Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR N18
HON. Scott A. Steiner

Date: May 01, 2024

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Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (Lewis v. Fletcher Jones Motor Cars, Inc. (2012) 205 Cal.App.4th 436, 442, fn. 1.)

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#	Case Name	Tentative
5.	2023-1325860 Ayala vs. General Motors LLC	Notice of Withdrawal filed on 04/19/2024.
6.	2019-1099732 BALBOA CAPITAL CORPORATION vs. ANTOINE GROUP LLC	**Motion for Attorneys' Fees** Plaintiff Balboa Capital Corporation ("Plaintiff") seeks an order awarding Plaintiff reasonable attorneys' fees and costs in the amount of $391,573 against defendants Antoine Group LLC and Behzad Nazari (collectively, "Defendants"). On 3/20/2024, the hearing on this motion was continued to allow Defendants to file an opposition. No opposition has been filed. There is no dispute that Plaintiff is the prevailing party and entitled to attorneys' fees and costs. (Civ. Code, § 1717; Code Civ. Proc., § 1032(a)(4); Judgment; Salisian Decl., ¶ 2, Exhibit A.) Plaintiff justified the hourly rates for the attorneys and paralegals who worked on this case. (Salisian Decl., ¶¶ 8-12;

		Poulos Decl., ¶¶ 13-16 and 18.) Defendants did not dispute the reasonableness of these hourly rates. Plaintiff submitted its associated counsel's billing records, its in house counsel's billing records, and an estimate for the fees associated with this motion to support the requested amount. (Salisian Decl., ¶¶ 13 and 14, Exhibit B; Poulos Decl., ¶¶ 12, 21, and 22, Exhibit C.) Based on the Court's own review of the supporting papers and the procedural history of this case, the Court finds that Plaintiff reasonably incurred $193,577.50 in attorneys' fees. The Court notes there was a substantial number of duplicated efforts and inefficiencies among the attorneys who worked on this case, especially after outside counsel was retained. In addition, the billed time appeared to increase after the Court granted Plaintiff's motion for directed verdict. Plaintiff timely served and filed its memorandum of costs. Defendants did not move to tax or strike the costs. The requested costs are recoverable under Code of Civil Procedure section 1033.5. Accordingly, Plaintiff's unopposed motion is granted. Plaintiff is awarded $204,107.10, which includes attorneys' fees in the amount of $193,577.50 and costs in the amount of $10,529.61. Plaintiff shall give notice.
7.	2022-1273054 Costello vs. Vons	Notice of Withdrawal filed on 04/25/2024.
8.	2023-1313902 Gonzalez vs. Advance Beauty College, Inc.	Dismissal of Entire Action filed.
9.	2023-1305622 Nasiri vs. City Of Costa Mesa, California	Defendant City of Costa Mesa's motion to compel plaintiff Soheila Nasiri to provide further responses to special interrogatories, set one, is denied. Defendant filed only the notice of motion but no supporting papers. A party may move to compel further responses to interrogatories on the grounds that the answer is evasive or incomplete. Code Civ. Proc. § 2030.300(a)(1). Both a declaration showing a prior meet and confer took place and a

		separate statement must be filed with the motion. Code Civ. Proc. §2030.300(b); CRC 3.1345. In addition, all motions must be supported by a memorandum of points and authorities. CRC 3.1113. Defendant has not filed any of the required supporting papers for its motion.
10.	2023-1320486 Perez vs. E Mortgage Capital, Inc.	Defendants E Mortgage Capital, Inc.'s and Joseph N. Shalaby's demurrer to Plaintiff Anthony Perez's First Amended Complaint is overruled as to the 2nd and 6th causes of action and sustained with 15 days leave to amend as to the 1st, and 3rd-5th causes of action. A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. Although California courts take a liberal view of inartfully drawn complaints, it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) On demurrer, a complaint must be liberally construed. (CCP § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-67.) <u>1st cause of action for breach of contract</u> The elements of breach of contract are (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*Miles v. Deutsche Bank National Trust Company* (2015) 236 Cal.App.4th 394, 402.) In pleading a breach of contract cause of action, plaintiff must allege whether the contract is written, oral, or implied by conduct. (See Code Civ. Proc., § 430.10(g); *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 458-459.)

