1. BRIAN BELAND ET. AL. V. LAKE POINTE VIEW ROAD OWNERS PC20200635

TENTATIVE RULING #1: THIS MATTER IS CONTINUED TO FEBRUARY 17, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

2. **FAYROOZ SALEH MOHAMED ALGOBANY 22CV1688**

Petitioner filed a Petition for Name Change on November 23, 2022. An Order to Show Cause (OSC) was issued and a hearing was set for January 20, 2023. To date, the court has not received proof of publication as required by Civil Procedure Section 1277. The matter is continued to April 7, 2023 at 8:30 a.m. in Department 9. Petitioner is to publish the OSC as required by Section 1277 and file proof of publication with the court no later than 10 days prior to the hearing date.

TENTATIVE RULING #2: THE MATTER IS CONTINUED TO APRIL 7, 2023 AT 8:30 A.M. IN DEPARTMENT 9. PETITIONER IS TO PUBLISH THE OSC AS REQUIRED BY SECTION 1277 AND FILE PROOF OF PUBLICATION WITH THE COURT NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. 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 REMOTELY BY ZOOM, PLEASE CONTACT THE CLERK'S OFFICE AT 530-621-5867.

3. NAME CHANGE OF MICHAEL DREBBING 22CV1730

TENTATIVE RULING #3: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. 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 REMOTELY BY ZOOM, PLEASE CONTACT THE CLERK'S OFFICE AT 530-621-5867

4. PATRICIA LIGHT V. CAMERON PARK SENIOR LIVING, LLC. 22CV0135

Motion to Compel Responses

On December 5, 2022, Plaintiffs filed their Motion to Compel Responses to (1) Form Interrogatories, (2) Special Interrogatories and (3) Request for Production, Set One, from Defendant Cameron Park Senior Living, LLC., and for Monetary Sanctions in the Amount of $1,980. Plaintiffs filed a Memorandum of Points and Authorities, a Separate Statement and a Declaration of Virginia L. Martucci, in support of their motion. All of the aforementioned documents were served on December 5th.

In opposition to the motion, Defendant filed its Memorandum of Points and Authorities, Declaration of Tiffany C. Sala, and Response to Plaintiffs' Separate Statement. All opposition papers were filed and served on January 6, 2023. Plaintiffs' reply brief was filed thereafter on January 12th.

Plaintiffs' motion is predicated on the fact that Defendant served boilerplate objections and failed to supplement or amend its responses after meet and confer discussions. Specifically, Plaintiffs take issue with Form Interrogatory 4.1; Special Interrogatories numbers 29-31, 39-41, 43-46, 52-56; and Requests for Production numbers 30, 31, 64, 66, 67, 76, 77, 78, 81, 82, and 91. For any documents Defendant is withholding on the basis of privilege, Plaintiffs are seeking a privilege log.

Defendant argues the motion is unnecessary and improper as all information and documents in its possession have been disclosed.

Request for Judicial Notice

In support of their motion, Plaintiffs ask the court to take judicial notice of the complaint in the present matter, along with all other filed papers and pleadings.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

Plaintiffs' Request for Judicial Notice was filed and served on December 5th, well before the hearing on this motion. Thus, Defendant has been provided sufficient notice of the request

to prepare for, and object to, if necessary. Further, the request provides the court, and Defendant, with sufficient information regarding those documents requested to be noticed. As such, Plaintiffs' Request for Judicial Notice is granted.

Interrogatories

"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." Cal. Civ. Pro. § 2030.210(a). Answers are to be "as complete and straightforward" as possible. Cal. Civ. Pro. § 2030.220. If an objection is made, "the specific ground for the objection shall be set forth clearly in the response." Cal. Civ. Pro. § 2030.240(b). All responses to interrogatories, with the exception of objections only, are required to be made under oath signed by the party responding. Cal. Civ. Pro. § 2030.250. Verifications are so imperative to the discovery process that it has been repeatedly said that an "unverified response is tantamount to no response at all." *See* Appleton v. Sup. Ct., 206 Cal. App. 3d 632 (2014).

Form Interrogatory 4.1

Defendant has disclosed just one insurance policy in response to 4.1. Plaintiff cites a management agreement under which Defendant is required to have additional layers of protection. Based on that agreement, Plaintiffs are of the opinion that Defendant is withholding information. Defendant maintains that it has disclosed the only insurance policy it has and its disclosure was made under oath and Plaintiffs' continued assertions that additional policies are in existence is harassing. According to Plaintiffs, Defendant served a copy of its insurance policy on the morning of January 12th. That policy is apparently an excess policy which, Plaintiffs maintain, was not disclosed in Defendant's response to Form Interrogatory 4.1.

Defendant has verified, under oath, that all applicable insurance policies have been disclosed. Nonetheless, Plaintiffs claim the insurance policy states otherwise. To the extent that there are additional policies to disclose, if any, Defendant is ordered to do so by way of an amended response to Form Interrogatory 4.1.

Special Interrogatories 29-32

According to Plaintiffs, interrogatories 29-32 seek information, facts, witnesses and documents related to whether or not Defendant claims Plaintiff did not suffer injury at its facilities. Defendant maintains that its responses to interrogatories 29-32 are compliant with Civil Procedure Section 2030.220, which states that when an interrogatory cannot be answered completely, all that is required is for the party to respond to the extent possible. According to Defendant, investigation has just begun, and no assertions have been formed at this juncture.

