SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 05-21-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you 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 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV416455 Hearing: Demurrer	N. Charles Podaras vs Valerie Weirauch et al	See Tentative Ruling. Moving parties will submit final order within 10 days.
LINE 2	23CV426220 Hearing: Demurrer	Santa Clara Valley Transportation Authority vs IAC At Cupertino, LLC et al	Motion Withdrawn
LINE 3	23CV427570 Hearing: Demurrer	DataStax, Inc. vs PacketFabric, Inc. et al	See Tentative Ruling. Court will issue final order.
LINE 4	21CV385112 Motion: Discovery	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit final order within 10 days.
LINE 5	21CV385112 Motion: Discovery	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit final order within 10 days.
LINE 6	22CV397444 Motion: Protective Order	Swaminathan Nandakumar et al vs David Plagens et al	See Tentative Ruling. Court will issue final order.
LINE 7	22CV397444 Motion: Compel	Swaminathan Nandakumar et al vs David Plagens et al	See Tentative Ruling. Court will issue final order.
LINE 8	23CV410157 Motion Leave to Conduct	Jane Doe vs Support Systems Homes, Inc. et al	See Tentative Ruling. Defendant shall prepare the final order within 10 days.

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LINE 9	19CV349521 Motion to Dismiss	Mora Estates I LLC v. Peer Deeds LLC, et al.	Notice appearing proper and good cause appearing, Defendants' unopposed motion to dismiss the complaint is GRANTED. Plaintiff has no counsel and an LLC cannot represent itself. Moreover, Plaintiff filed no opposition (as it could not without counsel). The failure to file a written opposition "'creates an inference that the motion or demurrer is meritorious.'" *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. The First Amended Complaint is dismissed in its entirety against all defendants with prejudice. The upcoming trial dates of May 29, 2024, May 30, 2024 and June 3, 2024 are vacated. Defendant Peer Deeds shall submit the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 10	21CV387639 Hearing: Default	Elizabeth Chung vs Altva Capital Management Limited et al	Plaintiff seeks default judgment against Defendant Filbert Global ("Filbert"). It is undisputed that default has been entered against Filbert. Plaintiff basically wants a judgment finding that the loan agreement involving Filbert was invalid and unenforceable. Part of the defense of the remaining defendants relies on their ability to prove that the loan agreement was valid. As such, entering judgment against Filbert prior to the resolution of the claims against the remaining defendants is inappropriate. Whether to grant judgment against one defendant when others remain in the case is wholly discretionary, even when it is clear that a several judgment is proper. See CCP § 579. Here it is not clear that a several judgment is proper and even if so, the Court declines to exercise its discretion to grant judgment against Filbert prior to the resolution of the remaining claims, given the issues in the case. The motion is DENIED. Defendants shall prepare the final order.
LINE 11			
LINE 12			
LINE 13			
LINE 14			

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 15			
LINE 16			
LINE 17			

- oo0oo -

Calendar Line 1
Case Name: Podaras v. Weirauch, et al.
Case No.: 23CV416455

Plaintiff N. Charles Podaras ("Plaintiff") filed his First Amended Form Complaint ("FAC") against defendants Valerie Weirauch, Tasha McDonald, Barry Vickery, Marsha Dyslin, and Does 1-25 (collectively, "Defendants").

FACTS

The factual allegations of the FAC indicate that in early 2019, Plaintiff moved onto a property in San Jose ("the Property"), owned by Weirauch. The parties verbally agreed that Plaintiff could reside at the Property. Plaintiff and Weirauch agreed that Plaintiff would help take care of the house and dogs; however, Plaintiff did not believe he was an employee. Plaintiff alleges there was no understanding that he would no longer be allowed to reside at the Property if Weirauch no longer wanted assistance with the dogs or house.

On April 28, 2022, Weirauch texted Plaintiff that he needed to have his belongings out by Saturday. On April 30, 2022, Weirauch repeatedly asserted that Plaintiff needed to leave and eventually began yelling at Plaintiff. Plaintiff closed his door to end the conversation. Thereafter, Weirauch sent Plaintiff multiple demands to move out and threatened to call law enforcement if he did not move out.

On May 11, 2022, Weirauch and McDonald knocked on Plaintiffs door and handed him a paper that stated he had 3 days to move out. On May 14, 2022, Plaintiff responded to the letter indicating he had rights under California's laws and requested she stop pressuring him to leave. After this, Plaintiff lost WiFi access and hot water pressure.

On May 23, 2022, Plaintiff received notice of Weirauch's CHRO/TRO legal proceeding against him. He discovered he was no longer allowed back in the home where his belongings were, including medication and medical devices. On October 25, 2022, the CHRO was denied and the TRO was lifted. Plaintiff was informed that his belongings were packed up in Weirauch's garage without Plaintiff's permission.

On November 18, 2022, Plaintiff visited the Property on an arranged appointment to get his belongings. He was denied entry by Vickery and Dyslin. Upon leaving, Vickery followed Plaintiff almost 70 yards down the street and indicated he was a lawyer. Plaintiff alleges that Vickery retired from his law career in 2016.

On December 30, 2022, Plaintiff requested San Jose Police escort him to the Property to retrieve belongings.

