TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 27, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1-2. 23CV01597, Greenwald v. General Motors, LLC.

Plaintiff Jason Greenwald ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants General Motors, LLC ("Defendant" or "Manufacturer"), Novato Chevrolet ("Dealer"), and Does 1-10 for causes of action arising from an automobile purchase and alleged violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act").

This matter is on calendar for Defendant's motion to strike punitive damages and their demurrer to the fourth and fifth causes of action within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action.

First, the Court notes that Plaintiff has dismissed their fourth and fifth causes of action for fraudulent inducement and violations of Business and Professions Code § 17200 *et seq*. Therefore, the demurrer is **MOOT**.

The motion to strike is **GRANTED without leave to amend**.

3-4. SCV-265333, Bay Cities & Grading, Inc. v. City of Santa Rosa

This matter comes on calendar for hearing on two motions: Plaintiff's motion to compel the deposition of Nick Vinh, and Defendant's motion to compel further responses to two form interrogatories.

Plaintiffs motion to compel the deposition of Nick Vinh is DENIED. Plaintiff's motion for judicial notice and request for monetary sanctions are now rendered Moot.

The parties are ORDERED TO APPEAR at the hearing on Defendant's motion to compel responses to form interrogatories 309.1 and 309.2.

I. Plaintiff's motion to compel deposition of Nick Vinh

A. Background

On October 30, 2023, Plaintiff filed a motion to compel further responses to two form interrogatories related to Defendant's affirmative defenses. Hearing on the motion was set for January 19, 2024. On January 4, Defendant served amended responses to the two interrogatories, which Plaintiff regarded as satisfactory enough to warrant taking the motion to compel off calendar. However, the responses were unverified. Plaintiff asserts that Defendant's counsel assured that Ms. Lori Urbanek, a City of Santa Rosa employee who had in the past signed discovery verifications, would be doing the same as to this discovery.

On February 8, 2024, Defendant served a verification of the amended responses signed by Nick Vinh, Plaintiff's risk manager. Plaintiff did not recognize Mr. Vinh's name because he had never been identified in any discovery responses in this case. Accordingly, Plaintiff noticed his deposition. The first deposition notice was issued on February 8, 2024, and set a deposition date for February 19, 2024. Defendant's counsel then notified Plaintiff's counsel that February 19, 2024 is a national holiday. (Defendant's Opp., Kisylia Decl. ¶5). On February 14, 2024, Plaintiff then served an amended notice of deposition for Mr. Vinh's set to be taken on February 20, 2024. ((Defendant's Opp., Kisylia Decl. ¶5). Defendant objected to the deposition notice as being untimely per CCP §2025.270(a).

Despite discussions between counsel regarding Mr. Vinh's deposition, he has not appeared. Plaintiff moves to compel his appearance.

B. Plaintiff's counsel's declaration

The instant motion to compel Mr. Vinh's deposition was filed on February 20, 2024. On the same date, Plaintiff filed an ex parte application to advance the hearing date on the instant motion. Also on the same date, Plaintiff filed two separate declarations by Plaintiff's counsel. Both declarations are captioned "Declaration of Steven B. Copeland in Support of Bay Cities Paving & Grading, Inc.'s Ex Parte Motion to Shorten Time to Hear Motion to Compel Deposition of Nick Vinh." The text portions of the two declarations are identical, with the exception that one of them contains a paragraph, number 16, that is not present in the other one. Paragraph 16 describes the amount of time counsel spent on "drafting the moving papers,"

counsel's hourly billing rate, and the amount expended on a filing fee. The Court is not inclined to make a determination that any one of Plaintiff's ex parte declaration was intended to accompany the motion tot compel.

However, even if it did, in paragraph 14, the declaration identifies Exhibits F and G as "the deposition notices sent for Mr. Vinh's deposition." Exhibit G is a copy of the deposition notice dated February 14, 2024 for Mr. Vinh's deposition on February 20, 2024. However, Exhibit F is simply blank. The page that says "Exhibit F" is immediately followed by a page that says "Exhibit G." Exhibit F was presumably meant to be the notice of Mr. Vinh's February 19, 2024 deposition. (The other declaration has the same problem.)

Moreover, two citations in Plaintiff's memorandum of points and authorities to Exhibit A attached to the declaration do not match the contents of the exhibit. The memorandum states that "At Ms. Urbanek's deposition, BCPG took her through the Amended Responses to No. 15.1 and 50.2 and to every question about the facts stated in its contents, Ms. Urbanek responded, 'I don't know.'" That is followed by "[SBC Decl., Ex. A, pp. 206:22-214:4]." Exhibit A is an extract from the transcript of Ms. Urbanek's deposition, but there is no page 206; it skips directly from page 24 to page 214. Plaintiff may have meant "pp. 215:14-223," but that is guesswork. Similarly, the memorandum cites to an exchange in which Ms. Urbanek stated that she did not intend to verify the discovery responses as "[SBC Decl., Ex. A, p. 214:2-4]"; the quoted exchange actually appears at lines 11 through 12 of page 221. (Again, the same problem exists with the other declaration.)

C. Analysis

Defendant describes the timeline of events as follows:

"The City of Santa Rosa ('City') served amended responses to Form Interrogatories nos. 15.1 and 50.2 ('Responses') on January 5, 2024, noting that verifications were to follow.
. . .
"The City served verifications signed by Mr. Vinh on February 8, 2024. Plaintiff served a notice of deposition issued to Nick Vinh, set to be taken on February 19, 2024, on February 8, 2024. Counsel for the City notified counsel for Plaintiff that February 19, 2024 is a national holiday. Plaintiff then served an amended notice of deposition issued to Nick Vinh ('Amended Notice') set to be taken on February 20, 2024, on February 14, 2024."

(Kisylia Dec, ¶¶ 3, 5.) This is somewhat at odds with Plaintiff's account: Plaintiff states that first deposition notice was served on February 13, not on February 8. Since Defendant's version is presented as a declaration and Plaintiff's is not supported by evidence (see comments above regarding Exhibit F), the Court will assume that Defendant's timeline is accurate.

Defendant's core argument is that the February 14, 2024, deposition notice was untimely because it failed to comply with CCP § 2025.270(a), which requires that the notice be served at least 10 days before the date set for the deposition. The Court agrees with Defendant. February 20th is unquestionably less than 10 days after February 14. The deposition notice was invalid, and Defendant followed the proper procedure in objecting to it. (Kisylia Dec, ¶ 6 and Exh. A.). Plaintiff presented no statute or caselaw that stands for the proposition that a defective deposition

notice deposing can be compelled from a defective notice, and one to which Defendant timely objected too. Plaintiff's deposition notice is fatally flawed thereby rending Plaintiff's motion to compel as moot.

