SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 06/20/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Local Rule 3.43(2).) CourtCall will **NOT** be used by D18. Zoom is approved for all hearings except Issue Conferences and Trials. **Dept. 18's telephone number is: (925) 608-1118.**

NOTE: In order to minimize the risk of miscommunication, Dept. 18 prefers and encourages email notification to the department of the request to argue and specification of issues to be argued.

Dept. 18's email address is: dept18@contracosta.courts.ca.gov.

Submission of Orders After Hearing in Department 18 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. The order must include appearances. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C23-00162
CASE NAME: LAURA HEARNE VS. JAGDISH SAINI
***HEARING ON MOTION IN RE: JUDGMENT ON THE PLEADINGS**
FILED BY: SAINI, JAGDISH K.
TENTATIVE RULING:

The issue of retaliatory eviction has been litigated and decided in a prior lawsuit against Defendant Saini. The other defendants who were not a party in the prior lawsuit are in privity with Defendant Saini. The unopposed motion for judgment on the pleadings is granted without leave to amend.

2. 9:00 AM CASE NUMBER: C23-00164
CASE NAME: CAMILLE DEAN VS. KEVIN XU
***HEARING ON MOTION IN RE: PROTECTIVE ORDER**
FILED BY: XU, KEVIN HU
****TENTATIVE RULING:****

The court grants the unopposed motion for protective order and temporarily stays discovery until Xu has completed the court-ordered mental health diversion program.

3. 9:00 AM CASE NUMBER: C23-00164
CASE NAME: CAMILLE DEAN VS. KEVIN XU
***HEARING ON MOTION IN RE: SEAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER**
FILED BY: XU, KEVIN HU
****TENTATIVE RULING:****

The motion to seal the declarations of Darice M. Collins, Ali Griner, LMFT, Janet A Martin, M.D., Ph.D. is granted.

4. 9:00 AM CASE NUMBER: C23-00832
CASE NAME: BYRON-BRENTWOOD-KNIGHTSEN UNION CEMETERY DISTRICT VS. JOSE IVAN OLIVAREZ
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL (ATTORNEY CHRISTOPHER FRY)**
FILED BY:
****TENTATIVE RULING:****

The motion to be relieved as counsel is granted. The order is effective upon the filing of the proof of service of the signed order upon the client.

5. 9:00 AM CASE NUMBER: C23-02738
CASE NAME: WILLIAM WALKER VS. GEORGE WHITEHEAD
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE**
FILED BY: WALKER, WILLIAM CHARLES
****TENTATIVE RULING:****

The court does not have proof that the moving party provided notice of the date and time of the motion nor the assigned department. The motion is continued to August 1, 2025, at 9 am.

6. 9:00 AM CASE NUMBER: C23-02738
CASE NAME: WILLIAM WALKER VS. GEORGE WHITEHEAD
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER ANSWERS TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE**
FILED BY: WALKER, WILLIAM CHARLES
****TENTATIVE RULING:****

See line 5.

7. 9:00 AM CASE NUMBER: C24-00447
CASE NAME: QRS REMODELING INC VS. PALUMBO DOMENICA
HEARING ON SUMMARY MOTION TO INVALIDATE THE MECHANICS LIEN
FILED BY: CONAN, LINDSEY
TENTATIVE RULING:

Before the Court is a motion for summary adjudication filed by defendant Lindsey Conan. The motion is **denied**, as discussed below.

Plaintiff, QRS Remodeling, Inc., alleges that Palumbo Domenica and Lindsey Conan, owners of real property located at 10 Las Cascadas Road, Orinda (APN 262-051-015-2), employed plaintiff for the purposes of constructing improvements on defendants' property. QRS performed work and provided materials but allegedly was not paid. QRS recorded a notice of mechanics lien with the County Recorder's Office for $15,026.34, together with interest, on December 10, 2020 (instrument #2020-0310063). A copy of the notice is attached to the complaint.

On March 2, 2021, plaintiff filed the present action in the Alameda County Superior Court, but the action was later transferred to Contra Costa. The complaint alleges five causes of action: (1) Foreclosure of Mechanic's Lien; (2) Breach of Contract; (3) Quantum Meruit/ Unjust Enrichment; (4) Open Book/Account Stated, and (5) Common Counts.

Defendant Linsdey Conan now moves for summary adjudication pursuant to Code of Civil Procedure, § 437c "to invalidate the mechanic's lien" recorded by plaintiff "on the grounds that the lien is invalid." In support of the motion, defendant Lindsey Conan provides a declaration, which states, in essence, that the lien amount is overstated and/or unsupported. A supplemental declaration filed on April 7th adds evidence defendant contends supports that position. No opposition papers were received.

A motion for summary adjudication under Code of Civil Procedure § 437c(f)(1) can be granted "if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c(f)(1).) (See also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 251.) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. (Code Civ. Proc., § 437c (f)(2).)

The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 845, 850.) Only if the moving party successfully meets this burden does the burden shift to the opposing party to make its own prima facie showing of the existence of a triable issue of material fact. (*Ibid*.; *see also Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) Even where a motion for summary judgment is unopposed, or the opposition is flawed, a court cannot grant summary judgment unless the moving party meets its initial burden. (See *Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.)

Defendant makes several representations about what is included in the lien (such as garbage disposal) or not included in the lien (credit for an initial payment).

Defendant cites Civil Code, section 8430. Subdivision (a) of that statute allows the lien to reflect the lesser of (1) the reasonable value of the work provided or (2) the price agreed to for the work.

The contract amount here was $34,950. The amount of the lien is less than half that amount. As for the reasonable value of the work, defendant does not show as a matter of law that the value should be less than the lien amount.

Further, no separate statement was filed in support of the motion. While QRS did not file an opposition, the lack of separate statement is itself sufficient grounds to deny the motion. (Code Civ. Proc., § 437c (b)(1) ["supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed"]; Cal Rules of Court, Rule 3.1350 (d) [requirements of a separate statement].)

8. 9:00 AM CASE NUMBER: C24-01129
CASE NAME: DISCOVERY BUILDERS, INC., A CALIFORNIA CORPORATION VS. SEECON BUILT HOMES, INC.
***HEARING ON MOTION IN RE: RELEASE OF MECHANICS LIEN**
FILED BY: SEECON BUILT HOMES, INC.
****TENTATIVE RULING:****

The matter is continued on the court's own motion to August 1, 2025, at 9am.

