

April 13, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003537 Synchrony Bank vs. Kathlynn Wheeling

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for July 17, 2026 at 11:00 a.m.

2. CL0003551 Jefferson Capital Systems LLC vs. David Carter

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for over four (4) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for August 21, 2026 at 11:00 a.m.

3. CU0001584 Matthew Coulter vs. Mark Olsen et al

1) Motion to Compel Further Form Interrogatories

Defendant Sierra Foothills Construction Co., Inc.’s (“SFCC”) motion to compel further responses to Form Interrogatories, Set One propounded to Plaintiff Coulter and Request for Sanctions is GRANTED. Plaintiff is ordered to serve code-compliant further verified responses to Form Interrogatory (“FI”) No. 17.1 no later than ten (10) days from service of notice of entry of this order. The Court awards Defendant sanctions in the amount of \$1,960.00 payable by Plaintiff no later than ten (10) days from service of notice of entry of this order.

Legal Standard

Under Code of Civil Procedure section 2030.300(a), a court may order a party to serve a further response to an interrogatory when the court finds: “(1) An answer to a particular interrogatory is evasive or incomplete[;] (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate[; or] (3) An objection to an interrogatory is without merit or too general.”

Upon receipt of a response, the propounding party may move to compel further response if it deems an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). Any motion to compel further answers to interrogatories must be filed within forty-five (45) days of receipt of response, unless the parties agree to extend the time in writing. CCP § 2030.300 (c). When such a motion is filed, the Court must determine whether responses are sufficient under the Code, and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

Analysis

Form Interrogatory No. 17.1 seeks all facts in support of any response other than an unqualified admission to the contemporaneous requests for admission, the contact information of anyone with knowledge of those facts, identification of any documents or tangible things in support of any such response, and the contact information of anyone with those documents. Diamond Decl., Ex. A, No. 17.1. Plaintiff's only response was "Detailed responses to Defendant's Request for Admission have been set out in a separate document that is being produced along with these Answers to Form Interrogatories." Diamond Decl., Ex. C.

Thus, Plaintiff only provides an omnibus response for all 53 related Requests for Admission ("RFA"), without providing any disambiguation as to what portion applies to which RFA. The structure of the form interrogatory is clear. Plaintiff is to provide, "for each response that is not an unqualified admission", the number of the RFA at issue, the facts, witnesses, and documentary evidence thereon. In order to determine if Plaintiff's omnibus response is code compliant, one must look to the RFA responses which Plaintiff, properly, provided. If the individual responses to the RFA included the response to FI 17.1, such would be code compliant. Yet, they clearly do not. The RFA responses completely fail to provide the specific information/identification requested let alone even mention FI 17.1. Moreover, indicating Plaintiff did not provide response because he had no names and addresses and had already produced all responsive documents is not the same as providing an actual response which is what SFCC was entitled to. See, Opposition, Pg. 2, ll. 10 – 15. Thus, Defendant is entitled to further response, and Plaintiff must structure his response in a way which makes clear what facts are responsive to a particular RFA or, if no person or document or fact exist for a particular RFA, Plaintiff should so indicate.

Accordingly, Defendant Sierra Foothills Construction Co., Inc.'s Motion to Compel further response to FI 17.1 is GRANTED. Plaintiff shall serve further response to FI 17.1 no later than ten (10) days from service of notice of entry of this order.

Sanctions

The motion was necessitated by Plaintiff's deficient response.

The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. The Court finds an award of sanctions to compensate Defendant SFCC for reasonable expenses incurred as a result of the discovery motion is warranted under the circumstances present here as no substantial justification for failing to provide code compliant responses let alone respond substantively to the meet and confer effort made by Plaintiff has been shown.

An award of monetary sanctions must be "reasonable under the circumstances" *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1437; Code Civ. Proc., § 2023.030(a) (monetary sanctions may be awarded to compensate a party for reasonable expenses). "The principle of reasonableness means a trial court has discretion to reduce the amount of fees and costs requested as a discovery sanction in order to reach a reasonable award."

Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc. (2020) 56 Cal.App.5th 771, 791.

Based on information appearing in the Diamond and Avansino declarations, the monetary sanctions requested by Defendant reflect 5.5 total attorney hours to draft the discovery motion, and an anticipated 2 hours to draft a reply and prepare for and attend the hearing at respective rates of \$350.00 and \$680.00 per hour plus a filing fee of \$60.00. Diamond Decl., ¶¶ 12-16. Considering the substance of the motion, which does not present a large number of requests or complex factual or legal issues, the Court finds the time expended by counsel to prepare the instant motion is excessive. Moreover, the Court finds Mr. Diamond's hourly rate is not supported by other known existing attorney hourly rates in this county despite a high level of experience. Further, this motion is only one of three (3) motions prepared concurrently and set for hearing on the same date and time. The Court must be cognizant of some amount of cross-over of information/argument in these motions resulting in certain portions of the pleadings being identical and, thus, only needing to be prepared once for three filings.

Under the totality of the circumstances present here, including the Court's experience with addressing attorney's fee requests, the Court finds 4.0 hours of time for attorney Avansino at counsel's reasonable hourly rate of \$350.00, for a total of \$1,400.00, plus one hour at a rate of \$500.00, plus the filing fee of \$60.00, constitutes the reasonable amount of attorney's fees and costs incurred by Defendant. Thus, the Court awards SFCC sanctions in the amount of \$1,960.00 payable by Plaintiff no later than ten (10) days from service of notice of entry of this order.

2) **Motion to Compel Further Special Interrogatories**

Defendant Sierra Foothills Construction Co., Inc.'s ("SFCC") Motion to Compel further responses to Special Interrogatories, Set One propounded to Plaintiff Coulter and the corresponding Request for Sanctions is GRANTED. Plaintiff is ordered to serve code-compliant further verified responses to Special Interrogatory ("SI") Nos. 1, 3, 4, 5, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54 within ten (10) days from service of entry of this order. The Court awards Defendant sanctions in the amount of \$3,200.00. payable by Plaintiff to Defendant SFCC no later than ten (10) days from service of notice of entry of this order.

Requests for Judicial Notice

Defendant's requests for judicial notice are granted.

Legal Standard

Under Code of Civil Procedure section 2030.300(a), a court may order a party to serve a further response to an interrogatory when the court finds that: "(1) An answer to a particular interrogatory is evasive or incomplete[;] (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate[; or] (3) An objection to an interrogatory is without merit or too general."

Upon receipt of a response, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). Any motion to compel further answers to interrogatories must be filed within 45 days of receipt of response unless the parties agree to extend the time in writing. CCP § 2030.300 (c). When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

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. “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. Specifically, the Code provides, “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.” Code Civ. Proc. § 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...”). “Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence.” *Id.* “These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases.” *Id.*

Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. “(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing.” *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id.* at 377-378. Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140. “When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden.” *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.

Analysis

At bar, Plaintiff argues Defendant was “never prejudiced in any way by Plaintiff’s discovery responses,” the discovery asserts legally unavailable affirmative defenses as well as asks questions which have no probative value in proving or disproving any of the allegations in the SAC, and the SIs seek information protected by a person’s right to privacy. Opposition, 1:24-2:13. The Court disagrees with Plaintiff’s arguments.

Responses to Special Interrogatories Nos. 1, 4, 6, 13, 32, 33, 47, 50-54 all contain some form of “see answer” to another interrogatory or document. Such is not a sufficiently clear factual response. Therefore, further responses are required.

Responses to SI Nos. 3, 14-20, 22, 23, and 49 state Plaintiff, “is producing”, documents are “being produced,” or Plaintiff “will try to obtain...” Such does not sufficiently specify the documents Plaintiff is discussing. Further responses are required.

