

06-30-23  
Dept. 9  
Tentative Rulings

1.      **DIAMOND TERRACE APARTMENTS v. DEHR-LEWIS**      **23UD0080**  
**Motion Hearing – Stay**

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 30, 2023,  
IN DEPARTMENT NINE.**

**2. GONZALEZ v. GENERAL MOTORS 22CV1379**

**Motion to Compel Further Responses**

This action claims violations of the Song-Beverly Consumer Warranty Act (Song-Beverly Act), for defects in a 2019 GMC Sierra vehicle.

The case is in the discovery stage. On March 28, 2023, Plaintiff filed a Motion to Compel Further Responses and Documents to Plaintiff's Request for Production of Documents, Set One. Defendant objected to these requests on the grounds of relevance, that they are vague and ambiguous, overbroad, burdensome and oppressive and that they request materials that are protectible as confidential materials and trade secrets.

Following a hearing on May 19, 2023, the court continued the matter, reserved the issue of sanctions, and ordered the parties to meet and confer via phone or in person to resolve the discovery dispute. Both parties submitted declarations documenting compliance with the court's direction.

Plaintiff's Declaration of Alessandro Manno re: the Court's Order Imposing Monetary Sanctions, dated June 9, 2023 ("Manno Declaration"), requests \$6,764 in sanctions representing attorneys' fees in drafting and arguing the motion to compel further responses.

In Defendant's Declaration of Cameron Major re: Plaintiff's Motion to Compel Request for Production of Documents, Set One, dated June 23, 2023 (Major Declaration), Defendant documented the meet and confer process and declared that, as a result, there remains no outstanding discovery dispute between the parties. Defendant contends that no sanctions should be awarded because if Plaintiff had just engaged in adequate meet and confer efforts at the outset, this motion would have been rendered unnecessary. Defendant further contends that the amount claimed for sanctions is excessive.

**Meet and Confer Requirement**

Defendant's earlier opposition to the Motion to Compel also argued that Plaintiff had failed to meet and confer prior to filing this Motion to Compel Further Responses to Plaintiff's Request for Production of Documents, stating that the parties' extensive correspondence between January 11, 2023 and March 22, 2023 was "disingenuous", lacking in meaningful substantive reasoning or analysis, and did not amount to a "good faith" effort to "meet and confer". Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set One, at page 3-5.

The court has reviewed the 18 pages of meet and confer correspondence that Plaintiff initiated on January 11, 2023, and the 10 pages that Defendant sent in response, and finds that the Plaintiff's correspondence technically fulfilled the statutory responsibility to meet and confer regarding the discovery dispute prior to filing the motion. Declaration of Alessandro Manno in Support of Plaintiff's Motion to Compel Further Responses and Documents to Request for Production of Documents, Set One, dated March 28, 2023, paragraphs 25-33 and Exhibits 17-24.

However, as noted at the May 19, 2023 hearing, the court expects a more robust meet and confer effort than simply dueling letters. Particularly, given the parties were able to resolve the discovery issues after talking over the phone (albeit after the court at the May 19, 2023 indicated how it was likely to rule if the issues remained unresolved), the court finds that direct communications are even more essential, as opposed to dueling letters, to resolving these kinds of disputes.

#### Award of Sanctions

In its opposition to Plaintiff's Motion, Defendant filed a Separate Statement in Support of Opposition to Plaintiff's Motion to Compel Further Responses to Requests for Production of Documents, Set One in which Defendant argued that Plaintiffs requests are so "ridiculously overbroad" that it would be "virtually impossible" to search for the requested documents, that it would require "countless" people "to scour every corner of the global company" and that the task would be "indescribably cumbersome, "unbearable, unnecessary, unduly burdensome and expensive."

To oppose Plaintiff's Motion, Defendant filed 94 pages of opposition documents, at least some of which were irrelevant to the proceedings, such as excerpts of unpublished trial court transcripts and an unrelated declaration, all the while accusing the Plaintiff of unnecessarily burdening the court with "an intent to harass and improperly burden" and abusing the discovery process "with no other objective than to extort a higher settlement by obtaining higher attorneys' fees from GM." (Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel at 5-6.)

In Defendant's own words: "once the parties were able to meet and confer substantively on the phone and discuss these issues, we were able to resolve the entirety of the dispute." Major Declaration at ¶6.