9. 9:00 AM CASE NUMBER: C24-01257
CASE NAME: CSAA INSURANCE SERVICES, INC. VS. GREGORY MCLENDON

*****HEARING ON MOTION IN RE: SET ASIDE DEFAULT
FILED BY: MCLENDON, GREGORY
****TENTATIVE RULING:****

"[N]eglect is excusable if a reasonably prudent person under similar circumstances might have made the same error. [Citations omitted.]" (*Austin v. Los Angeles Unified School Dist., supra,* 244 Cal.App.4th at 929) As the California Supreme Court stated in *Elston v. City of Turlock, supra,* 38 Cal. 3d 227, "[u]nless inexcusable neglect is clear, the policy favoring trial on the merits prevails." (*Id.* at 235 [emphasis added])

Section 473 is a remedial statute intended to be liberally applied to achieve the objective of determining actions on their merits. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 256 ["'the provisions of section 473 … are to be liberally construed and sound policy favors the determination of actions on their merits'"]) The law strongly favors granting relief to allow the party to have his day in court and resolve the case on the merits. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980-82; *Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1139-1140) Any doubts as to whether relief is warranted are to be resolved in favor of the party seeking relief. (*See Austin v. Los Angeles Unified School District* (2016) 244 Cal.App.4th 918, 929)

Defendant has shown the default was taken through his excusable neglect. (Code Civ. Proc., section 473, subd. (b).) The motion to set aside is granted. The attached responsive pleading shall be filed in conjunction with the order setting aside the default.

10. 9:00 AM CASE NUMBER: C24-01746
CASE NAME: JORDAN MOUTON VS. RYAN BUENAFLOR
***HEARING ON MOTION IN RE: QUASH SUBPOENA FOR PLTF EMPLOYMENT RECORDS**
FILED BY: MOUTON, JORDAN
****TENTATIVE RULING:****

It is clear. . .personnel records and employment history are within the protection provided by the state and federal Constitutions." (*San Diego Trolley, Inc. V Super. Court* (2001) 87 Cal.App.4th 1083, 1097.) Matters that would otherwise be protected by the constitutional right of privacy are discoverable only if directly relevant to plaintiff's claims and essential to the fair resolution of the lawsuit." (*Vinson v Super. Court* (1987) 43 Cal.3d 833, 841-842.) When the right to discovery conflicts with a privilege right, the court is required to carefully balance the right of privacy with the need for discovery [Citations]." (*Harris v. Super. Court* (1992) 3 Cal.App.4th 661, 665.)

"Although admissibility is not a prerequisite to discoverability, a heightened standard of discovery may be justified when dealing with information which, though not privileged, is sensitive or confidential." (*Volkswagen of America, Inc. v. Super. Ct.* (2006) 139 Cal.App.4th 1481, 1492.) "The burden is on the party seeking the constitutionally protected information to establish direct relevance." (*Davis v. Super. Ct*. (1992) 7 Cal.App.4th 1008, 1017 [emphasis added].) "Mere speculation as to the possibility that some portion of the records might be relevant to some substantive issue does not suffice." (*Id.*) "Even when the balance does weigh in favor of disclosure, the scope of disclosure must be narrowly circumscribed." (*Id.)* Direct relevance is required in such matters, apparently to prevent a searching for only tangentially pertinent sensitive information. (See *Britt v. Superior Court* (1978) 20 Cal.3d 844, 860-861 & fn. 4; *Weil & Brown*, Cal. Practice Guide, Civil Procedure Before Trial (1987) § 8:320, p. 8C-50.) Further, personnel records are protected from discovery unless the litigant can show a compelling need for the particular documents and that the information cannot reasonably be obtained through depositions or from non-confidential sources. (*Harding Lawson v. Superior Court* (1992) 10 Cal.App.4th 7, 10.)

Here, the subpoenas for plaintiff's employment records are overbroad. Nothing prohibits Defendants from re-serving subpoenas that are not so broad. It may be helpful to depose Plaintiff first.

The motion to quash is granted.

11. 9:00 AM CASE NUMBER: C24-02114
CASE NAME: CLAUDIA PACHECO VS. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT DBA BART
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT DBA BART
****TENTATIVE RULING:****

Defendant Bay Area Rapid Transit (BART)'s Demurrer to Complaint is sustained with leave to amend for Plaintiff Claudia Pacheco to plead a statutory basis for liability against BART. BART shall prepare the

order and serve and file notice of its entry. Plaintiff shall have 10 days from notice of entry of order in which to amend the complaint.

Background

Plaintiff Claudia Pacheco brings this personal injury action against defendant BART, alleging that she sustained injuries on June 24, 2023, when she fell while walking from the Lafayette BART station to her vehicle parked in space number 60 of the station's parking lot. According to the complaint, plaintiff stepped down from a public sidewalk onto an unmarked and deceptively uneven surface at a pedestrian entrance to the parking lot, lost her balance, and fell. She contends the transition from the sidewalk to the lot presented a dangerous condition on public property due to an abrupt height differential, lack of warnings, and uneven terrain. Plaintiff alleges that BART owned, maintained, and controlled the Lafayette Station premises, and that BART and its employees or agents were negligent in failing to inspect, repair, or warn against the hazard. The complaint asserts causes of action for general negligence and premises liability under Government Code section 835 and alleges that BART had actual or constructive notice of the condition for a sufficient time to remedy it. Plaintiff seeks compensatory damages, including for medical expenses, lost wages, and pain and suffering, and pleads compliance with the Government Claims Act.

On February 3, 2025, BART filed a demurrer to the complaint pursuant to CCP § 430.10(e). BART first contends the general negligence cause of action is barred because, under Government Code § 815, public entities are not liable for common-law torts absent a specific statutory basis, and plaintiff has pleaded none. Second, BART argues the premises-liability (dangerous-condition) claim is inadequately pleaded because the complaint fails to identify with requisite specificity the exact location and nature of the alleged defect, and allegedly conflicts with the location stated in plaintiff's government claim, thereby depriving the District of fair notice and rendering the pleading vulnerable to challenge. BART therefore seeks an order sustaining the demurrer, without leave to amend, as to both causes of action.

In opposition, plaintiff argues that the complaint adequately pleads both causes of action. As to the dangerous condition claim, plaintiff contends the complaint identifies the location of the fall with sufficient particularity by specifying that she was walking from the BART station to her car parked in space number 60 and fell at a pedestrian entrance between the public sidewalk and the parking lot. Plaintiff maintains this description provides BART with adequate notice of the alleged defect. As to the negligence claim, plaintiff argues that Government Code sections 815.2 and 815.4 authorize liability for acts or omissions of BART employees or contractors, and the complaint alleges that the dangerous condition was created by such actors acting within the scope of their duties. Plaintiff also asserts that, to the extent the court finds any pleading deficiencies, leave to amend should be granted because there is a reasonable possibility the complaint can be cured.

Analysis

BART's demurrer to the complaint is sustained with leave to amend.

"Except as otherwise provided by statute ... [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov't Code, § 815, subd. (a).) Plaintiff's complaint does not clearly identify the statutory basis for either cause of action. To the extent plaintiff alleges common-law negligence or other tort liability, a specific statutory basis must be pleaded. (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183 ["direct tort liability of public entities must be based on a specific statute"].)

