SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable CHRISTOPHER G. RUDY, Presiding

Courtroom Clerk: R. Belligan

DATE: 01/18/2022 TIME: 9:00 A.M.

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2170

1. **To contest the ruling, call (408) 808-6856 before 4:00 P.M. Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.**
2. **The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) The proposed order must be e-filed by counsel and submitted per 3.1312(c))**
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EFFECTIVE JULY 24, 2017, THE COURT WILL NO LONGER PROVIDE OFFICIAL COURT REPORTERS FOR LAW AND MOTION HEARINGS. SEE COURT WEBSITE FOR POLICY AND FORMS.

TROUBLESHOOTING TENTATIVE RULINGS

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH", or "QUIT" your browser and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	17CV316927	City of Half Moon Bay vs Granada Sanitary District et al	Hearing: Motion Summary Judgment by Defendant Montara Water and Sanitary District. Motion GRANTED. Click link at line 1 for full ruling. The Court will prepare the formal order.

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LINE 2	17CV316927	City of Half Moon Bay vs Granada Sanitary District et al	Hearing: Motion Summary Judgment by Plaintiff City of Half Moon Bay Motion DENIED. Click link at LINE 1 for full ruling. The Court will prepare the formal order.
LINE 3	17CV316927	City of Half Moon Bay vs Granada Sanitary District et al	Motion Summary Judgment by Defendant Granada Sanitary District Motion GRANTED. Click link at LINE 1 for full ruling. The Court will prepare the formal order
LINE 4	17CV316927	City of Half Moon Bay vs Granada Sanitary District et al	Motion: Joinder in Defendant Montara Water and Sanitary District's Motion for Summary Judgment by Defendant/X-Complainant Granada Community Services District Click link at LINE 1 for full ruling. The Court will prepare the formal order

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LINE 5	17CV316927	City of Half Moon Bay vs Granada Sanitary District et al	Motion: Joinder in Defendant Granada Community Services District's Motion for Summary Judgment by Defendant Montara Water & Sanitary District Motion GRANTED. Click link at LINE 1 for full ruling. The Court will prepare the formal order
LINE 6	19CV345863	Credit Corp Solutions Inc, vs. Liliana Gonzalez	Motion: Summary Judgment/Adjudication by Plaintiff/X-Defendant Credit Corp Solutions, Inc. Motion GRANTED in part and DENIED in part Click link at line 6 for full ruling. The Court will prepare the formal order.

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LINE 7	17CV316096	Katalyst Development, LLC vs GABRIEL MICHEL et al	Motion: Compel SBC Global Service, Inc.'s Compliance with the Subpoena Duces Tecum Issued on November 11, 2021 and Request for Sanctions by Plaintiff Katalyst Development LLC. No proof of service of the Court's order setting this hearing. If no proof of service and no appearance, the motion will be ordered OFF CALENDAR.
LINE 8	20CV369658	Rose Warren vs Let T. Leonardo	Motion: Compel Defendant Les T. Leonardo Further Responses to Demands for Production Nos. 1-24 and for Sanctions by Plaintiff Rosa Warren Motion GRANTED. Click link at line 8 for full ruling.
LINE 9	20CV369658	Rose Warren vs Let T. Leonardo	Motion: Compel Defendant Les T. Leonardo Further Responses to Requests for Admission, Set One, Nos. 1-22 and for Sanctions by Plaintiff Rosa Motion GRANTED. Click link at LINE 8 for full ruling.

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LINE 10	20CV369658	Rose Warren vs Let T. Leonardo	Motion: Compel Defendant Les T. Leonardo Further Responses to Form & Special Interrogs, Sets One and for Sanctions by Plaintiff Rosa Warren Motion GRANTED. Click link at LINE 8 for full ruling
LINE 11	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Luis Fernando Arroyo Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 12	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Joshua Ayala Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 13	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Alondra Ayala Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 14	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Rachel Garcia Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 15	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Andy Garcia Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 16	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Daniel Garcia Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 17	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Angel Gael Jimenez Lopez Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 18	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Devin Salvador Lopez Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 19	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Fernando Pacheco Siranda Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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LINE 20	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Melanie Gutierrez Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.

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1. **To contest the ruling, call (408) 808-6856 before 4:00 P.M. Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.**
2. **The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) The proposed order must be e-filed by counsel and submitted per 3.1312(c))**
3. **In light of the lifting of shelter-in-place orders in this County, appearances by CourtCall are no longer mandatory. CourtCall appearances are encouraged. In person appearances must comply with social distancing rules per paragraph 5 below. If any party wants a court reporter, the appropriate form must be submitted. Remote reporting is encouraged.**
4. **There will be a public access line so that interested members of the public can listen in. That number is 888-363-4735, access #: 3118410.**
5. **As ordered by the Presiding Judge of the Court, any person appearing in person for the hearing must observe appropriate social distancing protocols and wear a face covering, unless otherwise authorized by the Court.**
6. **As a reminder, state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies while in the courtroom and while listening in on the public access line.**

LINE 21	16CV295614	Argelia Castillo et al vs Hee Kang et al	Hearing: Compromise of Minor's Claim For Alyhna Nicole Garcia Enciso Proof being made to the satisfaction of the Court and Good Cause appearing the Petition is GRANTED on the terms and conditions set forth in the petition. The Court will use the submitted proposed orders. A hearing is set for 6/30/22 at 10:00 AM, in Dept. 7 for proof of deposit of monies in blocked account. If funds have not been deposited by that date an appearance is required. If proof that funds have been deposited is filed with the court before that date, no is appearance is necessary.
LINE 22			
LINE 23			
LINE 24			
LINE 25			
LINE 26			
LINE 27			
LINE 28			
LINE 29			

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable CHRISTOPHER G. RUDY, Presiding

Courtroom Clerk: R. Belligan

DATE: 01/18/2022 TIME: 9:00 A.M.

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2170

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LINE 30			

Calendar Lines 1, 2, 3, 4 & 5
Case Name: *City of Half Moon Bay v. Granada Community Services District, et al.*
Case No.: 17CV316927

The following motions are at issue: (1) defendant/cross-defendant Montara Water and Sanitary District's ("Montara") motion for summary judgment as to the complaint ("Complaint") filed by plaintiff/cross-defendant City of Half Moon Bay (the "City"); (2) the City's motion for summary judgment as to its own Complaint; and (3) defendant/cross-complainant Granada Community Services District's ("Granada") motion for summary judgment as to the City's Complaint and its own cross-complaint ("Cross-Complaint"). Granada joins in Montara's motion and Montara joins in Granada's.

I. Background

A. Factual

1. *Complaint*

This action arises out of a dispute between various municipalities over their financial obligations concerning sewer infrastructure for the San Mateo Coast. According to the allegations of the operative Complaint, on February 3, 1976, the City, Montara and Granada entered into a Joint Exercise Powers Agreement ("JPA") for the purposes of creating the Sewer Authority Mid-Coastside Authority (the "Authority") to construct, own, and operate regional wastewater facilities for the three communities. (Complaint, ¶ 14 and Exhibit B.) Shortly after the execution of the JPA, the Authority constructed the Intertie Pipe System ("Intertie") pursuant to Phase I of the agreement. (*Id.*, ¶ 15.) Intertie is a sewer force main and associated tanks, pumps, and mechanical and electrical components that convey wastewater from Montara's and Granada's sewer collection systems to the Authority's treatment plant in the City. Intertie's construction, net of state and federal grants, was funded only by Granada and Montara, with the City assigned no benefit from, and thus no burden to fund, it. (*Id.*)

Intertie was constructed to be operated and maintained for its useful life. (Complaint, ¶ 17.) While the JPA did not specify the useful life, the JPA foresaw that Intertie would eventually require replacement. (*Id.*) After four decades of use, critical portions of the Intertie must now be replaced at a cost of approximately $4.4 million. (*Id.*, ¶¶ 17-18.) This cost was included by the Authority in its proposed 2017-2018 General Budget which, if approved and implemented, would purport to obligate the City to bear approximately half the cost to replace critical portions of the Intertie. (*Id.*) However, the City does not have any use for, nor right to use the Intertie and thus no obligation to fund the replacement parts under the JPA. (*Id.*)

Under the JPA, a member agency's share of the Authority's general fund is based on its share of flows to the Authority's plant, while only member agencies participating in a particular capital project contribute to its budget. (*Id.*, ¶ 19.) The City alleges that under the JPA, the Intertie replacement is a capital project for which Montara and Granada must approve and contribute to a project budget, rather than be funded from the general budget. (*Id.*, ¶¶ 20-22.) Among the factors alleged by the City to support its position are: the age of the Intertie and its finite useful life; the replacement nature of the subject project; the significant cost of the project; the nature of the costs to be incurred; the City's lack of benefit from the Intertie; and the JPA's distinction of "construction" from "maintenance and operation." (Complaint, ¶ 25.)

The City further alleges that under the JPA, any member may withhold its approval of capital projects and project budgets. (Complaint, ¶ 26.) The latter requires unanimous approval of the agencies that benefit from, and are therefore obliged to fund, the associated projects. (*Id*.) If the City withdraws from a project, it is not obligated to contribute to that project's budget nor may it benefit from that project. (*Id*.) Accordingly, the City asserts, it may withhold its approval of the Intertie project budget. (*Id*., ¶ 27.) The City seeks a declaration that capital projects such as large-scale pipe replacement do not constitute "operation and maintenance" and the JPA therefore does not oblige the City to contribute to the cost of the $4.4 million in Intertie capital replacement projects via the general budget.

