TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 23, 2025 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo * ALSO SEE BELOW FOR D16'S T/R****
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. 23CV01925, Robledo v. Guerrero

Plaintiff Renaldo Robledo ("Plaintiff" or "Robledo") filed the complaint (the "Complaint") in this action against defendants Rogelio Guerrero ("Guerrero", "Individual Defendant", or "Cross-Complainant"), Sky Olive Tree Nursery ("Sky Olive" or "Corporate Defendant", together with Guerrero, "Defendants") and Does 1-20. The Complaint contains causes of action for various causes of action of related to contracts and a partnership agreement. Guerrero has in turn filed a cross-complaint (the "Cross-Complaint") against Robledo and Does 1-20 with causes of action for trespass and nuisance.

This matter is on calendar for Plaintiff's motion to strike and their demurrer to the first and second causes of action pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action. Guerrero has filed an opposition, and Robledo has filed a reply. The Demurrer is **OVERRULED.** The motion to strike is **DENIED**.

I. Procedural and Evidentiary Issues

Plaintiff, through a photograph improperly inserted into the notice of motion, attempts to put forward an evidentiary matter under the guise of judicial notice. This is not an accurate reflection of issues of judicial notice. Judicial notice only extends to those matters specifically outlined in Evid. Code § 452. Plaintiff has not shown that any provision of Evid. Code § 452 applies to the submitted photograph. Plaintiff may not "by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 115. The request for judicial notice is improper and DENIED.

Accordingly, all Plaintiff's arguments derived thereon are left unsupported. Even had the material been considered, Plaintiff misapprehends the liberal construction to which complaints are entitled at demurrer. Plaintiff avers a particular motivation in the construction of the fence. The Cross-Complaint contains no allegation to this effect. The Court would not draw Plaintiff's intended inference absent an express allegation admitting the purported motivation in fence construction.

II. Governing Law

A. Standards on the Demurrer

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. A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. Complaints are read as a whole, in context and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Matters which may be judicially noticed are also considered. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow 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.

"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. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 115.

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321. Where the allegations are that the incident occurred "on or about" a particular date, the demurrer should be overruled, as it is sufficient for the purposes of pleading that the claim may be timely. *Childs v. State of California* (1983) 144 Cal.App.3d 155, 160.

B. Motion to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. The moving party shall meet and confer before filing the motion to strike. CCP § 435.5 (a). Any issues to be raised in the motion to strike shall be raised in the meet and confer process. CCP § 435.5 (a)(1). However, insufficient meet and confer is not grounds to grant or deny a motion to strike. CCP § 435.5 (a)(4).

C. Trespass

"Trespass is an unlawful interference with possession of property." *Girard v. Ball* (1981) 125 Cal.App.3d 772, 788. "The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm." *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 262. "Liability for trespass may be imposed for conduct which is intentional, reckless, negligent or the result of an extra-hazardous activity." *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406. "The general rule is simply that damages may be recovered for annoyance and distress, including mental anguish, proximately caused by a trespass." *Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905. In actions for trespass, even where plaintiff cannot show actual damages, plaintiff may be entitled to nominal damages. *Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219.

"'A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor has tortiously placed there, whether or not the actor has the ability to remove it.' Under this definition, 'tortious conduct' denotes that conduct, whether of act or omission, which subjects the actor to liability under the principles of the law of torts. (Rest.2d Torts, § 6.)" *Newhall Land & Farming Co. v. Superior Court* (1993) 19 Cal.App.4th 334, 345.

"'A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor or his predecessor in legal interest has placed on the land '(a) with the consent of the person then in possession of the land, if the actor fails to remove it after the consent has been effectively terminated, ...'" *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1141–1142, quoting Restatement (Second) of Torts § 160 (1965). Mistaken belief by the trespasser that they have permission is not a defense to a cause of action for trespass, however reasonable that belief might be. *Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1780.

D. Nuisance

"(P)rivate nuisance is a civil wrong based on disturbance of rights in land." *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302. "First, the plaintiff must prove an interference with his use and enjoyment of his property. (*Ibid.*) Second, 'the invasion of the plaintiff's interest in the use and enjoyment of the land [must be] *substantial*, i.e., that it cause[s] the plaintiff to suffer 'substantial actual damage.' (*Ibid.*) Third, '[t]he interference with the protected interest must not only be substantial, but it must also be unreasonable' [citation], i.e., it must be 'of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.' (*Ibid.*, italics omitted.)" *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262–263, quoting *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938. Civil Code § 3479 defines nuisance as "(a)nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." "[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition." *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 ("*Gypsum*"); quoting Prosser and Keeton, Law of Torts (5th ed. 1984) § 86, p. 616.

