SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Sunil R. Kulkarni Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2110

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LAW AND MOTION TENTATIVE RULINGS [AMENDED]
DATE: NOVEMBER 2, 2023 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV386893	Arellano v. Hero Adams, Inc., et al. (PAGA)	See tentative ruling. The Court will prepare the final order.
LINE 2	20CV372980	Masuda v. Lucile Salter Packard Children's Hospital at Stanford, et al.	See tentative ruling. The Court will prepare the final order.
LINE 3	23CV413864	Johnston v. G&P Enterprises, LLC dba Allied Trustee Services (Class Action)	See tentative ruling. The Court will prepare the final order.
LINE 4	19CV352557	Csupo, et al. v. Alphabet, Inc.	See tentative ruling. The Court will prepare the final order.
LINE 5	18CV328329	Menchaca v. Goodwill of Silicon Valley, et al.	Off calendar based on the agreement of the parties.

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LAW AND MOTION TENTATIVE RULINGS [AMENDED]

LINE 6	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See tentative ruling. The Court will prepare the final order.
LINE 7	21CV382972	Garcia, et al. v. Goodwill of Silicon Valley	Off calendar based on the agreement of the parties.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Gabriela Arellano v. Hero Adams, Inc., et al.*
Case No.: 21CV386893

This is an action under the Private Attorneys General Act ("PAGA") on behalf of the employees of Defendants Hero Adams, Inc. ("Hero Adams" of "Defendant"), OPA Management Group, Inc. ("OMG") and OPA Restaurant Group ("ORG"), alleging wage statement violations, meal and rest period violations, and failure to pay overtime wages.

Before the Court are Plaintiff Gabriella Arellano's motions to compel further responses from Defendant Hero Adams to (1) form interrogatories ("FI") (set one), nos. 12.1-12.7, 13.1, 13.2, 14.1, 14.2 and 15.1, (2) special interrogatories ("SI") (set three) nos. 1 and 2, (3) SI (set four), nos. 1-29 and (4) requests for production of documents ("RPD") (set two), nos. 1-84. Plaintiff seeks monetary sanctions in connection with all four motions. Defendant opposes the motions and requests monetary sanctions in its favor. As discussed below, the Court GRANTS Plaintiff's motions to compel and awards monetary sanctions in a reduced amount. Defendant's request for monetary sanctions is DENIED.

I. BACKGROUND

A. Factual

According to the allegations of the operative Complaint, Plaintiff was employed by the defendants from May 2019 to approximately September 2020 as an hourly-paid, non-exempt employee. (Complaint, ¶ 22.) Defendants own and operate restaurants including, but not limited to, Opa! Authentic Creek Cuisine, Mo's, Willard Hick's and Tac-oh! (*Id*., ¶ 21.) Plaintiff alleges that the defendants committed various wage statement violations, meal and rest period violations, and failed to pay all wages due, including overtime wages.

Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint on September 21, 2021, asserting a single claim under PAGA.

B. Discovery

On August 22, 2022, Plaintiff propounded her first sets of FI and RPD and first and second sets of SI on the defendants, including Hero Adams. Hero Adams provided responses on October 26, 2022, which Plaintiff characterizes as containing boiler-plate objections and not being fully code-compliant.

On February 9, 2023, Plaintiff took the deposition of Rosemary Garcia, the Person Most Knowledgeable ("PMK") regarding issues pertaining to joint employment for OMG. Nearly a month later, Plaintiff took the deposition of Molly Adams, the PMK regarding joint employment issues for Hero Adams.

On April 3, 2023, Hero Adams provided further responses to FI, set one, several of which were still comprised solely of objections based on its contention that it never employed Plaintiff at any time. On June 16, 2023, the Court held an informal discovery conference to address the continuing dispute over Hero Adams' obligation to produce documents and

information regarding the employees of the restaurants it manages. The Court instructed Plaintiff to re-serve her discovery requests using language specific to Hero Adams' management structure and then move to compel further responses.

On June 22, 2023, Plaintiff re-served SI, sets three and four and RPD, set two, on Hero Adams. Defendants took Plaintiff's deposition the following day and on June 25 and 28, Hero Adams served its responses to the SI and RPD, respectively. These motions followed.

II. MOTIONS TO COMPEL

A. Legal Standards

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 ("*Kirkland*").) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid*.)

A party propounding interrogatories and requests for admission may also move for an order compelling further responses if it deems an answer is evasive or incomplete and/or an objection is without merit or too general. (Code Civ. Proc., §§ 2030.300, subd. (a) and 2033.290, subd. (a).) The statutes do not require any showing of good cause in support of such a motion. (See *id*., §§ 2030.300 and 2033.290; see also *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221 ("*Coy*").) The burden is on the responding party to justify any objections or failure to fully answer. (*Coy, supra,* 58 Cal.2d at pp. 220–221.)

A. FI (Set One), Nos. 12.1-12.7, 13.1, 13.2, 14.1, 14.2 and 15.1

The interrogatories at issue seek the following information from Hero Adams relative to conduct alleged in the Complaint: witnesses, interviews, recorded statements, videos, photos, diagrams or models and reports (nos. 12.1-12.6); surveillance (nos. 13.1 and 13.2); violation of any statute, ordinance or regulation and a citation or charge for the same (nos. 14.1 and 14.2); and denials of material allegations and each special or affirmative defense (no. 15.1).

Hero Adams responded nearly identically to each of these requests, barring nos. 13.2 and 15.1, to which only objections were asserted, asserting various objections (vague and ambiguous, seek information protected by the attorney-client privilege or attorney work product doctrine, lack of relevance) and then substantively responding "No. Responding Party never employed Plaintiff at any time."

As a general matter, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence."

(CCP, § 2017.010.) When responding to an interrogatory, each answer must be as complete and straightforward as the information reasonably available to the responding party permits. (See Code Civ. Proc. § 2030.220, subd. (a).) If the responding party lacks sufficient knowledge to respond to an interrogatory, it shall so state "but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code Civ. Proc. § 2030.220, subd. (c).)

Plaintiff maintains that further responses to these interrogatories are warranted because a response stating "Responding Party never employed Plaintiff at any time" is evasive and incomplete because it operates as if the interrogatory is only seek information pertaining to Plaintiff when in fact information is being sought as to Plaintiff and "aggrieved employees" as defined in the Complaint- including "employees who worked for restaurants owned and operated by Defendants, which included but are not limited to, Opa! Authentic Creek Cuisine, Mo's, Willard Hick's and Tac-oh!" (*Id*., ¶ 21.) Further, Plaintiff continues, Hero Adams is obligated to provide all information reasonably available to it, which may include making inquiries to others, including the restaurants it manages that aggrieved employees may have worked out.

According to Plaintiff, Molly Adams, the CEO of both Hero Adams and OMG, testified at her deposition that her LLC is the majority shareholder in Hero Adams as well as each of the restaurants managed by it, and is also the majority shareholder in OMG and each of the restaurants it manages. She has set things up such that Hero Adams provides "management services" for Mo's, Willard Hicks, and Tac-oh! restaurants (all of which she owns entirely or holds a majority interest in) by contract for a fee, while OMG provides similar services to Opa! restaurants (all of which she similarly owns entirely or holds a majority interest in) by contract for a fee. Thus, Plaintiff explains, each of the restaurants managed by either OMG or Hero Adams pass their income directly to Ms. Adams' LLC.

Ms. Rosemary Garcia, designated by OMG as the PMK regarding the employment relationship between OMG and Hero Adams, and the VP of Human Resources for both OMG and Hero Adams, testified at her deposition that employees of both Hero Adams and OMG restaurants are governed by a single HR departments which she runs herself, that she provides training to managers for both entities together, and that the same policies applied to all sets of employees, including meal and rest break policies. The entities also share the same payroll and accounting departments, utilize a single new hire onboarding packet, use the same meal period waiver forms, employ the same criteria for providing performance evaluations and are headquartered at the same address, at which records relating to time-keeping, overtime, employee complaints, wage statements, worker's compensation records and other items for both entities are stored.

Based on the foregoing, it is Plaintiff's contention that the entities are one and the same, and that the employees of all restaurants they manage are *jointly* employed by Hero Adams *and* OMG. Given this, she argues that she is entitled to further responses and Hero Adams cannot avoid doing so merely by asserting that it did not employ her, which she contests is untrue.

