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 30, 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	22CV406030	Terrence Kurns v. Saeed Mahameed et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	19CV354233	Todd Henry Jarvis v. State Farm General Insurance Company et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	21CV388134	Metropolitan Direct Property and Casualty Insurance Company v. Rafael Loera	Motion to deem RFAs admitted: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. In addition, the court GRANTS IN PART plaintiff's request for monetary sanctions and orders defendant to pay plaintiff $460 (one hour of time plus the filing fee) within 30 days of notice of entry of the court's order. Moving party to prepare the formal order for the court's signature.
LINE 4	22CV399066	GDK Enterprises, LLC v. BioVision, Inc. et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	22CV406385	Isis Dayanara Sosa Cartagena v. Cyril Inneh et al.	OFF CALENDAR
LINE 6	22CV407006	True Automotive, LLC v. Mira Shingal et al.	Motion to compel: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion. The court has not been provided with sufficient information to support the request for monetary sanctions, however, and so the court DENIES that request. Moving party to prepare the formal order.
LINE 7	21CV392194	Valley Water v. Gail Oliver	Click on LINE 7 or scroll down for ruling in lines 7-8.

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LINE 8	21CV392237	Valley Water v. Benjamin Strong et al.	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 9	22CV406855	Arch Veterinary Services, Inc. v. Liliana Guerrero	Click on LINE 9 or scroll down for ruling.
LINE 10	19CV360975	Sophie Shen v. Weiping Xia et al.	Click on LINE 10 or scroll down for ruling.

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Calendar Line 1
Case Name: *Terrence Kurns v. Saeed Mahameed et al.*
Case No.: 22CV406030

I. BACKGROUND

This is a breach of contract and tort action concerning a kitchen and bathroom remodeling project in a home. Plaintiff Terrence Kurns, d/b/a Kubro Construction ("Kurns"), filed his complaint on October 20, 2022 against defendants Saeed Mahameed and Majd Omari, alleging a mechanic's lien in the amount of $62,680. Mahameed and Omari responded with a cross-complaint against Kurns, 786 Construction Consulting Services ("786"), and Irfan Pathan ("Pathan") (collectively, "Cross-Defendants") on December 22, 2022.

On July 11, 2023, the court sustained in part and overruled in part Kurns's demurrer to the cross-complaint, with leave to amend. Mahameed and Omari then filed a first amended cross-complaint ("FACC") on July 20, 2023. In the FACC, Mahameed and Omari allege ownership of the property at 2110 Maykirk Rd., San Jose, CA (the "Subject Property"). (FACC, ¶ 12.) They hired Pathan and 786 Construction Consulting Services in January 2022 to work on the kitchen and bathroom remodel for "a total price of 271,723.00." (*Id*. at ¶ 15.) Mahameed and Omari did not sign a written contract with Pathan or any of the Cross-Defendants. (*Id.* at ¶ 19.) In addition, Pathan did not have a valid contractor's license. Kurns does have a valid contractor's license and claims to have contributed to the construction project, as to which Pathan's (and, apparently, any Cross-Defendants') work ceased on June 15, 2022. (*Id.* at ¶¶ 13, 17, 19.) Mahameed and Omari contend that they communicated solely with Pathan and sent payments only to him; they contend that Kurns's name merely appears on an unsigned contract as someone working in "partnership with" Pathan. (*Id*. at ¶ 20.) Mahameed and Omari allege that Kurns cannot legally place a mechanic's lien on the Subject Property because neither Kurns nor Pathan completed the remodel. (*Id. at* ¶¶ 21-22.)

The FACC also alleges that Pathan is also known as Kurns. (See, e.g., *id.* at ¶¶ 15-18.)

The FACC sets forth the following causes of action:

1. Recovery of Compensation Paid to Unlicensed Contract (against Pathan);
2. Breach of Oral and Implied Contract (against all Cross-Defendants);
3. Negligence (against all Cross-Defendants);
4. Fraud and Deceit (against all Cross-Defendants);
5. Intentional/Negligent Misrepresentation (against all Cross-Defendants); and
6. Violation of Unfair Competition Law (against all Cross-Defendants).

Currently before the court is Kurns's demurrer to the third through sixth causes of action of the FACC on the ground of uncertainty and failure to state facts sufficient to constitute a cause of action. Mahameed and Omari oppose the demurrer.

II. LEGAL STANDARDS

"'It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]'" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341 [quoting *Committee on Children's Television, Inc. v.*

General Foods Corp. (1983) 35 Cal.3d 197, 213].) 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 [citing *Golceff v. Sugarman* (1950) 36 Cal.2d 152, 154].)

