TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 22, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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

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

FOR ORAL ARGUMENT REQUESTS, PLEASE CONTACT THE COVERING JUDICIAL ASSISTANT AT 707-521-6729.

ANY & ALL LAW AND MOTION ARGUMENT REQUESTS WILL BE HEARD ON FRIDAY 07/24 AT 3:00PM.

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

TO JOIN ZOOM BY PHONE:
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1. 24CV02480, Schirtzinger v. Steele

Plaintiffs Robert F. Schirtzinger ("Schirtzinger") and Sarah C.E. Thompson ("Thompson," together with Schirtzinger, "Plaintiffs"), have filed the currently operative second amended complaint (the "SAC") against defendants Kaiser Permanente Medical Group, Inc. ("Kaiser"), The Permanente Medical Group ("TPMG"), Allied Universal Security Services Universal Protection Service, LLP ("Allied"), Nicholas Schirtzinger ("Nicholas"), Thomas Steele

("Steele"), Sandy Karren ("Karren", together with all other defendants, "Defendants"), and Does 1-25 with five causes of action.

This matter is on calendar for Plaintiffs' motion to add punitive damages to the Complaint.

Plaintiffs have filed an appeal of the Court's prior order disqualifying their counsel. Given that said counsel is still within the case due to the automatic stay resulting from the appeal, matters litigated therein have already been found by the Court to justify exercising a discretionary stay due to the facts and circumstances of this case. *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 888. Kaiser had brought an ex parte application for stay pending the appeal, and the Court granted that request on April 20, 2026. This matter is stayed. However, given the jurisdictional issues related to this motion, in an abundance of cautio, the Court leaves the motion on calendar, but CONTINUES the matter to December 16, 2026, at 3:00 pm in Department 19.

2. <u>24CV05990, Heustis v. Ramirez</u>

Plaintiff James Heustis ("Plaintiff"),f filed complaint in this action against Mendocino Forest Products Company, LLC ("MFP" or "Defendant") and Mario Mareres ("Mareres"), and Does 1-50, with causes arising out an alleged discrimination against Plaintiff for disability during the course of employment (the "Complaint").
This matter is on calendar for the motion by Defendant for summary judgment, or in the alternative adjudication the complaint Cal. Code Civ. Proc. ("CCP") § 437c. The motion for summary judgment is **DENIED**. The motion for summary adjudication is **GRANTED in part and DENIED in part**.

I. <u>Evidentiary and Pleading Issues</u>

Defendants have filed an "Errata" to the declaration of Bridget Pedersen attaching a document not originally submitted with the summary judgment motion. While Defendant avers that Plaintiff failed to note the omission, and therefore there is no prejudice, that is not a prevailing position. The notice requirements of CCP § 437c are very strict, and all evidence must be served 81 days before the hearing. The eleventh-hour attempt to remedy the issue appears to violate the notice requirements, and therefore the Errata is not considered. The Court continues to consider the content of the declaration of Bridget Pedersen, ¶ 8.

Defendant asserts fourteen (14) objections in their reply to Plaintiff's evidence in opposition. Objections 1-6 and 11 are OVERRULED, as their objections of irrelevance are unpersuasive. Objections 7-9 are OVERRULED as the admission of a party opponent. Objection 9 is also overruled as to what others told the HR Secretary as not being for the truth of the matter asserted, but rather that it was what was communicated to Plaintiff. Objection 13 is OVERRULED, as nothing about the underlying evidence appears to be speculative. Objection 12 is SUSTAINED in part as to Ramirez's authority to fire, and otherwise OVERRULED. Objection 14 is SUSTAINED.

As to Defendant's request for summary adjudication, their separate statement is not adequately laid out to determine what facts they believe are relevant to the summary adjudication of any issue. Defendant incorporates all previous facts, without regard for the repetitious nature of many of those assertions. As the Court notes below, each of the causes of action operate on nuanced categories of fact, and it is not the place of the Court to designate those facts for Defendant which it believes are relevant to each cause of action. That is Defendants' responsibility. If all the facts were relevant to all the causes of action, the same triable issue of fact would be relevant to each action sought to be summarily adjudicated. Accordingly, simply based on the procedural issue, the Court finds the "issues" deficiently presented and therefore summary adjudication of any matters contested thereon is DENIED.

The exception is that Plaintiff concedes that his second cause of action for hostile work environment is not viable and seeks to withdraw it. However, he also fails to have filed a dismissal thereon. The issue being uncontested, the motion for summary adjudication of the second cause of action is GRANTED.

Defendant's separate statement on reply is not authorized by CCP § 437c and is therefore not considered.

II. Underlying Facts

Defendant is a forest products company that operates a sawmill, at which Plaintiff was employed. Defendant's Separate Statement of Undisputed Material Facts ("DUMF") ¶ 1. Mario Ramirez ("Ramirez") is employed by MFP as a superintendent at the sawmill. DUMF ¶ 2. Plaintiff was initially hired on April 5, 2016. DUMF ¶ 3. Plaintiff began working as a lumber grader on June 25, 2018, requiring him to grade lumber based on quality. DUMF ¶ 5-6. Lumber graders regularly lift over 10 pounds, frequently lift and move over 25 and occasionally lifting over 50 pounds. DUMF ¶ 7. During his time as a grader, Plaintiff lifted more than 25 pounds often, and had lifted up to 450 pounds. Plaintiff's grader position required that he evaluate and then roll over lumber weighting between 10 and 450 pounds to see another of its four sides, flipping the lumber with his hands and grading each side of the lumber within two seconds. DUMF ¶ 9.

In August 2023, Plaintiff suffered heatstroke requiring hospitalization, and he returned to work on August 14, 2023. DUMF ¶ 13. Plaintiff was subsequently diagnosed with kidney failure. DUMF ¶ 14. The floor manager at the mill was Martin Campos ("Campos"), and above Campos the superintendent was Ramirez. Plaintiff has fifth stage kidney failure where his kidneys no longer function. DUMF ¶ 18. In August 2023, Plaintiff was told by his treating physician that if he did not start dialysis, he had only six months to live. DUMF ¶ 19. Plaintiff started dialysis that month and had catheter implant surgery to allow for dialysis. DUMF ¶ 20-21. On October 13, 2023, Plaintiff had a discussion with Camps and Ramirez telling them he had scheduled the catheter implant surgery. DUMF ¶ 22. This was the first time Plaintiff told Campos and Ramirez about his kidney failure. DUMF ¶ 23. He thereafter went to Defendant's Human Resources Benefits Manager, Kristi Bednar ("Bednar"), and informed her that the surgery would occur sometime in November. DUMF ¶ 24. On November 16, 2023, Plaintiff informed Bednar that his catheter implant surgery had been scheduled for November 20, 2023. DUMF ¶ 25. Plaintiff was placed off work by his treating physician for the surgery, and his last day of work before leave was November 17, 2023. DUMF ¶¶ 26, 29. The administrator sent a letter requesting that Plaintiff return a completed Certification of Health Care Provider form the same day. DUMF ¶ 31. Plaintiff's request for leave was submitted to the third-party leave administrator on November 16, 2023. DUMF ¶¶ 27-28. Plaintiff was placed on FMLA/CFRA leave, effective November 18, 2023. DUMF ¶ 30.

