SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001077

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: DANIEL DELONG vs. DEFENDANT: MARGARET GRADE	

NATURE OF PROCEEDINGS: MOTION – CONTINUE TRIAL

RULING

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002936

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: EDGAR RUBEN GUERRERO MUNOZ vs. DEFENDANT: TERRA TEAK AND GARDEN INC., A CALIFORNIA CORPORATION	

NATURE OF PROCEEDINGS: MOTION – OTHER: FINAL APPROVAL HEARING

RULING

Plaintiff's unopposed motion for final approval of class-action and PAGA settlement is **GRANTED**. Absent objection, the Court will sign the Proposed Order submitted by Plaintiff.

The confirms and adopts its findings from the August 19, 2025 Order granting preliminary approval. The Court finds that the requirements for conditional class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representative are typical of those of the class; and (c) the named representative can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4th 224, 240.)

Notice has been given to all class members and there have been no objections or requests for exclusion.

Accordingly, the Court orders that:

1. The class is certified and Plaintiff is appointed class representative.

2. The court appoints Haulk & Herrera LLP as class counsel and appoints ILYM Group, Inc. as the Settlement Administrator as set forth in the settlement agreement.

3. After considering the factors set forth in *Clark v. American Residential Services LLC* (2009) 175 Cal.App. 4th 785, 799, the court rules that the proposed class settlement is fair and reasonable.

4. The Court finds that the fee award for the settlement administrator and for class counsel are both fair and reasonable under California law.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004472

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: GREAT WALL INVESTMENT AMERICA LLC, ET AL vs. DEFENDANT: CITY OF SAUSALITO	

NATURE OF PROCEEDINGS: DEMURRER TO SECOND AMENDED COMPLAINT

RULING

The City of Sausalito's demurrer to the Second Amended Complaint is **SUSTAINED** without leave to amend.

Procedural Deficiency

The Court draws the City's attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

Late Opposition

Plaintiffs' Opposition was due nine court days before the January 6, 2026 hearing, i.e., on December 22, 2025. Plaintiffs did not file their Opposition until December 29, 2025, seven days late and the same day the City's Reply was due.

The Court notes that the City has filed two previous demurrers. The City's demurrer to the original Complaint was made on the grounds that Plaintiff Great Wall Investment America LLC ("GWIA") did not file a government claim with the City and that both claims were not based on any statutory basis for liability against the City. Plaintiff did not file any Opposition, instead filing a First Amended Complaint. The City demurred to the First Amended Complaint on the grounds that Plaintiffs' claims were barred by the 90 day statute of limitations under Government Code Section 65009, GWIA did not file a government claim with the City, Plaintiff Ying Xu's government claim did not accurately reflect her negligent hiring, supervision and/or retention claim, and that both claims were not based on any statutory basis for liability. Plaintiffs did not file any Opposition and did not appear at the hearing. The Court sustained the demurrer with leave to amend.

Plaintiffs then filed their Second Amended Complaint, to which the City now demurs. Plaintiffs never sought leave to file an untimely Opposition and provide no explanation for their untimeliness. The Court, in its discretion, does not consider this late filing. (See Cal. Rule of Court 3.1300(d) ["If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate"]; Local Rule 2.8(G); *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 261-262; *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765.)

Meet and Confer

While Plaintiffs complain about the City's meet and confer efforts, those efforts were sufficient to satisfy the meet and confer obligations under Code of Civil Procedure Section 430.41. Failure to adequately meet and confer is not grounds to overrule a demurrer in any event. (Cal. Code Civ. Proc. § 430.41.)

