SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: October 31, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO HAVE THE HEARING REPORTED: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

TO SET YOUR NEXT hearing date: You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and reserve a date before you file your motion**. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Civil Local Rule 8C is in the amendment process and will be officially changed by January 2024.

Where to call for your hearing date:	408-882-2430
When you can call:	Monday to Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV392034	UL LLC vs CORDOVA PRINTED CIRCUITS, INC.	Parties are ordered to appear for examination
2	20CV362241	Adolf Konigsreiter et al vs Dean Rossi et al	Sereno Group Realty, Ed Graziani, and Leslie Woods's Demurrer to the First Amended Complaint is continued to December 12, 2023 at 9:00 a.m. in Department 6. See Line 4, below for further details.
3	23CV415605	Julie Heynes vs Michael Formico et al	Michael Formico's Demurrer to the Complaint is SUSTAINED WITH 30 DAYS LEAVE TO AMEND. Please scroll down to Line 3 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
4	20CV362241	Adolf Konigsreiter et al vs Dean Rossi et al	This matter was set for Plaintiffs to show cause why (a) they should not be declared vexatious litigants as to Defendants Sereno Group Realty, Ed Graziani, and Leslie Woods; (b) why they should not be required to post a security in the amount of $50,000 within 30 days of entry of this order; and (c) obtain permission from the Civil Division presiding judge in Santa Clara County before filing any new litigation or any motion in this existing litigation. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Accordingly, the Court will prepare a formal order implementing (a), (b), and (c) and setting a further hearing for December 12, 2023 at 9:00 in Department 6. If the Court receives no confirmation that Plaintiffs have posted the $50,000 security by that date, the Court will dismiss this case.
5	20CV364325	CAROLYN SERRANO et al vs ATHANASIUS DUARTE et al	Jovanna Salazar and Isidro's Motion for Summary Adjudication is GRANTED. An amended notice of motion with this hearing date was served by electronic mail on June 27, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) There is also good cause to grant this motion. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
6	20CV364325	CAROLYN SERRANO et al vs ATHANASIUS DUARTE et al	Jovanna Salazar and Isidro's Motion for Summary Adjudication is GRANTED. An amended notice of motion with this hearing date was served by electronic mail on June 27, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) There is also good cause to grant this motion. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
7	20CV374136	JOHN DOE vs TIMOTHY ANDO, MD et al	Dr. Vemuri's Motion for Summary Judgment is GRANTED. Please scroll down to Line 7 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

8	17CV314927	Nadira Akbari vs S5 Advisory, inc. et al	Plaintiff's Motion to Compel Further Responses to Special Interrogatory Nos. 15, 24, 55, 61, 64, 67, 70, 73, 76, 79, 82, 85, and 86 is GRANTED, in part. Motions for sanctions are denied. Please scroll down to Lines 8-10 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
9	17CV314927	Nadira Akbari vs S5 Advisory, inc. et al	Plaintiff's Motion to Compel Further Responses to Request for Production (Set Two) Nos. 1-3 is GRANTED, in part. Motions for sanctions are denied. Please scroll down to Lines 8-10 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
10	17CV314927	Nadira Akbari vs S5 Advisory, inc. et al	Plaintiff's Motion to Compel Further Responses to Requests for Production (Set Four) Nos. 125, 127, 130, 133, 135, 136, 137, 138, 139, 140, 141, 142 and 144 is GRANTED, in part. Motions for sanctions are denied. Please scroll down to Lines 8-10 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order..
11	22CV393994	Lonich Patton Ehrlich Policastri P.C. vs Sonja Talaich	Defendant's motion to compel and for sanctions is DENIED. The subject discovery responses were served on October 26, 2022, and Defendant does not identify through separate statement or otherwise any deficiencies in those responses. Plaintiff's motion for $175 in sanctions is GRANTED. There was no basis for Defendant's motion. Defendant is therefore ordered to pay $175 in sanctions within 30 days of service of the formal order. The parties are ordered to appear for argument. Orders to be reflected in the minutes.
12	22CV403980	AMEL MOHAMED vs AKAMAI TECHNOLOGIES, INC et al	Motion withdrawn.
13	22CV403980	AMEL MOHAMED vs AKAMAI TECHNOLOGIES, INC et al	Motion withdrawn.
14	22CV403980	AMEL MOHAMED vs AKAMAI TECHNOLOGIES, INC et al	Motion withdrawn.
15	22CV404728	Santa Clara County Federal Credit Union vs Steve Aguayo	Matter settled, so motion off calendar.
16	22CV405323	Octavio Mendoza vs Irma Cruz et al	Plaintiff's motion to compel and for sanctions is DENIED. Please scroll down to Line 16 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

17	21CV387627	Dingware Inc. vs Edge International Supply Group, LLC dba Edge ISG	Farhad Novian's and Michael Gerst's Motion to Withdraw is GRANTED. An amended notice of motion with this hearing date was served by electronic and U.S. mail on July 14, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The Court notes that Edge International Supply Group, LLC is a corporation and must be represented by counsel. (*Paradise v. Nowlin* (1948) 86 Cal. App. 2d 897.) Accordingly, it cannot continue to appear in this action until it files a substitution of counsel. The Court issues an order to show cause why Edge's answer should not be stricken for failure to obtain counsel, which shall be heard on December 19, 2023 at 10:00 a.m. in Department 6. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to use order on file.

oo0oo

Calendar Line 1

Julie Heynes v. Michael Formico, et.al., Case No. 23CV415605

Before the Court is Defendant, Michael Formico's demurrer to Plaintiff, Julie Heynes' complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is an action for breach of contract and fraud. As alleged in the complaint, on or about October 6, 2015, Plaintiff entered into an agreement (the "Investment Agreement") with Michael Formico and Cindy Krueger (collectively "Defendants") under which Defendants agreed to help Plaintiff invest in real estate properties. On the same day, Plaintiff transferred $400,000.00 to Formico's bank account in exchange for his finding and purchasing an investment property for her.

