SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: July 6, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

IN PERSON HEARINGS: The Court strongly prefers in person appearances for contested law and motion matters. We are open and look forward to seeing you in person again.

VIRTUAL HEARINGS: Whenever feasible, please use video when appearing for your hearing virtually through Microsoft Teams. To attend virtually, click or copy and paste this link into your internet browser, and scroll down to Department 6: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO HAVE YOUR HEARING REPORTED: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here: https://www.scscourt.org/general_info/court_reporters.shtml

LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV342573	REVIVER FINANCIAL, LLC vs ANA SUAREZ	Parties are ordered to appear for examination.
LINE 2	21CV381901	PHYSICIANS SURGERY SERVICES, LP vs Shultz & Associates	Defendant Shultz & Associates' Demurrer is off calendar. Plaintiff filed a First Amended Complaint pursuant to Code of Civil Procedure section 472(a) on June 22, 2023. The Court sets a further case management conference for September 12, 2023.
LINE 3	22CV408830	Li Chang vs Shu-Mei Chang	Plaintiff/Counter-defendant's Demurrer and Motion to Strike are off calendar. Defendant/Counterclaimant filed her First Amended Cross-Complaint pursuant to Code of Civil Procedure section 472(a) on June 22, 2023.
LINE 4	20CV371939	ANTRANIK ANTRANIK et al vs 7-ELEVEN STORE et al	Defendants' Mohammed Pournagshband and Firooz Khandan's Motion for Summary Judgment/Summary Adjudication is continued to July 20, 2023 at 9 a.m. in Department 6 to permit the Court to review the Opposition papers which were not e-filed (but were timely served and submitted in hard copy).
LINE 5	22CV408665	QUOTE VELOCITY, LLC, a Delaware Limited Liability Company vs Hi.Q, Inc., a Delaware Corporation et al	Eva Spahn's Motion to Appear Pro Hac Vice is GRANTED. Court to use order on file.
LINE 6	22CV408665	QUOTE VELOCITY, LLC, a Delaware Limited Liability Company vs Hi.Q, Inc., a Delaware Corporation et al	Plaintiff Quote Velocity LLC's Motion to Compel Defendants' Further Responses to Written Discovery is GRANTED. Defendants are ordered to provide supplemental written discovery responses, including a timeline for document collection and production, on or before July 26, 2023. Based on this record and the Declaration of Gaurav Suri, Plaintiff's motion for sanctions is DENIED. Please scroll down to Line 6 for full tentative ruling. Court to prepare formal order.
LINE 7	22CV408665	QUOTE VELOCITY, LLC, a Delaware Limited Liability Company vs Hi.Q, Inc., a Delaware Corporation et al	See line 6, above.
LINE 8	20CV368715	CHICAGO TITLE COMPANY vs LISA SHUMWAY et al	Lisa Shumway's Motion to Enforce Settlement is off calendar. That motion was disposed of in the Court's April 20, 2023 order.
LINE 9	21CV377715	Jay Tsai et al vs Hao Liu et al	Minor's Compromise Claim is APPROVED. Court to use order on file.
LINE 10	21CV377715	Jay Tsai et al vs Hao Liu et al	Minor's Compromise Claim is APPROVED. Court to use order on file.

LINE 11	19CV358454	Mark Bettelheim vs Lorenzo Rios et al	Defendants' Motion for Attorneys' Fees and Costs is GRANTED. The Court orders Plaintiff to pay Defendants $133,398.11 in attorneys' fees and costs within 90 days of service of the final order. The Court further finds Code of Civil Procedure section 583.310, requiring that cases be dismissed if not brought to trial within 5 years, is inapplicable. Plaintiff dismissed this case without prejudice on June 7, 2022. Please scroll down to Line 11 for full tentative ruling. Court to prepare formal order.
LINE 12	23CV412524	In re: J.G. Wentworth Originations, LLC	On June 8, 2023 Petitioner's Request for Approval for Transfer of Payment Rights was before the Court. Although there appeared to be good cause to grant the petition, the Transferor's declaration and Exhibits C and D were not submitted to supplement the record. The Court therefore ordered the Petitioner to appear and provide this complete record at the hearing. During the hearing, Petitioner requested a continuance to provide this information, and the Court reset this matter for July 6, 2023. As of July 3, 2023, there was no additional information in the Court's file. Accordingly, the Court again orders Petitioner to appear at the hearing on July 6, 2023 at 9 a.m. in Department 6 to explain the status of this petition.

