TENTATIVE RULINGS
LAW & MOTION CALENDAR
June 7, 2023 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 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 19 in person or remotely by Zoom, a web conferencing platform. However, appearances by Zoom are STRONGLY encouraged. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

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

TO JOIN ZOOM ONLINE:

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

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The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing

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

1. MCV- 256128, American Express National Bank v. Amora

I. Introduction

Plaintiff American Express National Bank ("Plaintiff") filed the complaint in this action against defendants Dawn Amora ("Defendant"), with causes of action arising from line of credit. This

matter is on calendar for Plaintiff's motion pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the attached settlement agreement (the "Agreement") to enter a judgment for the full settlement amount. The motion is DENIED without prejudice.

II. Legal Standard

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37. The court retains equitable powers over requests to enter judgments under § 664.6. *Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050, 1062.

Plaintiff moves the Court for a judgment in the amount of $2,447.82. Despite notice being given to Defendant's counsel, the motion is unopposed. There is no record indicating that Defendant is no longer represented by counsel. However, lack of clarity within the declaration submitted gives pause.

III. Analysis

The Parties have stipulated that Defendant owes Plaintiff $5,221.62. See Declaration of Douglas Wallace ("Wallace Decl."), Exhibit A (the "Agreement"). The terms of the agreement require Defendant to pay $3,134.00 to Plaintiff in 12 payments ranging from $261.00 to $261.20. Agreement ¶ 3. The payments began on September 23, 2021, and the final payment was due on August 23, 2022. *Ibid*. Defendant was entitled to one opportunity to cure any default, which was required to occur within 15 days of mailed notice of default. Agreement ¶ 9. Should Defendant fail to cure said default, Plaintiff is entitled to the full judgment amount plus costs, minus credits for amounts paid. Agreement ¶ 10.

Plaintiff avers that "Defendant failed to make complete payments for the month of October 2021, and each month thereafter." Wallace Decl. ¶ 7. Plaintiff received their last payment from Defendant on August 24, 2022, but this payment did not cure the alleged default. *Ibid*. Plaintiff offered no explanation as to why it did not pursue a default shortly after Defendant's failure to submit payment on October 2021, or any month thereafter. Nonetheless, Plaintiff requests that judgment be entered for the full amount, **minus $3,133.00 in credits for payments made, of the $3,1334.00 owed per the payment schedule.** *Ibid*. There is no balance sheet attached purporting

how Defendant's payments can be short $1.00, spread over 11 payments. The Court also notes that Plaintiff's letter informing Defendant's counsel of default on December 22, 2022, does not inform him of the balance owed, or the amount of default. See Wallace Decl., Ex B. Finally, the Court is also without information as to why the amount indebted was $5,221.62 but the payment schedule only accounted for $3,134.00 in payments.

Without additional information, the Court would exercise its equitable powers in denying the motion. *Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050, 1062. With the amounts in controversy, and the lack of evidence regarding the amount of payments made, the probability of a computational error is too high to ignore.

The Court also notes that Plaintiff requests costs but has neither filed nor served any memorandum of costs thereon. The court costs are also unaddressed by the Wallace Decl. There being no evidence of the costs requested, granting them would not be proper.

Both of the above deficiencies may be remedied through additional evidence. Therefore, the Motion is **DENIED without prejudice**.

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).

2. SCV-269778, Mayfield v. FCA US, LLC

Plaintiffs Stephen Mayfield and Joni Mayfield (together "Plaintiffs") filed the complaint in this action against defendant American Honda Motor Co., Inc., ("Defendant") with causes of action for violations of the Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1790 et seq.) (the "Complaint") arising out of Plaintiff's purchase of a 2018 Dodge Ram (the "Vehicle"). Pursuant to a stipulation, the trial date was vacated because the parties reached a settlement which awarded Plaintiff attorneys' fees and costs but left the matter to further stipulation or order of the Court. This matter is on calendar for Plaintiff's motion for attorneys' fees and costs pursuant to the parties' settlement agreement and Cal. Civ. Code § 1794.