D. Sanctions

CCP § 2025.450(g)(1) provides that if a motion to compel a deposition is granted, "the court shall impose a monetary sanction . . . in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Plaintiff's motion to compel the deposition of Mr. Vinh being denied also moots Plaintiff's request for sanctions.

II. Defendant's motion to compel further responses to form interrogatories number 309.1 and 309.2

A. Governing law

CCP § 2030.230 provides that "[if] the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained." The principal question raised by this motion is whether Plaintiff's answers to two interrogatories propounded by Defendant were compliant with that statute.

B. Background

Defendant moves to compel further responses to two questions propounded by way of form interrogatories: no. 309.1, which requests identification of "any other damages you attribute to the construction claim or construction defect claim alleged in this action," and no. 309.2, which requests identification of "any documents [that] support the existence or amount of any item of damages claimed in interrogatory 309.1." In summary, these two interrogatories are asking for evidence supporting the amount of damages sought by Plaintiff.

Plaintiff's responses to these interrogatories referred Defendant, pursuant to CCP § 2030.230, to "BCPG's Exceptions, dated December 3, 2018, to City of Santa Rosa Semi-Final Estimate #38." That document is 4,438 pages in length. It is contained in a set of binders, which are depicted in a photograph attached as Exhibit A to Plaintiff's counsel's declaration. Plaintiff's responses describe certain subsets of the Exceptions binders identified as "tabs," for example "Tab 2 contains backup amounts to the claim for Bid Item Quantities and Change Order Quantities." Defendant argues that "A vague reference to a pile of nearly 5,000 documents is not responsive," and that "Pointing to a stack of papers with a general summary of the Tabs within is improper and deficient under the Discovery Act."

C. Analysis

Plaintiff's position, at a high level, is that computing the damages in a "lawsuit revolv[ing] around the construction of heavy civil infrastructure for a public works project" is a very complicated process; that supporting that computation requires voluminous documentation; and that Plaintiff's responses to the two interrogatories at issue here are as good a job can possibly be done of organizing that documentation in a way that will make it accessible to Defendant. The 190-page "relevant skeleton of the claims binder" provided by Plaintiff (Copeland Dec., Exh. B) certainly supports the first point.

Plaintiff argues that Defendant has previously demonstrated the ability to use the tabs in the Exceptions binders, noting that Defendant "literally marked as exhibits printouts from BCPG's job cost tracking software, job cost billing software and internal cost tracing software . . . . Those marked exhibits are Nos. 1002, 1021, 1026, and 1031-1042 and are attached to the Copeland Decl." In his declaration, Plaintiff's counsel states that exhibit G to that declaration "show[s] that the City marked most of the identified construction claims backup as exhibits to [the depositions of Eric Barker, Michelle Welch, and Ruby Athwal] and asked the witnesses about their contents." Exhibit G consists of 61 pages of what appear to be computer-generated reports, but no exhibit markings are apparent to the Court. However, the Court notes that Mr. Barker was asked about Exhibit 1021, "the claim statement . . . dated December 3, 2018," at his deposition (Copeland Dec., Exh. D, p. 111); that Ms. Athwal was asked about Exhibit 1002, "a billing status report," at hers (Copeland Dec., Exh. E, p. 34); and that Ms. Welch was asked about both exhibits 1002 and 1026, "a letter from Santa Rosa to BCPG . . . containing the semifinal estimate," at hers (Copeland Dec., Exh. F, pp. 35, 76.) This appears to bear out Plaintiff's contention that Defendant understood how to navigate the claims binders well enough to locate relevant exhibits.

In this context, it seems significant that Defendant's counsel made frequent references to "tabs" at the depositions. Examples include:

- "So just [so] I'm clear, you worked on Tabs number 2, 3, 6, and 7? . . . Do you recall specifically what you did to verify the amounts in Tab 2, for example?" (Copeland Dec., Exh. D, p. 113.)
- "What did you do in connection with Tab 3?" (*Id.* at p. 119.)
- "[W]e see Tab 8, which is the . . . force account bills for change order 075, correct?" (Copeland Dec., Exh. F, p. 50.)
- "I assisted in the backup for Tab 7, and I compiled the backup for Tab 8 and 9." (*Id.* at p. 72.)
- "And going down to Tab 5, which begins at page 134 of Exhibit 1024, this is entitled 'The Time Impact Analysis.'" (*Id.* at p. 98.)

According to the concordances at the ends of Mr. Barker's and Ms. Welch's deposition transcripts, the word "tab" or "tabs" occurred a total of 12 times at the former deposition and 72 times at the latter. This is consistent with the notion that Defendant's counsel knew how to use

the tabs in the 4,483-page Exceptions binder, which was marked as Exhibit 1024 at the depositions, to find the content of interest. (Copeland Dec., Exh. F, p. 3.)

Plaintiff also argues that both parties have engaged professional accountants to testify as experts at trial on the issue of damages, that Plaintiff has disclosed its expert's 250-page report to Defendant (Copeland Dec., second Exh. E), and that, therefore, Defendant should be in no doubt about the nature and amount of the damages Plaintiff will claim at trial. While that is a fair enough point, the Court notes that Plaintiff did not identify the expert's report in response to interrogatory no. 309.2.

Despite the sketch of the Exceptions binder provided by Plaintiff's "relevant skeleton" exhibit (Copeland Dec., Exh. B), the Court does not have enough information to rule on whether Plaintiff's references to the full Exceptions binders, accompanied by the descriptions of their contents and organization that appear in Plaintiff's answers to interrogatories no. 309.1 and 309.2, satisfy CCP § 2030.230's mandate that the specification of "the writings from which the answer may be derived or ascertained . . . be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained." Accordingly, the parties are ordered to appear for oral argument. The Court will take Plaintiff up on its offer to bring a digital copy of the Exceptions binder to the hearing. The Court will address the issue of sanctions at the hearing.

II. Conclusion

Plaintiffs motion to compel the deposition of Nick Vinh is **DENIED**. Plaintiff's request for judicial notice and for monetary sanctions are rendered **MOOT**. The parties are **ORDERED TO APPEAR** at the hearing on Defendant's motion to compel responses to form interrogatories 309.1 and 309.2.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. <u>SCV-266243, Doe v. County of Sonoma</u>

Plaintiff Jane Doe[1], by and through their Guardian ad litem, Claudia Dincin, ("Plaintiff"), filed the currently operative first amended complaint in this action against the County of Sonoma ("County"), First Security Services (now replaced by Universal Protection Service), Universal Protection Service, LP("Universal", dba Allied Universal Security Services, and named in the complaint as Allied Universal) with causes arising out of the alleged sexual assault of Plaintiff while undergoing a psychiatric hold (the "FAC").
This matter is on calendar for the motion by the County for summary judgment or in the alternative adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437(c). The motion for summary judgment is **DENIED**.

