SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: March 19, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	2008-1-CV-127825	Silvia Sanchez v. Juan Martinez Fernandez	Order of examination: parties to appear.
LINE 2	22CV403647	Kateryna Pomogaibo v. Weeklys, Inc.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	22CV403647	Kateryna Pomogaibo v. Weeklys, Inc.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	23CV421587	Weiting Zhan v. Rui Tang	Click on LINE 4 or scroll down for ruling.
LINE 5	20CV372475	QTV Enterprise, LLC v. Hieu Minh Nguyen et al.	Click on LINE 5 or scroll down for ruling in lines 5-7.
LINE 6	20CV372475	QTV Enterprise, LLC v. Hieu Minh Nguyen et al.	Click on LINE 5 or scroll down for ruling in lines 5-7.
LINE 7	20CV372475	QTV Enterprise, LLC v. Hieu Minh Nguyen et al.	Click on LINE 5 or scroll down for ruling in lines 5-7.
LINE 8	22CV404231	Diana Rodriguez v. Michelle Rodriguez	Click on LINE 8 or scroll down for ruling in lines 8-11.
LINE 9	22CV404231	Diana Rodriguez v. Michelle Rodriguez	Click on LINE 8 or scroll down for ruling in lines 8-11.
LINE 10	22CV404231	Diana Rodriguez v. Michelle Rodriguez	Click on LINE 8 or scroll down for ruling in lines 8-11.
LINE 11	22CV404231	Diana Rodriguez v. Michelle Rodriguez	Click on LINE 8 or scroll down for ruling in lines 8-11.
LINE 12	20CV373696	Jerry Ivy, Jr. v. Jerry Ivy, Sr. et al.	Click on LINE 12 or scroll down for ruling in lines 12-13.
LINE 13	20CV373696	Jerry Ivy, Jr. v. Jerry Ivy, Sr. et al.	Click on LINE 12 or scroll down for ruling in lines 12-13.

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LINE 14	21CV387894	Tun Sein Tan v. Wan Sein Chan et al.	Click on LINE 14 or scroll down for ruling.
LINE 15	22CV398049	Connected Home Living, Inc. v. ALC Home Health Care, Inc.	OFF CALENDAR. The court has set this default judgment request for a prove-up hearing on April 15, 2024 at 1:30 p.m. in Department 7.
LINE 16	23CV424226	Wells Fargo Bank, National Association v. SHP Middlefield, LLC	OFF CALENDAR
LINE 17	23CV414483	Jesse Razo, Jr. v. Bernard Lopez	Referee's application to confirm sale subject to overbidding: parties to appear.

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Calendar Lines 2-3
Case Name: *Kateryna Pomogaibo v. Weeklys, Inc.*
Case No.: 22CV403647

I. BACKGROUND

This is a limited civil action for breach of contract by plaintiff Kateryna Pomogaibo ("Pomogaibo") against defendant Weeklys, Inc. ("Weeklys"). The original and still-operative complaint, dated September 30, 2022, is a form complaint stating a single cause of action for breach of contract. It seeks $10,000 in damages and attorneys' fees according to proof. The narrative portion of the breach of contract attachment alleges that "Pomogaibo has to sent [*sic*] order for publication, summons, and credit card details to newspaper. Newspaper has to publish summons 4 weeks and charge $400 for it. Newspaper refused to comply with court order based on conversation with attorney Ekaterina Berman, who said to newspaper three false datums – she represented his client Yevgeniy Babichev, [I]'m [vexatious] litigant, [I] have not received permission from presiding judge to serve defendant. Elizabeth Alber, is legal representative who is responsible for violation of court order." The attachment alleges that Weeklys is the owner of the East Bay Express newspaper, and that Weeklys caused damages in the form of "strong emotional distress and expenses for therapist."