In opposition, Hero Adams insists that its objections are justified because Plaintiff's requests are not reasonably calculated to lead to the discovery of admissible evidence and thus exceed the scope of admissible evidence given that it did not employ her. It asserts that

Plaintiff must meet a heightened standard of relevance with specific facts, and not mere generalities, because it is a non-party. The Court does not find Hero Adams' assertions persuasive.

While it is Hero Adams' contention that it was not Plaintiff's employer, and it correctly describes the legal test for determining whether a party should be considered a joint employer (see *Martinez v. Combs* (2010) 49 Cal.4th 35), Plaintiff is entitled to obtain discovery to evaluate or challenge this contention, even in the face of the testimony provided by Hero Adams' various PMKs at their depositions that appear to support Hero Adams' position. Further, Hero Adams does not become a "nonparty" merely based on its assertion that it is not Plaintiff's employer; the fact remains that Hero Adams is a named defendant in the Complaint who Plaintiff alleges jointly employed her with the other defendants and "exercised sufficient authority over the terms and conditions of [her] and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees." (Complaint, ¶¶ 22, 25.) Plaintiff is also not required to establish the merits of this allegation at this juncture; she is entitled to obtain the discovery necessary *to* do so, if it exists. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 551 ["California law has long made clear that to require a party to supply proof of any claims or defenses as a condition of discovery in support of those claims or defenses is to place the cart before the horse. The Legislature was aware that establishing a broad right to discovery might permit parties lacking any valid cause of action to engage in 'fishing expedition[s],' to a defendant's inevitable annoyance. [Citation.] It granted such a right *anyway*, comfortable in the conclusion that "[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation."].)

Given the allegations of the Complaint, the FI at issue plainly seek relevant information, and seek information not only relative to Plaintiff but also "aggrieved employees." (See FI, Set One, the term "incident" as defined by Plaintiff as "the allegations asserted by Plaintiff and the aggrieved employees.") Thus, by qualifying its responses to these requests as applying solely to Plaintiff, Hero Adams has not provided complete responses as required and cannot unilaterally limit the interrogatories in this way. To the extent that Hero Adams has objected on the grounds that these requests seek materials that are protected by the attorney-client privilege and the attorney work product doctrine, those objections are preserved and may be asserted in the further responses, where warranted. The remaining objections are overruled and Hero Adams is ordered to provide further responses to these requests.

B. SI (Set Three), Nos, 1 & 2

In these requests, Plaintiff seeks the contact information for all aggrieved employees who formerly worked at the restaurants managed by Hero Adams during a specified time period (no. 1) and those who currently do (no. 2). In response to these requests, Hero Adams objected that the responses are overbroad, that they violate third-party privacy rights and are not reasonably calculated to lead to the discovery of relevant information.

In connection with the motion, both parties generally make the same arguments as with the preceding requests, with Hero Adams insisting that these requests exceed the scope of permissible discovery because Plaintiff is seeking contact information for employees of the restaurant entities that it manages but never employed Plaintiff.

As an initial matter, the fact that Plaintiff was not employed by the other restaurant entities does not mean these requests are not seeking relevant information or are overbroad because as discussed above, this action is not limited to Plaintiff but *also* includes all "aggrieved employees," which is defined within the Complaint as including the employees of the other restaurant entities identified in the requests.

In determining whether a PAGA/class action plaintiff is entitled to discover the contact information of other employees, an instructive authority on the issue is the California Supreme Court's decision in *Williams v. Superior Court* (2017) 3 Cal.5th 531. In *Williams*, the court held that- as in a putative class action- the contact information for the *entire* group of employees a plaintiff seeks to represent under PAGA "is routinely discoverable as an essential prerequisite to effectively seeking group relief, without any requirement that the plaintiff first show good cause" regarding the scope of the impacted group. (*Williams* at 538; see also *id.* at 549 ["[t]he trial court had no discretion to disregard the allegations of the complaint making this case a statewide representative action from its inception"].) Moreover, the fact that "the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope." (*Williams, supra*, 3 Cal.5th at 551.)

Here, information about Plaintiff *and* the aggrieved employees is relevant not only to the issue of whether Hero Adams is a joint employer (either of Plaintiff or of any of these other individuals) *and* the ultimate merits of the case. Thus, the Court rejects Hero Adams' assertion that these request are overbroad and exceed the scope of permissible discovery. It does, however, agree with Hero Adams' that these requests implicate the privacy rights of the aggrieved employees whose contact information they seek. But these privacy interests can be protected through the distribution of a *Belaire-West* notice to aggrieved employees advising them of their right to opt-out Hero Adams' providing their contact information to Plaintiff. Accordingly, Hero Adams must provide further responses to these requests, without objections.

C. SI (Set Four), Nos. 1-29

With these requests, Plaintiff seeks the following: the total number of current and former employees of the restaurants managed by Hero Adams in California throughout the statutory period, as well as their dates of employment and rates of pay (nos. 1-6); Plaintiff's highest rated of pay, job titles and the identities of her supervisors (nos. 7-9); information regarding the locations owned, operated and/or managed by Hero Adams in California (nos. 10-15); information concerning job titles and positions labeled non-exempt, hourly, as well as the roles and tasks such positions were expected to complete off the clock (nos. 16, 17, 21, 22); and information concerning the policies and procedures in effect during the covered period (nos. 18-20, 23-29).

Hero Adams responded in essentially the same manner to these requests as it did to the SIs in Set Three, above. For the same reasons, the Court rejects Hero Adams' objections and finds that Plaintiff is entitled to further responses, without objections, as these requests undoubtedly seek relevant information.

D. RPD (Set Two), Nos. 1-84

Finally, this set of production requests consists of 84 requests in total which seek documents concerning Hero Adams' wage and hour policies, time and wage records for aggrieved employees, documents evidencing reimbursement of business expenses, complaints made by aggrieved employees regarding their working conditions, work schedules, agreements affecting working conditions and more. With these requests, Plaintiff seeks to obtain information evidencing the policies and practice promulgated by Hero Adams, as well as the manner in which these policies were applied to the aggrieved employees.

In response to these requests, Hero Adams asserted objections based on third-party privacy rights and relevance, explaining that because it never employed Plaintiff the requests exceed the scope of discovery permitted under the Discovery Act and because the restaurants from which Plaintiff sought confidential employee information (Willard Hicks Morgan Hill, LP, No Name Grill, LP, Tac-Oh! Morgan Hill, LP, Tac-Oh! San Jose, LP, Mo's TBJ Campbell, LP and Mo's TBJ Morgan Hill, LP (collectively, "Entity Restaurants")) were non-parties, the privacy rights of individuals employed by them were implicated. No substantive response, i.e., an agreement to comply or statement of inability to comply, was provided. (Code Civ. Proc., § 2031.210, subd. (a).)

As a threshold issue, it is undisputed that Hero Adams failed to timely serve its responses to RPD, set two. Generally, unless an extension is agreed upon, a party responding to an inspection demand has 30 days after its service to respond. (Code Civ. Proc., § 2031.260.) Here, the RPD were propounded on June 22, 2023 but Hero Adams did not serve its responses (via email) until July 28, 2023, over 30 days (plus the extension of time for electronic service) later. Failing to timely respond to an inspection demand *waives all objections* to it, including claims of privilege and work product. (Code Civ. Proc., § 2031.300, subd. (a).) However, the privacy rights of non-parties cannot be waived. (See *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554, 561-562.)

In its opposition to the motion to compel further responses to these requests, Hero Adams acknowledges that its responses were untimely, but requests relief from waiver of its objections based on mistake, inadvertence or excusable neglect. While a court may grant relief from this type of waiver, in order to obtain such relief, the party seeking it must not only have belatedly served substantially compliant responses, but must *also* file a *noticed* motion supported by a declaration showing that the delay in responding was the result of "mistake, inadvertence or excusable neglect." (Code Civ. Proc., § 2031.300, subd. (a).) Hero Adams' request for waiver is merely a statement in its opposition to the motion to compel and not part of a noticed motion before the Court. As such, the Court cannot grant this request and the objections asserted by Hero Adams' in its responses are deemed waived.

