SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: October 24, 2023 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.

***New information* (please read)**: To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date *before filing and serving* your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, 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	23CV414532	Olivia Ceja Escovar v. General Motors, LLC	OFF CALENDAR
LINE 2	23CV414532	Olivia Ceja Escovar v. General Motors, LLC	OFF CALENDAR
LINE 3	17CV310881	William Chiocchi et al. v. Anthony Dariano et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	21CV379921	Kent Taylor v. Aifeng Su et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	22CV399892	Sanco Pipelines Incorporated v. FPC Builders Inc. et al.	Motion to compel deposition of Scott Tang: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion, as it appears that Tang is a relevant witness. The court orders defendant FPC Builders Inc. to produce Tang for deposition by no later than November 22, 2023. In addition, the court awards monetary sanctions to plaintiff in the amount of $1,030, to be paid by FPC no later than December 29, 2023.
LINE 6	23CV418459	In re: Robert F. Wallace (Malik v. Deccan Value LLC et al.)	Click on LINE 6 or scroll down for ruling in lines 6-8.
LINE 7	23CV418459	In re: Robert F. Wallace (Malik v. Deccan Value LLC et al.)	Click on LINE 6 or scroll down for ruling in lines 6-8.
LINE 8	23CV418459	In re: Robert F. Wallace (Malik v. Deccan Value LLC et al.)	Click on LINE 6 or scroll down for ruling in lines 6-8.
LINE 9	21CV389915	Richardvon Pey v. OTO Development, LLC	Click on LINE 9 or scroll down for ruling.

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LINE 10	22CV406449	Aklesh Prasad v. Ford Motor Company et al.	Motion to compel arbitration: OFF CALENDAR. It appears that the moving party has been dismissed from the case.
LINE 11	23CV416574	Kim Castellanos et al. v. Tesla, Inc.	Motion to compel arbitration: plaintiffs have filed a notice of non-opposition to defendant's motion. The motion is therefore GRANTED, and this case is stayed pending arbitration. The court VACATES the case management conference set for October 24, 2023 at 3:45 p.m. and instead sets a case status review re: arbitration on Thursday, April 18, 2024 at 10:00 a.m. in Department 10 (please doublecheck the website after January 16, 2024, as department assignments will sometimes change in mid-January every year).
LINE 12	22CV407884	Wesco Insurance Company v. Green Bay Construction Co, Inc. et al.	Plaintiff Wesco Insurance Company's motion to deposit funds is GRANTED. Notice is proper, and the court has received no opposition to the motion. In addition, the court finds the amount of Wesco's requested attorney's fees upon its dismissal from the action ($1,000) to be reasonable. Moving party shall prepare the formal order(s) for the court's signature.

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Calendar Line 3
Case Name: *William Chiocchi et al. v. Anthony Dariano et al.*
Case No.: 17CV310881

I. BACKGROUND

This is a real property dispute between the (current and/or former) owners of four adjoining parcels of land: (1) plaintiffs William Chiocchi and Adriana Chiocchi as Trustees of the William and Adriana Chiocchi Living Trust dated April 12, 2000 ("Plaintiffs"); (2) defendants Mark von Kaenel, Dianna von Kaenel (erroneously sued as Dianne von Kaenel), Kenneth Robinson, and Bonnie Robinson (collectively, "von Kaenel"); (3) defendant Alexa Andrea Ingram-Cauchi (erroneously sued as Alexa Andrea Ingram-Cuachi) as Trustee of the Old Santa Cruz Revocable Trust dated January 13, 2015 ("Ingram-Cauchi"); and (4) defendant Anthony Dariano ("Dariano").

Plaintiffs filed their initial complaint on May 24, 2017 to quiet title and prevent interference with an easement that runs from their property through land that they sold. Plaintiffs filed a second amended complaint ("SAC") on February 28, 2018, which states six causes of action: (1) Quiet Title to easement pursuant to Civil Code §809 (against Dariano); (2) Quiet Title to easement by implication (against all defendants); (3) Quiet Title to easement by necessity (against all defendants); (4) Private Nuisance (against Dariano and von Kaenel); and (5) Declaratory Relief (against all defendants), seeking a determination of the parties' "respective rights and obligations with respect to the Access Road, the easements and the location of a portion of Ingram[-Cauchi]'s fence, in order that the parties may ascertain their respective rights, interest and obligations . . . ." (SAC at ¶ 56.)

