

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 5/23/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (5/22/2023) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:

<https://reservations.sccscourt.org/>

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV427371	Weiting Zhan vs Shuaiqi Ge	Hearing: Demurrer to the First-Amended Complaint by Defendant Shuaiqi Ge Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.
LINE 2	21CV387376	Dieu-Thanh Vo vs Tam Truong et al	Motion: Compel defendant Tam Truong [further] responses to production of documents filed by Plaintiff Dieu-Thanh Vo (pro per) Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.

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LINE 3	23CV420090	Why Systems LLC vs Emodo, Inc.	Motion: Compel OFF CALENDAR. [This motion was already continued by the court to 6/4/2024 at 9am in Dept. 3.]
LINE 4	23CV420593	LESS PROPERTIES, LLC, et al vs ALI PAKNEJAD et al	Motion: Compel Deposition of defendant Ali Paknejad and for monetary sanctions filed by Plaintiff Less Properties, LLC doing business as LPLLC Branham Plaza ("Plaintiff") Plaintiff Less Properties, LLC doing business as LPLLC Branham Plaza ("Plaintiff")'s motion to compel the deposition of defendant Ali Paknejad ("Defendant") and for monetary sanctions is DENIED. The court exercises its discretion to consider the Defendant's opposition papers filed 5/16/2024. It shows two of Defendant's counsel's responses to meet and confer that were <i>not</i> in Plaintiff's moving papers. (See Decl. of Abid Aziz filed with Defendant's Opposition on 5/16/2024, Exhibits A and B.) First, by email on January 24, 2024, Defendant's counsel asked if the deposition could be held remotely. (<i>Id.</i> , Ex. A.) Next, by email on March 5, 2024, Defendant's counsel offered to conduct his client [Defendant]'s deposition via video conference on all days in March except for March 14, 20, 21 and 25. (See Ex. B. to Decl. of Abid Aziz filed with Defendant's Opposition on 5/16/2024.) Plaintiff's counsel should have continued to meet and confer in good faith <i>before</i> filing this motion. The court will prepare the order.
LINE 5	23CV423278	William Fales vs Select Portfolio Servicing, Inc. et al	Motion: Withdraw as attorney Motion to Be Relieved as Counsel for Plaintiff William Fales by Jason W. Estavillo Unopposed and GRANTED. Moving attorney to prepare order.

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LINE 6	24CV433490	In re: M.L.	Hearing: Other First Amended Petition for approval of verified petition for transfer of structured settlement payment rights by Funding Portal Unopposed and GRANTED. Moving party to prepare order.
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LINE 8			
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LINE 12			

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Calendar Line 1

Case Name: *Weiting Zhan v. Shuaiqi Ge*

Case No.: 23-CV-427371

Demurrer to the First Amended Complaint by Defendant Shuaiqi Ge

Factual and Procedural Background

This is an intentional tort action brought by plaintiff Weiting Zhan (“Plaintiff”), a self-represented litigant, against defendant Shuaiqi Ge (“Ge”).

According to the first amended complaint (“FAC”), on March 19, 2021, defendant Ge received approximately 23 messages from a Ms. Jianing Tang (“Ms. Tang”). (See FAC at IT-1.) Operating on the assumption that Ms. Tang was incapacitated, defendant Ge called 911.¹ (Ibid.) Thereafter, when Ms. Tang asserted claims related to rent and deposit, defendant Ge engaged her in conversation and persuaded her to file charges and a malicious prosecution criminal case against Plaintiff. (Ibid.) Defendant Ge also provided false statements to police to assist Ms. Tang’s malicious prosecution. (Ibid.)

The criminal case was filed on May 5, 2021 and dismissed on January 4, 2024. (FAC at ¶ 9, p. 3.) Thus, Plaintiff endured 1,021 days of false charges, humiliation and mental stress. (Ibid.) Plaintiff also claims he is suffering from post-traumatic symptoms and is currently seeking psychiatric help to cope with the traumatic events. (Id. at ¶ 13.) Plaintiff seeks damages from defendant Ge for civil conspiracy, malicious prosecution leading to breach of a rental lease and intentional tort for violating his speedy trial rights. (Ibid.)

