# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV1802151

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: DISCOVER BANK<br><br>vs.<br><br>DEFENDANT: KELLEY L. PULLMAN | |

NATURE OF PROCEEDINGS: MOTION – RECONSIDERATION

RULING

Kelley L. Pullman's ("Defendant") unopposed Motion for Reconsideration of Order Denying Motion to Vacate Judgment is granted.

Defendant made a sufficient showing that her motion was timely even though default judgment was taken against her almost six years before she moved to vacate. (*Politsch v. Metroplaza Partners, LLC* (2025) 109 Cal.App.5th 397.)

***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/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
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***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201799

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: ROY HARDIMAN, ET AL<br><br>vs.<br><br>DEFENDANT: THE WOODLANDS STORE, INC. | |

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

The Joint Motion for Relief Under CCP Section 473(b) is granted. The Court will sign the propose order submitted by the parties on April 1, 2025.

***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301381

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: JOHN MCNEILLY, ET AL<br>vs.<br>DEFENDANT: FCA US, LLC, ET AL | |

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

RULING

The Applications for An Order Admitting Rhea Varghese and Jason Hartman as Counsel Pro Hac Vice are both denied without prejudice.

Each application failed to include proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on the State Bar of California at its San Francisco office. (CRC 9.40(c)(1).)

***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002362

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: BRANDON YE<br><br>vs.<br><br>DEFENDANT: JOSHUA MATTHEW RICHMAN ET AL | |

NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR

RULING

Plaintiff Brandon Ye's motion for an order compelling defendants Joshua Matthew Richman and Allison Nicole Zenner (hereinafter "Defendants") to permit Plaintiff to inspect, photograph and test the real property located at 9 Edwards Ave. is granted as prayed.

"Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting, copying, testing, or sampling documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control of any other party to the action." (Code Civ. Proc., § 2031.010, subd. (a).) "A party may demand that any other party allow the party making the demand, or someone acting on the demanding party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it." (§ 2031.010, subd. (d).) Pursuant to section 2017.010, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action…if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. …"

The inspection, testing and photographing sought by Plaintiff is relevant to the subject matter involved in the pending action. Defendants cite no authority in support of their argument that Plaintiff must offer evidence to support his claims before he is entitled to conduct the inspection, testing and photographing. In any event, contrary to Defendants' argument, Plaintiff has offered evidence to support his claim of nuisance and damage. (See ex. 2 to Chase decl., responses to nos. 7.1 and 8.8.) The court finds that the recommendations of the Discovery Facilitator that "(1) defendant will/does not acquiesce in the claim that he is bound by the 2017 settlement agreement between other parties as part of the inspection, and plaintiff will not forego that claim" and "(2) plaintiff will agree to indemnify defendant for any damage caused by and during the course of

the inspection in order to address defendant's concern about destruction during the process of the inspection" are reasonable. Further, Plaintiff made clear during the meet and confer process that the testing he seeks is nondestructive. (See ex. C to Riggs decl.)

Plaintiff's request for sanctions is granted in the amount of $5,835. (§ 2031.310, subd. (h).) The court has reduced the amount sought by Plaintiff for the time spent by counsel on meet and confer efforts (2 hours for Mr. Riggs and 1 hour for Mr. Preonas). Such efforts are required before a motion can be brought.

***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003307

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: REINA ISABEL YAH IC<br><br>vs.<br><br>DEFENDANT: EMMA COLLEEN MONE, ET AL | |

NATURE OF PROCEEDINGS: DEMURRER

## RULING

Defendant Emma Colleen Mone's ("Defendant") Demurrer to plaintiffs Reina Isabel Yah IC and Bryan Caamal's (collectively "Plaintiffs") prayer for exemplary and punitive damages as set forth in Plaintiffs' First Amended Complaint ("FAC") is OVERRULED. Defendant's Motion to Strike portions of the FAC relating to an award of punitive or exemplary damages as to Defendant is DENIED.