Plaintiffs' assertions that interrogatories 29-32 seek only information, facts, witnesses and documents is only partially correct. The interrogatories take it one step further and ask for Defendant's legal contentions – "Do you contend that PLAINTIFF did not suffer any physical

injury during her residency ***as a result of the neglect by YOUR facility***?" It does appear that discovery is in its infancy. And while Plaintiffs attempt to frame these requests as simple fact-finding interrogatories they unambiguously call for a legal conclusion.

While it is true that interrogatories are intended to assist the requesting party in ascertaining the contentions of the opposing party, and the purpose of discovery is to take the "game element" out of trial, that does not change the fact that Defendant simply may not be able to fully respond to an interrogatory propounded before it has had the opportunity to conduct meaningful discovery. Each response is to be "as complete and straightforward as the information reasonably available to the responding party permits." Cal. Civ. Pro. § 2030.220(a). In responding that the request calls for a legal conclusion and is premature, Defendant has responded with all of the information available to it at this time.

Plaintiff's Motion to Compel Further Responses to Special Interrogatory Request Numbers 29-32 is denied.

Special Interrogatories 39-41

According to Plaintiffs, these interrogatories seek information regarding steps taken by Defendant to ensure Plaintiff received medical treatment for her injuries on July 12, 2019, February 24, 2020 and January 23-26, 2021. Defendant again contends that it has provided all of the information it has to date but the matter is still early in the discovery process and experts have not yet been retained.

Defendant's assertion that these requests call for expert testimony is unfounded. Each request specifically seeks "…all steps that YOU took to ensure that PLAINTIFF received medical treatment…" As Defendant states, "…the question of whether Decedent Received the proper care and treatment and the extent and scope of that treatment, calls for a premature expert opinion…" Memo of P&As in Opposition, Pg 4:24-5:1. That may be so, but that is not the information requested by these interrogatories. The interrogatories are not asking for the treatment itself but instead, what steps Defendants took to ensure treatment was given. Was an ambulance called, are there in-house physicians or nurses who attended to Plaintiff? These are simply facts, not medical conclusions. Thus, the lack of expert involvement at this stage in the proceeding is irrelevant. Defendants can provide the information that they do have at this time. This is not to say that responses cannot be supplemented with expert testimony once available, but, as Defendants repeatedly state in their opposition papers, Civil Procedure Section 2030.220, requires a party to respond to the extent possible at the time the response is provided.

Given the breadth of permissible discovery, and the fact that these requests seek information directly related to Plaintiffs' case in chief, Defendant's objections that the requests are not reasonably calculated to lead to the discovery of permissible evidence are likewise unfounded.

The remainder of the objections, "overbroad, vague and ambiguous, unduly burdensome, calls for a legal conclusion, and requires a narrative response. The request lacks foundation…attorney-client privilege, attorney work product doctrine, individual employee and

patients' constitutional right to privacy, Health Insurance Portability and Accountability Act of 1996 (HIPPA)…" appear to be, as Plaintiffs characterize them, simply boilerplate. In fact, Defendant does not even address these objections in its opposition. The party asserting the objection bears the burden of proving its validity. Defendant has not done so.

Plaintiffs' Motion to Compel Further Responses to Special Interrogatories 39-41 is granted.

Interrogatory 43-44

These interrogatories seek the name and contact information for Defendants' insurance brokers. Defendant objects mainly on the basis that the information sought is not discoverable and violates the individual's constitutional right to privacy.

Plaintiffs are seeking this information so they may independently verify Defendant's contentions regarding its insurance policies. While Defendants do not feel doing so is necessary, Plaintiffs still have the right to conduct discovery as they seem fit. In conducting discovery, each "party is permitted to use multiple methods of obtaining discovery and the fact that information was disclosed under one method is not, standing alone, proper basis for refusing to provide discovery under another method." Irvington-Moore, Inc. v. Sup. Ct. 14 Cal. App. 4th 733 (1993). Thus, even though Defendants may not agree with its necessity, Plaintiffs have a right to the requested information in order to further investigate whether or not any additional insurance policies exist.

Additionally, Defendant's privacy concerns are without merit. As previously stated, Defendant, as the objecting party, bears the burden of establishing the viability of its objection. Defendant has not done so, and it is unclear why the name and professional contact information of Defendant's broker would be a matter of privacy. Thus, the requested information should be disclosed.

Plaintiffs' Motion to Compel Further Responses to Special Interrogatories 43-44 is granted.

Interrogatory 45

Interrogatory 45 seeks the identity of "all excess liability insurance coverage in effect for YOU for the years 2016 to the present." Defendant maintains that it has already responded to this request in its response to Form Interrogatory 4.1. Thus, according to Defendant, this request lacks foundation and is vague and ambiguous in light of the fact that Defendant has already stated there is no excess liability policy.

Defendant's assertion is correct. This interrogatory is simply a restatement of Form Interrogatory 4.1 which requests information regarding "…any policy of insurance which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage)…" Defendants have already provided their verified response and have been ordered to amend Form Interrogatory 4.1 to disclose additional

policies, if any. Thus, Plaintiffs Motion to Compel Further Response to Special Interrogatory Number 45 is denied.

