

**1. WAGNER v. FIRSTPV, INC., ET AL., 23CV0893****Defendant Service Finance Co.'s Motion to Deem Matters Admitted**

On January 23, 2025, defendant Service Finance Company, LLC (“Service Finance”) filed its motion to deem matters admitted (Request for Admissions, Set One) and request for monetary sanctions in the amount of \$3,032.50<sup>1</sup> against defendant FirstPV, Inc. (“FirstPV”).

On February 13, 2025, FirstPV served its verified response to the request for admissions without objections. Therefore, the motion is moot. (Code Civ. Proc., § 2033.280, subd. (c).)

However, the court is still required to award sanctions against the late-responding party. (Code Civ. Proc., § 2033.280, subd. (c) [“It is mandatory that the court impose a monetary sanction ... on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.”].) Counsel for Service Finance declares it incurred the following fees in preparing the instant motion: (1) \$1,182.50 (4.3 hours at \$275.00 per hour) for an associate to draft and revise the moving papers; (2) \$750.00 (2.0 hours at the partner rate of \$375.00 per hour) for the partner to review and revise the moving papers; (3) \$1,100.00<sup>2</sup> (4.0 hours at \$275.00 per hour) for an associate to review the opposition papers and draft the reply brief. (Bodzin Decl., ¶ 7.)

FirstPV disputes the amount requested and urges the court to reduce the amount to \$825.00, representing three hours of legal work at \$275.00 per hour.

---

<sup>1</sup> Service Finance technically requests a monetary sanction in the amount of \$3,582.00. However, as discussed below, there appears to be an inadvertent overcalculation of \$550.00.

<sup>2</sup> It appears that defense counsel mistakenly calculated this amount as \$1,650.00. However, four hours of legal work at \$275.00 per hour amounts to \$1,100.00.

Having read and considered the moving papers and defense counsel's declaration, the court finds that \$1,650.00 is a reasonable sanction under the Civil Discovery Act (6.0 hours of legal work at \$275.00 per hour).

**TENTATIVE RULING # 1: THE MOTION TO DEEM MATTERS ADMITTED IS MOOT. HOWEVER, DEFENDANT FIRSTPV SHALL PAY DEFEENDANT SERVICE FINANCE A MONETARY SANCTION IN THE AMOUNT OF \$1,650.00 WITHIN 30 DAYS AFTER THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**2. NAT'L CREDIT ACCEPTANCE v. OWEN, ET AL., SCL20070084**

**Order of Examination Hearing**

On February 18, 2025, proof of personal service was filed showing that judgment debtor Mike Owen was personally served with the order to appear for examination no less than 10 days prior to the hearing.

**TENTATIVE RULING # 2: JUDGMENT DEBTOR'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 28, 2025, IN DEPARTMENT FOUR.**

**3. GUPTA v. TESSA HOWARD, 24CV1966**

**Trial Setting Conference**

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
FEBRUARY 28, 2025, IN DEPARTMENT FOUR.**

4. GUPTA v. TYSON HOWARD, 24CV1967

Trial Setting Conference

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
FEBRUARY 28, 2025, IN DEPARTMENT FOUR.

**5. TAHOE ASPHALT, INC., ET AL. v. SOUTHWEST WEAR PARTS CO., INC., 24CV2723****(A) Plaintiffs' Motion to Strike Portions of Defendant's First Amended Answer****(B) Plaintiffs' Motion for Judgment on the Pleadings**

Plaintiffs have filed a motion to strike defendant's first amended answer (filed January 17, 2025) and motion for judgment on the pleadings.

Plaintiffs' counsel declares she met and conferred with defendant prior to filing these motions. (Hayes Decl., filed Jan. 27, 2025, ¶¶ 9–15.)

**1. Background**

Plaintiff Tahoe Asphalt Property Company, LLC ("TAPCO") owns the real property and improvement located at 1104 Industrial Avenue in South Lake Tahoe, California (the "Property"). (Compl., ¶ 7.) Plaintiff Tahoe Asphalt, Inc. ("Tahoe Asphalt") operates an asphalt supply company on the Property pursuant to a lease. (Compl., ¶ 10.)

