SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 04-18-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 04-18-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

The court apologizes for the late posting of the tentatives – at 2:30.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	2008-1-CV-117967 OEX	Unifund CCR Partners Vs C. Monteiro	There appears to be no showing by the debtor that it is entitled to a claim of exemption. Therefore, any claim of exemption is DENIED. Plaintiff shall submit the final order.
LINE 2	23CV426229 Hearing: Demurrer	David Williams vs Overdose Americas, Inc	See Tentative Ruling. Defendant shall submit the final order.
LINE 3	23CV426229 Motion: Strike	David Williams vs Overdose Americas, Inc	See Tentative Ruling. Defendant shall submit the final order.
LINE 4	20CV371309 Motion: Compel	Meridian at Willow Glen Homeowners Association v. Taylor Morrison of California, LLC	See Tentative Ruling.
LINE 5	20CV371309 Motion for Relief from Waiver to Exercise	Meridian at Willow Glen Homeowners Association v. Taylor Morrison of California, LLC	See Tentative Ruling.
LINE 6	20CV371309 Motion Order Release from Waiver of Objection	Meridian at Willow Glen Homeowners Association v. Taylor Morrison of California, LLC	See Tentative Ruling.
LINE 7	22CV396920 Motion: Compel	Blackstone Development, Inc. vs Ruth Reeves et al	See Tentative Ruling. Defendant shall submit the final order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 04-18-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 8	23CV411015 Motion Order Establishing Admissions of Facts	David Rome, Trustee et al. et al vs Asim Mughal et al. et al	Off Calendar
LINE 9	19CV353189 Motion: Vacate Judgment	Navy Federal Credit Union vs Marovan Zaiter	Parties are ordered to appear.
LINE 10	23CV412053 Motion: Hearings for Entry of Judgment against 3rd Party	Rossi Hamerslough Reischl & Chuck vs Dipali Shah	Off calendar
LINE 11	23CV425372 Hearing: Motion for Appointment of counsel	Tyghe Mullin vs Matthew Delorenzo	Plaintiff shall appear at the hearing to discuss the motion and service of the case on Defendants.
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

- oo0oo -

Calendar Lines 2 and 3
Case Name: David Williams v. Overdose Americas, Inc.
Case No.: 23CV426229

Defendant Overdose Americas, Inc. ("Defendant") demurs to the complaint, alleging multiple issues, but most significantly that Plaintiff David Williams lacks standing to bring suit against it, as the claim for fraudulent misrepresentation relates to a contract that was entered between Cynthia.io, the company which Williams founded, and Defendant. David Williams the individual was not a party to the contract. See Ex. E attached to Dec. of Fineman. Defendant is correct that Plaintiff was not a party to the contract, and therefore lacks standing to bring suit.

California law provides that "[e]very action must be prosecuted in the name of the real party in interest[.]" Code Civ. Proc. § 367. A real party in interest is generally defined as "the person possessing the right sued upon by reason of the substantive law." *Redevelopment Agency of San Diego v. San Diego Gas & Electric Co*. (2003) 111 Cal.App.4th 912, 920–21. Only a real party in interest has standing to prosecute an action, while a party who is not the real party in interest lacks standing to sue. *Id*. at 920. "A complaint filed by someone other than the real party in interest is subject to general demurrer on the ground that it fails to state a cause of action." *Id.* at 921. For example, "someone who is not a party to a contract has no standing to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party." *Windham at Carmel Mountain Ranch Ass'n v. Superior Court* (2003) 109 Cal.App.4th 1162, 1173 (alterations and quotation marks omitted). Here, the Master Services Agreement is between Overdose and Cynthia.io, not Mr. Williams as an individual. Ex. E to Dec. of Fineman (2022 Master Services Agreement). The services that Overdose allegedly misrepresented were hired by, paid for, and performed for Cynthia.io. The funds that Overdose allegedly wrongfully retained would belong to Cynthia.io. To the extent any party was harmed by Overdose's alleged misconduct, it was Cynthia.io as a corporate entity, not any individual. Accordingly, Mr. Williams, who is not a party to the 2022 Master Services Agreement, lacks standing to enforce the contract or to recover damages relating to the contract. See *Windham at Carmel Mountain Ranch Ass'n. v. Superior Court*, 109 Cal.App.4th at 1173. Because Mr. Williams does not have standing to sue, the Complaint fails to state a cause of action. See *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796. Because the complaint fails to state a cause of action, the demurrer is SUSTAINED.