Interrogatory 46

Interrogatory 46 request "…the date any notice of claim was given to any insurance carrier related to this matter and how notice was given…"

Plaintiffs argue that they are entitled to this information "…to confirm what insurance may apply here." The policy produced to Plaintiffs covers a time period from January 1, 2020 through January 1, 2021 and is apparently a claims-made policy. Thus, the applicable policy is the one in effect at the time the claim was made to the insurance company regardless of when the event occurred. Thus, the date the claim was made is directly relevant to the issue of insurance coverage and therefore discoverable. Plaintiffs' Motion to Compel Further Responses to Interrogatory 46 is granted.

Interrogatories 52-56

These interrogatories seek the identity of Defendant's landlords from 2017 through 2021. Defendant's response states only, "not applicable." Defendant argues that this is not a case involving a tenancy or landlord/tenant relationship and there is no landlord to identify.

The information sought by these interrogatories is clearly probative, regardless of the fact that this is not a case "involving a tenancy or landlord/tenant relationship." Where an individual is injured on property owned by another, the identity of the property owner is clearly discoverable. Plaintiffs further assert that the identity of the property owner is relevant in establishing a single enterprise/alter ego claim. It appears Defendant takes issue with the use of the term "landlord" where in actuality Plaintiffs are seeking the identity of the property owner. However, instead of stating as such in its response, Defendant simply makes the blanket determination that the request is "not applicable." Defendant does not provide any factual basis for its assertion and therefore its response is not in keeping with Section 2030.220(a), that each response be "as complete and straightforward as the information reasonably available to the responding party permits." Cal. Civ. Pro. § 2030.220(a).

Plaintiffs' Motion to Compel Further Responses to Special Interrogatories 52-56 is granted.

Requests for Production

"A party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:" (1) a statement that the party will comply, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210. Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection…including one based on privilege or on the protection of work product…" Cala Civ. Pro. §2031.300(a).

A statement that the party will comply shall include a statement "that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." Cal. Civ. Pro. § 2031.220.

A statement of inability to comply shall "affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Cal. Civ. Pro. § 2031.230.

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Cal. Civ. Pro. § 2031.240.

Requests for Production Numbers 30-31

Requests 30 and 31 seek copies of all applicable insurance policies and all documents that evidence or refer to any insurance policies for the period of 2016 to the present. Defendant provided a copy of the declaration page for its insurance policy and as of January 12th, a copy of the insurance policy that was in effect from January 1, 2020 through January 1, 2021.

Copies of the insurance policies in effect at the time of the alleged incident are unquestionably discoverable. *See* Cal. Civ. Pro. § 2017.210. However, it is unclear how a policy in place for the year 2016 would be discoverable when Ms. Light admittedly did not enter the facility until 2017. Section 2017.210 allows for "…discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action…" Plaintiffs have not provided any justification for disclosure of a 2016 policy.

Defendants are to produce further responses to requests numbers 30-31 for the time period 2017 through the present.

Requests for Production Numbers 64, 66-67, 76-78

Plaintiffs move to compel further responses to Requests for Production numbers 64, 66-67, and 76-78, on the basis that Defendant has made only partial and incomplete production of the requested documents. However, Plaintiffs do not specify why they believe this to be true. Requests 64, 66, and 67 seek punch cards and staffing data from 2015 to present. Defendant produced records for 2020 and 2021 only. There is no indication why Plaintiffs believe Defendant has additional records. Request numbers 76, 77, and 78 seek in-service training materials. Again, Plaintiffs claim that Defendant made only a partial production but do not

specify the reason for this belief. According to Defendant, it has conducted a reasonable search and diligent inquiry and all responsive documents within its custody and control have already been produced.

While Defendant may have expressed to Plaintiff during meet and confer discussions that no additional documents have been produced, that is not what is represented by Defendant's actual verified response. Instead, the response to request number 64 states, in pertinent part: "Subject to and without waiver of the stated objections, Defendant responds as follows: See Exhibit J." The remainder of the requests provide similar responses referring only to attached exhibits. Defendant fails to include in its response a statement "that all documents or things in the demanded category are in the possession, custody, or control" of Defendant are being included in the production. Cal. Civ. Pro. § 2031.220. Without this assurance made under oath in the verified responses, the response is incomplete. If Defendant has made the required search and has produced everything in its possession and control, then amending its responses to state as such should be of little consequence to Defendant and would afford Plaintiff the protection of having a verified statement that all such documents have been produced. Further, if, to Defendant's knowledge, there are responsive documents in existence but not disclosed by Defendant, Defendant's response is to state the "name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Cal. Civ. Pro. § 2031.230.

Of note is Defendant's objection that the requested documents violate the attorney-client privilege. Plaintiffs are requesting a privilege log for any documents withheld. Defendants maintain that while the objection is asserted, presumably for the purpose of preserving the objection, they do not state that any documents have been withheld because none have been and as such, there is no need for a privilege log. Again, if the responses are amended to indicate that all documents in Defendant's possession and control have been produced, there is no need for a privilege log.

For the aforementioned reasons, Plaintiffs' Motion to Compel Further Responses to Requests for Production of Documents numbers 64, 66-67, 76-78 is granted.

Requests for Production Numbers 81-82

Request numbers 81 and 82 request service levels and census information for the time of Plaintiff's residency. Plaintiffs argue the information is discoverable to show the needs of the residence during Plaintiff's time with Defendant. This, according to Plaintiff, is directly relevant to its allegations of understaffing and undertraining. Plaintiff states that any issues regarding privacy of the other residents can be resolved simply by redacting their identifying information.

