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: April 30, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV403330	Mark Hacker v. Encore Industries et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	23CV418783	Axia Dental Lab and Technology Inc. v. Joseph S. Kim et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	23CV418783	Axia Dental Lab and Technology Inc. v. Joseph S. Kim et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	22CV398534	Rachel Ragni Larrenaga v. ChargePoint, Inc.	Motion to compel: after the court prepared a tentative ruling on this wide-ranging motion and was about to post it, the moving party sent an email to Department 10 at 11:33 a.m. on the day of posting, asking the court to continue the hearing in light of a tentative settlement between the parties. The court GRANTS the request and continues this hearing to June 4, 2024 at 9:00 a.m. but asks that counsel please provide greater advance notice in the future as a basic courtesy to the court.
LINE 5	23CV409965	Shoushan Tashjian et al. v. Ahmad Javid et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	23CV414140	Mike Patton v. Carol Sandman	Motion for appointment of receiver: click on LINE 6 or scroll down for ruling in line 6.
LINE 7	23CV414140	Mike Patton v. Carol Sandman	Motion to compel compliance: parties to appear. Click on LINE 6 or scroll down for more information regarding the court's ruling in line 7.
LINE 8	22CV396514	Jane Doe v. Robert Hicks et al.	Click on LINE 8 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 9	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Motion to seal: the court GRANTS the unopposed motion, finding under CRC 2.550(d) that the redactions to the declaration of Scott Russell in support of the application for default judgment are targeted and that an overriding interest exists to overcome the right of public access to the redacted information. As required by rule, the court also expressly finds that the overriding interest supports sealing the redacted information; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. Access to the unredacted version of the declaration in the file will remain restricted until further order of the court.
LINE 10	22CV406855	Arch Veterinary Services, Inc. v. Liliana Guerrero	Click on LINE 10 or scroll down for ruling.
LINE 11	22CV408078	Lavina DeSantiago-Calderon v. Daniel Velazquez Alvarez	Click on LINE 11 or scroll down for ruling.
LINE 12	23CV411435	Ke Fang v. Ritula Malhotra	OFF CALENDAR. This case has been dismissed.
LINE 13	23CV411879	Jorge Zermeno Ochoa v. Pankaj Verma	Motion to be relieved as counsel: notice is now proper, with the filing and service of the amended notice of hearing. Parties to appear.
LINE 14	23CV417041	Sandy Muisum Chew v. Fiona Elizabeth Bodkin et al.	Click on LINE 14 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 15	23CV419710	Movate Inc. v. Panzura, LLC	Application of Katherine L. Wall to appear *pro hac vice*: parties to appear. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.

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Calendar Line 1
Case Name: *Mark Hacker v. Encore Industries et al.*
Case No.: 22CV403330

I. BACKGROUND

This action arises from the alleged involuntary dissolution of Encore Industries, a California corporation ("Encore"). Plaintiff Mark Hacker ("Hacker") filed suit against defendants Encore, Gary N. Vogel ("Vogel"), and Does 1 through 50, asserting causes of action for involuntary dissolution, breach of fiduciary duty, and declaratory relief on August 18, 2022. He filed the operative verified second amended complaint ("SAC") on October 3, 2023, after the court overruled in part and sustained in part a demurrer to the first amended complaint.

There are also cross-actions. Encore filed a cross-complaint against Hacker on June 9, 2023, stating causes of action for breach of fiduciary duty, conversion, common counts, and imposition of a constructive trust. Hacker brought a demurrer to this cross-complaint, which the court sustained with leave to amend on December 13, 2023. Encore's operative first amended cross-complaint was filed on January 8, 2024.

Vogel filed a cross-complaint against Hacker on November 2, 2023, stating two causes of action for declaratory relief. The first cause of action seeks a declaration of rights and duties under a promissory note, a copy of which is attached to the cross-complaint as Exhibit A. Hacker allegedly gave the promissory note to Vogel as consideration for a purchase of Encore shares from Vogel. A copy of the stock purchase agreement is attached as Exhibit B to the cross-complaint. The note was secured by a stock pledge agreement, a copy of which is attached to the cross-complaint as Exhibit C. The second cause of action seeks a declaration as to whether there was any agreement between Hacker and Vogel for forgiveness of the remaining balance on the promissory note as alleged by Hacker. (See Vogel Cross-Complaint, ¶¶ 1-16; Hacker SAC, ¶ 11.)

Currently before the court is a motion to strike portions of the Vogel cross-complaint.

II. REQUEST FOR JUDICIAL NOTICE

Hacker has submitted a request for judicial notice in support of motion to strike. "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."

Hacker requests judicial notice of one document under Evidence Code section 452, subdivision (d), which involves "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Court records cannot be 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.) The document submitted for judicial notice is a copy of Hacker's original complaint attached to the request as Exhibit 1.

The court denies this request on the ground that it is irrelevant to the material issues before the court. Hacker's original complaint has not been his operative pleading for more than a year, since April 12, 2023. While the original complaint could be noticed simply as to its existence and the date on which it was filed, those facts are not relevant to the present motion.

III. MOTION TO STRIKE THE VOGEL CROSS-COMPLAINT

A. General Standards

Under 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 challenged pleading 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 (*Turman*) [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.) Rule 3.1322(a) of the California Rules of Court requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

As is the case with a demurrer or a motion for judgment on the pleadings, the court cannot consider extrinsic evidence in ruling on a motion to strike. This includes declarations. The court has considered the declaration of Hacker's counsel, Gordon Finwall, only to the extent it addresses the meet-and-confer efforts required by Code of Civil Procedure section 435.5. The court has not considered the exhibits to the Finwall declaration.

