LAKES TREATMENT CENTER, INC., et al v RESORT AT LAKE TULLOCH, LLC, et al

21CV45585

DEFENDANT VAN'S MOTION TO COMPEL COMPLIANCE WITH COURT ORDERS AND FOR SANCTIONS; DEFENDANT RESORT AT LAKE TULLOCH'S MOTION FOR LEAVE TO FILE A FIRST AMENDED CROSS-COMPLAINT

This case stems from a property dispute between The Lakes Treatment Center, Inc. ("LTC") and Bernadette Cattaneo ("Cattaneo") (collectively, "Plaintiffs") and The Resort at Lake Tulloch, ("Resort"), Narullah Safdari ("Safdari"), Odell Tristin ("Tristin"), Michael Van ("Van"), Andreas Ambramson ("Ambramson"), and Diamond Dirt LLC ("Diamond.") Now before the Court is Van's motion to compel Tristin to pay outstanding sanctions and for the imposition of additional sanctions.

Defendant Van's Motion to Compel Compliance/Sanctions:

On January 9, 2026, the Court granted Van's unopposed motions to compel discovery responses against Safdari and Tristin (collectively, "Defendants.") The Court ordered that Tristin must produce all responsive answers to Van's Request for Production, Set One on or before January 23, 2025. Tristin and his counsel were also ordered to pay sanctions in the amount of $3,360.00.

On June 16, 2026, Van's counsel emailed counsel for Defendants regarding the outstanding sanctions which had yet to be paid and requesting confirmation that sanctions would be paid on or before June 30, 2026. (Declaration of Michael J. Laino ("Laino Decl.") ¶ 2.) On June 18, 2026, Defendants' counsel responded that he was "working on it." (*Ibid.*) Defendants did not make any payment of the sanction awards by June 30, 2026. (*Ibid*.) On July 1, 2026, Van's counsel followed up on the outstanding sanctions owed and his intention to seek an order from the Court to compel compliance. (*Id.* ¶ 3.) Defendants' counsel responded that his client would be stopping by at some point and he would follow up, but no follow up was made. (*Ibid*.) As of July 8, 2026 (the date of the instant motion), neither Tristin nor his attorney have made any sanctions payments to Van. (*Id.* ¶ 4.)

Plaintiff moves for an order compelling payment of the original sanctions, as well as imposition of additional sanctions in the amount of $1,960.00.

Tristin opposes the motion. In the opposition, his counsel states that $5,000 of $6,030.00 in outstanding sanctions was mailed to Van's counsel on or about July 27, 2026. (Opp. p. 1.) Tristin's counsel further represents in the opposition that the remaining balance will hopefully be paid by the time of the hearing on this motion. However, Tristin objects to the imposition of any further sanctions, arguing that there is no basis in the Discovery Act for imposing sanctions on a party for failing to pay earlier issued sanctions.

The Court agrees that the Discovery Act does not specifically state that the failure to pay sanctions is a "misuse of the discovery process," which would warrant further sanctions under that section of the Code of Civil Procedure. However, the Court, has the discretion and authority to impose sanctions up to $1,500.00 pursuant to Code Civil Procedure section 177.5 "for any violation of a lawful court order by a person, done without good cause or substantial justification."

Here, Tristin and his attorney clearly violated the Court's previous order imposing sanctions on both Tristin and his attorney, with a specified deadline for payment. Tristin's attorney does not attempt to provide good cause or substantial justification for their decision to ignore the Court's order for upwards of six months.

Thus, the **Court imposes additional sanctions in the amount of $1,500 against Tristin and his counsel pursuant to Code Civil Procedure section 177.5**. The Court expects the full original sanction and this additional amount **to be paid forthwith**, and no later than 5:00 p.m. on Friday, August 14, 2026.

Defendant Resort's Motion For Leave to File a First Amended Cross-Complaint:

I. Background

On September 9, 2021, Plaintiffs filed their original complaint against Resort, Safdari and Tristin. Plaintiffs filed a First Amended Complaint on July 5, 2023, adding Van and Abramson and new causes of action. On August 16, 2023, by stipulation of the parties, Plaintiffs filed a Second Amended Complaint ("SAC") adding Diamond as a defendant. The SAC alleges causes of action for: 1) Breach of Lease Agreement, (2) Promissory Estoppel, (3) Trespass, (4) Intentional Misrepresentation, (5) Fraud by Concealment, (6) Interference with Contractual Relations, (7) Conspiracy, (8) Declaratory Relief, (9) Breach of Fiduciary Duty, (10) Accounting, and (11) Access to Books and Records. The SAC's fourth, fifth, sixth, and seventh causes of action are alleged against Van, and the eighth, ninth, tenth, and eleventh causes of action are alleged against Diamond.

