SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Farris Bryant, Courtroom Clerk (covering for Rachel Tien)
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: April 11, 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 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	2014-1-CV-271941	Carol Tran v. Mobile Tummy, Inc. et al.	Order of examination: parties to appear.
LINE 2	23CV422073	Yifan Jiang v. Xuan Xu	Click on LINE 2 or scroll down for ruling.
LINE 3	19CV358256	Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 4	19CV358256	Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 5	21CV381647	Anand Gupta v. Santosh Kumar et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	23CV412159	Andrew Romani et al. v. Rakshith Raman et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	23CV412710	Lena Villegas v. General Motors LLC	Motion to compel: After the court already prepared a ruling on this motion, plaintiff filed an eleventh-hour notice of withdrawal on April 10, mere minutes before the posting of tentative rulings. This matter is now OFF CALENDAR.
LINE 8	23CV418284	Wells Fargo Bank, N.A. v. Lydia T. Nguyen	Motion to deem RFAs admitted: parties to appear to address the notice issue that was raised for the first time at the hearing on April 9, 2024 (on plaintiff's summary judgment motion).
LINE 9	22CV398156	Central Coast Community Energy et al. v. BigBeau Solar, LLC	Application of Bryn R. Pallesen to appear *pro hac vice*: parties to appear. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will grant it.

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LINE 10	23CV418166	Jose Mario Jr. Guerrero v. Victor Perez	Motion by Cypress Insurance Company to intervene: notice is proper, and the motion is unopposed. Having reviewed the moving papers, the court finds good cause to GRANT the motion. Cypress Insurance Company shall prepare and e-file the proposed order for the court's signature.

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Calendar Line 2
Case Name: *Yifan Jiang v. Xuan Xu*
Case No.: 23CV422073

I. BACKGROUND

This is an action by plaintiff Yifan Jiang against defendant Xuan Xu for the partition of real property located in Santa Clara County. On August 19, 2022, Jiang and Xu jointly purchased a single-family residence at 5974 Bowen Court in San Jose (the "Bowen Property") for $1.95 million. (First Amended Complaint ("FAC"), ¶ 2.) At the time of purchase, the parties jointly obtained a loan for $1.56 million. (*Id.* at ¶10.) According to the complaint, Xu has refused to contribute to the loan since January 2023, and Jiang has had to pay Xu's share of the loan. (*Ibid.*) In addition, despite verbal promises, Xu has refused to repay Jiang one-half of the advance payment and transaction fees. (*Id.* at ¶ 11.) Jiang incurred other expenses related to the Bowen Property, including property tax, insurance premiums, replacement of air-conditioning system, gardener fees, repair of the water purification system, and basic maintenance. (*Id.* at ¶¶ 12-18.) Between June and September 2023, Jiang and Xu agreed to a partition of the Bowen Property, but their negotiations have come to an impasse. (*Id.* at ¶ 20.)

On September 8, 2023, Jiang filed his original complaint in this case, stating causes of action for breach of contract and common counts. On October 31, 2023, Xu demurred to the original complaint (and also filed a motion to strike portions of the complaint). Jiang then filed his FAC on February 5, 2024, withdrawing the previous causes of action and stating a sole cause of action for partition of real property. On February 16, 2024, Jiang submitted a "Request for Judicial Notice of Pendency of Action," attaching a "Notice of Pendency of Action" by Xu in San Mateo County: *Yifan Jiang v. Xuan Xu* (San Mateo County Superior Court Case No. 23CIV04190 (the "San Mateo Action")).

Now before the court is Xu's demurrer to the FAC, filed on February 27, 2024. Jiang filed an opposition on March 7, 2024, Xu filed a reply on April 4, 2024, and then Jiang filed a 13-page "Opposition to Defendant's Reply to Plaintiff's Opposition to the Demurrer" on April 8, 2024. Because this last filing is in the nature of a surreply, submitted without leave of court, it is improper. The court has not considered it.

II. REQUEST FOR JUDICIAL NOTICE

Both parties have submitted requests for judicial notice. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the matter issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2; see also *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569 [because judicial notice is a substitute for proof, it is always confined to matters that are relevant to the issues at hand.]; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant"] (*Jordache*).) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

A. Xu's Requests

In support of her demurrer, Xu has submitted a request for judicial notice of 11 documents, submitted as Exhibits 1-11, under Evidence Code sections 452 and 453. Exhibits 1 and 11 are copies of plaintiff Jiang's complaint and FAC in this case. Exhibits 2 – 10 are copies of court records from the San Mateo Action.

Evidence Code section 452, subdivision (d) states that the court may take judicial notice of "[r]ecords of any court of this state." "It is settled that a court may take judicial notice of its own records when ruling upon a demurrer. [Citation.]" (*Nuliad Farmer Assn. v. La Torre* (1967) 252 Cal.App.2d 788, 791.) A court may also judicially notice the files of another pending case. (Evid. Code, § 452, subd. (d)(1); *Saltares v. Kristovich* (1970) 6 Cal.App.3d 504, 511.) The court "cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Woodell* (1998) 17 Cal.4th 448, 455; see also *State ex re Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 837, fn. 6 ["we do not take judicial notice of the truth of any factual assertions appearing the documents"]; see also *Arcadians for Environmental Preservation v. City of Arcardia* (2023) 88 Cal.App.5th 418, 440 ["while the existence of [other] lawsuits may be subject to judicial notice as court records (Evid. Code, § 452, subd. (d)), the truth of the allegations and evidence in them is not"].)

