

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV1903075

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PLAINTIFF:      MARK BENNETT, D.D.S.

vs.

DEFENDANT:    OHIO NATIONAL LIFE  
ASSURANCE CORPORATION, ET AL

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NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR  
PROGRAM

**RULING**

**Appearances required.**

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

*The Zoom appearance information for May 2025 is as follows:*

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6Iyz2dKaw.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: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV2301767

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PLAINTIFF:      JAMES HUTTON, ET AL

vs.

DEFENDANT:    BERNARD KAUFMAN, ET  
AL

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NATURE OF PROCEEDINGS: 1) MOTION – SANCTIONS; DISCOVERY FACILITATOR PROGRAM

2) MOTION – SUMMARY ADJUDICATION

3) MOTION – RELIEF; DISCOVERY FACILITATOR PROGRAM

**RULING**

The hearing on the motions is **continued to June 3, 2025 at 1:30 p.m. in Courtroom 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.*

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0000005

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

PETITIONER:      FRIENDS OF HAUKE  
PARK

and

RESPONDENT:      CITY OF MILL VALLEY

NATURE OF PROCEEDINGS: HEARING – OTHER: ON OBJECTIONS TO THE  
ADMINISTRATIVE RECORD

**RULING**

The parties did not file any motions pursuant to their stipulation and the Order of the Court dated February 26, 2025. The parties are to appear at the hearing for a case management conference.

***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 May, 2025 is as follows:***

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0002212

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

PETITIONER:      FRIENDS OF HAUKE  
PARK

and

RESPONDENT:      CITY OF MILL VALLEY

NATURE OF PROCEEDINGS: HEARING – OTHER: ON OBJECTIONS TO THE  
ADMINISTRATIVE RECORD

**RULING**

The parties did not file any motions pursuant to their stipulation and the Order of the Court dated February 26, 2025. The parties are to appear at the hearing for a case management conference.

***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: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0002218

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PLAINTIFF:      JOHN DOE I, ET AL

VS.

DEFENDANT:    MARIN HEALTH  
MEDICAL CENTER

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NATURE OF PROCEEDINGS: MOTION – OTHER: PRELIMINARY APPROVAL OF  
SETTLEMENT AGREEMENT

RULING

Plaintiffs' unopposed motion for preliminary approval of class-action settlement is **GRANTED**.

The court preliminarily finds that the requirements for conditional class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representatives are typical of those of the class; and (c) the named representatives can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4<sup>th</sup> 224, 240.)

Accordingly, the Court orders that:

1. The proposed class is conditionally certified, and Plaintiffs are conditionally appointed class representatives.
2. The court conditionally appoints Ryan Clarkson, Yana Hart and Bryan P. Thompson of the Clarkson Law Firm and Matthew J. Langley of Almeida Law Group as class counsel.
3. The court appoints Verita Global, LLC as the Settlement Administrator.
4. After considering the factors set forth in *Clark v. American Residential Services LLC* (2009) 175 Cal.App. 4<sup>th</sup> 785, 799, the court preliminarily rules that the proposed class settlement is fair and reasonable.

5. The court has reviewed the notice plan and finds it provides adequate notice to members of the settlement class.
6. The Court sets a Final Approval Hearing for **October 20, 2025 at 1:30 pm in Courtroom A.**
7. Absent objection, the Court will sign the Proposed Order submitted by Plaintiff.

***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: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0002451

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PETITIONER:      CHARLES CARTER

vs.

RESPONDENT:      C/O T. ASCENCIO, ET AL

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) CASE MANAGEMENT CONFERENCE

**RULING**

The Court previously sustained Respondent California Department of Corrections and Rehabilitation's ("CDCR") demurrer to Petitioner Charles Carter's ("Petitioner") petition for a writ of mandate for failure to exhaust administrative remedies. Petitioner was granted leave to amend and filed an amended petition on January 23, 2025. Respondent has now demurred to the amended petition.

Petitioner has not filed a response or opposition to the demurrer. California Rule of Court rule 8.54(c) states that a "failure to oppose a motion may be deemed a consent to the granting of the motion." In addition, the amended petition does not contain any allegations which cure the previously identified defects. As the Court indicated in its previous order, the written decision from the Office of Appeals dated March 2, 2023 (attached as an exhibit to the amended petition) compels the conclusion that Petitioner did not exhaust all administrative remedies. Accordingly, the Court does not have jurisdiction to hear this case.

For these reasons, the demurrer is **SUSTAINED without leave to amend.**

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

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0003518

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

PLAINTIFF:      JANET CHRISTINE  
SCHNEIDER, ET AL

vs.

DEFENDANT:    PG&E CORPORATION, ET  
AL

NATURE OF PROCEEDINGS: MOTION – OTHER: INTERVENE

**RULING**

The unopposed motion of United Services Automobile Association to intervene as a Plaintiff in the underlying action is **GRANTED**. (Code Civ. Proc., § 387(b).)

