SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding
David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: December 5, 2023 TIME: 9:00 A.M.

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and reserve a date before you file your motion**. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Civil Local Rule 8C is in the amendment process and will be officially changed in January 2024.

Where to call: 408-882-2430
When to call: Monday through Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	23CV418376	AMIRABBAS KASHANIPOUR et al vs FAYETTE PROPERTIES, LLC. et al	FPI's Demurrer is SUSTAINED with 20 days leave to amend. Please scroll down to lines 1-2 for full tentative ruling. Court to prepare formal order.
2	23CV418376	KASHANIPOUR et al vs FAYETTE PROPERTIES, LLC.	FPI's Motion to Strike is MOOT. Please scroll down to lines 1-2 for full tentative ruling. Court to prepare formal order.
3	21CV377884	Jeffery Duncan vs Redwood Electric Group, Inc et al	Off calendar.
4	19CV355322	Tristan Muntsinger vs Liftoff Mobile, Inc. et al	Plaintiff's Motion to Compel Further Discovery Responses From Defendant Liftoff Mobile, Inc. is DENIED. The parties' cross motion for sanctions is DENIED. Please scroll down to line 4 for full tentative ruling. Court to prepare formal order.
5	21CV378850	Bobbi Rodriquez vs Diane Rodriguez	Plaintiff's motion to compel third party Linette Rodriguez to produce documents and appear for deposition is GRANTED. An amended notice of motion with this hearing date was served by U.S. mail on November 2, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) A deposition subpoena seeking "All text and email [sic] And cell phone records regarding communication with Dian Rodriguez referring to Bobbi Rodriguez" and for Linette Rodriguez to appear for deposition was personally served on third party witness Linette Rodriguez on April 8, 2023. Third party witness did not respond in any way to the subpoena. Accordingly, Linette Rodriguez is ordered to (1) produce documents and appear for deposition and (2) pay Plaintiff $450 in sanctions on or before January 31, 2024. Court to prepare formal order.
6	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Defendant Universal Protection Services, L.P. DBA Allied Universal Security Services' Motion to Compel Plaintiff's Further Responses to Request for Production of Documents (Set One) is GRANTED. Please scroll down to lines 6-8 for full tentative ruling. Court to prepare formal order.
7	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Defendant Universal Protection Services, L.P. DBA Allied Universal Security Services' Motion to Compel Plaintiff's Further Responses to Special Interrogatories (Set One) is GRANTED. Please scroll down to lines 6-8 for full tentative ruling. Court to prepare formal order.
8	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Defendant Universal Protection Services, L.P. DBA Allied Universal Security Services' Motion to Compel Plaintiff's Further Responses to Form Interrogatories-General (Set One) is GRANTED. Please scroll down to lines 6-8 for full tentative ruling. Court to prepare formal order.
9	22CV408210	Lawrence Tuggle, III vs Santa Clara Valley Medical Center et al	Motion withdrawn.
10	22CV408210	Lawrence Tuggle, III vs Santa Clara Valley Medical Center et al	Motion withdrawn.

11	18CV340229	ERASMO CONTRERAS vs FCA US LLC	Plaintiff's Motion for Attorneys' Fees and Costs is GRANTED, IN PART. Please scroll down to Line 11 for full tentative ruling. Court to prepare formal order.
12	21CV377880	Farhad Khorasani vs Balvinder Chadha et al	Plaintiff's Motion to Enforce Settlement is GRANTED. An amended notice of motion with this hearing date was served on Defendant by U.S. Mail on November 15, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The parties entered a written settlement agreement in July 2023 wherein they agreed that the court may retain jurisdiction under Code of Civil Procedure section 664.6. Defendant failed to make any payments under the settlement agreement, which also provides attorneys' fees to the party forced to move for enforcement of the agreement. Accordingly, there is good cause to grant the relief Plaintiff requests. Plaintiff shall prepare a form of judgment for $4,600 reflecting the $3,000 owed under the settlement agreement (¶1) and $1,600 in attorneys' fees. Moving party to prepare formal order.
13	21CV377884	Jeffery Duncan vs Redwood Electric Group, Inc et al	Off calendar.
14	21CV378850	Bobbi Rodriquez vs Diane Rodriguez	The parties are ordered to appear to confirm Defendant's complete compliance with paragraph 2 of the Court's October 19, 2023 order, which states: The Court CONTINUES Plaintiff's motion for terminating sanctions to December 5, 2023. If Defendant fails to appear for deposition as ordered in paragraph 1, above, the Court will find that to be yet another violation of a Court order and issue terminating sanctions, striking Defendant's answer, at the next hearing date. To be clear: there will be no more chances to comply."
15	22CV400956	Marilyn Rojas vs CARPIGIANI NORTH AMERICA et al	Defendant Thomas A Bailey dba JTB Distributors' Motion for Good Faith Settlement is GRANTED. An amended notice of motion with this hearing date was served by email on September 11, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The Court also finds that $1,000,000 is within a reasonable range/within-the-ballpark based on the totality of the circumstances and the possible award, if any, Plaintiff would receive at trial. Moving party to prepare formal order.
16	23CV412266	Joseph Nguyen et al vs Tuyen Nguyen et al	Plaintiffs' Motion for Trial Preference is GRANTED. An amended notice of motion with this hearing date was served by electronic mail on November 6, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) There is also good cause to grant this motion. Plaintiffs are in their 80s. Code of Civil Procedure 36(a) states the court *shall* grant this motion with this record. Court to prepare formal order.
17	22CV396331	Jon Balli vs Planned Parenthood Mar Monte, Inc. et al	Plaintiff's motion to compel is GRANTED, IN PART. The parties' cross motion for sanctions are DENIED. Please scroll down to line 17 for full tentative ruling. Court to prepare formal order.