With regard to the issue of good cause, the Court finds that such cause exists as the requested items relate directly to the merits of Plaintiff's claims as well as Hero Adams' role in the employment of Plaintiff and the aggrieved employees. As Plaintiff notes, an "employer" is broadly defined to include "any person … who directly *or indirectly, or through an agent or any other person,* employs *or exercises control* over the wages, hours, or working conditions of [an employee]" (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 947 [internal quotations omitted, emphasis added]), and "[a]n entity that controls the business enterprise may be an employer even if it did not 'directly hire, fire or supervise' the employees" (*Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015, 1019, quoting *Guerrero, supra,* at 950). Further, "[m]ultiple entities may be employers where they 'control different

aspects of the employment relationship." (*Castaneda,* at 1019, quoting *Martinez v. Combs, supra,* 49 Cal.4th at 76.) The materials sought by the RPD at issue consist of the information necessary to apply the foregoing standards to the case at bar in order to ascertain who was responsible for employing Plaintiff and the aggrieved employees and thus good cause exists for their production.

As good cause exists and Hero Adams' objections are deemed waived, further responses to RPD, Set Two, are warranted. Because any objections have been waived, barring third-party privacy (which can be protected by a *Belaire-West* notice), in order to provide code-compliant further responses, Hero Adams must either state its intention to comply, in whole or in part, with the production demands, or represent its inability to comply (with an explanation) after affirming that a diligent search and reasonable inquiry has been made. (Code Civ. Code, § 2031.210, subds. (a)(1) and (2).)

E. Requests for Monetary Sanctions

As indicated above, both parties request monetary sanctions. Because the Court has determined that further responses to the requests at issue are warranted, Hero Adams' requests for sanctions are DENIED.

Plaintiff makes code-compliant requests for monetary sanctions against Hero Adams and its counsel in connection with each of her motions. Because Plaintiff prevailed on these motions, Defendant did not act with substantial justification in opposing them, and no other circumstances render an award of sanctions unjust, the Court will award sanctions. (Code Civ. Proc., §§ 2030.300, subd. (d), 2031.310, subd. (h).)

Plaintiff seeks $3,660 in connection with each of the four motions at issue, representing four hours of actual time preparing the motions and an anticipated two hours to review the oppositions and prepare replies and three hours to attend the hearing on the motions at a billing rate of $400 per hour. Plaintiff additionally incurred a $60 filing fee for each motion. The Court will not award sanctions for anticipated time and Plaintiff provides no support in connection with her replies establishing the actual amount of time spent on preparing those papers. The Court otherwise finds that the time actually spent by Plaintiff's counsel in drafting these motions and counsel's hourly rates are reasonable. Accordingly, the Court will award $6,400 in sanctions to Plaintiff (16 hours x $400/hr.), plus $240 in filing fees, for a total award of $6,640.

III. CONCLUSION

Plaintiff's motions to compel further responses are GRANTED. Plaintiff's request for sanctions is GRANTED IN PART. Hero Adams' request for sanctions is DENIED.

The parties shall meet and confer on a form of *Belaire-West* notice and notice procedure. If the parties encounter any issues in this regard, they may address them with the Court at the case management conference scheduled for November 30.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 2

Case Name: *Masuda v. Lucile Salter Packard Children's Hospital at Stanford, et al.*
Case No.: 20CV372980

This is a putative class action against Defendants Lucile Salter Packard Children's Hospital at Stanford ("LPCH"), Stanford Health Care and Stanford Health Care Advantage for purported violations of the Fair Credit Reporting Act ("FCRA"), specifically 15 U.S.C. sections 1681b ("Section 1681b") (b)(2)(A), 1681d ("Section 1681d") (a)(1) and 1681g ("Section 1681g") (c).

Before the Court is (1) Defendants LPCH and Stanford Health Care's (collectively, "Defendants") motion for a protective order and (2) deceased Plaintiff Emily Masuda's competing motion to compel Defendants to provide the class list and to allow discovery into the identity of absent class members to locate potential additional class representatives. Both motions are opposed. As discussed below, the Court GRANTS Defendants' motion for a protective order and DENIES Plaintiff's motion to compel.

IV. BACKGROUND

According to the allegations of the operative Complaint, Plaintiff worked for the defendants within the five years preceding this action. (Complaint, ¶ 24.) When she applied for employment, the defendants provided her with a disclosure and authorization to perform a background investigation and then performed the same. (*Ibid*.) However, the defendants failed to provide disclosure and authorization forms that complied with the FCRA, particularly its requirement that disclosures are "clear and conspicuous." Specifically, the disclosure was noncompliant because: (1) it was not in all capital letters; (2) it was not in boldface; (3) because it was part of an employment application, it was not a standalone document as required; and (4) it described multi-state law differences thereby reducing clarity as to what rights each applicant or employee possessed. Plaintiff additionally alleges that the disclosure form failed to comply with the FCRA because it did not provide an accurate summary of rights and the law under the act.

Plaintiff initiated this action with the filing of the Complaint on November 13, 2020, asserting the following causes of action: (1) failure to provide proper disclosure (violation of 15 U.S.C. § 1681b(b)(2)(A)); and (2) failure to give proper summary of rights (violation of 15 U.S.C §§ 1681d(a)(1) and 1681g(c)).

V. MOTION FOR PROTECTIVE ORDER/MOTION TO COMPEL

Plaintiff and Defendants have filed competing motions relating to the discoverability of the class list, including applicant contact information, as sought by Plaintiff's Amended Special Interrogatories ("SI"), Set One.[1] Plaintiff moves to compel Defendants to produce this list, while Defendants seek a protective order which provides that they need not respond to discovery relating to production of the class list (including applicant contact information). Alternatively, Defendants state that to the extent the Court is inclined to permit Plaintiff to

[1] Discovery has been stayed since November 1, 2022, when the parties agreed to do so in order to focus their efforts on resolving this case.

conduct some form of precertification discovery, they request that it be limited in scope to protect them from undue burden and expense.

A. Legal Standard

Defendants' motion is made pursuant to Code of Civil Procedure sections 2017.020 and 2030.090. "When interrogatories have been propounded, the responding party, and any other party or affected natural person or organization may promptly move for a protective order." (§ 2030.090, subd. (a).) "The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (§ 2030.090, subd. (b).) The protective order may provide "[t]hat the set of interrogatories, or particular interrogatories in the set, need not be answered." (§ 2030.090, subd. (b)(1).) A court is also permitted, pursuant to a motion for a protective order, to "limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., §§ 2017.020, subd. (a).) Generally, the party moving for a protective order bears the burden of demonstrating good cause for the order by explaining and justifying its objections to the discovery requests at issue. (See *Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 255 (*Fairmont*), citing *Goodman v. Citizens Life & Cas. Ins. Co.* (1967) 253 Cal.App.2d 807, 819.)

As for Plaintiff's motion, a party who propounds interrogatories may move for an order compelling response to those interrogatories where none has been provided. (Code Civ. Proc., § 2030.290, subd. (b); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.)

B. Discussion

A critical component of the context in which the instant motions are being made is that this putative class action is currently headless given the unexpected passing of named plaintiff Emily Masuda in April 2023. Plaintiff's counsel seeks the class list and contact information in order to locate potential additional class representatives.[2]

1. *Precertification Class Discovery, Generally*

This action has yet to be certified and "[p]recertification class discovery is not a matter of right." (*Starbucks Corp. v. Superior Court* (2011) 194 Cal.App.4th 820, 825.) While a class representative who is not a class member or is otherwise unqualified to serve as class representative may, in certain circumstances, move for precertification discovery for the purpose of identifying a new class representative" (*CVS Pharmacy, Inc. v. Superior Court* (2015) 241 Cal.App.4th 300, 308), before such discovery is permitted, the "trial courts must apply a balancing test and weigh the actual or potential abuse of the class action procedure against the potential benefits that might be gained." (*Ibid.*, internal citations omitted; see also *CashCall, Inc. v. Superior Court* (2008) 159 Cal.App.4th 273, 290.) This test,

[2] Both sides submit requests for judicial notice in connection with their papers. Because the materials at issue are court records and thus proper subjects of judicial notice, these requests are GRANTED. (Evid. Code, § 452, subd. (d).)

commonly referred to as the "*Parris* balancing test," requires the court to "expressly identify any potential abuses of the class procedure that may be created if the discovery is permitted, and weigh the danger of those abuses against the rights of the parties under the circumstances." (*Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 300-301.)

