TENTATIVE RULINGS
LAW & MOTION CALENDAR
December 6, 2023 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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1-4. SCV-270500, Canzoneri v. General Dynamics OST

Plaintiff Kokett Canzoneri ("Plaintiff"), filed the currently operative second amended complaint in this action against General Dynamics Ordnance and Tactical Systems, Inc. ("GDI"), General Dynamics OTS (Niceville), Inc. ("GDN" together with GDI, "Defendants") Yolanda Moore (dismissed) and Erina Kearney (dismissed) with causes arising out of the Defendants' alleged wrongful termination of Plaintiff and other violations of employment law (the "Complaint"). This matter is on calendar for Plaintiff's four motions: (1) motion to quash subpoena duces tecum, (2) motion compelling further responses to form interrogatories ("FIs"), general, from Defendants under Code of Civil Procedure ("CCP") §§ 2030.300, and (3) motion compelling further responses to form interrogatories, employment ("EROGs") set one and (4) motion compelling further responses to form interrogatories, EROGS, set two, from Defendants under Code of Civil Procedure ("CCP") §§ 2030.300.

Plaintiff's motion to quash is GRANTED in part.

Plaintiff's motion to compel further responses to Form Interrogatories, General, Set One is DENIED.

Plaintiff's motions to compel further responses to Form Interrogatories, Employment Set One and Set Two are DENIED in part and GRANTED in part.

I. Governing Law

A. Discovery Generally

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. "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. Specifically, the Code provides that "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…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* When a party serves response after a motion to compel is filed, the court maintains jurisdiction within its discretion to determine whether the requested sanctions are appropriate. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411.

B. Discovery to Non-Parties

Compelling need is not always the test to apply in determining whether discovery is permissible, as "Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies". *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Good cause should be shown on requests for production from non-parties as well as parties. *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223–224, as modified (Mar. 7, 1997)("*Calcor Space Facility*"). Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378. "(A) party seeking to compel production of records from a nonparty must articulate specific facts justifying the discovery sought; it may not rely on mere generalities. (citation). In assessing the party's proffered justification, courts

must keep in mind the more limited scope of discovery available from nonparties." *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal.App.5th 1011, 1039, reh'g denied (Feb. 3, 2021), review denied (Apr. 21, 2021); citing *Calcor Space Facility* at 567; *see also Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366.

C. Privacy Rights

Additionally, the right of privacy is an "inalienable right" secured by article I, section 1 of the California Constitution. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656. The right of privacy protects against the unwarranted, compelled disclosure of private or personal information and "extends to one's confidential financial affairs as well as to the details of one's personal life." *Ibid*. "Personal financial information comes within the zone of privacy protected by article I, section 1 of the California Constitution." *Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 664; see also, *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 754–755 (The right to privacy extends to personal financial information.). However, even the constitutional right of privacy does not provide absolute protection "but may yield in the furtherance of compelling state interests." *Ibid*, quoting, *People v. Wharton* (1991) 53 Cal.3d 522, 563. Thus, "when the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard [and] the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854. A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 367; see also, *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552-555; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071.

The court must "carefully balance" the interests involved - *i.e.* the right of privacy versus the public interest in obtaining just results in litigation. *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 714; see also, *Valley Bank of Nevada, supra,* 15 Cal.3d at 657; *Pioneer Electronics (USA), Inc., supra,* 40 Cal.4th at 371. In balancing these interests, "[t]he court must consider the purpose of the information sought, the effect that disclosure will have on the affected persons and parties, the nature of the objections urged by the party resisting disclosure and availability of alternative, less intrusive means for obtaining the requested information." *SCC Acquisitions, Inc., supra,* 243 Cal.App.4th at 754–755. "[T]he more sensitive the nature of the personal information that is sought to be discovered, the more substantial the showing of the need for the discovery that will be required before disclosure will be permitted." *Ibid.*

D. Protective Orders

Although Code of Civil Procedure section 1985(b) states in part that "an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in the subpoena," Code of Civil Procedure section specifically states that "[a] deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the

production of the business records designated in it." See CCP §§1985(b) and 2020.410(c); see also, *City of Woodlake v. Tulare County Grand Jury* (2011) 197 Cal.App.4th 1293, 1301 ["good cause affidavits are not always required…[f]or example, under the statutes providing for pretrial discovery in civil proceedings, a party may seek the production of business records for copying…" and "[a] deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it."], quoting Code Civ. Proc. §2020.410(c); Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8E-6, §8:547.5 ["A subpoena for the production of business records need not be accompanied by an affidavit or declaration showing good cause for production of the records."].

