SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: January 25, 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	22CV400111	Bank of America N.A. v. Quynhphuong B. Nguyen	Claim of exemption: the court DENIES the claim, as Nguyen has not shown that the amounts to be withheld are exempt. Nguyen's proposed amount to be withheld from earnings of $0 is unreasonable, given Nguyen's income. (CCP § 706.123.) The amounts contained on Nguyen's financial statement are internally inconsistent, and the listed monthly expenses are excessive. The court finds that the judgment creditor's proposed wage garnishment of $323.73 per pay period is reasonable.
LINE 2	23CV414223	Stack Capital, LLC v. Michael F. Wallau	Order of examination: parties to appear.
LINE 3	21CV390666	Eric F. Hartman et al. v. Koshy P. George	Click on LINE 3 or scroll down for ruling in lines 3-5.
LINE 4	21CV390666	Eric F. Hartman et al. v. Koshy P. George	Click on LINE 3 or scroll down for ruling in lines 3-5.
LINE 5	21CV390666	Eric F. Hartman et al. v. Koshy P. George	Click on LINE 3 or scroll down for ruling in lines 3-5.
LINE 6	23CV413357	Robert Gonzalez et al. v. Equity Residential Management, LLC et al.	Click on LINE 6 or scroll down for ruling in lines 6-7.
LINE 7	23CV413357	Robert Gonzalez et al. v. Equity Residential Management, LLC et al.	Click on LINE 6 or scroll down for ruling in lines 6-7.
LINE 8	22CV404231	Diana Rodriguez v. Michelle Rodriguez	Click on LINE 8 or scroll down for ruling.

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LINE 9	21CV382117	Alum Rock Union Elementary School District v. Esau Ruiz Herrera	Motion for summary judgment: notice is proper, and the motion is unopposed. Upon review of the papers, the court concludes that plaintiff has met its initial burden of showing that there is no triable issue of material fact regarding its causes of action, and that there is no defense to these causes of action. (Code Civ. Proc. § 437c, subd. (p).) The motion is GRANTED. Moving party to prepare formal order for court's signature.
LINE 10	21CV389607	County of Santa Clara v. Kelly Ranger	Motion for leave to amend answer and file separate cross-complaint: plaintiff has indicated that it does not oppose the motion and in fact attempted to stipulate to it with defendant. The court does not understand defendant's unwillingness to enter into a stipulation with plaintiff. In any event, the court finds good cause for the motion and GRANTS it. Defendant shall file both her amended answer and separate cross-complaint within 10 days of this order—i.e., by **February 2, 2024**.
LINE 11	22CV399413	Li Juan Liu v. Kenneth To	Click on LINE 11 or scroll down for ruling.
LINE 12	22CV407397	Andrew Marowitz v. Alessio Lisi	Click on LINE 12 or scroll down for ruling.

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Calendar Lines 3-5
Case Name: *Eric F. Hartman et al v. Koshy P. George*
Case No.: 21CV390666

I. BACKGROUND

This is a dispute between neighbors regarding a private road and easement that allows them access to their respective properties. Plaintiff Eric Hartman filed the complaint on November 1, 2021 against defendants Koshy and Sheeba George, his next-door neighbors (the "Georges"), as well as against seven other defendants: KPGCPA Financial Services, Inc., America's Tax Solutions – Accountant and Advisors, Lynn Dornon Kuehn, The Carpet Butler, John Lee, James Young, and William C. Dresser.

Hartman's verified complaint alleges the following causes of action:

1. Conspiracy to Harm Plaintiff and His Real and Personal Property and Injunctive Relief – Against All Defendants

2. Unfair Business Practices – Against Koshy P. George and KPGCPA Financial Services Inc.

3. Abate Public Nuisance and Private Nuisance and Criminal Nuisance (Penal Code 370 – illegal six-foot fence) – Against James Young

4. Assault and Battery – Against Lynn Dornon Kuehn

5. Temporary Writ of Injunction and Permanent Injunction to abate public and private nuisance and for damages – Against Koshy P. George and Sheeba George

6. Trespass and Willful Invasion of Private Property – Against William C. Dresser and Koshy P. George

7. Breach of Written Contract (Governing Documents) – Against Koshy and Sheeba George

8. Slander Per Se and Libel on its Face – Against Koshy George.

Defendants Lynn Dornon Kuehn and The Carpet Butler (collectively, the "Kuehn Defendants") filed an unverified answer on August 10, 2023.[1]

On November 6, 2023, Hartman filed the present motion for judgment on the pleadings ("JOP motion"), seeking judgment as to the first cause of action for conspiracy and fourth cause of action for assault and battery against the Kuehn Defendants. The Kuehn Defendants filed an opposition on January 11, 2024. On November 14, 2023, the Kuehn Defendants filed two discovery motions against Hartman: (1) a motion to compel further responses to requests for production of documents, and (2) a motion to compel further responses to special interrogatories. The court addresses these motions in turn.

