SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

Honorable Amber Rosen, Presiding

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

DATE: 09-21-23 TIME: 9 A.M.

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

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:
(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

IN PERSON HEARINGS: **Courtrooms are again open and all litigants may appear in person** at the Downtown Superior Courthouse located at 191 N. First Street, San Jose.

VIRTUAL HEARINGS: You should **appear by video**, unless it is not possible.

To **Join Teams Meeting** -Click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV409066 Hearing: Motion to Strike	Jesus Gamez vs General Motors, LLC	See Tentative Ruling. Court will prepare the final order.
LINE 2	22CV409066 Hearing: Demurrer	Jesus Gamez vs General Motors, LLC	See Tentative Ruling. Court will prepare the final order.
LINE 3	19CV360605 Motion: Set Aside	ASNM, LLC. et al vs CHERRY BLOSSOM S-CORPORATION et al	See Tentative Ruling. Plaintiff shall submit the final order.
LINE 4	19CV360605 Motion: Compel	ASNM, LLC. et al vs CHERRY BLOSSOM S-CORPORATION et al	See Tentative Ruling. Plaintiff shall submit the final order.
LINE 5	21CV38528 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	OFF CALENDAR. Continued to 1/11/24 at 9 a.m.
LINE 6	21CV38528 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	OFF CALENDAR. Continued to 1/11/24 at 9 a.m.
LINE 7	21CV38528 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	OFF CALENDAR. Continued to 1/11/24 at 9 a.m.
LINE 8	22CV407258 Motion: Compel	Chilone Payton vs Tracy Rogers et al	OFF CALENDAR.

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LINE 9	20CV372981 Motion: to Disqualify Arbitrator	Villagrana v. Caliber Holdings Corporation, et al.	See Tentative Ruling. Defendants shall submit final order.
LINE 10	22CV401457 Motion: to dismiss or stay action	Chris Field et al vs Google Inc. et a	See Tentative Ruling. Plaintiffs shall prepare the final order.
LINE 11			
LINE 12			

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Calendar Lines 1 and 2
Case Name: *Gamez v. General Motors, LLC*
Case No.: 22CV409066

This is a lemon law case. According to the allegations of the first amended complaint ("FAC"), on August 11, 2019, plaintiff Jesus Gamez ("Plaintiff") entered into a warranty contract with defendant General Motors, LLC ("Defendant" or "GM") for a 2019 Chevrolet Silverado 1500 ("subject vehicle"), which contained a bumper-to-bumper warranty, a powertrain warranty and an emissions warranty. (See FAC, ¶¶ 6-7, exh. A.) On July 30, 2020, Plaintiff presented the subject vehicle to GM's authorized repair facility for concerns regarding the vehicle's transmission, infotainment and other various concerns, and the repair facility performed warranty repairs. (See FAC, ¶ 24.) On November 24, 2021, Plaintiff presented the subject vehicle to GM's authorized repair facility for concerns regarding the vehicle's transmission, electrical system and other various concerns, and the repair facility performed warranty repairs. (See FAC, ¶ 25.) On April 13, 2022, Plaintiff presented the subject vehicle to GM's authorized repair facility for concerns regarding the vehicle's transmission, and the repair facility performed warranty repairs. (See FAC, ¶ 26.) Plaintiff continues to experience problems with the subject vehicle's transmission as it has a shifting delay coming out of Park to Drive and from Park to Reverse, the transmission jerks when putting it into gear and has a hard shift in any weather condition, and the gears grind, causing it to lose power. (See FAC, ¶ 27.) The aforementioned defects substantially impair the use, value and safety of the vehicle, rendering the value of the subject vehicle to be worthless. (See FAC, ¶¶ 11-12.) Prior to Plaintiff's purchase of the subject vehicle, GM was well aware and knew that the 8-speed transmission installed on the subject vehicle was defective and susceptible to sudden and premature failure, issuing various technical bulletins to its dealers (but not consumers) concerning the transmission defect, but when Plaintiff interacted with GM's sales representatives and viewed GM's advertisements and marketing materials as well as GM's repair facilities' employees, they failed to disclose the defects and GM's knowledge of the defects to Plaintiff prior to and at the time of sale and thereafter. (See FAC, ¶¶ 57-58, 60-67.) Specifically, GM knew that the 8-speed transmission had defects that can result in hard or harsh shifts, jerking, lurching, hesitation on acceleration, and surging or an inability to control the vehicle's speed, acceleration or deceleration. (See FAC, ¶ 59,) These conditions present a safety hazard and are unreasonably dangerous to consumers because they can suddenly and unexpectedly cause the driver to be able to control the speed and acceleration/ deceleration of the vehicle, exposing the driver and passengers to serious risk of accident and injury. (*Id*.)

On May 16, 2023, Plaintiff filed the FAC against GM, asserting causes of action for:
1) violation of Civil Code section 1793.2, subdivision (d);
2) violation of Civil Code section 1793.2, subdivision (b);
3) violation of Civil Code section 1793.2, subdivision (a)(3);
4) breach if the implied warranty of merchantability; and,
5) fraudulent inducement/concealment.

GM demurs to the fifth cause of action of the FAC for fraudulent inducement/concealment, and moves to strike paragraph g from the prayer seeking punitive damages.

I. GM'S DEMURRER TO THE FIFTH CAUSE OF ACTION

GM demurs to the fifth cause of action for fraudulent inducement/concealment arguing that it fails to allege facts with sufficient particularity and fails to allege a transactional relationship giving rise to a duty to disclose.

Transactional relationship

As to GM's argument regarding a transactional relationship, GM cites to *Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, in which the court stated that "[i]n transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff." (*Engler*, *supra*, 7 Cal.App.5th at p.311; see also Def.'s memorandum of points and authorities in support of demurrer ("Def.'s demurrer memo"), pp.9:11-25, 10:1-25.) "Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Id*. at p.312.)

Here, the FAC plainly alleges that "Plaintiff entered into a warranty contract with Defendant GM regarding a 2019 Chevrolet Silverado 1500." (FAC, ¶ 6.) This alleges a direct dealing between the parties. GM's argument regarding a transactional relationship is without merit.

Requisite particularity

GM also argues that the fifth cause of action fails to allege facts with sufficient particularity. (See Def.'s demurrer memo, pp.7:24-28, 8:1-28, 9:1-10.) As GM notes, a cause of action for concealment is required to be pled with specificity. (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 878 (stating that "[c]oncealment is a species of fraud, and '[f]raud must be pleaded with specificity'").) GM argues that the fifth cause of action "fails as a matter of law because Plaintiff failed to allege (i) the identity of the individuals at GM who purportedly concealed material facts or made untrue representations about their Silverado, (ii) their authority to speak and act on behalf of GM, (iii) GM's knowledge about alleged defects in Plaintiff's Silverado at the time of purchase, (iv) any interactions with GM before or during the purchase of the Silverado, or (v) GM's intent to induce reliance by Plaintiff to purchase the specific Silverado at issue." (Def.'s demurrer memo, p.9:1-6.)