Accordingly, Xu's request for judicial notice of her Exhibits 1-11 is GRANTED insofar as it relates to the *existence* of these court records, but not as to the *truth* of any factual assertions, allegations, or evidence in the records.

B. Jiang's Requests

In support of his opposition to the demurrer, Jiang has submitted a request for judicial notice of six documents, submitted as Exhibits 1-6, under Evidence Code sections 452 and 453. Exhibits 1, 5, and 6 are records from the file in this action, and Exhibits 2-4 are records from the file in the San Mateo Action. Jiang's request notes that some of the documents are attached "with partial exhibits."

Jiang appears to be requesting judicial notice of several documents already noticed by the court in response to Xu's request for judicial notice. The court need not take judicial notice of the existence of the same documents twice, and the court cannot take judicial notice of the truth of any facts asserted in the attachments to the documents. As mentioned, the court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant." (*Jordache,* 18 Cal.4th 739, 748, fn. 6.) Accordingly, Jiang's request for judicial notice of his Exhibits 1, 2, 4, and 5 is DENIED.

Jiang's Exhibits 3 and 6 are court records that were not judicially noticed in connection with Xu's request discussed above. Jiang's request for judicial notice of his Exhibits 3 and 6 is GRANTED.

III. DEMURRER TO THE FAC

A. Meet and Confer

As an initial matter, counsel for Xu, Michael Muse-Fisher, has filed a declaration asserting his attempted compliance with the meet-and-confer requirements of Code of Civil Procedure, section 430.41, subdivision (a). Under this provision, the demurring party is required to meet and confer in person or by telephone with the opposing party in an effort to resolve the objections to be raised on demurrer. According to the Muse-Fisher declaration, he met and conferred with Jiang's father, who advised that Jiang was on the call but not speaking. This does not constitute compliance with the statute, but "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (Code Civ. Proc., § 430.10, subd. (a)(4).) Therefore, the court considers Xu's demurrer on its merits.

The court notes that Jiang's father is not listed as his counsel of record—and the court has no information as to whether Jiang's father is an attorney. To the extent that Jiang is not represented by counsel—and it appears that he has chosen to proceed in propria persona at this time—he must personally participate in any future meet-and-confer discussions. It is not proper for Jiang to have another non-lawyer family member represent him in this case, whether during settlement negotiations or in hearings before the court. (See Bus. & Prof. Code, § 6125 ["No person shall practice law in California unless the person is an active licensee of the State Bar."].)

B. Legal Standard

In ruling on a demurrer, the court 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 al 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.) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

C. Analysis

Xu demurs to the sole cause of action for partition on the ground that there is another action pending between the same parties on the same cause of action in this state. (See Notice of Demurrer and Demurrer, p. 2:8-9.) This is one of the grounds for demurrer explicitly set forth in Code of Civil Procedure section 430.10. (See Code Civ. Proc., § 430.10, subd. (c).) "A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 789 (*Plant Insulation*).) Although the existence of the other lawsuit may not appear on the face of the complaint, the court can take judicial notice of the existence of the other court files. (Evid. Code § 452, subd. (d).)

At the same time, a demurrer on the ground that there is another action pending between the same parties is not judicially favored. (*Conservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 176 (*Pacheco*).) "Because of its disfavored status the statutory language has been strictly interpreted to defeat pleas in abatement." (*Ibid.*) Thus, a special demurrer on this ground requires showing: "(1) That both suits are predicated upon the same cause of action; (2) that both suits are pending in the same jurisdiction; and (3) that both suits are contested by the same parties. [Citations.]" (*Colvig v. RKO Gen.* (1965) 232 Cal.App.2d 56, 70.)

"Where the plea is sustained the order should be merely an abatement or continuance of the second action, and it is error to give judgment for the defendant on the merits. [Citations.]" (*Id.* at p. 71; see also *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 336, fn 2.) "[W]here the defense of another action pending or a demurrer based upon subdivision (c) of Section 430.10 is sustained (and no other special defense is sustained) an interlocutory judgment shall be entered in favor of the defendant pleading the same to the effect that no trial of other issue shall be had until the final determination of that other action . . . ." (Code Civ. Proc., § 597.)

To be considered the same "cause of action," the pleadings in question must allege invasion of the same "primary right." (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1384.) Actions filed in different counties of the Superior Court of California are within the "same jurisdiction." (See *Simmons v. Superior Court of Los Angeles County* (1950) 96 Cal.App.2d 119, 122-123; *Burch v. Slamin* (1955) 137 Cal.App.2d 1, 3 ["Where complaints are filed in two counties involving the same subject of action the county in which summons is first served acquires jurisdiction of the entire controversy and the action in the other county is subject to abatement on the ground of another action pending. [Citations.]")

