1. MATTER OF ARON M. 22CV0210

   OSC Re: Name Change.

   TENTATIVE RULING # 1: THE PETITION IS GRANTED.

2. MATTER OF MALDONADO 22CV0048

OSC Re: Name Change.

TENTATIVE RULING # 2: THE PETITION IS GRANTED.

3. MATTER OF BRAY 22CV0047

OSC Re: Name Change.

TENTATIVE RULING # 3: THE PETITION IS GRANTED.

4. MATTER OF THIBODEAU 21CV0239

   OSC Re: Name Change.

   TENTATIVE RULING # 4: THE PETITION IS GRANTED.

5. MATTER OF CHAPMAN 22CV0202

OSC Re: Name Change.

TENTATIVE RULING # 5: THE PETITION IS GRANTED.

6. MATTER OF WHEELER 22CV0304

OSC Re: Name Change.

TENTATIVE RULING # 6: THE PETITION IS GRANTED.

7. DEWATER v. HOSOPO CORP. PC-20190143

Motion to Lift Discovery Stay

Plaintiff filed an action against defendant Wilson and others for battery and negligent hiring, supervision, or retention. Defendant Wilson moved for a protective order to stay all discovery in this case and to stay the setting of the trial date pending the final disposition of felony criminal charges being prosecuted against him in People v. Wilson, case number P18CRF0458-1, which arises from the same incident that is the subject of this civil action. Defendant Wilson contended that even if he does not offer any direct evidence in the case, he would be forced to examine and conduct discovery that will necessarily disclose his strategy and assertions that could potentially be used against him in the criminal case; and if the motion was denied, it would unfairly and severely prejudice his ability to defend himself in the civil case and jeopardize his rights in the criminal case. He further argued the entire action must be stayed, because the prosecutor may obtain the civil discovery from plaintiff to use in prosecuting his case.

At the hearing on September 20, 2019, the court granted the motion in part and denied the motion in part. The court ordered that discovery propounded upon defendant Wilson shall be stayed until the jury enters its verdict after trial in the related criminal case. The formal order was entered on October 15, 2019.

The court stated in the ruling: "Defendant Wilson is facing criminal prosecution for the conduct that allegedly supports the civil action against him. The preliminary hearing in the criminal case is set for September 26, 2019. Defendant's civil defense counsel declares that she has been informed by defendant's criminal defense counsel that he estimates the felony criminal case could proceed to trial as early as November 2019, but no later than February

2020. (Reply Declaration of Defense Counsel Laura Simpson, paragraph 5.) ¶ Allowing discovery directed at defendant Wilson to proceed in this case places that defendant in the unenviable position of invoking the right and face penalties in the civil litigation or incriminating himself at this early stage of the civil case. However, the court is not convinced that defendant Wilson should be granted an indefinite stay of discovery, because an unlimited stay until the criminal case is final after appeals that may take years to conclude would severely prejudice the plaintiff's interest in proceeding expeditiously with this litigation or any aspect of it. It appears that the appropriate remedy under the circumstances presented where the criminal trial will presumable take place within five months at latest is to stay further discovery proceedings directed against defendant for a limited period to allow for the trial of the criminal case."

Plaintiff previously moved for the court to reconsider and to lift the stay to allow defendant Wilson to be compelled to answer discovery, or invoke his right to remain silent, thereby leaving it to defendant Wilson to decide whether he exposes himself to civil liability or self-incrimination in crimes. Plaintiff essentially contended: it is taking too long for the criminal trial to take place and the criminal case has already missed its anticipated initial trial date of February 2021; the pandemic is not the reason for the delay; plaintiff has suffered severe injuries as a result of defendant Wilson's alleged conduct and Hospoo Corp d.b.a. Horizon Solar Power has refused a June 16, 2020 offer to compromise on the ground that it has not had sufficient time to assess liability issues due in part to the inability to depose defendant Wilson due to his pending criminal case; since the date that the criminal case was filed against defendant Wilson related to the subject incident, defendant Wilson has had many criminal charges filed against him in two other cases; continuing the stay for an unlimited time until all criminal cases have been tried severely prejudices plaintiff; and plaintiff should not be stopped

from conducting discovery in this case due to the fact that defendant Wilson cannot stop allegedly committing felony crimes.

The motion for reconsideration was opposed and the matter heard on March 19, 2021. The court took the matter under submission after oral argument. On March 22, 2021, the court denied the motion for reconsideration. The court also set a review hearing re: Stay of Discovery for 8:30 a.m. on Friday, March 18, 2022, in Department Nine. Plaintiffs and the other defendants were to file and serve by February 14, 2022 any points and authorities and evidence they wished to be considered by the court in reviewing whether to vacate the discovery stay after March 18, 2022; defendant Wilson was to file and serve any opposition/response to the documents filed by plaintiff and the other defendants not later than March 7, 2022; and plaintiffs and the other defendants were to file and serve any reply to defendant Wilson's opposition/response not later than March 11, 2022.

On February 14, 2022, defendant Aerotek, Inc. filed a joinder in plaintiff Dewater's motion for reconsideration. The court is unable to find in the court's file any points and authorities from plaintiff to support further reconsideration of the order staying discovery proceedings. Defendant Wilson filed his opposition to reconsideration on March 7, 2022. At the time this ruling was prepared there was no reply in the court's file and the time to file the reply had expired.

Defendant Aerotek argues in its joinder: discovery against each party, except defendant Wilson, has been completed; the case is three years old; the discovery stay should be lifted; and, at the very least, defendant Aeroteck, Inc. should be allowed to conduct discovery concerning plaintiff's claims brought against defendant Aeroteck, Inc., such as whether Aeroteck is vicariously liable to plaintiff or was negligent in employing defendant Wilson.

Defendant Wilson opposes lifting the stay on the following grounds: plaintiff and defendant Aeroteck have not demonstrated compelling circumstances exist to warrant lifting the stay; the stay should continue in order to preserve defendant Wilson's constitutional right against self-incrimination; defendant's criminal case is set to go to trial in the Placer County Superior Court on May 2, 2022 and continuing the stay would not put the case at risk of violating the five year statute to bring the matter to trial as that limitation expires in March 2024; there have been recent law and motion proceedings regarding discovery disputes, which is evidence that discovery regarding defendant Wilson is not the last piece of discovery to complete in order to prepare for trial; numerous depositions remain to be taken, such as medical providers; only three depositions have been taking so far in this litigation; since plaintiff only seeks to recover monetary damages, fairness dictates that the stay of proceedings remain in place; defendant Wilson's 5th amendment rights are implicated and he will suffer burdens should the stay be lifted as defendant Wilson would be forced to choose between refusing to respond on the ground of his 5th amendment right to remain silent, or waiving his privilege against self-incrimination, thereby implicating itself in the pending criminal case; the stay would be in the best interests of judicial efficiency as it would eliminate 5th amendment objections to discovery after the criminal case is resolved and would facilitate resolution of the criminal case; it is in the public interest to have the stay remain in effect as the public has an interest in ensuring that the criminal process is not subverted by ongoing civil cases; the court has the inherent power to continue the stay of discovery in order to protect defendant's 5th amendment right; and a partial lift of the stay is not warranted under the circumstances, because plaintiff can certainly obtain evidence from defendant Aeroteck, Inc. by discovery propounded upon Aeroteck to support his claims that Aeroteck is responsible for defendant Wilson's conduct and that defendant Aeroteck negligently employed defendant Wilson.

5th Amendment Constitutional Right Against Compelled Self-Incrimination

The appellate court in Pacers, Inc. v. Superior Court (1984) 162 Cal.App.3d 686 found that a stay of discovery in civil proceedings is appropriate where a civil defendant's silence is constitutionally guaranteed. The appellate court stated: "Where, as here, a defendant's silence is constitutionally guaranteed, the court should weigh the parties' competing interests with a view toward accommodating the interests of both parties, if possible. An order staying discovery until expiration of the criminal statute of limitations would allow real parties to prepare their lawsuit while alleviating petitioners' difficult choice between defending either the civil or criminal case. (See *United States v. Kordel*, 397 U.S. 1, 9, 90 S.Ct. 763, 768, 25 L.Ed.2d 1.) ¶ This remedy is in accord with federal practice where it has been consistently held that when both civil and criminal proceedings arise out of the same or related transactions, an objecting party is generally entitled to a stay of discovery in the civil action until disposition of the criminal matter. (See, e.g., *Campbell v. Eastland* (5th Cir.1962) 307 F.2d 478, cert. den. 371 U.S. 955, 83 S.Ct. 502, 9 L.Ed.2d 502; *Perry v. McGuire* (S.D.N.Y.1964), 36 F.R.D. 272; *Paul Harrigan & Sons, Inc. v. Enterprise Animal Oil Co., Inc.* (E.D.Pa.1953) 14 F.R.D. 333; *National Discount Corp. v. Holzbaugh* (E.D.Mich.1952) 13 F.R.D. 236.) The rationale of the federal cases is based on Fifth Amendment principles as well as the inherent unfairness of compelling disclosure of a criminal defendant's evidence and defenses before trial. Under these circumstances, the prosecution should not be able to obtain, through the medium of the civil proceedings, information to which it was not entitled under the criminal discovery rules. (See *People v. Collie*, 30 Cal.3d 43, 177 Cal.Rptr. 458, 634 P.2d 534.)" (Pacers, Inc. v. Superior Court (1984) 162 Cal.App.3d 686, 690.)

"Even where the civil discovery process is directed against an individual defendant who is also a defendant in a related criminal case, the Ninth Circuit has held that "[t]he Constitution

does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings. [Citations.]" (*Keating v. Office of Thrift Supervision* (9th Cir.1995) 45 F.3d 322, 324.) *Keating* observed that the question of whether a civil proceeding should be stayed pending the outcome of a parallel criminal proceeding often rests not on the constitutional issue of self-incrimination, but on the issue of abuse of discretion. " 'In the absence of substantial prejudice to the rights of the parties involved, [simultaneous] parallel [civil and criminal] proceedings are unobjectionable under our jurisprudence.' [Citation.] 'Nevertheless, a court may decide in its discretion to stay civil proceedings ... "when the interests of justice seem [ ] to require such action." ' [Citations.]" (*Ibid*.) ¶ *Keating* further stated: "The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made 'in light of the particular circumstances and competing interests involved in the case.' [Citation.] This means the decisionmaker should consider 'the extent to which the defendant's fifth amendment rights are implicated.' [Citation.] In addition, the decisionmaker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation. [Citation.]" (45 F.3d at pp. 324–325.) ¶ Concluding that the administrative law judge's refusal to stay the civil proceeding was not an abuse of discretion, *Keating,* citing *Baxter v. Palmigiano* (1976) 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L.Ed.2d 810, held that "[a] defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege. Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding,

even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding." (*Keating v. Office of Thrift Supervision, supra,* 45 F.3d at p. 326.)" (Avant! Corp. v. Superior Court (2000) 79 Cal.App.4th 876, 885–886.)

