TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, May 8, 2024 at 3:00 p.m.
Courtroom 18 –Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom**. Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-263456, Abel v. McCutchan, Jr

The hearing on Plaintiff's Notice of Hearing on Claim of Exemption is CONTINUED to June 12, 2024, at 3:00 p.m. in Department 18. The levying officer, the Sonoma County Sheriff's Office, has not filed a copy of the Claim of Exemption with the Court as required by CCP § 703.550. The Sheriff's Office attempted to e-file the Claim of Exemption on April 12, 2024, but the filing was rejected by the clerk of court. Thus, the Claim of Exemption remains unfiled.

The Sonoma County Sheriff's Office is hereby ORDERED to file a copy of the Claim of Exemption in this matter no later than May 31, 2024. The clerk of court is ordered to serve a copy of the Court's minute order on the Sonoma County Sheriff's Office by mail at the mailing address listed on the Notice of Hearing on Claim of Exemption.

There is also a Motion to Dismiss currently scheduled in this matter on May 22, 2024. In the interest of judicial economy, the Court on its own motion continues the hearing on the motion to dismiss to be heard on the same day and time as this Claim of Exemption, June 12, 2024 at 3:00 p.m.

2. SCV-270898, Gemignani v. Andrade

This matter is on calendar for Defendants' motion to compel further responses from Plaintiff to form interrogatory no. 17.1. The motion is GRANTED. The Court orders Plaintiff to provide further responses regarding requests for admissions nos. 1, 4, 5, 6, 8, 9, 11-17, and 20 as set forth in detail herein. With respect to each of the 22 requests for admission, Plaintiff is ordered to comply with CCP § 2030.220(c) by identifying whether the factual basis for her response was her personal knowledge or information she acquired from someone else. Sanctions are awarded to Defendant in the amount of $3,910.00.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with California Rules of Court, rule 3.1312.

I. Background

This case arises out of a traffic collision that occurred on September 7, 2021, in which Daryl Titus ("Conservatee") was struck by a vehicle as he was crossing Bennett Valley Road. Before the incident, Conservatee had been walking along the side of Bennett Valley Road, in a place where there were no sidewalks on either side. He was crossing the road when he was hit because defendant Jose Andrade ("Andrade"), a Santa Rosa police officer who was off duty at the time, had stopped him and told him that he should be walking on the other side of the road. Conservatee was profoundly injured by the collision, and as a result is presently subject to two conservatorships: one, of his estate, by his sister Cindy Gemignani ("Plaintiff"), and the other, of his person, by his sister Edith Titus.

On May 26, 2022, Plaintiff filed a complaint against Andrade and the City of Santa Rosa (collectively "Defendants"), alleging causes of action for negligence (first) and violation of Civ. Code § 52.1, also known as the Bane Act (second). The Bane Act prohibits anyone, including but not limited to law enforcement officers, from interfering with constitutional rights by force or threat of violence. The original complaint named only Andrade and the City as defendants, and identified the driver and owner of the vehicle as Does 1 and 2. Plaintiff filed a First Amended Complaint on March 8, 2024, adding conservator Edith Titus as a plaintiff and adding Alberto Rojas and Ivan Medina, respectively the driver and owner of the vehicle that struck Conservatee, as named defendants.

However, neither Ms. Titus, Mr. Rojas, nor Mr. Medina were named parties to the litigation at the time the discovery relevant to the instant motion took place.

On October 10, 2023, Defendants propounded Requests for Admissions, Set One ("RFA") and a set of form interrogatories ("FI") on Plaintiff. Plaintiff served responses on November 22, 2023. Plaintiff denied all but two of the requests for admissions. Defendants' counsel sent a meet-and-confer letter to Plaintiff's counsel on December 6, 2023, expressing dissatisfaction with Plaintiff's responses to FI no. 17.1, which requests further details about any response to a request for admission other than an unqualified admission. After a string of emails, Defendants filed the instant motion to compel further responses to FI no. 17.1 on January 4, 2024. The motion is timely under the 45-day rule. (CCP § 2030.300(c).)

II. Governing law

"California law provides parties with expansive discovery rights." (*Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591.) The scope of discovery is one of reason, logic and common sense. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.) The right to discovery is generally liberally construed. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 540; *Davies v. Superior Court* (1984) 23 Cal.2d 291, 300.)

Specifically, "any party may obtain discovery 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." (CCP § 2017.010; see also *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8.) "For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement . . . . [Citation.] Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence. [Citation.] These rules are applied liberally in favor of discovery [citation], and (contrary to popular belief), fishing expeditions are permissible in some cases." (*Garamendi, supra*, at p. 712, fn. 8, internal quotation marks omitted; see also *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) However, even where a "fishing expedition" is permitted, a party seeking discovery must provide sufficient identification of the requested information to acquaint the other party with the nature of information desired. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 225.) Relevancy is determined by the allegations of the pleadings. (*John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1185.)

If a party responding to an interrogatory request lacks personal knowledge sufficient to respond fully, the party must make a reasonable and good-faith effort to obtain the information by inquiry to

other natural persons or organizations, except where the information is equally available to the propounding party. (CCP § 2030.220(c).)