A statutory plea in abatement requires showing the "absolute identity of parties." (*Plant Insulation, supra*, 224 Cal.App.3d at p. 789 (*Plant Insulation*).) To meet this standard, the parties must "stand in the same relative position as plaintiff and defendant. [Citation.]" (*National Auto Ins. Co. v. Winter* (1943) 58 Cal.App.2d 11, 16 (*National Auto*); see also *Western Pipe & Steel Co. v. Tuolumne Gold Dredging Corp.* (1944) 63 Cal.App.2d 21, 28-29 [the parties need not named be as plaintiff and defendant in both actions but must stand in the same "relative position as plaintiff and defendant"].)

Here, Xu argues the special demurrer should be sustained because she filed a cross-complaint in the San Mateo Action seeking partition of the parties' property before Jiang filed his FAC seeking partition in this Santa Clara case. (Notice of Demurrer and Demurrer, p. 2:10-16.) Xu's memorandum in support of demurrer ("MPA") outlines the procedural history of this action and the San Mateo Action, relying upon her judicially noticed documents ("RJN").

According to these documents, on September 8, 2023, Jiang filed complaints for breach of contract and common counts in both Santa Clara County and San Mateo County. (MPA, p. 8:2-5; RJN, Exs. 1-2.) Xu filed demurrers to both actions. (MPA, p. 8:6-7; RJN, Ex. 3.) On November 16, 2023, Xu filed a verified cross-complaint for partition of real property ("Xu Cross-Complaint") in the San Mateo Action. (RJN, Ex. 4.) The Xu Cross-Complaint states a single cause of action for the partition of two parcels of real property: (1) property on Kentfield Avenue in Redwood City, which is in San Mateo County (the "Kentfield Property"); and (2) the Bowen Property located in San Jose, which is in Santa Clara County. (*Ibid.*)

Xu contends that the demurrer here is proper because the court in the San Mateo Action has jurisdiction over her cause of action for a partition of both the Kentfield Property and the Bowen Property. (MPA, pp. 8:25-9:9, 11:15-21.) In a minute order dated February 6, 2024 in the San Mateo Action, the court (Judge Fineman) discussed jurisdiction and venue:

> Code of Civil Procedure section 872.110, subdivision (b)(1), which governs partition actions, provides: "(b) Subject to the power of the court to transfer actions, the proper county for the trial of actions under this title is:[¶] (1) Where the subject of the action is real property or real and personal property, the county in which the real property, or some part thereof, is situated." This provision is consistent with the venue provision regarding real property in general. (Code of Civ. Proc., 392, subd. (a)(1); id., § 872.11, subd. (b).) The Supreme Court in *Murphy v. Superior Court* (1902) 138 Cal. 69, 71-72 in a partition action explained that real property includes distinct parcels of land in different counties and that allowing one action involving property in different counties obviates a multiplicity of actions. Accordingly, since one of the properties at issue is in San Mateo County, this court has jurisdiction to determine the partition actions involving the Santa Clara action.

(RJN, Ex. 8, p. 2.)

This court similarly finds that San Mateo County is a proper venue for the partition of both properties. Nevertheless, the question of whether Xu's special demurrer is well-taken is a distinct inquiry. As explained above, for a special demurrer to lie under Code of Civil Procedure section 430.10, subdivision (c), the parties must "stand in the same relative position as plaintiff and defendant." (*National Auto, supra*, 58 Cal.App.2d at p. 16; see also *Franchise Tax Board v. Firestone Tire & Rubber Co.* (1978) 87 Cal.App.3d 878, 883.) Here, the first pleading to state a cause of action for partition is Xu's Cross-Complaint in the San Mateo Action, filed on November 16, 2023, in which Xu seeks relief as cross-complainant against Jiang as cross-defendant. (RJN, Ex. 4.) In Jiang's FAC in this case, dated February 25, 2024, Jiang seeks partition as plaintiff against Xu as defendant. Thus, the parties do not stand in the same relative position in the two actions, but instead stand in opposite relative positions. Although this may seem like a technical distinction without a material difference when it comes to a partition action (as opposed to an action for monetary damages or other "one-way" relief), the court reads the case law as requiring "strict" application of the standard. (See *Pacheco, supra*, 224 Cal.App.3d at p. 176.) As a result, the court OVERRULES Xu's special demurrer to the FAC under section 430.10, subdivision (c).

Nevertheless, the court still concludes that this action should be stayed under the rule of *exclusive concurrent jurisdiction*. (See *Plant Insulation, supra*, 224 Cal.App.3d. 786-787 ["Under the rule of exclusive concurrent jurisdiction, when two superior courts have concurrent jurisdiction over the subject matter and parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matter have been resolved."].) This rule does not require absolute identity of the parties and, rather than a strict statutory rule, is a common-law rule that can be enforced by the trial court to avoid conflict of jurisdiction, confusion, and delay. (*Id.* at pp. 787-788.) When the rule of exclusive concurrent jurisdiction applies, the second action should be stayed so that the court retains jurisdiction until a final

resolution is reached. (*Id*. at p. 792.) The court finds that the present circumstances satisfy all of the relevant considerations for the rule to apply.

Thus, even though the court is overruling the demurrer under section 430.10, subdivision (c), the ultimate outcome is the same as if the demurrer were sustained: this matter is STAYED, pending resolution of the partition action in San Mateo County. The court vacates the case management conference that is currently set for June 18, 2024 and instead sets this matter for a case status review regarding the concurrent San Mateo case for **October 17, 2024 at 10:00 a.m.** in Department 10.

