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: May 14, 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	23CV425445	Fortune Vieyra v. San Jose Day Nursery et al.	Click on LINE 1 or scroll down for ruling in lines 1-3.
LINE 2	23CV425445	Fortune Vieyra v. San Jose Day Nursery et al.	Click on LINE 1 or scroll down for ruling in lines 1-3.
LINE 3	23CV425445	Fortune Vieyra v. San Jose Day Nursery et al.	Click on LINE 1 or scroll down for ruling in lines 1-3.
LINE 4	19CV352403	Deanna Lacy et al. v. San Joaquin Regional Rail Commission et al.	Continued by stipulation and order to August 13, 2024 at 9:00 a.m.
LINE 5	19CV352403	Deanna Lacy et al. v. San Joaquin Regional Rail Commission et al.	Continued by stipulation and order to August 13, 2024 at 9:00 a.m.
LINE 6	19CV352403	Deanna Lacy et al. v. San Joaquin Regional Rail Commission et al.	Continued by stipulation and order to August 13, 2024 at 9:00 a.m.
LINE 7	19CV360748	John Doe 6 v. Doe 1 et al.	Click on LINE 7 or scroll down for ruling in lines 7 and 9.
LINE 8	19CV360748	John Doe 6 v. Doe 1 et al.	Motion to compel further responses to requests for production: parties to appear. This motion was originally calendared for May 28, 2024 but then apparently advanced to May 14, 2024 by mistake by the clerk's office, when the other two motions in this case (lines 7 and 9) were advanced. The court is inclined to hear this motion on June 4, 2024 instead, in light of the calendaring error.
LINE 9	19CV360748	John Doe 6 v. Doe 1 et al.	Click on LINE 7 or scroll down for ruling in lines 7 and 9.

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LINE #	CASE #	CASE TITLE	RULING
LINE 10	22CV398222	Cupertino Property Development I, LLC v. Chen Zhang et al.	Click on LINE 10 or scroll down for ruling.
LINE 11	20CV370667	Helena R. Chang et al. v. Angele J. Leong	Motion to substitute Mei Kuang Chang, personal representative of Helena Ru Chang, as the plaintiff in this case: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party will submit the proposed order for the court's signature.
LINE 12	20CV372864	Carlos S. Tovar et al. v. Oscar Tovar	Click on LINE 12 or scroll down for ruling.
LINE 13	23CV412294	Alex Yonas v. Equinox Fitness Palo Alto, Inc. et al.	Motion to be relieved as counsel: parties to appear. Under CRC 3.1362, the motion is supposed to be accompanied by a declaration (Form MC-052), but the court does not see such a declaration in the file.
LINE 14	23CV417122	Jodi Cordial v. Warren Family Investment Partnership LP et al.	OFF CALENDAR. The motion has been withdrawn.
LINE 15	23CV422606	Jane Doe et al. v. Union School District et al.	Petition for approval of compromise of minor's claim. Parties to appear in accordance with CRC 7.952.
LINE 16	23CV422606	Jane Doe et al. v. Union School District 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 1-3
Case Name: *Fortune Vieyra v. San Jose Day Nursery et al.*
Case No.: 23CV425445

I. BACKGROUND

This is an action by plaintiff Fortune Vieyra against San Jose Day Nursery ("SJDN") and Angela Gomez, an employee of SJDN (collectively, "Defendants"). This action appears to be directly related to a child custody case between Vieyra and Elizabeth Jorgensen (Santa Clara County Case No. 21CP000545 [the "Child Custody Action"]), in which Vieyra and Jorgensen have a fundamental disagreement not only over custody of their child, E.V., but also over E.V.'s gender identity. E.V. is currently four years old.[1]

