TENTATIVE RULINGS

FOR: January 20, 2022

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are optional. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Cynthia P. Smith, Dept. A (Historic Courthouse) at 8:30 a.m.

Estate of Pearl L Diggs **20PR000224**

PETITION TO DETERMINE TITLE TO PROPERTY; FOR CITATION TO ANSWER INTERROGATORIES AND TO APPEAR TO BE EXAMINED; FOR DAMAGES; FOR SECTION 859 TWICE DAMAGES; FOR ATTORNEY FEES AND COSTS (Prob. Code, § 850, 856, 8870 *et seq.*)

TENTATIVE RULING: After review of the petition, the Court GRANTS the relief set forth in the proposed order. The clerk is directed to set a hearing for April 27, 2022 at 8:30 a.m. in Dept. A for the examination of Demetrius Reed and Antoinette Reed concerning the wrongful taking, concealment or disposition of estate property and for the Court to consider the items on which it reserves jurisdiction as indicated in the proposed order. Prior to Petitioner's service of the Citation and interrogatories on Demetrius Reed and Antoinette Reed, Petitioner is directed to

change the date of appearance in the Citation to April 27, 2022 at 8:30 a.m. in Dept. A and to change the deadline for the written answers to interrogatories to April 26, 2022.

Conservatorship of Colin Matthew Walton **20PR000260**

REVIEW HEARING

TENTATIVE RULING: The matter is CONTINUED to February 17, 2022, at 8:30 a.m. in Dept. A. Conservator to ordered to file, no later than February 14, 2022, a Notice of Conservatee's Rights (GC-341) as required pursuant to Probate Code §1830, subdivision (c) and a Determination of Conservatee's Appropriate Level of Care (GC355) as required pursuant to Probate Code section 2352.5, subdivision (c).

Conservatorship of Ralph Moon **21PR000266**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

Conservatorship of William Ashworth Cummins **26-63046**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE ESTATE

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Cynthia P. Smith, Dept. A (Historic Courthouse)

****at 10:00 a.m. ****

Soda Canyon Group v. County of Napa, *et al*. **17CV001063**

PETITION FOR WRIT OF MANDAMUS (Violation of California Environmental Quality Act)

APPEARANCE REQUIRED. The Court will hear argument from the parties regarding the below tentative ruling on January 20, 2022, at 10:00 a.m. in Dept. A. The parties need not request or notice a request for oral argument, as otherwise required by Local Rule.

Soda Canyon Group (Petitioner or SCG) petitions the Court for a writ of mandate, based on alleged violations of the California Environmental Quality Act (CEQA), directing respondent County of Napa (County) to set aside its actions adopting a Negative Declaration and approving

use permit No. P13-00320-UP (Use Permit) and exception to the County's Road and Street Standards for a winery project proposed by real parties in interest Mountain Peak Vineyards, LLC, Steven Rea, Eric Yuan, and Hua Yuan (collectively Real Parties), and located at 3265 Soda Canyon Road in unincorporated Napa County (Project).[1] Upon review of the moving and opposition papers, the Court tentatively agrees with Petitioner on grounds that substantial evidence in the administrative record supports a fair argument that the Project may have a significant effect on the environment and that as a result the County is required to prepare an Environmental Impact Report (EIR).

A. LEGAL BACKGROUND

"'With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.' (Citations.) ''Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment.' (Citations.)' (Citation.)" (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. (*Pocket Protectors*.)) Put another way, "[a] public agency should not file a negative declaration for a project if it can be fairly argued that the project might have a significant environmental impact." (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1348. (*Loenoff*.)) "Where the agency has filed a negative declaration while granting a use permit, the concern of judicial review, by both trial and appellate courts, is whether there is substantial evidence in the record supporting a fair argument of significant environmental impact. If such evidence is found, it cannot be overcome by substantial evidence to the contrary." (*Ibid*.) "In the CEQA context, substantial evidence is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.' (. . . § 15384, subd. (a).)" (*Scaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 621, fn. 6.) Similarly, "'Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.' (Guidelines, § 15384.)" (*Pocket Protectors, supra,* at 927-28.) "Since CEQA's concern is about the likely future impact of a yet undeveloped project, the evidence will obviously consist of predictions with varying degrees of plausibility." (*Loenoff, supra,* at 1348.)