2. *Granada's Cross-Complaint*

Granada takes the opposite position to the City in its Cross-Complaint. According to the allegations of this pleading, the Authority constructed Intertie in two phases. (Cross-Complaint, ¶ 17.) Phase I consisted of three components with "capacity rights, construction costs and operation and maintenance expenses being shared as specified" until these costs were reallocated as contemplated in Phase II. (*Id*., ¶ 18.) Intertie was one of the three components, with initial construction costs shared equally between Montara and Granada. (*Id*.) Phase II, in turn, consisted of construction of the final component of the Authority's sewer system, which contemplated one or more wastewater treatment facilities. (*Id*.) Ultimately, the member agencies chose to construct a single consolidated treatment plant, to which the Authority connected the then-existing Intertie. (*Id*.)

Under the terms of the JPA, and upon the Authority's Board of Directors' decision to construct a single treatment plant, the member agencies agreed to reallocate the costs and expenses of the Authority's sewer system, thereby terminating the previous Phase I cost allocations. (Cross-Complaint, ¶ 20.) The member agencies agreed to share the total expenses of operation and maintenance of all the components of Intertie "based on flows into the single consolidated treatment plant facility," and that "capacity rights and construction costs previously allocated in Phase I components shall be reallocated to be consistent with the treatment plant facility allocations." (*Id*.) As of 2017, the flow allocations consisted of 52% (the City), 26% (Granada) and 22% (Montara). (*Id*., ¶ 22.)

Granada alleges that contrary to the allegations in the City's Complaint, the City directly and indirectly utilizes and benefits from Intertie, which transports its wastewater to the Authority's wastewater treatment plant, and the City receives wastewater flow "priority" there. (Cross-Complaint, ¶ 23.) Nevertheless, Granada asserts, the JPA Phase II reallocation of the Authority's sewer system costs and expenses does not rely on a "benefit" calculation, but rather relies on each member agency's proportion of wastewater flows into the wastewater treatment plant and their LCP allocations. From the time of Phase II reallocation until the City's June 2017 refusal to approve the Authority's 2017-2018 general budget, Granada pleads, the City has continually funded the operation and maintenance, including construction, on the Intertie, in accordance with the reallocation set and agreed to by the member agencies in the JPA. (*Id*., ¶¶ 25-26.)

Granada further alleges that under the plain reading of the JPA and the past practice of the member agencies, the "Project Budget" provisions apply to new improvements not previously existing. (Cross-Complaint, ¶ 30.) Thus, Granada maintains, because three

components of the Authority's sewer system components, including Intertie, have been in existence and continual used and have been functioning for nearly four decades, the project budget provisions of the JPA are inapplicable to work done on the Intertie. (*Id*.) The 2017-2918 general budget did not envision expanding Intertie or increasing its capacity; it only proposed to implement a plan to repair and replace certain segments of the Intertie, in line with similarly funded past repairs and replacements. (*Id*) The member agencies have regularly and properly funded work on the existing sewer system, including Intertie, through the general budget. (*Id*.) Granada seeks a declaration that the City continues to share responsibility for its share of all costs and expenses related to the Intertie, as reflected in the JPA, as well as an affirmative declaration that infrastructure work which does not envision expanding the Intertie or increasing its capacity, but only proposes to implement to repair and replace certain segments of the Intertie does not require a project budget. (*Id*., ¶ 31.)

B. Procedural

The City filed its Complaint for declaratory relief in San Mateo County Superior Court on July 11, 2017. Granada filed its Cross-Complaint for declaratory relief on September 5, 2017.[1] Several weeks later, a motion for mandatory transfer was granted by the San Mateo County Superior Court, transferring this entire action to this Court. On September 30, 2021, the instant three motions for summary judgment were filed by the parties. All of the motions are opposed.[2]

II. Montara's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with Montara's motion for summary judgment, Granada, the City and Montara itself all make requests for judicial notice.

First, in support of its motion, Montara requests that the Court take judicial notice of the existence and contents of the Declarations of Pippin Cavagnaro and Clemens Heldmaier in support of its opposition to the City's own motion for summary judgment. As these items are court records, they are proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (d). Accordingly, Montara's request is GRANTED.

Next, in support of its joinder in Montara's motion for summary judgment, Granada requests that the Court take judicial notice of the City's Complaint (Exhibit A), a court record. Granada's request is GRANTED. (Evid. Code, § 452, subd. (d).)

Finally, in connection with its opposition to Montara's motion, the City requests that the Court take judicial notice of various items attached to the Declaration of John Doughty in Support of the City's Joint Opposition to Montara's and Granada's motions for summary judgment, specifically: Staff Report of the January 25, 2010 Authority Board Meeting Agenda

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[1] Montara filed a cross-complaint for declaratory relief on August 24, 2017, that is substantively the same as Granada's. This pleading is not at issue in Montara's motion.

[2] Pursuant to a stipulation between the parties and resulting Court order, Granada and Montara filed a joint opposition to the City's motion for summary judgment. The City also filed 9 volumes of joint evidentiary exhibits relied on by all parties in support of their motions or oppositions to the motions.

Item No. 6A (Exhibit K); California Regional Water Quality Control Board ("RWQCB") Order R2-2018-1005, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of Granada's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit L); RWQCB Order R2-2018-1012, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of the Authority's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit M); RWQCB Order R2-2018-1022, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of the Authority's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit N); July 14, 2008 Authority Board Meeting Minutes (Exhibit O); and Authority Resolution No. 3-2009 (Exhibit P).

Government records are judicially noticeable pursuant to Evidence Code sections 451, subd. (a) and 452, subds. (b) and (c). Evidence Code section 452 provides that the Court may take judicial notice of "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." The Court may notice relevant portions of a city's or joint powers authority's staff reports and legislative enactments. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 [judicial notice of staff report]; see *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Ca1.App.4th 1014, 1027 [applying Evid. Code, § 452, subd. (b) and (c) to "local ordinances and the official resolutions, reports, and other official acts of a city."].) The authority to take judicial notice, includes those government records published on the internet. (See, e.g., *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38, fn. 3.) Exhibits K, O, and P fall into this category.

The administrative decisions of the State RWQCB, i.e., Exhibits L, M and N, are also proper subjects of judicial notice as "[o]fficia1 acts of the legislative, executive, and judicial departments of any state." (Evid. Code, § 452, subd. (c); *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484.) Accordingly, the City's request for judicial notice is GRANTED.

B. Burden of Proof

"A defendant seeking summary judgment [or adjudication] must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72 [internal citations omitted].)

"The 'tried and true' way for defendants to meet their burden of proof on summary judgment motions is to present affirmative evidence (declarations, etc.) negating, as a matter of law, an essential element of plaintiff's claim." (Weil & Brown, Cal. Prac. Guide; Civ. Proc. Before Trial (The Rutter Group 2014) ¶ 10:241, p. 10-104, citing *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) "The moving party's declaration and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to resolve any evidentiary doubts or ambiguities in plaintiff's (opposing party's) favor.'" (*Id*., ¶ 10:241.20, p. 10-105, citing *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion)." (*Id*., ¶ 10:242, p. 10-105, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.) "Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Id.*)

C. Analysis

The disposition of the instant motion rests on an issue of contractual interpretation. Per Montara's motion, the dispute at issue and its position can be summarized thusly: despite all member agencies of the Authority historically contributing to the cost of repair and replacements of improvements comprising the intertie pipeline system ("IPS") as required by the provisions of the JPA, the City no longer wishes to pay its share based on an interpretation of the JPA that such repairs and replacements of the IPS are not expenses of operation and maintenance, but rather a "project" that is to be funded by Montara and Granada only. It is Montara's position that the City must pay because maintenance *includes* repair and replacement of segments of the IPS based on the following: the plain language of the JPA; the context in which the JPA was drafted; the members' course of performance; definitions of terms in federal and state regulations that governed the Authority at inception; and public policy considerations.

1. *Montara's Undisputed Material Facts*

In support of its motion, Montara submits the following purportedly undisputed material facts:

a. Formation of SAM

In 1976, real party in interest Sewer Authority Mid-Coast (the "Authority" or "SAM") was formed pursuant to the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.) (the "Act") to construct, own and operate regional wastewater treatment works. (Montara's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment ("UMF") No. 1.) The Joint Exercise of Powers Act "provides a means by which governmental agencies may join together to accomplish goals that they could not accomplish alone, or that they might more efficiently and more effectively accomplish together." (*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 962.) Under the Act, when authorized by governing bodies to do so, "two or more public agencies by agreement may jointly exercise any power common to the contracting parties," and they main join in the creation of a separate entity to exercise those powers on their behalf. (Gov. Code § 6502.)