According to the first amended complaint ("FAC"), E.V. attended SJDN's daycare for at least a year, during which time Defendants allegedly sided with Jorgensen and against Vieyra in affirming a male gender identity upon E.V., contrary to Vieyra's express wishes and instructions. (FAC, ¶ 8.) On October 4, 2022, Vieyra sent an email to SJDN expressing his concern regarding the handling of E.V.'s gender identity by SJDN staff. (*Ibid.*) On October 8, 2022, Vieyra sent a virtually identical email to Gomez. (*Ibid.*) The following year, from October 12, 2023 through November 2, 2023, Vieyra and Gomez exchanged a series of emails regarding E.V.'s gender identity. (*Ibid.*) The FAC alleges that Gomez held secret meetings with Jorgensen regarding the same issue, and that Defendants consistently favored Jorgensen, who is a white female, over Vieyra, an African-American male. (*Ibid.*) The FAC also alleges that Defendants' actions caused significant psychological harm and undue distress to E.V. (*Ibid.*)

Vieyra filed the child custody case in family court on September 8, 2021. Over two years later, on November 7, 2023, he filed the original complaint in this case, stating causes of action for: violation of parental rights; intentional infliction of emotional distress; civil conspiracy; negligence; fraudulent concealment; discrimination based on race in violation of the California Unruh Civil Rights Act; child abuse; and discrimination based on race and gender. On December 12, 2023, he filed the FAC, which identifies causes of action for: violation of parental rights; intentional infliction of emotional distress; civil conspiracy; negligence; fraudulent concealment; race discrimination; child abuse and discrimination; and breach of contractual obligations.

Currently before the court are three matters: a demurrer and motion to strike the FAC, filed by Defendants, and a "motion for protective order to ensure privacy and confidentiality," filed by Vieyra.

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[1] The court refers to the child as "E.V." based on the child's birth name. The court takes no position regarding the correct name for the child, which is apparently one of the disputes between the parents. The court surmises E.V.'s age from one of the exhibits to the "Amended Addendum" to the first amended complaint, which indicates that E.V. was "two weeks from turn[ing] 4 years old" on October 1, 2023.

II. PRELIMINARY ISSUES

A. Judicial Notice

In support of their motion to strike, Defendants request judicial notice of the FAC. As this pleading is already part of the record in this matter and is necessarily being considered by the court on Defendants' demurrer and motion to strike, the court DENIES this request as unnecessary.

Defendants indicate that they do not have access to the court files in the Child Custody Action. Accordingly, the undersigned has not accessed any of those files and takes judicial notice only of the *existence* of the Child Custody Action and whatever other information is contained in the parties' papers about that action.

B. Self-Representation

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

When one party is represented and the other is not, "[t]he judge should monitor to ensure the in propria persona litigant is not inadvertently misled, either by the represented party or by the court." (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284.) Nevertheless, "in propria persona litigants are not entitled to any special treatment from the courts. [Citation.]" (*Id.* at p. 1285.) "[W]e cannot disregard the applicable principles or law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal.App.3d 294, 303; see also *Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

C. Obligation to Meet and Confer

Counsel for Defendants has filed a declaration asserting that she attempted to comply with the statutory meet-and-confer requirements by sending a single letter to Vieyra. Under Code of Civil Procedure section 430.41, subdivision (a), the demurring party is required to meet and confer *in person or by telephone* with the party who filed the pleading in question for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised on demurrer. A party moving to strike must meet a similar requirement under Code of Civil Procedure section 435.5, subdivision (a). While it is apparent that the parties did not meet and confer as required by statute, "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer," nor is such a determination "grounds to grant or deny a motion to strike." (Code Civ. Proc., §§ 430.41, subd. (a)(4), 435.5, subd. (a)(4).) Thus, the court considers the demurrer and motion to strike on their merits.

III. DEMURRER TO THE FAC

A. Legal Standard

In ruling on a demurrer, the court 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.) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

B. Analysis

Defendants demur to the FAC on the grounds that it is uncertain and that it fails to state sufficient facts, pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f). (See Notice of Demurrer and Demurrer, p. 1:24-27.)

1. Uncertainty

Defendants first contend that the entire complaint fails to comply with rule 2.112 of the California Rules of Court. (Memorandum ("Defendants' Memo"), p. 2:22.) Rule 2.112 states: "Each separately stated cause of action, count, or defense must specifically state: [¶] (1) Its number (e.g., "first cause of action"); [¶] (2) Its nature (e.g., "for fraud"); [¶] (3) The party asserting it if more than one party is represented on the pleading (e.g., "by plaintiff Jones"); [¶] (4) The party or parties to whom it is directed (e.g., "against defendant Smith")."