It is plaintiff's burden to show how the complaint can be amended and Plaintiff has failed to do so and has in fact failed to oppose the motion at all. Even where a plaintiff fails to meet his burden, however, he should generally be given leave to amend, except where there is no reasonable probability that the defect can be cured. See *City of Torrance v. Southern California Edison Co*. (2021) 61 Cal. App. 5th 1071, 1091. Here, because Plaintiff lacks standing, there is no reason to believe the defect can be cured. See *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031 ("[s]tanding is the threshold element" of a cause of action and may be the basis for sustaining a demurrer without leave to amend). The Court makes no opinion, however, as to whether the corporate entity may be able to assert claims against Defendant.

Because the demurrer is sustained without leave to amend, there is no reason to address the other bases for the demurrer or the motion to strike. The unopposed demurrer is SUSTAINED without leave to amend. Defendant shall submit the final order.

- oo0oo -

Calendar lines 4-6
Case Name: Meridian at Willow Glen HOA v. Taylor Morrison, LLC
Case No.: 20CV371309

According to the allegations of the third amended complaint ("TAC"), Defendant Taylor Morrison of California ("Defendant") recorded a Declaration of Covenants, Conditions and Restrictions for Meridian at Willow Glen on December 14, 2012. (See TAC, ¶¶ 12-13, exh. A.) In January 2013, Defendant substantially completed construction and development of a common-interest development of 51 residences and common areas on the subdivision map of Tract No. 10108, file no. 21798266 in San Jose ("Project"). (See TAC, ¶¶ 2, 14.) However, as a result of Defendant's omissions and actions, there were numerous latent defects at the Project, including: missing head flashings at windows and doors, improperly installed stucco and stucco accessories, improperly installed self-adhered membrane and building paper, improperly installed lath, improperly installed plywood sheathing, non-corrosion resistant fasteners installed at exterior walls, lack of sealant at dissimilar building components, improperly installed stone cladding assemblies, elevated decks failing to manage water and leakage, improper flashing installations, improperly installed guardrails, improperly installed roof shingles, improperly installed felt underlayment, excessive gaps in sheathing at penetrations, reverse laps at downspouts, reverse slope at garage slabs, cracked, chipped and damaged concrete flatwork, cracked CMU walls and thin coatings, and cracked column foundations. (See TAC, ¶ 16.)

On October 31, 2023, Plaintiff filed a complaint against Defendants, asserting causes of action for:

1) violation of the Right to Repair Act;
2) breach of fiduciary duty; and,
3) breach/enforcement of CC&Rs.

On November 14, 2023, Plaintiff served its demand for inspection of documents ("DIDs") and form interrogatories ("FIs") on counsel for Defendant; responses were due by December 19, 2023. Per Defendant's counsel, communications were to be made only by U.S. mail; email was insufficient. Defendant served its responses to the discovery on December 20, 2023 by email. Plaintiff contends that Defendant's tardy response by email resulted in a waiver of all objections. After a meet and confer, Defendant provided supplemental responses containing the same objections of the December 20 responses and did not provide any log indicating documents withheld on the basis of its objections. After further meet and confer, Defendant stated that it would eventually provide amended responses but could not commit to a date when those responses would be provided. On January 26, 2024, Defendant provided amended responses to DIDs 29, 47, 49 and 51 with the same objections, but did not provide amended responses or documents to the other 109 DIDs. Trial is scheduled for May 20, 2024. Plaintiff moved to compel further responses to the DIDs. Defendant moves for relief from waiver of objections as to its FIs and DIDs.

I. MOTION TO COMPEL FURTHER RESPONSES TO INSPECTION DEMANDS

Plaintiff contends that: Defendant's responses, supplemental responses and amended responses to Plaintiff's inspection demands are not code-compliant; Defendant's objections in

its responses are meritless; Defendant's objections based on privilege and privacy are not well taken; and, Defendant has not provided an adequate privilege log. Defendant argues that: after the motion was filed, it provided further amended responses to DIDs 47-51 and 54 and thus, the motion is moot as to them; its objections of overbreadth are valid; Plaintiff does not provide facts that the requests are proportional to Plaintiff's needs to prove its claims; and, Defendant has a substantial privacy interest of its clients' personal information and its own financial information, and the private documents sought lack relevance.