In reviewing a demurrer, a court may also consider judicially noticed facts. (Code Civ. Proc., § 430.30, subd. (a).) Only relevant material may be noticed. (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.) Although the FACC itself is undoubtedly relevant to this demurrer, the court DENIES Mahameed and Omari's request for judicial notice of the FACC as unnecessary because it is the pleading under review. (*Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 ["Judicial notice is unnecessary because, in our review of the demurrer ruling, we accept the allegations in the complaint and the facts in the exhibits as true."].) The court has also not considered the exhibits attached to the declaration of Mahameed and Omari's counsel, Patricia Boyes, or any arguments relying on those exhibits because they are extrinsic evidence; they fall outside the scope of the pleadings. On its own motion, however, the court takes judicial notice of notice of its prior order dated July 11, 2023 ("July 11, 2023 Order"). (Evid. Code, § 452, subd. (d).)

III. DISCUSSION

A. Sufficiency of Fact Pleading

Kurns demurs to the third through sixth causes of action, contending that each fails to allege facts sufficient to state a cause of action. While Kurns also generally invokes the sham pleading doctrine and litigation privilege, he does so conclusorily and fails to explain how these doctrines support his position. The court therefore declines to consider these points, which strike the court as inapt. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 ["[W]e may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he or she wants us to adopt."].)

1. Negligence

The elements of a cause of action for negligence are: "'(a) a legal duty to use due care; (b) a breach of such legal duty; and (c) the breach as the proximate or legal cause of the resulting injury.'" (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 875 (*Truong*) [quoting *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917].) "In short, to recover on a theory of negligence, Plaintiffs must prove duty, breach, causation, and damages." (*Truong, supra,* 156 Cal.App.4th at p. 875**.**)

As he did with respect to the original cross-complaint, Kurns argues that the negligence cause of action in the FACC is improperly pleaded because it fails to allege a duty and a breach of that duty. In opposition, Mahameed and Omari argue, again, that the oral and implied contract forms the basis for any duty on the part of Kurns. As the court previously noted in its July 11, 2023 order, "[T]he existence of a contract claim alone is not enough to support a negligence cause of action." (July 11, 2023 Order at p. 5:24-25.) While Mahameed and Omari also cite California Code of Regulations Title 21, section 43, in their opposition as a separate basis for a duty, the citation is inapposite because it codifies the duties of a contractor who

builds a public school pursuant to the Field Act. (See Cal. Code Regs., tit. 21, §§ 1, 14; see also Ed. Code, § 81130 *et seq*.) Because the FACC once again fails to allege the basic element of duty for a negligence claim, the court need not reach the question of whether a breach is also sufficiently alleged.

The court SUSTAINS Kurns's demurrer to the third cause of action under Code of Civil Procedure section 430.10, subdivision (e), with 10 days' leave to amend.

2. Fraud and Deceit

"The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage." (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990 [citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*)].) "Fraud must be pleaded with specificity rather than with '"general and conclusory allegations."'" (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793 (*West*) [citing *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184].) "The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made." (*West, supra,* 214 Cal.App.4th at p. 793 [citing *Lazar, supra,* 12 Cal.4th at p. 645].)

Kurns again argues that Mahameed and Omari have pled the fraud claim without sufficient specificity as to the nature of the alleged misrepresentation(s), who made the misrepresentation, and to whom Kurns made the misrepresentation. Kurns also now argues that Mahameed and Omari have failed to plead scienter. Mahameed and Omari respond that paragraphs 48-51 of the FACC, which contain new allegations, adequately address each of Kurns's objections:

> 48. Plaintiff/Cross-Defendant, KURNS states in his Complaint and in his Demurrer to the Complaint that Plaintiff sent Defendants/Cross-Complainants a "proposal", that Plaintiff "began working on the remodeling project in accordance with this proposal" and that there were "change orders, as required under the contract. KURNS falsely conspired with IRFAN PATHAN to represent to Plaintiffs that IRFAN PATHAN was the contractor they were dealing with when in actual fact KURNS was the contractor pulling the strings
>
> 49. Plaintiff/Cross-Defendant IRFAN PATHAN is equally responsible for the fraud and deceit by holding himself out to Defendants/Cross-Complainants as a licensed contractor and the person that they had hired to do the work even though IRFAN PATHAN was unlicensed and was merely working for KURNS.
>
> 50. KURNS and PATHAN were deliberately misrepresenting themselves to Defendants/Cross-Complainants and PATHAN told Defendants/Cross-complainants that he would, furnish labor, materials, equipment, and services necessary to perform a kitchen remodel and bathroom remodel and related construction work located at the Property and comply with all state, county, and city building ordinances, account for all expenses, disbursements and payments accurately, and that he would complete the work at the subject property in a good and workmanlike manner.