Defendants suggest that Plaintiff never had standing to file this action, but as held by the court in *CashCall*, there is no bright-line rule against allowing plaintiffs who never had standing to conduct precertification discovery for the purpose of identifying potential class members with standing. (*CashCall, supra,* 159 Cal.App.4th at 285-286, 290-291.) Nevertheless, Defendants maintain that the potential for misuse of class action procedure is "overwhelming" in part *because* Ms. Masuda never had standing to assert claims under the FCRA based on the standard articulated in the recent decision of *Limon v. Circle K Stores, Inc.* (2022) 84 Cal.App.5th 671, and her counsel will not be able to find a substitute representative with standing absent an improper and private inquiry. Plaintiff counters that *Limon* conflicts with other Court of Appeal decisions and therefore is not binding on this Court and, under the *Parris* balancing test, precertification discovery should be permitted as it is the efficient way of proceeding.

2. *The FCRA and Standing to Pursue a Claim*

The FCRA was enacted in 1969 because Congress found a "need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." (15 U.S.C. § 1681(a)(4).) Its stated purpose was "to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter." (15 U.S.C. § 1681(b).) (*Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal.App.4th 548, 559.)

Section 1681b of the FCRA "restricts the circumstances under which a consumer reporting agency may … divulge a consumer report, limiting its ability to disclose to those situations specifically enumerated in the statute 'and no other.' " (*Cisneros v. U.D. Registry, Inc., supra,* 39 Cal.App.4th at p. 561.) One permissible situation is when an agency has reason to believe a person it furnishes a report to "intends to use the information for employment purposes." (15 U.S.C. § 1681b(a)(3)(B).)

Paragraph (b)(1) provides that "[a] consumer reporting agency may furnish a consumer report for employment purposes only if-- [¶] (A) the person who obtains such report from the agency certifies to the agency that-- [¶] (i) the person *has complied* with paragraph (2) with respect to the consumer report …," and paragraph **(b)(2)** provides that no report be procured unless "**(i)** a clear and conspicuous disclosure *has been made* in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure,* that a consumer report may be obtained for employment purposes…." (15 U.S.C. § 1681b(b), emphases added.)

Congress wanted to ensure employers' compliance with the disclosure and authorization provision codified at paragraph (b)(2) in order to "secur[e] job applicants'

privacy rights by enabling them to withhold authorization to obtain their consumer reports," as well as to "provid[e] applicants with an opportunity to warn a prospective employer of errors in the report before the employer decides against hiring the applicant on the basis of information contained in the report." (*Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d 492, 496–497.) To ensure compliance with the statute,

> [t]he FCRA provides a private right of action against those who violate its statutory requirements in procuring and using consumer reports. The affected consumer is entitled to actual damages for a negligent violation. 15 U.S.C. § 1681*o*. For a willful violation, however, a consumer may recover statutory damages ranging from $100 to $1,000, punitive damages, and attorney's fees and costs. 15 U.S.C. § 1681n.

(*Syed v. M-I, LLC, supra*, 853 F.3d at 497.)

Defendants are also alleged to have violated Section 1681d(a)(1) and 1681g(c). Section 1681d(a)(1) provides that "[a] person may not procure or cause to be prepared an investigative consumer report on any consumer unless- [¶] (1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to the character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and such disclosure is [made in writing mailed/delivered to the consumer and advises the consumer of their right to request additional disclosures] …." Section 1681g lists the information that a consumer reporting agency is, upon request, required to "clearly and accurately" disclosure to the consumer. As relevant here, this includes a "[s]ummary of rights to obtain and dispute information in consumer reports and to obtain credit scores." (15 U.S.C. 1681g(c).)

What is required to assert standing[3] in California courts to pursue a claim under the FCRA? In the recently decided case of *Limon v. Circle K Stores, Inc.* (2022) 84 Cal.App.5th 671, the Fifth District Court of Appeal considered this specific issue.

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[3] The term "standing" generally refers to the prerequisites necessary to pursue a claim in federal court based on Article III of the U.S. Constitution. (*The Rossdale Group, LLC v. Walton* (2017) 12 Cal.App.5th 936, 944.) "Article III of the federal Constitution imposes a 'case-or-controversy limitation on federal court jurisdiction,' requiring [a plaintiff to allege] 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues.'" (*Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117, fn. 13, quoting *Gollust v. Mendell* (1991) 501 U.S. 115, 125-26.) "'There is no similar requirement in [California's] state Constitution.'" (*Rossdale, supra*, 12 Cal.App.5th at 944, quoting *Grosset, supra*, 42 Cal.4th at 1117, fn. 13 and citing Cal. Const., art. VI, § 10.) Thus, there is no requirement that a plaintiff establish the existence of a case or controversy, as that term has been defined by federal courts, to seek relief in state court. (*Ibid.*)

California courts are not bound by the requirements of Article III standing, and instead "are guided by 'prudential considerations.'" (*Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 370.) In California courts, the term standing is more broadly defined as "the right to relief in court." (*Rossdale, supra*, 12 Cal.App.5th at pp. 944-45 [internal quotation marks and citation omitted].) This right typically belongs to the "real party in interest." (See *Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 991, citing Code of Civil Procedure section

In *Limon*, the plaintiff alleged that the defendant employer violated the FCRA by failing to provide the required disclosures in connection with his employment application. The trial court sustained the defendant's demurrer to the plaintiff's class action complaint without leave to amend after finding that the plaintiff lacked standing because he failed to allege or suffer any injury. On appeal, the court considered whether and to what extent the plaintiff "must suffer an injury in order to have standing to sue under the FCRA in California courts." (*Limon*, 84 Cal.App.5th at 690.)

While the court acknowledged the Legislature's authority to confer standing on a class of individuals "irrespective of whether they suffered injury" (*Limon* at 695), it explained that "as a general matter, to have standing to pursue a claim for damages in the courts of California, a plaintiff must be beneficially interested in the claim he is pursuing." (*Id*. at 700.) Applying this general principle of standing to the FCRA and, in doing so analyzing the meaning of the relevant terms contained therein, the court concluded that the statute did not excuse plaintiffs from demonstrating a beneficial interest, which it equated to an injury-in-fact. (*Id*. at 697-698.) This requirement is met by an FCRA plaintiff, the court held, when he demonstrates that he suffered an injury that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." (*Id*. at 704, quoting *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361-362.)

In addressing injury, the plaintiff claimed that the noncompliant disclosure violated his interests in privacy and access to information, to which the defendant responded that he had received all information required under the FCRA and any "confusion" was insufficient to constitute injury because, in part, the plaintiff testified he would have authorized the defendant to run a consumer report even if he received an "indisputably compliant FCRA form." (*Id*. at 704.) The appellate court concluded that the plaintiff failed to plead an injury sufficient to demonstrate standing because "there was no injury to [plaintiff]'s protected interest in ensuring fair and accurate credit (or background) reporting" because he received a copy of the report, it did not contain injurious or false information, and he did not allege any material risk of future harm. (*Id*. at 705, 707.) The court further opined that based on his deposition testimony, the plaintiff "undoubtedly understood he was advising [defendant] he was willing to have it conduct a background check on him prior to being hired," and rejected his claim of an informational injury because "an informational injury that causes no adverse effect is insufficient to confer standing upon a private litigant to sue under the FCRA." (*Id*. at 705-707.)

Defendants maintain that based on the standard articulated in *Limon*, Plaintiff never had standing to pursue a claim under the FCRA because she did not suffer any cognizable injury. As a threshold consideration, Plaintiff argues that *Limon* conflicts with other Court of Appeal

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367.) Typically, a party lacks standing in California to assert a claim that belongs to another person; thus, it has often been said that "[a] real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law." (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.) It has also been stated that in order to have standing in California courts, "the plaintiff must be able to allege injury — that is, some 'invasion of the plaintiff's legally protected interests.' [Citation.]" (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175.)

and California Supreme Court decisions and therefore is not binding on this Court. This contention is wholly without merit.

