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: March 28, 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	2005-1-CV-044225	Columbia Credit Services, Inc. v. Aaron Fontanilla	OFF CALENDAR
LINE 2	22CV396170	Christian Humanitarian Aid v. AM Star Construction, Inc. et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	22CV396170	Christian Humanitarian Aid v. AM Star Construction, Inc. et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	23CV422278	Joe Sparacino v. Terri Fijak et al.	OFF CALENDAR. With the filing of the first amended complaint, the demurrer to the original complaint is now MOOT.
LINE 5	23CV422278	Joe Sparacino v. Terri Fijak et al.	OFF CALENDAR. With the filing of the first amended complaint, the demurrer to the original complaint is now MOOT.
LINE 6	23CV409970	Clifford Jeffrey Stanley et al. v. Ramiro Cintora et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	22CV398156	Central Coast Community Energy et al. v. BigBeau Solar, LLC	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 8	22CV398156	Central Coast Community Energy et al. v. BigBeau Solar, LLC	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 9	1999-7-CV-386483	Jose Mezzetti v. John Mickey II	Return of civil bench warrant: parties to appear.
LINE 10	23CV415326	Ari Law, P.C. v. Affeld Grivakes LLP et al.	Click on LINE 10 or scroll down for ruling.
LINE 11	23CV422800	R.C.S. Management and Investment Corporation v. Felipe Casalduc	Click on LINE 11 or scroll down for ruling.

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LINE 12	23CV427251	Elaine Trigueiro v. Guadalupe Mendoza et al.	OFF CALENDAR. After the court already prepared its tentative ruling denying the motion to consolidate, the moving party indicated that it would be dismissing the case. In the future, please do not wait until the last minute to take a noticed motion off calendar.

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Calendar Lines 2-3
Case Name: *Christian Humanitarian Aid v. AM Star Construction, Inc. et al.*
Case No.: 22CV396170

I. BACKGROUND

This case involves a dispute over an architectural services contract and related agreements entered into by plaintiff Christian Humanitarian Aid ("Plaintiff" or "CHA") and defendants AM Star Construction, Inc. ("AMS"), Michael Achkar ("Achkar," the owner of AMS), and Shultz & Associates (the architect for the project). CHA filed the original complaint in this matter on March 23, 2022. It filed the operative First Amended Complaint ("FAC"), adding defendant Link Corporation ("Link"), on March 15, 2023. The FAC states claims for: (1) Fraud in the Inducement (against AMS, Achkar, and various Does); (2) Fraud and Deceit (against AMS, Achkar, and various Does); (3) Breach of Contract (against AMS and various Does); (4) Breach of the Implied Covenant of Good Faith and Fair Dealing (against AMS and various Does); (5) Professional Negligence (against Shultz & Associates); (6) Breach of Contract (against Shultz & Associates); (7) Breach of Contract (against Link); (8) Negligence (against Link); and (9) Declaratory Relief (against AMS and various Does, seeking a declaration as to the validity of a mechanic's lien).

Shultz & Associates ("Shultz") filed a cross-complaint on May 25, 2023 and a first amended cross-complaint ("FAXC") on September 27, 2023. The FAXC states seven causes of action: (1) Equitable Indemnity; (2) Contribution; (3) Declaratory Relief; (4) Breach of Contract; (5) Conversion; (6) Common Count; and (7) Quantum Meruit. There are two exhibits attached to the FAXC. Exhibit A is a copy of the Architectural Services Agreement between CHA and Shultz, signed by CHA on May 21, 2019. Exhibit B consists of two letters from CHA lawyers requesting that Shultz consent to the use of its CAD files; only one of the letters (from May 2021) is signed by Shultz.

AMS and Achkar also filed a cross-complaint on July 25, 2023, stating 11 causes of action. The court heard CHA's demurrer to and motion to strike the AMS/Achkar cross-complaint on December 7, 2023. The court sustained the demurrer in part, with leave to amend, and overruled it in part; the court denied the motion to strike. AMS/Achkar then filed an amended cross-complaint on January 2, 2024.

Currently before the court is CHA's demurrer to, and motion to strike portions of, Shultz's FAXC. CHA filed the demurrer and motion on October 30, 2023. Shultz filed oppositions on March 15, 2024.

II. DEMURRER TO THE SHULTZ FAXC

A. General Standards

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

concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) Facts appearing in exhibits attached to the complaint (which are considered part of the "face of the pleading") are given precedence over inconsistent allegations in the complaint. (See *Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].)

The court considers only the pleading under attack, the attached exhibits, and any facts or documents that may properly be judicial noticed. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. The court has only considered the declarations from CHA's counsel to the extent that they discuss the required meet-and-confer efforts; the court has not considered the attached exhibits.

B. Basis for CHA's Demurrer

CHA demurs to the FAXC's fifth, sixth, and seventh causes of action on the basis that they fail to state a cause of action, under Code of Civil Procedure section 430.10, subdivision (e). (See Notice of Demurrer and Demurrer at pp. 2:15-3:4.)

C. Analysis

1. Fifth Cause of Action (Conversion)

Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion cause of action are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (See *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) "[T]he law is well settled that there can be no conversion where an owner either expressly or impliedly assents to or ratifies the taking, use or disposition of his property." (*Chen v. PayPal, Inc*. (2021) 61 Cal.App.5th 559, 576 [quoting *Farrington v. A. Teichert & Son, Inc*. (1943) 59 Cal.App.2d 468, 474].)

The FAXC's fifth cause of action alleges that "[o]n or about May 20, 2021, [CHA], by and through one of its counsel of record . . . induced Shultz to release data comprising the instruments of service, and falsely and fraudulently represented to Shultz that, in exchange for agreeing to such use, that [sic] Shultz would be released from liability. This representation by an agent of [CHA] was in fact false, and [CHA] knew of its falsity. Shultz justifiably relied upon the representations of [CHA's] agents, and was thereby induced to deliver instruments of service in electronic form. The May 20, 2021 correspondence is included as EXHIBIT 'B' to this cross-complaint . . . ." (FAXC, ¶ 42.)

CHA contends that the demurrer should be sustained because "[t]he express, written consent, signed by Shultz on May 24, 2021, attached as Exhibit B to the amended cross-complaint[,] completely disposes of any allegations that CHA used Shultz's CAD files without

Shultz's consent . . . . Therefore, Shultz's cross-complaint fails to state facts sufficient to constitute a cause of action for conversion." (Memorandum at p. 7:21-27.)[1]

Strictly speaking, this argument does not establish a failure to allege facts supporting any of the elements of a conversion cause of action; rather, it asserts a defense to the claim. "'[A] demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense.'" (*Stella v. Asset Management Consultants, Inc*. (2017) 8 Cal.App.5th 181, 191.) Whatever the scope of the release might be, the FAXC plainly alleges, in the language quoted above, that the release and correspondence attached as Exhibit B were fraudulently induced. That allegation must be accepted as true on demurrer, and Shultz's ability to prove the allegation is not a relevant consideration. "[A] release is invalid when it is procured by misrepresentation, overreaching, deception or fraud." (*Jimenes v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 563.)

For this reason, the court OVERRULES CHA's demurrer to the fifth cause of action.