Dariano filed a cross-complaint on September 25, 2018, stating causes of action against Plaintiffs for: 1) Fraud; 2) Negligent Misrepresentation; 3) Negligence; 4) Conversion; 5) Quiet Title; and 6) Declaratory Relief (seeking, at ¶ 66, a determination "of the parties' respective rights and duties to one another, and specifically that Cross-Defendants interfered with the Access Road").

In 2020, Dariano brought a motion for summary adjudication of portions of the SAC, as well as the fifth and sixth causes of action in his cross-complaint. Among other things, Dariano argued that Plaintiffs had failed to join all necessary and indispensable parties to the case. At a hearing on October 13, 2020, the court (Judge Monahan) denied this motion. Judge Monahan's formal order stated: "Going forward the parties are reminded that CCP §437c(f)(2) states in pertinent part that: 'A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.'" (October 14, 2020 order at p. 7:7-11.)

Plaintiffs filed the operative Third Amended Complaint ("TAC") on April 22, 2021 (and then again on May 13, 2021, with exhibits attached). The TAC states six causes of action: (1) Quiet Title to Easement "pursuant to Civil Code 809" against Dariano; (2) Quiet Title to Easement "by implication" against all defendants; (3) Quiet Title to Easement "by necessity" against all defendants; (4) To Enjoin Private Nuisance, against Dariano and von Kaenel (with the nuisance defined as deprivation of access to the easement) (see TAC at ¶ 51.); (5)

Unreasonable Interference with Easement, against Dariano and von Kaenel; and (6) Declaratory Relief, against all defendants, seeking a declaration "of the parties' respective rights and obligations with respect to the Access Road, the easements, and the location of a portion of Defendant Ingram's fence, in order that the parties may ascertain their respective rights, interest and obligations as described above." (TAC at ¶ 62.)

Dariano demurred to the TAC's first cause of action for quiet title, asserting that it was defective under Code of Civil Procedure section 389 for failure to join indispensable parties. On August 24, 2021, this court (Judge Arand) overruled the demurrer, concluding that Dariano had not established non-joinder of any indispensable party. The court's formal order noted:

> Here, as Plaintiffs/Sellers correctly point out (see Opposition at p. 5:1-26) each of the other landowners are not only parties to the current lawsuit, they (along with Dariano) are each parties to other quiet title claims involving the alleged easement. The fact that the first cause of action for quiet title is only alleged against Defendant Dariano does not in any way establish a failure to join an indispensable party to this action generally or to the quiet title issue. The question to answer is whether in the absence of the nonparty "the court would be obliged to grant partial or 'hollow' relief rather than complete relief to the parties before the court." (*Arabia v. BAC Home Loans Servicing, L.P.* (2012) 208 Cal.App.4th 462, 480.) Should this lawsuit proceed to a judgment any issues relating to the alleged easement and its effect upon all relevant landowners and their title will be addressed in the quiet title claims as well as the declaratory relief claim, all of which are alleged against Defendant Dariano.
>
> "In deciding whether [third parties] are necessary parties, we analyze the three distinct parts, or clauses, of [CCP §] 389, subdivision (a). 'Clause (1) stresses the desirability of joining those persons in whose absence the court would be obliged grant partial or 'hollow' rather than complete relief to the parties before the court. The interests that are being furthered here are not only those of the parties, but also that of the public in avoiding repeated lawsuits on the same essential subject matter. Clause (2)(i) recognizes the importance of protecting the person whose joinder is in question against the practical prejudice to him which may arise through a disposition of the action in his absence. Clause (2)(ii) recognizes the need for considering whether a party may be left, after the adjudication, in a position where a person not joined can subject him to a double or otherwise inconsistent liability.' . . ."
>
> "The 'complete relief' clause 'requires joinder when nonjoinder precludes the court from effecting relief not in some overall sense, but between *extant parties*. In other words, joinder is required only when the absentee's nonjoinder precludes the court from rendering complete justice *among those already joined*. . . . Properly interpreted, [the 'complete relief' clause] is not invoked simply because some absentee may cause future litigation. . . ."
>
> "Under clause (2)(ii) of section 389, subdivision (a), joinder would be required if, in the absence of [identified non-parties], the action would expose defendants to 'a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.' '[A] 'substantial risk' means more than a theoretical

> possibility of the absent party's asserting a claim that would result in multiple liability. The risk must be substantial as a practical matter.'"
>
> (*Countrywide Home Loans, Inc. v. Superior Court* (1999) 69 Cal.App.4th 785, 792-796, emphasis in original, multiple internal citations omitted, but initially quoting the California Law Revision Commission comments for CCP §389.) There appears to be no substantial risk here that the Court cannot render complete justice among the parties already joined to this lawsuit.