In arguing that *Limon* is not binding, Plaintiff essentially argues that the decision improperly imposed an external limitation on standing by requiring an injury *in addition* to the violation of the plaintiff's legal rights, and directs the Court to the State Supreme Court's decision in *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, as well as the appellate decisions of *Jasmine Networks v. Superior Court* (2009) 180 Cal.App.4th 980, *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16 and *National Paint & Coating Assn. v. State of California* (1997) 58 Cal.App.5th 753 as establishing the impropriety of this conclusion. In these decisions, Plaintiff argues, the courts made clear that California law does not impose an Article III standing requirement, a concrete injury. There are several problems with Plaintiff's argument.

First, even if, as Plaintiff contends, the *Limon* decision was "wrong" because it misread California authorities such as *Jasmine*, it remains good law in the state as the California Supreme Court denied review and a request for de-publication of the decision. Second, the "[d]ecisions of every division of the District Courts of Appeal are binding upon … the superior courts of [the] state," with superior courts possessing the discretion to choose between which decision to follow only where there is more than one on a particular point of law and those decisions conflict. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456.) Here, *Limon* is the *only* California appellate decision which addresses the standing required to pursue an FCRA claim in California courts and, as good law, this Court therefore remains bound to follow it.

Third, even if the Court had the ability to reject the *Limon* decision on its merits, nothing in any of the authorities cited by Plaintiff warrants such an action. Plaintiff accurately describes these decisions as holding that the California Constitution does not impose the same standard as Article III with regards to standing; however, she ignores the fact that the *Limon* court *agreed* on this point, stating that "California is not constrained by the case or controversy provisions of Article III." (*Limon*, 84 Cal.App.5th at 697.) But it continued that while California courts have clearly rejected adoption of Article III standing, that did not mean that they had not recognized some *commonality* among standing requirements in the federal and California judicial systems. (*Ibid*.) In this regard, *Limon* explained, California courts have "also equated the 'beneficially interested' test for standing in California to the injury-in-fact prong of the article III test for standing in the federal courts." (*Id*. at 698, citing *People for Ethical Operation of Prosecutors etc. v. Spitzer* (2020) 53 Cal.App.5th 391, 407-408; *Synergy Project Management, Inc. v. City and County of San Francisco* (2019) 33 Cal.App.5th 21, 30-31, etc.) *Limon* then distinguished *Weatherford* and *National Point*, explaining that they merely stood for the proposition that the Legislature may authorize public interest lawsuits by a plaintiff even if that plaintiff has not been injured by the claimed violation, and *not* that a concrete or particularized injury is never required in order for a plaintiff to have standing to sue in California. With regard to *Jasmine*, the court noted that the decision involved interpreting Code of Civil Procedure section 367 and was not an attempt to "delineate the entire scope of California's standing doctrine" and thus did not answer the question of what was required to establish standing for an FCRA claim in California courts. (*Limon*, at 691.)

This court finds the authorities cited by Plaintiff distinguishable or of no import on the issue of FCRA standing in California for the same reasons as the *Limon* court. As for the

remaining decision cited by Plaintiff, *Connerly*, that case is distinguishable because it did not involve a claim under the FCRA but instead considered whether the plaintiff's status as a taxpayer granted him standing to challenge the constitutionality of various "affirmative action" statutes. Thus, this case is similarly of no help to Plaintiff.

3. *Plaintiff Lacked Standing to Assert Her Claims*

Limon controls and thus the question is whether Plaintiff ever had standing to assert claims under the FCRA based on the standard articulated in that case. The Court agrees with Defendants that the answer is no. A review of the allegations of the Complaint shows that they are nearly identical to the allegations found insufficient to establish standing to assert an FCRA claim in *Limon*. As in *Limon*, Plaintiff alleges Defendants' disclosure and authorization forms contained "extraneous provisions" and "extraneous information," including a liability release, causing the forms to fail to be "clear and conspicuous" and "clear and accurate" and further violate the "standalone disclosure" requirement. (Complaint, ¶¶ 25-26, 38-43.) Plaintiff also similarly pleads that the disclosures included an inadequate and incomplete summary of rights under the FCRA. (*Id*., ¶¶ 54-59.) Plaintiff alleges that *because* of these inadequate disclosures, she and "class members have been injured, including but not limited to having their privacy and statutory rights invaded in violation of the FCRA." (*Id*., ¶¶ 46, 60.)

As in *Limon*, there are *no* allegations of any concrete and particularized, *actual* and imminent injury to Plaintiff's right to receive fair and accurate credit reporting. She does not plead that she did not receive a copy of the report, the report contained defamatory, false or inaccurate information, or that she suffered an adverse employment action based on such information. (See *Limon, supra,* 84 Cal.App.5th at 706.) There are also no allegations that the forms confused Plaintiff such that she did not understand that she was authorizing a background check and would not have done so if she understood, or that the inclusion of a release resulted in any concrete and particularized, actual and imminent harm. (*Id*. at 706-707.) Accordingly Plaintiff lacked standing to maintain her FCRA claims in the same way that the plaintiff in *Limon* did.

4. *Parris* Balancing Test

How does Plaintiff's lack of standing effect the *Parris* balancing test analysis? The Court believes that this lack of standing and the nature of the claims at issue create a situation in which the potential abuses of the class action procedure significantly outweigh the rights of the putative class members. Here, Plaintiff *never* had standing to pursue claims under the FCRA and to permit Plaintiff to nevertheless use precertification discovery to locate a more appropriate representative would essentially condone a misuse of class procedure. There is also the question of whether Plaintiff's failure to plead standing to assert the claims at issue is a failure likely to be shared by all putative class members such that this lawsuit is unlikely to have a chance of proceeding as a class action. As explained in *Howard Gunty Profit Sharing Plan v. Superior Court* (2001) 88 Cal.App.4th 572, 581, the case from which the *Parris* balancing test was derived, a court should not be placed in the "anomalous position of approving solicitation of a lead plaintiff for a class action which the court might well have cause to refuse to certify at a later date."

As for the rights of the putative class members, this is not a situation in which those members cannot know whether or not they have standing without discovery from Defendants, as these individuals have full knowledge of whether the required disclosures were made to them. This is factually distinguishable from *CashCall*, *supra,* where the trial court's rule permitting precertification discovery of names and contact information of potential plaintiffs to find a new class representative was upheld in part because the putative class members (CashCall employees) would not otherwise have knowledge that their privacy rights had been violated by the defendant's monitoring of their phone calls with customers. Without such knowledge, the putative class members would be unable to obtain any relief for these alleged violations because they would have no reason to file suit. That is not case in this action, where the denial of a request to obtain precertification discovery of potential class members would not harm the rights of those individuals to pursue legal action in the future if they want to. (See *First American Title Ins. Co. v. Superior Court* (2007) 146 Cal.App.4th 1564, 1577-1579 [reversing order permitting precertification discovery of putative class members where plaintiff was never a member of class he sought to represent based on reasoning that allowing him to obtain discovery to cure this defect would be "inappropriate."]

Finally, in order to find a suitable class representative to replace Plaintiff, i.e., to ascertain whether an individual has standing to assert claims under the FCRA, as Defendants argue, Plaintiff's counsel would have to engage in an individualized line of questioning on personal and private issues to determine whether the information contained in an applicant's background check was false or inaccurate, defamatory, or otherwise led to an adverse employment action. This impinges on the privacy rights of these individuals and generally, the "privacy rights of putative class members add to the potential for abuse and undercut the benefits of precertification discovery." (*CVS Pharmacy, Inc.*, *supra,* 241 Cal.App.4th at 313.)

Given the foregoing, the Court concludes that in the case bar the potential abuses of the class action procedure significantly outweigh the rights of the putative class members. As such, Court will not permit Plaintiff to obtain precertification discovery of the class list and contact information for these individuals. Therefore, Plaintiff's motion to compel is DENIED and Defendants' motion for a protective order is GRANTED.

VI. CONCLUSION

Defendants' motion for a protective order is GRANTED.