Responses to SI Nos. 8, 21, 23, and 48 each contain vague, incomplete, or ambiguous responses relating to Plaintiff’s behavior, the ratification of SFCC’s employees by Defendant, and damages, and thus are non-substantive reiterations of vague pleading from the SAC. The modern liberal allowance of pleadings is in part dependent on the principle that discovery procedures are intended to provide clarity on what otherwise might be vague pleadings. *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695. Plaintiff cannot provide vague contentions and demands for damages in his Complaint and fail to clarify those contentions and demands in discovery. Where the interrogatories ask for Plaintiff to provide facts, he cannot in turn provide conclusions. The answers are unresponsive as a result. Further responses are required.

Responses to SI Nos. 9, 24-27, 34-46 assert various objections including, relevance, overly broad, right to privacy. As discussed above, information is relevant if it ‘might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement...’ *Garamendi, supra*, 116 Cal.App.4th at 712 fn. 8. At bar, the information sought by these SIs relate to Plaintiff’s mental health disorders, potential other public incidents involving Plaintiff, and potential other violent or harassing incidents. The FAC alleges “Plaintiff has been harmed and is entitled to recover general and compensatory damages...in an amount in excess of \$500,000, including...emotional and mental distress, including feelings of helplessness, anxiety, humiliation, and the loss of a sense of security, dignity, and pride.” FAC, ¶ 27. Moreover, the FAC alleges a physical altercation between Plaintiff and Defendants. While certain evidence may or may not be admissible at the time of trial, the information sought at this juncture is relevant and/or likely to lead to relevant information. Here, Plaintiff has put his mental health condition squarely at issue by his own assertion of damages, as well as any potential history of violent altercations via his asserted factual allegations. As such, the information is discoverable, and the motion to compel further responses to these SIs is granted. Whether, ultimately, certain information and/or documentation is admitted into evidence is a subject for another day.

SI No. 21 requested Plaintiff describe the nature of his military service, and in response he asserts a response is “classified top secret,” citing to 18 U.S.C., § 798 in his opposition. This statute does not apply broadly to one’s military service. Therefore, a further response is required.

Accordingly and as set forth herein, further responses as ordered. Said responses shall be served on Defendant SFCC no later than ten (10) days following service of notice of entry of this order.

Sanctions

This motion was necessitated by Plaintiff’s deficient response.

The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. The Court finds an award of sanctions to compensate Defendant SFCC for reasonable expenses incurred as a result of the discovery motion is warranted under the circumstances present here.

An award of monetary sanctions must be “reasonable under the circumstances” *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1437; Code Civ. Proc., § 2023.030(a) (monetary sanctions may be awarded to compensate a party for reasonable expenses). “The principle of reasonableness means a trial court has discretion to reduce the amount of fees and costs requested as a discovery sanction in order to reach a reasonable award.” *Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc.* (2020) 56 Cal.App.5th 771, 791.

Based on information appearing in the Diamond declaration, the monetary sanctions requested by Defendant reflect 5.9 total attorney hours to draft the discovery motion, and an anticipated 2 hours to draft a reply and prepare for and attend the hearing, plus a \$60.00 filing fee. Diamond Decl., ¶¶ 13-16. Considering the substance of the motion, which, although including a somewhat large number of requests, does not present complex factual or legal issues, and a reasonable attorney’s fees hourly rate for this county, the Court awards SFCC sanctions payable by Plaintiff in the total amount of \$3,200.00. Said amount shall be paid within ten (10) days of service of notice of entry of this order.

3) **Motion to Compel Further Answers to Deposition Questions**

Defendant Sierra Foothills Construction Co., Inc.’s (“SFCC”) motion to compel Plaintiff Coulter’s deposition appearance and answers to depositions is GRANTED. However, Defendant’s request for sanctions is DENIED. Plaintiff shall submit to an additional deposition and answer questions nos. 1-8 and 11.