[1] The Court notes that Plaintiff is a transgender person born female but identifying as male. See FAC ¶ 1. The papers of both parties appear unclear on Plaintiff's preferred pronouns (See, e.g., FAC ¶ 22). Plaintiff's preferences not being clear, out of both clarity and respect, the Court uses they/them pronouns in this opinion.

I. Evidentiary and Pleading Issues

First, while the Court notes that County has requested summary adjudication in the alternative, they have failed to comply with the requirements of Cal. Rule of Court, Rule 3.1350 (b). The County does not present any particular issue for summary adjudication in their notice of motion. As a result, the Court only considers the motion as one for summary judgment.

Plaintiff makes several objections within facts to which they do not raise an actual substantive dispute. A fact within the separate statement being undisputed waives any evidentiary objections to the support for that fact. *Hurley Construction Co. v. State Farm Fire & Casualty Co.* (1992) 10 Cal.App.4th 533, 540–541. Particularly, as to County's UMF ¶¶ 4-6, and 9-10, Plaintiff contends the facts are disputed, but simply reasserts an objection without providing counter evidence to show that the fact is a matter of genuine dispute. These facts are treated as undisputed for the failure to comply with CCP § 437c(b)(3).

Plaintiff's objection 19 is SUSTAINED on the basis of hearsay (an objection unenumerated but conveyed in substance in pg. 15:11-16). The balance of Plaintiff's objections appear to ignore that the McColley declaration ¶¶ 1-3 fully establishes the foundation as to the remainder of the declaration. Plaintiff's citation to CCP § 437c(e) is even less supported, and is a complete misapplication of the principles of that section, Plaintiff's objections 1-18 and 20-25 are OVERRULED.

II. Underlying Facts

On February 19, 2019, Plaintiff was admitted to the Sonoma County Behavioral Health, Crisis Stabilization Unit ("CSU"). County's Separate Statement of Undisputed Fact ("County UMF"), ¶¶ 1-2, 7. Plaintiff was and still is a minor. County UMF ¶ 2. The CSU provides 24 hour, 7 day a week crisis intervention, assessment, medication and supportive care for individuals in acute mental crisis, for periods of up to 23 hours and 59 minutes. County UMF ¶ 3. During their time in the CSU, Plaintiff was assessed and placed on a hold under Govt. Code § 5150 (a "5150 hold"). County UMF ¶ 2, 7. Plaintiff also alleges that during their time in the CSU, Plaintiff was sexually assaulted by another minor. County UMF 7-8. The CSU is certified by the California Department of Health Care Services and is fully compliant with applicable certification requirements both now and at the time of the incident. County UMF ¶ 4. At the time of the incident, the CSU was the County's only designated facility for assessment and provision of services for individuals subject to 5150 holds. County UMF ¶¶ 9-10.

Plaintiff was admitted to the CSU at 0930[2] on February 19, 2019. Plaintiff's Additional Undisputed Material Fact ("Plaintiff AUMF") ¶ 1. At the time of their admission, Plaintiff's admission form does not reflect that a 5150 hold had been placed. Plaintiff AUMF ¶ 2. Plaintiff's file reflects that a 5150 hold was not placed until 2130 on February 19, 2019. Plaintiff AUMF ¶ 4. The assault took place around 1800 on February 19, 2019. See Plaintiff's Opposition to County UMF ¶ 2; see also McColley Declaration ¶ 14. Prior to the 5150 hold, Plaintiff's stay at

[2] This matter involves medical records, which provide 24 hour military time. Both to accurately reflect the evidence, and because it enhances clarity with the facts, the Court's decision uses the same time system.

the CSU had several other indicia of being outpatient services as opposed to inpatient services, including lacking doctor's notes, the billing code used, the duration of Plaintiff's assessment by nursing staff and a marriage and family therapist, and that at the time her parent had only consented to treatment, not admission. Plaintiff AUMF ¶¶ 3, 6-8. Plaintiff was transferred to John Muir Health for inpatient care at 0020 on February 20, 2019. Plaintiff AUMF ¶ 4.

III. The Burdens on Summary Judgment and Adjudication

1. *Generally*

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving defendant does not meet its initial burden, the plaintiff has no evidentiary burden. CCP § 437c(p)(2).

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original). Where the deficiency is with the complaint, and not the evidence presented, the legal effect of a motion for summary judgment is the same as that of a motion for judgment on the pleadings. *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.

2. *Government Code § 854.8*

Generally, "a public entity is not liable for . . . (a)n injury proximately caused by a patient of a mental institution (or) (a)n injury to an inpatient of a mental institution." Gov. Code, § 854.8 (a). This immunity does not prevent recovery from a public entity for an injury resulting from the dangerous condition of public property, "(e)xcept for an injury to an inpatient of a mental institution." Gov. Code, § 854.8 (c). A "mental institution" means "a state hospital for the care and treatment of persons with mental health disorders or intellectual disabilities, the California Rehabilitation Center referred to in Section 3300 of the Welfare and Institutions Code, or a county psychiatric hospital." Gov. Code, § 854.2. Further, a "county psychiatric hospital" means "the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100 of the Welfare and Institutions Code." Gov. Code, § 854.3.

"The board of supervisors of each county may maintain in the county hospital or in any other hospital situated within or without the county or in any other psychiatric health facility situated within or without the county, suitable facilities and nonhospital or hospital service for the detention, supervision, care, and treatment of persons who have a mental health disorder or a developmental disability, or who are alleged to be such." Welf. & Inst. Code, § 7100 (a). "(S)ince these immunity provisions are to be construed broadly, we must likewise give a broad construction to the definitions of the entities involved." *Guzman v. County of Los Angeles* (1991) 234 Cal.App.3d 1343, 1349 ("*Guzman*").

"'Inpatient' means a person who has been admitted to a hospital, skilled nursing facility, or intermediate care facility for bed occupancy for purposes of receiving inpatient services. A person is considered an inpatient when he is formally admitted as an inpatient with the expectation that he will remain at least overnight and occupy a bed, even though it later develops that he can be discharged or that he is transferred to another facility and does not actually use a bed overnight." Cal. Code Regs., tit. 22, § 51108. Conversely, "'Outpatient services' means preventive, diagnostic, or treatment services other than inpatient services." Cal. Code Regs., tit. 22, § 51143.

IV. Analysis

1. *The County Shifts its Initial Burden*

The initial burden is on the County as the moving party to demonstrate that summary judgment of this issue is proper. The County's argument relies exclusively on the assertion that Plaintiff's causes of action are precluded by Govt. Code § 854.8.