## BACKGROUND

This case arises out of an automobile accident. Plaintiffs allege that on February 25, 2023, Defendant, while driving under the influence of alcohol and at an excessive speed, rear-ended Plaintiffs' vehicle, causing Plaintiffs to sustain bodily injuries and property damage. (FAC, ¶ 8.) Plaintiffs further allege that at the time of the accident, Defendant's speed was so excessive that her vehicle rolled over multiple times. (*Ibid.*)

## LEGAL STANDARD

Demurrer

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.) "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.) A demurrer does not lie to a portion of a cause of action. (*PH II, Inc. v. Superior Ct.* (1995) 33 Cal.App.4th 1680, 1682.)

Motion to Strike

On noticed motion, the Court may strike out "any irrelevant, false, or improper matter inserted in any pleading," and "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) The basis for granting the motion to strike must appear on the face of the challenged pleading or else be judicially noticeable. (*Id.*, § 437, subd. (a).)

ANALYSIS

Demurrer

The adequacy of the punitive damage allegations cannot be tested by demurrer, since a demurrer does not lie to a portion of a cause of action and punitive damages alone do not constitute a complete cause of action. (*Grieves v. Superior Ct.* (1984) 157 Cal.App.3d 159, 163–64.) However, punitive damages allegations may be tested via Motion to Strike. (*Ibid.*)

Motion to Strike

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) "Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) An award of punitive damages requires "despicable conduct," meaning behavior that is "vile," "base," or contemptible" and that would be "looked down upon and despised by ordinary decent people," in addition to willful and conscious disregard for the rights and safety of others. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "'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.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

In *Taylor v. Superior Court* (1979) 24 Cal.3d 890, the California Supreme Court held that the malice requirement for punitive damages may be satisfied when a person knowingly drinks alcohol to the point of intoxication and thereafter drives a motor vehicle and causes an accident. The *Taylor* Court held that "one who voluntarily commences, and thereafter continues, to consume alcoholic beverages to the point of intoxication, knowing from the outset that he must thereafter operate a motor vehicle demonstrates ... 'such a conscious and deliberate disregard of the interests of others that his conduct may be called willful or wanton.' [Citations]." *(Id.,* at 899.)

Similarly, in *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, the driver was not only intoxicated, but also ran a stop sign, zigzagged in and out of traffic at excessive speeds, and was driving in a crowded beach recreation area on a Sunday afternoon in June. The court determined that the circumstances involved more than just the decision to drive in an intoxicated condition: "The risk of injury to others from ordinary driving while intoxicated is certainly foreseeable, but it is not necessarily probable. The risk of injury to others from [defendant's] conduct under the circumstances alleged was probable." (*Id.,* at 89).

Here in this case, the gravamen of Plaintiffs' action, as in *Taylor*, is that Defendant knowingly drove while under the influence of alcohol and thereafter collided with Plaintiffs' vehicle, causing injuries. (See FAC, ¶¶ 16(A)(2), 45(A)(2), 78(A)(2) [alleging that moments prior to getting behind the wheel, Defendant intentionally drank in excess to impair her driving in reckless disregard of the safety of others, including Plaintiffs, in violation of CVC 23153(a) and (b) – California's drunk driving statute – despite having full knowledge of the safety hazard of driving while intoxicated].)

Like *Dawes*, Plaintiffs allege additional "aggravating" factors. For example, allegations of excessive speed, supported with the facts underlying that conclusion (caused Defendant's vehicle to roll multiple times) (FAC, ¶ 8), allegations that Defendant had a preexisting and known drinking problem which resulted in her living in "sober living" community (FAC, ¶ 11), and finally that Defendant's BAC was ".15 or Higher," significantly over the legal threshold (FAC, ¶ 12).

Defendant argues that *Taylor* and *Dawes* are "outdated" because they were decided before Civil Code section 3294 was amended to add the requirement of "despicable conduct," but "despicable conduct" refers to conduct that is "base," "vile," or "contemptible." (*College Hospital, supra*, at p. 725.) Drunk driving is certainly contemptible conduct.

For these reasons, the Court DENIES the Motion to Strike.

***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003679

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: ROY HARDIMAN, ET AL<br>vs.<br>DEFENDANT: DONALD SANTA, ET AL | |

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

The Joint Motion for Relief Under CCP Section 473(b) is granted. The Court will sign the propose order submitted by the parties on April 1, 2025.