On December 18, 2023, this Court (Hon. Rosen) issued its order sustaining Vickery and Dyslin's demurrer to Plaintiff's initial complaint and providing 20 days leave to amend. On January 10, 2024, Plaintiff filed his FAC. On February 15, 2024, defendants Bryan Vickery and Marsha Dyslin (collectively, "Moving Defendants") filed a demurrer to the FAC on the following grounds:

1) The FAC is untimely per the Court's December 5, 2023 Order;

2) Plaintiff did not perfect service of the FAC;
3) As to all the causes of action, the FAC is vague, ambiguous, uncertain, confusing, and unintelligible;
4) The FAC fails to state a cause of action as to general negligence;
5) As to the standard form FAC box checked intentional tort, the FAC fails to state a cause of action;
6) As to the factual allegations in the FAC, Plaintiff himself indicates it is "incomplete" and adds three counts that make no sense.

Plaintiff failed to file an opposition to the demurrer. For the reasons stated below, the demurrer of the moving parties only is sustained without leave to amend.

As an initial matter, the Court finds that Plaintiff untimely filed his FAC after the Court granted him 20 days leave to amend. Next, while the Court does not find the pleading to be so uncertain or ambiguous that Moving Defendants are unable to respond, the Court does find the allegations related to Moving Defendants to be insufficient to state a cause of action for general negligence. (See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 ["'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.'"]; *Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th 627, 634 ["The elements of a negligence cause of action are duty, breach, causation, and damages."].) The FAC is devoid of allegations that Moving Defendants owed Plaintiff a duty and subsequently breached that duty. There are very few allegations regarding the Moving Defendants. (See FAC, ¶¶ 27, 29, 30.)

As for Plaintiff's three counts, contained at the bottom of his factual allegations, the Court finds each count to be insufficient. Statutory causes of action must be pled with specificity. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1020 [general rule that statutory causes of action must be specifically pled].) Plaintiff's three counts, alleging violations of various code sections which he does not specify, are not pled with any specificity whatsoever.

Finally, as stated above, Plaintiff did not file an opposition to Moving Defendants' demurrer, creating an inference that the demurrer is meritorious. (See *Sexton v. Superior Court* (1997) 58 Cal. App. 4th 1403, 1410.)

This Court has already provided Plaintiff with the opportunity to amend, and he has been unable to state valid claims to overcome a pleading challenge on demurrer. Further, Plaintiff has not requested leave to amend or explained how any further amendments will change the legal effect of his pleading. Therefore, the demurrer is SUSTAINED without leave to amend. (See e.g., *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case.'"].)

Moving Defendants shall prepare the final order, incorporating the tentative ruling, within 10 days of the hearing.

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Calendar Line 3
Case Name: *DataStax, Inc. v. Packet Fabric, et al.*
Case No.: 23CV427570

I. Background

A. Factual

On or about March 30, 2022, Plaintiff DataStax, Inc. ("Plaintiff") entered into a master subscription Agreement ("the Agreement") with Defendant PacketFabric ("PacketFabric"), whereby Plaintiff agreed to sell to PacketFabric certain software and services. (Complaint, ¶ 6.)

On April 14, 2023, PacketFabric informed Plaintiff that it had assigned its rights under the agreement to Defendant R-Stor, Inc. ("R-Stor"). (Complaint, ¶ 7.) Plaintiff did not release PacketFabric from liability under the Agreement. (*Id*., ¶ 8.)

On or about April 1, 2023, Defendants PacketFabric and R-Stor ("Defendants") placed an order with Plaintiff for software and services under the Agreement for a price of $1,961,695.42. (Complaint, ¶ 9.) Plaintiff provided the software and services pursuant to the Agreement. (*Id.*, ¶ 10.) Defendants made two partial payments such that $ 1,631,695.42 remains unpaid. (*Id.*, ¶ 9.)

B. Procedural

Based on the foregoing allegations, Plaintiff initiated this action, filing the still-operative Complaint on December 7, 2023. The Complaint raises three causes of action, each alleged against all defendants, for (1) breach of contract, (2) account stated, and (3) money due and owing.

PacketFabric filed a demurrer to the entirety of the Complaint and each of the causes of action therein on February 15, 2024. Plaintiff opposed the demurrer on May 9, 2024. PacketFabric filed a reply on May 14, 2024.

II. Legal Standard

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).) [1]

The court in ruling on a demurrer treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods*

[1] All further undesignated statutory references are to the Code of Civil Procedure.

Corp. (1983) 35 Cal.3d 197, 213-214.) 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 may also be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

III. Merits of the Demurrer

PacketFabric demurs to the entire Complaint and each cause of action therein on the ground of failure to state a claim (§ 430.10, subd. (e)). It also demurs to the third cause of action for money due and owing on the ground of uncertainty (§ 430.10, subd. (f)).

A. Failure to State a Cause of Action

PacketFabric demurs to the entire Complaint and each cause of action therein on the ground asserting that it was not a party to the Agreement at the time the payment to Plaintiff was due because it assigned all of its rights and obligations under the Agreement to R-Stor. Plaintiff does not dispute the assignment but argues that PacketFabric remains liable under the Agreement because no release or novation occurred.

The parties agree that the Agreement allows for assignments to certain entities without the consent of the other party. The relevant language of the Agreement provides:

> The Agreement may not be assigned by either party by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Schedules), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or the sale of all or substantially all of the assets of the business to which the Agreement relates. Any such assignment shall be effective upon payment of all amounts then due. DataStax shall be entitled to subcontract any of its obligations under the Agreement, in which case, DataStax shall remain responsible for the acts or omissions of a subcontractor as if they were DataStax's acts or omissions.