Defendants are correct that the FAC does not label the causes of action with numbers or indicate the party to whom the individual causes of action are directed. (See FAC, p. 3, ¶ 10.) The FAC does use a list to identify the eight causes of action at paragraph 10, subsections (a) through (h). Nevertheless, because the FAC names multiple defendants, the failure to label the parties with respect to the eight different causes of action is problematic, albeit eminently curable. "[W]here the complaint contains substantive factual allegations sufficiently apprising defendant of the issue it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.) "Although inconvenient, annoying and inconsiderate, the lack of labels for plaintiff's causes of action does not substantially impair [defendant's] ability to understand the complaint, and a demurrer sustained on the ground of uncertainty without leave to amend should have been overruled. [Citations.]" (*Ibid.*)

Defendants further contend that the FAC is confusing and uncertain throughout. (Defendants' Memo, p. 3:2.) As a general matter, "demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [internal citations omitted].) "The label given a petition, action or other pleading is not determinative;

rather, the true nature of a petition or cause of action is based on the facts alleged and remedy sought in that pleading. [Citations.]" (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 1241 Cal.App.4th 498, 511.)

Nevertheless, even though the court almost never sustains a demurrer under Code of Civil Procedure section 430.10, subdivision (f), it will do so here with leave to amend, because Vieyra's multiple pleadings are uncertain and confusing: Vieyra has filed a four-page amended complaint, but he has also separately filed a 15-page "amended addendum" to the amended complaint that attaches 11 exhibits. The addendum purports to authenticate the attachments under penalty of perjury, but like the FAC itself, it does not identify the facts that support the stated causes of action. Some of the FAC's causes of action appear to be directed to issues that fall under the jurisdiction of the Family Division of this court, and that are presumably being addressed in the already-pending Child Custody Action. For example, the first cause of action for "Violation of Parental Rights" cites Civil Code sections 3003, 3022, and 3023, but there are no such sections in the Civil Code. The court assumes that these are citations to provisions of the Family Code, which are not appropriate for adjudication in the Civil Division of the court. Just as critically, with respect to all of the causes of action, it is unclear whether Vieyra purports to bring some or all of the causes of action *on behalf himself only or also on behalf of E.V.*, and whether one or more of the causes of action are being brought *against one or both of the named Defendants*. Indeed, it is not clear whether the gravamen of the FAC is injury to Vieyra or injury to E.V., as the FAC and "amended addendum" refer repeatedly to the psychological and emotional trauma *of E.V.*, intentional infliction of emotional distress *on E.V.*, "child abuse" *on E.V.*, negligence "caus[ing] harm *to [E.V.]*," and racial discrimination *against E.V.* In sum, the court concludes that the causes of action in the FAC (and addendum) are so uncertain as to be subject to a demurrer under section 430.10, subdivision (f).

The court SUSTAINS Defendants' demurrer to the FAC on the ground that it is uncertain, with 20 days' leave to amend.

2. Failure to State Sufficient Facts

Defendants further contend that none of the causes of action state sufficient facts under section 430.10, subdivision (e). (Defendants' Memo, p. 3:6-7.) While the court has found that the FAC is subject to demurrer on the ground of uncertainty, the court will briefly address this additional ground for demurrer.

Vieyra has filed five separate documents containing arguments in opposition to Defendants' demurrer and motion to strike. These include a "Declaration in Opposition to Defendant's Case Law References," a "Declaration in Opposition to Demurrer," a "Memorandum in Support of the Declaration in Opposition to the Demurrer," a "Supplemental Memorandum Addressing Errors in Defendants' Demurrer to Amended Complaint," and a "Supplemental Memorandum Addressing Errors in Defendants' Demurrer Memorandum." Many, if not most, of the arguments contained in these documents appear to be directed to the quality of Defendants' moving papers. But the question before the court on demurrer is the sufficiency of the pleading in question, not the quality of the motions and briefing. The court has difficulty understanding how the arguments in these five separate documents support the sufficiency of the allegations in the FAC. Nearly all of these arguments are conclusory statements asserting that the FAC is sufficient, without explaining why or how.