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Calendar Line 6
Case Name: *QUOTE VELOCITY, LLC, a Delaware Limited Liability Company vs Hi.Q, Inc., a Delaware Corporation et al*
Case No.: 22CV408665

Before the Court is Plaintiff's Quote Velocity, LLC's Motion to Compel and for Sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a breach of contract case. Plaintiff Quote Velocity, LLC ("Quote Velocity") provides real-time web and live transfer prospects, i.e., lead generation in financial, automotive and healthcare verticals. (Complaint, ¶14.) Defendant Health IQ Insurance Services, Inc. is a Medicare broker that uses individual's health care records to find and recommend healthcare plans tailored to that individual's needs. (Complaint, ¶15.) On April 6, 2021,[1] Quote Velocity and Hi.Q, Inc. entered a Lead Purchasing Agreement whereby Health IQ agreed to pay Quote Velocity for customer leads. (Complaint, ¶16.) From May 2021 through September 2022, Quote Velocity provided millions of dollars of services to Health IQ for which Health IQ paid. (Complaint, ¶25.)

Thereafter, however, Health IQ stopped paying for Quote Velocity's services. (Complaint, ¶¶26-42.) Quote Velocity alleges Health IQ knew it would be unable to pay for additional services but nonetheless demanded increasing levels of lead generation from Quote Velocity. (Complaint, ¶38.) Quote Velocity made several demands for payment, and ultimately terminated the Lead Purchasing Agreement by letter dated December 14, 2022. (Complaint, ¶¶39-41.) The final invoice Quote Velocity included with the termination letter reflects a total outstanding balance of $6,988,428.00. (Complaint, ¶41.) As of the filing date of this Complaint, Defendants had not responded to Quote Velocity's letter. (Complaint, ¶42.)

Quote Velocity then brought this lawsuit on December 16, 2022 alleging a single cause of action for breach of contract. On December 26, 2022. the Court (Hon. Peter Kirwan) issued Quote Velocity's requested writ of attachment for the entire $6,988,428.00 "for any property of defendant who is not a natural person for which a method of levy is provided."

On February 1, 2023, Quote Velocity served Defendants with Form Interrogatories, Special Interrogatories, and Requests for Production of Documents. Defendants served their responses on March 8, 2023, with the virtually identical six pages of general objections and the same response to each individual request that included additional objections and this final sentence: "Based on the foregoing objections, Defendant will not produce documents responsive to this Request as written and will meet and confer with Plaintiff in good faith." As of the filing of the motion, Defendants have produced no substantive responses, documents or privilege log.

[1] The Complaint has the date listed as April, 6, 20**22**. However, at paragraph 25, the Complaint lists invoices for services Quote Velocity provided from May 20**21** to September 2022, thus the Court understands that the Parties' relationship actually began in 2021.

The Parties met and conferred by Zoom on March 24, 2023. Plaintiff contends Defendants provided no explanation for their objections, instead choosing to rely on those objection and not to provide any substantive discovery responses.