> 51. Despite Plaintiff/Cross-Defendants' promises, they failed to adequately perform the work, failed to perform the work in a defect free manner, failed to complete the work and, despite such failures, Plaintiff/Cross-Defendants demanded payment for such work.

These allegations address scienter: Kurns and Pathan conspired to misrepresent that Pathan "was the contractor [Mahameed and Omari] were dealing with when in actual fact KURNS was the contractor pulling the strings." (FACC, ¶ 48.) The FACC further alleges that Pathan made this misrepresentation to Mahameed and Omari as Kurns's employee. (*Id*. at ¶¶ 48-49.) These allegations are also sufficient to answer "what" the misrepresentation was, "who" made it (Pathan on behalf of Kurns), and "to whom" Pathan made it.

The court is not persuaded by Kurns's argument that paragraph 48 is at odds with the original cross-complaint and the allegations of paragraph 20 of the FACC. As noted above, Kurns's conclusory assertion in passing that the sham pleading doctrine and litigation privilege bar the amended allegations is insufficient. Furthermore, while paragraph 20 of the FACC does state that Mahameed and Omari communicated solely with Pathan, this does not preclude the allegations of paragraphs 48 and 49 that Kurns and Pathan conspired with each other to have Pathan make a misrepresentation as Kurns's employee. (See Code Civ. Proc., § 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."]; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239 ["This rule of liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant."])

Accordingly, the court OVERRULES Kurns's demurrer to the fourth cause of action under Code of Civil Procedure section 430.10, subdivision (e).

3. Intentional/Negligent Misrepresentation

Kurns addresses the misrepresentation cause of action by reiterating his objections to the fraud cause of action, arguing that the FACC fails to allege any misrepresentation by Kurns. The fifth cause of action is set forth in paragraphs 56-65 of the FACC and mirrors the allegations contained in the fourth. Because the FACC pleads fraud with sufficient specificity, the court finds that it also pleads intentional/negligent misrepresentation with sufficient specificity. (See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166, overruled in part on a different ground in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 919 ["Causes of action for intentional and negligent misrepresentation sound in fraud and, therefore, each element must be pleaded with specificity."].)

Kurns also argues that the misrepresentation cause of action is defective with respect to Pathan, because paragraph 61 lacks any factual support for the concept that Pathan's statements were misrepresentations. The court disagrees. Paragraph 61 alleges that Pathan promised that he would "furnish labor, materials, equipment, and services necessary" for the remodel, "and that he would complete the work at the subject property in a good and workmanlike manner." Other paragraphs of the FACC make it clear that Pathan allegedly failed to complete the work as promised, which supports the notion that these promises were misrepresentations. (See FACC, ¶¶ 18, 56.)

Accordingly, the court OVERRULES Kurns's demurrer to the fifth cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

4. Violation of Unfair Competition Law (UCL)

"Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct. It embraces anything that can properly be called a business practice and that at the same time is forbidden by law." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 [citations omitted].) "Section 17200 'borrows' violations from other laws by making them independently actionable as unfair competitive practices. In addition, under section 17200, a practice may be deemed unfair even if not specifically proscribed by some other law." (*Ibid.*)

Kurns maintains that the FACC fails to state a cause of action for unfair competition or unfair business practices because it still does not allege that he acted in an unlawful, unfair, or fraudulent manner. Kurns repeats his argument that the FACC still improperly lumps Kurns and Pathan together. As discussed above, however, the FACC now alleges that Pathan, as Kurns's employee, conspired with Kurns to misrepresent the status of his license and his capacity to complete the construction project.[1] In addition, the court disagrees with Kurns that paragraphs 11 and 67 are insufficient to allege a UCL violation in anything but conclusory terms. The court finds that these paragraphs sufficiently allege a conspiratorial relationship between Kurns and Pathan:

> ¶ 11 Plaintiff/Cross-Defendant [KURNS] aided and abetted, encouraged and rendered substantial assistance to the other Cross-Defendants. In taking action to aid and abet and substantially assist the commissions of these wrongful acts and other wrongdoings complained of, as particularized herein, each of the Plaintiff/Cross-Defendants acted with an awareness of its primary wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals and wrongdoing.
>
> ¶ 67 KURNS falsely conspired with IRFAN PATHAN to represent to Plaintiffs [*sic*] that IRFAN PATHAN was the contract they were dealing with when in actual fact KURNS was the licensed contractor pulling the strings.

(*Schick v. Lerner* (1987) 193 Cal.App.3d 1321, 1328 ["The sine qua non of a conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful objective and their intent to aid in achieving that objective."].)