To withstand a demurrer, the pleader must plead sufficient facts to support the elements of the cause of action in question. Here, the FAC alleges the following facts, in summary: Vieyra learned that a staff member at SJDN referred to E.V. using male pronouns; Vieyra wrote a series of emails to SJDN personnel instructing them not to refer to E.V. with male pronouns or as a boy; SJDN personnel had conversations or meetings with E.V.'s mother, Jorgensen, without Vieyra's knowledge; and SJDN did not follow Vieyra's instructions. (FAC, ¶ 8.) As the court understands it, the crux of Vieyra's FAC is that SJDN had a duty to follow Vieyra's instructions rather than Jorgensen's instructions as to how to refer to E.V. But the FAC does not allege sufficient facts to establish that SJDN had such a duty.

By way of example, the FAC includes negligence among the listed causes of action. "An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 66, 673.) "The issue of whether a legal duty exists is an issue of law, not an issue of fact for the jury." (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.) Here, the FAC does not contain sufficient allegations—indeed, it does not contain *any* allegations—to support the notion that Defendants owed Vieyra an exclusive duty to follow his instructions regarding how to refer to E.V. Further, the FAC does not allege facts showing that Defendants' conduct was the proximate or legal cause of any alleged injuries suffered by Vieyra (or by E.V.). Thus, the FAC "does not state sufficient facts to constitute a cause of action" for negligence. (Code Civ. Proc., § 430.10, subd. (e).)

As a further example, the FAC lists race discrimination as a cause of action, referencing the Unruh Civil Rights Act (Civ. Code, § 51.) The general rule is that statutory causes of action (such as actions under the Unruh Act) must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)[2] Here, the FAC alleges: "Defendant SJDN and Gomez consistently favored communications and instructions from Elizabeth Jorgensen, a white female, over those from Plaintiff, an African-American male, as shown in [SEE EXHIBIT C-K]. This pattern of behavior demonstrates a clear bias and racial discrimination." (FAC, ¶ 8(e).) These allegations are not sufficient to withstand a demurrer because they do not allege *any facts* supporting the conclusion that SJDN favored communications and instructions from Jorgensen, or otherwise denied Vieyra full and equal accommodations, advantages, facilities, privileges, or services. The bare citation to nine attached emails is entirely inadequate, particularly given the absence of any identification of any part of these communications that evinces the alleged discriminatory animus.

The remaining causes of action listed in the FAC similarly lack factual allegations to support the legal conclusions asserted. Vieyra's declarations and memoranda filed in opposition likewise assert legal conclusions without the support of specific facts.[3]

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[2] The Unruh Act provides: "All person within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b).)

[3] The court reiterates that "[a] demurrer tests only the legal sufficiency of the pleading" (*Committee on Children's Television, Inc. v. General Foods Corp.*, *supra*, 35 Cal.3d at pp. 213-214.) Thus, on demurrer, the court considers

In short, even if the FAC were not subject to demurrer on the basis of uncertainty, it is still subject to demurrer on the basis of the failure of each cause of action therein to state sufficient facts. The court SUSTAINS the demurrer to the FAC with 20 days' leave to amend.

Normally, a plaintiff bears the burden of proving that an amendment would cure the defects identified on a demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; see also *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].) Here, Vieyra has not carried this burden—indeed, he does not even address leave for amend in his oppositions. But given that this is the first pleading challenge in this matter, the court still grants 20 days' leave to amend.

Vieyra is admonished as follows:

- The court does not grant leave to add new claims or parties. "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].)

- Should Vieyra file a second amended complaint, it must be a *single, unitary* pleading, without any separately filed addenda or supplements. The amended complaint may attach exhibits, but the exhibits must be attached to the pleading itself, not to a separate document.

- In addition, the second amended complaint, if filed, must comply with rule 2.112 of the California Rules of Court.

- For future motion practice, an opening memorandum, an opposition memorandum, and a reply memorandum should *each be single documents*, not multiple documents. The court will not consider multiple memoranda of points and authorities when there is supposed to be only one. In addition, there should be *one declaration per witness at a time*, not multiple, separate declarations filed at the same time by the same witness.