"[T]he elements of substantial damage and unreasonableness necessary to making out a claim of private nuisance are questions of fact that are determined by considering all of the circumstances of the case" according to an objective standard: Specifically, whether a person of " 'normal health and sensibilities living in the same community' " would be substantially damaged by the interference and whether an impartial reasonable person would consider the interference unreasonable." *Chase v. Wizmann* (2021) 71 Cal.App.5th 244, 253. "It is the general rule that the unreasonable, unwarrantable or unlawful use by a person of his own property so as to interfere with the rights of others is a nuisance [citation]. In fact, any unwarranted activity which causes substantial injury to the property of another or obstructs its reasonable use and enjoyment is a nuisance which may be abated. And, even a lawful use of one's property may constitute a

nuisance if it is part of a general scheme to annoy a neighbor and if the main purpose of the use is to prevent the neighbor from reasonable enjoyment of his own property [citation].” *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1180, quoting *Hutcherson v. Alexander* (1968) 264 Cal.App.2d 126, 130. “So long as the interference is substantial and unreasonable, and such as would be offensive or inconvenient to the normal person, virtually any disturbance of the enjoyment of the property may amount to a nuisance.” *Oliver v. AT&T Wireless Services* (1999) 76 Cal.App.4th 521, 533 (internal quotations omitted). “The primary test for determining whether the invasion is unreasonable is whether the gravity of the harm outweighs the social utility of the defendant's conduct.” *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 303.

III. Demurrer

A. Statute of Limitations

Plaintiff argues that the statute of limitations has run on this matter. This fails for two reasons. First, Defendant’s Cross-Complaint phrases each allegation as occurring “on or about” particular dates. This is sufficient to overcome a demurrer for statute of limitations. *Childs v. State of California* (1983) 144 Cal.App.3d 155, 160. Second, trees are, as a matter of law, typically a continuing nuisance. See *Kahn v. Price* (2021) 69 Cal.App.5th 223, 238. Accordingly, the statute of limitations continues until the issue is remediated.

B. Trespass

Plaintiff contends that the Cross-Complaint fails to plead a cause of action for trespass because the Cross-Complaint concedes that Defendant gave Plaintiff permission to enter the property and store the olive trees. Defendant contends in response that the Cross-Complaint adequately addresses that permission was withdrawn, and therefore the elements of the cause of action are adequately pled.

While Plaintiff argues that the admission of initial consent is preclusive, and that there can be no cause of action for trespass. This is not an accurate representation of the law of trespass. First, Defendant makes multiple allegations that the conduct of Plaintiff and his agents exceeded the permission granted. This is a viable element of trespass claims. Second, the Cross-Complaint clearly alleges that all permission was withdrawn absent scheduled entry. Cross-Complaint ¶ 26. Plaintiff was told to remove the trees stored at the property. Cross-Complaint ¶ 17. Plaintiff failed to remove 26 trees. Cross-Complaint ¶ 29. This is sufficient to show a cause of action for trespass.

Plaintiff also attacks the alleged intrusion by other individuals around October 2022. Cross-Complaint ¶ 23-27. Plaintiff argues that because the entry alleged here was not him personally, he cannot be held liable for the trespass, and therefore it does not support the cause of action. Defendant has laid out sufficient factual allegations for agency related to the intrusion of strangers at Plaintiff’s behest. See, e.g., *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 263 (Trespass claims predicated on agency were sufficient to survive second prong of anti-SLAPP motion.). While the Cross-Complaint does not use the term “agent”

in this particularized context, the purview of the Court is not to examine the pleading for the necessary vocabulary, but rather the essential factual elements to support the cause of action. Defendant alleges that the "individuals had traveled to and entered the Property at the direction of" Plaintiff. Cross-Complaint ¶ 24. This appears to be an adequate factual allegation to support the inference of agency at the pleading stage.

The demurrer to the first cause of action for pleading facts showing the cause of action is **OVERRULED.**

C. Private Nuisance

Plaintiff argues that the nuisance cause of action is not adequately stated, because Guerrero's damages are speculative. While Plaintiff argues that Guerrero cannot state damages, the Cross-Complaint alleges that there remain trees on the property that Plaintiff has failed to remove. Cross-Complaint ¶ 28-29. Even trees overhanging into a property is sufficient to show damages for a nuisance cause of action. *Mattos v. Mattos* (1958) 162 Cal.App.2d 41, 42. Trees are a continuing nuisance, as they can be removed. *Kahn v. Price* (2021) 69 Cal.App.5th 223, 238. The abandonment of trees into the property appears to be adequate to state damages for a nuisance claim.

The demurrer to the second cause of action for failure to plead facts sufficient to state a claim for nuisance is **overruled.**

IV. Motion to Strike

Plaintiff also argues that particular allegations of the Cross-Complaint is subject to a motion to strike as irrelevant, false and improper.

Defendant first argues that the motion to strike was not raised during Plaintiff's meet and confer process, and therefore is procedurally deficient. Defendant concedes that the sufficiency of meet and confer efforts on a motion to strike do not form a basis for the Court to deny the motion to strike. CCP § 435.5 (a)(4). At best, the Court could order the parties to confer on the purported issues, but that appears unlikely to be fruitful. Accordingly, the Court turns to the merits.

The Court finds these allegations adequately related to the causes of action within the Cross-Complaint, and Plaintiff's arguments for striking are unpersuasive. As to Cross-Complaint ¶ 19, Plaintiff appears unduly concerned with the erroneous reference to a "duty" to assess the factual nexus of the allegation, that Plaintiff was obligated not to interfere with Defendant's enjoyment of property. While said allegation would be arguably "conclusory", it is not irrelevant. Whether something is conclusory is "a matter of degree", and the statement here is not rendered entirely so by improvident wording.

Cross-Complaint ¶¶ 23-25 are both relevant and adequately pled, as noted above. The allegation is clear that Plaintiff instructed those individuals to come to Defendant's property. They were invited by Plaintiff without Defendant's permission. The allegations remain relevant. Striking them is therefore improper.