While the complaint makes no mention of any exhibits, there are four documents attached to the complaint. Exhibit A is a copy of a September 2, 2022 order by this court (Judge Kirwan) in Case No. 20CV372317, permitting service of summons by publication in the East Bay Express on a defendant in that case, Yevgeniy Babichev. (Notably, the order does not direct the East Bay Express to publish the summons—it simply permits Pomogaibo to serve Babichev by publication in that newspaper.) Exhibit B is a copy of an unsigned letter from Pomogaibo to Weeklys, dated September 29, 2022, demanding payment of $10,000 for the "intentional sabotage and intentional infliction of emotional distress" caused by Weeklys' alleged refusal to publish the summons. Exhibit C is a copy of a September 29, 2022 email from Pomogaibo to someone at Weeklys. Exhibit D is a copy of the fees charged by the East Bay Express for the publication of legal notices.

Weeklys did not originally file a timely response to the complaint. As a result, Pomogaibo filed a request for entry of default, and while that request was pending, Weeklys filed a motion to set aside any default. This court (the undersigned) denied the motion to set aside on June 1, 2023 for failure to articulate any valid basis under Code of Civil Procedure section 473, subdivision (b). After Weeklys filed a renewed motion explicitly addressing section 473(b), the court granted the motion on October 10, 2023.[1] Shortly thereafter, Weeklys filed the present motions that are before the court: its demurrer to the complaint and its motion to strike portions of the complaint. Pomogaibo filed separate oppositions on December 5, 2023.

[1] The Appellate Division dismissed Pomogaibo's appeal of this order on November 13, 2023. This court denied Pomogaibo's motion for reconsideration of this order on March 14, 2024.

II. REQUESTS FOR JUDICIAL NOTICE

Weeklys has submitted two identical requests for judicial notice, one in support of the demurrer and the other in support of the motion to strike. Both ask the court to take judicial notice of the complaint in this action "pursuant to California Evidence Code §§ 451, 452, 453, 459 and California Rules of Court 3.1113(l) and 3.1306(c)." The court DENIES both requests as unnecessary, as the complaint is the pleading under review here, and so the court must review and analyze it in any event. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn.1 [denying as unnecessary a request for judicial notice of the pleading under review on demurrer].)

III. DEMURRER TO THE COMPLAINT

A. General Standards

The court, in ruling on a demurrer to a pleading, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.)

The court considers only the pleading under attack, any attached exhibits (which are part of the "face of the pleading'), and any facts or documents for which judicial notice is properly requested. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. Thus, the court has considered the declaration of counsel Harpaul Nahal, submitted with the demurrer, only to the extent that it describes the required meet-and-confer efforts. (E.g., Nahal Decl. at ¶¶ 6-7.)

Pomogaibo is self-represented. Self-represented litigants are entitled to the same consideration as other litigants and attorneys, and no greater. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the Code of Civil Procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

B. Analysis

As an initial matter, the court finds that Weeklys' meet-and-confer efforts were adequate, contrary to Pomogaibo's assertions in her opposition. Moreover, even if those efforts had been inadequate, that alone would not be a basis for overruling the demurrer. (See Code Civ. Proc., § 430.41, subd. (a)(4).)

Weeklys demurs to the sole cause of action for breach of contract on two grounds: uncertainty and failure to state sufficient facts. (See Notice of Demurrer and Demurrer at p. 2:5 [citing Code Civ. Proc., § 430.10, subds. (e) and (f)].) While Weeklys refers to ambiguity

and uncertainty as if they were separate grounds, that is incorrect. Ambiguity is simply an aspect of uncertainty.

1. Uncertainty

The court OVERRULES Weeklys' "uncertainty"-based demurrer to the breach of contract cause of action for two separate reasons.

First, "[s]pecial demurrers are not allowed" in limited civil cases. (Code Civ. Proc. § 92, subd. (c).) A demurrer on uncertainty grounds is considered a special demurrer. (See *Butler v. Sequeira* (1950) 100 Cal.App.2d 143, 145-146 ["A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations actually made."].)

Second, even if a demurrer based on alleged uncertainty were permitted in this case, the court would still overrule it. "'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [internal citations omitted].) The court finds that the allegations of the complaint are not "so incomprehensible" as to prevent Weeklys from reasonably responding. Indeed, it is apparent from Weeklys' arguments under section 430.10, subdivision (e) (for insufficiency of the facts), that it understands what the first cause of action is attempting to allege and is fully capable of responding.