***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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0004433

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: VIRGIL PINA<br><br>vs.<br><br>DEFENDANT: MARIN COUNTY | |

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant County of Marin's ("Defendant") demurrer to the First Amended Complaint is sustained with leave to amend.

***Allegations***

Plaintiff Virgil Pina ("Plaintiff") alleges that he worked for Defendant as a Senior Maintenance Electrician from May 2017 to October 16, 2023. On August 6, 2022, Plaintiff injured his knee. His doctor placed him on specific modified activity at home and work which prohibited him from performing his job. Plaintiff requested a "hybrid hands-on technical/managerial type of position," which he was denied. On November 14, 2022, Plaintiff had knee surgery. For approximately 18 months after his surgery Plaintiff tried to return to work but his requests to return and for an accommodation were denied. Ultimately, in order to receive his monthly retirement, he was forced to submit a letter of resignation wherein he was constructively wrongfully terminated.

Following a successful demurrer by Defendant, Plaintiff filed his operative First Amended Complaint alleging causes of action for disability/medical condition discrimination, failure to engage in the interactive process, failure to accommodate, failure to take steps to prevent discrimination and retaliation, and retaliation.

***Request for Judicial Notice***

Defendant's request for judicial notice of the complaint and demurrer and opposition thereto is granted. (Evid. Code, § 452, subd. (d).)

*Demurrer*

### A. 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*, *supra*, 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.)

### B. First Cause of Action for Disability/Medical Condition Discrimination

To state a cause of action for disability discrimination, the plaintiff must allege that he "'(1) suffered from a disability or was regarded as suffering from a disability, (2) could perform the essential duties of a job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability.'" (*Price v. Victor Valley Union High School District* (2022) 85 Cal.App.5th 231, 239 [citation omitted].)

Defendant first challenges this claim arguing Plaintiff has not sufficiently alleged a disability or medical condition. A physical disability under FEHA includes any physical impairment that affects one or more body systems and limits a major life activity. (Gov. Code, § 12926, subd. (m)(1).) A "physical disability" includes "[h]aving any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that" both affects one or more of the body's major systems and "[l]imits a major life activity." (Gov. Code § 12926(m)(1).) A physical disability limits a major life activity if it makes the achievement of the major life activity difficult, such as physical, mental, and social activities and working. (Gov. Code, § 12926, subd. (m)(1)(B)(iii).)

A physical disability "includes, but is not limited to, having any anatomical loss, cosmetic disfigurement, physiological disease, disorder or condition that does both of the following: (A) affects one or more of the following body systems: neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; and endocrine; and (B) limits a major life activity. (C) 'Disability' includes, but is not limited to, deafness, blindness, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, cerebral palsy, and chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, and heart and circulatory disease." (Cal. Code Regs., tit. 2, § 11065(d)(2).) A disability does not include "conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis. These excluded conditions have little or no residual effects, such as the common cold; seasonal or common influenza; minor cuts, sprains, muscle aches, soreness, bruises, or abrasions; non-migraine

headaches, and minor and non-chronic gastrointestinal disorders." (Cal. Code Regs., tit. 2, § 11065(d)(9)(B).)

Moreover, a "medical condition" is defined as a health impairment related to or associated with cancer or genetic characteristics. (Gov. Code § 12926, subd. (i).)

Here, upon amendment, Plaintiff has alleged his "knee injury" and subsequent "knee surgery" resulted in specific limitations. (First Amended Complaint (FAC), ¶¶ 6, 12.) He incorporates these allegations into each cause of action and generally alleges he had a "disability/medical condition." As Defendant argues, the "knee injury" and list of limitations are simply not sufficient to establish a physical disability. Moreover, there are no allegations regarding any "medical condition." As such, the Court sustains the demurrer with leave to amend.