The County argues that the application of the statute is clear. Plaintiff was admitted and subject to a 5150 hold during their time at the CSU. While the CSU is intended to provide immediate care to those having mental health crises, the defined duration of a 5150 hold is 72 hours. Plaintiff was under a 5150 hold prior to being transferred to a long term facility, John Muir Health. The County avers that Plaintiff was an inpatient at the time of the incident based on their procedures, and therefore Govt. Code § 854.8 (a)(2) applies.

Plaintiff makes several unavailing arguments attempting to show that the County has not met its initial burden on summary judgment. While Plaintiff argues that the McConnell Declaration fails to establish that the CSU is a "mental institution" as defined by Govt. Code § 854.2, this argument is meretricious. This designation is key to the determination of whether the CSU in any way is entitled to the protections of Govt. Code § 854.8. While Plaintiff accurately points out that the McConnell declaration eschews the title of County psychiatric hospital (see McConnell Declaration, ¶ 15), a motion for summary judgment requires that the Court examine the **evidence**, not attempt to penalize a party for their witness's avoidance of a term of art which may have different legal connotations than those within their field. McConnell Declaration, ¶ 15 also particularly states that the County does not operate an "inpatient Psychiatric Hospital", which may or may not be distinguishable from a "county psychiatric hospital" under Govt. Code § 854.3, and particularly a facility under Welf. & Inst. Code § 7100. Contrary to Plaintiff's argument, the McConnell Declaration sufficiently shows that the County's board of supervisors has chosen the CSU for "the detention, supervision, care, and treatment of persons who have a mental health disorder or a developmental disability, or who are alleged to be such." Welf. & Inst. Code, § 7100; McConnell Declaration ¶ 15-16. As such, it merits designation as a "county psychiatric hospital" under Govt. Code § 854.3, and therefore is a "mental institution" defined by under Govt. Code § 854.2, meriting the immunities granted by under Govt. Code § 854.8.

Second, Plaintiff argues that the County misapplies the authority in its brief. In fact, it is Plaintiff who misapplies the caselaw, particularly *Guzman v. County of Los Angeles* (1991) 234 Cal.App.3d 1343. Plaintiff argues, without pin citation, that the case revolves around injury to a plaintiff in the psychiatric ward of a hospital. See Plaintiff's Opposition, pg. 14:3-8. Plaintiff further avers that the application may be different if the injury occurred in a "mental health clinic". This contention has no basis in the wording of the decision, nor can the Court find any support for it in *Guzman*. The *Guzman* court came to several contrary conclusions in the application of that case. In *Guzman,* the plaintiff was admitted to a general hospital wing while awaiting transfer to the psychiatric wing of the same hospital. *Id*. at 1346-1347. Plaintiff was under a 72 hour 5150 hold, but space in the psychiatric wing never became available during the 72 hour hold, and he was never place there as a result. *Ibid*. Plaintiff suffered permanent injury as a result of treatment he received while under the 72 hour hold. *Id*. at 1347. Despite the fact that plaintiff was never placed in the psychiatric portion of the hospital, the *Guzman* court found that the immunities under Govt. Code § 854.8 applied. *Ibid*. That plaintiff was never transferred to the psychiatric wing of the hospital was immaterial to the determination that the hospital as a whole qualified as a "county psychiatric hospital" as defined by the code. *Id*. at 1349-1350. The *Guzman* court stated that a contrary interpretation would "render the immunity essentially meaningless or at least severely retard its effectiveness." *Id*. at 1349. "Finally, since these immunity provisions are to be construed broadly, we must likewise give a broad construction to the definitions of the entities involved." *Ibid*. The *Guzman* court takes special pains to enumerate the various provisions of Welf. & Inst. Code, § 7100, which includes "*nonhospital or hospital service* for the detention, supervision, care, and treatment of persons who are mentally disordered'". *Guzman v. County of Los Angeles* (1991) 234 Cal.App.3d 1343, 1350 (emphasis original).

Here, Plaintiff's contention that the CSU does not qualify as a mental institution under the code is not supported by any evidence. While Plaintiff contends that the evidence provided lacks foundation, Plaintiff's contentions fail to show as a matter of law that the CSU fails to meet the standards of Welf. & Inst. Code, § 7100. The Court has already addressed that the objections are without merit, and no evidence is offered in rebuttal for analysis in the second portion of summary judgment analysis. *Guzman* is both applicable and persuasive, the application of the immunities provided by Govt. Code § 854.8 to the CSU are clearly proper.

Plaintiff also posits that the County has not carried its burden in displaying that Plaintiff was an inpatient at the time the assault occurred. The Court has already noted that the majority of Plaintiff's evidentiary objections were without merit, and therefore the County has presented competent evidence that Plaintiff was an inpatient under a 5150 hold at the time the assault occurred. Therefore, application of Govt. Code § 854.8 is necessary and dispositive in the County's moving burden. The CSU is a mental institution as defined by the Govt. Code. Plaintiff was an inpatient at the time of the incident. Therefore, the County may neither suffer liability for any injury suffered by Plaintiff (Govt. Code § 854.8(a)(2)), or for a dangerous condition of public property (Govt. Code § 854.8(c)). The County has shifted their burden in presenting a complete defense, and the burden must now be met by Plaintiff in presenting a triable issue of fact as to this defense.

2. *Plaintiff Meets the Shifted Burden*

While the Court must construe the immunities granted by Govt. Code § 854.8 broadly (see *Guzman v. County of Los Angeles* (1991) 234 Cal.App.3d 1343, 1349), this does not mean that the wording of the statute is irrelevant for determining its application. As explored above, the County meets its initial burden in showing that the provisions of Govt. Code § 854.8 apply to Plaintiff's claims. However, Plaintiff offers adequate evidence to show that they may have been an outpatient at the time of the incident, and therefore the provisions of Govt. Code § 854.8 (a)(2) & § 854.8 (c) are not a complete defense to their claims.

Particularly, Plaintiff presents documentary evidence that their 5150 designation did not occur until 2130 in the evening of February 19, 2019. The County's evidence indicates that the assault occurred at 1800, more than three and a half hours before the 5150 designation became legally effective. Plaintiff has also provided a declaration from an expert witness indicating that until the point the 5150 was entered, the records in the file were not indicative of inpatient care, but rather basic outpatient assessment and evaluation. This is sufficient to raise a triable issue of material fact as to whether Plaintiff was an inpatient at the time of the assault. While the statute should be construed broadly to affect the intended immunity, the wording of the statute is specific in its application to harm suffered by "an inpatient of a mental institution". Govt. Code § 854.8 (a) & (c). Whether Plaintiff was in inpatient or an outpatient at the time of the assault is clearly salient in applying the immunities under Govt. Code § 854.8.