On December 6, 2023, Plaintiff filed a judicial council form complaint against defendant Ge.

On January 12, 2024, defendant Ge filed a demurrer to the complaint for failure to state a cause of action. The hearing on the motion was scheduled for March 19, 2024.

On January 16, 2024, prior to the hearing, Plaintiff filed the operative FAC against defendant Ge and thus the demurrer was rendered moot.

On April 15, 2024, defendant Ge filed the motion presently before the court, a demurrer to the FAC. Plaintiff filed written opposition. Defendant Ge filed reply papers.

Demurrer to the FAC

Defendant Ge argues the FAC is subject to demurrer for failure to state a valid claim and is barred by the two-year statute of limitations. (Code Civ. Proc., § 430.10, subd. (e); see *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995 [“A complaint showing on its face the cause of action is barred by the statute of limitations is subject to general demurrer.”].)

¹ In opposition, Plaintiff contends defendant Ge made a 911 call alleging that Plaintiff intended to kill his roommate, Ms. Tang, and prevent her from leaving without any substantiated basis. (See OPP at ¶ 2, p. 3.)

Legal Standard

“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’ ” (*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.)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. ... [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Analysis

“ ‘The absence of any allegation essential to a cause of action renders it vulnerable to a general demurrer. A ruling on a general demurrer is thus a method of deciding the merits of the cause of action on assumed facts without a trial.’ [Citation.] ‘Conversely, a general demurrer will be overruled if the complaint contains allegations of every fact essential to the statement of a cause of action, regardless of mistaken theory or imperfections of form that make it subject to special demurrer.’ [Citation.]” (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 291-292 (*Morris*).)

“A complaint, with certain exceptions, need only contain a ‘statement of the facts constituting the cause of action, in ordinary and concise language’ [citation] and will be upheld ‘ “so long as [it] gives notice of the issues sufficient to enable preparation of a defense.” ’ [Citation.] ‘[T]o withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.’ [Citation.]” (*Morris, supra*, 78 Cal.App.5th at p. 292.)

In addition, “Judicial Council form complaints are not invulnerable to a demurrer. Conversely, Judicial Council form complaints do not always fail to state a cause of action and, thus, they are not necessarily susceptible to demurrer. The logical implication from these polar opposite principles is that use of a Judicial Council form complaint is not a determinative factor in deciding whether or not to sustain a demurrer. Instead, a reviewing court must examine the particular allegations in the form pleading and determine whether those allegations satisfy the pleading requirements established by California law.” (*Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal.App.5th 547, 555.)

And, even though Plaintiff is a self-represented litigant, he is held to the same standards that apply to licensed attorneys. (See *Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [a litigant appearing in propria persona is entitled to the same, but no

greater, consideration than other litigants and attorneys]; see also *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193 [self-represented party “held to the same restrictive procedural rules as an attorney”].)

Here, Plaintiff’s FAC includes a judicial council form along with several additional pages of facts (primarily repeating facts from the judicial council form) and attached exhibits. Although the judicial council form checks off the box for “Intentional Tort,” Plaintiff appears to be seeking relief for claims based on civil conspiracy, malicious prosecution, and intentional tort for violating his speedy trial rights. (See FAC at IT-1.)

“Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration. [Citation.] By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy. [Citation.] In this way, a coconspirator incurs tort liability co-equal with the immediate tortfeasors.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511 (*Applied Equipment Corp.*)).

“Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort. ‘“A civil conspiracy, however atrocious, does not per se give rise to a cause of action unless a civil wrong has been committed resulting in damage.”’ [Citations.] ‘A bare agreement among two or more persons to harm a third person cannot injure the latter unless and until acts are actually performed pursuant to the agreement. Therefore, it is the acts done and not the conspiracy to do them which should be regarded as the essence of the civil action.’ [Citation.]” (*Applied Equipment Corp., supra*, 7 Cal.4th at p. 511.)

