

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, May 22, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

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The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

1-3. 24CV05294, Cohodes v. Cohodes

This case comes on calendar for three motions: Plaintiff Marc Cohodes' ("Plaintiff") motion for alternative service for Oriana Burns, Plaintiff's motion for discovery sanctions against Defendant Aurora Cohodes ("Defendant"), and Plaintiff's motion to seal exhibits filed in support of his Reply to the discovery sanctions motion.

Plaintiff's unopposed motion for alternative service for Oriana Burns is **DENIED**. Plaintiff's motion for sanctions against Defendant is **DENIED**. Plaintiff's motion to seal is **GRANTED**.

I. FACTUAL & PROCEDURAL HISTORY

This action arises out of Defendant Aurora Cohodes' ("Defendant") alleged breach of non-disclosure agreement, invasion of privacy, trespass, and intrusion into private affairs of Plaintiff Marc Cohodes ("Defendant"). (See Complaint filed September 10, 2024.) The parties married on June 28, 2013, in Montana and separated in September 2022. (Complaint, ¶¶ 1, 11.) The parties had previously executed a premarital agreement ("PMA") but that was revoked and replaced by the parties' Confidential Legal

Separation Agreement (“CLSA”). (Complaint, ¶¶ 2, 12–13.) Defendant’s contention in this case is that the PMA is not enforceable because it was not voluntarily executed for several reasons. (Opposition to Plaintiff’s Sanctions Motion, 1:25–2:5.) Plaintiff and Defendant are also parties to a proceeding in Montana: *Aurora Cohodes v. Marc Cohodes*, Case No. DV-16-2024-914-BC. (Motion to Seal, 1:2–4.)

This matter is on calendar for three motions by Plaintiff: alternative service for Oriana Burns, discovery sanctions against Defendant, and sealing exhibits filed in support of Plaintiff’s Reply to the discovery sanctions motion. The Court considers each motion in turn below.

II. DISCUSSION

A. Motion for Alternative Service on Oriana Burns

First, Plaintiff moves unopposed for an order authorizing email service of a document subpoena on non-party Oriana Burns under the belief that she has documents and information pertinent to his case. He contends that service has been attempted at Ms. Burns’ home address on 22 occasions between June 2, 2025, and December 16, 2025, without success, either that Ms. Burns was not home or that no one was home, plus two additional attempted services at her child’s school. (Spearman-Weaver Decl., ¶¶ 3–12, Exhibits 1–8.) Plaintiff claims that Ms. Burns is evading personal service, which justifies email service of a document subpoena since Ms. Burns has responded once to an email from Plaintiff’s firm. (Spearman-Weaver Decl., ¶¶ 3–12, Exhibits 1–8.)

However, all of Plaintiff’s cited authority supporting his motion, even the unpublished cases, is authority for alternative service of a *summons*, not alternative service of a *subpoena*. Plaintiff cites no authority permitting electronic service of a subpoena for documents on a non-party, which is what he seeks to do. A summons and a subpoena serve fundamentally different legal purposes in an action, supporting the Court’s position that authority permitting alternative service of a summons does not equally apply to alternative service of a subpoena. C.C.P. section 1987(a) requires that subpoenas be served via personal service. (*Target National Bank v. Rocha* (2013) 216 Cal.App.4th Supp. 1, 7–8 [“While the Legislature has provided many different modes of serving summons, only one mode, personal delivery, is available for serving a subpoena.”].) While Plaintiff has unsuccessfully attempted to serve Oriana Burns numerous times, the Court does not have authority to allow Plaintiff to serve her with a document subpoena via email even if she is allegedly evading service. Thus, Plaintiff’s motion for alternative service on Oriana Burns is **DENIED**.

B. Motion to Seal

Plaintiff’s second motion is a motion to seal portions of filings from May 15, 2026, and May 18, 2026, in support of Plaintiff’s Reply to his discovery sanctions motion.