In addition, under the Government Claims Act, "all governmental tort liability is based on statute," and "the general rule that statutory causes of action must be pleaded with particularity is applicable." (*Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 795.) To state a claim, "every fact material to the existence of [the public entity's] statutory liability must be pleaded with particularity." (*Ibid*.)

The demurrer to the first cause of action for general negligence is sustained with leave to amend. Plaintiff cites Government Code sections 815.2 and 815.4 as statutory bases for vicarious liability. These provisions may support liability where the injury is proximately caused by the act or omission of a public employee or independent contractor acting within the scope of employment or engagement. While plaintiff need not identify the specific employee or contractor by name, the complaint must allege a statutory basis for liability and facts showing that an act or omission attributable to such an individual caused the alleged injury.

The demurrer to the second cause of action for dangerous condition of public property is overruled to the extent it rests on vagueness. The complaint specifies that plaintiff fell at a pedestrian entrance from the public sidewalk into the Lafayette Station parking lot near space number 60. While the location could be described with greater precision, the allegations provide adequate notice of the area at issue. Further, although defendant contends there are inconsistencies between the complaint and the government claim, any such discrepancies may be clarified in discovery and do not warrant sustaining the demurrer on that basis at this stage.

Accordingly, the demurrer to the first cause of action is sustained with leave to amend. Plaintiff shall amend to plead a statutory basis for liability. In amending, plaintiff is free to provide greater detail regarding the alleged acts or omissions of BART employees or agents and the specific nature and location of the alleged defect.

12. 9:00 AM CASE NUMBER: C24-02654
CASE NAME: MIU FONG VS. ANGELA LEUNG
***HEARING ON MOTION IN RE: QUASH SERVICE OF SUMMONS AS TO ANGELA KIT-HING LEUNG**
FILED BY: LEUNG, ANGELA KIT-HING
****TENTATIVE RULING:***

Defendant Angela Kit-Hing Leung's Motion to Quash Service of Summons is **granted**.

CCP section 418.10, subd. (a)(1) states: "A defendant, on or before the last day of his or her time to

plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes . . . (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her."

"'[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction." (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) Mere notice of litigation does not confer personal jurisdiction absent substantial compliance with the statutory requirements for service of summons. (*MJS Enterprises, Inc. v. Superior Court* (1984) 153 Cal.App.3d 555, 557.)

Fong moves to quash the service of summons on the grounds that she was not personally served with the summons and complaint in this action. (Leung Decl. ¶ 8.) Plaintiff opposes, claiming that Leung was properly served at her private mailbox at 3527 Mt. Diablo Blvd. PMB 376 in Lafayette. (See Brett L. Gibbs Decl. ¶¶ 3-7.) Plaintiff argues the 3527 Mt. Diablo Blvd. address is Leung's usual mailing address because she uses this address on her pleadings and Leung does not contend otherwise.

CCP section 415.20(b) provides:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

CCP section 415.20 (c) states:

> Notwithstanding subdivision (b), if the only address reasonably known for the person to be served is a private mailbox obtained through a commercial mail receiving agency, service of process may be effected on the first delivery attempt by leaving a copy of the summons and complaint with the commercial mail receiving agency in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code.

Thus, CCP section 415.20(c) expressly authorizes service on such a "private mailbox obtained through a commercial mail receiving agency." However, section 415.20(c) requires such service on a private mailbox to be done "in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code." (CCP § 415.20(c).) Business and Professions Code section 17538.5(d) provides for service at a private mailbox service as long as that mailbox service places the documents into the customer's mailbox within 48 hours of their receipt and within five days after receipt mails all

documents to the customer at the last known home or personal address:

> Upon receipt of any process for any mailbox service customer, the [mailbox service] owner or operator shall (A) within 48 hours after receipt of any process, place a copy of the documents or a notice that the documents were received into the customer's mailbox or other place where the customer usually receives his or her mail, unless the mail receiving service for the customer was previously terminated, and (B) within five days after receipt, send all documents by first-class mail, to the last known home or personal address of the mail receiving service customer. The [mailbox service] shall obtain a certificate of mailing in connection with the mailing of the documents. Service of process upon the mail receiving service customer shall then be deemed perfected 10 days after the date of mailing.

(Bus. & Prof. Code § 17538.5(d).)

Once service is challenged, the burden is on a plaintiff to prove facts showing that service was effective. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.) Plaintiff has made no showing the requirements of Business & Professions Code section 17538.5 have been satisfied, so Plaintiff does not meet her burden. See (*Kremerman v. White* (2021) 71 Cal.App.5th 358, 373-374.) As such, the motion to quash is granted.

13. 9:00 AM CASE NUMBER: C24-02654
CASE NAME: MIU FONG VS. ANGELA LEUNG
***HEARING ON MOTION IN RE: QUASH SERVICE OF SUMMONS AS TO SAMUEL NG**
FILED BY: NG, SAMUEL
****TENTATIVE RULING:****

Defendant Samuel Ng's Motion to Quash Service of Summons is **granted**.

CCP section 418.10, subd. (a)(1) states: "A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes . . . (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her."
"'[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction." (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) Mere notice of litigation does not confer personal jurisdiction absent substantial compliance with the statutory requirements for service of summons. (*MJS Enterprises, Inc. v. Superior Court* (1984) 153 Cal.App.3d 555, 557.)
Ng moves to quash the service of summons upon him on the grounds that he was not personally served with the summons and complaint in this action. (Ng Decl. ¶ 5.) Plaintiff opposes the motion, asserting that "service was properly effectuated on Defendant at his wife's known private mailbox…pursuant to CCP § 415.20(c)" after several attempts to serve Defendant at his last known home address. (See Brett L. Gibbs Decl., ¶ 3-7 and Exs. B-D.) Plaintiff argues the 3527 Mt. Diablo Blvd. address is Ng's usual mailing address because he uses this address on his pleadings, and Ng does not contend otherwise.
CCP section 415.20(b) provides:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

CCP section 415.20 (c) states:

> Notwithstanding subdivision (b), if the only address reasonably known for the person to be served is a private mailbox obtained through a commercial mail receiving agency, service of process may be effected on the first delivery attempt by leaving a copy of the summons and complaint with the commercial mail receiving agency in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code.

Thus, CCP section 415.20(c) expressly authorizes service on such a "private mailbox obtained through a commercial mail receiving agency." However, section 415.20(c) requires such service on a private mailbox to be done "in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code." (CCP § 415.20(c).) Business and Professions Code section 17538.5(d) provides for service at a private mailbox service as long as that mailbox service places the documents into the customer's mailbox within 48 hours of their receipt and within five days after receipt mails all documents to the customer at the last known home or personal address:

> Upon receipt of any process for any mailbox service customer, the [mailbox service] owner or operator shall (A) within 48 hours after receipt of any process, place a copy of the documents or a notice that the documents were received into the customer's mailbox or other place where the customer usually receives his or her mail, unless the mail receiving service for the customer was previously terminated, and (B) within five days after receipt, send all documents by first-class mail, to the last known home or personal address of the mail receiving service customer. The [mailbox service] shall obtain a certificate of mailing in connection with the mailing of the documents. Service of process upon the mail receiving service customer shall then be deemed perfected 10 days after the date of mailing.