On May 22, 2026, the Court granted Plaintiff's motion for leave to file a Third Amended Compliant ("TAC.") Resort now moves for leave to file a FACC on the grounds that many of the new claims are compulsory claims to those raised in the TAC and that the failure to plead any of the claim earlier was an error or failure made in good faith. (Code Civ. Proc. § 426.5.)

II. Legal Standard and Discussion

When a party moves to amend a pleading "courts generally should permit amendment to the complaint at any stage of the proceedings, up to and including trial. [Citations.]" (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175.) Leave to amend should be granted liberally. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 488-489.) In ruling on such motion, the Court's main concern is prejudice to another party. (*Ibid*.) Prejudice means more than inconvenience, but instead focuses on delay in trial, loss of critical evidence or added costs of preparation. (*Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435, 1448.)

A motion to amend a pleading before trial must include a copy of the proposed amendment or amended pleading. (Cal. Rules of Court, Rule 3.1324, subd. (a)(1).) The motion must also be supported by a declaration which specifies the following: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier. (Cal. Rules of Court, Rule 3.1324, subd. (b).) In ruling on a motion for leave to amend, courts generally do not consider the amended pleading's merits. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 760.)

The Court finds a distinct measure of irony in the fact plaintiff's arguments echo the earlier arguments made by the Defendants in unsuccessfully opposing the Plaintiffs' motion for leave to file its TAC. First, Plaintiff argues that Resort impermissibly delayed bringing the amendment. They argue that the proposed amendments contain facts related to documents which were produced years earlier or depositions taken much earlier and should not have been brought this late and close to the trial date (February 2027). Second, Plaintiff argues that it will be severely prejudiced by the amendments because it will require significantly more discovery and the need to re-depose numerous witnesses.

Resort persuasively argues that it was unaware of many of the facts at the heart of this issue until depositions which took place in the spring and early summer of 2026. (Declaration of Daniel S. Truax ("Truax Decl.") ¶ 7.0.) After those depositions, Resort was able to confirm the merits of its compulsory counterclaims and facts underlying those claims. The amendments are related to the facts and disputes already pled in this case. Finally, as all parties agreed to move the trial in this matter (now set for February 3, 2027) allowing the amendment does not impact any rapidly approaching trial date.

Plaintiffs have failed to show that granting the Resort leave to file a FACC will unduly prejudice them nor that the amendment is the result of unreasonable delay.

Accordingly, the Court **GRANTS the motion for leave to file a First Amended Cross-Complaint**.

(However, in doing so, the Court is cognizant of the length of the discovery disputes which have already consumed the parties and the Court's time, and the potential of more disputes arising from the amended pleadings. Accordingly, the Court puts the parties on notice that it is likely to order the appointment of a discovery referee to assist the parties in determining what additional discovery will be needed and to make the necessary limitations on type, manner, and amount of discovery to be made should the parties be unable to reach agreement outside of formal motions; should the Court take this step the parties will be assessed all fees and costs associated with the work of any such appointed discovery referee.)

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Van and Defendant Resort, respectively, to submit formal Orders complying with Rule 3.1312 in conformity with this Ruling.

PONTE v PERREIRA, JR.

23CV47125

PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES; PLAINTIFF'S MOTION TO COMPEL ATTENDANCE AT DEPOSITION

This is a quiet title action to confirm an easement over property belonging to Defendant Alfred R. Pereira, Jr. individually and as Trustee for the Alfred R. Pereira Trust (“Defendant.”) Before the Court are two motions to compel brought by Plaintiff Larry E. Ponte (“Plaintiff.”) The motions are unopposed.

I. Factual and Procedural Background

A. Background Facts

Plaintiff owns a lot in Calaveras County, Assessor's Parcel Number (APN) 050-008-016-000, ("Plaintiff's Lot"). Defendant owns a lot in Calaveras County, APN 050-008-043-000 ("Defendant's Lot"). Plaintiff accesses his lot by crossing an unnamed road("Road") on Defendant's lot.

The Road departs Hogan Dam Road and travels across several lots including a lot owned by a non-party named Josh (“Josh’s Lot.”) Josh has not denied Plaintiff access across his lot. Plaintiff alleges that there are no other roads that lead onto Plaintiff’s Lot, and that he is surrounded by other owners’ parcels. Plaintiff has used the Road since 1983. At some point in December of 2023, Defendant stopped allowing Plaintiff to cross Defendant’s Lot to gain access to Plaintiff’s Lot.

