

22CV46224 - LAWRENCE J. SARKIS

Plaintiff/Cross-Defendant

v.

ANGELS GUN CLUB; DAVID VERHALEN

Defendants/Cross-Complainants

**PLAINTIFF'S MOTION TO COMPEL INSPECTION AND
FOR MONETARY SANCTIONS**

TENTATIVE RULING

This matter arises from a dispute over the operation of a gun club and related settlement agreement between Plaintiff/Cross-Defendant Lawrence J. Sarkis ("Plaintiff") and Angels Gun Club ("AGC") and David Verhalen ("Verhalen") (collectively "Defendants.")

Now before the Court is Plaintiff's motion to compel further responses to demand for inspection. As set forth below, the motion is granted, subject to the specifics of this Order.

I. Background Facts

On or around May 21, 2014, Plaintiff filed a complaint against AGC, seeking relief for Plaintiff's suspension and eventual expulsion from AGC for being a whistleblower. (FAC ¶ 7.) On or around September 19, 2014, Plaintiff filed a derivative action seeking relief for his claims that certain individuals mismanaged AGC, violated the law, and breached their fiduciary duties (collectively referred to herein as the "Previous Actions") (*Ibid.*)

In December 2021, Plaintiff entered into the Agreement with AGC, David Richards ("Richards"), Kathleen Bachelor, and each of AGC's then acting board members to settle the Previous Actions. Pursuant to that Agreement, AGC paid Plaintiff damages, agreed to retain an new Certified Public Accountant, was to direct the new CPA to audit AGC's sales tax payments from 2015 through 2020 and provide verification of the audit and its findings to Plaintiff, and "for five (5) years, AGC is required to provide copies of the annual profit & loss statements, annual revenue reports, and annual expense reports to David Richards upon written request." (FAC ¶ 8, Ex. A.)

On October 17, 2023, Plaintiff filed a First Amended Complaint ("FAC") in this matter alleging claims for breach of contract, false promise, negligent and intentional misrepresentation and breach of the implied covenant of good faith and fair dealing. Central to Plaintiff's causes of action is his allegation that the Agreement requires AGC

to produce “annual profit & loss statements, annual revenue reports, and annual expense reports” (“Reports”) to Richards for a period of five years. (FAC ¶11.) Plaintiff alleges that not only were the Reports not produced, but that AGC knew when it entered the Agreement that it could not produce the types of reports for which Plaintiff bargained. (FAC ¶ 24.)

II. Procedural History (Discovery)

On or about February 9, 2023, Plaintiff’s counsel served AGC with a Request for Special Interrogatories, Set One (“SROGS.”) (Declaration of Makayla M. Whitney (“Whitney Decl.”) ¶ 2.) On or about March 14, 2023, AGC provided its response (*Ibid.*, Ex. A.) On or about November 12, 2024, Plaintiff’s counsel served AGC with the Demand for Inspection of certain electronic devices (“Inspection Demand”) (Whitney Decl. ¶ 3, Ex. B.) AGC provided an unverified response on December 16, 2024, with a verified response provided on January 10, 2025. (Whitney Decl. ¶¶ 4,5.)

The parties have engaged in substantial meet and confer efforts but have been unable to come to a resolution.

III. Legal Standard

Motions to compel further responses to requests for production or inspection must set forth specific facts showing good cause justifying the discovery sought by the request. (CCP § 2031.310(b).) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact. (*Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224, disapproved on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531; *see also Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 [characterizing good cause as “a fact-specific showing of relevance”].) If good cause is shown by the moving party, the burden shifts to the responding party to justify any objections made to disclosure of the documents. (*Kirkland, supra*, 95 Cal.App.4th at 98.)

The scope of permissible discovery is very broad. [citation]. “[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Proc., § 2017.010.) For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. Admissibility is *not* the test. Rather, it is sufficient if the information sought might reasonably lead to other admissible evidence. [citation].

(*Children’s Hospital Central California v. Blue Cross of California* (2014) 226 Cal.App.4th 1260-1276-1277.) The scope of discovery is one of reason, logic and common sense. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.)