In reviewing the motion, particularly the declaration in opposition, exhibits B, C, D, E, F, G, I, and J were all submitted with inadequate resolution for the Court to review the substance of the evidence. The text on substantial portions of these exhibits are unintelligible as a result. Without speculating as to the possible cause, the Court notes that the document submitted exceeds 800 pages. In an abundance of caution, it is proper to continue the matter so the Court may review the evidence.

The motion is continued to July 26, 2023 at 3:00 pm in Department 19. Defendant shall resubmit the subject Declaration by July 1, 2023 in a manner which renders it capable of review. If necessary, Defendants may separate the filing into multiple filed documents, but the substance of the filing will not be changed. No further briefing is allowed.

3-5. SCV-270903, Fouche v. McKilligan

Plaintiff Aimee Fouche ("Plaintiff"), filed the complaint in this action against defendants Evangeline McKilligan ("Defendant"), all persons unknown claiming right to the property in the complaint, and Does 1-10 arising out of a request for partition and determination of rights (the "Complaint"). This matter is on calendar for Plaintiff's motions to compel further answers to form interrogatories ("FIs"), requests for production of documents ("RPODs"), and requests for admission ("RFAs") against Defendant under Code of Civil Procedure ("CCP") §§ 2030.300, 2031.310, and 2033.290.

I. **Governing Law**

Under CCP § 2024.020, the discovery cut-off is based on the date *initially* set for trial, and as such, a trial continuance or postponement of the trial date does not operate to reopen discovery. *See Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1575. Discovery is to be completed 30 days prior to the initial trial date, and motions regarding discovery are to be heard no later than 15 days before the initial trial date. *Ibid*. "The purpose of imposing a time limit on discovery is to expedite and facilitate trial preparation and to prevent delay. Without a cutoff date, the parties could tie up each other and the trial court in discovery and discovery disputes right up to the eve of trial or beyond. Furthermore, as defendants point out, to be effective the cutoff date must be firm or some litigants will manipulate the proceedings to avoid the cut-off date." *Beverly Hosp. v. Sup. Ct.* (1993) 19 Cal.App.4th 1289, 1295 (articulating purpose of cut-off in context of holding that notwithstanding statutory reference to "initial trial date," permitting additional discovery following a mistrial, order granting new trial or reversal on appeal is consistent with the overall purposes of the discovery rules).

Upon a motion to re-open discovery, the decision to reopen discovery must weigh: 1) The necessity and the reasons for the discovery; 2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; 3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; 4) the length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. See CCP § 2024.050. That discovery has closed does not mean that the Court lacks the power to hear a discovery matter, nor that it errs in determining that matter on the merits. *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1586. However, it is error to allow hearing on a discovery matter after the close of discovery unless the moving party has made the necessary showing to reopen discovery under CCP § 2024.050. *Id.* at 1588.

CCP §2033.290(d) (relating to requests for admission), 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. Motion to Compel

The parties were initially scheduled for trial on January 13, 2023. However on that date, the Court trailed this matter as the Court was currently handling another jury trial. The Court then ordered the parties back to court on January 20, 2023, for further proceedings. At Plaintiff's request, this second trial call date was vacated. A third trial appearance date of February 2, 2023, was then issued by the Court, at which the Parties did appear and the Court ordered a Special Set hearing on Plaintiff's Motion for Interlocutory Judgement. The Court also heard arguments from the Parties regarding which manner of partition of the subject property would be adopted by the Court.

Plaintiff served the RFAs, RPODs, and FIs to Defendant on February 7, 2022. Defendant served responses objecting to each request as untimely under CCP § 2024.020.