(August 25, 2021 Order at pp. 4:24-6:6, footnote omitted.) In the omitted footnote from this passage (footnote 3), the court stated: "Plaintiffs' initial argument in the opposition that the Court's October 14, 2020 Order denying Dariano's motion for summary adjudication somehow bars this demurrer is incorrect. *That Order only bars Dariano from moving for summary judgment as set forth in CCP § 437c(f)(2).*" (*Id.* at p. 4:28, fn. 3; emphasis added.)

On September 22, 2021, Dariano answered the TAC, listing 28 affirmative defenses, none of which articulate a defense of failure to join indispensable parties or misjoinder under Code of Civil Procedure section 389. On February 23, 2022, Dariano filed a first amended cross-complaint ("FAXC") against the Chiocchi plaintiffs stating cross-claims for: (1) "Negligen[t] Interference"; (2) Intentional Interference; (3) Quiet Title; (4) Quiet Title; and (5) Declaratory Relief.

On January 24, 2023, this court (Judge Arand) granted a joint motion for determination of good faith settlement, brought by Old Republic Title Company, cross-defendants and cross-complainants Mark von Kaenel, Dianna von Kaenel, Kenneth Robinson, and Bonnie Robinson, cross-defendant TCGLG, Inc. d/b/a KW Bay Area Estates, and Plaintiffs (as well as cross-party Chiocchi Development Company). Dariano opposed the motion, along with cross-defendant and cross-complainant Sereno Properties and Sharon Izzo. After the issuance of this order, the settling parties dismissed their various claims against each other.

Dariano then brought a motion for judgment on the pleadings ("JOP") against the TAC on drastically shortened time (to which the parties stipulated), arguing, yet again, a failure to join indispensable parties. On April 25, 2023, this court (the undersigned) denied the motion, stating:

> [T]he TAC names all of the easement holders, and so there is no misjoinder *on the face of the pleading*. None of the authorities cited by Dariano stand for the proposition that, once joined, indispensable parties may never settle and be dismissed from a case. None of Dariano's authorities address the question of what happens when an indispensable party wishes to settle, or under what specific conditions they may be allowed to do so in a quiet title case. Dariano's motion does not address the terms of the settlement between Chiocchi, von Kaenel, and Ingram-[Cauchi], and whether the latter two defendants' interests are now adequately represented by Chiocchi, pursuant to their settlement agreement. Of course, these latter questions fall outside the scope of the pleadings . . . .

(April 25, 2023 order at p. 2:7-15, emphasis in original.)

Currently before the court is a motion for summary judgment brought by Dariano, arguing that the case must be dismissed because "all necessary and indispensable parties are not in the case." (MPA at p. 2:7.)

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 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 his opposition, plaintiff William Chiocchi ("Chiocchi") has submitted a request for judicial notice of five documents, attached as Exhibits A-E to the request, pursuant to Evidence Code section 452, subdivisions (c) and (h).[1] Exhibits A-D are copies of recorded deeds granting an easement on the subject property and reserving the right to relocate the easement. Exhibit E is a copy of the opposition to the motion for good faith settlement filed by Dariano.

Judicial notice of Exhibits A-D is GRANTED. "Judicial notice may be taken of 'the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face.'" (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 184, internal citation omitted.)

Judicial notice of Exhibit E is DENIED. The brief filed in opposition to the motion for good faith settlement can only be noticed as to its existence and filing date, not its contents, and these are irrelevant to the issues before the court.

III. DARIANO'S MOTION FOR SUMMARY JUDGMENT

A. General Authority

The pleadings limit the issues presented for summary judgment, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins*. (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion."].) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.)

[1] The court understands that Chiocchi is the only surviving plaintiff and trustee of the William and Adriana Chiocchi Living Trust.

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly 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 his 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.) Accordingly, the court has not considered the unreported Los Angeles Superior Court order attached to Dariano's reply brief. (See also *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761 [written trial court ruling has no precedential value].)