However, appellate authority recognizes that the court must also consider the plaintiff's interest to an expeditious and fair resolution of their civil claims without being subjected to unwarranted surprise and the court's interest courts in fairly and expeditiously disposing of civil cases, and in efficiently utilizing judicial resources. The appellate court in Fuller v. Superior Court (2001) 87 Cal.App.4th 299 stated: "…[A] civil defendant does not have the absolute right to invoke the privilege against self-incrimination. (*Alvarez v. Sanchez*, supra, 158 Cal.App.3d at p. 712, 204 Cal.Rptr. 864.) A party or witness in a civil proceeding "may be required either to waive the privilege or accept the civil consequences of silence if he or she does exercise it. [Citations.]" (Ibid.) Courts recognize the dilemma faced by a defendant who must choose between defending the civil litigation by providing testimony that may be incriminating on the one hand and losing the case by asserting the constitutional right and remaining silent, on the other hand. (*Avant! Corp. v. Superior Court*, supra, 79 Cal.App.4th at p. 882, 94 Cal.Rptr.2d 505.) ¶ At the same time, courts must also consider the interests of the plaintiff in civil litigation where the defendant is exposed to parallel criminal prosecution. Plaintiffs are entitled to an expeditious and fair resolution of their civil claims without being subjected to unwarranted surprise. Among the myriad purposes of the civil discovery statutes is to safeguard against surprise and gamesmanship, and to prevent delay. (*Williams v. Travelers Ins. Co.* (1975) 49 Cal.App.3d 805, 810, 123 Cal.Rptr. 83.) It would be manifestly unfair to petitioners if the security guards were to invoke their privilege against self-incrimination and later elect to waive that privilege and testify at trial about the same matters. "A litigant cannot be permitted to blow

hot and cold in this manner. [Citations.]" (*A & M Records, Inc. v. Heilman*, supra, 75 Cal.App.3d at p. 566, 142 Cal.Rptr. 390.) " ' "[T]he fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both civil and criminal litigation...." [Citations.]' " (*Avant! Corp. v. Superior Court*, supra, 79 Cal.App.4th at p. 882, 94 Cal.Rptr.2d 505.) ¶ Added to the mix, of course, is the interest of the courts in fairly and expeditiously disposing of civil cases, and in efficiently utilizing judicial resources. (Gov.Code, § 68607; Code Civ. Proc., § 128, subd. (a); Cal.Stds. Jud. Admin., § 2.1; Keating v. Office of Thrift Supervision (9th Cir.1995) 45 F.3d 322, 324-325 [also lists, in addition to interests discussed supra, those of (1) people not party to the litigation and (2) the public in the pending civil and criminal cases], cert. den. (1995) 516 U.S. 827, 116 S.Ct. 94, 133 L.Ed.2d 49.) Staying civil discovery to await the outcome of a related criminal case might benefit the litigants and does not implicate constitutional issues. (*Avant! Corp. v. Superior Court*, supra, 79 Cal.App.4th at p. 882, 94 Cal.Rptr.2d 505.) However, courts are guided by the strong principle that any elapsed time other than that reasonably required for pleadings and discovery "is unacceptable and should be eliminated." (Cal.Stds.Jud.Admin., § 2.) Courts must control the pace of litigation, reduce delay, and maintain a current docket so as to enable the just, expeditious, and efficient resolution of cases. (Gov.Code, § 68607; Cal. Stds. Jud. Admin., § 2.) [Footnote omitted.]" (Fuller v. Superior Court (2001) 87 Cal.App.4th 299, 305-307.)

"Courts faced with a civil defendant who is exposed to a related criminal prosecution have responded with various procedural solutions designed to fairly balance the interests of the parties and the judicial system. Accommodation of the various interests, however, is usually made to a defendant in a civil action "from the standpoint of fairness, not from any constitutional right. [Citation.]" (*Blackburn v. Superior Court*, supra, 21 Cal.App.4th at p. 425,

27 Cal.Rptr.2d 204.) Courts that are confronted with a civil defendant who is exposed to criminal prosecution arising from the same facts "weigh the parties' competing interests with a view toward accommodating the interests of both parties, if possible." (*Pacers, Inc. v. Superior Court*, supra, 162 Cal.App.3d at p. 690, 208 Cal.Rptr. 743.) Courts have broad discretion in controlling the course of discovery. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431, 79 Cal.Rptr.2d 62.) Hence, in a discovery dispute, such as this one, the trial court must exercise its discretion in assessing and balancing "the nature and substantiality of the injustices claimed" on all sides. (*Avant! Corp. v. Superior Court*, supra, at p. 882, 94 Cal.Rptr.2d 505.) ¶ Historically, courts have devised a number of procedures designed to accommodate the specific circumstances of the case. One accommodation is to stay the civil proceeding until disposition of the related criminal prosecution. (*Avant! Corp. v. Superior Court*, supra, 79 Cal.App.4th at p. 882, 94 Cal.Rptr.2d 505, citing *People v. Coleman* (1975) 13 Cal.3d 867, 885, 120 Cal.Rptr. 384, 533 P.2d 1024; *Pacers, Inc. v. Superior Court*, supra, 162 Cal.App.3d at pp. 689-690, 208 Cal.Rptr. 743 [directing trial court to stay civil proceeding until criminal statute of limitations runs] .) Another possibility is to allow the civil defendant to invoke the privilege against self-incrimination, even if doing so may limit the defendant's ability to put on a defense. (*Avant! Corp. v. Superior Court*, supra, at p. 882, 94 Cal.Rptr.2d 505, citing People v. Coleman, supra, at p. 886, 120 Cal.Rptr. 384, 533 P.2d 1024; Keating v. Office of Thrift Supervision, supra, 45 F.3d at p. 326 [refusal to stay proceedings not abuse of discretion].) Other accommodations have included conferring an immunity on the party invoking the privilege (see *Blackburn v. Superior Court*, supra, 21 Cal.App.4th at pp. 431-432, 27 Cal.Rptr.2d 204 [discussing procedure for obtaining immunity]), or precluding a litigant who claims the constitutional privilege against self-incrimination in discovery from waiving the privilege and testifying at trial to matters upon which the privilege had been asserted. (*A & M*

Records, Inc. v. Heilman, supra, 75 Cal.App.3d at p. 566, 142 Cal.Rptr. 390 [circumscribed testimony preclusion not abuse of discretion].) Each of these procedural tools is devised based on the circumstances of the particular case. " '[T]he alleviation of tension between constitutional rights has been treated as within the province of a court's discretion in seeking to assure the sound administration of justice.' " (*Avant! Corp. v. Superior Court*, supra, at p. 882, 94 Cal.Rptr.2d 505, quoting from *People v. Coleman*, supra, at p. 885, 120 Cal.Rptr. 384, 533 P.2d 1024.)" (Emphasis added.) (Fuller v. Superior Court (2001) 87 Cal.App.4th 299, 307-308.)

With the above-cited principles in mind, the court will rule on the motion.

The following hearings are set in the criminal case: a trial confirming conference was set for March 30, 2022; a trial assignment – jury trial is set for April 29, 2022; and the criminal jury trial is set to commence in a little over one month on May 2, 2022.

Under the totality of the circumstances presented, the balance of defendant Wilson's 5th Amendment right not to be compelled to incriminate himself in the alleged criminal act that is the subject of this civil litigation against the plaintiff's right to discover information from defendant Wilson does not yet tip in favor of removing the stay of discovery previously ordered. The motion for reconsideration is denied.

The criminal jury trial is set to commence in about one month. The court sets a review hearing re: Stay of Discovery for 8:30 a.m. on Friday, November 4, 2022 in Department Nine. Plaintiffs and the other defendants are to file and serve by October 7, 2022 any points and authorities and evidence they wish to be considered by the court in reviewing whether to vacate the discovery stay; defendant Wilson is to file and serve any opposition/response to the documents filed by plaintiff and the other defendants not later than October 21, 2022; and plaintiffs and the other defendants are to file and serve any reply to defendant Wilson's opposition/response not later than October 28, 2022.

TENTATIVE RULING # 7: THE MOTION FOR RECONSIDERATION OF THE DISCOVERY STAY IS DENIED. THE COURT SETS A REVIEW HEARING RE: STAY OF DISCOVERY FOR 8:30 A.M. ON FRIDAY, NOVEMBER 4, 2022, IN DEPARTMENT NINE. PLAINTIFFS AND THE OTHER DEFENDANTS ARE TO FILE AND SERVE BY OCTOBER 7, 2022 ANY POINTS AND AUTHORITIES AND EVIDENCE THEY WISH TO BE CONSIDERED BY THE COURT IN REVIEWING WHETHER TO VACATE THE DISCOVERY STAY; DEFENDANT WILSON IS TO FILE AND SERVE ANY OPPOSITION/RESPONSE TO THE DOCUMENTS FILED BY PLAINTIFF AND THE OTHER DEFENDANTS NOT LATER THAN OCTOBER 21, 2022; AND PLAINTIFFS AND THE OTHER DEFENDANTS ARE TO FILE AND SERVE ANY REPLY TO DEFENDANT WILSON'S OPPOSITION/RESPONSE NOT LATER THAN OCTOBER 28, 2022.

NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE (vCourt) OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY

AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. AUGER v. PACIFIC COACHWORKS PC-20210031

Defendant RF Motorsports' Motion to Compel Further Responses to Form Interrogatories, Requests for Production, and Requests for Admission.

Defendant RF Motorsports moves to compel further responses to form interrogatories, numbers 9.1, 9.2, 12.1, 12.4, and 17.1; requests for admission, numbers 4-7 and 10; and requests for production, numbers 1 and 3-14. Defendant RF Motorsports also requests an award of $3,635 in monetary sanctions.

Plaintiff opposes the motion on the following grounds: the motion should be denied, because the meet and confer activities were insufficient; compelling further responses to the requests for production in light of the case history is an utter abuse of the discovery process; plaintiff has produced all discovery responses and documents sought to be produced were provided to defendant; there are no further documents to produce; all of plaintiff's responses were wholly adequate and code compliant; plaintiff's objections were not improper and were reserved notwithstanding plaintiff's substantive responses; and discovery sanctions are inappropriate, because any alleged conduct was not willful.

Meet and Confer Requirement

A motion to compel further responses to requests for production shall be accompanied by a meet and confer declaration under Code of Civil Procedure, § 2016.040. (Code of Civil Procedure, § 2031.310(b)(2).)

Meet and confer declarations are required for motions to compel further responses to discovery, to compel further production of documents and things, and to compel a deponent to attend a duly noticed motion or answer questions during the deposition. (See Code of Civil

Procedure, §§ 2025.450(a), 2025.450(b), 2030.300(a), 2030.300(b), 2031.310(a), and 2030.310(b).)

It is a misuse of discovery to fail to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made. (Code of Civil Procedure, § 2023.010(i).) "Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (Code of Civil Procedure, § 2023.020.)

"It is a central precept to the Civil Discovery Act of 1986 (Code Civ.Proc., § 2016 et seq.) (hereinafter "Discovery Act") that civil discovery be essentially self-executing. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1111, 1 Cal.Rptr.2d 222.) The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o); *DeBlase v. Superior Court* (1996) 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229.) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. (*DeBlase v. Superior Court*, supra, 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229; see also *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 Cal.App.3d 326, 330, 175 Cal.Rptr. 888.)" (Townsend v. Superior Court (1998) 61 Cal.App.4th 1431, 1434-1435.)

"A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

The court finds that under the circumstances presented in the declarations submitted in support of and opposition to the motion, the attempt at informal resolution is adequate and the meet and confer requirement was met.

Form Interrogatories

If the propounding party deems that the response to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents is unwarranted or the specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. (Code of Civil Procedure, § 2030.300(a)(1).)

"(a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: ¶ (1) An answer containing the information sought to be discovered. ¶ (2) An exercise of the party's option to produce writings. ¶ (3) An objection to the particular interrogatory. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. ¶ (c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated." (Code of Civil Procedure, § 2030.210.)

"(a) Each answer in response shall be as complete and straightforward as the information reasonably available to the responding party permits. ¶ (b) If the interrogatory cannot be answered completely, it shall be answered to the extent possible. ¶ (c) 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." (Code of Civil Procedure, § 2030.220.)

- Form Interrogatory Number 9.1

Form interrogatory number 9.1 asks plaintiff to state any other damages he attributes to the incident and for each item of damage to state the nature, date it occurred, the amount, and the name, address, and telephone number of each person to whom an obligation was incurred.

The term "incident" is specifically defined in the form interrogatories propounded as: "The alleged failure to resolve the "defects and nonconformities" alleged in your Complaint'."

Plaintiff objected that the interrogatory is overly broad, vague, and ambiguous as there is no single incident, and calls for premature expert disclosure, and/or work product information.

Plaintiff argues in opposition that the damages at the time of purchase and thereafter are readily available and calculable by reference to the statutes if you have the sales contract in your possession; the damages are clearly articulated in the statutes; and defendant has possession of the sales agreement and purchase price of the unit.

The interrogatory is not overly broad, vague, and ambiguous and the term "incident" is sufficiently defined as to specify the incidents defendant is seeking information about. The overly broad, vague, and ambiguous objections are overruled.

The interrogatory does not seek disclosure of the plaintiff's expert witness and only seeks disclosure of facts related to damages plaintiff attributes to the incident. The premature disclosure of expert witness objection is overruled.

"It is the policy of the state to do both of the following: ¶ (a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases. ¶ (b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts." (Code of Civil Procedure, § 2018.020.)