On August 21, 2024, defendant executed and recorded a mechanics lien against the Property for services it allegedly provided to plaintiff Tahoe Asphalt. (Compl., ¶¶ 14–15.) Defendant's proof of service indicates it served the mechanics lien on plaintiff Tahoe Asphalt at P.O. Box 95, South Lake Tahoe, California. (Compl., Ex. D.) The complaint alleges that neither plaintiff has ever been affiliated with said address. (Compl., ¶ 20.) As such, plaintiffs claim defendant failed to properly serve the mechanics lien on the owner of the Property. (Compl., ¶ 19.)

On December 9, 2024, plaintiffs filed their verified complaint against defendant, stating causes of action for: (1) declaratory relief; (2) injunctive relief; and (3) exoneration of surety bond.

On January 9, 2025, defendant filed its original answer. On January 17, 2025, defendant filed its first amended answer. On January 24, 2025, defendant filed its verified second amended answer.<sup>3</sup>

On January 27, 2025, plaintiffs filed their motion to strike portions of defendant's first amended answer.

On January 28, 2025, plaintiffs filed their motion for judgment on the pleadings.

## **2. Plaintiffs' Motion to Strike Defendant's First Amended Answer**

### **2.1. Legal Principles**

A motion to strike can be used to "[s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter the court judicially notices. (Code Civ. Proc., § 437, subd. (a).)

### **2.2. Discussion**

Plaintiffs claim the following paragraphs of defendant's first amended answer should be stricken as "sham" because they deny matters (that are within defendant's actual knowledge or can reasonably be ascertained through public record) on the ground that

---

<sup>3</sup> Defendant labels this pleading as "Defendant's Amended Verified Answer to Plaintiff's Verified Complaint." However, to avoid confusion, the court will refer to it as defendant's verified second amended answer. Defendant did not obtain leave of court to file its verified second amended answer and there is no indication that the parties stipulated to such filing. As such, defendant's verified second amended answer appears to be an unauthorized pleading. (See Code Civ. Proc., § 472, subd. (a) ["A party may amend its pleading once without leave of the court at any time before the ... motion to strike is filed, or after a ... motion to strike is filed but before the ... motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the ... motion to strike."].) Accordingly, the court strikes the verified second amended answer on its own motion. (Code Civ. Proc., § 436; *Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 830.) The court notes, however, that defendant's verified second amended answer would not have cured the defects in defendant's first amended answer, discussed below.

defendant does not have sufficient information or belief concerning them: Paragraphs 1– 3, 5–6, 10, 12– 14, 16, 19– 22, and 24– 26.<sup>4</sup>

Code of Civil Procedure section 431.30, subdivision (d) provides in relevant part: “If the complaint is verified, ... the denial of the allegations shall be made positively or according to the information and belief of the defendant.” However, “[w]hen the facts alleged in a verified complaint are presumptively within the knowledge of the defendant he must answer positively and an answer upon information and belief only should be treated as an evasion and an admission of the facts alleged in the complaint.

[Citations.]” (*Zenos v. Britten-Cook Land & Live Stock Co.* (1925) 75 Cal.App. 299, 304.)

“[I]f the matter is within the defendant’s actual knowledge or by its nature is presumed to be within his knowledge, or if the defendant has the means of ascertaining whether or not it is true, a denial on information and belief or for lack of either will be deemed sham and evasive and may be stricken out or disregarded.” (*Dobbins v. Hardister* (1966) 242 Cal.App.2d 787, 791.) “This rule is frequently applied to matters of public record. Accordingly, a denial upon information and belief, or for want of information or belief, of an alleged fact which may be ascertained from the inspection of a public record within reach of a defendant is insufficient to raise an issue, and such a denial constitutes an admission of the allegation of the complaint. [Citations.]” (*Oliver v. Swiss Club Tell* (1963) 222 Cal.App.2d 528, 539.)

The court grants plaintiffs’ motion to strike the following paragraphs of defendant’s first amended answer because the matters are either within defendant’s actual knowledge or are matters of public record: Paragraphs 2, 5, 10, 12, 16, 20, 21, and 22. As to these paragraphs, the court grants defendant leave to amend.

---

<sup>4</sup> Plaintiffs’ motion technically requests to strike defendant’s responses to the following paragraphs of plaintiff’s verified complaint: Paragraphs 7– 9, 11–12, 16, 18, 20, 22, 25– 28, 31–40, 42–43, and 45–47. But, plaintiffs’ Exhibit A specifically identifies the challenged paragraphs in defendant’s first amended answer.