Accordingly, the court OVERRULES Kurns's demurrer to the sixth cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

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[1] The court does agree with Kurns that it is odd that the FACC repeatedly refers to Pathan as "IRFAN PATHAN (aka KURNS)," even though it is clear that they are two different people.

B. Uncertainty

While Kurns repeatedly argues the FACC's usage of "Plaintiff and Cross-Defendants" makes it "unclear against whom" each claim is asserted, the court is not persuaded. The FACC clearly refers to Terrence Kurns, d/b/a Kubro Construction, as the sole plaintiff and as one of multiple cross-defendants. Moreover, the allegations in each cause of action refer to Pathan or Kurns by name. (See, e.g., Complaint, ¶¶ 59-61.) It is "clear from Kurns's arguments under Code of Civil Procedure section 430.10, subdivision (e), that he and his counsel understand the nature of the cross-claims." (July 11, 2023 Order p. 10:3-4.) The FACC, therefore, is not "so incomprehensible that a defendant cannot reasonably respond." (See *Lickiss v. Financial Industry Reg. Authority* (2012) 208 Cal.App.4th 1125, 1135.)

The court OVERRULES Kurns's demurrer on uncertainty grounds. (Code Civ. Proc., § 430.10, subd. (f).)

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Calendar Line 2
Case Name: *Todd Henry Jarvis v. State Farm General Insurance Company et al.*
Case No.: 19CV354233

This is a motion to compel compliance with requests for production of documents. Plaintiff Todd Henry Jarvis contends that defendant State Farm General Insurance Company ("State Farm") served written responses agreeing to produce certain categories of documents but has dragged its feet in producing them. State Farm responds that it has produced nearly all of the documents it agreed to produce to Jarvis, but certain documents are irrelevant to the case and Jarvis has not shown "good cause" to compel their production.

As an initial matter, the court generally agrees with State Farm that the remaining documents that Jarvis seeks to compel by this motion appear to be largely irrelevant. The court fails to see how any of these documents have any possible bearing on the causes of action in this case. The court is not persuaded by Jarvis's claim that he needs any of these documents to oppose State Farm's pending motion for summary judgment. Nevertheless, because State Farm agreed to produce these documents in its written responses, it must abide by that statement of compliance, under Code of Civil Procedure section 2031.320. Jarvis is correct that there is no "good cause" showing needed on a motion to compel compliance under section 2031.320, as opposed to a motion to compel further responses under section 2031.310.

The court makes the following specific orders:

Requests for Production Nos. 33 & 39-44: State Farm shall produce the PSP agreement with ServiceMaster to Jarvis by no later than February 20, 2024. Again, the court is skeptical that this document has any bearing on the causes of action in this case, but it is arguably discoverable and State Farm agreed to produce it.

As for the PSP agreement with Servpro, the court has been given insufficient information by which to assess Jarvis's claim that certain exhibits are "completely illegible": what are these exhibits, how many pages are illegible, what exactly is illegible about them, and do these exhibits have any possible relevance to the case? The court orders State Farm to conduct a reasonable search for a "legible" copy of the agreement and, if one can be found, to produce it to Jarvis by February 20, 2024.

Requests for Production Nos. 76-80: State Farm shall produce the 2013-2016 versions of "Our Commitment to Our Policy Holders" by no later than February 20, 2024. Again, these documents appear to have peripheral relevance, at best, to the issues in this case, but because State Farm agreed to produce them—and has already produced the 2017 and 2018 versions—they should be produced.

As for any written policies relating to a "water initiative," State Farm claims that it has searched for such documents and found none: "It seems likely that State Farm's amended response to request number 78 will explain that State Farm has made a reasonable inquiry and effort to locate the documents requested regarding a 'water initiative,' but no such documents as defined by the request appear to have ever existed." (Opposition at p. 6, fn. 5.) If this is true, and State Farm has not yet amended its written response, it must do so by no later than February 20, 2024.

Request for Monetary Sanctions: The court finds that State Farm has been rather slow with its document productions in this case. At the same time, State Farm has largely complied with its discovery responses at this point, and the court also finds that the vast majority of documents sought by this motion are of minimal relevance at best, and are unlikely to lead to the discovery of relevant and admissible evidence. Because State Farm agreed to produce more documents than those for which "good cause" was shown, it still must produce them, but the court also finds that Jarvis has hardly been prejudiced by the delay.

The motion to compel compliance is GRANTED. The request for monetary sanctions is DENIED.

IT IS SO ORDERED.[2]

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[2] Each side has filed voluminous objections to the other side's declarations in support of their briefs. These objections are completely inappropriate and absolutely useless on a discovery motion, and the court overrules all of them.

