

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0004613

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      KEVIN FUQUA

vs.

DEFENDANT:      CDCR

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NATURE OF PROCEEDINGS: MOTION – OTHER: REQUESTING THE PURPOSE OF CASE REASSIGNMENT.

**RULING**

This matter was removed to federal court, the United States District Court for the Northern District of California on February 26, 2025, case number is 3:25-cv-0240. While the matter has been removed, the case remains active before this court, pending final notice of resolution of the federal case.

On December 29, 2029, this case was reassigned to this department, Hon. Mark Talamantes presiding, from Department E, Hon. Andrew Sweet presiding. Plaintiff Kevin Fuqua filed a motion to request clarification why the case switched departments.

The notice of reassignment does not “reassign” the case from federal court back to Marin. The reassignment simply transfers the case to a different judge within the Superior Court, County of Marin, while the main case proceeds in federal court.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party’s absence.***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0004949

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      BELVEDERE LAGOON  
LLC

vs.

DEFENDANT: HACHMAN  
CONSTRUCTION INC., ET AL

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NATURE OF PROCEEDINGS: MOTION –SUMMARY JUDGMENT

**RULING**

Plaintiff and Cross-Defendant Belvedere Lagoon, LLC (“Plaintiff”) and Cross-Defendants John and Charlotte Doyle’s motion for summary judgment (alternatively, summary adjudication) as to Defendant and Cross-Complainant Hachman Construction, Inc.’s (“HCI”) cross-complaint<sup>1</sup> is DENIED. Plaintiff’s motion for summary adjudication of its own Fifth Cause of Action for disgorgement is likewise DENIED.

**BACKGROUND**

This is a construction defect case. Plaintiff owns a single-family home at 54 Peninsula Boulevard in Belvedere. (Complaint, ¶ 1.) Defendant explains that the property was made available for rental on AirBnB.

Plaintiff hired HCI as general contractor for a remodel in 2021. (*Id.* at ¶¶ 13, 16.) Plaintiff and HCI allegedly memorialized their business arrangement through a two-paragraph contract. (*Id.* at ¶¶ 16, 18-19.) Plaintiff alleges that the contract’s terms were illegal and that HCI ultimately abandoned the project, leaving it substantially incomplete. (*Id.* at ¶¶ 20, 28.) The complaint names as defendants HCI and its principal, Timothy Hachman, plus the project’s subcontractors as Does. It asserts causes of action for restitution, breach of contract (six counts), disgorgement, and fraud.

HCI filed a cross-complaint against Plaintiff and Jon and Charlotte Doyle. The cross-complaint describes the Doyles as the functional owners of the subject property as Plaintiff’s sole principals. (Cross-Complaint, ¶¶ 1, 3, 18.) According to HCI, the Doyles were difficult clients. The cross-complaint describes them as being indecisive and unwilling to accommodate the reasonable needs of the professionals working on their property. (*Id.* at ¶¶ 1-2, 4-7, 12, 16.) HCI alleges that it did not abandon the project – instead, the Doyles fired HCI and demanded that the workers leave their property when it was still in a state of active construction. (*Id.* at ¶ 19.) HCI asserts causes of action for breach of contract; breach of the implied covenant of good faith and fair dealing; account stated; quantum meruit; and abandonment of contract by excessive owner changes.

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<sup>1</sup> The parties’ requests for judicial notice are all granted. (Evid. Code, § 452, subd. (d).)

The Court now considers Plaintiff and the Doyles' (together, "Movants") motion for summary judgment (or, alternatively, summary adjudication) on HCI's cross-complaint. Simultaneously, it considers Plaintiff's motion for summary adjudication of the disgorgement claim in Plaintiff's complaint.

## LEGAL STANDARD

California Business & Professions Code § 7031 imposes intentionally harsh penalties for unlicensed construction work. Under the statute, an unlicensed contractor who performs his/her trade may not recover any compensation (§7031(a)) for that work and must disgorge all amounts paid (§7031(b)). Plaintiff asks the court to consider an all-or-nothing approach when applying the statute, and whether the statute also includes punishing a licensed contractor who supplied an unlicensed contractor.

As applied here, strict enforcement of the statute would allow the Plaintiffs to reap the benefits of the contractor Defendant's skill and labor, while seeking a refund through disgorgement of \$1,582,898.36 in payments made for that labor and materials built into the property, and also to excuse outstanding bills owed for alleged services rendered by the Defendant in the amount of \$419,895.62.

