Dept. 1
Civil Law and Motion Tentative Rulings for Friday, February 28, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CVL66019** **Bank of America v. Vlado**
   Hearing on: Deem RFAs Admitted
   Moving Party: Plaintiff
   Tentative Ruling: HEARING REQUIRED

This is a limited jurisdiction collections case. Before the Court this day is plaintiff's unopposed motion to deem previously-served RFAs admitted. As established by the unrefuted submissions, plaintiff caused to be served upon defendant on 09/11/24 a single set of RFAs, using the mailing address provided by defendant on his answer. Defendant did not timely respond, resulting in an automatic waiver of the right to assert objections (CCP §2033.280(a)), and triggering plaintiff's right to seek judicial intervention (CCP §2033.280(b)). On 11/18/24, plaintiff caused such a motion to be filed, and served a copy thereof on defendant at the same mailing address provided. No opposition has been received by this Court.

As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778. This motion was filed more than four weeks ago, giving defendant plenty of time to have complied in the interim. Moreover, the motion on file here is the exact same motion filed back in November, which confirmed a lack of compliance only since October. Thus, as far as this Court can tell, defendant has had four months to comply and plaintiff has neither confirmed nor denied this possibility. Although plaintiff has indicated no intention of appearing absent opposition, that is a gamble that did not pay off last time and will not pay off this time. Failure to make plain that substantially-compliant responses have *not* been received by the hearing date will result in an order denying the motion *with* prejudice.

2. **CV64645** **PG&E v. LaForge**
   Hearing on: Dismissal
   Moving Party: N/A
   Tentative Ruling: N/A

On 09/30/2024, this Court entered an order granting plaintiff's motion for summary adjudication of the declaratory relief cause of action. Thereafter, both sides filed an unconditional Notice of Settlement of Entire Case, indicating that complete dismissals would be filed by 10/22/2024. A review of the court file reveals a hole where those dismissals are supposed to be. Pursuant to CRC 3.1385(b), "if the plaintiff or other party required to serve and file the request for dismissal does not do so, the court must dismiss the entire case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed." There being no good cause shown, the Court intends to dismiss the case in its entirety.

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3. CV64938 Pine Mountain lake Association v. Trakhter
Hearing on: Various Discovery Motions
Moving Party: Both
Tentative Ruling: See Below

This case involves a dispute between an HOA and one of its resident-members over allegedly-unapproved alterations and improvements to the latter's property (address sign, solar panels, excavating, and rear patio/stairs/decking). During the litigation, defendant homeowner filed a cross-complaint against the HOA, asserting cross-claims for nuisance and premises liability. Before the Court this day are several discovery motions. Discovery in this case has been arduous. In some respects, this has been quite the David v. Goliath show. The pending discovery disputes permit the inference that the HOA is going a bit overboard here.

Form Interrogatories – Sanctions Denied, Responses in 15 days

On 09/17/2024, HOA caused to be served upon Trakhter a set of form interrogatories. He provided verified written responses on 11/07/2024. HOA, unhappy with certain of those responses, sent a "meet and confer" letter to Trakhter on 11/17/2024. In response to that letter, Trakhter filed a motion for a protective order, asserting harassment. HOA waited until January to file these discovery motions.

The party responding to interrogatories has an obligation to provide responses which are "as complete and straightforward" as possible, which obligates the party to make a "reasonable and good faith effort to obtain the information" from sources within its reach/control. CCP §2030.220. When meet and confer efforts have failed to secure a satisfying response, the propounding party may file a motion with a separate statement that is also "full and complete so that no person is required to review any other document in order to determine the full request and the full response." CRC 3.1345(c).

HOA first takes issue with Trakhter's responses to FRogs 2.5(b) and (c), providing the dates he lived at addresses other than his present address. The separate statement does not include Trahkter's verbatim response, only a description of that response: "Trakhter while identifying his residential addresses did not identify his residence for the last five years and the dates he lived at each address." Because the information sought is not reasonably calculated to lead to the discovery of admissible evidence, and the separate statement is defective, the HOA is not entitled to a further response.

HOA next takes issue with Trakhter's response to Frog 2.8, indicating that he failed to provide any response at all. Since a felony conviction may be admissible, HOA is entitled to a response.

HOA next takes issue with Trakhter's responses to FRog 6.4 (treatment), 6.5 (medication) 6.6 (services) and 6.7 (future care) relating to the premises liability cause of action. The separate statement is ambiguous in that it permits an inference that no response was provided to some of those, or that some response was provided that HOA felt was insufficient. Thus, this Court was forced to go to the actual responses provided (which is not supposed to happen) and could see for itself that

Trakhter did indeed give some response, albeit not ideal. Of course, it would have been easy to cure in a deposition, but for present purposes since HOA did not bother to provide a compliant separate statement, HOA is not entitled to a further response.

