

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

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

DATE: 02-22-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

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

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

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

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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3.1312.)**

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV394946 Hearing: Order of Examination	Cicelyn Slade vs Paragon Home Health Care & Hospice, Inc. et al	All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. The parties are to report after the examination has been completed.
LINE 2	22CV394951 Hearing: Order of Examination	Cicelyn Slade vs Asad Warraich et al	All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. The parties are to report after the examination has been completed.
LINE 3	22CV395368 Motion: Strike	Artemio Floresca et al vs Ruperto Arzadon et al	See Tentative Ruling. The Court will prepare the final order.
LINE 4	22CV397779 Motion: Strike	Google LLC et al vs John French III et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 5	22CV397779 Motion: Strike	Google LLC et al vs John French III et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.

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LINE 6	23CV415894	Khayti Sheth et al vs Geralyn Glowski et al	Off calendar
LINE 7	22CV409340 Motion: Compel	Sergey Armishev vs American Honda Motor Co., Inc.	Notice does not appear proper. If Defendant appears, motion may be continued. If Defendant fails to appear, the motion will go off calendar.
LINE 8	22CV408815 Motion of Attorney to Withdraw	Ray Barghi vs Well Fargo Bank NA et al	Notice appearing proper and good cause appearing, the unopposed motion to withdraw is GRANTED. Plaintiff shall submit the final order.
LINE 9	2014-1-CV-269683 Motion for Judgment Pursuant to Stip under CCP 664.6	Absolute Resolutions V LLC vs Sevy Intoc	Plaintiff once again failed to provide timely notice of today's hearing. Plaintiff has also failed to indicate when the default occurred, such that it is not clear that the motion for judgment is timely. Plaintiff's counsel, and no specially appearing counsel, shall appear, or the matter will go off calendar.

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3.1312.)**

LINE 10	19CV349010 Motion to Enforce Order re: Subpoenas	A-1 Trading, Inc. vs U.S. TelePacific Holdings Corp.	Defendant reissued subpoenas to the banks within 30 days of the court's order, as ordered. While the subpoenas are technically trial subpoenas, rather than the type of subpoena originally issued, Plaintiff failed to object on this basis until February 7, 2024. Instead, Plaintiff objected on grounds similar to those raised in its original objections. For this reason, the objections are now overruled in their entirety. The banks shall provide the records to Defendant immediately upon the final order, as though it were the type of subpoena originally issued. No personal appearance shall be made. Plaintiff is to pay sanctions to Defendant in the amount of \$600 (for 4 hours work), as Plaintiff's objections were not substantially justified.
LINE 11			
LINE 12			

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Calendar Line 3

Case Name: *Floresca, et al. v. Arzadon, et al.*

Case No.: 22CV395368

On March 2, 2022, plaintiffs Artemio C. Floresca and Estrella R. Floresca (collectively, the “Florescas”) filed a complaint against defendants Ruperto B. Arzadon, Marina R. Arzadon (collectively, the “Arzadons”) and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property adverse to plaintiffs’ title thereto, asserting causes of action for:

- 1) Quiet title;
- 2) Declaratory relief; and,
- 3) Fraud.

On March 22, 2023, the Arzadons filed a demurrer to the complaint. Artemio passed away. On May 5, 2023, Estrella R. Floresca (“Estrella”), individually and as the successor of interest of Artemio C. Floresca, filed a first amended complaint (“FAC”) asserting identical causes of action. On June 6, 2023, the Arzadons filed an answer to the FAC. Estrella demurred to the unverified answer and on September 29, 2023, the Court filed an order sustaining the demurrer. Also on September 29, 2023, the Arzadons filed a cross-complaint (“XC”), asserting causes of action for partition by sale and declaratory relief against Estrella, individually and as successor of interest of Artemio C. Floresca. Estrella moves to strike the XC, asserting that it was not timely filed.

ESTRELLA’S MOTION TO STRIKE THE XC

Estrella moves to strike the XC, asserting that it was not filed at the same time or prior to the filing of the Arzadons’ answer to the FAC on June 6, 2023. Code of Civil Procedure section 428.50, subdivision (a) states that “[a] party shall file a cross-complaint against any of the parties who filed the complaint... against him or her before or at the same time as the answer to the complaint or cross-complaint.” (Code Civ. Proc. § 428.50, subd. (a).) Therefore, Estrella is technically correct that the XC was not timely filed.