II. Legal Standard and Analysis

Discovery is generally permitted "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Cal. Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall limit the scope of discovery" if it determines that the burden, expense, or intrusiveness of that discovery "clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Cal. Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Cal. Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. Cal. Code Civ. Pro. §2031.210(a). A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand." Cal. Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. This burden may be satisfied by a fact-specific showing of relevance. *TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448. Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party's option to produce writings from which the answer can be determined, or an objection to the particular interrogatory. (Code Civ. Pro. §2030.210(a).) the responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

Defendants claim they cannot respond to this discovery because they lack sufficient monetary resources and had to let nearly all of their employees go. First, this does not appear to have been discussed with Plaintiff in the meet and confer context. Next, the Court is unfortunately faced with

many litigants that have limited resources, including self-represented litigants. The Court is required to treat those litigants the same as those represented by expensive law firms. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 (self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure; see also *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, while the Court may be sympathetic to Defendants' financial problems and loss of personnel, those issues do not permit Defendants to avoid their discovery obligations.

Defendants were able to propound numerous objections and prepare an opposition to the present motion. However, Defendants did not endeavor to provide even rudimentary substantive responses to these written discovery demands or to propose solutions or a timetable for collecting documents.

Accordingly, Plaintiff's motion to compel further responses to written discovery requests is GRANTED. Defendants are ordered to provide supplemental written discovery responses, including a timeline for document collection and production, on or before July 26, 2023.

Based on this record and the Declaration of Gaurav Suri, Plaintiff's motion for sanctions is DENIED.

Calendar Line 11
Case Name: *Mark Bettelheim v. Lorenzo Rios, et. al.*
Case No.: 19CV358454

Before the Court is Defendants' Motion for Attorney Fees and the applicability of Code of Civil Procedure section 583.310. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

III. Background

Plaintiff Mark Bettelheim initiated this lawsuit on November 8, 2019 asserting (1) intentional infliction of emotional distress, (2) violation of the Davis-Stirling Act, (3) self-dealing, (4) breach of fiduciary duty, and (5) violation of business and professions code section 17200 *et. seq.* Defendants answered the complaint on December 19, 2019.

According to the Complaint, Mr. Bettelheim owns a condominium unit in the Pigeon Loft Condominium Project ("Property"). (Complaint, ¶3.) Defendant Lorenzo Rios was acting as the director on the board of the Pigeon Loft Condominium Association ("HOA") despite not being elected to that position. (Complaint, ¶4.) Defendant Norma Rios is his wife, also acted as a director on the HOA board without being elected, and together they own a condominium unit in the same complex as Mr. Bettelheim. (Complaint, ¶4-5.) The complaint alleged Defendants "unlawfully usurped control of a homeowners association by refusing to have elections for years." (Complaint, ¶1.)

Plaintiff further alleged Defendants prevented lawfully required HOA elections to go forward and engaged in "a many-year campaign of terror on Plaintiff, an autistic individual." (Complaint, ¶¶8-18.) This "campaign of terror" included emailing Plaintiff on October 1, 2019 to notify him "that 'the foreclosure is proceeding,' and that Plaintiff would likely be 'evacuated of unit 444' the next week." (Complaint, ¶19.) Plaintiff makes numerous other allegations of wrongdoing stemming from Defendants' "control" of the HOA, including failing to properly utilize HOA dues to maintain the Property until the maintenance issues directly impacted Defendants, failing to issue Plaintiff a parking pass for three years, wrongfully accusing Plaintiff of failing to pay dues, and the like. (See, generally, Complaint.) Plaintiff's allegations all arise out of the HOA rules and requirements. (*Id.*)

In July 2020, Plaintiff moved for appointment of a receiver, again based on the alleged failure of Defendants to hold elections or to properly maintain the Property. The Court (Hon. Sunil Kulkarni) denied Plaintiff's motion, stating:

> Appointing a receiver is a far-reaching, expensive remedy. The Court does not believe that Plaintiff has shown enough to justify appointment of a receiver at this time. It's not clear that any of the problems that supposedly need repair will deteriorate drastically or irreversibly before trial. And there are many factual issues that need resolution with regard to Plaintiff's claims about improper elections and board members. Trial is coming up in early November 2020 that is the best place to resolve all of these factual disputes. The Court therefore DENIES the motion. (9/10/2020 Minute Order.)