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Calendar Line 1-2
Case Name: *Kashanipour et.al. v. Fayette Properties LLC et. al*
Case No.: 23CV418376

Before the Court is Defendant FPI Management Inc.'s motion to strike and demurrer to Plaintiffs' complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This case arises from a landlord tenant dispute concerning an alleged bed bug infestation. On November 3, 2022, Plaintiff, Amirabbas Kashanipour entered into a one-year lease agreement with Defendants, Fayette Properties, LLC, ("Owner") and FPI Management, Inc., ("FPI") for an apartment unit located at 2680 Fayette Drive, Mountain View, California, 94040, Unit #201 ("Subject Unit"). Amirabbas Kashanipour, Alireza Kashanipour, Fatemeh Akhacanyekta (an individual and Guardian ad Litem for Amirehsan Kashanipour, a minor), Amirsadegh Kashanipour (collectively, "Plaintiffs") reside at the Subject Unit, which Plaintiffs claim Defendants knew before December 2022 was infested with bedbugs.

On June 27, 2023, Plaintiffs filed suit against Defendants alleging: (1) Breach of Warranty of Habitability (Violation of Civil Code § 1941.1), (2) Breach of Warranty of Habitability (Health & Safety Code § 17920.3), (3) Negligence/Negligence Per Se (Premises Liability), (4) Nuisance, (5) Intentional Infliction of Emotional Distress, (6) Breach of Contract, (7) Unfair Business Practices (Violation of Business and Professions Code §17200, et. seq., and (8) Fraudulent Concealment. FPI demurrers and moves to strike portions of this complaint.

II. Legal Standard

A. Demurrer

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).) A demurrer for

uncertainty will be sustained only where the complaint is so deficient that the defendant cannot reasonably respond – i.e., the defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against them. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).)

The court treats a demurrer "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 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

B. Motion to Strike

Motions to strike are used to reach defects or objections to pleadings that are not challengeable by demurrer, such as words, phrases, and prayers for damages. (See Code Civ. Pro. §§ 435-437.) The proper procedure to attack false allegations in a pleading is a motion to strike. (Code Civ. Pro. § 436(a).) "The court may, upon a motion made pursuant to Section 435 [notice of motion to strike whole or part of complaint], or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading." (*Id.*) Irrelevant matters include immaterial allegations that are not essential to the claim or those not pertinent to or supported by an otherwise sufficient claim. (Code Civ. Proc. § 431.10.) The court may also "[s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. § 436 (b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc. § 437.)

C. Leave to Amend

Leave to amend must be allowed where there is a reasonable possibility of successful amendment. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [court shall not "sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment"]; *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1037 ["A demurrer should not be sustained without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment."].) The burden is on the complainant to demonstrate that a pleading can be amended successfully. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

III. Analysis

A. Demurrer

FPI demurs to Plaintiffs' first, second, fourth, fifth, sixth, seventh eight causes of action.

1. Breach of Warranty of Habitability and Breach of Contract

A breach of the implied warranty of habitability is a contractual cause of action. (See *Fairchild v. Park* (2001) 90 Cal.App.4th 919, at 924-925.) Plaintiffs must allege (1) the existence of a material defective condition affecting the premises' habitability, (2) notice to the landlord of the condition within a reasonable time after the tenant's discovery of the condition, (3) the landlord was given a reasonable time to correct the deficiency, and (4) resulting damages. (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297.)

The elements for a breach of contract claim are (1) the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach and (4) the resulting damages to the plaintiff. (*Bushell v. JP Morgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 921.)

FPI argues it is not a party to Plaintiffs' lease contract—it signed the lease agreement in the capacity of a designated agent for the Owner, thus Plaintiffs have failed to state these claims against FPI. Plaintiffs assert FPI's argument is one for discovery, not demurrer, but even if FPI's position is correct, FPI is a third-party beneficiary FPI obtained some benefit from the lease.

