alleged failure to abate the building code violations on the Property as ordered by the administrative hearing officer, and to pay the abatement costs and civil penalties imposed by the officer. That failure, therefore, is the INCIDENT. The INCIDENT is *not* the violations themselves. The facts that the violations occurred, and that Cupp is liable for them, are established by the Statement of Decision issued after the administrative hearing, which became final when Cupp did not file a timely challenge pursuant to CCP § 1094.6.

2. No. 9.1

The interrogatory asks for the amount of "other damages" County seeks. In its response, County notes that it seeks only civil penalties, abatement costs, and attorney's fees, and that those are not damages. The Court agrees. "Civil penalties are imposed as a means of securing obedience to statutes and regulations They are punitive in character. Civil penalties may be imposed without regard to actual damage that may have been sustained. Indeed, a characteristic feature of a penalty is its lack of proportional relation to [actual] damages." (*People v. Union Pacific Railroad Co.* (2006) 141 Cal.App.4th 1228, 1257-1258, internal quotation marks and citations omitted.) In contrast, "[t]he primary object of an award of damages in a civil action . . . is just compensation or indemnity for the loss or injury sustained by complainant . . ." (*In re De Laveaga's Estate* (1958) 50 Cal.2d 480, 488.) The motion is denied as to FROG no. 9.1 because County is not seeking damages at all.

Moreover, the Complaint describes what County *is* seeking in as much detail as is currently possible. County seeks \$14,295.45 in costs, and \$42,000, consisting of \$7,000/day penalty for unpermitted cannabis cultivation for a six-day period. (Complaint, Prayer section, ¶¶ 6, 7(b).) The remaining items cannot be precisely determined because they continue to accrue over time. County seeks \$22,190.99 in attorney's fees so far, but of course that number will continue to grow for as long as the instant case proceeds. (*Id.* at ¶ 6.) County seeks \$150/day penalties for unpermitted construction, unpermitted occupancy of a travel trailer, and junkyard conditions, accruing from July 30, 2020 until the conditions are mitigated. Even if County were to characterize these amounts as damages – which, again, they are not -- there is nothing more it could say in response to FROG no. 9.1. Therefore, Cupp's motion for a further response to form interrogatory No. 9.1 is DENIED.

3. No. 9.2

The interrogatory asks County to identify any documents supporting the damages claimed in FROG no. 9.1. In response, County refers Cupp to certain documents that are already in Cupp's possession, citing to CCP § 2030.230. That citation is somewhat odd in this context. The statute permits interrogatories to be answered by reference to "documents from which the answer may be ascertained," but this particular interrogatory does not ask a question to which the answer may be ascertained from documents, it merely asks for identification of those documents.

Nevertheless, County's response adequately identifies the documents that set forth the penalties and costs for which Cupp is liable.

The motion is DENIED as to FROG No. 9.2.

4. Nos. 12.1, 12.2, 12.4, and 12.5

These interrogatories requests contact information for individuals who witnessed the INCIDENT, who have knowledge of it, or whom County has interviewed concerning it, and photographs and diagrams of the INCIDENT. County again refers Cupp to various documents pursuant to CCP § 2030.230.

As discussed above, the “INCIDENT” giving rise to this lawsuit is Cupp’s failure to do certain things, many of them involving paying money to County. The “INCIDENT” does not involve the code violations on the Property; everything related to those violations was litigated in the administrative hearing, whose outcome is now final. In light of that distinction, these interrogatories are simply inappropriate. There cannot have been any witnesses to, or photographs of, Cupp failing to do something that he was obliged to do.

The motion is DENIED as to FROG Nos. 12.1, 12.2, 12.4, and 12.5.

5. Nos. 13.1 and 13.2

These interrogatories request information about any surveillance County has conducted of any individual involved in the INCIDENT. To both of them, County responds that “no ‘surveillance’ has been conducted at present, as Plaintiff understands the term.”

That response is problematic for two reasons. First, it is limited to “at present.” It is not clear what that means – today? the last month? the last year? But it does not matter what it means because the interrogatory is not time-restricted, so the response should not be either. “Have you conducted surveillance?” clearly means “have you *ever* conducted surveillance?” Secondly, “as Plaintiff understands the term” is evasive. County does not explain how it understands the term, but the Court understands it to mean its dictionary definition, “a close watch kept over someone or something, as by a detective.”