B. Declaratory Relief Generally

As noted above, both causes of action in the Vogel cross-complaint are for declaratory relief, a statutory cause of action created by Code of Civil Procedure section 1060. That section states:

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

> under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding determination of these rights or duties, whether or not further relief is or could be claimed at the time . . . . The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

(Code Civ. Proc., § 1060.)

To qualify for declaratory relief under section 1060, a plaintiff's action must present two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546.) "'The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.'" (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 181 [citation omitted].) For a party to pursue an action for declaratory relief, the actual, present controversy must be pleaded specifically. Thus, a claim must provide specific facts, as opposed to conclusions of law, which show a controversy of concrete actuality. (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal App 4th 497, 513-514, [disapproved on another ground in *Yvanova v. New Century Mortg. Corp*. (2016) 62 Cal.4th 919, 934, 939, fn. 13].)

As Hacker's motion acknowledges, a cause of action for declaratory relief is typically not subject to a pleading challenge (*e.g.,* a demurrer) because the plaintiff is entitled to a declaration of rights, even if it is adverse to the plaintiff's interest. (See *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 752.) When a complaint sets forth facts showing the existence of an actual controversy between the parties as to their respective legal rights and duties, and it requests that these rights and duties be adjudged, the plaintiff has stated a legally sufficient complaint for declaratory relief. It is an abuse of discretion for a judge to sustain a demurrer to such a complaint and to dismiss the action, even if the judge concludes that the plaintiff is not entitled to a favorable declaration. (*Id*. at 756; see also *Nede Mgmt. Inc. v. Aspen American Ins. Co.* (2021) 68 Cal.App.5th 1121, 1130-1132; *Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224, 235-236 [discussing cases].)

C. Discussion

Hacker moves to strike lines 8-11 from paragraph 3 of the cross-complaint and lines 4-7 of paragraph 9. (See Notice of Motion, p. 2:1-8.) The language at issue in paragraph 3 (part of the first cause of action) states: ". . . upon the occurrence of certain events, including but not limited to . . . (b) Hacker's institution of 'liquidation proceedings or other proceedings or relief under . . . any law, or the issuance of any notice in relationship to such event." The language at issue in paragraph 9 (also part of the first cause of action) is the entirety of the paragraph, which states: "Further, Vogel contends that the entire balance of principal and interest under the Note is currently due and payable by virtue of Hacker's filing of the Complaint for dissolution which qualifies as 'liquidation proceedings or other proceedings for relief under . . . any law, or the issuance of notice in relationship to such event . . .' as those terms are used in the Note."

Hacker argues that the targeted language must be stricken "as irrelevant, false or improper matter as said allegations are predicated on a misstatement of the meaning of subdivision 5 of the Promissory Note. Alternatively, they are subject to a motion to strike

because they are not drawn in conformity with the laws of this State in that said allegations omit the qualifying phrase 'for the relief of debtors' from the allegations and, consequently, do not accurately state the language of the Promissory Note which is attached to the cross-complaint as its Exhibit A." (Hacker Memorandum, p. 6:9-14.)

The court DENIES the motion to strike, as follows.

The motion, which does not separately address paragraphs 3 and 9, is a poorly disguised attempt to argue that the first cause of action fails to state sufficient facts, based on Hacker's disagreement with Vogel's interpretation of the language of the promissory note; the motion seeks to have the court, at the pleading stage, adopt Hacker's interpretation of that language. "This, of course, is a ground for demurrer and is not, therefore, a proper ground for a motion to strike." (*Warren v. Atchison, Topeka & Santa Fe Railway Co.* (1971) 19 Cal.App.3d 24, 41.) The motion improperly asks the court to reach and decide the merits of the first cause of action at the pleading stage.

None of the permitted grounds for a motion to strike have been established. The targeted language is not "irrelevant," as it is in fact central to the present controversy between the parties regarding their respective legal rights and duties under the first cause of action. The targeted language is also not "false" as a matter of law, merely because Hacker disagrees with Vogel's interpretation of certain language in the promissory note. The use of ellipses in the quoted language is also not false or misleading, given that the complete promissory note is attached as Exhibit A to the cross-complaint. The fact that the complete text is not repeated verbatim in the body of the cross-complaint does not come close to rendering the targeted language "improper" or "not filed in conformity with law," as Hacker claims.

The decision in *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794 (*Ball)*, cited by Hacker, provides no support for this motion. *Ball* held that "[w]here a trial court has concluded the plaintiff did not state sufficient facts to support a statutory claim and therefore sustained a demurrer as to that claim, a demurrer is also properly sustained as to a claim for declaratory relief which is 'wholly derivative' of the statutory claim." (*Id.* at p. 800.) In this case, there are no statutory claims alleged in the Vogel cross-complaint, nor any other claims of which the first cause of action could be considered "wholly derivative," and so this holding is inapplicable.

No demurrer has been brought against the first cause of action, so it is presumed to state sufficient facts for declaratory relief. The allegations of the cross-complaint are accepted as true on a motion to strike. (See *Turman, supra*, 191 Cal.App.4th at 63.) Also, at the pleading stage, a plaintiff or cross-complainant's reasonable interpretation of an ambiguous contract is accepted as true. (See *Rutherford Holdings, LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 229-230; *Requa v. Regents of University of California* (2012) 213 Cal.App.4th 213, 230-231 [court must accept contract interpretation that is not "clearly erroneous" at pleading stage].) Hacker has not established that Vogel's interpretation of the promissory note is clearly erroneous.

Hacker's argument would be more appropriate in support of a motion for summary judgment, where the court may consider evidence submitted by both sides. "When seeking summary judgment on a claim for declaratory relief, the defendant must show that the plaintiff is not entitled to a declaration in its favor by establishing '(1) the sought-after declaration is

legally incorrect; (2) [the] undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.' If this is accomplished, the burden shifts to the plaintiff to prove, by producing evidence of, specific facts creating a triable issue of material fact as to the cause of action or the defense." (*Cates v. California Gambling Control Com*. (2007) 154 Cal.App.4th 1302, 1307-1308 [citing *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402]; see also *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185.) We are not there yet.

