SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV2300024

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ROSIE HERNANDEZ vs. DEFENDANT: COUNTY OF MARIN, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Rosie Hernandez brought a motion to compel further discovery responses from Defendant County of Marin. The Court issued a tentative ruling on October 21, 2024. The Court held a hearing on October 22, 2024 where the parties appeared through counsel. The Court permitted the parties to file supplemental briefs addressing whether the Court could review privileged documents in camera as part of its decision.

The Court has not issued an order finalizing its tentative decision on the motion. On April 7, 2025 Plaintiff requested that a hearing date on the remaining matters. Having considered the papers submitted by the parties and the arguments of counsel at the hearings, the Court hereby adopts its tentative ruling as its decision in this matter. Defendant County of Marin has satisfied its burden that the report and related material are protected from discovery under the attorney-client privilege and work product doctrine. Plaintiff has not established there has been a waiver. (Evid. Code, § 912, subd. (a).) The Court denies Plaintiff's request to examine the disputed material in camera to determine whether the material is covered by a valid privilege. (Evid. Code, § 915, subd. (a).)

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 April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0002988

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PETITIONER: SARAH SHRADER vs. RESPONDENT: CITY OF SAUSALITO	

NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

Petitioner Sarah Shrader's First Amended Petition for Writ of Mandate is **DENIED.**

Allegations in the First Amended Petition

Petitioner filed her original Petition on May 22, 2024 and a First Amended Petition on October 3, 2024. In her First Amended Petition, Petitioner alleges that she is a medicinal cannabis patient with a valid physician's authorization for the medicinal use of cannabis who seeks to purchase medical cannabis and medicinal cannabis products within Sausalito. She further alleges that Section 10.47.030 of Respondent City of Sausalito's (the "City") Municipal Code unlawfully bans delivery of medicinal cannabis originating from within the City of Sausalito, and delivery originating outside the City to patients who are not Sausalito residents. Petitioner alleges that the Municipal Code violates California's Medicinal Cannabis Patients' Right of Access Act (the "Act"), specifically, Business & Professions Code Section 26322(a), and seeks a writ of mandate directing the City to comply with the Act. Specifically, Petitioner seeks a writ directing the City to allow the establishment of physical premises within the City from which the retail sale by delivery of medical cannabis can be conducted, and restraining the City from enforcing the Municipal Code to the extent it violates the Act.

Standard

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior *tribunal*, corporation, board, or person." (Code Civ. Proc. § 1085.) A writ of mandate "will issue against a county, city, or other public body . . . ." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593 [citation and internal quotations omitted].) A writ of mandate under Section 1085 is available where "the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to

perform; and the petitioner has a clear, present and beneficial right to performance." (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751-752.)

Request for Judicial Notice

The City's request for judicial notice of Municipal Code Chapter 10.47, pre-amendment (Exhibit A), California Senate Bill No. 1186 (Exhibit B), Ordinance No. 07-2024 (Exhibit C), Staff Report Introduction and Waiver of First Reading (Exhibit D), and SB-1186 Floor Analysis (Exhibit E), are granted. (Evid. Code §§ 452, 453.)

Evidentiary Objections

The City's Objection Nos. 1 and 2 are sustained.

Petitioner's Reply and Amended Declaration

Pursuant to the Stipulation and Order filed on December 13, 2024, Petitioner's Reply was due on April 7, 2025. While Petitioner filed a declaration (her own) on April 7th, she did not file her Reply until April 10, 2025, and that Reply advances a new argument not made in the First Amended Petition or Petitioner's opening brief, specifically, that the fees charged for delivery of medicinal cannabis have the effect of prohibiting the retail sale by delivery within the local jurisdiction in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand. (See Reply, pp. 2-3.) While Petitioner attempts to frame this argument as one made in response to the City's Opposition (e.g., in response to the list of available delivery services listed in the City's attorney's declaration), this is not actually the case. There is no reason Petitioner could not have made her delivery fee argument in her opening brief.

Not only did Petitioner file a late Reply brief advancing a new argument, she filed two declarations past the filing deadline as well. Along with her late Reply, Petitioner also filed a declaration of Carol von Haden, who signed her declaration two days after the Reply was due. On April 14, 2025, a week after her Reply was due, Petitioner filed an amended declaration which added even more new evidence, i.e., information about calls she made to delivery retailers on April 10th, three days after her Reply was due.

The Court will not consider Petitioner's new argument or new evidence. (See *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 227-228.) Petitioner provides no explanation for her late filings or why she makes new arguments and submits new evidence with her Reply. As discussed below, however, even if the Court considered Petitioner's new argument and evidence, it would not change the Court's ruling denying her Amended Petition.

The Act

The Act, which became effective on January 1, 2024, is found at Business & Professions Code Sections 26320 to 26325. Section 26320 identifies the legislative findings, declaration and intent of the Act: "The Legislature finds and declares as follows: (a) Access to medicinal cannabis is an integral aspect of access to health care, and eliminating barriers to medicinal cannabis access is essential to promoting and preserving the health of Californians for whom physicians have recommended the use of cannabis or cannabis products. (b) It is the policy of the state and the intent of the Legislature to ensure that Californians throughout the state have timely and convenient access to safe, effective, and affordable medicinal cannabis."

Business & Professions Code Section 26322, the focus of the Amended Petition, sets forth restrictions on regulations adopted by local jurisdictions:

> (a) A local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers, or that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, including, but not limited to, regulation of any of the following that has the effect of prohibiting the retail sale by delivery of medicinal cannabis:
>
> (1) The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction.
>
> (2) The operating hours of medicinal cannabis businesses.
>
> (3) The number or frequency of sales by delivery of medicinal cannabis.
>
> (4) The types or quantities of medicinal cannabis authorized to be sold by delivery.
>
> (5) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted by a licensed nonstorefront retailer, except that this paragraph shall not be construed to require the establishment of additional physical premises in a local jurisdiction that allowed medicinal cannabis retail as of January 1, 2022, and in which at least one physical premises engaged in the retail sale of medicinal cannabis, whether storefront or delivery, is already established.
>
> (b) Nothing in this chapter shall be construed to prohibit the adoption or enforcement of reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to:
>
> (1) Zoning requirements that are not inconsistent with subdivision (a). If compliance with subdivision (a) would otherwise require a local jurisdiction to authorize a physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted, this paragraph shall not be construed to alter that requirement.
>
> (2) Security or public health and safety requirements.
>
> (3) Licensing requirements.
>
> (4) The imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction.