Calendar Line 4
Case Name: *GDK Enterprises, LLC v. BioVision, Inc. et al.*
Case No.: 22CV399066

1. Background

This is a motion to compel the depositions of three witnesses: plaintiff GDK Enterprises, LLC ("GDK") and two apparent employees of GDK, Gordon Yan and Gloria Zhang.[3] For the reasons that follow, the court GRANTS the motion and orders that these three witnesses' depositions be taken within 30 days of this order either in *Santa Clara County* or another *mutually agreeable location in California*. The depositions will be taken *in person*. In addition, the court GRANTS IN PART defendants' request for monetary sanctions, in the amount of $5,734.20; the court DENIES GDK's request for sanctions.

The court has reviewed the meet-and-confer correspondence submitted by the parties. It appears that the parties spent a significant amount of time negotiating and then agreeing to a schedule by which all of the party depositions would take place in March and April 2023; they also agreed that these depositions would be preceded by a site inspection and mediation in February 2023. On January 25, 2023, defendants' counsel sent an email to GDK's counsel memorializing their discussions. (Declaration of Judy M. Lam, Exhibit 5.) It stated that the depositions of defendants would be taken by late March, and then the depositions of the plaintiff's witnesses—Yan, GDK, and Zhang—would occur a few days later, on April 3, 4, and 5, 2023, respectively. Next to each of Yan, GDK, and Zhang's dates, the email stated that the depositions would be "in person." Defendants' later served deposition notices of these witnesses on March 9, 2023.

After GDK's counsel began taking defendants' depositions, he sent an email on March 29, 2023 asking if defendants' counsel would agree to take GDK's witnesses' depositions by Zoom instead of in person. Defendants' counsel refused. GDK's counsel then sent a follow-up email objecting to the proposed San Francisco location of the depositions, stating that it was more than 75 miles from the witnesses' residences in Reno, Nevada. Defendants' counsel claims that she did not receive this second March 29, 2023 email until several days later, but in response to a March 30, 2023 email from plaintiff's counsel regarding the need for a Mandarin Chinese interpreter, she asked for confirmation that GDK's witnesses would appear, and GDK's counsel then reiterated that they "will not be appearing in person in your office. They are willing to appear via zoom[sic] or other remote appearance." (Lam Decl., Exhibit 7.)[4]

The depositions of the GDK's witnesses did not go forward. Defendants then requested in-person depositions of the witnesses in Santa Clara County or in Nevada, but GDK still has not agreed—as of the present date—to make them available for in-person depositions in these locations, either.

Defendants now bring this motion to compel.

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[3] Neither side clearly explains in their papers who Yan and Zhang are, or the relevance of their testimony.
[4] The exhibits are not page-numbered, and so the court simply refers to them by exhibit number, as there is no obvious way to be more specific.

2. Discussion

Given the factual circumstances outlined above, the court construes this motion as a motion to compel depositions that exceed the geographic travel limits set forth in Code of Civil Procedure section 2025.250. Even assuming that GDK is a Nevada corporation (although it alleges in its complaint that it is a California corporation (Complaint, ¶ 3)), and even assuming that GDK's purportedly key employees, Yan and Zhang, reside in Nevada, the court may still compel a deposition to be held "at a place that is more distant than that permitted under Section 2025.250." (Code Civ. Proc., § 2025.260, subd. (a).) In fact, under *Glass v. Superior Court* (1988) 204 Cal.App.3d 1048, 1050-1053 (*Glass*), which applied a predecessor to section 2025.260 (*i.e.*, Code Civ. Proc., § 2025, subd. (e)(3)), the court *should* issue an order compelling such depositions here. *Glass* is directly on point: it involved a non-California corporation that chose to bring an action in California, and it involved key deponents who were employed by that non-California corporation. Those are the same essential facts as are present here with GDK. In *Glass*, the Court of Appeal held that it was an abuse of discretion for the trial court *not* to compel the depositions in California. Just as in *Glass*, defendants argue that there are a number of additional circumstances that weigh in favor of taking the depositions in California: *i.e.*, the fact that the employees were in San Mateo, California, during the defendants' witnesses' depositions the week prior; the fact that Yan and Zhang apparently used to work in Milpitas, California; and most important of all, the fact that GDK had apparently acquiesced to the terms of the deposition schedule set forth in defendants' counsel's January 25, 2023 email before repudiating that understanding three-and-a-half days before the depositions were scheduled to begin.