(Bus. & Prof. Code § 17538.5(d).)

Once service is challenged, the burden is on a plaintiff to prove facts showing that service was effective. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.) Plaintiff has made no showing the requirements of Business & Professions Code section 17538.5 have been satisfied, so Plaintiff does not meet her burden. (See *Kremerman v. White* (2021) 71 Cal.App.5th 358, 373-374.) As such, the motion is granted.

14. 9:00 AM CASE NUMBER: C24-02780
CASE NAME: BROWN, KORO & ROMAG, LLP VS. LISA HOUSE

HEARING ON DEMURRER TO: FIRST AMENDED COMPLAINT
FILED BY: HOUSE, LISA
TENTATIVE RULING:

Off calendar, based on dismissal of action with prejudice.

15. 9:00 AM CASE NUMBER: C24-02780
CASE NAME: BROWN, KORO & ROMAG, LLP VS. LISA HOUSE
***HEARING ON MOTION IN RE: STRIKE PORTIONS OF 1ST AMENDED COMPLAINT**
FILED BY: HOUSE, LISA
TENTATIVE RULING:

Off calendar, based on dismissal of action with prejudice.

16. 9:00 AM CASE NUMBER: C24-03031
CASE NAME: ISIDRO MYRICK-BUSTOS VS. STARS BEHAVIORAL HEALTH GROUP, INC.
HEARING ON PETITION IN RE: RELIEVING HIM FROM THE REQUIREMENTS OF THE GOVERNMENT CLAIMS ACT
FILED BY: MYRICK-BUSTOS, ISIDRO
TENTATIVE RULING:

The unopposed motion for relief from the requirements of the government claims act is granted. The court notes, though, the complaint alleges "pursuant to Government Code section 911.6, Defendants failed to or refused to act on the government claim and accompanying application for leave to present a late claim within the 45 days outlined in Government Code section 911.6(c)." It appears to the court Plaintiff has in fact alleged that he complied with the government claims act. This does not appear to be disputed as the city filed an answer and not a demurrer and the city has not responded to this motion.

17. 9:00 AM CASE NUMBER: C25-00226
CASE NAME: LANE JENKINS VS. BRIAN BANIQUED
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: BANIQUED, BRIAN S.
TENTATIVE RULING:

Defendant Brian Baniqued brings this demurrer to each cause of action in the Complaint [Demurrer]. The Demurrer is opposed by Plaintiffs Lane Jenkins and Latonya Grundy [Plaintiffs].

For the following reasons, the Demurrer is **sustained as to each cause of action with leave to amend**.

Summary of Argument

Plaintiffs' verified Complaint [Complaint] states seven causes of action against Defendants HADS, Inc., Brian Baniqued, and Placer Foreclosure, Inc., including for Cancellation of Instrument, Violation of Rosenthal Fair Debt Collection Act, Wrongful Foreclosure, Negligent Misrepresentation, Breach of Contract, Declaratory Relief, and Injunctive Relief. Defendant Brian Baniqued [Defendant/Baniqued] demurs to the Complaint.

Defendant's Demurrer is based on the argument that Plaintiffs fail to state a claim against Defendant

in his individual capacity. Defendant HADS, Inc. was the beneficiary under the Notice of Default and Trustee Sale at issue. (Complaint, ¶¶ 14, 30, 34, Ex. 2, 5-6) Defendant argues that there is no basis alleged for Plaintiffs to seek relief from Defendant in his individual capacity.

Request for Judicial Notice

Defendant submits a request for judicial notice of the two prior lawsuits between the parties filed in 2021 and 2022, and the judgment and abstract of judgment from 2021. The court takes judicial notice of these court records pursuant to Civil Code § 452 (d).

Complaint Allegations

With respect to Defendant Baniqued, the Complaint alleges:

- Defendant is an individual residing within the jurisdiction of this court, and also agent for service of HADS, Inc. (¶¶ 3-4.)
- Plaintiff and Defendants, including Baniqued, entered into a prior settlement agreement with respect to settlement of payment for the deed of trust in favor of HADS, Inc. on the subject property. (¶¶ 13-14, 16.)
- Baniqued, acting as agent for HADS, Inc. - "Baniqued/HADS" - transmitted the "Notice to Cure" on September 3, 2024 that allegedly overstated the amount due. (¶ 21, 31-32.)
- Baniqued was on notice of, and rejected payment by Plaintiffs, to cure the default (¶ 26-29, 31-32.) Again, it is alleged to be in his role with HADS, Inc. (¶ 29, 32.)
- Baniqued entered into an agreement with Plaintiffs, the Settlement Agreement, that was breached when "Baniqued and HADS failed to properly account the amounts due," and when "HADS and Baniqued … refus[ed Plaintiffs'] tender(s) of payment." (¶¶ 49, 58.)

These allegations arise from and relate to Baniqued's actions as agent for HADS. From the pleadings submitted by Defendant, it also appears that Baniqued was included in the Settlement Agreement because he was named as a cross-defendant in the 2021 action. (RJN, Ex. B-C)

Legal Standard

The limited role of the demurrer is to test the legal sufficiency of the allegations in a complaint. (*Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388.) It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (*Ibid*.) For purposes of demurrer, all facts pleaded in a complaint are assumed to be true, but the court does not assume the truth of conclusions of law. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not

been given." (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227.)

Analysis

Plaintiffs seek relief pertaining to foreclosure of their property. Plaintiffs' factual allegations relating to Baniqued describe actions taken only in his capacity as agent of HADS, Inc. The property at issue is described in the Deed of Trust as held for benefit of HADS, Inc. (Complaint, 14, Ex. 2.)

As Defendant points out, the subject of this action is the foreclosure of the home undertaken for benefit of HADS, Inc. Plaintiffs do not allege a basis for claims against Baniqued in his individual capacity. "[I]mposition of personal liability is contrary to general principles of agency law." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1329.)

As such, Plaintiff has not alleged facts sufficient to state a claim against Baniqued, as an individual.

Leave is to be liberally granted to correct defects in the pleading. As such, Plaintiffs are granted leave to amend to state a basis for the claims against Baniqued, as an individual, and clarifying the relief sought against Baniqued, as an individual.

For such reasons, Defendant's Demurrer is sustained with leave to amend as to each of the causes of action alleged against Defendant.