Allegations in the Second Amended Complaint

Plaintiffs GWIA and Ying Xu and operate a tea shop under the brand "Pink Pink Tea Shoppe". Ying Xu is the sole member, manager and registered agent of GWIA and GWIA has no separate office or other address than those used by Ying Xu. (Second Amended Complaint ("SAC"), ¶¶3, 9, 26-28, 29.) Before applying to operate in Sausalito, Plaintiffs operated in two other locations. (*Id.*, ¶10.) Plaintiffs leased the property at 660 Bridgeway (the "Property") in October 2021 and applied for an Occupational Use Permit in November 2021 so that it could operate a tea shop at the Property. (*Id.*, ¶¶13-16.) The City requires entities operating a business in the City to obtain an Occupational Use Permit from the Community Development Department, which is a prerequisite to obtaining a business license. (*Id.*, ¶14.) Plaintiffs cite to the City's planning department section for forms and guidelines. (*Ibid.*) Plaintiffs' application advised the City that the business had multiple locations. (*Id.*, ¶16.) On November 16, 2021, a part time Interim Assistant Planner, Miriam Machado, reviewed and approved the Occupational Use Permit application. (*Id.*, ¶17.) Thereafter, Plaintiffs spent approximately $500,000 remodeling the Property, buying ingredients and equipment, and hiring staff. (*Id.*, ¶18.) In March 2024, the City informed Defendant that it would not perform a final inspection and that the Occupational Use Permit had been approved in error. (*Id.*, ¶23.) Plaintiffs thereafter shut down the proposed operation at the Property. (*Id.*, ¶25.)

Ying Xu filed a notice of tort claim with the City, under her own name, within six months of suffering damages. (*Id.*, ¶¶32, 42.) The City rejected the notice of tort claim on the ground that all attached accounting materials were not translated from Chinese to English. (*Id.*, ¶33.) Plaintiffs filed this action within six months from the City's rejection. (*Id.*, ¶45.)

Plaintiffs state that they are not suing the City to reverse its denial of the Occupational Use Permit, but rather for monetary damages caused by the negligence of the City's employees or independent contractors. (*Id.*, ¶46.) The First Cause of Action alleges negligent hiring, supervision or retention and the Second Cause of Action alleges general negligence.

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Request for Judicial Notice

The City requests that the Court take judicial notice of (1) the absence of a government claim filed by GWIA; (2) the revised government claim filed by Ying Xu; and (3) the absence of an appeal filed by Ying Xu or GWIA. The Court will take judicial notice of the filing and contents of (2), the revised government claim, but not the truth of the claim. (See *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368 n. 1.) The Court does not take judicial notice of (1) and (3) as these are evidentiary issues. At most, the Court can take judicial notice that the City's records do not show compliance with the claims presentation requirement. (*Id.* at p. 376.)

Discussion

Statute of Limitations

The City demurs to both causes of action on the ground that Plaintiffs' claims arise out of a land use decision, i.e., the occupational use permitting process, and are therefore subject to the 90-day statute of limitations under Government Code Section 65009. Because the permit was revoked in March 2024 and Plaintiffs did not file their original Complaint until November 12, 2024, the City argues, Plaintiffs' claims are untimely.

Section 65009(c)(1) provides in part: ". . . no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision: (E) To attack, review, set aside, void, or annul any decision on the matters listed in Section[] 65901 . . . or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit. (F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraph[] . . . (E)." Government Code Section 65901(a) provides: "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business."

"Section 65009 is located in division 1 (Planning and Zoning) of title 7 (Planning and Land Use) of the Government Code. It is intended to provide certainty for property owners and local governments regarding decisions made pursuant to this division and, thus, to alleviate the chilling effect on the confidence with which property owners and local governments can proceed with projects created by potential legal challenges to local planning and zoning decisions. To this end, Government Code section 65009, subdivision (c) establishes a short, 90–day statute of limitations, applicable to both the filing and service of challenges to a broad range of local zoning and planning decisions. Requiring an aggrieved citizen to file an action within 90 days but permitting him or her to withhold service for months or even years would effectively suspend the effective date of local land use and development decisions and leave such matters at the mercy of the complainant. After expiration of the limitations period, all persons are barred from any further action or proceeding." (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 526 [citations and internal quotations omitted].)