A party seeking a protective order must show good cause for issuance of the order by a preponderance of evidence. *Stadish v. Sup. Ct.* (1999) 71 Cal.App.4th 1130, 1145 (protective order directed at a document demand). "Generally, a deponent seeking a protective order will be required to show that the burden, expense, or intrusiveness involved in … [the discovery procedure] clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." *Emerson Elec. Co. v. Sup. Ct.* (1997) 16 Cal.4th 1101, 1110 (protective order in connection with deposition).

E. Compelling 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, 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). Any motion to compel further answers to interrogatories must be filed within 45 days of receipt of response unless the parties agree to extend the time in writing. CCP § 2030.300 (c). 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.

A motion to compel further responses must be filed within 45 days of the service of verified interrogatories, or their latest supplemental response. CCP § 2030.300(c). Failure to move within 45 days is jurisdictional, and serving indistinguishable requests after the expiration does not grant the court jurisdiction over the duplicative request. *Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 492. A motion to compel further deposition is untimely if the notice of motion is not filed with all supporting papers within the 60-day time

limit set by CCP § 2025.480. *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 320-321 ("*Weinstein*"). Similarly, a notice of motion to compel further responses to interrogatories is not "made" as contemplated by CCP § 1005.5 if it is not accompanied by the required meet and confer declaration. *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138, fn. 9.

CCP § 2030.300(d) (relating to interrogatories) provides 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." For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. Analysis

A. Motion to Quash

First, to address Defendants' contention that the Plaintiff's briefing violates Super. Ct. Sonoma County, Local Rules ("Local Rule"), rule 9.19, this point is specious. Local Rule 9.19 applies only to law and motion matters in family law. Local Rule 9.19 (a) ("The provisions of this division of the Sonoma County Superior Court Rules shall apply to **all family law and motion** matters before trial or as otherwise provided in any other division of these rules."). General civil rules and general law and motion rules are governed by Local Rules 4 and 5 respectively.

Defendants also contend that the notice of motion is not sufficiently specific to put them on notice as to the subpoenas at issue. "An omission in the notice may be overlooked if the supporting papers make clear the grounds for the relief sought." *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125. The grounds are more than clear based on the supporting papers. See Plaintiff's Memorandum in Support, filed 9/28/2023, pg. 4:1-5:21. Similarly, Defendants contend that the lack of separate statement (as required by Rule of Court, Rule 3.1345 (a)(5)) renders the motion deficient. Separate statements are only required where discovery responses have been provided. Rule of Court 3.1345 (b). There have been no responses by the subpoenaed parties pending the resolution of this motion. Therefore, the Court turns to the substance of the motion.

While the Court agrees with Defendants that Plaintiff has waived some of her rights to privacy by filing this action, the waiver is only partial. See *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014; citing *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842. Plaintiff concedes this, only challenging the requests for "documents reflecting stock options and/ or ownership interest in the company, description of job duties, discipline records, termination records, complaints made by Ms. Canzoneri, complaints made against Ms. Canzoneri, time records, including timesheets and schedules, absence records, incident reports, preemployment exam records to include typing tests and/or other administrative exams with the results and answers, employee progress records," "all documents included in (Plaintiff's) personnel file", and "any written or

electronic correspondence between (Plaintiff's employers), (including related business entity or affiliate, agents, employees or representatives) and Ms. Canzoneri (including but not limited to emails, text messages, instant messages, and any online social media posts)."

Defendants argue that the full scope of the records requested are fully discoverable material as to Plaintiff's efforts to mitigate damages. Plaintiff moves to quash, asserting that the subpoenas request a broad panoply of information irrelevant to the instant action, and infringing upon Plaintiff's privacy.