Plaintiff's November 20 surgery was delayed, and he returned to work on November 27, 2023, without a return to work note. DUMF ¶¶ 33-34. Ramirez told plaintiff that to return to work, he needed a doctor's note. DUMF ¶ 35. Plaintiff's medical leave began on December 5, 2023, the date of his rescheduled catheter implant surgery. DUMF ¶ 36. Plaintiff's medical leave was approved from December 5, 2023, through February 15, 2024. DUMF ¶ 37. Plaintiff had a second surgery for hernia repair between January 26, 2024, and February 8, 2024. DUMF ¶ 38. Bednar sent a letter to Plaintiff on February 20, 2024, informing him of his leave end date, and that if Plaintiff was unable to return at the conclusion of his protected leave, Defendant would begin the interactive process to see if a return is medically possible. DUMF ¶ 39. The letter also enclosed an accommodation request form so Plaintiff could request any required accommodations for his return to work. DUMF ¶¶ 39, 41 Plaintiff submitted an updated doctor's note that extended his leave through April 15, 2024, because of the second surgery. DUMF ¶ 40. Plaintiff returned the accommodation form which stated that he had a permanent lifting restriction of 25 pounds. DUMF ¶ 42. Plaintiff's regular grader position required him to be capable of lifting more than 25 pounds, and Defendant did not believe an accommodation would be possible based on the nature of the position. DUMF ¶ 43.

Plaintiff's final discussion with Mr. Ramirez was on April 12, 2024. DUMF ¶ 44. Plaintiff told Ramirez that he was ready to come back to work but had lifting restrictions, to which Ramirez responded that Plaintiff's return was up to human resources. DUMF ¶ 45. Ramirez had no further discussions with Plaintiff regarding his medical restrictions. DUMF ¶ 46. Defendant offers evidence that Bednar spoke with Plaintiff the same day. DUMF ¶ 47. Bednar told Plaintiff he could not return to work with his lifting restriction, and Defendant would not be able to accommodate him based on his medical restrictions. DUMF ¶¶ 48-49. Bednar told Plaintiff that he could go back to his doctor and revisit the lifting restriction. DUMF ¶ 50. In response, Plaintiff said he would call his social worker to see if anything could be done about his lifting restriction. DUMF ¶ 51. Plaintiff called his social worker to tell her that Defendant asked if his doctor could revisit the weightlifting restriction. DUMF ¶ 54. Plaintiff's social worker called Defendant and was asked by Defendant if Plaintiff' doctor would increase the weight restriction. DUMF ¶ 55. After being contacted by the social worker, Plaintiff's doctor would not revisit the restriction. DUMF ¶ 56. On May 1, Bednar had a telephone conversation with Plaintiff, in which she reiterated that Defendant could not accommodate Plaintiff's permanent restriction, and Bednar told Plaintiff that he would either need to return to his doctor to revisit the lifting restriction or that Defendant would have to separate him from employment. DUMF ¶ 58. Defendant did not try to convince plaintiff to have the weightlifting restriction dropped. DUMF ¶ 59.

Bednar sent correspondence to Plaintiff on May 2, 2024, informing him of his separation of employment, and that Defendant welcomed and encouraged Plaintiff's application to any open position for which he was qualified, with or without reasonable accommodation. DUMF ¶ 64. Between April 12, 2024, and May 2, 2024, MFP had a total of 10 open job postings for positions in Ukiah: Director, Stewardship; Sales Product Line Manager - Lumber Sales; Millwright; Truck Driver; Industrial Electrician; Maintenance Engineer; Manager, Forestry Inventory; Sawfiler Apprentice; Production Worker - Fenceline; and Linear Edger. DUMF ¶ 65. Of these, Plaintiff was only qualified to work as Production Worker - Fenceline or Linear Edger. DUMF ¶ 66. Both paid less than what Plaintiff was currently making as a grader. DUMF ¶ 66. They also both had job descriptions requiring lifting more than 25 pounds, or in the case of Production Worker, up to 100 pounds. DUMF ¶ 66. Defendant presents evidence that Plaintiff never asked if he could be transferred to another position with his restriction. DUMF ¶ 61.

Plaintiff was granted all the medical leave that he requested, after submitting all the required paperwork. DUMF ¶ 62. Ramirez has supervisorial authority, limited only to the Ukiah Sawmill, and Bednar does not create policies but rather helps to enforce policies created by others. DUMF ¶ 67.

Plaintiff disputes that the conversation on April 12, 2024, was with Bednar, stating that a secretary in HR was the person who called him, and told Plaintiff she was "unfamiliar with the process". Plaintiff's Separate Statement of Disputed Material Facts ("PSSDF") ¶ 47. Plaintiff was told during that conversation that Defendant "couldn't accommodate him", but outlined no options for accommodations, nor were any accommodations that had been considered but found unreasonable discussed. PSSDF ¶ 48. Plaintiff asserts that the position of grader is mostly one of skill in evaluating the lumber, and that the physical aspect of the work is not essential to the position. PSSDF ¶ 43. Plaintiff's accommodations form particularly stated that the required accommodation for Plaintiff was "assistance from other employees with lifting more than 25 lbs. or pushing or pulling heavy objects". PSSDF ¶ 42.

Plaintiff, during the pendency of his employment, worked close to and observed the station for fence-line graders, and he was familiar with what their work at that station entailed. Plaintiff's Separate Statement of Disputed and Additional Material Facts ("PAMF") ¶ A. Plaintiff regularly saw the fence line graders handle 10-pound boards PAMF ¶ A. At no time in the interactive process did anyone from Defendant discuss Plaintiff transferring to another position, nor was Plaintiff told that the fence line position was open. PAMF ¶ B. Plaintiff also previously performed work for Defendant including operating a staple gun, end-waxing, stacking, and cleanup duties and Plaintiff holds a forklift operator certification and operated forklifts at MFP. PAMF ¶ C. None of those tasks required him to lift more than 25 pounds at any one time, and he could have performed all of those duties within his restriction. PAMF ¶ C. Plaintiff would have accepted other roles at MFP to keep his employment and was willing to have lower pay if the new position required it. PAMF ¶ D. In July 2024, Plaintiff searched for jobs at MFP and found six positions that Plaintiff would have been both qualified and willing and able to do with his restrictions at the time including: Strip Puller, Packaging Laborer-Planer, Clean Up (Sawmill) – Entry Level, Forklift Operator, Forklift Operator – Swing Shift and Packaging Laborer. PAMF ¶ L. During the interactive process, no one discussed or mentioned the doctor's recommended accommodations of Plaintiff having co-worker assistance with moving loads over 25 pounds. PAMF ¶ F.

Ramirez supervised all of the workers in the planer area, which included approximately 40 to 45 employees. PAMF ¶ M. Ramirez approved Plaintiff's promotion from the utility-skilled position to the Grader Trainee position, personally came to Plaintiff to deliver a corrective action form and to discuss his employment (and called Plaintiff back after that incident and told him he could return to work), and it was Ramirez who told Plaintiff he needed a doctor's note before he could work and sent him home. PAMF ¶ N.

III. <u>The Burdens on Summary Judgment and Adjudication</u>

A. *<u>Generally</u>*

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. A defendant can meet its burden by presenting affirmative evidence negating as a matter of law an essential element of the claim or, alternatively, by showing that the plaintiff "does not possess, and cannot reasonably obtain, needed evidence." *Aguilar*, 25 Cal.4th at 854. Once a moving defendant meets its initial burden, the burden of production shifts to the opposing party to show the existence of one or more triable issues of fact. CCP § 437c(p)(2). In determining whether there is a triable issue of material fact, the court must determine what any evidence could show to a reasonable trier of fact. *Aguilar*, 25 Cal.4th at 856.