This harsh result may be permissible when the court considers the important public policy purpose behind B&P 7031. One of the primary purposes of this law is to protect the public. See, B&P 7006.6. B&P §7031(b) does not require the plaintiff seeking disgorgement to have suffered any injury. That is because "[s]ection 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation [or requiring them to disgorge compensation already paid]." *Eisenberg Village vs. Suffolk Construction Co., Inc.* (2020) 53 Cal.App.5th 1201, 1207; citing *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423. The issue here is whether law also includes the Defendant, a *licensed contractor*, requiring disgorge profits it earned, as well as those payments made to the *unlicensed contractors* it hired.

Any party may move for summary judgment. (Code of Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th 826, 843.) Similarly, a party may move for summary adjudication as to a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) "A motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th 826, 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar, supra*, 25 Cal.4th 826, 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar, supra*, 25 Cal.4th 826, 851.) When the moving party is the plaintiff, the initial burden entails "prov[ing] each element of the cause of action entitling the party to judgment[.]" (Code Civ. Proc., s 437c, subd. (p)(1).) When the moving party is the defendant, the initial burden entails showing "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Once the moving party has met its initial burden, the burden shifts to the opposing party to "show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subds. (p)(1)-(2).) "There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of

the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar, supra*, 25 Cal.4th 826, 845.)

## DISCUSSION

### A. Evidentiary Objections

HCI’s two evidentiary objections are overruled. On this record, Plaintiff did not meet their initial burden to demonstrate that in light of the undisputed facts, they are entitled to the relief sought as a matter of law. As a result, the Court did not have occasion to reach HCI’s opposing evidence and will not rule on Plaintiff’s objections to the same. (See Code Civ. Proc., § 437c, subd. (q).)

### B. Movants’ Separate Statement

HCI takes issue with certain procedural deficiencies in Movants’ notice of motion and separate statement. (See Cal. Rules of Court, rule 3.1350.) Movants’ separate statement is technically noncompliant for failure to meet formatting requirements. (See Cal. Rules of Court, rule 3.1350(b), (d)(1), (d)(3), (h).) (HCI’s other procedural objections are without merit.)

A court has discretion to deny a motion for summary judgment or adjudication based on a noncompliant separate statement. (Code Civ. Proc., § 437c, subd. (b)(1).) This does not mean it is proper to deny such a motion based on *any* deviation from perfect compliance with the rules. A party’s failure to comply with the portions of Rule 3.1350 pertaining to separate statements may obscure the nature of the relief sought or the evidence offered in support of such relief. This creates due process issues and presents appropriate circumstances for a denial based on procedural defects. (See *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [“The due process aspect of the separate statement requirement is self-evident – to inform the opposing party of the evidence to be disputed to defeat the motion.”] [superseded by statute in unrelated part as stated in *Certain Underwriters at Lloyds of London v. Superior Court* (1997) 56 Cal.App.4th 952, 957, fn. 4]; see also *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316 [“Where a remedy as drastic as summary judgment is involved, due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail.”].) However, where the moving papers sufficiently apprise all parties and the court of the scope of the relief sought and the evidence in support of that relief, denying the motion solely because it falls short of perfect compliance is inappropriate. (See *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118 [trial court did not abuse discretion by declining to reject summary judgment motion based on de minimis formatting error in separate statement].) The scope of the relief sought here, and the evidence offered to support such relief, are not complicated and are made clear in the notice of motion and separate statement.

Although the court weighed denying the motions on procedural grounds, the Court will reach the merits of the motions because it appreciates the amount of time and energy put into the papers by both parties.

### C. Merits

HCI was ultimately paid<sup>2</sup> \$1,582,896.38 in connection with Movants’ home improvement project. (RSS No. 2.) It is undisputed that least some of that sum was attributable to work performed by unlicensed subcontractors HCI hired. (RSS Nos. 3, 5-8; Doyle Dec., ¶ 15-17.) Movants argue that

<sup>2</sup> HCI disputes whether Plaintiff, as opposed to the Doyles, is entitled to any relief, arguing that it was the Doyles that paid HCI. In light of the Court’s conclusion that neither Plaintiff nor the Doyles are entitled to summary judgment or adjudication because their interpretation of the law is unsupported by authority, the Court will not address the parties’ arguments on this issue.

under Business and Professions Code, section 7031 (“Section 7031”), HCI’s use of unlicensed subcontractors means HCI is not entitled to *any* compensation for the project at 54 Peninsula Boulevard.