Here, as to the identity of the individuals at GM who purportedly concealed material facts and their authority to speak and act on behalf of GM, the FAC alleges that he interacted with GM's sales representatives, and that additionally, GM's directors, officers, employees and agents had a duty to disclose the defective nature of the vehicle and its transmission prior to and at the time of the sale on August 11, 2019. While it is true that "[i]f the duty to disclose arises from the making of representations that were misleading or false, then those allegations should be described… [t]his statement of the rule [regarding t]his particularity requirement necessitat[ing] pleading facts which 'show how, when, where, to whom, and by what means

the representations were tendered'…reveals that it is intended to apply to affirmative misrepresentations." (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) "[I]t is harder to apply this rule to a case of simple nondisclosure." (*Id*. (also stating, "How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?").) "Less specificity should be required of fraud claims 'when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' [citation]; '[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party." (*Id*.) Here, the allegations regarding the identity and the authority of the individuals at GM who allegedly concealed the facts regarding the vehicle's defects are pled with sufficient particularity. As to GM's knowledge about the alleged defects and its intent to induce reliance, the FAC also alleges these facts with the requisite particularity as it alleges in detail facts demonstrating that GM was aware of the defects and related safety risks, and how it became aware of those facts, and intentionally concealed the information regarding those defects and risks. (See FAC, ¶¶ 62-70.) These allegations are not mere conclusionary allegations. In *Dhital v. Nissan North America, Inc*. (2022) 84 Cal.App.5th 828, similar allegations were found to be pled with the requisite specificity. (*Id*. at pp.843-845.) As to GM's arguments regarding alleged interactions with GM during the purchase of the Silverado, the FAC alleges that Plaintiff interacted with GM's sales representatives and they concealed facts regarding the alleged defects. It is unclear what GM expects Plaintiff to allege as it does not elaborate in its memorandum; however, as stated above, it is harder to apply the particularity requirement to a nondisclosure, and GM fails to cite to any case requiring further specificity of allegations surrounding the concealment.

GM's demurrer to the fifth cause of action is OVERRULED.

II. GM'S MOTION TO STRIKE PORTIONS OF THE COMPLAINT

GM also moves to strike paragraph g from the prayer seeking punitive damages, arguing that the FAC fails to allege sufficient facts to support punitive damages and that the cause of action for fraudulent inducement/concealment fails to state facts sufficient to constitute a cause of action and therefore cannot support punitive damages.

Citing no specific paragraph of the FAC, GM argues that "[t]he only thing Plaintiff states is that prior to acquiring the vehicle, GM knew, ***or should have known,*** that the Subject Vehicle's transmission was defective and failed to disclose those defects at the time they bought it." (Def.'s memorandum of points and authorities in support of motion to strike ("Def.'s strike memo"), p.4:4-7, citing "generally FAC.") However, the fifth cause of action of the FAC alleges that: "Defendant GM was well aware and knew that the 8-speed transmission installed on the Vehicle was defective… [s]pecifically, Defendant GM knew that the 8-speed transmission had one or more defects that can result in various problems, including, but not limited to, hard or harsh shifts, jerking, lurching, hesitation on acceleration, surging and/or inability to control the vehicle's speed, acceleration, or deceleration… Defendant GM acquired its knowledge of the Transmission Defect prior to Plaintiff's acquisition of Subject Vehicle, through sources not available to consumers such as Plaintiff, including but not limited to pre-production and post-production testing data; early consumer complaints about the Transmission Defect made directly to Defendant GM and its network of dealers; aggregate warranty data compiled from Defendant GM's network of dealers; testing conducted by Defendant GM in response to these complaints; as well as warranty repair and

part replacements data received by Defendant GM from Defendant GM's network of dealers, amongst other sources of internal information… Defendant GM was internally referring [to] the 8-speed transmission as a 'neck-snapper'… Defendant GM engineers even considered stopping production in 2015 (but did not) and in 2016, GM President Johan de Nysschen acknowledged customer frustration surrounding the Transmission Defect internally and meeting with its authorized repair facility… Defendant GM's Mark Gordon lamented in February 2019 that 'shift quality issues are an ongoing concern with the 8-Speed transmission… [u]nfortunately, these issues have been through an Op-ex and a service solution is not going to be developed due to cost…' Defendant knew about the Transmission Defect, and its safety risks since prior to Plaintiff's purchase of Subject Vehicle… Defendant GM knew that the Vehicle and its 8-Speed transmission suffered from an inherent defect, was defective, would fail prematurely, and was not suitable for its intended use... Defendant GM has knowingly and intentionally concealed material facts." (FAC, ¶¶ 58-69.) Contrary to GM's assertion, the FAC unambiguously alleges that GM *knew* that the subject vehicle's transmission was defective.

Defendant GM also contends that the fifth cause of action fails to allege facts with sufficient particularity and thus cannot support punitive damages. (See Def.'s strike memo, pp.4:7-28 (stating that "Plaintiff fails to allege what specific representation(s), if any, were made about the Subject Vehicle and its transmission, and whether the person making those representation(s), if any, was an agent of GM, etc… [e]ssentially, Plaintiff omitted the who, what when and where allegations necessary to plead fraud… [i]f Plaintiff's underlying fraud claim fails for any reason, including insufficiency (or lack of specificity) of allegations, then his punitive damages claim must be stricken"), 5:1-3 ("Plaintiff has not sufficiently pled, and indeed cannot do so, that GM engaged in fraudulent conduct to sustain an award of punitive damages").) However, as stated above with respect to GM's demurrer, the fifth cause of action alleges facts supporting a fraudulent inducement/concealment cause of action with sufficient particularity. Moreover, in *Dhital*, *supra*, 84 Cal.App.5th 828, the court reversed the trial court's granting of a motion to strike in which the defendant likewise argued that the plaintiffs had not stated a viable fraud claim regarding allegations that were very similar to those alleged in the FAC. (*Id*. at pp. 844-845.)

GM's motion to strike paragraph g from the prayer of the FAC is DENIED.

The Court will prepare the Order.

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Calendar Line 3
Case Name: *ASNM, LLC, et al. v. Cherry Blossom S-Corporation, et al.*
Case No.: 19CV360605

Factual and Procedural Background

This case arises out of a breach of a lease agreement between the parties. On December 12, 2019, plaintiffs ASNM, LLC and Najmeh Mostafavi (collectively, "Plaintiffs") filed their Complaint against Cherry Blossom S-Corporation ("Cherry Blossom"); Jane Vei-Chun Sun ("Jane")[1] in her individual capacity and as a co-trustee;[2] Edmund Y. Sun ("Edmund") individually and as a co-trustee; John Shey-Tsuane Sun; and Christopher Shey-Tau Sun (collectively, "Defendants").

Plaintiffs brought the following seven causes of action against all Defendants:

1) Specific Performance;
2) Breach of the Implied Covenant of Good Faith and Fair Dealing;
3) Breach of the Lease Agreement;
4) Breach of Covenant of Quiet Enjoyment;
5) Intentional Interference with Prospective Economic Advantage;
6) Intentional Interference with Contract; and
7) Declaratory Relief.

This case was tried before a jury and on September 14, 2022, the jury reached its verdict. (Plaintiffs' Memo, p. 2:16-17.) This Court (Hon. Rosen) issued judgment on January 11, 2023 ("January 11 Judgment") and it was served via mail. (*Id.* at p. 2:17-18.) On January 12, 2023, Plaintiffs filed and served Notice of Entry of Judgment. (*Id.* at p. 2:19.)