Plaintiff primarily asserts that discovery is not closed, as there is currently no trial date set and points out partition actions are tried in a somewhat piecemeal manner. The language of the statute quoted by Plaintiff is fatal to her position that discovery has not closed. Plaintiff avers that the default of partition actions is that they are "bifurcated into two phases." Plaintiff's Amended Memorandum, pg. 3:10. Plaintiff offers no authority to support the proposition that this is adequate to meet the meaning of "separate trials" as contemplated by CCP §§ 598 or 1048. Plaintiff avers that due to the interlocutory judgment determining the right to partition, the two matters cannot be part of the same trial. "When the proceeds of the sale belonging to persons who are parties to the action, whether known or unknown, have not been allocated among such parties, the action may be continued as between such parties, for the determination of their respective claims thereto, which must be ascertained and adjudged by the court." Plaintiff's Amended Memorandum, pg. 3:13-16 (emphasis original), quoting CCP § 873.850. Here, the statute clearly states that any such finding of fact is "continued". As will be explored further, the Court finds that any further trial is merely a continuation of the original trial, and that discovery closed per the original trial date.

Indeed, even assuming Plaintiff is correct that actions proceeding under CCP §§ 872.720 and 873.850 are bifurcated, Plaintiff has provided no authority that bifurcated actions re-open discovery. The Court notes Plaintiff's reliance on *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 248 ("*Fairmont*"), but finds that matter is not instructive or dispositive as to whether the **bifurcation** of a trial serves to reopen discovery. The trial in that matter was bifurcated. *Id*. at 248. However, that was not the basis of the *Fairmont* Court's finding that discovery had reopened. Rather, it was that the judgment of the trial court was reversed on appeal, and that this constituted a "new trial" on remand. *Id*. at 253. As Plaintiff quotes, a case "may have a new 'initial' trial date **corresponding to a scheduled retrial or new trial of the action.**" *Id*. at 250 (emphasis added). The *Fairmont* court states that "unlike a continuance or postponement that only delays the onset of a trial, a new trial begins trial proceedings anew, 'as though no trial had ever been had.'" *Id.* at 252, quoting *Guzman v. Superior Court* (1993) 19 Cal.App.4th 705, 707.

As such, the *Fairmont* court made no determination whether bifurcation of a matter constituted a "new trial" and made several findings counter to this proposition.

Indeed, the statutory definition of "new trial" does not meet Plaintiff's averment that a bifurcated action is addressed by *Fairmont*. "A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referee." CCP § 656. In contrast, when ordering bifurcation, a court "may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues". Code Civ. Proc., § 1048 (b). Further, the manner in which bifurcated actions are treated by other statutes and rules cuts against any contention that discovery re-opens between phases. "Any motion for a new trial following a bifurcated trial must be made after all the issues are tried". Cal. Rules of Court, rule 3.1591(c); see also *Meyser v. American Bldg. Maintenance, Inc.* (1978) 85 Cal.App.3d 933, 937. These show that phases of a bifurcated trial are not a new trial as contemplated by the Discovery Act. The initial trial date has not moved or been superseded by a date for new trial or re-trial. As such, discovery closed based on the January 13, 2023, trial date.

In consideration of the above, all three (3) of Plaintiff's motions to compel are **DENIED**. Plaintiff's request for sanctions is also **DENIED**.

III. Motion to Re-open Discovery

Plaintiff makes no meritorious attempt to meet the good cause factors for re-opening discovery. Plaintiff plainly avers that the parties were unable to resolve the issue through meet and confer efforts. This is inadequate to meet the four factors defined under CCP § 2024.050(b). Due to Plaintiff's failure to make such a showing, it would be error to re-open discovery. *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1586. Plaintiff's request to re-open discovery is **DENIED**.

IV. Sanctions

CCP §2033.290(d) (relating to requests for admission), CCP § 2030.300(d) (relating to interrogatories), and CCP § 2031.310(h) (relating to requests for production of documents) each 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." The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. Defendant has submitted evidence that Plaintiff's counsel bears responsibility for the alleged discovery abuse. See Bentivegna Declaration ¶ 6. Plaintiff seeks $3,780, representing attorney work of nine hours for the motion, the meet and confer efforts and attending the hearing on this motion at $420/hr. Herrera Declaration, ¶ 14. The Court finds that a total of nine hours at the reasonable rate of $420/hr. is appropriate, for a total sanctions award in the amount of $3,780. Plaintiff and/or her attorney are to pay $3,780 to Defendant within 30 days of this order.

