SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: June 27, 2024 TIME: 9:00 A.M.

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

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

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

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

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV419499	Rosendo Cortes Fernandez v. Pacific Weathershield, Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	23CV419499	Rosendo Cortes Fernandez v. Pacific Weathershield, Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	23CV425854	William C. Dresser v. Adil Kiek Hiramanek et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	19CV360439	Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al.	Motion for summary judgment by defendant County of Santa Clara: the hearing on this motion has been continued to August 1, 2024 at 9:00 a.m., per the court's June 12, 2024 order.
LINE 5	19CV360439	Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al.	Motion to compel: click on LINE 5 or scroll down for ruling.
LINE 6	18CV326162	The Santana Row-Deforest Building Residential Condominium Owners Association v. Claude Wilkes	Motion to be relieved as counsel: parties to appear.
LINE 7	20CV367103	Marco Gurrola v. Johnny Mendoza et al.	Motion to be relieved as counsel: parties to appear.
LINE 8	23CV424158	Marco Cruz Chaidez et al. v. County of Santa Clara et al.	Petition for approval of compromise of minor's claim: parties to appear, in accordance with CRC 7.952.

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Calendar Lines 1-2
Case Name: *Rosendo Cortes Fernandez v. Pacific Weathershield, Inc. et al.*
Case No.: 23CV419499

Defendant Gregg Crawford Construction, Inc. d/b/a Pacific Weathershield ("Crawford") demurs to the first amended complaint ("FAC") filed by plaintiff Rosendo Cortes Fernandez ("Fernandez"). In addition, Crawford moves to strike all or part of the FAC. Notice is proper for both the demurrer and motion, but the court has not received any opposition from Fernandez. The court sustains the demurrer in part and overrules it in part. The court denies the motion to strike.

First, Crawford contends, in support of both its demurrer and its motion to strike, that Fernandez has failed sufficiently to allege successor liability, given that Fernandez was employed by Pacific Weathershield rather than Crawford. According to Crawford, when a corporation purchases the assets of another corporation—and in this case, Crawford is alleged to have "purchased Pacific Weathershield through his company Gregg Construction" (FAC, ¶ 13)—the general rule is that "the acquiring corporation does not assume the selling corporation's debts and liabilities." (Memorandum in Support of Demurrer, p. 3:24-27.) Crawford then goes on to cite extrinsic evidence that shows that Crawford entered into an "Asset Purchase Agreement" with Pacific Weathershield and that this agreement "expressly provides" that "Crawford will not be liable for any of Pacific Weathershield, Inc's liabilities." (*Id.* at p. 4:1-11.) Because the FAC affirmatively alleges that Crawford succeeded to Pacific Weathershield's liabilities (FAC, ¶ 13), the court must accept this allegation as true on a demurrer or motion to strike. (See, e.g., *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.) And because Crawford's argument ultimately relies on *extrinsic evidence* in an effort to dispute this factual allegation in the complaint, the court must reject this basis for the demurrer and motion to strike. The court OVERRULES the demurrer to the FAC and DENIES the motion to strike Crawford as a defendant on the basis of successor liability.

Second, Crawford argues that the first cause of action fails to state a sufficient basis for liability, because it is based on an alleged violation of Labor Code section 6409.6, which has been repealed as of January 1, 2024. The court agrees with Crawford that a violation of Labor Code section 6409.6 can no longer be the basis for a valid cause of action and therefore SUSTAINS the demurrer to the first cause of action without leave to amend.

Third, Crawford argues that the ninth cause of action (for violation of Labor Code section 1102.5) fails to state sufficient facts, because Fernandez does not sufficiently allege how he acted as a whistleblower. Although the court agrees with Crawford that the factual allegations in this cause of action are somewhat generic, the court finds that the allegation that Fernandez "complain[ed] internally to people with authority over plaintiff and/or authority to investigate or correct the violation or noncompliance with a reasonable belief that the information disclosed potential violations of state statutes or regulations relating to, inter alia, violations of regulations pertaining to the FEHA and California's anti-disability discrimination and anti-retaliation" is sufficient to survive a demurrer. The ninth cause of action incorporates by reference all of the preceding allegations in the FAC regarding alleged violations of FEHA. The court OVERRULES the demurrer to the ninth cause of action.