B. Discovery and Responses

On July 26, 2024, Plaintiff served discovery requests on Defendant, via his then-counsel Stephanie Finelli ("Finelli") including Form Interrogatories (Set No. 1) ("FROG") which are the only written discovery requests at issue. (Declaration of Stacy A. Tyler ("Tyler Decl.") ¶ 3.) After mutual extensions, the FROG responses were due on September 23, 2024. (*Id*. ¶ 6.) On or around September 13, 2024, the parties tentatively agreed to a resolution whereby Plaintiff would have access to Plaintiff's Lot via a different portion of Defendant's Lot. (*Id.* ¶ ¶ 7-8.) On September 13, 2024, the parties, a surveyor and Plaintiff's counsel went to the properties to look at the new easement location; however, Defendant abruptly yelled, left the scene, and rescinded the settlement offer. (*Id*. ¶ 9.)

Despite this abrupt exit, Defendant then resumed settlement discussions and discovery was postponed. (*Id.* ¶ 10.) On October 7, 2024, Defendant served discovery responses to various written discovery but failed to respond at all to the FROGs. (*Id*. ¶ 14.) On October 8, 2024, Plaintiff's counsel sent a meet-and-confer letter to Finelli about the defective discovery responses. (*Id.* ¶ 15, Ex. C.) To this letter, Finelli responded that she thought they were settling the dispute and thereafter both attorneys agreed to an extension until November 8 to file responses and then 45 days thereafter to file a motion to compel. (*Id*. ¶ 16.) Upon Defendant's request, Plaintiff granted an additional extension of response time to November 15, 2024. (*Id.* ¶ 17.) The parties then agreed to another extension until December 2, 2024, because the matter appeared close to resolution. (*Id.* ¶ 18.)

On November 19, 2024, Finelli emailed a proposed easement description which imposed significant restrictions on Plaintiff's use of the easement. (*Id*. ¶ 19.) Plaintiff did not agree to those restrictions and, thereafter, the parties agreed to further extensions on discovery responses. (*Id*. ¶ ¶ 20-21.) On December 17, 2024, Defendant provided supplemental responses to other written discovery but again failed to provide responses to the FROGs. (*Id*. ¶ 22, Ex. D.) During meet and confer efforts, Finelli explained that Defendant was difficult to reach and lived a distance from counsel, thus getting information had been difficult. (*Id.* ¶ 23.) However, Finelli agreed to provide the FROG responses by February 26, 2025, and Plaintiff would then have an additional 45 days to file a motion to compel. (*Id.* ¶ 24, Ex. E.)

On February 15, 2025, Plaintiff's counsel learned that Finelli was no longer representing Defendant (substitution of counsel was filed with the Court on 2/19/2026.) (Tyler Decl. ¶ 25.) During a follow up email conversation, Plaintiff's counsel sought clarification on the status of the FROG responses, and Finelli responded that Defendant knew of the outstanding requests and to follow up with him. (*Id*. ¶ 26.)

Throughout the month of April, Plaintiff's counsel attempted to reach Defendant on numerous occasions, without success. (Tyler Decl. ¶ 27.) In June of 2025, Defendant obtained new counsel – Randy Thomas ("Thomas") – who requested copies of the previously provided discovery amid continued requests for the FROG responses. (*Id*. ¶ 29.) Defendant provided some supplemental responses in September 2025 but again failed to respond at all to the FROGs. (*Id.* ¶ 31.) After some meet and confer efforts, Defendant's counsel agreed to provide responses to the FROGs by May 1, 2026. (*Id*. ¶ 33.) On May 6, 2024, Thomas' office advised Plaintiff's counsel that Defendant had ended their relationship and that Defendant was aware of his noticed deposition set for May 11, 2026. (*Id*. ¶ 35.)

As regards the Defendant's deposition, Plaintiff's counsel initially served a Notice of Deposition for Defendant, via Attorney Thomas, to take place on October 27. 2025. (Declaration of Stacy A. Tyler ISO MTC Deposition ("Tyler Depo Decl.") ¶ 3, Ex. A.) Due to Defendant having health problems, the deposition was rescheduled for December 18, 2025, and then again to January 29, 2026. (*Id*. ¶ 4, 5.)

Defendant appeared at his deposition on January 29, 2026, but refused to answer any questions and abruptly left the deposition. (Tyler Depo Decl. ¶ 6.) Thereafter, Plaintiff's counsel attempted meet and confer efforts, and the parties agreed that the deposition would take place and Defendant would pay the court costs associated with the missed deposition. (*Ibid*. ¶ 7.) Plaintiff then properly noticed Defendant's deposition for May 11, 2026. (*Id.* ¶ 8.) Defendant did not appear for his deposition, did not notify Plaintiff's counsel of his intention not to appear, and did not object to the deposition. (*Id.* ¶ 10.)

Defendant has failed to appear for his deposition and has not provided responses to the FROGs. (Tyler Decl. ¶ 36.) During a phone call in which Plaintiff's counsel advised Defendant of his need to respond to these obligations, he stated, "No, I don't," and hung up the phone. (*Ibid*.) Despite promises to do so, Defendant has also failed to pay for the costs associated with the failed deposition.