		Defendants argue this claim is time-barred. The statute of limitations for breach of written contract is four years. (Code Civ. Proc., § 337.) As Plaintiff alleges the contract ended in 2017, his deadline to file this action would have been in 2021. To the extent that Plaintiff is alleging an additional contract that was breached when the parties continued to work together from 2017 to 2020, the FAC fails to indicate whether the agreement is written, oral or implied by conduct. Also, it is not specified whether the agreement was written, oral or implied by conduct. If the agreement was oral, the statute of limitations is only two years pursuant to Code Civ. Proc., § 339. Furthermore, Plaintiff fails to allege that he performed under the contract or is excused from performing his obligations or conditions precedent. In opposition, Plaintiff submitted a declaration with the opposition that contains additional facts and evidence not pled in the current FAC. He also argues that he did not discover the breach(es) until later. The law does not permit the Court to take this into account; only what is pled in the FAC is relevant to the demurrer analysis. As a result, the Court sustains the demurrer to Plaintiff's cause of action for breach of contract with leave to amend. <u>2nd cause of action for restitution</u> In this cause of action, Plaintiff alleges that approximately $20 million in commissions from 2017-2020 was never paid to him and $7 million from 2015-2017 was never paid to him. He alleges that Defendants should be ordered to pay him this added value which he was responsible for. (FAC, ¶¶ 36-42.) Defendants contend that this is not a proper stand-alone cause of action, citing to cases that hold that unjust enrichment is not a cause of action and that restitution is the same as unjust enrichment. But, puzzlingly, one of the cases that Defendant cites, *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, actually holds to the contrary. While the court therein states that there is no cause of action in California for unjust enrichment, it states that "[t]here are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was

		procured by fraud or is unenforceable or ineffective for some reason. [Citations.]" *(Id.* at 1370.) Accordingly, the Court finds that a cause of action for restitution is appropriate, and the demurrer is thus overruled to the second cause of action. <u>3rd cause of action for breach of covenant of good faith and fair dealing</u> In order to properly establish breach of the covenant of good faith and fair dealing, Plaintiffs must prove the following: (1) the parties entered into a contract; (2) plaintiff did all that was required under the contract or was excused from such; (3) the conditions required for defendants performance occurred; (4) defendant unfairly interfered with plaintiff's right to receive the benefits of the contract, and (5) plaintiff was harmed by defendant's conduct. CACI 325. Breach of contract is a prerequisite to bring a claim for breach of the implied covenant of good faith and fair dealing. *See Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 ("The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation…[T]here is no obligation to deal fairly or in good faith absent an existing contract."); *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 885 ("Although breach of the implied covenant often is pleaded as a separate count, a breach of the implied covenant is necessarily a breach of contract.") This is derivative of Plaintiff's breach of contract claim. Because the Court sustains the demurrer to the first cause of action, the demurrer to this cause of action is also sustained with leave to amend. <u>4th cause of action for intentional interference with prospective economic advantage</u> And <u>5th cause of action for negligent interference with prospective economic advantage</u> The elements of interference with prospective economic advantage are: (i) economic relationship between Plaintiff and a third person containing probability of future economic benefit to Plaintiff; (ii) Defendant's knowledge of the existence of the relationship; (iii) intentional acts by Defendant designed to disrupt the relationship; (iv) actual disruption of the

		relationship; and (v) damages proximately caused by the acts of Defendant. (*Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1392.) Plaintiff alleges that an "economic relationship existed between Plaintiff and a third party that contains the probability of future economic benefit," and that Defendants "[intentionally] committed wrongful acts…to disrupt this relationship," which "caused Plaintiff to lose money in the present and future." (FAC, ¶¶ 55-58, 61-66.) Plaintiff alleges in the general allegations that "SHALABY would inform his prospective clients that Plaintiff was not licensed…" and that he would "email people that both Plaintiff and SHALABY knew and inform them that Plaintiff was being investigated…" (FAC, ¶¶21-22) The Court finds Plaintiff's allegations to be vague with respect to these causes of action. Plaintiff does not specify the "third party" with whom he had a relationship that was disrupted. And is Plaintiff alleging that Shalaby would inform "his" as in Shalaby's prospective clients that Plaintiff was not licensed, or is it Plaintiff's prospective clients that are referenced? (FAC, ¶ 21.) The demurrer is sustained with leave to amend with respect to these two causes of action as Plaintiff fails to plead sufficient facts to support these claims. <u>6th cause of action for defamation</u> The elements for a claim for defamation are: "(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." (*Sanchez v. Bezos* (2022) 80 Cal.App.5th 750, 763.) Plaintiff alleges that Defendants engaged in acts that injured Plaintiff's business and professional reputation…specifically, that Shalaby informed prospective clients that Plaintiff was not licensed, and that Plaintiff was going to steal their money/rip them off. He also emailed people that Plaintiff was being investigated which was not the case. (FAC, ¶¶ 72-73.) The statement that Plaintiff would steal client's money implies that Plaintiff was a thief and dishonest and supports a claim for defamation. Similarly, the statement that Plaintiff was being investigated which was not the case, also supports Plaintiff's cause of action for defamation. These, in connection with the allegations that Plaintiff's business and professional