The fair argument standard has been called a "low threshold test" for the requirement of an agency to prepare an EIR. (See *Pocket Protector, supra*, 124 Cal.App.4th at 928.) "It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (*Ibid*.)

"In examining the record for such substantial evidence, the courts recognize the public agency's responsibility for creating an adequate record. Deficiencies in the record due to the

[1] Because Respondents and Real Parties collectively filed a single opposition brief, the Court refers to them collectively as Opponents.

public agency's lack of investigation 'may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.' (Citation.) However, it remains the [Petitioner's] burden to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact." (*Loenoff, supra,* 222 Cal.App.3d at 1348-49.)

"Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument. (Citations.) So may expert opinion if supported by facts, even if not based on specific observations as to the site under review. (Citations.) Where such expert opinions clash, an EIR should be done. (Citation.)" (*Pocket Protector, supra*, 124 Cal.App.4th at 928.)

With this background in mind, the Court turns to Petitioner's CEQA claims.

B. SUBSTANTIAL EVIDENCE EXISTS IN THE ADMINISTRATIVE RECORD TO SUPPORT A FAIR ARGUMENT THAT THE PROJECT MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON SURFACE WATER AND BIOLOGICAL RESOURCES

Petitioner argues that substantial evidence exists to support a fair argument that the Project will have a significant impact on water quality, aquatic habitat, and species in the on-site streams and nearby Rector Creek. The Court agrees. The Court finds that the evidence found at AR 1502, 1508-22, 3498-3504, 3648-52 is substantial evidence sufficient to support a fair argument that the Project might have a substantial adverse impact on surface water quality, and on the health of several species, including at least one species designated as endangered, and their habitat in on-site streams and nearby Rector Creek. (See 14 C.C.R. § 670.5, subd. (a)(3)(D)-(F).)

"A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that…[t]he project has the potential to substantially degrade the quality of the environment…[or]…reduce the habitat of a fish or wildlife species...[or]…substantially reduce the number or restrict the range of an endangered, rare or threatened species." (14 C.C.R. § 15065, subd. (a)(1).) Moreover, the Court's de novo review should be undertaken with a preference for resolving doubts in favor of environmental review. (See *Pocket Protector, supra*, 124 Cal.App.4th at 928.)

Petitioner further presents substantial evidence questioning methodologies used by the County in collecting the data used to support the Initial Study's analysis of groundwater, surface water, and sediment runoff into downstream watersheds. (See, *e.g.*, AR 1491-1502, 3490-3496.) In this context, Petitioner asserts that the County "failed to assess the biological resources potentially impacted by the Project and/or analyze the Project's effects on them." (Opening Brief at 15:2-4.) "While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to

hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

In response to the foregoing, Opponents assert that Petitioner's allegations that "the Project will result in cave spoils entering nearby streams" are "without any factual basis." (*Id*. at 7:17-19.) Petitioner alleges that "there is substantial evidence in light of the whole record before the County that the Project not only may but will have significant direct, indirect, and cumulative effects on the environment, in areas including…biological resources, surface waters, and groundwater resources." (Petition at ¶ 36.) Opponents may be correct that there is no factual basis for an assertion that the Project will (with certainty) result in cave spoils entering nearby streams. But Petitioner does not need to produce evidence of the certainty of such event. "A public agency should not file a negative declaration for a project if it can be fairly argued that the project *might* have a significant environmental impact." (*Leonoff, supra,* 222 Cal.App.3d at 1348. Emphasis added.) And a *potentially* substantial adverse change in the environment constitutes a "[s]ignificant effect on the environment" for purposes of this analysis. (*Pocket Protectors, supra,* 124 Cal.App.4th at 927.) Moreover, "[s]ince CEQA's concern is about the likely future impact of a yet undeveloped project, the evidence will obviously consist of predictions with varying degrees of plausibility." (*Loenoff, supra,* at 1348.)