The motion to strike Cross-Complaint ¶ 33 is also not adequately supported. Plaintiff seeks to strike allegations of intent. General allegations of intent are typically sufficient. *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632. Plaintiff raises no legal standard by which the allegation may be found deficient.

Cross-Complaint ¶ 39, similar to ¶ 19, is arguably conclusory but not irrelevant. Striking it does not appear supported as a result.

The motion to strike is **DENIED**.

V. Conclusion

Based on the foregoing, the Demurrer is **OVERRULED**.

The motion to strike is **DENIED**.

Guerrero 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).

2. 24CV00392, Adams v. McQuilkin

Plaintiff Jacob Adams ("Plaintiff") filed the complaint in this action for motor vehicle liability (the "Complaint") against defendants Lewis McQuilkin ("Individual Defendant"), Recology, Inc. ("Corporate Defendant", together, "Defendants"), and Does 1-100. This matter is on calendar for the motion by Plaintiff to compel further responses to requests for admission ("RFAs") from Corporate Defendant[1] pursuant to CCP §2033.290(d) (relating to requests for admission) and for monetary sanctions. The motion is MOOT and sanctions are DENIED.

I. Legal Authority

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…")

[1] While the motion is directed to Corporate Defendant, Defendants share counsel, and "Defendants" is therefore used throughout this ruling.

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*.

B. Compelling Further Responses to Admissions

Regarding the RFAs, CCP § 2033.010 provides that "[a]ny party may obtain discovery ... by a written request that any other party to the action admit ... the truth of specified matters of fact, opinion relating to fact, or application of law to fact" relating to any "matter that is in controversy between the parties." It is well-established that requests for admissions may go to the "ultimate issues" of a case. *St. Mary v. Sup. Ct.* (2014) 223 Cal.App.4th 762, 774; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864. Each response to a request for admission "shall be as complete and straightforward as the information reasonably available to the responding party permits" and must either object or answer, in writing and under oath, with an admission of so much of the matter as is true; a denial of so much of the matter as is untrue; or a specification of so much of the matter as the responding party is unable to admit or deny based on insufficient knowledge or information. CCP §§2033.210(a)-(b), 2033.220. "If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." CCP § 2033.220(c). "If only a part of a request for admission is objectionable, the remainder of the request shall be answered" and if an objection is made to a request or part thereof, "the specific ground for the objection shall be set forth clearly in the response." CCP §2033.230.

Upon receipt of a response, a requesting party may move for a further response if it determines that an answer to a particular request "is evasive or incomplete" or if an objection to a particular request "is without merit or too general." CCP § 2033.290(a).

> Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment. If the litigant is able to make the admission, the time for making it is during discovery procedures, and not at the trial.

Cembrook v. Superior Court In and For City and County of San Francisco (1961) 56 Cal.2d 423, 429. Matters within the knowledge or experience of a party's expert is deemed obtainable, and therefore claims that such matters fall within the purview of expert testimony is not a defense to request for admission. *Chodos v. Superior Court for Los Angeles County* (1963) 215 Cal.App.2d 318, 323.

C. Sanctions

CCP §2033.290(d) (relating to requests for admission) 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. The Substance of the Motions are Moot

Defendants have provided supplemental responses on April 4, 2025. Accordingly, while the Court has jurisdiction to consider the sufficiency of the responses, the original motion as submitted appears moot. The supplemental responses appear better addressed through a fresh motion process. However, Plaintiff has requested sanctions in the motion, and therefore the Court still assesses the sufficiency of the RFAs and the original responses.

III. Sanctions

If the Court finds the original responses insufficient, sanctions are mandatory absent substantial justification. As an initial issue, it is worth noting that Defendants offered substantive responses subject to objections to three of the five RFAs at issue. Only two of the original RFA responses fail to admit or deny (RFAs ¶¶ 5 and 8).

On review, Defendants' objections are well taken. While Plaintiff seeks responses to the RFAs which include internalized definitions, those definitions appear inadequately specific to alleviate the ambiguity in the RFAs. As Defendants point out for RFA ¶ 1, Plaintiff expends significant effort attempting to define "left side" of the lane, but the definition lacks any reference to how much of the vehicle would have to be in the left side to satisfy the admission. The definition of Bodega Avenue omits any reference to how many lanes are present. RFA ¶ 2 suffers similar ambiguity, failing to define the subsequent lane split that Plaintiff's Counsel states in his Declaration.

RFA 4 ¶ is similarly lacking. Defendants admit that the image depicts the truck after the accident. The Plaintiff's vehicle is not present in the subject photograph. Clearly, something has been changed between when the accident occurred and when the photo was taken. The effect of removing Plaintiff's vehicle remains a matter on which we can only speculate. The answer to the interrogatory is therefore complete. RFA ¶¶ 5 and suffer from similar issues. Plaintiff seeks to establish some form or "routine" practice and right side, without defining what constitutes use of the space. In the hindsight of all the interactions of the parties, what Plaintiff means becomes more clear, but both the initial response and the reticence to reply to the admission while it is ambiguously worded is proper, as the purpose of these admission is to introduce at a finding of fact without the expansive discussion currently before the Court.

Defendants' objections are well taken and there would have been no cause to compel further responses given the ambiguous nature of the interrogatories. The request for Sanctions is DENIED

IV. Conclusion

Plaintiff's motion is **MOOT**. The request for sanctions is DENIED.