GDK argues that because it objected "three days" before the scheduled date of the deposition, it was excused from producing the witnesses in San Francisco under Code of Civil Procedure section 2025.410, subdivision (a). The problem with this argument is that GDK failed to comply with section 2025.410, *subdivision (b)*, which requires the objecting party to "make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition." Rather than employing personal service, GDK's counsel apparently sent an email on March 29, 2023 that defendants' counsel says she did not receive until a few days later. Accordingly, GDK's objections were invalid.

Just as critically, even if the objections had been properly served, the sequence of events here evinces unseemly gamesmanship on the part of GDK's counsel. GDK did not raise any issue with the depositions—including the fact that they were to be "in person"—for two months (apparently, the deposition notices served on March 9, 2023 also say "in person"), before suddenly expressing its desire for remote, Zoom depositions on March 29, 2023. The papers are not entirely clear as to whether defendants' counsel actually knew that Yan and Zhang were legal residents of Nevada—defendants' memorandum says that GDK "claim[ed] for the first time they are legal residents of Nevada" on March 29, 2023. (Memorandum at p. 1:13.) If defendants' counsel did not know, then that is further problematic conduct on the part of GDK's counsel. Finally, the fact that these depositions still have not been rescheduled, *now more than nine months later*, is further evidence that GDK and its counsel have behaved inexcusably. GDK's opposition brief fails to respond to this last point raised by defendants. GDK sets forth zero evidence or argument that it has attempted to reschedule the depositions in good faith. The court finds this to fall below the level of professionalism expected of members of the California State Bar and also fails to comply with the Santa Clara County Bar Association's Code of Professionalism (see Section 10 – Discovery). The court understands

that counsel for both sides are located outside of Santa Clara County, but it expects counsel who litigate in this county to abide by the Code of Professionalism that has been adopted by the Santa Clara County Superior Court.[5]

The motion is GRANTED.

3. Sanctions

The court finds that GDK and its counsel did not act with substantial justification in changing the terms of the parties' agreement at the last minute, in insisting on Zoom depositions rather than in-person depositions, and in failing to reschedule these cancelled depositions promptly. The court finds that GDK and its counsel are jointly and severally liable for monetary sanctions in the amount of **$5,734.20**, to be paid to defendants within 30 days of notice of entry of this order. This represents the time incurred in preparing the motion (3.6 hours at $620/hour plus 8.98 hours at $390/hour). The court is not awarding sanctions for court reporter, videographer, or interpreter fees, nor is it awarding prospective sanctions for preparing a reply brief (which the court has not received, in any event, as of January 26, 2024).

The court GRANTS defendants' request for sanctions IN PART. The court DENIES GDK's request.

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[5] The Code of Professionalism was originally adopted on June 24, 1992, last revised on December 2022, and approved in a Standing Order by the Presiding Judge of the Santa Clara County Superior Court in February 2023. Previous versions were also approved by previous Presiding Judges of the court.

Calendar Lines 7-8
Case Name: *Valley Water v. Gail Oliver* & *Valley Water v. Benjamin Strong et al.*
Case No.: 21CV392194 & 21CV392237

1. Background

In these two related cases, plaintiff Valley Water seeks to enforce settlement agreements with defendant Gail Oliver (Case No. 21CV392193) and defendants Benjamin Strong and Robin Navarro (Case No. 21CV392237) pursuant to Code of Civil Procedure section 664.6. After Valley Water filed two, nearly identical motions in these respective cases, the parties stipulated to "consolidate" the cases for the limited purpose of hearing these motions. Defendants filed a single opposition brief on January 17, 2024, and Valley Water filed a single reply brief on January 23, 2024.

The court GRANTS Valley Water's motions to enforce the settlement agreements. There is no dispute that the parties entered into settlement agreements in 2022. There is no dispute that the parties agreed that the court would retain jurisdiction over the parties to enforce the agreements under section 664.6. And there is no dispute that the defendants are presently in breach of the agreements with the fences that they have constructed. Accordingly, there is no basis for the court to make any order other than one to enforce the parties' settlements.

Defendants raise two arguments in opposition (even though they enumerate them as four): first, they argue that Valley Water is "estopped" from enforcing the contract because defendants reasonably relied on Valley Water's "representation regarding the property boundary"; second, they argue that Valley Water's loss of property is "de minimus [sic]," whereas enforcement of the boundary would cause them a significant hardship.[6] Neither of these arguments is persuasive.

