SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: May 23, 2024 TIME: 9:00 A.M.

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

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

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

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

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV425673	Ruby A. Calhoun v. Action Day Nurseries & Primary Plus, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	23CV425673	Ruby A. Calhoun v. Action Day Nurseries & Primary Plus, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	22CV408411	Mahesh Anand Karoshi v. City of Campbell	Click on LINE 3 or scroll down for ruling.
LINE 4	21CV389240	Adolfo De Luna v. Garden City Sanitation, Inc.	Click on LINE 4 or scroll down for ruling.
LINE 5	23CV409965	Shoushan Tashjian et al. v. Ahmad Javid et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	18CV328699	BH Financial Services, Inc. v. Jennifer Merendino	Claim of exemption: judgment debtor's claim is GRANTED in part and DENIED in part, as she has not shown the application of any statutory exemption. Nevertheless, her proposal to withhold $100 per weekly pay period is reasonable and will result in the judgment being paid off in approximately nine months; judgment creditor has not proposed any alternative in its opposition. The Sheriff's Office will release the amount currently being held ($284.15) to the judgment creditor.
LINE 7	21CV385243	Yisrael 26, LLC v. Terri Le	Click on LINE 7 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 8	22CV395967	David Boone v. Milissa Dalbesio et al.	Motion for discharge: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS plaintiff's motion. In addition, the court finds the amount of plaintiff's requested attorney's fees upon discharge to be within the range of reasonableness. Plaintiff shall prepare the formal order(s) for the court's signature.
LINE 9	23CV414483	Jesse Henry Razo Jr. v. Bernard Lopez	Referee's application to confirm sale subject to overbidding: parties to appear.

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Calendar Lines 1-2
Case Name: *Ruby A. Calhoun v. Action Day Nurseries & Primary Plus, Inc.*
Case No.: 23CV425673

This is a demurrer to, and motion to strike the punitive damages claims in, the complaint filed by plaintiff Ruby A. Calhoun. Notice is proper, and the court has received no opposition to the demurrer or motion to strike.[1]

The court agrees with defendant Action Day Nurseries & Primary Plus, Inc. ("Action Day Nurseries") that there appears to be a capacity issue on the face of the complaint: Calhoun is the sole named plaintiff, but the only factual allegations in the complaint relate to allegations about the treatment of her son, Julius E. Black, by a teacher at Action Day Nurseries. According to the complaint, the teacher "yelled at Julius, pulled him aggressively by his foot from under a table, then aggressively snatched him up from the ground by one arm, continuing to yell and scold him while his arm [was] dangling. Aggressively." Calhoun has not been appointed as Julius's guardian ad litem, and even if she were, she is not an attorney and cannot represent him. Although the form complaint also checks a box for "wage loss" damages to Calhoun, there are no factual allegations to support this claim for damages, nor has any cause of action been alleged as the basis for such a claim. In short, under Code of Civil Procedure section 430.10, subdivision (b) (no legal capacity to sue), the demurrer must be sustained.

Although Calhoun has failed to submit any written opposition to the demurrer, the court will sustain the demurrer with 20 days' leave to amend, given that this is the first pleading challenge in the case.

Action Day Nurseries goes on to argue that the complaint is uncertain and fails to state a cause of action under section 430.10, subdivisions (e) and (f). The court will refrain from ruling on the demurrer on these bases, although the court will observe that the complaint does lack allegations regarding any injuries to Julius; it also lacks facts sufficient to support a cause of action for intentional infliction of emotional distress. In the event that Calhoun chooses to amend her complaint, it would behoove her to address these deficiencies, as well.

Finally, because the court is sustaining the demurrer to the complaint, the motion to strike is denied (without prejudice) as moot. At the same time, the court will note that the complaint does appear to lack sufficient allegations of "malice, fraud, or oppression" to support a claim for punitive damages.

The demurrer is SUSTAINED with 20 days' leave to amend; the motion to strike is DENIED WITHOUT PREJUDICE as moot.

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[1]Action Day Nurseries has submitted a reply brief arguing that a "failure to oppose a motion may be deemed a consent to the granting of the motion," quoting rule 8.54 of the California Rules of Court. This is an appellate rule and has no application in these trial court proceedings.

Calendar Line 3
Case Name: *Mahesh Anand Karoshi v. City of Campbell*
Case No.: 22CV408411

I. BACKGROUND

This action arises from injuries incurred by plaintiff Mahesh Karoshi when he struck a tree stump while riding his bicycle on a sidewalk at 180 Kennedy Avenue in Campbell, California on July 6, 2022. Karoshi filed the original and still-operative complaint on December 5, 2022 against the City of Campbell (the "City"). The complaint admits at paragraph 5 that the City is a public entity.