[1] Lynn Kuehn is alleged to be the sole owner of The Carpet Butler, a carpet and upholstery cleaning company. (Complaint, ¶ 3.)

II. HARTMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

A. General Legal Standards

Code of Civil Procedure section 446, subdivision (a), provides: "When the complaint is verified, the answer shall be verified." An unverified answer is subject to a motion to strike or a judgment on the pleadings. (See *Hearst v. Hart* (1900) 128 Cal. 327, 328 (*Hearst*); see also *H. G. Bittleston Law & Collection Agency v. Howard* (1916) 172 Cal. 357, 362 (*H.G. Bittleston*); *DeCamp v. First Kensington Corp.* (1978) 83 Cal.App.3d 268, 283.)

A plaintiff's JOP motion is proper when: (1) the complaint states facts sufficient to constitute causes of action against the defendant, and (2) the defendant's answer does not state facts sufficient to constitute a defense to the complaint. (Code Civ. Proc., § 438(c)(1)(A).) A JOP motion is the functional equivalent of a general demurrer, but it is made after the time to demur has expired and more than 30 days before trial. (See Code Civ. Proc., § 438; see *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254 (*Shea*).) "Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." (*Ventura Coastal, LLC v. Occupational Safety & Health Appeals Bd.* (2020) 58 Cal.App.5th 1, 32 (*Ventura Coastal*) [quoting (*Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th 870, 877].)

The court cannot consider extrinsic evidence in ruling on a demurrer. The court has considered the declaration of counsel Tyler R. Austin only to the extent that it discusses the meet-and-confer efforts required by statute; the court has not considered the exhibits attached to this declaration or any arguments relying on extrinsic evidence. Nevertheless, the court does take judicial notice of the unverified answer filed on August 10, 2023 and the verified answer filed on November 7, 2023. (Evid. Code, § 452, subd. (d).)

B. Discussion

Hartman argues that a judgment on the pleadings should be granted because the Kuehn Defendants' submitted an unverified answer in response to Hartman's verified complaint. He further argues that an unverified answer "results in the admission of the allegations of the complaint." (JOP, p. 2:21-22.) In support, he cites two exceedingly old cases from 1900 and 1916. (See *Hearst, supra,* 128 Cal. at p. 328; *H.G. Bittleston, supra,* 172 Cal. at p. 362.) The court has reviewed these cases and does not agree with Hartman's characterization of their holdings. *Hearst* and *H.G. Bittleston* held that a motion to strike and/or JOP motion are proper means of contesting an unverified answer to an verified complaint—they do not guarantee judgment in the moving party's favor. Neither case states that the unverified answer automatically results in the admission of the allegations of the complaint. In *Hearst,* the California Supreme Court reaffirmed *McCullough v. Clark* (1871) 41 Cal. 298 (*McCullough*), which stated, "'If the answer of the defendant was not properly verified, the plaintiff should have moved in the court below either to strike out the answer, or for judgment as for want of an answer.'" (*Hearst, supra,* 128 Cal. at p. 328 [quoting *McCullough, supra,* 41 Cal. at p. 302].) In *H.G. Bittleston,* the California Supreme Court noted that a JOP motion was proper, but the "sole question" before the Court "is whether the amended complaint was properly verified." (*H.G. Bittleston, supra,* 172 Cal. at p. 358.)

In opposition, the Kuehn Defendants contend that the JOP motion is improper because they filed an amended verified answer on November 7, 2023, the day after Hartman filed his JOP motion. The Kuehn Defendants cite Code of Civil Procedure section 472, subdivision (a), in support of their position:

> A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike. A party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties. The time for responding to an amended pleading shall be computed from the date of service of the amended pleading.

The Kuehn Defendants filed and served their original, unverified answer on August 10, 2023; therefore, under section 472(a), they had until August 20, 2023 (10 days) to file an amended answer as of right. Hartman filed his JOP motion over two and a half months later, on November 6, 2023, and then the Kuehn Defendants filed an amended verified answer. The Kuehn Defendants cite no authority—and the court is not aware of any—extending the right to amend "as of course" to *JOP motions*, as opposed to demurrers or motions to strike, which are explicitly mentioned in the statute. As noted above, a JOP motion is the functional equivalent to a demurrer, but it is made after the time to demur expires. While Code of Civil Procedure section 472, provides a defendant the right to amend their answer before any opposition "to the demurrer or motion to strike" is due, courts have long held that it does not provide for an *unlimited* and indefinite time to amend. (See *Tingley v. Times Mirror Co.* (1907) 151 Cal. 1, 10 [holding right to amend is "not intended to confer a special right on a defendant to amend because plaintiff had not gone through the idle ceremony of demurring to an apparently good and sufficient answer"]; *Bank of America Nat'l Trust & Sav. Asso. v. Goldstein* (1938) 25 Cal.App.2d 37, 45 ["The arbitrary right to amend an answer under [Code of Civil Procedure section 472] without the consent of court is limited to the time during which the plaintiff was entitled to demur."]; see also *5 Witkin Cal. Proc. Plead § 1236* ["But if the plaintiff does not demur or file a motion to strike, the defendant's right to amend without leave is cut off 10 days after his or her answer is filed."].)