III. Discussion

Plaintiff seeks further responses to the following:

Demand No. 1: To inspect any ELECTRONIC MEDIA ANGELS GUN CLUB utilized to input, organize, maintain, and store ANGELS GUN CLUB financial data from October 2021 to present.

Demand No. 2: To inspect any ELECTRONIC MEDIA ANGELS GUN CLUB utilizes to input, organize, maintain, and store QuickBooks software or any other methods of accounting from October 2021 to present.

Demand No. 3: To inspect any ELECTRONIC MEDIA ANGELS GUN CLUB utilized to back up any ANGELS GUN CLUB financial data and meeting minutes from October 2021 to present.

Demand No. 4: To inspect any ELECTRONIC MEDIA ANGELS GUN CLUB utilizes to draft, input, organize, maintain, and store ANGELS GUN CLUB board of directions meeting minutes from October 2021 to present.

Plaintiff argues that the demands for inspection Nos. 1-3 are relevant and admissible—or likely to lead to admissible evidence—because they go to the heart of the dispute over AGC’s ability to properly maintain and produce the Reports specified in the Agreement. Plaintiff asserts that in the meet and confer efforts, it clarified the scope and purpose of the discovery was to analyze AGC’s financial reporting capabilities and that this information was necessary for the expert to find meta data on the specific computers and to “ensure all the data is available to run this, and that meta data usually hides in other parts of the computers.” (Whitney Decl. ¶ 6, Ex. D.)

Plaintiff argues that demand no. 4 is relevant and likely to lead to admissible evidence because they are seeking to determine whether any meeting minutes have been deleted, altered, or destroyed. Plaintiff argues that there was a heated debate at an AGC meeting regarding the matters of this lawsuit which is mysteriously absent from the minutes. Plaintiff also asserts that the meeting minutes may have contained information related to the Reports and/or tax status of AGC.

To each of these demands, AGC responded in a substantially identical manner, stating:

This inspection request is not reasonably calculated to lead to the discovery of relevant evidence. This Request is not reasonably limited and is overbroad in its scope. Counsel undersigned attempted to meet and confer with opposing counsel regarding the need for such discovery, the purported relevance of it to any of Plaintiff’s claims in this matter, and received only a very vague description of the inspection intended.

Given the inability to articulate the necessity of this discovery when asked, Responding Party will not accommodate this Request. Responding Party remains open to meeting and conferring with Propounding Party.

Boilerplate objections, such as those made by AGC, fail to satisfy the level of specificity required by the discovery statutes and are sanctionable. (*Korea Data Systems Co. v. Super. Court* (1997) 51 Cal.App.4th 1513, 1516.) Indeed it is a misuse of the discovery process to provide, without substantial justification, an unmeritorious objection to discovery or to make an evasive response to discovery. (Code Civ. Proc. § 2023.010(e), (f).) AGC's repeated the identical boilerplate objections to each discovery demand and failed to articulate the basis for any objection. Nor is there any legal basis for AGC to demand that Plaintiff "articulate the necessity" for discovery before AGC will agree to produce such discovery.

Once a motion to compel has been filed, the burden is on the responding party to justify the objections made. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) In its opposition, AGC focuses its argument primarily on its belief that the requests are overbroad and irrelevant. AGC also argues that it is produced sufficient responses elsewhere and that Plaintiff is essentially seeking unfettered access to AGC's electronic files simply to build his case.

A primary contention in Plaintiff's claims against AGC is that it has not only failed to produce the required Reports, but that it also knew it was incapable of producing those Reports when it entered into the Agreement with Plaintiff. Plaintiff has produced evidence in his motion tending to show that there is a dispute, even among AGC's members, as to what the software/computing programs AGC uses can in fact produce. Plaintiff reasonably argues that forensic review of the computers and electronic storage systems themselves may reasonably produce evidence tending to prove (or disprove) Plaintiff's theories regarding AGC's unwillingness or inability to produce those Reports.

However, the Court is also cognizant of the privacy interests potentially implicated by allowing access to AGC (and potential private individual) computers. Accordingly, the Court orders as follows:

1. AGC is ordered provide code-compliant responses to the demands for inspection, without mere boilerplate objections.
2. Plaintiff is to produce a list of search terms to be used by the forensic examiner and to provide the same to AGC and the Court within fifteen (15) days. Plaintiff is also to draft and circulate a protective order for approval by AGC regarding the limitation on use of data obtained and steps which will be taken to ensure that private personal data is not accessed.
3. The parties shall present a protective order to the Court within thirty (30) days of this Order.