2. Failure to State Sufficient Facts

The court SUSTAINS Weeklys' demurrer to the breach of contract cause of action on the ground that it fails to state sufficient facts.

To state a breach of contract cause of action properly, a plaintiff must allege: 1) the existence of a (valid) contract; 2) Plaintiff's performance or excuse for nonperformance; 3) Defendant's breach; and 4) damage to Plaintiff resulting from that breach. (See *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 228 [citing *Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1388].)

In this case, the complaint alleges that the contract at issue was oral, not written. As noted above, the essential terms of the oral contract are alleged to be: "Pomogaibo has to sent [*sic*] order for publication, summons, and credit card details to newspaper. Newspaper has to publish summons 4 weeks and charge $400 for it." As to a breach, the complaint alleges: "Newspaper refused to comply with court order based on conversation with attorney Ekaterina Berman, who said to newspaper three false datums – she represented his client Yevgeniy Babichev, [I]'m [vexatious] litigant, [I] have not received permission from presiding judge to serve defendant. Elizabeth Alber, is legal representative who is responsible for violation of court order."

This does not clearly describe the formation of an oral contract or its breach. Indeed, these allegations appear to be inconsistent with the September 2, 2022 court order attached to the complaint, which did *not* expressly order the East Bay Express to do anything. Moreover, a court order is not a contract: even if the court order were directed to the East Bay Express or Weeklys, and Weeklys had "refused to comply," that would not—in and of itself—establish any breach of an oral contract between Weeklys and Pomogaibo. Pomogaibo must establish the terms of a contract between herself and Weeklys. Because the complaint does not set forth sufficient facts alleging that there is such a contract, much less a breach, the demurrer must be sustained.

It is a plaintiff's responsibility to explain how a defect identified by a demurrer can be cured. (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].) Pomogaibo's opposition does not explain how the allegations could be amended to cure this material defect, and it is not readily apparent to the court that they can be. Nevertheless, because this is the first pleading challenge in this case, the court will sustain the demurrer with 10 days' leave to amend.

IV. MOTION TO STRIKE

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

California Rule of Court 3.1322(a) requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

B. Analysis

Weeklys seeks to strike the entire complaint—*i.e.*, the sole cause of action in its entirety, as well as nearly all narrative allegations and requests for damages. (See October 17, 2023 Notice of Motion and Motion at p. 2:10-28.)

The court DENIES Weeklys' motion. Once again, this is a limited civil action. Under Code of Civil Procedure section 92, subdivision (d), "[m]otions to strike [in limited civil cases] are allowed only on the ground that the damages or relief sought are not supported by the

allegations of the complaint." Further, to the extent that any portion of the motion to strike were actually permitted under section 92(d), the court would deny it as moot, in light of the court's ruling on the demurrer.

In short, the demurrer is SUSTAINED with 10 days' leave to amend. The motion to strike is DENIED.

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Calendar Line 4
Case Name: *Weiting Zhan v. Rui Tang*
Case No.: 23CV421587

I. BACKGROUND

On August 29, 2023, plaintiff Weiting Zhan filed an amended form complaint ("FAC") against defendant Rui Tang. On October 12, 2023, Tang filed the present demurrer to the FAC. Both parties are self-represented, although Tang is an attorney who represents a party adverse to Zhan in another case—a civil harassment restraining order matter in Santa Cruz County.

Although it is not entirely clear, the FAC appears to assert a single cause of action for intentional tort – defamation.[2] Zhan alleges that Tang intentionally and maliciously mistranslated Zhan's emails from Chinese to English as part of the evidence submitted to the Santa Cruz court in the civil harassment case. According to Zhan, she notified Tang about these alleged mistranslations and thereafter sent a cease-and-desist letter to Tang. Zhan never received a response from Tang. Zhan then filed this case.

For the reasons that follow, the court SUSTAINS the demurrer with 10 days' leave to amend.

II. DEMURRER TO THE FIRST AMENDED COMPLAINT

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents for which judicial notice is properly requested. The court cannot consider extrinsic evidence in ruling on a demurrer. (See, e.g., *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 5 ["When analyzing a demurrer, we look *'only* to the face of the pleadings and to matters judicially noticeable and not to the evidence or other extrinsic matter.'"] [emphasis in original].) As such, the court has not considered any of the exhibits attached to Zhan's opposition.