Plaintiffs' claims here are based in negligence and do not seek to "set aside, void, or annul" the City's original decision to grant the permit or subsequent decision to revoke the permit. (SAC, ¶46.) For Section 65009 to apply, therefore, Plaintiffs' claims must seek to "attack" or "review" the City's decision(s).

The City cites to *AIDS Healthcare Foundation v. City of Los Angeles* (2022) 86 Cal.App.5th 322, in which two members of a city committee (the PLUM committee) which reviewed and voted on proposed real estate were accused of bribery and other corruption in connection with their work on the committee. The plaintiff AHF sought an injunction to restrain the execution of any official act relating to any violation of the Political Reform Act ("PRA"), including the restraining of permits, and also sought an injunction restraining the city from utilizing taxpayer funds with respect to potentially tainted projects. The city demurred on the ground that the 90 day statute of limitations under Section 65009 barred the plaintiff's claims. The plaintiff argued that the four year statute of limitations under the PRA applied. The court concluded that the 90 day limitations period applied, stating: "By its plain language, section 65009's 90-day limitation on a broad variety of challenges to land use and zoning decisions encompasses AHF's action to challenge and set aside certain unidentified 'building permits granted by the City' over an 11-year period that 'would not have been approved in their current form but for the misconduct of [the two councilmembers]." (*Id.* at p. 335.) The court reasoned: "While AHF may challenge corruption under the PRA, the gravamen of AHF's action is an attack on, or review of, the PLUM committee's decisions related to permitting and real estate project approvals. Section 65009 applies directly to that challenge.[FN] AHF cannot escape the statutory time bar by couching its claim as 'necessarily dependent on a finding of a violation of the PRA' when the violation itself involves challenging the PLUM committee's project approvals." (*Id.* at p. 338.)

The *AIDS Healthcare* court cited *Freeman v. City of Beverly Hills* (1994) 27 Cal.App.4th 892, 897, in which the plaintiff sued the city after the city originally approved the plaintiff's plans to modify its restaurant including a drive-in business and then, after the plaintiffs began construction, suspended the permit on the ground it had been erroneously issued because the plaintiffs had not yet obtained architectural approval. The city then adopted an emergency ordinance establishing a conditional use permit (CUP) procedure for drive-in facilities. The plaintiff's architectural plans were approved but subject to a condition that prohibited drive-in use. The plaintiffs completed construction subject to this condition and then sued the city,

seeking a declaration that the CUP was in violation of the city's own ordinances and that the plaintiffs had acquired a vested right, money damages for the city's suspension of the initial permit, and money damages for inverse condemnation. (*Id.* at p. 895.) The court found that the plaintiffs' claims were barred by the limitations period under Section 65009, including the claims seeking monetary damages only.[1] The court stated:

> Although some of appellant's causes of action seek monetary damages rather than a direct invalidation of these ordinances, we conclude Government Code section 65009, subdivision (c)(2) bars these claims as well. We do so because a lawsuit seeking monetary damages based on a legislative body's decision adopting or amending a zoning ordinance obviously constitutes an "attack" on that decision within the meaning of section 65009, subdivision (c)(2). Monetary damage claims are just another way of "attacking" enactment of a zoning ordinance and, moreover, often of seeking to force reversal of the ordinance. Such a claim also requires "review" of the validity of the ordinance, again within the meaning of section 65009, subdivision (c)(2).
>
> Indeed Government Code section 65009, subdivision (c)(2) and its legislative purpose could be avoided easily if it did not preclude monetary damage claims as well as suits seeking declaratory and injunctive relief which are filed beyond the 120-day limitation period. Disappointed parties could "attack" the enactment of zoning ordinances by filing damage claims months or years later which threatened so much financial cost as to force the legislative body to "set aside" those ordinances. Moreover, those late-filed lawsuits could raise questions about the validity of such ordinances after their enactment and even result in a finding of invalidity after section 65009, subdivision (c)(2) presumably placed them beyond attack.
>
> The Legislature intended to foreclose any and all challenges to the validity of zoning ordinances unless they were filed promptly. Thus, it used very broad language in defining the kinds of challenges which had to be made within 120 days. This language is clearly broad enough to encompass claims for monetary damages which are based on a legislative body's decision to adopt or amend a zoning ordinance. A lawsuit seeking monetary damages on this basis is both an "attack" on the decision and an attempt to obtain a judicial "review" of that decision. Accordingly, we hold monetary damage claims of this type are barred by Government Code section 65009, subdivision (c)(2) unless brought within the 120-day limitation period.[FN]