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0004556

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

PLAINTIFF:      FERRO FAMILY  
ASSOCIATES, A CALIFORNIA LIMITED  
PARTNERSHIP

vs.

DEFENDANT:    FALLON TWO ROCK RD  
SOLAR FARM LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY

NATURE OF PROCEEDINGS: MOTION – OTHER: JUDGMENT ON THE PLEADINGS

**RULING**

Defendant Fallon Two Rock Rd. Solar Farm LLC's ("Defendant" or "Tenant") motion for judgment on the pleadings is **DENIED**.

***Background***

This is an action for breach of a lease. The complaint alleges that Plaintiff Ferro Family Associates ("Plaintiff" or "Landlord") owns real property at 2120 Fallon Two Rock Road in Petaluma (the "Premises"). (Complaint, ¶ 6.) Pursuant to a lease executed on July 21, 2022, Plaintiff leased the Premises to Defendant for purposes of constructing, installing, and operating a solar electrical facility. (*Ibid.*; see also Ex. A [lease].) The lease provided that Tenant was to pay " 'all Taxes and Assessments that may be imposed on the Improvements, and . . . any increase in Taxes and Assessments accruing during the Term against the Premises to the extent resulting directly from the presence of Tenant's Improvements on the Premises.' " (Complaint, ¶ 10 [quoting Ex. A, § 8.2]; see also *id.* at ¶ 11 & Ex. A, § 8.1 [defining "Taxes and Assessments"].) It defined "Improvements" to mean "any and all improvements, equipment, buildings, foundations, poles, towers or transmission lines at any time constructed by or for Tenant and located on the Premises, including without limitation, the Solar Facility." (*Id.* at ¶ 9.)

In June 2023, the Marin County Assessor's Office sent Plaintiff a property tax statement for Fiscal Year 2023/24. (Complaint, ¶ 13.) The statement included a \$6,358.04 increase in real estate taxes allegedly "result[ing] directly from Tenant's Improvements on the Premises." (*Id.* at ¶¶ 13, 15-16.) Defendant refused to pay this sum, taking the position that the tax increase was tied to rent income, and the lease does not obligate Defendant to pay taxes imposed on rent

income. (*Id.* at ¶ 14.) Plaintiff paid the \$6,385.04 to the Marin County Assessor's Office and demanded reimbursement, which Defendant refused. (*Id.* at ¶¶ 19-21.)

In June 2024, the Marin County Assessor's Office sent Plaintiff a tax statement for Fiscal Year 2024/25. (Complaint, ¶ 22.) This tax statement contained another real estate tax increase " 'attributed to Solar', " this time for \$5,944.16. (*Id.* at ¶ 22.) Defendant again refused to pay it, so Plaintiff did it to avoid penalties. (*Id.* at ¶¶ 23-24.)

Plaintiff subsequently filed the complaint, which contains causes of action for breach of the lease and declaratory relief. Defendant now moves for judgment on the pleadings.

### ***Legal Standard***

A defendant may bring a statutory motion for judgment on the pleadings as to the entire complaint or any cause of action stated therein. (Code Civ. Proc., § 438, subd. (c)(2)(A).) The motion may be brought only after the defendant has filed an answer to the complaint and the time to demur to the complaint has expired. (Code Civ. Proc., § 438, subd. (f)(2).) A statutory motion for judgment on the pleadings may be brought on the ground that the court lacks jurisdiction or that the complaint does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B).)

Grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or from matters properly subject to judicial notice. (See Code Civ. Proc., § 438, subd. (d).) As on demurrer, the pleading includes matters shown in exhibits attached to it or incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94; *Alameda County Waste Management Authority v. Waste Connections US, Inc.* (2021) 67 Cal.App.5th 1162, 1173-74 [rules governing demurrers apply to motions for judgment on the pleadings except to the extent provided by statute].) "[J]udgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution." (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.)

A motion for judgment on the pleadings may be granted with or without leave to amend. (Code Civ. Proc., § 438, subd. (h).) "[L]eave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. . . . Where . . . a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes abuse of discretion if the pleading does not show on its face that it is incapable of amendment." (*Virginia G. V. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852.)