Special rules govern allocation of the burden of proof on motions for summary judgment in wrongful termination and employment discrimination cases. *Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 930 ("When a plaintiff alleges retaliatory employment termination ... as a claim for wrongful employment termination in violation of public policy, and the defendant seeks summary judgment, California follows the burden shifting analysis of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 to determine whether there are triable issues of fact for resolution by a jury.") The purpose of these special rules is address the factual question of intentional discrimination; although the summary judgment procedure "provides a particularly suitable means to test the sufficiency of … the defendant's nondiscriminatory motives for the employment decision" (*Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 203), many employment cases "present issues of intent, and motive, and hostile working environment, issues not determinable on paper," and such cases are "rarely appropriate for disposition on summary judgment." *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286.

Under these special rules, when an employer seeks summary judgment, the employer has the initial burden to show that no unlawful discrimination or retaliation occurred. *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 354-55. Thus, to satisfy its initial burden the employer must show that the action has no merit by negating an essential element of the employee's claim or showing some legitimate, nondiscriminatory/non-retaliatory reason for the action taken against the employee. *Caldwell*, 41 Cal.App.4th at 202-03. Legitimate reasons for terminating employment include a failure to meet performance standards (*Trop v. Sony Pictures Entertainment Inc*. (2005) 129 Cal.App.4th 1133, 1149) and the employer's loss of confidence in an employee (*Arteaga v. Brink's, Inc*. (2008) 163 Cal.App.4th 327, 352). To establish that the termination was a legitimate business decision, it does not matter whether the plaintiff actually performed in an unsatisfactory manner; what matters is whether the defendant reasonably believed she had done so. *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433. A plaintiff may not "quarrel[] with the wisdom" of the reason. *Hicks v. KNTV Television, Inc.* (2008) 160 Cal.App.4th 994, 1011.

If the employer meets this burden, the employee must produce "substantial responsive evidence that the employer's showing was untrue or pretextual," thereby raising at least an inference of discrimination or retaliation. *Hersant v. Calif. Dept. of Social Services* (1997) 57 Cal.App.4th 997, 1004-05 ("*Hersant*"). Evidence showing facts inconsistent with the employer's claimed reasons tends to prove the employer's wrongful intent. *See, e.g. Reeves v. MV Transp., Inc.* (2010) 186 Cal.App.4th 666, 675 (substantial disparity in candidates' qualification may support inference of discrimination). When there are mixed motives for the employer's action, it is enough that discrimination or retaliation was a substantial motivating factor in the employer's decision. *See, e.g. Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 590. An employee may also avoid summary judgment by attacking the credibility of the employer's declarations, *i.e.* by demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them unworthy of credence" and hence infer discriminatory or wrongful intent. *Hersant*, 57 Cal.App.4th 997, 1005 (emphasis in original).

However, "disbelief of an Employer's stated reason for a termination gives rise to a compelling inference that the Employer had a different, unstated motivation, but it does not, without more, reasonably give rise to an inference that the motivation was a prohibited one." *McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1531-32 (also stating that "there must be more than inconsistent justifications for an employee's termination to support an inference that the employer's true motive was discriminatory"). Thus, it is *not* enough for the employee to raise triable issues of fact concerning whether the employer's reasons for taking the adverse action were sound. "The employee cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." *Hersant*, 57 Cal.App.4th at 1005, *quoting Fuentes v. Perskie* (3d Cir. 1994) 32 F.3d 759, 765.

Alternatively, the defendant employer may proceed directly to provide evidence that its action was taken for a legitimate, nondiscriminatory purpose. The burden is then on the plaintiff employee to rebut with evidence raising an inference that intentional discrimination occurred. Summary judgment for the employer should be granted where, "given the strength of the employer's showing of innocent reasons, any countervailing circumstantial evidence of discriminatory motive, even if it may technically constitute a prima facie case, is too weak to raise a rational inference that discrimination occurred." *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 362. "The stronger the employer's showing of a legitimate, nondiscriminatory reason, the stronger the plaintiff's evidence must be in order to create a reasonable inference of a discriminatory motive. *Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1159. An employee's showing is entitled to liberal construal in opposing summary judgment, but the evidence provided remains subject to careful scrutiny. *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433 ("*King*"). The court may "find a triable issue of material fact 'if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.'" *Ibid, quoting Aguilar* 25 Cal.4th at 850. An employee's subjective beliefs and uncorroborated, self-serving declarations do not create a genuine issue of fact. *King, supra*, 152 Cal.App.4th at 433. The evidence presented must relate to the employer's prohibited motivation and the adverse employment action to which the employee was subjected. *Id*. at 433-434. "Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354.

B. FEHA Claims

"FEHA prohibits several employment practices relating to physical disabilities. First, it prohibits employers from refusing to hire, discharging, or otherwise discriminating against employees because of their physical disabilities. (Gov. Code, § 12940, subd. (a).) Second, it prohibits employers from failing to make reasonable accommodation for the known physical disabilities of employees. (*Id.*, subd. (m).) Third, it prohibits them from failing to engage in a timely and good faith interactive process with employees to determine effective reasonable accommodations. (*Id.*, subd. (n).) Fourth, it prohibits them from retaliating against employees for opposing practices forbidden by FEHA. (Gov. Code, § 12940, subd. (h).) Separate causes of action exist for each of these unlawful practices." *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 371. "The reasonableness of an accommodation generally is a question of fact." *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 374.

1. *Reasonable Accommodation and the Interactive Process*

"The elements of a failure to accommodate claim are (1) the plaintiff has a disability under the FEHA, (2) the plaintiff is qualified to perform the essential functions of the position, and (3) the employer failed to reasonably accommodate the plaintiff's disability." *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1009–1010. "It is an employee's responsibility to understand his or her own physical or mental condition well enough to present the employer at the earliest opportunity with a concise list of restrictions which must be met to accommodate the employee." *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 443.

"To prevail on a claim under section 12940, subdivision (n) for failure to engage in the interactive process, an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred. An employee cannot necessarily be expected to identify and request all possible accommodations during the interactive process itself because '[e]mployees do not have at their disposal the extensive information concerning possible alternative positions or possible accommodations which employers have....'" *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018, quoting *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 425 (internal quotations omitted).

"Generally, [t]he employee bears the burden of giving the employer notice of the disability. [Citation.] This notice then triggers the employer's burden to take 'positive steps' to accommodate the employee's limitations.... [¶] ... The employee, of course, retains a duty to cooperate with the employer's efforts by explaining [his or] her disability and qualifications. [Citation.] Reasonable accommodation thus envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the employer's capabilities and available positions." *Raine v. City of Burbank* (2006) 135 Cal.App.4th 1215, 1222 (internal quotations omitted).

2. *Discrimination under FEHA*

In discrimination claims brought under the California Fair Employment and Housing Act ("FEHA"), the elements of a prima facia showing for the cause of action are: "(1) plaintiff suffers from a disability; (2) plaintiff is a qualified individual; and (3) plaintiff was subjected to an adverse employment action because of the disability." *Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236. "The FEHA defines 'disability' to include: (1) '[h]aving a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment [that constitutes a physical disability], which is known to the ****669** employer"; (2) '[b]eing regarded or treated by the employer ... as having, or having had, any physical condition that makes achievement of a major life activity difficult'; or (3) "[b]eing regarded or treated by the employer ... as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability.' (§ 12926, subd. (k)(3)-(5).)" *Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 345.