On January 18, 2023, Cherry Blossom and Jane, in her individual capacity, filed a motion for new trial and motion for JNOV. (Plaintiffs' Memo, p. 2:22-24.) On January 25, 2023, Jane and Edmund, referred to by Plaintiffs as the "Trustee Defendants," filed a motion for new trial and motion for JNOV, and then filed a motion to set aside judgment/correct clerical error. (*Id.* at p. 2:24-26.) Plaintiffs opposed each of these motions and the hearing took place on March 10, 2023. (*Id.* at p. 2:26-27.)

Plaintiffs assert that March 28, 2023 was the seventy-five day deadline for this Court to decide each of Defendants' post-trial motions. (Plaintiffs' Memo, pp. 2:28-3:1.) On April 21, 2023, Defendants filed a Notice of Appeal following the denial of these motions by operation of law "(i.e., after the Court failed to timely rule by March 28, 2023)." (*Id.* at p. 3:3-4.)

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[1] Several parties share the same last name. For clarity, the Court may refer to them by their first name. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

[2] Plaintiffs' complaint names Jane and Edmund in their individual capacities and as co-trustees of the Jarvis Holding Trust and the Nixon Lucille Holding Trust.

On April 25, 2023, this Court issued its order ("April 25 Order") on each of Defendants' motions, granting the motions for JNOV and motion to set aside judgment or correct clerical error and denying the motions for new trial. (Plaintiffs' Memo, p. 3:5-7.)

Plaintiffs now bring the current motion requesting this Court set aside the April 25 Order as void for lack of jurisdiction or, in the alternative, Plaintiffs request this Court reconsider the April 25 Order. Defendants oppose the motion.

Motion to Set Aside Order as Void for Lack of Jurisdiction Pursuant to Code of Civil Procedure section 473

Plaintiffs assert that the April 25 Order should be set aside as void because the Court had no jurisdiction to rule on Defendants' motions after March 28, 2023. (Plaintiffs' Memo, p. 3:10-12.)

As Plaintiffs contend, the Court has seventy-five days after notice of the entry of judgment is mailed to rule on the following motions: 1) a motion for new trial, pursuant to Code of Civil Procedure section 660, subdivision (c); 2) a motion for JNOV, pursuant to Code of Civil Procedure section 629, subdivision (b); and 3) a motion to set aside a judgment, pursuant to Code of Civil Procedure sections 663 and 663a, subdivision (b). (Plaintiffs' Memo, pp. 4:18-3:2.)

Code of Civil Procedure section 473, subdivision (d) provides this Court with the authority, upon motion by a party, to set aside any void order. (Code Civ. Proc., § 473, subd. (d).)

"A judgment is void only when the court entering that judgment lacked jurisdiction in a fundamental sense due to the entire absence of power to hear or determine the case resulting from the absence of authority over the subject matter or the parties." (*People v. The North River Ins. Co.* (2020) 48 Cal.App.5th 226, 233 [internal quotations omitted].) "Jurisdictional errors can be of two types: A court can lack fundamental authority over the subject matter, question presented, or party, makings its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable. Only void judgments and orders may be set aside under section 473, subdivision (d); voidable judgments and orders may not." (*Id.* at pp. 233-234 [internal quotations and citations omitted].)

"The time limits of section 660 are mandatory and jurisdictional, and an order made after the . . . period purporting to rule on a motion for new trial is . . . void." (*Siegal v. Superior Court of Los Angeles County* (1968) 68 Cal.2d 97, 101 (*Siegal*); see also *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1267 [discussing a motion for JNOV's "strict time limits"].) Likewise, "a trial court's failure to rule on a motion to vacate within section 663a, subdivision (b)'s time limit has the same legal effect as a trial court's failure to rule on a new trial motion within the time limit established by section 660." (*Garibotti v. Hinkle* (2015) 243 Cal.App.4th 470, 478 (*Garibotti*) [stating also "the Legislatures intent in enacting section 663a, subdivision (b), was to make the period for ruling on a motion to vacate identical to the period for ruling on a new trial motion"].)

Here, Plaintiffs served notice of entry of the judgment on January 12, 2023. The Court issued the order on Defendants' motions on April 25, 2023, 103 days after the judgment was

served. Accordingly, the order was issued outside of the seventy-five day statutory time limit and the April 25 Order is void and thus, the motions were denied by operation of law before the Court issued said order. (See *Garibotti*, *supra*, 243 Cal.App.4th at p. 483 [the motion "was denied as a matter of law before the court ruled and the court's order purporting to grant the motion is void as beyond the court's jurisdiction"]; see also *Melvin v. Carl* (1929) 206 Cal. 772, 774 [orders past the time limitation prescribed by section 660 are denied by operation of law].)

The Court also notes that Defendants' reliance on *In re Estate of Hickey* (1900) 129 Cal. 14 (*Hickey*) to support a summary of their argument that "there is no jurisdictional bar to the court correcting its judgment within a 'reasonable time,' as it did in the April 25 Order" is misguided. (See Defendants' Opposition, p. 10:19-22.) In *Hickey*, the Supreme Court determined that six months was a reasonable time for a *party* to bring a motion pursuant to Code of Civil Procedure section 473, as Plaintiffs do in this case. (*Hickey*, *supra*, 129 Cal. at pp. 15-16.) The case does not stand for the assertion that a court may correct its judgment within a reasonable time. "Since the [statutes] prescribe[] a limit which is jurisdictional in nature, relief from this form of error *may not be granted* by the trial court either under the provisions of section 473 of the Code of Civil Procedure or by means of a *nunc pro tunc* order." (*Siegal, supra,* 68 Cal.2d at pp. 101-102 [internal citations and quotations omitted][emphasis added]; *Estate of Shepard* (1963) 221 Cal.App.2d 70, 74 [stating same].) Therefore, the Court's jurisdiction is confined to the statutory time limits.

Accordingly, Plaintiffs' motion to set aside the April 25 Order is GRANTED.

Defendants' Remaining Arguments

Defendants raise additional arguments in opposition to Plaintiffs' motion, specifically, they assert that the Judgment issued on January 11, 2023 is void on its face. However, Defendants have filed a notice of appeal that encompasses this Judgment rendering the Court without jurisdiction to rule on this issue. (See e.g., *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 198 ["any subsequent trial court proceedings on matters 'embraced' in or 'affected' by the appeal [are] void-and not merely voidable . . . the automatic stay under section 916 *must* divest the trial court of fundamental jurisdiction over the matters embraced in or affected by the appeal"][emphasis original].)

Conclusion and Order

Plaintiffs' motion to set aside the April 25 Order is GRANTED. As such, the Court need not consider Plaintiffs' alternative motion for reconsideration. Plaintiffs shall prepare the final Order.