As the motion to strike is denied, Hacker is directed to file an answer to the Vogel cross-complaint within 10 days. (See Code Civ. Proc., § 472a, subdivision (d).)

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Calendar Lines 2-3
Case Name: *Axia Dental Lab and Technology Inc. v. Joseph S. Kim et al.*
Case No.: 23CV418783

I. BACKGROUND

This is a dispute over ownership and possession of commercial property and equipment between plaintiff Axia Dental Lab and Technology, Inc. ("Axia") and defendants Joseph Kim, DDS ("Kim") and Lucid Dental Lab, Inc. ("Lucid"). Axia is owned by Tony Lebar. Lebar and Kim are both dentists and former business partners who had a falling out. Axia filed the original complaint in this case on July 5, 2023; it filed the operative first amended complaint ("FAC") on November 2, 2023. This case is preceded by three other cases between Lebar and Kim that were filed in 2022: two unlawful detainer actions that are now closed, as well as a civil action for damages by Kim against Lebar that is scheduled to go to trial on September 30, 2024.

The parties both conducted dental businesses at 1240 Scott Boulevard, Santa Clara, California, a commercial building with a ground level and a basement level (the "Scott Property") that was owned by Lebar and Eunpyo Lee (collectively, the "Scott Property Landlords"). Kim rented the ground/main level from the Scott Property Landlords, and Axia rented the basement level from the Scott Property Landlords. As part of Axia's tenancy, it also subleased the common room on the main level from Kim. (FAC, ¶¶ 9, 12-14.) Axia moved its equipment into the property in April 2021 and ran its dental lab business on the basement level from June to November 2021. In November 2021, Kim claimed to have legal possession of the entire premises and prevented Axia, Lebar, and the Scott Property Landlords from entering the property. (See *id.*, ¶¶ 8 and 16.)

According to the FAC, Kim then incorporated defendant Lucid and began running a dental lab at the Scott Property using Axia's equipment and space. (FAC at ¶ 18.) Axia further alleges that the first unlawful detainer action between the Scott Property Landlords and Kim (Case No. 22CV396327), resulted in Kim's eviction from the property. After Axia regained access to the property in August 2022, it discovered that Kim had taken Axia's equipment and supplies with him. Axia alleges that Kim and Lucid are continuing to use Axia's equipment to run their own dental lab business. (FAC, ¶¶ 19-22.)

The FAC states 11 causes of action: (1) Conversion (against Kim); (2) Wrongful Eviction (against Kim); (3) Intentional Interference with Prospective Economic Relations (against both Kim and Lucid); (4) Negligent Interference with Prospective Economic Advantage (against both Kim and Lucid); (5) Intentional Interference with Contractual Relations (against both Kim and Lucid); (6) Breach of the Covenant of Quiet Enjoyment (against Kim); (7) Unfair Business Practice (against both Kim and Lucid); (8) Trespass (against Kim); (9) Declaratory Relief (against both Kim and Lucid); (10) Conversion (against Lucid); and (11) Constructive Trust (against both Kim and Lucid).

There are eleven exhibits (Exhibits A-K) attached to the FAC. Exhibit A is a copy of the agreement forming Lebar Dental Corporation, the original venture between Lebar and Kim. Exhibit B is a copy of Lebar Dental Corporation's fictitious business license permitting it to operate as Smile Plant Dental Clinic. Exhibit C is a copy of the January 15, 2020 lease agreement for the Scott Property's main level between Kim and the Scott Property Landlords.

Exhibit D is a copy of Axia's articles of incorporation. Exhibit E is a copy of Axia's statement of information. Exhibit F is a copy of Axia's April 1, 2021 lease for the "basement of the premises" at the Scott Property. Exhibit G is a list of equipment purchased or rented by Axia that was allegedly stored at the Scott Property before Kim allegedly denied access to it. Exhibit H is a copy of Lucid's articles of incorporation. Exhibit I is a copy of Lucid's statement of information. Exhibit J is the September 13, 2022 writ of possession for the Scott Property in Case No. 22CV396327. Exhibit K is a copy of the return on the writ of possession from the Santa Clara County Sheriff's Office stating that the judgment creditors (the Scott Property Landlords) were placed in possession of the Scott Property on August 2, 2022.

Currently before the court are the following matters: (1) Kim's demurrer to the FAC and (2) Kim's motion to strike portions of the FAC.

II. DEMURRER TO THE FAC

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.) "[A] general demurrer may not be sustained, nor a motion for judgment on the pleadings granted, as to a portion of a cause of action." (*Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1167 [overruled in part on other grounds in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905].)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents that may be properly judicially noticed. In addition, to the extent that "the factual allegations conflict with the content of the exhibits to the complaint," the court relies on and accepts as true "the contents of the exhibits," rather than "the pleader's allegations as to the legal effect of the exhibits." (*Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505.)

The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. The court has only considered the declarations from Kim's counsel, Nick Heimlich, to the extent that they discuss the meet-and-confer efforts required by statute. The court has not considered the exhibits attached to either of the Heimlich declarations.

B. Discussion

Kim demurs: to the FAC's first cause of action for conversion on the grounds of failure to state sufficient facts and lack of standing; to the second cause of action for wrongful eviction on the ground of failure to state sufficient facts; to the fifth cause of action for intentional interference with contractual relations on the grounds of uncertainty and failure to state sufficient facts; to the sixth cause of action for breach of the covenant of quiet enjoyment on the ground of failure to state sufficient facts; and to the seventh cause of action for unfair

business practices on the grounds of uncertainty and failure to state sufficient facts. (See Notice of Demurrer, p. 2:3-15 and Demurrer, pp. 1:23-3:3.)[1]

1. Uncertainty

"'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [citations omitted].) Here, the court finds that there is nothing incomprehensible or insolubly ambiguous about the fifth and seventh causes of action in the FAC, and it is apparent from Kim's papers that he understands what these causes of action allege. The court OVERRULES the demurrer to the fifth and seventh causes of action on the ground of uncertainty.