On this basis alone, Movants seek summary judgment as to HCI’s entire cross-complaint, or, alternatively, summary adjudication as to every cause of action within that pleading. Functionally, there is no difference between these two requests for relief. Movants are mounting a single argument they contend supports summary adjudication in their favor on each of the cross-complaint’s causes of action and thus supports summary judgment on the cross-complaint as a whole. (See Notice of Motion, Items 1-2; Memorandum, p. 2 & fn. 1.) Plaintiff seeks summary adjudication in its favor on its Fifth Cause of Action for disgorgement based solely on the same argument regarding Section 7031.

#### ***D. Statutory Scheme***

“To protect the public, the Contractors’ State License Law (‘CSLL’; Bus. & Prof. Code, § 7000 *et seq.*) imposes strict and harsh penalties for a contractor’s failure to maintain proper licensure. Among other things, the CSLL states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for ‘the performance of any act or contract’ unless he or she was duly licensed ‘*at all times* during the performance of that *act or contract.*’ ” (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 418 [quoting Bus. & Prof. Code, § 7031, subd. (a) (hereafter “Section 7031(a)”) [italics supplied by *MW Erectors* court].) That a portion of the work contracted for was performed with all required licensures in place offers no relief. “[I]f, *at any time* during performance of an agreement for contractor services, [the contractor] was not duly licensed,” Section 7031(a) renders him or her “ineligible to recover *any* compensation” under the contract. (*MW Erectors, supra*, 36 Cal.4th 412, 425 [emphasis in original]; *id.* at p. 426 [emphasizing “all-or-nothing” nature of the statute]; *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896 [“[I]f a contractor is unlicensed for any period of time while delivering construction services, the contractor forfeits *all* compensation for the work, not merely compensation for the period when the contractor was unlicensed.”] [emphasis in original]; accord *Goldstein v. Barak Construction* (2008) 164 Cal.App.4th 845, 855.)

Section 7031(a) “has been referred to as the ‘shield’ of the CSLL.” (*Loranger v. Jones* (2010) 184 Cal.App.4th 847, 854.) The statute also contains a “‘sword’ ” in Business and Professions Code, section 7031, subdivision (b) (“Section 7031(b)”). (*Ibid.* [quoting *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 518].) That provision “authorizes a person who utilizes the services of an unlicensed contractor to bring an action to recover *all* compensation paid to the contractor for his/her work.” (*Ibid.* [emphasis in original].) Section 7031(b) is unforgiving in the same manner as Section 7031(a): As a matter of law, it is impermissible to divide a contractor’s work into licensed and unlicensed portions and allow the customer to recover only those amounts he or she paid for the unlicensed work. (*Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521.) “[S]ection 7031(b) does not permit an offset for work performed after a license is obtained[.]” (*Alatrisme v. Cesar’s Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 672; accord *Goldstein, supra*, 164 Cal.App.4th 845, 855.) This interpretation reflects legislative intent that Sections 7031(a) and 7031(b) be “mirror image[s]” of each other “to ensure that the rules pertaining to an unlicensed contractor’s compensation rights were consistent regardless whether the contractor is suing or the contractor is being sued.” (*Alatrisme, supra*, 183 Cal.App.4th 656, 672, 669-670.)

#### **E. Disgorgement of Profits by a Licensed Contractor for Work Performed by his Unlicensed Contractor.**

In 2022, the Sixth District considered the impact of Section 7031 on construction contracts involving a licensed general contractor and an unlicensed subcontractor. A married couple hired TWA Construction, Inc. (“General Contractor”), a licensed general contractor, to build a home on their land.

(*Kim v. TWA Construction, Inc.* (2022) 78 Cal.App.5th 808, 817.) As part of that project, they needed a eucalyptus tree removed. (*Ibid.*) General Contractor hired Subcontractor using the Craigslist social media site to remove the eucalyptus. (*Id.* at p. 818.) Subcontractor was not licensed. (*Id.* at p. 825.) Subcontractor began removing the eucalyptus, but stopped work when a neighbor called the police, asserting that the tree was on her property. (*Id.* at p. 818.) Ultimately, the only work performed for the married couple under their contract with General Contractor was some unspecified work related to “erosion control,” which was performed by General Contractor’s owner personally, and the aborted tree removal performed by Subcontractor. (*Ibid.*) The couple paid the General Contractor \$16,000, seeking the \$10,000 of that amount attributed to the unlicensed Subcontractor’s tree-trimming work. (*Id.* at p. 821.)