Thus, “a civil conspiracy does not give rise to a cause of action unless an independent civil wrong has been committed. The elements of an action for civil conspiracy are (1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from a wrongful act done in furtherance of the common design.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1062.)

Also, there are four essential elements to a malicious prosecution claim: (1) there must be a prior action commenced by or at the direction of the defendant that was pursued to a legal termination in the plaintiff’s favor; (2) the defendant must have brought the prior action without probable cause; (3) the defendant must have initiated the prior action with malice; and (4) the plaintiff must show resulting damage, which may include out-of-pocket losses of attorney fees and costs, as well as emotional distress and injury to reputation. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 203.)

As to malicious prosecution, the California Supreme Court explained:

“The malicious commencement of a civil proceeding is actionable because it harms the individual against whom the claim is made, and also because it threatens the efficient administration of justice. The individual is harmed because he is compelled to defend against a fabricated claim which not only subjects him to the panoply of psychological pressures most civil defendants suffer, but also to the additional stress of attempting to resist a suit commenced out of spite or ill will, often magnified by slanderous

allegations in the pleadings. In recognition of the wrong done the victim of such a tort, settled law permits him to recover the cost of defending the prior action including reasonable attorney's fees [citations], compensation for injury to his reputation or impairment of his social and business standing in the community [citations], and for mental or emotional distress [citation]." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50-51.)

As pointed out by the moving papers, Plaintiff fails to allege sufficient facts to support the elements of any cause of action for civil conspiracy or malicious prosecution. Nor does Plaintiff allege facts in support of an unknown intentional tort for violating his speedy trial rights.

In opposition, Plaintiff suggests there may be causes of action for, among others, false imprisonment, defamation, intentional infliction of emotional distress, breach of contract and fraud. (See OPP at p. 7.) But, no such causes of action have been pled with sufficient factual allegations in the FAC. The demurrer is therefore sustainable on this ground but the court will give Plaintiff an opportunity for further leave to amend to provide facts in support of his claims. (See *Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 32 ["Public policy dictates that leave to amend be liberally granted. If there is any reasonable possibility that the plaintiff can state a cause of action, it is error to sustain a demurrer without leave to amend."].)

Consequently, the demurrer to the FAC is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the argument for statute of limitations.

Disposition

The demurrer to the FAC is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND for failure to state a valid claim.

The court will prepare the Order.

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Calendar Line 2

Case Name: *Dieu Thanh Vo vs Tam Troung, et al.*

Case No: 21CV387376

Plaintiff Dieu-Thanh Vo (“Plaintiff”)’s motion to compel defendant Tam Troung (Defendant”) [further] responses [and bank statements of 2019] to Plaintiff’s request for production of documents (“RPD”) [set one] is DENIED.

Defendant’s verified Amended Responses to Plaintiff’s RPD, Set One were dated 2/20/2024. (See Ex. 1 to Plaintiff’s Decl. filed 4/17/2024.) The proof of service (“POS”) for these responses shows it was served by email or electronic service to the attorney of record for Plaintiff (Sidney C. Flores) on 2/20/24. (See Ex. A to Decl. of Seth W. Weiner filed 4/22/2024.)

Plaintiff substituted himself in pro per on 4/4/2024. (See Substitution of Attorney—Civil (Without Court Order) filed herein on 4/4/2024.)

Plaintiff’s motion to compel asserts that he received Defendant’s answers from his prior attorney on 3/1/2024 and asks the court to compel Defendant to produce his bank statements of 2019. (See Plaintiff’s Memorandum of Points and Authorities (“MPA”) filed 4/17/2024.)

Plaintiff’s moving papers cite no law.