As stated by Defendant: DIDs 1-6, 38-41 and 43 pertain to documents regarding the development of the Project; DIDs 7-28 and 30 pertain to documents regarding construction of the Project; DIDs 29 and 42 pertain to documents regarding the sale of the lots at the Project; DIDs 31-37 pertain to documents regarding the governing documents of the Association; DIDs 44-45 pertain to documents regarding maintenance of the Project; DID 46 seeks documents identified in response to FI 15.1; DIDs 47-54 pertain to documents regarding Defendant's insurance policies, tender, reservation of rights, or exclusion of coverage; DIDs 55-93 pertain to documents regarding Defendant's affirmative defenses; DIDs 94-100 pertain to documents regarding Defendant's formation, operating agreement, capitalization, ownership interests, annual reports, membership share certificates, and meeting minutes from 2010 relating to the Project; DIDs 101-111 pertain to Defendant's bank account statements, balance sheets, financial statements, independent audit reports, investment documents and assets; and, DIDs 112-113 seek documents establishing that Defendant is a subsidiary or a parent of a subsidiary.

DID 1

DID 1 seeks documents submitted to the California Department of Bureau of Real Estate related to the Project. Defendant objects to the DID on the grounds that it is vague, ambiguous and overbroad regarding the terms "submitted" and "related to" and that the request is overbroad, burdensome and oppressive in terms of scope. Here, the terms are neither vague, ambiguous nor overbroad, the request is not overbroad, and Defendant neither establishes the quantum of work required to answer this DID nor an intent to create an unreasonable burden nor that the effect of the burden is incommensurate with the result sought. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought").) The objections are OVERRULED.

Defendant further argues that the fact that it makes these objections does not mean that there are responsive documents that it is refusing to produce, and that if there are additional documents that Plaintiff believes Defendant failed to produce, Plaintiff should have sought an order compelling Defendant's compliance with its response. Here, Defendant misunderstands its discovery obligations. Defendant has provided objections and a statement that without waiving those objections, it will produce documents that it deems responsive to the request. However, Code of Civil Procedure section 2031.240, subdivision plainly states that "[i]f the responding party objects to the demand for inspection… the response shall do both of the following: (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made… [and] (2) Set forth clearly the extent of, and the specific ground for, the objection." (Code Civ. Proc. § 2031.240, subd. (b).) As the responding and objecting party,

Defendant was obligated to identify any document(s) to which it objected. If Defendant has not withheld any documents subject to the objections it raised, then the further response removing the overruled objections will make it clear, especially since Defendant is moving for relief from waiver of these objections so that it may assert them in its further response. Plaintiff's motion to compel a further response to DID 1 without objections is GRANTED.

DID 2

DID 2 seeks documents related to the subdivision report submitted to the California Department or Bureau of Real Estate related to the Project. Defendant objects to DID 2 on the ground that the terms "related to," "subdivision report," "submitted," "preliminary report," and "final report" are vague, ambiguous and overbroad, and also objects to the request on the ground that it is overbroad, burdensome and oppressive in terms of scope. Again, the terms are neither vague, ambiguous nor overbroad, the request is not overbroad, and Defendant neither establishes the quantum of work required to answer this DID nor an intent to create an unreasonable burden nor that the effect of the burden is incommensurate with the result sought. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought").) The objections are OVERRULED. Defendant's further arguments are stated to be "the same reasons as stated for Request No. 1." In light of the above ruling regarding DID 1, Plaintiff's motion to compel a further response to DID 2 without objections is likewise GRANTED.

DIDs 3-6, 38-41, 43

DID 3 seeks budget-related documents submitted to the California Department or Bureau of Real Estate related to the Project; DID 4 seeks reserve-related documents submitted to the California Department or Bureau of Real Estate related to the Project; DID 5 seeks documents submitted to the County of Santa Clara related to the development and construction of the Project; DID 6 seeks correspondence-related documents sent or received to any third party budget preparer or reserve consultant related to the Project; DID 38 seeks documents submitted to the California Secretary of State related to the project; DID 39 seeks documents submitted to the California Department or Bureau of Real Estate related to the Project; DID 40 seeks documents submitted to the California Department or Bureau of Real Estate related to Plaintiff; DID 41 seeks reserve-study documents prepared by Defendant or on Defendant's behalf related to the Project; and DID 43 seeks documents submitted to the California Secretary of State related to the Project. Defendant makes similar objections and notes that its arguments are "the same reasons as stated for [DID 1 and other similar DIDs]." In light of the above ruling regarding DID 1, Defendant's objections are OVERRULED and Plaintiff's motion to compel a further response to DIDs 3-6, 38-41 and 43 without objections is likewise GRANTED.