The instant motions to compel followed.

II. Legal Standard

Pursuant to Cal. Code Civ. Proc. § 2030.290, if a party to whom interrogatories are directed fails to serve a timely response, then:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on

> the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

A party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Any party may obtain discovery, subject to restrictions, by taking the oral deposition of any person, including any party to the action. (Code Civ. Proc., § 2025.010.) A properly served deposition notice is effective to require a party to attend and to testify, as well as to produce documents for inspection and copying. (Code Civ. Proc., § 2025.280 (a).) The party served with a deposition notice waives any error or irregularity, unless that party promptly serves a written objection at least three calendar days prior to the date for which the deposition is scheduled. (Code Civ. Proc., § 2025.410 (a).) If, after service of the deposition, notice, a party fails to appear for examination, the party giving notice may move for an order compelling attendance and testimony. (Code Civ. Proc. § 2025.450(a).)

III. Analysis

A. Form Interrogatories

Defendant was properly served with the FROGs and has failed to respond, despite being given numerous opportunities to do so. He has not opposed the motion to compel and has provided no explanation for these failures.

Accordingly, the **motion to compel responses to FROGs is granted**. Defendant is to provide code-compliant responses, without objection, within fifteen (15) days of this Order.

B. Deposition

Defendant was properly served with a noticed deposition and failed to appear or object. Accordingly, the **motion to compel attendance at the deposition is GRANTED**. Defendant is to appear at a deposition at a date and location of Plaintiff's choosing, to occur within thirty (30) days of this Order.

C. Sanctions

California Rule of Court, rule 3.1348(a) states: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed."

Sanctions are mandatory for the failure to attend or properly object to the deposition because Defendant has provided no substantial justification for his refusal. (Code Civil Procedure § 2025.040(g)(1). Plaintiff's counsel avers that she has expended sixteen (16) hours in pursuit of Defendant's deposition at a rate of $425 per hour. The Court finds the hourly rate is high for this area and reduces it to the market rate of $300 for a total of $4, 800.00. The Court also orders Defendant to pay the costs associated with the two missed depositions in the amount of $2,103.40. **The total sanction amount for the missed depositions is therefore $6,903.40**.

The Court may also impose sanctions for the failure to respond to the FROGs. (Code Civ. Proc. § 2023.030(a).) After reviewing the moving papers, the Court concludes that sanctions are appropriate given Defendant's repeated reluctance (and even hostility) to participate in this matter. Plaintiff's counsel seeks $9,562.50 based on 19 hours of related work at a rate of $425.00. As stated above, $425 is excessive for this area and the Court reduces the hourly rate to $300.00. Additionally, while Plaintiff's counsel avers, she spent ten hours on the motion to compel, the Court finds it substantially overlaps with the simultaneously filed motion to compel deposition and accordingly reduces the hours spent to four (4) hours. Accordingly, the **Court grants sanctions against Defendant for the failure to respond to FROGs in the amount of $3,900.00**.

Defendant is ordered to pay total sanctions in the amount of $10,803.40 within twenty (20) days of this Order.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order in conformity with this Ruling concerning FROGs; the Court intends to sign the submitted (Proposed) Order regarding the Motion to Compel Deposition.

SANCHEZ v SENDER'S MARKET, INC., et al

24CV47302

DEFENDANT'S MOTION TO COMPEL PLAINTIFF RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, AND SANCTIONS

This is a breach of contract claim brought by Cynthia Sanchez ("Plaintiff") against a variety of defendants, including Roth Industries, Inc. ("Roth.")

Now before the Court is Roth's motion to compel. The motion is unopposed.

On February 11, 2026, Roth served Plaintiff with Requests for Production of Documents, Set Two ("RPD2) (Declaration of Oliver J. Larrivee ("Larrivee Decl.") ¶ 2.) Responses were due on March 17, 2026, but to date no responses have been received and Plaintiff has not requested an extension. (*Id.* ¶ 4.) Roth's counsel attempted to meet and confer with Plaintiff's counsel via email and unilaterally extended the response time to April 6, 2026. (*Id*. ¶ 5, Ex. C.) It is unclear whether Plaintiff's counsel responded, but either way, no responsive documents or answers were provided. (*Id.* ¶ 6.)

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response, then:

> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Plaintiff was properly served with RPD2 and failed to respond. She has also not filed any opposition which may be deemed consent to granting the motion. (Cal. Rules of Court 8.54(c).)