The appellate court in Dowden v. Superior Court (1999) 73 Cal.App.4th 126 explained the purpose and intent of the work-product doctrine as follows: "Section 2018's stated purpose and the underlying reasons for its creation emphasize the need to "limit[ ] discovery so that 'the stupid or lazy practitioner may not take undue advantage of his adversary's efforts....' " (Pruitt, *Lawyers' Work Product, supra,* 37 State Bar J. at pp. 240–241.)" (Dowden v. Superior Court (1999) 73 Cal.App.4th 126, 133.)

"In determining whether particular matter is privileged as work product, the reviewing court should be guided by the underlying policies of section 2018. Specifically, the policy of promoting diligence in preparing one's own case, rather than depending on an adversary's efforts. A practical guide for ascertaining its scope is found in *Mack v. Superior Court, supra,* 259 Cal.App.2d at pp. 10–11, 66 Cal.Rptr. 280 and *Fellows v. Superior Court, supra,* 108 Cal.App.3d at pp. 69–70, 166 Cal.Rptr. 274. In *Mack,* the court indicated that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial, are protected as work product. (*Mack v. Superior Court, supra,* 259 Cal.App.2d at pp. 10–11, 66 Cal.Rptr. 280; see also *Fellows v. Superior Court, supra,* 108 Cal.App.3d at pp. 69–70, 166 Cal.Rptr. 274.)" (Dowden v. Superior Court (1999) 73 Cal.App.4th 126, 135.)

"The person claiming protection under the attorney work product doctrine bears the burden of proving the preliminary facts to show the doctrine applies. (*Mize v. Atchison, T. & S.F. Ry. Co.* (1975) 46 Cal.App.3d 436, 447, 120 Cal.Rptr. 787.)" (League of California Cities v. Superior Court (2015) 241 Cal.App.4th 976, 993.)

Plaintiff's complaint seeks an award of damages, among other things. Form interrogatory number 9.1 seeks basic information as to what damages plaintiff claims against defendant and information concerning each person to whom an obligation was incurred.

There are no preliminary facts that indicate that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial is being sought or that the interrogatory is depending on an adversary's efforts in litigation preparation. The interrogatory merely seeks the basic facts that support plaintiff's claims of damages.

The work product objection is overruled.

Plaintiff further responded that without waiving the objections, plaintiff is entitled to all damages and remedies available under the Song-Beverly Consumer Warranty Act and consumer Legal Remedies Act and incidental and consequential damages that continue to accrue.

This response is not as complete and straightforward as the information reasonably available to the responding party permits.

The motion to compel a further response to form interrogatory number 9.1 without objections is granted.

- Form Interrogatory Number 9.2

Form interrogatory number 9.2 requests information about documents that support the existence or amount of any damages claimed in interrogatory number 9.1 and, if so, to describe each document and state the name, address, and phone number of the person who has each document.

Plaintiff only responded with the objection that the request seeks documents that are equally available to defendant, as the documents are in its own internal documents. Plaintiff cites Pantzalas v. Superior Court of Los Angeles County (1969) 272 Cal.App.2d 499, 503 in support of the assertion of this objection.

Plaintiff argues in opposition: defendant is requesting further information of plaintiff's restitution damages; plaintiff produced all documents requested in the requests for production, including documents supporting plaintiff's claim for damages; and since defendants sold the unit to plaintiffs, they are also in possession of all the documents plaintiff produced that support the claim for damages, including the sales agreement.

"Where the information sought is equally available to the propounder of the interrogatory, the burden and expense of any research which may be required should be borne by the party seeking the information. (*Bunnell v. Superior Court* etc., 254 Cal.App.2d 720, 723—724, 62 Cal.Rptr. 458.)" (Pantzalas v. Superior Court of Los Angeles County (1969) 272 Cal.App.2d 499, 503.)

The response to form interrogatory number 9.1 concerning what specific damages plaintiff is claiming is so general, vague, and ambiguous as to leave defendant to guess what damages are claimed and what information in its own records need to be researched. In fact, that response concerning the damages being claimed is so general, vague, and ambiguous that the equally available objection has not been substantiated by the facts before the court. The objection is overruled. The motion to compel a further response to interrogatory number 9.2 without objections is granted.

- Form Interrogatory Number 12.1

Form interrogatory number 12.1 seeks the name, address, and phone number of everyone who witnessed the incident or the events occurring immediately before or after the incident; who made a statement at the scene of the incident; who heard any statements about the incident by any individual at the scene; and who the plaintiff or anyone acting on plaintiff's behalf claim has knowledge of the incident, except for expert witnesses.

Plaintiff objected that the interrogatory is overly broad, vague, and ambiguous as there is no single incident, calls for premature expert disclosure, and/or work product information.

Plaintiff argues in opposition that the response is sufficient with proper objections and a substantive response.

For the same reasons stated in the ruling on form interrogatory number 9.1, the overly broad, vague, and ambiguous, and premature disclosure of expert witness objections are overruled.

Form interrogatory number 12.1 only seeks the identities of percipient witnesses, witnesses who were at the scene immediately before or after the accident, those who heard the statements by percipient witnesses to an accident, and those who might have personal knowledge of the accident itself. It expressly excludes expert witnesses.

There are no preliminary facts that indicate that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial is being sought or that the interrogatory is depending on an adversary's efforts in litigation preparation.

Plaintiff further responded without waiving the objections: None.

The motion to compel a further response to form interrogatory number 12.1 without objection is granted.

- Form Interrogatory Number 12.4

Form interrogatory number 12.4 seeks information about photos, films, or videotapes depicting any place, object, or individual concerning the incident or plaintiff's injuries.

Plaintiff objected to the interrogatory as it requests information subject to the attorney-client privilege and work product.

Plaintiff then responded subject to the objections and without waiving the objections that there are 43 photos of damage to the trailer, that plaintiff Dustin Auger took the photos, and he has possession of the photos.

Plaintiff concedes in the opposition that form interrogatory number 12.4 seeks basic information, which can easily be stated. (Plaintiff's Opposition, page 7, line 22-23.) Plaintiff then argues that plaintiff is permitted to preserve viable objections and plaintiff's response is sufficient as plaintiff substantively responded to the request.

"The attorney-client privilege is found in Evidence Code section 954 and generally permits the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer....' The privilege covers all forms of communication, including transmittal of documents. (*Wellpoint Health Networks, Inc. v. Superior Court*, supra, 59 Cal.App.4th 110, 119, 68 Cal.Rptr.2d 844.) Nevertheless, the privilege does not cover every document turned over to an attorney by the client. '[D]ocuments prepared independently by a party, including witness statements, do not become privileged communications or work product merely because they are turned over to counsel.' (Ibid.) The person claiming the attorney-client privilege must establish that the evidence sought to be protected falls within the statutory terms. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 397-398, 99 Cal.Rptr.2d 646.)" (Green & Shinee v. Superior Court (2001) 88 Cal.App.4th 532, 536-537.)

"" '[A] communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney. [Citation.]' [Citation.]" (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal.App.4th 1256, 1265, 8 Cal.Rptr.2d 467.) " ' "[A] litigant cannot silence a witness by having him reveal his knowledge to the litigant's attorney." ' [Citations.]" (*Jasper Construction, Inc. v. Foothill Junior College District* (1979) 91

Cal.App.3d 1, 17, 153 Cal.Rptr. 767.)" (DeLuca v. State Fish Co., Inc. (2013) 217 Cal.App.4th 671, 687.)

The existence of documents and things containing privileged information is not privileged and if interrogatories ask for the identification of such documents and things, an adequate response to such interrogatories must include a description of the document or thing. (Hernandez v. Superior Court (2003) 112 Cal.App.4th 285, 293.)

"For the guidance of the parties and the trial court in the event of further discovery litigation, we note that a party has "no right to refuse to identify documents in response to interrogatories, even if [it] may properly refuse to produce them later, based upon a claim of privilege. [Citation.]" (*Hernandez v. Superior Court, supra,* 112 Cal.App.4th at p. 294, 4 Cal.Rptr.3d 883.)" (Best Products, Inc. v. Superior Court (2004) 119 Cal.App.4th 1181, 1190.)

The attorney-client privilege objection is overruled.

"The person claiming protection under the attorney work product doctrine bears the burden of proving the preliminary facts to show the doctrine applies. (*Mize v. Atchison, T. & S.F. Ry. Co.* (1975) 46 Cal.App.3d 436, 447, 120 Cal.Rptr. 787.)" (League of California Cities v. Superior Court (2015) 241 Cal.App.4th 976, 993.)

Form interrogatory number 12.4 only seeks plaintiff to identify photos, films, or videotapes depicting any place, object, or individual concerning the incident or plaintiff's injuries, the individual taking the photos, films and or videos, and the contact information of the persons who have those photos, films, and videos.

There are no preliminary facts that indicate that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial is being sought or that the interrogatory is

depending on an adversary's efforts in litigation preparation. Plaintiff merely asserts a conclusion that the request is seeking privileged information.

As plaintiff concedes in the opposition, form interrogatory number 12.4 seeks basic information, which can easily be stated.

The motion to compel a further response to form interrogatory number 12.4 without objection is granted.

- Form Interrogatory Number 17.1

Form interrogatory number 17.1 requests plaintiff to provide the following information for each request for admission that was not a unqualified admission: the number of the request; all facts upon which the response was based; the names, addresses, and phone numbers of all persons who have knowledge of those facts; and the identity of all documents and other tangible things that support plaintiff's response and state the name, addresses and phone numbers of the persons who has each document or thing.

Plaintiff asserted the following objections to form interrogatory number 17.1: the term "unqualified admissions" is overbroad; the interrogatory unequivocally seeks the legal reasoning or theory behind the contention and such information is not discoverable; the facts upon which the denials of the request for admission are premised are protected by the attorney-client privilege and work product; the interrogatory seeks to tie down the responding party and prohibit him from producing additional or newly discovered facts at trial; the interrogatory improperly contains subparts, or a compound, conjunctive, or disjunctive question that violates Code of Civil Procedure, § 2030.060(f); and the information is equally available to defendant and plaintiff is not required to bear the expenses in preparing the defendant's case.

Subject to and without waiving the objections, plaintiff explained the facts underlying the denials of all 12 requests for admission.

Plaintiff argues in opposition: plaintiff's explaining of his denials of requests for admission numbers 4-7 are sufficient; those requests for admission relate to two alleged defects in the unit involving the freshwater tank and floor warping and whether plaintiff informed defendant of the alleged defects on or before November 23, 2020 and whether the unit was presented for repairs for the alleged defects on or before November 23, 2020; the requests are cumulative as plaintiff informed defendant of the two alleged defects during the warranty period by taking the unit for repair of the defects; the fact that defendants did not keep or maintain the records should not come to plaintiff's detriment concerning when the plaintiff complained to defendant about the defects; and plaintiff's denial of request for admission number 10 related to whether plaintiff caused the freshwater tank in the unit to be overfilled between November 22, 2019 and January 22, 2021 is adequately supported by the facts detailed in plaintiff's response to form interrogatory number 17.1.

The term "unqualified admission" is not overbroad. That objection is overruled.

Citing Singer v. Superior Court of Contra Costa County (1960) 54 Cal.2d 318, 325, plaintiff objected that this interrogatory seeks to tie down the responding party and prohibit him from producing additional or newly discovered facts at trial. That case does not hold that an interrogatory seeking an opposing party to set forth the facts that support the opposing party's denial of requests for admission improperly ties down the responding party and prohibits him from producing additional or newly discovered facts at trial.

"This brings us to defendant's fourth and main contention, which is that it should not be required to limit itself by stating all of the facts upon which it may subsequently rely. It has been suggested than an interrogatory which seeks to 'tie a party down in such a way that he may be deprived of his substantive rights' is improper (James, The Revival of Bills of Particulars Under the Federal Rules (1958) 71 Harv.L.Rev.1473, 1481). With this general observation we agree.