- Finally, the court notes that on May 9, 2024, well after the deadline for briefing on these matters, Vieyra filed two unauthorized surreply briefs in response to the demurrer and the motion to strike. The court has disregarded these improper filings and informs Vieyra that he must seek leave from the court before filing any surreply brief.

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only matters appearing on the face of the pleadings or matters that can be judicially noticed. (See *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) For this reason, material stated in Vieyra's declarations and memoranda cannot supplement the allegations in the FAC.

IV. MOTION TO STRIKE THE FAC

Because the court is sustaining the demurrer as to all of the causes of action, the court denies the motion to strike as MOOT. The court has already addressed Vieyra's compliance with rule 2.112 of the Rules of Court, which is one of the two grounds for the motion to strike. The court finds it unnecessary to address the request to strike the punitive damages allegations at this time.

V. MOTION FOR PROTECTIVE ORDER

Vieyra has filed a motion for protective order "to ensure privacy and confidentiality," but the motion does not address any specific information that calls for protection at this time. For example, Vieyra requests redaction of sensitive information, but he does not identify any information that needs to be redacted at the present moment. He asks for a "sealing of records," but he does not identify what those records are, and he does not apply the legal standard for sealing that is set forth in rule 2.550 of the California Rules of Court (including the express factual findings that the court is required to make). He seeks permission to "use pseudonyms for the minor and other parties," but the court has determined that it will refer to the minor as E.V., rather than by a full first or last name.[4] He also asks for an "in-camera review of certain sensitive evidence" but he does not identify what that evidence is.

Because the motion does not specify what, if anything, is needed under a protective order, the court DENIES the motion. At best, the motion is premature.

Finally, the court notes that with his moving papers, Vieyra has submitted a "Declaration for Additional Discovery," seeking to propound 516 specially prepared interrogatories, instead of the presumptive limit of 35. The court finds that this separate request is not fairly raised in the notice of motion and motion for a protective order, and so the court declines to address it. At the same time, the court will observe that 516 special interrogatories is unprecedented and will almost certainly be found to be unduly burdensome on the opposing parties. Although the court makes no ruling at this time, this quantity of interrogatories is unlikely to be allowed.

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[4] Ironically, it is Vieyra who has repeatedly referred to E.V. by the minor's full birth name in these papers.

Calendar Lines 7 & 9
Case Name: *John Doe 6 v. Doe 1 et al.*
Case No.: 19CV360748

In this case, plaintiff John Doe 6 alleges that he was sexually abused in 1989 by Pablo Boas, a youth pastor and saxophone teacher at the Jubilee Christian Center of San Jose (the "Church"). Doe 6 has brought causes of action for negligent supervision against the Church ("Doe 1"), and he also originally named Boas ("Doe 2") as a defendant. On June 21, 2021, Doe 6 dismissed Boas, leaving the Church as the only named defendant. This matter was originally set for trial on April 2, 2024, but that date was continued to July 1, 2024 at the request of the parties. The court "barely" found good cause to continue that trial date but ultimately did so, given the ongoing, last-minute discovery disputes between the parties. (See March 7, 2024 Order at p. 6.) Those discovery disputes are now the subject of the present motions before the court.

Doe 6 moves to compel answers to deposition questions from Boas and Boas's alleged accomplice, David Brimmer. Both Boas and Brimmer appeared for deposition but invoked the Fifth Amendment privilege against self-incrimination in response to nearly every question.

1. Motion to Compel Testimony from Boas

A party who invokes the privilege against self-incrimination must generally do so on a question-by-question basis. (*People v. Lopez* (1999) 71 Cal.App.4th 1550, 1555.) In this case, Doe 6 argues that Boas asserted the privilege "regardless of how innocuous the question was—such as questions about his residential or employment history or questions concerning crimes committed by others." (Memorandum, p. 3:7-9.) Boas responds that even these seemingly innocuous questions, placed in their proper context, could potentially incriminate him. For example, answers to questions about his residence or employment could constitute admissions that "link" Boas to allegations of sexual abuse in this case or other cases. (Opposition, p. 3:5-18.) In addition, questions concerning crimes "committed by others" could also theoretically incriminate Boas as an accomplice or accessory in other cases.