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Calendar line 4
Case Name: *ASNM, LLC, et al. v. Cherry Blossom S-Corporation, et al.*
Case No.: 19CV360605

On January 11, 2023, judgment was entered in favor of plaintiffs ASNM, LLC ("ASNM") and Najmeh Mostafavi ("Mostafavi") (collectively, "Plaintiffs") and against defendants Cherry Blossom S-Corporation ("Cherry Blossom") and Jane Sun, in the amount of $2,664,000 in compensatory damages and $9,000,000 in punitive damages, jointly and severally, as well as costs of suit, attorney's fees and post-judgment interest. The Court found Jane Sun to be the alter ego of Cherry Blossom. In the opening paragraph of the judgment, it defines "Jane Sun" as "JANE VEI-CHUN SUN, individually and as Co-Trustee of the Jarvis Holding Trust dated 6/15/2004 and as Co-Trustee of the Nixon Lucille Holding Trust dated 6/15/2004."

On April 6, 2023, ASNM served post-judgment interrogatories, and post-judgment inspection demands on Jane Sun, and on May 9, 2023, Jane Sun served responses to both. However, Jane Sun failed to produce any documents despite responses indicating that documents would be produced, and on June 2, 2023, Plaintiffs served separate meet and confer letters regarding Jane Sun's responses to both the post-judgment interrogatories, and the post-judgment inspection demands, and demanded that amended responses be provided by June 9, 2023. Counsel for Jane Sun requested an extension to June 16, 2023, and the request was granted. On June 19, 2023, Jane Sun's counsel indicated that she would provide amended responses to the post-judgment interrogatories and post-judgment inspection demands by June 23, 2023, and would provide responsive documents by June 30, 2023. Jane Sun provided amended responses to the post-judgment interrogatories and post-judgment inspection demands; however, no documents have yet been produced.

Plaintiffs move to compel further responses to the post-judgment interrogatories and post-judgment inspection demands, and to compel production of documents. Plaintiffs also request monetary sanctions.

REQUEST FOR JUDICIAL NOTICE

In support of their motion, Plaintiffs request judicial notice of articles of organization and articles of incorporation filed with the California Secretary of State, and recorded deeds. Jane Sun does not oppose the request for judicial notice. Plaintiffs' request for judicial notice is GRANTED. (See Evid. Code § 452, subds.(c), (h); see also *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1484, fn. 12 (taking judicial notice of articles of incorporation on own motion); see also *Jones v. Goodman* (2020) 57 Cal.App.5th 521, 528, fn. 6 (taking judicial notice of articles of incorporation filed with California Secretary of State); see also *West v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 780, 803 (stating that "[a] court may take judicial notice of a recorded deed"); see also *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194 (stating that "[a] recorded deed is an official act of the executive branch, of which this court may take judicial notice").)

DOCUMENTS RELATED TO EDMUND SUN

In many of the requests, Plaintiffs seek information relating to Edmund Sun in his individual capacity. In their original responses, Defendants objected to any requests regarding Mr. Sun in his individual capacity because Mr. Sun was dismissed from the lawsuit, is not a judgment debtor, and is now deceased. In their opposition to the motion to compel, Defendants now also claim for the first time that there can be no community property interest in his assets because he and Ms. Sun legally separated in 2003. Opp. p.4. Defendants have waived this objection by failing to raise it in a timely fashion. Under CCP § 2030.240(b) and CCP § 2031.240(b)(2), "the specific ground" for the objection must be set forth within the 30-day period or it is waived. *Brown v. Superior Court* (1986)180 Cal. App. 3d 701, 709. Because the Suns remained married up until Mr. Sun's death, his financial information is relevant.

PLAINTIFFS' MOTION TO COMPEL FURTHER RESPONSES TO POST-JUDGMENT INTERROGATORIES

Plaintiffs move to compel further responses from Jane Sun to post-judgment interrogatories 29, 34 and 35.

Interrogatory number 29

Interrogatory number 29 seeks the identity of any accountants used by Jane Sun and her spouse within the last three years by stating their names, addresses and telephone numbers. Jane Sun's response consists wholly of an objection based on relevance as neither her husband nor her accountants are judgment debtors and do not possess or control of any property of Jane Sun. Jane Sun cites to *Finance Holding Co., LLC v. Molina* (2018) 29 Cal.App.5th 663, arguing that "[p]ost-judgment discovery of third parties is much more narrow in scope than pre-trial discovery." (Jane Sun's opposition to motion to compel ("Opposition"), pp.4:27-28, 5:1-25.) However, *Finance Holding*, *supra*, is inapposite. There, the plaintiff and judgment creditor sought information from a third party—the judgment debtor's employer, American Institute of Certified Tax Coaches, Inc. (See *Finance Holding*, *supra*, 29 Cal.App.5th at p.667.) The *Finance Holding* court then discussed Code of Civil Procedure section 708.120, which provides that "[u]pon ex parte application by a judgment creditor… the court shall make an order directing the third person to appear before the court…." (Code Civ. Proc. § 708.120, subd. (a).) However, this interrogatory is not directed to any third party; rather, the interrogatory is directed to Jane Sun. Because Edmund Sun was married to Jane Sun and is co-trustee of the implicated trusts, his accountants are also relevant. Plaintiffs' motion to compel a further response to interrogatory 29 is GRANTED.

Interrogatory number 34

Interrogatory number 34 seeks the identity of shareholders of Cherry Blossom by name, address, telephone number, number of shares owned and percentages of total shares owned for each shareholder. Jane Sun initially responded with an objection on the ground of privacy and then stated that she owns 34% of shares of Cherry Blossom. Jane Sun then provided an amended response that also includes an objection on the ground of privacy and then stated "Jane Sun is currently the sole shareholder of Cherry Blossom S-Corporation, although Jane Sun does not own all the company's issued shares."

Plaintiffs argue that the responses are contradictory without explanation and therefore neither complete nor straightforward. (See Code Civ. Proc. § 2030.220, subd. (a) (stating that "[e]ach answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits").) In opposition, Jane Sun does not explain the contradiction, instead merely restating that "Ms. Sun is the sole shareholder, as she stated in her verified responses." (Opposition, p.6:3-4.) Here, it is difficult to understand how Jane Sun is the sole shareholder but does not own all the company's issued shares and Jane Sun's opposition and amended response does not explain the contradiction. Plaintiffs' motion to compel a further response to interrogatory number 34 is GRANTED.

Interrogatory number 35

Interrogatory number 35 seeks the identity of each member of Cherry Blossom LLC by stating the name, address, telephone number and membership ownership percentage for each member. Cherry Blossom LLC is the original entity that was converted into Cherry Blossom S-Corporation in 2010; however, Jane Sun continued to use the name Cherry Blossom LLC to conduct the business of Cherry Blossom S-Corporation, writing checks on behalf of the S-Corporation to Plaintiffs from an account held under the name Cherry Blossom LLC. (See Gullen decl., exh. L.) Moreover, nine days after Plaintiffs levied on the assets of the judgment debtors—including the S-Corporation—at Union Bank, Jane Sun then filed Articles of Organization on January 29, 2023, creating a new entity called Cherry Blossom LLC, and then served a claim of exemption on behalf of Cherry Blossom LLC, implying that the funds at Union Bank actually belonged to the LLC. (See Gullen decl., exhs. N-P.) On March 18, 2023, Jane Sun then filed amended articles which changed the name of the LLC to Cherry Blossom**s** LLC. (See Gullen decl., exh. Q.) Jane Sun's initial response objected to the request on the ground of relevance, asserting that Cherry Blossom LLC is not a judgment debtor. Jane Sun refused to provide an amended response to the interrogatory.