Certainly, it should not be the law that interrogatories can be used as a trap so as to limit the person answering to the facts then known and to prevent him from producing subsequently discovered facts. If it were the law that the answers to these interrogatories would limit the defendant at the time of trial to the facts set forth in its answers, then there would be much merit in the contention that such answers should not now be compelled. But that is not the law. The answers to these interrogatories would not have that legal effect. Answers to these interrogatories now, if compelled, will not prevent the defendant at the trial from relying on subsequently discovered facts, including facts produced at the trial by plaintiff or his witnesses, or by any of the other parties to this lawsuit, or their witnesses. In fact, such answers would not even prevent production of facts now known to defendant but not included in the answers, upon a proper showing that the oversight was in good faith. As already pointed out, the more recent federal cases have held that '(o)ne of the principal purposes of interrogatories is to ascertain the contentions of the adverse party. * * * (for otherwise) a party would be unjustly restricted in his preparation for trial.' McElroy v. United Air Lines, D.C., 21 F.R.D. 100, 102; see also Kyker v. Malone Freight Lines, D.C., 17 F.R.D. 393, and other cases cited, supra. The justification for this rule given in the Malone case was that the answering party is not limited by his answer if subsequent information is discovered. In RCA Mfg. Co. v. Decca Records, D.C., 1 F.R.D. 433, 435, it was stated that '(s)o far as the interrogatories require the production of information defendants must disclose whatever information it (sic) now has (sic) as demanded by the interrogatories. If in the interim, between the time of the answers to these interrogatories and the trial, defendants obtain further information, they will not be prevented from offering such further information on the trial * * *.' ¶ The interrogatories here involved do not call for 'all the facts' defendant intends to produce at the trial in support of the pleaded defenses. If the questions were that broad the trial court might well have been justified in refusing to compel

answers. But the interrogatories here involved are not of that character. They carefully limit the questions to facts now known to defendant. They request a statement of 'what fact or facts form the basis for the allegation' of contributory negligence and assumption of risk. Thus, by their very language, it is obvious that the interrogatories do not request answers that would create a limitation. All that is requested are the facts now known to the defendant upon which it predicates its defenses. The plaintiff is entitled to that information." (Emphasis added.) (Singer v. Superior Court of Contra Costa County (1960) 54 Cal.2d 318, 324–326.)

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

Form interrogatory number 17.1 only requests disclosure of the facts now known to the plaintiff upon which he predicates his denial of the requests for admission. The "tie down the responding party and prohibit him from producing additional or newly discovered facts at trial" objection is overruled.

"'[T]he attorney-client privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts upon which the communications are based [citations]' (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349, 182 Cal.Rptr. 275), 'and it does not extend to independent witnesses [citations]' (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 143, 261 Cal.Rptr. 493) or their discovery. (See also, *Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 13, 11 Cal.Rptr. 165; *City & County of S.F. v. Superior Court (Giorgi)* (1958) 161 Cal.App.2d 653, 656, 327 P.2d 195.) Nor can 'the identity and location of persons having knowledge of relevant facts' be concealed under the attorney work product rule of Code of Civil Procedure section 2018. (*City of Long Beach v. Superior*

Court (1976) 64 Cal.App.3d 65, 73, 134 Cal.Rptr. 468, quoting former Code Civ.Proc., § 2016.)" (Aerojet-General Corp. v. Transport Indemnity Insurance (1993) 18 Cal.App.4th 996, 1004.)

The attorney-client privilege does not protect the facts underlying the plaintiff's denial of requests for admission of facts.

"It is the policy of the state to do both of the following: ¶ (a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases. ¶ (b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts." (Code of Civil Procedure, § 2018.020.)

The appellate court in Dowden v. Superior Court (1999) 73 Cal.App.4th 126 explained the purpose and intent of the work-product doctrine as follows: "Section 2018's stated purpose and the underlying reasons for its creation emphasize the need to "limit[ ] discovery so that 'the stupid or lazy practitioner may not take undue advantage of his adversary's efforts....' " (Pruitt, *Lawyers' Work Product, supra,* 37 State Bar J. at pp. 240–241.)" (Dowden v. Superior Court (1999) 73 Cal.App.4th 126, 133.)

"The person claiming protection under the attorney work product doctrine bears the burden of proving the preliminary facts to show the doctrine applies. (*Mize v. Atchison, T. & S.F. Ry. Co.* (1975) 46 Cal.App.3d 436, 447, 120 Cal.Rptr. 787.)" (League of California Cities v. Superior Court (2015) 241 Cal.App.4th 976, 993.)

The existence of documents and things containing privileged information is not privileged and if interrogatories ask for the identification of such documents and things, an adequate response to such interrogatories must include a description of the document or thing. (Hernandez v. Superior Court (2003) 112 Cal.App.4th 285, 293.)

There are no preliminary facts that indicate that material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed on the initiative of counsel in preparing for trial is being sought or that the interrogatory is depending on an adversary's efforts in litigation preparation.

All that is requested is the facts and identity of documents and other tangible things upon which plaintiff based his response to each request for admission that was not an unqualified response and the persons who have knowledge of those facts and who has each document or thing. It is not seeking production of the documents. The work product objection is overruled.

Denial of requests for admission is effectively a contention that those facts are not true or do not exist.

"An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial." (Emphasis added.) (Code of Civil Procedure, § 2030.010(b).)

Therefore, a contention interrogatory can seek the facts, identities of witnesses, and identification of writings on which the contentions related to the denied facts are based. The objection that the interrogatory seeks the legal reasoning or theory behind the contention is overruled.

Plaintiff has also asserted the boilerplate objection that the information relating to the facts justifying denial of the requests for admission is equally available to defendant without any factual basis in the circumstances before the court. How does an opposing party know what the factual basis for the denial of a request for admission is and what information in his or her

hands is relevant to that factual basis that he or she has no knowledge of? This objection is overruled.

Plaintiff asserts that the interrogatory violates Code of Civil Procedure, § 2030.060(f) as the interrogatory contains subparts, or a compound, conjunctive, or disjunctive question.

"(f) No specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question." (Code of Civil Procedure, § 2030.060(f).

Section 2030.060(f) only applies to special interrogatories, not form interrogatories. The objection is overruled.

Requests for Admission

"Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by a written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties." (Code of Civil Procedure, § 2033.010.)

"(a) The party to whom requests for admission have been directed shall respond in writing under oath separately to each request. ¶ (b) Each response shall answer the substance of the requested admission, or set forth an objection to the particular request. ¶ (c) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party. (d) Each answer or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding request, but the text of the particular request need not be repeated." (Code of Civil Procedure, § 2033.210.)

"(a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits. ¶ (b) Each answer shall: ¶ (1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party. ¶ (2) Deny so much of the matter involved in the request as is untrue. ¶ (3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge. ¶ (c) 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." (Code of Civil Procedure, § 2033.220.)

"(a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: ¶ (1) An answer to a particular request is evasive or incomplete. ¶ (2) An objection to a particular request is without merit or too general." (Code of Civil Procedure, § 2033.290(a).)

Requests for Admission, numbers 4-7 and 10 request plaintiff to admit the following: plaintiff did not inform defendant RF Motorsports of any alleged defect in the vehicle relating to any freshwater tank overflow on or before November 23, 2020; plaintiff did not inform defendant RF Motorsports of any alleged defect in the vehicle relating to any floor warping on or before November 23, 2020; plaintiff did not present the vehicle for repair by defendant RF Motorsports relating to any freshwater tank overflow on or before November 23, 2020; plaintiff did not present the vehicle for repair by defendant RF Motorsports relating to any floor warping on or

before November 23, 2020; and between November 22, 2019 and January 22, 2021, plaintiff caused the vehicle's freshwater tank to be overfilled.

Plaintiff first responded with the objection that the request was vague and ambiguous and then denied each of these requests for admission.

The opposition does not address these responses, except to generally assert that all of plaintiff's responses were wholly adequate and code compliant; and plaintiff's objections were not improper and were reserved notwithstanding plaintiff's substantive responses.

The requests are not vague and ambiguous. Those objections are overruled.

The court grants the motion to compel further responses to requests for admission, numbers 4-7 and 10 without objections.

Requests for Production

"(a) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category." (Code of Civil Procedure, § 2031.240(a).)

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted." (Code of Civil Procedure, § 2031.240(b).)

"(c)(1)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. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "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." In adding this subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to

constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

- Request for Production Number 1

Request for production number 1 seeks all documents identified by plaintiff in response to form interrogatories, set one.

Plaintiff responded: 43 photographs; January 7, 2021, written statement from defendant RF Motorsports.

Defendant contends that the response is too general and meritless.

Plaintiff's counsel declares that verifications for the discovery responses at issue were served on February 2, 2022, the date the moving papers were filed; all discovery responses and documents sought by defendant's requests for production were provided to defendant; and that the document production included 43 photos. (Declaration of Nicolas M. Dillavou in Opposition to Motion, paragraphs 10, 11, and 14.).

The verified response and production regarding this request appear to be sufficient. The motion for further response and production concerning request number 1 is denied.

- Request for Production Number 3

This request seeks production of all documents that support the plaintiff's denials of the requests for admission.

Plaintiff responded: see production of photos, sales contract, pre-authorization, and PCW Owner's Manual.

Defendant states the PCW Owner's Manual was not produced; and the response failed to identify the specific documents that support each specific request for admission that was denied.

Plaintiff was required by statute to "Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made." (Code of Civil Procedure, § 2031.240(b)(1)).) A single category of documents was specified for request number 3 – the documents that support plaintiff's denials of the requests for admission. The request did not request that the response state which documents applied to which denials. Therefore, the response is sufficient.

However, it appears the production was insufficient in that the PCW Owner's Manual was not produced.

The motion to compel further responses and production concerning request for production number 3 is granted in part and denied in part. Plaintiff is ordered to produce the PCW Owner's Manual.

- Request for Production Number 4

Request for production number 4 seeks production of all documents that related to the use of the vehicle by plaintiff.

Plaintiff objected that the term "use" is vague and ambiguous.

Plaintiff also responded subject to and without waiving that objection that plaintiff could not locate any such documents after a reasonable inquiry and diligent search for responsive documents.

The term "use" is not vague and ambiguous. The objection is overruled. The motion to compel a further response to request for production number 4 without objection is granted.

- Requests for Production Numbers 5, 10, and 11.

Request numbers 5, 10, and 11 seek production of the following documents: all documents that relate to the repair, attempted repair, service, or maintenance of the vehicle by plaintiff; all documents that support plaintiff's contention that similar vehicles have fit and finish defects like

those in plaintiff's vehicle; and all documents that support plaintiff's contention that the vehicle failed to comply with the vehicle's warranty.

Plaintiff objected to each of these requests that the requests are vague and ambiguous and seek documents in the possession of the propounding party.

Plaintiff then provided a substantive response to each request subject to the objections and without waiving the objections.

The requests are not vague and ambiguous, and these objections are overruled.

Plaintiff's counsel declares that the deposition of defendant's person with the most knowledge on February 23, 2022, established that defendant did not keep or maintain repair orders for plaintiff's repair visits; and while plaintiff's claims are not supported by dealership written repair orders, they are substantiated by other documentary and testimonial evidence, including a sales contract, photos, and testimonial evidence by parties. (Declaration of Nicolas M. Dillavou in Opposition to Motion, paragraph 12 and 13.)

Plaintiff admits the repair, attempted repair, service, or maintenance records are not in defendant's possession.

Plaintiff has also not identified with particularity the documents, tangible things, land, or electronically stored information falling within the categories of items sought in request for production numbers 5, 10, and 11, which plaintiff objected to production on the ground that those documents are in the possession of the propounding party. This violates a mandated requirement set forth in Code of Civil Procedure, § 2031.240(b)(1).

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling

within any category of item in the demand to which an objection is being made…" (Code of Civil Procedure, § 2031.240(b)(1).)

Without identification of the documents there is nothing to support a court determination that such documents would be in the propounding party's possession and the propounding party has no ability to search its records for the documents that plaintiffs contend supports their claims and contentions.

The failure to state that the documents identified included such documents in defendant's possession makes these responses insufficient. A further response identifying those documents that fall within this category and are in the possession of defendant must be provided.

The objection that requests numbers 5, 10, and 11 seek production of documents in the possession of the propounding party is overruled.

The court grants the motion to compel further responses to requests for production, request numbers 5, 10, and 11.