		reputation was injured are sufficient at the pleadings stage to support a claim for defamation. The demurrer is overruled to the 6th cause of action. Defendant shall give notice.
11.	2023-1330417 Burch vs. San Juan Capistrano Unified School District	**Demurrer to Second Amended Petition for Writ of Mandate** **Case Management Conference** Respondent San Juan Capistrano Unified School District ("District") demurs generally to the four causes of action alleged in the Second Amended Petition for Writ of Mandate filed by Petitioners Daniel Burch ("Burch") and Quantum Education Dynamics ("Quantum") (collectively, "Petitioners"). District's requests for the Court take judicial notice of three directives issued by CalSTRS (in 2019, 2022, and 2023) are denied. All three directives are directed at fiscal years after the time period at issue in the SAP (2017-18 fiscal year) and do not appear relevant to the allegations in the SAP. (*Bell v. Greg Agee Construction, Inc.* (2004) 125 Cal.App.4th 453, 459, fn. 2.) District's unopposed request for the Court to take judicial notice of District's Board policy number 3300(b) is granted. (Evid. Code, § 452, subd. (b); *Warmington Old Town Associates, L.P. v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840, 858, fn. 3.) The Court notes District contends for the first time in District's reply that CalSTRS is an indispensable party. Because proper notice was not provided for this ground, the Court declines to consider this ground in this demurrer. <u>First cause of action for writ of mandate</u> "To adequately state a claim for the issuance of a writ of mandate, a petitioner must allege: (1) 'the public official or entity had a ministerial duty to perform'; and (2) 'the petitioner had a clear and beneficial right to performance.' (*HNHPC, Inc. v. Department of Cannabis Control* (2023) 94 Cal.App.5th 60, 69, citing *Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 184.) In addition, "it is essential that it shall appear from the allegations of the petition that there is not a plain, speedy, and adequate remedy in the ordinary course of the law." (*Ross v. O'Brien* (1934) 1 Cal.App.2d 496, 501, superseded by statute on other grounds.)

		"'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion … is the power conferred on public functionaries to act officially according to the dictates of their own judgment.'" (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.) "Generally, mandamus may be used only to compel the performance of a duty that is purely ministerial in character. [Citation.] The remedy may not be invoked to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular way." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) "While a party may not invoke mandamus to force a public entity to exercise discretionary powers in any particular manner, if the entity refuses to act, mandate is available to compel the exercise of those discretionary powers in some way." (*Ellena v. Department of Ins.* (2014) 230 Cal.App.4th 198, 205 (*Ellena*).) Whether a statute imposes a ministerial duty is a question of statutory interpretation. (*AIDS Healthcare Foundation*, at p. 701.) (*HNHPC, Inc. v. Department of Cannabis Control*, 94 Cal.App.5th at 70.) "Mandamus may be used to correct an abuse of discretion. (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547.) When reviewing an exercise of discretion, 'the judicial inquiry … addresses whether the public entity's action was arbitrary, capricious or entirely without evidentiary support, and whether it failed to conform to procedures required by law.' (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443.)" (*HNHPC, Inc. v. Department of Cannabis Control*, 94 Cal.App.5th at 71.) Petitioners alleged sufficient facts to state a cause of action for writ of mandate and that Burch's activities was not encompassed in the definition of retired member activities. (Ed. Code, § 22164.5, subd. (b); SAP, ¶¶ 10, 12, 17.1, 19, and 20.) Second cause of action for breach of contract