V. Conclusion

Based on the foregoing, Plaintiff's three (3) discovery motions and corresponding requests for are **DENIED**. Defendant's counter request for sanctions is **GRANTED**. Plaintiff and/or her attorney are to pay $3,780 to Defendant within 30 days of this order.

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).

6. SCV-271351, Doe 5 v. Boys and Girls Club of America

Plaintiffs John Doe 5 and Minor John Doe 6, by and through his guardian ad litem, O.M. (together "Plaintiffs"), filed the complaint (the "Complaint") against defendants Paul Dwayne Kilgore ("Individual Defendant"), Boys and Girls Club of America ("BGCA"), Boys and Girls Clubs of Sonoma Valley (erroneously named as Boys and Girls Club of Sonoma Valley, hereinafter "BGSV"), Boys & Girls Clubs of Sonoma-Marin ("BGSM", together with Individual Defendant, BGCA and BGSV, "Defendants") along with Does 1-100, arising out of alleged sexual abuse and vicarious liability thereon. This matter is on calendar for BGSV's motion to strike the request for punitive damages from the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 435. **The motion is DENIED.**

I. Legal Standards

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. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). And punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

II. Motion to Strike

BGSV moves to strike punitive damages requests from the Complaint on the basis that Plaintiffs have failed to meet the pleading requirements of Civ. Code § 3294(b). Plaintiffs aver that the Complaint is adequately pled.

Plaintiffs allege that the CEO of BGSV at the time, David Piers, "intended to 'set boundaries' around Individual Defendant's relationships with children" in 2010. Complaint ¶ 22. Indeed, BGSV seemed to be aware of its own failings in this regard, as Piers subsequently issued letters of reprimand in March of 2013 to several corporate officers, including himself, for failing to adequately enact these policies. Complaint ¶ 36. In this letter, Piers avers that he will "work to ensure that incident [sic] of this nature will not occur in the future'". *Ibid*. Despite this, Individual Defendant remained employed with BGSV, and continued to associate with minors

off site that he contacted through his position with BGSV. Complaint ¶¶ 33, 36, 37. BGSV, through its "employees and Executive Board", opened an investigation into Individual Defendant's actions in November of 2012, Complaint ¶ 29. BGSV found evidence of several actions of the type pled in the Complaint. Complaint ¶ 31. Particularly, the investigation substantiated that Individual Defendant undressed in front of minors and forced those minors to undress in front of him. *Ibid*. BGSV did not disclose this information to parents, and continued to keep Individual Defendant on staff, allowing further exposure to his alleged abuses. Complaint ¶¶ 32-34. Individual Defendant resigned from BGSV in September of 2013. Complaint ¶ 39.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, to show fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. An employer's failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code §

3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.

The Complaint sufficiently alleges knowledge and ratification on the part of corporate officers to sustain their claims for punitive damages. Piers saw the need to establish boundaries around Individual Defendant's relationships with children, and yet he failed to take any preventative measures. Complaint ¶ 22. The Executive Board was aware of the allegations against Individual Defendant and was aware that the investigation revealed that Individual Defendant had both exposed himself to minors and forced those minors to undress in front of him. Complaint ¶¶ 29, 31, 33. Piers was sufficiently aware of the incident to issue a letter of reprimand to himself and other corporate officers. Complaint ¶ 36. However, this knowledge did not prevent BGSV from reinstating Individual Defendant to his former position. Complaint ¶ 33. This is sufficient to show BGSV did not punish Individual Defendant for the acts it determined he had committed, and therefore can be construed as ratification. *See Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Civ. Code § 3294 (b) allows punitive damages against an employer who either had "advance knowledge of the unfitness of the employee" or "ratified the wrongful conduct for which the damages are awarded". Piers knew Individual Defendant needed boundaries, and yet abuse continued to occur after Piers expressed this unfitness. See Complaint ¶¶ 22-24, and 27-28. This is adequate to show advance knowledge. While BGSV suspended Individual Defendant while they investigated allegations in 2013, when the investigation revealed that Individual Defendant had sexually abused minors, BGSV nonetheless reinstated him. Complaint ¶¶ 31, 33. This is sufficient to show ratification. Thus, the factors under Civ. Code § 3294(b) are met, no further showing as to BGSV as an employer is necessary to justify punitive damages. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154 ("The 'additional' burden on a plaintiff seeking punitive damages from an employer is to show not only that an *employee* acted with oppression, fraud or malice, but that the *employer* engaged in conduct defined in subdivision (b)."). There is no allegation that Individual Defendant's actions fail to meet the requirements of Civ. Code § 3294(a).