Plaintiff's motion to compel is DENIED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 3

Case Name: *Johnston v. G&P Enterprises, LLC*
Case No.: 23CV413864

This is a putative class action alleging a single claim under the California Rosenthal Fair Debt Collection Practices Act, California Civil Code sections 1788–1788.33 ("RFDCPA"), against Defendant G&P Enterprises, LLC dba Allied Trustee Services, a debt collector.

Before the Court is Defendant's demurrer to the Complaint. As discussed below, the Court SUSTAINS the demurrer WITH 30 DAYS' LEAVE TO AMEND.

VII. BACKGROUND

According to the allegations of the operative Complaint, on various dates beginning on or about April 20, 2021, and continuing through the present date, plaintiff Robert Everet Johnston is alleged to have incurred one or more contractual obligations owed to Embarcadero Homes, Association, Inc. ("Embarcadero"). (Complaint, ¶ 13.) The alleged debt is a "consumer debt" as the term is defined under the RFDCPA. Plaintiff alleges that Embarcadero retained Defendant to collect on the debt. (*Id*., ¶ 15.)

Thereafter, in an attempt to collect the alleged debt, Defendant sent a collection letter to Plaintiff dated September 8, 2022. (Complaint, ¶ 16, Exhibit 1.) Plaintiff alleges that the collection letter did not include the notice required by the RFDCPA- specifically Civil Code section 1788.14.5(e)(1)- and that this is a routine practice of Defendant when attempting to collect on consumer debt that has been experienced by all putative class members.

Based on the foregoing, Plaintiff filed his complaint on April 11, 2023.

VIII. DEMURRER

A. Legal Standard

A demurrer tests the legal sufficiency of the complaint. (*Chen v. PayPal, Inc*. (2021) 61 Cal.App.5th 559, 568.) Consequently, it "reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice." (*Weil v. Barthel* (1955) 45 Cal.2d 835, 837; see also Code Civ. Proc., § 430.30, subd. (a).) "It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. … Thus, … the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958, internal citations and quotations omitted.)

In ruling on a demurrer, the allegations of the complaint must be liberally construed, with a view to substantial justice between the parties. (*Glennen v. Allergan, Inc.* (2016) 247 Cal.App.4th 1, 6.) Nevertheless, while "[a] demurrer admits all facts properly pleaded, [it does] not [admit] contentions, deductions or conclusions of law or fact." (*George v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 1112, 1120.) A demurrer will

succeed where the allegations and matters subject to judicial notice clearly disclose a defense or bar to recovery. (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 183.)

B. Discussion

Defendant demurs to the Complaint on the ground of failure to state facts sufficient to constitute a cause of action, arguing that no claim has been stated because the collection of fines, which it maintains was the subject of the collection letter at issue, does not amount to the collection of a consumer debt under the RFDCPA and therefore the notice requirement set forth in Civil Code section 1788.14.5 ("Section 1788.14.5") did not apply.[4]

Defendant explains that the debt that the subject collection letter was seeking to collect were homeowner association ("HAO") fines and contends that while no California case has discussed the issue of whether a "fine" constitutes a "debt" under the RFDCPA, federal authorities have done so and concluded that under the federal equivalent to the RFDCPA, the Federal Debt Collection Practices Act ("FDCPA"), they do *not* because such fines do not arise out of a consumer transaction.

The subject collection letter, attached to the Complaint as Exhibit A, advises Plaintiff that Defendant is seeking to collect "assessments and/or other charges" owed by Plaintiff on his real property in Stockton, but the subsequent pages clarify that it is not seeking to collect "assessments" but rather "fines" levied by the HOA.

The RFDCPA and the FDCPA protect consumers against fraudulent or unfair debt collection practices. As relevant here, subdivision (e)(1) of Section 1788.14.5 requires a "debt collector to which delinquent debt has been assigned" to include "in its first written communication with the debtor" a specified statement set forth in the statute. For the purposes of this section, "delinquent debt" is defined as a "consumer debt, other than a mortgage debt, that is part due at least 90 days and has not been charged off." (Civ. Code, § 1788.14.5, subd. (g).) A "consumer debt," in turn, means "money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction." (Civ. Code, § 1788.2, subd. (f).) Finally, a "consumer credit transaction" is defined as "a transaction between natural person and another person in which property, services, or money is acquired on credit by that natural person form the other person primarily for personal, family, or household purposes." (Civ. Code, § 1788.2, subd. (e).)

In making the argument that Plaintiff has failed to state a claim because fines levied by and HOA do not constitute a "consumer debt" under the RFDCPA, Defendant relies primarily on *Mlnarik v. Smith, Gardner, Slusky, Lazer, Pohren & Rogers* (N.D Cal. 2014) 2014 U.S. Dist. LEXIS 163448.[5] In *Mlnarik*, the plaintiffs owned property in Nebraska that was part of

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[4] Both parties submit requests for judicial notice in connection with their papers. As the requested items are all court records, they are proper subjects of judicial notice. (Evid. Code, § 452, subd. (d).) Consequently, Plaintiff's and Defendant's requests for judicial notice are GRANTED.

[5] While state courts can look to federal authority for guidance (see *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1432, fn. 6), federal authorities discussing the FDCPA are particularly useful here because the RFDCPA incorporates the majority of the

an HOA and were notified that they would be subject to fines for renting out their property to a third party- a violation of applicable covenants- if they did not correct the violation within six months. The plaintiffs elected not to do so, believing that the HOA lacked the authority to impose fines. The HOA ultimately filed a lien on the property for fines and the plaintiffs sued, alleging that the HOA violated the FDCPA and the RFDCPA by making various false claims in their letter advising them of the lien.

The HOA moved to dismiss the plaintiffs' claims, arguing that they failed to demonstrate that its alleged collection activities were made in connection with a "debt" or "consumer debt" as those terms are defined under the FDCPA and the RFDCPA. The court agreed, concluding that the fines did not so qualify because they did not "arise out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family or household purposes …." (*Mlnarik*, 2014 U.S. Dist. LEXIS 163448, *9.) Instead, they arose from the plaintiffs' *subsequent breach* of restrictive covenants, and not from their initial agreement to abide by the covenants at the time they purchased the property. Any promises made during the latter situation that could lead to an obligation to pay money (e.g., assessments) *would* qualify as a "debt" within the meaning of the FDCPA because they would have arisen out of a consumer real estate transaction, i.e., "a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family or household purposes." (*Id*., *9-10.) After making the foregoing conclusion, the court then held that the fines also were not "consumer debts" under the RFDCPA because the allegations relating to their collection by the defendant HOA did not sufficiently allege a collection arising from a transaction on credit, i.e., without paying for it, to acquire "property, services or money … for personal, family, or household purposes." (*Id*., *17, citing Civ. Code § 1788.2, subd. (e) and *Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 759.)

Defendant argues that similarly here, its collection efforts arose from the collection of fines, which do not involve debt incurred in a consumer credit transaction through which Plaintiff obtained money, services, or goods without paying for them. Consequently, it insists, the collection of fines is not covered by the RFDCPA. The Court agrees.

As stated above, the collection letter issued to Plaintiff, which is attached to the Complaint as Exhibit A, advises him on the first page that Defendant is seeking to collect "assessments and/or other charges" owed by Plaintiff on his real property in Stockton, while subsequent pages make clear that it is not seeking to collect "assessments" but rather "fines" levied by the HOA. Although Plaintiff alleges that the amounts sought to be collected by Defendant from him qualify as "consumer debt" under the RFDCPA (Complaint,¶ 15), and courts generally must accept factual allegations as true on demurrer, where facts allege in a complaint conflict with the contents of an attached exhibit, the contents of the exhibit take precedence. (*Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 245.) Here, a la *Mlnarik*, because Defendant was seeking to collect fines levied by an HOA, it was not collecting on a "consumer debt" arising from a credit transaction under the RFDCPA and thus Plaintiff has not stated a claim for violation of its terms.

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provisions of the FDCPA, aside from using an expanded definition of "debt collector" and a narrower definition of the term "debt." (Civ. Code, § 1788.17.)