> (5) Regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division.
> (c) Nothing in this chapter shall be construed to limit or otherwise affect the ability of a local jurisdiction to adopt or enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.
> (d) This section shall become operative on January 1, 2024.

Section 26323(a)(1) provides that the Act may be enforced by writ of mandamus bought by a medicinal cannabis patient who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction.

Section 26325 provides that the Act "addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution."

Municipal Code Section 10.47.030

Section 10.47.030 of the City's Municipal Code provides:

> Deliveries. No person and/or entity may deliver cannabis from any fixed or mobile location, either inside or outside the City, to any person in the City, except as follows:
> 1. A licensed cannabis retailer, microbusiness, or nonprofit licensed under California Business and Professions Code Section 26000 et seq. may deliver medicinal cannabis or medicinal cannabis products to any qualified patient or any person with an identification card in the City, as those terms are defined in California Health and Safety Code Section 11362.7, or to their primary caregiver as defined in California Health and Safety Code Sections 11362.5 and 11362.7(d).
> 2. A licensed cannabis retailer, microbusiness, or nonprofit selling cannabis or cannabis products for medical or adult use may deliver products in compliance with California Business and Professions Code Section 26090 within the City. All deliveries shall also comply with regulations of the Department of Cannabis Control.
> 3. Any person or entity delivering cannabis or cannabis products for medical or adult use in accordance with this subsection E shall register with or notify the City of Sausalito.

Sausalito Municipal Code, § 10.47.030.[1]

[1] This Order addresses Petitioner's challenge to the current version of the Municipal Code only. The Amended Petition also challenged language in a prior version of the Municipal Code to the extent it allowed delivery "to those residing within the City." As this language no longer exists in the Municipal Code following an amendment in November 2024, the parties' briefing focuses only on the current version.

Discussion

Petitioner contends that Section 10.47.030 violates the Act and seeks a writ of mandate allowing the establishment of physical premises within the City from which the retail sale by delivery can be conducted.

Standing

The City argues that Petitioner has not adequately established that she has standing to bring the Amended Petition. The City acknowledges that Section 26323(a)(1) of the Act allows a petition to be brought by "[a] medicinal cannabis patient . . . who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction", "who shall be beneficially interested within the meaning of Section 1086 of the Code of Civil Procedure." However, the City argues, this language does not obviate the need for a beneficially interested person to comply with general pleading standards, including the requirement to demonstrate that Petitioner's "remedy in the ordinary course of law is inadequate or that [she] would suffer irreparable injury were the writ not granted." (See *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 498.) Petitioner here does not allege that she would suffer irreparable injury as she does not allege any injury to her, such as the unavailability of, or lack of access to, medicinal cannabis delivery.

Petitioner has adequately alleged standing. The Legislature has the power to confer standing on a class of persons irrespective of whether they suffered injury. (See *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th 671, 693.) Petitioner has standing by way of Section 26323(a)(1), which makes her "beneficially interested" in the controversy as a medicinal cannabis patient seeking to purchase medicinal cannabis products within Sausalito. (See *Teal v. Superior Court* (2014) 60 Cal.4th 595, 689 ["'To have standing, a party must be beneficially interested in the controversy . . .'"] [citation added] [emphasis removed].)

"Within the Local Jurisdiction"

Petitioner argues that Section 10.070.030 violates the Act because it "prohibits the retail sale by delivery within the local jurisdiction" by not allowing physical establishments located within the City of Sausalito. Petitioner argues that "within the local jurisdiction" in the first clause of the Act *("[a] local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis"*) refers to the area where delivery is both initiated and completed. The City argues that "within the local jurisdiction" means only the area where the product is delivered, even if it is initiated outside the City, and thus there is no requirement that a local jurisdiction allow physical retail locations in their jurisdiction.

The City's interpretation is supported by the Legislative history. California Bill Analysis, Senate Third Reading of the Act (SB 1186), August 15, 2022 and August 22, 2022, states in the Comments:

> [T]his bill would only require medicinal cannabis to be made available for delivery. No local government would be required to license or permit storefront retail, allowing cities and counties that have resisted the presence of cannabis businesses as contrary to the character and culture of their communities to continue banning

> brick and mortar establishments where cannabis may be purchased onsite. Instead, cannabis would be available, at a minimum, through either delivery from a non-storefront retailer located within the jurisdiction, or from a retailer located outside the jurisdiction, depending on how the local government chooses to comply with the law.

(CA B. An. S.B. 1186 Sen., 8/15/2022 and 8/22/2022.)

Petitioner argues that the Act would have been unnecessary if it merely allowed deliveries into local jurisdictions that do not allow the establishment of medical delivery businesses within those jurisdictions, because California law already provided that "A local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200." (Bus. & Prof. Code § 26090(f).) This argument is without merit, as Section 26090(f) addresses deliveries on public roads, which is different than, but consistent with, Section 26322 of the Act. There is nothing in Section 26090(f) that supports the conclusion that the Legislature intended the Act to require local jurisdictions to allow the establishment of physical premises within local jurisdictions.

Petitioner also argues that the Municipal Code is preempted by the Act because Section 26325 provides: "This chapter addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution." However, by its terms, the Act allows local jurisdictions to regulate the delivery of medicinal cannabis to the extent not prohibited by state law. (See Bus. & Prof. Code §§ 26200(a)(1)(2) and (f); 26322(b) and (c).) The Legislative history also notes that "[i]t is important to note that the bill does not prohibit local governments from regulating cannabis sales. Nor does it . . . prohibit local governments from placing limits on the delivery of medicinal cannabis. According to the author . . . jurisdictions . . . can remain in compliance with this bill by limiting the sale of medical cannabis to delivery only." (CA B. An. 1186 Sen., 6/28/2022, Assembly Committee on Judiciary.)

Timely and Readily Accessible Manner; Sufficient Types and Quantities

Petitioner argues that even if the Ordinance does not on its face violate Section 26322 under the first clause that section, it violates Section 26322 under the second clause ("*[a] local jurisdiction shall not adopt or enforce any regulation . . . that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis*") because the City's registration/notification requirement (§ 10.47.030 (3)) "has the effect" of prohibiting the retail sale by delivery within the local jurisdiction in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand.

In support of this argument, Petitioner's counsel states that he sought records from the City regarding persons or entities who registered or notified the City and was told the City "has located no records of registration or notification" so far, although the City Clerk is still searching. (Declaration of Omar Figueroa, ¶¶2-4.) Petitioner then argues that this shows that there are no persons or entities that deliver into the City, and thus medicinal cannabis is not lawfully available in Sausalito in a timely and readily accessible manner or in types or quantities sufficient to meet demand.