Further, Plaintiff presents persuasive authority in showing that the application of the term "inpatient" would apply only if it were clear that Plaintiff were going to occupy a bed overnight at the time that designation was made. See Cal. Code Regs., tit. 22, § 51108. Plaintiff's evidence presents a triable issue of fact as to whether their admission was with the intent that Plaintiff

would occupy a bed overnight, particularly given the CSU's status as a psychiatric health facility intended for treatment and evaluation in under 24 hours. Plaintiff's evidence introduces adequate ambiguity as to Plaintiff's status that the weighing of evidence should be by a finder of fact, and as such represents a triable issue of fact. Given that the motion is one of summary judgment (see Section I, above), any triable issue represents a basis for denial.

Summary judgment is DENIED.

IV. Conclusion

Based on the foregoing, the motion for summary judgment is **DENIED**.

Plaintiff shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. SCV-266644, Fladseth v. Woods

Plaintiffs Douglas Curwood Fladseth ("Injured Plaintiff") and Debrah Fladseth ("Consortium Plaintiff", together with Injured Plaintiff, "Plaintiffs"), filed the currently operative fourth amended complaint (the "FAC") against defendants Nzinga Lindiwe Woods ("Defendant") along with Does 1-25, arising out of an automobile related incident. This matter is on calendar for Defendant's motion to compel responses to supplemental interrogatories and supplemental requests for production of documents. While there is service of the original papers, there is no proof of service reflecting that the hearing date was ever served on Plaintiffs. Therefore, the matter is CONTINUED to April 17, 2024, at 3:00 pm in Department 19. Defendant is to give notice in compliance with CCP § 1005.

7. SCV-270479, Giannis Restaurant v. Rodriguez

Plaintiff Giannis Restaurant, LP ("Plaintiff") filed the complaint in this action for breach of contract (the "Complaint") of a commercial lease (the "Lease") against defendants Jaime Rodriguez ("Individual Defendant"), Mi Ranchito Partners, Inc. ("Corporate Defendant"), and Does 1-20. This matter is on calendar for the motion by Plaintiff to compel further responses to form interrogatories ("FIs"), special interrogatories ("SIs") and requests for admission ("RFAs") pursuant to CCP §2033.290(d) (relating to requests for admission) and CCP § 2030.300(d) (relating to interrogatories) and for monetary sanctions. The motion is GRANTED.

I. Legal Authority

Regarding the FIs and SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." CCP §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or

organizations, except where the information is equally available to the propounding party." CCP §2030.220(c).

Upon receipt of a response, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255. An interrogatory requiring respondent to elucidate an opinion or a conclusion is not a proper objection to interrogatory. *West Pico Furniture Co. of Los Angeles v. Superior Court In and For Los Angeles County* (1961) 56 Cal.2d 407, 417.

Regarding the RFAs, CCP § 2033.010 provides that "[a]ny party may obtain discovery ... by a written request that any other party to the action admit ... the truth of specified matters of fact, opinion relating to fact, or application of law to fact" relating to any "matter that is in controversy between the parties." It is well-established that requests for admissions may go to the "ultimate issues" of a case. *St. Mary v. Sup. Ct.* (2014) 223 Cal.App.4th 762, 774; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864. Each response to a request for admission "shall be as complete and straightforward as the information reasonably available to the responding party permits" and must either object or answer, in writing and under oath, with an admission of so much of the matter as is true; a denial of so much of the matter as is untrue; or a specification of so much of the matter as the responding party is unable to admit or deny based on insufficient knowledge or information. CCP §§2033.210(a)-(b), 2033.220. "If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." CCP § 2033.220(c). "If only a part of a request for admission is objectionable, the remainder of the request shall be answered" and if an objection is made to a request or part thereof, "the specific ground for the objection shall be set forth clearly in the response." CCP §2033.230.

Upon receipt of a response, a requesting party may move for a further response if it determines that an answer to a particular request "is evasive or incomplete" or if an objection to a particular request "is without merit or too general." CCP § 2033.290(a).

> Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment. If the litigant is able to make the admission, the time for making it is during discovery procedures, and not at the trial.

Cembrook v. Superior Court In and For City and County of San Francisco (1961) 56 Cal.2d 423, 429. Matters within the knowledge or experience of a party's expert is deemed obtainable, and therefore claims that such matters fall within the purview of expert testimony is not a defense to request for admission. *Chodos v. Superior Court for Los Angeles County* (1963) 215 Cal.App.2d 318, 323.

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378.Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

CCP §2033.290(d) (relating to requests for admission) and CCP § 2030.300(d) (relating to interrogatories) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. Most of Individual Defendant's Responses are Deficient

Individual Defendant's responses to each of the RFAs at issue are deficient. Individual Defendant contends that RFAs 21, 23, 24, 26, and 35 are redundant requests overlapping with

prior RFAs, which makes the request to compel further responses untimely. The Court finds each of these contentions unpersuasive.

Individual Defendant relies on *Professional Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 492 ("*Magna Institute*"). In that case, plaintiff served interrogatories requesting the address of each student who enrolled in the college courses at issue. *Ibid*. Defendant objected, providing no substantive response, and the time to compel further responses passed without plaintiff making a motion. *Ibid.* Plaintiff thereafter served interrogatories requesting the name and the address of each student who enrolled in the college courses at issue. *Ibid.* When defendant again objected, including objecting based on the redundant nature of the interrogatory when the time to compel had already passed, plaintiff moved to compel further responses. *Ibid.* The Court of Appeal held that the redundant requests **which the parties fully agreed was "for all intents and purposes the same as the first"**, were precluded by the time limitations imposed by the Discovery Act. *Id*. at 493-494 (emphasis added).

Individual Defendant's cited case is inapposite. In *Magna Institute*, the interrogatories at issue were clearly and inarguably synonymous. That the answers to each query was going to produce the same response was not an issue on which the parties disagreed. Here, RFA ¶¶ 21, 23, 24, and 35 all produce gradations as to entities and time that appear potentially distinguishable. RFA ¶ 21 asks regarding Individual Defendant's intent to provide a personal guarantee as part of signing the lease documents. Given the various contentions asserted by Defendants regarding the Lease and the question of properly named corporate entities, the intent of Individual Defendant becomes a salient and distinguishable question from that posed in RFA ¶ 3, that he **did** make a personal guarantee. RFAs ¶¶ 23 and 24 appear meritorious for similar reasons. The RFAs seek clarity on ownership of a particular business location, potentially distinguishable from the LLC included in RFA ¶ 10. It also contains pertinent restrictions as to time in order to assess the truthfulness of statements made at the time the Lease was entered. The contention that the RFAs do not relate to Corporate Defendant appears irrelevant, since the RFA is directed to Individual Defendant, and representations he made to Plaintiff at the time of the Lease.