Code of Civil Procedure § 2023.030(a) provides:

The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has

engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

“Misuse of the discovery process” includes:

\* \* \*

(d) Failing to respond or to submit to an authorized method of discovery.

(e) Making, without substantial justification, an unmeritorious objection to discovery.

(f) Making an evasive response to discovery.

\* \* \*

(h) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.

\* \* \*

Code of Civil Procedure § 2023.010.

As discussed above, the court finds that more robust meet and confer efforts at the onset could have lessened the costs incurred by Plaintiff. The court also is mindful that even had more robust efforts been undertaken a motion still may have been required, as it was only after the court intervened and indicated how it was inclined to rule that Defendant modified its stance.

The court finds that the circumstances of this case are appropriate for awarding sanctions against the party unsuccessfully opposing this discovery motion. The court further finds that the hourly rate and detailed accounting of attorneys’ fees listed in the Manno Declaration at ¶¶4-5 are reasonable. However, the court finds it appropriate, given the concerns about the initial meet and confer efforts, to reduce the total fees awarded from the requested \$6,764 to \$4,500.

**TENTATIVE RULING # 2: THE COURT ORDERS DEFENDANT TO PAY \$4,500 IN SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE § 2023.030(A), PAYABLE BY JULY 31, 2023.**

**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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**3. TAVALLAEI v. ESSENTIAL ROPERTIES GROUP, INC. 22CV0350**

**Motion to Compel Inspection**

Plaintiff brought this action following his purchase of a 146-acre property from Defendant. The suit alleges that Defendant failed to remove personal property, junk and debris from the site, that Defendant failed to disclose and failed to dispose of hazardous materials that contaminated the property, that tenants remained on the property at close of escrow and that Defendant removed appliances that were to remain with the property. Defendant filed a Cross-Complaint alleging that Plaintiff refused to allow Defendant access to the property for the purpose of removing the waste and personal property, and that Plaintiff has improperly retained some of Defendant's personal property, such as tools and building materials.

Defendant originally propounded a Demand for inspection on November 22, 2022 for physical inspection and non-destructive testing. In December of 2022, Defendant specified that the inspection would include the entire parcel, and Plaintiff indicated that only specific areas could be inspected, including those areas where Defendant's property and the waste items had been located. Plaintiff argues that inspection of the entire lot "would take days"; Defendant proposes that the inspection be limited to a single business day between the hours of 8 a.m. and 6pm and has drafted and filed a Proposed Order for the court that contains this limitation.

Defendant has filed this Motion to Compel Inspection of the real property. Plaintiff does not object to an inspection of portions of the property but argues that the scope of the proposed inspection of the entire property is overbroad and burdensome and would be an invasion of Plaintiff's privacy. Plaintiff requests a protective order to prevent inspection of the entire 146-acre property. The parties do agree that the proposed inspection would not include the interior of Plaintiff's residence.

Code of Civil Procedure § 2031.010(d) provides:

A party may demand that any other party allow the party making the demand, or someone acting on the demanding party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

In the event that a response to a demand for inspection is incomplete, inadequate or evasive, the demanding party is authorized to move for an order compelling further response to the demand. Such a motion must set forth facts justifying the discovery and shall be accompanied by a meet and confer declaration. Code Civil of Procedure § 2031.310(a)-(b). From the motion, its supporting documents and from Plaintiff's opposition the court discerns facts justifying the discovery, in that the Plaintiff has put the condition of the property at issue in the lawsuit, and Defendant claims that Plaintiff has failed to allow access to personal property belonging to the Defendant which is capable of being relocated. There is no

substantial privacy interest that overcomes the policy favoring liberal discovery in the inspection of open acreage that does not include the interior of Plaintiff's residence. With the limitation of the inspection period to a single business day during business hours the demand for inspection is not overbroad or overly burdensome, considering that the Plaintiff has put the condition of the property at issue in this lawsuit.

Defendant documents meet and confer efforts to resolve this matter over the course of the past seven months in the Declaration of Terry L. Gilbeau, dated May 3, 2023 (Gilbeau Declaration"), at ¶¶ 2, 4-5. Plaintiff also documents these efforts in the Declaration of Jason L. Hoffman, dated June 13, 2023, at ¶¶ 6-7. The parties have apparently reached an impasse.

Code of Civil Procedure § 2031.310(h) requires sanctions to be imposed against any party who unsuccessfully makes or opposes a motion to compel further response to a demand, unless imposition of the sanctions would be unjust or the party subject to sanctions acted with substantial justification. See also, California Rule of Court, Rule 3.1348(a).