As noted hereinabove, the Court finds substantial evidence in the record sufficient to support a fair argument that the Project *might* have a *potentially* substantial adverse impact on surface water, and several species, including at least one species designated as endangered, and their habitat in on-site streams and nearby Rector Creek. In light of the preference for environmental review, this finding is sufficient to require Respondent to prepare an EIR prior to approving the Project. (See *Pocket Protectors*, 124 Cal.App.4th at 927.)

Opponents cite to areas in the record that they contend show that the "Project includes features that minimize the risk of grading work or cave spoils affecting water quality in nearby streams." (Opposition Brief at 6:20-21; see also *id*. at 9:25-11:15.) The presence of evidence that the project will have no significant effect is of no moment, however. "Where the agency has filed a negative declaration while granting a use permit, the concern of judicial review, by both trial and appellate courts, is whether there is substantial evidence in the record supporting a fair argument of significant environmental impact. If such evidence is found, it cannot be overcome by substantial evidence to the contrary." (*Leonoff, supra*, 222 Cal.App.3d at 1348.) "Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68)" (14 C.C.R. § 15064, subd. (f)(1).)

Similarly, Opponents argue that the County "studied potential erosion and water quality impacts, and determined that the Project will not result in substantial adverse impacts on water quality or biological resources in nearby streams." (Opposition at 7:19-21.) Again, however, "It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (See *Pocket Protector, supra,* 124 Cal.App.4th at 928.))

Opponents argue that the Teejay O'Rear report "did not contain any evidence that the construction or operation at the Project would cause sedimentation to increase." (Opposition at 8:3-7.) Expert opinion, however, "may qualify as substantial evidence for a fair argument… if supported by facts, even if not based on specific observations as to the site under review." (*Pocket Protector, supra,* 124 Cal.App.4th at 928.) The Court finds that the Teejay O'Rear report explicitly references the factual basis for the opinions set forth therein. (See AR 1509-1511.)

Similarly, Opponents assert that Amber Manfree "did not explain or provide a factual basis for her conclusion…." (Opposition at 8:8-10.) The Court disagrees. The record contains both Ms. Manfree's explanation and citation to the factual basis supporting her conclusions. (See, *e.g.*, AR 3499-3504.) Opponents then contend that "the County acted within its discretion to discount Manfree's testimony as an assumption unsupported by fact." (Opposition at 8:11-13.) Opponents cite to no portion of the record supporting their contention that the County discounted Manfree's testimony. The citation provided supports only a conclusion that the County drew a different conclusion than did Ms. Manfree. (See *id*. at 8:13-16.)

Opponents next address the testimony of Greg Kamman. (Opposition at 8:24, *et seq*.) Opponents contend that Mr. Kamman's testimony is not evidence of a Project-related impact. Even assuming, *arguendo*, that this is so, the Court finds Mr. Kamman's testimony to be evidence that the County may have failed to conduct an adequate Initial Study to support the Negative Declaration. As noted herein above, "[w]hile a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Moreover, "deficiencies in the record due to the public agency's lack of investigation 'may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.'" (*Loenoff, supra,* 222 Cal.App.3d at 1348-49.)

"[I]f the trial court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.' (Pub. Resources Code, § 21168.5.)" (*Brentwood Association for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504.)

The foregoing is sufficient to support Petitioner's prayer for a writ of mandate. However, in the interest of providing a complete record, the Court will briefly address Petitioner's other CEQA-related claims.

C. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS A FAIR ARGUMENT THAT GROUNDWATER EXTRACTION FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

The Court finds that the evidence found at AR 1493-1502, 1509, 1512-13, and 3490-96 is substantial evidence supporting a fair argument that the Project might have a potentially substantial adverse impact on groundwater overdraft and falling groundwater levels, and aquifer

supply. The Court further finds that the opinions and conclusions set forth respectively by Greg Kamman, and Teejay O'Rear, *et al*. at the above-referenced citations, are supported by fact and coherent explanation which are also set forth in the cited sections of the record.