Jane Sun's argument in opposition again repeats its objection that Cherry Blossom LLC is not a judgment debtor, acknowledging that "Cherry Blossom LLC was an LLC organized by Jane Sun… [but] Jane Sun canceled the LLC in 2008." (Opposition, p.6:10-12.) Here, given the issues of the case, the evidence indicating that Jane Sun continued to use the name of Cherry Blossom LLC, conducted business of Cherry Blossom S-Corporation through Cherry Blossom LLC, filed Articles of Organization for a Cherry Blossom LLC in January 2023, served a claim of exemption on behalf of Cherry Blossom LLC, and then later amended the name of the LLC to Cherry Blossoms LLC, and the fact that Jane Sun is the alter ego of Cherry Blossom S-Corporation demonstrates that the interrogatory is indeed relevant. Plaintiffs' motion to compel a further response to interrogatory number 35 is GRANTED.

PLAINTIFFS' MOTION TO COMPEL FURTHER RESPONSES TO POST-JUDGMENT INSPECTION DEMANDS

Plaintiffs move to compel further responses from Jane Sun to post-judgment inspection demands numbers 1-4, 9-12, 16-18, 20, 21, 23, 24, 32-34, 36-39, 43, and 46.

Inspection demand number 1

Inspection demand 1 seeks bank statements, savings account statements, checking account statements, brokerage account statements, money market account statements, retirement account statements, and other account statements issued between 2021 and 2023 for which Jane Sun or her spouse had any interest. Jane Sun responded that she would produce bank account statements in her individual name, and objected to the demand to the extent that it seeks documents regarding Edmund Sun who is not a judgment debtor and was dismissed from the action, and is overbroad to the extent that it seeks historical documents.

Jane Sun was married to, but legally separated from Edmund Sun during the requested period; however, Edmund recently passed away. Jane Sun argues that Edmund Sun can have no community property interests since they were legally separated; however, Edmund along with Jane Sun were co-trustees for the Jarvis Holding Trust dated 6/15/2004 and for the Nixon Lucille Holding Trust dated 6/15/2004, and title to the Monterey Road property is held by both in their capacity as co-trustees for these trusts. (See Gullen decl., ¶ 20, exh. R.) Here, there is good cause for the various financial statements. The objections are OVERRULED. Jane Sun's response does not state that she will comply in whole or part pursuant to Code of Civil procedure section 2031.220; however, her response indicates that she will only produce bank statements and only regarding herself in her individual capacity. As her objections have been overruled, Jane Sun is required to provide a further response to inspection demand number 1. Plaintiffs' motion to compel a further response to inspection demand number 1 is GRANTED.

Inspection demand numbers 2-4

Inspection demand number 2 seeks documents that evidence Jane Sun's and/or Edmund Sun's interest in real property during 2021-2023, including contracts deeds, notes, deeds of trusts, leases or other records. Inspection demand number 3 seeks all appraisals, comparable sales and/or valuations of any kind relating to any real property in which Jane Sun and/or Edmund Sun had an interest during 2021-2023. Inspection demand number 4 seeks all contracts and/or agreements relating to any real property in which Jane Sun and/or Edmund Sun had an interest during 2021-2023. In her response. Jane Sun objected that the term "interest" was vague and defined it as "an ownership interest held by Responding Party as an individual" and then stated that she does not have an interest in any real property.

Plaintiffs argue that she has wrongly narrowed the term "any interest" to mean ownership interest, which is evasive and that she should also provide any documents that evidence an interest by Jane Sun and/or Edmund Sun individually or as co-trustees. In opposition, Jane Sun argues that Plaintiffs can only levy on the judgment debtor's property and thus, a non-ownership interest does not accomplish anything for Plaintiffs.

Here, Plaintiffs are correct that the term "interest" is broader than how Jane Sun defines it as in her response. "[T]he word 'interests' is an overarching label for the rights, privileges, powers and immunities that aggregate to constitute "property." (*Pacific Gas & Electric Co. v. Hart High-Voltage Apparatus Repair & Testing Co., Inc.* (2017) 18 Cal.App.5th 415, 427-428 (also stating that "'interest' is defined as follows: 'Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity'… California law recognizes a wide range of interests are included in the bundle of sticks that constitutes 'property' and those sticks may be divided and held"); see also *Tidewater Oil Co. v. Workers' Comp. Appeals Bd.*

(1977) 67 Cal.App.3d 950, 959 (stating that "[t]he word 'interest' in its ordinary signification is broad enough to include every species of property right; it is broader and more comprehensive than the word 'title'; and it may be used as synonymous with 'estate' or 'title,' or it may be used to denote something less than an estate or title… by the employment of the word 'interest' in its broad sense the Legislature manifested an intent that it should include every species of property right").) Moreover, Jane Sun also wrongly narrows her response to only an interest held by her in her individual capacity. There is good cause for the documents evidencing Jane Sun's or Edmund Sun's interests in real property from 2021-2023 either in their individual capacity or in their capacity as co-trustees. In opposition, Jane Sun fails to justify her objection or to demonstrate that her response is complete and non-evasive. Plaintiffs' motion to compel a further response to inspection demand numbers 2-4 is GRANTED.

Inspection demand numbers 9-10

Inspection demand number 9 seeks documents evidencing payments of money to Jane Sun or Edmund Sun during 2021-2023. Inspection demand number 10 seeks documents evidencing any compensation to Jane Sun or Edmund Sun from any source during 2021-2023.

Jane Sun's initial responses objected on the ground of relevance because Edmund Sun is not a judgment debtor and was dismissed from the action, on the ground of overbreadth because it seeks historical documents and seeks documents protected by the taxpayer's privilege, and she then states that she will produce bank statements for individual accounts. Jane Sun then provided an amended response, again objecting on the ground of relevance because Edmund Sun is not a judgment debtor and was dismissed from the action, and on the ground of the taxpayer's privilege, and she then states that she will produce responsive, nonprivileged documents in her individual capacity in her possession, custody or control.

Plaintiffs argue that the responses state that only bank statements in Jane Sun's individual capacity will be produced, whereas other documents such as property management agreements that evidence compensation or payments of money made to Jane Sun or Edmund Sun in their individual capacity or as co-trustees must also be produced. In opposition, Jane Sun argues that she and Edmund Sun separated so his income is irrelevant and that the inspection demands do not encompass property management agreements as it only concerns compensation to Jane Sun in her individual capacity.

Again, however, there is good cause for the documents evidencing compensation to Jane Sun or Edmund Sun in their individual capacity or as co-trustees. As to Jane Sun's argument that compensation would not encompass payments made as a result of property management, it appears that Jane Sun has a narrow view as to what constitutes "compensation." However, "[c]ompensation includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement" and "there is little reason to think that ['compensation'] would mean something narrower than ['payment']." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 875-876.) Likewise, Jane Sun's argument that documents evidencing any "compensation" would not encompass property management agreements reflecting payments made to Jane Sun or Edmund Sun in their individual

capacities or as co-trustees is not convincing. Plaintiffs' motion to compel a further response to inspection demand numbers 9-10 is GRANTED.