PacketFabric argues that where the assignee has accepted the benefits under the contract, it can be implied that the assignee has also accepted the obligations. While this is a correct statement of the law, it does not absolve PacketFabric from liability.

"The general rule is that the mere assignment of rights under an executory contract does not cast upon the assignee the obligations imposed by the contract upon the assignor. [Citation.] The rule is otherwise, however, where the assignee assumes such obligations. [Citation.] '[W]hether there has been an assumption of the obligations is to be determined by the intent of the parties as indicated by their acts, the subject matter of the contract or their words.' [Citations.] Assumption of obligations may be implied from acceptance of benefits under the contract. [Citations.]" (*Enter. Leasing Corp. v. Shugart Corp.* (1991) 231 Cal.App.3d 737, 745.; see, also, Civ. Code, § 1589 ["A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to

the person accepting."]; *Weidner v. Zieglar* (1933) 218 Cal. 345, 350 (*Weidner*) [same].)

However, the assignor of the contract cannot be released from its burden of obligation to the other contracting party absent a release or novation. (*Baer v. Associated Life Ins. Co.* (1988) 202 Cal.App.3d 117, 123.) "The obligations of an assignor of a contract continue to rest upon him and he will be required to respond to the other party to the contract in the event of a default on the part of the assignee. [Citations.] (*Ibid*., citing *Wiseman v. Sklar* (1930) 104 Cal.App. 369, 374; see also 1 Witkin Summary of Cal. Law (2023) Contracts § 752 ["Where the subject matter of the assignment (e.g., a bilateral contract) involves reciprocal rights and duties, the assignor may transfer the benefits, i.e., the assignor may transfer his or her rights, but cannot escape the burden of his or her obligation by a mere assignment. The assignor still remains liable to the promisee. Even if the assignee assumes the obligation, i.e., agrees to perform it, the assignor still remains secondarily liable as a surety or guarantor, unless the promisee releases him or her or the parties execute a complete novation. [Citations.]".)

PacketFabric argues that *Walker v. Phillips* (1962) 205 Cal.App.2d 26, 33 (*Walker*) held that "[t]he assignee's acceptance of benefits and liabilities under the contract also eliminates any secondary liability of the assignor as a surety or guarantor that may remain." (Memorandum of Points and Authorities in Support of Demurrer, p. 3, lns. 26-28.) It did not.

Walker involved a motion to discharge an attachment on the ground that the complaint in that case failed to state a cause of action against the defendants. (*Walker*, *supra*, 205 Cal.App.2d at pp. 31-32.) In that case, the plaintiffs had placed coin-operated music and cigarette machines in a restaurant owned by defendants with the agreement that they would be entitled to a portion of the proceeds collected from the machines. (*Id.* at pp. 27-28.) The complaint asserted that defendants breached the agreement by demanding the machines be removed. (*Id.* at p. 29.) Amongst the defendants were two alleged assignees of the equipment lease agreement. (*Id.* at p. 32.) In reversing the trial court's order granting the motion to discharge the attachment, the Court of Appeal explained that assignees do not necessarily take on the liabilities imposed against the assignor under the contract but that their acceptance of the benefits of the contract implies an intent to assume the obligations as well. (*Id.* at pp. 32-33.) Thus, the attachment was proper as to the alleged assignees. (*Id.* at p. 33.)

The portion of *Walker* PacketFabric appears to be referring to states, "Inasmuch as the assignor remains secondarily liable as a surety or guarantor if the assignee is found to have assumed the obligation (Civ. Code, § 1457; *Cutting Packing Co. v. Packers' Exch*., 86 Cal. 574, 576; *Fenn v. Pickwick Corp*., 117 Cal.App. 236, 242), the attachment as against the other defendants is not inconsistent." (*Walker*, *supra*, 205 Cal.App.2d at p. 33.) This is consistent with the principles stated above. In other words, *Walker* explained that even though the assignors may have retained secondary liability, it was not inconsistent with that principle to also seek relief against the assignees. *Walker* cannot be read in the manner PacketFabric suggests.

PacketFabric also asserts that *Weidner*, *supra*, 218 Cal. 345 also so held. (Reply Memorandum in Support of Demurrer ("Reply"), p. 1, lns. 27-28.) This appears to be a mistake as PacketFabric cites *Weidner* as "23 P.2d 515, 517 (Cal. 1993) [sic]" but, when referring to the proposition that the assignee's acceptance of benefits and liabilities eliminates secondary liability on the part of the assignor, PacketFabric's citation is "See *Weidner*, 23 P.2d at 33". (Reply, p. 1, lns. 27-28.) In any event, no portion of *Weidner* stands for the proposition that secondary liability of the assignor is eliminated. The *Weidner* court reiterated the general principle that "mere assignment of rights under an executory contract does not cast upon the assignee any of the personal liabilities imposed by the contract upon the assignor" but that " '[a] voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting[.]" (*Weidner*, *supra*, 218 Cal. at p. 349-350.)