As noted above, the parties are self-represented. Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same

[2] While the FAC appears to plead a claim for defamation, Zhan has simultaneously marked a box on the form FAC indicating that the cause of action is for "Common Counts." (FAC, PLD-C-001, ¶ 8)

standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].)

B. A Procedural Oddity—Two Opposition Briefs

As an initial matter, the court notes that Zhan has filed two oppositions to the demurrer: one eight-page brief on October 19, 2023 and another six-page brief on February 16, 2024. Code of Civil Procedure section 1005 does not permit a party to file two separate oppositions to a single demurrer. Nevertheless, given that both oppositions were timely, and given that Tang will not suffer any discernible prejudice, the court will look past this procedural oddity and consider both oppositions on their merits. (See *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 [courts have a policy favoring disposition of cases on the merits].)

C. Discussion

Tang demurs to the FAC on the ground that it fails to state a cause of action, because all of the alleged conduct is protected by the litigation privilege. (See Civ. Code § 47.)[3] The court agrees.

1. Defamation and Litigation Privilege Generally

"'Defamation requires the intentional publication of a false statement of fact that has a natural tendency to injure the plaintiff's reputation or that causes special damage.' The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or cause special damage." (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 97 [internal citations omitted].)

"The litigation privilege 'derives from common law principles establishing a defense to the tort of defamation.' . . . '[T]he section was primarily designed to limit an individual's potential liability for defamation.'" (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241 (*Action Apartment*).) "The litigation privilege, codified at Civil Code section 47, subdivision (b), provides that a 'publication or broadcast' made as part of a 'judicial proceeding' is privileged. This privilege is absolute in nature, applying 'to *all* publications, irrespective of their maliciousness.'" (*Ibid.* [emphasis in original].) "'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that has some connection or logical relation to the action.' The privilege 'is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.'" (*Ibid.*) "The litigation privilege, however, is not without limit." (*Id.* at p. 1242.) As explained in more detail below, there are several exceptions to the privilege.

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[3] In the notice of demurrer, Tang cites Code of Civil Procedure section 430.10, subdivision (f), which provides for a demurrer for uncertainty. In the memorandum of points and authorities, by contrast, Tang argues that the FAC fails to state a claim. (See Code Civ. Proc., § 430.10, subd. (e).)

2. Merits of the Demurrer

Tang asserts that she assisted lead counsel in the civil harassment case in translating the contents of Zhan's emails and text messages to submit as evidence "to prove that [Zhan] has been relentlessly sending emails and text messages to [their] Client." (Demurrer, p. 1:12-20.) Tang contends that this conduct is subject to the litigation privilege because it went directly to the drafting and filing of a Civil Harassment Restraining Order ("CHRO"). (*Id.* at p. 3:18-19.)

In this case, the FAC alleges (and therefore acknowledges) that the email translations were submitted as part of the CHRO case. Thus, the statements were made directly in the course of conducting litigation. (See *Silberg v. Anderson* (1990) 50 Cal.3d 205, 212 [stating that the litigation privilege applies "even though the publication is made outside the courtroom" and "applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action"].) Therefore, unless an exception applies, Tang has shown that the statements are indeed protected by the litigation privilege. (See e.g., *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770 [pleadings are viewed as privileged communications].)

In opposition, Zhan argues that: (1) the privilege does not extend to certain crimes, including perjury (October 19, 2023 Opposition, p. 6:17-19, citing *Action Apartment*, *supra*, 41 Cal.4th at p. 1246); (2) Tang gained a substantial advantage through her malicious translation practices (*id.* at p. 7:13-14); and (3) Tang's translation falls under the exception to the litigation privilege under Civil Code section 47, subdivision (b)(2) (February 16, 2024 Opposition, p. 4:8-9). The court is not persuaded by these arguments.