1. Exhibit 5 (deposition excerpts of Aurora Cohodes’ deposition from the Montana litigation) to the Declaration of Celine G. Purcell in support of Reply in support of motion for sanctions (“Purcell Declaration”) pursuant to the Montana protective order;

2. Portions of the Reply in support of motion for sanctions, that refer to and or discuss Exhibit 5 to the Purcell Declaration: p. 1, lines 20-22; p. 3, lines 10-13; p. 4, lines 1-4 and lines 27-28; p. 5, line 11; p. 6, lines 12-15, 17-19, and 21; p. 7, lines 19 and 2-27; p. 8, lines 21-22; and p. 9, lines 4-5, pursuant to the Montana protective order; and
3. Exhibit 6 (CLSA) to the Declaration of Celine G. Purcell in support of Reply in support of motion for sanctions (“Purcell Declaration”).

Here, Plaintiff moves to seal the above records pursuant to California Rules of Court, rules 2.550 and 2.551. However, the rules for sealed records do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings except for discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. (Cal. Rules of Court, rule 2.550(a)(3); Advisory Com. com., rule 2.550.) Plaintiff moves for sanctions under the Discovery Act and thus the Court finds that the standard under rule 2.250 does not apply in this instance given that it is a discovery proceeding within the exception under 2.550(a)(3). The court in *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 90–97, interpreted the California Supreme Court’s decision in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, to conclude that “discovery material does not automatically become subject to a presumptive right of access once it is filed in civil litigation.” Given that the first two requests for provisional seal are pursuant to a protective order in Montana in a related case between the parties and this Court’s prior finding that portions of CLSA met the requirements under rule 2.551(d), sealing the above records is in the parties’ interests in this case. Thus, the Court **GRANTS** provisional sealing of the Exhibit 5 to the to the Declaration of Celine G. Purcell in support of Reply in support of motion for sanctions (deposition excerpts of Aurora Cohodes’ deposition from the Montana litigation), provisional sealing of the portions of the Reply as described above, and sealing references to the CSLA. (See Ruling Issued on Submitted Matter re: Motion to Seal & Motion to Disqualify, filed September 2, 2025.)

While Plaintiff filed this motion in conjunction with his Reply in the discovery sanctions motion on May 15, 2026, the Court set this motion to seal to be heard at the same time as the discovery sanctions motion on May 22, 2026. Defendant may raise any objection she has to the motion to seal at the hearing.

C. Motion for Discovery Sanctions against Defendant Aurora Cohodes

Lastly, Plaintiff moves for sanctions against Defendant for her deliberately false discovery responses pursuant to C.C.P. sections 2033.030(a) and 2033.420. Specifically, Plaintiff asserts that Defendant’s responses to Requests for Admission (“RFAs”) 1, 4, and 7 and the related response to Form Interrogatory 17.1 were false and that Defendant knew these responses were false when she provided the sworn statements based upon her testimony from the Montana litigation. (Motion for Sanctions against Defendant, 3:2–6:5.) The relevant discovery requested the following: RFA No. 1- admit that Defendant entered into a PMA with Plaintiff on June 25, 2013; RFA No. 4- admit that the CLSA revoked the PMA; RFA No. 7- admit that the CLSA provided Defendant with more post-marital support than the PMA required Plaintiff to provide Defendant; and Form Interrogatory No. 17.1- requesting unqualified admissions in connection with RFAs. (See Norton Decl., Exhibit D; Purcell Decl., Exhibit 3.) Defendant denied the three RFAs at issue and responded to Form Interrogatory 17.1 with the explanation that the PMA was not valid because Defendant did not have access to her own counsel. (See Norton Decl., Exhibit

D; Purcell Decl., Exhibit 3.) Plaintiff argues that since neither of the exceptions under C.C.P. section 2023.030(a) applies (that Defendant acted with substantial justification or other circumstances make the imposition of the sanction unjust), the Court is required to impose a monetary sanction under this section. (Motion for Sanctions against Defendant, 9:15–10:18.) Plaintiff also cites to the Court’s inherent authority under the Discovery Act and the Act’s purpose to impose monetary sanctions against Defendant and impose evidentiary sanctions against Defendant to exclude her testimony in response to RFAs 1, 4, and 7 and Form Interrogatory 17.1. (*Id.* at 10:19–12:27.) Plaintiff asserts that the Court also has authority under C.C.P. section 2033.420 to award sanctions to Plaintiff against Defendant. (*Id.* at 12:28–13:24.)