DIDs 7-28 and 30

As previously stated, DID 7-28 and 30 pertain to documents regarding construction of the Project. Defendant again objects to certain terms being vague, ambiguous and overbroad and to the request as being overbroad, burdensome and oppressive in terms of scope.

Defendant also notes that its arguments are "the same reasons as stated for Requests Nos. 1, 2, 3…." In light of the above ruling regarding DIDs 1-3, Defendant's objections are OVERRULED and Plaintiff's motion to compel a further response to DIDs 7-28 and 30 without objections is likewise GRANTED.

DID 29

DID 29 seeks documents related to the promotion of the sale of the residences at the Project. As with prior requests, Defendant objects to the terms "related to," "promotion,", "promotional," "materials," "brochures," and "advertising" being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that the request is overbroad, burdensome and oppressive in terms of scope. The request is not overbroad, and Defendant neither establishes the quantum of work required to answer this DID nor an intent to create an unreasonable burden nor that the effect of the burden is incommensurate with the result sought. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought").) The objections are OVERRULED.

Defendant also objects to DID 29 on the ground of relevance. This objection is without merit. (See *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 447 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement… [a]ny doubts regarding relevance are generally resolved in favor of allowing the discovery"); see also *Volkswagen of America, Inc. v. Super. Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1497 (stating that "[i]n accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence… [a]s a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial… [t]herefore, the party seeking discovery is entitled to substantial leeway… [f]urthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery").) The objection is OVERRULED.

Lastly, Defendant objects to the request on the grounds of third party purchasers' right to privacy and proprietary and confidential business documents. Here, Defendant has not presented any information with regards to the nature of the invasion of privacy or the confidentiality of any such documents. Regardless, in striking a balance between any purportedly private information, the California Supreme Court has noted that in balancing the rights of privacy with the right of discovery, courts should consider "[p]rotective measures, safeguards and other alternatives [that] may minimize the privacy intrusion." (*Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged").) The parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.p

df, with an "attorneys' eyes only" provision. This will assuage any privacy concerns. The objections are OVERRULED.

Plaintiff's motion to compel a further response to DID 29 without objections is GRANTED.

DIDs 31-37

As previously stated by Defendant, DIDs 31-37 pertain to documents regarding the governing documents of the Association. Defendant objects to certain terms being vague, ambiguous and overbroad, the request is unintelligible, and the requests seek information equally available to Plaintiff. These objections are OVERRULED.

DIDs 32 and 33 also object on the ground of attorney-client privilege. Here, the issue is that the documents sought by DIDs 32 and 33—documents related to the creation of the December 14, 2012 Declaration of CC&Rs (DID 32) and meeting minutes evidencing Defendant's turnover to homeowners to operate (DID 33)—are not identified in its privilege log. The very short privilege log identifies an email related to a draft budget, homeowners umbrella liability policies, master inspection quantity observation matrices, an evaluation of HOA's claims relative to R-3 Occupancy classification, and BGI cost of repairs. None of these items describe documents related to the creation of the Declaration of CC&Rs or meeting minutes. It is clear that a further response is required.

Plaintiff's motion to compel a further response to DIDs 31-37 without objections, except for those based on attorney-client privilege, is GRANTED.

DID 42

DID 42 seeks purchase and sale documents related to the sale of the residences at the Project. Defendant objects to the terms "related to" and "others" being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that the documents are equally available to plaintiff and seeks documents which invade third-party rights to financial privacy contained in third-party lot files and proprietary and confidential business documents. The parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf, with an "attorneys' eyes only" provision. This will assuage any privacy concerns and concerns regarding confidential business documents. (See *Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged").) These objections are OVERRULED.

Plaintiff's motion to compel a further response to DID 42 without objections is GRANTED.