a) Perjury

First, Zhan is correct that *Action Apartment* stands for the proposition that the litigation privilege does not apply to certain crimes, including perjury. (*Action Apartment*, *supra*, 41 Cal.4th at p. 1246.) Tang herself acknowledges that an individual criminally charged with perjury may not invoke the litigation privilege. (Demurrer, p. 4:11-13.) Nevertheless, Tang correctly points out that this action is not a criminal proceeding. Indeed, there is no allegation in this case that Tang has ever been prosecuted for perjury. Therefore, while a charge of perjury does constitute an exception to the litigation privilege, that exception has no application here.

b) Substantial Litigation Advantage

Zhan next argues that Tang is misusing the litigation privilege with the intention of verbally abusing Zhan for personal gain, running contrary to the purpose of the litigation privilege. (October 19, 2023 Opposition, p. 7:22-24, citing *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 29 (*Edwards*).)

The purpose of the litigation privilege is to afford "litigants and witnesses 'the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions.' In other words, the litigation privilege is intended to encourage parties to feel free to exercise their fundamental right of resort to the courts for assistance in the resolution of their disputes, without being chilled from exercising this right by the fear that they may subsequently be sued in a derivative tort action arising out of something said or done in the

context of litigation." (*Edwards, supra,* 53 Cal.App.4th at p. 29.) Additionally, the litigation privilege serves the purpose of promoting effective judicial proceedings, encouraging attorneys to advocate zealously for their clients, and finally, "[i]n barring subsequent derivative actions based on the statements of witnesses, attorneys or parties during litigation, the privilege is intended to force litigants to utilize the available discovery apparatus to uncover the truth prior to final judgment." (*Id.* at pp. 29-30.)

The Court of Appeal in *Edwards* acknowledged the "harsh result of extending a privilege to false and fraudulent statements made in the course of a judicial proceeding" but accepted this result "on account of the overriding importance of the competing public policy in favor of enhancing the finality of judgments and avoiding unending postjudgment derivative litigation—a policy which places the obligation on parties to ferret out the truth while they have the opportunity to do so *during* litigation." (*Edwards, supra,* 53 Cal.App.4th at p. 30 [emphasis original].)

In this case, Zhan has not established the existence of a "personal gain" or "litigation advantage" exception to the litigation privilege. (See *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913 ["application of the privilege does not depend on the publisher's motives, morals, ethics or intent"] [internal citations and quotations omitted].) Indeed, the court finds that the allegations against Tang in this case—presenting evidence to the court in the light most favorable to her client and in the light least favorable to her opponent (Zhan)—falls squarely within the scope of conduct that the litigation privilege was designed to protect. To the extent that Zhan contends that Tang submitted false evidence to the court in the CHRO proceedings, that argument could and should have been made to the Santa Cruz Superior Court, not as part of collateral proceedings in this court.

c) Civil Code Section 47, Subdivision (b)(2) Litigation Privilege Exception

Finally, Zhan asserts that Tang's translation of the emails falls under the exception to the litigation privilege stated in Civil Code section 47, subdivision (b)(2). That subdivision states, in relevant part:

> This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of that communication is the subject of a subsequent publication . . . which is privileged pursuant to this section.

(Civ. Code, § 47, subd. (b)(2).) As used here, "physical evidence" includes evidence specified in Evidence Code section 250, and Zhan argues that e-mails are included in section 250. (See February 16, 2024 Opposition, p. 4:2-3, 8-9; Evid. Code, § 250.) While this argument may be accurate on a superficial level, "[t]he plain language of the statute makes it clear the exception only applies when the alleged alteration or destruction is intended to deprive a party of the 'use' of that evidence." (*Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 464.)

Here, there is no allegation that Tang's translation of Zhan's emails was an attempt to deprive her of the use of that evidence or that the translated emails did deprive Zhan of use of the evidence. Indeed, the very nature of translations simply means that they are additional

information to be submitted to the court alongside the text in the original language. Therefore, the statutory exception does not apply.

Based on the foregoing, the court SUSTAINS the demurrer to the complaint. Although Zhan has not identified any amendment that would cure the deficiency in her defamation cause of action, and the court is unable to envision any, the court will grant Zhan 10 days' leave to amend, given that this is the first pleading challenge in the case. (See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747 [leave to amend is liberally allowed as a matter of fairness].)