In the years preceding SAM's formation, all three members- Montara, Granada and the City- were operating separate treatment works. (See Joint Exhibit ("Jt. Ex.") 14 ["City Reso. No. 11-79"] at p. 1.) However, the City's and Granada's systems lacked sufficient capacity to meet demand, while Montara's newly constructed system had excess capacity. (*Id*.) Various plans were considered and rejected, including regional cooperation, separate treatment

facilities by each member but a shared common deep water outfall at the location of the City's existing outfall which utilized an intertie pipe system ("IPS" or "Intertie") ("Plan A"), and full consolidation with members sharing a single treatment plant, outfall and construction of an IPS ("Plan F"). (*Id*.) The members were ultimately unable reach a consensus as to how to proceed because certain plans would have placed disproportionate cost burdens on certain members. The City therefore proposed sharing the cost of the consolidated system on an equitable basis, and the three members formed SAM to pursue a true regional approach. (City Reso. 11-79 at p. 2.)

b. Development of Consolidated Regional System

Working together as SAM, the members pursued a plan under which they would share use of an outfall and construction of an IPS, as well as a single treatment plant at the location of the City's existing plant. (City Reso. No. 11-79 at pp. 3-4.) Encountering difficulty obtaining permits caused the members to reconsider a plan pursuant to which each would operate its own treatment facility but share a common deep water ocean outfall at the site of the City's existing outfall. After cease and desist orders were imposed on all three members as a result of enforcement of federal and state clean water rules by the San Francisco Bay Regional Water Quality Control Board ("RWQCB"), meetings were held by all relevant parties to determine a way forward, and it was agreed that SAM would pursue a regional wastewater treatment system in two phases. (*Id*. at pp. 4-5; UMF No. 16.) In Phase I, construction would begin on the IPS and outfall and during that time, the members would decide whether to proceed with separate plants or a single plant. (*Id*.; UMF No. 11.) The agreement was embodied in a court order issued in an action against SAM filed by the state Attorney General, and the order contained a compliance schedule for construction of both phases. (*Id*. at 5; Jt. Ex. 17.)

In July 1979, Article IV of SAM's JPA was amended to incorporate the two-phased approach. (Jt. Ex. 4; UMF No 9.) The amendment defined both Phase I and Phase II components of SAM's proposed regional consolidated wastewater treatment system as the "Present Project." (*Id*. at pp. 1, 3; UMF No. 14.) The amendment indicated that in Phase I, the IPS would be constructed to the shared outfall and would be "shared equally between Montara and Granada" (UMF No. 12) and the new outfall would be shared "one-half (1/2) by [the City], one-quarter (1/4) by Montara and one-quarter (1/4) by Granada." (Jt. Ex. 4 at p. 1; UMF No. 12.)

As amended, Article IV(B)(4) also stated that if in Phase II the members chose to pursue a single consolidated treatment facility, then: "The total expenses of operation and maintenance of all components of the Present Project [would] be shared in a manner based on flows into the single consolidated treatment plant facility." (Jt. Ex. 4 at p 4; UMF No. 13.) In the case of a shared plant, capacity rights in the Phase I components would be reallocated. (*Id*.) However, if the members opted to maintain separate wastewater treatment plants, then "[t]he expenses of operation and maintenance of various components of the Present Project" would be "borne solely by those member agencies using said components." (*Id*.; UMF No 13.)

Cost allocation was discussed by the SAM board before the JPA was amended, with the City expressing their belief that they should not pay for operation and maintenance ("O&M") for the IPS under either Plans A or F. (Jt. Ex 19, p. JE104; UMF No. 15.) After "considerable discussion," it was agreed that under Plan F, O&M costs would be shared for all components

of the project by all three agencies based on each agency's respective flows in the treatment plant, while under Plan A each agency would share O&M costs of only those components used by that agency, and then according to flows. (*Id.*)

c. Funding of the IPS

Ultimately, SAM and its members decided to pursue a single, consolidated wastewater treatment plant (UMF No. 16), and SAM was awarded grant funding from the state and federal governments which paid nearly all of the costs of the consolidated system, including the IPS. (Jt. Ex. 16.) Grant proceeds were conditioned, in part, on compliance with state regulations then in effect at 40 C.F.R. Chapter I, Subchapter B. (Jt. Ex. 26 at HMB2199, General Cond. (a).)

In the years following, SAM members shared financial responsibility for the maintenance of the IPS pursuant to the general budget provisions of the JPA. (UMF No 17.) For example, the Budget for Fiscal Year 1983-1984 shows reserves for "capital equipment purchases" and "repair and replacement" of SAM's treatment works divided among all three members based on their flows into the Wastewater Treatment Plant. (Jt Ex. 29, p. 3.) The budgets for Fiscal Years 1996-1997 and 1997-1998 show that funding for operation and maintenance of all components of the SAM consolidated system were based on the flows. (Declaration of Christine C. Fitzgerald in Support of Montara's Motion for Summary Judgment ("Fitzgerald Decl."), ¶ 3, Exs. A, B.) In Fiscal Years 1998-1999 and 1999-2000, SAM's General Budget included a separate capital budget for which allocation of costs was not based on flows but, instead, based on each member's ownership and capacity rights in SAM's treatment plant. O&M costs were still shared by all members. (*Id*, ¶ 4, Exs. C, D.) Beginning in Fiscal Year 2000-2001, maintenance costs were allocated once again based on flows, including IPS repair and replacement costs. (*Id*., ¶ 5, Exs. E-I.) This practice continued until Fiscal Year 2005-2006, when SAM again began to allocate capital costs based upon capacity in the SAM treatment plant. (*Id*., ¶ 6, Exs. J-Q.) However, the members continued to share costs for IPS capital items except for costs related to a new project known as the Wet Weather Storage Project ("WWSP"), the costs of which were shared by Montara and Granada pursuant to the project budget process set forth in Article IV(B) of the JPA. (*Id*., ¶ 7, Ex. R.) Beginning in Fiscal Year 2013-2014, capital items were once again based on flow (supported by legal opinions from SAM's counsel) (*id*., ¶ 9, Exs. W, X) until 2017 when the instant dispute arose (*id*., ¶ 8, Exs. S-V).

Between 2010 and 2017, SAM's annual budget included several capital items for the IPS involving repair and replacement of components and the costs of these items were shared by all members, whether based on flows or capacity. (Fitzgerald Decl., ¶ 10, Exs. O at p. 45, T, U.)

d. The Present Dispute

By 2017, portions of the IPS had eroded, resulting in wastewater spills in some locations and an estimated cost of $4.4 million to replace those portions most in need of repair. (Complaint, ¶ 3.) On October 9, 2017, SAM's board awarded a contract in the amount of $1,997,050 to Bay Pacific Pipelines Inc. for the replacement of approximately one mile of force main segments, made necessary by recent spills resulting from corroded pipelines. (Jt. Ex. 48 at pp. JE158-160 [staff report]; Ex. 49 at p. JE212 [minutes].) The board also awarded a contract in the amount of $30,378 to Blacoh Industries for replacement of a surge pump at

the Portola Pump Station, which is part of the IPS. (*Id*., Ex. 48, pp. JE206-207; Ex. 49, p. JE213.)

City representatives on the board voted in favor of awarding both contracts. (Jt. Ex. 49, pp. JE212-213.) However, the City later took the view that it was not responsible for contributing toward IPS maintenance costs despite having done so in the past, and initiated the instant litigation seeking a declaration that it is not responsible for repair and replacement of IPS components. The City's view is based on the following: its belief that the replacement of IPS components involves construction activities rather than maintenance activities and thus the work should not be paid for out of SAM's general budget but rather should be addressed through the JPA's project budge procedures where a member may opt out (Complaint, ¶¶ 18-27); its belief that the JPA obligates it to contribute to the maintenance of the IPS only for its "useful life," which it is currently beyond (*id*., ¶ 17); and its belief that it does not use or benefit from the IPS and therefore has no obligation to contribute to its upkeep (*id*., ¶¶ 25, 27.)

2. *Rules of Contract Interpretation*

As this case rests on an issue of contractual interpretation, particularly that of the JPA and its provisions relating to costs and how those costs are to be borne by SAM's members, it is critical to lay out the well-settled rules of contractual interpretation that will apply here. In short, the "fundamental canon of contract interpretation is the ascertainment of the parties' intent." (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 11.) If clear and explicit, the language of the subject agreement controls (see Civ. Code, § 1638), and generally the words are to be understood in their ordinary and popular sense (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 931; Civ. Code, § 1644; Code Civ. Proc., § 1861), unless a contrary intent is shown, such as a specialized meaning due to trade custom and practice or a prior course of dealing (*LaCount v. Hensel Phelps Constr. Co.* (1978) 79 Cal.App.3d 754; Code Civ. Proc., § 1856, subd. (c).

The interpretation of a written construct is a question of law for the court unless such interpretation turns on the credibility of extrinsic evidence. (*Parsons v. Bristol Development Co* (1965) 62 Cal.2d 861, 865.) Extrinsic evidence is permissible where the terms of a contract are ambiguous (see *Vegas v. Western Employers Ins. Co.* (1985) 170 Cal.App.3d 922, 927), and a term qualifies as such when it is capable of more than one reasonable interpretation (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798.) The determination of whether ambiguity exists in the first instance is solely a judicial function. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350-1351.)

