1. DeLOIA, ET AL. v. CEFALU, ET AL., 23CV2066

(A) Def. John Cefalu's MTC Pltf. Chris Cefalu's Further Response to RFP (Set One)

(B) Def. John Cefalu's MTC Pltf. Chris Cefalu's Compliance with Agreement to Produce

(C) Def. John Cefalu's MTC Pltf. Gina DeLoia's Further Response to RFP (Set One)

(D) Def. John Cefalu's MTC Pltf. Gina DeLoia's Compliance with Agreement to Produce

(E) Def. Joby Cefalu's MTC Pltf. Chris Cefalu's Further Response to RFP (Set One)

(F) Def. Joby Cefalu's MTC Pltf. Chris Cefalu's Compliance with Agreement to Produce

(G) Def. Joby Cefalu's MTC Pltf. Gina DeLoia's Further Response to RFP (Set One)

(H) Def. Joby Cefalu's MTC Pltf. Gina DeLoia's Compliance with Agreement to Produce

Pending before the court are eight separate discovery motions filed on August 14, 2025, regarding each defendant's, John Cefalu's and Joby Cefalu's, Request for Production (Set One) ("RFP") propounded upon each plaintiff, Chris Cefalu and Gina DeLoia.[1] In other words, there are two separate motions made by each defendant against each plaintiff related to each RFP. Defense counsel explains the reason for each defendant bringing two separate motions against each plaintiff in her briefing: "[T]here is a 'distinction between a formal response to a production demand—i.e., a statement of compliance, representation of inability to comply, or assertion of any objections—and the production itself.' [Citation.] Code of Civil Procedure § 2031.210 'prescribes the nature and format of the response.' [Citation.] Code of Civil Procedure § 2031.280 'prescribes the form in which items must be produced. As newly amended, it requires that a document be identified with the specific request number to which it pertains…' [Citation.]" (Def. Joby's Reply to Pltf. Gina's Opp. to Mtn. to Compel Compliance with Agreement to Produce at 2:1–10 [emphasis omitted].)

[1] For clarity, the court will refer to each party by their chosen first name. The court intends no disrespect.

Defense counsel declares she met and conferred with plaintiffs in good faith prior to filing these motions. Plaintiffs challenge defense counsel's meet and confer efforts but the court finds the meet and confer requirement has been satisfied.

1. <u>Def. John Cefalu's Motions Against Pltf. Chris Cefalu</u>

Defendant John's motions against plaintiff Chris both relate to RFP Numbers 1, 2, 4, 5, 6, 7, 8, and 9. Defendant John alleges that on May 5, 2025, plaintiff Chris served a verified response with objections and did not produce any documents.

With respect only to the motion to compel compliance with agreement to produce (not the motion to compel a further response) defendant John seeks a monetary sanction of $434.29 against plaintiff Chris and in favor of defendant under Code of Civil Procedure section 2031.320, subdivision (b) for an alleged misuse of the discovery process (see Code Civ. Proc., § 2023.010, subd. (d) [failing to respond to an authorized method of discovery is a misuse of the discovery process]); and a monetary sanction of $1,000.00 against plaintiff Chris under Code of Civil Procedure section 2023.050, subdivision (a)(1) for failure to produce documents as agreed.[2]

On September 23, 2025, defendant John filed an amended notice of motion to compel compliance with agreement to produce, only, indicating that the requested monetary sanction against plaintiff Chris under Code of Civil Procedure section 2031.320, subdivision (b) is $628.58.

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[2] Code of Civil Procedure section 2023.050, subdivision (a) provides in relevant part: "Notwithstanding any other law, and in addition to any other sanctions imposed pursuant to this chapter a court shall impose a one-thousand-dollar ($1,000) sanction, payable to the requesting party, upon a party, person, or attorney if, upon reviewing a request for a sanction made pursuant to Section 2023.040, the court finds any of the following: (1) The party, person, or attorney did not respond in good faith to a request for production of documents … or an inspection demand…." (Code Civ. Proc., § 2023.050, subd. (a)(1).) The court notes that failure to produce documents as agreed (as opposed to failure to serve any response at all) is not one of the enumerated circumstances where the court "shall" impose a $1,000 sanction under Code of Civil Procedure section 2023.050, subdivision (a).