18. 9:00 AM CASE NUMBER: MSC20-02232
CASE NAME: GURULE VS ANTIOCH UNIFIED SCHOOL DISTRICT
***HEARING ON MOTION FOR DISCOVERY COMPEL DEMAND FOR DOCUMENTS, SET 6**
FILED BY:
****TENTATIVE RULING:****

The motion is continued on the court's own motion to June 27, 2025, at 9am.

19. 9:00 AM CASE NUMBER: MSC21-02349
CASE NAME: TAYLOR VS. AMAZON
HEARING ON SUMMARY MOTION
FILED BY: LAMONT ROSS, DAMIEN SEAN
****TENTATIVE RULING:****

Before the Court is Defendant/Cross-Complainant Damien Sean Lamont Ross' Motion for Summary Judgment ("MSJ").

Procedural Issues

Electronic Bookmarks

"[E]lectronic exhibits ***must include*** electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit." (Cal. R. Ct. 3.1110 (f)(4) emphasis added.) Mr. Ross' evidence in support of the MSJ is over three hundred pages long and includes 16 exhibits, yet there are no electronic bookmarks. This significantly increases the Court's efforts in finding and reviewing the exhibits being referenced by Mr. Ross.

Especially considering the other failures to abide by the Rules discussed below.

Depositions as Exhibits

When a deposition is used as an exhibit, "the exhibit must contain ***only*** the relevant pages of the transcript." (Cal. R. Ct. 3.1116 (b) emphasis added.) In addition, the "relevant portion of any testimony in the deposition ***must be marked*** in a manner that calls attention to the testimony." (Cal. R. Ct. 3.1116 (c) emphasis added.) Normally, this is done by either highlighting or bracketing the lines being cited to in the Memorandum and/or Separate Statement.

Mr. Ross includes the entirety of his deposition transcript which comes in at 126 pages, including the 25-page word index. There are no highlights or brackets marking the testimony "in a manner that calls attention to the testimony." In reviewing the separate statement, Mr. Ross only cites approximately 20 pages of this transcript. There is no explanation as to why the other 100+ pages are included.

Combined Motion

The Notice for Mr. Ross' MSJ indicates that it is intended to seek summary judgment as to the following pleadings: (1) the Taylor's Complaint (filed Oct. 21, 2021); (2) the Espinoza/Cerna Complaint (filed Oct. 14, 2022); (3) the Torres Cross-Complaint (filed Sept. 19, 2022); (4) the Sokolovski Cross-Complaint (filed Sept. 26, 2022); (5) the Ordonia Cross-Complaint (filed Sept. 26, 2022); (6) the Ordonia Cross-Complaint filed in the Espinoza/Cerna action. Mr. Ross seeks judicial notice of eight separate pleadings. (RJN Exs. 7-14.) He cites to these in his 'Procedural Posture' section discussing the consolidation of the two separate matters that now fall under the current case number C21-02349. These apparently are the pleadings against which he is moving. It is worth noting that Amazon is not listed as a party against whom Mr. Ross is moving in the Notice for the MSJ.

These pleadings include both the Taylor Complaint (Case C21-02349) and the Espinoza/Cerna Complaint (Case C22-02216). It also includes the Cross-Complaints of Hernandez/Torres Estates and Ms. Sokolovski in the C21-02349 matter. There are also four cross-complaints filed by Ms. Ordonia – three in the C21-02349 matter and one in the C22-02216 matter. It is unclear why there are four separate cross-complaints filed by Ms. Ordonia, but it appears she added new cross-claims against different parties at different times.

Is it unclear why these pleadings were cited as not all of these pleadings relate to Mr. Ross. For example, the cross-complaint filed by Ms. Ordonia on June 12, 2022, only alleges cross-claims against Evgeny Sokolovski and Salvador Espinoza. (Ex. 8.) Mr. Ross is not identified in that pleading at all. Is Mr. Ross seeking some kind of ruling relating to that pleading? If so, on what basis since he is not a party to that pleading?

"A party may move for summary judgment ***in an action*** or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding, or "a party may move for summary adjudication as to one or more causes of action *within an action*." (Code Civ. Proc., § 437c, subds. (a)(1) & (f)(1), emphasis added.) These references to "an action" in the summary judgment statute are singular references. The word "action" is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another […]." (Code Civ. Proc., § 22, emphasis added.)

"Where there are both a complaint and a cross-complaint there are actually two separate actions pending and the issues joined on the cross-complaint are completely severable from the issues under

the original complaint and answer. [citations.]" (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 134 quoting *Security Pacific National Bank v. Adamo* (1983) 142 Cal.App.3d 492, 496.) "Where a cross-complaint is filed there are two simultaneous actions pending between the parties wherein each is at the same time both a plaintiff and a defendant.'" (*Ibid.* quoting *K.R.L Partnership v. Superior Court* (2004) 120 Cal.App.4th 490, 503.)

No authority, of which this Court is aware, permits a party to challenge two separate complaints, as well as four separate cross-complaints (aka actions) via one motion. Mr. Ross does not provide any such authority. This attempt to address so many separate pleadings/actions in one motion leads to confusion as to who can oppose and on what basis they can oppose – as discussed below. Initially, the Court was inclined to deny the MSJ without prejudice and require Mr. Ross to re-file separate MSJs directed toward each pleading to which he wanted a ruling.

Since most parties did not opposed the MSJ at all, and no party addressed these procedural issues, the Court will move forward and consider the merits of the MSJ. While the MSJ is contained in a single motion it actually should be considered as six separate motions – one addressed as to each of the six separate pleadings to which Mr. Ross is seeking adjudication. The Court will treat it as such.

Amazon's Opposition

Mr. Ross' attempt to move in a single motion as to multiple actions causes confusion not just for the Court, but also for the parties. As noted above, Mr. Ross' Notice identifies six separate actions in which he is seeking summary judgment. It is worth noting that Amazon is not listed as a party against whom Mr. Ross is moving in the Notice for the MSJ. Despite this, Amazon has filed an opposition to the MSJ.

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.) From the pleadings cited by Mr. Ross, as well as the Court's review of the pleadings, none of the complaints/cross-complaints involve Mr. Ross versus Amazon. There is no complaint filed by Amazon that names Mr. Ross as a defendant. Nor is there a Cross-Complaint filed by Amazon that identifies Mr. Ross as a Cross-Defendant.

Based on the above, it is unclear what basis Amazon has for filing an opposition to the MSJ. Amazon does not explain in its papers. Mr. Ross, in reply, does not address this issue either. Instead, he addresses the merits of Amazon's opposition. It is worth noting that Ms. Sokolovski also filed an opposition, but Mr. Ross does not address that opposition at all in his reply.

As there is no pleading wherein Mr. Ross and Amazon have direct claims against each other, the Court will not consider Amazon's opposition to the MSJ.

Standard

Summary adjudication is proper if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc. § 437c(c).) A moving defendant satisfies the initial burden of showing that a cause of action has no merit if he shows that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c (p)(2).)