A court must view the language in light of the instrument as a whole, and not use a "disjointed, single paragraph, strict construction approach." (*Ezer v. Fuchsloch* (1979) 99 Cal.App.3d 849, 861.) If possible, the court should give effect to every provision (Civ. Code, § 1641; *White v. Dorfman* (1981) 116 Cal.App.3d 892, 897), though an interpretation which renders part of the instrument to be surplusage should be avoided (see *Estate of Newmark* (1977) 67 CalApp.3d 350, 356).

3. *Relevant Provisions of the JPA and the Parties' Interpretations*

As set forth above, when interpreting the terms of an agreement, a court first begins with the words contained therein, understood in their ordinary and popular sense. In making its

argument that the City's interpretation of the JPA is erroneous, Montara focuses on Article IV(B)(4) of the JPA, which provides as follows:

> In the event the member agencies choose to construct a single consolidated treatment plant facility …. [t]he total expenses of operation and maintenance of all of the components of the Present Project shall be shared in a manner based on the flows into the single consolidated treatment plant facility.

(JPA Art. IV(B)(4); UMF No. 14)

"Present Project," in turn, is defined earlier in Article IV(B) to include the IPS.[3] The members of SAM elected to construct a single consolidated system with only one treatment plant, and therefore, per the express terms of the JPA, all three have shared financial responsibility for operation and maintenance of the IPS based on flows, including replacement and repair of IPS force main segments and pumps.

Montara maintains that the drafters of the JPA intended the term "maintenance" to be understood in its broad, ordinary sense, i.e., to include everything necessary to maintain SAM's treatment works in good condition. In contrast, the City asserts that the replacement of force main segments in the IPS is *not* mere operation and maintenance, but rather "construction" as defined in the "Definitions" section of the JPA, i.e., the "acquisition, reconstruction, alteration, enlargement, replacement or reparation as well as construction." (JPA, Section I(d).) This distinction is critical because whether or not the cost of IPS repairs is to be shared or borne by just some of the members is dependent on how it is categorized within the meaning of the JPA.

The JPA creates two types of budgets: general budgets and project budgets. (UMF No. 2.) General budgets, described in Article V(A), are SAM's annual budgets for administrative expenses and the expenses of operations and maintenance. The latter expenses are allocated based on flows into the Wastewater Treatment Plant, which the former are allocated based on each member's voting rights on the SAM Board. Project budgets, described separately in Article V(B), are intended for new SAM projects, and include, among other things, the cost of construction of the project. Unlike general budgets, a member may opt out of a project for which a project budget has been prepared, and a SAM Board subcommittee of participating members would be formed to oversee the project.

The City maintains that because the work that needs to be done on the IPS involves the replacement of parts, it qualifies as "construction" and thus is subject to a project budget that it can elect to opt out of. Montara asserts that because the work at issue in this action is for the maintenance of the existing IPS, the general budget process is implicated and the City is obligated to pay its share of costs based on flows into the Wastewater Treatment Plant.

As set of forth above, the City also bases its position on the notion that the IPS requires replacement of parts that have reached their "useful life" and therefore the project giving rise to this litigation and the costs incurred therein are not "the expenses of operating and maintaining

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[3] "The Present Project shall be a secondary wastewater treatment and disposal system, divided into four components to service the combined needs of the member agencies to the year 2000 …. Phase I of the system is composed of …. [a]n intertie pipeline and attendant pumping facilities …." (JPA at Art. IV(B)(1)(a)(i).)

improvements" or "general administrative expenses," but rather a project that requires planning, engineering and construction costs to be funded by a project budget. With the foregoing in mind, the Court will discuss its conclusions below.

4. *The Court Finds Montara's Position Persuasive and Therefore Agrees that the City is Obligated to Share in the Costs of the IPS Project*

Without even considering the course of conduct between the members of SAM, the Court agrees with Montara that's its interpretation of the relevant provisions of the JPA with regards to the work to be performed on the IPS is more reasonable.

First, the Court agrees with Montara that support for the notion that the drafters of the JPA intended the term "maintenance" to be understood in its broad and ordinary sense is found within the agreement itself, particularly the categories of budgets created and the nature of those budgets as per the language used to describe them. The process of approving a project budget begins with the SAM Board approving a project "in concept." (UMF No. 7.) As Montara contends, approval of a project "in concept" signifies approval of one *not yet* in existence, i.e., *new* projects, as distinct from the project at issue here, which is defined, presently existing, and one that SAM came together to build and maintain. Responsibility for construction and ongoing maintenance of the IPS is provided for in Article IV of the JPA, and thus there is no need to address governance of it through a subcommittee under Article VI. In short, project budgets are for new facilities/future projects and general budgets are for the present project, and because the costs of IPS repair and replacement cannot be described as administrative expenses, the category under which they must fit is operation and maintenance expenses, which is to be borne by all SAM members.

The City's reliance on the "surplusage rule," a rule of construction where every word of a contract or statute is assumed to have an independent meaning, does not compel the conclusion that the work to be done on the IPS qualifies as "construction." The City argues that the JPA consistently distinguishes "construction" from "maintenance," and cites to various provisions in the agreement in which these terms are listed separately, explaining that there would be no need to list them separately if the intention was that one was subsumed within the other. But as Montara notes, the surplusage rule is not as uncompromising as the City would have this Court believe, to wit: "While courts should strive to avoid constructions that make statutory words surplusage, this principle is merely a guide and should not be employed to defeat legislative intent." (*People v. De Porceri* (106 Cal.App.4th 60, 69.) Indeed, there are instances of redundancy of terms in the JPA which suggest that the surplusage rule should not have ironclad application to the interpretation of its terms. For example, the JPA provides that "The parties hereto have in common the power to plan for, acquire, *construct*, *reconstruct*, alter, enlarge, *replace*, *repair*, maintain, manage, operate and control facilities for the collection, transmission, treatment and disposal of wastewater." (JPA, Art. II(C)(4).) Yet the JPA also defines "construction" to include "acquisition, *reconstruction*, alteration, enlargement, *replacement* or *reparation* as well as construction." Notably, the City has not addressed this type of redundancy.

The City's assertion that making its ratepayers pay their share for the operations and maintenance is not "fair" because they derive no benefit from ignores the stated intent of SAM's members as expressed within the JPA, particularly that "[i]n the event a single

treatment plan concept was selected as the fourth component under Phase II, it is the intent of the Authority to further consolidate sewer functions within the service areas of the three member agencies, and to establish a uniform system of sewer service charges, levied throughout the entire jurisdiction of the Authority, with which to pay expenses of operations and maintenance." (JPA, Art. IV(B)(5).) By choosing to apply uniform rates throughout SAM's service area the member agencies, as Montara contends, intended that all of them were meant to be equally on the hook for SAM's liabilities, including for the IPS. Moreover, the JPA does not otherwise limit the City's responsibility to fund operations and maintenance work based on its perceived benefits, and it should be noted that the member agencies, back when they entered into the JPA, elected *not* to utilize a wastewater system that required each member to only pay for its use of facilities.

In any event, even if benefit *was* a relevant consideration, the Court is not persuaded by the City's insistence that it derives no benefit from the IPS. SAM's members elected to create a consolidated system and the IPS is what effectively consolidates it so that member agencies can share a single wastewater treatment plant. The City does not transport is own wastewater through the IPS because SAM's treatment plant is located in the City itself and therefore transport is not necessary. If the plant had been located elsewhere, the City would require the IPS to transport waste, but the fact that Montara and Granada were willing to transport their waste instead is a material benefit to the City.

While the City also maintains that it was only required to fund operations and maintenance of the SAM IPS system during its useful life, and that that time has ended, not only does the JPA *not* specify what "useful life," which appears in the Phase I cost allocation section of the JPA,[4] means, but a review of the statutory and regulatory environment in which the JPA was drafted supports the conclusion that the phrase "useful life" does not place an endpoint on the City's obligation to share in the cost of operating and maintaining the components of the SAM wastewater system, including the IPS. The language of the JPA regarding operations and maintenance was created to comply with the May 10, 1979 preliminary injunction and to obtain federal and state Clean Water Grant Program funding. The injunction required the City, Granada and Montara to construct the SAM IPS, to be "operated and maintained by defendant Sam in accordance with the rules and regulations applicable to the California Clean Water Grants Program." (UMF No. 35.) The Clean Water Grant Program approvals themselves explicitly required SAM to comply with all federal and state Clean Water Grant Program regulations. (See July 12, 1979 EPA Clean Water Grant Approval, requiring SAM to comply with "all applicable provisions of 40 C.F.R Chapter I, Subchapter B [the federal Clean Water Grant Program regulations]." (UMF No. 4.) Had SAM adopted contrary definitions of operations and maintenance, it would have suffered significant consequences.

Clean Water Grant Program regulations specify that "[t]he term 'operation and maintenance' includes replacement" and define "useful life" as the "period during which the treatment works will be operated" (40 C.F.R. § 35.905 (UMF No. 19), not just until the IPS needs repair or replacement, and RWQCB regulations further provide a definition of

[4] Article IV(B)((1)(d)(iii), which pertains to operation and maintenance of Phase I components of the wastewater treatment and disposal system, states that, "Each member agency hereby agrees to utilize Phase I components as said components are completed and available for use, and to ensure the proper operation and maintenance of same in accordance with the requirements of the Regional Water Quality Control Board for the *useful life thereof*."