Inspection demand numbers 11-12

Inspection demand number 11 seeks a copy of Jane Sun's driver's license and inspection demand number 12 seeks a copy of her social security card. Jane Sun objects to the demand on the ground of privacy.

Plaintiffs argue that this information is necessary to confirm Jane Sun's identity and her connection with assets, entities or accounts, and any reasonable expectation of privacy is minimal. In opposition, Jane Sun questions what "Plaintiffs intend to do with these documents… [t]here is no lawful use for these documents." (Opposition, p.8:7-9.)

Here, there is no reasonable expectation of privacy as to Jane Sun's driver's license. (See *People v. Herrera* (1981) 124 Cal.App.3d 386, 389 (stating that "[i]nformation contained on a driver's license does not give such rise to a person's reasonable expectation of privacy").)

As to the social security card, given the issues of the case, Jane Sun's history of transactions, that Jane Sun was found to be the alter ego of Cherry Blossom, that Jane Sun should expect that Plaintiffs would need a means of identifying and confirming Jane Sun's identity in connection with assets, entities or accounts, Jane Sun has a reduced expectation of privacy in these circumstances. However, assuming that Jane Sun has a reasonable expectation of privacy under these particular circumstances, and assuming that any invasion of privacy is serious in nature, scope and actual or potential impact, "that interest must be measured against other competing or countervailing interests in a 'balancing test.'" (*Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 371.) Here, Plaintiffs need the social security number to be able to confirm Jane Sun's identity and her connection with assets, entities and accounts. This information is highly relevant as to various source of information. On balance, Plaintiffs' interest in confirming Jane Sun's identity and her connection with assets, entities and accounts outweighs any possibility of disclosure of Jane Sun's social security number. Regardless, the parties shall stipulate to a protective order with an attorney's eyes only provision if they have not already done so. As said above, given the issues of the case, Jane Sun shall produce the social security card subject to a protective order with an attorney's only provision. (See *Pioneer*, *supra*, 40 Cal.4th at p.371 (stating that "[p]rotective measures, safeguards and other alternatives may minimize the privacy intrusion").) Plaintiffs' motion to compel a further response to inspection demand numbers 11-12 is GRANTED.

Inspection demand numbers 16-18, 20-21

Inspection demand numbers 16-18 seek the operating agreements, articles of organization, and accounting records for any LLCs which Jane Sun and/or Edmund Sun had any interest during 2021-2023. Inspection demand numbers 20 and 21 seek the partnership agreements and accounting records for any limited or general partnerships in which Jane Sun and/or Edmund Sun had any interest during 2021-2023. Jane Sun objects to the inspection demand on the ground of relevance because Edmund Sun is not a judgment debtor and was

dismissed from the action, on the ground of overbreadth because it seeks historical documents, and on the ground of privacy rights of third parties.

In opposition to the motion, Jane Sun notes that "[t]hese requests seek information regarding entities that are not parties to this action… [and] are entirely overbroad… [as] the Requests seek all information regarding nonparty LLCs and partnerships… [and a] judgment against Jane Sun and Cherry Blossom S-Corporation is not a license to invade the sphere of privacy of nonparties and nondebtors." (Opposition, p.8:14-22.)

However, "[a] corporation, partnership or unincorporated association has no personal right of privacy." (*Fibreboard Corp. v. Hartford Accident & Indemnity Co.* (1993) 16 Cal.App.4th 492, 516; see also *The Community Action Agency of Butte County v. Super. Ct. (Bussey)* (2022) 79 Cal.App.5th 221, 238, fn. 10 (stating that "corporations have no California right to privacy that is protected by the California Constitution or statutory law").) Even if corporations had a general right of privacy, the documents sought do not invoke any right of privacy in the first instance as these entities have a reduced expectation of privacy and there would be no serious invasion of privacy in the disclosure of these documents. There is good cause for these documents that enable the confirmation of Jane Sun's interests, rights and obligations in the entities as well as the profits, losses and distributions of income. Jane Sun is incorrect that these documents lack relevance as she is not only liable in her individual capacity but she and Edmund Sun are also liable as co-trustees. Plaintiffs' motion to compel a further response to inspection demand numbers 16-18, 20 and 21 is GRANTED.

Inspection demand numbers 23-24

Inspection demand number 23 seeks documents evidencing Jane Sun and Edmund Sun's interest in any stocks, bonds, mutual funds, exchange traded funds, or any other securities at any time during 2021-2023. Inspection demand number 24 seeks documents evidencing the right to any future payment to Jane Sun or Edmund Sun owned during 2021-2023. Jane Sun's response states that she will produce responsive nonprivlileged documents sufficient to show any rights or interests in 2021-2023 to the extent that they are in her possession, custody or control and can be located following a diligent search and reasonable inquiry.

Plaintiffs argue that "[t]hese responses are improper because instead of stating whether she has and will produce these documents, she merely states that she will for documents in the future when they should have already conducted the inquiry and search necessary." (Pls.' memorandum of points and authorities in support of motion, p.7:12-15.) However, that is not what Code of Civil Procedure section 2031.210 requires. Subdivision (a)(1) requires that a party responding to an inspection demand respond separately to each demand by "[a] statement that the party **will comply** with the particular demand for inspection… by the date set for the inspection." (Code Civ. Proc. § 2031.210, subd.(a)(1) (emphasis added).) Here, Jane Sun's response—like the statement required by section 2031.210, subdivision (a)(1)—is in the future tense. (See also Code Civ. Proc. § 2031.220 (stating that "[a] statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed **will comply** with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, **will be allowed** either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being

made **will be included** in the production").) Plaintiffs' argument does not mandate a further response on a motion to compel a further response pursuant to Code of Civil Procedure section 2031.310; rather, this argument would be more appropriate for a motion for order compelling compliance upon failure to permit inspection pursuant to section 2031.320. Plaintiffs' motion to compel a further response to inspection demand numbers 23 and 24 pursuant to Code of Civil Procedure section 2031.310 is DENIED without prejudice to a motion to compel compliance as to inspection demand numbers 23 and 24.

Inspection demand numbers 32 and 33

Inspection demand numbers 32 and 33 seek the trust declaration and any amendments for the Jarvis Holding Trust dated 6/15/2004 and the Nixon Lucille Holding Trust dated 6/15/2004. Jane Sun's response states that she is not a judgment debtor in her capacity as a trustee and thus objects on the grounds of relevance and third party privacy. Jane Sun's opposition repeats the same argument and additionally argues that the properties held for the benefit of the beneficiaries are not assets of the trustee. Here, as explained above, Jane Sun is wrong that she is not a judgment debtor in her capacity as a trustee. Her additional argument likewise lacks merit as the information is nevertheless relevant. There is good cause for the documents. Plaintiffs' motion to compel a further response to inspection demand numbers 32 and 33 is GRANTED.