"When a defendant moves for summary judgment on the ground there is an affirmative defense to

the action, the burden shifts to the plaintiff to show there is one or more triable issues of material fact regarding the defense after the defendant meets the burden of establishing all the elements of the affirmative defense." (*Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1484.)

"In ruling on the motion, the court must consider all of the evidence and all of the inferences reasonably drawn therefrom, and must view such evidence and such inferences, in the light most favorable to the opposing party." (*Aguilar, supra,* 25 Cal.4th at p. 843 (internal citations and quotations omitted); see also, Code of Civ. Proc. §437c(c).) "All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment." (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 757 quoting *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

Analysis

The Taylor and Espinoza/Cerna Complaints

As noted above, there are two separate Complaints which assert direct claims against Mr. Ross. Each of those Complaints allege wrongful death/negligence claims against Mr. Ross based his alleged negligence in stopping his vehicle in the #1 lane of the I-80. (Taylor Complaint ¶ 18; Espinoza/Cerna Complaint ¶ 15, 27.) Mr. Ross asserts the same affirmative defense as to each Complaint. Neither of those parties submitted an opposition to Mr. Ross' MSJ. As such, the Court will address those claims together.

Even though the instant MSJ is unopposed, the Court cannot grant summary judgment unless Mr. Ross meets his initial burden. (See *Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) The scope of that initial burden is defined by the pleadings. (See *580 Folsom Assocs. v. Prometheus Dev. Co*. (1990) 223 Cal. App. 3d 1, 18.)

"Sudden Emergency" or "Imminent Peril" Defense

"Under the 'sudden emergency' or 'imminent peril' doctrine, 'a person who, without negligence on his part, is suddenly and unexpectedly confronted with peril, arising from either the actual presence, or the appearance, of imminent danger to himself or to others, is not expected nor required to use the same judgment and prudence that is required of him in the exercise of ordinary care in calmer and more deliberate moments.'" (*Abdulkadhim v. Wu* (2020) 53 Cal.App.5th 298, 301-02 quoting *Leo v. Dunham* (1953) 41 Cal.2d 712, 714.) "A party will be denied the benefit of the doctrine … where the party's negligence causes or contributes to the creation of the perilous situation." (*Ibid.* quoting *Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 216.)

"The basis of the rule is 'that the actor is left no time for thought, or is reasonably so disturbed or excited, that he cannot weigh alternative courses of action, and must make a speedy decision, based very largely upon impulse or guess. Under such conditions, the actor cannot reasonably be held to the same conduct as one who has had full opportunity to reflect, even though it later appears that he made the wrong decision, which no reasonable man could possibly have made after due deliberation…." (*Schultz v. Mathias* (1970) 3 Cal.App.3d 904, 912 citations omitted.) "The test is whether the actor took one of the courses of action which a standard man in that emergency might have taken, and such a course is not negligent even though it led to an injury which might have been prevented by adopting an alternative course of action." (*Id*. at 912-13.)

Mr. Ross inspected his vehicle before driving it that day. (Ross Depo. at 76:12-21.) The tires on his vehicle were replaced in November 2019, less than a year before the incident. (Ross Decl. ¶ 3, Evid.

Ex. 16.) Prior to the incident, Mr. Ross was driving in the number 1 lane of the westbound I-80. (Ross Depo. at 14:14-19.) After crossing the Carquinez Bridge, Mr. Ross was near the Hercules and Mill Valley exit when his left rear tire blew out. (*Id.* at 14:20-15:1.)

The tire blowout made it difficult to control his car. (*Id.* at 14:14-16:16.) While trying to control his car, he put his hazard lights on. (*Id.* at 16:19-24.) He then slowed and stopped in the middle of the #1 lane. (*Id.* at 17:4-21.) There was a "decent amount of cars" on the freeway that were "driving pretty fast." (*Id.* at 17:22-18:5.) Based on this, he determined that he could not safely get off the freeway to the right, and there was no shoulder to the left to move into. (*Id.* at 17:22-18:9.) At this point, Mr. Ross called 911 and then AAA to attempt and get assistance. (*Id.* at 18:10-19:11.)

He remained in his car, making those calls, until he saw a car slow and stop behind him. (*Id.* at 19:12-20:15.) At that point, he exited his vehicle to assess his tire. (*Ibid.*) The car that stopped behind him did not impact his vehicle. (*Id.* at 20:16-23.) Shortly thereafter, a second car came up and impacted the first car behind him. (*Id.* at 21:5-24:8.) At that point, Mr. Ross called 911 again to report the accident. (*Id.* at 25:8-10.) At some point shortly thereafter, a fourth car impacted the third car at speed, which resulted in a chain impact pushing car three into car two and car two into Mr. Ross' vehicle. (*Id.* at 32:22-33:16.)

Mr. Ross contends that his actions were reasonable under the circumstances and that he reasonable and the sort that a "standard man in that emergency might have taken." (*Schultz*, supra, 3 Cal.App.3d at 912-13.) Mr. Ross' testimony indicates that he had no reason to suspect that he might get a tire blowout prior to the time of the incident. The tires were relatively new and he visually inspected them before his trip that day. While he did consider trying to move to the right to get off the freeway, he determined that was not feasible given the amount and speed of traffic in those lanes.

Under those conditions, it was objectively reasonable for Mr. Ross to act as he did – *i.e.* to put on his hazard lights, slow and eventually stop in the #1 lane, and call both 911 as well as AAA to try and get assistance. As such, Mr. Ross has met his burden to show that the 'sudden emergency' defense applies in this matter. Accordingly, the burden then shifts to the plaintiffs to there is one or more triable issues of material fact regarding the defense. (*Jessen*, supra, 158 Cal.App.4th at 1484.)

None of the plaintiffs in the Taylor or Espinoza/Cerna matters filed oppositions to the MSJ. As such, they have failed to meet their burden.

The Court notes that Ms. Sokolovski filed an opposition. However, she does not have standing to oppose Mr. Ross' MSJ with respect to the claims asserted by the Taylor and Espinoza/Cerna plaintiffs in those Complaints. As such, the Court does not consider her opposition with respect to these actions.

Based on the above, Mr. Ross' MSJ is **granted** as to the Taylor Complaint as well as the Espinoza/Cerna Complaint.

Indemnity Cross-Complaints

As to the cross-complaints identified by Mr. Ross, each of them only alleges indemnity related causes of action (indemnity, contribution, apportionment, etc.) against Mr. Ross. The Court notes that only one of the cross-complainants with claims asserted against Mr. Ross filed an opposition to the instant MSJ – Ms. Sokolovski.

Initially, it is unclear how Mr. Ross' arguments based on the 'sudden emergency' or 'imminent peril'

doctrine apply to a claim for indemnity. Indemnity is not discussed in the MSJ, nor are the elements of such a claim articulated.