Cupp notes that he and County “both know that the COUNTY has flown drones over my property on Arlington Avenue on more than one occasion,” and asks “Is this not ‘surveillance’?” It is, but that point is not dispositive because the interrogatory does not ask about surveillance in general, only about surveillance of “any individual”; that is, of a person. The drone flyovers were surveillance of the Property, but not necessarily of any person. In his Cross-Complaint, Cupp alleges that Inspector Todd Hoffman misled the hearing officer into believing that drone images were actually images from Google Earth. (Cross-Complaint, ¶ 41.) That deception would have been unlikely to succeed if any individuals had been discernible in the drone images, which suggests that none were. The fact that County took drone images of the Property does not compel the conclusion that County “conducted surveillance of any individual.”

However, nor does it mean that County did not do that. The motion is granted with respect to FROGs no. 13.1 and 13.2. County is instructed to provide supplemental responses with no time

limitation concerning any surveillance it has conducted (in the common, ordinary-English meaning of the word) of “any individual involved in the INCIDENT”, as distinct from surveillance of the Property. Again, INCIDENT in this context has been defined by the Court under Section III-B (1), above.

The motion is GRANTED as to FROG Nos. 13.1 and 13. 2.

6. No. 14.1

The interrogatory asks whether County contends that anyone involved in the INCIDENT violated any law, “and that the violation was a legal (proximate) cause of the INCIDENT.” It does *not* ask whether County contends that Cupp, or anyone else, broke any laws as a general matter; it is restricted to laws whose violations were proximate causes of the INCIDENT. County responded that Cupp “was and has been in violation of a variety of County ordinances and state building codes as set out in the Complaint on file herein. It is quite likely that he was and has been in violation of State licensing or tax laws related to cannabis cultivation.”

Again, the INCIDENT at issue is Cupp’s failure to abate the conditions he was ordered to abate in the administrative hearing, and to pay the civil penalties and costs assessed by the hearing officer. It is open to question whether Cupp’s violation of County ordinances and building codes, or his violation of cannabis tax laws, was the proximate cause of those failures. That said, County is correct in noting that the “variety of County ordinances and state building codes” Cupp was found to have violated at the administrative hearing are “set out in the Complaint on file herein.” (Complaint, ¶¶ 4-17.) County avers that answering FROG no. 14.1 would require it to summarize documents already in Cupp’s possession, and therefore refers Cupp to those documents pursuant to CCP § 2030.230. The Court does not agree that cutting and pasting the list of statutes and regulations already enumerated in the Complaint rises to “making of a compilation, abstract, audit, or summary.”

As to Cupp’s alleged “quite likely” violations of cannabis tax and licensing laws, if County contends that those violations proximately caused the issues it is suing Cupp for, it needs to “identify . . . the statute[s], ordinance[s], or regulation[s] that [were] violated.” (Form DISC-001, ¶ 14.1.) “Defendant probably violated some laws” does not accomplish that.

The motion is GRANTED as to FROG No. 14.1. County is instructed to provide a supplemental response that lists those statutes, and only those statutes, it contends that Cupp violated in a manner that proximately caused the omissions at issue in this lawsuit.

7. No. 14.2

The interrogatory asks whether anyone was charged with a violation of a statute or regulation as result of the INCIDENT. County responded that Cupp was so charged, but responds to the request to identify “the statute, ordinance, or regulation allegedly violated” with a reference to “the documents produced by Plaintiff, the Complaint on file herein, the Administrative Record, and related correspondence to Defendant” pursuant to CCP § 2030.230. Again, the Court does

not agree that copying the citations from the Complaint or the administrative record rises to “making of a compilation.”

The motion is GRANTED as to FROG No. 14.2.

8. No. 17.1

The interrogatory requests the evidentiary basis for the denial of any RFA. As noted above, Cupp propounded 55 RFAs, and County denied 54 of them. County begins its response to FROG no. 17.1 by noting that “[t]he Requests exceed the authorized limit in Code of Civil Procedure § 2033.030 without good cause, and due to the multiple sub-parts, the number far exceeds the number identified by Defendant Ron Cupp in his Declaration.” That is a valid objection regarding the RFAs, but County did not make it in that context. Since County chose to deny 54 RFAs despite their multiple sub-parts, Cupp was justified in asking County for the basis for those denials.

However, County responded to the RFAs without waiving its objections to them, and as discussed above in Section III-A, those objections are sustained. County is not obliged to provide evidentiary support for its responses to objectionable RFAs.

The motion is DENIED as to FROG No. 17.1.

C. Special interrogatories

Cupp has propounded 132 SROGs. They follow a pattern: for each of 44 paragraphs of the Complaint, one SROG asks County to state all facts upon which it bases the “allegation” represented by the entire text of the paragraph, a second asks it to identify all individuals with knowledge of that “allegation,” and a third asks for identification of all documents that support the “allegation.”