Fourth, Crawford argues in support of his motion to strike that the first cause of action is based on a repealed statute, Labor Code section 6409.6. Because the court has already

sustained the demurrer to the first cause of action without leave to amend on this same basis, the court DENIES the motion to strike the first cause of action as moot.

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Calendar Line 3
Case Name: *William C. Dresser v. Adil Kiek Hiramanek et al.*
Case No.: 23CV425854

I. BACKGROUND

This is an action by plaintiff and judgment creditor William Dresser ("Dresser") seeking to void alleged property transfers by the judgment debtor, Roda Hiramanek, to her son, defendant Adil Hiramanek (hereinafter, "Hiramanek"), that occurred before her passing away on January 16, 2020.

Dresser filed the original and still-operative complaint on November 13, 2023. It states two causes of action against Hiramanek and Dinaz Bhote (a daughter of Roda Hiramanek). The first cause of action is brought under the California Uniform Voidable Transactions Act (Civ. Code, §§ 3439 et seq.), and the second cause of action is one for common law fraudulent transfer. There are no exhibits attached to the complaint.

On April 29, 2024, Dresser filed a proof of service of the summons and complaint on Hiramanek, showing substitute service on someone named Richard Blanco at 195 East San Fernando Street, San Jose, CA 95112. It includes a declaration from a registered process server.

Currently before the court is Hiramanek's motion to quash the service of summons, filed on May 29, 2024. Dresser filed an opposition on June 11, 2024.

Both sides in this case are self-represented, which is sometimes referred to as appearing "in propria persona." "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted]; see also *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) As it happens, Dresser is an attorney, while Hiramanek is not.

II. REQUEST FOR JUDICIAL NOTICE

Dresser has submitted a request for judicial notice in support of his opposition to the motion. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

Dresser requests judicial notice of four documents that he describes as copies of court records. While the request states that the documents are attached as Exhibits A-D, none of the documents are in fact attached to the request filed with the court. The request is therefore DENIED.

Hiramanek's declaration in support of his motion includes, in an unnumbered paragraph, the following statement: "I request judicial notice of every document and fact cited in the motion." This request is improper and is also DENIED. (See Cal. Rules of Court, rule 3.1113(*l*) [requiring a "separate document listing the specific items for which notice is requested"].)

Because Dresser repeatedly refers to Hiramanek as a vexatious litigant, the court, on its own motion pursuant to Evidence Code section 452 subdivisions (c), (d), and (h), takes judicial notice of the Judicial Council of California's Vexatious Litigant List (www.courts.ca.gov/documents/vexlit.pdf), which lists Hiramanek as a vexatious litigant as of June 22, 2010.

III. MOTION TO QUASH SERVICE OF SUMMONS

A. Legal Standard

"[I]n California, '. . . the original service of process, which confers jurisdiction, must conform to statutory requirements or all that follows is void.'" (*Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 809.) "Until statutory requirements are satisfied, the court lacks jurisdiction over a defendant." (*Id.* at p. 808.) "When a defendant challenges the court's personal jurisdiction on the ground of improper service of summons the burden is on the plaintiff to prove . . . the facts requisite to an effective service." (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413; see also *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1163.)

In meeting this burden, the filing of a proof of service creates a rebuttable presumption that service was proper, so long as the proof of service complies with applicable statutory requirements. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1442; see also *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390 (*Zara*) ["Evidence Code section 647 provides that a registered process server's declaration of service establishes a presumption affecting the burden of producing evidence of the facts stated in the declaration."].)

B. Discussion

Hiramanek's memorandum of points and authorities spends a great deal of time discussing prior litigation, making *ad hominem* attacks on both Dresser and the registered process server, and advancing hearsay statements about Dresser, the process server, and the location where service occurred. Much of this discussion is not relevant to the substantive basis for Hiramanek's motion, which appears to be that substitute service was improper.