Where it is clear from the face of a contract that one has signed as an agent and that the principal was the contracting party, the agent is not liable. (*Barrett v. Hammer Builders, Inc*. (1961) 195

Cal.App.2d 305, 317.) An agent represents and acts for his principal. When an agent contracts in the name of his principal, the principal contracts and is bound, the agent is not. (*Zimmer Constr. Co. v. White* (1935) 8 Cal. App. 2d 672, 674.)

The lease attached as Exhibit A to the complaint makes clear that the lease is between the Owner, Fayette properties LLC, and Amirabbas Kashanipour. FPI is expressly and clearly listed as the designated agent for the Owner and the signatory on its behalf. The complaint lacks any allegations that the agent entered into the agreement on its own behalf or that FPI was the beneficiary of the lease agreement as a third-party beneficiary.

Accordingly, FPI's demurrer to Plaintiffs' first, second and sixth causes of action are SUSTAINED with 20 days LEAVE TO AMEND.

2. Nuisance

To assert a claim for private nuisance, Plaintiffs must allege (1) an interference with their use and enjoyment of their property, (2) that causes Plaintiffs to suffer substantial actual damage, (3) of such a nature, duration, or amount as to constitute unreasonable interference with the use and enjoyment of their property. (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-263, citations, italics, brackets, and quotation marks omitted.)

El Escorial Owners' Assn. v. DLC Plastering, Inc. (2007) 154 Cal.App.4th 1337 holds: "Where negligence and nuisance causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim." FPI relies on *El Escorial Owners* and argues Plaintiffs allege no separate set of facts to sustain a nuisance claim. The Court agrees.

Accordingly, FPI's demurrer to Plaintiffs' fourth cause of action is SUSTAINED with 20 days LEAVE TO AMEND.

3. Intentional Infliction of Emotion Distress

The elements of a prima facie case for the tort of intentional infliction of emotional distress are "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Conduct to be outrageous must be so extreme as to exceed all bounds of that

usually tolerated in a civilized community." (*Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1009, citation and ellipses omitted.)

Plaintiffs' allege Defendants' concealment of and intentional failure to abate the infestation is extreme and outrageous, that Defendants knew their outrageous conduct would result in Plaintiffs severe emotional distress, and Plaintiffs have suffered stress, humiliation, depression, fear of safety, and annoyance. (Complaint ¶¶ 129, 130, 131, 135.) FPI argues this is a standard habitability case, and the complaint fails to allege the nature or extent of the alleged emotional injuries.

Plaintiffs rely on *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057. The Court finds *Burnett* distinguishable because there, plaintiff alleged the lessor was actively negligent in refusing to remediate the problems cause by the excessive moisture and mold infestation on the premises and the court could not say, as a matter of law, that the contractual exculpatory clause shielded the lessor from liability. (*Burnett,* 123 Cal.App.4th at 1067-1068.)

Here, Plaintiffs allege that "sometime on or about December 2022, Defendants intentionally and willfully failed to remedy the issues raised by Plaintiffs by maintaining a company policy of apathy and/or denial" and that "Defendants failed to abate the bedbugs for extended periods of time until Plaintiffs were forced to vacate the subject Property." (Complaint ¶¶ 33, 129, 132.) However, unlike *Burnett*, Plaintiffs do not allege Defendants actively refused to rectify the problem or the duration in which they continued to refuse remedial measures.

Therefore, FPI's demurrer to Plaintiff's fifth cause of action is SUSTAINED with 20 days LEAVE TO AMEND.

4. Unfair Business Practice; Violation of B & P Code §§ 17200 et. seq.

Business and Professions Code section 17200 prohibits any "unlawful, unfair, or fraudulent business practices." (Bus. & Prof. Code § 17200.) The Unfair Competition Law ("UCL") covers a wide range of conduct. It embraces anything that can be properly called a business practice and that at the same time is forbidden by law. (*Korea Supply Co. v. Lockhead Martin Corp.* (2003) 29 Cal.4th 1134, 1143.) Under section 17200, a practice may be deemed unfair or deceptive even if not proscribed by some other law. (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 48.) There are three varieties of unfair competition: practices which are unlawful, unfair, or fraudulent. (*Cel-Tech Communications,*

Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 180.) Pursuant to Section 17200, unfair competition includes, "any unlawful, unfair, or fraudulent business act or practice, and unfair, deceptive, untrue, or misleading advertising…" (Bus. & Prof. Code § 17200.) FPI asserts the complaint lacks the required heightened specificity for a statutory claim and fails to identify how each Defendant allegedly violated the statute.

Plaintiffs' UCL claim is based on Defendants' violations of Civil Code sections 1941.1 and Health and Safety Code section 17920.3. The demurrer to the breach of warranty of habitability has been sustained as explained above. Therefore, these violations are not sufficient to support this claim.

Accordingly, FPI's demurrer to Plaintiffs' seventh cause of action is SUSTAINED with 20 days LEAVE TO AMEND.