Defendant objects on the basis that the request is overbroad, unduly burdensome, harassing and not narrowly tailored. Requesting the service levels of every resident over the span of years as well as ever single document that so much as mentions the resident population is unreasonable.

Although the scope of discovery is broad, it is not without limits. Haniff v. Sup. Ct. 9 Cal. App. 5th 191 (2017). The court may restrict discovery if "the selected method…is unduly

burdensome or expensive…" Cal. Civ. Pro. 2019.030(a). A finding of undue burden requires "…a case-specific consideration of the factual circumstances." Park v. Law Offices of Tracey Buck-Walsh, 73 Cal. App. 5th 179 (2021). "In common parlance the word 'undue' connotes a judgment call about whether some action or result exceeds what is reasonable or fair." Park v. Law Offices of Tracey Buck-Walsh, 73 Cal. App. 5th 179 (2021). Courts are to "weigh the cost, time, and expense and disruption of normal business resulting from an order compelling the discovery against the probative value of the material which might be disclosed if discovery is ordered" (Calcor Space Facility, Inc. v. Sup. Ct., 53 Cal. App. 4th 216 (1997) while "taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." Cal. Civ. Pro. 2019.030(a).

Each of the requests at issue are seeking documents regarding every single resident for the entirety of Ms. Light's residency with Defendants. Each of which would need to be individually reviewed and redacted to protect the privacy rights of every individual. While the information requested is likely to lead to the discovery of probative evidence, it is unclear how service levels from the 2017-2018 period would be probative when the first incident of negligence alleged by Plaintiffs did not occur until July of 2019. Likewise, the entirety of records from 2019 may not be necessary but only a period of time within that year. Plaintiffs can assuredly limit this request to more reasonable time periods which would allow them to still access information probative to their case, without unduly burdening Defendant.

Not only are the requests unduly burdensome, but request 82 is particularly objectionable as vague and ambiguous as well. The request seeks "ANY and ALL DOCUMENTS that *evidence or refer to the census (resident population) of the FACILITY and care levels of residents…"* (emphasis added). Civil Procedure Section 2031.030 requires each request to identify the documents sought with reasonable particularity. Cal. Civ. Pro. § 2031.030(c)(1). Request number 82 fails to do so. Instead, it asserts a blanket demand for all documents that so much as refer to the resident population for a span of four years. Blanket demands have routinely been struck down by courts on the basis that they "…hardly constitute 'reasonable' particularity…" *Calcor Space Inc., Supra.* at pg. 222. While a review of any and all documents that have ever referred to the population of the facility within those four years would likely produce some probative evidence, it remains unreasonably overbroad. If the purpose of the request is to seek documents that evidence the number of residents at any given time, then the request should so state. This request can undoubtedly be limited to request with more particularity, documents that are directly probative to Plaintiffs' case.

Regarding Defendant's objection on the basis of privacy and HIPPA, these objections are well taken, though Plaintiff is correct, any privacy concern may be resolved by redacting identifying information of the individuals in question. A patient's "…privacy rights are not infringed if neither disclosure of the patients' identities nor disclosure of identifying medical information was requested. [Citations]" Snibbe v. Sup. Ct. 224 Cal. App. 4th 184, 195 (2014). Plaintiffs' requests, as stated, do seek identifying information. The requests themselves do not reference the production of documents with confidential medical information to be responsive. However, Plaintiffs' have made it clear in their moving papers that they do not seek the production of such information and would be agreeable to accepting redacted documents.

Upon limiting the requests to time and scope, as discussed above, these requests may also be limited to seek non-identifying information regarding the residents.

Plaintiffs' Motion to Compel Request Numbers 81 and 82 is denied.

Request for Production Number 91

Request number 91 seeks all documents regarding employees reprimanded, coached, terminated or written up regarding the findings by the Department of Social Services. Plaintiffs claim the information requested goes to the issue of liability, notice and the ratification of deficient practices. Defendant objects stating that subsequent remedial measures are inadmissible to prove liability.

Evidence Code Section 1151 expressly precludes evidence of subsequent remedial measures to prove negligence or culpable conduct. For such evidence to be discoverable Plaintiffs would need to show some way in which the information may lead to the discovery of evidence that would be admissible – in other words, the discovery of information that could be used to show something other than negligence or culpable conduct. Plaintiffs have not done so. Instead, they admittedly seek the requested information to show "liability and notice and ratification of deficient practices," all issues of liability. Consequently, because the request is not reasonably calculated to lead to the discovery of admissible evidence, no further response is necessary.

Sanctions

Plaintiffs seek monetary sanctions in the amount of $1,980. This accounts for over 4 hours spent drafting the motion and its supporting documents, an estimated hour reviewing and responding to the opposition, and $180 in filing fees. This is calculated at a billable rate of $450 per hour.

Defendant opposes the request for sanctions and argues that Plaintiffs failed to meaningfully meet and confer to resolve the issues presented by the motion without the need for court intervention. An examination of the meet and confer letters, according to Defendant, proves that the parties had not reached an impasse and the filing of this motion was premature. Defendant points to its meet and confer letter of October 10, 2022, which went unanswered.