Defendant opposes the sanctions arguing that discovery sanctions are not the vehicle to resolve this dispute at issue which is central to Defendant’s argument in this entire action. (Opposition, 5:9–6:4.) Defendant argues that her responses were not willfully false under *Saxena* because her statements were made in good faith and reflected her honest understanding of her own experience. (*Id.* at 6:5–7:20.) Defendant further contends that she acted with substantial justification under Section 2023.030(a) because her position is well-grounded in law and fact under Family Code section 1615. (*Id.* at 7:3–20.) Furthermore, Defendant contends that her responses fall with the Section 2033.420(b) exceptions with the primary position that a motion under Section 2033.420 is procedurally premature since it is a post-proof remedy. (*Id.* at 7:21–8:28.) Lastly, Defendant contends that the requested evidence sanction improperly preempts the trier of fact’s determination of a contested merits issue. (*Id.* at 9:1–27.)

In Reply, Plaintiff argues that Defendant concedes that she made willfully false statements under oath that were not offered in good faith. (Reply, 2:13–4:7, 5:15–7:10.) Plaintiff clarifies that the motion does not seek to resolve a merits issue but seeks recourse for her willfully false discovery responses. (*Id.* at 4:8–5:14.) Plaintiff iterates that Defendant did not act with substantial justification as Defendant admitted in her discovery responses in the Montana action that she entered into the PMA and the CLSA revoked the PMA (Purcell Decl., Exhibit 1 [Aurora’s Responses to Marc’s Montana RFAs]). (*Id.* at 7:11–8:6.) Plaintiff further maintains that Section 2033.420 exceptions do not apply because Defendant cannot reasonably believe she will prevail on having access to her own counsel for the PMA and Defendant fails to offer no “good reason” for failing to admit RFAs 1, 4, and 7. (*Id.* at 8:7–22.) Plaintiff contends that sanctions are not premature and the proposed evidentiary sanction is proportionate and reasonable. (*Id.* at 8:23–10:12.) Plaintiff asks that if the Court finds that the proposed evidentiary sanction is too harsh “for whatever reason”, the Court issue an order: (1) requiring Defendant to conform her discovery responses in this action to her Montana deposition, (2) holding that Defendant provided false discovery responses, and (3) imposing monetary sanctions against Defendant in the amount of Plaintiff’s costs for bringing the motion totaling \$37,577.70. (*Id.* at 10:13–17.)

Here, this case presents a unique posture where Plaintiff is attempting to have the Court adjudicate alleged credibility issues pre-trial via a discovery sanctions motion. C.C.P. section 2033.420 allows for the reimbursement of the party that propounded the RFA for the attorney fees and costs incurred in proving at trial the genuineness or truth of a document or matter covered by the request. (*City of Glendale v. Marcus Cable Associates, LLC* (2015) 235 Cal.App.4th 344, 349.) “Discovery sanctions are not imposed for providing an incorrect response. Costs of proof in connection with requests for admission are awarded if the response is established to be incorrect—not for the misuse of the discovery process.” (*Id.* at

359) Therefore, Section 2033.420 is inapplicable as Plaintiff insists the motion seeks recourse for her willfully false discovery responses.

C.C.P. section 2023.030 authorizes a court to impose sanctions for misuse of the discovery process. C.C.P. section 2023.010 defines nine types of discovery misconduct, but this list is non-exhaustive. (See C.C.P. § 2023.010 [“Misuses of the discovery process include, but are not limited to, the following ...”].) However, section 2023.010 does not apply to the denial of a request for admission without a reasonable basis. (*City of Glendale, supra*, 235 Cal.App.4th at 359, citing *Estate of Manuel* (2010) 187 Cal.App.4th 400, 405.) “The discovery misuse or abuse for which discovery sanctions are imposed includes improperly using discovery, failing to respond, disobeying a court order, or failing to meet and confer. (Code Civ. Proc., § 2023.010.) Discovery sanctions are not imposed for providing an incorrect response.” (*City of Glendale, supra*, 235 Cal.App.4th at 359.) The court in *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154 found that providing false discovery responses is a sanctionable discovery abuse relying on *Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 333–334. In *Saxena*, the court reasoned that when a court “has not issued an order compelling response or further response to an interrogatory (and where such an order has not been violated), the party moving for the exclusion of evidence has the burden of establishing the answer given by the responding party was willfully false, i.e., *intentionally not true*.” (*Saxena, supra*, 159 Cal.App.4th at 334.)