III. Analysis

A. Factual allegations copied from the complaint

Many of Plaintiff's responses to part (b) of FI no. 17.1, the "state all facts" part, consist of text either copied verbatim from the complaint or very similar to passages from the complaint. Defendant argues that "merely repeating the allegations of her Complaint is not sufficient." But Defendant has cited no authority, and the Court is aware of none, for the proposition that because a fact is alleged in a complaint, it cannot also serve as the factual basis for denying a request for admission during discovery. For example, "SRPD JOSE ANDRADE stopped him for no valid or lawful reason and commanded him to cross the street to walk on the other side" is a fact regardless of the caption of the document in which it appears. It is, of course, a fact that must be proved with evidence at trial, which is why FI no. 17.1 asks the responding party to identify the evidence that supports the factual basis for each denial. But it is neither here nor there that a fact alleged in response to FI no. 17.1 also appeared in the complaint.

B. Conservatee's possible incompetence

Defendants noticed Conservatee's deposition for November 30, 2023. (MPA Exh. F, 11/14/23 email to Defendant's counsel ["As for the depo, you noticed it on the 30th"].) Defendant's counsel emailed Plaintiff's counsel on November 8, 2023, seeking confirmation "that you're going to produce Daryl Titus for deposition at the end of the month." (MPA Exh. F; Reply Exh. A.) In his email response on November 14, Plaintiff's counsel commented that Conservatee "I just want to give you fair warning that Daryl is not going to be able to give a meaningful deposition due to his injuries. I'm not even sure he would understand the oath." (MPA Exh. F.) Defendants' counsel responded "If he's unable to testify, then I think we need to talk about a stip and order stating [Conservatee] is unable to testify at deposition or trial based on his medical condition." (*Ibid.*) In his December 19 email to Defendants' counsel, responding to Defendants' counsel's December 6 letter, Plaintiff's counsel responded "It seems that you think I'm trying to play a fast one on you as I've said [Conservatee] isn't able to give meaningful deposition testimony at present time. I still stand by that, but I also listed him as a witness because he was there." (*Ibid.*)

Many of Defendants' objections to Plaintiff's responses to FI no. 17.1 center around the supposition that due to his medical condition, Conservatee will be unable to sit for a deposition or testify at trial. In their reply memorandum, Defendants point out that Conservatee's testimony will be essential to support his Bane Act cause of action, and that Plaintiff's cooperation in scheduling

Conservatee's deposition is essential. The Court does not disagree with either of those points, but does not interpret Plaintiff's counsel's "not going to be able to give a meaningful deposition" to mean that Conservatee will *never* be able to be deposed, or to testify at trial. The Court notes that in his December 19 email, counsel explained that he had "said [Conservatee] isn't able to give meaningful deposition testimony *at [the] present time.*" (Emphasis supplied.) That fits with the "I just want to give you fair warning" context, which suggests that counsel was not declining to produce Conservatee, but merely commenting that a deposition might be fruitless. Counsel amplified on this in his opposition memorandum and his separate statement, noting that "Plaintiff is hopeful that [Conservatee's] competency improves over time." Since Plaintiff is Conservatee's sister and his conservator, her hopes regarding Conservatee's potential for improvement are worth of consideration.

In light of these points, the Court takes Plaintiff's point to be that Conservatee was not amenable to deposition at the time of the email exchange, but might be at some point in the future after his health improves. For that reason, the Court is not persuaded that Plaintiff cannot legitimately fulfill the requirement that she "make a reasonable and good-faith effort to obtain the information by inquiry to other natural persons" by obtaining it from Conservatee (CCP § 2030.220(c)), or that Conservatee cannot be listed as a potential witness in responses to part (c) of FI no. 17.1, the "state the names of all persons" part. If Conservatee's condition does not improve and it becomes clear that he will not be able to be deposed, testify, or both, then, as Defendants correctly point out, there may be insufficient evidence to support the Bane Act cause of action. But the Court finds that a holding at this time that Conservatee is simply unavailable as a witness would be premature.

That said, however, CCP § 2030.220(c) provides that when "the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, *the party shall so state . . . .*" (Emphasis supplied.) That is, even if a responding party has duly obtained the requested information from someone else, the responding party must say that they have done that. It is not sufficient to say, for example, "I denied the request for admission because of fact X" and then identify witness W as a witness who can establish X, where the responding party did not personally know X but learned it only by asking W. Therefore, the Court orders Plaintiff to amend her responses to FI no. 17 to indicate which denials were based on facts known to her personally, and which were based on facts obtained from someone else.

C. Individual responses

Plaintiff's responses to FI no. 17.1 are discussed below, organized by the number of the RFA request to which each response pertains.

RFA no. 1: The request is for an admission that Andrade did not use threats during his interaction with Conservatee. Petitioner's response states that "SRPD JOSE ANDRADE stopped [Conservatee] for no valid or lawful reason and commanded him to walk on the other side," and that Andrade "stated to Conservatee that he needed to cross the road because the other side was safer." This does not address threats at all. It says nothing along the lines of, for example, "SRPD JOSE ANDRADE stated that if he did not cross the street, he would be arrested."

