TENTATIVE RULINGS

FOR: May 19, 2021

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CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Workforce Defense League v. Davis/Reed Construction, Inc., et al. **21CV000232**

MOTION TO STRIKE

TENTATIVE RULING: Defendant Builder Brothers Carpentry, Inc.'s ("BBC") motion to strike four portions of plaintiff Workforce Defense League's ("WDL") complaint on the grounds they are irrelevant, false, improper, and not drawn in conformity with the law is GRANTED WITH LEAVE TO AMEND.[1] If WDL elects to do so, it shall file a first amended

[1] BBC seeks to strike: (1) paragraph 11 ["Defendants required Wage Claimants to provide their own tools, including compressors, nail guns, saws, and hand tools. Wage Order 16, section 8(b) requires employers to pay employees who provide and maintain their own tools at least two times the state minimum wage for each hour worked."]; (2) a sentence in paragraph 12 (incorrectly identified in the complaint as paragraph 10) ["Defendants ipso facto failed to compensate Wage Claimants twice state minimum wage for all regular hours worked."]; (3) a

complaint within 10 calendar days of service of notice of entry of order. If WDL files an amended pleading it is instructed to correct the paragraph number from the original complaint.

WDL alleges Industrial Welfare Commission ("IWC") wage order No. 16-2001, section 8(B) (Cal. Code Regs., tit. 8, § 11160) ("Wage Order 16"), applying to "Wages, Hours and Working Conditions for Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries," requires employers to pay employees who provide and maintain their own tools at least two times the state minimum wage for each hour worked. (Compl, ¶ 11.) BBC proffers WDL incorrectly represents Wage Order 16 and the remedies allowed when employees are improperly required to use their own construction tools. The Court understands the question before it as whether defendants should reimburse workers for their tools or should defendants pay double minimum wage.

A. Factual Allegations

WDL is a joint labor-management cooperation committee formed pursuant to the federal Labor Management Cooperation Act of 1978. (Compl., ¶ 1.) It brings this action on behalf of Wage Claimants, defined as carpenters working on the Stanly Ranch project in Napa who are owed unpaged wages, pursuant to Labor Code section 218.7, subdivision (b)(3).[2] (*Id*. at p. 1:5-6 [Intro].) BBC is a direct contractor or subcontractor as defined in section 218.7. (*Id*., ¶ 2.) Defendant Davis/Reed Construction, Inc. is the general contractor and BBC is one of its subcontractors. (*Id*., ¶ 8.)

Defendants employed Wage Claimants as carpenters in the construction of building structures in connection with the Stanly Ranch project. (*Ibid*.) Defendants paid most Wage Claimants on a piece rate basis. (*Id*., ¶ 9.) Wage Claimants worked more than eight hours in work days and/or more than forty hours in work weeks. (*Id*., ¶ 10.) Defendants required Wage Claimants to provide their own tools, including compressors, nail guns, saws, and hand tools. (*Id*., ¶ 11.)

B. Discussion

BBC argues the allegations regarding employees providing their own tools must be stricken because they are unreimbursed expenses, not wage claims, and as such, WDL lacks standing under Labor Code section 218.7, subdivision (b)(3), to bring this portion of the first cause of action. The Court agrees. The Court first turns to the language of Wage Order 16 to

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sentence in paragraph 19 (incorrectly identified in the complaint as paragraph 17) ["Wage Order 16, section 8, establishes that workers required to bring their own tools must be paid twice the state minimum wage."]; and (4) a sentence in paragraph 22 (incorrectly identified in the complaint as paragraph 20) ["and 8. Wage Order 16, section 8 required Defendants to pay Wage Claimants twice the state minimum wage, because Defendants required Wage Claimants to bring their own tools."].