While BGSV request that the Court strike without leave to amend, they provide no argument sufficient to support this contention.

Accordingly, the motion is **DENIED**.

III. Conclusion

The motion to strike is **DENIED**. BGSV shall file an answer within 30 days of notice of this order.

Plaintiffs' counsel shall submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

7. SCV-271764, Johnston Thomas Attorneys at Law PC v. Cohen-Roth

Defendant Elana Cohen-Roth's ("Defendant") motion for stay of proceedings is **DENIED.**

I. Procedural History

Defendant has a criminal action pending against her in the Superior Court of California County of Sonoma, under title *People v. Cohen-Roth* (Case No. SCR-751314-1), in which she faces charges of theft, felony money laundering, and other things in relation to her role as trustee of the Nancy Barr Revocable Trust of 2015. (Notice of Motion, 1:23-28.) Plaintiff JOHNSON | THOMAS, Attorneys at Law, PC ("Plaintiff") provided legal services to Defendant in connection with the underlying criminal action and in this matter seeks fees which Defendant failed to pay for legal services Plaintiff provided. (Memorandum of Points and Authorities ["MPA"], 4:4-6.)

II. Motion

Defendant moves for a stay of proceedings in this civil matter pending the resolution of the ongoing criminal matter to promote the interests of the Court and judicial economy, and to protect Defendant's Fifth Amended rights and prevent her inability to meaningfully defend herself in this civil action. (Notice of Motion, 2:1-6.) Defendant argues that courts have inherent power to stay proceedings in the interests of justice, and discretion to stay civil proceedings when the interests of justice seem to require it. (MPA, 5:2-8; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489; *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 886 ("*Avant! Corp.*").) Defendant further argues the following factors used to determine whether a civil proceeding ought to be stayed weigh in her favor: "(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation." (MPA, 5:9-15; *Avant! Corp*, supra, 79 Cal.App.4th 876, 887.) Defendant's position is that her Fifth Amendment rights are directly implicated between the two cases as they involved the same allegations and facts. Therefore, she cannot comply with pending discovery requests in this civil matter without forfeiting her Fifth Amendment rights in the criminal case. (MPA, 5:21-27.) The Court notes that Defendant does not provide any specific discovery request that currently implicate her Fifth Amendment rights in this matter. Furthermore, Defendant claims that the stay would not prejudice Plaintiff and would be in the interest of justice by not burdening the judicial system with civil discovery "plagued with difficulties" involving Defendant's Fifth Amendment rights and privileges. (*Id*. at 6:6-26.) Again, Defendant has failed to provide any evidence to establish this point.

Plaintiff opposes on three grounds: (1) Defendant is conflating the probate matter, SPR-094779, which relates to the Nancy Barr Revocable Trust, with the criminal arrest, and this matter concerns a straightforward breach of contract cause of action and will not implicate her Fifth Amendment rights; (2) Defendant made this same, identical motion to stay the proceedings in the probate matter, which this Court denied; and (3) Defendant "waived any such claim" for her Fifth Amendment right against self-incrimination by appearing in this case via an answer/general denial. (Opposition, 1:19-28, 2:1-4.)