Notwithstanding the foregoing, courts liberally grant leave to amend where, on the face of the pleadings, there is a reasonable possibility for amendment. (*Ventura Coastal, supra,* 58 Cal.App.5th at p. 32.) In this case, the fact that the Kuehn Defendants filed a proper, verified answer on November 7, 2023 indicates a more-than-reasonable possibility that they will remedy the otherwise defective pleading.

The court GRANTS Hartman's JOP motion, but it also grants the Kuehn Defendants 10 days' leave to amend. (Code Civ. Proc., § 438, subd. (h)(2).) Although there is a "First Amended Verified Answer" already on file as of November 7, 2023, the Kuehn Defendants will need to refile it as a "*Second* Amended Verified Answer."

III. THE KUEHN DEFENDANTS' DISCOVERY MOTIONS

Having granted the Kuehn Defendants leave to amend their answer, and having concluded that their initial failure to file a verified answer does not result in an "admission" of

the complaint's allegations or a "default" (contrary to Hartman's unsupported claim), the court now overrules Hartman's objection to the Kuehn Defendants' requests for production of documents and special interrogatories. The notion that "Defendants are in default and subject to Plaintiff's Motion to Strike [sic] and Entry of Dismissal" was the sole objection and response given by Hartman to each of the Kuehn Defendants' discovery requests. This was improper. Even if there is a material defect in a defendant's original answer, this does not excuse a plaintiff from responding to discovery. An answer is not a prerequisite to engaging in discovery. (See, e.g., Code Civ. Proc., § 2030.020, subd. (a) ["A defendant may propound interrogatories to a party to the action without leave of court at any time."].)

The court orders Hartman to provide substantive responses to each of the Kuehn Defendants' interrogatories and requests for production by no later than February 15, 2024. Hartman may not interpose any *new* objections to this written discovery, as the court agrees with the Kuehn Defendants that any new objections, other than the one already made, have been waived.

IT IS SO ORDERED.

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Calendar Lines 6-7
Case Name: *Robert Gonzalez et al. v Equity Residential Management, LLC et al.*
Case No.: 23CV413357

I. FACTS

This is an action alleging statutory violations of the Investigative Consumer Reporting Agencies Act ("ICRAA") and related causes of action brought by plaintiffs Robert Gonzalez, Johanna Paola Cardona Moya, Lauren Jacobsen, Eileen Kim, Hernan Augusto Martinez Sarmiento, Corey Nuechterlein, Escha Prokl, Mark Alvear, Eva Reyes, Rasmo Reyes, Pengfei Hu, Flora Neal, Ireyel Neal, Josue Ahedo, and Jocelyn Guerrero (collectively, "Plaintiffs") against defendants Equity Residential Management, LLC and Transunion Rental Screening Solutions, Inc. (collectively, "Defendants").

The original and still-operative complaint filed on March 22, 2023 alleges three causes of action: (1) Violations of the ICRAA (Civ. Code, § 1786); (2) Invasion of Privacy; and (3) Declaratory Relief.

According to the complaint, Plaintiffs were all prospective tenants of the Lex Apartments, a residential apartment complex managed and operated by Equity Residential Management, LLC ("Equity"). (Complaint, ¶¶ 1-16, 21.) As part of the housing application process, Plaintiffs completed a multi-page application (the "Application") that included a release of information permitting Defendants to obtain Plaintiffs' private and personal information (e.g., criminal background, eviction history) from third parties. (*Id*. at ¶¶ 27, 29.) The complaint further alleges that Defendants failed to comply with the mandatory requirements, disclosures, and authorizations while obtaining investigative consumer reports under the ICRAA. (*Id*. at ¶ 28.) Plaintiffs claim that Defendants concealed the nature and type of the investigative reports, when Defendants would obtain the reports, the entity or entities that would provide the reports, and Plaintiffs' rights regarding the reports. (*Id.* at ¶ 36.)