The complaint states two causes of action: (1) Premises Liability, and (2) General Negligence. As the City is a public entity, the only portion of the first cause of action that states a valid claim is "Count 3 – Dangerous Condition of Public Property."[2] The second cause of action for general negligence fails as a matter of law: "Under the Government Claims Act (Gov. Code, § 810 et seq.), there is no common law tort liability for public entities in California; instead, such liability must be based on statute." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897 [citing Gov. Code, § 815, subd. (a)] ["Except as otherwise provided by statute," "[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person."].) One statute that provides for such liability is Government Code section 835, which governs claims for dangerous condition of public property: "'[A] public entity is not liable for injuries except as provided by statute (§ 815) and . . . section 835 sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property.'" (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129; see also *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829 ["section 835 sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property," to the exclusion of any more general negligence claim on this subject].)

The narrative portion of the form complaint's premises liability attachment states: "Plaintiff was riding his bike on the sidewalk and struck a tree stub that was cut/removed by Defendant The City of Campbell without any warning signs or notification that the stub was present." The narrative portion of the general negligence attachment states: "Plaintiff was riding his bike on the sidewalk and struck a tree stub that was cut/removed by Defendant The City of Campbell without any warning signs or notification that the stub was present. The City of Campbell had a duty to fix or warn of the hazard (i.e., the tree stump). The City of Campbell beached [sic] it[s] duty to fix or warn of the hazard. The City of Campbell's breach of duty is a legal and proximate cause, and a substantial factor, for Plaintiff's damages."

On February 17, 2023, the City answered the complaint. In addition to a general denial, the answer raises 25 affirmative defenses, including the defense that Karoshi's claims are barred by various provisions of the Government Code, including section 835.

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[2] The form complaint also checks the box for "failure to warn" under Civil Code section 846. This statute is inapplicable to public entities such as the City. (See *Loeb v. County of San Diego* (2019) 43 Cal.App.5th 421, 436.) Civil Code section 846 generally provides immunity to *private property owners* where persons who enter their property for *recreational purposes* are injured. (See Civ. Code, § 846, subd. (d)(2) [providing an exception to immunity "where permission to enter for [recreational purposes] was granted for a consideration"].)

Currently before the court is a motion for summary adjudication filed by Karoshi on March 12, 2024. The City filed an opposition on May 9, 2024.

II. KAROSHI'S MOTION FOR SUMMARY ADJUDICATION

A. General Standards

The pleadings limit the issues presented on a motion for summary judgment or adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins*. (2010) 181 Cal.App.4th 60, 73 ["[T]he pleadings determine the scope of relevant issues on a summary judgment motion."].)

The moving party bears the initial burden of production—to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, affirmative defense, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1).) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136 (*Raghavan*).) Code of Civil Procedure section 437c, subdivision (t), makes clear that the only means by which a party may seek summary adjudication of a part of a cause of action or of an issue other than an "issue of duty" is by submitting a joint stipulation of the parties to the court, specifying the issue(s) to be adjudicated, which the court must then approve before the motion can be filed.

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of an opponent's claim or defense. While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; see also *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037 [evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party].)

The moving party may generally not rely on additional evidence filed with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . . ."]; see also *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 252; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.) The court has therefore not considered the second declaration of Jamal S. Mahmood, submitted with the reply, any of the attached exhibits, or any arguments based on upon them.

Where a plaintiff has moved for summary judgment, it has the burden of showing that there is no defense to a cause of action. (Code Civ. Proc. § 437c, subd. (a).) That burden can be met if the plaintiff has proved each element of the cause of action entitling it to judgment on that cause of action. If the plaintiff meets this burden, it is up to the defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (Code Civ. Proc. § 437c, subd. (p)(1); see also *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 965.)

B. The Basis for Karoshi's Motion

There are a number of fundamental procedural defects in Karoshi's moving papers. First, Karoshi's notice of motion indicates that he seeks an order "granting summary adjudication in favor of plaintiff, and against defendant, the City of Campbell, as to the duty defendant owed to plaintiff, as set forth in plaintiff's complaint." (Notice of Motion, p. 2:2-4.) This does not provide sufficient notice of the subject of the motion. Rule 3.1350(b) of the California Rules of Court states, "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty *must be stated specifically in the notice of motion* and be repeated, verbatim, in the separate statement of undisputed material facts." (Emphasis added.) Karoshi's notice of motion fails to comply with this rule.