Petitioner has not met her burden in showing that medicinal cannabis is not lawfully available in Sausalito in a timely and readily accessible manner or in types or quantities sufficient to meet demand. (See *Los Angeles Police Protective League v. City of Los Angeles* (2014) 232 Cal.App.4th 136, 140 [petitioner bears burden of pleading and proving facts on which the claim for relief is based].) Her counsel's declaration does not support this conclusion, and she submits no other evidence that the registration/notification requirement has the effect of prohibiting deliveries into Sausalito. Further, the City submits evidence that there are a number of delivery services who advertise deliveries to Sausalito (Declaration of Christopher Moffitt, ¶¶3-11) and that the City has never taken any steps to prevent such delivery. (Declaration of Brandon Phipps, ¶¶2-7.)

In connection with her Reply, Petitioner argues for the first time that fees charged in connection with delivery have the effect of prohibiting the retail sale by delivery within the local jurisdiction in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand. Petitioner's declaration and amended declaration states that she contacted several cannabis delivery services listed in the City's counsel's declaration and was informed that delivery required a minimum purchase of between $40-125, depending on the service provider. She further states that she did not place an order with these services due to the minimum purchase requirement. Ms. von Haden states that she cannot afford having medicinal cannabis delivered (due to the minimum purchase requirement) so her caregivers drive to Fairfax, which has the only retail storefront in Marin County.

As noted above, the Court does not consider the new argument and evidence submitted with Petitioner's Reply. Even if it did, they do not support the issuance of a writ. The delivery fees are not a "regulation" by the City so as to fall under the language of Section 26322. Rather, they are added by third party delivery service providers.

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: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0004255

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: PAUL G. REA, ET AL vs. DEFENDANT: PACIFIC GAS AND ELECTRIC COMPANY, ET AL	

NATURE OF PROCEEDINGS: MOTION – STRIKE

RULING

Defendant Core Tree Care, Inc.'s ("Core") motion to strike is **DENIED**.

BACKGROUND

This is an action against Pacific Gas & Electric Co. ("PG&E") and its tree servicing contractor, Core, for allegedly wrongfully cutting down trees on private property. The complaint alleges that Plaintiffs Paul Rea and Joette Scoratow ("Plaintiffs"), a married couple, own real property at 5 Herbing Lane in Kentfield ("the Rea Property"), where they have lived for decades. (Complaint, ¶¶ 2, 10.)

For some time, pursuant to an easement granted to PG&E, the company has maintained an electric power pole, crossbar, and overhead utility lines at 118 Briar Road, which adjoins the Rea Property. (Complaint, ¶ 14.) Historically, those fixtures did not encroach on the Rea Property, although they were near the property line. (*Ibid.*)

In September 2023, Core came onto the Rea Property without notice and attempted to remove certain trees. (Complaint, ¶ 15.) Plaintiffs advised them, verbally and in writing, that the trees were not on 118 Briar Road, PG&E did not have easement rights over the Rea Property, and the trees should not be removed. (*Id.* at ¶ 16.)

In October 2023, PG&E installed a new power pole at 118 Briar Road. (Complaint, ¶ 17.) The new pole, the crossbar on it, and certain PG&E utility lines now allegedly encroached on the Rea Property. (*Id.* at ¶ 17.) When Plaintiffs objected to the encroachment, PG&E asserted that it had an unrecorded 1972 easement over the Rea Property. (*Id.* at ¶ 19.) This was the first Plaintiffs had heard of that easement, and they objected to its enforceability. (*Ibid.*)

In January 2024, Core again visited the Rea Property and attempted to remove trees. (Complaint, ¶ 21.) Plaintiffs contacted PG&E and demanded that no tree work be performed until the dispute over the encroachment/easement issue was resolved. (*Ibid.*) PG&E allegedly repeatedly assured Plaintiffs that it had instructed that no tree work be performed until the parties resolved the dispute. (*Id.* at ¶¶ 21-23, 25.)

In June 2024, PG&E informed Plaintiffs that it intended to make certain changes to the electrical fixtures on 118 Briar Road to remedy the encroachment onto Plaintiffs' property. (Complaint, ¶¶ 26-27.) Plaintiffs advised PG&E that they would be out of town between July 24 and August 13, 2024, so PG&E should not visit the property to make plans for the work during that period. (*Id.* at ¶ 27.) During that period, Core, acting on behalf of PG&E, allegedly came onto the Rea Property without notice, removed the trees, and heavily pruned a grove of bay trees. (*Id.* at ¶ 28.) Plaintiffs allege that Core was fully aware that the foliage it cut was on the Rea Property and of the directive from PG&E that no work was to be done on the Rea Property until the dispute was resolved, but nevertheless cut the trees down "out of spite[.]" (*Id.* at ¶¶ 28, 39.)

Plaintiffs assert claims for trespass; violation of Civil Code, section 3346; violation of Civil Code, section 733; willful or negligent injury to real property; injunctive relief; and declaratory relief. Core now moves to strike Plaintiffs' requests for punitive damages and treble damages from the complaint.

LEGAL STANDARD

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 any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (*Id.*, § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro, supra*, 63 Cal.App.4th 761, 768.)

DISCUSSION

Punitive Damages

Civil Code, section 3294 provides that punitive damages are available "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice[.]" To state a claim for punitive damages, the plaintiff must plead facts supporting the position that "defendant has been guilty of oppression, fraud, or malice." (See *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166; Civ. Code, § 3294, subd. (a); see also *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7 [parroting the language of the punitive damages statute is permissible only where sufficient facts are otherwise alleged to support the allegation of "oppression, fraud, [or] malice"].) Requests for punitive damages are properly stricken where the complaint fails to plead such facts. (See *Turman v. Turning Point of California, Inc.* (2010) 191 Cal.App.4th 53, 63-64.)

"Oppression" refers to "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Code Civ. Proc., § 3294, subd. (c).) "Despicable conduct" refers to conduct ' " 'so vile, base, contemptible, miserable, wretched or loathsome that

it would be looked upon and despised by most ordinary decent people.' " ' (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159 [quoting *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 330].) "Such conduct has been described as having the character of outrage frequently associated with crime." (*Butte Fire Cases*, *supra*, 24 Cal.App.5th 1150, 1159.)