Currently before the court are Equity's: (1) demurrer to the second and third causes of action, and (2) motion to strike portions of the complaint. Plaintiffs filed a single opposition to the demurrer and motion to strike on October 23, 2023.

II. EQUITY'S DEMURRER TO THE SECOND AND THIRD CAUSES OF ACTION

A. Legal Standards

A demurrer to the complaint may be brought on the ground that the "pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) As the Courts of Appeal have explained, "Because the function of a demurrer is not to test the truth or accuracy of the facts alleged in the complaint, we assume the truth of all properly pleaded factual allegations." (*Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, 203 (*Los Altos Golf*) [citing *Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1397].) "Whether the plaintiff will be able to prove these allegations is not relevant; our focus is on the *legal* sufficiency of the complaint." (*Los Altos Golf, supra,* 165 Cal.App.4th at p. 203 (emphasis in original).) Thus, "[t]o survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S.*

Hart Union High School Dist. (2012) 53 Cal.4th 861, 872 (*C.A.*) [citing *Golceff v. Sugarman* (1950) 36 Cal.2d 152, 154].)

B. Discussion

Equity demurs to the second and third causes of action, contending that each fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

1. Invasion of Privacy

Equity argues that the second cause of action fails to allege: (1) that Plaintiffs had a reasonable expectation of privacy, and (2) that Equity's actions constituted a serious invasion of privacy. (Demurrer, p. 5:11-13.)

Because Plaintiffs do not allege any publication of investigative reports, they appear to allege invasion of privacy in violation of the state constitutional right to privacy rather than a violation of the common law right to privacy. (See *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40 (*Hill*) ["[C]ommon law invasion of privacy by public disclosure of private facts requires that the actionable disclosure be widely published and not confined to a few persons or limited circumstances."]) "[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (*Id*. at pp. 39-40.) "Moreover, the plaintiff in an invasion of privacy case must have conducted himself or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant." (*Id.* at p. 26; see also *Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 288 (*Hernandez*); *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 1000.)

Here, Equity insists that Plaintiffs consented to Equity's allegedly invasive actions and therefore cannot plead a *reasonable* expectation of privacy. Indeed, Plaintiffs admit to voluntarily completing the Application—including the consent to release "private and personal information from third parties about the Plaintiffs" to Equity. (Complaint, ¶ 27.) Plaintiffs also admit that rental housing applications normally involve criminal background and prior eviction history checks, which are obtained through "investigative consumer reports conveying information regarding the applicant's character, general reputation, personal characteristics, and mode of living." (*Id*. at ¶ 30.)

In opposition, Plaintiffs maintain that they have a reasonable expectation of privacy in the reports and a reasonable expectation that Equity would have obtained the reports in compliance with the ICRAA. In support of this proposition, Plaintiffs generally cite Civil Code section 1786.52 and *Hill, supra*, 7 Cal. 4th at p. 37. Civil Code section 1786.52 provides for a consumer's right to maintain an action against an investigative consumer; it does not provide standards for a reasonable expectation of privacy, nor does it grant a *per se* "reasonable" expectation of privacy for every claim invoked under the statute. Plaintiffs are required to plead each element of an invasion of privacy cause of action. (*C.A., supra*, 53 Cal.4th at p. 872.) Plaintiffs' citation to *Hill* is similarly inapposite because the California Supreme Court in that case did not address the ICRAA; it therefore provides no guidance as to

whether consumers have a reasonable expectation of privacy in their investigative consumer reports.

Equity also argues that Plaintiffs fail to establish that Equity committed a "serious invasion" of privacy because Plaintiffs: (1) consented to the release of information, and (2) recognized the background checks were common practice or routine commercial behavior. Indeed, courts have generally held that "there is no justification for concluding disclosure of contact information, after affording affected individuals the opportunity to opt out, would entail a serious invasion of privacy." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 555 [citing *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373].) Moreover, Equity cites the analogous case of *Folgelstrom v. Lamps Plus, Inc.* (2011) 195 Cal.App.4th 986, in which the Court of Appeal determined that a retailer's usage of customers' ZIP codes to obtain addresses for marketing purposes was not a "serious" invasion of privacy or "an egregious breach of social norms, but [rather] routine commercial behavior." (*Id.* at p. 992.)

In response, Plaintiffs argue conclusorily that the "elements are sufficiently pled, and must be deemed true at the pleadings stage." (Opp., p. 6:23-24.) But to plead a serious invasion, Plaintiffs must "show that the intrusion is so serious in 'nature, scope, and actual or potential impact [as] to constitute an egregious breach of the social norms underlying the privacy right.'" (*Hernandez, supra,* 47 Cal.4th at p. 287 [quoting *Hill, supra,* 7 Cal.4th at p. 37]; see also *C.A., supra*, 53 Cal.4th at p. 782 [requiring a pleading of each element of a cause of action].) Plaintiffs also broadly claim that "the very nature of the statutory scheme addresses a presumed right to privacy, which are supported by specific factual allegations throughout the Complaint." (Opp., pp. 6:27-7:1.) Plaintiffs do not provide any legal authority to support this conclusory statement.