RFA ¶ 26 appears proper for similar reasons. The RFA ¶ 1 particularly asked for an admission that Corporate Defendant had entered into a lease for the Property. RFA ¶ 26 requests an admission that the business that operated at the Property entered into a lease for that property. Given that Defendants contend that the Lease fails to name Corporate Defendant, this is a meritorious distinction.

RFA ¶ 35 appears proper under the same logic. Plaintiff seeks clarity on Individual Defendant's position on the various corporate names, entities and locations that may produce relevant information. Individual Defendant clearly contends that "Mi Ranchito, Inc." and "Mi Ranchito, LLC" are entirely different business organizations (see Individual Defendant's Separate Statement RFA ¶ 35). Individual Defendant's contention that the information requested is irrelevant is contrary to his contention that the requests are redundant. There is no way for the Court to interpret that RFA ¶¶ 10 and 35 are synonymous. Plaintiff adequately displays the potential relevance of this information, and good cause is to be interpreted liberally.

Individual Defenant's contention that RFA ¶¶ 42 and 44 require a legal conclusion and are therefore objectionable is not supported by any citation to law. It is without merit, as it defies the very purpose of RFAs. See *Cembrook v. Superior Court In and For City and County of San Francisco* (1961) 56 Cal.2d 423, 429. That Individual Defendant asserts other contentions in his separate statement is improper, as any objections not made in the original response are waived. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140. Plaintiff is entitled to substantive verified responses to these RFAs. As to RFAs ¶¶ 42 and 44, compelling further responses is proper.

As to FI ¶ 17.1, the parties acknowledge that the interpretation of the Court as to the RFAs above directly affects the propriety of Individual Defendant's failure to respond as to RFA ¶ 21, 23, 24, 26, 35, 42, and 44. The Court finding compelling responses to the RFAs proper, so too is compelling responses to FI ¶ 17.1.

As to SI ¶¶ 50 and 51, the Court finds these distinguishable from SI ¶¶ 9 and 10 for similar reasons as those outlined above. While Individual Defendant contends that the restatement of the body of the interrogatories are very similar, the definitions incorporated therein are sufficiently distinguishable that the request is not redundant within the meaning of *Magna Institute*. As such, compelling responses is proper.

Therefore, Plaintiff's motion is GRANTED. Individual Defendant shall produce further objection-free responses to RFA ¶¶ 21, 23, 24, 26, 35, 42, and 44, FI ¶ 17.1, and SI ¶¶ 50 and 51 within 30 days of notice of this order.

III. Sanctions

The motion being granted, sanctions are mandatory absent substantial justification. The discovery abuse stems entirely from the objections asserted by and through counsel, and as such imposition of sanctions against counsel is proper. Plaintiff requests filing fees of $60. They also request eight attorney hours expended on the motion, three hours reviewing the opposition and preparing a reply, and one hour to attend the hearing. The request for time attending the hearing is speculative, as at this point no hearing has occurred, and monetary sanctions must represent costs that are reasonable and actual. Therefore, the Court finds eleven attorney hours reasonable. Plaintiff requests a rate of $275 an hour, which is reasonable given the locality and experience of the attorney at issue. Therefore, Plaintiff's request for sanctions is GRANTED in the amount of $3,085. Individual Defendant and/or his counsel shall pay $3,085 to Plaintiff within 30 days of notice of this order.

IV. Conclusion

Plaintiff's motion is **GRANTED**. Individual Defendant shall produce further objection-free responses to RFA ¶¶ 21, 23, 24, 26, 35, 42, and 44, FI ¶ 17.1, and SI ¶¶ 50 and 51 within 30 days of notice of this order. The request for monetary sanctions is GRANTED and Individual Defendant and/or his counsel shall pay $3,085 to Plaintiff within 30 days of notice of this order.

Plaintiff's counsel shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-270889, Smith v. Poncia

Plaintiff Karin A Smith, as trustee of the Leroy W. Poncia Revocable Trust date September 30 2014 ("Plaintiff") filed the currently operative complaint (the "Complaint") in this action against Clarence R. Poncia, Truste of the Clarence R. Poncia Revocable Trust dated September 16, 2004 ("Clarence[3]"), William Michael Poncia ("William"), and all other persons owning an interest in the properties named as Does 1-10, arising out of Plaintiff's request to partition the parties jointly owned properties.

This matter is on calendar for the motion by Plaintiff pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Complaint. The motion is opposed by Clarence. The Motion is **GRANTED**.

I. Facts and Procedure

The original complaint in this action was filed by Plaintiff on May 25, 2022. On October 3, 2023, William's retained forensic accountant prepared a report which alleged a variety of financial shortfalls in accounted for income collected by Clarence as property manager. On November 2, 2023, Plaintiff's attorney interviewed William's expert regarding her assessment. Plaintiff's attorney arranged a meet and confer with Clarence's counsel and William's counsel seeking stipulation to leave to amend, but Clarence declined to stipulate. Further meet and confer occurred on January 10, 2024, without result. This motion followed on January 19, 2024.

The matter was originally set for trial on January 26, 2024. William filed an ex parte motion for continuance of trial on December 15, 2023, seeking continuance to June 2024 or later. The Court granted the application in part on December 18, 2023, taking the trial off calendar and setting a Case Management Conference for March 14, 2024. The trial date remains unset.

II. Governing Authorities

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1). "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." CCP § 576. The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse

[3] The parties Clarence, William, and the decedent Leroy Poncia all share familial affiliation and last names, therefore first names are utilized for clarity. No disrespect is intended.

party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. "(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].

> The cases on amending pleadings during trial suggest trial courts should be guided by two general principles: (1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory [then] no prejudice can result.

McMillin v. Eare (2021) 70 Cal.App.5th 893, 910, quoting *City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1563.

It is within the court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare, supra*, 70 Cal.App.5th at 1379. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. "As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very

satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts." *Brown v. Aguilar* (1927) 202 Cal. 143, 149.

III. Analysis

A. Unwarranted Delay

First, unwarranted delay is a substantial factor in determining whether leave to amend is proper. *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, 1097. The Court addresses Clarence's averment that Plaintiff failed to show promptness after it discovered the factual discrepancies leading to the newly alleged causes of action due to an October 3, 2023 report from a forensic accountant (an expert not retained by Plaintiff, but rather by William). Plaintiff timely moved to follow up on the report, interviewing the expert to test the veracity of their conclusions. Thereafter, after attempting to obtain a stipulation to allow amendment through meet and confer efforts, Plaintiff's motion was brought approximately one month after meeting and conferring on the issue. Clarence's contention appears to be that because the raw information was available to Plaintiff well in advance, Plaintiff has unduly delayed. While particular factual postures may lend themselves to this analysis, it is unpersuasive here. The facts leading to Plaintiff's attempted amendment were drawn out of over 20 years of bank records by a forensic accountant. If such facts were obvious and discoverable by a layman, or even an attorney, there would be no need for such experts with levels of specialization to this task. The Court finds Plaintiff's averment that the matter was discovered by a forensic accountant, and that Plaintiff moved timely thereafter, as being sufficient to show Plaintiff has not unduly delayed.