2. Sixth and Seventh Causes of Action (Common Counts – *Indebitatus Assumpsit* and *Quantum Meruit*)

The sixth and seventh causes of action both assert common counts, and CHA makes the same argument against both. "The common count is a general pleading which seeks recovery of money without specifying the nature of the claim." (*Title Ins. Co. v State Board of Equalization* (1992) 4 Cal.4th 715, 731.) "A common count is proper whenever the plaintiff claims a sum of money due, either as an indebtedness in a sum certain, or for the reasonable value of services, goods, etc., furnished. It makes no difference in such a case that the proof shows the original transaction to be an express contract, a contract implied in fact, or a quasi-contract." (*Utility Audit Co v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 958; see also CACI No. 371.) "In California, it has long been settled the allegation of claims using common counts is good against special or general demurrers. The only essential allegations of a common count are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment. [Citation.].'" (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) "A common count is not a specific cause of action, however; rather, it is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness, including that arising from an alleged duty to make restitution under an assumpsit theory." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394; see also *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 690.)

The sixth cause of action is for *indebitatus assumpsit*. "The indebitatus assumpsit count states that the defendant was or is indebted to the plaintiff in a certain sum of money, stating generally the consideration, and that, being so indebted, the defendant promised to pay that sum of money on request. Through the statement of the consideration, the count may be identified as, for example, being for money had and received, including for money had and received by the defendant to and for the use of plaintiff; for goods, wares, and merchandise sold and delivered; for the reasonable value of services rendered; or for labor and materials furnished." (55 Cal.Jur.3d (2015) *Restitution and Constructive Contracts,* § 19.)

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[1] CHA's notice of demurrer and supporting memorandum should have been filed separately but were instead submitted as one continuously paginated document.

The sixth cause of action alleges that "[o]n or about November 14, 2019, cross-defendants [CHA] and Zoes 26 through 50, inclusive, and each of them, became indebted to Shultz in the agreed sum of at least $9,746.23, or in an amount according to proof at trial, plus interest, for architectural services rendered by Shultz to [CHA] at the request thereof in the Shultz contract. Shultz never received the remaining balance of $9,746.23 from [CHA], despite requesting such payment by [CHA], together with interest at the rate of 1.5% per month from the date of November 14, 2019." (FAXC, ¶¶ 50-51.)

CHA argues that the sixth cause of action fails to state sufficient facts because "Shultz affirmatively alleges the existence of a written contract and attaches and incorporates it by reference. The existence of a written contract, as alleged by Shultz, precludes an action based on an implied contract." (Memorandum at p. 8:16-20 [internal citation omitted].) This argument is incorrect as applied to an indebitatus assumpsit claim. An indebitatus assumpsit claim is not barred by an allegation of an express contract; it requires only an allegation of an express oral or written agreement to pay for services. The presence of the fourth cause of action for breach of contract does not establish that the sixth cause of action necessarily fails to state sufficient facts. Shultz may allege both at this time, as an election of remedies is not required at the pleading stage. "One of the typical occasions for alternative pleading is uncertainty about the nature of a contractual obligation that the evidence may establish . . . ." (4 Witkin, *California Procedure* (5th ed. 2022), § 419.)

The court OVERRULES the demurrer to the sixth cause of action.

The seventh cause of action is for *quantum meruit*. "Quantum meruit refers to the well-established principle that the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered. To recover in quantum meruit, a party need not prove the existence of a contract, but it must show the circumstances were such that the services were rendered under some understanding or expectation of both parties that compensation therefore was to be made. The measure of recovery in quantum meruit is the reasonable value of the services rendered, provided that they were of direct benefit to the defendant. A plaintiff must establish both that he or she was acting pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and did benefit the defendant." (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1673 [internal citations omitted].)

Relying primarily on decisions that do not discuss pleading challenges or do not discuss claims for quantum meruit, CHA argues that because the FAXC "affirmatively alleges the existence of a written contract . . . Shultz is precluded from additionally seeking recovery under a quantum meruit theory."[2] (Memorandum at p. 9:13-17.) The court disagrees. While Shultz may not *recover* under both a breach of contract and a quantum meruit theory, he can still plead both. As one court of appeal has explained:

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[2] For example, CHA cites *Klein v. Chevron USA, Inc.* (2012) 202 Cal.App.4th 1342, but that case did not involve a cause of action for quantum meruit; the cause of action was for unjust enrichment. "[C]ases are not authority for propositions not considered." (*People v. Ault* (2004) 33 Cal.4th 1250, 1268 fn. 10.)

> But NHV and VMG were permitted to plead inconsistent counts. "When a pleader is in doubt about what actually occurred or what can be established by the evidence, the modern practice allows that party to plead in the alternative and make inconsistent allegations." (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1402, 45 Cal.Rptr.3d 525.) "The plaintiff remains free to allege any and all 'inconsistent counts' that a reasonable attorney would find legally tenable on the basis of the facts known to the plaintiff at the time." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 691, 34 Cal.Rptr.2d 386, 881 P.2d 1083.) Thus, a plaintiff may plead inconsistent causes of action for breach of contract and common count. (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 407, p. 546.) NHV and VMG cannot recover for both breach of contract and quantum meruit (see *Hedging Concepts, Inc. v. First Alliance Mortgage Co., supra*, 41 Cal.App.4th at pp. 1419–1420, 49 Cal.Rptr.2d 191), but they can plead both causes of action.

(*Newport Harbor Ventures LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1222–1223.)

CHA's demurrer to the seventh cause of action on the ground that it fails to state sufficient facts is therefore OVERRULED.

III. MOTION TO STRIKE

A. General Standards

Pursuant to Code of Civil Procedure section 436, 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. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437(a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63 [citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255].)

A motion to strike may be brought against a portion of a cause of action that is purportedly defective—*e.g.*, because it seeks an improper remedy. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680.) At the same time, as Courts of Appeal have emphasized, "[W]e have no intention of creating a procedural 'line item veto' for the civil defendant." (*Id*. at p. 1683.)

B. Analysis of CHA's Motion

CHA's notice of motion states that it seeks to strike nine specified portions of the FAXC. (See Notice of Motion at pp. 2:19-5:7.)

The first request is to strike the portions of paragraph 47 of the FAXC (part of the fifth cause of action) that purport to seek a temporary restraining order or other injunctive relief,

based on CHA's retention of instruments prepared by Shultz. CHA contends that this language should be stricken as "improper," because Shultz "consented to [the] use" of those instruments, and there is an adequate remedy at law. (Notice of Motion at p. 2:20-24.) The court DENIES the motion to strike this language. The demurrer to the conversion cause of action has been overruled, CHA has not yet established consent, and the allegations that CHA continues to remain in wrongful possession of Shultz's property are accepted as true at the pleading stage. Under these circumstances, a provisional remedy is not necessarily foreclosed. "[T]he general rule is that an injunction may not issue unless the alleged misconduct is ongoing or likely to recur." (*Madrid v. Perot Systems Corp.* (2005) 130 Cal App.4th 440, 464-465.)