Legal Standard

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. “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. Specifically, the Code provides, “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.” Code Civ. Proc. § 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...”). “Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence.” *Id.* “These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases.” *Id.*

Analysis

At bar, Plaintiff's counsel contends the questions Plaintiff was instructed not to answer were objectionable on the ground they would not produce admissible evidence and were not reasonably calculated to lead to admissible evidence because they involved Plaintiff's character. The Court disagrees. The questions may have led to admissible evidence, aided in the development of Defendant's case, or assisted with settlement negotiations.

Moreover, "even were the questions designed to elicit irrelevant evidence, irrelevance alone is an insufficient ground to justify preventing a witness from answering a question posed at a deposition." *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1014. Further, "[u]nless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under Sections 2025.420 and 2025.470, the deposition shall proceed subject to the objection." Code Civ. Proc. § 2025.460(b). At bar, Plaintiff failed to assert any privacy objections at the time of the deposition, and has failed to pursue a motion for a protective order after suspending the deposition. While a question at a deposition might be objectionable, the objection, once stated, is preserved for trial. Such stating of an objection and preservation does not lead to preclusion of an answer. Therefore, answers to the questions at issue are warranted, though objections may still be preserved by timing noting them in the record at the time of continued deposition.

Sanctions

"It is a central precept to the Civil Discovery Act of 1986...that civil discovery be essentially self-executing." *Townsend v. Superior Court* (1988) 61 Cal.App.4th 1431, 1434. The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." *Id.* at 1435. "Depositions differ from other manner of discovery mechanisms in that counsel for both parties are present. The immediacy of counsel allows for the instantaneous discussion of an objection and attempts at informal resolution." *Id.* at 1436. "A reasonable and good-faith attempt at informal resolution entails something more than bickering with deponent's counsel at a deposition. Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." *Id.* at 1439.

At bar, the deposition transcript reflects a good deal of bickering between the parties' counsel. Defendant's counsel sent a meet and confer letter regarding the present motion on December 19, 2025, noting Plaintiff's counsel's failure to seek a protective order and Defendant's arguments regarding various affirmative defenses. Diamond Decl., Ex. H. Plaintiff's counsel responded on December 22, 2025, asserting the line of questioning was inappropriate, irrelevant, and meant to intimidate and harass the witness, but also stating "I have no problem restarting Mr. Coulter's examination to go over these matters again," but asserting other areas of examination would be contested. Diamond Decl., Ex. I. Plaintiff's counsel also suggested, "we file a joint motion with the court for resolution of the evidentiary issues that are at the heart of our dispute.... This will save us from further heated interaction." *Id.* However, Defendant's counsel responded with a refusal of this offer. Diamond Decl., Ex. J.

Thus, based on the record it appears counsel's attempt at informal resolution was insufficient and the meet and confer letter was not a serious attempt to obtain an informal resolution of each issue. Therefore, Defendant's request for sanctions is denied. The Court further denies a request for sanctions by Plaintiff in that Plaintiff was not successful in opposing the instant motion, and Plaintiff's counsel's efforts at resolution were made after the deposition was taking place. The Court does order each party will bear their own expenses in relation to the continued deposition.

4. CU0001912 Old Republic Insurance Company et al vs. United Parcel Service, Inc. et al

Appearance required by Plaintiffs Old Republic and USF Reddaway to show cause as to why sanctions in the amount of \$1,000.00 jointly and severally should not issue against these plaintiffs. The Court is in receipt of the Declarations of S. Henslee Smith and Julian C. Sonnega Re: Order to Show Cause Hearing. The Court does not find said declarations reasonably absolve Plaintiffs from appearance at the MSC based on Plaintiffs' counsels' clear understanding the entire case was not settled. The Court notes an OSC did not issue to Plaintiff Gary Oliver, yet one should have in that Mr. Oliver failed to appear at the MSC as well forcing the Court to vacate trial dates. Thus, an OSC shall issue as to this plaintiff as to why sanctions in the amount of \$1,000.00 should not issue for the failure to appear forcing the vacating of a jury trial. Consolidated cases become a single case. Once consolidated, there no longer remains two separate cases. As such, each case no longer existed after consolidation as a separate case. Counsel were all aware of this as set forth in the stipulation to consolidate filed with the Court on June 5, 2025. Further, a notice of settlement of the entire case is just that – settlement of the entire case – all parties and all causes of action.