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

B. Grounds for Dariano's Motion

Dariano's "Notice of Motion for Summary Judgment Motion" states that he seeks "to dismiss the First, Second, Third and Sixth Cause of Action [in] Plaintiffs' Third Amended Complaint." (Notice of Motion at p. 1:26-27.) The separately filed "Motion for Summary Judgment" states the same. (Motion at p. 1:23-34.)

Where a motion is for summary judgment only, the court has no power to grant summary adjudication of any particular claim, issue, or defense. (See *McMillan Companies, LLC v. American Safety Indemnity Co*. (2015) 223 Cal.App.4th 518, 542, citing *Montevalli v. Los Angeles Unified School Dist*. (2004) 122 Cal.App.4th 97, 114 ["a motion for summary adjudication cannot be considered by the court unless the party bringing the motion for summary judgment duly gives notice that summary adjudication is being sought as an alternative to summary judgment, in the event summary judgment is denied"]; see also 6 Witkin, *Cal. Procedure* (5th ed. 2019) Proceedings Without Trial § 322 [listing cases].)

In his supporting memorandum of points and authorities,[2] Dariano asserts that because of the dismissals following the court's approval of the other parties' settlement, "the Plaintiffs [sic] quiet title actions contained in the TAC (Cause of Action 1-3 and 6) should be dismissed.

[2] Dariano's memorandum does not comply with Rule of Court 3.1113(f), as it lacks both a table of contents and a table of authorities.

It is Black Letter [sic] statutory law that quiet title actions are not allowed unless the Plaintiff abides with [sic] **CCP section 339** [sic] and **CCP section 762.010 et seq**. A quiet title action is not viable and should be dismissed if all necessary and indispensable parties are not in the case."[3] (MPA at p. 2:2-7; boldface in original.) Dariano also suggests that a judgment in this case could lead to "multiple potential future lawsuits." (*Id*. at p. 10:24.)

The motion is supported by a declaration from counsel Robert Cullen, which states that "[a]ttached to this motion are accurate copies of the following documents: Grant Deeds for Parcels owned by Dariano, von Kaenel, Ingram Cauchi and Plaintiff Chiocchi; the joint notice of conditional settlement dated 3-10-22; the settlement agreement between the settling parties—von Kaenel, Ingram Cauchi, Old Republic Title and Plaintiff Chiocchi, and the plaintiffs [sic] dismissal of the complaint against Ingram Cauchi and von Kaenel with prejudice filed April 6, 2023." (Cullen Decl. at pp. 1:25-2:2.)[4] The court is dubious that this qualifies as a proper authentication of all of the attached documents. (See Evid. Code, § 1401(a) ["Authentication of a writing is required before it may be received into evidence."]; *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 273 [stating that a writing must be authenticated by evidence establishing that the writing is what it purports to be]; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 523 [explaining that ordinarily in law and motion matters, a writing is authenticated by declarations establishing how the documents were obtained, who identified them, and their status as "true and correct" copies of the original].) As Chiocchi does not object to Dariano's evidence, the court will treat this material as properly authenticated. These documents are not submitted as a separate packet of evidence (see Rule of Court 3.1350(c) and (g)) but are simply attached to Dariano's separate statement of undisputed material facts.

C. Analysis of the Motion

For the following reasons, the court denies Dariano's motion for summary judgment.

First, as Judge Monahan's October 14, 2020 order made clear, this motion is barred by Code of Civil Procedure section 437c(f)(2): "A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." (Code Civ. Proc., § 437c, subd. (f)(2).)

In his prior motion for summary adjudication, Dariano argued that "Plaintiffs have no right to change the location of the recorded easement without all parties' consent," (July 16, 2020 Memorandum of Points and Authorities at p. 11:23-24) and that "Chiocchi has failed to name all necessary and indispensable parties to the First Cause of Action for quiet title." (October 5, 2020 Reply at p. 1:24-25.) This is the same argument being made today. This argument was also made (and rejected) in Dariano's previous demurrer to the TAC and motion for JOP. The present motion and the supporting declaration make no mention of the previously denied motion for summary adjudication or the explicit language from Judge Monahan's October 14, 2020 order citing section 437c(f)(2). By not addressing the denial of the prior

[3] Section 339 is a statute of limitations, and so the court assumes that Dariano is referring to Code of Civil Procedure section 389 rather than section 339.