[2] Section 218.7, subdivision (b)(3), states in pertinent part: "A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages owed to a wage claimant by the direct contractor or subcontractor for the performance of private work, including unpaid wages owed by the direct contractor, pursuant to subdivision (a)."

find that WDL's allegations do not give rise to a wage claim. They instead give rise to a claim for unreimbursed business expenses under Labor Code section 2802. The Court then reviews section 45.5.8 of the California Department of Labor Standards Enforcement ("DLSE") Enforcement Policies and Interpretations Manual, Uniform and Tool Requirements, *Gonzalez v. Nefab Packaging, Inc.* (C.D. Cal. Oct. 30, 2013), No. LA CV13-04499 JAK (SSx), 2013 U.S.Dist.LEXIS 201758 ("*Gonzalez*"), and *Gonzalez v. Nefab Packaging, Inc.* (9th Cir. 2016) 637 F.App'x 310 ("*Gonzalez II*"), which confirm this Court's interpretation of Wage Order 16.

1. The Language From Wage Order 16

An employer is required to pay employees' "expenditures or losses" incurred in discharge of their duties. (Lab. Code, § 2802, subd. (a).) An exception, however, is located in Wage Order 16: "When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code § 2802." (Cal. Code Regs., tit. 8, § 11160, ¶ 8(B).)

WDL maintains this language means that when an employee is required to provide their own tools, and that person does not make the requisite amount for the exception to apply, the remedy is to pay that employee two times the minimum wage for all hours worked. The Court does not agree with this interpretation. The Court reads Wage Order 16 as exempting employers from expense reimbursements for employees earning twice the minimum wage. It does not require employers who improperly require employees to provide and maintain their own tools and equipment to pay twice the minimum wage. Only employees who are paid at least double the minimum wage may be required to provide their own hand tools. The language is clear and unambiguous. Thus, the plain language of Wage Order 16 does not support WDL's claim, and WDL lacks standing under Labor Code section 218.7, subdivision (b)(3), to bring this portion of the first claim.

2. DLSE Manual

The DLSE Manual at section 45.5.8, provides: "Remedy. Failure of an employee to receive two times the minimum wage while still obligated to purchase the tool would result in the employer being liable for the cost of the tool or equipment under Labor Code § 2802." (BBC's RJN, Ex. A at p. 45-17.) The Court believes section 45.5.8 provides a common-sense remedy that employees not earning twice the minimum wage who were incorrectly required to provide hand tools are made whole by the reimbursement remedy under Labor Code section 2802.

WDL asserts the DLSE Manual "is indisputably a void underground regulation to which the Court can afford *no* weight or deference," citing *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571-72. (Opp. at p. 7:9-10.) And WDL proffers the Court "should therefore reject Section 45.5.8 of the DLSE Manual as a careless sentence made up out of thin air by some unknown bureaucrat who thought the Wage Order overpaid carpenters." (Opp. at p. 8:23-25.)

Assuming the DLSE Manual and section 45.5.8 are void as an "underground regulation," the California Supreme Court provided guidance when it stated: "Agency interpretations set forth in void underground regulations are not entitled to any special judicial deference, but they may very well be correct, and the public benefits from knowing them. Moreover, a court that is exercising its independent judgment should certainly take the agency's interpretation into consideration, having due regard for the agency's expertise and special competence, as well as any reasons the agency may have proffered in support of its interpretation, and if the court is persuaded, it may, of course, adopt the agency's interpretation as its own. Thus, when an agency like the DLSE sets forth an interpretive policy in a void underground regulation, the deference that the agency's interpretation would normally enjoy is absent, but in its place the agency has its power to persuade." (*Alvarado v. Dart Container Corp. of Calif.* (2018) 4 Cal.5th 542, 559, citations omitted.)

The Court exercised its independent judgment, but considered the interpretation contained in the DSLE Manual. The Court considered the DSLE's interpretation of section 45.5.8, and the Court is persuaded it is correct. (*Id*. at p. 561.) The Court also took "into consideration the DLSE's expertise and special competence, as well as the fact that the DLSE Manual is a formal compilation that evidences considerable deliberation at the highest policymaking level of the agency." (*Ibid*.)