- Requests for Production Numbers 6-9

Request numbers 6-9 seek production of all documents that relate to plaintiffs' requests that defendant RF Motorsports repair, service or maintain the vehicle by plaintiff; all documents that relate to any inspection of the vehicle requested, conducted or performed on plaintiffs' behalf, all documents that support plaintiff's contention that the vehicle presently has a non-conformity that substantially impairs plaintiff's use, and all documents that support plaintiff's contention that similar vehicles have common observed problems to those in YOUR [sic].

Plaintiff responded that these requests were vague and ambiguous; and as for request number 9, it is also unintelligible.

The requests are not vague and ambiguous. Those objections are overruled.

Request number 9 is incomplete and unintelligible. Therefore, the motion to compel a further response to request for production number 9 is denied.

The motion to compel further responses to requests for production numbers 6-8 without objection is granted.

- Requests for Production Numbers 12-14

Request numbers 12-14 seek production of all documents that support plaintiffs' contention that defendant RF Motorsports failed to comply with the California Lemon Law regarding the vehicle; all documents that relate to claims plaintiff made under the California Lemon Law within the last five years; and all documents relating to damages plaintiff sustained in connection with the vehicle from November 2019 through the present.

. Plaintiff objected: the requests are vague and ambiguous; they seek documents in the possession of the propounding party; they call for a legal conclusion; seek attorney-client and/or work product privileged information; and they seek disclosure of expert information outside the guidelines of the Code of Civil Procedure.

The requests are not vague and ambiguous, and those objections are overruled.

Plaintiff was obligated by statute to "Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made." (Code of Civil Procedure, § 2031.240(b)(1)).) Even if plaintiff objects that documents already in defendant's possession will not be produced, plaintiff is still statutorily required to identify those documents that fall within the category of documents described in the request.

The failure to state that the documents identified included such documents in defendant's possession makes these responses insufficient. A further response identifying those

documents that fall within this category and are in the possession of defendant must be provided.

Discovery proceedings may seek legal conclusions and contentions of the opposing party.

"An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial." (Emphasis added.) (Code of Civil Procedure, § 2030.010(b).)

"" 'Requests for admissions ... are primarily aimed at setting at rest a triable issue so that it will not have to be tried.... 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.' [Citation.]" (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 752, 175 Cal.Rptr.3d 650; see § 2033.010.) ¶ In addition, a request may ask a party for a legal conclusion. (§ 2033.010; *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 733, 735, 34 Cal.Rptr.2d 283 [request may seek admission party was negligent and negligence was legal cause of damages].)" (Emphasis added.) (Grace v. Mansourian (2015) 240 Cal.App.4th 523, 528–529.)

The same holds true for requests to produce the documents that support a legal contention or conclusion. The "calls for a legal conclusion" objection is overruled.

Plaintiff having objected to production on the grounds of attorney-client privilege and work product/expert information, plaintiff was mandated to provide a privilege log along with the response.

"(c)(1)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. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "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." In adding this subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to

constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

The court orders plaintiff to provide a privilege log concerning the documents plaintiff contends is protected by the privileges asserted.

The motion to compel further responses to Requests for Production Numbers 12-14 is granted.

Discovery Sanctions

"…If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2023.030(a).)

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2030.300(d).)

"Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust" (Code of Civil Procedure, § 2031.310(h).)

"(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a

motion to compel further response, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2033.290(d).)

The court finds it is appropriate to award defendant RF Motorsports the amount of $3,635 in monetary sanctions payable by plaintiffs.

TENTATIVE RULING # 8: DEFENDANT RF MOTORSPORTS MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION IS GRANTED IN PART AND DENIED IN PART AS STATED IN THE TEXT OF THE RULING. THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE, NUMBERS 1 AND 9 IS DENIED. THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET 1, NUMBER 3 IS GRANTED IN PART AND DENIED IN PART. THE COURT ORDERS THAT THE PCW OWNER'S MANUAL BE PRODUCED BY PLAINTIFF WITHIN TEN DAYS. THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE, NUMBERS 4-8 AND 10-14 IS GRANTED AS DESCRIBED IN THE TEXT OF THE RULING. PLAINTIFF IS ORDERED TO PROVIDE FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE, NUMBERS 4-8 AND 10-14 AND A PRIVILEGE LOG WITHIN TEN DAYS. DEFENDANT'S MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, NUMBERS 9.1, 9.2, 12.1, 12.4, AND 17.1 IS GRANTED. PLAINTIFF IS ORDERED TO PROVIDE FURTHER RESPONSES TO FORM INTERROGATORIES, NUMBERS 9.1, 9.2, 12.1, 12.4, AND 17.1 WITHIN TEN DAYS. THE COURT GRANTS THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION, NUMBERS 4-7 AND 10. PLAINTIFF IS ORDERED TO PROVIDE FURTHER RESPONSES TO REQUESTS FOR ADMISSION, NUMBERS 4-7 AND

10 WITHOUT OBJECTIONS WITHIN TEN DAYS. PLAINTIFF IS ALSO ORDERED TO PAY DEFENDANT RF MOTORSPORTS $3,635 IN MONETARY SANCTIONS WITHIN TEN DAYS.

NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE (vCourt) OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR

LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. WANLAND v. BEST LEGAL SUPPORT TEAM, LLC 21CV0383

Defendants' Motion to Quash Service of the Summons and Complaint.

Plaintiff filed a complaint against defendants asserting a cause of action for breach of fiduciary duties.

Defendants Wanland, Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC move to quash service of the summons and complaint on the following grounds: the summons and complaint were not properly served when they were left at defendant Wanland's front door after defendant Wanland talked with the registered process server through the closed front door; and the ADR package was not served as required by Rules of Court, Rule 3.221(c).

Plaintiff argues in opposition: the declaration of defendant Wanland in support of the motion is not credible; and the registered process server's proof of service executed under oath and declaration in opposition are credible and establish that defendant Wanland and the LLCs were personally served on January 15, 2022.

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: ¶ (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her." (Code of Civil Procedure, § 418.10(a)(1).)

""[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction. [Citation.] Thus, a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444, 29 Cal.Rptr.2d 746.) ¶ When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the

plaintiff has "the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service." (*Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868, 54 Cal.Rptr. 302.) ¶ "When an issue is tried on affidavits, the rule on appeal is that those affidavits favoring the contention of the prevailing party establish not only the facts stated therein but also all facts which reasonably may be inferred therefrom, and where there is a substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed." (*Griffith Co. v. San Diego Col. for Women* (1955) 45 Cal.2d 501, 508, 289 P.2d 476.) But we "independently review [the trial court's] statutory interpretations and legal conclusions [citations]." (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230, 113 Cal.Rptr.3d 147 (*Gorham*).)" (American Express Centurion Bank v. Zara (2011) 199 Cal.App.4th 383, 387.)

"A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. ¶ The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective." (Code of Civil Procedure, § 415.10.)

"On a motion to quash service of summons, the plaintiff bears the burden of proving by a preponderance of the evidence that all jurisdictional criteria are met. (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710, 215 Cal.Rptr. 442; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232, 254 Cal.Rptr. 410 (Ziller).) The burden must be met by competent evidence in affidavits and authenticated documents; an unverified complaint may not be considered as supplying the necessary facts. (*Ziller*, supra, 206 Cal.App.3d at p. 1233, 254 Cal.Rptr. 410.)" (Nobel Floral, Inc. v. Pasero (2003) 106 Cal.App.4th 654, 657-658.)

"Contrary to Allstate's contention, substantial evidence is found in the record to support the trial court's implicit finding that the summons and complaint was in fact properly served upon Mach, in the form of substitute service pursuant to section 415.20. [FN 7.] When evidence presented below is conflicting, an appellate court must presume that " 'the court found every fact necessary to support its order that the evidence would justify. So far as it has passed on the weight of evidence or the credibility of witnesses, its implied findings are conclusive.' " (*Taylor–Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 110, 265 Cal.Rptr. 672, quoting *Kulko v. Superior Court* (1977) 19 Cal.3d 514, 519, fn. 1, 138 Cal.Rptr. 586, 564 P.2d 353, overruled on other grounds by *Kulko v. California Superior Court* (1978) 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132.) " 'Where there is substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed' " on appeal. (*Ibid*.) ¶ FN7. Although not expressly stated, the court must have so concluded because it did not remove the default judgment against Mach. It would not have been able to reach this result if it had found that service was never effectuated. ¶ Section 415.20 provides in part: "If a copy of the summons and of the complaint cannot with reasonable diligence be personally delivered to the person to be served ... a summons may be served by leaving a copy of the summons and of the complaint at such person's dwelling house ... in the presence of a competent member of the household ... who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint ... to the person to be served at the place where [the copies] were left." (§ 415.20, subd. (b).) ¶ " ' "Ordinarily, ... two or three attempts at personal service at a proper place should fully satisfy the requirement of reasonable diligence and allow substituted service to be made." [Citation.]' " (*Bein v. Brechtel–Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1392, 8 Cal.Rptr.2d 351, quoting *Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1392, 245 Cal.Rptr. 596.) If the form of substituted service is " ' "reasonably

calculated to give an interested party actual notice of the proceedings and an opportunity to be heard ... [in order that] the traditional notions of fair play and substantial justice implicit in due process are satisfied." ' [Citations.]" (*Bein v. Brechtel–Jochim Group, Inc., supra,* 6 Cal.App.4th at p. 1392, 8 Cal.Rptr.2d 351.) The pre–1969 service of process statutes requiring strict and exact compliance have now been more liberally construed to effectuate service if actual notice has been received by the defendant. (*Ibid.*) ¶ In this case, a process server for the Staffords made six attempts at personal service at Mach's residence. On the sixth attempt, on November 18, 1996, Mach answered the door but did not reveal his identity. The process server reported that "an Asian male answered the door" and, when the server asked for Mach, the man "began asking a lot of questions such as why [the server] was asking for [Mach] and who sent [the server]." The server then informed the man that he had legal documents for Mach, and asked him to show identification. The man refused and threatened to call the police, so the server "announced drop service" and left the papers with him. The server then mailed the summons and complaint to Mach at the same address two days later. ¶ We note that the defendant in this case was *actually* served by this process, he did not claim that he failed to receive notice of service, and he forwarded these papers to Allstate. On December 30, 1996, the Staffords returned and filed the summons along with the process server's proof of service, declaring that "substitute service" was made on a co-occupant and competent member of the household, at the given residence address. Allstate undertook no investigation and sought no legal opinion to confirm the adjuster's view that service was not properly effectuated. Based on these facts, there was sufficient evidence in the record to support the trial court's implicit finding that service was proper." (Emphasis added.) (Stafford v. Mach (1998) 64 Cal.App.4th 1174, 1182-1183.)

Defendant Wanland declares: He is a defendant and manager of defendants Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC; on January 15, 2022 an man knocked on his front door; he lives in a gated subdivision, he highly regards his privacy, and does not appreciate solicitors who still come to his door on occasion; he assumed the man was a solicitor; without opening the door he asked the man what he wanted; the man said is Don Wanland here?; defendant did not identify himself and there was no indication on the man's person that he was a process server; defendant responded "no" to the question; the man left the property, got into his car, and drove away; defendant opened the door to see if any solicitation papers had been left and he found three stapled packages including a summons and complaint; and there was no ADR packet included with any of the three staled documents nor was there anything else left in front of the door.

The three proofs of service of the summons and complaint executed by a registered process server declare the following under oath: he personally served defendant Donald Martin Wanland, Jr. by personal delivery of the summons and complaint at a certain address in El Dorado Hills on January 15, 2022 at 9:12 a.m.; and he personally served defendants Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC by service Donald Martin Wanland, Jr., registered agent for Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC on January 15, 2022 at 9:12 a.m.