C. <u>Wrongful Discharge in Violation of Public Policy</u>

"The claim for wrongful discharge in violation of public policy requires [plaintiff] to prove (1) he was employed by [defendant], (2) [defendant] discharged him, (3) the alleged violation of public policy was a motivating reason for the discharge, and (4) the discharge caused [plaintiff] harm." *Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 641. "To support a wrongful discharge claim, the policy must be "(1) delineated in either constitutional or statutory provisions; (2) 'public' in the sense that it 'inures to the benefit of the public' rather than serving merely the interests of the individual; (3) well established at the time of the discharge; and (4) substantial and fundamental." *Phillips v. St. Mary Regional Medical Center* (2002) 96 Cal.App.4th 218, 226.

D. *Violation of the CFRA*

"Violations of the CFRA generally fall into two types of claims: (1) "interference" claims in which an employee alleges that an employer denied or interfered with her substantive rights to protected medical leave,[3] and (2) "retaliation" claims in which an employee alleges that she suffered an adverse employment action for exercising her right to CFRA leave" *Rogers v. County of Los Angeles* (2011) 198 Cal.App.4th 480, 487–488.
CFRA interference claims consist of two elements: 1) the employee's entitlement to CFRA leave rights; and 2) employer's interference or denial of those rights. *Choochagi v. Barracuda Networks, Inc.* (2020) 60 Cal.App.5th 444, 454. The employee is subject to CFRA protections if any of the leave taken qualifies as CFRA leave. *Dudley v. Department of Transp.* (2001) 90 Cal.App.4th 255, 264.

"A plaintiff can establish a prima facie case of retaliation in violation of the CFRA by showing the following: (1) the defendant was a covered employer; (2) the plaintiff was eligible for CFRA leave; (3) the plaintiff *exercised his or her right to take a qualifying leave*; and (4) the plaintiff suffered an adverse employment action *because he or she exercised the right to take CFRA leave.*" *Choochagi v. Barracuda Networks, Inc.* (2020) 60 Cal.App.5th 444, 457. "Like claims for discrimination, CFRA retaliation claims . . . are subject to the McDonnell Douglas burden-shifting analysis." *Bareno v. San Diego Community College Dist.* (2017) 7 Cal.App.5th 546, 560.

IV. Analysis

Defendant contends that each of Plaintiff's causes of action fails because he cannot meet elements of each cause of action. Defendant avers that there is no violation of either FEHA or CFRA because Plaintiff could not perform the essential functions of his job with any reasonable accommodation, and that he is not a "qualified individual" under the statute as a result.

A. *Failure to Accommodate and Engage in the Interactive Process*

A. Defendant Shifts the Burden on One of the Accommodation Based Causes of Action

Defendant generally shifts their burden as to one of the two accommodation process causes of action. As to the actual failure to accommodate, Defendant shows that Plaintiff could no longer lift anything more than 25 pounds in a position which often required him to lift 50 pounds or more. DUMF ¶ 8. Therefore, he could not perform the job's essential functions, and he identified no accommodations at the time that would have made either his current position or alternative positions feasible. According to Defendant's evidence, there is nothing that they failed to provide. They have shifted their burden as to the failure to accommodate claim.

However, the Court is not similarly persuaded on the failure to engage in the interactive process claim. The only evidence Defendant provides is to show that they suggested to Plaintiff that he have his doctor reassess his disability. This is not an accommodation within any reasonable construal of the statute, and so this does not seem to be a good faith part of the interactive process. Defendant offers no other evidence regarding *any* efforts related to accommodations discussed with or offered to Plaintiff. There is no evidence regarding the proposal of solutions from Defendant other than for Plaintiff to be reassessed as less disabled. That burden is on the employer because "[e]mployees do not have at their disposal the extensive information concerning possible alternative positions or possible accommodations which employers have...." *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 425 (internal quotations omitted). The note preceding any discussion with Plaintiff is simply that Defendant is "unable to accommodate". Given that Defendant offers no evidence of any true interactive process, they fail to shift their burden as to that cause of action.

B. Plaintiff Meets the Shifted Burden

As to the failure to accommodate, Plaintiff raises triable issue of fact. While Defendant insists that Plaintiff cannot establish that he knows what the essential functions of the fence-line job through direct observation, that appears to be a triable issue of fact. Defendant's argument against this goes truly to the weight of the quality of that evidence, not its impropriety. They offer no case showing that an employee's direct observation of job responsibilities is either irrelevant or failed to raise a triable issue of fact. Defendant cites Gov. Code § 12926(f), but that section is not the exclusive list of possible evidence of essential functions. Gov. Code § 12926(f)(2). Fence line grading appears to have been actively available at the time Plaintiff was terminated without offered accommodation, and there is evidence it may have been within his capacity, either with or without some reasonable accommodation.

Defendant also insists that it could not have offered the fence-line position to Plaintiff because it was below his then-current rate of pay. Defendant's flat insistence that the Code of Federal Regulations requirements should bind their duties under FEHA is directly contrary to the caselaw for California's statute. Defendant avers that Plaintiff could not have had the fence-line position offered as an accommodation because the rate of pay was below his current rate of pay, violating 29 CFR § 1630.2.[1] Again, Defendant's own repeatedly cited case indicates a result contrary to their argument. Under FEHA, the only proscription is against the employer being *obligated* to make a promotion that amounted to a promotion. *Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 969. If there are positions that are not "promotions" that are not offered as an accommodation, including those with lower pay, there is a triable issue of fact as to whether this would have constituted a reasonable accommodation.

Plaintiff also shows that subsequently available positions for which he was qualified were relevant and available shortly after he was terminated. Defendant strongly asserts that the available positions that Plaintiff points to in July 2024 are irrelevant, because the accommodation only relates to those positions available at the time. That is rebutted by the very case that Defendant repeatedly cites:

[1] The Court also notes that while subd. (o)(1)(iii) is similar, the quoted language does not appear in the current version of 29 C.F.R. § 1630.2. It is not of adequate concern to pursue further given the collateral nature of the issue.

> Jobs available during the extended time period are relevant because it may have been a reasonable accommodation for Neiman Marcus to extend Nadaf–Rahrov's leave of absence for a limited period of time until a position became available that Nadaf–Rahrov could perform, particularly if Neiman Marcus could have anticipated the future opening.

Nadaf-Rahrov v. Neiman Marcus Group, Inc. (2008) 166 Cal.App.4th 952, 968.

Plaintiff has shown two months after Defendant purportedly determined there were no available positions, there were various other positions available, six of which he was qualified to perform without accommodation or with reasonable accommodation. It is clear that Defendant did not remotely engage in the discussion of Plaintiff's transfer, and accordingly there is a triable issue of fact as to the failure to accommodate.

Turning to the interactive process, even if Defendant had met their burden here, Plaintiff would meet the shifted burden. Plaintiff is persuasive that the failure to engage in the interactive process survives summary judgment. That cause of action requires the parties to engage in an exchange. Defendant provides no evidence that they affirmatively engaged in a discussion with Plaintiff about what accommodations were available and would assist Plaintiff. Defendant's only response to Plaintiff's medical restriction was to ask if he could get the restriction removed before terminating him. No discussion of alternative positions occurred to explore whether Plaintiff could perform them. No additional leave was discussed to see if there might be other positions opening up. There was no discussion of what accommodations were considered but determined to be unreasonable. There are triable issues of material fact as to whether Defendant engage in, and fulfilled, the interactive process.