Second, Karoshi's separate statement indicates that the duty alluded to (but not specified) in the notice of motion is "a duty of care to ensure that sidewalks within its jurisdiction are [free] from defects with respect to the general public, including plaintiff, as a matter of law." (Separate Statement, p. 2:2-4 [bracketed text added].) The 12 undisputed material facts ("UMFs") listed in the statement do not support this purported duty. Instead, these UMFs address the City's actions in cutting down the tree that resulted in the stump, Karoshi's injuries from the accident, the fact that the City "had jurisdiction over the tree stump," the City's denial of liability, and the application of Government Code section 830.

Third, Karoshi's supporting memorandum of points and authorities argues that the City's "duty included ensuring the safety of sidewalks for both pedestrians and bicyclists," which is a different articulation of the alleged duty from the notice of motion, the separate statement, and the complaint itself. (Memorandum, p. 4:1-2.) The memorandum goes on to note that the filing of this motion stems from a dispute between the parties over the City's discovery responses, as well as the meaning of a written stipulation between the parties (regarding any reliance on Campbell Municipal Code section 10.48.120 in this case), which Karoshi claims the City has violated. But neither discovery responses nor stipulations can expand the scope of issues presented in a summary adjudication motion, which is bounded by the scope of the allegations in the operative pleading.

C. The City's Opposition

The City denies that it owes the duties articulated in Karoshi's papers, given that it can only be liable to pursuant to statute, as a public entity. As the City notes, under *Stack v. City of Lemoore* (2023) 91 Cal.App.5th 102, 109-110 (*Stack*), there is no general duty of the public entity to "ensure" the safety of all users of its sidewalks—instead, there is only a statutory duty to prevent a dangerous condition of public property, as set forth in the Government Code. The City concedes that it has the statutory duties set forth in the Government Code, but not the duty (or duties) as variously articulated in Karoshi's papers. (See Opposition, pp. 4:24-6:24.)

The City further disputes Karoshi's interpretation of its discovery responses and the stipulation entered into between the parties regarding Campbell Municipal Code section 10.48.120.

D. Discussion

The court DENIES Karoshi's motion for summary adjudication for failure to meet the initial burden. A motion for summary adjudication cannot be granted based on issues *not* raised by the pleadings. (See *County of Los Angeles v. Super. Ct.* (2009) 181 Cal.App.4th 218 226 ["The issues to be addressed in a summary adjudication motion are framed by the pleadings."].)

As noted above, the only viable cause of action alleged against the City in the operative complaint is the first cause of action, to the extent it alleges a dangerous condition of public property. Government Code section 835 "sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property," to the exclusion of any more general negligence claim on this subject. (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829 ("*Brown*").) Section 835 provides that a public entity is liable for injury caused by a dangerous condition:

> . . . if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> > (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
> >
> > (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Gov. Code, § 835.)

> [A] claim alleging a dangerous condition may not rely on generalized allegations but must specify in what manner the condition constituted a dangerous condition. A plaintiff's allegations, and ultimately the evidence, must establish a physical deficiency in the property itself. A dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself, or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users.

(*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347-1348 [internal citations and quotations omitted]; see also *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 759 ["To establish a qualifying condition, the plaintiff must point to at least one physical characteristic of the property."].)

The only issue raised by the first cause of action is whether the sidewalk at the particular location where Karoshi was injured was in a dangerous condition because of a "tree stub" or "stump," the only physical characteristic of the property identified in the complaint. While summary adjudication may be sought on an "issue of duty," the issue of duty must still be raised by the operative pleading. This is absent from Karoshi's complaint. The complaint

cannot reasonably be interpreted as alleging that the City owed Karoshi "a duty of care to ensure that sidewalks within its jurisdiction are [free] from defects with respect to the general public," as articulated in Karoshi's separate statement of undisputed material facts, or that the City owed Karoshi a duty to ensure "the safety of sidewalks for both pedestrians and bicyclists," as described in Karoshi's memorandum of points and authorities.

As a consequence, the court does not need to address the City's argument that this motion must be denied under *Stack, supra*, or the plain language of the Government Claims Act. If the court did address this argument, however, the court would likely agree, given the absence of any common law duty here.

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Calendar Line 4
Case Name: *Adolfo De Luna v. Garden City Sanitation, Inc.*
Case No.: 21CV389240

This motion to compel by plaintiff Adolfo De Luna is a supplement to the motions that the court heard last week, on May 16, 2024. Last week, the court granted in part and denied in part each side's requests to compel further deposition testimony and for a protective order regarding each side's conduct at the depositions. With respect to witness Salvatore San Filippo, the CEO of defendant Garden City Sanitation, Inc. ("GCS"), the court ordered four additional hours of deposition testimony, to be allocated as De Luna saw fit between the PMQ deposition of GCS and a deposition in San Filippo's personal capacity.[3] De Luna now moves to compel answers to specific questions from San Filippo. The court grants in part and denies in part this motion, as well.