On October 6, 2025, plaintiff Chris filed a timely opposition to defendant John's amended notice to compel compliance with agreement to produce only (not the motion to compel a further response). Plaintiff Chris claims that all documents have been produced with an index, leaving nothing of substance for defendant to pursue. Plaintiff Chris's opposition requests a sanction "against Defendants and their counsel, Alexis Holmes, in the amount of $724.50, for filing the Motion without substantial justification, and for her abuse of the discovery process."

On October 10, 2025, defendant John filed a timely reply to plaintiff Chris's opposition. Defendant Joby points out that plaintiff Chris filed no opposition to the motion to compel further responses and provided no further response. Defendant John also argues that the index does not comply with Code of Civil Procedure section 2031.280, subdivision (a) ("Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond."). According to defendant, the index does not detail which documents correspond to which request.

2. <u>Def. John Cefalu's Motions Against Pltf. Gina DeLoia</u>

Defendant John's motions against plaintiff Gina both relate to RFP Numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9. Defendant John alleges that on May 5, 2025, plaintiff Gina served a verified response with objections and did not produce any documents.

With respect only to the motion to compel compliance with agreement to produce (not the motion to compel a further response) defendant John seeks a monetary sanction of $434.29 against plaintiff Gina and in favor of defendant under Code of Civil Procedure section 2031.320, subdivision (b) for an alleged misuse of the discovery process (see Code Civ. Proc., § 2023.010, subd. (d) [failing to respond to an authorized method of discovery is a misuse of the discovery process]); and a monetary sanction of $1,000.00 against plaintiff Gina under Code of Civil Procedure section 2023.050, subdivision (a) for failure to produce documents as agreed.

On September 23, 2025, defendant John filed an amended notice of motion to compel compliance with agreement to produce, only, that indicates (1) the disputed RFPs include RFP Numbers 1, 2, and 4 through 27; and (2) the requested monetary sanction against plaintiff Gina under Code of Civil Procedure section 2031.320, subdivision (b) is $1,288.58.

On October 6, 2025, plaintiff Gina filed a timely opposition to defendant John's amended notice to compel compliance with agreement to produce only (not the motion to compel a further response). Plaintiff Gina claims she did not agree to produce responsive records for RFP Numbers 10 through 27; and that all documents have been produced with an index, leaving nothing of substance for defendant to pursue. Plaintiff Gina's opposition requests a sanction "against Defendants and their counsel, Alexis Holmes, in the amount of $724.50, for filing the Motion without substantial justification, and for her abuse of the discovery process."

On October 10, 2025, defendant John filed a timely reply to plaintiff Gina's opposition. Defendant John points out that plaintiff Gina filed no opposition to the motion to compel further responses and provided no further response. Defendant John also argues that the index does not comply with Code of Civil Procedure section 2031.280, subdivision (a) ("Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond."). According to defendant, the index does not detail which documents correspond to which request.

3. <u>Def. Joby Cefalu's Motions Against Pltf. Chris Cefalu</u>

Defendant Joby's motions against plaintiff Chris both relate to RFP Numbers 1, 2, 4, 5, 6, 7, 8, and 9. Defendant Joby alleges that on May 5, 2025, plaintiff Chris served a verified response with objections and did not produce any documents.

With respect only to the motion to compel compliance with agreement to produce (not the motion to compel a further response) defendant Joby seeks a monetary sanction of $824.29 against plaintiff Chris under Code of Civil Procedure section 2031.320, subdivision (b) for an alleged misuse of the discovery process (see Code Civ. Proc., § 2023.010, subd. (d) [failing to respond to an authorized method of discovery is a misuse of the discovery process]); and a monetary sanction of $1,000.00 against plaintiff Chris under Code of Civil Procedure section 2023.050, subdivision (a) for failure to produce documents as agreed.

On September 23, 2025, defendant Joby filed an amended notice of motion to compel compliance with agreement to produce, only, indicating that the requested monetary sanction against plaintiff Chris under Code of Civil Procedure section 2031.320, subdivision (b) is $1,288.58.

On October 6, 2025, plaintiff Chris filed a timely opposition to defendant John's amended notice to compel compliance with agreement to produce only (not the motion to compel a further response). Plaintiff Chris claims that all documents have been produced with an index, leaving nothing of substance for defendant to pursue. Plaintiff Chris's opposition requests a sanction "against Defendants and their counsel, Alexis Holmes, in the amount of $724.50, for filing the Motion without substantial justification, and for her abuse of the discovery process."