4. Upon approval of the protective order, AGC shall permit inspection of all electronic media used in the regular course of business within fifteen (15) days.

Sanctions

Plaintiff's counsel seeks sanctions in relation to this motion. Pursuant to Code Civ. Proc. section 2030.030 the Court may impose sanctions for the misuse of the discovery process. Here, Defendant's initial responses to the Plaintiff's discovery requests were evasive, lacked specificity, and contained numerous (and identical) boiler plate objections. However, Defendant's opposition indicates that it had a reasonable belief that the requests were overbroad given that they might implicate personal computers. Accordingly, the Court reduces the sanctions sought to \$500.00.

22CV46224 - LAWRENCE J. SARKIS

Plaintiff/Cross-Defendant

v.

ANGELS GUN CLUB; DAVID VERHALEN

Defendants/Cross-Complainants

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING

Before the Court is a motion for summary judgment filed by Defendant/Cross-Complainant Angels Gun Club, Inc ("AGC") and David Verhalen (collectively "Defendants") against Plaintiff/Cross-Defendant Lawrence J. Sarkis ("Plaintiff") as to Plaintiff's Complaint.

As set forth below, the Court denies the motion for summary adjudication. The Court grants Plaintiff's unopposed Request for Judicial Notice.

I. Factual Background

On December 13, 2021, Plaintiff, AGC, David Richards ("Richards"), Kathleen Bachelor, and each of AGC's then acting board members executed a Settlement Agreement and Mutual Release of All Claims to settle previous litigation initiated by Sarkis against AGC ("Agreement.") (Declaration of Makayla A. Whitney ("Whitney Decl.") ¶ 2.) The previous litigation stemmed from Plaintiff's alleged wrongful expulsion from AGC and claims of mismanagement by AGC's board of directors. (Declaration of Lawrence Sarkis ("Sarkis Decl.") ¶ 2.)

The Agreement that is the subject of this action contains Clause 3(i) which states:

In further consideration of this Agreement, AGC will provide copies of the following documents to Plaintiff Richards or another AGC member designated by Plaintiff Richards upon written request of such member for five (5) years following the Effective Date: annual profit & loss statements, annual revenue reports and annual expense reports.

(Plaintiff UMF ("PUMF") 1.) As part of the Agreement, Plaintiff would no longer be a member of AGC. (PUMF 2.) Further, in compliance with the Agreement, Plaintiff dismissed his court cases against AGC (PUMF 10), relinquished his claim to be reinstated as a member of AGC (PUMF 11) and has not reapplied for membership in AGC (PUMF 12.)

On October 17, 2023, Plaintiff filed a First Amended Complaint (“FAC”) in this matter alleging claims for breach of contract, false promise, negligent and intentional misrepresentation and breach of the implied covenant of good faith and fair dealing. Central to Plaintiff’s causes of action is his allegation that the Agreement requires AGC to produce “annual profit & loss statements, annual revenue reports, and annual expense reports” (“Reports”) to Richards for a period of five years. (FAC ¶11.) Plaintiff alleges that not only were the Reports not produced, but that AGC knew when it entered the Agreement that it could not produce the types of reports for which Plaintiff bargained. (FAC ¶ 24.)

Now before the Court is AGC’s motion for summary adjudication on the claims of false promise and misrepresentation.

II. Legal Standard

Summary adjudication is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

Defendant has the initial burden to show Plaintiffs’ claims have no merit by showing either (1) that one or more elements of each cause of action cannot be established or (2) there is a complete defense to the claims. (Code Civ. Proc., § 437c(p)(2); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850.) If Defendant meets that burden, then the burden shifts to Plaintiffs to show that a triable issue of material fact exists as to the element or defense at issue. (*Ibid.*) In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the opposing party. (*Aguilar, supra*, 25 Cal.4th at p. 843.)

The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Summary adjudication is granted when a moving party establishes the absence of a triable issue of material fact and the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

III. Discussion

A. Procedural Deficiencies

If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts. (Cal. Rule of Court 3.1350.)

