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: January 18, 2024 TIME: 9:00 A.M.

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

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

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

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

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV424958	Daniel Burrell, Sr. v. Jerry Dorton	Order of examination: parties to appear.
LINE 2	22CV393105	Jack Hansen v. Rogelio Sanchez et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	22CV398575	Julia Minkowski v. James Hann et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	23CV413850	Daniel Talavera et al. v. Equity Residential Management, LLC et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 5	23CV413850	Daniel Talavera et al. v. Equity Residential Management, LLC et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 6	22CV395964	Michael Ward v. Sean Anderson et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	22CV404299	Darrell Williams v. Travestean Williams et al.	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 8	22CV404299	Darrell Williams v. Travestean Williams et al.	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 9	20CV365693	Santa Clara Medical Group, Inc. v. DQT, LLC et al.	Click on LINE 9 or scroll down for ruling in lines 9-11.
LINE 10	20CV365693	Santa Clara Medical Group, Inc. v. DQT, LLC et al.	Click on LINE 9 or scroll down for ruling in lines 9-11.
LINE 11	20CV365693	Santa Clara Medical Group, Inc. v. DQT, LLC et al.	Click on LINE 9 or scroll down for ruling in lines 9-11.
LINE 12	22CV395396	Syed Nazim Ali v. Cisco Systems, Inc.	Click on LINE 12 or scroll down for ruling in lines 12-14.
LINE 13	22CV395396	Syed Nazim Ali v. Cisco Systems, Inc.	Click on LINE 12 or scroll down for ruling in lines 12-14.
LINE 14	22CV395396	Syed Nazim Ali v. Cisco Systems, Inc.	Click on LINE 12 or scroll down for ruling in lines 12-14.

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Calendar Line 2
Case Name: *Jack Hansen v. Rogelio Sanchez et al*
Case No.: 22CV393105

This is a tort action by self-represented plaintiff Jack Hansen against the owners of a leased warehouse where Hansen is a tenant: defendants Rogelio Sanchez, Carlos Sanchez, and Armando Sanchez (collectively, "Defendants").

I. PROCEDURAL HISTORY

The original complaint, filed by Hansen on January 10, 2022, alleged three causes of action: (1) intentional infliction of emotional distress; (2) tortious interference with prospective business clients and earnings; and (3) breach of contract. On January 17, 2023 this court (Judge Kirwan) overruled Defendants' demurrer to the first cause of action, sustained without leave to amend the second cause of action, and sustained with leave to amend the third cause of action for breach of contract. Hansen filed a first amended complaint ("FAC") on January 17, 2023, alleging a single claim for breach of contract.

On June 6, 2023, the court (Judge Geffon) heard Defendants' demurrer to the FAC and Hansen's motion to compel further discovery responses from Defendants. At the hearing, Hansen confirmed that he had not intended to abandon his intentional infliction of emotional distress ("IIED") cause of action—instead, he essentially intended his FAC to be a *supplement* to his original complaint.[1] In its June 7, 2023 order, the court granted Hansen 10 days' leave to file a second amended complaint ("SAC") that would include the IIED and breach of contract causes of action, as amended. The June 7, 2023 order did not explicitly address Hansen's motion to compel. Hansen then filed the SAC on June 26, 2023, alleging a cause of action for intentional infliction of emotional distress, as well as a new allegations of "assault and battery."

On July 27, 2023, Defendants filed a motion to strike Hansen's June 26, 2023 SAC on the ground that it was too late. On September 1, 2023, the court (Judge Geffon) issued an amended order. The amended order reiterated the court's June 7, 2023 order but also added language specifically addressing Hansen's motion to compel, finding it to be moot:

> Based on the foregoing, the Motion to Compel also on calendar for today's date is denied as MOOT. Once an operative complaint is placed on file, Plaintiff can file any appropriate Motion to Compel addressing the specific causes of action that are alleged in the Second Amended Complaint.

Pursuant to this amended order, which essentially "restarted the clock" for filing an amended complaint, Hansen filed another SAC on September 11, 2023, attaching a single cause of action for intentional infliction of emotional distress but also including allegations of physical "assault."

On November 22, 2023, this court (the undersigned) reviewed the file and determined that the pending motion to strike was directed to an inoperative pleading (the SAC filed on

[1] While Hansen also stated that he did not intend to abandon his tortious interference with prospective business clients and earnings cause of action, that cause was dismissed by operation of the court's January 17, 2023 order.

June 26, 2023 rather than the SAC filed on September 11, 2023). Accordingly, the court vacated the December 5, 2023 hearing on the motion and reset it to January 18, 2024. The order directed the Defendants to re-file their motion: "If the parties wish to re-file the same briefs that they have already filed, that is fine with the court, *but the documents should make it clear they are directed to the operative second amended complaint* [*i.e.*, the September 11, 2023 SAC]." (November 22, 2023 Order at p. 2:12-14, emphasis added.)

II. THE PRESENT MOTION TO STRIKE

Although Defendants refiled their motion to strike, they did not direct it to the September 11, 2023 SAC—the motion is still directed to the June 26, 2023 SAC, contrary to the express instructions in the court's order. Defendants' motion to strike is not only directed toward an obsolete pleading, it is also filed in nonconformity with an order of this court. (*State Compensation Ins. Fund v. Super. Ct*. (2010) 184 Cal.App.4th 1124, 1130 ["Thus, an amended complaint supersedes all prior complaints."]; see also Code Civ. Proc., § 436.) Accordingly, the motion to strike the June 26, 2023 SAC must be DENIED AS MOOT.

Notwithstanding the foregoing, the court notes that Defendants are essentially correct that the added allegations for "assault" in the September 11, 2023 SAC (and for "assault and battery" in the June 26, 2023 SAC) are improper. They were added without leave of court, and in contravention of Judge Kirwan's January 17, 2023 order and Judge Geffon's September 11, 2023 order. Hansen's opposition fails to provide any explanation for these allegations that are essentially a new cause of action for new alleged injuries (physical injuries), in contrast to the original IIED cause of action.