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[1] The limitations period was 120 days at the time *Freeman* was decided. (See Stats. 1995, ch. 253, § 1, p. 1.)

(*Id.* at p. 897.)

AIDS Healthcare is distinguishable because the plaintiff there sought to set aside permits. However, while *Freeman* addressed a different subsection of Section 65009 (subsection (c)(1)(B), relating to adoption or amendment of ordinances), the rationale of that case governs here. As in this case, the plaintiffs in *Freeman* sought monetary damages based on the city's original approval and subsequent revision of that approval. The *Freeman* court held that this was an "attack" of the city's adoption of the ordinance. Applying the same analysis here, Plaintiffs' claims seek to "attack" the City's decision on Plaintiffs' permit application, contending it was negligently made, even though Plaintiffs seek monetary damages rather than to set aside that decision. The money damages flow from the City's decision on the permit application. Section 65009(c)(1)(E) applies to "any decision on the matters listed in Section[] 65901", which would include the initial approval and subsequent revocation of Plaintiffs' permit application. (See *Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1492 [discussing broad scope of language]; *Weiss v. City of Del Mar* (2019) 39 Cal.App.5th 609, 621.)

Plaintiffs allege in their Second Amended Complaint that Section 65009 does not apply because the decision on their permit application was made by the City's executive branch, and Section 65009 applies only to decisions of a legislative body. Plaintiffs do not cite to any authority supporting this decision. Further, Section 65009 has been found to apply to decisions of planning departments and/or community development departments that are authorized by the public entity to review and make zoning decisions. (See e.g., *Stockton Citizens,* 210 Cal.App.4th at p. 1492; *Weiss,* 39 Cal.App.5th at p. 620-621; Sausalito Ordinance Title 10; see also *Groch v. City of Berkeley* (1981) Cal.App.3d 518, 522.)

Accordingly, the City's demurrer is sustained on the ground that Plaintiffs' claims are untimely under Government Code Section 65009

No Statutory Claims Asserted

The City contends that Plaintiffs fail to plead any statutory basis for liability against the City and the City is immune from liability for common law claims. (See *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 63; *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 895-896.)

Plaintiffs' Second Amended Complaint cites to Government Code Sections 815.2, 815.4 and 820. Section 815.2(a) provides: "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Section 815.4 provides: "A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. Nothing in this section subjects a public entity to liability for the act or omission of an independent contractor if the public entity would not have been liable for the injury had the act or omission been that of an employee of the public entity." Section 820(a)

provides: "Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person."

The demurrer is sustained as to the First Cause of Action on the additional ground that Plaintiffs do not allege any statutory basis for their negligent hiring, supervision or retention claim. In their Second Amended Complaint, Plaintiffs cite to *C.A. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861 as support that they can bring a direct claim against the City for negligent hiring and supervision. However, in *C.A. Williams*, the court found the school district could be liable for negligent hiring and retention because there was a "special relationship" between the district and the students. The court noted that "[a]bsent such a special relationship, there can be no individual liability to third parties for negligent hiring, retention or supervision of a fellow employee, and hence no vicarious liability under section 815.2." (*Id.* at p. 877.) The *C.A. Williams* court distinguished *de Villers v. County of San Diego* (2007) 156 Cal. App. 4th 238 on this basis. In *de Villers*, the court found that the county was not liable for the conduct of a coroner toxicologist for failure to investigate her before she was hired because there was no special relationship with her husband and therefore had no duty to protect him. (*Ibid.*) Here, Plaintiffs do not plead any special relationship between them and the City. Courts have refused to apply *C.A. William* for purposes of allowing a negligent hiring and supervision claim where no special relationship is alleged. (See *Herd v. County of San Bernardino*, 311 F.Supp.3d 1157,1172 (C.D. Cal. 2018); *McKay v. City of Hayward*, 949 F.Supp.2d 971, 988 (N.D. Cal. 2013).)