Litigation ensued when the neighbor sued for trespass, and General Contractor ultimately sued the landowners for breach of contract. (*Kim, supra*, 78 Cal.App.5th 808, 819.) Prior to trial, the court issued a ruling with the effect of prohibiting General Contractor “from presenting a claim for money owed for the tree removal work performed by an unlicensed subcontractor” and permitting the landowners “to claim the money paid for the unlicensed [sub]contractor should be disgorged[.]” (*Id.* at p. 820.) This was based on a holding that Section 7031 applies where a licensed general contractor seeks compensation from a customer for services rendered by his unlicensed subcontractor. (*Ibid.*) Ultimately, a judgment issued ordering General Contractor to disgorge the \$10,000 the landowners had paid him for his unlicensed subcontractor’s services. (*Id.* at p. 821.)

On appeal to the Sixth District, the question presented was whether Section 7031(a) bars a licensed general contractor from maintaining an action against a client to recover amounts due to him for services performed by his unlicensed subcontractor. (*Kim, supra*, 78 Cal.App.5th 808, 825.) The Sixth District held that it does. (*Id.* at p. 831.) The appellate court construed the language of Section 7031(a) to render the statute applicable where the person who seeks to maintain an action to recover compensation for unlicensed work is not the same person who *actually* performed the unlicensed work, so long as the person seeking to maintain the action performed the unlicensed work “through others,” i.e., by hiring an unlicensed subcontractor to do it. (*Id.* at p. 828; see also Bus. & Prof. Code, § 7026 [“contractor,” for purposes of Section 7031, includes someone who provides specified services “by or through others”].)

The court further reasoned that this holding closed a loophole: “It is clear that an unlicensed subcontractor may not recover compensation for his work from either the owner or the general contractor. To nevertheless enable a contractor to recover compensation for the performance of unlicensed work, simply because the work was accomplished by hiring a subcontractor, would circumvent the purpose of section 7031” and be inconsistent with the statutory definition of “contractor.” (*Id.* at p. 829.)

Movants argue that because at least one of the subcontractors HCI hired was unlicensed for at least some of the duration of that subcontractor’s performance, HCI is prohibited from recovering *any* compensation for *any* work HCI itself or any of its subcontractors, licensed or not, did on the project. Unlike in *Kim* where the amount at issue was \$10,000 owed to one unlicensed contractor, Movants seek disgorgement of not only the \$1,582,892.38 paid to HCI in connection with the project, but also \$419,896.00 for unpaid work and materials, \$35,590.50 of which was attributed to unlicensed work. (Opposition Memorandum, p. 10; see also p. 11) Movants argue that that any single subcontractor licensing violation is enough to disqualify HCI from receiving any compensation, whatsoever.

Movants do not contend that HCI itself was unlicensed at any point during its performance except in the sense that it rendered services through at least one unlicensed subcontractor.

Movants do not consider, that the *Kim* decision sought only sums that were directly attributable to that unlicensed work. (*Kim*, 78 Cal.App.5th 822-823, 825.) *Kim* establishes only that a licensed general contractor cannot recover compensation from a client for *an unlicensed subcontractor’s work*. Section

7031(a) and Section 7031(b) mirror each other (*Alatraste, supra*, 183 Cal.App.4th 656, 672, 669-670), so *Kim* is also authority for the idea that a licensed general contractor must disgorge to a client all funds paid for an unlicensed subcontractor's work. (See *Kim, supra*, 78 Cal.App.5th 808, 820, 831 [trial court's pretrial ruling, which permitted the landowners "to claim the money paid for the unlicensed [sub]contractor should be disgorged[,]” was not in error].)

*Kim* does not address the licensed general contractor's ability to recover compensation, or avoid disgorgement, for other work. The court is uncomfortable with allowing a Marin County property owner to reap the benefits of the labor and materials provided by a licensed professional, and cannot adopt the Movant's broad interpretation of *Kim*. Such a reading would be completely inequitable. A licensed general contractor does not stand in his unlicensed subcontractors' shoes for all purposes.

This idea is indispensable to Movants' argument because it triggers the applicability of other cases prohibiting apportionment where a single contractor performs both licensed and unlicensed work. (See, e.g., *Goldstein, supra*, 164 Cal.App.4th 845, 855.) The Court is not persuaded that *Kim* goes that far.