"rehabilitation" which "include[es] repair and replacement not considered routine or periodic" (Cal. Admin. Code, tit. 23, § 2102, subd. (hh) (UMF No. 21)). These regulations also define "replacement" by citing and paraphrasing the definition provided by the federal regulations which, among other things, state that the term "operation and maintenance" *includes* replacement. Per the foregoing, repair, replacement and rehabilitation are all forms of maintenance of treatment works. Because SAM's treatment works were intended to facilitate the members' compliance with the aforementioned regulations, they establish the context in which the JPA was drafted and support the conclusion that the drafters of the JPA intended the term "maintenance" to be construed broadly.

In its opposition, the City emphasizes that the definitions in clear water regulations at the time JPA was drafted are irrelevant because they have since been rescinded, but the point is that they *were* in existence when the JPA was drafted, and thus provide relevant context and provide insight as to how the drafter intended the term "maintenance" to be construed.

The City also places emphasis on the statement in the JPA that the "Present Project" was intended to serve the member agencies' needs through 2000 (see fn. 3, *supra*), arguing that the JPA was therefore only intended to govern initial construction of SAM's system until that point in time, and not future related projects, including replenishment. But this statement refers to the *entire* Present Project, not just the IPS, and the Court agrees with Montara that the more reasonable interpretation of the statement is that it was intended to obligate the parties to create a system that would anticipated needs up to the year 2000, rather than establish an end point for the parties' financial obligations for that system.

The Court also does not find persuasive the City's assertion that Montara is attempting to re-write the terms of the JPA, as its interpretation is based on the plain language of the agreement. If anything, the Court agrees with Montara that the City's interpretation is dependent on a revision of the JPA, especially given its appeal to "fairness," which has nothing to do with the plain language of the agreement.

In sum, the Court agrees with Montara that the costs of operations and maintenance of the Present Project, *inclusive of the IPS*, fall within Article IV(B)(4) of the JPA and thus are a joint responsibility of the member agencies. Thus, the City cannot decline to contribute its share of the cost for repairs of the IPS, including the replacement of components that require as much.

Montara's motion for summary judgment, joined by Granada, is GRANTED.

III. Granada's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with Granada's motion for summary judgment, both Granada and the City make requests for judicial notice.

First, in support of its motion, Granada requests that the Court take judicial notice of the City's Complaint and its own Cross-Complaint. As these items are court records, they are proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (d). Accordingly, Granada's request is GRANTED.

In support of its opposition to Granada's motion, the City submits a request for judicial notice that is identical to the request it submitted in support of its opposition to Montara's motion for summary judgment. For the same reason set forth above in the preceding section, the City's request for judicial notice is GRANTED.

B. Analysis

Granada' motion for summary judgment relies on essentially the same theory as Montara's, that is, the plain language of the JPA supports the conclusion that "Operations and Maintenance" includes the "Repair, Rehabilitation, and Replacement" of consolidated treatment works such that the City is obligated to bare its share of the cost to make repairs to the IPS. As articulated above, the Court finds this interpretation of the JPA both reasonable and persuasive. Accordingly, Granada's motion for summary judgment, joined by Montara, is GRANTED.

IV. The City's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with the City's motion, both the City and Montara submit requests for judicial notice.

First, the City requests that the Court take judicial notice of the following items, which are attached the declarations of John Doughty (the "Doughty Decl.") and Pamela Graham (the "Graham Decl.") filed in support of its motion for summary judgment: the City's Complaint (Exhibit A to Graham Decl.); Montara's Cross-Complaint (Exhibit B to Graham Decl.); Granada's Cross-Complaint (Exhibit C to Graham Decl.); SAM's IPS Review and Evaluation Report dated December 2009 prepared by SRT Consultants, attached to the January 25, 2010 SAM Board Meeting Agenda for Item No. 6A (Exhibit D to Graham Decl."); engineering drawings of Granada Force Main Replacement Project dated August 2017 (Exhibit E to Graham Decl.); Stipulation and Order Regarding Expenses and Assessments of Sewer Authority Mid-Coast dated August 21, 2017 (Exhibit F to Graham Decl.); the City's protest letter to SAM dated July 10, 2018, accompanying the City's payment for operations and maintenance for the month of June 2018 (Exhibit G to Doughty Decl.); staff report for the May 18, 2021 City Council Meeting, when the City adopted a resolution to approve under protest the SAM General Budget for fiscal year 2021-2022 (Exhibit H to Doughty Decl.); SAM General Budget for fiscal year 2021-2022 (Exhibit I to Doughty Decl.); and City Resolution No. C-2021-22, approving under protest the SAM General Budget for fiscal year 2021-2022 (Exhibit J to Doughty Decl.).

Exhibits A, B, C and F are court records and therefore proper subjects of judicial notice under subdivision (d) of Evidence Code section 452.

Government records are judicially noticeable pursuant to Evidence Code sections 451, subd. (a) and 452, subds. (b) and (c). Evidence Code section 452 provides that the Court may take judicial notice of "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." The Court may notice relevant portions of a city's or joint powers authority's staff reports and legislative enactments.

(*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 [judicial notice of staff report]; see *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Ca1.App.4th 1014, 1027 [applying Evid. Code, § 452, subd. (b) and (c) to "local ordinances and the official resolutions, reports, and other official acts of a city."].) The authority to take judicial notice, includes those government records published on the internet. (See, e.g., *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38, fn. 3.) Exhibits D, E, G, H, I and J fall into this category.

In accordance with the foregoing, the City's request for judicial notice is GRANTED.

Next, in support of its opposition, Montara requests that the Court take judicial notice of the existence and contents of the Declaration of Christine Fitzgerald filed in support of its motion for summary judgment. This request is GRANTED. (See Evid. Code, § 452, subds. (d) and (h).)

B. Analysis

The arguments asserted by the City in support of its motion are the same as those that it asserts in opposition to Montara's and Granada's summary judgment motions. That is, it maintains that it is not obligated to pay for any portion of repairs to the IPS because such repairs qualify as new "construction" under the JPA rather than maintenance. However, for the reasons articulated in detail above in the section pertaining to Montara's motion, the Court does not find this interpretation of the JPA to be reasonable. Consequently, the City's motion for summary judgment is DENIED.

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Case Name: City of Half Moon Bay v. Granada Community Services District, et al.
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Calendar Line 6
Case Name: *Credit Corp. Solutions, Inc. v. Gonzalez*
Case No.: 19CV345863

Plaintiff/cross-defendant Credit Corp. Solutions, Inc. ("CCS") moves for summary judgment, or in the alternative, summary adjudication, in its favor and against defendant/cross-complainant Liliana Gonzalez ("Gonzalez") on CCS's complaint ("Complaint") and Gonzalez's First Amended Cross-Complaint ("FACC")

V. Background

C. Factual

This is an action to collect on an unpaid debt and a resulting cross-action for unfair debt practices relating to the collection of that debt. According to the allegations of the underlying complaint, a credit card was issued to Gonzalez by Synchrony Bank FKA GE Capital Retail Bank. (Complaint, ¶ 6.) Gonzalez used the credit card to make purchases and accrued a balance on the card. (*Id*.) She ultimately defaulted on the required payments, leaving an unpaid balance of $2,240.89. (*Id*., ¶ 8.) CCS was subsequently assigned and transferred all right, title and interest in the credit account. (*Id*., ¶ 6.)

D. Procedural

Based on Gonzalez's failure to pay, CCS initiated the instant action on April 8, 2019, asserting claims for (1) account stated and (2) open book account.

Gonzalez filed the initial cross-complaint on June 10, 2019, alleging that CCS engaged in unlawful acts and abusive practices in connection with its attempt to collect the debt in violation of the Federal Fair Debt Collection Practices Act (the "FDCPA") and its state counterpart, the Rosenthal Fair Debt Collection Practices Act (the "RDCPA"). She filed the FACC on March 10, 2020.

After various motions attacking the sufficiency of the pleadings by both parties, each filed separate motions for summary judgment, or in the alternative, summary adjudication as to both the Complaint and the FACC. Both motions were denied on March 5, 2021, with Gonzalez's motion denied on the merits and CCS's denied as untimely. CCS subsequently sought an order for the issuance of a writ of mandamus from the appellate division of this Court, which it filed concurrently with a motion for reconsideration of the Court's order on the motions for summary judgment/adjudication on March 15, 2021, and an ex parte application for a stay of proceedings. The application was granted, with a stay of proceedings in effect pending determination of the motion for reconsideration, which was then scheduled for hearing on June 10, 2021. The writ petition was denied by the appellate division on July 30, 2021, with the panel stating it was doing so to permit the trial court to rule on the motion for reconsideration. After the March 15th motion for reconsideration was taken off calendar by the Court, CCS filed substantially the same motion for reconsideration on August 6, 2021. In

December 2021, the motion was granted, with the Court reversing its order denying CCC's motion for summary judgment/adjudication as untimely and scheduling it to be heard on its merits. Neither party was permitted to submit any additional briefing on the motion.

VI. CCS's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

With the instant motion, CCS seeks summary judgment, or in the alternative, summary adjudication against Gonzalez and in its favor on its Complaint and Gonzalez's FACC.