The second request is to strike portions of paragraph 42 (also part of the fifth cause of action) that allege false representations and fraudulent inducement as part of CHA's alleged conversion of instruments of service. (Notice of Motion at p. 3:12-14.) This portion of the motion is also DENIED. No fraud cause of action is alleged in the FAXC, and Shultz is not required to allege conversion with any heightened degree of specificity merely because it also alleges that the conversion was accomplished through false representations. Alleging that false representations were made by counsel is also in not a "false and improper" attack, contrary to CHA's suggestion. Again, CHA's repeated (but insufficiently factually developed) argument that Shultz "consented" to the use of his property is not a basis for striking the targeted portions of either paragraph 47 or paragraph 42.

The third, fourth, and fifth requests all seek to strike allegations pertaining to the amount of interest. (See Notice of Motion at pp. 3:15-4:7.) The third request targets a portion of paragraph 47 of the FAXC (part of the fifth cause of action) and is solely based on Article XV, section 1 of the California Constitution. This portion of the motion, targeting the phrase "in the amount of 1.5% per month" in paragraph 47 is GRANTED with 10 DAYS' LEAVE TO AMEND. "Absent a statutory provision specifically governing the type of claim at issue, the prejudgment interest rate is 7 percent under article XV, section 1 of the California Constitution." (*Bullock v. Philip Morris USA, Inc*. (2011) 198 Cal.App.4th 543, 573; see also *Brown v. California Unemployment Ins. Appeals Bd.* (2018) 20 Cal.App.5th 1107, 1116.)

Contrary to what the opposition appears to suggest, Civil Code section 3289 does not apply to a conversion cause of action.[3] While the opposition does not suggest how the request for interest in the fifth cause of action could be amended, the court finds that leave to amend on this point, at least once, is appropriate. The court does not, however, grant leave to amend to add new causes of action or parties.

The fourth and fifth requests target portions of paragraph 51 and 53 (part of the seventh cause of action for quantum meruit) and are solely based on Civil Code section 3289, which applies to the rate of interest stipulated by contract. This portion of the motion is DENIED, as CHA has not sufficiently established that Civil Code section 3289 has any application to common counts generally or to a cause of action for quantum meruit specifically. CHA's repeated argument that alleging a breach of contract somehow bars Shultz from also alleging a quantum meruit claim remains unpersuasive, as already discussed above with respect to the demurrer, and is not a basis for striking the targeted portions of paragraphs 51 and 53.

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[3] Civil Code section 3336, which does not bar injunctive relief, would be the generally applicable statute,

The court GRANTS the sixth request to strike a portion of the FAXC's prayer seeking "[r]easonable attorneys' fees and costs." (See Notice of Motion at p. 4:12-14.) As a general matter, parties to litigation must pay their own attorney's fees, except as provided by statute or agreement, or where attorney's fees are themselves part of the measure of damages. (See *Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252, 1257; Code Civ. Proc., § 1021 [costs awarded to prevailing party]; Code Civ. Proc., § 1033.5, subd. (a)(10) [attorney's fees "are allowable as costs" "when authorized by" contract, statute, or law].) Nothing in the FAXC or the Architectural Services Agreement attached as Exhibit A states a basis for seeking attorney's fees. Shultz's opposition "concedes that no contractual term permits the recovery of attorneys' fees." (Opposition at p. 5:2-7.) As no currently alleged cause of action would serve as a basis for attorney's fees, the court DENIES leave to amend this portion of the prayer at this time.[4]

The seventh, eighth, and ninth requests seek to strike portions of paragraph 47 (part of the fifth cause of action for conversion) and paragraphs 53 and 54 (part of the seventh cause of action for quantum meruit) that allege a value for the converted instruments of service and a "reasonable value" for services rendered. The sole basis for striking this language is that it is "improper" because it exceeds that terms of the contract. (See Notice of Motion at pp. 4:15-5:7.) These requests are DENIED, as CHA has not established that it is *undisputed* that the alleged values are improper or that they are "barred" by Civil Code section 3302, which only applies to "the breach of an obligation to pay money only."

IV. CONCLUSION

The court OVERRULES the demurrer to the FAXC. The court GRANTS in part and DENIES in part the motion to strike, with 10 days' leave to amend, as specified.

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[4] The opposition suggests that Shultz *could* add claims that would allow for the recovery of attorney's fees. As Shultz cannot add any new causes of action without bringing a noticed motion for leave to amend, that is a hypothetical point that may need to be addressed later down the road, but not at this time. It is not a basis for granting leave to amend the existing FAXC.

Calendar Line 6
Case Name: *Clifford Jeffrey Stanley et al. v. Ramiro Cintora et al.*
Case No.: 23CV409970

I. BACKGROUND

This is an action for quiet title and cancellation of instrument brought by plaintiffs (1) Clifford Jeffrey Stanley; (2) Cynthia Ann Stanley; and (3) Clifford Jeffrey Stanley and Cynthia Ann Stanley, as Trustees of the Stanley Family Trust, Initially Created August 2, 2000 (collectively, "Plaintiffs") against defendants Ramiro Cintora and the Joseph Farzam Law Firm (collectively, "Defendants"). The original and still-operative complaint, filed on January 17, 2023, alleges that Defendants improperly recorded a judgment lien on April 3, 2019, which operates as a cloud on the title of Plaintiffs' residence. (Complaint, ¶ 26.)

The judgment lien was the last in a series of abstracts of judgments entered in a case between defendant Cintora and plaintiff Clifford Stanley and Stanley's former company, Bad Boys Bail Bonds, Inc. (Los Angeles County Superior Court Case No. BC340651). (See Complaint, ¶ 14.) The Los Angeles court first entered judgment on October 6, 2011, finding Bad Boys liable to Cintora for $41,442.50 plus costs. (*Id*. at ¶¶ 14-15.) The court subsequently entered a Second Amended Final Judgment awarding additional costs of $2,974.92 on November 9, 2011. (*Id*. at ¶ 16.)

On January 19, 2016, the trial court—pursuant to Cintora's motion to amend—added plaintiff Clifford Jeffrey Stanley as an individual judgment debtor, because Bad Boys Bail Bonds Inc. had dissolved, and Stanley assumed the corporation's liabilities. (Complaint, ¶¶ 17-18.) After hearing a contested motion to strike by Bad Boys, the court signed and entered a Fourth Amended Final Judgment on May 23, 2016. Under that judgment, Clifford Jeffrey Stanley was deemed to be the alter ego of Bad Boys and was liable under the 2011 amended judgment. (*Id*. at ¶ 22.)

In June 2022, Plaintiffs sold property but could not close escrow because of the abstract of the Fourth Amended Final Judgment that Defendants recorded on April 3, 2019. (Complaint, ¶¶ 24-25.) The complaint alleges that because the liens associated with the judgment are over 10 years old and were not renewed before expiration of the 10-year statute of limitations, they are extinguished by operation of law. (*Id*. at ¶ 26.)

The complaint states three causes of action: (1) Declaratory Relief; (2) Action to Quiet Title; and (3) Cancellation of Instrument. Paragraph 24 of the complaint refers to an "Exhibit A," an April 3, 2019 Amended Abstract of Judgment, but there are no exhibits attached to the complaint. The declaratory relief cause of action seeks a declaration that the April 3, 2019 Amended Abstract of Judgement is extinguished by operation of law and is unenforceable because the judgment on which it is based has now expired. (See Complaint, ¶ 31.)