"Fraud" refers to "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Ibid.*) "Malice" refers to "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (*Ibid.*)

The complaint alleges that Core, knowing that the trees were on the Rea Property and that they were not supposed to do any tree work on the Rea Property until Plaintiffs and PG&E resolved their tree dispute, nevertheless entered onto the Rea Property without notice while Plaintiffs were out of town and removed both foliage and entire trees. (Complaint, ¶ 28.) Plaintiffs allege that Core did this out of "spite" (*id.* at ¶ 39), which is a non-conclusory allegation of fact amounting to a claim that Core acted with intent to cause injury to Plaintiffs. This is sufficient to constitute "malice" under Civil Code, section 3294, subdivision (c). Where a pleading sufficiently alleges that the defendant acted with intent to injure, it need not also allege that the defendant's conduct was "despicable" to state a claim for punitive damages. (Civ. Code, § 3294, subd. (c) ["malice" requires intent to cause injury *or* despicable conduct carried on with willful and conscious disregard].) The complaint's punitive damages allegations are not so patently deficient that they cannot survive a motion to strike. The motion to strike is denied as to the punitive damages requests.

Treble Damages

The complaint requests treble damages under both Civil Code, section 3346 and Code of Civil Procedure, section 733, which provide for treble damages for certain injuries to trees or timber. (Complaint, ¶¶ 42, 45.) Core requests that Plaintiffs' requests for treble damages be stricken but does not provide any argument or cite any authority as to whether the complaint pleads facts supporting treble damages under either of those statutes. "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [the court] consider[s] the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.)

The only argument in Core's brief that is applicable to the treble damages requests, as opposed to being solely applicable to the requests for punitive damages under Civil Code, section 3294, is that the complaint supposedly "concede[s]" that Plaintiffs "are not sure that [Core] committed any wrongdoing." (Memorandum, p. 5.) Here, Core references the following:

> "On or about August 8, 2024, while Plaintiffs were out of town, PG&E came onto the Rea Property and, without notice of any kind and in complete disregard of their agreement and affirmative representations, removed the Rea trees and heavily pruned a grove of Bay Trees on the Rea Property. *Plaintiffs are informed and believe and thereon allege that PG&E acted through its contractor, [Core].*"

(Complaint, ¶ 28 [emphasis added].) This is a standard permissible "information and belief" allegation. A plaintiff " 'may allege on information and belief any matters that are not within his

personal knowledge, if he has information leading him to believe that the allegations are true.' " (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 570 [quoting *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792].) Plaintiffs have alleged facts supporting their belief that the party that cut down their trees was Core, acting on PG&E's behalf. (See Complaint, ¶¶ 15, 16, 21 [allegations that Plaintiffs personally interacted with both Core and PG&E employees regarding the trees and knew Core to be performing tree management work on behalf of PG&E].) Their information and belief allegation is not an admission that they have no idea whether it was Core who allegedly cut down their trees without permission.

The motion is denied as to the treble damages requests.

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: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004285

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ANDRES PEREZ vs. DEFENDANT: COUNTY OF MARIN, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants' demurrer to the first amended complaint is **OVERRULED**.

Background

This action arises out of a motor vehicle accident which occurred on March 27, 2024 in San Rafael. Plaintiff Andres Perez commenced this action on October 21, 2024 for motor vehicle negligence and general negligence against the County of Marin and Jose Felipe Suarez. In response to Defendants' demurrer, Plaintiff filed a first amended complaint on January 6, 2025. Defendants now demur to the first amended complaint.

The first cause of action for motor vehicle negligence alleges generally that both defendants operated the motor vehicle, employed the person who operated the vehicle in the course of their employment, owned the motor vehicle, entrusted the motor vehicle, were the agents/employees of the other defendants acting within the scope of their agency/employment, and are liable to Plaintiff. In the second cause of action for general negligence, Plaintiff alleges:

> Defendants, County of Marin, Jose Felipe Suarez, and DOES 1 through 100, inclusive, and each of them, negligently owned, operated, and maintained their motor vehicle so that the same did collide with a motor vehicle owned and operated by Plaintiff, Andres Perez, thereby causing Plaintiff to sustain major bodily injuries and property damage as a result of this accident.
>
> Plaintiff alleges that Govt. Code §§ 815.2 and 815.4 provide the statutory basis for suing Defendants, based on the negligent acts of its employee(s) and/or its independent contractors.

The Defendants, among other violations, violated California Vehicle Code § 21056, which provides that "section 21055 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section."

Under California Vehicle Code § 21056, vehicle code § 17004 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Moreover, California Vehicle Code § 17004 does not provide blanket immunity where
Defendants are in violation of Section 21056.

Specifically, at the time of the incident, Plaintiff and others were stopped at a red light with all lanes blocked. Despite this, Defendant Driver Jose Suarez's vehicle was traveling at a negligent and high rate of speed without due regard for the safety or conditions of the road thereby the Defendant was unable to stop for upcoming stopped traffic. Through Defendant Driver Jose Suarez's own admission, he was traveling at unsafe speed causing the collision.

Immunity

Vehicle Code section 17004 provides that "[a] public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call."

Defendants point to the Traffic Crash Report attached by Plaintiff to his Government Claim Form to argue that Deputy Suarez was responding to an emergency call. Defendants ask the court to take judicial notice of the Claim Form and the Traffic Crash Report pursuant to Evidence Code section 452, subdivision (h) ("[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy"). (RJN nos. 2 and 3.) "The court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim. ..." (*Gong* v. *City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1.) As for police reports, it is "improper for [a] court to take judicial notice of [a] police report and, a fortiori, its attachments." (*Petricka* v. *Department of Motor Vehicles* (2001) 89 Cal.App.4th 1341, fn. 1; see also *People* v. *Jones* (1997) 15 Cal.4th 119, 171, fn. 17, overruled on unrelated grounds in *People* v. *Hill* (1998) 17 Cal.4th 800, 823, fn. 1.) Even if the situation is different here because Plaintiff attached the Traffic Collision Report to his Claim Form, the court cannot take judicial notice of the *truth* of what is said in the report. "... '... Although the existence of a document may be judicially noticeable, the truth of statements contained in the document...*are not subject to judicial notice if those matters are reasonably disputable*.'" (*Unruh-Haxton* v. *Regents of University of California* (2008) 162 Cal.App.4th 343, 364, citations omitted.) Therefore, the court cannot

accept as true Deputy Suarez's statement that he was responding to a call for service with his lights and sirens on. While the court may be able to accept as true what Plaintiff said (as an admission of a party), his statement that he saw Deputy Suarez's vehicle approaching with emergency lights on does not establish as a matter of law that Deputy Suarez was "responding to an emergency call."

