

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 07/05/24      TIME: 1:30 P.M.      DEPT: E      CASE NO: CV2100119

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: JOEY DALE

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PLAINTIFF:      CATHY LOCKE

vs.

DEFENDANT:      CITY OF NOVATO

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NATURE OF PROCEEDINGS: MOTION – LEAVE

**RULING**

On July 3, 2024, the Court issued an order regarding Defendant/Cross-Complainant City of Novato's Motion for Summary Judgment or Summary Adjudication, adopting in full its tentative decision issued on May 16, 2024. As a result, Plaintiff/Cross-Defendant's Motion for Leave to File Third Amended Complaint is moot.

***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 July, 2024 is as follows:***

***<https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMMVvd2tFQT09>***

***Meeting ID: 160 515 3328***

***Passcode: 360075***

***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](http://marin.courts.ca.gov)***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 07/05/24      TIME: 1:30 P.M.      DEPT: E      CASE NO: CV2201564

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: JOEY DALE

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PLAINTIFF:    NATHAN ACCOMAZO,  
ET AL

vs.

DEFENDANT: BILL FORD

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NATURE OF PROCEEDINGS: MOTION – CONSOLIDATE

**RULING**

Plaintiff's unopposed Motion to Consolidate Case Nos. CIV 2201564 and CIV 2202529 is granted. The court notes that Case No. CIV 2202604 has already been consolidated into CIV 2202529.

***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: 07/05/24      TIME: 1:30 P.M.      DEPT: E      CASE NO: CV2202529

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: JOEY DALE

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PLAINTIFF:    NATE ACCOMAZZO

vs.

DEFENDANT:   BILL FORD

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NATURE OF PROCEEDINGS: MOTION – CONSOLIDATE

**RULING**

Plaintiff's unopposed Motion to Consolidate Case Nos. CIV 2201564 and CIV 2202529 is granted. The court notes that Case No. CIV 2202604 has already been consolidated into CIV 2202529.

***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: 07/05/24      TIME: 1:30 P.M.      DEPT: E      CASE NO: CV0001441

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: JOEY DALE

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PLAINTIFF:      EDNA MARCIA RIBEIRO

vs.

DEFENDANT:    ALEXANDRE P. FRADE,  
ET AL

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NATURE OF PROCEEDINGS: DEMURRER – FIRST AMENDED COMPLAINT

**RULING**

Defendants' demurrer to the first amended complaint is overruled.

**First, Third, Fifth, Sixth, and Seventh Causes of Action:** Defendants demur on the grounds that “[t]he First Amended Complaint is uncertain and fails to state a cause of action because it splits the First Cause of Action for Medical/Dental Malpractice into separate causes of action for (1) dental malpractice, (2) negligent infliction of emotional distress, (3) violation of civil rights, (4) negligence and (5) breach of fiduciary duty.”

Procedural Issue: “Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint...or to specified causes of action...” (Cal. Rule of Court 3.1320(a).) Defendants combine the grounds of uncertainty and failure to state facts sufficient to constitute a cause of action in a single paragraph. Additionally, the demurrer is not clear as to whether Defendants are demurring to the first cause of action or just the other causes of action since the basis for the demurrer is that Plaintiff is improperly splitting the Medical/Dental Malpractice cause of action.

Uncertainty: “”Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” ”A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.”” (A.J. Fistes Corp. v. GDL Best Contractors, Inc. (2019) 38 Cal.App.5<sup>th</sup> 677, 695.) Defendants can easily respond to the allegations.

Failure to State Sufficient Facts: Even if Defendants are correct that each of the causes of action at issue here are based upon Dr. Frade's alleged negligence, Defendants have not shown that Plaintiff cannot pursue different legal theories at the pleading stage. A plaintiff may pursue different legal theories but will not be entitled to more than a single recovery. (See *Plotnik v. Meihaus* (2012) 208 Cal.App.4<sup>th</sup> 1590, 1612.) "The primary right theory...is invoked... when a plaintiff attempts to divide a primary right and enforce it in two suits. ..." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4<sup>th</sup> 888, 904.)

Second Cause of Action: Defendants demur on the ground that "[t]he Second Cause of Action fails to state a cause of action for sexual abuse pursuant to Civil Code Section 51.9." Defendants argue that Plaintiff has not stated a cause of action because she has not shown that Defendant "h[e]ld[ ] himself out as being able to help plaintiff establish a business, service, or professional relationship." Subdivision (a)(1) of section 51.9 actually requires a plaintiff to prove:

There is a business, service, or professional relationship between the plaintiff and defendant *or* the defendant holds himself or herself out as being able to help the plaintiff establish a business, service or professional relationship with the plaintiff or a third party. ...

(Emphasis added.) As Defendants themselves acknowledge, Plaintiff has alleged a "professional dentist/patient relationship' throughout the cause of action."

Fifth Cause of Action: Defendants demur on the ground that "[t]he Fifth Cause of Action fails to state a cause of action as it is inapplicable as the allegations cannot constitute discrimination pursuant to the Unruh Civil Rights Act."

Defendants are wrong in their apparent argument that the business must refuse to provide service. "The objective of the Act is to prohibit businesses from engaging in unreasonable, arbitrary or invidious discrimination. Therefore, the Act applies not merely in situations where businesses exclude individuals altogether, but also where treatment is unequal. ..." (*Pizarro v. Lamb's Players Theatre* (2006) 135 Cal.App.4<sup>th</sup> 1171, 1174; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 29.)

With respect to when Dr. Frade engaged in "the alleged discrimination and disparate treatment," even if Defendants are correct that the conduct must have occurred before or during Dr. Frade's treatment, they are wrong that Dr. Frade provided treatment before any alleged discrimination and disparate treatment. Plaintiff alleges that "Dr. Frade insisted...that Ms. Ribeiro exchange services [(a facial and a couple of massages)] for the tooth extraction and subsequent implant" before he performed the extraction. (¶15) In any event, Defendants are wrong that Plaintiff can only state a claim if the alleged conduct occurred before Dr. Frade provided treatment. Plaintiff was still a customer of the business establishment when, immediately after the extraction, Dr. Frade made sexual advances on Plaintiff, including kissing her on the mouth, and insisted Plaintiff give him a shoulder massage. (¶¶19-20)

***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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