However, section 428.50, subdivision (c) also authorizes a party to “obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a)...” (Code Civ. Proc. § 428.50, subd. (c).) “Leave may be granted in the interest of justice at any time during the course of the action.” (*Id.*) Estrella argues that “Defendants have not acted in good faith in filing an untimely Cross-Complaint... [because] Defendants were well aware of the facts upon which their Cross-Complaint arises and acted consciously not to pursue their claims or to otherwise act in a manner that would have preserved their rights prior to their filing of their answer on June 6, 2023... [since] Defendants were aware of their claims since the commencement of the action when Plaintiff filed the Complaint on March 2, 2022....” (Estrella’s memorandum of points and authorities in support of motion to strike (“Estrella’s memo”), p.6:11-21.) Estrella also notes that “this Court has previously recognized that Defendants’ counsel has shown a pattern of being ‘somewhat negligent with respect to calendaring and filing deadlines’ and has indicated that ‘[t]he Court is not inclined to excuse any more such mishaps.’” (*Id.* at p.6:21-24.)

In opposition, the Arzadons argue that since the Court sustained the demurrer to the answer, “there is no basis for striking the Cross-Complaint... [since b]y striking the initial Answer, Plaintiff/Cross-Defendant essentially rendered the case without an Answer to the FAC.” (Arzadons’ opposition to motion to strike (“Opposition”), p.3: 3-8.) This argument is without merit; the language of section 428.50, subdivision (a) is clear. The Arzadons were required to file the XC “before or at the same time as the answer” to the FAC. There is nothing in section 428.50 that suggests that if a demurrer to that answer is sustained, that provides the potential cross-complainant with a new period of time to file the XC.

Nevertheless, while it is true that Defendants’ counsel has been consistently tardy in his filings, the dismissal of the Arzadons’ cross-action is too extreme a penalty to the Arzadons for the tardiness of the Arzadons’ counsel and would not be “in the interest of justice.” Additionally, requiring the Arzadons to file a motion for leave to file a XC would further delay progress in this case and would not effectuate the interests of judicial economy. Accordingly, Estrella’s motion to strike is DENIED.

The Court will prepare the Order.

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Calendar lines 4 and 5**Case Name:** *Google, LLC, et al. v. French, et al.***Case No.:** 22CV397779

According to the allegations of the first amended complaint (“FAC”), plaintiffs Google LLC (“Google”) and City of San Jose (“City”) (collectively, “Plaintiffs”) seek to quiet title to certain properties known as Park Avenue and South Montgomery Street, South Montgomery Street, Otterson Street, and Barack Obama Boulevard (formerly known as Autumn Street), to proceed with the phased construction of the development project in San Jose known as “Downtown West.” (See FAC, ¶¶ 1-2, 42-47.) Defendant Leslie Kipp is one of several descendants of former owners of the parcels comprising the subject property and may claim to have some right, title, estate, interest, lien or cloud on title to the subject properties. (See FAC, ¶¶ 5-41.) Plaintiffs collectively assert fee interest ownership of the subject properties, alleging that Civil Code section 831 and 1112 and Code of Civil Procedure section 2077 create a presumption that Plaintiffs own the fee interest to the center line of the subject properties. (See FAC, ¶¶ 57-66.) In order for Google to proceed with its development plans for the Downtown West project, fee title in the subject properties must be perfected in Google. (See FAC, ¶¶ 67-76.)

On July 12, 2022, Plaintiffs filed the FAC asserting causes of action for:

- 1) quiet title (by Google against all defendants); and,
- 2) quiet title (by City against all defendants).

On June 5, 2023, defendant LKH propounded identical requests for production of documents (“RPDs”) on both plaintiffs Google and City. On July 7, 2023, both Google and City provided responses which included a preliminary statement and general objections. LKH moves to strike the preliminary statement and general objections for the responses and to compel responses, or, in the alternative, moves to compel further responses to RPDs numbers 34-40, 42-49 and 55-57 as to both Google and City.