On or about February 3, 2018, Plaintiff and Defendants signed a note ("Promissory Note") in which Defendants agreed to return Plaintiff's $400,000.00, plus interest, by June 15, 2018. (Complaint, Exhibit A.) Defendants did not pay Plaintiff by the agreed date. On or about October 28, 2018, Plaintiff sent a letter to Ms. Krueger expressing her financial needs and demanded that Defendants return her $400,000. Defendants did not do so.

From October 6, 2015, until July 7, 2022, Plaintiff and Mr. Formico exchanged numerous text messages discussing their social activities, friendship, status of Plaintiff's investment, Plaintiff's financial hardship, and her request for help and return of her investment money. Mr. Formico's responses to Plaintiff's payment requests and inquiries where predominantly vague and elusive stating, "I can't talk right now," "I am in a meeting," and "I will call you later."

On October 23, 2018, Mr. Formica promised to pay $5000.00 on Plaintiff's Costco credit card and $5000.00 toward her credit union debt. Mr. Formica also promised to give Plaintiff a check for $40,000.00; none of these promises were fulfilled. However, on or about June 28, 2022, Mr. Formico deposited $5,000 into Plaintiff's bank account.

On July 7, 2022, Plaintiff sent Mr. Formico a text message demanding payment for one last time. After no payments were received, Plaintiff filed this suit on April 27, 2023 asserting (1) breach of a written contract, (2) breach of a contract, (3) fraud, and (4) intentional misrepresentation. Mr. Formico demurs to the complaint. Plaintiff requested default against Ms. Kruger on August 11, 2023.

II. Legal Standard

A demurrer tests the sufficiency of a complaint and raises only questions of law. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) On a demurrer, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The court may not consider contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, a plaintiff must demonstrate that the complaint alleges facts sufficient to establish every element of each cause of action. (*Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (Code of Civ. Proc. §430.10(e); *Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case "with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action." (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.) Whether the plaintiff will be able to prove the pleaded facts is irrelevant. (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-610.) A pleading is required to assert general allegations of ultimate fact. Evidentiary facts are not required. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal. App. 4th 684, 690.)

A demurrer may also be sustained if a complaint is "uncertain." Uncertainty exists where a Complaint's factual allegations are so confusing, they do not sufficiently apprise a Defendant of the issues it is being asked to meet. (*Williams v. Beechnut Nutrition Corp*. (1986) 185 Cal.App.3d 135, 139, fn. 2; Code of Civil Procedure §430.10(f).) A pleading is required to assert general allegations of ultimate fact. Evidentiary facts are not required. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal. App. 4th 684, 690.) Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly's of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) "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." (*Ibid*.) "[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

III. Analysis

Mr. Formico demurs to the first, second, third, and fourth causes of action on the grounds that, (1) each claim fails to state facts sufficient to constitute a cause of action, (2) first and second claims are uncertain, and (3) each claim is barred by the applicable statute of limitations.

A. First Cause of Action: Breach of Written Contract.

Mr. Formico argues that Plaintiff's first cause of action for breach of a written contract fails to state sufficient facts and is uncertain since the alleged written contract is a promissory note between Ms. Heynes and Defendant Krueger. In opposition, Ms. Heynes asserts that her Promissory Note was signed by Mr. Formico and Ms. Krueger.

To state a cause of action for breach of contract, a plaintiff must allege, "(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.) If a breach of contract claim "is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307; *Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198-199.)

Ms. Heynes sufficiently alleges breach of contract. Ms. Heynes alleges and attaches a written Promissory Note signed by both Mr. Formico and Ms. Krueger wherein they both agree to return Plaintiff's $400,000 with interest. (Complaint ¶ 9, Exhibit A.) Ms. Heynes further alleges she performed her obligation by transferring $400.000.00 to Mr. Formico's bank account (Complaint ¶ 8) and that neither Mr. Formico nor Ms. Krueger repaid her $400,000 by the June 15, 2018 due date. (Complaint ¶¶ 9-17.) Accordingly, the Court cannot sustain Mr. Formico's demurrer based on uncertainty and failure to state sufficient facts.

Mr. Formico next argues this claim is barred by the four-year statute of limitation because the Complaint specifically alleges the contract was breached on June 15, 2018. (Complaint ¶ 20); Civ. Code. Proc. § 337.) A general demurrer based on the statute of limitations is permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. The running of the statute must appear clearly and affirmatively from the dates alleged. It is not sufficient that the complaint might be barred. If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324-325.)

Ms. Heynes asserts equitable and/or promissory estoppel should extend the statute of limitations here because Mr. Formico's reassurances that he would repay the $400,000 in text messages and phone calls up through June 2022 caused her to refrain from taking legal action.