HOA next takes issue with Trakhter's responses to the entire 8 series, pertaining to lost wages. Although the separate statement is defective, this Court's review of the actual responses provided by Trakhter makes plain that the issue is moot. His actual responses to 8.3, 8.4, 8.6 and 8.7 make plain that he does not have provable or quantifiable lost wages, and that any claim for lost wages would be entirely speculative. As such, rather than order a further response, this Court will simply make a finding that Trakhter's answer "yes" to FRog 8.1 is a misuse of the discovery process and impose an issue sanction converting that answer to a "no."

Finally, HOA takes issue with Trakhter's response to FRog 12.4 (photographs of the site). Trakhter's verbatim response was "I have photos of the place" – which is actually less precise than HOA's description of his response. Although this is still representative of a defective separate statement, since it is close and the answer is so manifestly inadequate, HOA is entitled to a further response here.

Special Interrogatories – Sanctions Denied, Responses in 15 days

In SRog No. 3, HOA asks Trakhter to identify all persons with knowledge of the facts supporting the contention set forth in Para 13 of his First Amended Cross-Complaint. Trakhter identified himself, and by inference the HOA agents. That is sufficient.

In SRog No. 4, HOA asks Trakhter to state all facts supporting his contention that the HOA agents caused a nuisance. It appears from his reference to a shoulder injury that he misunderstood the call of the question as relating to the premises liability cause of action. HOA's effort to meet and confer on this failed to point out the obvious disconnect, which may have generated compliance. Instead, the meet and confer was nothing more than a demand to "do it my way" or else. Since the HOA failed to discharge its meet and confer obligation, it is not entitled to a further response – at least not yet.

In SRog No. 7, HOA asks Trakhter to explain his opinion that "ordinary people would be annoyed" by the HOA behavior. Given that this was his opinion, the mere fact of stating it is a sufficient explanation for why he holds that to be his opinion. Moreover, it is subject to judicial notice that people generally do not like having their person and home photographed by strangers.

In SRog No. 9, HOA asks Trakhter to identify witnesses who would support Trakhter's opinion that ordinary people would be annoyed by what the HOA did. Since it appears the call of the question may be for Trakhter to provide a witness list, HOA is entitled to know if he intends to call other persons to speak about the HOA activity. A further response is required.

Regarding SRogs 10 – 96, this Court declines to address those substantively for three reasons. **First**, the 11/17/24 email to Trakhter does not come close to qualifying as a good faith meet and confer. The

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Discovery Act requires that, prior to the initiation of this motion, the parties were to have engaged – at moving party's lead – in a "serious effort" to resolve the dispute. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438. It is "more than the mere attempt by the discovery proponent to persuade the objector of the error of his ways … the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294. How much "meet and confer" effort depends on many factors, most notably the objectively reasonable "prospects for success." *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 432–433. The failure to properly meet and confer can be addressed in any of the following ways: (1) denying the motions outright; (2) continuing the motions for further meet and confer efforts; and/or (3) imposing monetary sanctions against the moving party. See CCP §2023.010(i). Counsel did not even bother to address these interrogatories separately – it just one sentence covering all 87 of them, while expecting this Court to address all 87 separately. **Second**, most of those interrogatories pertain to the second and third causes of action, both of which have since been summarily adjudicated in HOA's favor. HOA did not both to file anything with the Court carving those out, saving this Court the effort. **Third**, as noted elsewhere, the separate statement fails to set forth the challenged responses verbatim, as is required by the Rules of Court. When counsel is unwilling to put in the work required to perfect a motion seeking judicial intervention, the trial court has no obligation to take up the request, let alone do extra work to deliver the requested relief.

HOA's request for monetary sanctions is DENIED because the HOA failed to prevail on most of this motion.

Production of Documents – Sanctions Granted ($1,000), Responses in 15 days

The party serving requests for production of documents must have good cause for the documents sought, and must describe them with reasonable particularity. CCP §§ 2031.030(c), 2031.310(b). Thereafter, the recipient is obligated to provide one of three responses: (1) a statement of **compliance**, which includes the actual documents (organized and labeled or as they are kept in the usual course of business) or a clear indication as to when and how the documents will be provided; (2) a statement of **noncompliance** based on **inability**, confirming a "diligent search and reasonable inquiry" and the reason for the inability, to wit: the documents never existed, were lost/destroyed, or in the possession of someone inaccessible; or (3) A statement of **noncompliance** based on **objection**, which must describe responsive documents and set forth "clearly" the specific grounds for the objection. CCP §§ 2031.210-2031.280.