Defendants additionally cite Vehicle Code section 21055, which exempts authorized emergency vehicles from certain rules, but this provision also requires that the driver is responding to an emergency call. As already discussed, the court cannot determine as a matter of law that Deputy Suarez was responding to an emergency call.

Second Cause of Action

Defendants' argument that the County is immune because Deputy Suarez is immune fails. As already shown, the court cannot determine at this stage of the case that Deputy Suarez is immune. Even if the court could make that determination, Government Code section 815.2, subdivision (b) would not apply. Vehicle Code section 17001 provides that "[a] public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment." "...This is true even if the public employee is immune under section 17004. A public entity has immunity only as provided in section 17004.7." (*Moreno* v. *Quemuel* (2013) 219 Cal.App.4th 914, 919, citation omitted.) "...[S]ection 17001 'otherwise' provides for public entity liability. Vehicle Code section 17001, therefore, is cognizable under the exception of section 815.2, subdivision (b)." (*Brummett* v. *County of Sacramento* (1978) 21 Cal.3d 880, 885; see also *Silva* v. *Langford* (2022) 79 Cal.App.4th 710, 721.)

Defendants' reliance on Vehicle Code sections 21055 and 21056 fails for the same reason as already discussed. Even if the sections apply "[t]he cases defining this [due care] standard [set forth in section 21056] state that an exempt driver must observe that degree of care imposed by common law to immunize his public entity employer from liability under Vehicle Code section 17001. In *Torres v. City of Los Angeles* (1962) 58 Cal.App.2d 35, 47..., it was held that such driver, operating his vehicle in the line of duty, must nonetheless drive in such a manner as would not impose upon others an unreasonable risk of harm. The court said 'The question to be asked is what would a reasonable, prudent emergency driver do under all the circumstances, including that of emergency.'" (*Brummett, supra*, 21 Cal.3d at 886.)

Here, Plaintiff alleges that Deputy Suarez approached an intersection where the light was red and all lanes were blocked at a speed which was too fast for him to be able to stop. At the pleading stage this is sufficient to allege that he was driving in such a manner so as to impose upon others an unreasonable risk of harm.

Both Causes of Action

Defendants argue that Plaintiff has not alleged adequate facts. As to the first cause of action of the form complaint, the court in *People ex rel. Dept. of Transportation* v. *Superior Court* (1992) 5 Cal.App.4th 1480, 1486 explained:

> In some cases, merely checking a box on a Judicial Council form complaint will be sufficient. In other cases..., where specific allegations need be alleged, the form complaint is like a partially completed painting. It is up to the pleader to add the details that complete the picture. [In that situation,] [t]he form complaint...is no more immune to demurrer than any other complaint that fails to meet the essential pleading requirements to state a cause of action.

Other than the date and place of the accident required to be alleged in paragraph MV-1, only paragraph MV-2, subparagraph f, requires further allegations. Although Plaintiff fails to allege facts there, the remaining subparagraphs are sufficient. "A demurrer must dispose of an entire cause of action to be sustained." (*Fremont Indemnity Co.* v. *Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Further, it is clear from the allegations in the second cause of action that the basis for liability against Deputy Suarez is negligent driving and that the basis for liability against the County is as his employer.

As to the second cause of action, Plaintiff has alleged the details as to the manner in which the vehicle was operated. With respect to Defendants' argument that Plaintiff must provide details as to "what property was damaged" and "what 'major bodily injuries' Plaintiff sustained," Defendants improperly seek evidentiary facts rather than ultimate facts.

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 April, 2025 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: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0004594

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ALLISON FAUST vs. DEFENDANT: TEOBALDO SCHUJMAN, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant Teobaldo Schujman's ("Defendant") demurrer to Plaintiff Alison Faust's ("Plaintiff") complaint is **SUSTAINED with leave to amend** as to the Twelfth Cause of Action, sexual battery. (See *Gabriel v. Wells Fargo Bank, N.A.* (2010) 188 Cal.App.4th 547, 556 [that a cause of action is barred by collateral estoppel is grounds for a demurrer].) It is **OVERRULED** as to the Thirteenth Cause of Action.

BACKGROUND

This action arises out of the end of a long-term romantic relationship. Plaintiff alleges that she and Defendant were a couple from approximately December 2008 to 2023. (Complaint, ¶ 26.) During that period, they lived together and held each other out to the world as husband and wife, although they did not legally marry. (*Id.* at ¶¶ 23, 26, 36.) They have two children together. (*Id.* at ¶¶ 30, 45.)

Plaintiff asserts that in December 2008, she and Defendant "agreed to and did form a partnership to collect assets, including interests in real property, and operate the said partnership property for the benefit of the partnership." (Complaint, ¶ 10.) They allegedly further agreed to pool their resources and efforts, jointly and equally own the product of their labor in the form of the partnership, and use the partnership income and assets for their joint livelihood. (*Id.* at ¶ 11.) Using partnership assets, they acquired certain real properties in which Plaintiff asserts an interest. (*Id.* at ¶ 66.)

In 2022 or 2023, Defendant allegedly fathered a child with another woman. (Complaint, ¶¶ 29, 50.) The complaint asserts that Defendant subsequently told Plaintiff that all of their shared property actually belonged exclusively to him. (*Id.* at ¶ 50.)

Plaintiff alleges that throughout their relationship, Defendant had pressured her to have anal sex with him, and she refused on every single occasion. (Complaint, ¶ 218.) In late December 2021 or January 2022, after Plaintiff and Defendant's relationship had broken down and while Plaintiff was preparing to move out of the shared home, Defendant came home drunk in the middle of the night. (*Id.* at ¶¶ 217, 219-220.) Plaintiff, who had been sleeping separately from Defendant for at least six months by this time, was asleep in her room. (*Id.* at ¶ 221.) Defendant allegedly forced his way into the room and demanded anal sex, saying, "This is going to happen." (*Id.* at ¶ 222.) Plaintiff states that she resisted, saying, "Please no," and "Please don't do this, you know it is going to hurt me." (*Id.* at ¶ 223.) The complaint asserts that this culminated in Defendant committing forcible anal rape on Plaintiff while she begged him to stop. (*Id.* at ¶ 226.) Plaintiff states that she was internally injured from this assault, required medical care to assist in her recovery, and continues to experience associated medical complications today. (*Id.* at ¶¶ 227, 229-230.) Plaintiff further alleges that Defendant committed additional acts of domestic violence against her throughout their relationship, including within the past three years. (*Id.* at ¶¶ 237-240.)

