TENTATIVE RULINGS
LAW & MOTION CALENDAR
April 19, 2023 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

**** TO BE HEARD IN D17****
USE D19's ZOOM

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 19 in person or remotely by Zoom, a web conferencing platform. However, appearances by Zoom are STRONGLY encouraged. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 857-0848-8569
Password: 410765
https://us02web.zoom.us/j/85708488569?pwd=MzAvL3o3U2g4ck5SZTN3cXEyNllOQT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 900 6833 US (San Jose)

The 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

PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1&2. SCV-268477, Smashmallow, LLC v. Tanis Food Tec, B.V.

Plaintiff Smashmallow, LLC ("Plaintiff") filed the complaint (the "Complaint") in this action against defendant Tanis Food Tec B.V. ("Defendant") arising out of a contractual dispute. Defendant has subsequently filed a cross-complaint (the "Cross-Complaint") against Plaintiff. This matter is on calendar for the motion by Defendant pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Cross-Complaint. The Motion is **DENIED**.

I. Facts and Procedure

The Complaint in this matter was filed on May 26, 2021. Thereafter, Defendant filed the Cross-Complaint on February 8, 2022. The parties were set for trial on March 24, 2023. After the trial date was set, Plaintiff filed a motion for summary judgment of the Cross-Complaint on December 7, 2022. On March 13, 2023, Defendant filed an ex parte Application for an order shortening time to file a First Amended Complaint. The Court denied the Application that same day. However, the Parties had also filed a flurry of ex parte Applications on other issues during this timeframe, so the Court ordered the Parties to appear on March 17, 2023 to discuss trial readiness.

On March 17, 2023, the Court at the request of the Parties, agreed to vacate the March 24, 2023, trial date and continued the same to September 8, 2023. The Court also granted Defendant's order shortening time on Motion to File an Amended Complaint. That evening, Defendant filed the instant motion to amend the Cross-Complaint to add two new defendants, Sonoma Brands, LLC and Jonathan Sebastiani (together "Proposed Cross-Defendants"), and to add two new causes of action for conversion and fraudulent misrepresentation (the "Proposed Cross-Complaint").

II. Governing Authorities

A. Pleading Amendments – Liberally Allowed

When a plaintiff is ignorant of the name of a defendant when it files a complaint, plaintiff must amend the complaint to include the true name of the defendant once it is discovered. CCP §474. Amendments to complaints are to be allowed liberally, because there is an interest in all material issues being litigated expeditiously and to complete disposition. *Vogel v. Thrifty Drug Co.* (1954) 43 Cal.2d 184, 188.

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1).

The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

B. Exceptions

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. "(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].

> The cases on amending pleadings during trial suggest trial courts should be guided by two general principles: (1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory [then] no prejudice can result.

McMillin v. Eare (2021) 70 Cal.App.5th 893, 910, quoting *City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1563.

It is within the Court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare, supra,* 70 Cal.App.5th at 1379. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. "As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts." *Brown v. Aguilar* (1927) 202 Cal. 143, 149.

Amendment of a complaint is not the proper procedure for adding allegations which have occurred after the filing of the initial complaint, rather such allegations should be added through a supplemental complaint under CCP § 464. *Hebert v. Los Angeles Raiders, Ltd.* (1991) 23 Cal.App.4th 414, 426. However, the substance of a request, and not the title, is the proper measure of the sufficiency of a pleading. *Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 464, fn.6. It is not proper for supplemental pleadings to allege new causes of action or defenses, rather the new facts must "supplement" the already alleged causes of action. *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647.

III. Analysis

1. Unwarranted Delay

First, the Court notes that this amendment appears to be unduly delayed. Defendant asserts that this claim is in part necessary based on their expert's analysis of the discovery provided by Plaintiff, which was only completed in February 2023. See Motion at 6:11-16. However, these discovery materials have been in Defendant's possession for nearly a full year prior to Defendant's "discovery" of the cause of action. See Declaration of David H Kwasniewski. This clearly represents a lack of diligence. Unwarranted delay is a substantial factor in deciding in determining whether leave to amend is proper. *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, 1097. Similarly, the claim for conversion is predicated on the failure of Plaintiff to make a payment in April of 2020. Defendant has sat on these claims for nearly three years since the payment was due, nearly two years after Plaintiff filed suit, and over a year after filing their Cross-Complaint before moving to enforce their rights to this effect; instead electing to initiate under the contract and thereafter amend the Cross-Complaint each less than a month before trial. The claims asserted by Defendant have been subject to unwarranted delay. However, absent prejudice, this alone is not adequate reason to deny leave to amend.