Inspection demand numbers 34, 36-39 and 42-43

Inspection demand numbers 34, 36-39 and 42-43 seek the trust declarations of other trusts for which Jane Sun is a trustee along with Edmund Sun. Jane Sun objects to the inspection demands on the grounds that she is not a judgment debtor in her capacity as trustee of those trusts. However, as Jane Sun noted in opposition, trust property "is held for the benefit of the beneficiaries." (Opposition, p.10:5-6.) Contrary to Jane Sun's unsupported statement that she is not a beneficiary of the trusts, Plaintiffs present evidence that Jane Sun is the beneficiary of the Cherry Blossom Holding Trust, the Gunnhi Holding Trust, the Newark Holding Trust, the Sanctuary Holding Trust and the Sun and Sons Holding Trust. (See Gullen decl. exhs. S-W.) In opposition, Jane Sun does not address the evidence provided in support of Plaintiffs' argument. There is good cause for the trust documents. Plaintiffs' motion to compel a further response to inspection demand numbers 34, 36-39 and 42-43 is GRANTED.

Inspection demand number 46

Inspection demand number 46 seeks operating agreements for Cherry Blossom, LLC. Jane Sun's response objects that Cherry Blossom LLC is not a judgment debtor and refuses to otherwise respond. Here, Jane Sun has not stated a valid ground for the objection. However, as previously stated, given the issues of the case, the evidence indicating that Jane Sun continued to use the name of Cherry Blossom LLC, conducted business of Cherry Blossom S-Corporation through Cherry Blossom LLC, filed Articles of Organization for a Cherry Blossom LLC in January 2023, served a claim of exemption on behalf of Cherry Blossom LLC, and then later amended the name of the LLC to Cherry Blossoms LLC, and the fact that Jane Sun is the alter ego of Cherry Blossom S-Corporation demonstrates good cause for the inspection demand and that the inspection demand is indeed relevant. Plaintiffs' motion to compel a further response to inspection demand number 46 is GRANTED.

PLAINTIFFS' MOTION TO COMPEL COMPLIANCE TO POST-JUDGMENT INSPECTION DEMANDS

Jane Sun's counsel agreed to produce documents responsive to Plaintiffs' inspection demand numbers 1, 9, 10 and 15 by June 30, 2023. (See Gullen decl., ¶¶ 4-8, exhs. E-H.) No documents were produced. (See Gullen decl., ¶11.) In opposition, Jane Sun does not address the failure to produce any documents. Accordingly, Plaintiffs' motion to compel compliance upon failure to produce documents is GRANTED.

PLAINTIFFS' REQUEST FOR MONETARY SANCTIONS

In connection with its motions to compel, Plaintiffs request monetary sanctions in the amount of $19,910 against Jane Sun. Plaintiffs substantially prevailed on their motion. The request is code-compliant.

In opposition to the motion, Jane Sun complains that her arguments are entirely correct, and that Plaintiffs failed to meet and confer. For reasons previously stated, Jane Sun is largely incorrect with regards to the merits of her opposition. As to Plaintiffs' purported failure to meet and confer, Jane Sun acknowledges that Plaintiffs sent many letters. (See Opposition, pp.10:25-28, 11:1 (stating that Plaintiffs engaged in "a letter writing campaign" and "wr[o]te letters, impose[d] unilateral deadlines, refuse[d] any compromise, and proceed[ed] to motion practice").) The Court finds that the parties adequately met and conferred, exchanging multiple correspondences. (See Gullen decl., exhs. D-H.)

Plaintiffs' counsel calculates that they have spent 32.2 hours enforcing the post judgment discovery, including drafting meet-and-confer letters and the motion. Plaintiffs' counsel's rate is $550 per hour. Plaintiff also anticipates incurring an additional 4 hours reviewing the opposition, preparing a reply for the hearing and appearing at the hearing for a total of 36.2 hours and $19,919 in fees. However, the Court neither awards anticipatory costs nor costs associated with meet and confer efforts. The Court reduces the amount of monetary sanctions to 10 hours of time for a total of $5,500. Plaintiffs' request for monetary sanctions is GRANTED in part.

Conclusion

Plaintiffs' request for judicial notice is GRANTED. (See Evid. Code § 452, subds.(c), (h); see also *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1484, fn. 12 (taking judicial notice of articles of incorporation on own motion); see also *Jones v. Goodman* (2020) 57 Cal.App.5th 521, 528, fn. 6 (taking judicial notice of articles of incorporation filed with California Secretary of State); see also *West v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 780, 803 (stating that "[a] court may take judicial notice of a recorded deed"); see also *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194 (stating that "[a] recorded deed is an official act of the executive branch, of which this court may take judicial notice").)

Plaintiffs' motion to compel further responses to post-judgment interrogatories numbers 29, 34 and 35 is GRANTED. Defendant Jane Vei-Chun Sun, individually, and as co-trustee of the Jarvis Holding Trust dated 6/15/2004 and as co-trustee of the Nixon Lucille

Holding Trust dated 6/15/2004 (collectively, "Jane Sun") shall provide further, verified, code-compliant responses within 20 calendar days of this Order without objections.

Plaintiffs' motion to compel further responses to post-judgment inspection demand numbers 1-4, 9-11, 16-18, 20, 21, 32-34, 36-39, 43, and 46 is GRANTED. Defendant Jane Sun shall provide further, verified, code-compliant responses without objections and produce all responsive documents in her possession, custody and control to Plaintiffs within 20 calendar days of this Order.

Plaintiffs' motion to compel a further response to post-judgment inspection demand number 11 is GRANTED. The parties shall stipulate to a protective order with an attorney's eyes only provision if they have not already done so. Within 20 calendar days of this Order, defendant Jane Sun shall provide a further, verified, code-compliant response without objections and produce a copy of her social security card subject to the aforementioned protective order with an attorney's only provision. (See *Pioneer*, *supra*, 40 Cal.4th at p.371 (stating that "[p]rotective measures, safeguards and other alternatives may minimize the privacy intrusion").)

Plaintiffs' motion to compel a further response to post-judgment inspection demand numbers 23 and 24 is DENIED.

Plaintiffs' motion to compel compliance upon failure to produce documents to post-judgment inspection demand numbers 1, 9, 10 and 15 is GRANTED. Defendant Jane Sun shall produce all responsive documents in her possession, custody and control to Plaintiffs within 20 calendar days of this Order.

Plaintiffs' request for monetary sanctions is GRANTED in part. Counsel for defendant Jane Sun shall pay counsel for Plaintiffs $5,500 within 20 calendar days of this Order.

Plaintiffs, as the prevailing party, shall submit the final order.

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Calendar line 9
Case Name: Guillermo Villagrana v. Caliber Holdings et al
Case No.: 20CV372981

Plaintiff Guillermo Villagrana brings a motion to disqualify the arbitrator, to rescind the arbitration, and to allow the case against Defendant Higareda to proceed in state court. Plaintiff contends that the arbitrator should be disqualified because the arbitrator did not timely reply to his motions for disqualification under CCP § 170.3, and as such consented to his disqualification. Plaintiff claims that Defendants breached the arbitration provision regarding following the Federal Rules of Civil Procedure, such that the arbitration provision should be rescinded. Lastly, Plaintiff asserts that because Defendant Higareda failed to join the arbitration, Plaintiff should be able to proceed against him in state court. All three claims are denied.