The court is empowered to strike the "assault" allegations on its own motion and it therefore does so. (Code Civ. Proc., § 436 [permitting the court to strike a pleading not "filed in conformity with the laws of this state, a court rule, or an order of the court."]) Again, Judge Kirwan's January 17, 2023 order specifically instructed Hansen that a demurrer sustained with leave to amend permits him "to amend the causes of action to which the demurrer has been sustained, *not add entirely new causes of action*"; similarly, Judge Geffon's September 11, 2023 order only permitted Hansen to restate the intentional infliction of emotional distress claim set forth in the original complaint.

The court hereby STRIKES the assault allegations contained on page 4 of the complaint (which is page 1 of the attachment) in their entirety.

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Calendar Line 3
Case Name: *Julia Minkowski v. James Hann et al.*
Case No.: 22CV398575

I. BACKGROUND

This is a legal malpractice action brought by plaintiff Julia Minkowski against defendant James Hann, who represented Minkowski in a divorce case in Santa Clara County (Case No. 19FL004302). The original complaint, filed while Minkowski was self-represented on May 24, 2022, stated claims for: (1) Breach of Contract (a legal retainer agreement); (2) Legal Malpractice; and (3) Breach of Fiduciary Duty against Hann and his law firm, the Hann Law Firm (collectively, "Hann"). The original complaint did not allege when Hann's representation ended.

The operative first amended complaint ("FAC"), filed on August 3, 2022 after Minkowski obtained legal representation, similarly states claims for: (1) Breach of Contract (now styled an Attorney-Client Fee Agreement); (2) Legal Malpractice; and (3) Breach of Fiduciary Duty against both defendants. The FAC alleges (at ¶ 50) that the representation ended "in or about May 2021." The FAC alleges (at ¶ 75) that "Plaintiff became 'pro per' representing herself" on "May 25, 2021." A copy of the "Attorney-Client Fee Agreement" is attached to the FAC as Exhibit A.

Currently before the court is a demurrer to the FAC filed by Hann on December 9, 2022. For some reason, the clerk's office did not promptly set a hearing date for the demurrer, and neither side followed up for many months. At a case management conference on July 25, 2023, the court asked Hann's counsel if they still wished to proceed with the demurrer. Upon receiving an affirmative answer, the court set the matter for hearing on November 14, 2023. The parties then stipulated to continue the hearing (for some reason, the parties' stipulation is not contained in the file, but it is reflected in the court's November 14, 2023 minute order). The court reset the hearing for January 18, 2024.

II. REQUEST FOR JUDICIAL NOTICE

"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 form 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."

In support of his demurrer, Hann has submitted a request for judicial notice of seven documents, attached as Exhibits 1-7. Judicial notice of most of these documents (Exhibits 1 and 3-7) is requested pursuant to Evidence code section 452, subdivision (d) (court records). (See Request at p. 1:22-26.) These six documents are records from the divorce case in which Hann represented Minkowski.

Exhibit 1 is a copy of a March 4, 2021 stipulation and order in the divorce case continuing the trial date so that the parties could hire private judge Michael Smith to adjudicate all issues. The stipulation is signed by Minkowski.

Exhibit 3 is a copy of a December 8, 2020 Notice of Hearing for a motion for attorney's fees and costs filed by Minkowski in the divorce case while she was represented by Hann. Attached to the notice of hearing is a declaration from Minkowski, whose contents are *not* subject to judicial notice under section 452(d). (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1057 [court may take judicial notice of existence of declaration but not of facts asserted in it]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court proceedings].)

Exhibit 4 is a copy of a May 5, 2021 stipulation and order from the divorce case removing a document from the court file. Exhibit 5 is a copy of a substitution of attorney form filed in the divorce case on May 25, 2021. Minkowski signed this on May 10, 2021. Hann signed the substitution on May 25, 2021, the day he filed it. Exhibit 6 is a copy of a notice of limited scope representation filed in the divorce case on September 13, 2021 by attorney Robert Tennant on behalf of Minkowski. Exhibit 7 is a copy of a notice of recusal / disqualification filed by Michael Smith, in his capacity as a temporary judge, in the divorce case on September 16, 2021.

The court GRANTS judicial notice of Exhibits 1 and 3-7 pursuant to Evidence Code section 452, subdivision (d). As Exhibits 1 and 4 are court orders, they can be noticed as to their contents and legal effect. The court grants judicial notice of Exhibit 3 only as to the notice of hearing itself, and not as to the contents of the attached declaration.

The court DENIES judicial notice of Exhibit 2, which is a copy of a letter sent by Michael Smith to counsel in the divorce case on February 25, 2021, enclosing documents relating to his appointment as a temporary judge in the divorce case. This letter was not filed in the divorce case and is not a court record. Hann claims that this letter can be judicially noticed pursuant to Evidence Code section 452, subdivision (h). (See Request at pp. 1:27-2:3.) This subdivision does not typically apply to private correspondence. (See *Gould v. Md. Sound Indus*. (1995) 31 Cal.App.4th 1137, 1145 ["Judicial notice under Evidence Code section 452, subdivision (h), is intended to cover facts which are not reasonably subject to dispute and are easily verified. These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter."].) While both the original complaint and the FAC discuss Mr. Smith's involvement in the divorce case as a temporary judge, the February 25, 2021 letter is not mentioned, and it cannot be considered incorporated by reference into either pleading. The court finds that this letter does not fall under any provision of section 452.

III. DEMURRER TO THE FAC

A. General Legal Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) Allegations are not accepted as true on demurrer if they contradict or are inconsistent with facts judicially noticed. (See *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1474 [rejecting allegation contradicted by judicially noticed facts]; see also Witkin, *California Evidence* (5th Ed., 2012) 2 Judicial Notice § 3(3) ["It has long been established in California that allegations in a pleading contrary to judicially noticed facts will be ineffectual; i.e., judicial notice operates against the pleader."]) As an example of this, the judicially noticed stipulation from the divorce case (Exhibit 4) establishes that Minkowski did in fact consent to the appointment of Michael Smith as a private judge, and it controls over the allegation in the FAC that she did not consent. (See FAC, ¶ 26.)