Defendant now demurs to the Twelfth and Thirteenth Causes of Action only.

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.) In testing a pleading against a demurrer, the facts alleged in the pleading (including those in any exhibit attached to 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*, *supra*, 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

Twelfth Cause of Action – Sexual Battery (Civ. Code, § 1708.5)

The Domestic Violence Protection Act (Fam. Code, § 6200 *et seq.*, "DVPA") authorizes a judge to issue an order (a domestic violence restraining order, or "DVRO") to "prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a

resolution of the causes of the violence." (Fam. Code, §§ 6220, 6300, subd. (a).) For the order to issue, the court must find "reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300; *In re Marriage of D.S. and A.S.* (2023) 87 Cal.App.5th 926, 933-934.) "Abuse in this context includes physical abuse or injury and acts that 'destroy[] the mental or emotional calm of the other party.'" (*In re Marriage of Reichental* (2021) 73 Cal.App.5th 396, 404 [quoting *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497]; see also Fam. Code, § 6203.)

On July 11, 2023, Plaintiff filed a Request for Domestic Violence Restraining Order under the DVPA seeking protection against Defendant (the "DVRO Request"). (Defendant's RJN,[1] Ex. B.) In the section of the DVRO Request reserved for describing the alleged abuse, she referred to "an anal rape incident back in January 2022 when [she] was about to leave him for the first time that caused [her] to eventually need corrective surgery[.]" (*Id.* at § 5f.) On August 7, 2023, after a three-day hearing on the DVRO Request, the Honorable Judge Sheila Lichtblau issued a Restraining Order After Hearing protecting Plaintiff from Defendant until midnight on February 7, 2024 (the "Order"). (RJN, Ex. F.)

Defendant argues that as a result of the DVRO proceeding, Plaintiff is collaterally estopped from relitigating the issue of whether the anal rape incident – the sole basis for her sexual battery cause of action – occurred, which requires that the sexual battery claim be dismissed. "Collateral estoppel, or issue preclusion,[2] 'precludes relitigation of issues argued and decided in prior proceedings.'" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) It applies "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825) "Even assuming all [of these] threshold requirements are satisfied, however, [the] analysis is not at an end." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.) The court "must also consider whether application of collateral estoppel in a particular case will advance the public policies which underlie the doctrine." (*Younan v. Caruso* (1996) 51 Cal.App.4th 401, 407; *Lucido, supra,* 51 Cal.3d 335, 342-343.) That a claim is barred by collateral estoppel is a proper ground for demurrer. (See *Gabriel, supra,* 188 Cal.App.4th 547, 556.)

Final Adjudication

For issue preclusion purposes, " 'any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect' " is considered "final." (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 936 [quoting Rest.2d Judgments, § 13].) Accordingly, this requirement can be satisfied even where no judgment finally disposing of a case has issued. (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1564.) A prior adjudication "may be deemed 'sufficiently firm' to be accorded preclusive

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[1] Defendant's requests for judicial notice, all of which are unopposed, are all granted. (Evid. Code, § 452, subd. (d); see also *Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 210, fn. 3 [granting unopposed request for judicial notice of transcript of court hearing under that provision]; *In re B.D.* (2019) 35 Cal.App.5th 803, 818, fn. 8.) This does not mean that the Court accepts as true any person's assertions of fact that are reflected in the court transcripts it judicially notices. The truth of the statements in the transcripts, as opposed to their existence, is not subject to judicial notice. (See *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22.)

[2] At various points in her brief, Plaintiff confuses collateral estoppel/issue preclusion with claim preclusion. (See, e.g., Opposition, p. 1, fn. 1; p. 4; p. 5.) These doctrines are different and have different elements. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.)

effect based on the following factors: (1) whether the decision was not avowedly tentative; (2) whether the parties were fully heard; (3) whether the court supported its decision with a reasoned opinion; and (4) whether the decision was subject to an appeal." (*Id.* at p. 1565.)

The Court's order in the DVRO proceeding was not "avowedly tentative[.]" (*Border Business Park, supra*, 142 Cal.App.4th 1538, 1565; see also RJN, Ex. F [Order].) As discussed below, Plaintiff does not argue or offer evidence that she was prevented from presenting her case as to the rape incident during the DVRO proceeding. The Court issued a "six-month peaceful contact order" and provided a detailed explanation for its decision, specifically including the reasoning for its determination as to the rape incident, from the bench. (RJN, Ex. E, 110:21-116:8.) The Court's order, like all orders granting or denying a request for a DVRO, was appealable. (*Rivera v. Hillard* (2023) 89 Cal.App.5th 964, 974.) This element is satisfied.

Identical Issue

This requirement "addresses whether 'identical factual allegations' are at stake in the two proceedings, not whether the ultimate issues . . . are the same." (*Lucido, supra,* 51 Cal.3d 335, 342 [quoting *People v. Sims* (1982) 32 Cal.3d 468, 485].) Satisfying this element "does not require identity of legal theories or causes of action. If it did, there would be no end to litigation for injuries arising out of the same facts, as long as a party could offer another legal theory by which the same issue might be differently decided." (*Evans v. Celotex Corp.* (1987) 194 Cal.App.3d 741, 746-747.)

In the DVRO proceeding, Plaintiff submitted the rape incident as a "past act . . . of abuse" justifying the issuance of a domestic violence restraining order. (RJN, Ex. B, § 5f; Fam. Code, § 6300.) In the instant proceeding, the same incident forms the basis for her sexual battery cause of action. (Complaint, ¶¶ 216-233.) Whether the rape incident occurred is accordingly at issue in both proceedings. The "identical issue" requirement is satisfied.

Actually Litigated

" ' "When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated. . . . A determination may be based on a failure of pleading or of proof as well as on the sustaining of the burden of proof." ' " (*Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 400-401 [quoting *Barker v. Hull* (1987) 191 Cal.App.3d 221, 226].) "For purposes of issue preclusion, . . . an 'issue' includes any legal theory or factual matter which *could have been* asserted in support of or in opposition to the issue which was litigated." (*Border Business Park, supra*, 142 Cal.App.4th 1538, 1555-1556 [emphasis added].) "[T]his element of issue preclusion requires only ' "the *opportunity to litigate* . . . not [that] the litigant availed himself or herself of the opportunity." ' " (*People v. Curiel* (2023) 15 Cal.5th 433, 452 [emphasis in original] [quoting *Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 869]; accord *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1179.) To prove that an issue was actually litigated, the party arguing collateral estoppel must show that evidence as to that issue was not restricted in the prior proceeding, but "need not establish that any particular type of evidence, such as oral testimony, was presented." (*Barker, supra*, 191 Cal.App.3d 221, 226.)