“A motion for summary adjudication tenders only those issues or causes of action specified in the notice of motion, and may only be granted as to the matters thus specified.” (Schmidlin v. City of Palo Alto (2007) 157 Cal.App.4th 728, 743-744.) Further, “the motion must be denied if the movant fails to establish an entitlement to summary adjudication of the matters thus specified; the court cannot summarily adjudicate other issues or claims, even if a basis to do so appears from the papers.” (Ibid.)

Here, not only does the Notice of Motion not specify which causes of action AGC believes are subject to summary adjudication, the Separate Statement also fails to specifically state which causes of action are at issue.

The Notice of Motion also fails to comply with Local Rule 3.3.7, which alone provides the Court grounds to deny the motion.

AGC is warned that the failure to comply with procedural requirements in the future may result in the denial of future motions, with prejudice. However in the interest of judicial efficiency, the Court will rule on the substantive merits.

B. Substantive Arguments

AGC moves for summary adjudication on the three causes of action involving misrepresentation – 1) false promise, 2) fraudulent misrepresentation and 3) negligent misrepresentation.

“To maintain an action for deceit based on a false promise, one must specifically allege and prove, among other things, that the promisor did not intend to perform at the time he or she made the promise and that it was intended to deceive or induce the promise to do or not do a particular thing.” (Tarmann v. State Farm Mut. Auto. Ins. Co. (1991) 2 Cal.App.4th 153, 159.) It is simply a form of intentional misrepresentation or fraud. (Ibid.)

To prove fraud, Plaintiff must show: 1) a misrepresentation (false representation, concealment, or nondisclosure); (2) scienter or knowledge of its falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. (Dhital v. Nissan North America, Inc. (2022) 84 Cal.App.5th 828, 838.)

A cause of action of negligent misrepresentation is “a species of the tort of deceit.” (Conroy v. Regents of University of California (2009) 45 Cal.4th 1244, 1255.) Similar to intentional misrepresentation, the plaintiff must produce evidence of a misrepresentation, intent to induce reliance, justifiable reliance, and damages. (Ibid.) However, unlike intentional misrepresentation, the tort of negligent misrepresentation only requires that the misrepresentation be made “without reasonable ground for believing it to be true.” (Borman v. Brown (2021) 59 Cal.App.5th 1048, 1060. It does not require actual knowledge of the falsity of the statement. (Ibid.)

As the moving parties, Defendants bear the burden of showing that there are no material issues of fact any of the misrepresentation claims. In support of their motion, Defendants relies on only four facts: 1) Plaintiff's name is not included as a person who would receive the financial reports pursuant to Clause 3(i) (UMF 1) 2) Plaintiff is not a member of the gun club (UMF 2); 3) Plaintiff was specifically left out of being named in Clause 3(i) (UMF 3); and 4) the Agreement is unambiguous. (UMF 4.)

These contentions, even if undisputed, have little bearing on the Plaintiff's claims for misrepresentation (either intentional or negligent) that allegedly induced him to enter into the Agreement. Plaintiff counters with triable issues of material fact on these claims. Specifically, Plaintiff contends that AGC intentionally misrepresented its ability to produce the types of financial reports listed in the Agreement, knowing at the time it made those promises to Plaintiff that it could not fulfill the same. (PUMF 13, 14; Declaration of Lawrence Sarkis ("Sarkis Decl.") ¶ 5.) Plaintiff alleges he relied on those misrepresentations in agreeing to dismiss his court cases against AGC. He further alleges that he has been damaged because he has, at the least, incurred fees and costs associated with trying to enforce the Agreement.

Defendants object to Plaintiff's evidence that he relied on those representations in agreeing to sign the Agreement based on the parole evidence rule. However, it is well-established California case law "parole evidence is admissible to prove fraud in the inducement 'even though the contract recites that all conditions and representations are embodied therein.'" (Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Development Corp. (1995) 32 Cal.App.4th 985, 995 [citation omitted].)

Accordingly, as genuine issues of material fact remain on Plaintiff's claims, the motion for summary adjudication is denied.

VI. Conclusion

For all the foregoing reasons, Defendants' motion for summary adjudication is denied.