Roth's counsel seeks sanctions in the amount of $866.74 based on 3.2 hours of work (at $250 per hour) and a $66.74 filing fee. The Court must impose sanctions in the amount of $1,000 for the failure to provide responses to RPDs. (Code Civ. Proc. § 2023.050(a).) The Court may impose sanctions even where, as here, there has been no opposition filed. (Cal. Rule of Court 3.1348.)

Accordingly, the motion to compel responses to RPD2 is **GRANTED**. Plaintiff shall provide code-compliant, objection-free responses within twenty (20) days of this Order.

Additionally, Plaintiff is ordered to pay **sanctions in the amount of $1,000.00** within twenty (20) days of this Order.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Order.

BLAKE, et al v SAN ANDREAS SNF OPERATIONS, LLC, et al

24CV47533

PLAINTIFF'S MOTION TO STRIKE ANSWER; DEFENDANTS' MOTION TO COMPEL COMPLIANCE WITH SETTLEMENT AGREEMENT

This civil action involves claims for elder abuse, neglect, and wrongful death brought by Linda Cooper, Barry Blake, Arthur Blake, Virginia Blake (as successor in interest to Glenn Blake), as individuals and as successors in interest to their mother, Decedent Thelma Blake ("Decedent") (collectively, "Plaintiffs") against multiple Defendants.

Now before the Court is Plaintiff's motion to strike the Answer filed by Avalon Care Center – San Andreas, LLC, Avalon Care LLC, Avalon Health Care, Inc., Avalon Holding, Inc., Avalon Health Care Management, Inc. and Charles Kirton ("Avalon Defendants.") Simultaneously, there is a motion to compel compliance with settlement agreement filed by Defendants.

I. Factual and Procedural Background

A. Background Facts

At all relevant times, the Decedent was a 96-year-old woman who qualified as an "elder" under Welfare and Institutions Code section 15610.27. (Complaint ¶ 10.) Defendant San Andreas SNF Operations LLC dba Golden San Andreas Care Center ("Care Center") was in the business of providing continuous skilled nursing care as a twenty-four-hour facility as defined in 72103 of Title 22 of the California Code of Regulations and California Health and Safety Code section 1250(c). (*Id*. ¶ 15.) On May 11, 2023, Decedent was admitted to Care Center for daily custodial care. (Declaration of Paige Farris ("Farris Decl.") ¶ 2.) It is alleged that while Decedent was a resident of the Care Center, she was neglected and that Care Center failed to monitor, diagnosis and treat a urinary tract infection ("UTI") which eventually contributed to Decedent's death. (*Id*. ¶ 28.)

Plaintiffs allege that at all relevant times, Care Center was collectively owned by a myriad of businesses, all of which are named as Defendants herein, including CaFive Operations Holdings, LLC; CH CaFive Holdings LLC, IY Evergreen CA Holdings, LLC (collectively "Evergreen Defendants") and the Avalon Defendants. Plaintiffs allege that the Evergreen Defendants and Avalon Defendants were "joint venturers in the enterprise of owning, operating, and managing" the Care Center. (Complaint ¶ 19.) Plaintiff alleges that the Evergreen Defendants and Avalon Defendants "owned, operated, and managed multiple skilled nursing facilities in California and are the alter egos of each other and/or a single enterprise." (*Id*. ¶ 21.) Plaintiffs allege that all of these entities and their subsidiaries had the same corporate office and management team and used the same management company to operate each separate care facility. (*Ibid.*) Plaintiffs further allege that the various Defendants utilized management practices, funding schemes, financial diversions and other tactics to understaff Care Center to the detriment of the patients.

Plaintiffs filed their Complaint on August 6, 2024. On October 3, 2024, Defense Counsel Kathleen Rhoads of the law firm GRSM filed an Answer on behalf of the Avalon Defendants. (Declaration of Paige Farris ("Farris Decl.") ¶ 4, Ex. A.) At some point, the law firm of GRSM let Plaintiffs' counsel know that they did not represent the Avalon Defendants and did not have authority to file an Answer on their behalf. (*Ibid*.) It appears this took place about one year later in September of 2025. (Farris Reply Decl. ¶ 3.) On March 10, 2026, Plaintiffs' counsel emailed counsel at GRSM reiterating the conversation about not representing the Avalon Defendants and asking that the Answer be withdrawn. (Farris Decl. ¶ 5, Ex. B.) Attorney Lindsay Romano with GRSM confirmed that the Answer would be withdrawn. (*Ibid*.) For the next few weeks Plaintiffs' counsel continued to correspond with GRSM seeking confirmation that the Answer would be withdrawn as to the Avalon Defendants without results. (*Ibid*.)