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Calendar Lines 3-4
Case Name: *Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.*
Case Nos.: 19CV358256 (lead case), 20CV370523, and 20CV372889

I. BACKGROUND

These cases arise out of a horrific shooting at the Gilroy Garlic Festival on July 28, 2019 by a single shooter, who killed himself after police returned fire and shot him multiple times. Three people died, and 17 others were wounded by the gunfire. The original complaint in the first of the three cases (Case No. 19CV358256) was filed on November 12, 2019 by plaintiffs Wendy Towner, Francisco Aguilera, Nick McFarland, Justin Bates, and Brynn Ota-Matthews (collectively, the "Towner plaintiffs"). The Towner plaintiffs eventually filed a Fifth Amended Complaint ("5AC") on July 23, 2021, stating several causes of action against defendants Gilroy Garlic Festival Association, Inc. ("GGFA"), First Alarm Security & Patrol, Inc. ("First Alarm"), the City of Gilroy ("City"), Century Arms, Inc. ("Century Arms"), and various Does.

The second case (Case No. 20CV370523) was brought by plaintiffs Juan Salazar, Lorena Salazar, Keyla Salazar, Lyann Salazar, Eduardo Ponce, and Dasha Pimentel (collectively, the "Salazar plaintiffs") on September 10, 2020. They filed their operative Third Amended Complaint ("TAC") on July 27, 2021. The TAC states causes of action for: (1) Negligence (against GGFA and First Alarm); (2) Premises Liability (against GGFA and First Alarm); (3) Wrongful Death (against all defendants); (4) Dangerous Condition of Public Property (against the City); (5) Joint Venture Liability (against GGFA and the City); (6) Products Liability re: WASR assault rifle (against Century Arms); (7) Negligence re: WASR assault rifle (against Century Arms); and (8) Public Nuisance re: WASR assault rifle (against Century Arms). There are no exhibits attached to the TAC.

The third case (Case No. 20CV372889) was brought by plaintiff Veronica Henderson ("Henderson"). She filed her original complaint on October 30, 2020, and she filed her operative Second Amended Complaint ("SAC") on July 18, 2022. The SAC states six causes of action for: (1) Negligence (against GGFA and First Alarm); (2) Premises Liability (against GGFA and First Alarm); (3) "Public Entity Liability" (against the City); (4) Products Liability re: WASR assault rifle (against Century Arms); (5) Negligence re: WASR assault rifle (against Century Arms); and (6) Public Nuisance re: WASR assault rifle (against Century Arms). There are no exhibits attached to the SAC.

On January 5, 2021, this court (Judge Barrett) consolidated these three cases for discovery purposes only, pursuant to a stipulation by the parties.

In Case No. 19CV358256, the court (Judge Arand) sustained GGFA and the City's demurrer to the fifth cause of action for joint venture liability, without leave to amend, and granted their motion to strike references to the term "joint venture" from various portions of the 5AC. (See December 9, 2021 Order.)[1]

[1] The court takes judicial notice of this order on its own motion pursuant to Evidence Code section 452, subdivision (d).

On November 7, 2023, the court (the undersigned) granted Century Arms's motion to quash service of the summons in Case No. 19CV358256, based on the court's lack of specific personal jurisdiction over Century Arms.[2] That order ended Century Arms's involvement in Case No. 19CV358256. On November 14, 2023, the court granted motions for summary judgment by the City, First Alarm, and GGFA as to all remaining claims in the 5AC in Case No. 19CV358256.[3]

Currently before the court are two more motions for summary judgment. These are: (1) First Alarm's motion for summary judgment as to the Henderson SAC in Case No. 20CV372889, and (2) First Alarm's motion for summary judgment as to the Salazar TAC in Case No. 20CV370523. Both motions were filed on December 12, 2023. Henderson filed an opposition to the motion on March 28, 2024. The Salazar plaintiffs have not filed an opposition.

II. GENERAL LEGAL STANDARDS FOR SUMMARY JUDGMENT

The pleadings limit the issues presented for summary judgment or summary 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."].) "A moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Jacobs v. Coldwell Banker Residential Brokerage Co*. (2017) 14 Cal.App.5th 438, 444 [quoting *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 421 (*Howard*)]; see also *California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 637, fn. 3 ["Evidence offered on an unpleaded claim, theory, or defense is irrelevant because it is outside the scope of the pleadings."].)

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.) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly

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[2] The court also takes judicial notice of this order pursuant to Evidence Code section 452(d).
[3] The court takes judicial notice of this order pursuant to Evidence Code section 452(d) as well.

scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

The moving party may generally not rely on additional evidence submitted 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.)

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action . . . . The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; internal citations omitted.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* at 850.)

III. FIRST ALARM'S MOTION AS TO THE HENDERSON SAC (CASE NO. 20CV372889)

A. The Basis for First Alarm's Motion

The Henderson SAC asserts two causes of action against First Alarm: the first cause of action for negligence and the second cause of action for premises liability. First Alarm moves for summary judgment "on the grounds that the undisputed material facts establish that there is no merit to the claims alleged in . . . the Henderson operative Second Amended Complaint" because Henderson "cannot establish the elements of duty, breach or causation for [the] causes of action against First Alarm." (Dec. 12, 2023 Notice of Motion at p. 1:9-13.)