Where a demurrer is to an amended complaint, the Court "may consider the factual allegations of prior complaints, which a plaintiff may not discard or avoid by making contradictory averments, in a superseding, amended pleading." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034, internal quotations omitted; see also *Larson v. UHS of Rancho Springs, Inc*. (2014) 230 Cal.App.4th 336, 343 [noting "well-established precedent" allowing "courts to consider omitted and inconsistent allegations from earlier pleadings when ruling on a demurrer."]; *Doe v. United States Youth Soccer Assoc.* (2017) 8 Cal.App.5th 1118, 1122 [citing *Berg & Berg*].)

The court cannot consider extrinsic evidence in ruling on a demurrer. The court has considered the declaration of counsel Peter Bales only to the extent it discusses the meet-and-confer efforts required by statute. The court has not considered any portion of the declaration of John B. Sullivan, submitted with Hann's reply, the exhibit attached to this declaration, or any arguments in the reply that depend upon this extrinsic evidence. The court has also not considered the declaration from Minkowski's counsel Patrick Evans, or any arguments in the opposition that refer to or depend upon this extrinsic evidence. All of this evidence, which is discussed extensively in the opposition brief, falls outside the scope of the pleadings.

B. Discussion

Hann maintains that all three causes of action fail to state sufficient facts because they are all time-barred by Code of Civil Procedure section 340.6. (See Dec. 9, 2022 Notice of Demurrer and Demurrer at pp. 1:25-2:3.)

"A complaint showing on its face the cause of action is barred by the statute of limitations is subject to general demurrer." (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.) The running of the statute must appear clearly and affirmatively from the dates alleged—it is not enough that the complaint might be barred.

(*Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42.) "Generally, the limitations period starts running when the last element of a cause of action is complete." (*NBCUniversal Media, LLC v. Super. Ct.* (2014) 225 Cal.App.4th 1222, 1231.)

Code of Civil Procedure section 340.6 states that an action against an attorney for a "wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date or the wrongful act or omission, whichever occurs first." The running of the statute shall be tolled during any of the following: "(1) The plaintiff has not sustained actual injury; (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred; (3) The attorney willfully conceals the wrongful act or omission occurred; and (4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action." "Actual injury" occurs "when the plaintiff suffers *any loss or injury legally cognizable as damages in a legal malpractice action based on the asserted errors or omissions*." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 743, emphasis added.) "An existing injury is not contingent or speculative simply because future events may affect its permanency or the amount of monetary damages eventually incurred." (*Id.* at p. 754.)

The Supreme Court in *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1229 (cited by Hann) held that "section 340.6(a) applies to a claim when the merits of the claim will necessarily depend upon proof that an attorney violated a professional obligation—that is, an obligation the attorney has *by virtue of* being an attorney—in the course of providing professional services. Such claims brought more than one year after the plaintiff discovers or through reasonable diligence should have discovered the facts underlying the claim are time-barred by section 340.6(a) unless the plaintiff alleged actual fraud." (Emphasis in original.) The Court later stated that "section 340.6(a)'s time bar applies to claims whose merits necessarily depend upon proof that an attorney violated a professional obligation in the course of providing professional services. In this context, a 'professional obligation' is an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the Rules of Professional Conduct." (*Id*. at pp. 1236-1237.)

Based on the foregoing, the one-year limitations period in section 340.6 applies to all three causes of action in the FAC—breach of the attorney-client agreement, legal malpractice, and breach of fidiciary duty—all of which are based on allegations of violations of a professional obligation.

"[S]ection 340.6 means exactly what it says: an action against an attorney for a wrongful act (except actual fraud) arising in the performance of professional services must be commenced within one year of discovery of the facts constituting the wrongful act." (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 821.) "The words of the statute are quite broad, but they are not ambiguous: any time a plaintiff brings an action against an attorney and alleges that attorney engaged in a wrongful act or omission, other than fraud, in the attorney's performance of his or her legal services, that action must be

commenced within a year after the plaintiff discovers, or should have discovered, the facts that comprise the wrongful act or omission." (*Yee v. Cheung* (2013) 220 Cal.App.4th 184, 194-195; see also *Connelly v. Bernstein* (2019) 33 Cal.App.5th 783, 789-798; *Garcia v. Rosenberg* (2019) 42 Cal.App.5th 1050, 1060.)

Hann contends that Minkowski alleges actual injuries that were sustained by no later than March 3, 2021, based on her allegations that Hann "wrongfully and erroneously" advised her to "hire" Michael Smith as temporary judge in the divorce case at that time. (See Memorandum at p. 10:19-27, citing the FAC at ¶¶ 14, 24-26, 31, 43-47, 93-95, 117, and 126 [allegations that Smith improperly inflated his bills and was biased in his actions in favor of the lawyer for Minkowski's husband].)

While this alleges actual injury, section 340.6 clearly states that the running of the limitations period is tolled while "[t]he attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred." (See Code Civ. Proc., § 340.6(a)(2).) "Code of Civil Procedure section 340.6 does not expressly state a standard to determine when an attorney's representation of a client regarding a specific subject matter continues or when the representation ends, and the legislative history does not explicitly address this question." (*Gonzalez v. Kalu* (2006) 140 Cal.App.4th 21, 28 (*Gonzalez*); see also *Wang v Nesse* (2022) 81 Cal.App.5th 428, 439 (*Wang*), quoting *Gonzalez*.) "Ordinarily, an attorney's representation ends 'when the client discharges the attorney *or consents to a withdrawal*, the court consents to the attorney's withdrawal, or upon completion of the tasks for which the client retained the attorney.'" (*Wang, supra*, at 439, internal quotations marks omitted, emphasis added.) "'[T]he inquiry into when representation has terminated does not focus on the client's subjective beliefs about whether the attorney continues to represent him or her in the matter. Instead, the test is objective and focuses on the client's reasonable expectations in light of the particular facts of the attorney-client relationship.' In determining whether an attorney continues to represent a client, 'we objectively examine 'evidence of an ongoing mutual relationship and of activities in furtherance of the relationship.' Representation ends 'when the client actually has or reasonably should have no expectation that the attorney will provide further legal services.'" (*Wang, supra*, at 440, internal quotation marks and citations omitted.)