DIDs 44 and 45

As previously stated, DIDs 44-45 pertain to documents regarding maintenance of the Project. As with prior requests, Defendant objects to certain terms being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that these requests are overbroad, burdensome and oppressive in terms of scope and that the documents are equally available to Plaintiff. Defendant notes that these arguments are based on "the same reasons stated for request Nos. 1 and 31." As to its argument that the documents are also in its documents at its property management company, the request seeks documents that Defendant asserts were provided to Plaintiff by it. Defendant does not specify to which documents it refers such that they could be identified by the property management company. These objections are OVERRULED and Plaintiff's motion to compel a further response to DIDs 44 and 45 without objections is GRANTED.

DID 46

DID 46 seeks documents identified in response to FI 15.1. Defendant objects on the ground that it seeks documents subject to the attorney client privilege and work product privilege and seeks expert witness documents.

Form interrogatory 15.1 seeks facts upon which Defendant bases its denial or special or affirmative defenses as well as documents that support the denial or affirmative defenses. Defendant's responses to FI 15.1 indicate that it has filed a general denial and identifies the documents with Bates Stamp Nos. TM000001-001914. These are the lone documents referenced in its response to FI 15.1. The privilege log does not identify a document with Bates Stamp No. TM000001-001914 and does not reference its general denial. Defendant's separate statement in opposition as to other responses notes that the document with Bates Stamp No. TM000001-001914 is not privileged. The attorney client privilege and attorney work product privilege do not seem to apply since Defendant could not rely on a privileged document in support of its affirmative defenses, Plaintiff otherwise clearly needs to know what documents Defendant is relying on supporting its defenses, and the lone documents identified in its response to FI 15.1 are not privileged. As Defendant has neither identified documents that it will rely on in supporting its defenses that are privileged, nor explained how the privilege applies, the objections are OVERRULED and Plaintiff's motion to compel a further response to DID 46 without objections, including those based on attorney client privilege and attorney work product privilege, is GRANTED.

DIDs 47-54

DIDs 47-54 pertain to documents regarding Defendant's insurance policies, tender, reservation of rights, or exclusion of coverage. As with prior requests, Defendant objects to certain terms being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that these requests are overbroad, burdensome and oppressive in terms of scope, are not relevant, and invade Defendant's right to privacy. Defendant notes that the arguments are for "the same reasons stated for Request No. 1; in light of the Court's above reasoning regarding DID 1, these objections are without merit. As to the privacy objection, the parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at https://www.scscourt.org/

court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf, with an "attorneys' eyes only" provision. This will assuage any privacy concerns and concerns regarding confidential business documents. (See *Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged"); see also *SCC Acquisitions, Inc. v. Super. Ct. (Western Albuquerque Land Holdings, LLC)* (2015) 243 Cal.App.4th 741, 756 (stating that "[t]he corporate right to privacy is a lesser right than that held by human beings and is not considered a fundamental right").) These objections are OVERRULED. Plaintiff's motion to compel a further response to DIDs 47-54 without objections is GRANTED.

DIDs 55-93

As Defendant states, DIDs 55-93 pertain to documents regarding Defendant's asserted affirmative defenses. Defendant objects to these requests on the ground that they seek protected by the attorney-client and attorney work product privileges, prematurely seek expert opinion, are burdensome and overbroad in terms of scope, are equally available to Plaintiff and discovery has yet to be concluded. The requests are not overbroad. As to the objection based on burden, Defendant does not establish the quantum of work required to answer these DIDs. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required").) As to the objection based on the premature seeking of expert opinion and that discovery has not concluded, the trial date is scheduled for May 20, 2024. These objections not based on privilege are OVERRULED.

As to the objections made on the ground of the attorney-client and attorney work product privileges, the privilege log does not identify any documents indicating in the description that they support any particular affirmative defense. "The purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production." (*Hernandez v. Super. Ct. (Acheson Industries, Inc.)* (2003) 112 Cal.App.4th 285, 292.) "The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege." (*Id*.) Here, the information in the privilege log is not sufficient to allow the Court to determine which of the ten listed documents support a specified affirmative defense, if at all. It is clear that Defendant must either identify which of the listed documents support a response to the particular DID, or withdraw the objections based on privilege.