This case is currently stayed pursuant to the Court's order of May 12, 2022, wherein the court stayed the case "pending completion of arbitration." Because of the stay, this Court has only "vestigial powers." *Brock v. Kaiser Found. Hosps*. (1992) 10 Cal.App.4th 1790, 1796. Under its "vestigial" jurisdiction, "a court may: appoint arbitrators if the method selected by the parties fails (§ 1281.6); grant a provisional remedy 'but only upon the ground that the award to which an applicant may be entitled may be rendered ineffectual without provisional relief ' (§ 1281.8, subd. (b)); and confirm, correct or vacate the arbitration award (§ 1285). Absent an agreement to withdraw the controversy from arbitration, however, no other judicial act is authorized." *Titan/Value Equities Group, Inc. v. Superior Court* (1994) 29 Cal. App. 4th 482, 487. Questions of procedure and discovery are for the arbitrator, not the court. *Id*. at 488.

Plaintiff's motions do not fit within the exceptions to the court's lack of jurisdiction. In its reply, Plaintiff contends that the Court does have jurisdiction, citing the exception for determining "any subsequent petition involving the same agreement to arbitrate and the same controversy." Reply, pp2-3. But here there is no later petition and the provisions Plaintiff cites are inapposite to his motion to disqualify the arbitrator. Because the case is stayed and Plaintiff's motions to disqualify, for rescission, and for finding of waiver do not fall within the vestigial jurisdiction of the Court, the Court has no jurisdiction to hear these motions and Plaintiff's requests are DENIED in their entirety.

To the extent that Plaintiff's request to find that Mr. Higareda failed to join the arbitration and thereby waived his right to arbitration could be deemed to be within the court's vestigial powers, he would still lose. From Defendant's exhibits, it appears that although Plaintiff failed to include Mr. Higareda as a respondent in his demand for arbitration, both sides initially agreed on April 28, 2023 that Mr. Higareda would be a party to the arbitration. Ex. P, to Decl. of Rowley. Then, Plaintiff objected to Mr. Higareda's joinder in the arbitration by letter dated May 1, 2023. Ex. R to Decl. of Rowely. On May 2, 2023, in the pre-order #15, the arbitrator found that "counsel stipulated that Ruben Higareda, who was not named as a Respondent in Claimant's Demand for Arbitration, is not now a Respondent in this arbitration and has never been a Respondent in this Arbitration." Ex. 5, Decl. of Shepardson. Based on Mr. Higareda's initial agreement to be part of the arbitration, despite Plaintiff not naming him, and due to the stipulation of the parties as to his current status, this Court does not find that Mr.

Higareda waived arbitration.[3] Moreover, the arbitrator has been ruling on the status of Mr. Higareda which only serves to underscore why this issue must be stayed pending the resolution of the arbitration.

Plaintiff's motion is denied. Defendants shall submit the final order.

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[3] In reply, Plaintiff raises a new argument regarding Higareda's failure to pay fees. The Court will not entertain new arguments raised for the first time on appeal.

Calendar line 10
Field v. Google

Google brings a motion to dismiss, or alternatively to stay the action based on forum non conveniens. Forum non conveniens is "an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 751. Google claims that because (1) Plaintiffs are not California residents; (2) most of the fact witnesses and medical professionals are located in Texas; and (3) there is no private or public policy interest in having the case heard in California, this case should be brought in Texas. Plaintiffs oppose the motion.

Legal Standard

"In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." *Stangvik*, 54 Cal.3d at 559-560. To carry its burden, the moving defendant must present evidence "establishing a suitable alternate forum and providing the trial court with sufficient facts to carry out its weighing and balancing analysis." *Nat'l Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 933 n.15. The Court has discretion in ruling on the motion. *Id*.

Analysis

Suitability of Texas

The first question is whether Texas is a suitable place for this action, as an action should not be dismissed if, for example, the defendant cannot be subjected to jurisdiction in the other state. *Stangvik*, 54 Cal.3d at 752. A forum is generally suitable where there is jurisdiction and the action is not barred by the statute of limitations. *Auffret v. Capitales Tours, S.A.* (2015) 239 Cal.App.4th 935. 940. Plaintiff states that Texas is not suitable for several reasons, including that Texas would not have jurisdiction over Plaintiff Melissa McRee without her consent because she has no ties to Texas and did not suffer harm there and because it is questionable whether Texas would have jurisdiction over Plaintiff Field since his ties were "fleeting." Opp. p 14-15. But he cites no authority in support of this claim. Given that Plaintiff was working in Texas, at least for part of the time during the alleged actionable conduct, and that Defendant has business offices in Texas and at least some of its employees who committed the alleged conduct worked in Texas, there is no reason to think Texas would not have jurisdiction. The statute of limitations also would not present a bar to prosecuting the case in Texas given Defendant's willingness to toll the actions. Mem. p8.

In addition to jurisdiction and statute of limitations, Plaintiff claims that Texas is not suitable because it cannot provide a remedy for the actions brought. Defendant concedes that Texas does not recognize Plaintiff's claims for false light and retaliation claims under Labor Code § 1102.5, claiming without persuasive support, that they are duplicative of other claims. Memo p 8. Given that not all of Plaintiffs' claims can be redressed under Texas law, it seems that Texas is not a suitable forum.

Private and Public Interests

However, even assuming that Texas were a suitable forum, Defendant cannot meets its burden to show that private and public interests weigh in favor of a dismissal or a stay. There is "a strong presumption in favor of the plaintiff's choice of forum." *Stangvik*, 54 Cal. 3d at 753. Moreover, "if a corporation is the defendant, the state of its incorporation and the place where its principal place of business is located is presumptively a convenient forum." *Id.* at 755. While this presumption can be rebutted, it is not rebutted in this case.

Defendant claims that the private interest factors make Texas the more suitable forum, alleging that the fact witnesses and medical witnesses are there. Defendant contends, for example, that the Plaintiffs are no longer in California and that Defendant Maycock and other percipient witnesses "were located in Texas during the relevant timeframe." Memo, p9. While Plaintiffs may not live if California, they also do not live in Texas. Significantly, Defendant provides no declaration that any of the percipient or material witnesses currently reside in Texas. As such there is no greater private interest to Google in having the trial in Texas as there would be in California. And in any event, as suggested by Plaintiff, any out of state witnesses could be deposed remotely, incurring little to no additional expense based on the location of the witnesses.

On the other hand, there are a number of factors that weigh in favor of having the case in California. Plaintiff McRee has significant ties to California having grown up here and having lived here until recently. Plaintiff Field worked for Google from California for 11 months (more months than he was in Texas), worked out of Google's California offices at times, and received medical treatment from doctors in California. Decl. of Field. Google is headquartered in California and has its principal place of business in California. The declarations filed for this motion indicate that the witnesses in the case currently live throughout the United States and even Canada, rendering California no more inconvenient than Texas.

With respect to the public interest, given that Google has its headquarters and principal place of business here in Santa Clara County, its business and employment practices are of significant concern to Californians. Moreover, there is no evidence from Defendant suggesting the California courts would be overburdened due to this action.

Conclusion

Based on the above, and the additional arguments in the opposition, the motion to dismiss, or to alternatively stay the action based on forum non conveniens, is DENIED. Plaintiffs shall submit the final order.

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