I. DEFENDANT LKH’S MOTIONS TO STRIKE CERTAIN PLAINTIFFS CITY OF SAN JOSE’S AND GOOGLE LLC’S DOCUMENT REQUEST OBJECTIONS

LKH moves to strike City’s and Google’s preliminary statement and general objections “pursuant to Sections 2023 and 2031 of the Code of Civil Procedure.” (See LKH’s notice of motion to strike certain of plaintiff City’s document request objections, p.2:13-19.) However, those sections of the Code of Civil Procedure were repealed in 2005. Moreover, the other section cited in LKH’s memorandum relating to the preliminary statement and general objections—Code of Civil Procedure section 2031.210, subdivisions (a)(3) and (c)—refer to the format of a response to an inspection demand; it does not provide any authority for a motion to strike a portion of a response of a party’s discovery response. LKH’s motion to strike City’s and Google’s preliminary statement and general objections is DENIED.

II. DEFENDANT LKH’S MOTIONS TO COMPEL A RESPONSE, OR, ALTERNATIVELY, A FURTHER RESPONSE TO RPDs 34-40, 42-49 AND 55-57.

Motion to compel initial responses to RPDs 34-40, 42-49 and 55-57

LKH moves to compel initial responses, or, in the alternative, moves to compel further responses to RPDs 34-40, 42-49 and 55-57. Here, from the meet and confer letter and the separate statement in opposition, both City and Google have provided a response to the RPDs. The motion to compel initial responses to RPDs 34-40, 42-49 and 55-57 is MOOT.

Alternative motion to compel further responses to RPDs 34-40

As to LKH's alternative motion to compel a further response: RPD 34 seeks documents relating to any above-ground project parking proposed or potentially located; RPD 35 seeks documents relating to any below-ground project proposed or potentially to be located; RPD 36 seeks documents relating to any project electric microgrid distribution system proposed or potentially located; RPD 37 seeks documents relating to any project utility corridor proposed or potentially located; RPD 38 seeks documents relating to any project construction or improvement proposed or potentially located; RPD 39 seeks all maps, drawings or other documents showing any proposed, potential or actual project construction or improvement within, above or below any portion of the subject properties such as parking, electric microgrid distribution systems or utility corridors; and RPD 40 seeks documents relating to any proposed, potential or actual project demolition activities utilizing any portion of the subject properties. Code of Civil Procedure section 2031.310, subdivision (b)(1) requires LKH as the moving party to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc. § 2031.310, subd. (b)(1).) In her supporting memorandum, LKH states that: "Paragraph 4 of Plaintiffs' summary judgment declarant Shelia Jivan's Declaration details various aspects of the project, including construction improvements... Plaintiffs make extensive verified claims about the Downtown Project and alleged construction improvements... Ms. Hendrix is entitled to obtain the documents that these document requests seek both to test the veracity of these City of San Jose/[Google LLC] pleadings and also for the potential to impeach Plaintiffs for possibly making potentially false sworn statements about the Downtown Project and the purported use of the Subject Properties... issues of property ownership also include whether any uses by Plaintiffs of the Subject Properties to date have already violated or any proposed future uses would violate Ms. Hendrix's ownership interest in the Subject Properties." (LKH's memorandum of points and authorities in support of motion to strike and motion to compel a response, or, in the alternative, a further response from plaintiff City ("LKH's city memo"), pp.6:4-23, 7:1-25, 8:1-4; see also LKH's memorandum of points and authorities in support of motion to strike and motion to compel a response, or, in the alternative, a further response from plaintiff Google ("LKH's Google memo"), pp.6:12-24, 7:1-24.) Here, LKH fails to provide any specific facts with regards to below-ground projects, electric microgrid distribution systems, or project demolition activities. Moreover, while a declaration in support of a motion for summary judgment may reference construction activity, LKH has not demonstrated through specific facts as to how facts related to current or future potential construction activities are relevant to her quieting title to the subject property which apparently turns on the intent of a transfer that occurred in the 1860s. LKH's argument that she may be able to impeach Plaintiffs with regards to background facts that have no pertinence to the material issues of this case, is unconvincing. As Plaintiffs argue in opposition, LKH's claimed desire to impeach witnesses on inconsequential matters does not demonstrate good cause justifying the discovery sought by the demand. LKH's alternative motion to compel further responses to RPDs 34-40 is DENIED.