On October 10, 2025, defendant Joby filed a timely reply to plaintiff Chris's opposition. Defendant Joby points out that plaintiff Chris filed no opposition to the motion to compel further responses; and argues that the index does not comply with Code of Civil Procedure section 2031.280, subdivision (a) ("Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond."). According to defendant, the index does not detail which documents correspond to which request.

4. <u>Def. Joby Cefalu's Motions Against Pltf. Gina DeLoia</u>

Defendant Joby's motions against plaintiff Gina both relate to RFP Numbers 1, 2, and 4 through 27. Defendant Joby alleges that on May 5, 2025, plaintiff Gina served a verified response with objections and did not produce any documents.

With respect only to the motion to compel compliance with agreement to produce (not the motion to compel a further response), defendant Joby seeks a monetary sanction of $1,124.29 against plaintiff Gina and in favor of defendant under Code of Civil Procedure section 2031.320, subdivision (b) for an alleged misuse of the discovery process (see Code Civ. Proc., § 2023.010, subd. (d) [failing to respond to an authorized method of discovery is a misuse of the discovery process]); and a monetary sanction of $1,000.00 against plaintiff Gina under Code of Civil Procedure section 2023.050, subdivision (a) for failure to produce documents as agreed.

On September 23, 2025, defendant Joby filed an amended notice of motion to compel compliance with agreement to produce, only, indicating that the requested monetary sanction against plaintiff Gina under Code of Civil Procedure section 2031.320, subdivision (b) is $1,288.58.

On October 6, 2025, plaintiff Gina filed a timely opposition to defendant Joby's amended notice to compel compliance with agreement to produce only (not the motion to compel further responses). Plaintiff Gina claims that all documents have been produced with an index, leaving nothing of substance for defendant to pursue. Plaintiff Gina's opposition requests a sanction "against Defendants and their counsel, Alexis Holmes, in the amount of $724.50, for filing the Motion without substantial justification, and for her abuse of the discovery process."

On October 10, 2025, defendant Joby filed a timely reply to plaintiff Chris's opposition. Defendant Joby points out that plaintiff Gina filed no opposition to the motion to compel further responses; and argues that the index does not comply with Code of Civil Procedure section 2031.280, subdivision (a) ("Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond.”). According to defendant, the index does not detail which documents correspond to which request.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 17, 2025, IN DEPARTMENT FOUR, AT WHICH TIME, THE COURT WILL INQUIRE THE PARTIES REGARDING THE CURRENT STATUS OF THE REMAINING DISPUTE(S).

2. McCLELLAN v. BRUDER, 24CV0706

(A) Defendant's Motion to Compel Plaintiff's Responses to Written Discovery

(B) Defendant's Motion to Deem Matters Admitted

Defendant's Motion to Compel Plaintiff's Responses to Written Discovery

On July 31, 2025, defendant Gregory Joseph Bruder ("defendant") filed the instant motion to compel plaintiff Louis Doon McClellan's ("plaintiff") response to Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One). Defendant also seeks a monetary sanction in the total amount of $735.

Plaintiff, who is representing himself in *pro per*, filed no opposition to the instant motion.[3]

If a party to whom interrogatories or request for production were directed fails to serve a timely response, the propounding party may move for an order compelling responses. (Code Civ. Proc., §§ 2030.290, subd. (b) [interrogatories], 2031.300 [request for production]; see *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) All that need be shown in the moving papers is that a set of interrogatories or request for production was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (See *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.)

[3] The court notes, however, two separate filings submitted by plaintiff: (1) on September 29, 2025, plaintiff filed a "Motion to Strike Order to Deem Matters Admitted / Request for Admissions Memorandum of Points and Authorities: Declaration of Louis Doon McClellan," purportedly set for hearing on October 17, 2025; and (2) on October 14, 2025, plaintiff filed a "Proposed Order to Adjudicate Case Under Title 42 U.S.C. Section 1983 and Points and Authorities and Declaration of Louis Doon McClellan," also purportedly set for hearing on October 17, 2025. The court does not consider either of these filings in connection with the pending motions. There is no proof of service for the September 29, 2025, "Motion to Strike" in the court's file; and the October 14, 2025, filing is an unauthorized pleading that is irrelevant to the instant motions.

Upon granting a motion to compel responses to interrogatories or request for production, the court shall impose a monetary sanction under Code of Civil Procedure section 2023.010, et seq. against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a 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 Civ. Proc., §§ 2030.290, subd. (c) [interrogatories], 2031.300, subd. (c) [request for production].)