Plaintiff's motion to compel a further response to DIDs 55-93 without objections, except for those based on attorney client privilege and attorney work product privilege, is GRANTED. Defendant is ordered to either amend its privilege log to provide sufficient information for the Court and Plaintiff to determine to which DID(s) Defendant is asserting the objection based on privilege, or to withdraw the objection as to each DID that it does not identify any documents as privileged.

DIDs 94-100

DIDs 94-100 pertain to documents regarding Defendant's formation, operating agreement, capitalization, ownership interests, annual reports, membership share certificates, and meeting minutes from 2010 relating to the Project. As with prior requests, Defendant

objects to certain terms being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that the requests are burdensome and overbroad in terms of scope, lack relevance, seek documents protected by third-party privacy rights, seek proprietary and confidential business documents, seek documents which are subject to the attorney-client and work product privileges, and seek documents equally available to Plaintiff.

The requests are not overbroad and do not lack relevance. (See *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 447 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement… [a]ny doubts regarding relevance are generally resolved in favor of allowing the discovery"); see also *Volkswagen of America, Inc. v. Super. Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1497 (stating that "[i]n accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence… [a]s a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial… [t]herefore, the party seeking discovery is entitled to substantial leeway… [f]urthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery").) As to the objection based on burden, Defendant does not establish the quantum of work required to answer these DIDs. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required").)

As to Defendant's objections based on third-party privacy and the seeking of confidential and proprietary business documents, in striking a balance between any purportedly private information, the California Supreme Court has noted that in balancing the rights of privacy with the right of discovery, courts should consider "[p]rotective measures, safeguards and other alternatives [that] may minimize the privacy intrusion." (*Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged").) The parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf, with an "attorneys' eyes only" provision. This will assuage any privacy concerns.

As to the objections made on the ground of the attorney-client and attorney work product privileges, the privilege log does not identify any documents indicating in the description that they support any particular request. (See *Hernandez v. Super. Ct. (Acheson Industries, Inc.)* (2003) 112 Cal.App.4th 285, 292 (stating that "[t]he purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production…[t]he purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege").) Moreover, none of the identified documents in the privilege log—based on the description--concern any of the subjects of DIDs 94-100. For example, DID 100 seeks meeting minutes. The privilege log does not contain any meeting minutes. DID 99 seeks membership or share certificates; the privilege log does not identify membership or share certificates and the Court cannot understand how the attorney-client privilege or attorney work product privilege could apply to those documents. DID 98 seeks Defendant's annual reports.

These documents are not privileged and the privilege log does not identify any annual reports. As Defendant has neither identified documents in response to these requests that are privileged, nor explained how the privilege applies, the objections are OVERRULED and Plaintiff's motion to compel a further response to DIDs 94-100 without objections, including those based on attorney client privilege and attorney work product privilege, is GRANTED.

DIDs 101-111

DIDs 101-111 pertain to Defendant's bank account statements, balance sheets, financial statements, independent audit reports, investment documents and assets. As with prior requests, Defendant objects to certain terms being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that the requests are burdensome, harassing and overbroad in terms of scope, lack relevance, are premature, seek documents protected by third-party privacy rights, seek proprietary and confidential business documents, and seek documents which are subject to the attorney-client and work product privileges. The requests are not overbroad and do not lack relevance. (See *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 447 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement… [a]ny doubts regarding relevance are generally resolved in favor of allowing the discovery"); see also *Volkswagen of America, Inc. v. Super. Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1497 (stating that "[i]n accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence… [a]s a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial… [t]herefore, the party seeking discovery is entitled to substantial leeway… [f]urthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery").) As to the objections based on burden and oppression, Defendant neither establishes the quantum of work required to answer this DID nor an intent to create an unreasonable burden nor that the effect of the burden is incommensurate with the result sought. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought").) As to the objection that the request is premature, this is without merit as the trial date is May 20, 2024. Moreover, the responses in the separate statement indicate that the objections are based on "the same reasons as stated for Requests Nos. 94 [and] 96." Thus, for identical reasons, the objections lack merit.

As to Defendant's objections based on third-party privacy and the seeking of confidential and proprietary business documents, in striking a balance between any purportedly private information, the California Supreme Court has noted that in balancing the rights of privacy with the right of discovery, courts should consider "[p]rotective measures, safeguards and other alternatives [that] may minimize the privacy intrusion." (*Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged").) The parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at

https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf, with an "attorneys' eyes only" provision. This will assuage any privacy concerns.