"A defendant may prevail in a state constitutional privacy case by negating any of the three elements." (*Hill, supra*, 7 Cal.4th at p. 40.) Here, Equity has negated two out of three. Accordingly, the court SUSTAINS the demurrer to the second cause of action on the ground of insufficient facts and grants 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

2. Declaratory Relief

Equity demurs to the third cause of action, arguing that the complaint fails to allege an actual controversy involving justiciable questions relating to the rights or obligations of a party. (Dem., p. 5:13-14.)

Code of Civil Procedure section 1060 governs actions for declaratory relief and provides in relevant part:

> Any person interested under a written instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.

The fundamental basis of declaratory relief is the existence of an actual and present controversy over a proper subject. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) To state a claim for declaratory relief, a plaintiff must therefore allege "an '*actual controversy* relating to the legal rights and duties of the respective parties,' not an abstract or academic dispute." (*Centex Homes v. St. Paul Fire and Marine Insurance Co.* (2015) 237 Cal.App.4th 23, 29 (emphasis in original) [quoting *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746-47].) "Declaratory relief operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed. Thus the remedy is to be used to advance preventive justice, to declare rather than execute rights." (*Kirkwood v. California State Auto. Assn. Inter-Insurance Bureau* (2011) 193 Cal.App.4th 49, 59.) "A general demurrer to a cause of action for declaratory relief must be overruled as long as an actual controversy is alleged; the pleader need not establish it is entitled to a favorable judgment." (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606.)

In this case, the complaint alleges:

> An actual controversy has arisen and now exists between Plaintiffs and the Defendants regarding the legality and effect of the Defendants' Application, which Plaintiffs contend violates the ICRAA. Defendants demands [*sic*] all leases must be renewed or re-certified, and because the same forms are always used, which authorizes the Defendants to obtain investigative consumer reports about the Plaintiffs, a judicial determination is necessary to prevent the Defendants' continued violations of the ICRAA.

(Complaint, ¶ 64.) This allegation is insufficient to show an actual controversy for purposes of pleading declaratory relief. While the complaint does allege that Plaintiffs submitted *initial* housing applications at some point in time before the filing of this action, the complaint fails to allege that Plaintiffs are current residents subject to ongoing mandatory Application requirements. (*Id*. at ¶¶ 1-16.) In particular, the complaint does not allege how and in what capacity Plaintiffs are subject to any purported renewal and recertification process. Accordingly, whether Plaintiffs may file another application or renew an existing lease is a purely abstract question and insufficient to plead a declaratory relief claim.

The court SUSTAINS Equity's demurrer to the third cause of action and grants 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

III. EQUITY'S MOTION TO STRIKE

A. Legal Standards

A court may strike out any "irrelevant, false, or improper matter inserted into any pleading" or "strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).)

B. Discussion

Equity moves to strike paragraphs 42, 44, 55, and 57 of the complaint, in addition to paragraphs 4, 7, and 8 of the first cause of action's prayer for relief, and paragraph 3 of the second cause of action's prayer for relief.

1. Injunctive Relief

First, Equity argues that paragraph 57 of the complaint and paragraphs 7 and 8 of the first cause of action's prayer for relief should be stricken because they seek injunctive relief, even though the ICRAA limits remedies to damages and attorneys' fees and does not extend to injunctive, declaratory, or equitable relief. In support of its argument, Equity cites California Civil Code section 1786.50 (part of the ICRAA), which provides:

> **(a)** An investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report is liable to the consumer who is the subject of the report in an amount equal to the sum of all the following:
>
> > **(1)** Any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, ten thousand dollars ($10,000), whichever sum is greater.
> >
> > **(2)** In the case of any successful action to enforce any liability under this chapter, the costs of the action together with reasonable attorney's fees as determined by the court.
>
> **(b)** If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages.

Paragraph 57 of the complaint, contained in the first cause of action, alleges: "Plaintiffs are also entitled to permanent injunctive [relief] against all Defendants and their heirs, executors, transferees and assigns, and declaratory relief to the following effect with any such injunction running with the land . . ." In opposition, Plaintiffs do not address Civil Code section 1786.50; instead, they rely on paragraph 64 of the complaint and *SCLC v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 223 (*SCLC*) for support of their entitlement to injunctive relief against continuing violations of the ICRAA. This case is inapposite, however, because it did not address the ICRAA at all.