The SAC's first cause of action for negligence (SAC, ¶¶ 16-53) alleges that First Alarm contracted with GGFA to provide security for the Gilroy Garlic Festival and had a duty, along with the other defendants, to provide a "reasonably safe event" in 2019. This was allegedly breached by the failure to prevent the July 28, 2019 mass shooting. There are few allegations against First Alarm specifically, but the SAC makes several references to inadequate security measures and training. The second cause of action for premises liability (SAC, ¶¶ 54-72) contains no specific references to or allegations against First Alarm, but it incorporates by reference the prior allegations about "security."

Echoing its prior summary judgment motion in Case No. 19CV358256, First Alarm's primary argument is that Henderson's claims "are barred because the Plaintiff cannot establish that First Alarm owed the Plaintiff a duty, or that First Alarm breached a duty, as the attack was an unforeseeable act of violence that occurred without warning. There has never been any prior gun violence, mass shooting or any similar act of violence at the Festival." (Memorandum of Points and Authorities ("MPA"), p. 1:24-27.) It also argues that it cannot be liable to Henderson because "[t]he Shooter did not gain access to the Festival through any gate or area where First Alarm was responsible for providing security." (MPA, p. 2:1-2.) As it did in its prior motion, First Alarm correctly notes that "[i]n general, a defendant has no duty to

protect a party from unforeseeable third party criminal conduct even when a defendant has formed a special relationship with the plaintiff . . . . It is well settled law that 'foreseeability is the crucial factor' in determining whether there is a duty to prevent a third party's criminal conduct." (*Id.* at p. 9:7-20, internal citations omitted but citing among others *Wiener v. Southcoast Childcare Centers, Inc.*, (2004) 32 Cal.4th 1138, 1146-1150 (*Wiener*).)

First Alarm's motion is supported by a declaration from counsel Luanne Rutherford, who authenticates Exhibits 1-7.

B. Analysis

The analysis of the first cause of action for negligence and the second cause of action for premises liability is essentially the same, because premises liability is a variety of negligence.

1. Applicable Legal Principles

"An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673.) "The issue of whether a legal duty exists is an issue of law, not an issue of fact for the jury." (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.)

"Broadly speaking, premises liability alleges a defendant property owner allowed a dangerous condition on its property or failed to take reasonable steps to secure its property against criminal acts by third parties." (*Delgado v. American Multi-Cinema, Inc*. (1999) 72 Cal.App.4th 1403, 1406.) "Premises liability is a form of negligence … and is described as follows: The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." (*Brooks v. Eugene Burger Management Corp*. (1989) 215 Cal.App.3d 1611, 1619; see also CACI 1001 ["A person who [owns/leases/occupies/controls] property is negligent if he or she fails to use reasonable care to keep the property in a reasonably safe condition. A person who [owns/leases/occupies/controls] property must use reasonable care to discover any unsafe conditions and to repair, replace, or give adequate warning of anything that could be reasonably expected to harm others."].)

There is also a separate notice requirement for premises liability: "An owner is liable for harm caused by a dangerous condition, of which the owner had actual or constructive knowledge. An injured plaintiff has the burden of showing that the owner had notice of the defect in sufficient time to correct it, but failed to take reasonable steps to do so." (*Howard, supra,* 203 Cal.App.4th 403 at p. 431 [citations omitted].) "Although no two accidents happen in the same way, to be admissible for showing notice to a landowner of a dangerous condition, evidence of another similar accident must have occurred under substantially the same circumstances." (*Id*. at p. 432.)

"An owner of real property is 'not the insurer of [a] visitor's personal safety . . .' However, an owner is responsible 'for an injury occasioned to another by [the owner's] want of ordinary care or skill in the management of his or her property . . .' Accordingly, landowners

are required 'to maintain land in their possession and control in a reasonably safe condition,' and to use due care to eliminate dangerous conditions on their property." (*Taylor v. Trimble* (2017) 13 Cal.App.5th 934, 943-944, internal citations and quotations omitted.) "The proper test to be applied to the liability of the possessor of land . . . is whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others." (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156.)

2. First Alarm's Initial Burden

First Alarm has established through admissible evidence (primarily, the declaration of Kurt Svardal, submitted as Exhibit 2 to the declaration of Luanne Rutherford) that prior to the July 28, 2019 attack, there had been no incidents of gun violence at the Festival. This is sufficient to meet the initial burden of establishing that the July 28, 2019 attack could not be considered reasonably foreseeable. If the third-party criminal attack here was not reasonably foreseeable, there could be no duty on the part of First Alarm to prevent it, eliminating the possibility of any breach. This is a sufficient basis upon which to grant First Alarm's motion for summary judgment.