2. Prejudice

Procedurally, the instant motion is neither a motion for leave to amend, nor a motion to supplement the original complaint. A motion to amend should not allege facts which occur after the filing of the complaint. *Hebert v. Los Angeles Raiders, Ltd.* (1991) 23 Cal.App.4th 414, 426. Conversely, a motion to supplement the complaint should not seek to add causes of action. *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647. Here, Defendant seeks both these remedies. The dual nature of these proposed allegations is illustrative of the prejudice in allowing amendment. Prior to the filing of this motion, this matter was set for trial on March 24, 2023. The continuance of the trial, which occurred partly in consideration of this pending motion, was made to September 8, 2023. The brevity of this continuance was in part due to the representation that discovery would be unnecessary. Contrary to Defendant's argument, the proposed amendments do not "arise from the same general set of facts". Defendant seeks to allege multiple facts which occur after the filing of the Cross-Complaint, including allegations from March 2, 2023. In adding these facts, Defendant has also added causes of action. While additional causes of action that derive from the same facts are generally treated as non-prejudicial, and facts which reinforce already pled causes of action are the same, the combination appears to be the equivalent of a litigation rug-pull, in an effort to leave Plaintiff scrambling to address matters they could not

possibly have derived from the original Cross-Complaint. The bounds of amended complaints and supplemental complaints appear to be restricted to their relevant niches for just this reason. This does not even begin to address the prejudice potentially experienced by Proposed Cross-Defendants, who despite their alleged association with Plaintiff, have an independent right to discovery.

Additionally, there is palpable prejudice in allowing amendment to add causes of action while Plaintiff has a motion for summary judgment of the Cross-Complaint. Plaintiff filed their motion for summary judgment on December 9, 2022, and served the substance of that motion the same day. Defendant thereafter waited over three months to move to amend their Cross-Complaint, until such amendment would render the currently set date for summary judgment unavailable due to the 75-day statutory notice period. This is a rule of which Defendant is clearly aware. See Defendant's Opposition to Plaintiff's Ex Parte to Shorten Time on MSJ, Filed 1/17/2023, pg. 4:1-12. Indeed, Plaintiff's request that the time for summary judgment be shortened is a matter outside the power of the Court, as the time for filing is set by statute. See CCP § 437c (a)(2); *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268. From the date of this motion to the trial, there are 142 days. Motions for summary judgment must be heard more than 30 days before trial absent good cause, and notice must be served 75 days prior to hearing the motion. CCP § 437c. This 105-day time frame provides Plaintiff and Proposed Cross-Defendants only 37 days to perform any discovery on claims made within the proposed amendment. While Defendant disclaims any prejudice related to discovery, this ignores the need to perform discovery in time to file a renewed motion for summary judgment. Even if the Court were to find good cause to hear a motion for summary judgment within 30 days of trial, or even on the day of trial, 67 days is inadequate time to hear any discovery disputes which may arise, including those of Proposed Cross-Defendants who have never even appeared in this case to this point.

Adding to the finding of prejudice is the particular nature of the claims now asserted by Defendant. Defendant seeks to amend the Cross-Complaint to include a cause of action for fraud. As is noted by Defendant, fraud must be pled with specificity. *See Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166-1167 ("'the plaintiff must allege the names of the persons who made the representations, ... to whom they spoke, what they said or wrote, and when the representation was made'"). The specificity requirements in pleading fraud achieve two purposes: 1) to place the defendant on notice of definite charges which can be intelligently met; and 2) to weed out non-meritorious allegations at the pleading stages. *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 838. Here, Defendants do not just seek to amend the Cross-Complaint to include allegations of fraud, but to add new cross-defendants in a motion filed on the eve of trial. As is noted above, the trial has been briefly continued. However, these claims give rise to obvious discovery needs in addressing the elements of fraud. As is examined above, there is simply inadequate time before the trial date, particularly when considering the impact to Plaintiff's pending motion for summary judgment. Bringing fraud claims at such a late hour implicates the purpose of providing Plaintiff with notice of the claims in a manner where they can be intelligently met and adequately defended. Based on the above, the Court finds substantial prejudice in allowing amendment. This, combined with the undue delay, dictates the proper discretionary result. The motion for leave to amend is DENIED.

Plaintiffs 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).
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Plaintiff Smashmallow, LLC ("Plaintiff") filed the complaint (the "Complaint") in this action against defendant Tanis Food Tec B.V. ("Defendant") arising out of a contractual dispute. Defendant has subsequently filed a cross-complaint (the "Cross-Complaint") against Plaintiff. This matter is on calendar for the motion by Defendant pursuant to Cal. Code Civ. Proc. ("CCP") § 2025.420 for a protective order. The Motion is **DENIED**. The request for sanctions by both parties are **DENIED**.