"Equitable indemnity is an equitable doctrine that apportions responsibility among tortfeasors responsible for the same indivisible injury on a comparative fault basis." (*Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1176-77.) "[T]he equitable indemnity doctrine originated in the common sense proposition that when two individuals are responsible for a loss, but one of the two is more culpable than the other, it is only fair that the more culpable party should bear a greater share of the loss." (*Ibid.* quoting *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 593.) "A right to equitable indemnity can arise only if the prospective indemnitor and indemnitee are mutually liable to another person for the same injury." (*Ibid.*)

"The elements of a cause of action for indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is … equitably responsible." (*Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 217 quoting *Expressions at Rancho Niguel Assn. v. Ahmanson Developments, Inc.* (2001) 86 Cal.App.4th 1135, 1139.) "At the heart of the doctrine [of equitable indemnity] is apportionment based on fault. At a minimum equitable indemnity 'requires a determination of *fault* on the part of the alleged indemnitor… .'" (*Heritage Oaks Partners v. First American Title Ins. Co.* (2007) 155 Cal.App.4th 339, 348 citations omitted.)

"[O]ne point stands clear: there can be no indemnity without liability. In other words, unless the prospective indemnitor and indemnitee are jointly and severally liable to the plaintiff there is no basis for indemnity.'" (*Ibid.* quoting *Munoz v. Davis* (1983) 141 Cal.App.3d 420, 425; see also *Centex Homes v. Superior Court* (2013) 214 Cal.App.4th 1090, 1099 "This rule 'is often expressed in the shorthand phrase '… there can be no indemnity without liability.'" quoting *Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1158-59.)

Given the determination above granting Mr. Ross' MSJ as to the two Complaints in this matter, there is a finding that Mr. Ross does not have any fault in those matters. "As a minimum equitable indemnity 'requires a determination of *fault* on the part of the alleged indemnitor…," here, being Mr. Ross. As there has been a finding of no fault on the part of Mr. Ross, the indemnity-based claims asserted against him fail.

As such, Mr. Ross' MSJ is **granted** as to the Torres Cross-Complaint, the Sokolovski Cross-Complaint, and the Ordonia Cross-Complaint that asserts claims against Mr. Ross.

Conclusion

Mr. Ross' MSJ is **granted**.

20. 9:00 AM CASE NUMBER: MSC22-00188
CASE NAME: PERUMAL VS. MAYARI DEVELOPMENT
MOTION TO STRIKE 4TH AMENDED COMPLAINT FILED BY HENRY ORTIZ ON 1-15-25
FILED BY:
TENTATIVE RULING:

Before the Court is Defendant Henry Ortiz's Motion to Strike Fourth Amended Complaint.

Factual and Procedural Background

Plaintiffs filed their Fourth Amended Complaint ("FAC") on May 2, 2024. Defendant Henry Ortiz filed his Answer to the FAC on May 29, 2024. Over seven months later, on January 15, 2025, Defendant filed the instant motion to strike portions of the FAC ("Motion").

Legal Standard

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part of the pleading. (Code Civ. Proc. § 435 (b)(1); Cal. Rules of Court, Rule 3.1322(b).) This means that a motion to strike must be filed within 30 days after service of the pleading. (*Miszkewycz v. County of Placer* (2024) 99 Cal.App.5th 67, 75 citations omitted.)

The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of the pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Cal. Code Civ. Proc. §§ 436(a)-(b); *Stafford v. Schultz* (1954) 42 Cal.2d 767, 782 ["matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded"].) An "irrelevant" matter includes allegations not essential to the claim or defense, as well as allegations "neither pertinent to nor supported by an otherwise sufficient claim or defense." (CCP§ 431.10 (b).)

Analysis

Timeliness

Plaintiff filed and served the FAC on May 2, 2024. As such, Defendant had until Monday, June 3, 2024, to file a motion to strike (as the 30th day falls on a Saturday.) (Code Civ. Proc. § 435 (b)(1); Cal. Rules of Court, Rule 3.1322(b); *Miszkewycz*, supra, 99 Cal.App.5th at 75.) As noted above, the Motion was filed on January 15, 2025 – 226 days after the deadline to file such a motion.

The motion is additionally improper and untimely in that Defendant filed it well after he filed an Answer to the FAC. A "defendant can move to strike a complaint only before he has answered it and not afterward." (*Adohr Farms, Inc. v. Love* (1967) 255 Cal.App.2d 366, 370.)

Based on the above, the Motion is untimely.

Substantive Arguments

The "grounds for the motion to strike must appear on the face of the challenged pleading or in matter which the court may judicially notice." (*City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) When a motion to strike is based on evidence contained in the moving party's declarations, it is properly denied. (See e.g. *Spears v. Spears* (2023) 97 Cal.App.5th 1294, 1300 fn. 5.)

Here, Mr. Ortiz's Motion consistently references and/or cites to extrinsic evidence – often without citation to any actual evidence to support the argument. For example, as a reason for why a particular paragraph should be stricken, Mr. Ortiz repeatedly states: "Per Defendant Henry Ortiz's experts and upon walkthrough in early August 2024 of home, no problem exists…." (all caps and bold removed.) There is no citation to any expert report or any other documents or declarations to support this claim. Thus, even if it were acceptable to reference extrinsic evidence – which is not the case – Mr. Ortiz fails

to provide support for his arguments.

Conclusion

Based on the above, Defendant's Motion is **denied**.

21. 9:00 AM CASE NUMBER: MSC22-00188
CASE NAME: PERUMAL VS. MAYARI DEVELOPMENT
***HEARING ON MOTION IN RE: SANCTIONS AGAINST DEFENDANT HENRY ORTIZ JR. UNDER CCP 128.7 (CONTINUED)**
FILED BY: PERUMAL, SHIAMALEE
****TENTATIVE RULING:****

Before the Court is Plaintiffs Shiamalee Perumal and Shyam Sunter's Motion for Sanctions Against Defendant Henry Ortiz, Jr. under Code of Civil Procedure Section 128.7.

Factual and Procedural Background

This matter generally relates to issues arising from the construction and sale of real property located at 2030 Hoover Avenue in Pleasant Hill (the "Property"). The Sellers of the Property purchased it and performed improvements thereon, which were completed by March 2018. On or about March 7, 2018, Plaintiffs purchased the Property from Sellers for $1,250,000. Defendant Ortiz is alleged to be one of the Sellers of the Property.

Pertinent to this motion, Plaintiffs filed a Fourth Amended Complaint on May 2, 2024. Defendant Henry Ortiz filed his Answer to thereto on May 29, 2024. Over seven months later, on January 15, 2025, Defendant Ortiz filed a motion to strike the Fourth Amended Complaint under California Code of Civil Procedure Section 436.