The word “allegation,” singular, is in quotation marks because that is the word the SROGs use. However, many of the paragraphs addressed by the SROGs contain multiple allegations. For example, SROG no. 106 reads as follows:

“IDENTIFY ALL DOCUMENTS AND ESI that support the allegation contained in paragraph 28 of YOUR Complaint that, on August 28, 2019, the County provided notice to DEFENDANT that an abatement hearing had been tentatively scheduled for September 27, 2019, to determine whether the County correctly concluded the Property was in violation of the County’s Building and Zoning Codes and that abatement costs and civil penalties were due. Mr. Cupp initially requested that the hearing be continued. This hearing was subsequently postponed indefinitely due to local emergencies.”

The text following the first comma accurately quotes paragraph 28 of the complaint. However, despite the fact that paragraph 28 is just one paragraph, it contains three related but distinct

allegations: that County notified Cupp of the hearing, that Cupp initially requested a continuance, and that the hearing was postponed due to local emergencies. Any documents that support the allegation that County notified Cupp are unlikely to be the same ones that support the allegation that Cupp requested a continuance, which in turn are unlikely to be the same ones that reflect that the hearing was postponed due to an emergency. Thus, this is effectively three different interrogatories, requesting identification of three different sets of documents that support three different allegations. This is by no means an isolated example.

Propounding parties are generally limited to 35 special interrogatories. (CCP § 2030.030(a)(1).) A party wishing to propound more than that may do so by attaching a declaration stating why more are necessary. (CCP § 2030.040(a).) Cupp has not provided the Court with a copy of such a declaration – or, indeed, with a copy of the special interrogatories themselves – but he declares that he provided “Declarations for SPECIAL INTERROGATORIES, FORM INTERROGATORIES, and REQUEST FOR ADMISSIONS that were over the statutory limit.” (Cupp Dec., ¶ 6.) County has not suggested that Cupp has not done so, or that the declaration was non-compliant with the form prescribed by statute. (CCP § 2030.050.) The Court will therefore assume that Cupp attached a declaration of the necessity of propounding 132 SROGs.

However, due to the multiple-allegation issue discussed above, there are effectively a great many more than 132 interrogatories. Therefore, Cupp has not complied with CCP § 2030.040(a), in that he has not declared why it was necessary to propound the actual number of special interrogatories that he propounded, under this analysis it could well be more than 400. That in itself is a sufficient basis to deny his motion to compel further responses.

In its response, County objected to each SROG on multiple grounds, including “not full and complete in and of itself” and “compound, and contains subparts.” The “not full and complete” objections are overruled. While it is true that each SROG refers to a paragraph of the Complaint, each SROG also quotes the text of that paragraph. Thus, this is not a situation where “resort must necessarily be made to other materials in order to complete the question.” (*Catanese, supra*, 46 Cal.4th at p. 1164.) The SROG quoted above, for example, would be complete in and of itself if the phrase “contained in paragraph 28 of YOUR Complaint” were omitted. The presence of that phrase does not make it less complete.

However, County’s “compound, and contains subparts” objections are sustained. (CCP § 2030.060(f).) As with the RFAs, an interrogatory that asks for the factual basis of a paragraph containing multiple allegations is ipso facto compound. The vast majority of the SROGs here fall into that category.

The motion to compel further responses to the SROGs is DENIED.

D. Protective order

In its PO Motion, County requests two orders: that it be excused from responding Cupp’s Request for Production of Documents, Set Two served on April 2, 2024; and that Cupp “be barred from serving any further written discovery without seeking approval from the Court in advance.” (PO Motion at p. 1.)

1. Document production

a. Nos. 53 and 54

In his Omnibus Reply, Cupp (through counsel) argues that “[a]t least some of the discovery Cupp seeks is likely to lead to the discovery of admissible evidence in support of the allegations in his Cross-Complaint.” (Omnibus Reply at p. 3.) As noted above, County demurred to the Cross-Complaint on July 18, 2024, and the Court sustained the demurrer as to all causes of action on November 6. Therefore, Cupp’s discovery demands are not justified by the requested material’s relevance to the Cross-Complaint, because at the moment there *is* no Cross-Complaint. However, the Court granted Cupp leave to amend one cause of action, the third, which alleges that County conducted warrantless searches in violation of Cupp’s U.S. and California constitutional rights. Cupp presumably intends to argue that the drone surveillance of the Property was unlawful, that the warrant authorizing the surveillance and/or the affidavit supporting it were invalid, and that County had a pattern and practice of conducting such unlawful searches, supporting recovery under *Monell, supra*, 436 U.S. 658.

RPD Nos. 53 and 54 seek, respectively, all drone images and video depicting the Property, and all documents related to County’s use of drones for property inspections. That information arguably “appears reasonably calculated to lead to the discovery of admissible evidence” supporting the third cause of action. (CCP § 2017.010.) As things stand at the moment, there is no third cause of action because it did not withstand the Demurrer.