On October 8, 2024, defendant propounded upon plaintiff via mail the discovery requests at issue.[4] (Olson Decl., ¶ 2 & Ex. 1.) Accordingly, plaintiff's deadline to serve his verified responses was November 12, 2024 (30 calendar days plus 5 additional days for mail service). (Code Civ. Proc., §§ 1013, subd. (a), 2030.260, subd. (a) [interrogatories], 2031.260, subd. (a) [request for production].) To date, plaintiff has not served any response to these discovery requests. (Olson Decl., ¶ 5.) Therefore, the motion to compel is granted. Plaintiff shall serve a verified response to defendant's Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production (Set One) no later than November 17, 2025.

Technically, plaintiff filed no opposition to the instant motion; thus, *mandatory* sanctions under Code of Civil Procedure sections 2030.290, subdivision (c) (interrogatories) and 2031.300, subdivision (c) are not required. However, the court exercises its discretion under Code of Civil Procedure section 2023.030, subdivision (a) to impose a monetary sanction against plaintiff for his misuse of the discovery process. (See Code Civ. Proc., § 2023.010, subd. (d) [failing to respond to an authorized method

[4] Defendant's motion also claims, "[P]laintiff was asked by letter to informally identify his health care providers to facilitate subpoenas and to provide Medicare benefits information to determine their right of reimbursement. … Plaintiff has failed to respond to said discovery." (Mtn. at 3:11–15.) The court notes that failing to respond to informal discovery is not a basis for a motion to compel. Accordingly, the court does not address the informal discovery request in the instant motion.

of discovery is a misuse of the discovery process].) Having reviewed and considered the declaration from defense counsel, the court finds that $285 is a reasonable sanction under the Civil Discovery Act (representing one hour of legal work at $225 per hour, plus the $60 filing fee). (Olson Decl., ¶ 6.)

<u>Defendant's Motion to Deem Matters Admitted</u>

On September 19, 2025, defendant filed his motion to deem matters admitted under Code of Civil Procedure section 2033.280. Defendant also seeks a monetary sanction of $735, representing three hours of legal work at $225 per hour, plus a $60 filing fee. (Olson Decl., ¶ 7.)

Plaintiff filed no opposition to the motion; rather, on September 29, 2025, plaintiff filed a "Motion to Strike Order to Deem Matters Admitted / Request for Admissions Memorandum of Points and Authorities: Declaration of Louis Doon McClellan." However, there is no proof of service in the court's file for said motion. The court does not consider it in determining whether to grant the instant motion. Additionally, on October 14, 2025, plaintiff filed a "Proposed Order to Adjudicate Case Under Title 42 U.S.C. and Section 1983 and Points and Authorities and Declaration of Louis Doon McClellan." However, the October 14, 2025, filing is an unauthorized pleading that is irrelevant to the instant motion.

A party served with request for admission must serve a response within 30 days. (Code Civ. Proc., § 2033.250.) Failure to serve a response entitles the requesting party, on motion, to obtain an order that the genuineness of all documents and the truth of all matters specified in the requests for admission be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) When such a motion is made, the court must grant the motion and deem the requests admitted unless it finds that prior to the hearing, the party to whom the requests for admission were directed has served a proposed response that is in substantial compliance with the provisions governing responses. (Code Civ. Proc.,

§ 2033.280, subd. (c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776, 778; see also *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396 [“two strikes and you’re out”].)

Under Code of Civil Procedure section 2033.280, subdivision (b), the requesting party may also move for a monetary sanction under Code of Civil Procedure section 2023.010, et seq. “The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction … on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.” (Code Civ. Proc., § 2033.280, subd. (c).)

In this case, on July 15, 2025, defendant propounded upon plaintiff via mail Request for Admission (Set One). (Olson Decl., ¶ 3 & Ex. 1.) Accordingly, the deadline for plaintiff to serve his verified response was August 19, 2025 (30 calendar days plus five additional days for mail service). (Code Civ. Proc., §§ 1013, subd. (a), 2033.250, subd. (a).) To date, however, plaintiff has served no response. (Olson Decl., ¶ 6.)

The motion to deem matters admitted is granted. Having reviewed and considered defense counsel’s declaration, the court finds that $285 (one hour of legal work at $225 per hour, plus the $60 filing fee) is a reasonable sanction against plaintiff under the Discovery Act.