California treats "third party criminal acts differently from ordinary negligence, and require[s] us to apply a heightened sense of foreseeability before we can hold a defendant liable for the criminal acts of third parties. There are two reasons for this: first, it is difficult if not impossible in today's society to predict when a criminal might strike. Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal." (*Wiener, supra*, 32 Cal.4th at 1149-1150 [internal citations omitted].) "In each case . . . the existence and scope of a property owner's duty to protect against third party crime is a question of law for the court to resolve." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213 (*Castaneda*).) "In assessing whether the facts show 'heightened foreseeability' of third party crimes, our precedents have focused on whether there were prior similar incidents from which the property owner could have predicted the third party crime would likely occur, though we have recognized the possibility that 'other indications of a reasonably foreseeable risk of violent criminal assaults' could play the same role. (*Id*. at pp. 1220-1221 [quoting *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 240]; see also *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1207-1212 (*Alvarez*) [stating that "a duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated"; that "[f]oreseeability is the crucial factor in determining the existence of this duty"; and that "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises"]; *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 536-538 ["In the case of criminal conduct by a third party, an extraordinarily high degree of foreseeability is required to impose a duty on the landowner' for the resulting harm . . . . When the court engages 'in any analysis of foreseeability, the emphasis must be on the specific, rather than more general, facts of which a defendant was or should have been aware.'"].) "[I]n cases involving liability for third party criminal conduct, 'the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents.' . . . Common sense is not the standard for determining duty. Nor is hindsight." (*Id*. [citations omitted].))

3. Henderson's Rebuttal

When the burden shifts to Henderson, she is unable to raise any triable issues of material fact as to foreseeability, as there is no evidence of substantially similar incidents ever having occurred at the Festival in prior years. The opposition does not acknowledge or address the court's prior order on the prior motions for summary judgment. Repeated assertions (taken almost verbatim from the prior opposition briefs) that the Festival had a "history of violence and criminality" because knives were confiscated at Festival gates and some patrons were arrested for drunkenness or fistfights do not come close to demonstrating that the July 28, 2019 mass shooting by a lone individual was reasonably foreseeable. Nor do repeated assertions of historical gang activity at the Festival, not involving any guns, support any "heightened sense of "foreseeability," as there is no evidence of that the lone shooter here had any connection with any gang.

The decision in *Dix v. Live Nation Entertainment, Inc.* (2020) 56 Cal.App.5th 590, cited in Henderson's opposition, does not raise any triable issue of material fact as to the existence of a duty to prevent the July 28, 2019 shooting. Although that case included a discussion regarding the "special relationship" that exists between festival operators and festival attendees, that case arose from an accidental drug overdose at a music festival, involving a completely different kind of duty to attendees (*i.e.*, a duty to provide adequate medical care and adequate protection from illegal substances). It is completely distinguishable from the facts of this case and does not support the idea that a mass shooting by a lone gunman was reasonably foreseeable third-party criminal conduct at the Festival. Moreover, as First Alarm notes in its reply brief, that case does not support the existence of a special relationship here, because that case dealt with the relationship between a festival operator and festival attendees—not the purported relationship between a *vendor* to the festival operator and the festival attendees.

The opposition's reference to the "*Rowland* factors" (see *Rowland v. Christian* (1968) 69 Cal.2d. 108) also does not raise any triable issue, as it misunderstands the law in this area. In *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 219-221, the California Supreme Court made it clear that the purpose of applying the *Rowland* factors is to determine whether an already-established "duty" should be *further limited*, not "to *create* a duty to take action to protect the plaintiff from third party harm." (Emphasis added.) In other words, the *Rowland* factors are to be applied in order to limit a defendant's liability, not expand it.

As discussed above (and in the court's November 14, 2023 ruling in Case No. 19CV358256), the weight of the decisional law discussing liability for violent third-party criminal conduct holds that the degree of reasonable foreseeability necessary to give rise to a duty to prevent such conduct can rarely, if ever, be established in the absence of prior similar incidents. (See *Weiner*, *Castaneda*, and *Alvarez*, *supra*.) Henderson has presented no evidence of prior similar incidents at the Festival.

The October 20, 2023 declaration of event safety expert Steven Adelman (first submitted in opposition to the December 2022 motions for summary judgment and resubmitted here as Exhibit 1 to Henderson's packet of opposing evidence) still does not provide such evidence or raise any triable issues as to the reasonable foreseeability of the mass shooting and

the existence of any duty by First Alarm to prevent it.[4] What Adelman does focus on as having previously occurred on Festival grounds (fistfights, public drunkenness, etc.) is not comparable to the July 28, 2019 attack. Similarly, general knowledge of gun violence elsewhere in California or in the nation is not enough to make the July 28, 2019 attack reasonably foreseeable under California law. The court agrees with First Alarm's argument that "possibility" does not establish "foreseeability." "[A] general knowledge of the *possibility* of violent criminal conduct is not in itself enough to create a duty under California law." (*Williams v. Fremont Corner, Inc.* (2019) 37 Cal.App.5th 654, 668, emphasis in original.) "Knowing there is a general potential for rowdy or troublesome conduct by bar patrons . . . does not make the category of aggressive parking lot assaults reasonably foreseeable, any more so than the presumed awareness of previous assaults and robberies or problems with transients on the property establishes the foreseeability of a violent sexual assault." (*Id*. at pp. 671-672; see also *Hanouchian v. Steele* (2020) 51 Cal.App.5th 99, 111-113.)