Movants have not presented any case addressing the kind of apportionment at issue here: apportionment between work performed by an unlicensed subcontractor and work performed by a separate professionally licensed contractor who performed those construction services under the building contract. The Court has found no instance of an appellate court interpreting § 7031 to mean that an undisputedly licensed contractor can lose all right to compensation for his own licensed work because of a defect in an unrelated professional's licensure.

#### **F. Work Orders and Changes Generate Compensable Work.**

The court also notes as an aside that this remodel at 54 Peninsula Road in Belvedere, became a challenge for the Defendant due to the alleged indecisive conduct by the Plaintiff's. According to the declarations submitted in opposition to the motion, the project began in 2022 and underwent at least three major design revisions, which were submitted to the Town of Belvedere by their design architect, Michael Heckman. (Declaration of Tim Hachman in Opposition). This indecision resulted in numerous starts and stops and restarts, and demolition, which came at a cost.

The Defendant reports that the project "grew and grew." Defendant sent 19 invoices to the property owners, spanning over 2 years totaling \$2,002,792. Of that sum, the Plaintiff's paid invoices #1-17 totaling \$1,582,896.38. The outstanding amount owed is alleged to be \$419,895.62. The project was stopped in 2024, when Defendant alleges that Plaintiffs began considering the addition of an ADU to the project, hiring a new architect Cedric Barringer.

The payment amounts attributable to the Defendant and to the licensed and unlicensed subcontractors, if any, for and because of all this work remains a disputed issue of fact. Accordingly, the motions are denied.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 04/24/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0007150

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      ANDREA THORNTON

vs.

DEFENDANT:      JOHN CARPINE, ET AL

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) MOTION - STRIKE

**RULING**

There are two motions on calendar. Defendants John Carpine (“Carpine”) and Triangulum, LLC’s (“Triangulum”; together, “Defendants”) demurrer to Plaintiff Andrea Thornton’s (“Plaintiff”) First Amended Complaint (“FAC”) is overruled. Defendants’ motion to strike is denied.

**BACKGROUND**

This case concerns a 2023 vehicle collision in Mill Valley. Plaintiff alleges that she was driving her Volkswagen Tiguan when another driver, Carpine, struck her with a Ford Expedition. (FAC, ¶ 1.) She alleges that Triangulum is the owner of the Ford Expedition and Carpine’s employer, and that Carpine was acting in the course and within the scope of his employment at the time of the accident. (*Id.* at ¶¶ 3, 11.) According to the FAC, the intersection where the accident occurred is “controlled by a clearly visible stop sign for traffic traveling on Miller Avenue.” (*Id.* at ¶ 13.) Carpine allegedly did not brake or yield at the stop sign. (*Id.* at ¶¶ 13-14.) Plaintiff alleges that he did this intentionally, in “disregard of the known presence of other vehicles,” and “with substantial certainty that his intentional act of driving a large SUV into the occupied intersection without stopping would result in harmful and offensive contact with Plaintiff’s vehicle.” (*Id.* at ¶ 22.) The collision flipped Plaintiff’s car, trapping her inside and allegedly causing serious physical and psychological injuries. (*Id.* at ¶ 15.) Plaintiff’s FAC asserts causes of action for battery; negligence; negligence per se; wanton and reckless misconduct; negligent hiring, supervision, and retention; “imputed liability”; and “vicarious liability.”

Defendants previously demurred to the battery and wanton and reckless misconduct claims as pleaded in Plaintiff’s original complaint. The Court sustained that demurrer with leave to amend as to the battery claim only, holding that Plaintiff had not alleged the required element of intent. (See Jan. 22, 2026, Order, p. 3.) The Court ruled that to state a cause of action for battery, Plaintiff needed to plead “that Carpine hit her with his car with the intent that such contact be harmful or offensive.”

The Court now considers Defendants’ demurrer to the FAC’s battery cause of action, which Plaintiff asserts only against Carpine and Does. Concurrently, it considers Defendants’ motion to strike punitive damages allegations from the FAC.

**DEMURRER****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**

“The essential elements of a cause of action for battery are: (1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching.” (*So v. Shin* (2013) 212 Cal.App.4th 652, 669; accord *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 890; CACI No. 1300.) In California, a cause of action for battery requires a plaintiff to show that “defendant touched plaintiff . . . with the intent to harm or offend plaintiff[.]” (*So, supra*, 212 Cal.App.4th 652, 669 (Second District) [emphasis added]; accord *Carlsen, supra*, 227 Cal.App.4th 879, 890 [citing *So*]; see also CACI No. 1300.) Defendants argue that Plaintiff has again failed to properly allege intent.