Defendants' 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).

3-4. 24CV02888, Zaragoza v. Barragan

Plaintiffs, Jorge Zaragoza and Maria Alvarez Camacho ("Plaintiffs"), have filed the complaint ("Complaint") against defendants Abraham Barragan Gonzalez ("Defendant"), and Does 1-20 arising out of a landlord/tenant transaction and alleged breaches of habitability requirements.

This matter is on calendar for Plaintiffs' motion to compel further responses to Set One of the special interrogatories ("SIs"), and requests for production of documents ("RPODs"), from Defendant under Code of Civil Procedure ("CCP") §§ 2030.300 and 2031.310, and sanctions thereon. The motions are **GRANTED**.

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 discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden." *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.

B. Interrogatories

Regarding FIs and 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." 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.

C. Requests for Production of Documents

Regarding the RPODs, a demand for production may request access to "documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control" of another party. A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.* CCP § 2031.240(c)(1) provides that when asserting claims of privilege or attorney work product protection, the objecting party must provide "sufficient factual information" to enable other parties to evaluate the merits of the claim, "including, if necessary, a privilege log."

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). 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*, 58 Cal.2d at 220–221. It is insufficient to claim that a requested document is within the possession of another person if the party has control over that document. *Clark v. Superior Court of State In and For San Mateo County* (1960) 177 Cal.App.2d 577, 579.

D. Privacy Rights and Discovery

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 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.

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.* Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

E. Sanctions

CCP § 2030.300(d) (relating to interrogatories), and CCP § 2031.310(h) (relating to requests for production of documents) 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

Plaintiffs have filed two motions as to Defendant. Defendant has filed a timely opposition to the motions.

A. Meet and Confer

Defendant argues that Plaintiffs' meet and confer efforts were insufficient, and by extension the Court should deny the motion.

Plaintiffs sent a letter addressing the perceived deficiencies in the discovery responses. Defendant responded by letter, but the parties agreed that Defendant would have additional time to provide amended responses. Amended responses were provided but not to the SIs and RPODs at issue. Plaintiffs subsequently moved to compel.

The Court finds the meet and confer efforts adequate. Defendant's offer of deficient objections only to attempt to tease out amended responses in response to meet and confer efforts appears improper. As the Court addresses below, the nature of the objections initially served appears boilerplate and without substantive support in law.

Plaintiff identified that the responses were deficient. Defendant provided supplemental responses, but elected not to supplement the responses which are raised in the motions. For

Defendant to argue that more than two letters are required, when they elected not to supplement responses already identified as deficient, does not serve the self-executing nature of discovery. Serving insufficient responses followed by waves of supplements while dragging out motion deadlines appears to be discovery abuse. Plaintiff only moved to compel those responses that Defendant refused to supplement. Defendant may not hold Plaintiff's ability to compel hostage by dictating how they would like the discovery request drafted. Plaintiff identified issues, Defendant supplemented some and elected not to supplement others, and it now falls to the Court to determine whether those interrogatories were sufficiently drafted. Plaintiffs' meet and confer efforts appear adequate.

B. RPODs

The parties met and conferred after the filing of the motion, and have resolved all the relevant RPODs with the exception of ¶ 21. Despite this, the Court provides analysis on the requests submitted with the motion, because it is relevant for the purposes of sanctions, which remain at issue.

Good cause for each category is sufficiently stated. RPOD ¶¶ 17, 26, 27 and 30 all relate directly to the property and possible governmental interactions memorializing issues, and placing Defendant on notice of the same. RPOD ¶ 19 relates to statements about Plaintiffs between Defendant and his employees. The possibility of admissions contained in such communications appears sufficiently salient that the documents are clearly discoverable. Furthermore, the Complaint contains retaliation claims, which clearly relate to this category of documents. Finally, RPOD ¶ 21 relates to bids for remediation of mold at the property from the last 10 years. This is relevant not just to show Defendant's avoided costs in not remediating the problem, but when Defendant knew of mold issues.

As to RPOD ¶ 19, Defendant avers that the request is overbroad because "emails with employees or contractors concerning plaintiffs could be unrelated to plaintiffs' tenancy", but they provide no explanation why Defendant would be having non-tenancy related communications about Plaintiffs, or why that would otherwise be protected. The request is not overbroad. Again, there are retaliation claims which implicate the discoverable nature of this discovery request. Mendez also argues that RPOD ¶¶ 17, 26, 27 and 30 are documents equally available to Plaintiffs. This is not a properly asserted objection. First, the term "equally available" is not generally applicable to RPODs, but interrogatories. See CCP § 2030.220(c). To the degree that Defendant argues that this constitutes a burden, that is a matter which Defendant should have asserted in a protective order. See CCP § 2031.060. The time for such a motion has passed.

Finally, it is improper for Defendant to aver that he has no need to produce documents actually in his possession as a party to the case, but rather that third party discovery is *necessary*. The burden of discovery production generally falls on the parties, and the extent of discovery as to third parties is substantially more limited. *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal.App.5th 1011, 1039. Defendant provides **no** case supporting the legal contention that Plaintiffs must propound discovery to a public entity for documents that Defendant has in his possession. Finally, even if third party discovery to a public entity were a

preferable source, it would not provide Plaintiffs with the same evidence that Defendant *knew* of any citations or public investigation. This objection is frivolous.