The demurrer to the Second Cause of Action is sustained on the additional ground that Ms. Machado's and the City's decisions on Plaintiffs' permit application are discretionary acts and thus subject to statutory immunity. (See Gov. Code § 821.2 ["A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked"]; § 818.4 ["A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked"].)

Because the Court sustains the demurrer on the grounds discussed above, it does not address the City's additional arguments.

Leave to Amend

To be granted leave to amend following the sustaining of a demurrer, "a plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading by clearly stating not only the legal basis for the amendment, but also the factual allegations to sufficiently state a cause of action." (*Siskiyou Hospital, Inc. v. County of Siskiyou* (2025) 109 Cal.App.5th 14, 54 [citation and internal quotations omitted].)

Plaintiffs do not satisfy their burden to show how any amendment can cure their pleading. Plaintiffs have had multiple opportunities to address the City's arguments in the context of the three demurrers. With respect to the current demurrer, Plaintiffs failed to file a timely Opposition. While the Court acknowledges that Plaintiffs include some argument in the body of the Second Amended Complaint itself, these arguments do not support the Plaintiffs' position and Plaintiffs fail to show how amendment will cure the defects in the Second Amended Complaint. Accordingly, the Court sustains the City's demurrer without leave to amend.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004958

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: WELLS FARGO BANK, NA vs. DEFENDANT: BELINA LACUNA, AN INDIVIDUAL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The hearing on the motion for summary judgment by plaintiff Wells Fargo Bank, N.A. ("Plaintiff") is **CONTINUED TO February 3, 2026** to allow Plaintiff an opportunity to file a supplemental separate statement of undisputed material facts addressing both causes of action alleged in Plaintiff's complaint and in accordance with Plaintiff's amended notice of motion filed on October 16, 2025. (See Amended Notice of Motion and Motion for Summary Judgment, p. 1:25-28.)

The supplemental separate statement shall be filed no later than Tuesday, January 20, 2026.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006085

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: MOTARAM ZAINALIZADEH vs. DEFENDANT: KELLY MARIE ESCOBAR, ET AL	

NATURE OF PROCEEDINGS: MOTION – SHORTEN TIME

RULING

Plaintiff has not filed a response or opposition to the motion for judgment on the pleadings. The failure to oppose is treated as consent to the granting the motion. (Calif. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8G.1.) Defendants' motion is therefore granted with leave to amend. The parties are ordered to appear at the hearing to set a schedule for an amendment in light of the rapidly approaching trial date.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007368

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PETITIONER: JOHN DOE, AN INDIVIDUAL vs. DEFENDANT: KENTFIELD AND SAN FRANCISCO SPECIALTY HOSPITAL, INC., A CALIFORIA CORPORATION, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant 1125 Sir Francis Drake Blvd. Operating Company, LLC d/b/a Kentfield Hospital's ("Defendant") demurrer to Plaintiff John Doe's ("Plaintiff") complaint is **OVERRULED** in full.

Background

This is a sexual assault case. Plaintiff alleges that while a patient at Kentfield Hospital, he was sexually assaulted by Defendant's agent, an unnamed nurse. (Complaint, ¶¶ 16-17.) Defendant now demurs to Plaintiff's causes of action for violation of the Unruh Civil Rights Act (Civ. Code, § 51); the Tom Bane Civil Rights Act (Civ. Code, § 52.1); and intentional infliction of emotional distress ("IIED").