I. Facts and Procedure

Plaintiff noticed two depositions of Defendant's Person(s) Most Qualified (PMQ), which ultimately occurred on March 10-11, 2022. Declaration of Lynn Fiorentino in Support of Motion for Protective Order, ¶ 9. Defendant served discovery responses including requests for production of documents, to which a final verification was provided on October 18, 2022. See Plaintiff's Declaration in Opposition, Exhibit 3. Plaintiff served Defendant with a third notice of deposition of PMQ on December 9, 2022. The third notice of deposition sought a person knowledgeable as to Defendant's records, record keeping practices and procedures, and production of documents. It also seeks to have the PMQ appear with categories of documents, each of which have been previously requested in requests for production of documents sets one and two.

II. Governing Authorities

"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.* 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.

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.
CCP § 2025.420(a) provides that before, after, or during a deposition, a party, deponent, or other affected natural person or organization may move for a protective order, and that the motion shall be accompanied by a protective order. CCP § 2025.420(b) provides that the Court, "for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." The protective order may include, but is not limited to, one or more of the following directions: "… (11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, copied, tested, or sampled, or that conditions be set for the production of electronically stored information designated in the deposition notice." CCP § 2025.420(g) provides: "If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just."

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).

III. Analysis

As Plaintiff points out, the failure to provide a separate statement is adequate basis to deny a motion to quash under Rule of Court, Rule 3.1345. However, despite the strong similarity, Defendant has filed a motion for protective order, which is not required to attach a separate statement under CROC 3.1345. As such, this does not provide any basis to deny the motion.

Defendant being the moving party for the protective order, they bear the burden of showing good cause. *Stadish v. Sup. Ct.* (1999) 71 Cal.App.4th 1130, 1145. Defendant fails to show sufficient burden, expense or intrusiveness to justify granting the motion. *Emerson Elec. Co. v. Sup. Ct.* (1997) 16 Cal.4th 1101, 1110.

The heart of Plaintiff's discovery here appears to be a desire to catch Defendant in a failure to fully produce relevant documents to discovery requests under requested categories. "To be sure, litigants may be entitled to some information about how an opposing party conducts discovery." See Defendant's Memorandum of Points and Authorities in Support of Motion for Protective Order, Filed 1/6/2023, pg. 13:13-14. While the Court finds no weight in Plaintiff's claims regarding the numerical discrepancy between the parties' production, Defendant's prior discovery abuses leads the Court to believe that this represents something more than a fishing expedition. See Court's 10/19/2022 Order (Court found substantive deficiencies in Defendant's discovery responses.); see also Defendant's November 1, 2022 letter to Judge Broderick,

(Defendant objecting that the Court's 10/19/2022 order should not be entered because it was already fulfilled by Defendant's provision of allegedly sufficient discovery answers just one day prior to hearing, and the same day tentative decisions are posted.). Defendant has made no showing that the actual production of the requested categories of documents would burden them. The topics of the deposition appear salient to Plaintiff's discovery strategy, and may lead to admissible evidence. Plaintiff's prior depositions of PMQs occurred months prior to Defendant providing finalized responses to Plaintiff's requests for production. The presence of the requested documents at deposition has an apparent purpose that benefits the ability to conduct the deposition on the noticed topics. While the discovery is clearly duplicative, the Court does not find the duplicative request unreasonable under the circumstances.
Defendant's motion for protective order is DENIED.

IV. Sanctions

Plaintiff is the prevailing party here and therefore Defendant is not entitled to sanctions under the Discovery Act. Plaintiff's request for sanctions is procedurally defective. Plaintiff requests that the Court grant monetary sanctions equal to attorney's fees with the amount to be determined at a later time. There is no support for this proposition, and the discovery code particularly militates against such surprise sanctions orders.

> "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought.

Code Civ. Proc., § 2023.040

While including such information in the notice of motion is inapplicable, as Plaintiff is the opposing party, the obvious policy is that parties should be as informed as possible regarding the possibility and extent of sanctions. Plaintiff has provided neither any figure as to the amount of sanctions sought, nor any evidence of actual expenses necessary to grant mandatory discovery sanctions. The Court will not write Plaintiff a blank check for sanctions which they do not see fit to adequately support. Plaintiff's request for sanctions is DENIED.

V. Conclusion.

Defendant's motion for protective order is DENIED, as is their request for sanctions. Plaintiff's request for sanctions is DENIED.

Plaintiffs 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).

3. SCV-269891, Mancillas v. Mattison

Plaintiff Wyatt Mancillas' ("Plaintiff") motion to compel initial discovery responses from Defendant CJ Mattison ("Defendant") to set one form interrogatories and request for production of documents is **DENIED** as moot because Defendant has filed with this Court and served upon Plaintiff objection-free and verified responses, with proof of service, as of March 27, 2023. As the responses were still untimely and served after Plaintiff's filing of the motion to compel, mandatory monetary sanctions in the amount of $460.00 is **GRANTED**, and shall be imposed on Defendant.