The court denies plaintiffs' motion to strike the following paragraphs of defendant's first amended answer: Paragraphs 1, 3, 6, 13, 14, 19, and 24–26.

As it relates to Paragraph 1 (answering Paragraph 7 of plaintiffs' complaint), the issue of whether plaintiff TAPCO owns the *improvement* on the alleged real property is not a matter of public record.

As it relates to Paragraphs 3 and 6 (answering Paragraphs 9 and 12 of plaintiffs' complaint), the addresses reflected in Paragraphs 9 and 12 of plaintiffs' complaint are not necessarily exhaustive lists of plaintiffs' "correct" addresses.

As it relates to Paragraph 13 (answering Paragraph 19 of plaintiffs' complaint), defendant positively denies Paragraph 19 of plaintiffs' complaint.

As it relates to Paragraph 14 (answering Paragraph 20 of plaintiffs' complaint), public records do not necessarily reflect all addresses in which plaintiffs have ever been affiliated.

As it relates to Paragraph 19 (answering Paragraph 25 of plaintiffs' complaint), the issue of whether plaintiff Tahoe Asphalt was "forced" to obtain a bond is not a matter of public record.

As it relates to Paragraphs 24 through 26 (answering Paragraphs 30–47 of plaintiffs' complaint), plaintiffs claim that defendant failed to specifically address the allegation with either an admission or a specific denial. However, the court finds no matter to strike within these paragraphs.

Based on the above, the motion to strike is granted in part with leave to amend and denied in part.<sup>5</sup>

//

//

//

---

<sup>5</sup> However, based on the circumstances, the court anticipates plaintiffs filing a petition to expunge the mechanics lien under Civil Code section 8480, subdivision (a).

### 3. Plaintiffs' Motion for Judgment on the Pleadings

#### 3.1. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants plaintiffs' request for judicial notice of Exhibit A (recorded grant deed), Exhibit B (plaintiff TAPCO's Statement of Information filed with the California Secretary of State), Exhibit C (plaintiff Tahoe Asphalt's Statement of Information filed with the California Secretary of State), Exhibit D (recorded mechanics lien), and Exhibit E (recorded bond to release mechanics lien).

The court denies plaintiffs' request to take judicial notice of the fact that defendant has not initiated an action to foreclose on the mechanics lien.

#### 3.2. Legal Principles

A motion for judgment on the pleadings serves the same function as a general demurrer. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 145–146.) A motion may be brought where “the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.” (Code Civ. Proc., §438, subd. (c)(1)(A); see also *Adjustment Corp. v. Hollywood Hardware & Paint Co.* (1939) 35 Cal.App.2d 566, 569–570 [judgment on the pleadings is proper where the answer “fails to deny any of the material allegations of the complaint”].) The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts the court may judicially notice. (Code Civ. Proc., § 438, subd. (d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758–759.)

#### 3.3. Discussion

Civil Code section 8416, subdivision (c) provides that a copy of the mechanics lien shall be served on the owner or reputed owner of the property. For an owner or reputed owner who resides in or outside this state, service shall be made “by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage

prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in Section 8174." (Civ. Code, § 8416, subd. (c)(1).) "Failure to serve the copy of the claim of mechanics lien ... shall cause the claim of mechanics lien to be unenforceable as a matter of law." (Civ. Code, § 8416, subd. (e).)

Plaintiffs' motion is based on the ground that the complaint alleges defendant failed to serve plaintiff TAPCO (the owner of the real property at issue). (See Compl., ¶ 19.) However, defendant's first amended answer positively denies this allegation. Although the complaint alleges that the address reflected in defendant's proof of service is not an address with which either plaintiff has ever been affiliated (Compl., ¶ 20), the court has denied plaintiffs' motion to strike defendant's denial of said allegation in Paragraph 14 of its first amended answer because public records do not necessarily reflect all addresses in which plaintiffs have ever been affiliated. Accordingly, the court finds that defendant's first amended answer states facts sufficient to constitute a defense to the complaint.

The motion for judgment on the pleadings is denied.

**TENTATIVE RULING # 5: THE MOTION TO STRIKE IS GRANTED IN PART WITH LEAVE TO AMEND AND DENIED IN PART. THE MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**