Alternative motion to compel further responses to RPD 42

RPD 42 seeks documents relating to the actual or potential ownership of the subject properties by any person other than Plaintiffs. Plaintiffs' response states that they have already produced the documents in response to prior document requests and is not aware of any further responsive documents. Plaintiffs also state that they have produced "documents that relate to research concerning the disputed property; which relate to any quitclaim deed or conveyance of the disputed property; the acquisition of the disputed property by Frederick Billings, Archibald Peachy, and Henry Naglee; Google's and the City's acquisition of the parcels adjacent to the disputed street properties; the site for the Downtown West project; communications to/from the City of San Jose concerning quieting title; and communications sent to or received from HHM." LKH argues that the response "neither unambiguously confirms that all existing documents have been produced or will be produced nor states that there are no responsive documents to this request." (LKH Google memo, p.4:21-14; see also LKH City memo, pp.4:22-24, 5:1.) LKH also asserts that "to the extent that there truly are no responsive documents ([Plaintiffs'] evasive response also suggests a failure to engage in a diligent search for responsive documents), then there would [be] additional response obligations." (LKH Google memo, pp.4:24, 5:1-3; see also LKH City memo, p.5:1-4.)

The response is not evasive. Plaintiffs both plainly state that they have produced all responsive documents and their opposition confirms this. As Plaintiffs are indicating that the documents exist and have been produced, Code of Civil Procedure section 2031.230 regarding an inability to comply with the particular demand of inspection does not apply. As to LKH's argument that the response fails to comply with Code of Civil Procedure section 2031.220, that statute provides that the response "shall state that the production... will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code Civ. Proc. § 2031.220.) Plaintiffs' response indicates that all the documents are included in the production.¹

Citing Code of Civil Procedure sections 2031.210, 2031.220, 2031.230 and 2031.240, LKH also argues that "nowhere has Plaintiff Google LLC made any effort to specifically identify any of the allegedly particular documents which it may be claiming to have previously produced that allegedly would be responsive to this Document Request No. [42]." (LKH's Google memo, p.5:7-10; see also LKH's City memo, p.5:8-12, citing Code Civ. Proc. §§ 2031.210, 2031.220, 2031.230 and 2031.240.) Here, these sections do not require Plaintiffs to specifically identify any of the allegedly particular documents which it may be claiming to have previously produced that would be responsive to RPD 42. Moreover, Plaintiffs cite to *Pollock v. Super. Ct. (Schuster)* (2023) 93 Cal.App.5th 1348, which plainly states that "[b]ased on the plain language of section 2031.210, a statement of compliance need not identify the specific request to which each document will pertain." (*Id.* at p.1351.) LKH has not met its burden to demonstrate that she is entitled to a further response to RPD 42.

¹ Further, in opposition, Plaintiffs indicate that they "already produced... documents that relate to their research on the Street Portions, any deed or conveyance of the Street Portions, and the question of whether the statutory presumptions apply to the Street Portions... documents from Google's surveyor, title company, civil engineer, Google's historical title expert, Guy Kerley, [who] conducted exhaustive research about the Street Portions in probate and title records...." (Pls.' opposition to LKH's motion ("Opposition"), p.13:16-21.)

LKH's alternative motion to compel a further responses to RPD 42 is DENIED.

Alternative motion to compel further responses to RPDs 43-45

RPDs 43-45 seek documents related to any actual, potential or proposed encroachment of the subject properties, or a permit or agreement for such encroachment. Plaintiffs' responses make certain objections and state that they decline to produce documents in response to the request but also identify other documents already produced. LKH argues that these requests seek evidence regarding uses of the subject properties that violate her ownership interest in the subject properties which may support her claim for quiet title in her cross-complaint. In opposition, Plaintiffs argue that her alleged theory behind these requests assumes that she has an ownership interest in the street portions and would need to prevail in this action and then bring another lawsuit for damages related to those encroachments, and thus is seeking discovery on a claim that has not been brought and could not be brought unless and until this action is concluded in her favor. (See Opposition, pp.12:25-28, 13:1-8.)