The Court orders Plaintiff to respond to FI no 17.1 regarding RFA no. 1 in a more thorough manner that directly addresses the issue of threats.

RFA nos. 2 and 3: The requests are for admissions that Andrade did not, respectively, intimidate or coerce Conservatee during their interaction. Defendant contends that the responses are incomplete and evasive. The Court disagrees. The facts related to intimidation include "SRPD JOSE ANDRADE parked his vehicle with the flashers on and yelled to Conservatee to cross the road," and that these commands were "done in an intimidating . . . manner." The facts related to coercion state that Andrade's commands were made "in a manner that coerced Conservatee to follow the commands." These statements provide adequate factual support for Plaintiff's denial of RFA nos. 2 and 3.

RFA no. 4: The request is for an admission that Andrade did not subject Conservatee to a "credible threat of violence." Plaintiff's factual basis for denying that proposition is that Conservatee "naturally would fear that refusing these commands could lead to violence." This does not say that Conservatee *did* fear that refusing the commands would lead to violence, so even if Plaintiff interpreted "credible threat" to mean "subjectively credible to Conservatee personally," this would not be a sufficient factual basis to deny the RFA.

Moreover, it is not at all clear that a plaintiff's subjective impression that the defendant's conduct is threatening is sufficient to sustain a Bane Act cause of action. "[T]o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence." (*Cabesuela v. Browning-Ferris Industries* (1998) 68 Cal.App.4th 101, 111.) That suggests an objective standard. But that issue does not arise at this point, because Plaintiff does not even allege that Conservatee interpreted Andrade's conduct as a threat of violence.

The Court orders Plaintiff to provide an adequate factual basis for suggesting that Andrade subjected Conservatee to a credible threat of violence.

RFA nos. 5-6: The requests are for admissions that Conservatee did not have a constitutional right to, respectively, impede the flow of traffic and walk on the roadway of Bennett Valley Road. Plaintiff's factual bases for both denials are based on the unarguable point that "The Fourth

Amendment to the U.S. Constitution holds that people have a right to be free from unreasonable search and seizures."

The Bane Act prohibits interference or attempted interference with "rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state." In the operative First Amended Complaint ("FAC"), Plaintiff argues that Andrade interfered with Conservatee's Fourth Amendment rights by stopping him without reasonable suspicion that he was involved in illegal activity. (FAC ¶¶ 28-33; see *Terry v. Ohio* (1968) 392 U.S. 1.) That is a reasonable enough argument, but it is not responsive to the question of why Plaintiff denied that impeding the flow of traffic and walking on Bennett Valley Road are not constitutional rights (or, to put it less awkwardly, asserted that they *are* constitutional rights). These two requests did not say "Please admit that no constitutional right of DARYL TITUS was violated." (But see the discussion of RFA no. 22 below.)

The Court orders Plaintiff to respond to FI no. 17.1 regarding RFA nos. 5-6 in a manner that addresses the specific constitutional issues raised by those RFAs.

RFA nos. 8-9: These requests are for admissions that Andrade did not engage in, respectively, malice or oppression in his contact with Conservatee. The closest Plaintiff comes to addressing that issue, in both cases, is the statement that "JOSE ANDRADE's commands to cross the road were done [] in an intimidating and commanding manner . . . and in a manner that coerced Conservatee to follow the commands."

"'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code § 3294(c)(1).) "'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code § 3294(c)(2).) All that Plaintiff alleges in his factual basis for asserting malice and oppression is that Andrade's commands were intimidating, coercive, and commanding. (The latter is a common feature of commands.) Those are not the same as "intended to cause injury" or "despicable conduct." As intimidating as Andrade might have been, nothing in Plaintiff's factual-basis explanation suggests that he was motivated by a desire to subject Conservatee to hardship, or that he willfully disregarded Conservatee's safety.

The Court orders Plaintiff to provide responses to FI no. 17.1 regarding RFA nos. 8-9 that directly address the factual bases for the well-known elements of malice and oppression quoted above.

RFA nos. 11-12: These requests address Veh. Code § 21950(b), which provides that although drivers must stop for pedestrians in marked crosswalks or at intersections, "This section does not

relieve a pedestrian from the duty of using due care for their safety." RFA no. 11 requests an admission that pedestrians in general have a duty of care for their own safety "when walking within a roadway." RFA no. 12 requests an admission that Conservatee individually had a duty of care for his own safety during the incident.

Plaintiff responded to both RFAs with "Responding Party objects to the form of this Request on the basis that it is misleading as phrased." The Court is not in a position to rule on those objections because Defendants have not moved to compel further answers to the RFA. Plaintiff repeats those objections in the factual-basis responses to FI no. 17.1, without explanation of what she regards as misleading. The Court sees nothing misleading. Plaintiff's point may be that Veh. Code § 21950 is entitled "Right-of-way at crosswalks" and the requests are not restricted to crosswalks, but subdivision (b) of that statute clearly contemplates that pedestrians have "the duty of using due care" for their safety in general, not just in situations involving crosswalks.