"In order to assert equitable estoppel, the following four elements must be present: (1) the party to estopped must be apprised of the facts; (2) he must intend that his conduct be acted on, or must so act that the party asserting estoppel had a right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1250 (*Sofranek*).) Promissory estoppel requires "(1) a promise clear and unambiguous in its terms; (2) [reasonable and foreseeable] reliance by the party to whom the promise is made;" and (3) injury. (*Aceves v. U.S. Bank N.A*. (2011) 192 Cal.App.4th 218, 225; see *Jolley v. Chase Home Finance, LLC,* (2013) 213 Cal.App.4th 872, 897.)

Ms. Heynes fails to sufficiently allege estoppel. The text messages attached to the complaint as exhibits B, C, and D on their own are insufficient. Accordingly, the Court SUSTAINS the demurrer to the First Cause of Action for Breach of a Written Contract with 30 days LEAVE TO AMEND.

B. Second Cause of Action for Breach of Contract

Plaintiff's second cause of action is titled Breach of Contract but does not allege whether the contract is oral or in writing. The elements of a breach of oral contract claim are the same as those for a breach of written contract: (1) a contract; (2) its performance or excuse for nonperformance; (3) breach; and (4) damages. (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)

Ms. Heynes alleges: "on or about October 6, 2015, she entered into an agreement with Defendants under which Defendants agreed to help Plaintiff invest in investment properties" and "[o]n or about October 6, 2015, in consideration of this agreement, Plaintiff transferred $400,000.00 to Formica's bank account in exchange for Formica finding and purchasing investment property for plaintiff." (Complaint ¶¶ 8.) The Complaint further alleges: "[o]n or about 6/15/2018, Defendants materially breached the Agreement by, among other things, failing to return Plaintiff's $400,000 investment plus interest." (Complaint ¶¶ 20, 26.)

Plaintiff fails to allege whether the contract is oral or written or to allege sufficient facts to overcome the statute of limitations. The Court accordingly SUSTAINS the demurrer to the Second Cause of Action for Breach of Contract with 30 days LEAVE TO AMEND.

B. Third Cause of Action for Fraud

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "The elements of fraud, which give rise to the tort action for deceit, are (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." (*Id.* at 638.) Therefore, Plaintiff must plead facts which "show how, when, where, to whom, and by what means the misrepresentations were tendered." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) However, "less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy.'" (*Committee on Children's Television, Inc. v. General Foods Corp* (1983) 35 Cal.3d 197, 213-14, citing *Bradley v. Hartford Acc. & Indem. Co.* (1973) 30 Cal.App.3d 818, 825; See, *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 158.)

Mr. Formico argues the complaint lacks any allegations supporting the elements of a fraud cause of action against him. The Court agrees. Although the complaint includes attachments of numerous text communications between Ms. Heynes and Mr. Formica, it fails to allege with the requisite specificity what Mr. Formico falsely represented or concealed. Mr. Formico's responses to Ms. Heynes' inquiries that "I can't talk right now", "I am in a meeting", "I will call you", or "can I call you later" referenced in the general allegations do not rise to the level of misrepresentations that induced Ms. Heynes to give

Defendants $400,000.00. (Complaint ¶ 14.) And Ms. Heynes merely recites the elements of fraud in the fraud cause of action.

Mr. Formico also argues this claim is barred by the three-year statute of limitation since the complaint admits the breach of contract occurred over five years ago on June 15, 2018. Plaintiff again claims equitable and promissory estoppel extend the statute and argues the statute tolled until discovery of the fraud, which date can only be determined after discovery due to the dynamics of the parties' relationship. As explained above, Ms. Heynes fails to allege sufficient facts to apply estoppel. The Court also disagrees that this is a case where discovery is necessary for Ms. Heynes to identify when she discovered the fraud.

Accordingly, the Court SUSTAINS the demurrer to the Third Cause of Action for Fraud with 30 days WITH LEAVE TO AMEND.

D. Fourth Cause of Action for Intentional Misrepresentation

Mr. Formico identifies and analyzes negligent misrepresentation as the fourth cause of action. However, the complaint's fourth cause of action is for intentional misrepresentation, not negligent misrepresentation. (Complaint ¶ 6.) Nevertheless, the same issues discussed above are present in Plaintiff's intentional misrepresentation claim. Accordingly, the Court SUSTAINS the demurrer to the Fourth Cause of Action with 30 days WITH LEAVE TO AMEND.

Calendar line 7
John Doe v. Stanford Health Care, et al., Case No. 20CV374136

Before the Court is defendant Mytilee Vemuri M.D.'s[1] motion for summary judgment, or in the alternative, summary adjudication. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

This is an action for medical negligence. Plaintiff John Doe is an African American male. (Third Amended Complaint ("TAC"), ¶ 13.) [2] Prior to 2019, he was diagnosed with bipolar disorder and post-traumatic stress disorder for which he had been hospitalized several times. (*Ibid*.) In 2019, Plaintiff was a graduate student at Stanford University in the neuroscience field. (TAC, ¶ 14.) On March 9, 2019, he believed he was suffering a bipolar episode and presented to Stanford Hospital for voluntary admission. (TAC, ¶¶ 15-16.) During his stay, he was prescribed medications that were not medically appropriate, given his history and symptoms. (TAC, ¶¶ 18, 27, 31-32.) On March 11, he was transferred to the involuntary unit on a "5150" hold. (TAC, ¶ 21.) Based on his behavior and symptoms, a security officer was posted outside his door, however, the security officer was removed that night by his supervisor due to staff shortages. (TAC, ¶¶ 24-25.) On March 12, 2019, Plaintiff assaulted a nurse. (TAC, ¶ 29.) From March 13, 2019, through March 25, 2019, Plaintiff was prescribed medications that were not medically appropriate, given his history and symptoms, despite his worsening symptoms. (TAC, ¶ 33.) On April 17, 2019, Plaintiff was discharged from Stanford Hospital. (TAC, ¶ 38.)[3]