B. *Disability Discrimination and Failure to Prevent Discrimination*

1. Defendant Shifts Their Burden

Defendant particularly attacks Plaintiff's ability to show that he could perform his job with or without reasonable accommodation. This is mostly akin to the cause of action for failure to reasonably accommodate, except it relates to Plaintiff's current job, rather than a new proposed position. *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 257. To shift their burden, Defendant need only show that Plaintiff could not perform the tasks required for the essential functions of his position even with reasonable accommodations. Plaintiff's position as lumber grader required him to move significant amounts of weight on a regular basis. Plaintiff had been categorized as permanently disabled and unable to lift over 25 pounds. Plaintiff could not lift more than 25 pounds and did not discuss any accommodations beyond having co-worker assistance. The job description presents evidence that lifting heavy loads is an essential element of the position. Defendant shifts their burden here.

2. Plaintiff Meets the Shifted Burden

Plaintiff argues that there was a reasonable accommodation available in the form of assigning a “helper” to move the lumber. He also argues that the failure to consider alternative positions constitutes discrimination. In arguing that qualification for a different position is sufficient to state a discrimination claim, Plaintiff misstates the standard opined in *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 257, in arguing that Defendant must show reassignment. That case dealt with the distinction between the accommodation claims (which are already addressed above) and discrimination claims. “For purposes of a section 12940, subdivision (k) claim, the plaintiff proves he or she is a qualified individual by establishing that he or she can perform the essential functions of the position to which reassignment is sought, rather than the essential functions of the existing position [for discrimination claims].” *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 256.

Nonetheless, “The reasonableness of an accommodation generally is a question of fact.” *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 374. Plaintiff opines that the expertise in grading the lumber is skill based, and that the movement of the lumber is separate. The evidence that had been submitted by Defendant in the motion makes clear that they view the ability to lift as an essential function, but the evidence thereon is a job description and little else. Plaintiff’s doctor’s note expressly stated as an accommodation that Plaintiff receive assistance with lifting and moving heavy loads. This does not appear to be addressed in any part of the record except Defendant’s conclusion that Plaintiff cannot perform the essential function of the position. No evidence addressing where other individuals come into the process, and there being no evidence that assistance was even discussed, whether that accommodation is reasonable appears to be a triable issue of fact.

It is also of note that courts of appeal are varied in whether they consider reassignment as part of an underlying discrimination claim, or an accommodation claim. *Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 968. As is already addressed, reassignment appears to have been readily available, or available shortly after.

Therefore, there are triable issues of material fact as to discrimination claims. Accordingly, because Defendant only attacks the failure to prevent discrimination claim by attempting to refute the underlying discrimination, there are also triable issues of fact as to that cause of action.

C. *CFRA Violations*

As the Court has already addressed the propriety of the other causes of action, the violation of the CFRA appears to rise and fall on the same considerations. Plaintiff was terminated while on protected leave, and there are triable issues of fact as to whether that termination was appropriate. This meets the standards for retaliation.

As to the Eighth cause of action, the Court notes that while Plaintiff’s cause of action as phrased doesn’t state something immediately recognizable, the substance of the cause of action is one for CFRA interference. Plaintiff has shown that he would have qualified for further leave based on the need for a kidney transplant, and that his termination might have been attributable to his need for further leave. Defendant does not address this except to point out Plaintiff’s inadequate label for the cause of action. To the degree this might have resulted in summary judgment, it would only be as to the pleading, and not the evidence, and therefore the Court would have to assess (and likely grant) leave to amend. That does not appear to be in the interest of any party.

D. *Termination in Violation of Public Policy*

Again, Defendant has couched their summary judgment on this cause of action on their ability to show a lack of triable issue of fact in the underlying FEHA claims. Given that there are triable issues of fact for those causes of action, so too are there triable issues of fact here.

Summary judgment is DENIED.

E. *Punitive Damages*

Defendant avers that the Court should summarily adjudicate punitive damages based on Ramirez's lack of authority. They aver as a conclusion that he does not set corporate policy, but they fail to Defendant does not show what the extent of Ramirez's authority actually encompasses. "The scope of a corporate employee's discretion and authority under our test is therefore a question of fact for decision on a case-by-case basis." *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 567. Given that Defendant presents no actual facts, and only legal conclusions, it is unmoving. Plaintiff shows at least some of the scope of Ramirez's authority, and that appears sufficient to raise triable issues of fact.

Additionally, for this issue particularly, Defendant's failure to particularize within the separate statement what facts are relevant for the issue renders any parsing of the relevant facts a burden Defendant attempts to improperly place upon the Court. Given the evidence presented by Plaintiff, it appears particularly relevant what Defendant asserts are the relevant material facts.

IV. Conclusion

Based on the foregoing, the motion for summary judgment is **DENIED. Summary adjudication is GRANTED as to the Second cause of action, and otherwise DENIED.**
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).

3-4. 24CV06419, Benedict v. The Ezralow Company, LLC

Plaintiffs Betsy Benedict, Megan Benedict, Loren Castillo, Breezy Garcia, George Kozlov, Rigoberto Lemus, Faizah Patel, Athony Piazza, Kimberly Piazza, Patriana Scott, Donna Vue, and Latasha Williams (together "Plaintiffs") filed the currently operative first amended complaint (the "FAC") in this action against defendants The Ezralow Company, LLC ("Ezralow"), West Coast Redevelopment, Inc., ("West Coast", together with Ezralow, "Defendants"), and Does 1-10, for multiple alleged causes of action arising out of alleged .

This matter is on calendar for the Defendants' demurrer to causes of action two through four 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, and Defendants' motion to strike particular allegations from the FAC under CCP § 435. The Demurrer is **OVERRULED. The motion to strike is GRANTED in part without leave to amend and DENIED in part. The Court issues an ORDER TO SHOW CAUSE re: Sanctions against Defendants' counsel.**

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).

> "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.

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. If a demurrer is sustained, 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; *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

B. Motions 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 or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. In general, as with showing 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.). A motion to strike is 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). 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.

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 wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing 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).

C. <u>ICRAA</u>

> If an investigative consumer report is sought in connection with the hiring of a dwelling unit, … the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report and a

summary of the provisions of Section 1786.22.

Civ. Code, § 1786.16.

If the violation of the ICRAA "was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages." Civ. Code, § 1786.50 (b). "Nothing in this chapter shall in any way affect the right of any consumer to maintain an action against an investigative consumer reporting agency, a user of an investigative consumer report, or an informant for invasion of privacy or defamation." Civ. Code, § 1786.52.

D. Invasion of Privacy

"The first essential element of a state constitutional cause of action for invasion of privacy is the identification of a specific, legally protected privacy interest." *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35. "Legally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ("informational privacy"); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ("autonomy privacy")." *Ibid.*

"The second essential element of a state constitutional cause of action for invasion of privacy is a reasonable expectation of privacy on plaintiff's part." *Id.* at 36. A "reasonable" expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. *Ibid*. Third, "(a)ctionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." *Ibid.*

E. Declaratory Relief

> Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

Code Civ. Proc., § 1060.

F. Unfair Competition Law (the "UCL")

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).

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."). "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).