Here, as Hann points out, the judicially noticed substitution of counsel form in the divorce case (RJN Exhibit 5) establishes that Minkowski consented to Hann's withdrawal on May 10, 2021, and any tolling based on continuing representation ended at that point. This establishes that Minkowski's claims against Hann became "clearly and affirmatively" time-barred under section 340.6 on May 11, 2022, almost two weeks before Minkowski filed the original complaint in this action. The court therefore SUSTAINS Hann's demurrer to all three causes of action in the FAC.

A plaintiff bears the burden of demonstrating that an amendment would cure the defect identified on demurrer. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Minkowski's opposition does not dispute that section 340.6 is the relevant statute of limitations for all three claims alleged in the FAC. Nevertheless, Minkowski does assert that Hann "concealed" facts by withholding her client file, even though this claimed delay in transferring files is not alleged in the FAC. The opposition also contends that Minkowski did not suffer actual injury until Smith recused himself as a temporary judge on September 16, 2021 (see RJN Exhibit 7), despite the FAC's allegations of inflated billing before that. This September

16, 2021 date was after Minkowski had acquired limited scope representation from new counsel (see RJN Exhibit 6), and this allegation is also not contained anywhere in the FAC.

The court has doubts that any amendment to the FAC will change the conclusion that the causes of action are time-barred, given Minkowski's undisputed consent to Hann's withdrawal on May 10, 2021. As noted by Hann, the Court of Appeal in *Go-Tek Energy, Inc v. SoCal IP Law Group, LLP* (2016) 3 Cal.App.5th 1240, 1248 rejected an argument based on possession of client files similar to that made in the opposition. "The transfer of the files was a clerical, ministerial activity . . . . Firm one's possession of client's files after November 8, 2012, and its transfer of the files on November 15, 2012, are not 'evidence of an ongoing mutual relationship.' (*Ibid*.) Nor do they constitute 'activities in furtherance of the relationship.' (*Ibid*.) The relationship ended no later than November 8, 2012, when client consented to firm one's withdrawal." While Minkowski here claims a much longer delay, that does not transform retention of files into evidence of a continuing representation under the applicable objective standard. After consenting to Hann's withdrawal, Minkowski could not reasonably have had any expectation that Hann would provide further legal services.

Still, given that this is the first pleading challenge in the case—though tremendously delayed—the court will sustain the demurrer with 10 DAYS' LEAVE TO AMEND.

Minkowski is reminded that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court, an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. "Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456, citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.)

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Calendar Lines 4-5
Case Name: *Daniel Talavera et al. v. Equity Residential Management, LLC et al.*
Case No.: 23CV413850

I. FACTS

This is an action alleging statutory violations of the Investigative Consumer Reporting Agencies Act ("ICRAA") and related causes of action brought by plaintiffs Daniel Talavera, Rachel Talavera, Andrea Villicana Flores, Alhussein Nagi, Phillis Rodriguez, Daniel Dura, Nancy Duran, David Kim, Mijeong Ban, Joseph Chi, and Ashley Chi (collectively, "Plaintiffs") against defendants Equity Residential Management, LLC and Transunion Rental Screening Solutions, Inc. (collectively, "Defendants").

The original and still-operative complaint filed on March 30, 2023 states three causes of action: (1) Violation of the ICRAA (Civ. Code, § 1786); (2) Invasion of Privacy; and (3) Declaratory Relief.

According to the complaint, Plaintiffs were all prospective tenants of the Lex Apartments, an apartment complex managed and operated by Equity Residential Management, LLC ("Equity"). (Complaint, ¶¶ 1-12, 17.) As part of the housing application process, Plaintiffs completed a multi-page application (the "Application"), including a release of information permitting Defendants to obtain Plaintiffs' private and personal information from third parties. (*Id*. at ¶ 23.) The Application allegedly permits Equity to screen for any criminal background and previous evictions. (*Id.* at ¶ 25.) The complaint further alleges that Defendants obtained investigative consumer reports about Plaintiffs without complying with mandatory requirements, disclosures, and authorizations under the ICRAA. (*Id*. at ¶ 24.) In particular, Plaintiffs claim that Defendants concealed the nature and type of the investigative consumer reports, the timing of when Defendants would obtain the reports, the entity or entities that would provide the reports, and Plaintiffs' rights regarding the reports. (*Id.* at ¶ 32.)

Currently before the court are Equity's: (1) demurrer to the second and third causes of action, and (2) motion to strike portions of the complaint. Plaintiffs filed a single opposition to both the demurrer and motion to strike on October 23, 2023.

II. EQUITY'S DEMURRER TO THE SECOND AND THIRD CAUSES OF ACTION

A. Legal Standards

"'It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [he or she] describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]'" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341 [quoting *Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213].) "For purposes of reviewing a demurrer, the courts accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924.)

A demurrer to the complaint may be brought on the ground that the "pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).)

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872 [citing *Golceff v. Sugarman* (1950) 36 Cal.2d 152, 154].)

B. Discussion

Equity demurs to the second and third causes of action in the complaint, contending that each fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

1. Invasion of Privacy

Equity contends that the complaint fails to allege: (1) that Plaintiffs had a reasonable expectation of privacy, and (2) that Equity committed a serious invasion of Plaintiffs' privacy rights. (Dem., p. 5:10-12.)