3. Federal Authorities

Gonzalez and *Gonzalez II* provide further support for the Court's interpretation of Wage Order 16. At issue in *Gonzalez* was Wage Order 1-2001, paragraph 9(B), which like Wage Order 16 here, required employers to furnish all tools and equipment necessary to perform a job. Paragraph 9(B) included an exception – as Wage Order 16 does here – to the general rule that employers must furnish all tools for those employees whose wages "are at least two (2) times the minimum wage provided herein." (Cal. Code Regs. tit. 8, § 11010.) The district court held the plain language of the Wage Order "did not create a new minimum wage or prevailing minimum wage for employees who must furnish their own tools." (*Gonzalez, supra,* 2013 U.S.Dist.LEXIS 201758, at *10.) The Ninth Circuit upheld the district court's ruling when it stated: "This provision plainly requires the employer to provide tools to certain employees, and exempts from that requirement those earning at least two times the minimum wage. It does not impose a new minimum wage as a remedy for the employer's failure to provide the tools. As the district court recognized, California law instead requires the employer to indemnify employees for 'all necessary expenditures or losses incurred . . . .' Cal. Lab. Code § 2802(a)." (*Gonzalez II, supra*, 637 F.App'x at pp. 311-12.) Considering Wage Order 16 and Wage Order 1-2001 share similar language, the Court finds the reasoning from these two cases persuasive and this authority cuts against WDL's argument that the alleged tool claim actually is a wage claim, instead of a reimbursement claim under Labor Code section 2802.

WDL argues *Gonzalez* and *Gonzalez II* were wrongly decided because they incorrectly gave "great weight" to the DLSE Manual. While the district court did not follow the roadmap for consideration of the DLSE Manual as expressed in *Alvarado*, detailed above, the district court only used the DSLE's interpretation as "further support" for its interpretation after making

an independent determination based on the plain language of the Wage Order. (*Gonzalez, supra*, 2013 U.S.Dist.LEXIS 201758, at *12.) Both cases, therefore, are appropriate to consider.

C. A Motion to Strike is Appropriate

WDL posits a motion to strike is a line item veto that prevents it from making a record on a case involving two issues of first impression. WDL asks the Court to reject the motion to allow the parties to litigate the matter on the merits, and decide the validity of WDL's claim in cross-motions for summary judgment. The Court disagrees. There is no record to establish as the issue before the Court is a legal one that it can decide as a matter of law via a motion to strike. Labor Code section 218.7, subdivision (b)(3), allows joint labor management cooperation committees such as WDL to bring claims only for "unpaid wages." As noted, as a matter of law, the allegations subject to this motion to strike are irrelevant and improper as WDL is seeking to litigate a claim for unreimbursed business expenses, which it is not permitted to do. WDL, however, still has standing to pursue its claim for unpaid wages based on its allegations of unpaid overtime hours. (Compl., ¶ 13 (incorrectly identified in the complaint as paragraph 11).)

D. Requests for Judicial Notice and Joinder

BBC's request for judicial notice is GRANTED as to section 45.5 of the DLSE Manual, the order from *Gonzalez*, and the unpublished opinion in *Gonzalez II*.

WDL's request for judicial notice is GRANTED as to the Basis for Wage Order No. 16 Regarding Certain On-Side Occupations in the Construction, Drilling, Mining, and Logging Industries and the Basis for Industrial Welfare Commission Order No. ML.1-76 from the Industrial Welfare Commission.

Defendant Davis/Reed Construction, Inc.'s request for joinder is GRANTED.

West Pueblo Partners, LLC v. Stone Brewing Co., LLC **21CV000498**

DEFENDANT'S DEMURRER TO COMPLAINT

TENTATIVE RULING: The demurrer is OVERRULED.

Defendant Stone Brewing Co., LLC demurs, pursuant to Code of Civil Procedure sections 430.10, subdivision (e) and 430.30, to the Complaint filed by Plaintiff West Pueblo Partners, LLC on the grounds that the complaint fails to allege facts sufficient to constitute a cause of action for unlawful detainer.

A. Procedural Matters

The present action concerns a commercial lease agreement by which Defendant leased from Plaintiff certain real property known as the Borreo Building in Napa, California. The subject lease is also at the heart of case number 21CV000458, pending in this Court.

Defendant's request for judicial notice is GRANTED.