A. As to the Complaint

1. *Burden of Proof*

In order to meet its initial burden on the claims asserted in its Complaint, CCS must make a prima facie case showing that there are no triable issues of material fact – one sufficient to support the position of the party in question that no more is called for. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.) More specifically, plaintiffs moving for summary judgment bear the burden of persuasion that each element of the cause of action (or affirmative defense) in question has been proved, and hence there is no defense thereto. (Code Civ. Proc., § 437c.) Plaintiffs, who bear the burden of proof at trial by preponderance of evidence, therefore "must present evidence that would require a reasonable trier of fact to find the underlying material fact more likely than not- otherwise he would not be entitled to judgment as a matter of law, but would have to present his evidence to a trier of fact." (*Aguilar, supra*, 25 Cal.4th at 851.) The defendant has no evidentiary burden until the plaintiff produces admissible and undisputed evidence on each element of a cause of action. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2013), ¶ 10:238.) If the plaintiff meets this initial burden, it then shifts to the defendant to "show that a triable issue of one or more material facts exists as to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(1).)

2. *CCS's Undisputed Material Facts*

Here, in support of its motion, CCS submits the following purportedly undisputed material facts: on January 11, 2014, Gonzalez opened the subject credit card with Synchrony Bank ("Synchrony") at a Home Design store for the purchasing of furniture for her apartment. (CCS's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment/Adjudication ("UMF") No. 1.) Synchrony, as creditor, recorded purchases made on the account in its regular course of business, including the purchase of a couch. (UMF No 2.)

Gonzalez recalled that if she made payments on the account, they were likely the minimum amount due. (UMF No. 4.) Gonzalez testified that in July 2014, she ceased making payments on the account after she and her boyfriend broke up and she was no longer able to afford them. (UMF No. 5.) On March 10, 2015, Synchrony notified Gonzalez that the late fee associated with the account was being increased up to $38, and Gonzalez later testified that she understood that if she did not make timely payments on her account, this fee likely would be assessed. (UMF Nos. 6-7.)

Gonzalez made her last payment on the account on April 14, 2015 and thus defaulted on June 2, 2015, when the next payment was due. (UMF No. 9.) On November 9, 2015, Synchrony mailed Gonzalez a statement (the "November Statement") to 1262 Ortiz Court in Sunnyvale which reflected an account balance of $2,202.89. (UMF Nos. 10.) The November Statement also indicated that no payments were recently made on the account, a late fee of $38 was assessed on November 2, 2015, and that payment was due on December 2, 2015. (UMF Nos. 12.) Per the statement, if no payment was received on December 2, 2015, Gonzalez might have pay a late fee of up to $38. (UMF No. 13.)

On December 8, 2015, Synchrony charged off the account, meaning that it was closed to future use but the debt remained owing. (UMF No. 14.) That same day, Synchrony also generated an account statement ("December Statement") indicating the balance at the time of charge off was $2,202.89, which included $903 in charged off principal, $1,337.89 in charged off finance charges, and a charged off late fee of $38. (UMF No 15.) The December Statement also confirmed that the account would be subject to a late fee up to $38 if payment was not made by December 10, 2015. (UMF No. 16.) This statement was not mailed to Gonzalez. (UMF No. 17.)

On January 20, 2016, Synchrony sold the account to CCS; at that time there remained an unpaid principal balance of $2,240.89. (UMF No. 19.) Synchrony notified Gonzalez of the foregoing on February 1, 2016. (UMF No. 20.) Two days later, CCS mailed Gonzalez a debt validation notice confirming that the account had been assigned to it and that she owed $2,240.89, and that, unless she notified CCS within 30 days after receipt of the notice that she disputed the validity of the debt, or any portion thereof, CCS would assume the debt was valid. (UMF No. 22.) Gonzalez did not provide such notice to CCS, and CCS was only made aware that Gonzalez challenged any portion of it after it initiated the instant action. (UMF Nos. 23-24.)

On May 7, 2019, Gonzalez wrote a letter to CCS in an attempt to settle the account (the "May Letter"). (UMF No. 25.) In the May Letter, Gonzales stated that she was unable to pay the total balance due, that she opened the account for her ex-fiancé due to his poor credit, and that she defaulted on the account following the dissolution of their relationship. (UMF No 26.) Gonzalez referenced the specific amount owed in response to a bill she received. (UMF No. 27.)

From the account opening to present, Gonzalez received mail at Ortiz Court, her parents' home. (UMF No. 28.) Even when she resided elsewhere, she would pick up mail delivered to her at Ortiz Court on a weekly basis which had been set aside for her by her parents. (UMF Nos. 29, 30.)

3. *Account Stated (1st Cause of Action)*

In the first cause of action, CCS alleges that within the last four years, an account was stated in writing between Gonzalez and Synchrony Bank, and on the account a balance of $2,240.89 was stated to be due which Gonzalez expressly or impliedly agreed to pay. (Complaint, ¶ 16, Exhibit B.) It further alleges that it was assigned the credit account and thus is now the owner and holder, and that its demands for repayment to Gonzalez have been unsuccessful. (*Id.*, ¶ 18.) Consequently, the aforementioned balance is currently due and owing. (*Id.*, ¶ 20.)

An account stated (as with an open book account) is a common count, which is "proper whenever the plaintiff claims a sum of money due, either as an indebtedness in a sum certain, or for the reasonable value of services, goods, etc. furnished. It makes no difference in such a case that the proof shows the original transaction to be an express contract, a contract implied in fact, or a quasi-contract." (*Utility Audit Co v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 958.) It is an "agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing. [Citations.] To be an account stated, 'it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing.' [Citation.]" (*Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 752.)

The essential elements of such a claim are: "(1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. [Citations.]" (*Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600.) As set forth above, it must be established that the debtor expressly *or* impliedly promised to pay the creditor the amount owed. (See *Maggio, Inc., supra,* 196 Cal.App.3d at 752.) The assent of the debtor can be implied by conduct, to wit: "[w]hen a statement is rendered to a debtor and no reply is made in a reasonable time, the law implies an agreement that the account is correct as rendered." (*Id.* at 753; see *Professional Collection Consultants v Lauren* (2017) 8 CalApp.5th 958, 968 [applying the foregoing principle in the context of credit card debt].) When an account stated is "assented to, either or impliedly, it becomes a new contract." (*Gardner v. Watson* (1915) 170 Cal. 570, 574.)

Here, the evidence submitted by CCS establishes that Synchrony mailed account statements to Gonzalez which confirmed a balance due at charge off of $2,240.89, with the account subject to a $38 late fee if payment was not made by December 10, 2015. (UMF Nos. 10, 15, 16, 20, 21, 28-30.) CCS also mailed Gonzalez a debt validation notice confirming the assignment of the account to CCS and a balance due of $2,240.89. (UMF Nos. 21, 22.) Thereafter, Gonzalez wrote to CCS in an attempt to settle the account based on her stated inability to pay the balance due. (UMF Nos. 25, 26.) In stating that she was unable to pay the amount due but not otherwise objecting to it, Gonzalez assented to the $2,240.89 balance, thereby establishing a contract between herself and CCS. The foregoing is sufficient to meet all of the elements of an account stated claim and thus CCS has met its initial burden. Accordingly, the burden shifts to Gonzalez to demonstrate the existence of a triable issue of material fact.

In her opposition, Gonzalez does not specifically address the elements of the claim for an account stated, instead relying entirely on the twenty-eighth affirmative defense asserted in her answer to the Complaint as a complete defense to the claim and to defeat the motion. With this defense, Gonzalez maintains that CCS failed to comply with one or more provisions of the California Fair Debt Buying Practices Act (the "FDBPA") (Civ. Code, §§ 1788.50-1788.66), which regulates "the activities of a person or entity who has bought charged-off consumer debt." (2013 Cal. Stats. ch. 64.) In her opposition she asserts that CCS violated the FDBPA by attempting to collect an amount from her that includes an "unlawful" $38 late fee in violation

of Civil Code section 1788.58 ("Section 1788.58"), subdivision (a)(4). This code section provides as follows:

In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

(4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge off interest, and the total of any post-charge off fees.

Gonzalez argues that because CCS is attempting to charge an unlawful fee, it did not allege "the debt balance at charge off" in violation of the foregoing section. It continues that violations of Section 1788.58, subdivision (a)(3) through (8), are remedied by Civil Code section 1788.60 ("Section 1788.60"), which provides, in relevant part:

(a) In an action initiated by a debt buyer, no default *or other judgment may entered against a debtor* unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged by paragraphs (3) to (8), inclusive, or subdivision (a) of 1788.58.

(Emphasis added.)

Thus, Gonzalez continues, because CCS did not allege the debt balance at charge off in violation of Section 1788.58, subdivision (a)(3), judgment cannot be entered against her. This argument is wholly unpersuasive, however, as it evidences a clear misreading of 1788.60, subdivision (a). The statute does *not* say that the mere failure to properly allege the "debt balance due at charge off" bars the entry of judgment against the debtor; rather, it states that judgment cannot be entered unless authenticated business records are submitted to the debt buyer to establish the facts required be alleged by Section 1788.58, subdivision (a)(3) through (8). In neglecting to address the substantive merits of CCS's claim for an account stated, Gonzalez has not established a failure on CCS's part to submit the necessary business records. Thus, Gonzalez has not established a complete defense to CCS's first cause of action, and CCS's request for summary adjudication of the claim is GRANTED.

