SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002230

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: TAYLOR MARTINDALE vs. DEFENDANTS: MICHAEL THOMAS SHIRLOCK ET AL.	

NATURE OF PROCEEDINGS: MOTION – CONTINUE TRIAL

RULING

Appearances required.

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

The Zoom appearance information for June 2026 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003075

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: SANDRA MANCIA vs. DEFENDANT: STEVEN TRAVIS SPILLMAN	

NATURE OF PROCEEDINGS: MOTION – CONTINUE TRIAL

RULING

Appearances required.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005483

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PETITIONER: LANEH HOLDINGS LP vs. DEFENDANT: BANK OF MARIN	

NATURE OF PROCEEDINGS: MOTION – APPOINTMENT OF JUDICIAL REFEREE

RULING

Appearances are required.

Within ten (10) days of the Court's order the parties shall meet and confer and file a joint pleading jointly proposing a nominee to serve as referee. In the event the parties are unable to reach agreement on a nominee, then within the same time period, each side shall file a pleading nominating up to two (2) nominees to serve as referee.

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: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0006691

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: YOSHIMORI TOME vs. DEFENDANT: VICTRON ENERGY, B.V., ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

This matter has been continued to August 4, 2026 at 1:30 pm 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: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0006915

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: UPHOLD HQ INC. vs. DEFENDANT: PAOLA ANDREINA TORRES GARCIA ET AL.	

NATURE OF PROCEEDINGS: MOTION – PRO HAC VICE

RULING

The unopposed application to admit Jack Ryan as Counsel Pro Hac Vice for Plaintiff Uphold HQ Inc. is **GRANTED.** (Calif. Rules of Court, rule 9.40.)

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: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0007933

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: WELLS FARGO BANK, N.A. vs. DEFENDANT: EUAN MACDONALD, AN INDIVIDUAL	

NATURE OF PROCEEDINGS: MOTION – REQUEST FOR ADMISSIONS

RULING

The unopposed motion of Plaintiff Wells Fargo Bank, N.A. for an Order Deeming the Truth of Matters Specified in Request for Admission is **GRANTED.** Defendant failed to respond to the requests, to subsequent meet and confer letters, and has failed to oppose this motion. The facts in Requests 1-9 are hereby deemed admitted. (Code Civ. Proc. § 2033.280(b).)

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: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0008584

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: RYAN CAMP, ET AL vs. DEFENDANT: ROBERT TAYLOR , ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

The unopposed demurrer of Defendant ATA Towing, Inc. to the 18th Cause of Action for penalties and injunctive relief under PAGA is **SUSTAINED with leave to amend.**

Discussion

Plaintiff has not filed a response or opposition to the demurrer. The failure of a party to oppose a demurrer may be construed as having abandoned the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Thus, the failure to oppose is treated as consent to the granting the motion. (Calif. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8G.1.) The demurrer is sustained on this basis.

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: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0009382

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: ROMAR COURT APARTMENTS LLC vs. DEFENDANT: CITY OF NOVATO ET AL.	

NATURE OF PROCEEDINGS: MOTION – LEAVE TO AMEND COMPLAINT

RULING

Respondents City of Novato ("the City"), Novato City Council, and Novato Housing and Building Code Appeals Board's ("Board"; all of these together, "Respondents") demurrer to Petitioner Romar Court Apartments LLC's ("Petitioner") petition is **OVERRULED**.

Background

Petitioner alleges that it owns 6 Romar Court in Novato, a fourteen-unit rental property. (Petition, ¶ 1.) According to the petition, for the past approximately nine years, the City has been in communication with Petitioner about certain "minor" and "minimal" "issues" at the complex's Building 12. (*Id.* at ¶¶ 1, 8-9.) Petitioner states that this line of communication opened on June 7, 2017, when the City discovered some damage to Building 12's carport during a routine annual inspection. (*Id.* at ¶ 8.) After that June 2017 inspection, the City allegedly did not revisit the property until November 22, 2019. On that date, it noted that certain building permits Petitioner had submitted in December 2017 were never finalized. (*Id.* at ¶ 9.) In August 2021, the City issued Petitioner a building permit for repairs and seismic upgrades. (*Ibid.*) Between October 7, 2022, and September 4, 2024, the City issued three "notifications for non-performance." (*Ibid.*) For seven years thereafter, "the City conducted limited enforcement activity and never cited the Property as presenting a substantial threat to public health or safety." (*Id.* at ¶ 9.)