II. Legal Standard and Discussion

A. Motion to Strike

A motion to strike lies either to strike: (1) any "irrelevant, false or improper matter inserted in any pleading"; or (2) any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

“There is a presumption that an attorney has authority to appear for any person for whom he professes to act [citation], but this presumption is disputable [citation].” (*Wilson v. Barry* (1951) 102 Cal.App.2d 778, 780.) Here there is ample evidence that the law firm of GRSM did not represent the Avalon Defendants at the time they filed an Answer on their behalf. First, attorney Lindsay Romano with GRSM avers “At the time of the filing of the Answer on behalf of the Avalon Defendants, GRSM had not yet formally been retained to act on behalf of the Avalon Defendants or Avalon Care Center—San Andreas, LLC.” (Declaration of Lindsay Romano (“Romano Decl.”) ¶ 12.) Nonetheless, they filed an Answer on behalf of the Avalon Defendants in October and December of 2024. (*Id*., ¶ ¶ 8-11, Exs. C and D.)

On March 10, 2026, Plaintiffs’ counsel sent email correspondence specifically asking if the Answer filed by Avalon would be withdrawn since GRSM did not represent them. (Farris Decl. ¶ 5, Ex. B.) To that very specific email, GRSM attorney Romano responded, “Yes, we can do that.” (*Ibid*.) Thus, even two years after filing an Answer on behalf of the Avalon Defendants – which represented to the Court the authority to represent those defendants – GRSM continued to agree that it did not have authority to file that Answer in 2024.

The issue of representation is somewhat convoluted, including payment by the GSRM law firm for first appearance fees on behalf of all defendants. However, the key for the Court is paragraph 17 of the Declaration of Lindsey Romano where she expresses "On April 14, 2026, via email, I advised Counsel for Plaintiffs that GRSM *now* represents the Avalon Defendants". [Emphasis added.] This makes clear that GRSM did not have authority to file an Answer on behalf of the Avalon Defendants in 2024, continued to express to Plaintiffs' counsel in September of 2025 that they were not representing the Avalon Defendants (Farris Reply Decl. 3), and continued to represent to Plaintiff's counsel that this was true as late as March of 2026. Plaintiff's counsel avers that she relied - to her client's detriment - on GRSM's representation that it represented and spoke for the Avalon Defendants. (Farris Reply Decl. 2). Had Plaintiff's counsel been aware that the Avalon Defendants' Answer was filed without authority, she would have operated under the belief that the Avalon Defendants were not represented by GRSM when she provided the settlement demand on behalf of her clients only as to the Evergreen defendants.

The Court is somewhat baffled that GRSM would file an Answer on behalf of entities that they were not retained to represent. (Cal. Bus. & Prof. Code §6104.) It is further concerned that GRSM allowed Plaintiffs’ counsel to believe it did not represent the Avalon Defendants throughout the course of this litigation and only purported to have an attorney-client relationship once a settlement demand had been made.

Plaintiff’s motion to strike the answers filed by the Avalon Defendants is **GRANTED**.

[The Court notes this tentative ruling had been issued on a previous calendar but was continued to this calendar at Defendants’ request to determine if the Ruling on their motion to enforce settlement might render the decision moot; for the reasons expressed below, it does not.]

B. Motion to Enforce Settlement Agreement

Pursuant to Code Civil Procedure section 664.6(a):

> If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Here, the Demand was not made orally before the Court, thus, prior to the Court having any authority to enforce a settlement agreement, the settlement must be "signed by the parties." Pursuant to subsection (b), a writing is signed by a party if it is signed by 1) the party, 2) an attorney who represents the party, or 3) an insurer who is defending and indemnifying a party to the action. However, an insurer does not "sign" on behalf of party if the insured would be liable under the settlement for any amount above the policy limits. "Strict compliance" with the terms of the statute is required before any Court may accept or enforce a settlement agreement. (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 38.)

Here, there is no signed settlement agreement before the Court evidencing an agreement between Plaintiffs and the Avalon Defendants. There is a demand letter, and then an email accepting the Demand. However, there are no signed documents by the Avalon Defendants.

Even if the Court were to construe Ms. Romano's March 6, 2026, email accepting the Demand as a "writing" by an attorney, it is abundantly clear that at the time she accepted the offer on behalf of "our client and their insureds" she did not represent the Avalon Defendants. As such, her written acceptance of the Demand could not have been made on behalf of the Avalon Defendants because she was not their attorney at that time.

"Section 664.6 creates only a summary procedure for specifically enforcing certain types of settlement agreements by converting them into judgments." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 797.) Before a Court can enforce a settlement pursuant to this limited statutory scheme, there must be a contract formed and a "writing signed by the parties." (*Ibid*.) There is no evidence that there is a writing signed by the Avalon Defendants which would comply with the requirements of 664.6

Accordingly, the motion to enforce the settlement pursuant to that statutory section is DENIED.