[4] The Cullen declaration does not have numbered paragraphs.

summary adjudication motion and by not making any effort to distinguish the current motion from the prior motion, Dariano has failed to meet his burden of establishing "to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." (See *Bagley v. TRW, Inc*. (1999) 73 Cal.App.4th 1092, 1096-1097; *Schachter v. Citigroup, Inc*. (2005) 126 Cal.App.4th 726, 737-739.)

Second, Dariano also fails to meet his initial burden for summary judgment because he fails to address all causes of action. The motion does not even address the TAC's fourth and fifth causes of action for *nuisance* and *interference*, both of which are alleged against Dariano and both of which are not dependent on a joinder of all defendants. None of the undisputed material facts in Dariano's separate statement address those two causes of action at all.

Each of the foregoing defects is fatal to the motion, but even if they could both be overlooked—and even if the court were to assume that the other defendants' good-faith settlement and dismissal constituted "newly discovered facts or circumstances," something that Dariano has not even tried to show—the court would still deny the motion, and that is because Dariano has failed to present any authority for the proposition that in a quiet title case that included all necessary parties (as this one did), a settlement between some of the parties *such that they no longer have adverse interests* to the plaintiff and a dismissal of those settling parties, deprives the court of jurisdiction or the ability to provide complete relief to the remaining parties. As noted above, this was a singular failure in Dariano's JOP motion. (As the court tried to explain in its April 25, 2023 order: "None of the authorities cited by Dariano stand for the proposition that, once joined, indispensable parties may never settle and be dismissed from a case. None of Dariano's authorities address the question of what happens when an indispensable party wishes to settle, or under what specific conditions they may be allowed to do so in a quiet title case.") He has done nothing to remedy this failing. Indeed, none of the decisions cited in the present motion present circumstances similar to this case.

Chiocchi's opposition points out (echoing Judge Arand's August 25, 2021 order) that the dismissals have no impact on the prior court findings that all necessary parties were joined in this action. This is because Code of Civil Procedure section 389(a)(1) "focuses on whether complete relief can be afforded [to] the parties to the parties to the action. Here, complete relief can be granted between Chiocchi and Dariano. Chiocchi's first cause of action for quiet title is against Dariano only and seeks to enforce the express relocation reservation easement language in Dariano's deed. Chiocchi's second and third cause of action for Quiet Title of Easement by Implication and by Necessity effectively seeks the same relief as Chiocchi's first cause of action. Chiocchi's fourth cause of action is to Enjoin Private Nuisance. With this cause of action Plaintiff seeks relief from defendants '[b]locking access and interfere[ence] with Plaintiffs' use of the easement and their construction of the Access Road.' Chiocchi's fifth cause of action for Unreasonable Interference effectively seeks monetary relief based upon the same conduct as Chiocchi's fourth cause of action. Portions of Chiocchi's Sixth Cause of action for Declaratory Judgment are now moot based on the Settlement. The remaining declaration sought under this clause effectively seeks the same relief as Chiocchi's first cause of action, through a declaration that the express language in Dariano's deed means what it says: Chiocchi has the right to 'relocate the easement.'" (Opposition at pp. 12:11-13:2, internal citations omitted.)

The opposition is accompanied by declarations from (among others) Alexa Andrea Ingram-Cauchi and Mark von Kaenel, who both state that under the court-approved settlement

agreement: Chiocchi has assumed all responsibility and liability for this lawsuit with Dariano; Ingram-Cauchi and von Kaenel's rights in the existing easement will not be negatively impacted by a ruling for either Chiocchi or Dariano; and the parties to the settlement agreement have agreed that it is enforceable under Code of Civil Procedure section 664.6 and that they will execute a stipulation that the court will retain jurisdiction to enforce the settlement agreement. Chiocchi has also submitted a declaration that states the same.

In his reply brief, Dariano disputes this interpretation and argues that, following the settlement and dismissals, equity "requires" that this matter be dismissed. This is not persuasive. Even if this motion for summary judgment were not barred by section 437c(f)(2) and did not fail to address all causes of action, the court would still be required to construe the evidence liberally in support of the party opposing summary judgment, resolving all doubts concerning the evidence in favor of that party. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389.) Even if the evidence submitted by Dariano could be construed as meeting his initial burden, the evidence in opposition (including the declarations from Ingram-Cauchi, von Kaenel, and Chiocchi) would be sufficient to raise a triable issue as to whether: (1) the settling parties still have adverse interests to Chiocchi such that they could be required to remain in the case, (2) the court can provide complete relief to the parties to the litigation, and (3) the parties will ultimately stipulate to the court retaining jurisdiction over the settling parties. The opposition evidence suggests that there remains no substantial risk, as a practical matter, of the extant parties incurring inconsistent obligations. (See *Countrywide Home Loans, Inc.*, *supra*, 69 Cal.App.4th at p. 796.) Nevertheless, the court cannot weigh the evidence on summary judgment or evaluate the credibility of declarants. "Typically in summary judgment litigation, equally conflicting evidence requires a trial to resolve the dispute." (*Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881.)