Based on the separate statement accompanying this motion, it is evident that Trakhter failed to provide Code-compliant responses … and further evidence that no meet and confer effort would have generated a suitable response from this self-represented individual. Responses like "most documents were sent and filed to legal case" are entirely unhelpful and unfairly misleading to the HOA. Trakhter shall provide a complete written responses with all supporting documents to HOA within 15 days, and shall pay the HOA a sanction of $1,000 for misusing the discovery process.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

Protective Order- Moot

The motion for a protective order is technically MOOT since discovery is closed. However, should discovery re-open for any reason, this Court agrees that HOA has exhausted its permissible use of special interrogatories and should be warry about continuing to burn excessive legal fees on this case since this Court is not likely to surcharge excessive litigation costs to Trakhter or the HOA membership as a whole.

4. CV63591 **Redick v. County of Tuolumne et al**
Hearing on: Demurrer
Moving Party: County of Tuolumne
Tentative Ruling: Overruled, answer in 10 days

It was alleged that on 11/03/18, plaintiff went to the Lowe's here in Sonora with a few friends, and helped himself to flooring, tools, laundry supplies, "for rent" signs and a bottle of Pepsi. They reportedly fled the store with roughly $1,600 worth of unpaid merchandise. One week later, plaintiff was at Lowe's trying to return or exchange some of the flooring reportedly stolen the week prior. According to the arrest warrant, law enforcement confirmed the theft – and the identity of 2 of the 3 involved – after viewing store surveillance video, private cell phone video, and information pertaining to the getaway vehicle(s). Plaintiff was charged with various crimes. See CRF58586. However, two years later, all charges against plaintiff were dismissed in the interests of justice. The court file provides only scant information, but it does appear that the District Attorney was unsure she could prove plaintiff's involvement in the theft part of the event.

Within 10 weeks after securing a dismissal of all charges, plaintiff filed civil lawsuits against Lowe's (CV63539), the County of Tuolumne, the Sonora Police Department, the Tuolumne County Jail (CV63592), and the Tuolumne County District Attorney (CV63593). Plaintiff submitted defective proofs of service to unwitting processing clerks and secured patently fraudulent default judgments, all of which were eventually set aside. Displeased with that turn of events, Plaintiff embarked on a relentless campaign of systemic abuse, filing a barrage of frivolous motions and petitions before this and several other courts in a concerted effort to avoid ever having the merits of his civil lawsuits tested. Despite the presence of more meaningless paper on file, the time has finally come to see just what plaintiff is alleging.

Before the Court this day is a demurrer by the County of Tuolumne to the master complaint filed by plaintiff on 08/25/2021. That pleading contains a single cause of action for malicious prosecution, and is only four pages in length. This pleading supersedes the operative pleadings from CV63592 and CV63593, which have since been dismissed without prejudice (see Minute Order dtd 08/23/21). This is important to note because the County's current demurrer appears to be directed at an entirely different pleading than the operative one at bar. Because the County is arguing things untethered to the current pleading, most of that demurrer appear disconnected and irrelevant. However, some small parts of the demurrer are still applicable.

According to the County of Tuolumne, the complaint fails to state facts sufficient to constitute a cause of action (see CCP §430.10(e)). Where the demurrer is based on the pleading not stating sufficient facts, the rule is that if, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566. In other words, a general demurrer for failure to state a cause of action must be overruled, if the pleading states, however inartfully, facts disclosing some right to relief. *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352.

As noted, plaintiff is suing for malicious prosecution. To prevail thereon, plaintiff must allege facts supporting each of the following essential elements:

1. CRF58586 was pursued to a legal termination in plaintiff's favor, ie, the decision to voluntarily drop the charges tended to indicate defendant's innocence;
2. CRF58586 was commenced or maintained without probable cause, ie, it was not objectively reasonable to believe the charges were tenable; and
3. CRF58586 was commenced with malice and for an improper purpose.

See *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292; *Jaffe v. Stone* (1941) 18 Cal.2d 146, 150; *Area 55, LLC v. Nicholas & Tomasevic, LLP* (2021) 61 Cal.App.5th 136, 155-166; *Zhang v. Chu* (2020) 46 Cal.App.5th 46, 52-53; *Sycamore Ridge Apartments, LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1398-1406; *Cantu v. Resolution Trust Co.* (1992) 4 Cal.App.4th 857, 881-884; *Jackson v. Beckham* (1963) 217 Cal.App.2d 264, 270; in accord, *Gressett v. Contra Costa County*, WL1054975 at *5-7 (N.D. Cal. 2015).

Although County is correct that individual public employees are immune from liability for decisions made regarding criminal charges (Govt. Code §821.6), that immunity does not reach the employing agencies themselves – which may have liability for the actions of their agents if those actions violate the fundamental rights of individuals (see 42 USC §1983). The operative pleading is far from perfect, and yet it is more than sufficient to inform the reader that plaintiff is suing the County (via the Office of the District Attorney) for malicious prosecution. No more need be said. The demurrer is overruled. County shall answer the complaint within 10 days.

5. CV65320 **Taylor v. Larson Farms**
Hearing on: Ex Parte Application to Compel Party Deposition
Moving Party: Defendant
Tentative Ruling: N/A

Ex parte reserved, but no papers on file yet.