Defendant claims \$2,722.50 in incurred costs and attorney fees in connection with this motion, which included the motion itself and a reply to Plaintiff's opposition. Gilbeau Declaration at ¶7. This includes 7.1 hours of attorney time at the rate of \$375 per hour, plus \$60 for filing fees. Id. The court finds these costs and fees to be reasonable and does not find that any of the exceptions to an award of sanctions applies. The court grants the sanctions request in full.

**TENTATIVE RULING # 3: THE MOTION TO COMPEL INSPECTION IS GRANTED. THE COURT ORDERS PLAINTIFF TO PAY \$2,722.50 IN SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE § 2031.310(H), PAYABLE BY JULY 31, 2023.**

**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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**



**4. NAME CHANGE OF SCHUETTE 23CV0669**

**Name Change**

Petitioner filed a Petition for Change of Name on May 3, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication and a background check with the court.

**TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 25, 2023, IN DEPARTMENT NINE.**

**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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**5. NAME CHANGE OF HUANG-RAMIREZ 23CV0673**

**Name Change**

Petitioner filed a Petition for Change of Name on May 4, 2023.

Proof of publication was filed on June 7, 2023, as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

**TENTATIVE RULING # 5: ABSENT OBJECTION THE MOTION IS GRANTED AS REQUESTED.**

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**6. NAME CHANGE OF HAMES 23CV0645**

**Name Change**

Petitioner filed a Petition for Change of Name on April 28, 2023.

Proof of publication was filed on June 26, 2023, as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file a background check with the court.

**TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 18, 2023, IN DEPARTMENT NINE.**

**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.**

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**7. WYNN INNOVATIONS LLC v. PRICE 22CV1586**

**Deem Facts Admitted (5)  
Demurrer (5)**

Demurrer

Plaintiff has filed demurrers to the Answers of Defendants Linda Cook, Amy Kessler, Jacob Henke, Joe Price and Price Global Logistics, LLC. In response to Plaintiff's Complaint, on December 28, 2022, each of these Defendants filed a single page General Denial on Judicial Council Form PLD-050. Besides checking the box indicating that "defendant generally denies each and every allegation of plaintiff's complaint," these five answers listed the following affirmative defenses:

Breach of Contract. Plaintiff breached his contract, if any, with Defendants and by reason of such breach of contract this answering defendant has been excused of any duty it may have had to perform any obligation set forth in any agreement with Plaintiff, if there be such agreement.

Estoppel, Unclean Hands, Laches. Plaintiffs conduct which constitutes a breach of contract, tortious conduct, waiver, unclean hands, and laches. Plaintiff is estopped to assert any right of relief.

Failure to Mitigate Damages. Plaintiff failed and neglected to mitigate his damages so as to reduce an/ore diminish his claim.

To this list of affirmative defenses shared between all answering Defendants, Defendants Kessler, Cook and Henke added:

Not a Proper Party Defendant: Defendant [Amy Kessler, Jacob Henke, Linda Cook] is not a proper party to this lawsuit as she/he is not an owner or officer of Price Global Logistics, LLC, but rather just an employee of the company, and did not enter into any contracts or agreements with Plaintiff on behalf of the company or in her/his individual capacity.

Plaintiff argues that, in accordance with Code of Civil Procedure § 430.20(a), these affirmative defenses are conclusory and unsupported by facts sufficient to constitute a defense.

However, "[n]o error or defect in a pleading is to be regarded unless it affects substantial rights." (*Buxbom v. Smith* (1944) 23 Cal.2d 535, 542, 145 P.2d 305, citing Code Civ. Proc., § 475.) The primary function of a pleading is to give the other party notice so that it may prepare its case (*Leet v. Union Pac. R.R. Co.* (1944) 25 Cal.2d 605, 619, 155 P.2d 42), and a defect in a pleading that otherwise properly notifies a party

cannot be said to affect substantial rights. This principle is consistent with the rule that leave to amend a pleading should be liberally granted as long as there is no timeliness problem under a statute of limitations or prejudice to the opposing party.

Harris v. City of Santa Monica, 56 Cal. 4th 203, 240 (2013).