Boas notes that even though the allegations relate to events in 1989—nearly 35 years ago—the statute of limitations has been amended in recent years to allow prosecution of sexual abuse anytime within one year after the victim reports that abuse to law enforcement:

> (f) (1) Notwithstanding any other limitation of time described in this chapter, if subdivision (b) of Section 799 does not apply, a criminal complaint may be filed *within one year of the date of a report* to a California law enforcement agency by a person of any age alleging that the person, while under 18 years of age, was the victim of a crime described in Section 261, 286, 287, 288, 288.5, or 289, former Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(Pen. Code, § 803, subd. (f)(1).) Because of this open-ended limitations period, Boas argues that he is still subject to prosecution anytime someone accuses him of sexually abusing them. In response, Doe 6's counsel states that his client has no intention of reporting alleged abuse by Boas to any law enforcement agency and is willing to "execute a declaration and/or stipulation

under penalty of perjury reflecting same." (Supplemental Declaration of Jonathan E. Meislin, ¶ 4.)

Unfortunately, this is not sufficient. A review of the March 13, 2024 deposition transcript (rough, uncertified version) indicates that counsel's questioning of Boas at his deposition included wide-ranging questions about not just the alleged encounters between Boas and Doe 6, but also about numerous other alleged perpetrators of sexual abuse at the Church and numerous other possible victims of sexual abuse at the Church—abuse that was allegedly committed both by Boas and others. The court understands that Boas pleaded guilty to criminal sex charges in 1995, but it is completely unclear from the parties' papers whether these alleged or potential victims who were discussed during the deposition are ones whose criminal charges were fully resolved, or whether the list of individuals includes victims for which criminal charges were never resolved. *None of this is explained in Doe 6's papers*. What is clear is that Doe 6 was *not* one of those victims as to which criminal charges were resolved in 1995, given Doe 6's claim that he has never reported Boas's abuse to any law enforcement. Thus, even if Doe 6 is now willing to execute a declaration stating that he will not report abuse by Boas to law enforcement, that does not address the possibility that Boas's answers to deposition questions could still incriminate him in connection with other victims' allegations of sexual abuse.

Because Doe 6's papers fail to show that there is *no possibility* that Boas's depositions answers may subject him to criminal liability, the court DENIES the motion to compel.

2. Motion to Compel Testimony from Brimmer

The motion as to Brimmer is similar, with a few key differences: Brimmer is not accused of having sexually abused Doe 6 directly, but he is accused of being Boas's "accomplice." In addition, Brimmer was a member of the Church's Board of Directors, and he is accused of having sexually abused *other* victims at the Church, including Boas himself. In contrast to the motion against Boas, the court did not receive a timely opposition to the motion against Brimmer, but on May 7 (six days late), Brimmer's criminal defense attorney, Benjamin Stewart, attempted to file "objections" to the motion "to protect his client's Fifth Amendment rights." (Public Defender's Objections, p. 2:6-8.) The clerk's office initially rejected this filing, and it had to be refiled on May 10, 2024, just four days before the hearing.[5]

Stewart points out that Brimmer is *currently* facing criminal prosecution for similar conduct as that alleged here. Indeed, the "priors charged in Mr. Brimmer's pending matter allege that the crimes occurred at Jubilee Christian Center during a specified time frame. Answers regarding Mr. Brimmer's potential employment during that specified time frame could incriminate him by placing him at the scene of the alleged crime during the commission of the alleged crime." (Public Defender's Objections, p. 4:10-14.) Thus, it appears that questions about Brimmer's age, whereabouts on specific dates, employment, and activities at the Church, while seemingly innocuous, could potentially incriminate him in his ongoing criminal case.

[5] Doe 6 apparently received the objections on May 7, because he filed a reply the following day.

Doe 6 argues that "Brimmer is not under investigation for the acts giving rise to this lawsuit" (Reply, p. 2:11-12), but that is beside the point. Regardless of whether he may be criminally charged for Doe 6's claims of sexual abuse, the answers he is being asked to give in deposition could criminally implicate him in his *existing criminal case*—possibly (though somewhat unlikely) as evidence for the pending charge of sexual battery, and possibly (and far more likely) as evidence of his 11 prior convictions for sexual assault against minors.