Plaintiff initiated this action on November 30, 2020 asserting (1) medical negligence; (2) negligent infliction of emotional distress; (3) violation of civil rights; and (4) intentional infliction of emotional distress. On October 28, 2021, Plaintiff filed his TAC, which asserts claims for (1) medical negligence and (2) violation of civil rights. On May 26, 2023, Dr. Vemuri filed the instant motion for summary judgment, which Plaintiff opposes.

---

[1] Defendant's materials spell her surname as "Vermuri" and "Vemuri", the docket reflects "Vemuri" as the accurate spelling, therefore, the Court will utilize that spelling.
[2] To protect his constitutional right to privacy, Plaintiff brings this action under a fictitious name.
[3] Plaintiff states the scope of this case has been limited to the time period of March 10, 2019 to March 12, 2019. (Opp., p. 4:12-15.)

II. Evidentiary Objections

A. Plaintiff's Objections

Plaintiff objects to the declaration of Renee Binder, M.D. on hearsay, foundation, relevance, and other grounds.

Objections 1-6, 7-10, 14-16, 18-36 are OVERRULED.

Objections 12-13 and 17 are SUSTAINED.

B. Dr. Vemuri's Objections

Dr. Vemuri objects to Plaintiff's exhibits 4 to 8 and a portion of Dr. Mohan Nair, M.D.'s declaration.

The objection to paragraph 6(f) of Dr. Nair's declaration is OVERRULED.

The objections to exhibits 4 to 8 are SUSTAINED.

III. Legal Standard

Any party may move for summary judgment. (Code of Civ. Proc., §437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 843.) The object of the summary judgment procedure is "to cut through the parties pleading" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th at p. 843.) Summary adjudication works the same way, except it acts on specific causes of action or affirmative defenses, rather than on the entire complaint. (§ 437c, subd. (f).) … Motions for summary adjudication proceed in all procedural respects as a motion for summary judgment.'" (*Hartline v. Kaiser Foundation Hospitals* (2005) 132 Cal.App.4th 458, 464.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (*Aguilar, supra*, 25 Cal.4th at p. 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in questions. (*Aguilar, supra*, 25 Cal.4th at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code

of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 850.) A triable issue of material fact exists "if, and only if, the evidence would allow of reasonable trier of fact to find the underlying facts in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, 25 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id*. at p. 843.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion)." (*Aguilar, supra,* 25 Cal.4th at pp. 854-855.) "Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Ibid.*)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra*, 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id*. at 843.)

IV. Analysis

Dr. Vemuri argues she is entitled to summary judgment, or in the alternative summary adjudication because (1) she met the standard of care and (2) she did not deny Plaintiff equal access to services and medical care.

A. First Cause of Action: Medical Negligence

"The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; and (c) the breach as the proximate or legal cause of the resulting injury.'" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917 (*Ladd*).) Medical negligence is still negligence.

> With respect to professions, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional "circumstances" relevant to the overall assessment of what constitutes "ordinary prudence" in a particular situation. Thus the standard for professionals is articulated in terms of exercising "the

knowledge, skill, and care ordinarily possessed and employed by members of the profession in good standing…" [Citation.]

(CACI, No. 500; *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998.)

Dr. Vemuri's statement of facts are as follows: On March 8, 2019, Plaintiff presented to the Stanford Hospital outpatient psychiatry clinic because he had relapsed with marijuana and he reported feeling hypomanic the day before with anxiety, not feeling grounded, having racing thoughts, and lack of sleep. (Dr. Vemuri's UMF, No. 5.)

On March 10, 2019, Dr. Vemuri saw Plaintiff and noted that he did not sleep overnight despite receiving Haldol and Zyprexa. (Dr. Vemuri's UMF, No. 39.) Plaintiff was more agitated but cooperative on exam. (Dr. Vemuri's UMF, No. 40.) Dr. Vemuri and Plaintiff discussed his history, symptoms, current medications in the context of labs which demonstrated elevated liver enzymes. (Dr. Vemuri's UMF, Nos. 41-42.) They acknowledged that Haldol could be helpful for him, but he thought it might be the cause of his agitation. (Dr. Vemuri's UMF, No. 43.) He again advised that Zyprexa was an effective rescue medication for him, and he was willing to take it, in addition, he was amenable to taking Vistaril, Propranolol, and Gabapentin. (Dr. Vemuri's UMF, No. 44.)

Dr. Vemuri reviewed his outpatient psychiatry notes regarding medications and symptoms/side effects. (Dr. Vemuri's UMF, No. 46.) She adjusted Plaintiff's medications based on the information she gathered and Plaintiff's clinical presentation. (Dr. Vemuri's UMF, No. 48.) That afternoon, the on-call psychiatry resident was called by the nursing staff after a near loss of consciousness episode where Plaintiff slumped on a chair and became verbally nonresponsive for less than one minute. (Dr. Vemuri's UMF, No. 49.) He was assessed after and the resident consulted with Dr. Vemuri, who was the attending psychiatrist. (Dr. Vemuri's UMF, No. 50.)