By filing a general denial to an unverified Complaint, Defendants have placed every material factual allegation of the Complaint at issue. Thus, it cannot be said that the Answers are devoid of factual assertions, even though they exist only by negative inference. The affirmative defenses are in fact largely conclusory, but they do serve to put Plaintiff on notice of the substance of intended defenses. If these defenses are unsupported by facts then Plaintiff will have other opportunities beyond the initial pleading stage to contradict those claims.

As to the Answer of Defendant Joe Price, the court continues the hearing date on the motion because due to an oversight on the court's part, the hearing on Joe Price's Answer was not placed on calendar.

#### Motions to Deem Facts Admitted and for Sanctions

On February 23, 2023 Plaintiff served Requests for Admissions, Set One to five of the seven named Defendants: Linda Cook, Joe Price, Amy Kessler, Jacob Henke and Price Global Logistics. Responses to that discovery were due on March 30, 2023. Code Civil Procedure § 1005. Plaintiff sent a meet and confer letter on April 10, 2023, in response to which Plaintiff received an undated letter stating that the parties, who are located in Texas, had not been able to retain counsel in California, that they would meet at the May 1 Case Management Conference<sup>1</sup> and that "[w]e are not prepared to answer to the interrogatories until that time." Declaration of Sylvia Li in Support of Plaintiff Wynn Innovations, LLC's Motion to Deem Facts Admitted as to Defendant Linda Cook's Failure to Timely Respond to Requests for Admissions and for Monetary Sanctions ("Li Declaration"), Exhibit C.

Code of Civil Procedure § 2033.280 provides, in pertinent part:

If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, . . .

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<sup>1</sup> The court notes that the May 1, 2023, Case Management Conference that was referenced in that letter was continued on the court's initiative until September, 2023.

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction . . . .

(c) 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 under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Defendants Linda Cook, Joe Price, Amy Kessler, Jacob Henke and Price Global Logistics have failed to respond to Requests for Admissions propounded by Plaintiff. On Plaintiff's motion and as required by Code of Civil Procedure § 2033.280, the court grants the motion to deem the facts contained in the Requests for Admissions, Set One, to be admitted as to those Defendants.

The court is also required to impose sanctions in the form of costs and reasonable attorney fees on the parties whose failure to respond to discovery necessitated this motion. Plaintiff claims \$1,920 per defendant, based on four hours of time spent on meet and confer efforts and on preparing the motion, as well as two hours of time anticipated responding to Defendants' opposition to the motion and an hour to attend the hearing, at a rate of \$250 per hour. In addition, Plaintiff claims \$170 of costs, including a \$90 filing fee and \$80 for a court runner service.

The court notes that while the hourly rate and time expended is not unreasonable, the motion is largely identical for each of the five defendants, and while there would have been a separate filing fee required for each motion, the cost of court runner services could be shared for the five motions that were all filed on the same day. Finally, Plaintiff claimed two hours of anticipated time for responding to opposition, of which there was none filed for this motion, and only one hearing appearance will be required for all five defendants. With these factors in mind, the court recalculates the reasonable attorney fees as four hours of preparing the first motion, two hours to reproduce the template of the motion and supporting documents for each of the multiple defendants, one hour for appearance at the hearing and no time required for responding to opposition, a total of seven hours of attorney time, or \$1,750. The \$80 court runner cost may be shared between all Defendants. Thus, the sanctions attributable to each Defendant equal \$456 ( $\$350 + (\$80/5) + \$90$ )

#### **TENTATIVE RULING # 7:**

**1. PLAINTIFF'S DEMURRERS TO THE ANSWERS OF DEFENDANTS LINDA COOK, AMY KESSLER, JACOB HENKE AND PRICE GLOBAL LOGISTICS, LLC ARE OVERRULED.**

2. PLAINTIFF'S DEMURRER TO THE ANSWER OF JOE PRICE IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 18, 2023, IN DEPARTMENT NINE. PLAINTIFF IS DIRECTED TO PROVIDE NOTICE OF THE CONTINUED HEARING DATE.

3. PLAINTIFF'S MOTIONS TO DEEM FACTS ADMITTED FROM REQUESTS FOR ADMISSION SET ONE AS TO DEFENDANTS LINDA COOK, JOE PRICE, AMY KESSLER, JACOB HENKE AND PRICE GLOBAL LOGISTICS, LLC ARE GRANTED.