The process server also submitted a declaration in opposition to the motion. He declares: he visited the subject address three times; the first visit was January 13, 2022 at 4:58 p.m.; a black Hummer H2 was in the driveway and there was a light in the house; he knocked on the front door and rang the doorbell; there was no answer; the second visit was on January 14, 2022 at 12:43 p.m.; he observed a black Hummer parked next to the residence; he knocked on

the front door and had a conversation with a man who talked with him through a partially opened window; that man stated that Donald Martin Wanland, Jr. was not there; the third visit was on January 15, 2022 at 9:12 a.m.; he observed a black Hummer parked next to the residence; he knocked on the front door and a man, who appeared to be the same person he talked to on the previous occasion, came to the door; he told the man that he was a process server and that he had a complaint and summons for Donald Martin Wanland, Jr.; the man refused his request to open the door; the man refused to identify himself; he advised the man he was leaving the summons and complaint for him; he left the summons and complaint next to the front door; as he walked away from the premises, he observed the man to open the door and pick up the summons and complaint he left there; the man shouted to him "I am not served"; the man was approximately 5'10", Caucasian, brown hair, about 60 years old and 175 pounds; when he returned to his office, he reviewed the file from Rapid Legal and saw a picture of a middle-aged Caucasian gentleman that was noted as having been provided by plaintiff; he recognized the photo as the same person he had conversed with at the subject address on the last two occasions; and that man that he served he believes is Donald Martin Wanland, Jr.

"The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (Evidence Code, § 647.)

"The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and

without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate." (Evidence Code, § 604.)

The Third District Court of Appeal has stated: "A presumption affecting the burden of producing evidence requires the ultimate fact to be found from proof of the predicate facts in the absence of other evidence. If contrary evidence is introduced then the presumption has no further effect and the matter must be determined on the evidence presented. (Evid.Code, § 604.)" (In re Heather B. (1992) 9 Cal.App.4th 535, 561.)

Contrary evidence having been introduced, the evidentiary presumption has no further effect, and the matter will be determined by the evidence presented.

"'Personal service' means the actual delivery of the papers to the defendant in person. *Holiness Church of San Jose v. Metropolitan Church Ass'n*, 12 Cal.App. 445, 448, 107 P. 633; *Hunstock v. Estate Development Corporation*, 22 Cal.2d 205, 138 P.2d 1, 4, 148 A.L.R. 968." (Sternbeck v. Buck (1957) 148 Cal.App.2d 829, 832-833.)

"Actual physical delivery of process can be prevented by a recalcitrant defendant, and the cases recognize the sufficiency of attempted delivery in the presence of a defendant who refuses to accept the paper. "We take it that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand." (*In re Ball* (1934) 2 C.A.2d 578, 579, 38 P.2d 411 [process server came within 12 feet of petitioner, said "I have here another one of those things for you," tossed paper toward petitioner, and added "Now you are served"]; *Trujillo v. Trujillo* (1945) 71 C.A.2d 257, 260, 162 P.2d 640 [process server loudly explained nature of document through locked door of defendant's car and placed it under windshield wiper]; see also *People v. Prescott* (1951) 106 C.A.2d 597, 235 P.2d 406 [conviction for assaulting

process server to prevent service].) ¶ More often the frustration of physical delivery is accomplished by the defendant's concealment. Because mere knowledge of an action does not confer jurisdiction of the person (see supra, §880), the defendant, upon becoming aware of the filing of the complaint, may successfully avoid personal service by secreting himself. In that situation the plaintiff may either attempt a tedious and expensive pursuit (see, e.g., *Central Mfrs. Mut. Ins. Co. v. Torreyson* (1952) 113 C.A.2d 634, 248 P.2d 940), or may elect to use a form of substituted service (see infra, §926.). ¶ Of course, no process server, whether an officer or a private person, has any authority to break into a dwelling for purposes of service. (Foley v. Martin (1904) 142 C. 256, 71 P. 165, 75 P. 842.)" (3 Witkin, California Procedure, (4th ed. 1997) Actions, § 925, page 1105.)

"Upon the foregoing conflict of evidence, the court found that the defendant was duly served with the summons and complaint in the divorce action, in Los Angeles, on October 12, 1944, and that his default for failure to appear or answer the complaint was duly entered, and the court thereupon denied the motion on January 18, 1945, to set aside the default or the interlocutory decree of divorce. The court was warranted in assuming the truth of the averments of Mr. Giss that he left the copies of the documents in the custody and control of the defendant with an explanation of the nature thereof, and that the defendant knew the nature of the documents and the purpose of leaving them with him, but deliberately attempted to avoid service by dislodging them from the windshield wiper. The evidence adequately supports the finding of due personal service of process, and warrants the denial of defendant's motion to vacate the interlocutory judgment." (Trujillo v. Trujillo (1945) 71 Cal.App.2d 257, 260.)

"It is established that a defendant will not be permitted to defeat service by rendering physical service impossible. *In In re Ball* (1934) 2 Cal.App.2d 578, 38 P.2d 411, it was held that effective service was made when the process server informed the defendant that he had "

'another one of those things for you,' " and when the defendant moved away, threw the summons and complaint so that it fell a few feet away from the defendant. "We take it that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand." (Id. at p. 579, 38 P.2d 411.) ¶ In *Ludka v. Memory Magnetics International*, supra, 25 Cal.App.3d 316, 101 Cal.Rptr. 615, a default judgment was upheld against the argument that it should have been set aside because service of process was faulty. In that case the process server entered the defendant's offices and, unable to obtain access to a corporate officer, threw the papers on a coffee table saying " 'You're served.' " Copies of the summons and complaint were thereafter sent to the defendant. The defendant argued that service was improper because the receptionist, upon whom service ostensibly was made, was not then his secretary nor an agent for service of process on the corporation, and because a third party in the reception area, declaring that service had not been made, threw the papers into the wastebasket. It was held that the service of process "amply complied" with section 415.20 and that the gratuitous actions of the third party did not render service ineffective. (Id. at pp. 320-321, 101 Cal.Rptr. 615.) Here, the process server provided actual notice of the documents to the person apparently in charge of Sabek's office and, prevented by that person from leaving them inside the office, left them on the other side of the office door. No more was required to effect service other than to mail to Saberi a copy of the summons and complaint." (Khourie, Crew & Jaeger v. Sabek, Inc. (1990) 220 Cal.App.3d 1009, 1013-1014.)

"In all general civil cases, the plaintiff must serve a copy of the ADR information package on each defendant together with the complaint. Cross-complainants must serve a copy of the

ADR information package on any new parties to the action together with the cross-complaint." (Rules of Court, Rule 3.221(c).)

Rule 3,221 does not state that failure to serve the ADR package on each defendant results in the court lacking personal jurisdiction over a defendant properly served the summons and complaint. Defendants have cited no legal authority that violation of Rule 3.221(c) results in the court having no personal jurisdiction over a defendant properly served the summons and complaint. In fact, the Rule does not provide for any penalty imposed on plaintiff should the plaintiff fail to serve the ADR package.

The court notes that it has long been held that noncompliance with court rules, to which no penalty was attached, does not prevent the court from hearing and disposing of motions. (See Johnson v. Sun Realty Co. (1934) 138 Cal.App. 296, 299.) The same would hold true where the court can exercise jurisdiction to hear a case even though a court rule concerning service of documents in addition to the summons and complaint was violated.

The rule is simply not jurisdictional. "While a Rule of Court phrased in mandatory language is generally as binding on the courts and parties as a procedural statute, it is seldom jurisdictional and ordinarily departure from it is not reversible error unless prejudice is shown. (See *Adams v. Sharp*, 61 Cal.2d 775, 777—778, 40 Cal.Rptr. 255, 394 P.2d 943; cf. *Harriman v. Tetik*, 56 Cal.2d 805, 810, 17 Cal.Rptr. 134, 366 P.2d 486 (Provisions of former section 634 of the Code of Civil Procedure relating to findings held directory and failure to comply strictly with its provisions not reversible error.); 1 Witkin, California Procedure, s 68)." (Estate of Cooper (1970) 11 Cal.App.3d 1114, 1121-1122.)

Having read and considered the moving and opposition papers and the declarations filed in support of and opposition to the motion, the court finds that defendants were validly served the summons and complaint by personal service and, therefore, the court has personal jurisdiction

over defendants in this case. The motion to quash service of the summons and complaint is denied.

TENTATIVE RULING # 9: DEFENDANTS' MOTION TO QUASH SERVICE OF THE SUMMONS AND COMPLAINT IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE (vCourt) OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN

WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

10. COOK v. COOK SC-20160174

Plaintiff's Motion to Appoint Referee to Sell Art

The parties in this action have a disagreement in relation to the sale of certain art to effectuate the settlement of the case.

On June 6, 2019, the court granted in part and denied in part plaintiff's motion to appoint referee. The court ordered that a referee be appointed to sell the three subject artworks through art dealers/art sales agents as agreed in the settlement agreement. each of the parties are to submit to the court and serve on the other party the names of up to three potential referees, describe each of their qualifications, and state the rates they charge for their services. The court further ordered that the names be submitted and served not later than June 13, 2019; and the parties are to meet and confer and attempt to select one referee agreeable to both parties. The court also set a review hearing re: selection of referee at which time the court will appoint the referee agreed to by the parties or, should the parties not agree, the court would select a referee from the list and appoint that person the referee.

The parties reported to the court in the joint stipulation and request for continuance of appointment of referee filed on June 19, 2019 that the parties made considerable progress since June 6, 2019 in the following ways: the parties executed a written amendment to the settlement agreement; the parties agreed to a dealer for each of the works of art to be sold; the parties agreed to the term and conditions of dealer contracts for each of the three works of art to be sold; the dealer contracts are part of the written amendment to the settlement agreement; the parties agreed on the amount of reimbursement to the plaintiff; and the parties agreed on the amount of the equalizing payment required in the settlement agreement. The parties also reported they were in the process of crating the works of art and/or shipping them to the respective dealers. The court granted the parties request to continue the review hearing.

On September 18, 2019, the parties requested a further continuance to October 18, 2019, which was granted. On October 18, 2019, the parties submitted a joint status report and requested a six-month continuance, which was granted. The matter was set for hearing on April 3, 2020, and later continued due to the public health crisis.

At the hearing on June 5, 2020, plaintiff requested a six-month continuance of the hearing and defendant asserted that March and December are the best months for art sales and the dealers are unsure if it will happen in December 2020. The court continued the hearing to January 15, 2021. At the hearing on January 15, 2021, the parties reported difficulties in selling a painting. The court continued the hearing to July 23, 2021, with instructions that Gina Cook was to make every effort to sell the painting.

Gina Cook and Kristin Cook filed status reports. Gina Cook reported that various problems arose concerning sale of the two remaining works of art; the parties have explored several alternatives, such as defendant buying out plaintiff's interests, an auction sale, donation to obtain a tax credit or deduction, and coordination related to better assess the marketplace and to determine who to contact next to sell the artwork; and the parties cannot come to an agreement as to what alternatives should be executed and are at a deadlock. Kristin Cook also reports difficulties in selling the two remaining works of art; she states the gallery where the sculpture is located stated it would be back to business as usual in the near future and would like the opportunity to continue to offer the piece for sale and requests that the court continue the hearing for another six months; the remaining artwork cannot be sold as there is no willing dealer to offer it and no willing buyer; and she suggests that the artwork be donated.

At the hearing on July 23, 2021, the court stated it would continue the hearing for another six months. The court continued the hearing to February 4, 2022, and set an MSC for October 20, 2021.

At the MSC on October 20, 2021, the court found that the matter had not settled, and the parties are not ready for trial. The court also directed the parties to file motions for appointment of a partition referee, "and to set them for hearing within 120 days." (Emphasis added.)

On January 24, 2022, plaintiff filed a status report stating that the case was not settled at the October 20, 2021, MSC and the parties were to submit motions for appointment of a partition referee within 120 days, which was February 17, 2022.

The parties were to set the hearing on the petition to take place within 120 days of the MSC, not merely submit the motions for filing within 120 days.

At the hearing on February 4, 2022, Kristin Cook stated that there is only one piece of art still pending and the others are in a gallery. The hearing was continued to April 1, 2022

On February 15, 2022, plaintiff Gina Cook filed a motion to appoint referee pursuant to Code of Civil Procedure, § 873.010. The parties having failed to sell two of the three remaining works of art of the past few years after the parties asked the court to defer appointing a referee to sell the works of art, plaintiff Gina Cook submits the names of two persons she considers qualified to sell the works of art and requests the court to appoint Mr. Brumbaugh as referee to sell the remaining two pieces of art.

The proof of service declares that on March 4, 2022, notice of the hearing and the moving papers were served by mail on defendant Kristin Cook. At the time this ruling was prepared, there was no opposition in the court's file.