On the evening of March 10, 2019, nursing staff paged the on-call psychiatry resident Dr. Timothy Ando and reported that Plaintiff was agitated, was trying to leave, and uncooperative with redirection. (Dr. Vemuri's UMF, Nos. 52-53.) Dr. Ando assessed Plaintiff and determined that he remained acutely dangerous to himself and gravely disabled. (Dr. Vemuri's UMF, No. 54.) Dr. Ando consulted with Dr. Vemuri and that evening Plaintiff was placed on an involuntary 5150 hold for danger

to self and grave disability. (Dr. Vemuri's UMF, No 56.) Plaintiff was administered additional medication and transferred to a locked unit. (Dr. Vemuri's UMF, Nos. 57-59.) Plaintiff became restless, agitated, and more difficult to redirect. (Dr. Vemuri's UMF, No 60.) Dr. Ando placed an order for security presence pursuant to information from and at the request of the night shift nurse. (Dr. Vemuri's UMF, No. 61.)

On March 11 at 2:00 a.m., the nurse documented that security had to be pulled because of staffing issues. (Dr. Vemuri's UMF, No. 62.) There is no record of another request or any further communication regarding security presence. (Dr. Vemuri's UMF, No. 63.) Later that day, Plaintiff was seen by the attending psychiatrist Daniel Kim, M.D. and resident Ricardo Lozano, M.D. (Dr. Vemuri's UMF, No. 65.) Plaintiff reported feeling like he was "calming down" and was tired. (Dr. Vemuri's UMF, No. 66.) Dr. Kim and Dr. Lozano did not believe a security presence was necessary and did not order any for that day. (Dr. Vemuri's UMF, No 69.) Throughout the day, Plaintiff was noted to be anxious, agitated, and restless, but he denied thoughts of harming others or himself. (Dr. Vemuri's UMF, No. 72.)

On March 12, 2019, the nursing staff continued to monitor and assess Plaintiff throughout the day. (Dr. Vemuri's UMF, No. 77.) From 6:21 p.m. to 7:45 p.m., Plaintiff was noted to be watching TV with his girlfriend/visitor. (*Ibid*.) At approximately 8:00 p.m., Plaintiff physically assaulted a nurse when he threw/pushed her to the ground, stood over her, hit, and attacked her. (Dr. Vemuri's UMF, Nos. 77-78.) Security was immediately called, and he was placed in 4-point restraints and administered medication via injection. (Dr. Vemuri's UMF, No. 81.) He was then evaluated by resident Dr. Matthew Edwards, who noted Plaintiff was agitated, and it was appropriate for him to remain in restraints. (Dr. Vemuri's UMF, Nos. 82-83.) Dr. Edwards requested 2 security officers and a 1:1 sitter. (Dr. Vemuri's UMF, No. 84.) Plaintiff was assessed again on March 13, 2019. (Dr. Vemuri's UMF, Nos. 85-92.) Plaintiff had constant security presence with him throughout the rest of his admission to SHC due to the assault. (Dr. Vemuri's UMF, No. 93.)

> The standard of care in malpractice cases is also well known. With unimportant variations in phrasing, we have consistently held that a physician is required to possess and exercise, in both diagnosis and treatment, that reasonable degree of knowledge and

> skill which is ordinarily possessed and exercised by other members of his profession in similar circumstances.

(*Landeros v. Flood* (1976) 17 Cal.3d 399, 408; see also CACI, No. 501; *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 36.)

> Ordinarily, the standard of care required of a doctor, and whether he exercised such care, can be established only by the testimony of experts in the field. But to that rule there is an exception that is as well settled as the rule itself, and that is where "negligence on the part of a doctor is demonstrated by facts which can be evaluated by resort to common knowledge, expert testimony is not required since scientific enlightenment is not essential for the determination of an obvious fact.

(*Gannon v. Elliot* (1993) 19 Cal.App.4th 1, 6 [citations omitted]; see also CACI, No. 501; see also *Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215 ["The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of laymen."].)

Dr. Vemuri argues she met the standard of care. In support, she relies on Dr. Binder's declaration. Dr. Binder reviewed the pleadings, medical records, deposition transcripts, and discovery responses. Dr. Binder opines that Dr. Vemuri met the standard of care in the care, treatment, diagnosis, medication management and medical services provided to Plaintiff. (Dr. Vemuri, Exh. A; Dr. Binder Decl., ¶¶ 38-48.) This is sufficient to meet Dr. Vemuri's initial burden. Thus, the burden shifts to Plaintiff to demonstrate a triable issue of material fact as to the standard of care.