"[T]he court *shall* impose a monetary sanction…against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, 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." Cal. Civ. Pro. § 2031.320(b) (emphasis added). Additionally, "[t]he court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process…pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct…If a monetary sanction is authorized by any provision of this title, the court *shall* impose that sanction unless it finds that one subject to the sanction acted with substantial

justification or that other circumstances make the imposition of the sanction unjust." Cal. Civ. Pro. 2023.030(a)(emphasis added) & 2023.020. Misuse of the discovery process includes, but is not limited to, making an evasive response to discovery, or failing to confer in a reasonable good faith attempt to informally resolve any discovery dispute. Cal. Civ. Pro. § 2023.010. Written interrogatories and requests for production of documents are both authorized forms of discovery. Cal. Civ. Pro. §§ 2030.210, 2031.210.

Here, Plaintiffs' motion has been granted in part and denied in part. Neither party was entirely successful in making or opposing the present motion, which makes sanctions under 2031.320(b) inapplicable.

Regarding sanctions pursuant to Sections 2023.030 and 2023.020, it appears that both parties engaged in recognized misuses of the discovery process. Portions of Defendant's responses certainly contain notable deficiencies and evasive responses. However, Defendant made it abundantly clear that it was open to continuing meet and confer discussions. Defendant proposed supplemental responses, but the parties seem unclear as to whether or not and when Defendant would be serving the verified supplemental responses. Plaintiffs' haste in filing this motion to compel does call into question its good faith in participating in the meet and confer process. In light of the fact that neither party is entirely innocent of its use of the discovery process, it would be unjust to sanction only Defendant for its actions. Plaintiffs' request for sanctions is denied.

Motion to Compel Deposition

On December 6, 2022, Plaintiffs filed and served their Motion to Compel the Deposition of Defendants' Person Most Qualified Regarding Insurance and Documents. The Notice of Motion, Memorandum of Points and Authorities, Request for Judicial Notice, Declaration of Virginia L. Martucci, and a Separate Statement were all filed in support of the motion.

Defendants filed their opposition papers on January 6, 2023, which consisted of Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Compel Deposition of Person Most Qualified Re Insurance and Documents and a supporting Declaration of Tiffany C. Sala. Plaintiffs filed their reply on January 12th.

Request for Judicial Notice

The court notes Plaintiffs' Request for Judicial Notice is identical to the request made in Plaintiffs' Motion to Compel Responses to (1) Form Interrogatories, (2) Special Interrogatories and (3) Request for Production, Set One, from Defendant Cameron Park Senior Living, LLC. In the interest of judicial economy, the court hereby incorporates by reference and adopts its ruling on the Request for Judicial Notice as listed above.

Deposition

According to Plaintiffs, when they received what they perceived to be inadequate and incomplete discovery responses regarding Defendants' insurance coverage, they noticed the

deposition of Defendants' person most qualified (PMQ) to speak to the issue of Defendants' insurance coverage. Defendants offered to provide a declaration in lieu of the deposition, though Plaintiffs felt the declaration was inadequate and inaccurate. Plaintiffs now seek an order compelling the PMQ deposition and compelling the production of documents in response to the document requests listed in the deposition notice.

Defendants assert that they were in the process of meeting and conferring regarding a stipulated protective order as well as a declaration from their PMQ regarding insurance when Plaintiffs unilaterally ceased meet and confer efforts and filed the present motion. According to Defendant, Greg Kasner is the contact for all insurance policies and the only individual qualified to appear for the PMQ deposition. However, Mr. Kasner is also an APEX officer of the entity. In that capacity, Defendants argue that he is not subject to deposition, hence their proposal to provide a declaration.

In response, Plaintiffs note that Mr. Kasner is defendants' "former Executive Director and present manager…" Reply, pg. 1:27-2:1. Moreover, Plaintiffs claim that Defendants have the option to produce someone other than Mr. Kasner for the deposition.

It is well established law that any party may obtain discovery by way of an oral deposition. Cal. Civ. Pro. § 2019.010(a) & §2025.010. "The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying." Cal Civ. Pro. § 2025.280(a). In the case of a corporation or entity where a specific individual is not named in the deposition notice, "…the deposition notice shall describe with reasonable particularity the matters on which the examination is requested" to which, the corporation shall designate and produce the person most qualified in that regard. Cal. Civ. Pro. § 2025.230.

Where a party seeks to avoid deposition, it may move for a protective order. Civil Procedure Section 2025.420 vests the court with the authority to, upon a showing of good cause, issue a protective order which, among other things, may direct that the deposition not be taken at all. Civ. Pro. § 2025.420(b)(1). In keeping with that power, the court may preclude the deposition of a "…corporate officer at the apex of the corporate hierarchy absent a reasonable indication of the officer's personal knowledge of the case and absent exhaustion of less intrusive discovery methods." Liberty Mutual Ins. Co. v. Sup. Ct. 10 Cal. App. 4th 1282, 1287 (1992). In other words, in ruling on a motion for a protective order, the court is to determine whether the party seeking the deposition has shown good cause that the officer has unique or superior personal knowledge of discoverable information. *Id.* at 1289.

If a party deponent timely objects to the notice of deposition or fails to appear at a properly noticed deposition or fails to produce for inspection any document or tangible thing described in the deposition notice, then the party giving notice may move for an order compelling the deponent's attendance and testimony. Cal. Civ. Pro. § 2025.450(a).