Frankly, Defendants have not presented good cause as to the some of the contested categories. The request for "all documents within the personnel file" is overbroad and is likely to infringe on categories of documents which are private and protectable (doctor's notes regarding absences, etc). Similarly, the Court does not find relevance in any discipline records, complaints made by or against Plaintiff, time records, including timesheets and schedules, absence records, incident reports, preemployment exam records to include typing tests and/or other administrative exams with the results and answers, or employee progress records. Defendants elucidate no persuasive support for this, simply averring the conclusion that such matters are relevant without expressing a logic as to why or how such matters might lead to admissible material. The exception in these categories is termination records, which are clearly relevant to mitigation efforts. *Stanchfield v. Hamer Toyota, Inc.* (1995) 37 Cal.App.4th 1495, 1502–1503 (Proof that plaintiff was terminated from subsequent employment for cause was substantial evidence in support of the jury's findings on mitigation.). Finally, the request for all communications with an employer appears to infringe on Plaintiff's general right to privacy. This request is not tailored to obtain relevant evidence, instead placing a blanket request to invade every aspect of Plaintiff's subsequent employment relationships.

Plaintiff has not presented adequate cause for the Court to find other categories of documents protected. The Court has already addressed termination records. Also objected to, but clearly relevant to mitigation, are documents reflecting stock options and/or ownership interest in the companies. Plaintiff offers no persuasive argument about how such information is not directly relevant to compensation, and therefore mitigation.

The motion to quash is GRANTED in part. The requests for any discipline records, complaints made by or against Plaintiff, time records, including timesheets and schedules, absence records, incident reports, preemployment exam records to include typing tests and/or other administrative exams with the results and answers, employee progress records, all documents within the personnel file, and all communications between Plaintiff and the subpoenaed parties are quashed. The motion is DENIED in part, and the remaining categories in the subpoena are appropriate to produce.

The parties have each prevailed in part on this motion, and the Court finds sanctions therefore inappropriate. See CCP § 1987.2 ("[T]he court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion including reasonable attorneys' fees, if the court finds the motion was made or opposed in bad faith or without substantial justification, or that one or more of the requirements of the subpoena were oppressive").

Plaintiff's request for sanctions of $5,480 is DENIED. Defendants' request for $3,400 in sanctions is DENIED.

B. General Form Interrogatories

First to address Plaintiff's motion to compel further responses to general interrogatories, the Court finds the motion untimely. The last set of responses to general interrogatories were served August 4, 2023. While Defendants provided supplemental responses as to the employment interrogatories below, no supplemental responses were provided to the form interrogatories. Plaintiff was required to make the motion to compel within 45 days of the last set of supplemental responses, or the stipulated time limit of the parties. Defendants argue that Plaintiff has only filed the Notice of Motion within the time limit, and therefore the motion was not properly made. See *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 320.

Defendants provided no supplemental responses after August 4, 2023. The parties agreed that Plaintiff had two weeks from any supplemental responses to move to compel. No supplemental responses being provided, the statutory timeframe contained in CCP § 2030.300 had long since passed. Under the parties agreement, any motion would have been due on October 6, 2023. Plaintiff argues that *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316 and *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127 are inapposite. This is unpersuasive. Plaintiff is correct that "(a) motion upon all the grounds stated in the written notice thereof is deemed to have been made and to be pending before the court for all purposes, upon the due service and filing of the notice of motion". CCP, § 1005.5. Plaintiff argues *Weinstein* is inapplicable, as it particularly deals with a notice of deposition under CCP § 2025.010 *et seq*. This is unavailing, largely because of *Golf & Tennis Pro Shop, Inc*. Plaintiff's argument that the notice of motion within *Golf & Tennis Pro Shop, Inc*. was deficient is true, but incomplete. Here, Plaintiff filed only the notice of motion on October 5, 2023. This is insufficient. "(I)t seems clear the Legislature intended for the meet and confer declaration to accompany the notice of motion, along with all other documents supporting the notice of motion." *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138, fn. 9. "Section 2030.300, subdivision (c) required adequate notice to be given to the plaintiffs and the court 45 days after service of the verified response, not in some nebulous timeframe that was 'well ahead of the hearing date.'" *Id.* at 139. Simply put, Plaintiff was required to comply with the 45-day time frame (or the stipulated time frame of the parties). The failure to accompany the (facially timely) notice of motion with the meet and confer declaration renders the motion incomplete and not properly made.[1] The Court has no jurisdiction to compel further responses as to the general form interrogatories. *Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 492.

Nor is Plaintiff's contention that supplemental responses on a completely separate set of interrogatories was sufficient to reset the time frame for the general form interrogatories. Plaintiff provides no authority extending the time frame based on completely separate discovery responses. Plaintiff filed these (properly) as separate motions, they clearly operate on separate time frames based on the responses provided.