2. Failure to State Sufficient Facts

a) Conversion (First Cause of Action)

The court OVERRULES Kim's demurrer to the first cause of action for conversion.

Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim 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.)

Kim's first argument—that Axia lacks standing because it is trying to bring claims on behalf of patients—completely mischaracterizes this cause of action. Axia's cause of action is directed to Kim's alleged prevention of Axia's ability to conduct its business in serving its patients. (See FAC, ¶¶ 25-27.) It is not a cause of action *on behalf of* those patients. Even if this argument did not mischaracterize the cause of action, it addresses only a small part of the allegations, and a demurrer does not lie to part of a cause of action.

Kim's second argument, that Exhibit C and Exhibit F to the FAC establish a failure to state sufficient facts, is also unpersuasive. Generally, "[i]t is . . . solely a judicial function to interpret a written instrument unless the interpretation turns on the credibility of extrinsic evidence." (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 724; see also *Sierra Vista Regional Medical Center v. Bonta* (2003) 107 Cal.App.4th 237, 245 ["The interpretation of a contract is a question of law unless the interpretation turns on the credibility of extrinsic evidence."].) Contrary to Kim's contention, these two exhibits do not establish, as a matter of law, the falsity of the allegation "that [Kim's] lease is limited to the Scott Property's main level or that Axia Dental is limited to the Scott Property's basement level." (Memorandum, p. 4:20-21.)

[1] Kim also asserts that the first and seventh causes of action seek damages that are not available. As this is not a proper basis for a demurrer (or motion to strike), the court's discussion of this argument ends with this footnote.

b) Wrongful Eviction (Second Cause of Action)

The court OVERRULES Kim's demurrer to the second cause of action for wrongful eviction.

A tenant who is wrongfully evicted by a landlord may recover damages in tort for the eviction, regardless of whether the eviction is actual or constructive. (*Pierce v. Nash* (1954) 126 Cal.App.2d 606, 612-615 [constructive eviction]; *Saferian v. Baer* (1930) 105 Cal.App. 238, 243 [actual eviction].) In order to maintain a wrongful eviction cause of action, a party must have "property rights and privileges in respect to the use or enjoyment interfered with." (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 899.) "California case law has recognized a tort cause of action for wrongful eviction, including breaches of the covenant of quiet enjoyment that compel a tenant to vacate, whereas breach of covenant of quiet enjoyment that does not result in a wrongful constructive or actual eviction is a breach of contract." (*Bevis v. Terrace View Partners, L.P.* (2019) 33 Cal.App.5th 230, 250-251.)

Kim contends that the second cause of action fails to state sufficient facts against him because he was not Axia's landlord. (Memorandum, pp. 5:17-6:7.)[2] This is not persuasive. The FAC clearly alleges that, before Kim blocked Axia's access to the basement level, he "subleased to Axia the use of the main level common room and received monthly payments from Axia. Axia employees would enter through the main floor to access the basement." (FAC, ¶ 14.) The FAC also expressly alleges that in November 2021, Kim "took the position that, pursuant to his Lease Agreement, he had legal possession of the entire premises and refused to allow Scott Property Landlord, Tony Lebar and/or Axia to enter the building. Defendant Kim installed a lock on the door that allowed access to the basement sometime in November or December 2021. . . . In November 2021, Kim claimed that he was leasing the basement to Axia and that Defendant Kim was in a landlord/tenant relationship with Axia." (FAC at ¶¶ 16-17.) These allegations are incorporated by reference into the second cause of action and are accepted as true on demurrer.

c) Intentional Interference with Contractual Relations (Fifth Cause of Action)

The court OVERRULES Kim's demurrer to the fifth cause of action for intentional interference with contractual relations.

"The elements of a cause of action for intentional interference with contractual relations are '(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.'" (*Redfearn v. Trader Joe's Co*. (2018) 20 Cal.App.5th 989, 997.) The defendant's conduct need not be wrongful apart from the interference with the contract. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.)

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[2] Kim's memorandum also refers to this as demonstrating Axia's lack of standing. This is incorrect. In addition, it is not a ground that was properly raised in the Notice of Demurrer.

The fifth cause of action (FAC, ¶¶ 44-49) incorporates all prior allegations by reference and alleges that Axia performed all of its contractual obligations with outside parties except those it was prevented from or excused from performing as a result of Kim's actions. These actions include barring access to the basement level of the property, preventing Axia from conducting its lab business. This "intentional misconduct induced Axia to breach its agreements with outside contractors, the Scott Property Landlords, and suffer damages such as loss of business."

These allegations, including those incorporated by reference, sufficiently state a cause of action for intentional interference with contractual relations against Kim.

d) Breach of the Covenant of Quiet Enjoyment (Sixth Cause of Action)

The court OVERRULES Kim's demurrer to the sixth cause of action for breach of the covenant of quiet enjoyment.

Civil Code section 1927 states: "An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same." (Civ. Code, § 1927.) The implied covenant of quiet enjoyment is the doctrine that a landlord impliedly promises to allow the tenant possession and "quiet enjoyment" of the premises during the term of the rental agreement and not to disturb the tenant's possession and beneficial enjoyment of the premises for the purposes contemplated by the rental agreement. (*Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th. 578, 588.) Minor inconveniences and annoyances are not actionable breaches; the landlord's acts or omissions must be substantial—*i.e.*, so serious as to render the premises unfit for the purposes contemplated by the lease or which substantially affect the tenant's enjoyment of a material part of the premises. (Civ. Code, § 1927; see also *Kulawitz v. Pacific Woodencare & Paper Co*. (1944) 25 Cal.2d 664, 668.)