2. Estoppel

In support of their estoppel argument, defendants allege that they reasonably relied on stakes placed by Valley Water to mark the property line. They then erected fences that were built on straight-line paths between the stakes. When Valley Water informed them that these fences still encroached upon Valley Water's property because the fences did not "follow the Property Line's concave characteristic" (*i.e.*, the line between the stakes was curved rather than straight because of the curvature of Saratoga Creek), defendants refused to change the fences. (Valley Water's Memorandum (Oliver) at p. 4:11-13.) In their opposition to these motions, defendants argue that they "were not provided with a plat map showing the [2015] survey." (Opposition at p. 6:5-6.) Therefore, they acted in good faith and "did not act with an intent to place their fence in such a way as to gain extra ground over Plaintiff." (*Id.* at p. 6:23-24.)

This does not even come close to establishing the elements of an estoppel. In their opposition, defendants do not cite any of those elements or cite any authority to support their position. To establish an estoppel, a party must show that the other party "intentionally and deliberately led [it] to believe a particular thing true and to act upon such belief" before attempting "to contradict it" in subsequent litigation. (Evid. Code, § 623; see also *Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 571.) Here,

[6] Defendants repeatedly misspell *de minimis* as *de minimus*, which grates like fingernails on a chalkboard.

Defendants fail to show that Valley Water "intentionally and deliberately" led them to believe that the property line followed a straight line between the stakes rather than a curved line. There is no evidence of *any communication* between the parties about defendants' proposed fences, much less that Valley Water reviewed and approved any of the defendants' proposed fences before they were built. In fact, there is no evidence that Valley Water was even aware that defendants intended to build fences that followed a straight line between stakes rather than one that followed the property line. In the absence of such evidence, defendants cannot show that Valley Water *deliberately* induced such construction. They cannot make the bare minimum showing that is necessary to establish an estoppel.

3. The Degree of the Breach and the Burden of Refencing

A 2022 survey of the properties indicates that Oliver's fence encroaches on Valley Water's land by 47 square feet, and Strong and Navarro's fence encroaches on the land by 54 square feet. Defendants argue that this is a *de minimis* intrusion that "does not impede Plaintiff's ability to maintain the creek." (Opposition at p. 7:8-20.) By contrast, they argue that the cost of refencing the boundaries will cause "significant and material hardship." They note that Oliver spent $3,917 on building her current fence, and Strong and Navarro spent $2,250 on their current fence.

In arguing that the property line encroachments are minimal, defendants concede that they are in breach of the settlement agreements. And they once again fail to cite any *legal authority* for the proposition that an allegedly minor breach of an agreement can simply be excused under these circumstances. Further, as a factual matter, the court does not see any provision in the settlement agreements between the parties that would excuse an immaterial breach of the agreement or that even defines what an immaterial breach would be. Because there is no genuine dispute that defendants are in breach of the agreements, they must be enforced.

Indeed, even if there were some means by which the court could weigh the materiality of defendants' breaches against the burden of curing them, the court would not find that defendants have shown that the latter clearly outweigh the former. The court has no way of knowing whether 47 square feet or 54 square feet are truly *de minimis* amounts of property, just as it has no way of knowing whether $3,917 and $2,250 are *de maximus* expenses that would cause a "significant and material hardship" on all of the defendants.[7] In truth, both sides of this balance strike the court as being incredibly trivial. If $3,917 and $2,250 were the costs of building Oliver's and Strong/Navarro's *entire fences*, then surely the cost of fixing the fence boundaries to comply with the supposedly *de minimis* nature of the current intrusions would simply be a fraction of these amounts. The court finds that defendants' claim that they have committed a *de minimis* intrusion to cut directly against their argument that fixing this intrusion would create a financial hardship.

[7] The court has been given no information about defendants' financial circumstances.

4. Conclusion

The motions are GRANTED. The court instructs Valley Water to prepare the final orders and/or judgments containing the specific determinations set forth in its notices of motion.

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Calendar Line 9
Case Name: *Arch Veterinary Services, Inc. v. Liliana Guerrero*
Case No.: 22CV406855

Defendant Liliana Guerrero moves for an award of attorney's fees, after having prevailed on an anti-SLAPP motion against plaintiff Arch Veterinary Services, Inc. ("Arch Vet"). Although there is no question that Guerrero is entitled to attorney's fees, and although the court finds her attorneys' hourly billing rates to be reasonable, the court also concludes that the supporting evidence on this motion is insufficient for the court to make a specific award. The court therefore CONTINUES the hearing on this motion to April 30, 2024 at 9:00 a.m. Guerrero shall file additional billing records (attached to one or more declarations) to support the motion by no later than March 26, 2024; Arch Vet may file a supplemental opposition by April 15, 2024; and Guerrero may file a supplemental reply brief by April 22, 2024.