RPOD ¶ 21 is also discoverable. Plaintiff requests documents for any bids concerning mold remediation at the property in the last 10 years. Defendant asserts financial privacy. This is not persuasive. The request is not for amounts actually paid, but rather the information gathered. It is clearly discoverable material to find out Defendant's knowledge of the costs of remediation, and when he knew it. The request is not overboard as to time. Given the nature of mold issues, ten years appears to be a reasonable period for discovery. While Plaintiffs agreed to limit to 7.5 years during meet and confer efforts, they need not have done so. The request is reasonable and the objection is not justified.

Plaintiffs' motion to compel further responses to RPOD ¶ 21 is GRANTED. The remainder of the requests have been rendered moot by agreement.

C. Special Interrogatories

Plaintiffs move to compel further responses from Defendant as to SI ¶¶ 5, 7, 8, and 20. The parties have agreed to supplemental responses as to all at issue SIs except ¶ 20, which remains at issue. Again, the Court provides analysis on the requests submitted with the motion, because it is relevant for the purposes of sanctions, which remain at issue.

SI ¶ 5 asks only for complaints received by Defendant from Plaintiffs about the Property. As a threshold matter, good cause for this appears obvious, establishing Defendant's notice from Plaintiffs regarding the issues of habitability. The burden therefore shifts to Defendant to justify objections.

Defendant argues that SI ¶ 5 is "vague, ambiguous, overbroad, and not reasonably particularized." See Defendant's Separate Statement in Opposition, pg. 8:26-27. Defendant's assertion of vagueness is not credible. Defendant contends that the interrogatory is not particularized because it must be particularly targeted to allegations contained in the Complaint. They provide no authority for such proposition. Failure to define each word in a discovery request, even one which is a term of art, does not necessarily render it ambiguous. *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1286. Defendant's discovery responses regarding Plaintiffs' complaints is not vague, ambiguous, nor overbroad. This is not some scattershot request regarding all tenants, or other properties. It relates directly to communications between the parties regarding all the conditions at the property. The objections to SI ¶ 5 are without merit.

Defendant's objections as to SIs ¶¶ 7 and 8 are equally without basis. SI ¶ 7 asks that Defendant describe his knowledge of mold on the property. SI ¶ 8 merely asks for the date on which Defendant learned of mold on the property. Both these requests appear relevant for the purposes of determining Defendant's knowledge of the habitability issues at the property. Relevance appears obvious, and therefore good cause appears clear.

Defendant's assertion that the query is unlimited as to time appears deliberately obstructive. The issue here is one of habitability, and Defendant's knowledge of the conditions. If Defendant

knew of mold problems on the property before Plaintiffs tenancy, that is relevant. Defendant's objection to the contrary is meritless. Good cause is broadly construed, and Defendant offers no authority showing why it does not extend to his particular knowledge of the property prior to Plaintiffs' tenancy. *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. Even if the relevance were not so clear, fishing expeditions are sometimes permissible. *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591.

SI ¶ 20 also appears sufficiently stated. Plaintiffs request Defendant to provide the average amount expended on maintenance for the property during their tenancy. This appears to be evidence potentially relevant for showing insufficient maintenance. Defendant's objection on relevance goes to the weight of the possible evidence submitted, and not its propriety. Defendant argues that the maintenance done is what is relevant, not the cost thereon, but evidence that Defendant failed to expend a reasonable amount in the face of complaints *is* evidence, which might be abrogated by the nature of the work performed. Defendant also objects claiming the information is private. This is an incredibly limited type of financial information strongly related to the claims in the Complaint. The information requested is not sufficiently implicated by the right to financial privacy to outweigh the relevance thereon.

Defendant's objection under Civ. Code § 3295 is also unavailing. The interrogatory is not an onerous intrusion for the purposes of establishing the viability of punitive damages, but rather direct requests regarding expenditures on the failure to maintain the premises. Accordingly, compelling a further response is proper.

Plaintiffs' motion to compel further responses to special interrogatories is GRANTED as to SI ¶ 20. The remainder of the requests have been rendered moot by agreement.

III. Sanctions

Plaintiffs requests sanctions against both Defendant and counsel for Defendant's failure to produce code compliant responses. In so doing, they produce an attorney declaration which avers the rate actually charged to Plaintiffs, and the amount of time expended. Across the two motions, Plaintiffs request $4,070 in sanctions.

The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." CCP § 2023.030.

As the Court notes above, the motion was made necessary by frivolous objections interposed through Defendant's counsel. This is sufficient evidence that the discovery abuse is adequately attributable to counsel, and so the sanctions thereon should be joint and several.

Requests for fees on discovery motions must be both actual and reasonable. Plaintiff requests $395 an hour for counsel Nelson. The rates requested are reasonable. Plaintiffs request 3 hours per motion, with two hours per opposition, reply and appearance. Plaintiffs also request $60 in

filing fees for each motion. The amount of time expended is reasonable except no appearance for hearing has occurred. The Court reduces the time on each motion by .5 hours, leaving 4.5 hours per motion at $395 per hour. Therefore, sanctions are granted for costs of 9 attorney hours at $395 per hour, plus $120 in filing fees, for sanctions of $3,675.00. Defendant and/or his counsel shall pay $3,675.00 to Plaintiffs within 30 days of notice of this order.