		"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Petitioners alleged the existence of a written contract between Quantum and District. (SAP, ¶ 22, Exhibit 1.) There are no facts alleging an agreement between District and Burch, or that Burch was an intended third-party beneficiary under the written agreement. Petitioners did not allege sufficient facts to show District breached the written contract or that Quantum was a damaged because of the alleged breach. Petitioners allege District's misreporting the payments made to Quantum to Burch's personal tax identification and CalSTRS member number breached the parties' contract. (*Id.*, ¶ 25.) However, the contract attached as Exhibit 1 does not include a term regarding reporting income to CalSTRS. Petitioners has not shown parole evidence applies. Accordingly, the demurrer is sustained with 15 days leave to amend. <u>Third cause of action for promissory estoppel</u> The elements of a promissory estoppel claim are: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Flintco Pacific, Inc. v. TEC Management Consultants, Inc.* (2016) 1 Cal.App.5th 727, 734.) In California, under the doctrine of promissory estoppel, a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. (*Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460, 1470-1471.) It is well established that an estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy, adopted for the benefit of the public. *Id.*, at 1471. The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it. *Id.* The facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not

		established through which, by favoritism or otherwise, the public interest may be mulcted, or public policy defeated. *Id*. The SAP does not allege exceptional circumstances necessary to justify application of the promissory estoppel doctrine against District. Accordingly, the demurrer is sustained with 15 days leave to amend. <u>Fourth cause of action for equitable estoppel.</u> "The doctrine of equitable estoppel is founded on notions of equity and fair dealing and provides that a person may not deny the existence of a state of facts if that person has intentionally led others to believe a particular circumstance to be true and to rely upon such belief to their detriment.... ' "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." ' ... Where, as here, a party seeks to invoke the doctrine of equitable estoppel against a governmental entity, an additional element applies. That is, the government may not be bound by an equitable estoppel in the same manner as a private party unless, 'in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.' " (*City of Oakland, supra,* 224 Cal.App.4th at pp. 239–240, 169 Cal.Rptr.3d 51, citations omitted.) Further, the doctrine of equitable estoppel has been applied in cases involving a retirement system's right to recoup the overpayment of pension benefits. (See, e.g., *id.* at pp. 239–248, 169 Cal.Rptr.3d 51.) (*Krolikowski v. San Diego City Employees' Retirement System* (2018) 24 Cal.App.5th 537, 564-565.) Petitioners have not alleged sufficient facts to uphold estoppel against District. Accordingly, the demurrer is sustained with 15 days leave to amend. District shall give notice.

12.	2023-1333056 Valenzuela vs. Livechat, Inc.	The hearing on the motion by specially appearing defendant Text, Inc., f/k/a LiveChat, Inc., to quash service of summons and first amended complaint, is continued to 08/07/2024 at 10:00 AM in Department N18. Defendant contends it is a Delaware entity that is not subject to general or specific jurisdiction in California. Plaintiff has asked the court to defer ruling on the motion until she has had a reasonable opportunity to conduct jurisdictional discovery. (Mot. at p. 17.) The hearing is continued to allow Plaintiff to conduct discovery on the issue of specific jurisdiction. (*Goehring v. Superior Court* (Bernier) (1998) 62 Cal.App.4th 894, 911 ["A plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before a court rules on a motion to quash"].) The Court is interested in the number of goods or services sold by Defendant to California residents via the website at issue. (See *Thurston v. Fairfield Collectibles of Georgia, LLC* (2020) 53 Cal.App.5th 1231, 1240.) Plaintiff shall file and serve her supplemental papers by **07/25/24**. If Plaintiff cannot complete the jurisdictional discovery by this deadline, she may file a statement explaining the reasons for the delay and requesting a further continuance. However, the parties are strongly advised to work in good faith to complete the discovery expeditiously. Defendant may file and serve any supplemental response by **07/31/24**. The Clerk shall give notice of the ruling.
13.	2022-1290262 Garcia vs. Elmore Motors	Plaintiff Myra Garcia's motion to compel defendant Elmore Motors to provide further responses to requests for production, set two ("RFPs"), is granted. Defendant is to serve further responses no later than June 5, 2024. Plaintiff is awarded sanctions of $2,460 against Defendant to be paid no later than May 15, 2024. Plaintiff's motion to compel Defendant to provide further responses to requests for admission, set two ("RFAs") is granted as to nos. 73-77. The court is inclined to deny as to the remaining RFAs. **Motion to Compel Further Responses to RFPs** Code Civ. Proc. section 2031.310 provides, in relevant part, that "any party may obtain discovery" by "inspecting, copying, testing, or sampling documents, tangible things, land or other