“In an action for civil battery, the element of intent is satisfied if the evidence shows defendant acted with a ‘willful disregard’ of the plaintiff's rights.” (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, 613 [quoting *Lopez v. Surchia* (1952) 112 Cal.App.2d 314, 318].) Plaintiff has alleged that Carpine intentionally failed to yield at a stop sign and proceeded into an occupied intersection when he was “substantial[ly] certain[.]” that this “would result in harmful and offensive contact” with Plaintiff. (FAC, ¶¶ 20-22.) In other words, he willfully disregarded the risk that his conduct would result in a harmful or offensive contact with Plaintiff. This alleges intent in the manner deemed sufficient in *Ashcraft*. This allegation is also consistent with the principle that people are presumed to intend the consequences that are substantially certain to result from their willful actions. (*Gomez v. Acquistapace* (1996) 50 Cal.App.4th 740, 746; see also CACI No. 1320 [defining “intent” for purposes of battery claim].)

Plaintiff has sufficiently pleaded intent and the demurrer is overruled.

## MOTION TO STRIKE

### 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, subs. (a)-(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc., § 437.) “When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend.” (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

### DISCUSSION

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 which, “assumed to be true[.]” support the position that “defendant has been guilty of oppression, fraud, or malice.” (See *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041; Civ. Code, § 3294, subd. (a).) “Oppression” refers to “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (Civ. Code, § 3294, subd. (c).) “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 scope of what Defendants are requesting stricken far exceeds the scope of their argument. Defendants characterize this as a “motion to strike punitive damages” (Memorandum, p. 2) and their sole argument is that Plaintiff has not alleged facts sufficient to support an award of punitive damages. If this argument has merit, it entitles Defendants to strike the *requests for punitive damages* from the pleading. It does not support striking the substantive allegations that support both Plaintiff’s requests for punitive damages and her causes of action.

The motion is DENIED as to Item Nos. 1-7 listed in the Notice of Motion on this basis. The Court proceeds to address Item No. 8, which is the only item consisting of a request for punitive damages.<sup>1</sup>

The bare fact that a plaintiff has stated a cause of action for some intentional tort does not, ipso facto and without reference to the details of the tort alleged, mean she has stated a claim for punitive damages. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.) But punitive damages are available in connection with an intentional tort committed under circumstances amounting to “oppression,” “fraud,” or “malice” within the meaning of Civil Code, section 3294. (Civ. Code, § 3294, subd. (a).)

Plaintiff has alleged criminal conduct. “Despicable conduct,” a term used within Section 3294’s definitions of both “oppression” and “malice,” “has been described as “[having] the character of outrage frequently associated with crime.” ’ ( *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050 [quoting *Taylor v. Superior Court* (1979) 24 Cal.3d 890,

<sup>1</sup> Item No. 8 requests that the Court strike the following language from the FAC’s Prayer: “Punitive and exemplary damages against Carpine as to the First (Battery) and Fourth (Wanton and Reckless Misconduct) Causes of Action[.]” (Notice of Motion, p. 2.)

894].) She alleges that Carpine intentionally<sup>2</sup> disregarded a stop sign and drove into an intersection he knew to be occupied by other vehicles and did so with substantial certainty that he was going to hit another driver. (FAC, ¶¶ 20, 22.) Those allegations describe, at minimum, the criminal offense of reckless driving. (Veh. Code, § 23103.) Consciously driving in a manner that risks other people's safety is oppressive and/or malicious conduct as those terms are defined in Section 3294(c). (See *Taylor, supra*, 24 Cal.3d 890, 895 [“[A] conscious disregard of the safety of others may constitute malice within the meaning of section 3294 of the Civil Code.”].)

The motion is DENIED.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

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<sup>2</sup> In their briefs in support of both this motion to strike and their demurrer, Defendants repeatedly state that Plaintiffs' allegations that Carpine acted intentionally are conclusory and so should be disregarded. That a person performed an act with intent that a certain result would occur is an allegation of fact. Allegations of ultimate fact are generally permissible at the pleadings stage, and Plaintiff is not required to plead the evidentiary facts that support the ultimate fact that Carpine was acting intentionally. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 570; see also *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 212 [“[T]he complaint should set forth the ultimate facts constituting the cause of action, not the evidence by which plaintiff proposes to prove those facts.”] [superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 228].)