First, with respect to questions pertaining to GCS's document collection efforts, the court notes that a party witness is not necessarily obligated to conduct a detailed review of the contents of each document it provides to counsel for production to the other side; in addition, the contents of GCS's documents did not appear to be called for by the PMQ deposition topic for which San Filippo was designated. The motion appears to be founded on the erroneous assumption that a witness can be expected to have meaningful information about their document production without being asked to prepare for it as a PMQ witness. Nevertheless, to the extent that San Filippo was asked these questions in his personal capacity, he was required to provide responsive answers, because a party taking a deposition can ask about documents. Each of the four document-related questions at issue on this motion was essentially a version of the same question: *i.e.*, "Did you find any documents that constitute [x]?" There are at least four possible answers to this question that would have been responsive: "Yes," "No," "I don't recall," and "I don't know, because I didn't look closely at them." There may be more. But the answer that San Filippo did give each time—essentially, "Anything I had, I gave to my attorneys"—was not responsive. The court does not understand why San Filippo repeatedly gave the same non-responsive answer each time. To the extent that this rote answer was the product of deposition coaching, it was improper coaching.

GCS cites the following exchange as an example of "badgering and harassing" by De Luna's counsel:

> Q: How many hours did you take to do that?[4]
>
> A: I don't recall the exact amount of time[]
>
> Q: Can you give us your best estimate? Was it like a couple of hours? Was it ten hours? Was it 20 hours? Do you – what's your best estimate?
>
> A: We [were] just helping out drivers. I – again, I couldn't tell you an estimated time.

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[3] At the deposition, De Luna's counsel must delineate clearly to GCS's counsel which parts of the deposition are which.

[4] Because the parties have only provided excerpts from the deposition, the court is not entirely sure what "that" refers to.

Q: Okay. Was it more than 10 hours?

A: Again, I could [sic] tell you exact amount of time [sic] it took.

Q: Could it have taken more than 20 hours?

A: Again, I couldn't tell if it was one hour, two hours, three hours, four hours. I couldn't tell you.

Q: Okay. But could it have been as low as one hour? But the most it could have been, what is your best estimate?

A: Again, I don't recall.

Q: Could it have been over 40 hours, sir?

Mr. Khan: Objection. Argumentative. Asked and answered about five times. You can answer again if you know.

A: Yeah, I don't recall how many hours.

Q: Could it have been over 80 hours?

Mr. Khan: Same Objections.

A: I don't recall how many hours.

Q: Could it have been over a hundred hours?

(Declaration of Adam G. Khan, Exhibit D, pp. 38:1-39:8.) While this back and forth does show dogged and obstinate questioning on the part of plaintiff's counsel, it also betrays an equally obstinate refusal by a witness to provide his best recollection in response to a series of questions on a singular topic. It is of course unreasonable to expect any witness to have a perfect recollection of facts in answering deposition questions, but what the foregoing shows is a witness who resisted making any good faith effort to provide his best recollection and his best estimate. It is for precisely this type of stubborn and evasive testimony that the court is ordering four additional hours from San Filippo. While GCS presents this testimony as if it shows bad behavior by only the other side, GCS fails to recognize that this testimony also reflects poorly on its own side.[5] The outcome of this motion is entirely a self-inflicted wound by the witness and his counsel.

Similarly, the court finds no credibility in the claim that San Filippo was "unable" to answer questions about lifting restrictions or legitimately "confused" by these questions. The court finds that San Filippo's answers were evasive, and as already noted in the May 16, 2024

[5] The speaking objection ("Asked and answered about five times. You can answer again if you know.") is highly improper.

order, counsel's numerous speaking objections and efforts to coach the witness (*e.g.*, "I don't know how he answers that") were grossly improper.[6]

The court therefore orders San Filippo to provide responsive answers to these questions during the deposition time that remains. At the same time, the court finds that this particular dispute over two specific areas of questioning is just a small part of the overall dispute that the court already decided on May 16, 2024, where the court found that both sides behaved improperly. As a result, the court denies De Luna's request for monetary sanctions.

GRANTED IN PART and DENIED IN PART.

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[6] The court overrules counsel's meritless objections to these questions. The notion that these questions simultaneously called for both a "legal conclusion" *and* for "expert testimony" is so internally inconsistent that the objections are frivolous on their face.