Finally, Henderson cannot raise triable issues of material fact based on allegations that First Alarm was negligent in other ways, such as in the hiring, training or supervision of security staff. (See Henderson SAC, ¶¶ 40, 41, 58, and 59.) "[P]laintiffs cannot attempt to circumvent governing decisional law about a commercial enterprise's liability for criminal acts by recasting their claim in some other sub-theory of negligence. The dispositive issue remains the foreseeability of the criminal act. Absent foreseeability of the particular criminal conduct, there is no duty to protect the plaintiffs from that particular type of harm." (*Alvarez*, *supra*, 100 Cal.App.4th at 1212; see also *Rinehart v. Boys & Girls Club of Chula Vista* (2005) 133 Cal.App.4th 419, 431.)

As First Alarm has established that it did not have a duty to prevent the attack in 2019, it is entitled to judgment on the Henderson SAC. Given the court's determination that there was no duty, it is not necessary for the court to address the parties' additional arguments regarding breach or causation.

C. Evidentiary Objections

The court notes that Henderson has submitted objections to some of First Alarm's evidence with her opposition. As these objections do not comply with Rule of Court 3.1354, the court will not rule upon them. (See *Vineyard Spring Estates v. Superior Court* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co*. (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].)

With its reply, First Alarm has submitted objections to the declaration of Steven Adelman. As these objections do not comply with Rule of Court 3.1354, they will also not be ruled on. "Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (See Code Civ. Proc., § 437 c, subd. (q).)

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[4] Again, the court re-emphasizes that "the existence and scope of a property owner's duty to protect against third party crime is a question of law for the court to resolve." (*Casteneda*, *supra*, 41 Cal.4th at p. 213.)

IV. FIRST ALARM'S MOTION AS TO THE SALAZAR TAC (CASE NO. 20CV370523)

A. The Basis for First Alarn's Motion

The Salazar TAC asserts three causes of action against First Alarm: the first cause of action for negligence, the second cause of action for premises liability, and the third cause of action for wrongful death. First Alarm moves for summary judgment "on the grounds that the undisputed material facts establish that there is not merit to the claims alleged in the Salazar operative Third Amended Complaint, as these Plaintiffs cannot establish the elements of duty, breach or causation for their causes of action against First Alarm." (Notice of Motion, p. 1:9-12.)

The TAC's first cause of action for negligence (TAC, ¶¶ 20-65) alleges that First Alarm contracted with GGFA to provide security for the Festival, and that it breached its duty to "provide a reasonably safe event" by its failure to prevent the July 28, 2019 mass shooting. As with the Henderson SAC, there are virtually no specific references to First Alarm in the Salazar TAC, but there are several allegations regarding inadequate security measures. The second cause of action for premises liability (TAC, ¶¶ 66-82) contains no references to First Alarm, either, but it incorporates by reference the prior allegations about security. The third cause for wrongful death (TAC, ¶¶ 83-88) incorporates and depends upon the allegations of the first and second causes of action.

First Alarm's motion is largely the same as that brought against the Henderson SAC. First Alarm argues that the Salazars' claims, like Henderson's claims, "are barred because the Plaintiffs cannot establish that First Alarm owed the Plaintiffs a duty, or that First Alarm breached a duty, as the attack was an unforeseeable act of violence that occurred without warning. There has never been any prior gun violence, mass shooting or any similar act of violence at the Festival." (Memorandum, p. 1:24-27.) First Alarm also argues that it cannot be liable to the Salazars because "[t]he Shooter did not gain access to the Festival through any gate or area where First Alarm was responsible for providing security." (Memorandum, p. 2:1-2.) It once again notes that "[i]n general, a defendant has no duty to protect a party from unforeseeable third party criminal conduct even when a defendant has formed a special relationship with the plaintiff . . . . It is well settled law that 'foreseeability is the crucial factor' in determining whether there is a duty to prevent a third party's criminal conduct." (*Id.* at p. 9:7-20 [internal citations omitted].) First Alarm argues that the absence of a duty to prevent the shooting means that there can be no wrongful act to support the third cause of action for wrongful death. (*Id*. at p. 12:1-9.)

The motion for summary judgment as to the Salazar TAC is supported by another declaration from counsel Luanne Rutherford, who authenticates Exhibits 1-7.

B. Analysis

First Alarm's motion for summary judgment as to the Salazar TAC is GRANTED. As was the case with the motion directed to the Henderson SAC, First Alarm's evidence establishes that before the July 28, 2019 attack, there had been no incidents of gun violence at the Festival. This is sufficient to meet the initial burden of establishing that the July 28, 2019 attack could not be considered reasonably foreseeable. Consequently, there was no duty to

prevent it and no breach of any duty. This meets First Alarm's initial burden as to the first cause of action for negligence, the second cause of action for premises liability, and the third cause of action for wrongful death.

As the Salazar plaintiffs have not filed any opposition to First Alarm's motion, they cannot rebut First Alarm's showing with any triable issue of material fact.

V. CONCLUSION

The court GRANTS First Alarm's motions for summary judgment in both Case No. 20CV370523 and Case No. 20CV372889.

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Calendar Line 5
Case Name: *Anand Gupta v. Santosh Kumar et al.*
Case No.: 21CV381647

Plaintiff Anand Gupta moves to compel initial responses to form interrogatories (general and employment), special interrogatories, and requests for production of documents from defendant Santosh Kumar. In addition, Gupta moves for an order deeming admitted his first set of requests for admissions from Kumar.