[1] Indeed, the posture of *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138, fn. 9 seems to mandate that all papers accompany the notice of motion. The conclusion here need not go that far. The motion to compel must be "accompanied" by a meet and confer declaration. *Ibid*; CCP § 2030.300 (b)(1). Here, it was not.

As such, the Court is without jurisdiction to make orders on this matter, and the motion to compel further responses to Plaintiff's General Interrogatories, Set One is DENIED.

Compensatory sanctions are mandatory unless the court finds substantial justification or circumstances that make the imposition of sanctions unjust. See CCP § 2030.300 (d) (the Court "shall impose monetary sanction" against the unsuccessful party). Plaintiff has filed a motion which failed to be timely, and necessitated opposition. Sanctions are mandatory. However, the Court finds the declaration of counsel as insufficient to justify the sanctions amount sought. The Court may only grant "reasonable expenses". CCP § 2023.030(a). Counsel flatly avers that she spend 11 hours on the opposition, but that she "anticipates incurring $5,328 in attorneys' fees and costs, including the time that will be spent preparing for and appearing at the hearing." Declaration of Abby H. Putzulu in Opposition ¶ 15. This request includes speculative time which Defendants have not actually incurred. The Declaration contains no breakdown of this time, nor counsel's hourly rate. As a result the Court must draw conclusions as to what a reasonable expense for the opposition would be. The Court that a $350 hourly rate is reasonable for this jurisdiction and therefore finds $3,850 as the reasonably incurred attorney's fees on the motion. The motion clearly derives from the actions of Plaintiff's counsel, and therefore counsel should be held jointly liable for the sanctions amount. Defendants' request for sanctions is GRANTED in the amount of $3,850 against both Plaintiff and her counsel.

C. Employment Interrogatories

1. Procedural Issues

Plaintiff has filed a separate statement in support of the Form Interrogatories – Employment ("EROG"), Set One, but the separate statement is deficient in that it states no reasons to compel further response. This renders the separate statement entirely deficient. Plaintiff has filed an amended separate statement in an attempt to remedy the error. However, the concern by the Court is that this separate statement is not timely as required under CCP § 2030.300, as covered by the Court's analysis under *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138. The separate statement served with the motion clearly fails to comply with Rule of Court, Rule 3.1345. The papers served to Defendants were not complete. The amended Separate Statement was not served to Defendants within sufficient time to comply even with CCP § 1005 and CCP § 1010. Therefore, all supporting papers were not filed and served within 45 days of the September 22, 2023, supplemental responses. Plaintiff provides no authority allows the Court to re-assert jurisdiction due to counsel's "excusable neglect". The Court is without jurisdiction to consider the request as a result. *Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 492.

Plaintiffs request to compel further responses to EROGs Set One is DENIED.

Defendants contend they have only provided supplemental responses as to EROG Set Two 200.6, 201.3, 201.4, 207.2, and 209.2. Defendants offer no support for the contention that their election to supplement only a few of the responses within the same document does not reset the time frame under CCP § 2030.300. "Unless notice of this motion is **given within 45 days of the**

service of the verified response, or **any supplemental verified response**, or on or before any specific **later** date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories." CCP § 2030.300 (c). EROGs Set Two is properly before the Court in full.

Plaintiff has filed a single notice of motion as to Form Interrogatories – Employment, Set One and Two. However, Plaintiff has filed two separate memoranda separately in support of Set One and Set Two. Indeed, the Court finds substantial problem with Plaintiff's election to file two memorandums in support of a single notice of motion, exceeding 25 pages of total briefing. Because the memoranda are separately filed, without any obvious priority, the Court cannot easily ignore the excess briefing. Given the procedural deficiency in the Separate Statement of the Employment Interrogatories – Set One, the Court considers the full briefing on Employment Interrogatories - Set Two.

2. Compelling Further Responses

As to the substance of EROGs Set Two, the Court finds some of Plaintiff's contentions meritorious, and others less supported. EROGs Set Two is differentiated from EROGs Set One, in that it identifies GDI as the employer at issue instead of GDN. For EROGs 200.1, 200.3, 200.4 are all predicated on the concept of an employment relationship between Plaintiff and the "EMPLOYER", in this document defined as GDI. Defendants' response to these interrogatories simply state that there is no employment relationship between the GDI and Plaintiff. This obviates any further response, as Defendants do not contend this relationship exists. See, e.g., EROG 200.4 ("Was any part of the parties' EMPLOYMENT relationship governed" by particular documents, and "(i)f so", identify them). The Defendants' contention that there is no employment relationship does not render the response inadequate.

