SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/04/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200232

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: GEOFFREY BAYLOR, ET AL vs. DEFENDANT: RICHARD WATERMAN, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: STATUTORY COSTS; EXPERT FEES

RULING

This matter is continued to June 25, 2025, to be heard concurrently with Defendants' motion to strike or tax costs and Plaintiffs' motion to tax costs.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

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: 06/04/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301148

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: BERENICE YESENIA MONROY RAMIREZ and DEFENDANT: DAISY CARLSON	

NATURE OF PROCEEDINGS: MOTION – TAX COSTS

RULING

Plaintiff's motion to tax costs is granted in part and denied in part as follows: Plaintiff's motion to tax expert fees is denied. Plaintiff's motion to tax mediation fees is granted in the amount of $2,900.

Expert Fees

Defendant seeks expert fees in the total amount of $6,875, consisting of $4,375 paid to James H. Cantrell, CPM, CAM, and $2,500 paid to Edrington and Associates. Plaintiff opposes this request on the basis that the experts were not ordered by the court. (See Code Civ. Proc., § 1033.5, subd. (a)(8) [recoverable costs include "[f]ees of expert witnesses ordered by the court"] and subd. (b)(1) ["[f]ees of experts nor ordered by the court" are not allowable as costs "except when expressly authorized by law"].)

The memorandum of costs specifies that expert fees are sought "per Code of Civil Procedure section 998." Subdivision (c)(1) of that section states:

> If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover their postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant.

A copy of the Offer to Compromise is attached to the memorandum of costs. Defendant offered Plaintiff $50,000. (See also Atutubo decl. ¶3 and ex. A.) Defendant served the Offer on July 25, 2024. (*Id.* ¶3.) Plaintiff did not respond to the offer within 30 days. (*Id.* ¶4.) Thereafter, Defendant retained the experts. (*Id.* ¶5.) Plaintiff raises no argument as to why Defendant is not entitled to her expert fees pursuant to that provision.

Mediation Fees

Defendant seeks to recover $2,900 in mediation fees paid to ADR Strategies Group. Plaintiff argues that Defendant is not entitled to recover these fees because the parties agreed to equally share the costs of the mediator and mediation. Defendant does not dispute that Plaintiff and Defendant agreed to share the costs of mediation and therefore she is not entitled to recover her share of the costs. (*Howard* v. *American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 539-540; *Carr Business Enterprises, Inc.* v. *City of Chowchilla* (2008) 166 Cal.App.4th 25, 30; *Anthony* v. *Li* (2020) 47 Cal.App.4th 816, 824-825.)

Defendant asserts she can recover costs under section 998 which she would not be able to recover under section 1033.5 (aside from expert fees). The court disagrees. Section 998, subdivision (a) states that "[t]he costs allowed under Section[ ] ... 1032 shall be withheld or augmented as provided in this section." "... Section 998 allows a prevailing party to recover fees paid to experts under the specific circumstances outlined in the statute in addition to the costs allowable under sections 1032 and 1033.5..." (*Chaban* v. *Wet Seal, Inc.* (2012) 203 Cal.App.4th 49, 55, citation omitted.) "... The post offer costs that section 998...awards to the defendant whose offer exceeds the judgment for plaintiff are 'the costs allowed under Section...1032' (§ 998, subd. (a)) to a prevailing party. ..." (*Scott Co. of California* v. *Blount, Inc.* (1999) 20 Cal.4th 1103, 1112-1113, brackets omitted.)

Accordingly, the court grants the request to tax these mediation fees in the amount of $2,900.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/04/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0000494

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: GRAPE OFF K.K. vs. DEFENDANT: WINERY EXCHANGE, INC.	

NATURE OF PROCEEDINGS: MOTION – PROTECTIVE ORDER; DISCOVERY FACILITATOR PROGRAM

RULING

The Court denies Plaintiff Grape Off K.K.'s ("Plaintiff") motion for protective order. The Court finds Plaintiff did not act with substantial justification and awards Defendant Winery Exchange, Inc. dba WX Brands ("Defendant" or "WX") reasonable sanctions in the reduced amount of $3,540.

FACTUAL BACKGROUND

Plaintiff, a Japanese corporation, is a wine and spirits import and distribution company with its primary business located in Japan. Defendant is the current owner of the Bread & Butter wine brand.