On October 8, 2021 Defendants moved for summary judgment. Pursuant to stipulation, in April 2022, the Parties agreed to continue the hearing on that motion from March5, 2022 to June 21, 2022 due to a severe injury suffered by Plaintiff's then-counsel. On April 28, 2023, Plaintiff submitted a substitution of counsel form at which time Plaintiff's current counsel of record entered the case. Shortly thereafter, on June 7, 2022, the same day his opposition to Defendants' summary judgment motion was due, Plaintiff requested that the entire action be dismissed without prejudice. This motion for attorney fees followed on December 5, 2022.

The clerk's office originally set the hearing for this motion for March 21, 2023. The Court did not locate a proof of service in the court's file demonstrating that an amended notice of motion for that hearing date was served. The Court therefore continued the hearing on this motion to April 27, 2023 and directed Defendants to serve an amended notice of motion. While preparing tentative rulings for the April 27, 2023 hearing, the Court again did not locate a proof of service of the amended notice of motion in the court's file. However, the Court erroneously indicated in its April 26, 2023 tentative ruling that it would continue the hearing to June 1, 2023 (rather than dismiss the motion without prejudice). The motion was accordingly set to be heard on June 1, 2023.

This time, Defendants did serve an amended notice of motion for this hearing date. The amended notice was served and filed on May 12, 2023. Plaintiff submitted an opposition on May 18, 2023 arguing the Court should deny Defendants' motion due to insufficient notice under Code of Civil Procedure section 1005(b) because 16 court days before June 1 was May 5, and Defendants did not serve the amended notice of motion until May 12.

The Court's May 31, 2023 tentative ruling awarded fees and costs to Defendants. During the June 1, 2023 hearing, Plaintiff requested a continuance to file a substantive opposition, which request the Court granted. The Court's May 31, 2023 tentative ruling also requested additional information to support the amount of fees and costs in Defendants' request. The Parties have now each provided the Court with additional briefing and evidence, and the Court issues a modified tentative ruling below.

IV. Legal Standard and Analysis

A. Service of Amended Notice of Motion

Code of Civil Procedure section 1005, subdivision (b), requires all moving and supporting papers to be served and filed at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (b).) Here, the proof of service was served less than 16 days before the hearing. Plaintiff does not argue it was prejudiced by this delay in notice, and Plaintiff plainly had actual notice of this motion long before it received the notice of motion for this June 1, 2023 hearing date since Plaintiff received the Court's tentative rulings for the prior motions (which rulings Plaintiff references in his opposition) and actually served an opposition to this motion. On these facts and the history of this case, the Court finds Plaintiff waived any irregularities in the notice. (See *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7 ["[i]t is well settled that the appearance of a party at the hearing of a motion and [their] opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion."]; see also *Moofly Productions, LLC v. Favila* (2020) 46 Cal. App. 5th 1, 10.)

Plaintiff may argue that in the above-cited cases the non-moving party opposed the motion *on the merits*, and here Plaintiff only objected on procedural grounds. The Court considered this point carefully and must reject this argument in this case. First, in cases where the courts have not found a waiver, the non-moving party had received no notice at all and therefore did not appear to oppose the requested relief before that relief was granted. (See e.g., *Jones* v. *Otero* (1984) 156 Cal.App.3d 754; *St. Paul Fire & Marine Ins. Co.* v. *Superior Court* (1984) 156 Cal.App.3d 82; *O'Brien* v. *Cseh* (1983) 148 Cal.App.3d 957, 961; *Duggan* v. *Moss* (1979) 98 Cal.App.3d 735.) By contrast, Plaintiff long had notice of this motion, which was filed and first served in December 2022 and subsequently appeared on the Court's law and motion calendar twice. That Plaintiff has had such notice is made clear by its opposition.