4. *Open Book Account (2nd Cause of Action)*

In the second cause of action, CCS alleges that that within the last four years, Gonzalez became indebted to Synchrony on an open book account for money due in the sum of $2,240.89 for money lent, paid, laid out and/or extended to or for Gonzalez at her request, and for which she agreed to pay the foregoing sum. (Complaint, ¶ 22.) CCS is now the owner and holder of the account due to assignment and its request for payment of the total balance due from Gonzalez have been unsuccessful. (*Id.*, ¶¶ 23-24.) Here, CCS asserts that its evidence establishes the existence of an open book account and therefore it is entitled to summary adjudication of this cause of action.

A "book account" is defined by statute as:

> a detailed statement which constitutes the principal record of one or more transactions between a debtor and creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor the entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form.

(Civ. Code, § 337a; *Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708 (*Interstate*) [a book account is a detailed statement of debits and credits on an account from which "'it can be reasonably determined what amount is due to the claimant'"].) A book account is considered open if the debtor has made some payments, but has not paid the full outstanding balance on the account. (*Interstate, supra,* 174 Cal.App.3d at p. 708.)

The elements of an open book account cause of action are: (1) that plaintiff and defendant had a financial transaction; (2) that plaintiff kept an account of the debits and credits involved in the transaction; (3) that defendant owes plaintiff money on the account; and (4) the amount of money that defendant owes plaintiff. (See CACI No. 372; see also *Tsemetzin v. Coast Fed. Sav. & Loan Ass'n* (1997) 57 Cal.App.4th 1334, 1343.)

Here, as CCS contends, the monthly statements, notice of sale of account, debt validation notice, and May Letter all confirm the existence of transactions between Gonzalez and Synchrony, which were later assigned to CCS. (UMF Nos. 10-13, 15-16, 20-22, 25-27.) The transactions were made in Synchrony/CCS's regular course of business, and the records were kept in a reasonably permanent form and manner, as evidence by the correspondence between the parties confirming the balance due of $2,240.89. (UMF Nos 20-22, 26.) The foregoing establishes each of the elements of an open book account and thus the Court finds that CCS has met its initial burden on the second cause of action.

As with the her opposition to the first cause of action, Gonzalez does not address the elements of the second cause of action, instead relying entirely on her twenty-eighth affirmative defense to defeat CCS's motion. However, for the reasons articulated above, Gonzalez has not established a complete defense based on failure to comply with Section 1788.58, subdivision (a)(3). Therefore, CCS's request for summary adjudication is GRANTED.

B. As to the FACC

1. *Burden of Proof*

"A defendant seeking summary judgment [or adjudication] must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action … The burden then shifts to the plaintiff to show there is a

triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72 [internal citations omitted].)

"The 'tried and true' way for defendants to meet their burden of proof on summary judgment motions is to present affirmative evidence (declarations, etc.) negating, as a matter of law, an essential element of plaintiff's claim." (Weil & Brown, Cal. Prac. Guide; Civ. Proc. Before Trial (The Rutter Group 2014) ¶ 10:241, p. 10-104, citing *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) "The moving party's declaration and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to resolve any evidentiary doubts or ambiguities in plaintiff's (opposing party's) favor.'" (*Id.*, ¶ 10:241.20, p. 10-105, citing *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion)." (*Id.*, ¶ 10:242, p. 10-105, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.) "Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Id.*)

2. *Violation of the FDCPA*

In her first cause of action, Gonzalez alleges that CCS, in its attempt to collect on her alleged debt, violated the FDCPA by doing the following:

- Making and using false, deceptive, and misleading representations (15 U.S.C. §§ 1692e and 1692e(10));
- Misrepresenting the character, amount, or legal status of the alleged debt (15 U.S.C. § 1692e(2)(A)); and
- Collecting interest, fees, or other charges that are not expressly authorized by the agreement creating the alleged debt or otherwise permitted by law (15 U.S.C. § 1692f(1))

CCS's alleged misstatements, misrepresentations and efforts to collect amounts not expressly authorized by the credit agreement or the law which violated the FDCPA are alleged to have been made in the Complaint when CCS identified the balance owed at charge-off as $2,240.89 and stated that it was not seeking to recover any post charge-off fees or interest. (FACC, ¶¶ 15-18.) Gonzalez alleges that the foregoing are false because CCS is wrongfully attempting to collect post charge-off late fees in the amount of $38, and thus she does not actually owe the total amount pleaded. CCS maintains that it is entitled to summary adjudication of Gonzalez's FDCPA claim because it did not mislead her in any way and thus did not violate the FDCPA.

The FDCPA "was enacted as a broad remedial statute designed to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain

from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." (*Gonzalez v. Arrow Fin. Serv. LLC* (9th Cir. 2011) 660 F.3d 1055, 1060-1061 [internal citations omitted].) The Act "comprehensively regulates the conduct of debt collectors, imposing affirmative obligations and broadly prohibiting abusive practices." (*Id*.) Ordinarily, proof of intentional violation of the FDCPA is not required; it is a strict liability statute. (*Id*.) Prevailing plaintiffs are entitled to actual damages, statutory damages, and attorney's fees and costs. (*Id*.)

In order for a plaintiff to recover under the FDCPA, "there are three threshold requirements: (1) the plaintiff must be a 'consumer'; (2) the defendant must be a 'debt collector'; and (3) the defendant must have committed some act or omission in violation of FDCPA." (*Powell v. Black Rock Asset. Mgmt.* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 113785, *4 [internal citations omitted].)

CCS does not dispute that Gonzalez is a "consumer" within the meaning of Section 1692a, subd. (3), or that it is a "debt collector" within the meaning of Section 1692a, subd. (6). It does dispute, as stated above, that it made any false, deceptive or misleading misrepresentations. CCS emphasizes that case law provides that when in determining whether conduct violates the FDCPA, a court must undertake "an objective analysis that takes into account whether the least sophisticated debtor would likely be misled by a communication." (*Donohue v. Quick Collect, Inc.* (9th Cir. 2010) 592 F.3d 1027, 1030.) Courts are advised not to be "concerned with mere technical falsehoods that mislead no one, but instead with genuinely misleading statements that may frustrate a consumer's ability to intelligently choose his or her responses." (*Id*. at 1034.) Thus, "a debtor's false or misleading representation must be *material* in order for it to be actionable under the FDCPA." (*Tourgeman v. Collins Financial Services, Inc.* (9th Cir. 2014) 755 F.3d 1109, 1119 [emphasis added, quotation marks omitted].)

CCS insists that the FACC contains "no specific allegations supporting any falsehood in [it]'s Complaint or otherwise, and the undisputed evidence in the case confirms that this is true." (CCS's Memo. at 10:4-5.) But the FACC *does* contain such allegations in specifically identifying the $38 late fee as improper and thus the total amount alleged to be owed on the account, inclusive of that fee, as false. Problematically, CCS does not specifically address the propriety of the $38 fee and its inclusion in the total balance alleged to be due and owing. It generally states that there is no evidence that any error of misrepresentation associated with the account exists or, even if one does, that it is material, but CCS fails proffers to *evidence* of this, as it must do, and thus fails to meet its initial burden. (See *Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 891[stating that a defendant attempting to show that the plaintiff does not possess the evidence necessary to establish an element of their claim must product *evidence* establishing both that they do not have such evidence *and* cannot reasonably obtain it].) While CCS *does* address the $38 late fee in its reply, where it also asserts that the FDCPA claim is untimely, these are new argument raised for the first time on reply. As such, the Court cannot consider them because doing so would prejudice Gonzalez's due process rights. (See *In re Tiffany Y.* (1990) 223 Cal.App.3d 298, 302-303 ["The general rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before."], internal quotations omitted].) As CCS has not met its initial burden,

Gonzalez has no obligation to establish a triable issue of material fact, and CCS's request for summary adjudication of the FDCPA cause of action is DENIED.

3. *Violation of the RFDCPA (2nd Cause of Action)*

Gonzalez's second cause of action essentially mirrors her first, with allegations that CCS, in its attempt to collect on her alleged debt, violated the RDCPA by doing the following:

- Making and using false, deceptive, and misleading representations (Civil Code § 1788.17);
- Misrepresenting the character, amount, or legal status of the alleged debt (Civil Code §§ 1788.13, subd. (e) and 1788.17); and
- Collect interest, fees, or other charges that are not expressly authorized by the agreement creating the alleged debt or otherwise permitted by law (Civil Code §§ 1788.13, subd. (e), 1788.14, subd. (b) and 1788.17)

As with the preceding cause of action, Gonzalez's RDCPA claim is predicated on CCS's Complaint against her to collect on the alleged credit card debt. That is, CCS's alleged misstatements, misrepresentations and efforts to collect amounts not expressly authorized by the credit agreement or the law which violated the RDCPA were made in the Complaint.