As to the objections based on attorney-client and attorney work product privileges, the privilege log does not identify any documents indicating in the description that they support any particular request. (See *Hernandez v. Super. Ct. (Acheson Industries, Inc.)* (2003) 112 Cal.App.4th 285, 292 (stating that "[t]he purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production…[t]he purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege").) Moreover, none of the identified documents in the privilege log—based on the description--concern any of the subjects of DIDs 101-111. For example, DID 101 seeks bank account statements and the privilege log does not identify any bank account statements, and such documents would not be privileged. DIDs 102 and 103 seek balance sheets; the privilege log does not identify any balance sheets, and these balance sheets would not be privileged. DIDs 104 and 106 seek financial statements and the privilege log does not identify any financial statements, and these statements would not be privileged in any event. As Defendant has neither identified documents in response to these requests that are privileged, nor explained how any privilege applies, the objections are OVERRULED and Plaintiff's motion to compel a further response to DIDs 101-111 without objections, including those based on attorney client privilege and attorney work product privilege, is GRANTED.

DIDs 112-113

DIDs 112-113 seek documents establishing that Defendant is a subsidiary or a parent of a subsidiary. Defendant objects to certain terms being vague, ambiguous and overbroad. The terms are neither vague, nor ambiguous nor overbroad. Defendant also objects that the requests are burdensome, harassing and overbroad in terms of scope, lack relevance, are premature, seek documents protected by third-party privacy rights, seek proprietary and confidential business documents, and seek documents which are subject to the attorney-client and work product privileges. The requests are not overbroad and do not lack relevance. (See *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 447 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement… [a]ny doubts regarding relevance are generally resolved in favor of allowing the discovery"); see also *Volkswagen of America, Inc. v. Super. Ct. (Rusk)* (2006) 139 Cal.App.4th 1481, 1497 (stating that "[i]n accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence… [a]s a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial… [t]herefore, the party seeking discovery is entitled to substantial leeway… [f]urthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery").) As to the objections based on burden and oppression, Defendant neither establishes the quantum of work required to answer these DIDs, nor an intent to create an unreasonable burden nor that the effect of the burden is incommensurate with the result sought. (See *W. Pico Furniture Co. v. Super. Ct. (Pacific Finance Loans)* (1961) 56 Cal.2d 407, 417 (stating that "[t]he objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result

sought").) As to the objection that the request is premature, this is without merit as the trial date is May 20, 2024. Moreover, the responses in the separate statement indicate that the objections are based on "the same reasons as stated for Requests Nos. 94, 96 and 101." Thus, for identical reasons, the objections lack merit and are OVERRULED.

As to Defendant's objections based on third-party privacy and the seeking of confidential and proprietary business documents, in striking a balance between any purportedly private information, the California Supreme Court has noted that in balancing the rights of privacy with the right of discovery, courts should consider "[p]rotective measures, safeguards and other alternatives [that] may minimize the privacy intrusion." (*Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371 (also stating that "if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged").) The parties are ordered to stipulate to a protective order comparable to the Model Protective Order of the Court's complex civil litigation department, available at https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf, with an "attorneys' eyes only" provision. This will assuage any privacy concerns. The objection is OVERRULED.

As to the objections based on attorney-client and attorney work product privileges, the privilege log does not identify any documents indicating in the description that they support any particular request. (See *Hernandez v. Super. Ct. (Acheson Industries, Inc.)* (2003) 112 Cal.App.4th 285, 292 (stating that "[t]he purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production…[t]he purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege").)

Plaintiff's motion to compel a further response to DIDs 112-113 without objections, except for those based on attorney client privilege and attorney work product privilege, is GRANTED. Defendant is ordered to either amend its privilege log to provide sufficient information for the Court and Plaintiff to determine to which DID(s) Defendant is asserting the objection based on privilege, or to withdraw the objection based on privilege as to the particular DID that it does not identify any documents as privileged.

Defendant's counsel shall provide code-compliant further responses to DIDs 1-113 in compliance with the above order to Plaintiff's counsel by email and mail within 10 days of this Court's order.