The parties agree that Plaintiff did not mention the alleged rape during her testimony in the DVRO proceeding, despite pleading it as an instance of abuse justifying relief in her DVRO

Request. (Memorandum, p. 3; Opposition, pp. 1-2; RJN, Ex. B, § 5f.) This does not mean the issue of whether the rape occurred was not litigated. Defendant plainly litigated it. Defendant's counsel elicited testimony from him regarding alternative causes of the injuries Plaintiff alleged she obtained from the rape (RJN, Ex. D, 84:17-86:11); whether Defendant had any recollection of Plaintiff accusing him of rape or visiting a doctor for treatment of the alleged injuries around the time of the incident (*id.* at 86:16-26); that after the alleged rape occurred, Plaintiff moved back in with Defendant in the hopes of making the relationship work (*id.* at 87:7-17); that Plaintiff had never accused Defendant of rape or any form of sexual assault between the time the alleged rape occurred and the time she filed the DVRO Request, and that Defendant never assaulted her in any way (*id.* at 88:4-10). In closing arguments, Defendant's counsel argued that Plaintiff had not presented any evidence or argument as to the rape beyond the very brief statement in the DVRO Request itself. (RJN Ex. E, 102:19-104:10.) That Plaintiff elected not to present any testimony regarding the rape incident, an allegation plainly within the scope of the proceeding given the legal requirements for issuance of a DVRO and the fact that Plaintiff herself asserted the alleged rape as a basis for issuance of a DVRO in her case, does not mean the issue was not litigated.

During the hearing, Plaintiff's counsel stated, "I can't say too much more about the anal rape, Your Honor. That's subject to an ongoing criminal investigation that my client launched on June 30th. I can say I have been contacted several times by the detectives, but I can't say any more about that." (RJN, Ex. E, 94:25-95:4.) The Court considers whether this means the evidence as to the rape incident was "restricted" in the DVRO proceeding as a result of the ongoing police investigation. (See *Barker*, *supra*, 191 Cal.App.3d 221, 226.)

Plaintiff has not offered any argument or evidence to show that during the DVRO proceeding, she was restricted from presenting evidence that the rape incident occurred, due to an ongoing criminal investigation or for any other reason. The Court cannot conclude that there was some impediment to her presenting evidence on this issue just because her attorney suggested as much during the hearing. Also, assuming for purposes of argument the truth of counsel's statement that Plaintiff launched a criminal investigation into the rape incident on June 30, then the investigation was ongoing at the time Plaintiff filed her DVRO Request on July 11, 2023. In the DVRO Request, she stated under penalty of perjury that the rape occurred. (RJN, Ex. B, §§ 5f, 32.) It does not make sense that the existence of an ongoing criminal investigation would prevent Plaintiff from offering evidence about this incident in a court proceeding, but would not prevent her from making sworn statements describing the same incident in the legal document that effectively serves as the complaint for purposes of that court proceeding. (See RJN, Ex. B, § 32.) If she could talk about it in the DVRO Request, the Court sees no reason why she could not talk about it in court.

Necessarily Decided

At the DVRO proceeding, after the parties submitted the case for decision, the Court stated, "What I'm going to do is issue a six-month peaceful contact order. And I'll tell you why. . . . [I]t seems to me that many of the claims that have been presented are exaggerated or there's insufficient evidence to support them. . . . There was really zero testimony on anal rape. He says it didn't happen. . . . [I]t doesn't come close to meeting the burden; in fact, it's just not there." (RJN, Ex. E, 110:21-111:2, 111:9-12.) The "burden" the Court referred to here was Plaintiff's

burden to present "reasonable proof" that the rape incident happened. (Fam. Code, § 6300.) The Court's statements amount to a determination that the rape incident did not occur.

Plaintiff's attempt to draw a distinction between a finding that Plaintiff did not meet her burden as to the rape issue and a finding that the rape incident did not occur (Opposition, p. 3) is unconvincing. A judge's task of factfinding, in every case, consists of determining whether a party has met its burden to show that the fact exists. When a judge makes a finding that, for example, "Defendant did not rape Plaintiff," this is shorthand for, "Based on the evidence presented, Plaintiff has not satisfied her burden of proving that Defendant raped her." The same is true in reverse. When a judge states that a sexual assault plaintiff has not satisfied her burden of proving that the defendant sexually assaulted her, the judge is saying that for all relevant legal purposes, the alleged sexual assault did not happen. (See *Barker*, *supra*, 191 Cal.App.3d 221, 226 [quoting Rest.2d Judgments, § 27, com. d, p. 255] [" 'A determination may be based on a failure of pleading or of proof as well as on the sustaining of the burden of proof.' "].)

Moreover, this issue was *necessarily* decided. This requirement "has been interpreted to mean that the issue was not ' "entirely unnecessary" ' to the judgment in the prior proceeding." (*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 482 [quoting *Lucido*, *supra*, 51 Cal. 3d 335, 342].) In the DVRO proceeding, Plaintiff placed the question of whether Defendant had committed a "past act . . . of abuse" against her (Fam. Code, § 6300) at issue[3] and cited the rape incident as a qualifying past act of abuse. Under these circumstances, it was far from gratuitous for the Court to make a determination as to whether the rape incident occurred.

Identity of Parties

Plaintiff was a party to the DVRO proceeding. (See *Zevnik, supra,* 159 Cal.App.4th 76, 82; RJN, Ex. B § 1; *id.* at Ex. F, § 1.) This requirement is satisfied.

Public Policy Factors

The public policies underlying the doctrine of collateral estoppel are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigants[.]" (*Lucido*, *supra*, 51 Cal.3d 335, 343.)

Lucido's reference to "preservation of the integrity of the judicial system" refers to the fact that "[p]ublic confidence in the integrity of the judicial system is threatened whenever two tribunals render inconsistent verdicts." (*Lucido*, *supra*, 51 Cal.3d 335, 347.) In the DVRO proceeding, Plaintiff requested relief based in part on an allegation that Defendant committed an act of anal rape against her. The Court determined that the incident did not occur and did not award Plaintiff relief based on that incident. Plaintiff's sexual battery cause of action in this case asks a different judge of the same court to hold that the very same rape incident occurred. Such inconsistent holdings would threaten public confidence in the judicial system.