Here, as with the second cause of action, Kim's argument in support of the demurrer is based on the notion that it fails to state sufficient facts because Kim was not Axia's landlord. (See Memorandum, p. 7:11-17.) As discussed above, the FAC more than adequately alleges that Kim was Axia's sublessor as to a portion of the Scott Property and that he claimed to be a landlord as to even more of it. (See FAC, ¶¶ 14, 16-17 & 52.) These allegations are accepted as true on demurrer.

e) Unfair Business Practices (Seventh Cause of Action)

The court OVERRULES Kim's demurrer to the seventh cause of action for unfair business practices.

"Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct. It embraces anything that can properly be called a business practice and that at the same time is forbidden by law." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.) "Unlawful business acts or practices within the meaning of the UCL include anything that can properly be called a business practice and that at the same time is forbidden by law." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1474 [citations and quotation marks omitted].) "A practice is forbidden by law if it violates any law,

civil, or criminal, statutory or judicially made, federal, state, or local." (*Ibid*. [internal citations omitted].)

Kim misinterprets the seventh cause of action as alleging only *fraudulent* business acts and argues that it "does not explain how Kim's alleged conduct is 'false, misleading and deceptive' within the meaning of the UCL." (Memorandum, p. 7:22-23.) The seventh cause of action incorporates all prior allegations by reference and alleges that "[u]pon vacating the Scott Property, Defendants took all of Axia's equipment and supplies and commenced to engage in the business of a dental laboratory with Defendant Lucid, using Axia's equipment and supplies to provide services to the public. Defendants continue to operate a dental laboratory with equipment and supplies that are owned by Axia." (FAC at ¶ 59.) This adequately alleges conduct forbidden by law—conversion of Axia's equipment and supplies—conducted as a business practice. These allegations are accepted as true on demurrer.

III. MOTION TO STRIKE PORTIONS OF THE FAC

A. Request for Judicial Notice

Kim has submitted a request for judicial notice in support of the motion to strike. "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."

Kim requests judicial notice of a copy of a judgment entered in Case No. 22CV396327, attached to the request as Exhibit 1. No specific basis for the request is stated.

This request is GRANTED in part and DENIED in part. The request is GRANTED under Evidence Code section 452, subdivision (d) (allowing for judicial notice of court records), to the extent that Exhibit 1 establishes the existence of the unlawful detainer case and the fact that a judgment was entered on February 17, 2023. It is DENIED to the extent that Kim seeks to have factual findings in the judgment noticed as to their truth. Court records cannot be 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.) "As a general rule factual findings in a judgment are not the proper subject of judicial notice." (*Hawkins v. SunTrust Bank* (2016) 246 Cal.App.4th 1387, 1393.)

B. General Standards for a Motion to Strike

Under 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. Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc. § 431.10, subds. (b),

(c).) 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, subd. (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.) California Rule of Court 3.1322(a) requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

C. Discussion

Kim seeks to strike five specified portions of the FAC and the attached exhibits. (See Notice of Motion, p. 2:2-18.) The court GRANTS the motion to strike in small part and DENIES it in large part, as follows.

The motion to strike paragraphs 19-20 and Exhibit J from the FAC on the basis that they are "irrelevant and prejudicial" is DENIED. To begin with, purported "prejudice" is not a basis for a motion to strike. Moreover, Kim fails to explain how they are prejudicial. Indeed, Kim fails to establish that the general allegations describing the first unlawful detainer case (Case No. 22CV396237) and the copy of the writ of possession that resulted (Exhibit J) are irrelevant to all eleven causes of action alleged in the FAC. (See Memorandum, p. 3:7-12.)

The motion to strike paragraphs 26-27 from the FAC is DENIED. Kim claims that these paragraphs, which are the bulk of the conversion cause of action and which describe Kim changing the locks at the Scott Property and denying Axia access to its leased premises, are "improper" because they seek nonrecoverable damages. (See Memorandum, pp. 3:13-4:2.) This is incorrect.

Civil Code section 3336 provides:

> The detriment caused by the wrongful conversion of personal property is presumed to be:
>
> First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and
>
> Second—A fair compensation for the time and money properly expended in pursuit of the property.

(Civ. Code, § 3336.) "Civil Code section 3336 sets out the presumptive measure of damages in conversion, which is rebuttable . . . ." (*Dakota Gardens Apartment Investors B v. Pudwill* (1977) 75 Cal.App.3d 346, 351.)

Contrary to Kim's contentions, the damage to "Axia's business, goodwill and reputation" alleged in paragraph 27 is not "improper" matter but rather a description of a "loss which is the natural, reasonable and proximate result of" Kim's alleged conversion of Axia's equipment and supplies. Even if the reference to "goodwill and reputation" damages were improper, that would not be a basis for striking paragraphs 26 and 27 in their entirety.

The motion to strike three pages from Exhibit F to the FAC on the ground that they are irrelevant is DENIED. Kim's argument that these pages refer to "wholly resolved matters" does not establish that they are irrelevant to all of the eleven causes of action alleged in the FAC. (See Memorandum, p. 4:4-10.) The bare, unexplained assertion that the pages are "prejudicial" does nothing to support a motion to strike.

The motion to strike all of Exhibit K to the FAC, a copy of the return on the writ of possession from the Santa Clara County Sheriff's Office, as "irrelevant" is DENIED. Kim has failed to show that the document is irrelevant to all eleven causes of action alleged in the FAC. On the contrary, the court finds this document to be highly relevant to many of these causes of action. The unexplained assertion that the document is "prejudicial" does not provide any support for striking it. (See Memorandum, p. 4:11-18.)