Plaintiffs believed that the Motion to Strike was frivolous and contacted Defendant Ortiz to inform him of this belief and request that he withdraw the Motion. They informed Mr. Ortiz that if he did not withdraw the Motion, they would seek sanctions pursuant to Code of Civil Procedure section 128.7. After some back and forth between the Parties, Mr. Ortiz confirmed that he would not withdraw the Motion. As a result, Plaintiffs filed the instant motion for sanctions.

The Court continued the hearing on this motion to coincide with the hearing on Mr. Ortiz's Motion to Strike, which is the basis for this Motion. The Court denied Mr. Ortiz's Motion to Strike on both procedural and substantive grounds. (See Line 20.)

Legal Standard

California Code of Civil Procedure section 128.7 provides a mechanism for a party to request sanctions against other parties for improper conduct. The statute includes certain procedural requirements regarding providing notice to the other side before filing the motion seeking sanctions.

"Section 128.7 subdivision (c)(1) establishes that a notice of motion for sanctions 'shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper … is

not withdrawn.'" (*Broadcast Music, Inc. v. Structured Asset Sales, LLC* (2022) 75 Cal.App.5th 596, 605 (*Broadcast*).) "Service of the motion on the offending party begins a [21]-day safe harbor period…." (*Ibid.*)

"Under section 128.7, '[a] party seeking sanctions must follow a two-step procedure." (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 698.) First, the "'moving party must serve on the offending party a motion for sanctions.'" (*Ibid*.) Service of the sanctions motion triggers the 21-day safe harbor period during which the moving party may not file the motion. (*Ibid*.) That is because the offending party may avoid sanctions by withdrawing the challenged pleading during the 21-day period. (*Ibid*.)

Second, if the offending party does not withdraw the challenged pleading during that period, then the moving party may file the motion for sanctions. (*Ibid*.) Thus, a "sanctions motion cannot be filed until the 22d day after service of the motion, i.e., after the 21-day safe harbor period expires." (*Broadcast,* supra, 75 Cal.App.5th at 605.)

Analysis

Safe Harbor

Defendant Ortiz served his Motion to Strike on Plaintiffs on January 8, 2025. (Kim Decl. ¶ 11; PoS filed January 15, 2025.) The next day, Plaintiffs' counsel emailed Mr. Ortiz and requested that he withdraw the Motion to Strike, explaining that it was untimely and substantively improper. (Kim Decl. ¶ 12.) They indicated that they would seek sanctions under California Code of Civil Procedure section 128.7 if the motion was not withdrawn. (*Ibid.*)

After further emails, the parties held a telephonic conference on January 13 wherein Plaintiffs' counsel reiterated their position. (Kim Decl. ¶ 14.) Despite these discussions, Mr. Ortiz confirmed he would move forward with the Motion to Strike and filed it on January 15. (*Ibid.*) There is no indication that there was any further communication between the Parties following the filing of the Motion to Strike on January 15.

As noted above, the first step in seeking sanctions under section 128.7 requires the moving party to "serve on the offending party a motion for sanctions." (*Martorana*, supra, 175 Cal.App.4th at 698.) "A party does not comply with the notice provisions of section 128.7 simply by sending a letter of its intent to seek sanctions to the offending party." (*Id.* at 700 multiple citations omitted.)

Plaintiff's counsel's declaration states that they "reserved a hearing for this Motion for Sanctions for May 2, 2025, providing ample time to serve Ortiz with the Motion for Sanctions and allowing Ortiz the opportunity to withdraw the Motion to Strike before the hearing takes place." (Kim Decl. ¶ 22.) It does not, however, indicate if or when the Motion for Sanctions was actually served upon Mr. Ortiz.

The emails attached to the declaration are in accord. The last email communication attached relates to a message sent on January 15, wherein Plaintiffs' counsel indicates to Mr. Ortiz that based on his decision to move forward with this Motion to Strike "Plaintiffs will, therefore, ***be serving*** a motion for sanctions with a hearing date of May 12, 2025." (Kim Decl., Ex. 1 at p.1 emphasis added.) The email goes on to make clear that Mr. Ortiz "will still have 21 days following the service of the motion to reconsider and withdraw your motion to strike before we file the motion for sanctions." (*Ibid.*) There is

no indication anything was attached to that email, and the highlighted wording indicates that the motion was not served at that time. There are no follow-up emails or other communications included in Plaintiffs' counsel's declaration which indicate if/when the motion for sanctions was actually served on Mr. Ortiz. For example, Plaintiffs do not attach the email serving the Motion for Sanctions papers, if they were served electronically. They also do not attach any Proof of Service confirming when the papers were served upon Mr. Ortiz.

The Court, however, in reviewing the papers on its own noticed that the [Proposed] Order submitted with Plaintiffs' motion for sanctions attaches a proof of service. At first the Court presumed that was the proof of service of the motion that was filed with the Court regarding the motion for sanctions – since a moving party is required to file the proof of service of the moving papers at least five court days prior to the hearing. (Cal. R. Ct. 3.1300(c).) Instead, in closely examining it, the PoS indicates that the Motion and supporting papers were served on Mr. Ortiz (and the other parties to this action) on March 18, 2025, by electronic service. (Why there was a two-month delay between informing Mr. Ortiz they would be serving the motion and actually serving the motion is not explained.)

California Code of Civil Procedure section 1010.6 (a)(3)(B) "concerns electronic service and states in relevant part: '[A]ny right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days,'" with a few exceptions not relevant here. (*Transcon Financial, Inc. v. Reid & Hellyer, APC,* (2022) 81 Cal.App.5th 547, 551 ("*Transcon*") referencing former section 1010.6 (a)(4)(B).) "Section 1010.6 thus extended the safe harbor period by two court days…." (*Ibid.*)

Twenty-one days after March 8, 2025, is Tuesday, April 8, 2025. Adding two court days to that time pushes the safe harbor period to Thursday, April 10, 2025. That means that Mr. Ortiz had until Thursday, April 10, 2025, to withdraw the motion to avoid sanctions. (*Transcon*, supra, 81 Cal.App.5th at 551) In addition, Plaintiffs "had to wait for the period to expire fully before filing the sanctions motion[]." (*Ibid.* citing *Broadcast*, supra, 75 Cal.App.5th at 605-06.) Thus, the first day Plaintiffs could file their motion for sanctions was Friday, April 11, 2025. Instead, Plaintiffs filed the motion on Wednesday, April 9, 2025.

"[T]he law requires strict compliance with the safe harbor provisions." (*Transcon*, supra, 81 Cal.App.5th at 551 citing *Li v. Majestic Industry Hills LLC* (2009) 177 Cal.App.4th 585, 593.) "Failure to comply with the safe harbor provisions 'precludes an award of sanctions.'" (*Ibid.* quoting *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 700.)

Conclusion

As Plaintiffs failed to comply with the safe harbor provision required by California Code of Civil Procedure section 128.7, their motion is **denied.**