The Complaint alleges that Plaintiff at no time released PacketFabric from liability. (Complaint, ¶ 8.) PacketFabric contends that this allegation cannot overcome the exhibits attached to the Complaint, which show that PacketFabric made a valid assignment of its liabilities under the Agreement to R-Stor. This argument misses the mark. The Complaint does not allege that the assignment of liabilities was invalid and, even assuming a valid assignment has been made, PacketFabric is not absolved of liability as discussed above absent a release or novation. PacketFabric does not contend that any of the documents (or portions thereof) attached to the Complaint constitute a valid release or novation.

PacketFabric also contends that interpreting the assignment clause of the Agreement not to include liabilities would fail to give effect to the portion of the assignment clause that indicates that the assignment is effective "upon payment of all amounts then due." But, again, this argument ignores that even if R-Stor is liable pursuant to the assignment, PacketFabric also remains liable absent a release or novation. As mentioned above, the Complaint alleges that no release has occurred. (Complaint, ¶ 8.)

The demurrer to the entirety of the Complaint and each cause of action therein on the ground of failure to state a claim is OVERRULED.

B. Uncertainty

As to the third cause of action for money due and owing, PacketFabric also argues that this cause of action is not well-established under California law and that the elements of such a claim are not apparent from the Complaint, rendering the cause of action uncertain.

Plaintiff argues that the third cause of action is a common count claim for money due and owing. "In California, it has long been settled the allegation of claims using common counts is good against special or general demurrers. [Citation.] The only essential allegations of a common count are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.' " (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.)

PacketFabric's uncertainty argument must be rejected because the third cause of action pleads all of the elements above and PacketFabric makes no other argument as to how the third cause of action is uncertain. "Demurrers for uncertainty . . . are disfavored. [Citation.] 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.' [Citation.]" (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.)

Here, Plaintiff has adequately pleaded the elements stated above. The Complaint states that all defendants, which would include PacketFabric, are indebted to it in the amount of $ 1,631,695.42, a certain sum, and that that amount remains unpaid. (Complaint, ¶¶ 19-20.) It also alleges consideration in the form of Plaintiff's performance or excuse for performance of the terms of the Agreement. (Complaint, ¶¶ 10 [Plaintiff provided the software as provided in the Agreement], 12 [Plaintiff fully performed or was excused from performing every term of the agreement], 20 [incorporating prior paragraphs into third cause of action].)

The demurrer to the third cause of action on the grounds of uncertainty and failure to state a claim is OVERRULED.

IV. Conclusion

PacketFabric's demurrer to the Complaint as a whole and to each cause of action therein is OVERRULED in its entirety.

The Court will prepare the final Order.

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Calendar lines 4 and 5
Case Name: *Quintara Biosciences, Inv. V. Wang, et al.*
Case No.: 21CV385112

PROFESSIONALISM

As an initial matter, the Court reminds counsel for the parties that the Superior Court of Santa Clara County has adopted the Code of Professionalism of the Santa Clara County Bar Association and expects that counsel will treat each other, and this Court, professionally and respectfully. (Santa Clara County Bar Association's Code of Professionalism, § 9 ["A lawyer should at all times be civil, courteous, and accurate in communicating with adversaries, whether in writing or orally"].)

MOTION TO COMPEL FORM INTEROGATORIES, SET ONE AGAINST DEFENDANT ALAN LI

Plaintiff Quintara moves to compel responses from Defendant Alan Li to Quintara's form interrogatories-general ("FROGs"), set one, Nos. 1, 2, 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 4.1, 4.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.1, 13.2, 14.1, 14.2, 15.1, 17.1, 50.1, 50.2, 50.3, 50.4, 50.5, and 50.6. The requests were served on Li on December 8, 2023. (Motion, p. 8:17.) At the time of the filing of the motion, Li had failed to provide responses or objections. (*Id.* at p. 8:18-20.) Plaintiff requests the Court order Li to provide substantive responses without objections.

Li opposes the motion,[2] claiming: (1) Alan Li has provided code-compliant verified responses to requests for admissions ("RFAs");[3] (2) service on Jordan Pugeda was improper; (3) Wang's responses were in substantial compliance with the discovery statutes; and 4) sanctions are warranted against Quintara and James Li, of LiLaw, Inc.

In opposition, Li has attached his responses to the form interrogatories, set one, served nearly four months late on April 14, 2024. (See Opposition, Ex. 2.) In Reply, Plaintiff asserts the motion should be granted as to FROGs 15.1, 17.1, 50.1, 50.2. (Reply, pp. 3-5.) Additionally, Plaintiff asserts that the verification Li signed under penalty of perjury is not made on his own behalf but on behalf of the corporate defendants. (*Id.* at pp. 2:25-3:4, citing *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.)

The Court finds that Defendant Li has substantially complied with requests 1, 2, 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 4.1, 4.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.1, 13.2, 14.1, 14.2, 50.3, 50.4, 50.5, and 50.6, even if the verification is out of compliance. However, Li has failed to respond to FROG 15.1. Additionally, Plaintiff contends that several of the files submitted in response to FROG 17.1 are blank or non-existent. There does not appear to be any response to 50.1 and the response to 50.2 does not answer the form interrogatory. Accordingly, the motion is GRANTED as to FROGs 15.1, 17.1, 50.1, and 50.2. Defendant Li must provide code compliant responses without objections within 10 days of the final order. Because Defendant Li failed to comply with these requests, the Court grants

[2] Defense counsel has filed a single opposition to both motions to compel.
[3] RFAs are not at issue in this motion.

sanctions to Plaintiff's counsel in the amount of $450. Defendants' combined request for sanctions is denied. Plaintiff shall submit the final order within 10 days of the hearing.

MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES, SET ONE AGAINST DEFENDANT RUIFENG BIZTECH INC.

Plaintiff Quintara moves to compel responses from defendant Ruifeng to Quintara's form interrogatories-general, set one, Nos. 1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 8.1, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 9.1, 9.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.1, 13.2, 15.1, 17.1, 50.1, 50.2, 50.3, 50.4, 50.5, and 50.6. The requests were served on Ruifeng on December 8, 2023. (Motion, p. 1:11.) At the time the motion was filed, Ruifeng had failed to provide responses or objections. Plaintiff requests the Court order Ruifeng to provide substantive responses without objections.

Ruifeng asserts the same arguments in opposition. As Plaintiff notes in Reply, Ruifeng has not responded to Plaintiff's form interrogatories, set one. Rather, Defendant has attached Gangyou Wang's responses to these form interrogatories. (See Opposition, Ex. 2 [FROG 1.0, 1.1 stating Gangyou Wang is answering the interrogatories].) As for the assertion that service was improper, Plaintiff provides proof that Ruifeng's counsel at the time of service received proper service. (Lambert Reply Decl., ¶¶ 2, 9, Exs. A, D.) Thus, the motion to compel responses to form interrogatories to Nos. 1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 8.1, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 9.1, 9.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.1, 13.2, 15.1, 17.1, 50.1, 50.2, 50.3, 50.4, 50.5, and 50.6 is GRANTED. Defendant Ruifeng shall serve verified, code-compliant responses within 10 days of the final order. The Court grants sanctions to Plaintiff's counsel in the amount of $900. As noted above, Defendants' combined request for sanctions is denied. Plaintiff shall submit the final order within 10 days of the hearing.

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Calendar Lines 6 and 7
Case Name: *Swaminathan Nandakumar, et al. v. David Plagens, et al.*
Case No.: 22CV397444

I.Background

A. Factual

Plaintiffs Swaminathan Nandakumar and Rekha Nandakumar ("Plaintiffs") own real property located at 1269 Sage Hen Court in San Jose. (First Amended Complaint ("FAC"), ¶ 1.) Defendants David Plagens and Lisa Plagens ("Defendants") own the neighboring property located at 1277 Sage Hen Court. (*Id*., ¶ 2.)

Plaintiffs contend that, in 2016, they reached out to Defendants via email to discuss replacement of a shared good neighbor fence at the property line between the two properties. (FAC, ¶ 9.) The parties did not reach an agreement. (*Id.*, ¶¶ 10-14.) Defendants also parked vehicles by the curb in front of Plaintiffs' house, despite Plaintiffs' asking them to stop. (*Id.*, ¶¶ 16-17.) In retaliation against Plaintiffs, Defendants filed three police reports making false allegations against Plaintiffs. (*Id.*, ¶¶ 19, 21, 34.) Among the allegations in the police reports were complaints that Plaintiff Swaminathan Nandakumar stalked or "peeped" at Plaintiffs' young daughter and that Plaintiffs found a "surveillance device" behind the fence. (*Id*., ¶¶ 21(i)-(iii), 34.)

The parties attended mediation, resulting in a stipulation and order, which provided that the fence between their homes would be replaced within 90 days and the parties would split the expense. (FAC, ¶¶ 25, 26(i).) The stipulation and order provided that, in the event of a dispute, the parties would return to mediation. (*Id*., ¶ 26(ii).) Plaintiffs attempted to comply with the stipulation and order but Defendants would not cooperate. (*Id.*, ¶¶ 28-29.) Plaintiffs then scheduled a date for further mediation but Defendants could not attend and the mediation did not occur. (*Id.*, ¶¶ 30-31.)

Thereafter, Defendants built a privacy fence solely on their own property and took down the fence at the property line without providing the 30-day notice required by Civil Code section 841. (FAC, ¶¶ 32-33.) Defendants took no further action to replace the property line fence. (*Id*., ¶ 33.)

On January 6, 2022, Defendants filed a motion for contempt, falsely alleging that Plaintiffs failed to comply with the stipulation and order. (FAC, ¶¶ 36-37.)

B. Procedural

Based on the foregoing allegations, Plaintiffs filed the currently-operative FAC on June 23, 2022, stating causes of action for: (1) breach of contract (stipulation and order), (2) breach of covenant of good faith and fair dealing (stipulation and order), (3) violation of Civil Code section 841, (4) abuse of process, and (5) civil harassment.

On January 16, 2024, Plaintiffs filed a motion for a protective order limiting discovery. The motion seeks to excuse Plaintiffs from answering the following discovery requests served by Defendant David Plagens on December 6, 2023.

As directed to Plaintiff Swaminathan Nandakumar:
(1) special interrogatories, set three (Nos. 104-162);
(2) requests for production of documents, set three (Nos. 48-71);
(3) requests for admissions, set one (Nos. 1-44); and,

As propounded to Plaintiff Rekha Nandakumar:
(1) requests for production of documents, set three (Nos. 48-71); [4]
(2) requests for admissions, set one (Nos. 1-46).

Defendants opposed the motion and Plaintiffs filed a reply.

On January 19, 2024, Defendants filed a motion to compel Plaintiffs' initial responses to Defendant David Plagens's special interrogatories, set three, and requests for production of documents, set three. Plaintiffs have opposed the motion to compel. Defendants have not filed a reply.