Petitioner alleges that beginning in August 2024, and "[f]or no known or justified reason, the City's enforcement efforts against the Property suddenly became very aggressive" after years of minimal enforcement. (Petition, ¶¶ 10-11.) The City issued a total of five administrative citations to Petitioner between late August 2024 and early March 2025, resulting in $96,000 in penalties, which Petitioner claims is excessive. (*Id.* at ¶ 11.) "To comply with the City's newly aggressive enforcement efforts," Petitioner allegedly applied for a permit to conduct seismic retrofitting on March 21, 2025. (*Id.* at ¶ 13.) The City deemed the application incomplete. (*Ibid.*) Petitioner alleges that the City was insufficiently responsive to Petitioner's efforts to do what was required to complete the application and get the permit approved. (*Id.* at ¶¶ 13-14.)

On April 23, 2025, following an early April inspection of Building 12, the City issued a Notice to Vacate under Health and Safety Code, section 17980.6 ("the HSC Order"). (Petition, ¶ 17.) The HSC Order revoked Building 12's occupancy permit and required all residents to vacate the building until such time as Petitioner brought it up to code. (*Id.* at ¶ 18; Respondents' Request for Judicial Notice, Ex. A, p. 4[1].) Petitioner alleges that the violations set forth in the HSC Order are so poorly defined as to render the order unconstitutionally vague; that "[t]he ramp up in sudden enforcement activity" was illegal; that the HSC Order failed to provide legally required notices; and that by directing that Building 12 be vacated, the City effected an unconstitutional taking of Petitioner's property. (*Id.* at ¶¶ 18-19, 22.)

Petitioner appealed the HSC Order to the Board. (Petition, ¶ 27.) The Board decided the appeal in the City's favor, issuing an order upholding the HSC Order and a second order deeming Building 12 a public nuisance at the City's request (the latter of these, "the Nuisance Order"; together, the "Appeal Orders"). (*Id.* at ¶¶ 27, 29.) The Novato City Council issued Resolution 2025-107 upholding the Appeal Orders on December 9, 2025. (*Id.* at ¶ 31.)
The petition contains causes of action for a writ of mandate under Code of Civil Procedure, sections 1085 and/or 1094.5 and unlawful taking of property under the California and United States Constitutions. Petitioner seeks a writ compelling Respondents to set aside the HSC Order and the Nuisance Order.

Before the Court is Respondents' demurrer. Respondents have demurred to the Second Cause of Action only, which is the unlawful taking claim.

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

[1] Respondents' unopposed request for judicial notice of the HSC Order (see RJN, Ex. A) is granted. (Evid. Code, § 452, subds. (b), (c).) This does not mean the Court accepts as true anything the HSC Order says about the conditions of Building 12. (See *AL Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, 1313.)

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

Petitioner's Second Cause of Action alleges that the Appeal Orders effected unlawful takings of property. (See Petition, ¶¶ 29, 39.) The Takings Clause of the Fifth Amendment to the United States Constitution provides that private property shall not be "taken for public use[] without just compensation." (U.S. Const., 5th Amend.) Its California counterpart provides that "[p]rivate property may be taken or damaged for a public use and only when just compensation . . . has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19.) "Although the California Constitution affords somewhat broader protection by also requiring compensation when property is damaged for public use, apart from this difference, the state takings clause is construed congruently with the federal clause." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 260; *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 183.)

Respondents' primary argument is that government action amounting to code enforcement or nuisance abatement is categorically deemed not to implicate either the state or the federal takings clause as a matter of law, so neither one of the Appeal Orders is capable of qualifying as a taking. "Courts have consistently held that a State need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." (*Keystone Bituminous Coal Ass'n v DeBenedictis* (1987) 480 U.S. 470, 492, fn. 22; see also *Cedar Point Nursery v. Hassid* (2021) 594 U.S. 139, 160 ["[T]he government does not take a property interest when it merely asserts a 'pre-existing limitation upon the land owner's title.' For example, the government owes a landowner no compensation for requiring him to abate a nuisance on his property, because he never had a right to engage in the nuisance in the first place."] [quoting *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1028-1029]; *People ex rel. Dept. of Transportation v. Hadley Fruit Orchards, Inc.* (1976) 59 Cal.App.3d 49, 53.)