As Defendant maintains, other courts which have addressed the issue of whether the collection of fines, generally (not just those levied by an HOA), give rise to a violation of the RFDCPA have uniformly held that it does *not*. (See, e.g., *Herrera v. AllianceOne Receivable Management* (S.D. Cal. 2015) 2015 U.S. Dist. LEXIS 79317, *17-18 [granting summary adjudication of RFDCPA claim arising from collection of traffic fines because such fines are not a consumer credit obligation]; *Russell v. Superior Court* (N.D. Cal. 2015) U.D. Dist. LEXIS 143871, *3 [traffic fines are not consumer transactions under the RFDCPA]; *Hupp v. Solera Oak Valley Greens Assn*. (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 140131, *10-11 [dismissing FDCPA claim arising from collection of homeowners association fines without leave to amend]; *Yazo v. Law Enforcement Systems* (C.D. Cal. 2008) 2008 U.S. Dist. LEXIS 93345, *6-7 [no FDCPA claim stated for collection of fines for failure to pay tolls]. This lends even further support to the conclusion that Plaintiff has not and cannot state a claim for violation of the RFDCPA based on Defendant's efforts to collect the HOA-levied fines.

In his opposition, Plaintiff argues that Defendant should be judicially estopped from taking the position that the monies sought to be collected from him are "fines" because, in a prior small claims lawsuit against him by the HOA, the fines were categorized as "homeowners' assessments and related collection costs" but Defendant apparently takes a different position now. The doctrine of judicial estoppel precludes a party from taking inconsistent positions in separate judicial proceedings. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) However, Plaintiff fails to demonstrate that the requirements of judicial estoppel are met, which consists of the following: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Id*. at 183.) Not only has Plaintiff not made such a demonstration, he could not if he tried because Defendant establishes that the small claims action he refers to was dismissed by the HOA and thus it was not successful in asserting a "different" position with regard to the nature of what it was attempting to collect from him.

Plaintiff also insists that FDCPA case law supports his position that the amounts sought to be collected from him qualify as a "debt" under the FDCPA and thus, because the RFDCPA incorporates its provisions, a violation of the FDCPA is a *per se* violation of the RFDCPA. But the cases Plaintiff cites in support of this proposition involved HOA *assessments* and *not* fines.[6] The *Mlnarik* court acknowledged that various courts had concluded that HOA

[6] Even if assessments *were* at issue, while they have been held to be "debt" under the FDCPA, the same cannot be said of the RFDCPA. Courts considering whether HOA assessments constitute a consumer credit transaction under the RFDCPA have concluded that the answer is "no." (See, e.g., *Dickson v. Century Park East Homeowner's Assn.* (C.D. Cal. 2021) 2021 U.S Dist. LEXIS 141845, *4 [explaining that "the obligation of a member of [a homeowner's association], … to pay assessments is not a promise to pay later for value to be received, but, rather, it is an obligation to pay the costs of ownership as those costs arise. The assessments simply do not involve a loan or credit to members of [a homeowner's association]. Nor do the assessments involve the acquisition of a product or service by a homeowner for family or household use. Therefore, neither the regular assessment nor the special assessment is a 'consumer credit transaction' for the purpose of the [RFDCPA]."]; also see *Durham v.*

assessments are consumer "debt" under the FDCPA because the promise to pay occurs when the debtor purchases the property and therefore they "arise" out of the consumer real estate transaction, and did not disagree with this proposition. (*Mlnarik, supra* at *10, citing *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC* (6th Cir. 2012) 698 F.3d 290, 293.) However, it distinguished the case before it, explaining that nothing suggested that the defendant's collection efforts pertained to HOA assessments. Instead, the court reasoned, while the plaintiffs *did* enter into certain contractual obligations when they purchased the property (covenants), the relevant promise that arose from the transaction was *not* the obligation to pay fines, but rather to not rent the property. (*Id.*) When that obligation was breached, the HOA imposed fines and consequently the resulting financial obligation arose not out of the purchase of the property, but the *subsequent* breach of other obligations made when it was purchased. Thus, the fines were not "debt."

Plaintiff additionally argues that the fines represent a "consumer credit transaction" because "[he] continued to live in the property without paying a contractual obligation the HOA claimed." (Opp. at 8:1-2.) But in order for debt collection activity to fall within the scope of the RFDCPA, "it must involve money due or owning, or alleged to be due or owing, by reason of a transaction in which property, services, or money *is acquired* on credit primarily for personal, family, or household purposes." (*Hagey v. Solar Service Experts, LLC* (94 Cal.App.5th 1303, 1309.) Here, Plaintiff did not acquire the subject property in which he "continued to live" on credit *from* the HOA, nor does he allege that the HOA provided him with any other property, service, or money for which he did not have to pay immediately. Thus, Plaintiff's argument is without merit.

In sum, Defendant's collection efforts in connection with Plaintiff involved the collection of fines, and fines do not involve any debt incurred in a consumer credit transaction through which Plaintiff obtained money, services, or goods without paying for them. As such, the RFDCPA was not implicated by those efforts and Plaintiff has not stated a claim thereunder. Consequently, Defendant's demurrer to the Complaint on the ground of failure to state facts sufficient to constitute a cause of action is SUSTAINED.

IX. CONCLUSION

Defendant's demurrer to the Complaint on the ground of failure to state facts sufficient to constitute a cause of action is SUSTAINED. While the Court thinks it is unlikely Plaintiff can amend to state a claim, the Court will give Plaintiff a chance to do. Therefore, Plaintiff has 30 DAYS' LEAVE TO AMEND.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Continental Central Credit (S.D. Cal. 2009) 2009 U.S. Dist. LEXIS 96760, * 18 [summary judgment granted on RFDCPA claim because HOA assessment does not arise out of a consumer credit transaction].) The requirement of "credit" is what makes the definition of "debt" narrower under the RFDCPA than the FDCPA and compelled the foregoing holdings.

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Calendar Line 4

Case Name: *Attila Csupo, et al. v. Alphabet, Inc.*
Case No.: 19CV352557

This is a putative class action for conversion and quantum meruit, alleging that defendant Alphabet, Inc.'s ("Google") Android operating system and mobile phone applications passively transfer data using class members' cellular data allowances without their consent.

Before the Court is Google's omnibus motion to seal materials filed in connection with Plaintiffs Attila Csupo, Andrew Burke and Kerry Hecht's motion for class certification, which is currently under submission. The motion was initially opposed by Plaintiffs, but in their response to Google's reply, they explain that as a result of the parties' negotiations during the meet and confer process, they now withdraw that opposition. As discussed below, the Court GRANTS the motion as modified by the parties' negotiations.[7]

X. MOTION TO SEAL

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) Confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to

[7] The Court notes that Plaintiffs have a "response" to Google's reply. While normally sur-replies filed without court permission are improper, the Court will allow Plaintiffs' sur-reply here. The Court agrees with Plaintiffs that by reaching this negotiated resolution for this motion to seal, they have not necessarily conceded any future challenges to Google's confidentiality proposals.

the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Discussion

As stated above, Google moves to seal various portions of the record in connection with Plaintiffs' motion for class certification and related filings which it maintains include its proprietary and sensitive business information, including information about its business practices, internal data logs, data systems and infrastructure. More specifically, Google seeks to seal the following three categories of information: (1) details pertaining to internal systems, specifically proprietary functionalities, data infrastructure, logs, and metrics related to Google's location features, Network Statistics data, Google GMS Core, Google's Clearcut pipeline, and Google's Android Device Configuration Service, (2) Google's business practices related to data collection and reference to internal documentation, and (3) materials containing or discussing information about Android devices' data and metrics collected by Google.

In its opening memorandum, Google asserted that the foregoing information, which is not other publicly disclosed, should be sealed because its disclosure would reveal sensitive business information to competitors and pose a cybersecurity risk from bad actors seeking to compromise its data sources.

Plaintiff initially opposed Google's motion in a brief filed on August 15, 2023, arguing that it was a "transparent effort to hide Google's wrongdoing from public view and avoid embarrassment- not to protect trade secrets or other commercially sensitive information." (Opp. at 4:2-4.) At the August 17, 2023, hearing on the motion for class certification, the Court instructed the parties to meet and confer over Google's proposed redactions and stated that the parties should consider (1) if any of the proposed redactions concerned content that is already public; (2) if Google could reconsider the proposed redactions of program names; and (3) if certain general descriptions of the technology at issue were sufficiently detailed to require sealing.