For all of these reasons, summary judgment is inappropriate.

D. Evidentiary Objections

With his reply, Dariano has submitted objections to the opposing declaration of Chiocchi. It is not necessary for the court to rule on these objections for two reasons.

First, because the motion for summary judgment has been denied on the ground that it is barred by section 437c(f)(2) and fails to meet the initial burden by not addressing all causes of action, the objected-to subject matter is immaterial. "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc., § 437c, subd. (q).)

Second, the objections do not comply with Rule of Court 3.1354. The rule 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 Rules of Court. Both documents must be filed with the objecting party's opposition or reply papers. (Rule of Court 3.1354(a).) The court is not required to rule on objections that do not fully comply with the rule. (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].)

The motion for summary judgment is DENIED.

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Calendar Line 4
Case Name: *Kent Taylor et al v. Aifeng Su et al.*
Case No.: 21CV379921

This is an action arising from a traffic collision that occurred on December 20, 2018 between plaintiff Kent Taylor ("Taylor") and defendant Aifeng Su ("Su"). AAA Insurance Company and CSAA Insurance Group are also named as defendants in this matter. The court refers to all defendants collectively as "Defendants."

On April 16, 2021, Taylor filed the original complaint, alleging the following causes of action:

1. California Civil Code Section 3333 Violation; and
2. Negligent Cause of Property Damage.

Taylor filed a first amended complaint on June 14, 2021, a second amended complaint on February 8, 2022, a third amended complaint on July 13, 2022, and a fourth amended complaint ("4AC") on July 21,2022. The 4AC is the operative complaint, although it is mistakenly labeled as "Notice of Amendment Second (2nd) to Complaint." It contains the same causes of action as the original complaint.

Defendants have now filed a motion for "summary judgment," although it addresses only the second cause of action for negligence in the 4AC. Defendants argue that the second cause of action fails to establish any damages, and in the alternative, they argue that it is time-barred. The motion does not say anything about the first cause of action at all; indeed, the motion does not even acknowledge its existence. Taylor, who is representing himself, filed multiple, duplicative oppositions to this motion on September 14, 2023, September 21, 2023 and October 5, 2023. Because they are all timely, and they collectively do not exceed the briefing page limits under the Rules of Court, the court has reviewed all of them.

The fact that Defendants have moved for summary judgment without addressing all causes of action in the 4AC is a monumental threshold issue that neither side addresses in their papers. It is entirely fatal to the motion. A motion for summary judgment must dispose of the entire action. (Code Civ. Proc., § 437c, subd. (a); *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946, 954 ["Summary judgment is proper only if it disposes of the entire lawsuit."].) In addition, because the notice of motion seeks *only* summary judgment, the court cannot (and should not) treat the motion as one for summary adjudication—the court can only grant what a party has specifically requested in the notice of motion. (See *Homestead Savings v. Superior Court* (1986) 179 Cal.App.3d 494, 498; see also *Barnick v. Longs Drug Stores* (1988) 203 Cal.App.3d 377, 384 ["Since there was no request for summary adjudication of issues but only a request for summary judgment of the entire action, we must reverse the judgment in its entirety."].) In this case, the notice of motion, memorandum of points and authorities, and separate statement of undisputed material facts all say summary "judgment" only. They do not request summary adjudication.

For this very basic reason, the court DENIES the motion.