III. Prejudice

First, it is clear that the amendment proposes to add a variety of new facts, which is usually indicative of prejudice. However, while Clarence flatly avers that this will create substantial discovery costs, he has provided no evidence to this effect.

This case was originally set for trial on January 26, 2024. Willliam moved to continue the trial prior to the close of discovery. William requested that the Court reset any deadlines to the new trial date. The Court did not set a new trial date, but rather vacated the trial date and then set a Case Management Conference in order to assess when a new trial may be practicable. Because there was no trial date set, the Court did not particularly enumerate trial date deadlines. It was the Court's intent in vacating the trial date to reset those timelines according to the trial date after discussions with the parties. Therefore, discovery remains open.

While it is likely that some discovery will have to occur on Plaintiff's new claims, the Court finds that this alone does not amount to prejudice justifying denial of the motion. As Plaintiff's claims are directly derived from evidence, there is no indicia that there has been a critical loss of evidence. Clarence has provided no evidence that his costs of preparation will be substantially increased, or that discovery will increase substantially. Trial is currently not set. Therefore, there is not adequate basis to deny the motion.

Part of the prejudice averred by Clarence is that that causes of action are not viable. That does not represent adequate reason to deny a motion for leave to amend. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. It does not appear appropriate at this juncture to attempt to address intricate issues of potential viability of claims when such matters are more thoroughly addressed via demurrers and motions to strike. Clarence does not elucidate any contrary pleadings caused by amendment, and as such does not state a claim for prejudice in averring that the causes of action are not viable.

No undue delay being present, and insufficient showing of prejudice being displayed, the motion for leave to amend is GRANTED.

IV. CONCLUSION

Based on the foregoing, the motion for leave to amend is GRANTED.

Plaintiff's counsel shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. SCV-271178, Abundiz v. O'Connor

Plaintiffs Beysaira Abundiz and Luiz Abundiz Medina (together "Plaintiffs"), filed the complaint (the "Complaint") against defendants Daniel O'Connor, Debra O'Connor, O'Connor Properties, LLC (together "Defendants"), and Does 1-20, arising out of residential lease agreement. Defendants have in turn filed a cross-complaint (the "Cross-Complaint") against Plaintiffs. This matter is on calendar for Plaintiffs' motion to compel deposition of Defendants under California Code of Civil Procedure ("CCP") § 2025.450(a).

The substance of the motion has been rendered moot, as the deposition of one of the Defendants has already been taken, and the parties have stipulated that the other will be taken on April 17, 2024. The matter remains before the Court for Plaintiffs' request for monetary sanctions.

The Court sincerely thanks the discovery facilitator for his efforts in this case.

I. Relevant Law

CCP § 2025.450(a), provides: "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice." On non-appearance of a deponent, the moving party shall attempt to meet and confer in good faith regarding the non-appearance. *Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, 1124.

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2025.450(g)(1).

II. Analysis

The parties are before the Court solely on the issue of sanctions as to Defendants' failure to appear for a properly noticed deposition. Each side failed to adequately meet and confer on this issue. It is clear that Plaintiffs had been attempting to elicit specific deposition dates from Defendants for months prior to filing the motion. Defendants' counsel clearly engaged in discussion regarding unavailability, but remained evasive regarding specific dates. Defendants were adequately specific regarding the reasons for unavailability, and when they would have better information. One day before the motion was filed, Defendants made their particular availability known to Plaintiffs. Rather than respond regarding whether that deposition date worked for Plaintiffs, instead the instant motion was filed. It is clear based on the Declaration of Albert Finch III, Ex. I, that Plaintiffs did not check their voicemails to find Defendants offer until December 18, 2023. The issue of when the deposition would occur was speedily resolved thereafter. Sanctions to Plaintiffs appear unjustified under these circumstances. Plaintiffs should not be rewarded for filing a motion when Defendants had clearly offered to fully resolve the issue prior to filing. Therefore, Plaintiffs' request for sanctions is DENIED. Defendants do not request sanctions.

III. Conclusion

Plaintiffs' request for sanctions is DENIED.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

10. SCV-273638, Carlberg v. Thor Motor Coach, Inc.

Plaintiff Hans Carlberg ("Plaintiff"), filed the complaint against defendants Thor Motor Coach, Inc. ("Thor"), Rec Van (together with Thor, "Defendants"), and Does 1-25 for causes of action arising out of the sale of a motor vehicle (the "Complaint"). The Complaint contains causes of action for alleged violations of California Consumers Legal Remedies Act (Civ. Code, § 1750 et seq., "CLRA") and violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act"). This matter is on calendar for Defendants' motion on the basis of forum non conveniens. The motion is DENIED.

I. Governing Authorities

A. Forum Non-Conveniens

Even if a court has subject matter and personal jurisdiction, it may stay or dismiss an action on the grounds that the court is an inconvenient forum. CCP § 418.10 (a)(2). "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." CCP § 410.30 (a). This is a codification of the legal principle of forum non conveniens. *Trident Labs, Inc. v. Merrill Lynch Commercial Finance Corp.* (2011) 200 Cal.App.4th 147, 153.

The moving party, typically the defendant, bears the burden of proof showing the forum is inconvenient. *National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 918 ("*National Football League*"). Where the plaintiff is a California resident, their choice of forum is entitled to a strong presumption of convenience. *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 755. Where dismissal of a suit by a state resident is requested, defendant bears the burden of showing that the forum is "seriously inconvenient". *National Football League, supra,* 216 Cal.App.4th at 932. It is an abuse of discretion to order dismissal under forum non-conveniens where a California resident has filed suit absent "extraordinary circumstances". *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857-858 ("*Archibald*"). However, where only a stay is requested, "the plaintiff's residence is but one of many factors which the court may consider. The court can also take into account the amenability of the defendants to personal jurisdiction, the convenience of witnesses, the expense of trial, the choice of law, and indeed any consideration which legitimately bears upon the relative suitability or convenience of the alternative forums." *Id.* at 860.

"California favors contractual forum selection clauses so long as they are entered into freely and voluntarily, and their enforcement would not be unreasonable." *America Online v. Superior Court* (2001) 90 Cal.App.4th 1, 11; see also *Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 495-496 and *The Bremen v. Zapata Off–Shore Co.* (1972) 407 U.S. 1, 10-12. California courts have frequently upheld forum-selection clauses over the objections of plaintiffs who believed that they would be better off in California courts. See, e.g., *Intershop Communications v. Superior Court* (2002) 104 Cal.App.4th 191, 200 [plaintiff has not shown "that substantial justice could not be achieved in a German court or that a rational basis is lacking for the selection of Hamburg as the forum"].