As a threshold matter, the California Supreme Court recognizes two legal theories providing separate means of ensuring privacy. (See *Ignat v. Yum! Brands, Inc.* (2013) 214 Cal.App.4th 808, 820 (*Ignat*); see also *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200.) A claim for invasion of privacy in violation of a state constitutional right "focuses on institutional record keeping and does not require a wide dissemination of private information." (*Ibid.* [citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35-37 (*Hill*)].) In contrast, a common law claim for invasion of privacy "requires publicity; disclosure to a few people in limited circumstances does not violate the right. [Citations.]" (*Ignat, supra,* 214 Cal.App.4th at 820.) Here, Plaintiffs appear to allege a claim for invasion of privacy on constitutional grounds, as they do not allege any publicity. Thus, they must show: "(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (*Hill, supra,* 7 Cal.4th at pp. 39-40.)

As Equity points out, the complaint does not allege a reasonable expectation of privacy, only "an expectation of privacy." (Complaint, ¶ 56.) Equity also notes that the complaint alleges that Plaintiffs each voluntarily submitted an Application and consented to a release of information—processes that are typical for "rental housing applications." (*Id.* at ¶ 26.) While Plaintiffs contend that the allegation of an "expectation of privacy" is sufficient for purposes of a demurrer, the court concludes that it is not. In reviewing a demurrer, the court must look to the pleadings as a whole and treat them "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) Accordingly, the court generally agrees with Equity that, "[a]fter acknowledging that such investigations are commonplace under the exact circumstances, and also consenting to the release of information, Plaintiffs cannot then allege that they had a reasonable expectation of privacy or that their privacy was invaded when the information was revealed to Equity." (Dem., at pp. 6:25-7:2; see also *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 1000 [holding reasonably expectation of privacy is defeated if plaintiff voluntarily consented to the alleged invasive actions of a defendant]; see also *Hill, supra,* 7 Cal.4th at p. 26.) Even if they had an expectation of privacy, they cannot argue that it was

"reasonable," given their explicit consent to the release of consumer information to the Defendants.

In addition, the complaint does not adequately allege a "serious invasion of privacy." In their opposition, Plaintiffs broadly assert that the "elements are sufficiently pled, and must be deemed true at the pleadings stage." (Opp., 6:20-22.) But to plead a serious invasion, Plaintiffs must "show that the intrusion is so serious in 'nature, scope, and actual or potential impact [as] to constitute an egregious breach of the social norms.'" (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 287 [quoting *Hill, supra,* 7 Cal.4th at p. 37].) "For example, 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." (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 371 [*Hill, supra,* 7 Cal.4th at p. 37].) The complaint is devoid of any facts to support a claim of "serious invasion"; instead, it merely sets forth the boilerplate language that Equity's actions would "be highly offensive to a reasonable person." (Complaint, ¶ 57.) This is far too vague and conclusory to support the third element of a constitutional privacy claim.

Plaintiffs also argue that "ICRAA violations are also invasions of privacy," and so "Plaintiffs can certainly assert a cause of action for invasion of privacy based on Defendant's alleged violations of the ICRAA" (Opp., at pp. 5:11, 5:19-20.) In support of this proposition, Plaintiffs cite Civil Code section 1786.52: "Nothing in this chapter shall in any way affect the right of any consumer to maintain an action against an investigative consumer reporting agency, a user of an investigative consumer report, or an informant for invasion of privacy or defamation." This language merely permits an invasion of privacy action—it does not establish one. Plaintiffs must still allege the elements of an invasion of privacy claim. (See *Davaloo v. State Farm Insurance Co.* (2005) 135 Cal.App.4th 409, 415 ["This fact-pleading requirement obligates the plaintiff to allege ultimate facts that as a whole apprise[ ] the adversary of the factual basis of the claim."])

The court therefore SUSTAINS Equity's demurrer to the second cause of action on the ground of insufficient facts and grants Plaintiffs 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

2. Declaratory Relief

Equity demurs to the third cause of action, arguing that the complaint fails to allege an actual controversy involving justiciable questions relating to the rights or obligations of a party. (Demurrer, p. 5:12-14.)

Code of Civil Procedure section 1060 provides in relevant part:

> Any person interested under a written instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the

> court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time . . . .

To qualify for declaratory relief under section 1060, a plaintiff's action must present two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546.) "'The "actual controversy" language in . . . section 1060 encompasses a probable future controversy relating to the legal rights and duties of the parties.' [Citation.] It does not embrace controversies that are 'conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court.' [Citation.]" (*Ibid*.; see also *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 [prohibiting plaintiffs from alleging an actual, present controversy "simply by pointing to the very lawsuit in which [they seek] that relief"].) Thus, "[a] party seeking declaratory relief must show a very significant possibility of future harm. (*Monterey Coastkeeper v. California Regional Water Quality Control Bd., etc.* (2022) 76 Cal.App.5th 1, 13 [citing *Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17].)

In this case, the complaint alleges:

> An actual controversy has arisen and now exists between Plaintiffs and the Defendants regarding the legality and effect of the Defendants' Application, which Plaintiffs contend violates the ICRAA. Defendants demands [*sic*] all leases must be renewed or re-certified, and because the same forms are always used, which authorizes the Defendants to obtain investigative consumer reports about the Plaintiffs, a judicial determination is necessary to prevent the Defendants' continued violation of the ICRAA.

(Complaint, ¶ 60.) This allegation is insufficient to show an actual controversy for purposes of pleading declaratory relief. Although Plaintiffs have submitted *initial* housing applications, they fail to allege that they are required to complete the same applications on an ongoing basis, or that Defendants obtain investigative consumer reports after the initial applications. Indeed, the complaint does not even allege that Plaintiffs are current tenants subject to any purported renewal and recertification process, only that they were *prospective* tenants. (*Id.* at ¶¶ 1-12.) The possibility that Plaintiffs may apply again or renew any existing lease, prompting another application, is purely speculative, based on the allegations of the complaint.

Accordingly, the court SUSTAINS Equity's demurrer to the third cause of action and grants Plaintiffs 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

III. EQUITY'S MOTION TO STRIKE

A. Legal Standards

Under Code of Civil Procedure section 436, a court may strike out any "irrelevant, false, or improper matter inserted into any pleading" or "strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) "The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice." (Code Civ. Proc., § 437, subd. (a).)