Finally, the court GRANTS the motion to strike the request for "reasonable attorney's fees on the Second and Sixth causes of action" in paragraph 6 of the FAC's prayer for relief. In the absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney. (See Code Civ. Proc., § 1021.) The contractual or statutory basis for a request for attorney's fees should be alleged within the body of the complaint. (*Wiley v. Rhodes* (1990) 223 Cal.App.3d 1470, 1474.) The FAC does not identify any basis for the request for attorney's fees, and Axia's opposition to the motion does not present any argument on this issue. As this is the first pleading challenge in this matter to be heard, the court will grant 10 days' leave to amend, despite Axia's failure to address the issue. The court does not grant leave to amend anything in the FAC other than the request for attorney's fees.

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Calendar Line 5
Case Name: *Shoushan Tashjian et al. v. Ahmad Javid et al.*
Case No.: 23CV409965

Defendants Ahmad Javid, Safoora Javid, and Eela Javid ("Defendants") filed this motion to compel on January 25, 2024. At the time, they had not received substantive responses to their form interrogatories, special interrogatories, document requests, or requests for admissions from plaintiff Shoushan Tashjian. Since then, Tashjian has provided substantive responses. Nevertheless, Defendants still seek monetary sanctions in the amount of $8,160.00 for having had to bring this motion.

Tashjian argues that Defendants failed to meet and confer adequately before bringing this motion. She notes that her counsel assured Defendants that they would receive substantive responses, but Defendants acted prematurely in bringing this motion. Defendants counter that they gave multiple extensions of time for Tashjian to respond but instead have been met with a pattern of delay. The court has reviewed the meet-and-confer correspondence between the parties and finds that both sides have fallen short. On the one hand, the tone of Defendants' counsel's emails is unduly self-important and officious ("*I don't have any doubt that the court will find that you are engaging in a deliberate misuse of the discovery process*"; "*in the spirit of the holidays we will grant your request*"). On the other hand, Tashjian's counsel's emails are perfunctory and insufficient; they fail to provide any explanation for the delayed discovery responses or any reasonable estimate of the time needed ("*I am working on these. You will have substantive responses and documents.*"). In the end, the court finds that Defendants' meet-and-confer efforts were adequate, but just barely.

At the same time, this motion is largely moot, given that Defendants now have Tashjian's responses. In reply, Defendants contend that the answers to Special Interrogatory No. 2 and Form Interrogatories Nos. 2.1, 2.9, and 17.1 "are [still] not complete," but they fail to explain how. The court has a copy of these answers and does not see any glaring, facial deficiencies. (Declaration of Jessica Galletta, Exhibits B & C.) Because Defendants have failed to provide any reasons for compelling further answers to these interrogatories, the motion is DENIED.

Defendants also argue that the court "still has the authority to, and should, grant this motion to compel plaintiff to produce the documents she is still withholding." (Reply, p. 2:20-24.) This is not exactly correct. The present motion was properly noticed as a motion to compel further responses under Code of Civil Procedure section 2031.310, not as a motion to compel compliance under section 2031.320.[3] Nevertheless, the court observes that it appears that Tashjian has been dragging her feet in producing responsive documents, and the court would expect that a reasonable timeframe for production would be within the next 30 days.

Finally, the court finds that Defendants are entitled to some compensation for having had to bring this motion, particularly given that even after this motion was filed in January 2024, Tashjian still did not serve supplemental responses until two and a half months later, on April 16, 2024. At the same time, the court finds that $8,160.00 is excessive, particularly

[3] Even though the Notice of Motion cites a variety of code sections, including section 2031.320, the opening papers do not articulate any specific grounds for compelling compliance, including what specific documents should be produced. "All documents" is not sufficiently specific.

given the lack of complexity in this motion. The court GRANTS IN PART Defendants' request and orders Tashjian to pay them **$1,680.00** (3 hours at $540/hour plus $60 for the filing fee) within 30 days of notice of entry of this order. The court DENIES Tashjian's request for monetary sanctions.

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Calendar Lines 6-7
Case Name: *Mike Patton v. Carol Sandman*
Case No.: 23CV414140

Plaintiff Mike Patton has filed two motions: (1) a motion to compel compliance with requests for production of documents, and (2) a motion for appointment of a receiver. The court orders the PARTIES TO APPEAR at the hearing to address the first motion, because the court needs more information. The court DENIES the second motion.

1. Motion to Compel Compliance

At the time the motion to compel was originally filed (January 26, 2024), Patton sought to compel compliance by defendant Carol Sandman with two requests for production: No. 28, which seeks documents reflecting the *rent collected* by AP+I Design (Sandman's company) for the property located at 200 Blossom Lane, Mountain View, California; and No. 29, which seeks documents reflecting the *expenses incurred* by AP+I Design for that property. Five days after the filing of this motion, Sandman produced additional documents, and it appears—although it is not entirely clear from the parties' briefing—that the dispute as to Request No. 28 has now been resolved. The only remaining disagreement is as to whether Sandman has produced all background documentation to support the expenses she says were incurred by AP+I Design, in response to Request No. 29.

With his reply, Patton submits a color-coded spreadsheet that purports to describe the background documentation that is still missing. According to him:

> Each of the red cells indicate[s] an expense listed by SandPatt for which the background documentation has not been produced, despite SandPatt listing an expense for those months on its P&L statement. Each of the yellow cells indicate[s] an expense where the background documentation has not been produced, but for which there is no corresponding P&L statement reflecting that an expense was actually incurred in that particular month. In short, the red cells indicate documents that necessarily must exist and have not been produced while the yellow cells indicate documents that should exist and have not been produced.

(Reply, p. 3:2-9.) The court has read this passage several times and still does not understand what it means. The court has reviewed the spreadsheet submitted by Patton and still does not understand exactly what it represents. The reply brief goes on to repeat the foregoing description without clarification. In addition, because this information has been submitted for the first time on reply, the court needs to hear Sandman's rebuttal. Accordingly, the court orders the parties to appear to address what exactly is still missing (or not) in the document production.