Plaintiffs also do not address Equity's reliance on *Poinsignon v. Imperva, Inc.*, (N.D.Cal. Apr. 9, 2018) 2018 U.S.Dist.LEXIS 60161 (*Poinsignon*), which dismissed a claim for injunctive relief under the ICRAA on the same basis that Equity advances here. Although this decision is not binding authority, it is directly on point and may serve as persuasive authority for the court. Plaintiffs' final argument is a non sequitur: they argue that because they seek permissible *attorneys' fees* under the ICRAA, they are somehow eligible to seek *injunctive relief* for continuing violations of the ICRAA. (Opp., p. 9:7-12.) The alleged logic of this argument is inscrutable, and in any event it is unsupported by any legal authority.

The court also strikes the portions of the prayer for relief for the first cause of action (paragraphs 7 and 8) that seek equitable relief and restitution. Again, the ICRAA does not permit equitable or declaratory relief, and Plaintiffs' opposition fails to address this.

Accordingly, the court GRANTS Equity's motion to strike paragraphs 57 of the complaint and paragraphs 7-8 of the first cause of action's prayer for relief.

2. Punitive Damages

Equity's motion to strike paragraph 3 of the second cause of action's prayer for relief is MOOT in light of this court's ruling on the demurrer.

Equity also contends that paragraphs 42, 44, and 55 of the complaint, as well as paragraph 4 of the first cause of action's prayer for relief, must be stricken because they fail to plead oppression, fraud, or malice, as required under Civil Code section 3294, subdivision (a), to seek punitive damages. In opposition, Plaintiffs point out that the ICRAA provides its own unique standard for punitive damages, which merely requires a showing that statutory violations are *grossly negligent or willful*: "If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages." (Civ. Code § 1786.50, subd. (b).)

Here, the complaint alleges that Equity was aware of the ICRAA "prior to committing the above violations" and was "on notice that their conduct was unlawful, and committed the above violations anyway." (Complaint, ¶¶ 42, 55.) The complaint also alleges that Equity's actions were "deliberate planned violations of the ICRAA." (*Id.* at ¶¶ 42, 44, 55.) For purposes of pleading a claim for punitive damages, these allegations are sufficient. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055 ["A claim 'for exemplary damage may be supported by pleading that the wrong was committed willfully or with a design to injure.'"].)

Accordingly, the court DENIES Equity's motion to strike paragraphs 42, 44, and 55 of the complaint, as well as paragraph 4 of the first cause of action's prayer for relief.

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Calendar Line 8
Case Name: *Diana Rodriguez v. Michelle Rodriguez*
Case No.: 22CV404231

As noted in the court's December 19, 2023 order, this is a motion for interlocutory judgment of partition by plaintiff Diana Rodriguez ("Diana"). Diana originally styled the motion as one for "summary interlocutory judgment," but notice was not proper for a *summary judgment* motion at the time of the December 19, 2023 hearing. Nevertheless, because the motion did not need to be a summary judgment motion and could have been brought as a regular motion on regular notice, the court reset the hearing for January 25, 2024 and instructed defendant Michelle Rodriguez ("Michelle") to file her opposition, if any, by January 11, 2024.

Since then, the court has received no opposition or other response from Michelle. As a result, the court now GRANTS the motion for interlocutory judgment of partition. This is a dispute over a home in which both Diana and Michelle each own 50% interests. The law favors partition of co-owned real property. (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596.) As a co-owner of the property, Diana has an absolute right to seek partition, absent a waiver. (Code Civ. Proc., § 872.210; *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493.) Michelle has not claimed that Diana waived her right to seek a partition.

As far as the court is aware, Diana has not proposed any particular referee to be appointed to oversee the sale of the property. Accordingly, the court orders the parties to *meet and confer* regarding the identification of a referee and to work out the logistics of any move out. The parties will let the court know if they are unable to reach an agreement as to the referee. Otherwise, Diana shall submit a proposed interlocutory judgment that includes all necessary information about appointment of the proposed referee within 30 days of this order. In addition, regardless of whether the parties are able to agree on a referee, all parties and other occupants must move out of the property by no later than 60 days from today—March 23, 2024—in order to facilitate the sale of the property.

IT IS SO ORDERED.

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Calendar Line 11
Case Name: *Li Juan Liu v. Kenneth To*
Case No.: 22CV399413

On March 7, 2023, the court conducted a case management conference in this case brought by plaintiff Li Juan Liu against defendant Kenneth To. At the same time, the court also conducted a case management conference in a related small claims matter (Case No. 22SC086992) that had previously been filed by To against Liu—*i.e.*, in the small claims case, To was the plaintiff and Liu was the defendant. The small claims court (Commissioner Copeland) sent the small claims case to the undersigned's department (Department 10), based on the belief that it would be more efficient to have the cases heard together. At the March 7, 2023 case management conference, the undersigned heard from the parties and ultimately determined that it was in the interest of justice for the two cases to proceed on separate tracks, and so the court sent the small claims case back to the small claims department (Department 15).