B. Discussion

Equity moves to strike paragraphs 38, 40, 51, and 53 of the body of the complaint, as well as paragraphs 4, 7, and 8 of the first cause of action's prayer for relief, and paragraph 3 of the second cause of action's prayer for relief. Equity argues that Plaintiffs seek relief that is unavailable by statute or case law.

1. Injunctive Relief

First, Equity argues that paragraph 53 of the complaint and paragraphs 7 and 8 of the first cause of action's prayer for relief should be stricken because they seek injunctive relief, even though the ICRAA limits remedies to damages and attorneys' fees and does not extend to injunctive, declaratory, or equitable relief.

In support of its motion, Equity cites California Civil Code section 1786.50 (part of ICRAA), which provides:

> **(a)** An investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report is liable to the consumer who is the subject of the report in an amount equal to the sum of all the following:
>
> > **(1)** Any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, ten thousand dollars ($10,000), whichever sum is greater.
> >
> > **(2)** In the case of any successful action to enforce any liability under this chapter, the costs of the action together with reasonable attorney's fees as determined by the court.
>
> **(b)** If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages.

Paragraph 53 of the complaint, contained in the first cause of action, alleges: "Plaintiffs are also entitled to permanent injunctive [relief] against all Defendants and their heirs, executors, transferees and assigns, and declaratory relief to the following effect with any such injunction running with the land . . . ."

In opposition, Plaintiffs do not address Civil Code section 1786.50; instead, they cite paragraph 63 of the complaint and *SCLC v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 223. This case is inapposite, however, because it did not address the ICRAA at all.

Plaintiffs also do not address Equity's reliance on *Poinsignon v. Imperva, Inc.*, (N.D.Cal. Apr. 9, 2018) 2018 U.S.Dist.LEXIS 60161, which dismissed a claim for injunctive relief under the ICRAA. Although this decision is not binding authority, it is directly on point and may serve as persuasive authority for this court. Plaintiffs' final argument is a non sequitur: they argue that because attorneys' fees are authorized under the ICRAA, they are therefore eligible to seek injunctive relief for continuing violations of the ICRAA. (Opposition

at p. 9:3-9.) The alleged logic of this argument is inscrutable, and in any event it is unsupported by any legal authority.

The court also strikes the portions of the prayer for relief for the first cause of action (paragraphs 7 and 8) that seek "equitable relief and restitution to the extent available under the law" and "[s]uch other and further relief as this Court may determine to be just and proper at law or in equity." Again, the ICRAA does not permit equitable or declaratory relief, and Plaintiffs' opposition brief fails to address this.

The court GRANTS Equity's motion to strike paragraph 53 of the complaint and paragraphs 7-8 of first cause of action's prayer for relief.

2. Punitive Damages

Equity argues that Plaintiffs' request for punitive damages in paragraph 3 of the second cause of action's prayer for relief should also be stricken. Because, as discussed above, the court is sustaining Equity's demurrer to the second cause of action, the motion to strike paragraph 3 of the second cause of action's prayer for relief is denied as MOOT.

Equity also contends that paragraphs 38, 40, and 51 of the complaint, as well as paragraph 4 of the first cause of action's prayer for relief, are subject to being stricken because they fail to meet statutory requirements for pleading punitive damages under Civil Code section 3294. In opposition, Plaintiffs point out that the ICRAA provides its own unique standard for punitive damages, which merely requires a showing that statutory violations are *grossly negligent* or *willful*. Civil Code section 1786.50, subdivision (b), provides: "If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages." Here, the complaint alleges that Equity was aware of the ICRAA "prior to committing the above violations and were on notice that their conduct was unlawful, and committed the above violations anyway." (Complaint, ¶¶ 38, 51.) The complaint also alleges that Equity's actions were "deliberate planned violations of the ICRAA." (*Id*. at ¶¶ 38, 40, 51.) California courts have consistently found "[a] claim 'for exemplary damage may be supported by pleading that the wrong was committed willfully or with a design to injure.'" (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055 [quoting *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29].)

Based on the foregoing, the court finds that Plaintiffs have sufficiently alleged facts to support a request for punitive damages. Accordingly, the court DENIES Equity's motion to strike paragraphs 38, 40, and 51 of the complaint, as well as paragraph 4 of the first cause of action's prayer for relief.

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Calendar Line 6
Case Name: *Michael Ward v. Sean Anderson et al.*
Case No.: 22CV395964

In this motion to compel further responses to document requests, both sides spend an inordinate amount of time arguing the merits of the case as a whole. These arguments have little to no bearing on the outcome of this motion, which focuses on the potential relevance of defendant Stoer Construction, Inc.'s business contracts, financial records, and payroll records to plaintiff Michael Ward's causes of action for breach of fiduciary duty, accounting, and declaratory relief. The court ultimately finds these documents to be discoverable and GRANTS the motion.

Requests for Production Nos. 12 & 25: Ward argues that during the meet-and-confer process, he narrowed the scope of these requests to "income producing contracts, construction contracts[,] or other contracts that would have a significant impact on the value of [Stoer] by creating liability for [Stoer]." (Memorandum at p. 9:8-9.) The court finds this to be an appropriate narrowing. In addition, if the timeframe of the requests were further circumscribed to the period *from January 1, 2018 to December 31, 2022*, that would be another appropriate narrowing and would eliminate any issues with the otherwise open-ended nature of Request No. 12 ("after January 1, 2018"). With those restrictions, the court concludes that the requested documents are potentially relevant to the claims (and cross-claims) in the case. Stoer argues that the requests are still overbroad and unduly burdensome, but it fails to substantiate the claim of undue burden with any concrete showing. Indeed, the court has been given zero information about the potential volume of documents called for by these requests: are we talking about five contracts, 50 contracts, or 500 contracts (or more)? These vague objections are overruled. GRANTED IN PART.

Requests for Production Nos. 26 & 30: For similar reasons, the court finds that these requests call for potentially relevant documents, so long as the timeframe for these requests is limited to the year 2022. GRANTED IN PART.