5. Fraudulent Concealment

Plaintiffs allege Defendants knew of the widespread bed bug infestations at the Subject Property and Plaintiffs' Unit and intentionally concealed this information from them. FPI argues that the complaint lacks the required particularity for pleading a fraud claim.

While the particularity requirement which typically applies to fraud "necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered,' it is harder to apply this rule to a case of simple nondisclosure." For allegations of fraudulent concealment, the standard particularity requirement is relaxed. (See *Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.) Fraudulent concealment is a lack of action, thus only the general nature of the deceit needs be alleged. (*Ibid.*)

Plaintiffs allege that "[p]rior to sometime on or about December 2022, Defendants knew of widespread bed bug infestation at the Subject Property and Plaintiff's Unit. However, Defendants intentionally withheld this information from Plaintiffs" and that Defendants knew that multiple units in the complex were affected. (Complaint ¶¶ 156, 157.) These conclusory allegations are insufficient to allege that Defendants knew about bed bug problems at the time the unit was leased to the Plaintiffs.

Accordingly, FPI's demurrer to Plaintiffs' eight cause of action is SUSTAINED with 20 days LEAVE TO AMEND.

B. Motion to Strike

FPI seeks to strike Plaintiffs' requests for punitive damages and attorneys' fees. Given the Court's rulings sustaining FPI's Demurrer to Plaintiffs' first, second, fourth, fifth, sixth, seventh, and eight causes of action, FPI's motion to strike is MOOT.

Calendar Line 4
Case Name: *Tristan Muntsinger vs Liftoff Mobile, Inc. et al*
Case No.: 19CV355322

Before the Court is Plaintiff's Motion to Compel Further Discovery Responses From Defendant Liftoff Mobile, Inc. and for Sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

Defendant Liftoff Mobile, Inc. ("Liftoff") hired Plaintiff as a Software Engineer on February 29, 2016. (First Amended Complaint ("FAC"), ¶ 19.) Plaintiff had nearly nine years of relevant engineering work experience at the time he was hired. (*Id.*) In the summer of 2016, Plaintiff began suffering severe migraine headaches, which he attributes to Defendant's punishing work culture and schedule. (FAC, ¶ 20.) He informed Liftoff of his medical issues in 2016 and again in 2017 and was told there were not forms he needed to fill out to more officially inform Liftoff of this issue. (FAC, ¶¶ 20-21.) Despite his medical condition and grueling workload, Plaintiff excelled, regularly received praise for his work, was credited with 'ramping up' quickly, and recognized for his strong performance by receiving a maximum salary raise of 10% in 2017. (FAC, ¶ 22.)

In 2017, Plaintiff was officially diagnosed with chronic migraine headaches and prescribed several medications which caused severe side effects. (FAC, ¶ 26.) At the same time, Plaintiff's supervisor told Plaintiff his productivity needed to improve, or he would be fired. (FAC, ¶ 27.) Plaintiff complained to human resources, who told Plaintiff Liftoff would never fire him. (FAC, ¶ 28.) Plaintiff's supervisor criticized Plaintiff for taking too long to complete an assignment during a one-on-one meeting on July 24, 2017, then fired Plaintiff on October 17, 2017 for "low performance." (FAC, ¶¶ 29-30.) Plaintiff alleges that shortly after his termination, Plaintiff's former supervisor told Plaintiff's coworkers that Plaintiff was terminated for low performance. (FAC, ¶ 30.)

Plaintiff alleges he was fired because of his medical condition and disabilities. (FAC, ¶ 31.) He filed this action on September 20, 2019 and the FAC in Spring 2020, asserting discrimination under FEHA, failure to prevent harassment under FEHA, failure to engage in interactive process (FEHA), failure to provide reasonable accommodation (FEHA), retaliation (FEHA), and slander.

Plaintiff served special interrogatories on Liftoff in June 2023 seeking the names and contact information of software engineers similarly situated to Plaintiff who did not achieve the productivity goals but who were not fired. Plaintiff claimed he engaged in extensive meet and confer to avoid a motion to compel, but Liftoff refuses to provide the requested information.

II. Legal Standard

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party's option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

The California Constitution creates "a zone of privacy" that protects against unwarranted compelled disclosure of private or personal information that extends to financial information and to the details of an individual's personal life. (Cal. Const. art I, § 1; see also, e.g., *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552; *Life Technologies Corp. v. Superior Court* (2011) 197 Cal.App.4th 640, 651-655.) This protection extends to discovery issues related to both parties and non-parties. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 841 (plaintiffs); *Heda v. Superior Court* (1990) 225 Cal.App.3d 525, 528 (defendants); *Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 229 (third parties).) Where a zone of privacy is impacted by a discovery request, the trial court must consider the purpose of the information sought, the effect that disclosure will have on the affected persons and parties, the nature of the objections urged by the party resisting disclosure, and the availability of alternative, less intrusive means for obtaining the requested information. (*SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 754-755; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal.4th 1, 26.) The more sensitive the personal information sought to be disclosed, the more substantial the showing of need required. (*SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 755.)