California Code of Civil Procedure section 415.20, subdivisions (a)-(b), permits substitute service when "a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served." Hiramanek contends that substitute service was improper because there were insufficient prior attempts at personal service. The Sixth District has found reasonable diligence where a plaintiff makes two or three

attempts to serve a defendant personally. (See *Zara, supra,* 199 Cal.App.4th at p. 389.) Here, the process server's declaration accompanying the proof lists two prior attempts to serve Hiramanek at the location where Hiramanek received mail before substitute service was made. The court finds that this number of prior attempts was sufficient, particularly given that the only known addresses for Hiramanek are apparently not residential addresses. As Dresser points out, 195 East San Fernando Street in San Jose is a local mail drop service location rather than a residence. On his motion to quash, Hiramanek lists a new address—St. James Park U.S. Post Office, 105 N. First Street, San Jose—but this is also not a residence; it is a post office.

Hiramanek further contends that substitute service was improper because it did not take place at his residence, even though he does not identify such a residence. This is not persuasive. Code of Civil Procedure section 415.20, subdivisions (a)-(b), expressly states that substitute service can be made at a "usual mailing address other than a United States postal service post office box." Hiramanek further claims that the location where service occurred is a "postal service extension." (Motion, p. 2:18-22.) The documents Hiramanek has submitted with his motion do not establish this; rather, they indicate that the 195 East San Fernando Street location is operated by Catholic Charities of Santa Clara County and not the United States Postal Service. Moreover, none of the documents attached to Hiramanek's declaration are properly authenticated. (See Evid. Code, § 1401, subd. (a) ["Authentication of a writing is required before it may be received into evidence."]; *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 273 [a writing must be authenticated by evidence establishing that the writing is what it purports to be]; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 523 [in law and motion matters, a writing is ordinarily authenticated by declarations establishing how the documents were obtained, who identified them, and their status as "true and correct" copies of the original].)

Because Hiramanek has not submitted any competent evidence to rebut the legal presumption of proper substitute service, established by the registered process server's declaration, the court DENIES the motion to quash.[1]

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[1] Hiramanek has submitted a reply brief and reply declaration attaching about 60 pages of additional exhibits. As with all motions, "points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Proctor v. Vishay Intertechnology, Inc*. (2013) 213 Cal.App.4th 1258, 1273; See also *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 ["This court will not consider points raised for the first time in a reply brief for the obvious reason that opposing counsel has not been given the opportunity to address those points."].)

Calendar Line 5
Case Name: *Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al.*
Case No.: 19CV360439

This is a motion to compel further responses to requests for admissions, form interrogatories, special interrogatories, and requests for production of documents, filed by defendant City of Santa Clara (the "City") against plaintiff Mesfin Regassa Ayle ("Ayle"). Ayle objects to this discovery and opposes the motion based on numerous arguments that the court finds to be wholly without merit. Indeed, Ayle's arguments are of the type that the court would expect from someone lacking any familiarity with civil discovery, rather than from someone represented by experienced counsel. Accordingly, the court grants the motion and also grants in part the City's request for monetary sanctions.

First, Ayle contends that the City has "improperly" combined multiple motions into one and that this is supposedly unfair to him. (Opposition, pp. 3:13-5:2.) The court rejects this argument out of hand. Although it is true that the City could have brought separate motions to compel further responses to its RFAs, interrogatories, and requests for production, there is no rule, statute, or case law that requires it to have done things that way. As long as the moving party complies with the page limits set forth in rule 3.1113(d) of the California Rules of Court, they may raise whatever number of issues they wish to raise in a single motion and opening brief. Ayle's contention that a single motion here "complicates and confuses the issues to be decided by the trial court" is conclusory and unpersuasive. (Opposition, p. 4:6-7.) The court is not confused, and it finds that a tripling or quadrupling the number of papers for "this motion" to become "these motions" would be even more confusing. Finally, the notion that the combining of motions deprived Ayle of the opportunity to respond to the City's single 10-page opening brief with oppositions totaling 60 pages is simply absurd.