Plaintiff then notes, in both cases, that Conservatee "was lawfully walking on the side of the road and exercising due care for his own safety until SRPD JOSE ANDREAD stopped him . . . ." While that may be true, it does not respond to the question of whether or not Veh. Code § 21950(b) says that pedestrians in general, and Conservatee in particular, have a duty of care for their own safety. The RFAs did not seek an admission that Conservatee was violating his duty; they just asked whether he had one.

FI no. 17.1(b) asks the responding party to "state all facts upon which you base your response." Plaintiff's responses to RFA nos. 11 and 12 were objections on the basis that they were misleading as phrased. The Court orders Plaintiff to respond to FI no. 17.1 regarding RFA nos. 11-12 with the facts upon which that response was based.

RFA nos. 13, 16, and 17: RFA no. 13 asks Plaintiff to admit that Conservatee violated Veh. Code § 21950(b) "when he walked into the path of the vehicle driven by Defendant Alberto Vasquez Rojas during the INCIDENT." In addition to the passage quoted above, that statute provides that "No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard." RFA no. 17 asks for an admission that Conservatee violated that same statute "at the time of the INCIDENT"; that appears to duplicate no. 13, but may mean at some time during the incident other than when the vehicle driven by Mr. Rojas hit him. RFA no. 16 asks for an admission that Conservatee was violating Veh. Code § 21954(a) during the incident; that statute provides that pedestrians who are in a roadway but neither in a marked crosswalk nor at an intersection must yield the right-of-way to vehicles on the roadway.

Perhaps Conservatee was violating these statutes; perhaps not. Certainly, there is no question that he was in the path of a vehicle. If he did not get there by "suddenly" leaving a place of safety – if, for example, he crossed the road carefully after pausing to look both ways, and the vehicle was traveling so fast that he had no opportunity to see it – then possibly he was not violating Veh. Code § 21950(b). Perhaps the incident occurred at an intersection; the complaint does not allege otherwise, and "unmarked crosswalk at an intersection" is specifically excluded from Veh. Code § 21954(a). But Plaintiff does not explore these possibilities in her explanation of her factual basis for denying these three RFAs. The explanations consist, in their entirety, of "Conservatee DARYL TITUS was lawfully walking on the side of the road and exercising due care for his own safety until SRPD JOSE ANDRADE stopped him for no valid or lawful reason and commanded him to cross the street to walk on the other side." The RFA says "during the INCIDENT"; "INCIDENT" is defined to "include[] the circumstances and events surrounding the alleged accident, injury, or other occurrence, giving rise to this action or proceeding." (MPA Exh. A, p. 2.) That clearly encompasses things that occurred after Conservatee began obeying Andrade's commands.

The Court orders Plaintiff to respond to FI no. 17.1, regarding RFA nos. 13, 16, and 17, with facts that directly address the question of whether Conservatee was violating the identified provisions of the Vehicle Code at any time during the "incident," as that term is defined in the RFA.

RFA nos. 14-15: These request admissions that Conservatee was violating, respectively, Pen. Code § 647(f) (public intoxication) or Health & Saf. Code § 11550 (controlled substances) at the time of the incident. In both cases, Plaintiff responded that "upon information and belief," he was not.

Allegations "upon information and belief" are inappropriate in this context. "Information and belief" is a pleading convention that allows parties to make allegations that they believe, for good reasons, to have a factual basis, where they propose to determine that factual basis later, possibly through discovery. But this *is* discovery. At this stage, Defendants are correct in stating that they are "entitled to the FACTS Plaintiff contends show Conservatee Titus was not under the influence of [alcohol / a controlled substance] during the incident." It is true that "[w]hen a party is attempting to prove a negative slight evidence is sufficient." (*People v. Macbeth* (1930) 104 Cal.App. 690, 693.) But an allegation on information and belief is not evidence at all; it is, at best, a statement of a reasonable belief that evidence exists.

The Court orders Plaintiff to respond to FI no. 17.1, regarding RFA nos. 14 and 15, with statements of facts. As discussed above, if her knowledge of those facts is derived from talking to someone else, for example Conservatee or the ambulance and hospital personnel she has identified as witnesses, Plaintiff needs to say so.

RFA no. 18: This requests an admission that Andrade's conduct "was not a substantial factor" in Conservatee's harm. As a factual basis for denying that admission, Plaintiff states, once again, that Andrade stopped him and told him to cross the street, and therefore he did, and that is when the van struck him. Defendant characterizes this response as non-responsive, evasive, and incomplete. The Court disagrees. Plaintiff's point, clearly, is that Conservatee would not have been in the location where the van struck him if Andrade had not ordered him to be there. That is a valid and rational factual basis for asserting that Andrade's conduct was a substantial factor in Conservatee's injury.

RFA nos. 19 and 21: These request admissions, respectively, that at the time of the incident, Andrade "was not in the course and scope of his employment as a police officer" and that he "was not acting under color of authority." In her statements of facts explaining her denial of both admissions, Plaintiff quotes several legal authorities, with appropriate citations, that support the proposition that police officers are deemed to be in the course and scope of their employment all the time, even when they are technically off duty.