Defendants provide a conclusionary assertion that their PMQ is also an APEX officer and is therefore not subject to deposition. However, they do not provide his title or any documentation to evidence his position with the company. Without a showing that Mr. Kasner is an APEX officer, the APEX doctrine does not apply.

Even if the APEX doctrine did apply, Defendants themselves concede that Mr. Kasner has unique and superior knowledge regarding the company's insurance policies. "Greg Kasner is the point of contact for all insurance questions and comments, and the sole individual with the entity involved in the insurance process. Thus, the subpoena could only be directed at Greg Kasner himself." Opposition, pg. 5:18-5:20.

Much of the briefing is dedicated to the sufficiency of the meet and confer process. It does appear that the parties engaged in discussions regarding the production of a declaration as opposed to a deposition. Plaintiffs considered the declaration and felt that the discrepancies between it and the already established evidence necessitated live testimony as opposed to a declaration. Such is Plaintiffs' right to do. They may not have been entirely forthcoming in their communication regarding their reasoning; however, the court does not find this to be sufficient grounds to deny the motion altogether.

Given that there has been no showing that the APEX doctrine applies, and, even if it were to apply, it has been established that Mr. Kasner has superior knowledge regarding discoverable information, Defendants are ordered to produce their PMQ in response to the Deposition Subpoena. The parties are to meet and confer regarding a mutually agreeable date and time. Responsive documents are to be produced as required per the Civil Discovery Act.

TENTATIVE RULING #4: PLAINTIFFS' REQUESTS FOR JUDICIAL NOTICE ARE GRANTED. PLAINTIFFS' MOTION TO COMPEL RESPONSES TO (1) FORM INTERROGATORIES, (2) SPECIAL INTERROGATORIES, AND (3) REQUEST FOR PRODUCTION SET ONE FROM DEFENDANT CAMERON PARK SENIOR LIVING, LLC, AND FOR MONETARY SANCTIONS IN THE AMOUNT OF $1,980.00 AGAINST DEFENDANT IS GRANTED IN PART AND DENIED IN PART. THE MOTION IS GRANTED REGARDING FORM INTERROGATORY 4.1, SPECIAL INTERROGATORIES 39-41, 43-44, 46, 52-56, AND REQUESTS FOR PRODUCTION OF DOCUMENTS NUMBERS 30-31 (FOR THE TIME PERIOD FROM 2017 THROUGH PRESENT), 64, 66-67, 76-78. THE MOTION IS DENIED FOR SPECIAL INTERROGATORIES 29-32, 45 AND REQUESTS FOR PRODUCTION OF DOCUMENTS NUMBERS 81, 82 AND 91. ALL AMENDED RESPONSES ARE TO BE SERVED NO LATER THAN FEBRUARY 17, 2023. PLAINTIFFS' REQUEST FOR SANCTIONS IS DENIED. PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF DEFENDANTS' PERSON MOST QUALIFIED REGARDING INSURANCE AND DOCUMENTS IS GRANTED. THE PARTIES ARE TO MEET AND CONFER REGARDING A MUTUALLY AGREEABLE DATE AND TIME. RESPONSIVE DOCUMENTS ARE TO BE PRODUCED AS REQUIRED BY THE CIVIL DISCOVERY ACT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. 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 REMOTELY BY ZOOM, PLEASE CONTACT THE CLERK'S OFFICE AT 530-621-5867

1-20-23
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TRs

5. CHRISTINE CAMBRIDGE ET. AL. v. MARSHALL MEDICAL CENTER 22CV1292

Application to file Documents Under Seal

Defendant seeks an order sealing the Professional Services Agreement ("PSA") entered into by and between Defendant and Plaintiff and portions of Defendant's Demurrer which quotes extensively from the PSA. Further, Defendant asks that any future filings that contain copies of the PSA or which quote from or substantially set forth the PSA's terms pertaining to compensation, benefits, or sensitive contractual rights and obligations to also be maintained under seal. The application and supporting documents were served on November 18, 2022.

Plaintiffs served their opposition to the application on December 30, 2022. Defendant filed its reply on January 9th.

Defendant argues the PSA should be sealed as it contains trade secrets belonging to Defendant. Such trade secrets include the contractual rates and terms upon which Defendant hires its physicians. Defendant maintains that it routinely keeps such information confidential, and it derives a benefit from being able to negotiate with its physicians without competitors knowing the general terms thereof. According to Defendant, the very fact that there is a confidentiality agreement in the PSA is evidence of Defendant's efforts to ensure that such terms are kept confidential.

Plaintiffs point to the strong public policy in favor of unhindered access to court documents. They argue that Defendant has not shown that it derives independent economic value from the supposed trade secrets, namely, the structure of physician compensation and specific rates. Even if the court were to find physician compensation and rates to be trade secrets, Plaintiffs argue that does not account for the entirety of the PSA to be lodged under seal. The PSA consists of 332 pages. Weighing the portions that refer to physician compensation, to the remainder of the 332 pages, Defendant's right to maintain the supposed trade secrets does not outweigh the publics right in all of the remaining information. In that same vein, Plaintiffs argue, sealing the entire PSA, as Defendant requests, is not the most narrowly tailored way to protect the alleged trade secrets in physician compensation and rates.