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[3] Plaintiff's contention that her DVRO Request only sought to "restrain conduct that disturbs [her] future peace" is not true. (Memorandum, p. 2.) The DVRO Request expressly asked for an order prohibiting Defendant from "assault[ing]" her, "sexually or otherwise[,]" among numerous other things. (RJN, Ex. B, § 10.) Also, the question of abuse is invariably presented on a petition for a DVRO regardless of what kind of order the petitioner requests, because a DVRO issues based on reasonable proof of past abuse. (Fam. Code, § 6300.)

Collateral estoppel promotes judicial economy by precluding relitigation of already-decided issues and thus lessening the burden on the courts. (See *Jackson v. City of Sacramento* (1981) 117 Cal.App.3d 596, 601.) In the DVRO proceeding, Plaintiff had the chance to offer evidence that the rape incident occurred. The issue was squarely presented by Plaintiff's own pleading. By all indications, Plaintiff and her counsel simply abandoned the issue, inexplicably neglecting to offer any evidence in support of her most serious allegation of abuse. Plaintiff did not take advantage of her first opportunity to prove up this allegation, and the Court does not see why it should have to permit her another chance now.

The final consideration, protection from harassment by vexatious litigants, assesses whether applying the doctrine would prevent the party invoking it "from being subjected to consecutive proceedings raising the same factual allegations." (*Lucido*, *supra*, 51 Cal.3d 335, 351.) Again, Plaintiff already accused Defendant of anal rape before a court of law. She then made no attempt to substantiate that allegation even as Defendant vigorously defended against it. The Court does not see why Defendant should be compelled to address the same allegation again.

The Court concludes that the doctrine of collateral estoppel bars Plaintiff's sexual battery claim. The demurrer to the Twelfth Cause of Action is sustained with leave to amend.

Plaintiff's domestic violence claim is based in part on the alleged rape incident. (See Complaint, ¶ 237.) To be clear, the Court's determination that collateral estoppel precludes Plaintiff from relitigating whether the rape occurred and thus precludes her sexual battery claim does not compel the Court to sustain Defendant's demurrer to the domestic violence claim to the extent that claim rests on the rape incident. A court cannot sustain a demurrer "to the extent" a claim does anything, because a court cannot sustain a demurrer as to a portion of a cause of action. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.) That the domestic violence claim is based both on the rape allegation and on other conduct means the Court's ruling that Plaintiff is collaterally estopped from raising the rape issue cannot address the entire Thirteenth Cause of Action. Accordingly, Defendant cannot remove the rape incident as a basis for the domestic violence cause of action through a demurrer based on collateral estoppel, even if he could achieve the same result by arguing collateral estoppel in a different procedural context.

Thirteenth Cause of Action – Domestic Violence (Civ. Code, § 1708.6)

Defendant makes the same collateral estoppel argument as to Plaintiff's domestic violence claim. This cause of action is based on a much greater variety of conduct than the Twelfth Cause of Action. In addition to the rape incident, Plaintiff alleges that Defendant domestically abused her in the following ways:

- Raging and screaming at her irrationally and without prompting
- Grabbing her by the throat, hitting, punching, and pushing her
- Punching walls and furniture while screaming at her
- Throwing things at her
- Grabbing her crotch and buttocks
- Pushing her against walls
- Banging into her as he passed her

- Making threats to kill her and put her in a cardboard box; relatedly, sending her images of a paper box and references to dead rats to remind her of his threats to kill her

(Complaint, ¶¶ 237-240.)

Defendant argues that in the DVRO proceeding, whether the domestic abuse Plaintiff alleges in her complaint occurred was litigated and decided adversely to Plaintiff. He points out that in the DVRO Request, Petitioner described numerous incidents of alleged domestic abuse other than the rape incident, some of which are similar to those alleged in the complaint.

The DVRO proceeding was in August 2023. Only instances of domestic abuse taking place prior to the last day of the hearing could possibly have been litigated in that proceeding, because any other incidents had not happened yet. The complaint alleges that certain acts of domestic abuse occurred after Defendant threw Plaintiff out of their shared home "at the end of 2023" (Complaint, ¶¶ 51, 239) and "into 2024" (*id.* at ¶ 240). Accepting Plaintiff's allegations as true, as the Court must at the demurrer stage, these acts postdated the DVRO proceeding and necessarily could not have been litigated in that proceeding.

Other than those incidents and the rape incident, the complaint does not specify when the alleged episodes of domestic violence occurred beyond saying they took place throughout the parties' relationship, including within the three years preceding Plaintiff's filing the complaint in November 2024. (*Id.* at ¶ 236.) This allegation is consistent with one or more of the remaining incidents occurring during the 15-month period between issuance of the DVRO and Plaintiff's filing the complaint, and any incident that occurred within that time range necessarily could not have been litigated during the DVRO proceeding.

The Court cannot conclude that Plaintiff's domestic violence cause of action is based exclusively on the same incidents of domestic violence that were described in the DVRO Request and litigated in that proceeding. As a result, it cannot conclude that the domestic violence cause of action, in full, rests on "factual allegations" that are "identical" to ones made in the DVRO proceeding. Relatedly, it cannot conclude that all of the incidents alleged in the complaint either actually were or could have been litigated in the DVRO proceeding. Defendant may or may not be able to rely on collateral estoppel to remove certain alleged acts of domestic violence predating the DVRO proceeding as bases for Plaintiff's domestic violence cause of action, but the rule that a court cannot sustain a demurrer to a portion of a cause of action prevents him from doing so via a demurrer.

The demurrer to this cause of action is overruled because the "identical issue" and "actually litigated" requirements of collateral estoppel are not satisfied.

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 April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/22/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0004707

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

IN THE MATTER OF: STATE FARM AUTOMOBILE MUTUAL INSURANCE COMPANY	

NATURE OF PROCEEDINGS: MOTION – EXAMINATION

RULING

Appearances required.

The Court finds good cause to grant the motion of Petitioner State Farm Mutual Automobile Insurance Company ("State Farm") to compel Respondent John Bui to submit to a physical examination.

The Court determines it has both subject matter and personal jurisdiction over Respondent. (See Ins. Code, § 11580; see also *Miranda v. 21st Century Ins. Co.* (2004) 117Cal.App.4th 913, 927.) Based on the attachments and representations of counsel, there is good cause to have an examination of Respondent's shoulder which was not contemplated in the initial examination and outside the scope of expertise of the first doctor. (*Shapira v. Superior Court* (1990) 224 Cal.App.3d 1249, 1255.)

The parties shall appear at the hearing and be prepared to address scheduling and any remaining issues.

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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