Defendants correctly point out that this is more akin to legal argument than to a statement of facts, but as the questions are legal ones – requests for admissions regarding "application of law to fact," as CCP § 2033.010 puts it – Plaintiff may be excused for giving legal answers. In any event, "California case law supports that the '24 hours a day' rule extends to municipal police departments," to take one example, is undoubtedly a fact. The Court sees no problem with these responses.

RFA no. 20: This requests an admission that Andrade did not identify himself as a police officer to Conservatee during the incident. Plaintiff's factual basis for denying the admission reads, in its entirety, "Responding Party does not have enough information to respond to this Request specifically, but asserts that JOSE ANDRADE's actions would identify him as a police officer."

The Court agrees with Defendants that this is non-responsive. It is also confusing. Plaintiff responded to the request for admission with "Deny." FI no. 17.1 asks her to explain why she did that. Plaintiff's point, apparently, is that the reason she denied the request for admission was that she did not have enough information to respond to it. But if that was the case, the appropriate response to the RFA would have been "Responding party lacks sufficient information or knowledge to respond," not "Deny." (CCP § 2033.220(c).) In that case, she would have been required to "state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (*Ibid.*)

The Court orders Plaintiff to respond to FI no. 17.1, with regard to RFA no. 20, by explaining the steps she took to comply with CCP § 2033.220(c) before denying the RFA.

RFA no. 22: Unlike nos. 5 and 6, this request does not ask for an admission that certain specific activities are not constitutionally protected. Rather, it asks for an admission that Andrade "did not intentionally act to deprive Conservatee DARYL TITUS of *any* constitutional right." (Emphasis supplied.)

Plaintiff's factual basis for denying that admission states that Andrade "intentionally stopped [Conservatee] for no valid and lawful reason," and then explains that "The Fourth Amendment to the U.S. Constitution holds that people have a right to be free from unreasonable searches and seizures." Contrary to Defendants' argument, this is neither non-responsive nor evasive; it is a description of a specific constitutional right coupled with a description of Andrade's conduct that violated it. It is true that Plaintiff's response does not explicitly tie those two things together; that is, it does not say "Andrade intentionally stopped Conservatee for no valid and lawful reason, which constituted a violation of his Fourth Amendment rights." But there can be no doubt that that is what Plaintiff means. This is a valid factual basis for asserting that Andrade intentionally violated Conservatee's constitutional rights (or denying that he did not).

IV. Sanctions

"The court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (CCP § 2030.290(c).) Thus, sanctions are mandatory unless one of the exceptions applies.

On December 6, 2023, Defendants' counsel sent a letter to Plaintiff's counsel, the so-called "meet and confer letter," detailing her objections to his response to FI no. 17.1. Plaintiff's counsel declares that he was having health problems during this period that interfered with his ability to work. (Krankemann dec, ¶¶ 6, 7, 10.) Because of those problems, counsel did not see the meet and confer letter until December 19, 2023. (*Id.*, ¶¶ 6-7.) In an email sent on that date, Counsel explained the situation to Defendants' counsel. Defendants' counsel responded the following day that she would hold off on filing a motion to compel until January 2, 2024. (MPA Exh. F; Krankemann dec, ¶ 10.) However, due to his deteriorating health, Plaintiff's counsel did not address the issues identified in the meet and confer letter, or respond to Defendants' counsel's December 20 email, before Defendants filed the instant motion on January 4, 2024. (Krankemann dec, ¶ 10; Hepler dec, ¶ 8.) Counsel's health problems proved to be caused by stage 3 colon cancer, for which he is currently receiving treatment. (Krankemann dec, ¶ 10.)

The Court takes cancer seriously and extends its sympathy to Plaintiff's counsel regarding what must be profoundly unpleasant health conditions. Nevertheless, the Court does not find that either of the exceptions to the mandatory nature of sanctions under CCP § 2030.290(c) applies here. The interrogatory responses were served electronically on November 22, 2023, which means that Defendant's 45-day period to move to compel expired on January 8, 2024. (CCP § 2030.300(c).) (45 days after November 22, 2023 is January 6, 2024, but because that was a Saturday the period would have extended to January 8 pursuant to CCP § 12a(a).) The 45-day limit is jurisdictional, meaning that the Court would have had no option but to deny the motion to compel if it had been filed after the Monday following the Thursday on which it actually was filed. (*Sexton v. Superior Court* (1987) 58 Cal.App.4th 1403, 1410.) Therefore, for all intents and purposes Defendants' counsel waited as long as she could. CCP § 2030.300(c) permits the parties to agree in writing to extend the 45-day period, but Plaintiff's counsel does not suggest that he made any attempt to secure such an agreement from Defendants' counsel. Despite his health issues, Plaintiff's counsel stated in his December 19 letter to Defendant's counsel that he was "working a couple hours each day," which suggests that if nothing else, he would have been able to request an extension of time to work on correcting his responses to FI no. 17.1 before the motion to compel was filed. If he had done so and Defendant's counsel had refused, the Court might have been inclined to find the "other circumstances make the imposition of the sanction unjust" exception applicable, but he did not.