Plaintiff alleges it was offered the exclusive import and distribution rights for Bread & Butter wine brand in Japan in 2013, prior to Defendant's acquisition of the brand. Plaintiff asserts that it invested millions of dollars making the Bread & Butter brand one of the number one sellers of California wines in Japan. The SAC indicates the sole distributorship was "being offered by the sole supplier DIVA California." (SAC, ¶ 8.) The SAC also alleges that in April of 2017 the brand was purchased by Defendant and that "WX Brands immediately accepted Plaintiff as the continued exclusive importer and distributor." (*Id.*, ¶ 12.) The SAC contends that "Plaintiff and Defendant are parties to an implied contract. The implied contract was formed when Defendant purchased the Bread & Butter brand wines and continued with the arrangement that was in place with Plaintiff since the beginning– that is Plaintiff would continue to be the exclusive importer and distributor of Bread & Butter brand wines in Japan which Defendant acquiesced to upon acquisition of the brand." (*Id.*, ¶ 19.)

"Defendant was fully aware of this long-term exclusive agreement with Plaintiff when they acquired Bread & Butter wines. Defendant consented through its course and conduct to continue the arrangement with Plaintiff wherein Plaintiff remained the sole importer and distributor of Bread & Butter wines in Japan and Defendant even placed Plaintiff's legally required back label on each of the bottles of Bread & Butter wines when they shipped them to Japan (which contained Plaintiff's information). Defendant continued to work with Plaintiff as the sole distributor for Bread & Butter wine from 2017 until recently." (*Id.*, ¶ 20.)

In or around August 2021, Grupo Penaflor, one of the largest wine companies in South America, invested in Defendant. (*Id.*, ¶ 21.) After Grupo Penaflor became an investor, Defendant purported to end the relationship with Plaintiff in order to make Mikuni Wines the sole distributor of Bread & Butter brand wines in Japan. Plaintiff contends that this is a breach of the long standing exclusive distributorship agreement it had with Defendant.

Plaintiff's operative Second Amended Complaint alleges causes of action for Injunctive Relief and Damages, Breach of Contract, Promissory Estoppel, Intentional Interference with Prospective Economic Advantage, Negligent Interference with Prospective Economic Advantage, and Unfair Business Practices.

Plaintiff now requests a protective order declaring that it is not required to further respond to Plaintiff's Request for Production of Documents, Set Two. Plaintiff also seeks $4,097.50 in sanctions against Defendant and its attorney of record.

OBJECTIONS TO EVIDENCE

The Court declines to rule on Defendant's objections on the ground they are not material to the determination of the motion.

LEGAL STANDARD

"When an inspection, copying, testing, or sampling of documents . . . has been demanded, the party to whom the demand has been directed, and any other party or affected person, may promptly move for a protective order." (Code of Civ. Proc., § 2031.060, subd. (a); see also Code Civ. Proc., § 2017.020.) "The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden or expense." (Code Civ. Proc., § 2031.060, subd. (b).)

A motion for protective order must be accompanied by a declaration showing the moving party made a "reasonable and good faith attempt" to resolve the issues outside of court. (C.C.P., §§ 2016.040, 2031.060, subd. (a).) The moving party's declaration must show a reasonable and good faith attempt at informal resolution, which entails something more than bickering with opposing counsel. (See *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.) "This rule is designed 'to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order....' [Citation.] This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]" (*Townsend v. Sup. Ct.* (1998) 61

Cal.App.4th 1431, 1435.) "'An evaluation of whether, from the perspective of a reasonable person in the position of the discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances, the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances.' [Citation.]" (*Clement, supra*, 177 Cal.App.4th at 1293-1294.)

The court is required to impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.060, subd. (h).)

DISCUSSION

Defendant argues the motion is not supported by adequate meet and confer efforts, nor was it "promptly" filed. The Court agrees.

Plaintiff provides extensive argument regarding prior discovery, but at issue in the instant motion is Defendant's Second Set of Requests for Production of Documents, served on November 21, 2024. (Gourde Decl., ¶ 20, Granillo Decl., ¶ 5, Exh. C.) Plaintiff provided initial responses and produced documents on January 10, 2025. (Gourde Decl., ¶ 20, Granillo Decl., ¶ 6, Exh. D.) Defendant sent meet and confer correspondence regarding the substance of Plaintiff's responses to the document requests and requesting further responses and documents, to which Plaintiff responded defending its responses and production. (Granillo Decl., ¶¶ 9-11, Exhs. F and H.) However, for the first time on March 5, 2025 at 1:17 p.m., Plaintiff indicated it would seek a protective order. (*Id.*, Exh. H.) Plaintiff proceeded to serve on Defendant that same day at 1:40 p.m. with the instant motion. (See, Ex. "H" and Ex. "I", Granillo Decl. ¶ 11.) This is not a reasonable attempt to resolve the issue without the Court's intervention. Moreover, the motion was filed nearly three months after Plaintiff had already served its responses and production. This is not sufficient under the Code. Accordingly, the Court denies the motion.