Here, it is true that in order for LKH to assert an "encroachment" on her alleged ownership interest in the street portions, she would need to prevail in this action and then bring another lawsuit for damages related to those encroachments. However, LKH's alleged ownership interest in the street portions is at issue in this case, and she may assert that she has that ownership interest. The documents responsive to this RPD 43 are likely identical to those already produced and the fact that Plaintiffs responded to these discovery requests does not constitute an admission that LKH indeed has any ownership interest. It seems extremely unlikely that Plaintiffs would have any "encroachment permit" or "encroachment agreement" considering that LKH's ownership interest has not been confirmed; however, should either responding party not have any documents relating to either an "encroachment permit" or an "encroachment agreement" because they never existed, after a diligent search and a reasonable inquiry in an effort to comply with the demand, they may so state. (See Code Civ. Proc. § 2031.230.)

LKH's alternative motion to compel further responses to RPDs 43-45 is GRANTED. Plaintiffs Google and City shall both provide verified, code-compliant further responses to RPDs 43-45 within 10 days of this order.

Alternative motion to compel further responses to RPDs 46-49

RPDs 46-49 seek documents relating to San Jose Street Vacating Resolution 80031. LKH asserts that "these document requests are reasonably calculated to lead to the discovery of admissible evidence for the same reasons as category 3 above, which reasons are incorporated herein." (LKH's Google memo, p.9:4-12; see also LKH's City memo, p.9:1-8.) LKH also argues that the "conditional vacating resolutions... suggest that the scope of each of these resolutions may have been pulled back because of the discovery of information that there may have been other ownership interests (such as that of Ms. Hendrix) in the Subject Properties." (LKH's Google memo, p.9:13-22, see also LKH's City memo, p.9:9-18.) In support of her motion as to these RPDs, LKH does not provide any evidence supporting her theory. (See *Calcor Space Facility v. Super. Ct. (Thiem Industries, Inc.)* (1997) 53 Cal.App.4th 216, 223 (stating that "[t]he burden rests upon the party seeking the discovery to provide *evidence* from which the court may determine these conditions are met") (emphasis original).) In opposition,

Plaintiffs provide evidence demonstrating that LKH's suspicions are unfounded. LKH fails to demonstrate good cause justifying the discovery sought by RPDs 46-49.

LKH's alternative motion to compel further responses to RPDs 46-49 is DENIED.

Alternative motion to compel further responses to RPDs 55-57

RPDs 55-57 seek documents relating to project use of the subject properties and improvements on the subject properties. LKH's memoranda fail to provide any specific facts with regards to project use or improvements and does not demonstrate through specific facts as to how facts related to current or future project use or improvements on the subject properties are relevant to her quieting title to the subject property which apparently turns on the intent of a transfer that occurred in the 1860s. LKH also fails to provide evidence supporting the need for any such documents. LKH fails to demonstrate good cause justifying the discovery sought by RPDs 55-57.

LKH's alternative motion to compel further responses to RPDs 55-57 is DENIED.

LKH's request for sanctions

LKH requests "discovery sanctions" against Plaintiffs in connection with her motions. The request for sanctions is not code-compliant. The request for sanctions does not specify the type of sanction sought in the notice of motion. (See Code Civ. Proc. § 2023.040 (stating that "[a] request for sanction shall, in the notice of motion... specify the type of sanction sought").) Additionally, if LKH was seeking monetary sanctions (as she apparently does in her reply brief), the notice of motion and the supporting memorandum fail to state any amount of monetary sanctions sought. (*Id.* (stating that "[t]he notice of motion shall be... accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought").) While LKH's counsel's declaration states his hourly billing rate and the discount offered to his client, it does not set forth a total amount or a number of hours spent on the motion. Even LKH's counsel's declaration in reply and LKH's reply brief fail to set forth a total amount of monetary sanctions sought, much less a total number of hours spent on the motion.

Moreover, LKH did not substantially prevail on her motion.

Accordingly, LKH's request for monetary sanctions is DENIED.

Counsel for Plaintiffs shall prepare a proposed order consistent with the tentative order and submit it to the Court for signature within 10 calendar days.