The court understands that Zhan has submitted a motion for leave to file a second amended complaint to add new allegations against Tang, which will be heard by the court on May 21, 2024 at 9:00 a.m. in Department 10. Because no opposition brief is due from Tang yet—and none has been received—the court expresses no views at this time regarding the merits of that motion. The leave to amend that the court is granting today with the present demurrer does *not* extend to adding *new causes of action* unrelated to those raised in the FAC. (See *Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023 ["Following an order sustaining a demurrer . . . with leave to amend, the plaintiff may amend [her] complaint only as authorized by the court's order. The plaintiff may not amend to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend"].)

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Calendar Lines 5-7
Case Name: *QTV Enterprise, LLC v. Hieu Minh Nguyen et al.*
Case No.: 20CV372475

Plaintiff QTV Enterprise, LLC ("QTV") has filed three essentially identical motions to compel against defendants Hieu Minh Nguyen, Nguyen Thi Thu Thao, and Quy Ngoc Thi Nguyen ("Defendants"). The motions seek "further" responses to form interrogatories, special interrogatories, and requests for production of documents; and they seek either to have RFAs deemed admitted or to compel a further response to the RFAs. Finally, the motions request monetary sanctions against each of the Defendants. QTV filed these motions on August 18, 2023, and they were calendared for a hearing on January 16, 2024. At a January 9, 2024 hearing in related cases between the same parties and same counsel (Nos. 17CV310864 and 18CV326638), the court continued the hearing on these motions to March 19, 2024, after discussion with the parties. It appears that QTV then served an amended notice of hearing on January 30, 2024. Accordingly, notice is proper.

The court has received no responses to these motions from Defendants. In addition, it appears from QTV's papers (although it is not 100% clear, because of the strange formatting of QTV's separate statements in support of the motions) that each of the Defendants served objection-only responses to all of the discovery requests. The grounds articulated for Defendants' objections were related to the long-pending motions to set aside, which the court has now denied. Defendants did not provide any responsive information.

Given the complete failure of Defendants to respond to these discovery requests, the court finds good cause to grant the motions. The court orders Defendants to provide substantive responses to all of the discovery requests—including the requests for admissions—with no further objections, within 20 days of notice of entry of this order.[4] As for monetary sanctions, QTV seeks $2,465 from each Defendant for the costs of bringing these three motions, for a total of $7,395. Because of the highly duplicative nature of these motions, the court declines to award that amount as to each Defendant; instead, the court awards a *total* of $2,465 in favor of QTV and against the Defendants collectively. Defendants shall also pay this amount to QTV within 20 days of notice of entry of this order.

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[4] The court does not deem the RFAs admitted at this time, but with a second failure to respond substantively, the court may do so in the future.

Calendar Lines 8-11
Case Name: *Diana Rodriguez v. Michelle Rodriguez*
Case No.: 22CV404231

In this case, the court granted a motion for interlocutory judgment of partition on January 25, 2024 and appointed a referee for the sale of the home shared by plaintiff Diana Rodriguez ("Diana") and defendant Michelle Rodriguez ("Michelle") on January 30, 2024. Prior to these court orders, Michelle filed four motions to compel further responses to requests for production of documents, form interrogatories, special interrogatories, and requests for admissions on November 16, 2024. As far as the court can tell, these discovery requests have nothing to do with the sole cause of action in this case for partition. These requests seek information about the mortgage and taxes relating to the property, Diana's personal financial information, and other irrelevant subject matter. In her motions, Michelle provides no explanation as to how this discovery has any bearing on the issues in a partition action, particularly given that a referee has now been appointed; instead, she includes boilerplate arguments and citations about how the scope of discovery is generally "very broad" in civil actions. These arguments are completely unhelpful. The court DENIES the four motions to compel and DENIES Michelle's requests for monetary sanctions against Diana.