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code Civ. Proc., § 452.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)
If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

Discussion

First Cause of Action – Violation of the Unruh Civil Rights Act

The Unruh Civil Rights Act provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b).) A party who "makes any discrimination or distinction" in violation of this provision may be held liable in a private action. (Civ. Code, § 52, subd. (a).)

Plaintiff states that his First Cause of Action "is based on Sections 51(b), 51.7, and 51.9 of the Unruh Act." (Opposition, p. 4.) But "Civil Code section 51 is the only statute comprising the Unruh Civil Rights Act." (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 606, fn. 4.) Civil Code, section 51.7 is the Ralph Civil Rights Act of 1976 (see Civ. Code, § 51.7, subd. (a)) and Civil Code, section 51.9 (hereafter "Section 51.9") is "a separate civil rights statute." (*Thomas, supra*, 97 Cal.App.4th 587, 606.)

That a complaint fails to plead separate claims as separate causes of action is no longer a ground for demurrer. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854, fn. 4 [such a ground for demurrer did exist prior to 1973, but was abolished].) Now, the sole remedy for this kind of pleading is a demurrer for uncertainty, and such a demurrer should be overruled where the allegations are "not confusing" notwithstanding the improper pleading. (*Ibid.*; see also *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848 fn. 3 ["[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond."].) While Plaintiff has improperly pleaded three different legal claims under the umbrella of a single cause of action, the First Cause of Action is not so confusing that Defendant "cannot reasonably respond" to it. (*Mahan, supra*, 14 Cal.App.5th 841, 848 fn. 3.) The allegations relevant to each claim are discernable.

"To state a claim under the Unruh Civil Rights Act, a plaintiff must allege the defendant is a business establishment that intentionally discriminates against and/or denies plaintiff full and equal treatment of a service, advantage, or accommodation based on plaintiff's protected status." (*Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 922.) Like all statutory causes of action, a claim under the Unruh Act must be pleaded with particularity, meaning "[e]very fact essential to the existence of statutory liability must be pleaded." (*Covenant Care, Inc. v. Superior Court*

(2004) 32 Cal.4th 771, 790; *Susman v. City of Los Angeles* (1969) 269 Cal.App.2d 803, 809.) Plaintiff has pleaded that Defendant is a business establishment (Complaint, ¶ 7 [Defendant does business as a hospital]) and that it discriminated against him "on the basis of gender" by allowing the nurse "to have unfettered access to sexually exploit and abuse Plaintiff" and by "actively concealing from Plaintiff [Defendant's] knowledge and awareness that [the nurse] was a sexual predator." (Complaint, ¶ 23.) This is sufficient to state a claim under the Unruh Act. (See *Liapes, supra*, 95 Cal.App.5th 910, 922.)

As to the Ralph Civil Rights Act claim, the statute protects "the right to be free from any violence, or intimidation by threat of violence, committed against [one's] person[] . . . on account of" certain protected characteristics. (Civ. Code, § 51.7, subd. (b)(1); see also Civ. Code, § 52, subd. (b) [establishing cause of action for violation of the Ralph Act].) To state a claim under the Ralph Act, a plaintiff must plead that "the defendant threatened or committed violent acts against the plaintiff or their property, and a primary motivating reason for doing so was a prohibited discriminatory motive, or that the defendant aided, incited, or conspired in the denial of a protected right." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1291.) Plaintiff has alleged that Defendant, through its agent, subjected him to sexual violence because of his gender. (Complaint, ¶ 22.) This states a claim under the Ralph Act. (*Gabrielle A., supra*, 10 Cal.App.5th 1268, 1291.)