Plaintiff's statement of facts are as follows: On March 10, 2019, at approximately 8:30 p.m., Plaintiff was moved from the voluntary unit to the locked psychiatric unit. (Plaintiff's Additional Material Facts ("Plaintiff's AMF"), No. 1.) The locked unit is the highest security area at Stanford and is reserved for patients severely disable or a danger to themselves or others. (Plaintiff's AMF, No. 2.) When he was moved, Plaintiff remained grandiose and became increasingly tangential and preservative with a blunted and irritable affect, and it was noted that the staff should take "assault precautions." (Plaintiff's AMF, Nos. 3-4.) After he was moved, Plaintiff was observed pacing the hall, going into

other patient rooms, putting on his roommates clothing, throwing his cup of water in his own face, and becoming more difficult to redirect. (Plaintiff's AMF, No. 5.) At 9:50 p.m., Nurse Zate-Perry requested "standby security" because she had to give Plaintiff medication. (Plaintiff's AMF, No. 6.) "Standby security" is for a short period of time, whereas "security presence" is for longer periods of time. (Plaintiff's AMF, No. 7.)

At 10:00 p.m., Nurse Zate-Perry requested, and the charge nurse Mary Ockerman agreed, to move Plaintiff from a double room to a single room with a camera close to the nurse's station for closer observation because he needed constant redirection, was loud, noncompliant, and would not calm down or sleep despite medication. (Plaintiff's AMF, No. 8.) The security guard who was present while nurse Zate-Perry was administering medication stayed to assist in moving Plaintiff to a single room and then left. (Plaintiff's AMF, No. 10.) Nurse Zate-Perry felt 1:1 security was necessary to redirect Plaintiff. (Plaintiff's AMF, No. 11.) Dr. Vemuri was the attending psychiatrist on duty at the time security presence was ordered, responsible for Dr. Ando's supervision. (Plaintiff's AMF, No. 12.)

Dr. Ando ordered that security presence was required "3/10/19 2305 [11:05 p.m.]- until specified," and Dr. Ando did not discontinue his order for security presence until 3/12/19 at 9:01 p.m., after the assault. (Plaintiff's AMF, No. 13.) Plaintiff was self-laughing and mumbling, in and out of his bed. (Plaintiff's AMF, No. 14.) At the time security presence was removed, Nurse Zate-Perry still wanted security to be present for 1:1 monitoring and Plaintiff was still manic despite medication. (Plaintiff's AMF, No. 14.) The 1:1 security guard monitoring was withdrawn without a medical determination that it was no longer necessary. (Plaintiff's AMF, No. 15.) Dr. Ando and his attending Dr. Vemuri did not keep themselves informed about whether Plaintiff was being supervised. (Plaintiff's AMF, No. 16.) When she ended her shift, Nurse Zate-Perry believed that assault precautions should be in place for Plaintiff, given his manic behavior, the fact that he was delusional, and the fact that he was not following directions. (Plaintiff's AMF, No. 18.) Accordingly, she wrote "safety concerns: assault precautions" on his chart. (Plaintiff's AMF, No. 19.)

There was nothing in the medical chart to inform nurses on the following shift that 1:1 monitoring had been withdrawn without psychiatric approval. (Plaintiff's AMF, No. 21.) Over the course of Plaintiff's stay at SHC, Dr. Kim noted that Plaintiff's symptoms did not respond to

medications, stating, "the patient had been tried on and has failed numerous medications at maximum doses, including antidepressants, typical antipsychotics, atypical antipsychotics, and mood stabilizers." (Plaintiff's AMF, No. 24.) Plaintiff was delusional when 1:1 continuous monitoring was ordered, and he remained delusional after the security staff overrode the doctor's orders for required monitoring. (Plaintiff's AMF, No. 25.) Dr. Ando acted under Dr. Vemuri's supervision when he ordered the security guard for 1:1 continuous monitoring of Plaintiff. (Plaintiff's AMF, No. 26.)

In support of his argument, Plaintiff provides the declaration of Doctor Mohan Nair, M.D., who opines that Dr. Vemuri (along with Dr. Ando) fell below the standard of care by selecting a security guard to provide monitoring of Plaintiff rather than a medically trained "sitter". (Dr. Nair Decl., ¶ 6(b).) He states Dr. Vemuri and Dr. Ando were on duty when the security guard was removed without further evaluation. (Dr. Nair Decl., ¶ 6(c).) On that basis, Dr. Nair opines that Dr. Ando and Dr. Vemuri's care fell below the standard of care because they decided that Plaintiff required 1:1 continuous monitoring, but they did not effectively communicate with Plaintiff's immediate caregivers to ensure that he received such monitoring. (*Ibid*.) He further opines they fell below the standard of care when they: (1) failed to take steps to communicate to psychiatrists in the following shifts that they had made the determination that the patient's condition required 1:1 continuous monitoring; (2) allowed a supervising security guard to override their medical judgment; (3) failed to keep informed of the patient's status; and (4) failed to be aware that a supervising security guard had overridden their judgment. (*Ibid*.) However, nowhere in Dr. Nair's declaration is an explanation for how any of these steps would have prevented this assault.

In reply, Dr. Vemuri primarily focuses on this issue of causation. In Dr. Vemuri's opening expert declaration, Dr. Binder opines:

> Plaintiff was admitted to SHC on March 9, 2019, on a voluntary basis. On the evening of March 10, 2019, it was appropriate to have placed Plaintiff on a 5150 hold for danger to self and gravely disable based on his deteriorating mental status and clinical condition. Plaintiff did not have a history of violence towards others based on information that he and his mother provided and based on prior medical records available to the SHC providers. As such, he was not determined at that time to be a danger to others. He was appropriately transferred to the locked unit the same evening. Plaintiff continued to be closely assessed and monitored by the

> nursing staff and the on-call resident, Dr. Ando. At one point in time the night shift nurse requested that Dr. Ando place an order for security presence, which Dr. Ando agreed to do. . .
>
> The attack on the SHC nurse did not occur until 48 hours after it was noted that security had been called off. During those 48 hours, while Plaintiff was still manic, restless and agitated, he had not displayed any violent behavior and there would have been no reason for the physicians to order (or for the nursing staff to request an order) security presence for any extended period of time. The assault on the SHC nurse by Plaintiff could not have been anticipated by the SHC providers and nursing staff. It was completely unpredictable and unprovoked. (Binder Decl. ¶ 44.)