In a materially tardy opposition—filed April 2, 2024, even though it was due five days earlier, on March 28, 2024—Kumar acknowledges that he did not provide timely responses to these discovery requests, but he quibbles with the validity of the affidavit of service for these requests from 2022 and argues that Gupta's recitation of the meet-and-confer history is also inaccurate. In any event, Kumar's counsel has submitted a declaration: (1) acknowledging that these requests were received by counsel "in late 2022 or early 2023," (2) attaching a copy of belated responses to the requests for admissions, and (3) describing difficulties in communicating with Kumar. Kumar's opposition requests that he be given an additional 60 days to provide responses to the interrogatories and document requests, given his prior cancer surgery, prior hip replacement surgery, and "continuing" chemotherapy.

The court finds that Kumar has identified some mitigating factors that warrant consideration, but it also finds that *one year* (if the court accepts Kumar's timeline—*one year and eight months* if the court accepts Gupta's timeline) is an unreasonably long time to have allowed discovery requests to languish without providing initial responses. In light of Kumar's extremely belated service of responses to the requests for admissions, the court denies Gupta's motion for an order deeming the RFAs admitted. In all other respects, the court grants the motion and orders Kumar to provide verified responses within **30 days of notice of entry of this order**. The court would ordinarily order a much shorter period, but in light of Kumar's cancer treatment, the court grants more time. (At the same time, the court finds that 60 days is excessive, given the long delay that has already occurred.) There shall be no more excuses for Kumar's (or Kumar's counsel's) non-responsiveness going forward.

As for monetary sanctions, the court notes that even with Kumar's health issues, he and his counsel did not act with substantial justification in waiting until the very last minute to respond to this motion and to Gupta's efforts to obtain initial discovery responses. The court grants Gupta's request in part and orders Kumar and counsel to be jointly and severally liable for **$1,040** in monetary sanctions, payable within 30 days of notice of entry of this order. (This amount represents 2.5 hours of Gupta's counsel's time at $400/hour, plus $40 in filing fees.)

The motion to compel and the request for sanctions are GRANTED IN PART and DENIED IN PART.

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Calendar Line 6
Case Name: *Andrew Romani et al. v. Rakshith Raman et al.*
Case No.: 23CV412159

Plaintiffs Andrew Romani and Tina Tian ("Plaintiffs") move to compel further responses to discovery requests from defendants Rakshith Raman and Lavanya Shridhar ("Defendants"). Although this is styled as a motion to compel further responses to "Requests for Admission, Set No. 1," in reality, what plaintiffs appear to be seeking to compel are further answers to *Form Interrogatory No. 17.1*, which calls for "all facts upon which [the responding party] base[s its] response" to each request for admission, where the response "is not an unqualified admission." The sole focus of Plaintiffs' briefing and separate statement is on the adequacy of the responses to Interrogatory No. 17.1 as they relate to Requests for Admissions Nos. 4, 6, 9, 11, 15, 17, 24, 25, 27, and 33-35. None of this is in Plaintiffs' notice of motion and motion. Plaintiffs do not identify Form Interrogatory No. 17.1 in their notice of motion, nor do they identify the foregoing requests for admissions. For this reason alone, Plaintiffs' motion is fatally flawed and must be denied.

Plaintiffs' motion must also be denied because their separate statements in support of the motion (two separate statements—one as to each defendant) are fatally defective. Rule 3.1345(c) of the California Rules of Court requires that a separate statement "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." In addition, rule 3.1345(c) requires the separate statement to include: "(1) The text of the request, interrogatory, question, 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 . . . (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 . . . ." Plaintiffs' separate statements fail to comply with these requirements in several material ways. The separate statements do not contain the complete *text of the RFAs at issue*; the separate statements *do not include any of the responses to the RFAs at issue*; the separate statements do not include the *text of Form Interrogatory No. 17.1*; and the separate statements do not include the *complete text of the answers to Form Interrogatory No. 17.1*. As such, the court is unable to adjudicate this issue without resort to other documents, including the original discovery requests and responses. Indeed, the separate statements here do not even make it clear that the motion to compel relates solely to the answers to Form Interrogatory No. 17.1; instead, the separate statements present the issue as if the responses to the RFAs themselves were the source of the parties' dispute. It is only by looking at *other documents* that the court can even decipher what the dispute is about. That is precisely what rule 3.1345(c) was designed to prevent from happening.

Finally, even if the court were to overlook these glaring procedural problems, the court would deny the motion on the merits. The court finds that the answers to Form Interrogatory No. 17.1 were code-compliant and sufficient, because they provide an explanation as to why defendants did not communicate with their realtor, their broker, Foundation Repair of CA, or even with each other about the need to repair the foundation of the home. In the present motion, Plaintiffs seek further explanations as to *why* defendants held the beliefs that they did, but that further explanation is not required, because it is not needed to support the responses to

the RFAs. The only exception to the foregoing appears to be Raman's answer to Form Interrogatory No. 17.1 as it relates to RFA No. 24—that answer is missing, although Shridhar does provide an answer as it relates to RFA No. 24. With the correction of this obvious cut-and-paste error, the court finds that the responses to Interrogatory No. 17.1 are adequate.

For the foregoing reasons, the court DENIES the motion to compel (and also denies Plaintiffs' request for monetary sanctions).

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