II. Plaintiffs' Motion for a Protective Order

A. Legal Standard

A party to whom discovery requests are directed may promptly move for a protective order. (Code Civ. Proc., §§ 2030.090, subd. (a) [interrogatories]; 2033.080, subd. (a) [requests for admission]; 2031.060, subd. (a) [requests for production].)[5] The Court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. (§ 2030.090, subd. (b) [interrogatories]; 2033.080, subd. (b) [requests for admission]; 2031.060, subd. (b) [requests for production].)[6] "[T]he burden is on the party seeking the protective order to show good cause for whatever order is sought." (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.)

"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. The court may make this determination

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[4] Notably, Plaintiffs' statement of the discovery requests at issue in the notice of motion indicates that Plaintiffs are seeking to avoid responding to requests for production of documents, *set one*, as propounded to Plaintiff Rekha Nandakumar. (Notice of Motion, p. 1, lns. 26-27.) However, it is clear from the other supporting documents that it is requests for production of documents, *set three*, as propounded to Plaintiff Rekha Nandakumar that is at issue.

[5] All further undesignated statutory references are to the Code of Civil Procedure.

[6] Although requests for production are at issue, Plaintiffs do not cite section 2031.060.

pursuant to a motion for protective order by a party or other affected person." (§ 2017.020, subd. (a).)

B. Merits of the Motion

Plaintiffs argue that the number of discovery requests propounded by Defendant David Plagens is unduly burdensome because some of the requests are duplicative and that the declaration in support of propounding additional special interrogatories beyond the statutory cap of 35 is insufficient. They request that the Court issue a protective order relieving them from the obligation to respond to the discovery requests at issue. Alternatively, they request that the Court extend the time in which to respond to the discovery requests to 30 days after the issuance of the Court's order.

i. More than 35 Special Interrogatories

A party may serve up to 35 specially prepared interrogatories on each other party as a matter of right. (§ 2030.030, subd. (a)(1).) If more than 35 interrogatories are sought, the propounding party must serve a "declaration of necessity." (§ 2030.050.) In order to challenge the declaration of necessity, the responding party must seek a protective order. (Code Civ. Proc., §§ 2030.090, subd. (b)(2) [party may move for protective order on the ground that "contrary to the representations made in a declaration submitted under Section 2030.050, the number of specially prepared interrogatories is unwarranted"].) "If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories." (§ 2030.040, subd. (b).)

Plaintiffs argue that the number of interrogatories propounded is unwarranted and that Defendant David Plagens declaration is insufficient because it fails to explain the need for the additional special interrogatories. The Court agrees. Defendants assert that the additional special interrogatories are warranted because the FAC raises numerous issues in its 14 pages and because the neighbor dispute forming the factual basis for this case spans five years.

At its heart, this case involves a dispute as to the replacement of a fence between Plaintiffs' home and Defendants' home. Although there are additional issues raised in the FAC, including Defendants' parking in front of Plaintiffs' home and Defendants' filing three allegedly false police reports and allegedly violating a stipulation and order regarding the fence, the case is far from complex. The Court finds that Defendants have failed to justify serving more than 35 special interrogatories.

Accordingly, the motion for protective order is GRANTED IN PART. Plaintiff Swaminathan Nandakumar is relieved of the obligation to respond to special interrogatories, set three (Nos. 104-162) as propounded by David Plagens. In light of this holding, the Court need not address Plaintiff's additional arguments regarding the special interrogatories.

For the first time in reply, Plaintiffs cite section 2033.050, which provides that a party propounding more than 35 requests for admissions must serve a declaration justifying the additional requests. However, Plaintiffs did not argue in their motion for protective order that Defendant David Plagens failed to justify the number of requests for admission he propounded. In fact, in their motion, Plaintiffs made no specific arguments regarding the requests for

admission whatsoever. Accordingly, this argument is rejected. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783 [points raised in the first time in reply should not be considered].)

ii. Unduly Burdensome and Duplicative

Plaintiffs contend that the requests at issue are unduly burdensome because they are duplicative. They state that the total numbers of discovery requests propounded on Plaintiff Swaminathan Nandakumar are 162 special interrogatories, 71 requests for production, and 46 requests for admission. The total numbers propounded on Plaintiff Rekha Nandakumar are 103 special interrogatories, 71 requests for production, and 44 requests for admission. They also contend that they have already produced 800 pages of responsive documents at a significant cost.

However, the only discovery requests for which Plaintiffs make any reasoned argument in the motion are the special interrogatories. As discussed above, the Court has already concluded that the protective order should be granted with respect to the special interrogatories. The Court notes that Plaintiffs argue that the requests for production are duplicative as some of them seek information regarding the installation and maintenance of Plaintiffs' security cameras. However, Plaintiffs do not identify which of the requests for production targets this information. (See *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal.App.4th 927, 934 [stating that the trial court is not required to "comb the record and the law for factual and legal support that a party has failed to identify or provide"].) Further, although Plaintiffs contend that they have already expended significant funds on the discovery requests and produced approximately 800 documents, they do not provide any information regarding the quantum of burden that would be involved in responding to the most recent of discovery. A party asserting undue burden must explain the amount of work necessary to respond to the subject discovery. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417-418.)