		property, and electronically stored information in the possession, custody, or control of any other party to the action." Code Civ. Proc., § 2031.010(a). Section 2031.220 requires a party responding to an inspection demand to respond with (1) a statement that it will comply, (2) a representation that it does not have the ability to comply, or (3) an objection. If the party responds with a statement of compliance, it must specify whether production "will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." Code Civ. Proc., § 2031.220. If the party responds with a representation that it does not have the ability to comply, it "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." Additionally, it "shall also specify whether the inability to comply is because the item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Code Civ. Proc., § 2031.230. On receipt of the response, the demanding party may move to compel a further response if any of the following apply: (1) a statement of compliance is incomplete; (2) a representation of inability to comply is inadequate, incomplete or evasive; (3) an objection is without merit or too general. Code Civ. Proc., § 2031.310(a). Where there has been a response to RFPs that the propounding party finds inadequate, then the Code provides for a motion and order compelling production upon a showing of good cause, prior meeting and conferring, and the filing of a separate statement. Code Civ. Proc. § 2031.310(b)(1) and (2); CRC 3.1345; TRG, Cal. Prac. Guide, Civil Procedure before Trial §8:1494.1. ***Meet and Confer Efforts*** Defendant contends that Plaintiff's meet and confer efforts were insufficient as Plaintiff's counsel did not address all of Defendant's objections. But Plaintiff's counsel describes a telephone conversation with Defendant's counsel at which she was invited to raise each of her issues of concern, and the two

that she specifically raised were addressed. [Reply Kingery Decl. (ROA #207), ¶¶ 6-9.] The court finds that Plaintiff's efforts were sufficient.

Showing of Good Cause

A motion to compel further responses to request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the discovery request. Code Civ. Proc. § 2031.310(b)(1). In order to meet the burden of showing good cause, the moving party must show: (1) relevance to the subject matter and (2) specific facts justifying discovery. Weil & Brown, Cal. Civ. Proc. Before Trial, 8:1495.6 (The Rutter Group 2011). Declarations are generally used to show good cause, and they must contain specific facts and not mere conclusions. *Id.* at 8:1495.7. If the moving party demonstrates good cause, then the opposing party must justify any objections. *Kirkland v Superior Court* (2002) 95 Cal. App. 4th 92, 98.

There is nothing in Plaintiff's counsel's declaration about good cause. [Kingery Decl. (ROA #174).] But as Plaintiff notes, good cause is discussed in its separate statement as to each RFP and is further outlined in the supporting memorandum. The court finds Plaintiff has done enough to show good cause for purposes of this motion. There is no real dispute as to the relevance of the requests.

The RFPs

For the 15 RFPs in issue, Defendant provided the same (or virtually the same) set of objections to each:

> Objection. As phrased, the request is vague, ambiguous and overly broad in that it fails to specifically describe each individual item sought and/or to set forth each category of item sought with reasonable particularity in violation of Code Civ. Proc. §2031.030(c).
> As phrased, the request is vague and ambiguous with respect to the undefined term(s)/phrase(s) "any and all DOCUMENTS" "wherein PLAINTIFF informed YOU" and "of her pregnancy."
> The request is further overly broad, unduly burdensome and harassing to the extent it would require Responding Party to produce "any and all DOCUMENTS" based on propounding party's definition of "DOCUMENTS" and the subject matter of this specific request. Responding Party objects to the terms "YOU" and "YOUR" on the