Accordingly, the court DENIES the motion to compel further deposition testimony from Brimmer.

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Calendar Line 10
Case Name: *Cupertino Property Development I, LLC v. Chen Zhang et al.*
Case No.: 22CV398222

Plaintiff Cupertino Property Development I, LLC has moved to compel further responses to special interrogatories (Nos. 36-56) from defendants Chen Zhang and Chen Zhang, LLC. Defendants' opposition to the motion was due on May 1, 2024, but they did not file anything on that date. Eight days later, on May 9, 2024, defendants filed a "response," indicating that they had now provided their interrogatory responses to plaintiff, and that the motion was "moot." On the same date, less than three hours later, plaintiff filed a reply indicating that it was still seeking monetary sanctions against defendants for having had to bring this motion.

Having now reviewed the history of this discovery dispute, as well as the interrogatories at issue, the court agrees that the heart of the dispute is now moot, given that defendants have finally provided substantive answers to the special interrogatories. Nevertheless, the court also agrees with plaintiff that defendants did not act with substantial justification in delaying their responses and in failing to communicate appropriately with plaintiff to avoid unnecessary motion practice. The court finds that even though the number of special interrogatories exceeds the presumptive limit of 35, the additional interrogatories are reasonable in scope. Accordingly, the court orders defendants to pay plaintiff **$1,560** (six hours to prepare the opening papers at $250/hour, plus the filing fee) within 30 days of notice of entry of this order.[6]

Again, the motion is MOOT, except that the court GRANTS IN PART plaintiff's request for monetary sanctions.

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[6] The court does not award any amount for the time spent drafting the reply brief.

Calendar Line 12
Case Name: *Carlos S. Tovar v. Oscar Tovar*
Case No.: 20CV372864

This case is a dispute over real property at 11375 Susan Court, Gilroy, California. Plaintiff Carlos S. Tovar ("Carlos"), on behalf of himself and as guardian ad litem for Teresa M. Tovar (now deceased), filed a complaint for quiet title, elder abuse, and declaratory relief against his son, Oscar Tovar ("Oscar") in 2020. Oscar then filed a cross-complaint against Carlos for fraud and deceit, misrepresentation, "quiet title and declaratory relief," and partition in 2021. This case has been pending a long time. At one point, in May 2022, the parties reported that they had settled the case, but then that settlement apparently fell apart, and the case is now set for a trial on August 26, 2024.

Oscar has filed a motion for an interlocutory judgment of partition, arguing that the "undisputed material facts" show that he and Carlos each own 50% of the property, based on the grant deed for the property. In response, Carlos argues that he and Teresa own 100% of the property and Oscar owns 0%, notwithstanding the face of the grant deed, and that this unresolved dispute over the parties' ownership interests in the property is the whole reason for the quiet title, elder abuse, and declaratory relief causes of action in the complaint. Until these factual issues are resolved, he argues that any partition of the property would be premature. Indeed, Carlos argues that Oscar's effort to obtain an interlocutory judgment of partition at this time is an effort to "circumvent" the trial to settle ownership.

The court agrees with Carlos. Although neither party cites *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 142-143 (*Summers*), the outcome of this motion appears to be controlled by that decision. In *Summers*, the Court of Appeal held that "the partition statutes do not allow a court to order the manner of a property's partition . . . before it determines the ownership interests in the property." (*Id.* at p. 140.) That case also involved both partition and quiet title causes of action, and the Court of Appeal made it clear that "the manner of partition—i.e., a physical division or sale of the property—is to be decided when or after the ownership interests are determined, but not before." (*Id.* at p. 143.) Accordingly, it reversed the trial court's ruling "because [that ruling] ordered the property to be sold before the parties' interests were resolved." (*Ibid.*) Although Carlos does not cite *Summers*, he does cite the older case of *Harrington v. Goldsmith* (1950) 97 Cal.App.2d 599, 603, which appears to set forth the same principle that a partition cannot occur when the ownership interests remain disputed and unsettled.

Because the ownership interests in the Gilroy property need to be resolved first, before there can be an order of partition, the motion is DENIED.

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