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Calendar Lines 12-13
Case Name: *Jerry Ivy, Jr. v. Jerry Ivy, Sr. et al.*
Case No.: 20CV373696

Defendants bring two similar motions to seal financial information contained in court filings: the first set of documents containing this financial information was submitted in support of plaintiff's opposition to the motion for summary judgment, which the court (Judge Kuhnle, covering for the undersigned) heard on November 2, 2023; the second set was submitted in support of defendants' motion for leave to amend the answer, which the court will hear on April 25, 2024. Notice is proper for these motions, and plaintiff has not filed any opposition.

The court finds that there exists an overriding privacy interest in defendants' financial information that overcomes the right of public access to this information, that the overriding interest supports sealing the documents reflecting this information, that a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed, that the proposed sealing is narrowly tailored with targeted redactions, and that no less restrictive means exist to achieve the overriding interest. Public access to the documents that have been conditionally lodged under seal will remain restricted until further order of the court. The court has not double-checked the file to see if redacted versions of all of the documents at issue have been filed, but to the extent that the parties have not already done so, they will submit redacted versions of these documents to the court for the public file.

IT IS SO ORDERED.

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Calendar Line 14
Case Name: *Tun Sein Tan v. Wan Sein Chan et al.*
Case No.: 21CV387894

This court previously granted summary judgment in favor of plaintiff Tun Sein Tan against his brother, defendant Wan Sein Chan, and ordered that the partnership that they formed (defendant Chan-Tan-Wong) be dissolved. Tan now moves for an award of attorney's fees and costs totaling $27,783.30. The court notes that an award of contractual attorney's fees is supported by the parties' partnership agreement, finds that the requested amount is reasonable, and GRANTS the motion.

Chan opposes the motion on a number of grounds, but the court finds none of them to be persuasive. First, Chan argues that the motion is "premature," because there is a pending appeal. This argument is directly contrary to established law (see, e.g., *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1052), and Chan cites no authority to support this uninformed argument.

Second, Chan objects to any fees that were incurred by Tan prior to the filing of the complaint. The court has reviewed the attorney invoices and finds that Tan's lawyers generated fees over a significant period of time (two years) before filing the complaint: for engaging in extensive correspondence with opposing counsel (including a "demand letter" and follow-up communications), analyzing the merits of a potential lawsuit, providing advice to Tan, and preparing a draft of the complaint. Although that is a longer-than-typical pre-filing period in which to be incurring fees, Chan fails to demonstrate that these activities were not an integral part of pursuing this litigation. The court views these amounts as falling within the scope of the parties' attorney's fees provision, which provides for recovery of "expenses incurred in such proceeding." The court interprets "in" to mean "as a part of" rather than "during."

Third, Chan takes issue with amounts incurred in filing a motion to amend the complaint and for "communications with clients and process server," because he now contends that Tan's counsel "fail[ed] to properly attach the correct documents" and that "none of the Defendants has even been properly served the summons to this day." (Opposition at p. 4:3-7.) These perfunctory and unexplained arguments are completely unhelpful. It appears that Tan filed the motion to amend after asking Chan to stipulate to the amendment "four times" and never received a response (July 18, 2022 Memorandum at p. 2:14-16), and this court (Judge Manoukian) ultimately granted the motion. This makes the fees related to the motion for leave to amend completely justified. Similarly, the court does not understand Chan's contention that he has not been properly served "to this day." If Tan's efforts to serve Chan were unsuccessful, but Chan ultimately submitted to the jurisdiction of this court voluntarily, then the fees incurred in those efforts are still reimbursable.

Fourth, Chan argues that any attorney's fees award should be awarded against both himself and the partnership (Chan-Tan-Wong). The court rejects this argument, as well. The positions taken by the defendants in this litigation have been driven by Chan, not the partnership. The partnership is not a separate decisionmaker. To the extent that the partnership has taken any positions, they have been asserted by Chan on its alleged behalf. Because the court has granted judgment in favor of Tan to dissolve the partnership, it makes no

sense for the award of attorney's fees to be deducted from Tan's share of the Chan-Tan-Wong partnership.

Finally, the court finds that the hourly billing rates of Tan's counsel are reasonable (Chan does not dispute this), and that the hours expended by counsel on this litigation (including pre-litigation investigation and preparation) were also reasonable.

The court GRANTS the motion and orders Chan to pay the full amount requested: $27,783.30.

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