On March 17, 2023, Defendants filed a demurrer, which was premised on the notion that the period of enforcement of any judgment in this case ran from the May 23, 2016 date of the Fourth Amended Final Judgment. In an order issued on June 7, 2023, this court (Judge Geffon) overruled the demurrer. Judge Geffon noted:

> Here, the Complaint alleges the first final judgment was entered on July 1, 2011 after a jury trial. (Complaint, ¶ 14.) The July judgment was subsequently amended by the Second Amended Final Judgment, entered on November 9, 2011, which awarded costs of $2,974.92. (*Id*. at ¶ 16; RJN, Exhibit A.) With the amendment of the November judgment, the statutory enforcement period was extended to November 9, 2021. (See *Iliff*, *supra*, 107 Cal.App.4th at 1207; *Wilcox*, *supra*, 124 Cal.App.4th at 502.) The Complaint further alleges that the most recent iteration of judgments, the Fourth Amended Final Judgment, solely modified the November 9, 2011 judgment by adding the alter-ego defendant – a modification that does not extend the statutory enforcement period. (Complaint, ¶ 22; RJN Exhibit G.) Because the Amended Abstract of Judgment was allegedly recorded on April 3, 2019 and no enforcement action (e.g., obtaining a writ of execution, levying on debtor's property) was taken, the 10-year statutory enforcement period began with the entry of the November 9, 2011 judgment and lapsed [on] November 9, 2021.

(June 7, 2023 order at p. 6:10-20, brackets added.)[5]

Following the June 7 order overruling the demurrer, there is no record of Defendants having filed an answer to the complaint. In any event, Plaintiffs have now filed a motion for summary judgment, or in the alternative, summary adjudication. Defendants oppose. This matter is currently set for trial on May 20, 2024.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed must be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

In support of their motion, Plaintiffs have submitted a request for judicial notice of 10 documents, listed as Exhibits A-J. Most of these documents are from the Los Angeles County case. Plaintiffs make their request under Evidence Code sections 451, 452(c), 452(d), 452(g), 452(h), 452.5, and 453. (See Request at p. 1:3.)

Exhibit A is a copy of the Second Amended Final Judgment on Jury Verdict, dated November 9, 2011. Exhibit B is a copy of a Notice of Motion and Motion to Amend Judgment, the Memorandum of Points and Authorities, and the supporting declaration with exhibits. Exhibit C is a copy of a January 19, 2016 Minute Order from the Los Angeles case, granting motions to amend the judgment brought by Cintora and by Bad Boy Bail Bonds. Exhibit D is a copy of a "Notice of Motion and Motion of Defendant Bad Boys Bail Bonds, Inc. and Third Party Clifford Jeffrey Stanley to Strike Portions of Third Amended [Proposed]

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[5] The court takes judicial notice of the June 7, 2023 order pursuant to Evidence Code section 452(d) on its own motion.

Final Judgment on Jury Verdict." Exhibit E is a copy of Cintora's opposition to this motion (Exhibit D), including a supporting declaration. Exhibit F is a copy of an April 7, 2016 Minute Order ruling on certain objections to the "Third Amended [Proposed] Final Judgment on Jury Verdict." Exhibit G is a copy of the Fourth Amended Final Judgment on Jury Verdict, dated May 23, 2016. Exhibit H is a copy of the Amended Abstract of Judgment in Case No. BC340651 (Los Angeles) recorded in Santa Clara County on April 3, 2019. Exhibit I is a copy of the court's (Judge Geffon's) June 7, 2023 order in this case. Exhibit J is a copy of a printout of the docket for Case No. BC340651.

As an initial matter, the court notes that Evidence Code section 452, subdivisions (g) and (h), do not provide a basis for taking judicial notice of any of the submitted documents. The court GRANTS judicial notice of Exhibits A, C, F, G, H, and I under Evidence Code sections 452, subdivisions (c) and (d). These court orders are judicially noticed as to their contents and legal effect but not as to the truth of any factual findings. (See *Barri v. Workers' Comp. Appeals Bd*. (2018) 28 Cal.App.5th 428, 437-438; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 145-148.) The court DENIES judicial notice as to Exhibits B, D, E, and J. These court filings by the parties (and docket printout) are not relevant to the material issues before the court. Furthermore, these documents cannot be judicially noticed as to the truth of their contents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court filings cannot be judicially noticed].)

III. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

A. General Standards

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

The moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

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

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove a defense. While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) The moving party may generally not rely on additional evidence submitted with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 252.)

B. Basis for Plaintiffs' Motion

Plaintiffs move for summary judgment on the ground that "there is no triable issue of material fact as to any cause of action," because "[t]he undisputed material facts establish that the ten-year period to enforce Defendants' judgment has lapsed and that Plaintiffs' judgment lien based upon the expired judgment is extinguished as a matter of law." (Notice of Motion and Motion at p. 2:14-20.) In the alternative, Plaintiffs move for summary adjudication as to the first, second, and third causes of action. (See Notice of Motion at pp. 2:25-4:2.)[6]

Plaintiffs' motion is accompanied by two declarations. The first is from Kristina Keller, one of Plaintiffs' attorneys, authenticating Exhibits A, G, J, and I to Plaintiffs' request for judicial notice. The second is from plaintiff Clifford Jeffrey Stanley. This declaration states that he and his wife, Cynthia Ann Stanley, are the co-Trustees of The Stanley Family Trust. It further states that in June of 2002, he and his wife, as Co-Trustees, sold real property located at 1548 Lincoln Avenue, San Jose, California, 95125 but were unable to close escrow immediately because of the judgment lien recorded by Defendants in Santa Clara County.

C. Analysis

Code of Civil Procedure section 683.020, subdivision (a), provides that a judgment may not be enforced upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property. All enforcement procedures pursuant to the judgment, or any writ or order issued pursuant to the judgment, "shall cease" after 10 years. (Code Civ. Proc., § 683.020, subd. (b).) Any lien created by an enforcement procedure pursuant to the judgment "is extinguished" after 10 years. (Code Civ. Proc., § 683.020, subd. (c).) A judgment lien on real property continues until 10 years from the date of entry of judgment. (Code Civ. Proc. § 697.310, subd. (b).)

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[6] Rule 3.1350(b) of the California Rules of Court states, in part, "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." Plaintiffs' separate statement does not repeat verbatim the requests for summary adjudication as stated in the notice of motion. The statement is also not in the format required by Rule 3.1350(h). The court therefore treats the motion as one for summary judgment only.

1. Plaintiffs' Prima Facie Case

Exhibit A to Plaintiffs' request for judicial notice ("RJN") establishes that the original judgment in the Los Angeles lawsuit was amended on November 9, 2011 to add $2,974.92 in costs. That amendment extended the statutory enforcement period to 10 years from November 9, 2011—*i.e.*, November 9, 2021.