IV. Conclusion

Plaintiff's motions to compel further responses to RPODs, and SIs, are GRANTED. Defendant will serve code compliant, objection-free responses within 30 days of notice of this order.

The request for sanctions is granted and Defendant and/or his counsel shall pay $3,675.00 to Plaintiffs within 30 days of notice of this order.

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).

5. 24CV07555, Stewart v. Fay Servicing, LLC

Plaintiffs Kara Michelle Stewart and Christopher Charles Stewart ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants the Fay Servicing, LLC ("Fay"), U.S. Bank Trust national Association, as trustee of the LSF9 Master Participation Trust ("US Bank", together with Fay, "Defendants"), and Does 1-20, for multiple alleged causes of action arising out of a mortgage transaction.

This matter is on calendar for the Defendants' demurrer to causes of action one through seven 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. The Demurrer is **SUSTAINED with leave to amend as to the First, Second, Fourth, and Sixth causes of action. The Demurrer is OVERRULED as to causes of action Three, Five and Seven.**

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. *Coshow 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. Homeowner's Bill of Rights ("HBOR")

"Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying the reasons for denial, including . . . (t)he amount of time from the date of the denial letter in which the borrower may request an appeal of the denial of the first lien loan modification and instructions regarding how to appeal the denial." Civ. Code, § 2923.6(f)(1).

Civil Code § 2923.7(a) provides that "[w]hen a borrower requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact" and CC § 2923.7(b) provides that the single point of contact "shall be responsible for": "(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options. (2) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application. (3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative. (4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any. (5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary." CC § 2923.7(c) provides that the single point of contact (which, per CC §2923.7(e) means an individual or team) shall remain assigned to the borrower's account "until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current."

C. Civ. Code § 2924c

A borrower in default "may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), that are actually incurred, or will be incurred as a direct result of the payment being tendered, in enforcing the terms of the obligation, deed of trust, or

mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred." Civ. Code, § 2924c (a)(1). In assessing attorney's fees related to foreclosure before allowing reinstatement, a lender's allowable fees are capped according to a percentage of the principle currently owed on the loan. Civ. Code § 2924c(d). Fees which are merely collateral to debt obligations are not constrained by Civ. Code § 2924c(d). *Bruntz v. Alfaro* (1989) 212 Cal.App.3d 411, 421.

D. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. "It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, … the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted). Breach of lease is merely a form of breach of contract. See *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1414.

"The implied covenant of good faith and fair dealing is implied by law in every contract to prevent a contracting party from depriving the other party of the benefits of the contract." *See, e.g., Moore v. Wells Fargo Bank, N.A.*, 2019 WL 4051754, at *5; *see also, Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683–684; *Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244. The covenant requires each contracting party to refrain from doing "anything which will injure the right of the other to receive the benefits of the agreement." *Kransco v. American Empire Surplus Lines Ins.* Co. (2000) 23 Cal.4th 390, 400; *see also, Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818. The implied covenant rests upon the existence of a specific contractual obligation and "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607; *see also, Racine & Laramie, Ltd. v. California Dept. of Parks & Rec.* (1992) 11 Cal.App.4th 1026, 1031-32.

E. Negligence

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages." *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572.

"Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434. "A financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 927 (Internal quotations omitted). Generally, once there is privity of contract between the lender and the consumer, the proper remedy is for breach of contract, and the application of tort law violates the economic loss rule. *Id*. at 937 ("[*Biakanja v. Irving* (1958) 49 Cal.2d 647]) does not displace the contractual economic loss rule when that rule squarely applies."). The central question in whether a duty is owed outside of contract claims in mortgage contexts is whether the lender's conduct has fallen outside the scope of their "role as a lender". *Id.* at 928.

F. Unfair Competition Law

Business & Professions Code section 17200, prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827.

Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.*

(2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted)("*Collins*"). Fraud claims under the UCL must be stated with "reasonable particularity". *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

II. Procedural and Evidentiary Issues

Defendants request judicial notice of a wide variety of public records and documents. 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. 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 1-5 and 7-12. No conclusion as to the truth of their contents is taken. Defendants argue that the Court should take judicial notice to RFJN Ex. 6, which is the letter issued January 19, 2024, stating that this is admissible under *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, fn. 3, disapproved of by *Leon v. County of Riverside* (2023) 14 Cal.5th 910, and *Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 445. The court in *Zakk* makes no ruling as to the propriety of such notice. In *Ingram*, the Court notes that there is no dispute between the parties regarding the truthfulness of the documents, and they are noticed under § 452 (h). Here, the accuracy of whether attachment A was included with the relevant letter is an express allegation of the complaint. Judicial notice is therefore improper. RFJN 6 is DENIED.

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. Plaintiffs' complaint is entitled to liberal factual construal. Where facts are open to different interpretations, Plaintiffs receive the benefit of the most beneficial interpretation of those facts. However, Plaintiffs are not entitled to any form of legal liberality. Plaintiffs still must plead adequate facts to meet viable legal theories. Where Plaintiffs' legal theories are flawed, causes of action may be fatally deficient.

A. Homeowner's Bill of Rights

While Plaintiffs have averred that they have causes of action under Civ. Code §§ 2923.6 and 2923.7, these statutes do not appear to themselves create a cause of action. Rather, the causes of action derive from Civ. Code § 2924.12. See, e.g., *Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272.