The parties subsequently met three times over the course of two weeks (on September 1, 8 and 19) and Google ultimately agreed to a substantially reduced number of redactions in connection with this motion, including all but two redactions in the parties' class certification and expert challenge briefs themselves. After discussing some of the rationales behind the remaining redactions, Plaintiff agreed to withdraw their opposition as it pertains to the remaining redactions.

The revised list of proposed redactions is set forth in detail on pages 2-11 of Google's reply brief. As Google maintains, courts routinely seal the type of information contained in the foregoing redactions, i.e., highly confidential information regarding internal systems, technologies, practices, and metrics, the disclosure of which would unfair advantage its competitors or pose security risks. (See, e.g., *See, e.g.*, *In re Google RTB Consumer Priv. Litig.* (N.D. Cal. 2022) 2022 U.S. Dist. LEXIS 227834, at *3-4 [sealing sensitive information regarding Google's internal logs and data sources]; *In re Google Inc. Gmail Litig.*, (N.D. Cal. 2013) 2013 U.S. Dist. LEXIS 138910, at *3 [sealing information about structures that Google has in place and the order in which emails go through these structures].) In line with these authorities, the Court concludes that sealing the aforementioned materials is warranted because: there exists an overriding interest that overcomes the right of public access to the

record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. (See Cal. Rules of Court, rule 2.550(d).) Therefore, Google's motion to seal, as modified by the parties' negotiations and described in Google's reply brief, is granted.

XI. CONCLUSION

Google's motion to seal, as modified in its reply brief, is GRANTED. Google must file promptly appropriately-redacted versions of the documents at issue in the public record, if that has not happened yet.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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Calendar Line 6

Case Name: *Temujin Labs, Inc., et al. v. Abittan, et al*
Case No.: 20CV372622

This action arises from the business dealings of: (1) Temujin Labs Inc., a Delaware corporation ("Temujin"); (2) a related Cayman Islands corporation; and (3) Temujin's co-founders, who go by the aliases of Lily Chao and Damien Ding.[8] These business dealings involve the development of Temujin as a financial technology company operating under the name "Findora."

Temujin alleges that Defendants and Cross-Complainants Ariel Abittan, Benjamin Fisch, and Charles Lu conspired to: (a) assert a false claim of ownership of its business; (b) misappropriate its trade secrets; (c) usurp and interfere with control over its assets, such as social media accounts; and (d) interfere with its relationships with investors and business partners. Mr. Abittan, a former business partner of Ms. Chao and Mr. Ding, filed a cross-complaint alleging, among other things, that Ms. Chao and Mr. Ding stole from and defamed him. Mr. Fisch and Mr. Lu filed a separate cross-complaint, asserting that Ms. Chao and Mr. Ding misrepresented a host of important facts about their business and activities to induce Mr. Fisch and Mr. Lu to work for Temujin.

Before the Court is Mr. Abittan's motion for terminating sanctions against cross-defendant Yuting Chen (a/k/s Tiffany Chen, a/k/a Lily Chao), which is unopposed. As discussed below, the Court GRANTS Mr. Abittan's motion.

XII. MOTION FOR TERMINATING SANCTIONS

Mr. Abittan request that the Court issue terminating sanctions, particularly an order striking Ms. Chen's answer (if any)[9] to his Cross-Complaint, entering a default judgment against her and setting a prove up hearing, based on her willful violation of Court orders compelling her deposition.

A. Legal Standard

Disobeying a court order is explicitly recognized as a "misuse of the discovery process." (Code Civ. Proc., § 2023.010, subd. (g).) "The trial court has broad discretion in selecting discovery sanctions, subject to reversal only for abuse. The trial court should consider both the conduct being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should attempt[] to tailor the sanction to the harm caused by the withheld discovery. The trial court cannot impose sanctions for misuse of the discovery process as a punishment. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992 [internal citations and quotations omitted].)

"The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. 'Discovery

[8] The Temujin entities, a related entity called Discreet Labs Ltd., Ms. Chao, and Mr. Ding are referred to collectively herein as the "Temujin Parties."
[9] No answer appears to have been filed by Ms. Chen to Mr. Abittan's Cross-Complaint.

sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.' If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. 'A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.'" (*Doppes*, *supra*, 174 Cal.App.4th at 992 [internal citations and quotations omitted].)

The sanction imposed "should not exceed that which is required to protect the interests of the party entitled to but denied discovery. Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.)

B. Discussion

This motion is preceded by repeated, unsuccessful efforts by Mr. Abittan to depose Ms. Chen. During prior meet and confer at the beginning of the year, Ms. Chen's counsel relayed to opposing counsel that her client[10] would not voluntarily sit for a limited deposition, claiming that she was not a party to the action. As a consequence of this assertion, the Court directed Ms. Chen to file a motion to quash summons and service of process and directed Mr. Abittan to file a motion to compel her deposition. On April 14, 2023, the Court issued an order on the foregoing motions, finding that Mr. Abittan was entitled to depose Ms. Chen, a cross-defendant in this action, in order to determine her identity and ascertain whether she is the person who allegedly caused the injuries he seeks to redress. However, the motion to compel was ultimately denied without prejudice such that Mr. Abittan could refile if Ms. Chen refused to attend her deposition after she was served with notice of the same.

On April 12, 2023, Ms. Chen was served with a deposition notice for May 11, 2023, a date selected based on the representation of Ms. Chen's then-counsel that her client would be available to be deposed that day. Ms. Chen did not object to the deposition notice but requested an interpreter.

After Ms. Chen took various actions that indicated she would not appear at her deposition, on May 2, 2023, Mr. Abittan filed an ex parte application seeking an order compelling Ms. Chen to appear at her deposition. On May 5, 2023, the Court denied the motion, concluding that whether Ms. Chen would appear at her deposition was a matter of speculation at that point in time. The Court advised that if Ms. Chen did not ultimately appear, Mr. Abittan could seek appropriate relief.

On May 11, 2023, Ms. Chen failed to appear at her deposition and did not respond to Mr. Abittan's counsel's subsequent inquiry as to her absence. Consequently, Mr. Abittan filed a motion to compel Ms. Chen to appear at her deposition and requested the Court impose

[10] Ms. Chen was served with summons in this action via text and publication in January 2022 and February 2022, respectively, pursuant to the Court's January 12, 2022 order allowing service through alternative means.

monetary sanctions against her. Ms. Chen did not oppose the motion. In an order dated August 16, 2023, the Court granted Mr. Abittan's motion in its entirety. Pursuant to this order, Mr. Abittan served Ms. Chen with a second notice of deposition; without any excuse or justification, Ms. Chen again failed to appear and has not paid the monetary sanctions. As a result, Mr. Abittan seek terminating sanctions against Ms. Chen, arguing that they are warranted given her repeated, willful violations of the Court's orders compelling her deposition. The Court agrees.

Ms. Chen indeed has repeatedly defied the Court's orders which have determined that Mr. Abittan is entitled to depose her and she must appear at the same. Less severe sanctions, including monetary sanctions, have not compelled Ms. Chen's compliance, and her behavior throughout the course of this process, including taking various actions to indicate she would not appear at her noticed deposition, failing to respond to Mr. Abittan's motions compelling her appearance and ultimately not appearing to be deposed, establishes the willfulness of her defiance. As stated above "[w]here a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.'" (*Doppes, supra*, 174 Cal.App.4th at 992 [internal citations and quotations omitted].) Such is the situation here and therefore the Court grants Mr. Abittan's motion.

XIII. CONCLUSION

Mr. Abittan's motion for terminating sanctions against Ms. Chen is GRANTED as follows: the Court enters default for Mr. Abittan on his Cross-Complaint against Yuting Chen.

The Court sets a prove up hearing for December 11, 2023 at 1:30 pm, at which time Mr. Abittan can present evidence supporting his cross-claims against Ms. Chen. (This is the same time and date as the other default prove-up hearing in this case.) Counsel and witnesses for Mr. Abittan can appear in person or remotely. To the extent there is documentary evidence to provide, the Court ask the parties to file such evidence in advance of the hearing.

The Court will prepare the order.

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