B. Legal Analysis

Defendant advances two arguments in support of its demurrer to the Complaint in this action, both based on the legal theory that the complaint alleges facts that establish a complete defense to the claims therein. First, Defendant argues that the subject lease's force majeure provision excused it from its obligation to pay rent under the lease and therefore its failure to do so does not constitute grounds on which Plaintiff is entitled to unlawful detainer. Second, Defendant asserts that Plaintiff's Notice to Pay Rent or Quit suffers from a technical defect on its face.

A complaint must contain "facts constituting the cause of action." (Code Civ. Proc. § 425.10, subd. (a)(1).)

A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Court must also accept as true facts that may be inferred from those expressly alleged. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1405.) The Court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code. Civ. Proc., § 430.30, subd. (a).) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) In reviewing a demurrer, the court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the complaint has included allegations that clearly disclose some defense or bar to recovery." (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

1. <u>Defendant's Contention that it Was Relieved from Its Obligation to Pay the Subject Rent by Force Majeure Is Not Clearly Established by the Complaint and Subject Matters of Defendant's Request for Judicial Notice</u>

Defendant first asserts that "[w]hen a landlord brings an unlawful detainer action for a tenant's alleged failure to pay rent, the tenant's "default in the payment of rent" *i.e.*, obligation but failure to pay rent, is an essential element of the unlawful detainer claim." (Support Memo at 6:17-19.) Defendant argues, in effect, that, pursuant to the force majeure provision of the parties' lease, Defendant was relieved of its obligation to make the rental payments that form the basis of Plaintiff's unlawful detainer cause of action. (See *Id*. at 7:5-12.)

The Court concurs that the cause of action for unlawful detainer in the Complaint is based on allegations that Defendant has failed to pay rent due under the parties' lease. (See Complaint; see also Opposition at 8:20-22.) Thus, if the force majeure provision does, in fact, relieve Defendant of its obligation to pay the rent that is alleged due and owing, Plaintiff's cause

of action fails. (See Code Civ. Proc. § 1161 ["[a] tenant of real property…is guilty of unlawful detainer…(2) [w]hen the tenant continues in possession…after default in the payment of rent…"].) This would be the case despite allegations in the body of the Complaint to the contrary. (See *Hill v. Santa Barbara* (1961) 196 Cal.App.2d 580, 586 ["[t]he recitals, if contrary to allegations in the pleading, will be given precedence, and the pleader's inconsistent allegations as to the meaning and effect of an unambiguous document will be disregarded"].)

The subject provision reads, "**FORCE MAJEURE**. If either Party is delayed, interrupted or prevented from performing any of its obligations under this Lease, and such delay, interruption or prevention is due to…act of God, governmental act or failure to act…or any cause outside the reasonable control of that Party, then the time for performance of the affected obligations of the Party shall be extended for a period equivalent to the period of such delay, interruption or prevention." (Complaint at Attachment 1, § 26, emphasis in original.)

Defendant argues that the "force majeures" in this case consisted of various governmental acts and orders undertaken in response to the COVID-19 epidemic of 2020 and 2021 (COVID-19 Acts). (See Support Memo at 8:3-6, 9-10, and 19.) We accept, *arguendo,* and only for purposes of this demurrer, Defendant's contention that the COVID-19 Acts are events that are outside of Defendant's control for purposes of triggering the force majeure provision. (See Support Memo at 8:9-9:8.) We also accept, *arguendo* and only for purposes of this demurrer, Defendant's argument that were Plaintiff prevented from delivering the premises to Defendant under the parties' lease, Defendant would not be obligated to pay rent. (See Support Memo at 11:12-12:9.)

Defendant argues that the COVID-19 Acts "prevented [Plaintiff] from providing and [Defendant] from using all or significant portions of the Borreo Building." (Support Memo at 7:14-17.) Defendants may be able to prove these facts. However, they point to nothing in the Complaint or in the matters subject to Defendant's request for judicial notice that clearly disclose them.

Specifically, Defendant relies on the subjects of its request for judicial notice to establish that the COVID-19 Acts prohibited on-premise dinging in restaurants in Napa for the periods March 20, 2020 through May 31, 2020, and June 1, 2020 through September 3, 2020, and limited such use thereafter. For purposes of the present analysis the Court assumes, *arguendo,* the truth of those contentions.