Perhaps it is for this reason that Plaintiff does not claim to have suffered any prejudice by the delayed service of the amended notice of motion. Plaintiff's opposition is a technical one, devoid of any evidence that the technical error had any practical impact on his ability to respond. This is not a small point. A non-moving party with actual notice of a motion who suffers no prejudice by a defect in service that seeks to avoid waiver of defects by filing the sort of opposition Plaintiff filed here is turning the purpose of the notice requirement on its head.

However, now Plaintiff has been given the opportunity to file a substantive response. The Court does not find the arguments in that response persuasive, as outlined further below.

B. Attorney Fee Request

Enforcement of recorded CC&Rs of a common interest development, like the Property here, is governed by the Davis-Stirling Common Interest Development Act. Section 5975 of that Act provides: "In an action to enforce the governing documents [of a common interest development], the prevailing party shall be awarded reasonable attorney[] fees and costs." (Civ. Code §5975(c).) The prevailing party is entitled to such fees "as a matter of right" and the trial court is "obligated to award attorney fees. . .whenever the statutory conditions have been satisfied." (*Champir, LCC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 589, citing *Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1152.)

Section 5975 does not define "prevailing party." (*Champir*, 66 Cal.App.5th at 590.) The law is well settled, however, that "[t]he analysis of who is a prevailing party under the fee-shifting provisions of the Act focuses on who prevailed 'on a practical level' by achieving its main litigation objectives.'" (*Id.*, quoting *Rancho Mirage Country Club Homeowners Assn. Hazelbaker* (2016) 2 Cal.App.5th 252, 260; *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574; *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94; *Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773.)

"In determining the prevailing party under the Davis-Stirling Act, the court "should 'compare the relief awarded on the . . . claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made. . . by 'a comparison of the extent to which each party has succeeded and failed to succeed in its contentions." (*Champir*, 66 Cal.App.5th at 592 (internal citations and quotations omitted).) The trial court cannot, as Defendants urge the Court to do, use the

definition of "prevailing party" under Code of Civil Procedure section 1032(a)(4). (*Id.* at 594.) Case law teaches: "this argument, that a litigant who prevails under the cost statute is necessarily the prevailing party for purposes of attorney fees, has been uniformly rejected by the courts of this state." (*Id.*, quoting *Heather Farms*, 21 Cal.App.4th at 1572.)

The gravamen of Plaintiff's Complaint here was Defendants' alleged failure to hold elections and to otherwise comply with the HOA requirements—exactly the type of case where Section 5975 applies. Plaintiff dismissed the entire action on the same day his opposition to Defendants' summary judgment motion was due, indicating an inability or lack of preparedness to substantively respond to that motion. Thus, this case is like *Salehi*, where the court of appeal reversed the trial court's denial of fees to defendants after plaintiff voluntarily dismissed her action on the eve of trial. (*Salehi*, 200 Cal.App.4th 1152.) The Court thus finds that Defendants are the prevailing parties in this action and are entitled to their attorney fees under Section 5975. None of Plaintiff's arguments dictate a different result. Defendants' claim for attorney fees and costs is statutory, not contractual. Accordingly, Code of Civil Procedure 1717 is inapplicable here.

According to the Declaration of Jennifer Z. Krenzin and the Declaration of David M. Levy Defendants' counsel incurred $133,398.11 in fees and costs from November 9, 2019 to the present at a rate of $275 per hour. The rate is reasonable in this Silicon Valley market for this type of case. The additional detail provided in Mr. Levy's declaration satisfies the Court that the time spent was relevant and reasonable. Accordingly, the Court GRANTS Defendants' motion and orders Plaintiff to pay Defendants $133,398.11 in fees and costs within 90 days of service of the final form of order.

At the last few hearings, Plaintiff has raised his concern that this case is facing dismissal with prejudice under the five year statute. Plaintiff has provided the Court with numerous reasons why the statute should not apply here. However, Plaintiff already dismissed this case without prejudice on June 7, 2022, which dismissal the clerk of court entered on that same date. Accordingly, the five year statute is inapplicable to this case. Now that Defendants' motion has been finally determined, the case will be off calendar.