Of note is the evidence presented of possible deficiencies and inaccuracies in the groundwater studies upon which the County relied in adopting the Negative Declaration. (See AR 1493-1502, 1509, 1512-13, and 3490-96.) As noted herein above, "[w]hile a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at 311.) Moreover, "deficiencies in the record due to the public agency's lack of investigation 'may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.'" (*Loenoff*, *supra*, 222 Cal.App.3d at 1348-49.)

Opponents' arguments to the contrary are unavailing. (Opposition at 9:25-11:15.) As discussed in detail herein above, "if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68)" (14 C.C.R. § 15064, subd. (f)(1).) Opponents suggest that Petitioner's arguments fail to recognize that the Project's impacts must be evaluated against a baseline. (Opposition at 10:20-21.) The argument appears to ignore the significant evidence that the County's estimated baseline is inconsistent with the data presented by Real Parties' expert witnesses. (See, *e.g.*, AR 1494, 3490.)

D. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS A FAIR ARGUMENT THAT AMBIENT NOISE IMPACTS FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

Petitioner next contends that "the Project will generate additional noise in this very quiet, remote, rural area primarily from the evening marketing events." (Opening Brief at 21:24-25.) Excessive noise may constitute an adverse environmental impact under CEQA. (See *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1379-80 ["through CEQA, the public has a statutorily protected interest in quieter noise environments"]; see also 14 C.C.R. § 15360 [defining "environment" as "physical conditions which exist within the area which will be affected by a proposed project including…ambient noise…"].)

The most compelling evidence presented by Petitioner on the issue of noise is the contention of Derek Watry that Opponents' noise assessment analysis (conducted by Illingworth & Rodkin, Inc.) relied on an inapplicable standard under Napa County Noise Ordinance. (See AR 2769; see also AR 545-563.) Mr. Watry concludes that, when the appropriate standard is applied, the data presented in Opponents' analysis reveals that noise levels caused by the Project would "exceed a local standard" and thereby constitute a significant impact. (See *id*.)

Opponents do not dispute Mr. Watry's contention that the alternative noise standard is applicable. Rather, they argue that the County had discretion to use the noise standard threshold it did under the holding in *Mission Bay Alliance v. Office of Community Investments & Infrastructure* (2016) 6 Cal.App.5th 160. The issue in *Mission Alliance*, however, was the agency's determination of an appropriate threshold of significance in an EIR. (See *id*. at 191-92.) The standard of review applied to determinations of the sufficiency of an EIR's analysis is significantly different from the fair argument standard governing the present analysis. Opponents argue, in effect, that while both the threshold standard used by Illingworth & Rodkin, Inc., and that urged by Mr. Watry are defensible, the Court should defer to the County's selection of the former. This argument is inconsistent with the principals of the fair argument standard discussed in detail herein above. (See *Pocket Protector, supra*, 124 Cal.App.4th at 928 ["[i]t is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination"].) The Court concludes that significant evidence in the record – in the form of the data collected and presented in the Illingworth & Rodkin, Inc. report – supports a fair argument, evidenced by Mr. Watry's conclusions, that the Project will have a significant impact on ambient noise levels in the surrounding vicinity. (See *Ibid* ["the Court's analysis is conducted with a preference for resolving doubts in favor of environmental review"].)

E. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS A FAIR ARGUMENT THAT TRAFFIC AND SAFETY IMPACTS FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

Finally, Petitioners argue that substantial evidence exists to support a fair argument that the Project will have adverse impacts on traffic and human safety, constituting an adverse environmental impact. (See Opening Brief at 23:24-25:18; see also Petitioner's Supplemental Brief After Remand.) The Court agrees as to both traffic and human safety issues.

The Court finds that the evidence found at AR 695-703, 2146-2204, 2928-2997, 3450, 3452-3484, 3820-23, 6864.006, 6864.013-6864.0139, SR 123-349, 361-376, 433-35, 444, 469, 873-74 is substantial evidence supporting a fair argument that the Project may have a potentially substantial adverse impact on traffic conditions and human safety.