Defendant also demurs on the ground failed to adequately allege any facts indicating that he was subjected to an adverse employment action because of the disability or perceived disability, or that the disability was a substantial motivating factor for his constructive termination. "Constructive discharge occurs only when an employer terminates employment by forcing the employee to resign." (*Mullins v. Rockwell Internat. Corp.* (1997) 15 Cal.4th 731, 737.) "The conditions giving rise to the resignation must be sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the job to earn a livelihood and to serve his or her employer. The proper focus is on whether the resignation was coerced, not whether it was simply one rational option for the employee." (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1246.) To establish a constructive discharge, an employee must plead and prove that the employer either intentionally or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employees resignation that a reasonable person in the employee's position would be compelled to resign. (*Id.,* at 1251.)

In the FAC, Plaintiff alleges "[u]ltimately, in order to receive his monthly retirement of $620/month, Plaintiff was forced by Defendant to submit a letter of resignation wherein he was constructively wrongfully terminated." (FAC, ¶ 13.) He also generally alleges he was subject to "adverse employment actions" including "terminating Plaintiff's employment." (FAC, ¶ 20.) As Defendant argues, the FAC does not include any allegation that Plaintiff was subjected to "intolerable working conditions." (*Mullins*, *supra*, 15 Cal. 4th at 737.) Moreover, there are no allegations that the disability was a substantial motivating factor for Plaintiff's constructive termination. The demurrer to this cause of action is sustained.

### C. Second Cause of Action for Failure to Engage in the Interactive Process

Plaintiff alleges that he was ready and willing to engage in the good faith interactive process required under Government Code section 12940(n) but Defendant failed to do so when it constructively terminated Plaintiff's employment. FEHA prohibits an employer from failing "to engage in a timely, good faith, interactive process with the employee . . . to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee . . . with a known physical or mental disability." (Gov. Code § 12940(n).)

The demurrer to this cause of action is sustained as Plaintiff fails to adequately allege a disability or perceived disability. (See *Hodges v. Cedars-Sinai Medical Center* (2023) 91 Cal.App.5th 894, 913 ["with no disability to accommodate, and no perception of one, there is no duty to accommodate and thus no accommodation to discuss"]; *Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 86 [plaintiff's cause of action for failure to engage in the interactive process failed where he failed to show a legally recognized disability].)

**D. Third Cause of Action for Failure to Accommodate**

Plaintiff alleges that Defendant failed to reasonably accommodate his disability as required under Government Code section 12940. However, as Plaintiff fails to adequately allege a disability or perceived disability, the demurrer to this cause of action is sustained as well. (See *Hodges*, *supra*, 91 Cal.App.5th at p. 913; *Higgins-Williams*, *supra*, 237 Cal.App.4th at p. 86.)

**E. Fourth Cause of Action for Failure to Take Steps to Prevent Discrimination and Retaliation**

Plaintiff alleges that Defendant failed to take all reasonable steps to prevent discrimination and retaliation as required under Government Code Section 12940(k). The demurrer to this cause of action is also sustained because Plaintiff fails to allege a viable claim for disability discrimination or retaliation. (See *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1021 ["An actionable claim under section 12940, subdivision (k) is dependent on a claim of actual discrimination"].)

**F. Fifth Cause of Action for Retaliation**

Plaintiff alleges that he was retaliated against due to his disability and/or request for accommodation in violation of Government Code section 12940(h). Plaintiff states: "As alleged above, during Plaintiff's employment with Defendant, Plaintiff complained of violations of the California Labor Code and notified Plaintiff's employer of Plaintiff's disability, requested an accommodation for same, and Defendant thereafter subsequently retaliated by terminating Plaintiff's employment." (FAC, ¶ 50.)

Section 12940(h) provides that it is unlawful for an employer to "discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." To state a cause of action for retaliation under this subsection, a plaintiff must allege: "'(1) the employee's engagement in a protected activity . . .; (2) retaliatory animus on the part of the employer; (3) an adverse action by the employer; (4) a causal link between the retaliatory animus and the adverse action; (5) damages; and (6) causation.'" (*Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 243.) As with the initial complaint, Plaintiff fails to state a cause of action under this section. The generalized allegation that Plaintiff complained and was terminated lacks adequate supporting facts sufficient to state a retaliation claim. He does not allege when he complained, what violations he complained about, to whom he complained, the disability he had at the time, or the accommodation(s) that he requested.