First, the court is well aware that detailed time records are not always required to support a motion for attorney's fees following an anti-SLAPP motion. (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 487-488 (*Lunada*).) In addition, generalized arguments about the excessiveness of fees or about the alleged duplication of work by counsel—such as those made by Arch Vet here—"'do not suffice.'" (*Id.* at p. 488 [quoting *Premier Medical Management Systems, Inc. v. California Insurance Guarantee Association* (2008) 163 Cal.App.4th 550, 564 (*Premier Medical*)].) Arch Vet makes speculative arguments about "duplicative" work by "two law firms" without identifying anything concrete. Additionally, Arch Vet's argument that the court should reduce the claimed fees "by fifty percent" is similarly speculative and arbitrary.

Nevertheless, the court is concerned that the scope of fees sought in this motion is overbroad and includes time spent on the case as a whole, rather than on the anti-SLAPP motion itself and this subsequent motion for fees. The declaration of Julian Sarafian states, "I have billed *a total of 21.1 hours on this matter to date* prior to working on this motion [for attorney's fees]. Those hours included *reading the complaint and supporting documents, discussing the case and facts thoroughly with my client*, reviewing the web posts that formed the basis (or apparent basis) for the claims, [etc.]. . . ." (Sarafian Decl., ¶ 5 [italics added].) Similarly, the declaration of Kenneth P. White states, "I have billed a *total of 17.8 hours on this matter to date prior to working on this motion* [for attorney's fees]. Those hours include reading the complaint and supporting documents, discussing the case and facts thoroughly with Mr. Sarafian, [etc.]. . . ." (White Decl., ¶ 6 [italics added].) Although the court understands that there may be a fine (and somewhat indefinite) line between working on the case as a whole and working on an anti-SLAPP motion that constitutes the primary focus of the case—for example, "reading the complaint and supporting documents" may be necessary to understand the case as a whole at the outset, as well as to work more specifically on an anti-SLAPP motion—the law is clear that a party may recover fees and costs for *only the anti-SLAPP motion itself* (and the related motion for fees and costs), not for the entire litigation. (*569 E. County Boulevard, LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 433.) The ambiguous language contained in these declarations of Guerrero's counsel leads the court to conclude that it needs more detailed information about counsel's time entries for the case, particularly for Sarafian, who has apparently been representing Guerrero from the outset. The court is not fully convinced that all of the claimed hours for Sarafian and White are attributable solely to the work on the anti-SLAPP motion, even if the majority of them might be.

At the same time, the court has fewer concerns about the 13.7 hours claimed by Guerrero in connection with White's associate, Nicholas Ramirez, where it appears that all of the tasks assigned to Ramirez were directly related to the anti-SLAPP motion. (White Decl., ¶ 7.)

As the court noted at the hearing on the anti-SLAPP motion, the court did not view the motion as being a particularly close call. Indeed, this single-count defamation action is about as simple a defamation case as can be. Thus, the court is not swayed by Guerrero's contention that the $25,498.46 requested here is reasonable because it "is far less than the amounts that have been awarded and upheld in other cases." (Reply at p. 1:11-12.) Those other cases are irrelevant, and "'each fee application under section 425.16, subdivision (c), must be assessed on its own merits . . . taking into account what is reasonable under the circumstances.'" (*Lunada*, *supra*, 230 Cal.App.4th at p. 488 [quoting *Premier Medical*, *supra*, 163 Cal.App.4th at p. 561].)

Again, the court continues the hearing on this motion to April 30, 2024. If, in the meantime, the parties are able to reach an agreement about the appropriate amount of fees, based on the views already expressed by the court in this order—and the court certainly encourages the parties to do so—then they may file a stipulation and order with the court and take the April 30 hearing off calendar.

IT IS SO ORDERED.

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Calendar Line 10
Case Name: *Sophie Shen v. Weiping Xia et al.*
Case No.: 19CV360975

As noted in plaintiff Sophie Shen's ex parte application, filed on December 11, 2023, this is her third attempt to obtain an order to sell the home of defendant and judgment debtor Weiping Xia. The first time, she filed an ex parte application without having initiated a levy on the home. The second time, she filed a noticed motion without having initiated a levy on the home. On this latest attempt, she indicates that she obtained a notice of levy from the Santa Clara County Sheriff's Office. Accordingly, on December 18, 2023, the court issued an order to show cause why Xia's house should not be sold.

In response, Xia points out that after filing this application with the court, Shen failed to file a copy of the application with the levying officer, as required by Code of Civil Procedure section 704.750, subdivision (a). As a result, the Sheriff's Office released the levy on January 16, 2024, and it is no longer in effect. (Declaration of Christopher G. Addy, ¶¶ 2-3.)

The application is therefore DENIED. Once again, the denial is without prejudice.

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