"The court shall appoint a referee to divide or sell the property as ordered by the court." (Code of Civil Procedure, § 873.010(a).)

"The court may: ¶ (1) Determine whether a referee's bond is necessary and fix the amount of the bond. ¶ (2) Instruct the referee. ¶ (3) Fix the reasonable compensation for the services of the referee and provide for payment of the referee's reasonable expenses. ¶ (4) Provide for the

date of commencement of the lien of the referee allowed by law. ¶ (5) Require the filing of interim or final accounts of the referee, settle the accounts of the referee, and discharge the referee. ¶ (6) Remove the referee. ¶ (7) Appoint a new referee." (Code of Civil Procedure, § 873.010(b).)

"The court in its discretion may appoint a referee for sale and a referee for division, or may appoint a single referee for both." (Code of Civil Procedure, § 873.020.)

"Real and personal property may be partitioned in one action." (Code of Civil Procedure, § 872.240.)

"The property shall be sold at public auction or private sale as the court determines will be more beneficial to the parties. For the purpose of making this determination, the court may refer the matter to the referee and take into account the referee's report." (Code of Civil Procedure, § 873.520.)

"Part of the property may be sold at public auction and part at private sale if it appears that to do so will be more beneficial to the parties." (Code of Civil Procedure, § 873.530.)

Absent objection or opposition, the court to appoint Mr. Brumbaugh as referee to sell the remaining two pieces of art.

TENTATIVE RULING # 10: ABSENT OBJECTION OR OPPOSITION, THE MOTION TO APPOINT REFEREE IS GRANTED. MR. BRUMBAUGH IS APPOINTED REFEREE TO SELL THE REMAINING TWO PIECES OF ART. THE COURT SETS A REVIEW HEARING RE: SALE OF ART FOR 8:30 A.M. ON FRIDAY, AUGUST 5, 2022, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE

DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

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PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. MARTINEZ-MEDINA v. EL DORADO TRANSIT AUTHORITY PC-20200117

Defendant El Dorado Transit Authority's Motion for Summary Judgment.

On February 25, 2020, plaintiffs filed an action against defendants El Dorado Transit Authority, El Dorado County Department of Transportation and Achterbe asserting a cause of action for general negligence, property damages, and personal injuries arising from motor vehicle accident. Plaintiffs alleged that defendant Achterbe while acting in the course and scope of employment with defendant El Dorado Transit Authority negligently caused the accident wherein the Transit Authority bus struck plaintiff's vehicle; and that defendant El Dorado County Department of Transportation failed to maintain the road where the accident occurred leading to an unsafe condition of the road wherein the stop sign at the subject intersection was obstructed by trees, which resulted in plaintiff Catalina Martinez-Medina not being alerted to the need for her to stop at the intersection.

A 2nd amended complaint was filed on May 5, 2021, which removed Mr. Achterberg as a defendant in the action and continued to allege that defendants El Dorado County Department of Transportation and El Dorado Transit Authority were liable for plaintiffs' injuries suffered in the collision due to negligence and dangerous condition of public property as the stop sign was not continuously visible for the mandated distance, which required posting a "Stop Ahead" sign to warn westbound traffic on Country Club Drive of the stop sign at the subject intersection with Knollwood Drive.

Defendant El Dorado Transit Authority moves for entry of summary judgment in its favor and against plaintiffs asserting the following grounds: it was plaintiff Catalina Martinez-Medina's negligent failure to stop at the intersection that caused the accident; defendant El Dorado Transit Authority is a Joint Powers Authority (JPA) with the County of El Dorado and

City of Placerville providing public transportation services on the Western Slope of El Dorado County, which is a separate and distinct governmental agency as provided in Government Code, § 6500, and nothing within the JPA grants authority to defendant El Dorado Transit Authority to provide roadway maintenance services, nor does it own, operate or control the public roads; as a matter of law the El Dorado Transit Authority driver of the bus involved in the collision did not negligently cause the collision as the driver first stopped the bus at the four way stop intersection and then entered the intersection, plaintiff Catalina Martinez-Medina approached the intersection after the bus driver entered the intersection, and plaintiff Catalina Martinez-Medina failed to stop as required by the stop sign; since the bus driver was not negligent in the collision, the El Dorado Transit Authority cannot be held liable for the collision; El Dorado Transit Authority cannot be held liable for a dangerous condition of the road, because it does not own, control, operate or maintain the subject road; and El Dorado Transit Authority did not breach a mandatory duty to have the roads comply with Department of Transportation requirements, because it does not own, control, operate or maintain the subject road.

The proofs of service declare that on November 30, 2021, plaintiffs' counsel and defendant El Dorado County's defense counsel were served notice of the hearing and the moving papers by mail and email. There are no oppositions to the motion in the court's file.

On February 14, 2022, plaintiffs filed a statement of non-opposition to defendant El Dorado Transit Authority's motion for summary judgment.

Plaintiffs' Non-Opposition to Motion

While the failure to comply with the requirement of filing a separate statement in opposition may constitute a sufficient ground, in the court's discretion, to grant the motion for summary judgment (Code of Civil Procedure, § 437c(b).) and the motion is unopposed, the court must

first make a preliminary determination as to whether the moving party met his or her initial burden of proof. (Thatcher v. Lucky Stores, Inc. (2000) 79 Cal.App.4th 1081, 1086.)

Inasmuch as plaintiffs have not objected to any evidence submitted in support of the motion and has not filed any opposition or separate statement in opposition, the court may enter a summary judgment against plaintiffs and in favor of defendant El Dorado Transit Authority as requested, provided the evidence submitted meets plaintiff's initial burden to establish a prima facie case of entitlement to summary adjudication of the two causes of action.

Motion for Summary Judgment Principles

"For purposes of motions for summary judgment and summary adjudication: ¶ * * * (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (Code of Civil Procedure, § 437c(p)(2).)

"The purpose of summary judgment is to penetrate through pleadings to ascertain, by means of affidavits, the presence or absence of triable issues of material fact. (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107 [252 Cal.Rptr. 122, 762 P.2d 46].) The trial judge determines whether triable issues of fact exist by examining the affidavits and evidence, including any reasonable inferences which may be drawn from the facts. (*People v. Rath Packing Co.* (1974) 44 Cal.App.3d 56, 61-64 [118 Cal.Rptr. 438].) The evidence of the moving

party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party resisting the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc*. (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785].)" (Crouse v. Brobeck, Phleger & Harrison (1998) 67 Cal.App.4th 1509, 1524.)

"In ruling on the motion, the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom (id., § 437c, subd. (c)), and must view such evidence (e.g., *Molko v. Holy Spirit Assn.*, supra, 46 Cal.3d at p. 1107, 252 Cal.Rptr. 122, 762 P.2d 46; *Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417, 42 Cal.Rptr. 449, 398 P.2d 785) and such inferences (see, e.g., *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1520, 80 Cal.Rptr.2d 94 [review on appeal]; *Ales-Peratis Foods Internat., Inc. v. American Can Co.* (1985) 164 Cal.App.3d 277, 280, 209 Cal.Rptr. 917, fn. * [same]), in the light most favorable to the opposing party." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.)

"A moving party defendant is entitled to summary judgment if it establishes a complete defense to the plaintiff's causes of action, or shows that one or more elements of each cause of action cannot be established. (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493.)" (Eriksson v. Nunnink (2011) 191 Cal.App.4th 826, 847.)

"A defendant has met its burden of showing a cause of action has no merit if it 'has shown that one or more elements of the cause of action ... cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show ... a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff ... may not rely upon the mere allegations or denials of its pleading to show ... a triable issue of material fact exists but,

instead, shall set forth the specific facts showing that a triable issue of material fact exists ....' (*Id.*, subd. (o)(2); *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 464 & fn. 4 [63 Cal.Rptr.2d 291, 936 P.2d 70].)" (Scheiding v. Dinwiddie Constr. Co. (1999) 69 Cal.App.4th 64, 69.)

"The pleadings determine the issues to be addressed by a summary judgment motion. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.)" (Oakland Raiders v. National Football League (2005) 131 Cal.App.4th 621, 629.)

"The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent's pleading. (Citations omitted.)" (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 212, page 650.)

"Even where the complaint does present a cognizable claim, so that the court proceeds to the second or third step, the pleadings remain significant. Summary judgment cannot be granted on a ground not raised by the pleadings. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.) Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings. (*Lewinter v. Genmar Industries, Inc.* (1994) 26 Cal.App.4th 1214, 1223, 32 Cal.Rptr.2d 305 [complaint alleged failure to warn of manufacturing defect in boat; plaintiff could not avoid summary judgment by showing failure to warn based on post-manufacture discovery of defect]; *Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, 119–120, 266 Cal.Rptr. 749 [complaint alleged owner negligently maintained

ski slopes; plaintiff could not avoid summary judgment by showing owner negligently cared for her after accident]; *Cochran v. Linn* (1984) 159 Cal.App.3d 245, 250, 205 Cal.Rptr. 550 [complaint alleged products liability based on manufacture and sale of liquid protein diet; plaintiffs could not avoid summary judgment by showing defendant negligently wrote book promoting diet]; see generally *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381–382, 282 Cal.Rptr. 508.) ¶ If either party wishes the trial court to consider a previously unpleaded issue in connection with a motion for summary judgment, it may request leave to amend. (*Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 216, 32 Cal.Rptr.2d 388; *Dorado v. Knudsen Corp.* (1980) 103 Cal.App.3d 605, 611, 163 Cal.Rptr. 477.) Such requests are routinely and liberally granted. However, " ' "[I]n the absence of some request for amendment there is no occasion to inquire about possible issues not raised by the pleadings." ' " (*Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d at p. 885, 164 Cal.Rptr. 510, 610 P.2d 407, quoting *Krupp v. Mullen* (1953) 120 Cal.App.2d 53, 57, 260 P.2d 629.) Declarations in opposition to a motion for summary judgment "are no substitute for amended pleadings." (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065, 225 Cal.Rptr. 203.) If the motion for summary judgment presents evidence sufficient to disprove the plaintiff's claims, as opposed to merely attacking the sufficiency of the complaint, the plaintiff forfeits an opportunity to amend to state new claims by failing to request it. (See *Kirby v. Albert D. Seeno Construction Co., supra,* 11 Cal.App.4th at p. 1068, 14 Cal.Rptr.2d 604.)" (Bostrom v. County of San Bernardino (1995) 35 Cal.App.4th 1654, 1663–1664.)

"To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. (*Zavala v. Arce*, supra, 58 Cal.App.4th at p. 926, 68 Cal.Rptr.2d 571.) If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings

before the hearing on the summary judgment motion. (See *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18, 272 Cal.Rptr. 227*; City of Hope Nat. Medical Center v. Superior Court* (1992) 8 Cal.App.4th 633, 639, 10 Cal.Rptr.2d 465; & Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2000) ¶¶ 10:257 & 10:257.2, pp. 10-96 & 10-97 (rev.# 1, 2000).)" (Distefano v. Forester (2001) 85 Cal.App.4th 1249, 1264-1265.)

"…[I]t is axiomatic that the party opposing summary judgment " 'must produce admissible evidence raising a triable issue of fact. [Citation.]' [Citation.]" (*Dollinger,supra,* 199 Cal.App.4th at pp. 1144–1145, 131 Cal.Rptr.3d 596.) This requirement is black letter law (Code Civ. Proc., § 437c, subd. (p)(2)) that applies whether the alleged cause of action is statutory or under the common law." (All Towing Services LLC v. City of Orange (2013) 220 Cal.App.4th 946, 960.)

With the above-cited legal principles in mind, the court will rule on defendant El Dorado Transit Authority's Motion for Summary Judgment.

Negligence Cause of Action

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages. (*Paz v. State of California* (2000) 22 Cal.4th 550, 559, 93 Cal.Rptr.2d 703, 994 P.2d 975; *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188, 91 Cal.Rptr.2d 35, 989 P.2d 121, disapproved on another point in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, fn. 19, 107 Cal.Rptr.2d 841, 24 P.3d 493; *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 614, 76 Cal.Rptr.2d 479, 957 P.2d 1313.)" (Friedman v. Merck & Co. (2003) 107 Cal.App.4th 454, 463.)