The success of this argument depends on its premise: that the government conduct Petitioner alleges in the pleading constitutes mere code enforcement and nuisance abatement activity. For this premise to hold up, the Court must be able to accept, at this stage of the litigation, that there were actual code violations at Building 12 and an actual nuisance to abate. If there were no code violations and no nuisance conditions, the Court does not see how the case law described in the last paragraph could apply. Under those conditions, the government action at issue would not consist of "stopping illegal activity" or "abating a public nuisance" (*Keystone*, *supra*, 480 U.S. 470, 492, fn. 22), and it would not be the case that the landowner was demanding compensation for refraining from doing something he had no right to do in the first place (*Cedar Point Nursery*, *supra*, 505 U.S. 1003, 1028-1029).

Respondents cite *Sansotta v. Town of Nags Head* (4th Cir. 2013) 724 F.3d 533 for the proposition that even where a government has enforced its municipal codes or its nuisance laws "incorrectly[,]" that enforcement action is still considered code enforcement or nuisance

abatement and so does not constitute a taking.[2] (Memorandum, p. 12.) In *Sansotta*, the town of Nags Head, North Carolina declared six beachfront cottages to be nuisances on two grounds, one of which was that as a result of coastal erosion, they had come to be located within land area covered by the public trust doctrine. (724 F.3d 533, 537-538.) A North Carolina state appellate court subsequently determined that a municipality, as opposed to a state, does not have authority to enforce the public trust doctrine. (*Id.* at p. 541.) Accordingly, Nags Head's nuisance order was without a legal basis to the extent it was based on the public trust doctrine. In *Sansotta*, the Fourth District held that Nags Head's nuisance order did not effect a deprivation of property sufficient to support a federal procedural due process claim by the owners of the cottages. (*Id.* at pp. 540-541.) The court rested that conclusion in part on the idea that Nags Head officials had a good faith belief that they had authority to enforce the public trust doctrine, so what they were doing was legitimate nuisance abatement:

> "We presume that the Town officials acted in good faith when issuing the nuisance declarations under the belief that they had [] authority [to enforce the public trust doctrine]. For purposes of a due process claim, we consider the Town's actions based on the circumstances at the time the government acted, not with the benefit of later-developed law, because the purpose of the Due Process Clause is to ensure that the government treats its citizens fairly, a determination which is best made by focusing on what government officials knew and believed at the time they acted. Thus, for purposes of the Owners' constitutional claim, that the Town ultimately lacked the authority to declare the cottages to be nuisances based on the public trust doctrine is of no import."

(724 F.3d 533, 541-542.)

Respondents appear to rely on *Sansotta* for the idea that provided the government has a good faith belief that a code violation or a nuisance condition exists at a property, its action to enforce the code or abate the nuisance cannot constitute a taking, regardless of whether the code violation or nuisance condition in fact exists. However, the portion of *Sansotta* at issue was discussing a procedural due process claim under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, not a Takings Clause claim (*Sansotta*, *supra*, 724 F.3d 533, 540), and as the Fourth Circuit explained, the government's state of mind is relevant to procedural due process analysis (724 F.3d 533, 541-542). *Sansotta* is an insufficient basis to support an argument that if the government believes in good faith that it is properly enforcing code requirements or nuisance laws, its conduct is categorically exempt from being deemed a taking.

Also in support of its claim that code enforcement and nuisance abatement action by the government cannot constitute a taking even if the government is mistaken in thinking that action is justified, Respondents cite *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th

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[2] Respondents also rely on *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 542-543, for the proposition that "even . . . allegedly unlawful" code enforcement conduct cannot constitute a taking. (Memorandum, p. 11.) *Lingle* does not support that proposition.