As to EROGs 200.2 and 200.6, Plaintiff asks Defendants to respond whether GDI's relationship was not "at will" and whether GDI contends there were any non-employment business relationships between GDI and Plaintiff. Each EROG requires that if GDI contends these facts, they must provide support. The initial responses provided by Defendants to each of these EROGs is no, therefore the subparts of the interrogatories are not triggered. EROG 201.1 simply appears to be answered in full. EROG 201.3 is answered in that there are no "other" adverse employment actions. The subparts are not at issue based on that response.

However, a number of the interrogatory responses are substantively deficient. EROG 201.4 is deficient in failing to identify particular policies (subpart (c)) as required by the interrogatory, and fails to address subpart (d) at all. Further response to EROG 201.4 is appropriate. EROG 201.7 requires Defendants to elucidate why Plaintiff was not selected for a particular position and identify the individuals selected in her stead. Defendants argue that Plaintiff was laid off, and that no particular person was selected in lieu of Plaintiff. However, this is internally inconsistent with Defendants' other responses. See EROG Set Two 201.4 (b) (Due to redundancy and downsizing "Defendant selected the other employee to assume the combined role."). Further, consistent response is appropriate to compel.

EROG 207.1 requires Defendants to identify when Plaintiff was provided with particular policies. Defendants flatly respond, "during her employment". This is clearly inadequately specific to directly answer the interrogatory. Similarly, there is inadequate specificity as to the contents of the documents identified. EROG 209.2 requires Defendants to identify all employee lawsuits over the last 10 years. Defendants aver that Plaintiff agreed to restrict this to California, and that the response provided does so. Plaintiff does not address this EROG on reply. Defendants offer no evidence that the parties came to such an agreement. Therefore, compelling responses as to GDI generally remains proper. EROG 211.1 requires Defendants identify the amount particular benefits would have paid, in addition to the amounts paid by Defendants. The response is deficient as a result.

The responses to EROGs 211.2 and 211.3 are also deficient. Defendants are obligated to respond as to whether they contend Plaintiff has not made adequate efforts to mitigate damages. Defendants have only objected and have not provided an affirmation that they will provide a response once one becomes available. The response is deficient in this regard, and further response is appropriate.

Therefore, as to Plaintiff's EROGs, Set Two, EROGs 200.1, 200.2, 200.3, 200.4, 200.6, 201.1, and 201.3, the motion to compel is DENIED. As to EROGs 201.4, 201.7, 207.1, 209.2, 211.1, 211.2, and 211.3, the motion is GRANTED.

3. Sanctions

As to sanctions for EROGs Set One, Defendants have prevailed, and compensatory sanctions are mandatory unless the court finds substantial justification or circumstances that make the imposition of sanctions unjust. See CCP § 2030.300 (d) (the Court "shall impose monetary sanction" against the unsuccessful party). However, the Court again finds the declaration of counsel as insufficient to justify the sanctions amount sought. The Court may only grant "reasonable expenses". CCP § 2023.030(a). Counsel flatly avers that she spent 10.5 hours on the opposition, but that she "anticipates incurring $5,123 in attorneys' fees and costs, including the time that will be spent preparing for and appearing at the hearing." Declaration of Abby H. Putzulu in Opposition ¶ 15. This request includes speculative time which Defendants have not actually incurred. The Declaration contains no breakdown of this time, nor counsel's hourly rate. As a result the Court must draw conclusions as to what a reasonable expense for the opposition would be. The Court finds $3,675 as the reasonably incurred attorney's fees on the motion. The motion clearly derives from the actions of Plaintiff's counsel, and therefore counsel should be held jointly liable for the sanctions amount. Defendants' request for sanctions as to EROGs Set One is GRANTED in the amount of $3,675 against both Plaintiff and her counsel.

As to EROGs Set Two, Plaintiff has prevailed in part. Plaintiff's Counsel avers that $7,500 in sanctions against both Defendants and their counsel is appropriate (despite stating that she has spent in excess of 20 hours on the motion alone, and her hourly rate is $750 per hour). See Declaration of Tracy C. Lemmon in Support of Motion to Compel EROGs Set Two, ¶¶ 53-54.