II. Procedural and Evidentiary Issues

First, Plaintiffs allege that the motion was not adequately preceded by meet and confer efforts. See CCP § 430.41; CCP § 435.5. However, failure to meet and confer is not sufficient basis to deny the motion. CCP § 430.41 (a)(4); CCP § 435.5 (a)(4). Defendants did send an extensive meet and confer letter, but further exchange does not appear to have occurred. The subsequent review compels the Court to address the merits, rather than mandate that the parties meet and confer further.

Plaintiffs also argue that they received no notice of the hearing date from Defendants. Nonetheless, Plaintiffs appear to have *actual* notice of the hearing and have filed a timely opposition. The remedy would otherwise be to continue the motion so Plaintiffs can have appropriate time to respond, not to deny the motion. Given that Plaintiffs have filed substantive opposition, continuance appears to cause unnecessary delay.

In reviewing Defendants' memorandum as to the demurrer, the Court could not locate one of the cases cited in support of their contentions. Defendants cite "*Gauvin v. Trombatore* (1970) 7 Cal.App.3d 918, 936", for the proposition that "Allegations that group multiple defendants together without identifying the specific conduct attributable to each defendant are insufficient to state a cause of action." Memorandum in Support of Demurrer, pg. 13:20-23. That citation does not lead to any published authority, and the republished authorities it does address are not named

Gauvin v. Trombatore. See, e.g., *Zelver v. Sequoia Hospital Dist.* (1970) 7 Cal.App.3d 934, *dismissed*. In contrast, there is a case by that name, but it is a federal case and does not address the proposition of law advanced. *Gauvin v. Trombatore* (N.D. Cal. 1988) 682 F.Supp. 1067. Parties and attorneys must typically cite only published, existing authority, as use of cases not certified for publication is prohibited under the California Rules of Court. See Rule of Court, Rule 8.1115(a); see *Rain Bird Sprinkler Mfg. Corp. v. Franchise Tax Bd.* (1991) 229 Cal.App.3d 784, 793 (trial court erred in relying on unpublished opinion, as that violated former rule 977 [now Rule 8.1115]); see also *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 109. Exceptions to this rule are incredibly limited. See, e.g., Rule 8.1115(b).

Fictionalized citations are a violation of Rule 8.1115. *People v. Alvarez* (2025) 114 Cal.App.5th 1115, 1119. Additionally, parties are required to provide citations to cases from the official report volume and page number and year of decision. Rule of Court, Rule 3.1113(c). Use of fabricated citations is "frivolous" conduct and is subject to sanctions under CCP § 128.7. *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426. Courts are empowered to sanction parties for violations of the Rules of Court. Rule of Court, Rule 2.30(b). Sanctions may only be imposed after a noticed motion or issuance of an order to show cause, and an opportunity to be heard. Rule 2.30 (c). Sanctions to the Court under Rule 2.30 must comply with the limits under CCP § 177.5. *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977.

Manufactured citations have been repeatedly found in cases where counsel have used large language models. This is not the lone error contained in the memorandum for demurrer. Defendants have cited *Aleksick v. 7-Eleven, Inc.* (2012) 205 Cal.App.4th 1176, 1185, arguing that the case holds that "A UCL claim that is entirely derivative of another statutory claim and does not identify distinct conduct does not establish an independent basis for liability." That case says nothing of the sort, and in fact holds that UCL causes of action dependent on a claim of statutory violations rise and fall with the statutory claim. *Aleksick v. 7-Eleven, Inc.* (2012) 205 Cal.App.4th 1176, 1185 ("When a statutory claim fails, a derivative UCL claim also fails."). Though it may be sanctionable through other methods, this is not a violation of Rule 8.1115, and so does not form the basis for the order to show cause but reinforces the Court's reasoning that large language models were used without adequate precaution.

This is sufficient for the Court to find a significant probability that large language models were used in the preparation of the Demurrer. Given that the citation is fictional and would otherwise mislead the Court both on the existence of authority and the holding thereon, the Court finds violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a). For any sanctions to issue thereon, an order to show cause must issue, and present an opportunity to be heard. For their part, Plaintiffs point out neither of these errors. Payment of sanctions to Plaintiffs appears improper as a result.

Therefore, due to violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a), **the Court issues an order to show cause against Defendants' counsel, Edrin Shamtob**, why they should not be liable for $1,500 in sanctions to the Court under Rule of Court, Rule 2.30, and be reported to the State Bar for violations of the duty of candor. Defendants' counsel will file any response to the OSC by July 30, 2026. **The Order to Show Cause will be heard August 6, 2026, at 3:30 pm in Department 19**. Any response will provide the names of the attorneys who drafted the demurrer, the relevant time expended thereon, and the resources used in producing the material. At minimum, counsel Edrin Shamtob will submit a declaration in response to the OSC, owing to their status as signatory on each of the submitted papers. *Quinteros v. Harbor Distributing, LLC* (2026) 121 Cal.App.5th 60 (pin cites not yet available).

III. Analysis

Defendants demur to the second through fourth causes of action.

A. Invasion of Privacy

Defendants contend that the invasion of privacy cause of action cannot be stated because it does not state anything more than the underlying cause of action for violation of the ICRAA. While Defendants opine that these redundant causes of action are not allowable, they offer no authority for that proposition. That is because Defendants' position is unsupported. "A plaintiff may proceed on a cause of action for violation of a specific statute and a cause of action in tort based on the same conduct, and may recover either the penalties authorized by the statute or punitive damages on the tort claim, but not both." *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 915. Here, there is an **express** statutory allowance of the mutual pursuit of invasion of privacy claims. Civ. Code, § 1786.52. Defendants' demurrer to invasion of privacy is OVERRULED

B. UCL

Defendants' argument against the UCL is that it cannot be repetitious of other causes of action. They provide no accurate authority for this, and "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. Even Defendants' (erroneously) cited case contradicts this position. *Aleksick v. 7-Eleven, Inc.* (2012) 205 Cal.App.4th 1176, 1185 ("When a statutory claim fails, a derivative UCL claim also fails."). The difference attributable to UCL claims is in remedy, not the underlying basis.

The demurrer to the claim under the UCL is OVERRULED.

C. Declaratory Relief

Defendants cite to *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324, but that case does not determine the result here for two reasons. First, that court opined that the cause of action for declaratory relief was "was unnecessary and superfluous." *Ibid.* However, the result there was that the *Hood* court found that granting summary adjudication **was inappropriate** as a result of its superfluous nature. *Ibid*. Defendants do not provide a case showing that a demurrer would be properly sustained because the cause of action is largely repetitive of other claims in the FAC. Second, here Plaintiffs have alleged ongoing conduct, by which they request a declaration that the lease and renewal form violates the ICRAA. That is not something captured by the backward looking damages allowed under the ICRAA.

Defendants' demurrer to the cause of action for declaratory relief is OVERRULED.

D. Specificity of Defendants

Defendants aver that Plaintiffs have not been adequately specific as to what Defendant performed each act. The authority they provide averring that such specificity is required either does not exist or says nothing of the sort. See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 140. Accordingly, it merits no further consideration.

The demurrer as to each of the Defendants is OVERRULED.

IV. Motion to Strike

Defendants also request that the Court strike the multiple forms of relief from the FAC. The motion to strike is at least partially meritorious. Plaintiffs concede that the requests to strike writ of mandate and relief to "run with the land" are appropriate. Plaintiffs do not concede Defendants' requests to strike ¶ 4 for prohibiting retaliation, but nor do they provide any argument supporting the cause of action. The motion to strike is therefore GRANTED as to requests ¶ 2-5. See Defendants' Motion to Strike, pg: 2:11-20. Leave to amend appears inappropriate, both because Plaintiff offers no explanation of how these matters may be remedied, and because trial is pending. The only substantive opposition Plaintiff raises is as to the request to strike punitive damages from the Complaint.