III. Analysis

Defendant contends Plaintiff's poor job performance led to his termination—specifically, that Plaintiff failed to hit the productivity goals of 60 points per quarter for two consecutive quarters in 2017. Plaintiff contends other Liftoff engineers also did not hit this productivity goal for two (and sometimes three) consecutive quarters in 2017 and were not fired. Liftoff produced a document that reflects its assessment of the performance of Plaintiff in comparison to the other engineers on this team. To protect the privacy of Plaintiff's former coworkers, Liftoff redacted the names of those engineers. In special interrogatory no. 8, Plaintiff seeks the identity of those engineers. Liftoff refused to produce that information, "on the grounds that it seeks to violate the privacy rights of third parties under the California Constitution and the California Consumer Privacy Act."

The Court agrees with Plaintiff that information regarding employees similarly situated to Plaintiff who did not meet targets and were not fired is relevant to the case. The Court is concerned, however, that revealing the identity and contact information of the redacted employees' names reveals much more than their identities and telephone numbers. Unveiling these employees' identities necessarily reveals confidential employee performance evaluations that these employees reasonably expected would remain confidential as well as highly personal information regarding their physical, mental, and emotional capabilities and/or disabilities—information squarely in the "zone of privacy" all of us would expect our employers to keep confidential.

The Court believes this discovery can be conducted without identifying these employees by name and contact information. Additional discovery can be taken regarding these employees by maintaining a consistent nomenclature of "Employee A", "Employee B", and so forth in the documentation and interrogatory responses. If, after additional discovery, Plaintiff contends there is a need to depose or otherwise question these employees directly, Plaintiff will need to make a compelling showing, and the employees will need to be notified and provided an opportunity to object to their identities being revealed.

Accordingly, Plaintiff's motion to compel is DENIED.

The parties' cross motions for sanctions are DENIED. Each party made efforts to resolve this dispute and had substantial justification for bringing this highly sensitive issue to the Court for resolution.

Calendar Lines 6-8
Case Name: *Hugo Amaya et al vs The Permanente Medical Group Inc. et al*
Case No.: 21CV391498

Before the Court are Defendant Universal Protection Services, L.P. DBA Allied Universal Security Services' ("Universal") Motions to Compel Plaintiff's Further Responses to (1) Request for Production of Documents (Set One), (2) Special Interrogatories (Set One), and Form Interrogatories-General (Set One). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises out of the medical treatment and passing of decedent Hugo Amaya ("Decedent"). Plaintiff Karen Amaya is Decedent's sister. (SAC, ¶ 1.) Around August 6, 2021, Decedent contracted COVID-19 and he was admitted to Kaiser-San Francisco and then transferred to Kaiser-Santa Clara. (SAC, ¶ 9, 11.) The same day, Decedent granted power-of-attorney to Amaya. (SAC, ¶ 61.)

From October 2021 to January 26, 2022, Defendants constantly threatened to "pull the plug" on the Decedent. (SAC, ¶ 17.) On January 26, 2022, Defendants affirmatively ended Decedent's life without written and verbal informed consent from Amaya. (SAC, ¶ 15.) The Decedent had vital statistics when Defendants "pulled the plug" on his life support, ventilator, and ECMO machine. (SAC, ¶ 18.)

Universal supplied the Security Guards to The Kaiser Group. (SAC, ¶ 39.) Horton and Laureta worked for Universal and Amaya alleges, upon information and belief, they worked as independent contractors for The Kaiser Group on January 26, 2022. (SAC, ¶¶ 41-42.) Between 10 a.m. to 4 p.m., the Security Guards assisted other Defendants when they threatened to call the police on Amaya, grabbed her and kicked her out of Decedent's bedside. (SAC, ¶¶ 43, 180-181, 196.)

Prior to Decedent's passing, Amaya filed for a temporary restraining order, temporary and permanent injunctive relief, and equitable relief for Decedent to be transferred to another medical facility to be treated, however, it was denied. (SAC, ¶ 45.)

Amaya filed the initial complaint on November 12, 2021, asserting: (1) temporary restraining order; (2) temporary and permanent injunctive relief; (3) intentional infliction of emotion distress; (4) negligent infliction of emotion distress; and (5) negligence. On January 25, 2022, Amaya filed her FAC,

asserting: (1) medical malpractice-respondeat superior; (2) medical malpractice-negligence; (3) unconscionable injury; (4) negligence-lack of informed consent; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; (7) battery; (8) negligence; (9) temporary injunctive relief; and (10) permanent injunctive relief.

On February 14, 2023, Amaya filed her SAC, asserting: (1) respondeat superior; (2) medical malpractice-negligence; (3) unconscionable injury; (4) negligence-lack of informed consent; (5) intentional infliction of emotional distress; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; (7) civil battery; (8) civil assault; (9) negligent hiring, retention, training, and supervision; (10) wrongful death; and (11) violation of Title VI of the Civil Rights Act of 1964.