Dr. Nair agrees that is was a nurse who initially requested a security guard, and that Dr. Ando ordered the security guard as requested. (Nair Decl., ¶ 5j.) In other words, it is undisputed that physicians rely on information from staff who are with the patients when administering treatment while the physician is not physically present with the patient. Dr. Nair further recites that Plaintiff saw Nurse Mary Ockerman, Dr. Ricardo Lozano, Dr. Daniel Sung-Joan Kim, the hospital occupational therapist who was overseeing group therapy that Plaintiff attended, Nurse Ellen Deffenbaugh, Nurse Jason Smith, another occupational therapist, and Nurse King in the 48 hour period between the time when security was removed and the assault. According to Dr. Nair's review of the records, while these individuals made notes about their observations of Plaintiff, none of those notes stated an ongoing concern that in their review required 1:1 security. Nor does Dr. Nair offer facts, explanations, or opinions as to how any act or failure to act by Dr. Vemuri could have prevented the unprovoked assault that took place 48 hours after the security was removed and even longer after Dr. Vemuri personally treated Plaintiff.

Plaintiff "must show that defendants' breach of the standard of care was the cause, within a reasonable medical probability, of his injury." (*Alexander v. Scripps Memorial Hospital La Jolla* (2018) 23 Cal. App. 5th 206, 229, citing *Bushling v. Fremont Medical Center* (2004) 117 Cal. App. 4th 493; se also *Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 525 (the summary judgment "standard is not satisfied by laconic expert declarations which provide only an ultimate opinion, unsupported by reasoned explanation".)

Plaintiff fails to raise a triable issue of fact as to the issue of causation. Accordingly, Dr. Vemuri's motion for summary adjudication of the first cause of action is GRANTED.

B. Second Cause of Action- Violation of Civil Rights

The Unruh Act provides, in relevant part, that "[a]ll persons within the jurisdiction of the state are free and equal" no matter their "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status." (Civ. Code, § 51, subd. (b).) The Act broadly outlaws arbitrary discrimination on the basis of protected characteristics in public accommodations and business establishments. (See *Ibid.; Jankey v. Song Koo Lee* (2012) 55 Cal.4th 1038, 1044.)

To establish an Unruh Act violation, a plaintiff must plead and prove: (1) defendant denied the plaintiff full and equal accommodations, advantages, facilities, privileges, or services, (2) a substantial motivating reason for defendant's conduct was plaintiff's protected characteristic, (3) plaintiff was harmed, and (4) defendant's conduct was a substantial factor in causing plaintiff's harm. (See CACI, No. 3060.) To prevail under the Unruh Civil Rights Act, the plaintiff must present proof of intentional acts of discrimination; the act does not cover disparate impact. (*Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 660-661 (*Mackey*).)

Dr. Vemuri first she argues the gravamen of the claim is the alleged professional negligence, however, Plaintiff's claim is predicated on unequal accommodations, advantages, facilities, privileges, and services because of his race and color. (See Complaint, ¶ 48.) Plaintiff also bases this claim on the fact that Defendants ignored his and his mother's statements warning against certain medications, and failed to treat Plaintiff with the care and concern they would have use for Caucasian patients. (*Ibid*.)

Dr. Vemuri states she did not discriminate against Plaintiff on the basis of his race or any other basis, intentionally or otherwise. (Dr. Vemuri Decl., ¶ 2.) She further states, she treated Plaintiff in the same manner and provided the same medical services and level of care as she would have provided any other patient at SHC under her care. (*Ibid*.) Dr. Binder also opines the medical services provided to Plaintiff were "within the scope of services that would be expected for any patient who presents to a teaching hospital such as SHC with the same or similar medical conditions as Plaintiff." (Dr. Binder Decl., ¶ 49.) And, "there is no suggestions or evidence whatsoever, that Plaintiff received disparate treatment or was in any way discriminated against with respect to the medical and nursing services he

received at SHC and by the healthcare providers." (*Ibid*.) This is sufficient to meet Dr. Vemuri's initial burden. Thus, the burden shifts to Plaintiff to demonstrate a triable issue of material fact.

In opposition, Plaintiff fails to provide any evidence of intentional discrimination. (See *Mackey, supra,* 31 Cal.App.5th at pp. 660-661.) Moreover, he fails to provide any admissible evidence from which discriminatory intent could be inferred. Plaintiff's reliance on allegations in his TAC in support of his opposition is unavailing. (See *College Hospital, Inc. v. Sup Ct*. (1994) 8 Cal.4th 704, 720, fn. 7; *Roman v. BRE Properties, Inc*. (2015) 237 Cal.App.4th 1040, 1054; *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 182.) Therefore, Plaintiff fails to meet his burden. Thus, summary adjudication of the second cause of action is GRANTED.