Both *Saxena* and *Department of Forestry & Fire Protection v. Howell* are either post-trial or post-judgment discovery sanctions while the instant case is not in the same procedural posture. The crux of the instant case is that Defendant maintains she did not have independent legal counsel at the time of signing the PMA, rendering the PMA invalid, because that counsel was recommended by Plaintiff’s counsel who she had never met before that day, which is what she claims justifies her discovery responses. (Aurora Cohodes’ Decl., ¶¶ 4, 6.) Upon review of Defendant’s discovery responses and testimony in the Montana litigation and the instant case, the Court does not find Defendant’s responses to be willfully false at this stage of the proceedings. Whether Defendant entered into the PMA and its legal effect on the subsequent CLSA is a matter properly tendered to adjudication. At most, Defendant’s discovery responses appear to be inconsistent between the instant action and the Montana action, but an incorrect response to an RFA does not justify discovery sanctions. Based on the above, Defendant’s Form Interrogatory response to No. 17.1 (requesting unqualified admissions in connection with RFAs) is substantially justified precluding monetary sanctions. The Court declines to impose an evidentiary sanction as the initial sanction against Defendant as the discovery statutes outline an incremental approach to sanctions starting with monetary sanctions and ending with the ultimate sanction of termination. (*Lopez v. Watchtower Bible & Tract Soc’y of New York, Inc.* (2016) 246 Cal.App.4th 566, 604 [internal citations omitted].) Furthermore, the Court lacks authority, and Plaintiff does not cite applicable authority, requiring Defendant to conform her discovery responses in this action to her Montana deposition. (See *Holguin v. Superior Court* (1972) 22 Cal.App.3d 812, 820.) Lastly, the Court declines to issue an order holding that Defendant provided false discovery responses in the instant action. Plaintiff’s motion for discovery sanctions is **DENIED**.

III. CONCLUSION

Plaintiff’s unopposed motion for alternative service for Oriana Burns is **DENIED**. Plaintiff’s motion for sanctions against Defendant is **DENIED**. Plaintiff’s motion to seal is **GRANTED**.

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

4-9. Hallock v. CMOUTS LLC

The Court rules as follows on the below six motions filed by Self-Represented Plaintiff Carter C. Hallock ("Plaintiff") and Defendants Wendy C. Jardine and CMOUTS LLC's (together "Defendants"):

1. Plaintiff's motion to strike Defendants' demurrer to Second Amended Complaint's ("SAC") First and Second Causes of Action for Breach of Contract – Profit Distribution and Breach of Contract – Unpaid Wages is **DENIED**.
2. Plaintiff's motion to strike Defendants' motion to strike portions of the SAC is **DENIED**.
3. Defendants' demurrer to the SAC is **SUSTAINED without leave to amend**.
4. Defendants' motion to strike portions of the SAC is **DENIED as moot** due to the sustaining of the entire demurrer to the SAC without leave to amend.
5. Plaintiff's motion to compel requests for production of documents is **DENIED**.
6. Plaintiff's motion to set case for trial is **DENIED**.

I. PROCEDURAL HISTORY

Plaintiff claims that he signed agreements with Defendants stating that Defendant owned 51% ownership of CMOUTS LLC and that he owned 49% of the business. (SAC, ¶¶ 3-8, 9-26.) Plaintiff commenced the action because he alleges Defendant refused to distribute profits to him between 2022 and 2025. (*Ibid.*) The SAC alleges similar facts as the First Amended Complaint against which a demurrer was previously sustained. The SAC now only alleges two causes of action for breach of contract – profit distribution and breach of contract – unpaid wages. (SAC, ¶¶ 32-41.) Plaintiff also seeks declaratory relief and injunctive relief so he can access corporate financial records. (*Id.* at ¶¶ 27-31.) The SAC includes the following attachments:

1. Attachment A – A document Plaintiff identifies as an operating agreement for Chase Bank's banking and credit facilities stating that Plaintiff is a 49% owner and Chief Operating Officer. On inspection of the document attached, it is not legible and no words can clearly be deciphered apart from the title in capital letters Chase, a date 11/4/21, a name Jordyn Johnson at the bottom, and a few numbers and words on the account summary page.
2. Attachment B – A letter from the United States Department of State addressed to Plaintiff as the "Chief Operating Officer."
3. Attachment C – A purchase order Plaintiff identifies as one executed by Plaintiff prior to a business trip to Florida and Virginia Beach to meet with customers on behalf of CMOUTS, LLC.

The Court is unable to decipher any of the words in the document apart from the words in all capitals “Purchase Order” and “Atlantic Diving Supply, Inc.” and the number “1392394.”

4. Attachment D – A case summary for *Chapin Jardine v. Chapin Hallock* (Case No. 25CV03725) that was already adjudicated in this Court with a Restraining Order entered against Plaintiff.
5. Attachment E - A personal checking account with Chase showing a deposit was not made into Plaintiff’s personal account on March 16, 2025.
6. Attachment F – A Notice of Delinquent Renewal from the DMV regarding a 2023 Lexus that Defendant will not return to Plaintiff.

Defendants’ counsel met and conferred with Plaintiff by e-mail and provided availability to speak on the phone regarding issues and deficiencies in the SAC, but Plaintiff threatened to speak with the IRS, send them the SAC, and serve criminal charges in another county to continue to “escalate the situation.” (Panagotacos Decl, ¶ 2, Exhibit A.) Ultimately, no agreement was reached regarding the issues. (*Id.* at ¶ 3.)

Defendants demur to the two causes of action in the SAC and also move to strike portions of the SAC. Plaintiff filed an opposition to the demurrer and also filed two separate motions to strike both of Defendants’ motions. Plaintiff also filed a discovery motion and a separate motion to set the case for trial. Each of the parties’ six motions are considered below.

II. PLAINTIFF’S MOTIONS TO STRIKE

Legal Standard

The court may, upon a motion made pursuant to C.C.P. section 435 or at any time in its own discretion, strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (C.C.P. § 436(b).)

Plaintiff’s Two Motions to Strike Defendants’ Demurrer and Motion to Strike SAC

Plaintiff filed two motions to strike Defendants’ demurrer to the SAC and motion to strike portions of the SAC. The motion to strike the demurrer cites California Rules of Court (“C.R.C.”), rule 3.1322 and C.C.P section 435. (Motion to Strike Demurrer, 2:46-61.) The motion to strike the demurrer fails to state any argument for why the demurrer should be stricken other than referring to evidence submitted as attachments to the SAC. (Notice of Motion to Strike Demurrer, 3:79-96.) The same references are used to support Plaintiff’s motion to strike Defendants’ motion to strike portions of the SAC. (Motion to Strike Motion to Strike Portions of the SAC, 2:46-52.)

Opposition

Defendants’ Oppositions to both motions state that the motions are unintelligible, unclear, and incoherent and that no legal authority was cited that supports why the Court should strike the motions.

Reply

Plaintiff's responses to the Oppositions re-states what was stated in the motions, states other various law, but does not make any cognizable argument in support of the motions.

Application

The Court does not find any sufficient grounds stated in either motion to strike that supports striking Defendants' demurrer or motion to strike filed as to the SAC. As such, both motions are **DENIED** and Defendants' demurrer and motion to strike will be considered below.

III. DEFENDANTS' DEMURRER & MOTION TO STRIKE

Defendants demurrer to the entire SAC is unintelligible and lacking basic facts to show Defendants are liable to Plaintiff. (Demurrer, 5:3-5, 9:22-28, 10:1-7.) Plaintiff only provided bank documents rather than any operating agreement to support his ownership or employment breach of contract claims. (*Id.* at 5:5-7.) Defendants also note that, after the hearing on Defendants' demurrer to the FAC, the Court did not allow Plaintiff leave to plead new causes of action such as his request for declaratory and injunctive relief. (*Id.* at 5:8-14, 10:10-25.) Finally, Defendants argue that any amendment is futile because Plaintiff cannot establish there is any reasonable possibility he can cure the numerous defects that exist in the SAC. (*Id.* at 11:9-20.)