The Court sustained a large portion of Universal's demurrer and granted a portion of its motion to strike by order dated July 25, 2023. Amaya then filed her third amended complaint on August 15, 2023. Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., the Permanente Medical Group, Inc. Michelle Moore M.D. and Shefali Singla's Demurrer to Plaintiff's Third Amended Complaint is set to be heard on February 20, 2024.

On May 12, 2023, Universal served form interrogatories, special interrogatories, and requests for production of documents on Plaintiff, making Plaintiff's responses due on June 14, 2023. Plaintiff failed to timely respond. There was some confusion (again) on Plaintiff's part as to what discovery she was responding to, and Universal provided extensions of time for Plaintiff to respond. Plaintiff finally responded on August 21, 2023. Universal made many attempts to meet and confer, but Plaintiff both indicated supplemental responses would be forthcoming without a date certain and that her responses were already complete. This motion followed.

II. Legal Standard

Discovery is generally permitted "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." (Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall 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. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party's option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

III. Analysis

In its order granting co-Defendants' Kaiser's motion to compel, the Court stated:

> It appeared to the Court during argument that Plaintiff was both confused as to which Defendant she had produced certain discovery responses and as to her duty to respond to each Defendant's discovery separately. To the extent the Court's interpretation of Plaintiff's comments was correct, the Court makes clear here that Plaintiff must respond to each Defendant's discovery requests—even if Plaintiff believes the requests to be redundant. Plaintiff sued multiple defendants; each is entitled to conduct discovery into Plaintiff's claims in compliance with the Code of Civil Procedure.

Nevertheless, Plaintiff's primary argument in her oppositions to each of these motions is that she has already produced information to Kaiser. These are not Kaiser's motions to compel, these are Universal's motions to compel. Plaintiff chose to sue numerous defendants, each defendant is entitled to conduct discovery. Plaintiff could have sought an agreement amongst herself and the defendants, moved for a protective order, or otherwise sought relief from the Court to try and streamline discovery. She did none of those things. She cannot unilaterally decide to produce discovery in response to one—or even a group of defendants—and not to others based on the erroneous assumption that each defendant has access to the other's discovery.

The Court also studied the meet and confer record and finds Plaintiff failed to meet the requirements under the Code of Civil Procedure to meet and confer. Plaintiff could have received clarification regarding the two definitions she seems to believe are vague (the Court disagrees and overrules those objections) and perhaps even engaged in a conversation regarding ways to streamline discovery. She simply did not do so. If Universal had sought its attorneys fees and costs, the Court would have been well within its discretion to grant sanctions on that basis alone. Code of Civil Procedure section 2023.020 states: "the court *shall* impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as result of that conduct." (Emphasis added; see also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448 (failure to participate in meet and confer process in good faith is independent discovery abuse for which sanctions are authorized by statute); *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 843, 879-880 (substantial monetary sanction appropriate for failure to cooperate

in setting protocol for expert inspection as ordered).) This monetary sanction is mandatory regardless of how the court rules on the offending party's motion. (Code Civ. Proc. §2023.020.) The Court strongly cautions Plaintiff to engage in genuine meet and confer in the event further discovery issues arise.

The Court has reviewed each of the separate statements and finds that Plaintiff's responses are incomplete, vague, and sometimes confusing. The code requirements set forth above are clear. Plaintiff has not complied with them.

Accordingly, Plaintiff is ordered to produce supplemental, code compliant, verified responses to each of the discovery requests set forth in Universal's separate statements within 30 days of service of this formal order.

Calendar Line 11
Case Name: *ERASMO CONTRERAS vs FCA US LLC*
Case No.: 18CV340229

Before the Court is Plaintiff's Motion to Compel Further Discovery Responses From Defendant Liftoff Mobile, Inc. and for Sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a lemon law case. On August 2, 2017, Plaintiff purchased a new 2016 RAM 1500 ("Vehicle") for $59,731.80, inclusive of fees, taxes, and finance charges. Thereafter, Plaintiff experienced engine issues, including a cooling system leak, soot accumulation in the Vehicle's particulate filter which required a replacement of the vehicles entire fuel system.

Consumer Law Experts, PC ("CLE") agreed to take Plaintiff's case on a contingency fee basis. During the litigation, CLE engaged in written discovery; produced the Vehicle for inspection; defended Plaintiff's deposition; attended court mandated case management conferences, informal discovery conferences, and post-mediation status conferences; met and conferred regarding Defendant's document production; and moved to compel further document production. Ultimately, CLE obtained Vehicle repurchase, civil penalties, and a stipulation that Plaintiffs are the prevailing party.