Defendant next suggests that the lease "requires that the Borreo Building premises 'be used for a full service restaurant and brewery to include the sale of malt beverages for both on and off premise consumption, events as well as the sale of Tenant's merchandise and for no other use or purpose.' ([Complaint, at Attachment 1,] § 5.1(a))" (See Support Memo at 9:13-15.) Defendant argues that the COVID-19 Act's prohibition and restrictions on indoor dining, "delayed, interrupted, and/or prevented Plaintiff from providing even half of the property for use as a full service restaurant and bar, and prevented Stone from using the entire property for a full service restaurant and brewery…." (Support memo at 9:17-22.)

However, Defendant materially misquotes the lease. The provision at issue actually states, "[t]he Premises shall be used for a full service restaurant and brewery to include the sale

of malt beverages for both on and off premise consumption, events as well as the sale of Tenant's merchandise and for no other use or purpose *without the written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed*." (Complaint at Attachment 1, § 5.1(a), emphasis added.) The omitted language significantly alters the import of the quoted language for purposes of the present analysis.[3] This language prohibits the landlord from unreasonably withholding, conditioning, or delaying its consent to an alternative use. As such, it undermines Defendant's contention that the lease "requires that the Borreo Building premises" be used exclusively for the enumerated uses. (See Support Memo at 9:13.) Thus, even accepting, *arguendo*, that the COVID-19 Acts could be said to have prevented the premises from being used for the enumerated uses, because the lease clearly provides for alternative uses, Defendant's argument that Plaintiff was prevented from delivering the premises is unsupported. Similarly, even accepting, *arguendo*, that the COVID-19 Acts prevented Defendant from using the premises "as a full service restaurant and bar" or "full service restaurant and brewery," given that the landlord was prohibited, under the lease, from unreasonably withholding, conditioning, or delaying its consent to an alternative use, the Court cannot conclude that the lease clearly "delayed, interrupted, and/or prevented" Defendant from using the premises.

Based on the foregoing analysis, the Court finds that Defendant's assertion that "for the vast majority of the past year, more than half of the Borreo Building was shut down by government restrictions" is simply not supported by the Complaint and/or the matters that are the subject of Defendant's request for judicial notice. (Support Memo at 10:11-12.)

2. <u>The Complaint Does Not Include Allegations That Clearly Disclose That the Notice to Pay Rent or Quit is Fatally Defective</u>

As Plaintiff appears to concede, in order to state a claim for unlawful detainer, Plaintiff is required to plead compliance with the notice requirements of Code of Civil Procedure section 1161, subdivision (2). (See *Borsuk v. Appellate Division of Super. Ct.* (2015) 242 Cal.App.4th 607, 616-17.) "In commercial leases the landlord and commercial tenant may lawfully agree to notice procedures that differ from those provided in the statutory provisions governing unlawful detainer. [Citations.] Thus, if the lease contains service requirements for the notice to quit at variance with the requirements in the unlawful detainer statutes, the lease provisions control. [Citation.]" (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 750 (*Culver Center Partners*).)

Defendant argues that "[Plaintiff's] own factual allegations establish that [Plaintiff's] Notice was defective." Defendant notes that the written Commercial Lease, attached as Attachment 1 to the Complaint, provides that "[a]ny notice…that either party…is required to give to the other party under this Lease shall be in writing and shall be…addressed to the other party at the party's address for notices set forth in the Basic Lease Information [section of the writing]." (See Complaint at Attachment 1, § 22.) Defendant further notes that the Basic Lease Information section gives "2120 Harmony Grove Rd., Escondido, CA" as "Tenant's Address."

[3] The Court is concerned not only by Defendant's omission of the italicized language, but by Defendant's failure to denote that omission by use of an ellipsis. The Court urges Defendant to take more care in ensuring that it does not selectively quote materials in a manner that may have the effect of misleading the Court.