2. Motion for Appointment of Receiver

This case was originally brought as a partition action. The court sustained Sandman's demurrer to the first cause of action (partition) with leave to amend, because it did not appear to be a true partition case between co-owners of real property.[4] Patton has not attempted to

[4] Instead, it was a suit between co-owners of a *company* that owned 100% of the property.

amend the complaint, and so there is no longer a legal basis to appoint a partition referee. Now, instead, Patton seeks the appointment of a receiver under Code of Civil Procedure section 564, subdivisions (b)(1) and (b)(9), "to both oversee the marketing and sale of, as well as manage the operation of 200 Blossom Lane." (Memorandum, p. 1:21-22.)

The appointment of a receiver is a "drastic," "harsh," and "costly" remedy that is to be exercised only when there is no other adequate remedy available. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629 [citing various cases].) Sandman argues here that Patton has not met his burden of establishing one of the statutory grounds for the appointment of a receiver, and the court agrees. (See *Miller v. Oliver* (1917) 174 Cal. 407, 410.) Under section 564, subdivision (b)(1), Patton must show that "the property or fund is in danger of being lost, removed, or materially injured." He completely fails to make that showing. Instead, he admits that the parties are in agreement that they should sell the property, but that they continue to disagree about the smaller details of performing that sale: *i.e.*, selecting the particular real estate broker (or brokers) to be used, the timing of "light exterior repairs and paint" on the property, and whether the listing price should be reduced to $4.8 million. None of this demonstrates that the property is at risk of being *lost*, *removed*, or *materially* injured.

Under section 564, subdivision (b)(9), which is a catch-all provision for "all other cases," the moving party must show that the appointment of a receiver is "necessary to preserve the property or rights of any party." Patton's arguments in support of this subdivision are the same as for subdivision (b)(1), and they remain insufficient. The fact that the parties have had disagreements about the details of the sale of the property—and the fact that it is taking longer to sell than the parties hoped it would—does not come anywhere close to showing that there is any danger that the property, or Patton's rights relating to the property, will not be preserved without the appointment of a receiver.

Patton also expends a considerable amount of his briefing on this motion for appointment of a receiver complaining that Patton has not been forthcoming with her document production (as set forth in the accompanying motion to compel). The court finds that these discovery-related complaints are totally irrelevant to whether a showing has been made under subdivisions (b)(1) or (b)(9).

The motion to appoint a receiver is DENIED.

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Calendar Line 8
Case Name: *Jane Doe v. Robert Hicks et al.*
Case No.: 22CV396514

Plaintiff Jane Doe moves for leave to amend her complaint to add a claim for punitive damages against defendant Central California Conference of Seventh-Day Adventists ("CCC"). CCC opposes. The court finds that Doe has not made a sufficient showing under Code of Civil Procedure section 425.14 to justify the proposed amendment, and so the court denies the motion.

CCC is a religious corporation, and section 425.14 of the Code of Civil Procedure provides that a claim for punitive damages against a religious corporation may only be brought if the court first finds that the plaintiff's evidence would meet the "clear and convincing evidence" standard of proof. The court does not weigh the evidence or make any factual findings; rather, the court must evaluate whether the factual allegations, if proven to be true, would support an award of punitive damages by clear and convincing evidence. In other words, the court decides whether the plaintiff has made a prima facie case for punitive damages. (*Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1723.)

Without weighing the evidence, the court finds that Doe has not articulated a prima facie case for punitive damages. Most critically, Doe does not properly allege that CCC either knew or had reason to know that defendant Robert Hicks was sexually abusing her while he was employed at Mountain View Academy. In fact, Doe expressly admits that "Mr. Hicks concealed the sexual nature of his relationship with Plaintiff with the intention of causing her injury. *It cannot be argued that, absent his concealment of his abuse of Plaintiff, he would have been able to cause her harm*." (Memorandum, p. 7:24-26 [emphasis added].) This admission is fatal to the motion. Because Hicks concealed his sexual abuse of Doe from others at CCC, it cannot be argued that CCC engaged in a "conscious disregard" for Doe's rights and safety, which is required to support an award of punitive damages under Civil Code section 3294, subdivision (b). Instead, Doe's motion is supported by "rumors" about the nature of Hicks's relationship with Doe, the belief (expressed after Hicks's arrest) that "something was not right" between Hicks and Doe, the concern that "people would think there was an inappropriate relationship between the two," and other inchoate suspicions. (Memorandum, pp. 4:3-8, 4:14-17, and 4:21-23.) This does not rise to the level of a "conscious disregard" or "ratification" by officers, directors, or managing agents of CCC. Doe alleges that Mountain View Academy "failed to investigate or take any steps to protect" her (*id.* at p. 4:6-7), but while this may be enough to allege *negligence*, it is not enough to allege oppression, fraud, or malice.

Similarly, Doe's allegation that CCC "routinely trained employees to report instances of reasonably suspicious child abuse to the principal of the school and not to a reporting agency" is not tantamount to alleging "fraud." There is no allegation that anyone *reported child abuse* to the principal that the principal in turn failed to pass on to the relevant authorities. Instead, as noted above, there were rumors, concerns, and suspicions about Hicks and Doe, including the principal's own suspicions. Again, that is not enough. One of the elements of fraud is *reliance*, and there is no allegation of reliance here. Another element of fraud is resulting *damage*, and Doe has not alleged any actual damage arising out of this alleged training by CCC of its employees.

The motion is DENIED.