I. Procedural History

Plaintiff brought this personal injury action against Defendant for general negligence and statutory liability, after Plaintiff was bitten repeatedly in the face by a dog Plaintiff believes was owned by Defendant. (See, Complaint, ¶ 10.) Plaintiff served set one of form interrogatories and request for production of documents on Defendant on October 7, 2022, and did not receive any timely responses. (Declaration of Michael S. Henderson in support of Motion to Compel ["Decl. Henderson"], ¶¶ 2-3.) On November 23, 2022, Defendant's sister, "Anastasia", requested that Plaintiff's counsel email her the two discovery requests, stating that she would be helping in this lawsuit, and Plaintiff's counsel emailed the requests. (*Id*. at ¶ 4.) Following this, Plaintiff's counsel sent a letter to meet and confer with Defendant regarding his failure to respond to the discovery requests. (*Id*. at ¶ 5.)

Though Plaintiff has brought this motion to compel initial responses on January 3, 2023, the Court notes that Defendant filed with this Court on March 27, 2023, and provided proof of service of objection-free, verified discovery responses he prepared himself to set one of form interrogatories and request for production. Regardless, the responses were still untimely.

II. Motion

After receiving no response, Plaintiff has brought this motion to compel initial responses from Defendant pursuant to Code of Civil Procedure ("C.C.P.") sections 2030.290 and 2031.300, and to request monetary sanctions in the amount of $860 for attorneys' fees and costs for preparing the motion, meeting and conferring, and any potential reply papers, at the rate of $400 per hour and $60 fee for filing the motion. (Motion to Compel, pp. 2-3; Decl. Henderson at ¶ 7.) Defendant has filed no opposition, but has instead filed with this Court his responses to Plaintiff's discovery requests.

III. Analysis

A party who fails to serve a timely response to interrogatories, absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial responses. (C.C.P. § 2030.290.) Where the responding party agrees to produce the documents, things, property, or information requested, but then fails to do so, the party seeking discovery may move to compel production of the promised documents, information, or things. (C.C.P.§ 2031.320.) For compelling responses to interrogatories and production requests, the court shall impose monetary

sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. (C.C.P. §§2023.010, 2023.030, 2030.290, 2031.300.) With a motion to compel for failure to respond, there is no deadline and no meet-and-confer requirement. (*Ibid*.) The moving party must merely show that the responding party failed to comply as agreed. (C.C.P. § 2031.320(a); see also *Standon Co., Inc. v. Sup.Ct.* (1990) 225 Cal.App.3d 898, 903.)

Here, Plaintiff in good faith tried to meet and confer on the lack of response to the discovery requests with Defendant, and after receiving no response, brought this motion to compel initial responses. As Defendant has in fact produced the responses already to Plaintiff, and these responses were prepared and signed by Defendant and contain no objections, the motion to compel is moot. However, the Court finds that the responses were still untimely served and finds reasonable to impose mandatory monetary sanctions on Defendant in the amount of $460, including $60 in filing fees incurred by Plaintiff and $400 incurred in attorneys' fees for time preparing this motion and meeting and conferring with Defendant, but not including time for a reply brief or oral argument as neither are necessary since Defendant did not oppose this motion.

IV. Conclusion

Based on the foregoing Plaintiff's unopposed motion to compel initial discovery responses to set one of form interrogatories and request for production of documents from Defendant is **DENIED** as moot as Defendant has already filed and served objection-free and verified responses to Plaintiff on March 27, 2023. As the responses were still untimely and served after Plaintiff's filing of the motion to compel, mandatory monetary sanctions in the amount of $460.00 for attorneys' fees and cost is **GRANTED**.

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).

4. SCV-271074, Tamayo v. Vergara

There are inconsistencies with the declaration of counsel, the proposed order, and the proof of service. The Proof of Service reflecting service to Plaintiff states that Plaintiff was served through substitute service. This is not among the service methods allowed under CROC 3.1362(d). Meanwhile, the declaration of counsel says Plaintiff was served via mail with the address confirmed via "Federal Express with Direct Signature Required". The proposed order states that Plaintiff was served by mail. There is no proof of service indicating that Plaintiff was served by mail as is stated in the declaration and proposed order, nor that she was served using a form of service supported by the Rule of Court. Attorney P. Ryan Banafshe and Danielle Farahi's motion to be relieved as counsel for Plaintiff Jessica Alehandra Tamayo, is DENIED without prejudice.

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