The Court declines to consider Plaintiffs' arguments regarding specific requests for production raised for the first time in reply. (See *St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at p. 783 [points raised in the first time in reply should not be considered].) To do so would be unfair as it deprives Defendants of the ability to respond. This is especially so in light of the fact that Defendants indicated during the meet and confer they might reduce their requests if Plaintiffs identified the duplicative requests, yet Plaintiffs failed to do so. (See Declaration in Support of Motion for Protective Order at para. 10 and Exs. P and Q.)

The motion is DENIED to the extent Plaintiffs are seeking to avoid responding to Defendant David Plagens's requests for admission and requests for production served on December 6, 2023.

iii. Request for Extension of Time in Which to Serve Responses

Plaintiffs contend that, if the Court decides to order them to respond to any of the discovery requests at issue, it should grant them 30 days from the date of the Court's order to respond. Ordinarily, when a party has failed to timely provide initial responses to the discovery requests at issue, he or she has waived any objection to them. (§§ 2031.300, subd. (a) [a party who fails to serve timely responses to a request for production or inspection of documents

"waives 'any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010)."]; 2033.280, subd. (a) [A party who fails to serve timely responses to a request for admissions waives any objections to the requests, including those based on privilege or the work product doctrine. see also *Scottsdale Ins. Co. v. Super. Ct.* (1997) 59 Cal.App.4th 263, 273 [waiver occurs where the responding party fails to timely raise an objection in its initial response]; *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1125.)

However, here, Plaintiffs moved for a protective order on the date their responses were due. In connection with their motion to compel responses, Defendants explain that they granted Plaintiffs an extension of the time in which to respond to the discovery requests at issue until January 16, 2024. Plaintiffs filed and served their motion for a protective order on January 16, 2024. Accordingly, the Court will GRANT the request for an extension of the time for Plaintiffs to respond to Defendant David Plagens's requests for admission and requests for production served on December 6, 2023. (§ 2033.080, subd. (b)(3); § 2031.060 (b)(2).) Plaintiffs must serve code-compliant responses to David Plagens's requests for admission and requests for production served on December 6, 2023 within 30 days of this Court's order.

C. Requests for Sanctions

Both parties requests sanctions in connection with the motion for protective order. The statutes providing for the issuance of a protective order provide, "the 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 for a protective order, 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." (§§ 2031.060 (h); 2030.090, subd. (d); 2033.080, subd. (d).)

Here, the Court finds that neither party substantially prevailed. Although Plaintiffs prevailed on their attempt to avoid responding to Defendant David Plagens's third set of special interrogatories served on December 6, 2023, the Court has ordered them to respond to his requests for admission and requests for production served on the same date. Additionally, the Court has granted Plaintiffs' request for an extension of the time in which to respond to the requests for admission and requests for production. The Court finds that neither party is entitled to sanctions.

Both parties' requests for sanctions in connection with the motion for a protective order are DENIED.

D. Conclusion

The motion for protective order is GRANTED IN PART. Plaintiff Swaminathan Nandakumar is relieved of the obligation to respond to special interrogatories, set three (Nos. 104-162) as propounded by David Plagens. Plaintiffs are granted an extension of the time in which to response and must serve code-compliant responses to David Plagens's requests for admission and requests for production served on December 6, 2023 within 30 days of this Court's order.

The motion is DENIED to the extent Plaintiffs are seeking to avoid responding to Defendant David Plagens's requests for admission and requests for production served on December 6, 2023.

Both parties' requests for sanctions in connection with the motion for protective order are DENIED.

I. Defendants' Motion to Compel

Defendants move for an order compelling Plaintiff Swaminathan Nandakumar to respond, without objections, to their special interrogatories, set three, and requests for production, set three, and compelling Plaintiff Rekha Nandakumar to respond to their requests for production, set three. Notably, these are the same requests at issue in the motion for protective order save for the requests for admission.[7]

"Unlike a motion to compel further responses, a motion to compel responses is not subject to a 45-day time limit . . . ." (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404 (*Sinaiko*).) There is no meet and confer requirement or time limit for bringing a motion to compel initial discovery responses, and the moving party need only show that the discovery was properly served and a timely response was not provided. (See Code Civ. Proc. §§ 2030.290 [interrogatories]; 2031.300 [requests for production of documents]; *Sinaiko*, *supra*, 148 Cal.App.4th at pp. 410-411; *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)[8] No separate statement is required. (Cal. Rules of Court, rule 3.1345(b).)

Generally, when a party has failed to timely provide initial responses to the discovery requests at issue, he or she has waived any objection to them. (§§ 2030.290, subd. (a) [A party who fails to serve timely responses to interrogatories waives any objections to the requests, including those based on privilege or the work product doctrine.]; 2031.300, subd. (a) [a party who fails to serve timely responses to a request for production or inspection of documents "waives 'any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010)."]; 2033.280, subd. (a) [A party who fails to serve timely responses to a request for admissions waives any objections to the requests, including those based on privilege or the work product doctrine. see also *Scottsdale Ins. Co. v. Super. Ct.* (1997) 59 Cal.App.4th 263, 273 [waiver occurs where the responding party fails to timely raise an objection in its initial response]; *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1125.)

Here, however, Plaintiffs filed a motion for a protective order within the time period in which to respond to the discovery requests at issue. As discussed above, the Court has granted the motion for a protective order to the extent it requests that the Court relieve Plaintiff Swaminathan Nandakumar from the obligation to respond to special interrogatories, set three

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[7] On January 19, 2024, Defendants filed a motion to deem the matters stated in their requests for admission filed December 6, 2023 admitted. That motion is scheduled to be heard on May 23, 2024.