The Court finds this amount excessive and unreasonable given the substance of the motion.[2] Counsel's hourly rate is $750 per hour, which greatly exceeds the amount appropriate for this locality, and the Court believes fees of no greater than $500 per hour are appropriate here. The Court finds monetary sanctions of $5,000 to be reasonable as to this motion. The deficient responses were only reached after extensive exchanges between counsel, and therefore the Court finds that Defendants' counsel bears some responsibility for the discovery abuse. Therefore, Plaintiff's request for sanctions as to EROGs Set Two is GRANTED in the amount of $5,000 against both Defendants and their counsel.

III. Conclusion

Plaintiff's motion to quash is GRANTED in part. The requests for any discipline records, complaints made by or against Plaintiff, time records, including timesheets and schedules, absence records, incident reports, preemployment exam records to include typing tests and/or other administrative exams with the results and answers, employee progress records, all documents within the personnel file, and all communications between Plaintiff and the subpoenaed parties are quashed. The motion is DENIED in part, and the remaining categories in the subpoena are appropriate to produce. Both parties' request for sanctions are DENIED.

Plaintiff's motion to compel further responses to Form Interrogatories, General is DENIED. Defendants' request for sanctions is GRANTED in the amount of $3,850 against both Plaintiff and her counsel.

Plaintiff's motion to compel further responses to Form Interrogatories, Employment, Set One is DENIED. Defendants' request for sanctions is GRANTED in the amount of $3,675 against both Plaintiff and her counsel.

Plaintiff's motion to compel further responses to Form Interrogatories, Employment, Set Two is DENIED as to EROGS 200.1, 200.2, 200.3, 200.4, 200.6, 201.1, and 201.3. Plaintiff's motion to compel further responses to Form Interrogatories, Employment, Set Two is GRANTED as to EROGs 201.4, 201.7, 207.1, 209.2, 211.1, 211.2, and 211.3. Plaintiff's request for sanctions as to EROGs Set Two is GRANTED in the amount of $5,000 against both Defendants and their counsel.

All sanctions are payable within 30 days notice of entry of this order.

Defendant'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).

5. SCV-273273, Bryant v. Gaebler

Plaintiff Stephen Bryant, dba Liven Properties Construction ("Plaintiff") filed the currently operative first amended complaint (the "FAC") in this action against defendants Max Gaebler,

[2] It is possible Plaintiff's counsel is requesting $7,500 for both EROGS Set One and Two, as the $7,500 amount is contained in each declaration in support, though either result is inconsistent with the Notice of Motion filed jointly for both, which requests $11,379.31.

Sara Steinberg, American Contractors Indemnity Company, and Does 1-25, relating to a construction contract between the parties. This matter is on calendar for the motion to compel arbitration filed the Defendants Gaebler and Steinberg pursuant to the California Arbitration Act, Cal. Code Civ. Proc. ("CCP") § 1280 et seq. (the "CAA"). The Motion is **GRANTED**.

I. The Basis for the Motion

Plaintiff offered construction services to Defendants Gaebler and Steinberg under a construction contract. See FAC, Exhibit A (the "Contract"). The Contract contains an arbitration provision covering "any claim arising out of or relating to this contract". See Contract, pg. 9. The Contract was signed by all parties.

II. Governing Law

A party seeking to compel arbitration pursuant to CCP § 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." *Mansouri v. Sup. Ct*. (2010) 181 Cal.App.4th 633, 640-641. "The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute." *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236. "Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability [or waiver]." *Id*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59. "Doubts are resolved in favor of arbitration" and "[t]he court should order [the parties] to arbitrate unless it is clear that the arbitration clause cannot be interpreted to cover the dispute." *San Francisco Police Officers' Assn. v. San Francisco Police Com.* (2018) 27 Cal.App.5th 676, 683, quoting *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 204–205. "California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration." *Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663, citing *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890. "This strong policy has resulted in the general rule that arbitration should be upheld unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute." *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686; accord, *Rice v. Downs* (2016) 248 Cal.App.4th 175, 185. The filing of a lawsuit by a plaintiff is sufficient to show that plaintiff has refused to arbitrate claims, allowing a defendant to move for arbitration. *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577.

III. Analysis

Plaintiff has filed a response in which they do not object to arbitration. There is no opposition. Plaintiff's filing of the suit is sufficient to show a refusal to arbitrate. Defendant has established an agreement to arbitrate. The petition to compel arbitration is GRANTED.

IV. Conclusion

Based on the foregoing, the Petition is **GRANTED**.

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

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