		grounds that Plaintiff's specially provided definition – "defendant Elmore Motors dba Elmore Toyota, as well as all employees, agents, attorneys, representatives, accountants, and anyone else acting on [its] behalf"– is overly broad, unduly burdensome, and unintelligible based on the facts and in the context of this action. Responding Party objects on the grounds that the request is beyond the scope of permissible discovery in that it requests information that, at least in part, is neither relevant to the subject matter in this action, nor reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. §2017.010). The request lacks temporal specificity and/or limitation making it overly broad, unduly burdensome and harassing. Responding party objects to the extent this request seeks information in violation of the attorney client privileged and/or attorney work product doctrine. Responding Party objects to this request to the extent it seeks premature disclosure of expert witness identification and/or information. The request calls for information that is protected by Defendant's and/or third parties' right to privacy under the Federal and California constitutions and applicable statutes. Defendant, as the custodian of private information, has the duty to resist attempts at unauthorized disclosure and the person who is the subject of it is entitled to expect that his or her right will thus be asserted. Discovery and investigation are in their infancy and continuing, and Responding Party reserves the right to amend its response if and when additional information becomes available. [Kingery Decl. (ROA #174), Ex. 2.] In its opposition, Defendant relies on its argument that Plaintiff has failed to address each of Defendant's objections. [Opp. (ROA #197) at 8-9.] First, Plaintiff's counsel's declaration shows that Plaintiff sought to address Defendant's objections in a meet and confer telephone call among counsel. [Kingery Decl., ¶ 7; Reply Kingery Decl., ¶¶ 7-8.] Second, in light of Plaintiff's filing of the pending motion to compel, it is *Defendant's* burden to justify its responses. It has not done so. In its opposition, Defendant focuses on Plaintiff's defined terms of YOU/YOUR and COMMUNICATIONS as being

overbroad and/or vague. But these were the precise terms addressed by Plaintiff during the meet and confer telephone conversation. Defendant does not explain how Plaintiff's counsel description for use of the terms was unclear or insufficient. Moreover, it is Defendant's obligation to respond as best as it can, providing the (unprivileged) information that it reasonably interprets the request to be seeking.

> A party may not deliberately misconstrue a question for the purpose of supplying an evasive answer. (Hunter v. International Systems & Controls Corp., supra, 56 F.R.D. 617, 625). Indeed, where the question is somewhat ambiguous, but the nature of the information sought is apparent, the proper solution is to provide an appropriate response. (See C.E.B., California Civil Discovery Practice, Section 8.54 (C.E.B.1975).)

Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783.

Here, Defendant has not met its obligation to respond to discovery. Nor has it justified its objections. Accordingly, the motion to compel further responses is granted.

Motion to Compel Further Responses to RFAs

> RFAs may be used as to any matter within the permissible scope of discovery: i.e., "relevant to the subject matter involved in the pending action" (CCP § 2017.010, ¶ *8:66 ff.*); and not otherwise privileged or protected from discovery. [CCP § 2033.010]

Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8G-3 §8:1288.

An RFA may properly seek admission or denial of "the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties." Code Civ. Proc. § 2033.010.

In responding to RFAs, a party has a duty to answer as completely and straightforwardly as the information reasonably available to him permits. Code Civ. Proc. §2033.220(a). A party may either (1) Admit so much of the matter as is true, (2) Deny so much of the matter as is untrue, or (3) Specify so much of the matter as to the truth of which

		the responding party lacks sufficient information or knowledge. Code Civ. Proc. §2033.220(b), (c). The answer must be "as complete and straightforward" as the information available *reasonably permits* and must *"[a]dmit* so much of the matter involved in the request as is true … or *as reasonably and clearly qualified* by the responding party." Code Civ. Proc. § 2033.220(a), (b)(1) (emphasis added). A party responding to RFAs is required to make a reasonable investigation. Code Civ. Proc. §2033.010; *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529. **After that, the party many deny the RFA for lack of information and belief**. Code Civ. Proc. § 2033.220(b)(3), (c). Where responses were timely served but are deemed deficient by the requesting party (e.g., because of objections or evasive responses), that party may move for an order compelling a further response. Code Civ. Proc. § 2033.290; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 636. This motion must be preceded by meet and confer efforts and be made within 45 days. Code Civ. Proc. § 2033.290(b), (c). **A court cannot force a litigant to admit or deny a fact**. *Holguin v. Superior Court* (1972) 22 Cal. App. 3d 812, 820; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 634. **If the litigant refuses to admit an obvious fact, the penalty is either impeaching the party, or obtaining cost of proof sanctions**. *Id;* Code Civ. Proc. §2033.420. Specifically, "if a party <u>fails to admit</u> the … truth of any matter when requested to do so… and if the party requesting that admission thereafter proves … the truth of that matter [at trial]". "[T]he party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." Code Civ. Proc. §2033.420(a). ***Adequacy of Counsel's Declaration for Additional RFAs*** Except for request to admit the genuineness of documents, which are unlimited, a party is limited to 35 requests for admission – *unless* service of the additional RFAs is accompanied by a declaration of necessity. Code Civ. Proc. §§ 2033.030, 20333.050.

Plaintiff's RFAs exceeded 35 and were accompanied by counsel's declaration of necessity. [Kingery Decl. (ROA # 170), Ex. 1.]