(*Id*. at p.1.) Finally, Defendant notes that the Notice to Pay Rent or Surrender Possession, attached to the Complaint as Attachment 2, is addressed to Defendant at "2611 Business Park Drive, Vista CA 92081." Defendant argues from the foregoing that the notice was not delivered as required by the provisions in the subject lease agreement. (See Support Memo at 14:13-23.)

Plaintiff acknowledges the foregoing aspects of the Complaint but contends that these factual allegations do not "conclusively establish" that Plaintiff's notice was defective. (See Opposition at 16:11-15.) The Court agrees.

The Court finds that the elements of the Complaint cited by Defendant establish that the subject lease "contains service requirements for the notice to quit at variance with the requirements in the unlawful detainer statutes." (*Culver Center Partners*, *supra*, 185 Cal.App.4th at 750.) As such, "the lease provisions control." (*Ibid*.)

However, accepting the allegations of the Complaint as true, and construing each liberally in favor of Plaintiff, the provisions do not conclusively establish that Plaintiff failed to serve notice consistent with the lease provisions. The cited provisions establish, at most, that as of May 2016, Plaintiff was required to send any notice required in relation to the lease agreement to Defendant at the Harmony Grove, Escondido address. Plaintiff notes that the Commercial Lease writing further provides that, "[e]ither party may change its address for notices hereunder by a notice to the other party complying with this Section." (Complaint at Attachment 1, § 22.) Given this provision, it is impossible to conclude that the lease required Plaintiff to deliver all notices under the lease agreement to the Harmony Grove, Escondido address. In this context, the Court notes that through the allegations of section 9, subdivision (a) of, and Attachment 17 to, the Complaint, Plaintiff alleges that it served Defendant with a 5-day notice to pay rent or quit. Based on the foregoing, the Court is unable to conclude that the Complaint includes allegations that clearly disclose that the 5-day notice to pay rent or quit was fatally defective. (See *Cryolife, Inc. v. Super. Ct.*, *supra*, 110 Cal.App.4th at 1152; see also Complaint at Attachment 1.)

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Estate of Margaret M. Cairns **PR18599**

THIRTY-FIFTH ANNUAL ACCOUNT AND REPORT AND PETITION FOR APPROVAL THEREOF, FOR APPROVAL OF TRUSTEE AND ATTORNEY COMPENSATION

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Sarah Hanley v. David Carroll, *et al.* **21CV000057**

DEFENDANTS' MOTION TO STRIKE PORTIONS OF COMPLAINT

TENTATIVE RULING: The motion is GRANTED IN PART. Defendants are invited to lodge a revised Proposed Order, approved by Plaintiff as to form, consistent with the following.

Defendants Napa Personal Pet Care Inc. and David C. Carroll move, pursuant to Code of Civil Procedure section 436, for an order striking seven specific portions of the Complaint (Subject Portions) filed by Plaintiff Sarah Hanley on the grounds that the Subject Portions constitute irrelevant, false, or improper matter, or a demand for judgment requesting relief not supported by the allegations of the Complaint.[4] More specifically, Defendants argue that the seven Subject Portions relate to Plaintiff's claim brought pursuant to California's Unfair Competition Law (UCL) but that the Subject Portions each, "go[] further than the UCL allows." (Support Memo at 1:8-9, 14-18.)

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court's tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

Upon noticed motion, the Court may strike any "irrelevant, false or improper matter inserted in any pleading. (Code Civ. Proc § 436, subd. (a).)[5] "Irrelevant…matter" as used in the statute, includes "[a] demand for judgment requesting relief not supported by the allegations of the complaint…." (See §§ 431.10, subds. (b)(3), and (c).)

However, "use of the motion to strike should be cautious and sparing." (*PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1683.) The Court is to "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*).) Finally, as to a claim that matters are irrelevant, where a motion to strike is so broad as to include relevant matters, it may be denied in its entirety. (*Allerton v. King* (1929) 96 Cal.App.230, 234.)