The Court is inclined to issue sanctions in the amount of \$1,000.00 as to Plaintiffs Old Republic and USF Reddaway jointly and severally due to the non-appearance at the MSC, failure to properly notice settlement and dismiss certain parties prior to MSC and trial if such was the intent, failure to show sufficient cause as to why sanctions should not issue and failure to correct these issues despite noticed OSC and the passage of approximately two (2) entire months since the OSC was noticed.

5. CU0002399 Linda Rodriguez vs. Lake of the Pines Association, a California non-profit mutual benefit Corporation et al

Defendants' Demurrer to Plaintiff's Complaint is overruled in part, sustained with leave to amend in part, and sustained without leave to amend in part. Plaintiff shall file and serve her amended complaint within ten (10) days of service of the notice of entry of this order.

Request for Judicial Notice

Defendants' unopposed request for judicial notice is granted.

In addition, on the Court's own motion, the Court takes judicial notice of Plaintiff's Claim and Order to Go to Small Claims Court filed on October 11, 2024 in Nevada County Superior Court Case No. SC0000484.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.*, 148 Cal.App.4th at 113-14.

Fifth Cause of Action: Breach of Fiduciary Duty – SUSTAINED WITH LEAVE TO AMEND

Defendant Lake of the Pines Association (“LOPA”) demurrer to Plaintiff’s fifth cause of action for breach of fiduciary duty asserting this cause of action is time barred.

While Defendants argue the cause of action accrued on June 4, 2021 when a neighboring property owner felled a redwood tree located on Plaintiff’s property without obtaining permission, Plaintiff asserts and the Complaint alleges the breach arose from Defendant’s refusal to enforce the CCRs against this neighbor. The Complaint does not indicate when it became clear to Plaintiff LOPA was not going to take any action to enforce the CCRs. The Complaint does say “Instead, the ASSOCIATION improperly intervened...”. See, Complaint, Pg. 3, ll. 14-18. The Complaint then goes on to allege LOPA trespassed onto Plaintiff’s property on October 14, 2022 to paint orange and white boundary marker lines which favored the neighbor. See, Complaint, ¶ 13.

At bar, the Complaint asserts LOPA breached its duties by “favoring the neighbor, engaging in selective enforcement, harassing Plaintiff, trespassing...and refusing to stop the neighbors’ ongoing trespasses and encroachments.” Complaint, ¶ 72. While it appears some of the allegations made by Plaintiff occurred within the four (4) year relevant statute, the Complaint is vague to the point it is unclear to the Court when Plaintiff knew or should have know her fifth cause of action arose.

However, it appears Plaintiff could amend her Complaint to cure this issue.

Accordingly, the Court sustains the demurrer with leave to amend to make clear what facts Plaintiff bases the fifth cause of action, when those facts arose, and how they support the claim.

Second, Fourth, and Ninth Causes of Action for Uncertainty- SUSTAINED

Defendant argues Plaintiff's second, fourth, and ninth causes of action are uncertain and ambiguous because they are not valid causes of action under California law. As discussed more fully below, the Court overrules the demurrer as to the second cause of action, and sustains without leave to amend the fourth and ninth causes of action.

Second Cause of Action: Boundary Interference- OVERRULED

Plaintiff's second cause of action for boundary interference seeks relief of quiet title pursuant to Code of Civil Procedure §§ 760.010 et seq., as well as declaratory relief regarding the boundaries of her property. The Complaint adequately pleads a cause of action for quiet title. Therefore, the demurrer as to the second cause of action is overruled.