Plaintiff also requests that the Court to appoint a discovery referee in connection with this motion. However, this request was not made in the notice of motion. (Cal. Rules of Court rule 3.1110(a).) The court generally cannot grant different relief, or relief on different grounds, than stated in the notice of motion. (See *People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726; *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124.) Moreover, Plaintiff has a separate motion to appoint a discovery referee set for hearing on June 18, 2025.

The final issue is sanctions. Because Plaintiff is not successful in its motion for a protective order, the Court is required to impose sanctions unless it finds the Plaintiff acted with substantial justification or some other circumstance making the imposition of sanctions unjust. (Code of Civ. Proc., § 2031.060, subd. (h).) Here, the motion was not supported by adequate meet and confer efforts and was not promptly made. The Court does not find that Plaintiff acted with substantial justification. Defendant states it incurred a total of $7,906.00 in attorney's fees and costs in connection with this motion, including 13.4 hours of attorney work at $590 per hour.

(Granillo Decl., ¶ 13.) The Court finds the number of hours spent is excessive and grants sanctions in a reduced reasonable amount of $3,540 (6 hours at $590/hour).

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/04/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001622

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: FELIPE GONZALEZ MARTINEZ, ET AL vs. DEFENDANT: 1125 SIR FRANCIS DRAKE BOULEVARD OPERATING CO., LLC	

NATURE OF PROCEEDINGS: 1) MOTION – OTHER: JUDGMENT ON THE PLEADINGS TO DEFENDANT 1125 SIR FRANCIS DRAKE BOULEVARD OPERATING CO., LLC ANSWER
2) MOTION – OTHER: JUDGMENT ON THE PLEADINGS TO BRAD HOLLINGER'S ANSWER

RULING

Plaintiff has filed two motions for judgment on the pleadings, one directed at the affirmative defenses in the answer of Defendants 1125 Sir Francis Drake Boulevard Operating Co., LLC, Vibra Healthcare, LLC, and Hollinger Holding Company LLC ("Entity Defendants"), and one directed at the affirmative defenses in the answer of Defendant Brad Hollinger ("Hollinger Defendant"). Plaintiffs' motions are granted in part and denied in part.

Legal Standard

An answer must contain "[a] statement of any new matter constituting a defense." (Code Civ. Proc., § 431.30, subd. (b)(2).) As explained in *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 812-813:

> ... "The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.'"
>
> Such "new matter" is also known as "an affirmative defense." Affirmative defenses must not be pled as "terse legal conclusions," but "rather...as facts 'averred as carefully and with as must detail as the facts which constitute the cause of action and are alleged in the complaint.'" ...

(Citations omitted.)

Analysis and Ruling:

1. As to Defense No. 2 [Entity Defendants] and Defense No. 3 [Defendant Hollinger] – Comparative Negligence, the motions are granted with leave to amend.

Witkin states with respect to pleading this defense:

> … The preferred method of pleading is to follow the practice of pleading negligence: Allege the negligent act or acts and the causal connection, either generally or specifically. "It is apparent that no fixed rule in this regard can be assigned which will fit all classes of cases; each case will depend on the particular facts involved. It is not necessary to use the specific term of contributory negligence, although a concise statement of the facts indicating the commission or omission of acts which would be required of one under similar circumstances in the exercise of ordinary care and which would appear to directly contribute to the injuries complained of must be alleged. It is not sufficient to merely allege in the form of a conclusion that the acts complained of were due to the negligence or carelessness of the plaintiff."

(5 Witkin, Cal. Proc. (6th ed. 2025) Pleading, § 1143, citations omitted.) Defendants allege only that the acts complained of were due to Plaintiffs' negligence, which is not sufficient.

2. As to Defense No. 3 [Entity Defendants] and Defense No. 4 [Hollinger Defendant] – Third Party Negligence, the motions are granted with leave to amend.

Defendants must plead this defense at least as specifically as their claim that Plaintiffs were negligent. They must plead facts showing that one or more other people, even if they cannot yet name them, did some negligent act(s) which caused Plaintiffs' injuries.