As discussed in detail herein above, Opponents' reference to reports that reached the alternative conclusion (no substantial adverse impact) are immaterial. (See Opposition at 13:19-14:5; see also 14 C.C. R. § 15064 ["if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect"] citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.) Opponents challenge the credibility of a traffic impact report that the Court does not, here, rely upon in making its decision. (See Opposition at 14:6-15:3.)

The Court disagrees with the Opponents' characterization of the evidence relating to public health and safety as "generalized fears, speculation, and assumptions unsupported by a factual foundation…." (Opposition at 15:7-8.) While some of the cited portions of the record do reflect fears, speculation, and assumptions, the overwhelming bulk of the cited portions of the record reflect factual evidence in the form of witness testimony.

F. ARGUMENTS RAISED BY OPPONENTS THROUGH THEIR SUPPLEMENTAL BRIEF

Through their Supplemental Brief, Opponents appear to argue that the issue before the Court is simply whether the County's adoption of Resolution 2021-81, which affirmed the County's prior decision to issue the subject use permit and approve the project based on the EIR, is supported by substantial evidence. (See Brief on Remand.) If Petitioner sought a writ overturning only that decision, then the Court would be inclined to agree with the standard of review suggested by Opponents.

However, the Petitioner here seeks a writ of mandate directing the County to set aside its actions "adopting a Negative Declaration and approving Use Permit No. P13-00329-UP and exception to the County's Road and Street Standards for the Project." (See Petition at and 11:14-17; see also *id*. at 1:2-7, 13-22, 8:6-9:7.) As discussed in significant detail herein above, the appropriate standard of review is the fair argument standard.

G. REMAINING CAUSES OF ACTION

In light of the Court's conclusion that Petitioner is entitled to writ relief pursuant to its first cause of action for violation of CEQA, the Court finds that Petitioner's remaining causes of action – which seek identical relief on alternative legal theories – are MOOT.

H. CONCLUSION

Based on the foregoing, the Petition for a peremptory writ of mandate to set aside the County's actions adopting a Negative Declaration and approving Use Permit No. P13-00320-UP and exception to the County's Road and Street Standards for the Project is GRANTED.

PROBATE CALENDAR – Hon. Scott R. L. Young, Dept. B (Historic Courthouse) at 8:30 a.m.

In the Matter of John Phillip Stoner **21CV001665**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

CIVIL LAW & MOTION CALENDAR – Hon. Scott R. L. Young, Dept. B (Historic Courthouse) at 8:30 a.m.

Liam Nubla vs Genuina Mercado et al **21CV000603**

MOTION TO COMPEL RESPONSES TO FIRST SETS OF WRITTEN DISCOVERY

TENTATIVE RULING: Plaintiff moves for an order (1) compelling Defendant to submit further, code-compliant responses to Plaintiff's requests for production of documents, numbered 1-18, 20-21, and 23; (2) compelling Defendant to produce any improperly withheld documents; and (3) for monetary sanctions in the sum of $1,000. The motion is DENIED. Plaintiff's request for sanctions is DENIED. Defendant's request for sanctions is GRANTED IN PART.

A. PROCEDURAL ISSUES

There is no proof of service on Plaintiff's motion in the Court's file. To the extent there were any notice defects, Defendant waived any objection to the defect(s) by failing to raise such objection and by submitting opposition papers addressing the substance of Plaintiff's motion. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697, quoting *Tate v. Super. Ct.* (1975) 45 Cal.App.3d 925, 930.)

B. MOTION TO COMPEL FURTHER RESPONSES

Plaintiff moves upon the grounds that Defendant's statement of compliance – by referring to specific documents it agrees to produce – is incomplete pursuant to Code of Civil Procedure sections 2031.210, 2031.220, 2031.240, and 2031.310 and, as a result, creates uncertainty as to whether all documents have been produced. Under Code of Civil Procedure section 2031.220, "[a] statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sapling, and related activity demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code Civ. Proc., § 2031.220.)