Request for Production No. 41: Again, the court restricts the timeframe for this request from 2018 to 2022. With this narrowed scope, the motion is GRANTED IN PART.

Requests for Production Nos. 75 & 76: The court restricts the timeframe for these requests from August 1, 2014 to December 31, 2022. GRANTED IN PART.

Request for Monetary Sanctions: Although Stoer is correct that the original scope of the document requests was overbroad, the court concludes that Stoer has been unduly inflexible in its meet-and-confer positions. In addition, no reasonable explanation has been given for why Stoer rebuffed Ward's suggestion of an informal discovery conference to try to resolve this matter, rather than proceeding with a noticed motion. The court finds that Stoer acted largely without substantial justification. The court DENIES Stoer's request for monetary sanctions and GRANTS IN PART Ward's request for monetary sanctions, in the amount of **$4,690** (8 hours at $500/hour, plus 2 hours at $315/hour, plus $60 in court costs). The purpose of monetary sanctions is compensatory, not punitive, but the court finds the time estimates for replying to Stoer's opposition and appearing at the hearing are excessive, particularly for a relatively straightforward motion such as this one.

The court declines to address Ward's alternative argument that he is entitled to discovery under Corporations Code section 1602. In addition, the court declines to rule on Stoer's "Objection to Plaintiff's Declaration in Support of Reply to Opposition to Michael Ward's Motion to Compel," filed on January 12, 2024. The court has not received any reply declaration from Ward in the file, so the court has no basis upon which to rule on these objections. Nevertheless, as a general matter, Stoer is correct that it is impermissible to submit new evidence in reply, and so to the extent that Ward's reply brief relies on new evidence or information, the court disregards it.

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Calendar Lines 7-8
Case Name: *Darrell Williams v. Travestean Williams et al.*
Case No.: 22CV404299

In this case, filed on September 7, 2022, plaintiff Darrell Williams ("Darrell") brought nine causes of action for ouster, mesne profits, violation of a co-tenant's rights, conversion, embezzlement, and several other legal theories against his mother, Travestean Williams ("Travestean"), and his niece, Chantal Williams ("Chantal").[2] Darrell alleged that defendants unlawfully deprived him of his property rights, including rental income from a home located at 1165 E. Florinda Street, Hanford, California, that he co-owned with Travestean.

Travestean has since passed away, and Darrell now seeks leave to amend his complaint to remove her as a defendant, add Chantal as a defendant in her capacity as trustee of the Travestean Wynn Williams Revocable Living Trust, add Michael Patterson (Chantal's husband) as a defendant, and add four more causes of action for elder abuse, fraud, undue influence, and breach of fiduciary duty. Darrell has also filed a motion to compel further responses from Chantal to four requests for production of documents. The court addresses these motions in turn.

1. Motion for Leave to Amend

The court finds that Darrell has shown sufficient good cause to amend the complaint and therefore GRANTS the motion. Although it appears that there may have been a delay of a few months in bringing this motion—as well as some possible meet-and-confer irregularities alleged by defendants—the court finds that Darrell was not materially dilatory in requesting these amendments. More important, the court finds that there is no prejudice to defendants, given the relatively early stage of the case. As Darrell notes, "[N]o trial date has been scheduled and defendant Chantal Williams has not yet conducted any discovery." (Memorandum at p. 5:3-4.) In her opposition, Chantal argues that if the motion were granted, "Defendant Would be Subjected to Litigation Costs that Would Have Been Avoided if Plaintiff Had Acted Timely" (Opposition at p. 6:10-12), but then she fails to identify any such costs. Similarly, the fact that Darrell has made similar allegations against Chantal in civil harassment and probate proceedings does not constitute cognizable prejudice of any sort.

Darrell shall file his proposed amended complaint within 10 days of this order.

2. Motion to Compel

The court GRANTS IN PART the motion to compel, as follows:

Request for Production No. 1: The court rejects Chantal's objection that some of these documents "are obtainable from some other source that is more convenient, less burdensome, or less expensive because the Requesting party can subpoena copies of the said documents from the entity in possession of the original records." (Defendant's Separate Statement at p. 2:14-17.) Chantal is obligated to produce documents in her possession, custody, or control, regardless of whether some third party may also have responsive

[2] Because the three main parties share the same surname, the court follows plaintiff's approach and refers to each of the Williams parties by their first names.

documents. The court also does not understand Chantal's contention that "[t]he inability to comply with the demand is because the particular item or category may have been destroyed, lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." (*Id.* at p. 2:20-23.) The court finds this boilerplate language to be ambiguous and evasive. Chantal shall amend her response to this request within 20 days of notice of entry of this order to clarify whether responsive documents were actually "destroyed, lost, misplaced, or stolen," and if so, an explanation as to how and when this supposedly happened; and whether documents have "never been, or [are] no longer, in" her possession, custody, or control.

Request for Production No. 6: The court finds that "ALL" documents relating to Chantal's financial activities is too broad of a category. Nevertheless, this request generally seeks documents that may be relevant to the claims in the case. The court narrows the scope of this request to: *Bank statements, pay stubs, deposit receipts, or public benefits statements during the relevant period*. The court rejects Chantal's unsupported claim that these documents are "privileged" or "constitutionally protected." Chantal shall amend her response to this request within 20 days.

Request for Production No. 13: For similar reasons, the court finds this request to be overbroad and narrows it to: *Travestean's bank statements, tax returns, and social security income statements during the relevant period.* The court reject's Chantal's vague "consumer protection laws" objection, which is without legal foundation. In addition, Chantal's claim that she "is not the custodian of records of Traveasten's [sic] 'financial activities'" is irrelevant. To the extent that any such documents are in Chantal's possession, custody, and control, she must produce them, following a reasonably diligent search. Chantal shall amend her response to this request within 20 days.

Request for Production No. 18: Again, the court finds that this request is overbroad, but it is easily and appropriately reduced in scope to: *Communications between you and third parties regarding Travestean's finances, estate, health, will, or trust.* Again, the court finds inadequate Chantal's boilerplate statement that "[t]he inability to comply with the demand is because the particular item or category may have been destroyed, lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." (Defendant's Separate Statement at p. 13:8-12.) Chantal shall amend her response to this request within 20 days.