"A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from

this section, have given rise to a cause of action against that employee or his personal representative." (Government Code, § 815.2(a).)

"We have observed that in general, under the Tort Claims Act, public employees are liable for injuries caused by their acts and omissions to the same extent as private persons. (Gov.Code, § 820, subd. (a).) Vicarious liability is a primary basis for liability on the part of a public entity, and flows from the responsibility of such an entity for the acts of its employees under the principle of respondeat superior. (See *Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932, 80 Cal.Rptr.2d 811, 968 P.2d 522.) As the Act provides, "[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would ... have given rise to a cause of action against that employee," unless "the employee is immune from liability." (Gov.Code, § 815.2, subds.(a), (b).) ¶ It is settled that "[u]nder general negligence principles ... a person ordinarily is obligated to exercise due care in his or her own actions so as ... not to create an unreasonable risk of injury to others.... [Citations.] It is well established ... that one's general duty to exercise due care includes the duty not to place another person in a situation in which the other person is exposed to an unreasonable risk of harm through the reasonably foreseeable conduct ... of a third person. [Citations.]" (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716, 110 Cal.Rptr.2d 528, 28 P.3d 249.)" (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1128.)

The Supreme Court found that the allegations of the complaint in Zelig, supra, failed to sufficiently allege a public employee engaged in negligent conduct and, therefore, found the plaintiffs were unable to state a cause of action against the public entity for negligence under the doctrine of respondeat superior. "Rather, the county, "as with all public entities," has the responsibility to "exercise reasonable care to protect all of its citizens" (*Thompson v. County of*

Alameda (1980) 27 Cal.3d 741, 753, 167 Cal.Rptr. 70, 614 P.2d 728, italics omitted), but does not thereby become liable to each individual for all foreseeable harm. The complaint does not allege that a public employee engaged in conduct within the scope of employment that would render the employee liable to plaintiffs for their mother's death, and thus there is no basis for imposing vicarious liability upon the public entities. Accordingly, we conclude that plaintiffs are unable to state a claim against the public entities under the doctrine of respondeat superior." (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1131.)

Defendant El Dorado Transit Authority has submitted evidence in support of the motion that establishes to following facts: the subject accident occurred on April 16, 2019 at approximately 4:25 p.m. at the intersection of Knollwood Drive and Country Club Drive in Cameron Park; at the time of the subject accident declarant Achterberg was in the course and scope of his employment as a he was driving a Ford transit bus operated by his employer, El Dorado Transit Authority; Mr. Achterberg approached the subject intersection while driving northbound on Knollwood Drive; at the time of the accident all four sides of the intersection displayed visible stop signs and marked limit lines painted on the road; the lanes are delineated by a solid double yellow line; the road is bordered on all four corners by areas of dirt on residential properties; the road is primarily straight, flat and level; the posted speed limit is 35 mile per hour; Mr. Achterberg stopped the bus at the limit line for the stop sign in his direction of travel at the subject intersection; after stopping he did not observe any cross traffic near either stop signs on eastbound or westbound Country Club Drive, so he proceeded northbound into the intersection at approximately 10 miles per hour; as the transit bus slowly traveled through the intersection, a white Honda Accord approached from Mr. Achterberg 's right and without stopping for the stop sign at the intersection, the front end of the Honda crashed into the right front wheel well of the bus; Mr. Achterberg immediately stopped and checked on the welfare

of his two passengers; and he later learned the driver of the white Honda was Catalina Martinez-Medina and he understands she was cited for violation of Vehicle Code, § 22450. (Declaration of Joseph Achterberg in Support of Motion for Summary Judgment, paragraphs 2-8.)

Plaintiff Catalina Martinez-Medina also admitted in her responses to requests for admission and stated in her responses to form interrogatories the following facts: she failed to stop at the stop sign located at the intersection of Country Club Drive and Knollwood Drive in Cameron Park; the word "STOP" was clearly marked on the ground as she approached the stop sign located at Country Club Drive heading westbound at the time of the subject accident; and the subject intersection is a four-way, stop sign controlled intersection. (Declaration of Kayla Villa in Support of Motion for Summary Judgment, Exhibit A – Plaintiff Catalina Martinez–Medina's Responses to Form Interrogatories, Set One, Number 20.6; and Exhibit B – Plaintiff Catalina Martinez–Medina's Responses to Requests for Admission, Set One, Request Numbers 3, and 18.)

"(a) The driver of a vehicle approaching an intersection shall yield the right-of-way to any vehicle which has entered the intersection from a different highway." (Vehicle Code, § 21800(a).)

"…every person has a right to presume that every other person will perform his duty and obey the law and in the absence of reasonable ground to think otherwise, it is not negligence to assume that he is not exposed to danger which could come to him only from violation of law or duty by such other person (*Harris v. Johnson*, 174 Cal. 55, 58, 161 P. 1155)." (Celli v. Sports Car Club of America, Inc. (1972) 29 Cal.App.3d 511, 523.)

The above-cited evidence meets defendant El Dorado Transit Authority's initial burden to establish as a matter of law that plaintiff Catalina Martinez–Medina's neglect in stopping at the

intersection was not reasonably foreseeable as Mr. Achterberg had a right to presume that every other person will perform his or her duty and obey the law; his conduct did not breach his duty of due care; and his conduct did not cause or contribute to the cause of the subject accident. In other words, defendant El Dorado Transit Authority has met its initial burden to prove that its employee was not negligent and, therefore, the defendant cannot be held liable for the subject accident under a theory of negligence.

Inasmuch as plaintiffs and defendants El Dorado County Department of Transportation have not opposed the motion and not submitted any evidence in opposition that raises a triable issue of material fact as to defendant El Dorado Transit Authority being liable for negligence, it is proper to grant summary adjudication of that cause of action in defendant El Dorado Transit Authority's favor and against plaintiffs.

Dangerous Condition of Public Property Cause of Action

Government Code, § 835 provides: "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and either: ¶ (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or ¶ (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

"(c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other

property that are located on the property of the public entity but are not owned or controlled by the public entity." (Emphasis added.) (Government Code, § 830(c).)

"As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies." (Government Code, § 6500.)

"For the purposes of this article, the agency is a public entity separate from the parties to the agreement." (Government Code, § 6507.)

Defendant El Dorado Transit Authority has submitted evidence in support of the motion that establishes to following facts: declarant Scott Ousley is the operations manager of the El Dorado Transit Authority, who manages the Authority's passenger services, operations, maintenance, dispatch, safety, and customer service functions; El Dorado Transit Authority is a separate and distinct public entity that provides public transportation services on the western slope of El Dorado County under the authority of a JPA with the County of El Dorado and City of Placerville; and defendant El Dorado Transit Authority does not own, operate, maintain, or control the public roads, including the subject intersection. (Declaration of Scott Ousley in Support of Motion for Summary Judgment, paragraphs 2-5; and Exhibit 1 – Joint Powers Agreement, page 1 and page 3, paragraph 4.)

The above-cited evidence meets defendant El Dorado Transit Authority's initial burden to establish as a matter of law that it cannot be held responsible for a dangerous condition of public property, because it did not own, operate, maintain, or control the public roads and the subject intersection where the accident occurred.

Inasmuch as plaintiffs and defendants El Dorado County Department of Transportation have not opposed the motion and not submitted any evidence in opposition that raises a triable issue of material fact as to defendant El Dorado Transit Authority being liable for the alleged dangerous condition of public property cause of action, it is proper to grant summary adjudication of that cause of action in defendant El Dorado Transit Authority's favor and against plaintiffs.

In summary, the motion for summary judgment against plaintiffs and in favor of defendant El Dorado Transit Authority is granted.

TENTATIVE RULING # 11: DEFENDANT EL DORADO TRANSIT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT EL DORADO TRANSIT AUTHORITY AND AGAINST PLAINTIFFS.

NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE (vCourt) OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY

AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. WELLS FARGO BANK v. TATE PCL-20200602

Plaintiff's Motion for Judgment on the Pleadings.

On November 23, 2020, plaintiff filed an action for breach of contract and common counts related to a credit card account. Plaintiff alleges that defendant owes a principal balance in the amount of $20,714.94; and despite demand for payment defendant has failed to pay plaintiff as agreed. Defendant answered the complaint by general denial and asserted affirmative defenses that plaintiff failed to mitigate its damages and the action is barred by the statute of limitations.

On August 13, 2021, the court granted plaintiff's motion to deem admitted requests for admission propounded upon defendant. The order deeming requests for admission, set one admitted was entered on that same date.

Plaintiff moves for entry of judgment on the pleadings on the grounds that the complaint states a cause of action against defendant to collect the alleged debt and that defendant's answer by general denial has been controverted by deemed admissions leaving defendant with no defense to the action.

Plaintiff filed a memorandum of costs seeking award of $1,355 in costs for filing and motion fees, service of process, and attorney fees.

The proofs of service in the court's file declares that on February 7, 2022, defendant was served the moving papers, the memorandum of costs, attorney fee declaration, and notice of this hearing by email to defense counsel. There was no opposition to the motion in the court's file at the time this ruling was prepared.

Meet and Confer Prior to Motion for Judgment on the Pleadings

"(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. ¶ (1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment. ¶ (2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following: ¶ (A) The means by which the moving party met and conferred with the party who filed the pleading

subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings. ¶ (B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith. ¶ (4) A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Code of Civil Procedure, § 439(a).)

Plaintiff's counsel has submitted a meet and confer declaration, which states that plaintiff's counsel attempted to meet and confer by correspondence sent to defense counsel on December 9, 2021; and that counsel received no response from defense counsel.

Motion for Judgment on the Pleadings Principles

"(c)(1) The motion provided for in this section may only be made on one of the following grounds: ¶ (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint…." (Code of Civil Procedure, § 438(c)(1)(A).)

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Emphasis added.) (Code of Civil Procedure, § 438(d).)

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79

Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.)

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)" (Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331.) However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. (See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.)

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

"It is true that a court may take judicial notice of a party's admissions or concessions, but only in cases where the admission "cannot reasonably be controverted," such as in answers to

interrogatories or requests for admission, or in affidavits and declarations filed on the party's behalf. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989–990, 94 Cal.Rptr.2d 643; see also *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604–605, 176 Cal.Rptr. 824 ["The court will take judicial notice of records such as admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court."].)" (Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal.App.4th 471, 485.)

The following facts were deemed admitted by defendant and, therefore, cannot reasonably be controverted: defendant had an account with plaintiff; monthly account statements were sent to defendant requesting minimum payments; defendant never notified plaintiff of a dispute involving the balance of any account statement; on November 23, 2020 there was a balance owing on the account in the amount of at least $20,714.94; since November 23, 2020 defendant has not paid plaintiff $20,714.94, or any other amount on the account; defendant owes plaintiff at least $20.714.94 on the account exclusive of any amounts incurred after November 23, 2020; the consumer credit card customer agreement and disclosure statement applicable to the account in this action is attached as Exhibit A; Exhibit A contains a provision entitling the prevailing party to attorney fees; and defendant does not have a credit defense, which refers to any debt cancellation agreement between plaintiff and defendant.

The court takes judicial notice of these deemed admission as requested by plaintiff.

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225, 162 Cal.Rptr. 669), but the burden of demonstrating such an abuse of discretion is on the appellant. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134

Cal.Rptr. 375, 556 P.2d 737.)" (Atlas Assurance Co. v. McCombs Corp. (1983) 146 Cal.App.3d 135, 149.)

Defendant's deemed admissions establish that defendant owes plaintiff $20,714.94 Defendant has not opposed the motion, has not advised the court how the answer could be amended to state a viable defense considering the deemed admissions, and it appears to the court that the deficiency cannot be remedied by amendment. Under the circumstances presented, it appears appropriate to grant the motion without leave to amend and enter judgment in favor of plaintiff for the amount prayed.

TENTATIVE RULING # 12: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. JUDGMENT IS ENTERED AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $20,714.94, PLUS COSTS AND ATTORNEY FEES IN THE AMOUNT OF $1,355.

NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. IF YOU WANT AN ORAL ARGUMENT, YOU WILL CONTINUED IT TO APRIL 8, 2022 AT 8:30 A.M. FOR SHORT ORAL ARGUMENTS.

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FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

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