Plaintiff requests judicial notice per Evidence Code sections 452 and 453 of the following:

1. Order on motion to stay civil proceeding in SPR-094779;
2. Answer to Plaintiff's Complaint in this action; and
3. Objections to Plaintiff's Form Interrogatories-General

This Court **GRANTS** Plaintiff's request for judicial notice.

Defendant replied to Plaintiff's opposition, arguing that this matter is directly related to the criminal case, that she did not waive her Fifth Amendment rights by filing an answer in this matter, and that this Court's previous denial of the motion to stay in the probate matter is irrelevant here as the criminal case has further progressed since then. (Reply to Opposition, pp.1-3.)

III. Analysis

a. Legal Standard

The Constitution of the U.S. or the State of California do not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings, but trial courts do have the discretion to stay civil proceedings if there would otherwise be substantial prejudice to the rights of the parties involved and when interests of justice seem to require such action. (*Keating v. Office of Thrift Supervision*, (9th Cir. 1995) 45 F.3d 322, 324; see also, *People v. Coleman*, (1975) 13 Cal.3d 867, 885; *Alpha Media Resort Inv. Cases*, (2019) 39 Ca1.App.5th 1121, 1131-1133; *Avant! Corp.*, supra, 79 Cal.App.4th 876, 882.) The Court has an interest in expeditiously processing matters, so "convenience of the courts is best served when motions to stay proceedings are discouraged." (*Alpha Media Resort Inv. Cases*, supra, 39 Cal.App.5th at 1132, quoting *Avant! Corp*., supra, 79 Cal.App.4th at 888.) "Indeed, California courts are 'guided by the strong principle that any elapsed time other than that reasonably required for pleadings and discovery is unacceptable and should be eliminated." (*Ibid*., quoting Cal. Stds. Jud. Admin. §2.) "To that end, courts must control the pace of litigation, reduce delay, and maintain a current docket so as to enable the just, expeditious, and efficient resolution of cases." (*Ibid.*; *Avant! Corp.*, supra, 79 Cal.App.4th at 887.)

Additionally, per Evidence Code section 940, civil defendants may refuse to disclose self-incriminating information in discovery, when facing criminal prosecution involving the same facts as in the civil action that may be reasonably be used against them in criminal proceedings. (*Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686, 688.) In order not to penalize civil defendants from exercising their privilege against self-incrimination by making them choose between their silence and a meaningful chance of avoiding the loss through judicial process of a substantial amount of property, when confronted with this issue, trial courts should stay discovery pending expiration of the criminal statute of limitations or resolution of the criminal case. (*Id.* at 688-690.)

b. Application

Here, Defendant has not provided the Court with any specific information sought in Plaintiff's discovery requests which implicate Defendant's Fifth Amendment rights, and Defendant has also not raised any specific objections based on her rights to any discovery propounded thus far upon her. Defendant broadly claims that just because the civil, criminal, and probate matters are related, and there are similar facts and allegations in them, that her Fifth Amendment rights may potentially be implicated via discovery in the civil matter. Per Evidence Code section 940, nothing will prevent Defendant from objecting to civil discovery requests based on her Fifth Amendment privilege if she believes the information sought may reasonably be used against her in the criminal matter if disclosed. The Court finds that such a broad assertion of a potential impact to Defendant's Fifth Amendment rights is not sufficient to rise to the level of "substantial prejudice." Instead, the Court recognizes a strong interest that Plaintiff has in proceeding expeditiously with this litigation regarding Plaintiff's breach of contract claim to obtain legal fees Defendant already owes to it. Further delay may result in some prejudice and potential hardship to Plaintiff. Thus, considering the factors in determining whether a stay is appropriate here, the Court finds that Defendant has not provided sufficient support for imposing a stay on these civil proceedings.

IV. Conclusion

Based on the foregoing, Defendant's motion is **DENIED**. Moving party 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.*****