Defendant contends the declaration is insufficient, so it was not required to respond to the excess RFAs, because the declaration did not state the number of requests for admission previously served and mis-stated the number being served in the pending RFAs. On the second point, Plaintiff explains the prior, first set, of requests for admission were misnumbered, which led to counsel's mistake. This was noted and apologized for in correspondence between counsel.

The court finds that these errors in the declaration of necessity are not fatal and did not relieve Defendant of its obligation to respond. The critical statement - -that is, that the additional RFAs were necessary – was made. Beyond this, Defendant did in fact respond and thus waived any objection to the sufficiency of the declaration.

RFAs Themselves

<u>RFA nos. 39-41, 45-47, 54-56, 59-61, 65, 73- 77, 84 and 86</u>

Defendant provided the same response to these RFAs. First, it asserted a number of objections, including attorney-client privilege, vagueness and ambiguity, and lack of relevance. Then, Defendant concluded with:

> Subject to, and without waiving the foregoing objections, Responding Party responds as follows: After a reasonable inquiry, based on the information known and/or readily obtainable to Responding Party, Responding Party is unable to unequivocally admit or deny the request, and therefore avers.
>
> Discovery and investigation are in their infancy and continuing, and Responding Party reserves the right to amend its response if and when additional information becomes available.

[Kingery Decl., Ex. 2.]

While Plaintiff objects to the assertion of objections, this is really a moot point because Defendant *did* respond.

		Plaintiff also objects to the response, contending that Defendant clearly could admit or deny so its response is evasive. But the Court cannot force Defendant to admit (or deny) any requests for admission. And Defendant is within its rights to state that after a reasonable inquiry, based on the information known or readily obtainable to it, the information is insufficient for it to admit. Code Civ. Proc. §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."). Defendant's statement essentially complies with the requirements of section 2033.220. The court is confused, however, by the statement that Defendant "therefore avers." "To aver" means "to state or declare something is true." The court will hear from Defendant's counsel as to the meaning of the statement and whether Defendant intends to deny the RFAs pursuant to Code Civ. Proc. §2033.200 for lack of sufficient information. RFA nos. 73-77 For these RFAs, Defendant asserted the same objections as for the others but did *not* also provide a response. Instead, Defendant stood on its objections, concluding with "Discovery and investigation are in their infancy and continuing, and Responding Party reserves the right to amend its response if and when additional information becomes available." [Kingery Decl., Ex. 2.] In opposition to the pending motion, relies on its lack of relevance objection contending that the RFAs are specifically geared at wage-and-hour issues such as meal and rest breaks and Plaintiff has not made wage and hour claims to date. But Plaintiff has identified factual issues she seeks to follow up on to determine whether there are other claims to be asserted. Given the breadth of discovery under Code Civ. Proc. § 2017.010, this is permitted. Accordingly, the motion is granted as to RFA nos. 73-77.

14.	2022-1284816 Trinidad vs. Kaiser Foundation Health Plan, Inc.	The court has ordered that plaintiff's motion to substitute Estrella Ferry as plaintiff in place of deceased Conrado Romero Trinidad be heard on less than 16 court days' notice. [ROA #111.] The court will entertain any opposition at the hearing. Subject to any such opposition, the court is inclined to grant the motion. A pending action or proceeding does not abate by the death of a party if the cause of action survives. Code Civ. Proc. § 377.21; *see also* Code Civ. Proc. § 377.20. On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest. Code Civ. Proc. § 377.31. Code Civ. Proc. § 377.31 provides: > On motion after the *death of a person who* ***commenced*** *an action or proceeding*, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest. Code Civ. Proc. § 377.32 provides: > (a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following: (1) The decedent's name. (2) The date and place of the decedent's death. (3) "No proceeding is now pending in California for administration of the decedent's estate." (4) If the decedent's estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest. (5) Either of the following, as appropriate, *with facts in support thereof*: (A) "The affiant or declarant is the decedent's successor in interest (as defined in Section 377.11 of the

		California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding." (B) "The affiant or declarant is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding." (6) "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding." (7) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct." (b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact. (c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration. The declaration of Estrella Ferry [ROA #106], with the attached death certificate for Conrado Romero Trinidad, declaring her to be successor trustee to Mr. Trinidad and his successor in interest satisfies each of these requirements.