Plaintiff argues that Attachments A-F of the SAC are evidence from credible institutions that support his claims. (Opposition, 1:28-38, 2:40-42.)

Defendants in the Reply state that Plaintiff failed to address the deficiencies outlined in the demurrer as to the SAC and references again the new attachments to the SAC as proof of his claims. (Reply, 1:19-23.)

The Court does not find that Attachments A-F of the SAC are conclusive evidence establishing Plaintiff's claims as half of the documents attached are not legible because the words are not clear and because the letters from Chase or the Department of State do not clearly establish that Plaintiff had any contract either orally or in writing with Defendants regarding ownership of or employment with CMOUTS, LLC. The Court finds that Plaintiff has failed to state facts sufficient to support his breach of contract claims and has also amended the Complaint outside of the scope of what the Court permitted him to do in the Order After Hearing regarding the demurrer to the FAC. Plaintiff has not provided any facts or made any argument that any of the defects outlined in the demurrer can be cured by amendment. As such, the Court will sustain the demurrer without leave to amend at this interval because Plaintiff was already afforded an opportunity to amend the Complaint to attach a contract on which his breach of contract claims are based and has failed to do so. Plaintiff was not able to cure the defects outlined in the first demurrer and has also not made any arguments that further amendment can cure the issues that continue to exist in the SAC. Due to the sustaining of the demurrer without leave to amend, Defendants' motion to strike is denied as moot as well.

IV. PLAINTIFF'S DISCOVERY MOTION

If the responding party fails to timely respond to a document demand, the demanding party may move for an order compelling a response. (C.C.P. § 2031.300(b).) A propounding party may move for an order compelling further response to a demand for production if that party deems that: (1) a statement of compliance with the demand is incomplete; (2) a representation of inability to comply is inadequate, incomplete, or evasive; or (3) an objection in the response is without merit or too general. (C.C.P. § 2031.310(a).) The court shall impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further responses to a demand for production, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (C.C.P. § 2031.310(h).)

Plaintiff moves for an order compelling responses to requests for production of eight categories of documents identified in the motion. (Motion to Compel, 2:44-61.) However, Plaintiff failed to identify what document demands were served on Defendants under the Discovery Act, when these were timely and properly served, when the responses to these were due, whether any responses were properly served on Plaintiff, and if so, whether these responses were or were not code-complaint. Though it is not uncommon for parties to informally exchange documents via email requests, Plaintiff has failed to provide any specific context for how and when the documents were demanded and what was exactly demanded to be inspected from Defendants.

Based on the above, the Court **DENIES** the motion as both procedurally and substantively deficient.

V. PLAINTIFF'S MOTION TO SET CASE FOR TRIAL

Legal Standard

Under C.C.P. section 36, a party over the age of 70, under the age of 14, or suffering from a medical illness or condition raising substantial medical doubt of survival beyond six months may petition the court for a preference regarding setting trial. (C.C.P. § 36(a)-(d).) The court may also grant such a motion for preference in its discretion if it is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference. (C.C.P. § 36(e).) If the court grants a motion for preference, then trial shall be set not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. (C.C.P. §36(f).) Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party. (*Ibid.*) If the action is based upon a health provider's alleged professional negligence, the trial date shall be set not sooner than 6 months and not later than 9 months from the date that the motion is granted. (C.C.P. § 36(g).)

Plaintiff's Motion to Set Case for Trial

Plaintiff's motion for trial preference titled as "Motion to Set Case for Trial" is made pursuant to C.C.P. section 36. (Motion, 2:37-66.) Plaintiff argues that the Court should grant trial preference because

Plaintiff has notified Defendants of the motion, because the merits of the evidence presented by the parties in case filings, case hearings, and cross-action hearings warrants trial preference, and because Defendants have not provided substantial evidence to disprove Plaintiff's ownership or employment claims. (*Id.* at pp. 3-4.)