1261. The portion of *Allegretti* Respondents rely on discusses a California Supreme Court case called *Landgate, Inc. v. California Coastal Commission* (1998) 17 Cal.4th 1006. Based on *Landgate*'s language, the Court does not see a basis for applying it beyond claims alleging a taking on the theory that a land use regulation or a development permit issuance decision forced the petitioner to delay in developing a property. (See *Landgate, supra*, 17 Cal.4th 1006, 1020-1021; see also *Lockaway, supra*, 216 Cal.App.4th 161, 190 [describing *Landgate*'s "complete holding"].) This is not such a case. More importantly, the test *Landgate* set forth to determine whether there has been a taking in whichever cases fall within its reach – "whether there is, objectively, sufficient connection between the land use regulation in question and a legitimate governmental purpose so that the former may be said to substantially advance the latter" (*Landgate, supra*, 17 Cal.4th 1006, 1022) – is a test the U.S. Supreme Court subsequently unanimously held should not be used in takings analysis. (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 532, 545; *Shaw, supra*, 170 Cal.App.4th 229, 264 & fn. 47 [collecting cases suggesting that *Lingle* "eviscerate[d]" *Landgate*, although falling short of actually holding as such]; *Lockaway, supra*, 216 Cal.App.4th 161, 189-190 [questioning continued viability of *Landgate*].) Even if *Landgate* were still good law, its test does not lend itself to use at the demurrer stage. *Landgate* was an appeal of a final judgment, and the Supreme Court's application of the *Landgate* test made heavy use of a developed evidentiary record. (See *Landgate, supra*, 17 Cal.4th 1006, 1023-1025.)

The Court turns to whether there is anything in the petition or subject to judicial notice that permits it to conclude, at the demurrer stage, that there were code violations or nuisance conditions at Building 12.

To begin with code violations, Petitioner does not affirmatively allege that Building 12 complied with all applicable legal requirements, or the converse – that Building 12 was not up to code. However, there is only one reasonable inference regarding Building 12's code compliance to be drawn from the petition. Petitioner alleges that there were "issues" at Building 12 and that, after some back and forth between Petitioner and the City about these "issues," the City issued Petitioner a building permit "for repairs and seismic upgrades[,]" followed by three "notifications for non-performance." (Petition, ¶¶ 8-9.) Petitioner does not allege that any of the notifications for non-performance was baseless. Petitioner acknowledges that the City issued it five administrative citations in connection with Building 12 and does not contest the factual bases for these citations, as opposed to the amount of the fines associated with them. (*Id.* at ¶ 11.)

Finally, Petitioner alleges a host of action on its own part intended "[t]o comply with the City's . . . enforcement efforts" both before and after issuance of the HSC Order. (*Id.* at ¶¶ 13-14, 20-21.) The pleading disputes the fact that any code violation rendered Building 12 so dangerous as to justify evacuating the tenants (*id.* at ¶ 20), but it cannot be reasonably interpreted to dispute that code violations existed. The only reasonable inference one can draw from these allegations, taken together, is that Building 12 was not up to code. Thus, the pleading admits that there were actual code violations at Building 12 and itself characterizes the City's action against the building, culminating in the HSC Order, as "enforcement efforts." (*Id.* at ¶¶ 10, 13, 18.) As a result, on the face of the petition, the City's conduct leading up to the issuance of the HSC Order, and the issuance of that order itself, were code enforcement activity and so legally cannot

support a takings claim under the California or United States Constitutions.[3] (*Keystone, supra,* 480 U.S. 470, 492, fn. 22.)

This does not end the analysis, though. Petitioner does not allege that Respondents effected a taking only by issuing the HSC Order and later affirming that order on appeal. Petitioner alleges that the Nuisance Order also constituted a taking. (See Petition, ¶¶ 39 [alleging that "the Orders" amount to unconstitutional takings], 29 [defining "Orders" to include both the Nuisance Order and the Board's separate order deciding Petitioner's appeal of the HSC Order in the City's favor].) According to the Petition, the Nuisance Order was distinct from the HSC Order and was the product of a request the City made to the Board after issuance of the HSC Order. (*Id.* at ¶¶ 27, 29.) Accordingly, the Nuisance Order is an independent basis for Respondents' liability on the Second Cause of Action. Critically, the Court cannot sustain Respondents' demurrer to the Second Cause of Action only to the extent that cause of action rests on the Board's order affirming the HSC Order. "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; see also *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [no demurrers as to a portion of a cause of action].) Unless Respondents have offered an argument capable of sustaining the demurrer to the extent the Second Cause of Action rests on the Nuisance Order, the entire demurrer must be overruled.