The RFDCPA, enacted in 1977, similarly regulates the collection of consumer debts, with the purpose of prohibiting "debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts." (*Camacho v. Automobile Club of Southern California* (2006) 142 Cal.App.4th 1394, 1398, fn. 7; Civil Code § 1788.1, subd. (b).) Generally, violations of the FDCPA also constitute violations of the RFDCPA. (See *Hartung v. J.D. Byrider, Inc*. (E.D. Cal. 2009) 2009 U.S. Dist. LEXIS 54415 at p. *31—California Civil Code section 1788.17 states that every violation of the FDCPA is *ipso facto* violation of the Rosenthal Act.) This is because the provisions of the FDCPA are incorporated into the RDCPA under Civil Code section 1788.17. Here, Gonzalez maintains that CCS violated the FDCPA and therefore also violated the RDCPA.

CCS's effort to obtain summary adjudication of this claim is dependent on the Court finding in its favor on the preceding cause of action. That is, CCS asserts that Gonzalez's RFDCPA action fails as a matter of law because it did not violate the FDCPA. Because the Court has concluded that CCS has not met its burden on the FDCPA claim, it follows that it must also conclude that CCS has not met its initial burden on the RFDCPA claim. Consequently, CCS's request for summary adjudication of the second cause of action is DENIED.

C. Conclusion

CCS's motion for summary judgment, or in the alternative, summary adjudication, is GRANTED IN PART and DENIED IN PART. The motion is DENIED as to the FACC and GRANTED as to the Complaint.

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Case Name: *Rose Warren vs Let T. Leonardo*
Case No.: 20CV369658

BACKGROUND

Before the Court are three separate motions by Rose Warren (Plaintiff) to Compel Les T. Leonardo (Defendant) to Further Respond to Demands for Production of Documents Set One; Responses to Requests for Admission, Set One; Further Responses to Form and Special Interrogs, Sets One; and for Monetary Sanctions as to all three motions. Defendant filed a single combined opposition to the three motions that, in essence, asserts that the motions are all moot because Defendant has now provided verified responses.

Plaintiff objects to Defendant's use of a single combined opposition as procedurally improper. Substantively, Plaintiff disputes that Defendant has provided code complainant responses to the disputed discovery and all of the documents that have been requested. Plaintiff appears willing to accept some of Defendant's responses, but asks the Court to rule on the following discovery requests:

Further response to Request for Production No's 9 and 10; Responses to Requests for Admissions No's 1 and 16 and Responses to Request for Production of Documents No's 1, 16, 17, 19, 20 and 21. Plaintiff also asks the Court to rule on the request for monetary sanctions.

DISCUSSION

A. Legal Standard

Motions to Compel Discovery Responses

1. Documents

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the particular demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. CCP §2031.210(a).

When the party complies, the required responsive statement is clear: "[a] statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, 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…will be included in the production." Civ. Proc. Code §2031.220.

The Code of Civil Procedure also describes the responsive statement that must be made if a party cannot comply with the document request:

> A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to

comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item. CCP § 2031.230.

2. Requests for Admission

` A responding party must provide non-evasive answers to requests for admission that are "as complete and straightforward as the information reasonably available to the responding party permits." (Code of Civil Procedure, § 2033.220(a).) "If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall 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." (Code of Civil Procedure, § 2033.220(c).)

"On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) An answer to a particular request is evasive or incomplete. (2) An objection to a particular request is without merit or too general." (Code of Civil Procedure, § 2033.290(a).)

3. Interrogatories

Each answer in a response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits." (CCP § 2030.220(a). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party must so state, but 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." (Id, 1] 2030.220(c). Emphasis added)

Plaintiff's responses were evasive and incomplete. Plaintiff cites no controlling authority to justify the limitation unilaterally imposed on the scope of his answer to defendant's special interrogatories. To the Court, the directive to make a "make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations" includes the duty to make an inquiry of himself in whatever capacity he serves in as the CEO of BitClave. Plaintiff is ordered to provide complete code compliant responses to Defendant's special interrogatories 1-8 making a good faith effort to obtain the information by inquiry to other natural persons or organizations in whatever capacity he holds. Responses to be provided within 7 days of the date of this order.

4. Sanctions

Code of Civil Procedure, § 2023.040 states: "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum

of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought."

CCP§2023.030 provides that:

To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process.

The Court may order a party engaging in the misuse of the discovery process, or their attorney who is advising the party, to "pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (CCP§ 2023.030(a).)

Among other things, CCP §2023.010 provides that it is a misuse of the discovery process to "[m]ak[e] or oppos[e], unsuccessfully and without substantial justification, a motion to compel or to limit discovery."(CCP§ 2023.010(H).)

The costs and expenses award is limited to reasonable expenses incurred which includes reasonable attorney's fees in proving matters unreasonably denied. (Code of Civil Procedure, § 2033.420(a).) A monetary sanction "shall" be imposed against the losing party on a motion to compel further responses to RFAs unless the court finds "substantial justification" for that party's position or other circumstances making the sanction "unjust." (Code of Civil Procedure, § 2033.290(d).)

B. Analysis

Motions to Compel

Defendant, in his combined opposition to these motions, contends that the motions are moot because he has responded to the disputed discovery. Under appropriate circumstances, a combined opposition may be appropriate. However, the Court is unable to decide if this is one of those cases because Defendant's opposition is wholly lacking in other important respects. As Plaintiff points out, Defendant provides no separate statement. Furthermore, Defendant's opposition is not supported by a sworn declaration with the verified responses Defendant claims are responsive and code compliant. The lack of these basic documents is critical because in reply Plaintiff denies that Defendant's responses are complete and code compliant.

The Court will therefore analyze the discovery requests based on Plaintiff's moving papers (as limited by Plaintiff's reply)

SPECIAL INTERROGATORY NO. 1: Do YOU contend that PLAINTIFF is not entitled to partition by sale of the real PROPERTY as alleged in the first cause of action of PLAINTIFF'S COMPLAINT?

This is a straightforward interrogatory. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request.

SPECIAL INTERROGATORY NO. 2: If YOU contend that PLAINTIFF is not entitled to partition by sale of the real PROPERTY as alleged in the first cause of action of PLAINTIFF'S COMPLAINT, state all facts which support, refer, or RELATE TO that contention.

This is a straightforward interrogatory. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request.

ADMISSION NO. 1: Admit that PLAINTIFF is entitled to partition by sale of the PROPERTY as alleged in the first paragraph of PLAINTIFF'S COMPLAINT.

This is a straightforward request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request.

ADMISSION NO. 16: Admit that YOU did not invest thousands of dollars in maintenance and upkeep and improving the PROPERTY resulting in increasing the PROPERTY's value over time, as referenced in Paragraph 18 of YOUR CROSS—COMPLAINT.

This is a straightforward request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request.

DEMAND FOR PRODUCTION NO. 1: Produce ALL DOCUMENTS RELATING TO partition by sale of real property as alleged in the first cause of action of PLAINTIFF'S COMPLAINT.

The Court is troubled by this request for production of documents. If the request was directed to an allegation made by Defendant in a pleading, the Court might overlook the fact that this request is not reasonably particularized. However Plaintiff is making the allegations here. Defendant should not be asked to speculate as to what documents Plaintiff says relate to her allegations. The Motion is DENIED as to this discovery request.

DEMAND FOR PRODUCTION NO. 9: Produce each DOCUMENT REGARDING the steps YOU took to ensure accurate titling on the PROPERTY.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 10: Produce each DOCUMENT RELATING TO any maintenance YOU performed at the PROPERTY during YOUR ownership.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 16: Produce each DOCUMENT RELATING TO the home equity line of credit obtained from FIRST TECHNOLOGY CREDIT UNION, including but not limited to any documents submitted in application for the loan.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 17: Produce each DOCUMENT RELATING TO all PAYMENTS made using proceeds from the $250,000 from WELLS FARGO BANK, N/A.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 19: Produce each DOCUMENT RELATING TO all PAYMENTS made using proceeds from the home equity line of credit from FIRST TECHNOLOGY CREDIT UNION.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 20: Produce each DOCUMENT you rely on to support YOUR allegation that PLAINTIFF is not entitled to a finding of waste as alleged in the fourth cause of action of PLAINTIFF'S COMPLAINT.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

DEMAND FOR PRODUCTION NO. 21: Produce each DOCUMENT you rely on to support YOUR allegation that YOU did not commit extensive waste by living on the PROPERTY without income.

This is a straightforward reasonably particularized request for production of documents request for admission. Whether or not this case may be settling is immaterial to the response. The Motion is GRANTED as to this discovery request

Sanctions

Plaintiff was forced to make three motions to compel in order to obtain discovery responses. When responses were finally provided, they were incomplete. The opposition was unsupported by any facts and was, in the Court's view, without substantial justification in many respects. Sanctions are appropriate. The request for Sanctions is GRANTED as ordered below.

ORDERS

Defendant shall serve a verified, Code of Civil Procedure ("C.C.P.") compliant responses to each of these requests, along with all additional responsive documents, to Plaintiff within 20 days from the date of this order.

Plaintiff seeks sanctions for each individual motion. Plaintiff asks for an award of $3,447.50 for the Motion to Compel Further Response to Request for Production of Documents; $2,695 for the Motion to Compel Further Response Request for Admissions; and $3,220 for the Motion to Compel Further Response to Interrogatories. The Court finds that the requests, to a certain extent share a common backbone and that there was some duplication of effort. Accordingly the Court will award Plaintiff her filing fees of $180 ($60.00 x 3) and attorney's fees of $3,500. Sanctions shall be paid within 30 days. The Court will prepare the formal order.

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