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Calendar Lines 6-8
Case Name: *In re: Robert F. Wallace (Malik v. Deccan Value LLC et al.)*
Case No.: 23CV418459

These motions arise out of subpoenas to third-party witnesses located in Santa Clara County, California, for a case pending in Stamford, Connecticut (*John I. Malik v. Deccan Value LLC et al.*, No. FST-CV21-6049964-S).[5] The defendants in that case, Deccan Value LLC, Deccan Value Investors GP LLC, Deccan Value Investors L.P., and Vinit M. Bodas (collectively, "Defendants") now move to quash subpoenas served on Silpa S. Pericherla, who is the Managing Director of Investments at the David and Lucile Packard Foundation, and Robert F. Wallace, who is the Chief Executive Officer of the Stanford Management Company. Wallace and the Board of Trustees of the Leland Stanford Junior University have filed a joinder in Defendants' motion to quash the subpoena to Wallace. Because the court finds that plaintiff John I. Malik has failed to show either: (1) that the requested discovery is relevant or reasonably calculated to lead to the discovery of admissible evidence, or (2) that any discoverable material cannot properly be obtained from the parties in the Connecticut action, the court GRANTS the motions to quash. In addition, the court DENIES Malik's request for $17,215.25 in monetary sanctions.

1. Document Requests

Three out of the four document requests in the subpoenas (Nos. 2-4) seek communications between Defendants and non-parties Pericherla and Wallace. In other words, these requests seek documents that should have been obtained directly from Defendants in the Connecticut case, not from non-parties in California. The first question this court would have upon reading requests like these is: why was this discovery not obtained in Connecticut? The answer arrives, finally, on page 12 of Malik's virtually identical opposition briefs:

> In addition, Defendants have generally evaded discovery in the Connecticut Actions, causing Plaintiff to file multiple motions to compel and, now, a motion for sanctions concerning Defendants' purposefully [sic] withholding of *all* their Microsoft Teams communications from production, which withholding they concealed from Malik for approximately one year, and which withholding they have *admitted* to doing.

(Oppositions at p. 12:6-10 [Pericherla] & p. 12:9-13 [Wallace]; italics in original.) Contrary to Malik's apparent assumption, this argument does not support enforcing the subpoena document requests. If there are indeed pending motions in Connecticut that cover the same subject matter, then there is no good cause—indeed, no cause whatsoever—for this court to consider duplicative third-party document requests. The Connecticut court is far better equipped to determine what is relevant or discoverable for that case, and it is axiomatic that discovery in the first instance must come from the parties to a litigation, rather than from out-of-state non-parties.

As for Request No. 1, which on its face does not seek communications between Defendants and Pericherla/Wallace but rather communications *generally* regarding the SEC investigation into Defendants in 2020-2022, there is no showing by Malik that the non-parties

[5] There is apparently also a countersuit between the parties in Connecticut (Case No. FST-CV21-60552725-S).

would have had any communications with anyone *other than with Defendants* about this. Why would the David and Lucile Packard Foundation or the Stanford Management Company have had communications with anyone other than Defendants regarding an SEC investigation about the Defendants? Malik's opposition briefs provide no answer. Moreover, even if such communications did exist—*e.g.*, internal communications within the Packard Foundation or within the Stanford Management Company about the investigation of Defendants—how would any such information that was never conveyed to Defendants be relevant to (or reasonably calculated to lead to admissible evidence for) the Connecticut case between Malik and Defendants? Again, the oppositions are silent. The court sees no connection between any such communications, even if they exist, and the issues in the Connecticut case. The court sees no good cause for this third-party discovery.

Indeed, even as to communications *between* Defendants and the third parties about the SEC investigation, Malik's oppositions offer little more than speculation that such documents actually exist:

- "[I]t is *very likely that* Packard has fulsomely probed, with Bodas, the circumstances surrounding the threatening email to attempt to get comfortable that Bodas did not send it."

- "It *stands to reason that* Packard requires that their money managers (i.e., Deccan) disclose possible criminal exposure of top executives (i.e., Bodas)."

- "[A]ny communications Bodas made to Packard about the foregoing matters . . . *might well have included* disparaging remarks about Malik . . . ."

- "Therefore, again, [Stanford/Packard] *likely has relevant knowledge* concerning Malik's allegations."

(Oppositions at pp. 8:27-9:16 [Pericherla], p. 9:1-18 [Wallace], emphasis added.) Every single one of these statements is speculative rather than based on a well-founded belief that discoverable information actually exists.