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Calendar Line 10
Case Name: *Arch Veterinary Services, Inc. v. Liliana Guerrero*
Case No.: 22CV406855

This motion originally came on for hearing on January 30, 2024. On that date, the court concluded that it needed more information—more billing records—to support the motion, because the evidence was unclear as to whether all of the requested fees were for work on the anti-SLAPP motion, rather than for other tasks in the case. The court continued the hearing to April 30, 2024, setting deadlines for defendant Liliana Guerrero to submit declarations attaching the additional billing records and for the parties to submit supplemental briefing addressing this information. The court also encouraged the parties to meet and confer to see if they could "reach an agreement about the appropriate amount of fees."

The court has now received and reviewed the parties' additional submissions and finds that Guerrero has shown that all of the requested attorney hours—21.1 hours for Julian Sarafian, 17.8 hours for Kenneth P. White, and 13.7 hours for Nicholas Ramirez—were for work on the anti-SLAPP motion. Therefore, the requested amount of $25,318.46 is fully supported.[5]

In response, plaintiff Arch Vet repeats the same speculative argument that the court rejected in its January 30, 2024 order—that these fees are necessarily "duplicative" because they were incurred by multiple attorneys. The court previously found that Arch Vet's argument was conclusory and unfounded, and Arch Vet adds nothing in its supplemental opposition to change that conclusion.

Accordingly, the court GRANTS the motion and awards Guerrero attorney's fees and costs of $25,318.46.

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[5] As noted in footnote 1 of Guerrero's supplemental reply, this is $180 less than the original amount requested, which included a typographical error.

Calendar Line 11
Case Name: *Lavina DeSantiago-Calderon v. Daniel Velazquez Alvarez*
Case No.: 22CV408078

Plaintiff Lavina DeSantiago-Calderon moves for leave to amend her complaint to add certain facts and allegations, as well as to add Daniel's Hauling Service (defendant Daniel Velazquez Alvarez's alleged employer), Daniel Villanueva (Alvarez's son), and Karely Villanueva (the alleged owner of Daniel's Hauling Service) (collectively, the "Hauling Service Defendants") as defendants. Defendant Alvarez opposes the motion on the ground that the statute of limitations as to the Hauling Service Defendants has now expired, and that any amended complaint cannot relate back to the original complaint because these defendants were known to DeSantiago-Calderon in May 2023, five months before the statute of limitations expired.

The court has reviewed the parties' submissions and concludes that although DeSantiago-Calderon was aware of the *existence* of the Hauling Service Defendants, there is no indication that she was aware of *whether or how* the Hauling Service Defendants might be *responsible for the occurrences* alleged in the complaint. Indeed, when plaintiff's counsel emailed defendant's counsel about Daniel's Hauling Service on May 5, 2023, it appears that plaintiff's counsel was under the misimpression that Alvarez was the owner of the business, rather than an employee of the business. Later on, defendant's counsel informed plaintiff's counsel that Daniel's Hauling Service was owned by Alvarez's son, Daniel Villanueva, and defendants also served written discovery responses that claimed that at the time of the accident, Alvarez was *not* acting in the course and scope of any employment at the time of the accident.[6] This hardly served to clarify the relationship between Alvarez and the Hauling Service Defendants—if anything, it obfuscated the fact that Alvarez was (or may have been) an employee of the Hauling Service Defendants.[7]

Because it appears that DeSantiago-Calderon was genuinely unaware of the relationship of the Hauling Service Defendants to the car accident in this case, and because the original complaint contains adequate allegations against fictitiously named Doe defendants, the court concludes that DeSantiago-Calderon may properly substitute the Hauling Service Defendants for the Doe defendants in this case.

Finally, defendants have not identified any prejudice arising out of this proposed amendment, and the court finds none, given that no trial date has yet been set in this case.

The motion for leave to amend is GRANTED. Plaintiff shall file her first amended complaint within 10 days of this order.

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[6] Now, somewhat confusingly, it is alleged that Karely Villanueva owns Daniel's Hauling Service.
[7] The court is puzzled by defendant Alvarez's reliance on his interrogatory responses in an effort to support his opposition to this motion. These responses do not support his position at all—rather, they support DeSantiago-Calderon's argument that she was unaware of the connection between Daniel's Hauling Service and Daniel Velazquez Alvarez.

Calendar Line 14
Case Name: *Sandy Muisum Chew v. Fiona Elizabeth Bodkin et al.*
Case No.: 23CV417041

This is a motion by defendants Fiona Elizabeth Bodkin and the Trustee of the Bodkin Family Trust to set aside the entry of default in this case. The motion was originally filed as an ex parte application on March 22, 2024, but because plaintiff Sandy Muisum Chew opposed the application, the court set the matter for a noticed hearing on April 30, 2024, with full briefing from the parties. Having now considered the parties' submissions, the court grants the motion.

The court finds that the motion is properly based on "mistake, inadvertence, surprise, or excusable neglect" under Code of Civil Procedure section 473, subdivision (b). In fact, there were two mistakes or acts of excusable neglect here: (1) defense counsel's mistaken belief that one of the two actions that had been filed arising out of the multi-car accident at issue (the present action filed by Chew, as opposed to the separate action filed by Neha Maheshwari Mantri) had been resolved, and (2) State Farm's apparent failure to specify that it was assigning the Chew action to defense counsel, in addition to the Mantri action. The court finds that the declaration of defense counsel submitted with the motion provides a sufficient evidentiary foundation for these mistakes; the court overrules Chew's specious objections.

Finally, the court also finds that the motion is timely. It is brought within the six-month deadline of section 473(b), and although Chew complains that defendants took five months to file it, defendants point out that they sent a proposed stipulation and order to set aside the default to Chew's counsel as early as December 11, 2023, which plaintiff's counsel refused to sign. The court does not discern any dilatory behavior on the part of defendants in bringing this application.

California courts have a clear policy favoring the disposition of cases on the merits (see *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806), and that policy applies here. The motion is GRANTED. Defendants shall file their response to the complaint within 10 days of this order.

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