[8] All further undesignated statutory references are to the Code of Civil Procedure.

(Nos. 104-162) as propounded by David Plagens. Accordingly, the motion to compel is DENIED to the extent it requests responses to that same set of special interrogatories.

With respect to the requests for production, the Court has ordered that Plaintiff provide code-compliant responses to those requests but it has granted Plaintiffs' request for an extension of the time in which to respond. Accordingly, the motion to compel is GRANTED to the extent it seeks code-compliant responses to the requests for production. The motion to compel is DENIED to the extent it seeks *objection-free* responses.

The motion to compel is GRANTED IN PART AND DENIED IN PART. The motion to compel is GRANTED IN PART to the extent it seeks code-compliant responses to Defendants' requests for production served on December 6, 2023. The motion is DENIED IN PART to the extent it seeks that the responses to the requests for production be objection-free. The motion is DENIED as to the special interrogatories as the Court has granted Plaintiffs' protective order as to the special interrogatories.

As with the motion for protective order, both parties request sanctions in connection with the motion to compel. The authorities governing a motion to compel initial responses to discovery requests provide that the 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 a response" to discovery requests, "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." (§§ 2030.290, subd. (c); 2031.300, subd. (c).) As with the motion for protective order, the Court finds that neither party substantially prevailed on the motion to compel. Accordingly, both parties' requests for sanctions in connection with the motion to compel are DENIED.

II. Conclusion

A. Motion for Protective Order

The motion for protective order is GRANTED IN PART. Plaintiff Swaminathan Nandakumar is relieved of the obligation to respond to special interrogatories, set three (Nos. 104-162) as propounded by David Plagens. Plaintiffs are granted an extension of the time in which to response and must serve code compliant responses to David Plagens's requests for admission and requests for production served on December 6, 2023 within 30 days of this Court's order.

The motion is DENIED to the extent Plaintiffs are seeking to avoid responding to Defendant David Plagens's requests for admission and requests for production served on December 6, 2023.

Both parties' requests for sanctions in connection with the motion for protective order are DENIED.

B. Motion to Compel

The motion to compel is GRANTED IN PART AND DENIED IN PART. The motion to compel is GRANTED IN PART to the extent it seeks code-compliant responses to

Defendants' requests for production served on December 6, 2023. Plaintiffs must serve code compliant responses to David Plagens's requests for production served on December 6, 2023 within 30 days of this Court's order.

The motion is DENIED IN PART to the extent it seeks that the responses to the requests for production be objection-free. The motion is DENIED as to the special interrogatories as the Court has granted Plaintiffs' protective order as to the special interrogatories.

Both parties' requests for sanctions in connection with the motion to compel are DENIED.

The Court will prepare the final Order.

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Calendar Line 8
Case Name: Jane Doe v. Support Systems Home, et al
Case No.: 23CV410157

Plaintiff Jane Doe seeks leave to conduct financial discovery on Defendant Filipos Markoefas ("Defendant"). Pursuant to Civil Code 3295(c), the Court may grant leave to conduct such discovery upon a showing by Plaintiff that there is a substantial likelihood she will prevail on an award of punitive damages. Defendant opposes the motion.

Section 3295(c) first states that "[n]o pretrial discovery by the plaintiff shall be permitted" with respect to evidence regarding punitive damages without a court order. An order allowing pretrial discovery of Defendant's financial condition, can granted only if "on the basis of the supporting and opposing affidavits presented, . . . plaintiff has established that there is a substantial probability that the plaintiff will prevail" on a claim for punitive damages.

The standard for granting an order under section 3295(c) is very high. "In this context, we interpret the words 'substantial probability' to mean 'very likely' or 'a strong likelihood' just as their plain meaning suggests. We note that the Legislature did not use the term 'reasonable probability' or simply 'probability,' which would imply a lower threshold of 'more likely than not.'" *Jabro v. Superior Court* (2002) 95 Cal. App. 4th 754, 758. This is because the purpose of the statute is to "protect defendants from being subjected to pretrial discovery into their financial affairs until a plaintiff establishes the likelihood [s]he will prevail on [her] punitive damages claim" and because the statute "concerns a defendant's right to privacy and protection from being forced to settle unmeritorious lawsuits in order to protect this right." *Id*. at 756-757 and 759.

Here the declarations of the parties establish that Defendant had, at the very least, an inappropriate sexual relationship with Plaintiff, as he was her counselor and the relationship started, at the latest, within one month of Plaintiff leaving the facility where Defendant was her counselor, in violation both of the policies of the workplace and in violation of California's rules regarding therapist/client relationships. Other facts regarding the relationship, such as whether it started while Plaintiff was still at Support Systems Homes, whether Defendant impregnated Plaintiff, and how much Defendant pursued, pressured, and manipulated Plaintiff are in dispute and are factors, among other, that a fact finder might consider in determining whether to award punitive damages.

The Court is unwilling at this point to say that a showing that Defendant had an inappropriate sexual relationship with Plaintiff means that it is very likely that a fact finder would grant punitive damages, even assuming it is legally sufficient to support such a finding. The Court therefore DENIES the motion. Defendant shall prepare the final order within 10 days of the hearing.

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