4. PLAINTIFF'S MOTIONS FOR SANCTIONS FOR COSTS AND REASONABLE ATTORNEY FEES ARE GRANTED IN THE AMOUNT OF \$456 AS TO DEFENDANTS LINDA COOK, JOE PRICE, AMY KESSLER, JACOB HENKE AND PRICE GLOBAL LOGISTICS, LLC.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

**8. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD, ET AL**

**PC20200294**

**Demurrer**

On May 16, 2023, Cross-Defendant El Dorado County Fire Protection District (“District”) filed a demurrer to the Second Amended Cross Complaint (“SACC”), filed on February 10, 2023, by private property owners related to disputes that have arisen about easements that are the subject of this litigation. The District’s demurrer is unopposed.

The SACC was filed on February 10, 2023, by private property owners against the District and other public entities, including El Dorado County (“County”). The causes of action that relate to the District are claims of nuisance and for declaratory relief. The relief requested in the SACC includes general and special damages, costs and attorney’s fees, a quiet title judgment recognizing the claimed easements, reformation of the 1977 grant deed of the real property at issue from a private property owner to El Dorado County and of the 1990 grant deed of that property from the County to the Georgetown Divide Recreational District, and a judicial declaration establishing the details of the claimed easements.

With respect to the District, the SACC alleges that the District assisted in or knowingly acquiesced to the installation of gates blocking access to the easement, investigated the construction of the allegedly illegal gates, knew the gates were illegal and did nothing to enforce local ordinances, laws or codes pertaining to the gates, and created a nuisance by not following or enforcing the enforce local ordinances, laws or codes pertaining to obstructions on the easement and the need emergency access for fire protection. SACC ¶¶ 6, 22, 24, 26, 27, 31,61.

**Request for Judicial Notice**

The District has filed a request for the court to take judicial notice of an Exhibit to the Declaration of Kevin P. Lee in Support of Cross-Defendant El Dorado County Fire Protection District’s Demurrer, dated and filed with this court on April 27, 2023 (“Lee Declaration”). The referenced Exhibit is the affidavit of the custodian of records for the District.

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 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including “records of (1) any court in this state or (2) any court of record of the United States.” Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.



In addition to taking judicial notice of the Exhibit to the Lee Declaration as a document constituting a record of the court, the court may take judicial notice of the facts stated therein “that are not subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evidence Code § 452(h). The court considers the sworn statement of a custodian of records as to the existence of public records to meet those criteria. Accordingly, the District’s request for judicial notice is granted.

#### Government Claims Act

The District argues that the SACC should be dismissed for failure to state a cause of action against the District because the parties that filed the SACC failed to comply with the Government Claims Act (Gov’t Code §§ 810 et seq.) by first filing a claim with respect to the District.

“[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, . . .” Govt Code § 945.4. “A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action.” Gov’t Code § 911.2.

Cross-Complainants have filed claims with the County of El Dorado prior to filing the Cross-Complaint. However, the District is a separate “local public entity” (Gov’t Code § 900.4) from the County and as such, pre-litigation claims must be submitted separately to its governing body by any of the means authorized in Government Code § 915.

The Lee Declaration filed by the District attaches, as Exhibit A, an affidavit of the District’s custodian of records, Kathleen Freeman, who declares that no Government Code claims filed by any of the Cross-Complainants in this action between January 2020 and December 2022 have been located in the District’s records. Cross-Complainants have filed no documents that contradict this affidavit.

The Lee Declaration further attests to the parties’ efforts to meet and confer prior to filing this motion.

#### Leave to Amend

The causes of action pertaining to the District in the SACC relate to the construction of fences and gates that allegedly blocked access to the easements that are the subject of this litigation. There are no specific dates in the SACC that establish when those fences and gates were constructed; however, the SACC at paragraph 34 states that on May 17, 2021, Cross-

complainants “who were then solely Defendants in this matter, filed an Opposition to Motion for Preliminary Injunction” in which they “alleged that the fencing erected by GDRD blocked their access to the Highway 49 Easement, that the unpermitted gate constructed by GDRD at the entrance to the Highway 49 Easement created a public safety hazard, and that gates and fencing were erected by GDRD and AAE in an effort to make Cross-Complainants abandon the Highway 49 Easement.” Thus, it has been more than one year since the events that gave rise to the causes of action listed in the SACC, and Cross-Complainants claims against the District are barred for failure to comply with the requirements of the Government Claims Act.