Plaintiffs argue that they have other damages incidental to these statutory violations, including attorney's fees. However, Plaintiffs provide no case showing application to these statutes absent recovery predicated under Civ. Code § 2924.12. As such, the remedies recoverable thereon appear to constrain Plaintiffs' claims. It appears clear that Plaintiffs may not conjure a cause of action for which their only recovery is self-inflicted attorney's fees for bringing the cause of action. Plaintiffs have not pled a basis for injunctive relief, as they have not pled that foreclosure proceedings are occurring, nor that the property has already been sold subject to foreclosure. These are the remedies available under the cause of action statute for the HBOR claims. Civ. Code § 2924.12. Plaintiffs have therefore failed to plead a cause of action for which they are entitled a remedy. *Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272. Accordingly, the demurrer to the first and second causes of action is **sustained with leave to amend.**

B. Civil Code § 2924c

Defendants argue that Plaintiffs cannot recover under Civ. Code § 2924c because the payment they made to cure default was voluntary, and the amounts were includable debt under the Deed of Trust.

The voluntary payment doctrine does not appear to foreclose claims under Civ. Code § 2924c. Defendant's contention that the "fees were owed" is not persuasive, as the fees were allegedly collected in an illegal manner. The voluntary payment doctrine does not appear to apply to claims under Civ. Code § 2924c, as cases recognize the right of a borrower to obtain reinstatement, then sue to recover any overpayment caused by statutory violations. See *Crossroads Investors, L.P. v. Federal National Mortgage Assn.* (2017) 13 Cal.App.5th 757, 793.

Defendants also argue that the amounts are includable under the Deed of Trust, are not incidental to the foreclosure, and therefore are not capped under Civ. Code § 2924c. Defendants appear to make contrary arguments in this regard. Defendants state both that the assessment of the attorney's fees is entirely allowable under the deed of trust, but that the assessment of these fees as part of the reinstatement is not subject to any restriction under Civ. Code § 2924c. The language of 2924c (a)(1)(C) bears strong resemblance to the language contained within the Deed of Trust. Civ. Code § 2924c defines allowable costs to be recovered for reinstatement as:

> "(A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), that are actually incurred, or will be incurred as a direct result of the payment being tendered, in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the

> obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred."

Civ. Code, § 2924c(a)(1).

Assuming Defendant argues that the fees from the prior action fall under (A) as an advance under the terms of the deed of trust (as the reinstatement quote appears to indicate), the statute only allows for those amounts which are "in default and **shown in the notice of default**." *Ibid* (emphasis added). The notice of Default lists the amount as $29,955.64. See Complaint Ex. B. The advances are noticeably absent. As such, it does not appear that Defendants may add these amounts if they are not included in the notice of default, and they are therefore not includable under (A).

As noted above, Defendants argue that this amount was allowable to include under the language of the Deed of Trust. The Deed of Trust allows Defendants to recover any costs, including attorney's fees, for participation in legal proceedings "that might significantly affect Lender's interest in the Property". Deed of Trust, § 9. Civ. Code § 2924c limits attorneys fees recoverable "in enforcing the terms of the obligation, deed of trust, or mortgage" in order for Plaintiff to cure default to amounts recoverable under subd. (d).

Plaintiffs appear to concede that the full amount of the fees is recoverable by Defendants as "collateral" to the foreclosure (see *Caruso v. Great Western Savings* (1991) 229 Cal.App.3d 667, 676), only that their demand on reinstatement was not proper. Defendants are also correct that these payments are capable of categorization as collateral advances. *Bruntz v. Alfaro* (1989) 212 Cal.App.3d 411, 421. However, the statutory procedure was simply not followed here in categorizing them timely to the notice of default.

Accordingly, it appears that Defendant's entitlement to assess the full attorney's fees is clear, but its limitation in being a necessary payment as part of the reinstatement is appropriately statutorily limited. Defendants did not include the amount in the request for default. They are attorney's fees which may be added without being included in the notice of default, but only if they are limited under Civ. Code § 2924c(d). While Defendants argue that the Deed of trust allows the assessment of the fees "on notice from Lender", no express term of the deed of trust addresses the right to impose these fees in a manner contravening Civ. Code § 2924c. Defendant could not assess the excess fees absent inclusion in the Notice of Default.

While Plaintiffs have not pled the amount of principle owing at the time of default, the Complaint is entitled to liberal construal, and there is information sufficient that the Court can surmise that the fees exceed the amount allowable under Civ. Code § 2924c(d). The amount of principle required to allow Defendants to assess $36,030,78 in attorneys' fees would be approximately $27,984,624. The Deed of Trust secures a loan amount of $650,000. Complaint, Ex. A. It does not appear to stretch the bounds of the pleading to conclude that the principle currently owing at the time of the default would not exceed $650,000. Supporting this, the notice of Trustee's Sale states the total unpaid balance is $729,077.54. Accordingly, Plaintiff has pled a violation of Civ. Code § 2924c.

The Demurrer to the third cause of action is OVERRULED.

C. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

Defendants also demur to Plaintiffs' contractual causes of action, stating that the inclusion of the attorneys' fees was allowable under the Deed of Trust.