Calendar Lines 8-10
Nadira Akbari vs S5 Advisory, inc. et al, Case No. 17CV314927

Before the Court is Plaintiff's Motion to Compel Further Responses to (1) Special Interrogatory Nos. 15, 24, 55, 61, 64, 67, 70, 73, 76, 79, 82, 85, and 86; (2) Request for Production (Set Two) Nos. 1-3; and (3) Requests for Production (Set Four) Nos. 125, 127, 130, 133, 135, 136, 137, 138, 139, 140, 141, 142 and 144. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

Plaintiff conducted sales for Defendant and Cross-Complainant S5 Advisory, Inc. ("S5"). Plaintiff alleges causes of action for wrongful termination, discrimination, and related claims stemming from that contractual relationship. S5 cross-complains for trade secret misappropriation, unfair competition, and related claims.

After Plaintiff filed her motions to compel, the parties engaged in further meet and confer efforts and narrowed the number of requests that remain at issue. The Court commends the parties for their extensive efforts to narrow their disputes and appreciates the non-argumentative summary of what remains at issue, which the Court will now address below.

II. Legal Standard

Discovery is generally permitted "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Cal. Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall limit the scope of discovery" if it determines that the burden, expense, or intrusiveness of that discovery "clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within

limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

III. Special Interrogatory Nos. 15, 24, 55, 61, 64, 67, 70, 73, 76, 79, 82, 85, and 86

15: GRANTED, in part. The Court understands S5's response to mean that it has no documents "related to [its] income statements" other than those it prepares for its income tax returns. If that understanding is correct, S5 is ordered to amend its written response to so state.

24: DENIED. The Court agrees that identifying "all documents related to [S5's] accounts receivable from May 1, 2021 through" the present is vague and overbroad.

55: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2012" is vague and overbroad.

61: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2014" is vague and overbroad.

64: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2015" is vague and overbroad.

67: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2016" is vague and overbroad.

70: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2017" is vague and overbroad.

73: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2018" is vague and overbroad.

76: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2019" is vague and overbroad.

79: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2020" is vague and overbroad.

82: DENIED. The Court agrees that identifying "all documents reflecting your net profits for 2021" is vague and overbroad.

85: DENIED. Plaintiff fails to explain how identification of "all client accounts from May 1, 2012 through the date of [S5's] response is likely to lead to the discovery of admissible evidence – Plaintiff's burden on this motion.

86: GRANTED. This request seeks information for how S5 prepares its balance sheet, regardless of who prepares that material for them. It appears that S5 has produced balance sheets and that it thus has information sought by this request.

IV. Request for Production (Set Two) Nos. 1-3

1: GRANTED. S5 is ordered to produce its profit/loss statements from May 30, 2021 to the present.

2: GRANTED. S5 is ordered to produce is annual and quarterly balance sheets from May 30, 2021 to the present.

3: DENIED. "All financial transactions from May 30, 2012" is overbroad.

V. Requests for Production (Set Four) Nos. 125, 127, 130, 133, 135, 136, 137, 138, 139, 140, 141, 142 and 144

125: DENIED.

127: GRANTED.

130: DENIED.

133: DENIED.

135: DENIED.

136: DENIED.

137: DENIED.

138: DENIED.

139: DENIED.

140: DENIED.

141: DENIED.

142: DENIED.

144: DENIED.

To the extent S5 is ordered to supplement its responses, such supplementation shall take place within 20 days of service of this final order.

The parties' motions for sanctions are denied.

Calendar Line: 16
Octavio Mendoza vs Irma Cruz et al, Case No. 22CV405323

Before the Court is Plaintiff Octavio Lopez Mendoza's Motion to Compel Further Responses to Form Interrogatories (Set Two), Requests for Production of Documents (Set One), and Requests for Admission (Set One) to Irma Cruz. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

This action arises out of a landlord tenant dispute. Plaintiff alleges his former landlord, Irma Cruz and Luis Mendoza (Luis Mendoza is pending default), locked him out of the premises, placed his belongings outside, and took some of his personal property, including an audio recording containing information Plaintiff claims is necessary for another lawsuit.

By this motion, Plaintiff seeks an order compelling Defendant Irma Cruz to provide responses to his Form Interrogatories (Set Two), Requests for Production of Documents (Set One), and Requests for Admission (Set One). It appears Plaintiff mistakenly moved for a response to special interrogatories, but no such interrogatories were served or attached to his motion. Defendant claims she already provided responses to the served discovery requests and attaches those responses to her declaration submitted in opposition to Plaintiff's motion. Plaintiff claims Defendant refuses to open his mail, and therefore did not receive and could not have timely responded to the requests. Both parties seek sanctions.

If the mail was returned, there could be a question regarding service. However, it is clear Plaintiff now has substantive responses to his discovery requests, and the Court therefore declines to be drawn into the dispute about the timing of service of the responses or the refusal to open mail.

Plaintiff asks the Court to find Defendant's objections were waived. The Court has discretion to find no waiver of objections, and exercises that discretion here. While the parties appear to each obtain the assistance of a lawyer from time to time, they are self-represented. And, although self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 543; see also *Rappleya v. Campbell* (1994) 8 Cal.4th 975, 984-85; *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434,

1444), there has also been substantial confusion in this matter regarding service and discovery because of language barriers.

Plaintiff's motion to compel is DENIED.

The parties' cross motions for sanctions are also DENIED.