Defendants' counsel requests sanctions for 17 hours of work at $350/hour. (Hepler dec, ¶ 10.) The Court finds the $350 figure reasonable. The 17 hours are broken down as follows: two hours to prepare the December 6 meet and confer letter; seven hours drafting the Separate Statement; six hours drafting, reviewing, and finalizing the memorandum of points and authorities, and an anticipated two hours to review the tentative ruling and attend oral argument. The Court declines to award sanctions for drafting a meet and confer letter, since the point of the meet and confer requirement is to avoid the necessity for a motion; if that had been effective, there would have been no motion and hence no occasion for sanctions. The Court finds seven hours excessive for drafting the Separate Statement in light of the fact that so much of it is cut-and-pasted and repetitive.

Sanctions are awarded in the amount of $3,850 for eleven hours of work consisting of six for the memorandum, four for the Separate Statement, and one for reviewing the tentative ruling. The Court will be amenable to increasing this amount to reflect the time spent attending oral argument if Plaintiff contests this tentative ruling. An additional $60 is awarded, representing the filing fee for the instant motion. The total amount of sanctions is $3,910.

V. Conclusion

The motion is GRANTED. The Court orders Plaintiff to prepare and serve on Defendant a further set of responses to FI no. 17.1, providing more detailed factual bases for her responses to RFA nos. 1, 4, 5, 6, 8, 9, 11-17, and 20, as set forth in detail above. In addition, Plaintiff shall comply with CCP § 2030.220(c) by identifying, as to each of the 22 RFAs, whether the factual basis for her response was her personal knowledge or information she acquired from someone else. Sanctions are awarded in the amount of $3,910.

The instant motion is captioned "Motion to Compel Plaintiff's Verified Further Responses to Form Interrogatories Set One and for Sanctions." Therefore, Plaintiff's responses to the request for admissions themselves are not before the Court. Nevertheless, the Court notes that amending some of the responses to FI no. 17.1, as ordered herein, may necessitate amending the associated RFA responses.

3. SCV-268058, Vandenbroucke v. Edwards Lifesciences LLC

Defendants' unopposed motion to seal confidential documents submitted conditionally under seal by Plaintiffs in opposition to Defendants' motion for summary judgment is GRANTED. The Court will sign the proposed order lodged with the moving papers.

California Rules of Court, Rule 2.550 provides "The Court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the record;

(2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.

Defendants seek to seal documents submitted conditionally under seal by Plaintiffs that contain confidential and proprietary information regarding their business practices and dealings. Defendants submit that public access to such documents could provide Defendants' competitors with valuable information about the product and about Defendants' business practices.

A trade secret is "'any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.'" (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1002.) "Because of the

intangible nature of a trade secret, the extent of the property right therein is defined by the extent to which the owner of the secret protects his interest from disclosure to others…If an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished." (*Ibid*.) A manufacturer has a "legitimate interest in protecting its trade secrets and other confidential proprietary information." (*Westinghouse Electric Corp. v. Newman & Holtzinger* (1995) 39 Cal.App.4th 1194, 1209.)

Defendants have demonstrated a significant interest in protecting their trade secrets from the public eye. The Court finds that this interest overrides the right of public access and supports sealing the records. The Court also finds that the proposed sealing is narrowly tailored and there are no less restrictive means to achieve the overriding interest of protecting Defendants' confidential proprietary information.

4. MCV-231357, Unifund v. Hagstrom

Judgment Creditor, Unifund CCR, LLC's, Application for Order of Sale of Dwelling is CONTINUED to July 10, 2024, at 3:00 p.m. in Department 18 for the Judgment Debtor, Steve E. Hagstrom, to show cause why an order for sale should not be made in accordance with this application. The Court will sign the Proposed Order to Show Cause lodged with the application. Service of the Order to Show Cause shall be made not later than June 10, 2024.

CCP § 704.770(a) provides, "Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application…" The statutes also provides "The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause." The Court finds good cause for setting the hearing beyond the 45 day limit given the impacted law and motion calendar in Department 18 and also given that the applicant did not file an ex parte application at the time of filing of this application to request the Court issue the order to show cause at a sooner time.

5. MCV-262192, Looney v. Rubin's Market Inc

Plaintiff's motion to appoint a receiver to seize and sell the judgment debtor's liquor license is DENIED without prejudice. Plaintiff has failed to show that the extraordinary remedy of appointing a receiver is warranted in this matter. The minute order shall constitute the order of the Court.

CCP § 708.630(b) provides that the Court may appoint a receiver to transfer the debtor's interest in the license, unless the debtor establishes that the amount of delinquent taxes and claims of prior creditors exceed the probable sale price of the license. A receiver may be appointed to enforce a judgment where the judgment creditor shows that, considering the interests of both the creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. (CCP § 708.620.) The legislative committee notes state that "a receiver may be appointed where a writ of execution would not reach certain property *and other remedies appear inadequate*." (Emphasis added).