Exhibit C to the RJN establishes that the Los Angeles County Superior Court's January 19, 2016 order granting Cintora's motion to add Clifford Jeffrey Stanley as the alter ego of Bad Boys Bail Bonds did not further extend the statutory enforcement period. As the order states, "Such an amendment is an equitable procedure based on the theory that the Court is not amending the judgment to add a new defendant, but is merely inserting the correct name of the real defendant. The amendment is predicated on alter ego liability . . . . Alter ego liability exists in this instance given that there was no substantial change of ownership or purpose when Mr. Stanley assumed all of BBBB's known debts and liabilities." (RJN, Ex. C, January 19, 2016 Minute Order, pp. 1-2.) As this court (Judge Geffon) previously noted, "Although the EJL [Enforcement of Judgments Law] does not define 'enforcement' . . . the EJL nowhere suggests that the filing and pursuit of an alter ego motion to amend a judgment to add an additional judgment debtor, under [Code of Civil Procedure] section 187, constitutes the enforcement of the judgment the movant seeks to amend." (Citing *Highland Springs Conference & Training Center v. City of Banning* (2019) 42 Cal.App.5th 416, 425-426; see also *JPV I L.P. v. Koetting* (2023) 88 Cal.App.5th 172, 188-189 [an amendment adding a judgment debtor on an alter ego theory "is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant"].)

Exhibit F to Plaintiffs' RJN (a copy of the Los Angeles County Superior Court's April 7, 2016 minute order) establishes that the court directed that a Fourth Amended Final Judgment be submitted. Exhibit G to the RJN (a copy of the Fourth Amended Final Judgment, signed by the court on May 23, 2016) establishes that it modified the November 9, 2011 amended judgment by adding Clifford Jeffrey Stanley as the alter ego and successor-in-interest of Bad Boys Bail Bonds, Inc., a modification that did not extend the statutory enforcement period beyond November 9, 2021. Exhibit H to the RJN (a copy of the Amended Abstract of Judgment) confirms that as of April 3, 2019, there was no other amendment of the judgment that could have extended the statutory enforcement period.

As there is no evidence that any enforcement action was taken by Defendants (e.g., obtaining a writ of execution or levying on debtor's property), the judicially noticed documents establish that the 10-year statutory enforcement period ended on November 9, 2021. By establishing that the statutory enforcement period has expired, Plaintiffs have met their initial burden on summary judgment.

a) The First Cause of Action

Summary judgment may be obtained in a declaratory relief action such as this one: the propriety of the application of declaratory relief lies in the trial court's function to render such a judgment when only legal issues are presented for its determination. (*Las Tunas Beach Geologic Hazard Abatement Dist. v. Superior Court* (1995) 38 Cal.App.4th 1002, 1015.) Having established that the statutory enforcement period for the judgment has expired,

Plaintiffs have shown that they are entitled to a declaration that the judgment is extinguished by operation of law and is unenforceable.

b) The Second Cause of Action

Regarding the complaint's second cause of action, the elements for a claim to quiet title are set forth in Code of Civil Procedure section 761.020, which include: a description of the property that is the subject of dispute, the plaintiff's title, the adverse claims to that title, the date as of which the determination of title is sought and a prayer for such determination. (See Code Civ. Proc., § 761.020; see also *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 131.) The judicially noticed material and the declaration from Clifford Jeffrey Stanley is sufficient to meet Plaintiffs' initial burden to establish title as of November 9, 2021.

c) The Third Cause of Action

As for the third cause of action: "Under Civil Code section 3412, '[a] written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.' To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position. [Citation.]" (*U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 778.) Here, the judicially noticed material establishes that the enforcement period for the judgment has expired, and that any lien created to enforce the judgment is extinguished. (See Code Civ. Proc., § 683.020, subds. (a)–(c).) The declaration of Clifford Jeffrey Stanley is sufficient to establish a "reasonable apprehension of serious injury including pecuniary loss," if the Amended Abstract of Judgment were allowed to continue to remain in place.

2. Defendants' Rebuttal

When the burden shifts to Defendants, they are unable to raise any triable issue of material fact. The only evidence submitted with the opposition is a declaration from counsel Michael Green that authenticates two attached exhibits (Exhibits 1 and 2).

Defendants argue that "the ten-year date began to run again" when the Los Angeles court issued its January 19, 2016 order. (See Opposition at p. 2:6-8.) This is incorrect. This motion turns on the interpretation of the judicially noticed documents, and the proper interpretation of these documents under the relevant statutes is a question of law for the court. The court agrees with Plaintiffs that Defendants' argument that the Fourth Amended Judgment restarted the 10-year period because it added "new" costs in the amount of $3,703.92 is a mischaracterization of the judgment. (Opposition at p. 3:21-22 and p. 7:13-17.) The Los Angeles court's April 7, 2016 minute order indicates that this amount was to be paid to the court in resolution of a fee waiver issue but that it was not a "new" cost under the 2011 judgment. This reference to the fee waiver order from July 1, 2011 did not restart the 10-year period. (See Ex. F to Defendants' RJN at pp. 2-3 and Ex. H at pp. 10-11.) Plaintiffs correctly point this out in their reply. (See Reply at p. 3:7-17.)

Defendants also claim that Plaintiffs are judicially estopped from making the arguments set forth in their motion. (See Opposition at pp. 7:25-8:21.) This is not a basis for denying the present motion, as Defendants have not filed an answer asserting any affirmative defenses, including any type of estoppel. (See *Laabs, supra*, 163 Cal.App.4th at 1258 [motion may not be granted or denied based on issues not raised by the pleadings].) "Estoppel is an affirmative defense that cannot be proved unless specially pleaded by the defendant." (5 Witkin, *Cal. Procedure* (5th ed. 2019) Pleading, § 1163; see also *Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 459 [general rule is that estoppel must be specifically pleaded with sufficient accuracy to disclose the facts relied upon].)

D. Objections to Evidence

Plaintiffs have submitted objections to the declaration of Michael Green with their reply. As these objections do not comply with Rule 3.1354, the court will not rule on them.

Rule 3.1354 of the California Rules of Court requires the filing of two documents, evidentiary objections and a separate proposed order on the objections, and both must be in one of the two approved formats set forth in the Rule. The court is not required to rule on objections that are not fully compliant. (See *Vineyard Spring Estates v. Super. Ct*. (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co*. (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].) Objections that are not ruled upon are preserved for appellate review. (See Code Civ. Proc. § 437c(q).)

The motion for summary judgment is GRANTED.

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Calendar Lines 7-8
Case Name: *Central Coast Community Energy et al. v. BigBeau Solar, LLC*
Case No.: 22CV398156

The parties have brought competing motions regarding a custodian of records deposition notice and associated document requests. Plaintiffs Central Coast Community Energy and Silicon Valley Clean Energy Authority ("Plaintiffs") seek to compel defendant BigBeau Solar, LLC ("BigBeau") to produce a witness and documents forthwith. BigBeau seeks a protective order against the deposition and document production. The parties asked the court to hear this matter on shortened time (essentially, within nine calendar days of the court having received the parties' ex parte papers). Because this case is set for a trial on July 22, 2024, the court agreed to do so, with an exceptionally truncated briefing schedule.

The court has now reviewed the parties' filings. Because of the rushed nature of this hearing, the court makes the following preliminary observations, and it invites the parties to correct any misapprehensions that it may have:

1. The court's understanding—although it has not done an item-by-item comparison—is that the vast majority of documents sought in the present motion were originally propounded in requests for production of documents on March 28, 2023, one year ago. After BigBeau responded to those RFPs, Plaintiffs allowed the deadline to bring a motion to compel to lapse. Plaintiffs acknowledge that those RFPs "overlap" with the present requests at issue.