Therefore the Court GRANTS the protective order as to RPDs no. 53 and 54. However, that ruling is without prejudice to Cupp renewing those production demands if he succeeds in amending the Cross-Complaint’s third cause of action in a manner that withstands a further demurrer.

b. Nos. 55-82

RPDs Nos. 55-63 seek non-privileged electronic communications, presumably by County employees, regarding Cupp or the Property. The “presumably” is because the requests distinguish between communications by five specific named County employees on the one hand, and “any INDIVIDUAL who is not an attorney” on the other. “INDIVIDUAL” is not restricted to County employees; it is, in fact, not defined at all. (King Dec., Exh. 3.) The “any INDIVIDUAL” requests are therefore overbroad.

RPDs Nos. 64 and 65 seek information about County employees’ use of personal electronic devices. The point, presumably, is to determine whether there is any basis for demanding access to County employees’ personal cell phones.

RPDs Nos. 66-69 seek information about County’s retention policies for electronic data. RPDs Nos. 70 and 71 seek communications between Permit Sonoma employees and County employees who work for the Assessor or the Tax Collector.

RPD No. 72 seeks documents discussing any steps County took to preserve evidence.

RPDs Nos 73-82 seek “all DOCUMENTS or ESI which supports, or fails to support,” a number of allegations quoted from County’s complaint. Such requests are inherently impossible to respond to, since every document in existence either supports or fails to support any given allegation.

The overarching point is that none of the documents requested in this group have any nexus with the issue in the instant case, which, again, is that Cupp has failed to abate the conditions or make the payments required by the hearing officer’s Statement of Decision issued on February 11, 202. All of the requests are aimed at gathering evidence to refute the outcome of the administrative hearing. Because that outcome is final and not before the Court, the requested documents are not “relevant to the subject matter involved in the pending action.” (CCP § 2017.010.)

Therefore, County’s request for a protective order covering document requests Nos. 55-82 is GRANTED. The County is not required to produced any documents responsive to these requests.

2. Court pre-review of further written discovery

County requests an order barring Cupp from filing further written discovery demands without previous approval by the Court. The request is DENIED. The Court is hopeful that Mr. Cupp’s counsel and County’s counsel can resolve further discovery disputes between themselves “without judicial involvement,” as discovery is meant to operate. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1291.) However, the denial is without prejudice. County may renew this request if it feels that renewal is justified by Cupp’s future discovery demands.

IV. Sanctions

“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 responses to interrogatories or requests for admissions, or a motion for a protective order. (CCP §§ 2030.300(d) [interrogatories], 2033.290(d) [requests for admissions], 2031.060(h) [protective orders], emphasis supplied). Thus, sanctions are mandatory here.

A. FROGs

Since Cupp’s motion to compel responses to the FROGs is granted in part and denied in part, Cupp has not made the motion successfully and County has not unsuccessfully opposed it. Therefore, sanctions will not be awarded in relation to that motion.

B. SROGs, RFAs, and protective order

Cupp has unsuccessfully moved to compel further responses to his SROGs and RFAs, and County has successfully moved for a protective order. Therefore, sanctions will be awarded to County in relation to those three motions.

Counsel for County declares that his billing rate is \$284/hour. The Court considers that amount reasonable. As to the RFAs, counsel claims 3 hours' time in both the opposition memorandum and the declaration. (Oppo at p. 6; King Dec. ¶ 11.) As to the protective order, he claims 4 hours in both his memorandum of points and authorities and his declaration. (MPA at p. 7; King Dec., ¶ 5.) As to the SROGs, the opposition memorandum states that counsel has spent 3.5 hours; the accompanying declaration also claims 3.5 hours, but says that they have been spent "reviewing this Motion to Compel re: *Form* Interrogatories." (Oppo at p. 8; King Dec. ¶ 4, emphasis supplied.) The Court assumes that "Form" is an error and counsel intended to write "Special." The total, 10.5 hours – that is, a bit more than one full day's work – is reasonable for the process of preparing three separate discovery motions.

Sanctions are awarded to County in the amount of \$2,982.00.

V. Conclusion

Cupp's motion to compel further responses to his FROGs is GRANTED with respect to FROGs no. 13.1, 13.2, 14.1, and 14.2, and otherwise denied. Cupp's motions to compel further responses to his SROGs and RFAs are DENIED. County's motion for a protective order is GRANTED with respect to excusing County from responding to Cupp's RPD Set 2, but DENIED as to its request for pre-filing discovery conditions on Cupp. Sanctions are awarded to County in the amount of \$2,982.00.

****This is the end of the Tentative Rulings.****