As discussed in Defendant’s opposition, Code of Civil Procedure (“CCP”) section 2031.310 governs motions for orders compelling further responses to documents requests. As the court explained in *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 403 (“*Sinaiko*”):

[I]f a propounding party is not satisfied with the response served by a responding party, the propounding party may move the court to compel further responses. (§[], 2031.310 [inspection demands].) The propounding party must demonstrate that the responses were incomplete, inadequate or evasive, or that the responding party asserted objections that are either without merit or too general. (§[], 2031.310, subd. (a)(1)–(3).) The propounding party must bring its motion to compel further responses within 45 days of the service of the response (§[], § 2031.310, subd. (c)), and must demonstrate that it complied with its obligation to “meet and confer.” (§§ 2016.040, [], 2031.310, subd (b)(2).) (Also required is a separate statute as specified in Cal. Rules of Court, rule 3.1020.) In addition, a party moving to compel further responses to an inspection demand must establish “good cause justifying the discovery sought by the inspection demand.” (§ 2031.310, subd. (b)(1).) (*Sinaiko, supra*, 148 Cal.App.4th 390, 403.)

First, Plaintiff’s motion does not demonstrate that any of Defendant’s Amended Responses were incomplete, inadequate, or evasive, or that Defendant asserted objections that are either without merit or too general. Consistent with CCP section 2031.230, Defendant’s verified response to RPD, set one Nos. 3, 4, 5, 19, 20, 21, 22, 23, 27, 28, 30, 31 and 32 stated that he had conducted a diligent search and a reasonable inquiry and was unable to comply with these Document Requests as no responsive documents had ever existed.

Second, Plaintiff's motion was filed on 4/17/2024, which is 57 days after the service of Defendant's amended responses on 2/20/2024. This motion is untimely. (See *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409 ["[t]he Legislature has explicitly stated that unless a party moves to compel further response within 45 days of the unsatisfactory response, he waives *any* right to compel a further response. We hold that this means what it says; plaintiff's motion was therefore untimely."])

Third, Plaintiff did not make a good faith effort to meet and confer and never identified any deficiencies with the Amended Responses before filing this motion.

Fourth, the motion must also be denied because Plaintiff failed to provide a separate statement as required by California Rules of Court ("CRC") Rule 3.1345. It is not sufficient that Plaintiff has attached Defendant's Amended Responses to her declaration as CRC Rule 3.1345, subd. (c) states (in part) that:

The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference. The separate statement must include--for each discovery request (e.g., each ... inspection demand) to which a further response, answer, or production is requested--the following:

- (1) The text of the request, ..., or inspection demand;
- (2) The text of each response, answer, or objection, and any further responses or answers;
- (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute;
- (4) If necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it;
- (5) If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and
- (6) If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.

(CRC, Rule 3.1345, subd. (c).)

Plaintiff's failure to provide a separate statement is further grounds for denying her motion. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893 ["We conclude that because Plaintiffs did not comply with the requirements of former rule 335 [regarding separate statements], the trial court was well within its discretion to deny the motion to compel discovery on that basis. (Cf. *Neary v. Regents of University of California* (1986) 185 Cal.App.3d 1136, 1145 [describing trial court's denial of motions to compel discovery because of a nonconforming separate statement].")

Fifth, Plaintiff has not "set forth facts showing good cause justifying the discovery sought by the demand" in the initial moving papers as required by CCP section 2031.310, subd. (b)(1). "The general rule of motion practice . . . is that new evidence is not permitted

with reply papers . . . '[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case . . . ' and if permitted, the other party should be given the opportunity to respond." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) Reply evidence should not address substantive issues in the first instance but only fill gaps in the evidence created by opposition. (*Id.* at p. 1538.)

CCP section 2031.310, subd. (h) states (in part):

[T]he court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(CCP § 2031.310, subd. (h).)

Defendant's request for monetary sanctions against Plaintiff is GRANTED under CCP section 2031.310 subd. (b) in the reasonable amount of (5 hours at \$300 per hour for a total of) \$1,500. Plaintiff shall pay this amount to Defendant within 30 days of this order.

The court will prepare the order.

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