TENTATIVE RULING # 2: THE MOTION TO COMPEL PLAINTIFF’S RESPONSES TO FORM INTERROGATORIES (SET ONE), SPECIAL INTERROGATORIES (SET ONE), AND REQUEST FOR PRODUCTION (SET ONE) IS GRANTED; THE REQUEST FOR A MONETARY SANCTION IS GRANTED IN PART. PLAINTIFF SHALL SERVE HIS VERIFIED RESPONSES AND PAY DEFENDANT A MONETARY SANCTION OF $285 NO LATER THAN NOVEMBER 17, 2025.

THE MOTION TO DEEM MATTERS ADMITTED IS GRANTED; AND THE COURT ORDERS PLAINTIFF TO PAY DEFENDANT A MONETARY SANCTION OF $285 NO LATER THAN NOVEMBER 17, 2025.

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) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. HUCKABY v. BMO BANK N.A., ET AL., 25CV0486

Demurrer

On June 3, 2025, pursuant to Code of Civil Procedure section 430.10, subdivision (e), defendant BMO Bank N.A. (“defendant”) filed a general demurrer to the first, third, fourth, fifth, and sixth causes of action in plaintiff Robert Huckaby’s (“plaintiff”) verified complaint[5] on the grounds that each of those causes of action fails to state a claim for relief.

Defense counsel declares she attempted to meet and confer with plaintiff in good faith prior to filing the demurrer, but plaintiff refused. (Pendergrass Decl., ¶¶ 2–5 & Ex. 1.) On April 30, 2025, defendant filed a declaration stating that its responsive pleading was due on May 5, 2025, and obtained an automatic 30-day extension of time within which to file a responsive pleading under Code of Civil Procedure section 430.41, subdivision (a)(2).

On September 8, 2025, plaintiff filed a timely opposition. On September 11, 2025, defendant filed a timely reply.

On September 15, 2025, defendant submitted an amended notice of hearing that includes the required language concerning the court’s tentative ruling system, which was not included in the original notice. (El Dorado Local Court Rule 7.10.05.)

The hearing was originally set for September 19, 2025. However, the court, on its own motion, continued the hearing to October 17, 2025.

1. Background

Linda Santley (hereinafter referred to as the “decedent”) created the Santley Bypass Trust by a Trust Instrument dated October 25, 2013.[6] (Ver. Compl., ¶ 7.) The sole

[5] Plaintiff Robert Huckaby filed this action in his capacity as trustee of the Santley Bypass Trust.

[6] The verified complaint alleges the decedent “created the SANTLEY BYPASS TRUST by a Trust Instrument dated October 25, 2013 (the ‘Trust’)….” (Ver. Compl., ¶ 7.) However, it is unclear whether the term, “Trust,” in the verified complaint refers to the Santley

beneficiary of the Trust is the decedent's minor-granddaughter, I.S. (age 12). I.S. is the daughter of defendant Eric Smith, the decedent's son.

By amendment to the Trust on January 27, 2023 (the day before the decedent's death), defendant Smith was given the right to live in the decedent's house for the benefit of I.S. until she reaches the age of 25, conditioned upon defendant Smith paying all of the costs of owning and occupying that property until then. (Ver. Compl., ¶ 11.)

Upon the decedent's death on January 28, 2023, plaintiff became the sole trustee of the Santley Bypass Trust. (Ver. Compl., ¶¶ 1, 7.)

Prior to her death, the decedent had checking and savings accounts at defendant's bank.[7] (Ver. Compl., ¶ 13.) Shortly after the decedent's death, plaintiff visited defendant's bank to change over to him as sole trustee the accounts held by the Trust under a new Employer Identification Number issued by the IRS for the Trust. (Ver. Compl., ¶ 13.) Defendant issued plaintiff new temporary checks, new account deposit slips, and a new debit card for the accounts owned by the Trust. (Ver. Compl., ¶ 13.) As a result, plaintiff believed the "prior accounts" were no longer active. (Ver. Compl., ¶ 13.)

Plaintiff never wrote any checks on the account and never activated the new debit card, leaving the funds in the account until he could determine what was necessary for the benefit of I.S.. (Ver. Compl., ¶¶ 10, 14.)