Request for Monetary Sanctions: The court finds that Chantal and/or her counsel did not act with substantial justification in raising numerous meritless objections to the document requests at issue. At the same time, the court agrees with Chantal that the requested sanctions are grossly excessive. The court will not grant monetary sanctions for time expended in "reviewing" discovery responses or "drafting" meet-and-confer correspondence, and the court finds that the amounts of time spent on these activities by various attorneys, post-bar clerks, and one paralegal were far too high. The court orders Chantal and her counsel to pay monetary sanctions to Darrell and his counsel in the amount of **$1,600**, representing four hours of time to prepare this simple and straightforward motion to compel, at $400/hour.

IT IS SO ORDERED.

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Calendar Lines 9-11
Case Name: *Santa Clara Medical Group, Inc. v. DQT, LLC et al.*
Case No.: 20CV365693 (and 21CV390477)

After the court already prepared a detailed tentative ruling in this case, it received, by hand-delivery on January 16, 2024, an eleventh-hour stipulation and proposed order from the parties that essentially tracked the outcome of the court's tentative ruling. The court notes that the parties appear to have a chronic inability to do anything in this case except at the very last minute. That includes the eleventh-hour motion to consolidate, the eleventh-hour motion for leave to amend, the eleventh-hour (and improper) "supplemental opposition" that plaintiff filed on January 10, 2024, and the eleventh-hour petition to compel arbitration that plaintiff filed in Case No. 21CV390477.

Notwithstanding the extraordinary lack of courtesy and preparation displayed by the parties in bringing forward their eleventh-hour stipulation and order, the court will sign it once it is properly e-filed. Not only are the cases to be consolidated "for trial," but they are also consolidated for all pretrial purposes (including any law-and-motion matters) in Department 10. In addition to trial on April 22, 2024, there will be a mandatory settlement conference on April 17, 2024 (time TBD) and a trial assignment conference on April 18, 2024 at 1:30 p.m. in the Civil Supervising Judge's courtroom (Department 6).

Because of the parties' apparent penchant for last-minute requests with the court, the court reminds the parties that there will be NO FURTHER CONTINUANCE of the trial date absent an EXTRAORDINARY SHOWING OF GOOD CAUSE.

IT IS SO ORDERED.

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Calendar Lines 12-14
Case Name: *Syed Nazim Ali v. Cisco Systems, Inc.*
Case No.: 22CV395396

1. Background

Three matters are presently before the court:

First, defendant Cisco Systems, Inc. ("Cisco") has filed a motion to dismiss the complaint with prejudice under Code of Civil Procedure section 391.4. Cisco filed the motion setting this hearing on August 28, 2023.

Second, plaintiff Syed Nazim Ali ("Ali") has filed a motion to transfer venue to Orange County. This motion was originally scheduled for a hearing on June 20, 2023 and then continued to September 19, 2023, in light of the then-pending motion by Cisco to declare Ali a vexatious litigant. On September 19, 2023, the court (Judge Kulkarni) continued the motion again, following the court's ruling granting the vexatious litigant motion and ordering the posting of a $250,000 bond, "and because there is no proof that Plaintiff has paid the necessary security."

Third, at the case management conference on September 19, 2023, Judge Kulkarni set this case for an order to show cause for a failure to appear by Ali. This OSC hearing was specially set to coincide with the hearing on the other two motions.

Based on a review of the parties' submissions, the court now GRANTS Cisco's motion to dismiss the complaint with prejudice. In light of that ruling dismissing the case, Ali's motion to transfer venue is DENIED AS MOOT, and the OSC regarding failure to appear is VACATED AS MOOT.

2. Motion to Dismiss

On May 16, 2023, the court heard Cisco's motion to declare Ali a vexatious litigant. The court granted the motion but held off on ordering Ali to post a security, because the court did not have a sufficient evidentiary basis upon which to order the $250,000 amount requested by Cisco. In an order dated June 1, 2023, after the receipt of supplemental submissions from the parties, the court granted the requested amount. Recognizing that $250,000 was quite a significant sum, the court allowed Ali 60 days from notice of entry of the court's order, rather than the customary 30 days, to post the security.

In its motion to dismiss, Cisco now demonstrates that it served notice of entry of the court's order on Ali on June 2, 2023, and that as of late August 2023 (more than 85 days after that notice), Ali still has not posted the required security. In his opposition to the motion, Ali fails to address the security issue at all. Instead, his arguments focus on the merits of his case, which are essentially the same arguments he made in his opposition to the vexatious litigant motion, and upon which the court already ruled in its May 16, 2023 order. In addition to filing an opposition to the motion to dismiss, Ali has filed an unauthorized surreply brief ("Plaintiff [sic] Response to Defendant [sic] Reply in Support of its Motion to Dismiss Plaintiff's Complaint with Prejudice"), which again fails to address the question of the posting of the security, and he has filed a set of exhibits ("Plainitff [sic] Exhibit A-E in Support Declaration

[sic] Supporting Merit of this Case"), which also focus on the merits of his causes of action rather than the issue of the security.

Because Cisco has established that Ali has failed to post the ordered security in accordance with Code of Civil Procedure section 391.3, the case is subject to dismissal under section 391.4. The motion is GRANTED.

3. Motion to Transfer / Order to Show Cause for Failure to Appear

Ali has moved to transfer this case—which he himself filed in Santa Clara County—to Orange County, based on the allegation that at least five judges of this court are "biased to support local mega tech giant and failed to deliver fair and equal justice to plaintiff for best interest of justice [sic]." (Memorandum at pp. 3:1-3, 3:15-5:20.) Because the court concludes that this case must be dismissed under section 391.4, the court DENIES AS MOOT his motion to transfer. Similarly, the court now VACATES the OSC for failure to appear as moot, as well.

IT IS SO ORDERED.

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