III. Conclusion

Plaintiffs' motion to strike the Answers of the Avalon Defendants is **GRANTED**. The motion to enforce settlement pursuant to section 664.6 is **DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit formal Orders and Judgment complying with Rule 3.1312 in conformity with this Ruling.

NISKANEN, et al v PIEROTTI, et al

25CV48291

PLAINTIFF'S MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS; DEFENDANT PIEROTTI'S DEMURRER AND MOTION TO STRIKE

This case involves claims of unfair business practices and fraud brought by Brian Niskanen ("Brian"), Alicia Niskanen ("Alicia"), Willem Emmer ("Willem"), Cindy Emmer ("Cindy"), Kevin Mead ("Kevin"), and Karen Mead ("Karen") (collectively "Plaintiffs") against John Pierotti ("Pierotti"), Greenhorn Creek Design Review Committee ("Committee") and Greenhorn Creek Design Review, LLC ("LLC") (collectively, "Defendants.")

Now before the Court are multiple motions: 1) Defendants' demurrer to the First Amended Complaint ("FAC"), 2) Defendant's Motion to Strike the FAC, and 3) Plaintiffs' Motion to Compel discovery responses.

The Motion to Strike and the Motion to Compel do not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, those motions are **DENIED without prejudice** to refile.

As set forth below, the Demurrer is sustained, with leave to amend.

I. Facts

Pierotti formed the LLC in or around October 28, 2021, and operated the LLC as a professional architectural entity in the state of California. (FAC ¶¶ 12, 13.) Plaintiffs allege that between October 28, 2021, and December 17, 2024, the Pierotti and LLC obtained money for "architectural design review fees" from "people who owned in the Greenhorn Creek and Seasons subdivisions in Angels Camp, California," and did so despite the fact that those defendants are not licensed architects. (*Id.* ¶ 14.)

On November 12, 2024, Pierroti formed the Committee to ""manage a common interest development under the Davis-Stirling Common Interest Development Act." (FAC ¶ 15.) On December 17, 2024, Pierotti cancelled the LLC with the California Secretary of State. (*Id.* ¶ 17.) Plaintiff alleges Defendants operated their businesses solely to "intimidate, harass, threaten, extort, and bully plaintiffs and others". (*Id.* ¶ 18.)

On June 29, 1995, Greenhorn Creek Associates, LLP recorded CC&Rs with the Calaveras County Recorder's Office with respect to the Greenhorn Creek subdivision in Angels Camp, California. (FAC ¶ 19, Ex. 4.) Section 6.06 of the CC&Rs provides that the prevailing party in any lawsuit may be awarded attorney's fees. (*Ibid*.)

On November 21, 2000, Lakemont Greenhorn Creek, LLC recorded CC&Rs with

Calaveras County Recorder's Office with respect to the Seasons subdivision in Angels Camp, California. (FAC ¶ 21.)

By December 1, 2021, the original entities which created and/or oversaw the various CC&Rs were defunct; Plaintiffs allege that at that time, there was no entity authorized to create and oversee a design review committee. (FAC ¶ 24.)

On April 24, 2025, Pierotti and Committee filed a small claims action against Brian [25SC8069], seeking $6,124.00 related to Brian's alleged failure to seek and obtain design review approval. (FAC ¶ 26.) [This small claim action was dismissed without prejudice without any hearing being held.]

Plaintiffs allege that they have been disputing Defendants' right to require design plans and approval and in so doing have incurred $35,000.00 in attorney's fees. They allege that these fees are "special damages" directly resulting from Defendants' conduct. (FAC ¶ 34.)

The FAC alleges causes of action for: 1) Unfair Business Practices, 2) Fraud-Intentional Misrepresentation, and 3) Fraud-Negligent Misrepresentation, 4) Civil Extortion, and 5) Declaratory Relief.

II. Legal Standards

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I.Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken." (*MKB Management, Inc. v. Melikian*, (2010), 184 Cal.App.4th 796, 802.) If a complaint does not sufficiently state a cause of action, "but there is a reasonable probability that a defect can be cured by amendment, leave to amend must be granted." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38.)

Defendant asserts that the Plaintiff's Complaint is subject to demurrer pursuant to Civ. Code 430.10 (e) (failure to state a claim).

III. Discussion

A. Unfair Business Practices

For a private person to bring an unfair business practice claim, the private person must have suffered an "injury in fact." (*Hall v. Time, Inc.* (2008) 158 Cal.App.4th 847, 854.) An "injury in fact" may occur where the plaintiff "expended money due to the defendant's unfair actions," lost money or property, or been denied money "to which she has a cognizable claim." (*Ibid*.) Additionally, the FAC must identify the "particular section of the statutory scheme which was violated" and "describe with reasonable particularity the facts supporting violation." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.)