"When [plaintiff] received notices in July 2023 that Bank of the West had become a trade name used by BMO Harris Bank N.A., [plaintiff] reviewed the bank statements for

Bypass Trust or the Trust Instrument dated October 25, 2013. Based on the complete allegations of the complaint, the fact that plaintiff brings this lawsuit in his capacity as trustee of the Santley Bypass Trust, as well as plaintiff's opposition papers, it is the court's understanding that the term, "Trust," in the complaint refers to the Santley Bypass Trust only. The court notes that the instant demurrer is not based on the ground of uncertainty. (Code Civ. Proc., § 430.10, subd. (f).)

[7] The complaint does not expressly allege that said bank accounts were assets of the Trust.

the Trust's accounts and found many withdrawals from the checking account that he knew nothing about and did not authorize." (Ver. Compl., ¶ 15.)

On August 24, 2023, plaintiff went to defendant's bank. (Ver. Compl., ¶ 16.) The branch manager pulled and printed out the transaction history for the Trust's accounts, showing many withdrawals from the checking account by checks and debit card phone or online authorizations. (Ver. Compl., ¶ 16.) Copies of the checks showed they were signed in the decedent's name after her death. (Ver. Compl., ¶ 16.) The branch manager said defendant had put special instructions on the Trust's accounts to stop debits from the prior debit card, but that was not followed. (Ver. Compl., ¶ 17.) The branch manager told plaintiff that defendant knew defendant Mary Contois had signed checks and made debit card withdrawals from the Trust's accounts after the decedent's death. (Ver. Compl., ¶ 17.) The branch manager referred the issues to defendant's back office for investigation and resolution. (Ver. Compl., ¶ 17.)

Review of the bank's records during the August 24, 2023, meeting showed that defendant gave plaintiff the same accounts as before, instead of opening new accounts, as was represented to plaintiff, leaving the original accounts "accessible to anyone with that information." (Ver. Compl., ¶ 18.)

Plaintiff immediately withdrew all but $100 from the Trust's accounts and opened new accounts at another bank so that defendant Smith and defendant Contois, and anyone else, could not access those funds, and allow defendant time to research and remedy the issue of unauthorized withdrawals from the Trust's accounts. (Ver. Compl., ¶ 19.)

Plaintiff alleges the decedent had pre-authorized debits set up, which defendant failed to decline after plaintiff made the account changes. (Ver. Compl., ¶ 20.) There appear to be: (1) 20 unauthorized debit withdrawals, for a total of $2,437.04; (2) three unauthorized checks, for a total of $7,299.06; and (3) 32 payments by online or phone debit, for a total of $14,058.06. (Ver. Compl., ¶¶ 20, 21.)

As of the date of the complaint, defendant had done nothing to reimburse the Trust for the unauthorized withdrawals (totaling $23,794.16) after the decedent's death. (Ver. Compl., ¶ 22.)

On January 12, 2024, defendant sent plaintiff $100 to close the checking account; the savings account remains open with $211.51 in it. (Ver. Compl., ¶ 23.)

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (h), the court grants defendant's request for judicial notice of Exhibit 2 (deposit account disclosure agreement). (See *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 666, fn. 2; *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, fn. 3.)

The court denies defendant's request for judicial notice of Exhibit 1 (redacted signature card for the Santley Bypass Trust) and Exhibit 3 (the Santley Bypass Trust) because neither of these exhibits fall under the enumerated categories of judicially noticeable material under Evidence Code section 452.

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

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4. Discussion

4.1. First C/A for Breach of Contract

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) the resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Defendant argues plaintiff's complaint fails to properly allege that defendant breach of the parties' agreement. The complaint alleges defendant breached the agreement by: (1) "paying transactions from the Trust's account that were not authorized by the authorized signer on the account, including checks signed in the name of [the decedent] but not actually signed by her;" (2) failing to comply with plaintiff's instructions to close the previous account and debit card to prevent unauthorized transactions; and (3) "promis[ing] 'Zero Liability for any unauthorized transactions' as stated on transmittal sheet for the new debit card, but fail[ing] to credit back the amount of unauthorized transfers after being notified of the unauthorized checks and debit card payments from the Trust's account." (Ver. Compl., ¶¶ 26–28.)

Defendant argues that these allegations contradict the express terms of the parties' agreement: "With respect to the account at BMO, Plaintiff signed the signature card agreeing to the account number (it had not changed) and the terms of the Deposit Account Disclosure, which makes clear that Plaintiff expressly agreed to the actions of which he now complains. … Plaintiff admits that he did not review the statements for months and did not notify BMO within the notice period."[8] (Dem. at 9:26–10:5.)