The following CLE attorneys worked on this matter: (1) Jessica Anvar (2.2 hours @ $525/hour), (2) Jordan G. Cohen (24.8 hours @ $510/hour), (3) Rodney Gi (60.6 hours @ $475/hour), (4) Corinna Jiang ($325/hour), (5) Vanessa Oliva (.9 hours @ $410/hour), (6) Diana Rivero (9.5 hours @ $415/hour), and (7) Matt Xie (1.2 hours @ $375/hour). The following CLE paralegals worked on this matter: Kathy Carreno (1.9 hours @ $175/hour), Crystal Orona (.5 hours @ $175/hours), Clarence Serrano 1.9 hours @ $175/hours). The total fees CLE seeks is $48,102.00, reflecting 103.5 hours of billable work during the four years the case was pending. Plaintiff seeks $8,349.30 in costs, and an additional $3,672 in attorneys' fees for preparation of its reply in support of this motion for a grand total of $60,123.30 in fees in costs.

II. Legal Standard and Analysis

An attorneys' fee award to the prevailing party is mandatory under the Song-Beverly act: "If the buyer prevails in an action under this section, the buyer shall be allowed the court to recover as part of

the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code §1794(d); *Wohlgemuth v. Catepillar, Inc.* (2012) 207 Cal.App.4th 1252, 1262.) A prevailing buyer is also entitled to reasonably incurred costs. (Civ. Code §1794(d).)

A fee award need not be proportional to the amount recovered, but it must be reasonably incurred. (*Robertson v. Fleetwood Travel Trailers of California, Inc.*, 17 Cal.4th 985, 820 (1998); *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 164 (2006); *McKenzie v. Ford Motor Company* (2015) 238 Cal.App.4th 695, 703; *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 152; *Christian Research Inst. V. Alnor* (2008) 165 Cal.App.4th 1315, 1320.) The U.S. Supreme Court has described the lodestar method as the guiding light of fee-shifting jurisprudence and has established a strong presumption that the lodestar represents the reasonable fee. (*City of Burlington v. Dague* (1982) 5050 U.S. 557, 562.) To determine the lodestar figure, the starting point is the calculation of the reasonable rate for comparable legal services in the local community for non-contingent lawyers of the same type, multiplied by the reasonable number of hours spent on the case. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) A party who qualifies for a fee should recover for all hours reasonably spent unless special circumstances would render an award unjust. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 632-633.)

The first step is to determine the number of hours reasonably expended in the litigation. (*Serrano v. Priest* (1971) 20 cal.3d 25, 48, fn. 23.) The reasonable hours expended can also include the time spent preparing and litigating the fee application. (*Serrano v. Unruh* 32 Cal.3d at 639.) The next step is to determine reasonable rates. Attorneys' rates are reasonable if they are within the range of rates charged by private attorneys of similar skill, reputation, and experience for comparably complex litigation. (*See, e.g. Bihun v. AT&T Info. Sys.* (1993) 13 Cal.App.4th 976, 997.) The court may also rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate. (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.)

Once the lodestar amount if determined, the court may increase that amount by a multiplier depending on the result obtained, litigation risks, novelty and difficulty of the legal and factual issues

involved in the case and the skill exhibited by counsel. (*In re Consumer Privacy Cases,* 175 Cal.App.4th 545, 556.) The Court may also decrease the lodestar amount. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 840.)

III. Analysis

Defendant does not dispute Plaintiff is entitled to fees and costs under the Song-Beverly Act. Defendant does dispute Plaintiff's counsels' billable rates and the number of hours spent on the case. The Court reviewed the billing records attached to the Declaration of Jordan G. Cohen at Exhibit I and the information provided in paragraphs 6 and 7 in the Supplemental Declaration of Jordan G. Cohen. "The verified time statements of attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of Cal. St. Univ.* (2005) 132 Cal.App.4th 359, 396; *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

The Court finds the rates charged reasonable for this Silicon Valley market. After studying the billing records, the Court also finds the time spent by counsel on this file to be reasonable. However, the amount of time spent on the motion for attorney fees, which motions CLE files and opposes with great regularity, is too much in the Court's view. Accordingly, the Court will reduce the fees by the amount spent on the reply and award $48,102.00 in attorneys' fees. Defendant did not seek to tax costs, thus the Court awards $8,349.30 in costs.

Calendar Line 17
Case Name: *Jon Balli vs Planned Parenthood Mar Monte, Inc. et al*
Case No.: 22CV396331

Before the Court is Plaintiff's motion to compel and for sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a wrongful termination action. Plaintiff is a 48 year old Hispanic male who has several disabilities, including Tourette's syndrome with coprolalia, major depression, epilepsy, and general anxiety. (Amended Complaint, ¶ 7.) Plaintiff was employed by Defendant Planned Parenthood Mar Monte, Inc. ("PPMM"). (Amended Complaint, ¶ 8.) Defendants hired Plaintiff on October 7, 2019 as VoIP Architect with job responsibilities that included general information technology, ensuring data security, design and implementation of Defendants' next generation Unified Communications as a Service, vendor selection and management, data analysis, and resign of Defendants' call center. (Amended Complaint, ¶ 24.) Plaintiff had more than 20 years of relevant work experience at the time he was hired. (*Id.*) Plaintiff put his supervisor on notice regarding his disabilities and asked for understanding and reasonable accommodations, but Defendants failed to accommodate Plaintiff, and, instead, criticized Plaintiff's job performance, placed him on forced administrative leave, and ultimately terminated his employment. (Amended Complaint, ¶¶ 37-41.)