Opposition

Defendants argue that Plaintiff cannot meet the requirements of a motion for trial preference under C.C.P. section 36 because he is not over 70, not under 14 in a wrongful death action, and has not provided any evidence or a declaration that trial preference is warranted because he is not ill, dying, aged, or ailing from any other conditions. (Opposition, pp. 1-2.) Defendants state that Plaintiff failed to provide proper notice of "discovery abuse" in his notice for the motion for trial preference and cannot meet the requirements for trial preference under the Code of Federal Regulations or the California Evidence code. (*Id.* at pp. 2-3.)

Reply

In the Response, Plaintiff tries to claim that it is Defendant Jardine who is a mentally unwell 73-year-old, so trial preference should be granted. (Response, 1:41-66.) Plaintiff makes further arguments regarding discovery that are wholly unrelated to a motion for trial preference.

Application

The Court finds that Plaintiff cannot establish the requirements for trial preference under C.C.P. sections 36(a)-(d). He cannot use Defendant Jardine's age as a basis for requesting his own motion. The Court is also not satisfied with Plaintiff's other discovery related arguments made in the motion because the Court finds that they are irrelevant to the issue of trial preference and that they do not support that it would be in the interests of justice to grant trial preference under section 36(e). For these reasons, Plaintiff's motion is **DENIED**.

VI. CONCLUSION

As stated above, the Court rules as follows on the parties' motions:

1. Plaintiff's motion to strike Defendants' demurrer to the SAC is **DENIED**.
2. Plaintiff's motion to strike Defendants' motion to strike portions of the SAC is **DENIED**.
3. Defendants' demurrer to the SAC is **SUSTAINED without leave to amend**.
4. Defendants' motion to strike portions of the SAC is **DENIED as moot** due to the sustaining of the entire demurrer to the SAC without leave to amend.
5. Plaintiff's motion to compel requests for production of documents is **DENIED**.
6. Plaintiff's motion to set case for trial is **DENIED**.

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

10. 25CV06592, Sonoma-Marín Area Rail Transit District (SMART) v. Muelrath

Plaintiff SMART’s demurrer to Defendant Dennis Muelrath’s Cross-Complaint is **CONTINUED** to the Case Management Conference calendar on **Thursday, July 9, 2026, at 3:00 p.m.** in Department 17 for a status update and to reset hearing on demurrer.

11. 24CV04839, Gallardo v. Peo

Defendant California Highway Patrol (“CHP”) moves for a judgment on the pleadings as to the sole cause of action asserted by Plaintiff Mario Gallardo (“Plaintiff”) against CHP for dangerous condition on public property. CHP’s judgment on the pleadings is **GRANTED** with leave to amend as the Second Cause of Action in the Complaint pursuant to C.C.P. section 438(c)(1)(B)(ii).

I. FACTUAL & PROCEDURAL HISTORY

On or about February 4, 2024, Plaintiff was travelling on US 101 Northbound south of the SR-116 highway ramp when his vehicle collided with roadway debris left on the freeway from Defendant Ryan Peo’s vehicle, causing Plaintiff to crash his vehicle. (Complaint, ¶¶ 1–6.) Plaintiff alleges that CHP failed to warn him of the debris left on the roadway and failed to keep the roadway clear of debris, creating a dangerous condition on public property. (Complaint, ¶¶ 5, 20–25.) CHP moves for a judgment on the pleadings as to the Second Cause of Action for dangerous condition on public property on the basis that Plaintiff cannot pursue a common law cause of action against CHP, CHP does not own the highway where the incident occurred, and Plaintiff fails to plead with particularity how the condition was dangerous.