Second, Ayle alleges that the City failed to identify "the text of all defined terms, instructions, and any other matters required to understand each discovery request and the response to it," but he does not identify any definitions or instructions that were missing from the City's papers, and he also does not identify anything that is still needed to understand the requests and responses. (Opposition, p. 5:3-11.) The court has reviewed the parties' separate statements in support of the motion and the opposition, and it finds that these documents contain sufficient information to understand the discovery requests at issue.

Third, Ayle makes the incomprehensible assertion that the "[a]ttorneys bringing this motion are not the attorneys of record." (Opposition, p. 5:12-6:27.) Even if this assertion were true, it would not excuse Ayle from responding to the underlying discovery requests at issue. Moreover, Ayle's assertion appears to be based on the unfounded notion that a "substitution of attorney" form is required whenever different attorneys within the same law firm work on a case. The court has never heard of such a counterintuitive requirement. As noted by the City in its reply, such a requirement would be directly contrary to the case law. (See, e.g., *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 258 [substitution or association of counsel *not* required for attorneys within the same firm].)

Fourth, Ayle argues that the interrogatories and requests at issue are "duplicative" of earlier requests, but he fails to make any showing of duplication—he does not cite even a single example of a request that is duplicative of a prior request. Instead, he makes the generic argument that the current special interrogatories are "substantially similar" to earlier

interrogatories. This is insufficient. The fact that there may be some overlapping subject matter between requests or interrogatories does not necessarily mean that they are duplicative. More needs to be shown, and Ayle has not shown it.

Fifth, the argument that the City has previously propounded Form Interrogatory No. 17.1 and therefore may not do so again is baseless. The prior iteration of Interrogatory No. 17.1 focused on different requests for admissions; the current iteration of Interrogatory No. 17 focuses on requests for admissions that have not been propounded before. Therefore, it is not "duplicative," and Ayle's argument to the contrary betrays a fundamental lack of understanding of how discovery is supposed to work under the Civil Discovery Act.

Sixth, Ayle argues that this discovery constitutes "harassment" and "oppression" of his counsel. (Opposition, p. 9:1-19.) Again, the court has reviewed the discovery requests at issue and finds that they are directed to the core issues in the case—the court discerns nothing on the face of the requests and interrogatories that would constitute harassment or oppression. As for the timing of the requests, Ayle fails to demonstrate any harassing behavior on the part of the City's attorneys. At most, he shows that his counsel's spouse was experiencing medical issues with a difficult pregnancy, but then he fails to link this to anything that the City did to exploit this medical situation. (Opposition, pp. 10:7-11:3.) For example, he does not show that counsel requested an extension of time to respond to discovery that was unreasonably refused by the other side. This is yet another apparently meritless argument.

In short, the court finds that all of Ayle's objections and arguments are not only lacking in merit, but several of them also border on the frivolous. The court would not expect experienced counsel to have asserted such objections and arguments on behalf of their client—again, these are the types of arguments that the court would expect to see from someone completely new to civil discovery in California. Accordingly, the court finds that Ayle and his counsel did not act with any justification—much less "substantial justification"—in opposing this motion to compel. The City has requested $3,486 in monetary sanctions, and the court concludes that at least some of this amount should be awarded. (As the court has noted in previous discovery motions in this case, the purpose of discovery sanctions is compensatory, not punitive.) The court orders Ayle and/or his counsel to pay the City **$2,205** in monetary sanctions **within 30 days of notice of entry of this order**. This amount represents eight hours spent preparing the opening brief and 2.5 hours spent preparing the reply brief at $210/hour. The court holds Ayle and his counsel jointly and severally liable for this amount.

Given the approaching trial date in this matter, the court orders Ayle to provide substantive responses to the discovery requests at issue **within 20 days of notice of entry of this order**.

The motion is GRANTED, and the request for sanctions is GRANTED IN PART.

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