Defendants seek to strike punitive damages "in connection with the Second, Third, and Fourth Causes of Action," without addressing the sufficiency under the First cause of action. Plaintiff accurately points out that punitive damages are expressly allowed in particular situations by the ICRAA. Civ. Code § 1786.50. A motion to strike is not a method by which the Court may erect barriers within a pleading, and Defendants provide no authority showing its propriety. Rather, it is a method for excision, where Defendants show that the pleading is "immaterial". Given that Defendants do not challenge Plaintiffs' ability to recover punitive damages for the first cause of action, they may not strike punitive damages from the prayer without showing that the entire complaint fails to support punitive damages.

As to the first request to strike punitive damages, the motion is DENIED.

V. Conclusion

Based on the foregoing, **the Demurrer is OVERRULED.** The motion to strike is **GRANTED without leave to amend as to requests ¶ 2-5 and DENIED as to request ¶ 1**.

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).

5-8. 25CV01455, Estrela v. Genesis Motor America

Plaintiff Jaidan Roi Estrela ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants Genesis Motor America ("Defendant") and Does 1-10, relating to Plaintiff's purchase of a 2022 Genesis GV70 (the "Vehicle") related to alleged violations of the Song-Beverly Act, Civ. Code § 1790, et seq. (the "Act").

This matter is on calendar for the motion by Plaintiff to seeking to compel further responses to Set One of each of the requests for admission ("RFAs"), form interrogatories ("FIs"), special interrogatories ("SIs"), and requests for production of documents ("RPODs"), from Defendant under Code of Civil Procedure ("CCP") §§ 2030.300, 2031.310, and 2033.290, and sanctions thereon.

I. Procedural Issues

Since the motions were filed, Defendant has served supplemental responses to the discovery addressed by each of Plaintiff's motions, but apparently not to each request thereon. See, e.g., Plaintiff's Reply pg. 3:7. Neither party has enumerated the supplemental responses. There is no separate statement containing Defendant's contentions regarding what is insufficient in the supplemental responses. There is no evidence that the parties have met and conferred regarding the sufficiency of these responses.

The Court must analyze the sufficiency of the original responses for the purposes of sanctions regardless. Therefore, the Court will determine the sufficiency of Plaintiff's original responses without addressing the supplemental responses. If Defendant finds those supplemental responses insufficient, they may file a separate motion compelling further response thereon, after meeting and conferring as required by statute.

Defendant avers that Plaintiff failed to adequately meet and confer on the underlying discovery. Plaintiff sent meet and confer letters on March 3, 2026. The same day, Defendant flatly refused to engage in meet and confer efforts while "[Defendant] has a pending motion to compel arbitration". Plaintiff was *required* to file the motion within 45 days of Defendant's responses absent a stay being in place. Defendant's refusal to confer, without obtaining the stay, is an attempt to have it both ways, and Plaintiff was not obligated to continue attempting to confer given the apparent futility. Plaintiff's meet and confer efforts are sufficient.

Defendant also argues that they never received actual notice of the hearing date for the motions. Defendants have filed timely and substantive oppositions. The remedy for failure to serve the hearing date would otherwise be to continue the motion so Defendant can have appropriate time to respond, not to deny the motion. Given that Defendant has filed substantive oppositions, continuance appears to cause unnecessary delay.

II. 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.* 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. 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. "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.

"If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." CCP, § 2031.240 (c)(1). However, failure to provide a privilege log does not, in and of itself, waive attorney client privilege. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1131.

D. RFAs

Regarding requests for admission, 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. Where an admission is denied outright (regardless of "weaseling qualifications"), the court cannot "force a litigant to admit any particular fact if he is willing to risk a perjury prosecution or financial sanctions." *Holguin v. Superior Court* (1972) 22 Cal.App.3d 812, 820.

E. Sanctions

CCP § 2030.300(d) (relating to interrogatories), CCP § 2031.310(h) (relating to requests for production of documents), and CCP § 2033.290(d) 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." 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.

III. Analysis

Plaintiff served RPODs, RFAs, FIs and SIs to Defendant on January 22, 2026. The same day Defendant filed their motion to compel arbitration. Defendant served objection only responses to all discovery on February 20, 2026. Plaintiff filed the motions to compel further responses on April 6, 2026.

A. Discovery Stay While Arbitration Request Pending

Defendant's objection that the discovery was improperly served while the motion to compel arbitration was pending appears appropriate to address at the outset, since Defendant raises the objection as to every discovery response at issue. Defendant offers **no authority** that this is an appropriate objection to discovery responses. Even if the Court were to formulate one for them based on legal authority, it would not lend merit to Defendant's objection here. While motions to compel arbitration may stay actions under CCP § 1281.4, no stay had been ordered by the Court at the time the motion to compel arbitration was filed, and it was subsequently denied. Though it is mandatory on request, an order relating to a request for stay under CCP § 1281.4 is not automatic and must be issued by the court. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 140. Defendant did not raise the matter, and accordingly this matter was expected to proceed in the normal course absent entry of an order for stay. The objections thereon to *every* discovery request is unsupported, and therefore overruled.

B. Requests for Admission

Plaintiff moves to compel further responses RFAs ¶ 1-25, averring that Defendant has asserted meritless objections to each RFA which renders responses insufficient.

The motion appears moot, as Defendant has offered supplemental responses. While Defendant argues that *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409 does **not** vest the Court with the authority to review the sufficiency of responses, that is **false**. "Whether a particular response does resolve satisfactorily the issues raised by a motion is a matter best determined by the trial court in the exercise of its discretion, based on the circumstances of the case." *Ibid*. Nonetheless, as that holding notes, it is a matter tendered to this Court's discretion, and this appears to be a matter more completely addressed through Plaintiff's ability to file a subsequent motion. However, the Court will assess the propriety of sanctions, as the necessity of the motion is not moot. *Ibid*.

Even on the very first RFA, the objections are so devoid of merit as to draw significant scrutiny. RFA ¶ 1 asks that Defendant "Admit that YOU are a "manufacturer" under Civil Code section

1791." Defendant responds with objections regarding legal conclusions, that the request is "vague and ambiguous", and under the arbitration rendering discovery premature. See Defendant's RFA Separate Statement, pg. 15:19-24. None of these objections have even an iota of merit. It strains credulity that Defendant (or their counsel) would be confused as to the classification of "manufacturer" under the Act. There is nothing vague or ambiguous about the statute at issue here, nor the RFA. Defendant objects as to each RFA that the RFAs request a "legal conclusion". This fundamentally misapprehends the purpose of RFAs. RFAs are properly targeted to various issues, including "application of law to fact". CCP, § 2033.010. Defendant's objection in this regard is meritless.

A great number of the RFAs undergo similar analysis. This conduct is repetitious throughout the responses, including substantively the same objections. Moreover, Defendant offered *no* substantive responses to RFAs. They are obligated to answer any RFA in substance absent valid objection. They have offered no valid objections.