Calendar Line 5
Case Name: *Shoushan Tashjian et al. v. Ahmad Javid et al.*
Case No.: 23CV409965

Plaintiff Shoushan Tashjian's deposition was scheduled to be taken on March 15, 2024, but she did not appear. Defendants Ahmad Javid, Safoora Javid, and Eela Javid ("Defendants") have now filed this motion to compel. It turns out that the deposition was not set up to be in person; rather, it was a *suboptimal* video deposition via Zoom. Even though Tashjian's counsel was able to join the Zoom meeting, Tashjian herself was unable to figure out how to join.

Tashjian argues that she remains willing to be deposed, and that Defendants jumped the gun by filing this motion without adequately meeting and conferring. While it may well be true that Defendants were needlessly aggressive in filing this motion only five days after her failure to show, Tashjian provides no explanation as to why she has not offered any make-up dates in the two months since. It is one thing to complain about a hasty motion, but it is entirely another thing to sit on one's hands and fail to mitigate the situation in any way whatsoever. The court is also totally perplexed as to why Tashjian's counsel chose to be in a different location from her client on March 15, 2024, particularly in light of her and her client's claims that the failure to appear may have been the result of dementia. Under these circumstances, leaving the client to her own devices (literally) was singularly unreasonable.

In light of the foregoing, the court GRANTS the motion and orders that Tashjian appear for deposition—either by Zoom or in person—**within 20 days** of notice of entry of this order.

The court will also GRANT IN PART Defendants' request for monetary sanctions. The court rejects Defendants' absurd request for terminating sanctions, which is totally unsupported, and the court also does not understand how Defendants believe that it is proper to ask for $2,760 in their opening papers and then transform this into a request for $5,452.50 in their reply papers, without even the semblance of adequate notice. Moreover, Defendants are not entirely blame-free for the inadequate communication between the parties: they, too, could have made a greater effort to communicate with Tashjian's counsel to reschedule her deposition. It appears that neither side did anything and decided to leave this unnecessary dispute for the court to address. Nevertheless, the court finds that Tashjian bears the greater portion of the blame for this needless motion practice, particularly given that the deposition had been rescheduled twice before, at her and her counsel's request. The purpose of discovery sanctions is compensatory, not punitive. The court orders Tashjian to pay Defendants **$1,140** (two hours at $540/hour plus a $60 filing fee) for the costs of having had to bring this motion, within 30 days of notice of entry of this order.

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Calendar Line 7
Case Name: *Yisrael 26, LLC v. Terri Le*
Case No.: 21CV385243

This is a motion by defendant Terri Le to amend her answer and file a cross-complaint. Plaintiff Yisrael 26, LLC ("Yisrael") opposes the motion but fails to show any bad faith on the part of Le or any prejudice arising from the proposed amendment and cross-pleading. Accordingly, the court grants the motion.

Yisrael filed this case on July 6, 2021. Le answered in propria persona and represented herself until February 21, 2023. The answer that is currently on file is still Le's original answer. After counsel became involved on her behalf, Le engaged in discovery, and the court heard a discovery motion filed by Le on November 16, 2023. Le now argues that she has learned new facts and evidence to support amendments to the pleadings. In view of these circumstances, the court finds good cause to grant leave to amend the answer. Yisrael has not shown that it would be prejudiced by the amendment—in fact, the opposition does not even mention prejudice. Given that this matter is currently set for a bench trial on January 13, 2025—*i.e.*, more than seven months from now—the court finds that the amendment would not be prejudicial to the plaintiff.

As for the proposed cross-complaint, Yisrael does not dispute that the pleading is compulsory in nature, given that it arises from the same lease at issue in the original case and given that the sole cause of action in the cross-complaint—conversion—appears to be directly related to Yisrael's claim for damages in the complaint. Nevertheless, Yisrael contends that the proposed cross-complaint is being brought in bad faith. It fails to identify facts in support of this conclusory contention. The closest it comes is its assertions: (1) that Le avoided contact with Yisrael "at a time relevant to address the issue of the equipment," and (2) that Le "unreasonably delayed" in raising the idea of a cross-complaint. (Opposition, pp. 7:12-13; 7:26-8:1.) Neither of these assertions is sufficient to show bad faith in the bringing of this proposed pleading.

For the same reason that the amended answer would not be prejudicial, the court finds that allowing the cross-complaint at this time would not be prejudicial to Yisrael.

The motion is GRANTED. Le shall separately file the amended answer and cross-complaint within 10 days of this order.

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