II. DISCUSSION

A. Governing Law

a. Judgment on the Pleadings Generally

“A motion for judgment on the pleadings performs the same function as a general demurrer...” (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) “It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings.” (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429.) “The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” (C.C.P. § 438(d).) “A trial court’s determination of a motion for judgment on the pleadings *accepts as true* the factual allegations that the plaintiff makes.” (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515 [emphasis added].) “In addition, it gives them a liberal construction.” (*Ibid.*)

b. Dangerous Condition of Public Property

For a public entity to be liable for injury caused by a dangerous condition of its property, the plaintiff must establish: (1) the property was in a dangerous condition at the time of the injury; (2) the plaintiff's injury was proximately caused by the dangerous condition; (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury the plaintiff incurred; and (4)(a) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition or (4)(b) the public entity had actual or constructive notice of the dangerous condition for a sufficient time prior to the injury to have taken measures to protect against it. (Gov. Code § 835.) A dangerous condition is defined as a "condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code § 830(a).) "Property of a public entity" and "public property" are defined as "real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity." (Gov. Code § 830(c).)

B. Plaintiff's Complaint Fails to State a Cause of Action against CHP

CHP, as a public entity, may be liable for injuries under Government Code section 835 as section 835 "sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property." (*Stack v. City of Lemoore* (2023) 91 Cal.App.5th 102, 108 [citations omitted].) Plaintiff need not allege a specific provision of the Government Code in his Complaint. A complaint may plead the language of a statute when sufficient facts are alleged to support the allegation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6–7.) The court in *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1348 reasoned:

A public entity may be liable for a dangerous condition of public property even where the immediate cause of plaintiff's injury is a third party's negligent or illegal act (like Urzua's grossly negligent driving) if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality. (*Bonanno v. Central Contra Costa Transit Authority, supra*, 30 Cal.4th at p. 152, 132 Cal.Rptr.2d 341, 65 P.3d 807.) But it is insufficient to show only harmful third-party conduct, like the conduct of a motorist. "[T]hird-party conduct, by itself, unrelated to the condition of the property, does not constitute a "dangerous condition" for which a public entity may be held liable.' " (*Zelig v. County of Los Angeles, supra*, at p. 1134, 119 Cal.Rptr.2d 709, 45 P.3d 1171.) There must be a defect in the physical condition of the property and that defect must have some causal relationship to the third-party conduct that injures the plaintiff. (*Id.* at pp. 1135–1140, 119 Cal.Rptr.2d 709, 45 P.3d 1171.) "[P]ublic liability lies under [Government Code] section 835 only when a feature of the public property has 'increased or intensified' the danger to users from third party conduct." (*Bonanno, supra*, at p. 155, 132 Cal.Rptr.2d 341, 65 P.3d 807.)

Here, Plaintiff's Complaint alleges that Plaintiff is informed and believes that CHP controlled the subject premises where the accident took place, that CHP knew or should have known about the

dangerous condition, CHP failed in the maintenance of the subject premises proximately causing Plaintiff's injuries, CHP's breach was a substantial factor in causing Plaintiff's harm, and CHP's breach has caused Plaintiff to suffer and continue to suffer physical, emotional, and financial harm. (Complaint, ¶¶ 20–25.) However, even accepting all allegations in the Complaint as true, Plaintiff fails to allege a defect in the physical condition of highway that has a causal relationship to Defendant Peo's conduct that injured him. The Complaint alleges that Defendant Peo negligently failed to clear the roadway of debris that he caused, which in turn placed a duty on CHP to warn Plaintiff of such debris. (Complaint, ¶¶ 5–6, 22.) This alone is insufficient to allege a dangerous condition of the highway as Plaintiff is required to allege physical damage, deterioration, or defect of the highway in such a way as to foreseeably endanger those using the property itself or allege physical characteristics of the highway's design, location, features, or relationship to its surrounding. (*Cerna, supra*, 161 Cal.App.4th at 1347–1348, citing *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148–149.) Plaintiff has failed to do so in his Complaint. Regarding ownership or control of the highway, Plaintiff has sufficiently alleged that CHP owned or controlled the highway where the accident took place, which the Court accepts as true at this stage in the pleadings. The truth of the ownership or control of the highway is outside the scope of a judgment on the pleadings.

C. Leave to Amend is Granted

While CHP argues that leave to amend should not be granted, there is some reasonable possibility Plaintiff may cure these defects through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.) The Court **GRANTS** leave to amend.

III. CONCLUSION

CHP's judgment on the pleadings is **GRANTED** with leave to amend as the Second Cause of Action in the Complaint.

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