Defendants argue that "[p]ortions of the complaint referring generally to the nonrestitutionary disgorgement of profits or other gains, and referring to potential harm to individuals or entities other than Hanley, should…be stricken as irrelevant and improper because neither relates to claims that could be brought by Hanley in this action." (Support Memo at 4:23-26.) Defendant urges that the "UCL provides for restitution but not for general disgorgement of

[4] For ease of discussion, the Court refers to each specific Subject Portion by the numbering used by Defendants in their Notice of Motion at 2:8-25.
[5] All subsequent statutory references are to the Code of Civil Procedure unless otherwise noted.

amounts allegedly obtained through a defendant's improper conduct." (Opposition at 4:1-2.) Defendants further urge that "individual UCL plaintiffs cannot pursue any remedy, even restitution, for other individuals or entities without following class-action procedures." (Opposition at 4:10-11.)

As to the former point, Plaintiff cites the following language from our Supreme Court. "The only nonpunitive monetary relief available under the Unfair Business Practices Act is the disgorgement of money that has been wrongfully obtained or, in the language of the statute, an order 'restor[ing] … money … which may have been acquired by means of … unfair competition.' [Citations.]." (*Bank of the West v. Super. Ct.* (1992) 2 Cal.4th 1254, 1266.) The Court understands Defendants to argue not that disgorgement is unavailable, but that any such disgorgement must be "restitutionary," and may not be "general." Disgorgement must, rather, be limited to wrongfully obtained gains of money that were vested in Plaintiff – as opposed to any third-person to the litigation or the general public.

There appears to be no dispute as to this point. Plaintiff affirmatively asserts that "[t]he UCL allegations at issue describe harms sustained only by Dr. Hanley. The UCL allegations at issue seek UCL remedies only on behalf of Dr. Hanley." (Opposition at 9:10-11.) Rather, the dispute appears to focus on whether the Subject Portions support Plaintiff's claim for restitution under the UCL. To the extent that each respective Subject Portion, read in the entirety of the Complaint, does so, Defendant is not entitled to an order striking it. (See *Turman*, *supra*, 191 Cal.App.4th at 63

With the foregoing in mind, the Court turns to the Subject Portions.

The motion is DENIED as to Subject Portion Nos. 1. The Court finds that the allegations, when read in the context of the Complaint as a whole, support Plaintiff's UCL Claims.

The motion is GRANTED as to Subject Portion No. 2. While damages are available under a common law cause of action for unfair competition, they are not available under a UCL claim. (See *Bank of the West v. Super. Ct.*, *supra*, 2 Cal.4th at 1265-66.) The Court therefore orders the language, "damages for NPPC's and Carroll's violations of § 17200 in an amount to be determined at trial" struck from paragraph 33, at 8:1-2, of the Complaint. (See §§ 436, subd. (a), 431.10, subds. (b)(3), and (c).)

The motion is DENIED as to Subject Portion Nos. 3. The Court finds that the allegations, when read in the context of the Complaint as a whole, support Plaintiff's UCL Claims.

The motion is GRANTED IN PART as to Subject Portion Nos. 4. Plaintiff asserts that she is not, through her UCL claim, seeking to obtain disgorgement of any "unfair benefits and illegal profits" that Defendants "reaped…at the expense of…members of the public." (See Opposition at 9:10-11.) The Court therefore orders the language ", and members of the public" struck from paragraph 66, at 13:4-5, of the Complaint. The Court finds that the remaining allegations of Subject Portion No. 4, when read in the context of the Complaint as a whole, support Plaintiff's UCL Claim.

The motion is DENIED as to Subject Portion No. 5. While the phrase "Defendants' competitors" may be read to include third-parties, it also may include Plaintiff. For this reason, the Court does not find the allegation irrelevant to Plaintiff's claims.

The motion is DENIED as to Subject Portion Nos. 6. As noted hereinabove, disgorgement of ill-gotten gains is a remedy available under a claim brought pursuant to the UCL. (See *Bank of the West v. Super. Ct.*, *supra*, 2 Cal.4th at 1266.)

Finally, the Motion is GRANTED IN PART as to Subject Portion No. 7. Based on the discussion set forth in the context of Subject Portion No. 2, the Court orders the language, "payment of damages" struck from item 4 of the Prayer, at 15:9 of the Complaint. Based on the discussion set forth in the context of Subject Portion No. 6, the Court denies the motion as to the remainder of the the language of Subject Portion No. 7.