To place documents under seal, the court must make a finding of the following factors: "(1) There exists and overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." Cal. Rule Ct. Rule 2.550(d). To seal documents, the court must make a specific factual showing why sealing is justified and limit the material sealed to the least restrictive means possible. *Id.* at subsection (e).

The PSA itself contains a confidentiality provision which requires the parties and their respective attorneys to maintain "…the terms of this Agreement in confidence." Notably, the

PSA is a contractual agreement between Defendant and the El Dorado Women's Health Medical Group, Inc. ("Medical Group"). Medical Group is not a party to the lawsuit. Thus, allowing the PSA to be openly accessible to the public would consequently cause Defendant to be in breach of its agreement with a third party and potentially open up Defendant to liability for its breach. This is undoubtably an overriding interest that supports sealing the record.

Additionally, Defendant has established that the structure it uses to establish physician compensation has been the result of significant time and effort on the part of Defendant. Defendant has taken steps, including adding a confidentiality provision to the agreement itself, to insure that the structure it uses to determine physician compensation remain confidential. The economic value in this information is clear. It goes directly to Defendant's ability to negotiate competitive rates with physicians.

Defendant seeks to seal the PSA in its entirety and only those portions of the pleading that quote from the PSA or refer to its terms. The court finds these provisions to be narrowly tailored to protect Defendant's interest in not availing itself to third party liability under the confidentiality provision and protect its established trade secrets while still affording the public access to all other portions of the pleadings.

For the foregoing reasons, Defendant's Application to File Documents Under Seal is granted. The PSA, portions of the demurrer which quote from the PSA and future filings containing the PSA and portions that quote the PSA are to be filed under seal. Parties submitting pleadings with information to be leased are to prepare (1) a version to be marked, "LODGED UNDER SEAL PURSUANT TO COURT ORDER" and (2) a version to be filed marked, "PUBLIC REDACTED MATERIALS FROM SEALED RECORDS; May Not Be Examined Without Court Order – Contains Material from Sealed Record."

Demurrer

Plaintiffs filed their complaint on August 23, 2022, asserting claims of unpaid wages, failure to comply with the Private Attorney General Act (PAGA) and Unfair Business Practices. Defendant now demurrers on the grounds that Plaintiffs' complaint fails to allege facts sufficient to circumvent the Corporate Practice of Medicine Bar or the express terms of the contract, fails to join El Dorado Women's Health Medical Group, Inc. as a necessary party, and fails to state facts sufficient to constitute a cause of action for violations of the Labor Code, the Unfair Competition Law and the Private Attorney General Act.

Plaintiffs filed and served their Opposition to Defendant's Demurrer to Complaint. Defendant's reply was filed thereafter on January 9th.

Request for Judicial Notice

In support of its demurrer, Defendant asks the court to take judicial notice of the following: (1) The Professional Services Agreement dated May 17, 2004 by and between

Defendant and El Dorado Women's Health Medical Group; (2) The Articles of Incorporation of El Dorado Women's Health Medical Group, Inc.; (3) The Statement of Information for El Dorado Women's Health Medical Group, Inc. filed May 8, 2019; (4) The Statement of Information for El Dorado Women's Health Medical Group, Inc. filed February 16, 2021 and the Certificate of Election to Wind Up and Dissolve filed by El Dorado Women's Health Medical Group, Inc. on July 25, 2022. Plaintiff has not opposed the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. Section 451(f) compels the court to take judicial notice of "facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute." Cal. Ev. Code § 451(f).

Here, the first request is for judicial notice of the PSA. Courts have found that where the subject document is central to plaintiff's complaint, and where no party questions the authenticity of the document proffered to the court, judicial notice of that document is proper. *See* Performance Plastering v. Richmond American Homes of Cal. Inc., 153 Cal. App. 4th 659. Defendant has provided the court and Plaintiffs with a copy of the PSA and the court has received no response objecting to its authenticity. Thus, Defendant's request for judicial notice of the PSA is granted.

Documents 2 through 4 are all filings with the state that can be found on the Secretary of State's website. Their nature as such makes their contents not reasonably subject to dispute. And in fact, there is presumably no dispute as Plaintiffs have not opposed the requests.

Defendant's requests for judicial notice are granted as to the following documents: (1) The Professional Services Agreement dated May 17, 2004 by and between Defendant and El Dorado Women's Health Medical Group; (2) The Articles of Incorporation of El Dorado Women's Health Medical Group, Inc.; (3) The Statement of Information for El Dorado Women's Health Medical Group, Inc. filed May 8, 2019; (4) The Statement of Information for El Dorado Women's Health Medical Group, Inc. filed February 16, 2021 and the Certificate of Election to Wind Up and Dissolve filed by El Dorado Women's Health Medical Group, Inc. on July 25, 2022.

Legal Standard for a Demurrer

A demurrer raises only issues of law, not fact, regarding the form and content of the pleadings of the opposing party. Cal. Civ. Pro. §§ 422.10 and 589. It is not the function of the demurrer to challenge the truthfulness of the complaint, instead, for the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading. *Aubry v. Tri-City Hosp. Dist*, 2 Cal. 4th 962, 966-967 (1992); *Serrano v. Priest*, 5 Cal. 3d 584 (1971); *Adelman v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 352, 359 (2001). A demurrer can only challenge defects that appear on the face of the pleading and other matters that are judicially noticeable, the challenging party cannot make allegations of fact to the contrary.