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[8] Defendant does not expressly identify which term(s) of the agreement in its Exhibit 2 that contradict plaintiff's allegations. However, the court notices the following term in Exhibit 2: "If you do not report Unauthorized Transactions within 30 days after the earliest date the statement is mailed, delivered, or made available, except as expressly provided in this Agreement with reference to unauthorized Electronic Fund Transfers, we will not be liable for payment of any Unauthorized Transaction shown on the statement." (See RJN, Ex. 2 at pp. 53–54 [emphasis omitted].)

The court rejects defendant's first argument (that plaintiff signed the signature card), as the court denied defendant's request to take judicial notice of the signature card (RJN, Ex. 1). Consequently, defendant's first argument does not appear on the face of the pleadings or judicially noticed material.

Defendant's second argument appears to be that there can be no breach of contract liability where plaintiff did not perform and was not excused from performing under the terms of the parties' agreement (i.e., plaintiff did not timely review the monthly bank statements, and plaintiff did not notify defendant of the disputed charges within the required notice period).

Plaintiff's complaint does not include a copy of the underlying agreement. However, documents referenced in a plaintiff's claim are subject to judicial notice. (See *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, fn. 3; *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 666, fn. 2.) As previously discussed, the court has granted defendant's request for judicial notice of the parties' Deposit Account Disclosure Agreement (RJN, Ex. 2.)

Plaintiff cites *Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239 for the proposition that, "If a contract is set out in the complaint, plaintiff's interpretation must be accepted as correct in testing the sufficiency of the complaint. A demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible." (Opp. at ¶ 3.)

In *Aragon-Haas*, an employment action, plaintiff alleged a cause of action for breach of contract and attached a copy of the entire contract to the pleading. (*Aragon-Haas*, *supra*, 231 Cal.App.3d at p. 236.) Plaintiff also alleged his own construction of one of the ambiguous terms in the contract. The court explained, " 'Where an ambiguous contract is the basis of an action, it is proper, if not essential, for a plaintiff to allege its own construction of the agreement. So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement.' [Citation.] … [¶] Where a complaint is based on a written contract which it sets out in full, a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible. [Citation.]" (*Aragon-Haas*, *supra*, at p. 239.) But *Aragon-Haas* does not help plaintiff here because plaintiff did not attach a copy of the parties' agreement to the complaint or set out the terms of said agreement in full; further, plaintiff does not identify which allegations in the complaint constitute his interpretation of the contract terms.

The parties' agreement includes the express term: "If you do not report Unauthorized Transactions within 30 days after the earliest date the statement is mailed, delivered, or made available, except as expressly provided in this Agreement with reference to unauthorized Electronic Fund Transfers, we will not be liable for payment of any Unauthorized Transaction shown on the statement." (See RJN, Ex. 2 at pp. 53–54 [emphasis omitted].) Based on this term, the court finds that plaintiff has failed to sufficiently allege breach of contract against defendant, as the allegations in plaintiff's complaint demonstrate, as a matter of law, that defendant is not liable for unauthorized transactions that are not reported to defendant within 30 days of the account statement.

The court sustains the demurrer to the first cause of action for breach of contract with leave to amend, as plaintiff has not had a previous opportunity to cure the defect.

4.2. Third C/A for Conversion

" 'A cause of action for conversion requires allegations of plaintiff's ownership or right to possession of property; defendant's wrongful act toward or disposition of the property, interfering with plaintiff's possession; and damage to plaintiff. [Citation.]' " (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 483, 395.)

The complaint alleges defendant was "in control of the deposit accounts" and "converted amounts from plaintiff's deposit accounts to their own use with the intent to permanently deprive plaintiff of that property." (Compl., ¶¶ 38–39.)

Defendant, however, argues plaintiff fails to properly plead a conversion claim because defendant cannot "convert" funds deposited into the account. (Dem. at 10:16–17.) "Title to the deposited funds passes immediately to the bank which may use the funds for its own business purposes… The bank does not hereby act as a trustee and cannot be charged with converting the deposit to its own use." (*Morse v. Crocker Nat'l Bank* (1983) 142 Cal.App.3d 228, 232 (citations omitted).)

The court agrees with defendant and sustains its demurrer to this cause of action. Because there is no reasonable likelihood that the defect can be cured by amendment, the court denies leave to amend.

4.3. Fourth C/A for Negligence

"Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.)