2. Deposition Testimony

For similar reasons, the court strains to see the relevance of the requested third-party depositions. Malik states that he "seeks [Packard's/Stanford's] mental impressions resulting from communications with Deccan concerning Malik's Allegations, which impressions Malik plainly cannot obtain from Deccan." (Opposition at p. 11:21-23 [Pericherla], pp. 11:24-12:1 [Wallace].) Malik fails to explain why Packard's or Stanford's "mental impressions" have any potential relevance to the Connecticut case. Plaintiff has brought claims for breach of contract, breach of the implied covenant of good faith and fair dealing, statutory theft, intentional infliction of emotional distress, and negligent infliction of emotional distress. Just as with internal communications at Packard or Stanford regarding the SEC investigation that were never communicated to the parties, the court does not see how the *mental impressions* of one of Defendants' customers—which were never communicated to either of the parties—would have any possible bearing on any of these causes of action.

In short, because the requested discovery either does not appear to be relevant or reasonably calculated to lead to the discovery of admissible evidence, or should have been obtained in the Connecticut action, the court grants the motions to quash in their entirety and denies monetary sanctions to Malik.

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Calendar Line 9
Case Name: *Richardvon Pey v. OTO Development, LLC*
Case No.: 21CV389915

This is a motion by plaintiff Richardvon Pey for leave to amend the complaint. Pey filed his original complaint and first amended complaint ("FAC") as a self-represented litigant. He now has a proposed second amended complaint ("SAC") that was prepared with the assistance of counsel. He argues that there is good cause for the proposed SAC, and that there would be no prejudice to defendant OTO Development, LLC ("OTO") to allow it. OTO opposes, arguing that the new pleading is tantamount to filing a new lawsuit, because it presents six new causes of action, a drastic change in this nearly two-year-old case. OTO also argues that the addition of the proposed sixth cause of action for intentional and/or negligent infliction of emotional distress would be futile, because it is time-barred and fails to state sufficient facts to constitute a cause of action.

Having closely compared the different versions of the complaint, the court concludes that the motion should be granted in part. Although the original complaint was barely five pages long, and the proposed SAC is a whopping seven times longer (35 pages), the new causes of action for harassment, discrimination, retaliation, failure to prevent, and hostile work environment (first through fifth causes of action) are all based on the same general set of facts that were previously alleged in the complaint. It did take Pey a long time to retain counsel to represent him, but once he did, his counsel acted relatively promptly to remedy the perceived deficiencies in the original complaint and FAC, the latter of which was rejected by the court because it went beyond the leave to amend granted in the August 22, 2022 order sustaining OTO's demurrer. Thus, the court disagrees with OTO that the present motion is the result of "unwarranted delay" or "delay tactics" by Pey. In addition, the court finds that OTO has failed to demonstrate any prejudice arising from the timing of this amendment. No trial date has been set in this case, and OTO's complaint that some witnesses "are no longer employed" by OTO represents a problem of proof that would exist regardless of whether the case proceeded on the SAC or on the original complaint. The original complaint raises the same basic allegations as the new complaint (essentially, wrongful termination based on race and gender discrimination, harassment, and retaliation), and so the evidence would be largely the same.

The court agrees with OTO, however, that the cause of action for intentional and/or negligent infliction of emotional distress (sixth cause of action) should not be permitted, as the amendment would be futile. Unlike the other new causes of action, the court finds that the proposed sixth cause of action finds no factual support in the original complaint at all. The original complaint describes harassment and discrimination based on gender and race; it also describes retaliation (demotion) and a hostile working environment. But it contains no allegations regarding emotional distress whatsoever. Indeed, the only damages claimed and requested in the original complaint are for "substantial losses of earnings and other employment benefits," as well as attorney's fees. (Complaint at p. 4.)[6] As a result, the proposed SAC's sixth cause of action does not relate back to the original complaint, which was filed on November 4, 2021, just three days shy of the two-year statute of limitations for intentional/negligent infliction of emotional distress.[7] (See *Kim v. Regents of the University of California* (2000) 80 Cal.App.4th 160, 169 [denying leave to amend for claims that were

[6] The original complaint contains no page numbers or paragraph numbers.
[7] The alleged constructive termination of Pey by OTO occurred on November 7, 2019.

unsupported by the factual allegations in earlier pleadings].) Because the disallowed FAC and the proposed SAC were both filed well after the two-year limitations period, the sixth cause of action is time-barred, and any amendment to add it would be futile.

In short, the court GRANTS in part and DENIES in part Pey's motion for leave to amend. Pey may file a second amended complaint that contains the first through fifth and seventh causes of action in the proposed SAC, but not the cause of action for intentional/negligent infliction of emotional distress. Pey shall file the amended pleading within 10 days of this order.

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