The availability of other remedies "does not, in and of itself, preclude the use of a receivership. [citation] Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution." (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) "It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable…'" (*Ibid*.)

Accordingly, even if otherwise proper, this Court will not grant such a motion absent a sufficient factual showing by Plaintiff regarding the availability and efficacy of other remedies to collect on the Judgment. (*Id.* at 350 [appointment of receiver "rests wholly within the judicial discretion"].) Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, "Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the 'necessity' required to justify the 'extraordinary' remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary."

Here, Plaintiff represents that he has investigated Defendants' finances and has not found a bank or deposit account in their name. According to a web search, the business is still open. Plaintiff states that he sent a letter to Defendants requesting the judgment be paid and that he served post-

judgment discovery upon them, to which he has received no response. Plaintiff sent another letter after receiving no responses to his discovery and received no response to the letter. According to Plaintiff, the Sheriff will not sell liquor inventory and the value of restaurant equipment and fixtures is depressed. Thus, there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

However, Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the absence of alternate remedies, or if alternate remedies exist, their inadequacy. Rather, as in *Medipro, supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. The Court is not convinced that there exist no bank accounts linked to a business that is purportedly still open. Furthermore, while Plaintiff represents that he propounded post-judgment discovery, such discovery was not attached to this motion, so the Court is unable to ascertain if it requested adequate information to assist Plaintiff in collecting the judgment. Also, Plaintiff has never moved to compel answers to the post-judgment discovery. Finally, Plaintiff's representations regarding the depressed value of restaurant equipment and fixtures are not supported by foundation. Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter.

Plaintiff requests in the alternative that the Court issue an order to show cause why the receiver should not be appointed. Doing so would not relieve Plaintiff of his burden to make a showing to the Court that appointment of a receiver is necessary. (*Moore v. Oberg* (1943) 61 Cal.App.2d 216, 221.) Plaintiff has not carried his burden here nor cited any authority supporting the issuance of an order to show cause. The alternative request is denied.

6-9. SCV-268721, Russell v. Russell

Defendant's motion to Vacate Judgments is CONTINUED to May 22, 2024 at 3:00 p.m. in Department 18 to allow Defendant to submit a reply to Plaintiff's opposition to Defendant's supplemental brief. Plaintiff submitted new evidence in his supplemental briefing, which the Defendant did not have an opportunity to substantively respond to, but which the Court intends to consider. Defendant's reply brief shall be filed no later than May 15, 2024. No other briefs are permitted. All other motions on calendar for this matter shall be continued to the same date and time.

Defendant's objections to the evidence submitted in support of Plaintiff's opposition to Defendant's supplemental brief are OVERRULED. The request to strike the opposition is DENIED. Defendant argues that the Court may only consider the judgment roll in determining the validity of judgments. It is true that the Court's review of whether a judgment is void on its face is generally limited to the judgment roll and matters that are admitted by both parties. (*Phelan v. Superior Ct. in & for City & Cnty. of San Francisco* (1950) 35 Cal.2d 363, 373.) However, it is not the rule that the Court can *never* consider extrinsic evidence. In fact, the Court in *OC Interior Servs., LLC v. Nationstar Mortg., LLC* (2017) 7 Cal.App.5th 1318 explains, "To prove that the judgment is void, *the party challenging* the judgment is limited to the judgment roll, i.e., no extrinsic evidence is allowed." (*Id*. at 1327. Italics added.) However, "Extrinsic evidence, i.e., evidence outside the judgment roll, may be presented on direct attack of a judgment that is valid on the face of the record to rebut the presumption that the judgment is valid." (*Id*. at 1328.) Defendant has cited no authority, and the Court has found none, which provides that extrinsic evidence is inadmissible to *rebut* a 473(b) finding. Defendant's objections are overruled on all other grounds raised as well.

10. SCV-272813, H. v. Wagner, Jr., D.C.

Defendant George Wagner, Jr.'s demurrer to the Fourth, Fifth and Sixth Causes of Action of Plaintiff First Amended Complaint ("FAC") is SUSTAINED **without** leave to amend. Defendants' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

I. Standard on Demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. (*Hahn /v. Merda* (2007) 147 Cal.App.4th 740, 747.) Complaints are read as a whole, in context and are liberally construed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) Matters which may be judicially noticed are also considered. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335,

349.) However, "Leave to amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law." (*Lawrence v. Bank of Am.* (1985) 163 Cal.App.3d 431, 436.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Goodman, supra*, at 349.)

II. Fourth Cause of Action (Gender Violence)

Civil Code § 52.4 provides, "'gender violence' is a form of sex discrimination and means either of the following:

> (1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.
>
> (2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

The Court previously sustained this defendant's demurrer to this cause of action on the basis that Plaintiff had failed to allege fact to support that the alleged sexual battery was motivated by gender discrimination and that it occurred under coercive conditions. Plaintiff amended the complaint but did not allege any new facts. Plaintiff simply reiterated the same facts previously alleged and explained within the complaint how they support each element of the cause of action. However, the Court had already examined the facts of the complaint and determined that they did not support the elements of the cause of action. Plaintiff has still not alleged facts showing that the sexual battery was motivated by gender discrimination or that it occurred under coercive conditions. To the extent that Plaintiff alleges paragraphs 45 and 46 in the FAC establish coercive conditions, the Court finds those paragraphs are conclusory.