Plaintiff's direct supervisor was also volatile and abusive. (Amended Complaint, ¶¶ 43-44.) On November 15, 2019, Plaintiff discovered a data breach and reported it to his direct supervisor. (Amended Complaint, ¶ 46.) Plaintiff's supervisor did not want to report the breach and threatened Plaintiff's job if he reported the breach. (Amended Complaint, ¶¶ 46-48.) After Plaintiff was given a full time salaried position, he reported the data breach to several in senior management, including Defendants' interim general counsel and chief compliance officer. (Amended Complaint, ¶¶ 49-55.) Immediately thereafter, Plaintiff was terminated. (Amended Complaint, ¶ 56.) PPMM contends the administrative leave and ultimate termination resulted from Plaintiff's childish behavior and was completely unrelated to Plaintiff's reporting of the data breach, which PPMM took seriously.

Plaintiff filed this action on March 24, 2022 and filed an amended complaint a year later on March 24, 2023, asserting (1) retaliation (Labor Code § 1102.5), (2) Retaliation (Labor Code § 98.6), (3)

Discrimination (Disability, Medical Condition, Race, Color/Ethnicity, National Origin, Gender, Sex), (4) Failure to Prevent Discrimination and Harassment, (5) Failure to Engage in Interactive Process, (6) Failure to Provide Reasonable Accommodation, (7) Harassment, (8) Slander, and (9) Libel.

Before the Court now is Plaintiff's motion to compel PPMM to further respond to Request for Production of Documents Nos. 55 and 77, Special Interrogatory Nos. 13, 14, and 15, and Requests for Admission Nos. 13, 14, and 15.

II. Legal Standard

Discovery is generally permitted "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." (Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall 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. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to "set forth specific facts showing good cause

justifying the discovery sought by the demand." (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party's option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

The party receiving requests for admission may respond either by answering that the party admits or denies the matter involved in the request or by objecting to the request. (Code of Civ. Proc. §2033.210(b).) If a part of a request for admission is objectionable, the responding party must answer the unobjectionable part. (Code of Civ. Proc. §2033.210(a).) The denial of all or a portion of a request must be unequivocal. (*American Fed'n of State, County & Mun. Employees v. metropolitan Water Dist.* (2005) 126. Cal.App.4th 247, 268.) A propounding party who believes responses are incomplete or objections are not well taken may move to compel further responses on either or both of those grounds. (Code of Civ. Proc. §2033.290(a); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776.)

III. Analysis

If information is not produced during discovery, it will be excluded at trial. (*Deeter v. Angus* (1986) 179 Cal. App. 3d 241; see also *Thoren* v. *Johnston & Washer* (1972) 29 Cal.App.3d 270.) With this caution in mind, the Court rules on each discovery request as follows.

A. Requests for Production

No. 55: GRANTED, IN PART. January 1, 2012 to the present is overly broad. The relevant time period is the period of Plaintiff's employment. "ALL DOCUMENTS" is also

overbroad. Plaintiff needs documents sufficient to show the accreditation requirements and process, and, in particular, whether a data breach would factor into that process. Accordingly, PPMM is ordered to produce the documents listed by numbers (1) through (8) on page 8 of PPMM's response separate statement within 20 days of service of this formal order.

No. 77: DENIED. As crafted, this request is not limited in time or tailored to the issue for which Plaintiff seeks discovery: the PPMM "policy", if any regarding downloading KeePass. The Court agrees that an interrogatory requesting a description of this policy and the identity of witness with personal knowledge of that policy and/or a person most knowledgeable deposition on that topic and/or a request for production of documents referring or relating to that policy is more appropriate.

B. **Special Interrogatories**

NO. 14: GRANTED, IN PART. Going back to 2014 is overbroad. PPMM avers that from January 1, 2018 to the present it had a policy limiting the number of people who could download KeePass. The relevant time period is January 1, 2018 through the date of Plaintiff's termination. PPMM identified individuals who were members of the listserve during the time period Plaintiff actually performed work for PPMM. To the extent this excluded 2018, PPMM is ordered to supplement this response to include that information within 20 days of service of this formal order.

C. **Requests for Admission and Form Interrogatory No. 17.1**

No. 13: DENIED. This answer is code compliant.

No. 14: DENIED. This answer is code compliant.

No. 15: DENIED. This answer is code compliant.

No. 17.1: DENIED.

D. **Sanctions**

The parties' cross motions for sanctions are DENIED. The Court finds that the parties engaged in substantial meet and confer and each was substantially justified in bringing this matter to the Court for resolution.