2. Plaintiffs sought these same documents in a person-most-qualified deposition notice on January 9, 2024. BigBeau served objections to this deposition notice but agreed to produce a witness as to some topics and agreed to produce some of the requested documents. The court is not at all clear on the status of this PMQ deposition—has it now gone forward? What about the documents that BigBeau planned to produce—have they now been produced?

3. The 54 document requests served with the February 13, 2024 custodian-of-records deposition notice are the same as the requests in the PMQ deposition notice. Again, the court has not done an item-by-item comparison, but based on a quick glance at various items, it appears that they are identical.

4. Plaintiffs rely on *Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 996 to support these serial requests, and the court agrees with Plaintiffs that this case does stand for the general proposition that a party is not precluded from seeking documents in the deposition notice of a party witness that it previously sought in RFPs from that same party. At the same time, the court agrees with BigBeau that *Carter* also emphasized that the trial court "possesses considerable discretion to restrict burdensome or duplicative discovery." (*Id*. at p. 998.) Specifically, the Court of Appeal noted that:

> . . . although a party "may obtain discovery by one or more" of several methods, "[t]he court shall restrict the frequency or extent of use of these discovery methods if it determines either of the following: [para.] (1) The discovery sought is unreasonably cumulative or

> duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. [para.] (2) The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case . . . ." (§ 2019, subd. (b).) In addition, section 2025, subdivision (i), authorizes the court, "for good cause shown" to protect a party from "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," by ordering that "all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied."
>
> (*Id.* at pp. 997-998 [internal citations omitted].)

5. Plaintiffs argue that BigBeau waived its objections to the COR notice, because its written objections to that notice were served only a day before the date identified on the deposition notice. BigBeau argues that the three-day deadline in Code of Civil Procedure section 2025.410 applies only to procedural objections ("any error or irregularity") and not substantive objections. BigBeau also argues that it was lulled by ambiguous correspondence from Plaintiffs about whether the scheduling of depositions was being temporarily suspended. Although the court does find that the more prudent course of action would have been for BigBeau to serve written objections three days in advance, the court also finds that these particular objections were not waived, given that the document requests at issue were identical to the PMQ requests to which BigBeau previously provided a timely response.

6. The court is inclined to find that the document requests accompanying the COR notice are duplicative and unduly burdensome, in light of the fact that this is their third iteration, and the first iteration was a year ago. The court also does not understand why Plaintiffs did not follow-up on these requests when they originally had the chance to do so last year, or even two and a half months ago, rather than waiting until just four months before the trial date in this case. The timing of Plaintiffs' present motion to compel raises questions as to their diligence in prosecuting this case.

Nevertheless, given the impending trial date, the court has reviewed the document requests in order to determine if there are any fundamental categories that are potentially relevant for trial (or summary judgment), and as to which Plaintiffs would be prejudiced if they did not receive the requested documents. Ultimately, the court finds very little that would fall into this category:

Request for Production No. 3: The court strains to see how documents relating to a party's subjective interpretation of a contract (the Renewable Power Purchase Agreements, or "PPAs") have any bearing on the material issues in this case. The proper interpretation of the PPAs is generally a legal question rather than a factual one, unless there is some ambiguity or specific issue that must be resolved by resort to extrinsic evidence. If there is, then the court would have expected to see a discovery request that is narrowly tailored to address *that specific issue*, rather than a generic request for "all" documents "relating to" BigBeau's interpretation. The court finds this request, as phrased, to be exceedingly overbroad and not reasonably calculated to lead to the discovery of admissible evidence. DENIED.

Request for Production No. 4: This request is also exceedingly overbroad. In general, any request that seeks "all documents relating to" a contention in the case—particularly, a contention that goes to such broad and sweeping issues as schedule delays and cost overruns in a construction project—is bound to be overbroad. The "relating to" formulation in this request (and in the vast majority of Plaintiff's requests) is particularly problematic. The court is also inclined to accept BigBeau's argument that the central issue in this case is whether BigBeau was entitled to terminate the project under the terms of the PPAs, and not necessarily what the *reasons* for that termination may have been. As a result, this request also does not go to the heart of the issues in the case. DENIED.

Request for Production No. 5: Although this request is also overbroad, the court will narrow it to the following: "All drafts of progress reports provided by BigBeau to 3CE or SVCE." GRANTED IN PART, as revised.

Requests for Production Nos. 6, 7, 10, 11, 12, 13, 14, 15, 26, 28, 30, 31, 32, 33, 34, 35: As with Request No. 4 above, these requests are all overbroad and do not appear to be directed to relevant or discoverable material. DENIED.

Requests for Production Nos. 16-17: These requests are also grossly overbroad. The court is not even sure how to interpret them: on their face, they appear to be seeking "all" documents "relating to" COVID-19, which is patently unreasonable. DENIED.

Requests for Production Nos. 18-19: The court narrows these overbroad requests to the following: "All documents that set forth any demand for Daily Delay Damages." As reformulated, the motion as to these requests is GRANTED IN PART.

Requests for Production Nos. 36-37: The court finds these requests to be similar to the other overbroad requests in this set. Nevertheless, the court determines that Plaintiffs may obtain discovery of written reports, if they in fact exist. Accordingly, the court narrows these requests as follows: "Any report of cost overruns, construction delays, and/or skyrocketing equipment costs that BigBeau either prepared or received prior to May 4, 2022." GRANTED IN PART.

Requests for Production Nos. 38-44 & 53-56: The court does not see how these documents have any bearing on the disputed issues in this case. DENIED.

Requests for Production Nos. 45-46: The court narrows the scope of these overbroad requests to the following: "All documents that reflect any change in the membership or ownership of BigBeau between October 25, 2018 and May 4, 2022." GRANTED IN PART.

Requests for Production Nos. 47-52: Even after reading Plaintiff's separate statement in support of their motion to compel, the court is left with an insufficient basis for determining how these categories of documents have any relationship to the issues in this case. Rather than explain what "initial synchronization," "interconnection agreement," or "CEC certification and verification" mean, Plaintiffs' separate statement merely cuts and pastes the same generic and boilerplate argument into each of its reasons "why further response is required." This is not enough. Plaintiffs have not satisfied their burden of showing good cause to compel production of these documents. DENIED.

In short, the court grants in part and denies in part each of the parties' motions—the motion to compel, and the motion for protective order.

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Calendar Line 10
Case Name: *Ari Law, P.C. v. Affeld Grivakes LLP et al.*
Case No.: 23CV415326

In this action for defamation by plaintiff Ari Law, P.C. ("Ari Law"), defendants Affeld Grivakes LLP, David W. Affeld, A Professional Corporation, and David Affeld ("Defendants") previously filed two special motions to strike the complaint under Code of Civil Procedure section 425.16 (aka, "anti-SLAPP motions") on June 13, 2023. Two days before its oppositions to the motions were due, Ari Law filed a request for dismissal of the complaint as to all Defendants and all causes of action, without prejudice. Although Ari Law dismissed the complaint and never filed an opposition to the anti-SLAPP motions, the parties nevertheless appeared for the hearing on October 26, 2023 to address the court's tentative ruling. In that October 25, 2023 tentative ruling, the court recognized that it no longer had jurisdiction to rule on the motion to strike, given the dismissal, but that it did retain jurisdiction to decide a motion for attorney's fees and costs:

> Where a plaintiff voluntarily dismisses an action after an anti-SLAPP motion is filed, the court loses jurisdiction to rule on the motion. (*Law Offices of Andrew L. Ellis v. Yang* (2009) 178 Cal.App.4th 869, 879 (*Ellis*) [citing *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 216, 218–219].) Indeed, there is nothing left to be stricken. Nevertheless, the trial court still retains jurisdiction to "entertain a motion brought by defendants for attorney fees and costs." (*Ellis, supra*, 178 Cal.App.4th at pp. 876, 881.) To do so, the court must consider the merits of the motion, but only to determine if the defendant would have prevailed and would have been awarded fees and costs for the motion. (See *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 679; *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1456-1457.)