In sum, the Court sustains the demurrer to the First Amended Complaint in its entirely with 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: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0004868

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

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| IN THE MATTER OF:<br><br>PAUL SUNAK | |

NATURE OF PROCEEDINGS: MOTION – COMPEL ARBITRATION

RULING

Paul Sunak's petition to compel arbitration is denied without prejudice.

***Petitioner's Arguments***

On December 19, 2024, Petitioner Paul Sunak ("Paul") filed a petition to compel arbitration against Respondents Usha Sunak ("Usha") and Gurbax Sunak ("Gurbax"). Paul alleges that Usha and Gurbax, who are Paul's parents (collectively referred to as the "Sunaks"), entered into a lease with Paul in 2015 (the "Lease") to rent a garage area and parking lot to Paul. (Declaration of Paul Sunak ("P. Sunak Decl.,"), Exh. A.) Paul decided to use the property for a medical cannabis dispensary. Because the development of this business required extensive permitting and could take several years, however, the parties agreed that the property would be rented to a commercial business temporarily to generate rental revenue while the permit process was pending. The Sunaks then rented the property to A&C Towing and Transportation. By early 2019, Marin County reversed its position on medical cannabis dispensaries, forbidding any to operate in unincorporated Marin County where the property was located. Paul and the Sunaks agreed to pivot to the development of a gas station on the property. However, beginning in early 2022, Paul and the Sunaks had a falling out and the Sunaks repudiated the Lease.

Paul states that he intends to seek a declaration of rights under the Lease and to assert a breach of contract cause of action against the Sunaks.

Paragraph 36 of the Lease provides in part:

> 36. DISPUTE RESOLUTION:
>
> A. MEDIATION: Tenant and Landlord agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 36B(2) below. Paragraphs 36B(2) and (3)

apply whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

B. ARBITRATION OF DISPUTES: **(1) Tenant and Landlord agree that any dispute or claim in Law or equity arising between them out of this agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 36B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part 111, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.**
(2) EXCLUSIONS FROM MEDIATION AND ARBITRATION: The following matters are excluded from Mediation and Arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions . . . .

In 2024, Paul's counsel sent a demand for mediation to Vince DeMartini, who he understood to be counsel for the Sunaks. This demand went unanswered. (Declaration of Sean O' Neill ("O'Neill Decl."), ¶2.) Paul's counsel then sent a demand for arbitration directly to the Sunaks, but this demand also went unanswered. (*Id.*, ¶3.)

Paul seeks to compel arbitration before the AAA, with one arbitrator chosen by AAA, and according to AAA's Commercial Rules. He argues that the court can and should decide which arbitration organization will be used, and which rules to apply, where the parties do not specifically designate an organization or rules in their arbitration agreement as is the case in the Lease. (See Code Civ. Proc. §§ 1281.6, 1281.9; *American Home Assur. Co. v. Benowitz* (1991) 234 Cal.3d 192, 199; *HM DG, Inc. v. Amini* (2013) 219 Cal.4th 1100, 1107-1108.)

***Discussion***

The Sunaks "agree that this dispute is appropriate for alternative dispute resolution. But they would prefer mediation first . . ." (Opp., p. 1:15-16.) The Sunaks state that they retained their current counsel, Anthony Bettencourt, on June 11, 2025, and that Mr. Bettencourt sent a letter to Paul's counsel requesting that the parties participate in mediation. Paul's counsel has not yet responded to this demand. (Declaration of Anthony Bettencourt ("Bettencourt Decl."), ¶¶3, 6.)

Paul's petition is denied. The parties agreed to attend mediation prior to any arbitration, so they must participate in mediation before one party may demand arbitration. The motion is denied without prejudice so that Paul may refile if the parties do not reach a resolution in mediation.

***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/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3O7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

***If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 06/27/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006278

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

| | |
|---|---|
| PLAINTIFF: CORNELL TONEY<br><br>vs.<br><br>DEFENDANT: SELECT PORTFOLIO SERVICING AND DOES 1-100, 2025 | |

NATURE OF PROCEEDINGS: ORDER TO SHOW CAUSE – PRELIMINARY INJUNCTION

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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