Plaintiffs do not identify the specific section of the statutory scheme which was violated, nor do they provide "with reasonable particularity" the facts supporting violation. As such, they cannot state a claim for unfair business practices.

Defendants take greater issue with the fact that Plaintiffs do not allege any "injury in fact" other than incurring attorney's fees related to their ongoing dispute with Defendants about the ability to require design plans and pay review fees. Plaintiffs do not allege that they ever submitted plans that were rejected, that they paid any plan review fees, or that they were somehow misled or induced to pay any fees or monies whatsoever to the Defendants. That is, there is no causal allegation linking any unfair business practice with causing damages.

However, "our courts have consistently 'distinguish[ed] between" attorney's fees that are sought as 'the allowance … to the prevailing party as an incident to the principal cause of action,' and those that are sought as 'part of the cause of action.'" (*Monster, LLC v. Superior Court* (2017) 12 Cal.App.5th 1214, 1228.) Where attorney's fees are the damages incurred by the Defendants' conduct, then they may be recovered as special damages if pled and proved at trial. (*Ibid*.) Here, Plaintiffs allege that because of Defendants' conduct (pled without particularity) they incurred special damages in the form of attorney's fees.

The problem with Plaintiff's claim for attorney's fees as special damages is that Plaintiffs are attempting to utilize contractual attorney's fees as an element of its UCL claims, but the UCL does not allow for recovery of attorney's fees as damages. Thus, Plaintiffs have not been injured in a way that is recognized by the UCL as an injury in fact.

The FAC fails to state a claim because it does not specify the statutory violations with specificity nor the factual allegations with particularity and does not allege an injury compensable under the UCL. As such, the demurrer is sustained, with leave to amend.

B. Fraud – Intentional or Negligent Misrepresentation

To state a cause of action for fraud, Plaintiffs must allege: "(a) misrepresentation (false representation, concealment or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Fraud must be pled with specificity, and a plaintiff must allege the "who, what, when, where, and how" of the alleged misrepresentation, and must plead facts showing falsity, knowledge of falsity, intent to induce reliance, justifiable reliance, and resulting damage. (*Ibid.*)

Defendants demur to the fraud causes of action on the grounds that they have not been pled with specificity. They assert that mere allegations of "false representations" to various Plaintiffs is insufficiently vague because it is unclear what the exact representations were, when and to whom they were made, why they were false, and who made the statements. The Court agrees that the FAC lacks the particularity needed to state a cause of action for fraud.

Accordingly, the demurrer as to the causes of action for fraud based on intentional and negligent misrepresentation is sustained, with leave to amend.

C. Civil Extortion

Civil extortion "is essentially a cause of action for moneys obtained by duress, a form of fraud." (*Fuhrman v. California Satellite Systems* (1986) 179 Cal.App.3d 408, 426.) Plaintiffs do not allege that Defendants every obtained any monies from them. They have only alleged that they incurred attorney's fees – which were paid to someone other than Defendants.

Accordingly, the demurrer as to the cause of action for civil extortion is sustained, with leave to amend.

III. Conclusion

The **Demurrer to Plaintiff's FAC is SUSTAINED, with leave to amend**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to submit a formal Order and Judgment complying with Rule 3.1312 in conformity with this Ruling.

CAPITAL ONE, NA, SUCCESSOR BY MERGER TO DISCOVER BANK, v SKAAR

26CF15614

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This matter involves a claim for credit card debt brought by Capitol One, N.A. ("Plaintiff") against RJ Skaar ("Defendant.")

Now before the Court is a motion for judgment on the pleadings.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
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> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the motion is **DENIED without prejudice to refile**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

WEST COAST HOLDINGS GROUP, LLC, v SONNACK, et al

25CV47906

DEFENDANT'S DEMURRER

This is an action arising out of the alleged wrongful foreclosure of real property brought by West Coast Holdings Group, LLC ("Plaintiff") against a variety of defendants, including Eileen C. Sonnack, Trustee of the Eileen C. Sonnack Trust ("Sonnack.")

Now before the Court is Sonnack's demurrer to Plaintiff's Complaint.

Defendant's Request for Judicial Notice is **GRANTED.**

The Complaint fails to comply with California Rule of Court 2.112 and is therefore subject to demurrer for uncertainty (Code Civil Procedure § 430.10(f); *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014 ["failure to comply with rule 2.112 presumably renders a complaint subject to a motion to strike (§ 436), or a special demurrer for uncertainty"].) The Complaint also fails to comply with Code Civ. Proc. Section 425.10(a) which requires that each legal theory be separately stated and contain a "statement of the facts constituting the cause of action, in ordinary and concise language."

The demurrer is **SUSTAINED, with 20 days leave to amend**, on the grounds that it fails to comply with California Rules of Court 2.112 and is therefore fatally uncertain.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Sonnack to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.