Defendant's responses are indicative of discovery gamesmanship and abuse. The motion was necessary. Sanctions on the motion to compel RFAs "shall" be granted. The timely responses were deficient, and Defendant flatly refused to amend them when Plaintiff sent the meet and confer letter. Defendant's subsequent service of responses does not cure the deficiency. "Untimely compliance is not compliance." *Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 831. The request for sanctions as to the motion to compel RFAs is GRANTED. The Court will address sanctions amounts below.

C. Inspection Demands

Plaintiff moves to compel further responses to RPODs ¶ 1-31. Again, the motion has been rendered moot by subsequent responses. For the purposes of sanctions, Defendant has offered no substantive responses, and good cause for RPODs appears clear. Analysis turns to sufficiency of objections.

Turning to the objections, they are boilerplate and improper. As an example, Defendant asserts there is no basis to compel production of documents "signed by the Plaintiff, in connection with the SUBJECT VEHICLE", because it is "without time limitation". Defendant's Response to RPOD ¶ 6. Given that the vehicle was purchased on June 6, 2022 (Complaint ¶ 7), the limitation on this RPOD appears natural and consequential. Defendant's objection is clearly asserted without regard for the facts of the case, meeting the definition of boilerplate.

Defendant's objections that the RPODs are an undue burden, overbroad, harassing and unreasonable are unsupported by any showing by Defendant supporting these contentions. As such, these objections fail. *West Pico Furniture Co. of Los Angeles v. Superior Court In and For Los Angeles County* (1961) 56 Cal.2d 407, 417; *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 773. For RPODs, additional deficiencies apply, as objections for undue burden must include types or categories of information that are not reasonably accessible. CCP § 2031.210(d). Trial courts retain broad discretion and authority to manage discovery issues, including determining whether a discovery request causes undue burden. *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 773.

Defendant also asserts attorney client privilege and attorney work product. This bare assertion, without any support either in the discovery response or in opposition, is deeply insufficient. “If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.” CCP, § 2031.240 (c)(1). The Court, however, does not find this objection generally waived, as mere failure to provide a privilege log is not sufficient to waive attorney client privilege. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1131. To the degree Plaintiff has responsive, attorney client privileged documents, a privilege log must be produced. Failure to do so justifying each discovery request where the privilege is asserted will result in the objection thereon being overruled.

This appears particularly necessary when dealing with RPODs. Neither Plaintiff nor the Court can augur what documents are withheld subject to a meritless objection. Whether documents might otherwise have been withheld must be considered when considering the sufficiency of Defendant’s responses as a result. After the good cause for the request is met, Defendant has the opportunity to not produce the documents if they can justify their objection. Otherwise, further responses must be compelled. Assertion of objections which do not protect any documents are a performative practice adding to discovery gamesmanship. They do not serve any practical purpose except to give the illusion of documents not produced.

The objections are unsupported, and sanctions are required.

D. Form Interrogatories

Plaintiff moves to compel further responses to FIs[2] 4.1, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 13.1, 13.2, 14.1, 15.1, 17.1, 50.2, 50.3, 50.4, 50.5, and 50.6. Supplemental responses have been provided, rendering the substance moot. The Court need not proceed beyond assessing whether the motion was necessary, and therefore whether sanctions against Defendant are appropriate.

Defendant asserts essentially the same objections to each and every interrogatory. Defendant’s objections fare no better here than elsewhere. No substantive responses have been provided. The objection only responses rely on the same unpersuasive boilerplate prevarications.
Defendant repeatedly argues a lack of relevance in matters that are clearly within the scope of this case. Defendant overwhelmingly fails to show how Plaintiff’s requests for matters salient to the alleged defect is “not relevant”. See Separate Statement of Form Interrogatories, ¶ 50.1.
The Court notes that Defendant avers a number of seemingly equally boilerplate and meritless objections in the amended responses. While the Court declines to extend its current reach beyond

[2] The Court notes that Plaintiff’s separate statement raises significantly more interrogatories than those listed in the notice of motion. The Court declines to extend beyond those matters in the notice of motion. Defendant does not address this, and their separate statement addresses the matters in Plaintiff’s separate statement. The moot nature of the motion renders this generally unprejudicial.

the matters raised by Plaintiff's motion, Defendant is urged to carefully consider the viability of the objections it has asserted, and the continued reticence to provide substantive responses. The responses provided were insufficient, and sanctions are required.

E. Special Interrogatories

Plaintiff moves to compel further responses to SIs ¶ 1-67. Again, Defendant served objection only responses. Again, analysis turns to the sufficiency of the responses to assess the propriety of sanctions.

Defendant interposes largely the same objections to the SIs. Defendant also asserts "trade secret" objections without providing any specificity as to the documents withheld, or any interrogatory specific argument thereon. They are unsupported, and therefore unjustified.

The motion compelling further responses to special interrogatories was necessary. Accordingly, sanctions are mandatory.

IV. Sanctions

Plaintiff requests sanctions for Defendant's failure to produce code complaint responses. In so doing, they produce an attorney declaration which avers the reasonable rate, and the amount of time expended.

Defendant argues that sanctions are unwarranted because their position was substantially justified as required by the statute. As the Court has addressed exhaustively above, Defendant's objections are almost universally meritless. The motion was necessitated by Defendant's accordingly deficient responses. Defendant's subsequent service of responses does not cure the deficiency. "Untimely compliance is not compliance." *Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 831. The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party.

The Court looks to the notice of motion to determine the appropriate amounts. CCP § 2023.040. For the RFAs, Plaintiff requests $3,615, for RPODs, FIs and SIs they request $3,885. Each motion was subject to a $60 filing fee. Counsel requests 9 hours per motion, including 2 prospective hours for reviewing the opposition and reply, and 2.5 hours to prepare for the hearing and appear. The Court may only impose sanctions for costs "incurred" as a result of discovery abuse. CCP § 2023.030. "Here, the use of the past tense—'incurred'—in section 2023.030 suggests the individual seeking sanctions must have already become liable for those expenses before those expenses can be awarded as sanctions." *Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th 1548, 1563. The time to prepare is both excessive and not yet actual, as no hearing has yet occurred. Accordingly, it is not properly included at this juncture.

Defendant filed largely duplicative oppositions to each of the motions. Plaintiff accordingly filed an "omnibus" reply. 2 hours per motion is excessive as a result. The reasonable amount of time is 0.7 hours per motion. This brings the total reasonable time per motion to 5.2 hours.

Counsel also requests $425 per hour. Counsel provides no explanation of their qualification and appears to be relatively new to the practice. The rate of $425 per hour appears excessive to this locality for someone of Counsel's apparent experience. The appropriate rate is $375 per hour. This results in sanctions per motion of $1,950 in attorney's fees, plus $60 per motion in filing fees. The total sanctions amount is $2,010 per motion.

In their memoranda, Plaintiff requests the sanctions be imposed against both Defendant and their counsel. While Defendant has interposed numerous boilerplate, unsuccessful objections, or prevarication, and Counsel prepared these defenses, the notice of motion only states that sanctions are sought against Defendant. A request for sanctions must include each party against whom sanctions are sought in the notice of motion. CCP § 2023.040. Accordingly, the Court cannot grant sanctions against counsel.

Plaintiff's request for sanctions against Defendant on their motions to compel further responses to FIs, SIs, RFAs, and RPODs is GRANTED in the total amount of $8,040.00.

V. <u>Conclusion</u>

Plaintiff's motions to compel further responses are **MOOT**. Plaintiff's requests for sanctions are **GRANTED** and Defendant shall pay $8,040 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.*****