The Petition does not admit, even by implication, that any aspect of Building 12 constituted a nuisance. On the contrary, it pleads that the City's claim that Building 12 was a nuisance was inadequately supported by evidence and improperly relied upon the appearance of Building 12 as opposed to health and safety considerations. (Petition, ¶ 27.) These allegations are not accepted as true against a demurrer because they are legal contentions. (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 173.) Ignoring these allegations leaves the Court with a petition that does not take a clear position as to whether there were, in fact, nuisance conditions at Building 12. The Court is not permitted to arbitrarily resolve that ambiguity against Petitioner, but must construe the pleading liberally in Petitioner's favor. (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 376.) The pleading's ambiguity as to the presence of nuisance conditions at Building 12 and the lack of any judicially noticeable material establishing the existence of nuisance conditions means that the Board's issuance of the Nuisance Order cannot, at this stage, be deemed immune from takings analysis on the basis that it constitutes nuisance abatement activity.

Respondents' remaining attacks on the Second Cause of Action are specific to the HSC Order, or the Board's order affirming it. They argue that these cannot be takings because of the manner in which they interfered with Petitioner's ownership of Building 12, and in particular the temporary nature of the interference. (Memorandum, pp. 13-14.) These arguments are not directed at the Nuisance Order. (*Ibid.*) The Court has no information before it that would even allow it to

[3] Petitioner's argument that this conclusion would render government conduct "immun[e] from constitutional scrutiny" wherever it consists of code enforcement activity (Opposition, p. 8) is overblown. Respondents' demurrer, and this order, only address Petitioner's takings claim. It has no bearing on Petitioner's ability to pursue a different constitutional claim.

entertain similar arguments as to the Nuisance Order, because the Petition does not plead any facts about the content or effect of the Nuisance Order and Respondents have not asked the Court to judicially notice that order. Absent a meritorious argument for why the Second Cause of Action fails to state a claim to the extent it is based on the Nuisance Order, the Court is required to overrule the demurrer notwithstanding its conclusions regarding the other order's ability to serve as the basis for a takings claim. The demurrer is OVERRULED.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 6/23/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0009500

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: MALFRED C. SPENCER vs. DEFENDANT: MARTIN C. JOHNSON	

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

RULING

Defendant's demurrer is **SUSTAINED** with leave to amend. Defendant's motion to strike is **GRANTED in part and DENIED in part,** with leave to amend.

Allegations in Plaintiff's Complaint

Plaintiff Malfred Spencer alleges that Defendant Martin C. Johnson hired him to be an in-home caretaker for Defendant's elderly parents. Defendant hired Plaintiff out of a homeless shelter and was aware that Plaintiff suffered from PTSD and bipolar episodes and was also aware of Plaintiff's physical limitations. Defendant paid Plaintiff only $100 per week, which Plaintiff accepted because Defendant misled Plaintiff into believing that they shared religious beliefs. After Plaintiff worked for Defendant for two years, Defendant failed to pay Plaintiff a $5,000 departure bonus as promised. Defendant breached his financial contract with Plaintiff, violated 18 U.S.C. Section 1584, and caused Plaintiff severe emotional distress.

Demurrer

Procedural Deficiency

Defendant fails to file a demurrer in compliance with California Rule of Court 3.1320(a), which provides that "[e]ach ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses." Defendant also failed to file and serve a notice of hearing notifying Plaintiff of the date and place of the hearing on his demurrer, as required under Rule 3.1320(c).

Plaintiff does not object to these deficiencies or claim he has been prejudiced in any way. The Court will consider Defendant's demurrer but admonishes Defendant to comply with all applicable rules when filing matters with the court.

Standard

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

Statute of Limitations

Defendant argues that all three causes of action are barred by the applicable statute of limitations.