"[C]hoice of law provisions are usually respected by California courts . . . ." *Smith, supra,* 17 Cal.3d at p. 494.) However, "an agreement designating [a foreign] law will not be given effect if it would violate a strong California public policy ... [or] 'result in an evasion of . . . a statute of the forum protecting its citizens.'" *Frame v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1971) 20 Cal.App.3d 668, 673.

"Any waiver by a consumer of the provisions of this title is contrary to public policy and shall be unenforceable and void." Civ. Code § 1751; *America Online, supra,* 90 Cal.App.4th at 15; see also Civ. Code § 1790.1 (any waiver of the Song-Beverly Act is unenforceable and void).

America Online's analysis begins by addressing the question of which party had the burden of proof on the unreasonableness question: did the plaintiff need to prove that litigating in the foreign venue *would* be unreasonable, or did the defendant need to prove that it would *not* be?

The court noted that "[n]ormally, the burden of proof is on the party challenging the enforcement of a contractual forum question." *America Online, supra,* 90 Cal.App.4th at p. 10, citing *Smith, supra,* 17 Cal.3d at p. 496. However, the court held that the CLRA's anti-waiver provision shifted the burden: "the burden of proof was on AOL to prove that enforcement of the forum selection clause would not result in a significant diminution of rights to California consumers." *Id.* at p. 10. In so holding, the court followed the precedent set by *Wimsatt v. Beverly Hills Weight Loss Clinics* (1995) 32 Cal.App.4th 1511, in which the plaintiffs challenged a forum-selection clause in a franchise agreement. The *Wimsatt* court noted that the Franchise Investment Law (Corp. Code §§ 31000 et seq.) contains an anti-waiver provision (Corp. Code § 31512), and held that "enforcing the forum selection clause would effectively waive the remedies of California's FIL, thereby violating the anti-waiver component of that law." *America Online* at p. 10. Therefore, "the burden of proof was on the franchisor to prove that enforcing the clause would not violate the statutory anti-waiver provision of the FIL by 'diminish[ing] in any way the substantive rights afforded California franchisees under California law.'" *Ibid.,* citing *Wimsatt* at p. 1522; see also *Hall v. Superior Court* (1983) 150 Cal.App.3d 411, 418 [forum-selection clause unenforceable because enforcing it would deprive the plaintiffs of the protection of the anti-waiver provision of the Corporate Securities Law of 1968 (Corp. Code § 25701)].

II. Analysis

Plaintiff avers that the offer to stipulate to the application of California law by an Indiana court is insufficient and incomplete. The Court would simply point Plaintiff to the Declaration of Dolores Gonzalez, ¶ 4, which appears unconditioned in its acceptance of the application of California law to Plaintiff's claims in their chosen forum. While the Court does not find persuasive Plaintiff's contention that Defendants' offer to stipulate to the application of California law is without value, this does not fully allay the Court's concerns in the application of California law by an Indiana court.

As Plaintiff's claims deal with unwaivable statutory rights under California law, the burden here is on Defendants to show that those substantive rights will not be diminished by enforcement of the forum selection clause. *America Online, supra,* 90 Cal.App.4th at 10. It is relevant to note that the court in *Hall v. Superior Court* (1983) 150 Cal.App.3d 411, 419 found any stipulation for application of California law may well have been ineffective, as Nevada law was also unwaivable. As such the application of California law in that case was anything but certain, even with a stipulation of the parties. *Ibid*.

Here, Defendants make no showing or representation that there is not a similar conflict of laws between the application of Indiana law and the unwaivable portions of California law at issue here. Even the Court in *Verdugo, supra,* 237 Cal.App.4th at 160-161 (the relevant authority most beneficial to Defendants' position) notes that the burden is on Defendant here to provide Indiana authority showing Plaintiff's unwaivable rights are entitled to adequate remedy. *Ibid* ("Alliantgroup, however, fails to cite any Texas authority granting Verdugo rights comparable to the rights the Labor Code establishes regarding overtime compensation, wage statements, meal and rest breaks, pay upon termination, commissions, and vacation pay."). As Defendants have not made a showing that there is no conflict of law which may affect the application of California law in Indiana, they have failed to carry their burden.

Defendants' averment on reply that Indiana will automatically adopt Defendants' stipulation to California law suffers from a particular defect that they fail to address. Namely, Defendants have already obtained Plaintiff's consent to a choice of law provision as part of their warranty contract. There is no authority or argument provided to show that the Indiana court will adopt one choice of law provision over the other.

Furthermore, as Plaintiff notes in the Complaint, the agreement involving forum selection contains a waiver of right to jury trial. Under the California constitution, this is an unwaivable right at the pre-dispute stage. *Handoush v. Lease Finance Group, LLC* (2019) 41 Cal.App.5th 729, 739. Defendants make no argument that this substantive right is not going to be impacted by the election of forum in Indiana.

As to Plaintiff's arguments regarding unconscionability, Plaintiff makes several arguments regarding the procedural unconscionability of conditions under which he signed the warranty, but, as Defendants argue on reply, he makes no argument regarding the substantive unconscionability. Both factors of unconscionability must be present in order to find a contract was unconscionable. Substantive unconscionability is where the terms of the contract are so one sided as to "shock the conscience", mere unequal benefit is not sufficient. *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213. Here, there is no showing by the Plaintiff (beyond the one addressed above regarding Indiana's ability to address Plaintiff's substantive rights) that the contents of the contract shock the conscience.

The Court finds no solace in the argument that Defendants only request a stay, and not dismissal. Indeed, dismissal is flatly improper based on California law. *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857-858. Staying the action does not, as Defendants aver, allow this Court to resume proceedings if it finds that the Indiana court has somehow misapplied or refused to apply California law. "In the forum non conveniens context, a forum is unsuitable only if it lacks jurisdiction or its statute of limitations bars the action." *Verdugo, supra,* 237 Cal.App.4th at 161. "Contrary to Alliantgroup's contention, the Texas court's decision to apply Texas law in deciding Verdugo's claims would not make Texas an unsuitable forum, and would not necessarily allow the trial court to resume proceedings on Verdugo's claims." *Id*. at 162. Contentions to the contrary are clear misstatement of Defendants' cited authority.

Therefore, because Plaintiff's claims hinge on unwaivable statutory causes of action, and Defendants have not carried their burden to show that Plaintiff's substantive rights will not be impacted by the election of law or forum, the motion to stay is DENIED.

III. Conclusion.

Defendants' motion for stay is DENIED.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

****This is the end of the Tentative Rulings.*****