Finally, to state a claim under Section 51.9, the plaintiff must plead that there was a business, service, or professional relationship between the parties. (Civ. Code, § 51.9, subd. (a)(1).) The statute expressly provides that such a relationship may exist between a plaintiff and a physician or similar. (Civ. Code, § 51.9, subds. (a)(1)(A), (I).) The plaintiff must also assert that the defendant made sexual advances to the plaintiff "or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe." (Civ. Code, § 51.9, subd. (a)(2).) Finally, the plaintiff must allege that he "has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right" as a result of the conduct. (Civ. Code, § 51.9, subd. (a)(3).)

Plaintiff alleges that the service or professional relationship required of a Section 51.9 claim existed between him and Defendant in that Defendant served as his healthcare provider. (Complaint, ¶ 20.) In *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, a plaintiff sued a healthcare corporation, alleging that she was molested by one of the corporation's employees (a certified nursing assistant) while a patient at one of its medical centers. (169 Cal.App.4th 1094, 1097.) The Second District held that the plaintiff had adequately pleaded the existence of the relationship required by Section 51.9: "[A]n entity providing health care services that hires and supervises a certified nursing assistant to care for patients . . . is either a service or falls within the ambit of a profession. . . . [P]laintiff has alleged sufficient facts to show defendant, a hospital owner which provides medical treatment for patients, falls within the scope of section 51.9." (*Id.* at pp. 1106-1107.) In this case, Plaintiff's complaint alleges that Defendant provides health care services and supervises the nurse at issue. (Complaint, ¶¶5-6.) This case is indistinguishable from *C.R.* in this regard. There cannot be any doubt that Plaintiff has adequately alleged "physical conduct of a sexual nature" that was "unwelcome" and "severe." (Civ. Code, § 51.9, subd. (a)(2); see Complaint, ¶ 17.) Plaintiff also alleges that he was subjected

to that treatment "on the basis of his gender" (Complaint, ¶ 22) and that he has suffered "emotional distress" as a result (*id.* at ¶ 26). This states a claim under Section 51.9.

Defendant argues that the First Cause of Action is uncertain, stating that it cannot understand *how* Defendant is alleged to have discriminated against Plaintiff based on gender, what Plaintiff's gender is, or how Defendant, a corporate entity, is meant to be liable for the sexual abuse allegedly perpetrated by a nurse. (Memorandum, pp. 3-4.) Each of these questions is either answered in the complaint (see Complaint, ¶¶ 22-23 [describing the conduct Defendant is alleged to have subjected Plaintiff to based on his gender], 2, 5 [pleading that Defendant is liable based on the nurse's status as Defendant's employee or agent]) or can be clarified in discovery. (See *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 ["A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures."].) The complaint is nowhere near so lacking in detail as to be vulnerable to a demurrer based on uncertainty.

The demurrer to this cause of action is overruled.

Second Cause of Action – Violation of the Bane Act

The Tom Bane Civil Rights Act (Civ. Code, § 52.1) provides that "[i]f a person . . . interferes" (or attempts to interfere) "by threat, intimidation, or coercion" with a plaintiff's "exercise or enjoyment" of any rights secured by federal or state law, the plaintiff may bring an action for damages and injunctive relief. (Civ. Code, § 52.1, subds. (b), (c).) "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., 'threats, intimidation or coercion') tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." (*Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 883.)

Plaintiff alleges that Defendant interfered with his right under the Unruh Act to be free of gender discrimination in the form of sexual harassment, exploitation, and abuse in places of public accommodation. (Complaint, ¶ 31.) Defendant argues that the complaint does not "specify any acts that were undertaken *specifically* because of plaintiff's gender or how plaintiff's gender played any role in the alleged sexual abuse allegation that is the basis of their entire complaint." (Memorandum, p. 4 [emphasis in original].) In other words, Defendant contends that Plaintiff has not sufficiently pleaded that Defendant interfered with a right secured by law. The Court disagrees. The complaint describes the right Defendant allegedly interfered with (Complaint, ¶ 31 [the right to be free of gender discrimination]) and what Defendant allegedly did that interfered with that right (*id.* at ¶¶ 23, 31 [through its employee, subjected Plaintiff to sexual abuse based on his gender]). This pleads the element of interference with a right protected by law with sufficient particularity. Defendant has not argued that Plaintiff's Bane Act cause of action falls short in any other respect. The demurrer to this cause of action is overruled.