The court's original ruling was to find that Defendants would have prevailed on the merits of their anti-SLAPP motions and were therefore entitled to attorney's fees and costs incurred in preparing the motions. At the October 26, 2023 hearing, counsel for Ari Law argued that the issue of fees and costs was not yet fully ripe, because the Defendants had not yet filed a motion, citing *Catlin Insurance Co., Inc. v. Danko Meredith Law Firm, Inc.* (2022) 73 Cal.App.5th 764, 783 (*Catlin*). Counsel requested an opportunity to file an opposition brief to any such motion, particularly given that no opposition had been filed to the anti-SLAPP motions themselves. After further consideration of *Catlin*, this court determined that it "would be more prudent to refrain from issuing a final decision on the merits of the anti-SLAPP motions until the fees motion is presented to the court." (October 26, 2023 Order at p. 6:7-10.)

I. THE MERITS OF THE ANTI-SLAPP MOTIONS – REVISITED

Defendants have now brought that fees motion, and Ari Law has filed an opposition brief. Having fully reviewed and considered Ari Law's opposition, the court finds that it does nothing to move the court away from its original discussion of the anti-SLAPP motions. Indeed, Ari Law's opposition consists almost entirely of generic legal arguments or non-sequiturs, rather than an identification of any specific flaws in the court's prior analysis. For example, Ari Law fails to rebut the finding that the allegations of the complaint arise from protected litigation activity. Instead, Ari Law argues that Defendants' actions were "made for the purpose of interfering with plaintiff's contractual relationship with the very clients that

Affeld came to represent." (Opposition at p. 3:24-25.) This argument is a non-sequitur and fails to address the fact that Defendants' statements to their client were made in the course of ongoing litigation. Ari Law argues that Defendant Affeld "cannot use the attorney-client privilege as a shield" (Opposition at p. 4:3), but this argument is also a non-sequitur, as the court does not understand Defendants' position to be based on an assertion of the attorney-client privilege, and certainly the court's prior tentative ruling did not rely on it.[7] Finally, Ari Law fails to address the application of the litigation privilege, other than the completely conclusory statement that:

> Defendants' defamatory statement was not privileged i [sic] and was not made in connection with "any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law . . . [.]" Thus, the litigation privilege under Civil Code § 47 does not apply, under the plain terms of the statute.

(Opposition at p. 4:19-23.) There is nothing remotely persuasive about this unsupported assertion. The court already previously indicated that it was inclined to find that because Defendants' allegedly defamatory statements occurred in March 2023, almost two months after Defendants took over the representation of Ari Law's former clients, these communications "were directly connected to, or logically related to and made during, the course of litigation proceedings," making the litigation privilege applicable. (October 26, 2023 Order at p. 5:11-14.)

The court therefore now adopts the findings and conclusions that it made in its original tentative ruling, as follows:

> When a special motion to strike is filed, the initial burden rests with the moving party to demonstrate that the challenged pleading arises from protected activity. (Code Civ. Proc., §425.16(e); *Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) "A defendant meets his or her burden on the first step of the anti-SLAPP analysis by demonstrating the acts underlying the plaintiff's cause of action fall within one of the four categories spelled out in [Code of Civil Procedure] section 425.16, subdivision (e)." (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 50-51.) If the defendant meets that burden, the plaintiff then "must demonstrate that the [challenged claims are] both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Soukop v. Law Offices of Herbert Hafif* (2006) 39 Cal. 4th 260, 291.) This is sometimes referred to as the burden of showing a "probability of prevailing."
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> * * *

[7] Ari Law's argument that Affeld's alleged defamatory statements were "commercial speech" also misses the mark, because these statements from lawyer to client were allegedly made in the context of representation in ongoing litigation, not as part of the "business of selling or leasing goods or services." (Code Civ. Proc., § 425.17.)

A. First Prong: Threshold Showing that the Challenged Claim Arises from Protected Activity

Defendants maintain that the claims arise from protected activity under Code of Civil Procedure section 425.16, subdivision (e)(2), which encompasses "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." The court agrees.

In *Pech v. Doniger* (2022) 75 Cal.App.5th 443, the plaintiff was an attorney who alleged that the legal advice provided by defendants (also attorneys) to their mutual clients interfered with plaintiff's fee agreement and caused the clients to terminate plaintiff's services. The Court of Appeal held that the defendants' legal advice was protected activity because it concerned proposed litigation and the clients' obligations under their agreement agreement, and the defendant-attorneys provided advice in preparation for litigation. (*Id*. at p. 462.) Similarly, in *Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482, the plaintiff-attorney sued defendant-attorney for solicitation of plaintiff's client. The *Taheri* Court held that defendant's communications with the client concerned pending litigation and therefore constituted protected activity under section 425.16, subdivision (e)(2). (*Id*. at p. 489, see also *Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-481 ["[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute."].)

The present situation parallels the facts of these cases. Defendants note that the allegedly defamatory statements that they made in March 2023 that purportedly criticized Ari Law's legal work and billing practices were legal advice that fell under the protected pre-litigation activity of section 425.16(e)(2), just as in the foregoing cases. Defendants also note that they replaced Ari Law as counsel on exactly the same date (January 23, 2023) in the Insurance Action and the Malpractice Action. (RJN, Exhs. 1-2; see also Decl. of David W. Affeld, p. 1.) Accordingly, the claims set forth in the now-dismissed complaint are directed to protected activity under Code of Civil Procedure section 425.16, subdivision (e)(2).

B. Second Prong: Ari Law's Probability of Prevailing

In order to demonstrate a probability of prevailing, the non-moving party must produce admissible evidence sufficient to overcome any privilege or defense that the defendant has asserted. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.) Ari Law has not filed an opposition to this motions to strike and therefore fails to meet its burden as a matter of law.

The court also observes that Defendants advanced anticipatory arguments in their opening briefs that essentially negate any probability of Ari Law actually meeting its burden. While it is not necessary for the court to address all of the anticipatory arguments, the court finds persuasive Defendants'

argument that the litigation privilege is an absolute bar to the causes of action for defamation, misrepresentation, negligence, and interference with contract.

The litigation privilege applies to "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212; see also Civil Code, § 47.) The privilege is absolute and applies regardless of whether the communication was made with malice or the intent to harm. (*Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1302.) The litigation privilege extends not only to statements made during litigation or official proceedings but also to prelitigation communications. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.)

As noted above, Defendants allegedly "published" their defamatory statements to the clients on March 2023, *well after* Defendants took over the representation of the clients in January 23, 2023. (Complaint, ¶ 10; RJN, Exhs.1-2.) Thus, the communications concerning Ari Law's performance on the clients' ongoing cases were directly connected to, or logically related to and made during, the course of litigation proceedings.