At the March 7, 2023 case management conference, the court explained to the parties why it was doing so:

- The purpose of small claims court is to have a *speedy, inexpensive, and informal* means of resolving disputes involving relatively small sums of money. By contrast, regular civil cases involving larger sums often take much longer to resolve—usually, multiple years longer.

- If small claims and regular civil cases involving the same parties were automatically combined and placed on a regular civil calendar, then that would give the defendant in a small claims case a strong incentive to file a retaliatory civil action in order to transform the small claims matter into a *non-speedy, expensive, and formal* civil action.

- That appears to be what happened here. Kenneth To filed Case No. 22SC086992 on March 23, 2022. On May 10, 2022, Li Juan Liu filed a request to "postpone" the small claims hearing, which was granted. On the day of the continued hearing (June 23, 2022), Liu filed her civil action against To and then informed Commissioner Copeland *that very same day* that she had a pending related civil case. On that day, Commissioner Copeland sent the small claims case to Department 10 to be heard with the related civil case.

- This procedural history is highly problematic. The court concluded that the practice of automatically joining small claims cases and regular civil cases based on the notion that it would serve "judicial economy" was misguided. As a general matter, it creates the wrong incentive for small claims defendants, and it apparently *created that very incentive in this particular case*. Indeed, at the case management conference on March 7, 2023, Liu confirmed that she had filed the present civil matter in direct response to To's small claims case.

- Small claims cases do not have any collateral estoppel or res judicata effect on regular civil cases, and so it makes sense for the small claims case to proceed first

in any event. (*Sanderson v. Niemann* (1941) 17 Cal.2d 563, 573-574 (*Sanderson*); *Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 865 [citing *Sanderson*].)

- This is not to say that small claims cases and general civil cases should *never* be joined or coordinated. In specific instances, it may well serve judicial economy to do so—particularly if both sides are in agreement *and* have access to counsel (which is not the case here). The problem lies in automatically and reflexively combining such cases, without consideration of the specific circumstances, which then creates the wrong incentives and unduly delays the small claims case.

At the March 7, 2023 conference, a default was pending against To in this civil case, and he indicated that he did not know what that meant. The court urged To to seek legal advice regarding his options.

Since then, To has not filed anything, and the default has been entered against him. Liu now brings this "Motion to Vacate Ruling to Sever Small Claims Action (22SC082996) from Civil Action (22CV399413)." She has not served the motion on To or provided him with notice of the hearing (notwithstanding her filing of a "N[o]tice of Motion"), because she relies on the following language of Code of Civil Procedure section 1010: "No bill of exceptions, notice of appeal, or other notice or paper, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding." Although To did appear at the March 7, 2023 case management conference, a default has now been "duly entered" against him.

Notwithstanding the absence of any opposition to the motion, the court denies it. First, it is not correct to describe the court's March 7, 2023 minute order as "severing" the small claims action, as the two cases were never consolidated—they were simply calendared for hearing on the same day in the same courtroom. Second, Liu presents no legal authority to support her argument that the court "has no jurisdiction to sever the small claims case from the civil case" or that the March 7, 2023 minute order "is a void ruling or void order and should be set aside [in] the interest of justice." Indeed, she identifies no support for the proposition that the court is required to join or consolidate two separately filed cases into one. These are matters that are customarily within the trial court's discretion under Code of Civil Procedure section 1048. Finally, Liu claims various "medical crises," "severely impaired functions," and "severe damages" caused by the court's March 7, 2023 minute order (Amended Motion at pp. 2:27-3:3, 6:9-10), but the court finds no causal link between the order severing the two cases and these claimed ailments. The court finds that there has been no prejudice to the parties in keeping the small claims case and the civil case separate—in fact, the court previously found that it was in the interest of justice to do so.

The motion is DENIED.

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Calendar Line 12
Case Name: *Andrew Marowitz v. Alessio Lisi*
Case No.: 22CV407397

This is a limited civil case in which plaintiff Andrew Marowitz and defendant Alessio Lisi own neighboring properties in Berkeley, California.[2] Marowitz alleges that Lisi hired contractors to build a fence that unlawfully encroaches on his property; in addition, Marowitz claims that Lisi's contractors damaged a concrete slab on his property and stole building materials from his open shed. He filed this action on November 29, 2022, checking the box for a "Limited" civil case, and indicating that the amount demanded was "$10,000 or less." Marowitz represents himself in this action.