The District raised the issue of Government Code compliance with Cross-Complainants in January, 2023, after the original Cross-Complaint was filed and before the SACC was drafted. Lee Declaration at ¶¶ 4-5. If Cross-Complainants had any evidence of compliance with the Government Claims Act requirements they could have referenced them in the SACC or filed an opposition to this motion, but they did not. Because failure to comply with the Government Claims Act will bar the claims contained in the SACC, there is no reason to allow leave to amend.

**TENTATIVE RULING # 8: CROSS-DEFENDANT EL DORADO COUNTY FIRE PROTECTION DISTRICT’S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**

**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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**9. NICHOLSON v. KEYSER 22CV1317**

**Demurrer**

Plaintiff filed this action against defendant Kristen Keyser, who is employed by Jordan Management to manage Sunrise Garden Apartments. The two causes of action listed in the form Complaint are 1) general negligence, and 2) intentional tort. The Complaint alleges that in February, 2022, the named defendant “had me removed from my home and then forbade me from coming on the property therefore causing me to lose my job.” The alleged damages are, according to proof, 1) wage loss/loss of employment, 2) general damages and 3) loss of earning capacity.

The Defendant’s demurrer to the original Complaint was sustained. Plaintiff filed a First Amended Complaint on May 18, 2023, which included several supporting documents that were not attached to the original Complaint.

Request for Judicial Notice

Defendant has filed a request for the court to take judicial notice of the First Amended Complaint<sup>1</sup>. 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 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including “records of (1) any court in this state or (2) any court of record of the United States.” Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant’s request for judicial notice is granted.

Demurrer

Defendant has filed a demurrer to all causes of action listed in the First Amended Complaint.

Standard of Review – Demurrer

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<sup>1</sup> The Request for Judicial Notice mis-states the filing date of the First Amended Complaint, filed on April 14, 2023, but it names the document, so the court presumes that it was the First Amended Complaint of which judicial notice is requested. The court has already taken judicial notice of the original Complaint, which was filed on September 13, 2022.

Code of Civil Procedure § 430.10(e) provides that a party may file a demurrer to a pleading where “[t]he pleading does not state facts sufficient to constitute a cause of action.”

In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, 96 Cal.Rptr. 601, 487 P.2d 1241.) Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Speegle v. Board of Fire Underwriters* (1946) 29 Cal.2d 34, 42, 172 P.2d 867.)

Blank v. Kirwan, 39 Cal. 3d 311, 318, 703 P.2d 58, 61–62 (1985)

We likewise accept facts that are reasonably implied or may be inferred from the complaint's express allegations. (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 633, fn. 3, 79 Cal.Rptr.3d 383; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43, 112 Cal.Rptr.2d 677.)

Chiatello v. City & Cnty. of San Francisco, 189 Cal. App. 4th 472, 480 (2010).

Although the First Amended Complaint alleges only “negligence” and “intentional tort” and does not specify particular causes of action, a demurrer “tests only whether, as a matter of law, the properly pleaded facts in the complaint state a cause of action *under any legal theory*.” New Livable California v. Ass'n of Bay Area Governments, 59 Cal. App. 5th 709, 714–15 (2020) (Citations omitted, italics in original).

#### Cause of Action for Intentional Tort

The First Amended Complaint contains allegations sufficient to maintain a cause of action for intentional interference with contract.

In order to state a cause of action for intentional interference with contract, a plaintiff must show: “(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, 270 Cal.Rptr. 1, 791 P.2d 587; *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1603, 92 Cal.Rptr.3d 422.)

Winchester Mystery House, LLC v. Glob. Asylum, Inc., 210 Cal. App. 4th 579, 596 (2012).

#### Cause of Action for Negligence

The First Amended Complaint also contains allegations sufficient to maintain a cause of action for negligent interference with prospective economic advantage.

The elements of negligent interference with contract or prospective economic advantage are (1) the existence of a valid contractual relationship or other economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge (actual or construed) of the relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; and (6) resulting economic harm. (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1077–1078, 66 Cal.Rptr.3d 432; *SCEcorp v. Superior Court* (1992) 3 Cal.App.4th 673, 677, 4 Cal.Rptr.2d 372.)

Nelson v. Tucker Ellis, LLP, 48 Cal. App. 5th 827, 844 (2020).

The First Amended Complaint and its attached supporting documents contain allegations which are sufficient to maintain causes of action for both negligent and intentional torts.

**TENTATIVE RULING # 9: DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS GRANTED.  
DEFENDANT’S DEMURRER IS OVERRULED.**

**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).**

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**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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**