Based on the foregoing, the court finds that Defendants are entitled to seek attorney's fees and costs.

II. THE MERITS OF THE FEES MOTION

As for the attorney's fees motion itself, Ari Law barely addresses the specific items submitted by Defendants' counsel in support of their fee calculations, instead arguing—again, very generically—that counsel "engaged in bad faith" and that their fees are "inflated and unreasonable." (Opposition at p. 7:22-24.) Ari Law argues—again, conclusorily—that "[t]he Court should disqualify both defense counsel from eligibility for a fee award due to their bad faith or if appropriate apply a negative multiplier . . . Defense counsel's conduct violates the Local Rules of this Court, including the Santa Clara County Bar Association Code of Professionalism." (Opposition at p. 9:22-26.) But Ari Law does not identify which sections of the Code of Professionalism were actually violated or how they were violated.

Ari Law also makes generic arguments that the fees requested were excessive, but these arguments are mostly unhelpful. (E.g., "It does not take a skilled attorney 31.7 hours to prepare [an anti-SLAPP] motion . . ." [Opposition at p. 10:10-11].)

The one aspect of Defendants' fee request that does give the court some pause is in their inclusion of a contingency multiplier, or "Contingency Enhancement," of 1.5x for each of their timekeepers. Although Defendants are certainly correct that a fee enhancement to compensate an attorney for contingent risk may be appropriate in a SLAPP case, the court finds that Defendants have not submitted sufficient information regarding that risk here. For example, in his reply declaration, counsel Scott Baker says "I have a written fee agreement with Mr. Affeld and his professional corporation for this matter, which provides for a contingent fee *if we succeed in recovering attorney fees*." (Baker Decl., ¶ 6 [emphasis added].) This does not sound like a true contingency arrangement, where counsel has taken on the risk

of going unpaid if Defendants do not prevail. The reply declaration of Damion Robinson is equally vague regarding the exact nature of the risk assumed by counsel in this representation. (Robison Decl., ¶ 7.) Based on this limited showing, the court is not convinced that this is the type of contingency arrangement that warrants a 1.5x multiplier. The moving party bears the burden of proving an entitlement to fees. (*569 E. Country Blvd. LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 432.) The court's conclusion is bolstered by the fact that this particular anti-SLAPP motion was a limited risk for Defendants, at best, given that it "[was] a quintessential SLAPP." (Opening Memorandum at p. 1:6-7.)

Accordingly, the court finds that counsel's hourly rates (which Ari Law does not challenge) were reasonable, and the number of hours expended on these motions was also reasonable. The court awards the fees requested in Defendants' motion, minus the "Contingency Enhancements."[8]

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[8] Defendants' papers are not a model of clarity when it comes to the exact totals, and so in the absence of further clarification at the hearing, the court will award **$75,963.33** in fees (representing 107.3 hours of attorney time) plus **$720.95** in costs.

Calendar Line 11
Case Name: *R.C.S. Management and Investment Corporation v. Felipe Casalduc*
Case No.: 23CV422800

In this motion to transfer venue, defendant Felipe Casalduc argues that this case was filed in the wrong county (Santa Clara) and should have been filed in Stanislaus County, where he resides. Plaintiff R.C.S. Management and Investment Corporation ("RCS") responds that Casalduc's motion was filed a day too late under Code of Civil Procedure section 396b, subdivision (a), which requires that a motion to transfer on the ground of improper venue be brought "at the time [the defendant] answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike . . . *within the time otherwise allowed to respond to the complaint* . . . ." (Emphasis added.) Here, RCS personally served the summons and complaint on Casalduc on October 14, 2023, giving him until November 13, 2023 to file this motion (30 days). He filed this motion on November 14, 2023 (31 days). Accordingly, the court agrees with RCS that this motion is untimely, to the extent that it has been brought under section 396b.[9]

Under Code of Civil Procedure section 397, subdivision (a), the court nevertheless has the discretion to change venue "[w]hen the court designated in the complaint is not the proper court." But the court is not persuaded, based on the information currently before it, that Santa Clara County is the wrong county. RCS argues that in this case, it is seeking declaratory relief as to Casalduc's ownership rights, or alleged lack thereof, in RCS, whose sole asset and business is a trailer park located in San Jose, in Santa Clara County.[10] Accordingly, RCS contends that under the "main relief" rule, its action is "local" rather than "transitory" in nature. Although the dispute between RCS and Casalduc does not appear to be over the *direct* ownership of real property, it does appear to be over the *indirect* ownership of interests in the "Trailer Tel" trailer park in San Jose. This appears to fall under Code of Civil Procedure section 392, subdivision (a)(1), which provides for proper venue in the county where real property is "situated" and where the action is "[f]or the recovery of real property, or of an estate or interest therein, or *for the determination in any form, of that right or interest*, and for injuries to real property." (Emphasis added.) Given the apparent breadth of this italicized language—particularly the phrase "in any form"—and given Casalduc's failure to advance any authority for the proposition that this language does not govern the present dispute, the court

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[9] The basis for the motion is unclear, as Casalduc cites outdated versions of sections 395, 396, and 399 that are no longer applicable. He does not directly cite sections 396b or 397.

[10] Specifically, the complaint seeks a declaratory judgment that: "(1) Defendant is not a shareholder in RCS; (2) Defendant has no interest in any of the assets of RCS, including, but not limited to, Trailer Tel, the full-service RV park owned and operated by RCS; (3) Defendant is not entitled to any information from RCS; (4) Defendant is not entitled to an inspection of RCS's books and records; (5) Defendant lacks standing to demand an inspection under Cal. Corp. Code § 1601; (6) All shares for which Julia was or is the beneficial owner, including but not limited to, the RCS shares held by Kris, as custodian for Julia, and any shares held by a trustee in a trust for Julia's benefit, were held in either a trust for Julia's benefit or were held by a custodian for benefit; (7) As a minor whose shares in RCS are being held by a custodian under the Uniform Transfers to Minors Act, Julia is not a holder of record of shares of RCS; (8) With respect to the RCS shares held pursuant to a fidiciary arrangement on behalf of Julia, RCS is only obligated to allow inspection of its books and records upon a lawful request by the fiduciary of record; (9) Kris has been properly designated as the successor custodian for Julia's shares in RCS pursuant to Prob. Code § 3918(d); and (10) No cause exists to remove Kris as the custodian of Julia's shares in RCS under Prob. Code § 3918(f)." (Complaint, ¶ 92.)

finds that there is still an insufficient basis for a discretionary transfer under section 397, subdivision (a).

Finally, under section 397, subdivision (c), a party may ask the court to exercise its discretion to transfer a case "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change," but such a motion may only be made a reasonable time *after* all defendants have answered the complaint. (*Cooney v. Cooney* (1944) 25 Cal.2d 202, 208.) Because no answer has yet been filed in this case, and because Casalduc has not made any showing regarding the convenience of any witnesses in any event, the court's consideration of a discretionary transfer under this subdivision is premature at best.

The motion to transfer venue is DENIED, and Casalduc shall file a responsive pleading to the complaint with 20 days of notice of entry of this order.

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