Plaintiff's FAC does not establish that the actions that allegedly occurred against her could not have happened to any other patient regardless of gender. She hasn't explained how the comment "good girl" shows this was directed against her, at least in part, because she is a woman. If the Court were to accept Plaintiff's facts as pled then the Court would have to assume that any alleged sexual assault also includes a claim for gender violence (and Ralph Act) without any additional or different facts. Plaintiff has not provided any authority for that proposition and the Court is not aware of any authority supporting that proposition.

Furthermore, Plaintiff has not provided any case law in her opposition to support her position that the facts alleged are sufficient to state this cause of action. Plaintiff has also failed to explain how the defects in her pleading can be cured by amendment. Therefore, leave to amend is denied.

III. Fifth Cause of Action (Ralph Act)

The elements of a Ralph Act claim (Civil Code § 51.7) are as follows:

"1. That [the defendant] threatened or committed violent acts against [the plaintiff or his or her property]; [¶] 2. That *a motivating reason for* [*the defendant's*] *conduct was* [his/her] perception of [*the plaintiff's age or disability*]]; [¶] 3. That [the plaintiff] was harmed; and [¶] 4. That [the defendant's] conduct was a substantial factor in causing [the plaintiff] harm."

(*Austin B. v. Escondido Union Sch. Dist.* (2007) 149 Cal.App.4th 860, 880–81. Italics in original.) "Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive, or that the defendant aided, incited, or conspired in the denial of a protected right." (*Gabrielle A. v. Cnty. of Orange* (2017) 10 Cal.App.5th 1268, 1291.) "[V]iolations of the Ralph Civil Rights Act cannot be accidental, as liability requires a showing that the defendant deliberately acted with 'a prohibited discriminatory motive.'" (*Gen. Ins. Co. of Am. v. Hall* 2023 WL 2202511, at *3.) Whoever aids, incites, or conspires in the denial of a right provided by the Act is also liable. (Civil Code, § 52(b).)

Here, again, Plaintiff failed to allege any new facts to support this cause of action. The Court previously sustained the demurrer to this cause of action because, although Plaintiff had alleged a violent act, Plaintiff failed to allege facts supporting any of the other elements of this cause of action, such as discriminatory motive. As with the Fourth Cause of Action, Plaintiff has simply reiterated facts previously alleged with a new explanation of how they support the cause of action. Plaintiff has still not alleged facts to show why she was targeted for her gender rather than targeted simply as a patient in a closed, private room. Plaintiff has still not stated a claim for violation of the Ralph Act. Plaintiff has cited no case law in opposition and has not explained how the defects can be cured by amendment. Leave to amend is denied.

IV. Sixth Cause of Action (Unfair Competition)

"The UCL defines 'unfair competition' as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." (*Zhang v. Superior Ct.* (2013) 57 Cal.4th 364, 370.) "'[A]n action under the UCL 'is not an all-purpose substitute for a tort or contract action.' [Citation.] Instead, the act provides an equitable means through which both public prosecutors and private individuals can bring suit to prevent unfair business practices and restore money or

property to victims of these practices.'" (*Id*. at 371.) "'Prevailing plaintiffs are generally limited to injunctive relief and restitution. [Citations.] Plaintiffs may not receive damages ... or attorney fees.' " (*Ibid*.) "[T]o bring a UCL action, a private plaintiff must be able to show economic injury caused by unfair competition." (*Id*. at 372.)

"The Legislature intended this 'sweeping language' to include 'anything that can properly be called a business practice and that at the same time is forbidden by law.'" (*Bank of the W. v. Superior Ct.* (1992) 2 Cal.4th 1254, 1266; see also *People v. McKale* (1979) 25 Cal.3d 626, 632.) "An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time forbidden by law.'" (*Bernardo v. Planned Parenthood Fed'n of Am.* (2004) 115 Cal.App.4th 322, 351.)

The Court previously sustained this defendant's demurrer to this cause of action on the basis that Plaintiff had only supported the cause of action with conclusory allegations, had not specified to whether Defendant Wagner is alleged to be an employee of DeSalvo Chiropractic or an owner, and had not alleged facts supporting asserting this cause of action against Defendant Wagner in his individual capacity. The only amendment made by Plaintiff, regarding this defendant, reads, "Defendant Wagner was paid by Defendant DeSalvo Chiropractic for his conduct as it related to Plaintiff and Plaintiff paid Defendant DeSalvo Chiropractic for the purported treatment she received as described herein. Therefore, Defendant Wagner engaged in unlawful business practice." (FAC, ¶ 67.) Such amendment does not address each of the bases on which the Court sustained the previous demurrer and does not assist the plaintiff in stating a claim for unfair competition against this defendant. Plaintiff has failed to state this cause of action, failed to cite authority in opposition, and failed to explain how the defects can be cured by amendment. Leave to amend is denied.