Defendant argues plaintiff's claim is barred by the economic loss doctrine, and a depository institution does not owe a customer a legal duty of care that is completely untethered to the contractual relationship, citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922–929.

The court agrees with defendant and sustains the demurrer to this cause of action without leave to amend, as there is no reasonable likelihood that the defect can be cured by amendment.

4.4. Fifth C/A for Gross Negligence

"California does not recognize a distinct cause of action for 'gross negligence' independent of a statutory basis." (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 856.) There being no independent statutory basis here, and no reasonably likelihood that amendment will cure the defect, the court sustains the demurrer to the fifth cause of action for gross negligence without leave to amend.

4.5. Sixth C/A for Fraud

" 'The elements of fraud … are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988), § 676, p. 778.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.]" (*Lazar*, *supra*, at p. 645.) "This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered. [Citation.] A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. [Citation.]" (*Id.* at p. 649 [internal quotations omitted].)

Defendant argues that plaintiff's complaint does not allege any misrepresentation: "[i]nstead, [plaintiff] alleges that, by providing him with checks, deposit slips, and a debit card, the bank somehow led him to believe that the old account had been closed and an account with a new account number had been opened. These general, non-descript allegations do not point to any specific statement, and they cannot support a fraud claim." (Dem. at 14:5–9 [emphasis omitted].) Additionally, plaintiff fails to allege justifiable reliance. (Dem. at 14:26–15:15.)

The court agrees with defendant and sustains the demurrer to this cause of action with leave to amend. (*Courtesy Ambulance Serv. v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, fn. 12.)

TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED WITH AND WITHOUT LEAVE TO AMEND; THE COURT GRANTS LEAVE TO AMEND WITH RESPECT TO THE FIRST AND SIXTH CAUSES OF ACTION AND DENIES LEAVE TO AMEND WITH RESPECT TO THE THIRD, FOURTH, AND FIFTH CAUSES OF ACTION. 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) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. WELLS FARGO BANK, N.A. v. PARAJON, 24CV2369

Motion for Judgment on the Pleadings

Pending before the court is plaintiff's motion for judgment on the pleadings.

Plaintiff's counsel declares he attempted to meet and confer with defense counsel in writing on May 1, 2025, prior to filing the instant motion, but received no response from defense counsel. (Bartley Decl., ¶¶ 4–6 & Ex. 1.) Code of Civil Procedure section 439, subdivision (a) technically requires the meet and confer to be performed in person, by telephone, or by video conference. (Code Civ. Proc., § 439, subd. (a).) However, the court notes that defendant is represented by counsel and finds that plaintiff's letter substantially complies with the meet and confer requirement.

Defendant filed no opposition to the motion.

1. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants plaintiff's unopposed request for judicial notice of Exhibit 1 (Compl.), Exhibit 2 (Pltf.'s Mtn. to Deem Matters Admitted), and Exhibit 3 (Court's Order issued Apr. 25, 2025, granting Pltf.'s Mtn. to Deem Matters Admitted).

2. Background

This is a credit card debt collection action. The complaint alleges defendant owes plaintiff $11,462.27 on the subject credit card. Defendant filed an answer generally denying each and every allegation in plaintiff's complaint.

On April 25, 2025, the court granted defendant's motion to deem matters admitted. (See RJN, Exs. 2 & 3.) As relevant here, the following matters were deemed admitted: (1) plaintiff issued defendant the subject credit card; (2) defendant was to repay the principal amount charged on the credit card, plus finance charges; (3) defendant currently owes $11,462.27 on the subject credit card; and (4) defendant's last payment on the credit card was January 31, 2024.

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3. Legal Principles

A motion for judgment on the pleadings serves the same function as a general demurrer. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 145–146.) A motion may be brought where "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 Civ. Proc., § 438, subd. (c)(1)(A); see also *Adjustment Corp. v. Hollywood Hardware & Paint Co.* (1939) 35 Cal.App.2d 566, 569–570 [judgment on the pleadings is proper where the answer "fails to deny any of the material allegations of the complaint"].) The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts the court may judicially notice. (Code Civ. Proc., §438, subd. (d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758–759.)

4. Discussion

Based on the judicially-noticed matters deemed admitted, the court finds that plaintiff has met its burden on the instant motion for judgment on the pleadings. The motion is granted.

TENTATIVE RULING # 4: THE MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED. 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) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.