Fourth and Ninth Causes of Action: Harassment and Retaliation- SUSTAINED

Defendant argues Plaintiff's claims for harassment and retaliation are not valid causes of action under California law. In her opposition, Plaintiff asserts her claims for harassment and retaliation are allowed by Code of Civil Procedure § 527.6.

“Code of Civil Procedure section 527.6 provides a specialized procedure for a petitioner who has suffered harassment within the meaning of the statute to expeditiously seek a limited judicial remedy—injunctive relief to prevent threatened future harm. ... A petitioner who also desires retrospective relief in connection with the same underlying conduct, such as tort damages, must do so separately.” *Olson v. Doe* (2022) 12 Cal.5th 669, 673. However, Code of Civil Procedure section 527.6 establishes a petitioning procedure that requires the use of forms created by the Judicial Council of California. Code Civ. Proc. § 527.6(x)(1). [C]urrent law requires that “[t]he petition and response forms ... be simple and concise, and their use by parties in actions brought pursuant to [section 527.6] is mandatory.” *Olson, supra*, at 678 (quoting Code Civ. Proc. § 527.6(x)(1), italics added). Because Plaintiff failed to use the mandatory forms, and cannot remedy the defect by amending her Complaint, the demurrer is sustained without leave to amend.

Sixth and Seventh Causes of Action for Res Judicata – SUSTAINED and SUSTAINED WITH LEAVE TO AMEND, respectively

Defendant demurs to the sixth and seventh causes of action, claiming they are barred by *res judicata*, because Plaintiff already pled and litigated the same issues in a prior small claims action. As discussed below, the Court sustains the demurrer as to the sixth and seventh causes of action with leave to amend.

At bar, the sixth cause of action asserts violations of Civil Code § 5855. The Complaint states the small claims action also asserted violations of Civil Code § 5855. Complaint, ¶ 27. The seventh cause of action asserts violations of Civil Code § 5200, noting the violation was previously adjudicated "for a similar refusal of records". Complaint, ¶ 84. The small claims court held the association unreasonably withheld access to association records under Civil Code § 5235(a) on July 30, 2024, August 10, 2024, and August 27, 2024, and also that Plaintiff did not sustain her burden with respect to all other claims. RJN, Ex. 1.

The Court notes, the Claim in SC0000484 asserts violations of “Civil Codes 5200, 5855, 4935” occurring between July 14, 2024 through August 2, 2024, yet clearly the small claims court heard and decided allegations stemming through at least August 27, 2024. See, Claim, Pgs. 2-3, ¶ 3 and resulting Memorandum Decision and Order both filed in SC0000484.

Plaintiff’s Opposition asserts the claims are not duplicative in that LOPA has continued to violate the Civil Code even after the violations found by the small claims ruling.

As to the sixth cause of action for violation of Civil Code §5855, it appears clear all facts alleged in support of this claim were at issue in the small claims case. Thus, the Court sustains without leave to amend the sixth cause of action.

As to assertions LOPA violated Civil Code §5200, Plaintiff asserts LOPA “continues to violate Civil Code section 5200”. (See, Complaint, pg. 3, line 25.) However, the Court cannot determine when and how Plaintiff asserts such has occurred. Perhaps, Plaintiff can cure this defect via the amendment. Accordingly, as to the seventh cause of action, the demur is sustained with leave to amend.

Seventeenth Cause of Action: Injunctive Relief- SUSTAINED

Defendant demurs to the seventeenth cause of action for injunctive relief asserting the Complaint improperly asserts a cause of action for injunctive relief which is a remedy and not a cause of action. The Court agrees. The demurrer to the seventeenth cause of action is sustained without leave to amend, but this order shall not preclude Plaintiff from seeking that remedy for the sixteenth cause of action for declaratory judgment.