Code of Civil Procedure section 2031.310 provides that a party demanding a document inspection may move for an order compelling further responses to the demand if the demanding party deems that "[a] statement of compliance with the demand is incomplete." (Code Civ. Proc., § 2031.310, subd. (a)(1).) A motion to compel further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (*Id.*, § 2031.310, subd. (b)(1).) The burden is on the moving party to show both relevance to the subject matter and specific facts justifying discovery. (*Glenfed Develop. Corp. v. Sup. Ct.* (1997) 53 Cal.App.4th 1113, 1117.) Once good cause is established by the moving party, the burden then shifts to the responding party to justify any objections made to document disclosure. (*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92 98; see *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 172-74.)

Plaintiff's motion makes no showing of good cause. Instead, Plaintiff solely focuses on the procedural deficiency of Defendant's responses. Despite Plaintiff's failure to show good

cause justifying the discovery sought, there are five requests at issue, the scope of which does not appear to be in dispute – *i.e.*, Defendant did not insert an objection – and therefore, the Court may rule on them without a showing of good cause. The Court reviews Plaintiff's motion with respect to these five requests (numbers 4, 5, 6, 7, and 21). Defendant's response to request numbers 4, 5, 6, and 21 include a statement that "Defendant complies" with no objections. The Court finds these responses sufficient to indicate Defendant's compliance pursuant to Code of Civil Procedure section 2031.220. Therefore, Plaintiff's motion is DENIED WITH PREJUDICE with respect to numbers 4, 5, 6, and 21. Furthermore, the Court finds that Defendant's response to request number 7, indicating that Defendant has no responsive documents after a diligent search and reasonable inquiry, is compliant with Code of Civil Procedure section 2031.230. Therefore, Plaintiff's motion is DENIED WITH PREJUDICE with respect to request number 7.

Defendant's responses to the remaining requests at issue (numbers 1-3, 8-18, 20, and 23) state an objection along with identification of a specific document which Defendant states she is producing in response. Because Plaintiff failed to show good cause justifying the discovery that is sought, Plaintiff has not met his burden on this motion. (Code Civ. Proc., § 2031.310, subd. (b)(1).) Thus, the burden does not shift to Defendant to justify her response and/or any objections. Defendant's motion is DENIED WITHOUT PREJUDICE as to request numbers 1-3, 8-18, 20, and 23.

C. MOTION TO COMPEL DOCUMENTS

The Court DENIES WITHOUT PREJUDICE Plaintiff's motion to compel the production of "any improperly withheld documents." Plaintiff did not provide any authority for such request. Even assuming arguendo that Plaintiff provided such grounds, Plaintiff does not identify the responses for which Defendant has purportedly withheld documents.

D. REQUEST FOR SANCTIONS

Plaintiff's request for monetary sanctions is DENIED on the grounds that Plaintiff fails to cite to any authority by which the Court may impose such sanctions.

Defendant requests an award of sanctions pursuant to Code of Civil Procedure sections 2023.010, 2023.030, and 2030.290. Section 2030.290 applies to interrogatories and is therefore inapplicable to the instant motion. (Code Civ. Proc., § 2030.290.) Section 2023.030 provides "[t]he court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (Code Civ. Proc., § 2023.030, subd. (a).) If a monetary sanction is authorized, "the court shall impose that sanction 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." (*Ibid.*)

The Court does not find that Plaintiff acted with substantial justification and does not find that the imposition of sanctions would be unjust. Defendant requests sanctions, not against Plaintiff, but against Plaintiff's counsel in the amount of $2,500. Defendant provides evidence that she has incurred costs in the amount of $1,000, to date, in opposing this motion, and requests an additional $1,500 due to the fact that Plaintiff counsel's behavior appears to be a pattern as evidenced, in part, by a separate case. The Court finds that the hours spent preparing the

opposition and the hourly rate are reasonable. However, the Court does not award sanctions based on matters arising in separate cases.

For the foregoing reasons, Plaintiff's request for sanctions is DENIED, and Defendant's request for sanctions against Plaintiff's counsel is GRANTED IN PART, in the amount of $1,000.