The statute of limitations for breach of an oral contract is two years. (Code Civ. Proc. § 339(1).)[1] A breach of contract cause of action ordinarily accrues at the time of breach. (See *Piedmont Capital Management, LLC v. McElfish* (2023) 94 Cal.App.5th 961, 964.) The statute of limitations for violation of 18 U.S.C. Section 1584 is ten years after the cause of action "arose". (18 USC § 1595(c)(1).) The statute of limitations for intentional infliction of emotional distress is two years. (Code Civ. Proc. § 335.1; *Wassmann v. South Orange County Community College District* (2018) 24 Cal.App.5th 825, 852-853.) "'A cause of action for intentional infliction of emotional distress accrues, and the statute of limitations begins to run, once the plaintiff suffers severe emotional distress as a result of outrageous conduct on the part of the defendant.'" (*Wasserman*, 24 Cal.App.5th at p. 853 [citation omitted].)

Defendant contends that Plaintiff's Complaint alleges that the events at issue occurred between 2005 and 2010, and therefore all of Plaintiff's claims are untimely because Plaintiff did not file his Complaint until March 20, 2026, approximately 16 years after the last relevant event occurred.

"In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred.'" (*Guardian North Bay, Inc. v. Superior Court* (2001) 94 Cal.App.4th 963, 971-972 [citations omitted]; see also *Childs v. State of California* (1983) 144 Cal.App.3d 155, 161 ["'[a] demurrer on the ground of the bar of the statute of limitations *does not lie* where the complaint merely shows that the action *may have been barred*. It must appear affirmatively that, upon the facts stated, the *right of action is necessarily barred*"'] [citation omitted][emphasis in original].) "[T]here are no hard and fast rules for determining what facts or circumstances will compel inquiry by the injured party and render him chargeable with

[1] The statute of limitations for breach of written contract is four years. (Code Civ. Proc. § 337.) Plaintiff does not allege a written contract in his Complaint. If there was a written contract between the parties, this must be specifically alleged.

knowledge. [Citation.] It is a question for the trier of fact. However, whenever reasonable minds can draw only one conclusion from the evidence, the question becomes one of law." (*Brewer v. Remington* (2020) 46 Cal.App.5th 14, 28 [citations and internal quotations omitted].)

The statutes of limitation do not clearly appear on the face of the Complaint, in large part because Plaintiff's Complaint is ambiguous as set forth below. The demurrer is not sustained on the basis of the statute of limitations.

Ambiguity

The demurrer is sustained on the ground of ambiguity. (Code Civ. Proc. § 430.10(e).) The Complaint groups Plaintiff's various grievances together into a single cause of action when it appears that Plaintiff intends to assert at least two, perhaps three, separate causes of action against Defendant. There are no separate elements alleged for these causes of action. Further, with respect to the breach of contract cause of action, Plaintiff is vague as to whether the contract was oral or written. The Court will grant Plaintiff leave to amend to remedy the ambiguities in his pleading.

Breach of Contract

Defendant argues that Plaintiff fails to plead the existence of an enforceable contract because there are no allegations as to "when the promise was made, by whom specifically, what the material terms were, or what consideration supported it." (MPA, p. 4:15-16.) Plaintiff need not allege the specific date of the contract and already alleges that promises were made by Defendant. However, Plaintiff does also need to allege at least the legal effect of the contract, as well as consideration if the contract was oral. (See *Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640; *Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 284.) Plaintiff has not sufficiently alleged either. Plaintiff's allegations generally reference both weekly pay and a departure bonus but it is unclear if the alleged contract(s) covered both of these payments.

18 U.S.C. § 1584

Section 1584(a) provides in part: "Whoever knowingly and willfully holds to involuntary servitude . . . any other person for any term . . . shall be fined under this title or imprisoned not more than 20 years, or both."

Defendant demurs to this cause of action on the ground that there is no private cause of action available for violation of this statute. However, Section 1595 expressly provides for a civil cause of action for violations of Chapter 77, which includes Section 1584. (See *Ratha v. Rubicon Resources, LLC* (9th Cir. 2026) 168 F.4th 541 ["Congress made clear in the 2008 version of § 1595(a) that any violation of the human-trafficking chapter would give rise to civil liability"].) Defendant also demurs on the ground that Plaintiff does not state sufficient facts to support a cause of action under this section. The demurrer is sustained on this basis. "When . . . the person claiming involuntary servitude is . . . free to choose the type of employment and the employer, and is also free to resign that employment if the conditions are unsatisfactory or to accept other employment, none of the aspects of 'involuntary servitude' which invoke the need to apply a contextual approach to Thirteenth Amendment analysis are present." (*Moss v.*

Superior Court (1998) 17 Cal.4th 396, 416-417.) Here, Plaintiff merely alleges that he "reluctantly excepted [sic] to work for the Defendant pennies on the Dollar. Instead of $800 a week, the Plaintiff agreed to work for $ One hundred a week", that Defendant created a "hostile environment", and that Defendant "neglect[ed] to Foresee Psychological harm towards the trusting Plaintiff." These allegations are insufficient to state a cause of action under Section 1584.