Plaintiffs plead no breach of contract, because Plaintiff pleads no breach of an express provision thereon. Plaintiffs argue that the Deed of Trust does not allow Defendants to add the attorney's fees from the prior action to the reinstatement amount. The Deed of Trust contains no express provision addressing this in either in the affirmative or the negative. Deed of Trust § 9 clearly entitles Defendants to assess any attorneys' fees accrued in protecting their interest in the property. That same section says that Defendants may make such amounts payable "upon notice from Lender to Borrower requesting payment." *Ibid*. As such, no violation of express terms is pled.

In contrast, the cause of action for breach of the covenant of good faith and fair dealing appears adequately pled. Plaintiff pleads a statutory duty (Civ. Code § 2924c) not expressly included in the Deed of Trust, by violation of which Defendants might damage Plaintiffs' rights to the benefits under the contract. Given that it is a violation of Plaintiff's rights under the contract, but not a breach of an express provision, this appears to meet the standard of the cause of action.

Additionally, the voluntary payment doctrine does not appear to foreclose Plaintiffs' claims here. Again, Plaintiffs' Complaint is subject to liberal construal. Plaintiffs plead that the payment was made under protest. Complaint ¶ 21. The Complaint is clear that foreclosure was pending, and they had a mere 19 days to tender the reinstatement amount. Complaint Ex. E. The probability that Plaintiffs would lose their home compelled them to pay the amount. Complaint ¶ 47. As a simple issue of financial reality, the loss of a home appears to adequately implicate preservation of property such that the payment would be made by a reasonable person, though they do not owe it. *Western Gulf Oil Co. v. Title Ins. & Trust Co.* (1949) 92 Cal.App.2d 257, 265. As is noted above, the accompanying statutory duty does not foreclose subsequent suit for refund of overpayment of reinstatement amounts. The voluntary payment doctrine does not appear to foreclose Plaintiffs' claims on the face of the Complaint as a result, as Plaintiffs have adequately pled elements of duress.

As to the fourth cause of action, the demurrer is SUSTAINED with leave to amend

As to the fifth cause of action, the Demurrer is OVERRULED.

D. Negligence

Defendants raise the economic loss rule as a defense to Plaintiffs' negligence claims. The caselaw on the issue is clear and unambiguous. "A financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 927 (Internal quotations omitted). The economic loss rule precludes tort claims for

violations of contractual duties. *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 937 ("[*Biakanja v. Irving* (1958) 49 Cal.2d 647]) does not displace the contractual economic loss rule when that rule squarely applies."). Plaintiffs may not assert clearly contractually related claims as a tort.

The demurrer to the negligence claim is OVERRULED.

E. Unfair Competition Law

As the Court analyzed above, Plaintiff's claim under Civ. Code § 2924c appears adequately pled. Plaintiff may both show wrongly held funds, and a violation of statute. As such, Plaintiff meets the pleading requirements for a UCL claim related to unlawful conduct. Further exploration of the claim would overreach the Court's role at demurrer.

The demurrer to the UCL claim is OVERRULED.

IV. Conclusion

Based on the foregoing, **the Demurrer is SUSTAINED with leave to amend as to the First, Second, Fourth, and Sixth causes of action. The Demurrer is OVERRULED as to causes of action Three, Five and Seven.**

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).

6. MCV-252258, Portfolio Recovery Associates, LLC v. Gilligan

Plaintiff Portfolio Recovery Associates, LLC, ("Plaintiff") filed the complaint in this action against defendant Mason Gilligan ("Defendant"), with causes of action for account stated and open book account. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed January 4, 2023 (the "Agreement") to enter judgment in the case in the amount of $9,925.34, as Defendant has defaulted on the agreement. There is no opposition to the motion.

However, there is no proof of service in the Court's file indicating the Defendant was ever given notice of the instant hearing date. Therefore, the motion is DENIED without prejudice.

Defendant 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).

BELOW ARE D16'S TENATIVE RULINGS….

4. 24CV03991, Wells Fargo Bank, N.A. v. Nelson

(Matter is being called by Department 19/Judge Pardo. If oral argument is requested, please use Department 19's Zoom login (see above).)

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") moves for an order deeming its Requests for Admissions, Set One, admitted against Defendant Jessica L. Nelson ("Defendant").

Defendant was served with Plaintiff's Request for Admissions, Set One, on October 28, 2024. (Early decl., ¶1.) As of the date of Plaintiff's counsel's declaration, no responses have been received. (*Id.*, ¶2.) ***Therefore, unless Defendant Jessica L. Nelson serves Plaintiff with verified responses, without objections, prior to the hearing on this motion,*** **the motion will be GRANTED and Plaintiff's Requests for Admissions, Set One, will be deemed admitted.**

The court will sign the proposed order.

5. 24CV04024, Looney v. Pierfront Wine and Brew, Inc., a California Corporation

(Matter is being called by Department 19/Judge Pardo. If oral argument is requested, please use Department 19's Zoom login (see above).)

Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") moves for an order compelling Defendants Pierfront Wine & Brew, Inc. dba Pierfront Wine & Brew, dba Enfuzion Bar & Lounge, and Britaney Bagliazo, individually as personal guarantor of Pierfront ("Defendants"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of $60. **The motion is GRANTED. Defendants are ordered to provide responses, without objections, to Plaintiff's discovery requests and pay sanctions within 30 days of this order.**

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.

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

On October 28, 2024, Plaintiff obtained a judgment against Defendants in the amount of $2,518.46. On the same day, Plaintiff served Defendants with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (*Id.*, at ¶¶2, 3.)

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. 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).

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