Blank v. Kirwan, 39 Cal. 3d 311, 318 (1985); _Donabedian v. Mercury Ins. Co._, 116 Cal. App. 4th 968 (2004); _Harboring Villas Homeowners Assn. v. Sup. Ct._, 63 Cal. App. 4th 426 (1998). For that reason, "[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." _Fremont Indemnity Co. v. Fremont General Corp.,_ 148 Cal. App. 4th 97, 114 (2007).

Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); _Berger v. Cal. Ins. Guar. Ass'n,_ 128 Cal. App. 4th 989, 1006 (2005). However, "[t]o determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to *any judicial relief against the defendant*, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged." _Elliot v. City of Pacific Grove,_ 54 Cal. App. 3d 53, 56. Otherwise stated, the demurrer is to be overruled if the allegations of the complaint are sufficient to state a cause of action under any legal theory. _Brousseau v. Jarrett,_ 73 Cal. App. 3d 864 (1977); *see also* _Nguyen v. Scott,_ 206 Cal. App. 3d 725 (1988).

Here, the complaint asserts claims for unpaid wages, penalties and interest under various sections of the Labor Code, unfair competition under Business & Professions Code § 17200, and a Private Attorney General Act ("PAGA") claim. The parties dispute whether or not there is a joint employer relationship between Defendant and El Dorado Women's Health Medical Group (the "Medical Group"), which would necessarily subject Defendant to employer liability. Nonetheless, according to Defendant, regardless of the issue of joint liability, Plaintiffs are precluded from recovery based the express terms of the Professional Services Agreement (the "PSA") alone.

Defendants cite Amendment 23 to the PSA stating that severance pay is awarded only "to the extent that a Medical Group Physician's employment by the Medical Group is terminated with such termination being without cause, and [Defendant] and the Medical Group agree that it is appropriate to provide the Medical Group Physician severance pay." However, they fail to cite the following: "To the extent that a Medical Group Physician's employment by Medical Group is terminated, with such termination being without cause, and Medical Group elects to offer or is required under its agreement with Medical Group Physician to provide Medical Group Physician severance pay upon the termination of Medical Group Physician's employment ***then Hospital [Defendant] shall pay the Medical Group Base Compensation up to three (3) months pay for such Medical Group Physician."*** Amendment 23, Ex. F to PSA, pg. 10-11 (emphasis added). Presumably, Plaintiffs argue that Medical Group terminated each Plaintiff's employment without cause and, whether it be that Medical Group elected to offer severance or was required to offer severance under the referenced employment agreements, Defendant now owes an amount equal to 3 months worth of each Plaintiff's pay. The two cited provisions are clearly contradictory.

"The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. Civ. Code § 1636. Such intent is to be inferred, if possible, solely from the written provisions of the contract. *Id.* However, where the words of the contract are susceptible to more than one interpretation, extrinsic evidence regarding the factual context in which the agreement was reached is to be considered. *Nish Noroian Farms v. Agricultural Labor Relations Bd*., 35 Cal. 3d 726 (1984). Here, the express language of the contract is contradictory and unclear. Thus, if the court would need to turn to extrinsic evidence to fully interpret the contract, which it cannot do in the context of a demurrer hearing. Thus, because at this stage in the proceedings the court is to determine whether Plaintiffs would be entitled to recovery under any theory, it can be found that the contract intended for Defendant to pay severance upon the termination of a Medical Group Physician.

That said, under the terms of the PSA the Defendant would owe *Medical Group* the amount equal to the severance, not Plaintiffs in their individual capacities unless, Plaintiffs can establish that they are third party beneficiaries of the contract. If they can do so, they can potentially recover severance. If not, then it appears it would be in the best interests of all involved to ensure that Medical Group is joined as a party to the action.

The same reasoning applies to Plaintiffs' claims for accrued PTO. Amendment 23 states, "[t]he Medical Group shall also be paid an amount equal to the accrued PTO or vacation time payable to the departing Medical Group Physician…" Amendment 23, Ex. F to PSA, pg. 10-11.

The court recognizes that these are claims for contractual liability; they do not address the issue of joint employer liability. Be that as it may, the court is only to find whether Plaintiffs can recover on any legal theory, and the court finds that they can. Defendant's demurrer is denied.

TENTATIVE RULING #5: DEFENDANT'S APPLICATION TO FILE DOCUMENTS UNDER SEAL IS GRANTED. THE PSA, PORTIONS OF THE DEMURRER WHICH QUOTE FROM THE PSA AND FUTURE FILINGS CONTAINING THE PSA AND PORTIONS THAT QUOTE THE PSA ARE TO BE FILED UNDER SEAL. PARTIES SUBMITTING PLEADINGS WITH INFORMATION TO BE LEASED ARE TO PREPARE (1) A VERSION TO BE MARKED, "LODGED UNDER SEAL PURSUANT TO COURT ORDER" AND (2) A VERSION TO BE FILED MARKED, "PUBLIC REDACTED MATERIALS FROM SEALED RECORDS; MAY NOT BE EXAMINED WITHOUT COURT ORDER – CONTAINS MATERIAL FROM SEALED RECORD." DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANT'S DEMURRER TO THE COMPLAINT IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR

<u>COURT</u>, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. 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 REMOTELY BY ZOOM, PLEASE CONTACT THE CLERK'S OFFICE AT 530-621-5867.