Plaintiff's request for monetary sanctions

In connection with its motion to compel further responses to the DIDs, Plaintiff requests monetary sanctions in the amount of $17,530.75. The request for monetary sanctions is code-compliant and Plaintiff has substantially prevailed on its motion and Defendant did not act with substantial justification in opposing the motion and there are no circumstances that would make imposition of the monetary sanction unjust. Plaintiff's request for monetary sanctions is premised on a total of Ms. Kopezynski's 7.5 hours at a rate of $700 per hour, Ms. de Frondeville's 10.5 hours at a rate of $400 per hour, Mr. David Blum's 5.5 hours at a rate of $250 per hour. There are also $180.75 in filing fees and costs. Additionally, Plaintiff seeks $6,525 for attending the hearing and preparing the reply; however, the Court does not award

anticipatory costs. Plaintiff did ultimately prepare a reply. The Court reduces the amount of monetary sanctions. Plaintiff's request for monetary sanctions is GRANTED in the amount of $10,000.00. Counsel for Defendant shall pay counsel for Plaintiff $10,000.00 within 10 days of this order.

The Court notes that Code of Civil Procedure section 2031.310, subdivision (i) does provide for the imposition of other sanctions in the event that a party fails to obey an order compelling further responses.

II. DEFENDANT'S MOTIONS FOR RELIEF FROM WAIVER AS TO INSPECTION DEMANDS AND FORM INTERROGATORIES

Defendant moves for relief from waiver of objections regarding its response to the DIDs and FIs. Here, Defendant provided its responses a day late in a manner not agreed upon—email. Plaintiff is correct that the objections were waived. Defendant contends that it substantially complied with its responses and moves for relief from waiver.

DIDs

The Court, above, addressed Defendant's objections in the above ruling regarding the motion to compel. The Court agrees that Defendant's responses to the DIDs do not substantially comply with Code of Civil Procedure sections 2031.210-2031.280. Nevertheless, as the Court has addressed each of the objections, and has overruled them in large part, Defendant's motion for relief from waiver as to the DIDs is GRANTED—subject to the ruling on the motion to compel further responses to the DIDs.

FIs

As to the FIs, Code of Civil Procedure section 2030.290, subdivision (a) allows the Court to relieve a party from waiver if the party subsequently served a response that is in substantial compliance with Code of Civil Procedure sections 2030.210, 2030.220, 2030.230 and 2030.240. Here, Plaintiff is again correct that Defendant's responses to the FIs are not code-compliant. These responses are often not as complete and straightforward as the information reasonably available to Defendant permits. (See Code Civ. Proc. § 2030.220, subd. (a).) Most of the objections are identical to the meritless objections that Defendant asserts regarding its DIDs—that the requests are premature, that the definition of certain terms are vague and ambiguous, the request is oppressive and burdensome. Defendant's motion for relief from waiver as to the FIs is DENIED.

The Court will prepare the Order.

- oo0oo –

Calendar Line 7
Case Name: Blackstone Development v. Ruth Reeves et al.
Case No.: 22CV396920

Defendant filed a motion to compel further responses to document request set one on December 18, 2023. On April 1, 2024, Plaintiff finally provided verified responses indicating that all responsive documents had been provided on October 27, 2023. While Plaintiff had told Defendant this via email back on November 27, 2023, he did not in fact send the verified response until more than 4 months later. Moreover, it appears that Plaintiff still has not verified that other documents, including accounting documents, existed and have been lost, despite stating this in the email of November 27, 2023 (Declaration of Schleg, Ex. B "Some information was lost in data transition"). If true, Plaintiff must state this under penalty of perjury, as required by CCP 2031.230. While it appears that Plaintiff provided all discovery on October 27, 2023, and told Defendant on November 27, 2023 that Plaintiff had provided all the information that it had, Plaintiff provides no excuse for why it failed to provide verified responses until April 1, 2024, and why it still has failed to provide a declaration about any lost or missing documents, as required under CCP section 2031.230. Because of Plaintiff's failures, Defendant was justified in filing a motion to compel and not withdrawing its motion. Accordingly, the motion is GRANTED and Plaintiff must provide a code-compliant verified response within 10 days of the final order. For its inexcusable delay requiring this motion to be heard, Plaintiff is sanctioned $3,030 (8.4 hours plus $90 filing fee). Sanctions must be paid to Defense Counsel within 10 days of the final order. Defendant shall submit the final order.

- oo0oo -