3. As to Defense No. 6 [Entity Defendants] and Defense No. 7 [Hollinger Defendant] – Natural Course, the motions are denied.

   Plaintiffs are seeking evidentiary allegations as opposed to ultimate facts.

4. As to Defense No. 7 [Entity Defendants] and Defense No. 8 [Hollinger Defendant] – Failure to Mitigate, the motions are granted with leave to amend.

   Defendants must offer facts as to what Plaintiffs should have done. Defendants allege only the conclusion that Plaintiffs failed to mitigate their damages.

5. As to Defense n]No. 8 [Entity Defendants] and Defense No. 10 [Hollinger Defendant] – Assumption of Risk the motions are denied.

   Defendants have adequately alleged the ultimate facts that Plaintiffs knew what the risks were and that they chose to take those risks. There are no further facts which Defendants can allege.

6. As to Defense No. 13 [Entity Defendants] and Defense No. 15 [Hollinger Defendant] – Failure to Mitigate, the motions are denied.

   Contrary to Plaintiffs' argument, Defendants have alleged the facts showing how Plaintiffs failed to mitigate their damages (they failed to obtain health insurance coverage as required by the Affordable Care Act).

7. As to Defense No. 15 [Entity Defendants] and Defense No. 17 [Hollinger Defendant] – "Two Schools of Thought" Doctrine the motions are denied.
   Plaintiffs again seek evidentiary allegations as opposed to ultimate facts.
8. Regarding Defense No. 16 [Entity Defendants] – Consent, the motion is denied:
   Defendants allege the ultimate fact that Plaintiffs would have consented to the procedures or treatment had they been informed of the risks.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/04/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005201

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: KOFI OPONG MENSAH vs. DEFENDANT: DYLAN THOMAS HACKETT	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants Dylan Thomas Hackett and Hackett Law Firm's ("Defendants") Demurrer to the Amended Complaint as to the cause of action for Intentional Infliction of Emotional Distress is SUSTAINED with leave to amend as to that cause of action only.

REQUESTS FOR JUDICIAL NOTICE

Defendants' Requests for Judicial Notice Nos. 1-3 are GRANTED. (Evid. Code, § 452, subds. (d), (g), (h).) As to Request No. 4, the Request is DENIED.

BACKGROUND

This is an action by Plaintiff Kofi Opong-Mensah ("Plaintiff") against his former attorney of record arising out of Defendants' representation of Plaintiff in an underlying employment action against Plaintiff's former employer. (*Kofi Opong-Mensah v. Marin Community College District,* Marin County Superior Court Case No. CIV1903799.) Plaintiff's Amended Complaint alleges causes of action against Defendants for breach of contract, common counts, legal malpractice, breach of fiduciary duty, and intentional infliction of emotional distress. Plaintiff alleges that Defendants' representation fell below the standard of care and caused him harm.

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.) 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.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

DISCUSSION

Defendants demur to Plaintiff's Amended Complaint's Sixth Cause of Action for Intentional Infliction of Emotional Distress on the grounds that it fails to allege facts sufficient to constitute a cause of action.

A cause of action for Intentional Infliction of Emotional Distress requires proof of: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the severe emotional distress. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050, superseded on other grounds in *Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 698, as modified (Nov. 12, 2024), as modified on denial of reh'g (Dec. 11, 2024), review denied (Feb. 11, 2025).) A defendant's conduct is considered to be outrageous if it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Hughes, supra,* at p. 1051.) In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–61, *citing Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

Defendants argue that Plaintiff's Amended Complaint does not allege conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Rather, Plaintiff alleges that he unsuccessfully sought to unwind a settlement agreement after substituting in as his own counsel and that he has a fee dispute with Defendants.

Appearing to concede that the Amended Complaint fails to adequately allege acts sufficiently extreme to constitute a basis for Intentional Infliction of Emotional Distress, Plaintiff states that he has additional facts and requests leave to amend to add them. (Oppo. p. 2:7-10.) He also states his plan to add a seventh cause of action for fraud.

The Court therefore SUSTAINS the demurrer with leave to amend. However the Court notes that leave to amend is limited to the cause of action at issue in this demurrer (Intentional Infliction of Emotional Distress). Plaintiff is not permitted to amend the complaint to add additional causes of action (including one for fraud) outside the scope of this order without seeking leave to amend by noticed motion. (See *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015 [plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting 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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