Seventh Cause of Action – IIED

To plead IIED, a plaintiff must plead (1) extreme and outrageous conduct by the defendant, (2) intent to cause emotional distress or reckless disregard of the risk of causing the same, (3) severe emotional distress, and (4) causation. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.) To

qualify as "extreme and outrageous," the conduct must be "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" (*Id.*, p. 496 [quoting Rest.2d Torts, § 46, com. d, p. 73].) "Liability for intentional infliction of emotional distress 'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051 [quoting *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1122 (overruled on another ground by *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 853, fn. 19)].) That allegations are insufficiently extreme and outrageous as a matter of law is a proper ground on which to sustain a demurrer. (*Cochran, supra*, 65 Cal.App.4th 488, 494.)

First, Defendant argues that the complaint alleges multiple incidents of sexual misconduct, but only sets forth the details of one. (See Complaint, ¶ 17.) This is not enough to support a demurrer based on uncertainty. During discovery, Defendant may demand that Plaintiff specify how many incidents are at issue here and provide details regarding those incidents.

Second, Defendant argues that Plaintiff has not pleaded "critical details," like "whether the nurse performed [his] act while providing care and treatment as part of plaintiff's care plan or if the act was completely separate from the nurse's duties." (Memorandum, p. 6.) In other words, Defendant accuses Plaintiff of failing to plead the evidentiary facts supporting his attempt to hold Defendant liable on a theory of respondeat superior. Defendant presents no authority for the idea that Plaintiff needed to do that. The complaint puts Defendant on notice that Plaintiff seeks to hold it liable for an act of sexual assault perpetrated by a nurse on a respondent superior theory. Defendant is free to explore the factual and legal basis for that in discovery.

Finally, Defendant makes various arguments amounting to contentions that Plaintiff has not alleged sufficiently extreme and outrageous conduct. Plaintiff bases his IIED claim on multiple forms of extreme and outrageous conduct. One basis for the claim is the sexual assault itself. (Complaint, ¶ 85.) There can hardly be any doubt that a nurse's sexually assaulting a patient under the guise of providing medical care is sufficiently extreme and outrageous to survive demurrer. Defendant does not argue that, on the face of the complaint, Defendant cannot be held vicariously liable for the alleged sexual assault. Because Plaintiff has alleged at least one act that is extreme and outrageous enough to support a claim for IIED, and Defendant has not argued that such act cannot be legally imputed to the employer, it does not matter whether any other factual basis for this claim is sufficiently extreme and outrageous. "A demurrer does not lie to a portion of a cause of action." (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [setting aside order sustaining demurrer as to only part of cause of action for legal malpractice]; accord *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.)

The demurrer to this cause of action is overruled.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in

accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/06/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007866

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PETITIONER: RICHARDSON BAY REGIONAL AGENCY vs. DEFENDANT: SAILING VESSEL REVENANT CF 2640 VB	

NATURE OF PROCEEDINGS: MOTION - STAY

RULING

Based on the submissions it appears that the parties agree on the location of vessel but have sharply divergent opinions on jurisdiction. Accordingly, the Court on its own motion should appoint an expert pursuant to Evidence Code sections 460 and 730 to render an opinion as to whether the vessel is anchored in a protected jurisdiction. (See, e.g. *Diaz-Barba v. Superior Court* (2015) 236 Cal.App.4th 1370 [court appointed a neutral expert to render an opinion on Mexican law and procedure].)

The parties shall appear at the hearing to address the selection of an appropriate expert and the manner of compensation.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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