Marowitz propounded 153 discovery requests on Lisi (115 form interrogatories, 13 special interrogatories, 14 requests for admissions, and 11 requests for production of documents), even though each side is entitled to propound a maximum of 35 discovery requests on an opposing party in a limited civil case, plus one deposition. (Code Civ. Proc., § 94, subds. (a & b).) Lisi objected and responded to just the first 35 of Marowitz's requests. Marowitz now moves for an order granting additional discovery.

The problem with this motion is that it fails to explain why Marowitz needs all this additional discovery. He has not narrowed the number or scope of any of his requests in any way—instead, he apparently seeks responses to *all 118* of the unanswered items. Under Code of Civil Procedure section 95, a party in a limited civil case may obtain court authorization for additional discovery, "but only upon a showing that the moving party will be unable to prosecute or defend the action effectively without the additional discovery." (Code Civ. Proc., § 95, subd. (a).) Marowitz has not done so here. Rather than provide any showing of need, he attaches the discovery and states, "PLEASE TAKE JUDICIAL NOTICE OF THE ATTACHED DISCOVERY REQUESTS AS EVIDENCE." (Supplemental Memorandum at p. 3:13-14 [all caps in original].) Elsewhere, he writes that he "NEEDS" the additional discovery but then provides no elaboration as to why. (Memorandum at p. 6:21 [all caps in original].) Making these conclusory statements in all capital letters does not make them any more helpful or persuasive.[3]

In the declaration attached to his "Supplemental" Memorandum of Points and Authorities, Marowitz identifies 11 "questions" to which he would like answers, but he again includes only perfunctory statements. The court does not see why Marowitz needs a copy of Lisi's insurance policy or Lisi's communications with Pacific Specialty Insurance Company: how are these documents necessary "to prosecute or defend the action effectively"? No reasons are given. Similarly, Marowitz asks why Lisi's "answer to the complaint was non-responsive" and also asks a number of "contention interrogatory"-type questions about the communications between Marowitz and Lisi—none of this is apparently necessary to prosecute the action, either.

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[2] Although this case almost certainly should have been filed in Alameda County Superior Court, it is apparently in this court because Lisi's permanent residence is in Palo Alto, in Santa Clara County.

[3] The court notes that Marowitz failed to file a request for judicial notice attaching his discovery requests. Lisi does attach the requests to his opposition, and the court has reviewed them. The court finds that nearly all of these requests are overbroad or seek information that has, at best, some peripheral relationship to the issues in this case, but not anything that, if withheld, would render Marowitz "unable to prosecute" this action "effectively."

Nevertheless, the court does see some potential relevance to Marowitz's requests for certain communications between Lisi and the fence "installer": *i.e.*, photos exchanged between Lisi and the installer, or any other communications between Lisi and the installer regarding Marowitz—including Marowitz's claims about the fence post locations, the broken concrete slab, and his "pressure treated planks and 4x4s." Accordingly, the court grants Marowitz leave to propound ***three*** additional document requests seeking the following:

1. Photographs communicated by and between Lisi and the installer;

2. Communications between Lisi and installer regarding Marowitz's claims about the fence post locations, the broken concrete slab, and his "pressure treated planks and 4x4s"; and

3. Any other communications between Lisi and the installer regarding Marowitz or his property.

Apart from these three additional requests, the court has not been provided with any other showing that any discovery is potentially necessary. As Lisi points out, Marowitz is still entitled to take a party deposition in this case.

Finally, as a postscript, the court responds to Marowitz's repeated complaints about an informal discovery conference that he requested but as to which he never got a response from the court. Until reading this motion, the court was unaware that Marowitz had even requested an informal discovery conference. Looking into the file, the court now sees that Marowitz filed a "Declaration of Meet and Confer Re: Defendant's Failure to Provide Sufficient Responses to Discovery Requests to Prepare for Settlement Conference or Trial. Request for Informal Discovery Conference Conducted by this Court" on August 21, 2023. ***This is not the proper way to request an informal discovery conference***. The clerk's office does not know what to do with a loose "declaration of meet and confer" placed in the file, particularly one with such an impenetrably long and inscrutable title. The clerk's office does not know, based on this random filing, to notify the undersigned that an IDC is being requested. When in doubt, a party should call the clerk's office to ask how to schedule an IDC, rather than file a declaration that is simply going to sit in the file until someone goes looking for it. The court understands that Marowitz is a self-represented litigant, but even then, he is held to the same standard as attorneys who appear in this court. "[W]hen a litigant is appearing in propria persona, [she] is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267, internal citations omitted.)

GRANTED in part and DENIED in part.

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