Intentional Infliction of Emotional Distress

Plaintiff references emotional distress in his Complaint, but it is not clear if he identifies this as type of damage suffered in connection with other claims or if he is asserting a cause of action for intentional infliction of emotional distress. The Court will assume the latter for purposes of this demurrer.

"The elements of a cause of action for IIED are as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress." (*Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) While Plaintiff alleges that he suffered severe emotional distress, he does not allege the other elements of this cause of action or facts to support those elements. The demurrer is sustained on this basis.

Motion to Strike

Procedural Deficiency

California Rule of Court 3.1322(a) provides: "A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively." Defendant's notice of motion fails to comply with this rule.

Plaintiff does not object to this deficiency or claim he has been prejudiced. The Court will consider the motion to strike but again admonishes Defendant to comply with applicable rules for the pleadings he files with the court.

Standard

The court may, upon a motion made pursuant to Code of Civil Procedure § 435, strike out any "irrelevant, false, or improper matter inserted in any pleading." (Cal. Code Civ. Proc. § 436.) Improperly pled damages claims may be challenged by motion to strike. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.)

Punitive damages are generally available where a defendant is guilty of oppression, fraud or malice. (Civ. Code § 3294(a).) "'Malice' is defined as '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'; 'oppression' is 'despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of

that person's rights.' 'Despicable conduct' is 'conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' [Citation.] 'The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.'" (*Colucci v. T-Mobile USA, Inc*. (2020) 48 Cal.App.5th 442, 454-55 [citations omitted].) Evidence of negligence, gross negligence, or even recklessness is not sufficient to support an award of punitive damages. (*Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 88.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff . . . judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 [citations omitted].) "The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves*, 157 Cal.App.3d at p. 166 (citations omitted).)

Punitive Damages

For the reasons discussed above in connection with the demurrer, the Complaint does not allege sufficient facts to support Plaintiff's claims and does not allege facts supporting any allegation that Defendant is guilty of oppression, fraud or malice. The motion to strike Plaintiff's request for punitive damages is therefore granted.

"$12M 90.01"

Because Plaintiff already stated that his breach of contract claim is for $5,000 (or $2,500, if Plaintiff contends he received partial payment), the "$12M 90.01" is presumably requested in connection with Plaintiff's request for emotional distress damages or punitive damages. Because a complaint cannot identify a specific amount for these types of damages, the motion to strike this amount is granted. (Code Civ. Proc. § 425.10(b); *Schwab v. Rondel Homes, Inc*. (1991) 53 Cal.3d 428, 432.)

"Irrelevant" Matter

Defendant also moves to strike the following, which he characterizes as irrelevant: "(a) References to the parties' religious beliefs, practices, and affiliations, including descriptions of Bible discussions, walks around Lake Merritt, and "Christian Brothers"; (b) References to "12 other Church Members" and religious motivations for accepting employment; (c) Characterizations of Defendant's professional credentials and tax practice that have no bearing on any cause of action; and (d) Other narrative material that does not support any element of any recognized cause of action." (MPA, p. 5.)

The Court denies the motion as to this "irrelevant" matter. As the Court reads Plaintiff's Complaint, the references to the parties' religious beliefs and practices were included to describe

Plaintiff's reason for accepting lower pay from Defendant, and the references to Defendant's credentials and background were included to indicate Defendant's superior knowledge or bargaining position over Plaintiff. These facts may ultimately be relevant for Plaintiff to prove his claims. Defendant does not identify any "other narrative material that does not support any element of any recognized cause of action" and therefore the motion is denied as to subsection (d) of his argument as well.

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 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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