### *Discussion*

#### First Cause of Action: Breach of the Lease

To state a claim for breach of contract, a plaintiff must assert facts that, if true, establish a breach. (See *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800.) Defendant claims the complaint, its attachments, and judicially noticeable documents<sup>1</sup> show that the lease does not obligate Defendant to pay these taxes because “the County based its increased tax assessment solely on the rent that Plaintiff receives under the Lease, and not on the value of the Solar Facility improvements.” (Memorandum, p. 5.) But the lease does not say that Defendant is required to pay taxes and assessments relating to the Improvements only to the extent that they are based on the value of the Improvements. Instead, it requires Defendant to pay “any increase in Taxes and Assessments accruing during the Term against the Premises to the extent resulting directly from the presence of Tenant’s Improvements on the Premises.” (Complaint, Ex. A, § 8.2 [emphasis added].) The County’s calculations of the tax increases indicate that the increased taxes against the Premises are due to an increase in the Premises’ rental value as a direct consequence of the presence of the solar facility. (Complaint, Exs. B, D.) Accepting the allegations of the complaint as true, such a tax increase falls squarely within the area of Defendant’s tax responsibility under Section 8.2 of the lease.

Defendant draws its focus on the *value* of the improvements from Section 8.1 of the lease, claiming it “is broadly written, and can be fairly interpreted to assign to Plaintiff responsibility for payment of any and all taxes and assessments on the property other than a tax or assessment on the direct value of the Solar Farm.” (Memorandum, p. 9.) Assuming for purposes of argument that the lease is fairly susceptible to Defendant’s interpretation, that does not mean that Plaintiff has failed to state a cause of action for breach of contract. “Where a complaint is based on a written contract which it sets out in full, a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible.” (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) Plaintiff’s interpretation of the lease is a reasonable one, and whether it is correct is not an issue that can be resolved against Plaintiff solely on the basis of the complaint and its attachments.

Also, the Court finds Defendant’s argument unpersuasive. It cannot see where in Section 8.1 of lease Defendant finds any support for the idea that Defendant’s obligation to pay taxes turns on whether the taxes are based on the “direct value” of the solar facility. (Memorandum, p. 9.) The Court is likewise unpersuaded that the taxes at issue are “tax[es] imposed on rent” (for which Defendant has no responsibility under Section 8.1) as opposed to taxes on *property* which have been calculated by reference to rental value, as the complaint alleges (§ 15). Defendant’s interpretation of Section 8.1 also fails to account for the plain language of Section 8.2. Next, Defendant argues that the increased taxes do not “result[] directly from the presence” (Complaint, Ex. A, § 8.2) of the solar facility on the Premises because the solar facility is exempt

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<sup>1</sup> Defendant’s requests for judicial notice, all of which are unopposed, are granted. (Evid. Code, § 452, subds. (c), (h); see also *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134 [Evidence Code, section 452, subdivision (c) permits judicial notice of a county’s official acts].) Requesting judicial notice was unnecessary for Exhibits 4 and 5 because they are exhibits to the complaint and so already properly under review. (*Frantz, supra*, 189 Cal.App.3d 91, 94; *Alameda County, supra*, 67 Cal.App.5th 1162, 1174.) As to Exhibit 7, the Court takes judicial notice of the existence of the webpage, but not the truth of what it says. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193.)

from property tax assessment by law. This simply does not follow. Whether Marin County acted illegally by assessing this increased tax has nothing to do with whether the increased tax is a direct result of the presence of the solar facility. The complaint alleges that legally or not, Marin County has assessed a tax increase against the Premises as a direct result of the fact that Defendant's solar facility is on the land. (Complaint, ¶ 13.) Defendant has not argued that the purported illegality of this tax assessment renders the contract unenforceable, so whether the tax assessment is legal is irrelevant to the dispute at hand. The issue presented by Plaintiff's complaint is who is responsible for paying the tax. Whoever that party is can bring a legal challenge to the Marin County Assessor's Office's levying the tax, but the legality of that action is not presently before the Court and will not be unless Defendant mounts some argument tying the tax assessment's legality to the enforceability of the lease.

The Court denies the motion as to this cause of action.

Second Cause of Action: Declaratory Relief

Defendant's argument as to this cause of action depends on the success of its argument on Plaintiff's claim for breach of the lease. Accordingly, the motion is denied as to this cause of action as well.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0004757

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

PLAINTIFF:      HILLARY WHITMAN

vs.

DEFENDANT:      SUPER73, INC.

NATURE OF PROCEEDINGS: 1) MOTION – PRO HAC VICE  
2) MOTION – PRO HAC VICE

**RULING**

The unopposed applications to admit D. Patrick Huyett and Kevin W. Fay as Counsel Pro Hac Vice for Plaintiffs are **GRANTED**. (Calif. Rules of Court, rule 9.40.)

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 05/27/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0005150

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PLAINTIFF:      JASON CARLEY

vs.

DEFENDANT:   KAISER FOUNDATION  
HOSPITALS, ET AL

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NATURE OF PROCEEDINGS: MOTION – STRIKE

**RULING**

Because an amended complaint was filed on April 24, 2025 the demurrer set for hearing on May 27, 2025 is ordered **DROPPED** from the calendar. (Code Civ. Proc., § 472, subd. (a); *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 505-506.)

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