SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/16/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2000143

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: GAVIN SCOTT HAPGOOD, ET AL vs. DEFENDANT: AUBERGE RESORTS LLC	

NATURE OF PROCEEDINGS: MOTION – SEAL

RULING

Defendant Auberge Resorts' unopposed motion to seal exhibits to omnibus declaration of Ashley Meyers related to April 11, 2025 conference is granted.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/16/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002382

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: SUSAN DAVIA vs. DEFENDANT: WALGREEN CO., ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – SET ASIDE/VACATE
2) DEMURRER

RULING

Walgreens.com, Inc. and Walgreens Boots Alliance, Inc.'s Motion to Set Aside the defaults entered against them on January 14, 2025 is GRANTED. The 1/17/25 Answer on file shall be deemed file on their behalf.

The hearing on Brand Fidelity International Limited's Demurrer is CONTINUED to August 27, 2025 in Department H at 1:30 pm. Briefing per Code.

BACKGROUND

Plaintiff filed her Complaint on March 28, 2024, alleging that defendants Walgreen Co., Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. (collectively "named Walgreens Defendants") failed to warn consumers about an unsafe chemical, DEHP, in a Walgreens brand brow kit in violation of Proposition 65. On April 16, 2024, Plaintiff filed a proof of service reflecting service of the Summons and Complaint on Walgreen Co. On April 26, 2024, Plaintiff filed proofs of service reflecting service of the Summons and Complaint on Walgreen Boots Alliance, Inc. and Walgreens.com, Inc. On May 29, 2024, Plaintiff requested, and the clerk entered, default as to all three defendants.

On September 4, 2024, Defendant Walgreen Co. filed a Motion to Set Aside all three defaults. By Order of the Court dated December 18, 2024, that Motion to Set Aside all three defaults was granted. That Order required an answer to be filed within 20 days. Despite this clear provision, defendants Walgreens.Com, Inc. and Walgreens Boots Alliance, Inc. did not file any responsive pleading and defendant Walgreen Co. filed a demurrer. On January 14, 2025 Plaintiff requested, and the clerk entered, default as to Walgreens.Com, Inc. and Walgreens Boots Alliance, Inc.

All three named Walgreens Defendants purported to file an Answer on January 17, 2025. On January 21, 2025, defendant Walgreen Co. then withdrew its demurrer.

On April 10, 2025, Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. moved to set aside the January 14, 2025, defaults entered against them.

On May 15, 2025, defendant Brand Fidelity International Limited filed its own demurrer.

LEGAL STANDARD – MOTION TO SET ASIDE

"The court may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473(b).) The moving party burden of showing that relief under Section 473 is warranted. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.)

"Surprise" within the context of section 473 means "some condition or situation in which a party to cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." (*Credit Managers Assn. v. National Independent Business Alliance* (1984) 162 Cal.App.3d 1166, 1173 [citation omitted].) "Excusable neglect" exists "if a reasonably prudent person in similar circumstances might have made the same error." (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1128 [citation omitted].)

DISCUSSION – MOTION TO SET ASIDE

Defendants Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. move to set aside the January 14, 2025 defaults entered against them pursuant to section 473(b) of the Code of Civil Procedure on the grounds that: (1) Plaintiff's counsel failed to provide any notice to Defendants and defense counsel before Plaintiff sought the second defaults; (2) Defendants were surprised that Plaintiff requested second entries of default against Defendants because "this matter was already litigated before this Court"; and (3) Defendants were diligent in seeking to set aside the second entries of default and moved to set them aside well within the sixth month statutory period.

In the alternative, Defendants bring this Motion pursuant to the mandatory avenue of California Code of Civil Procedure section 473(b) and request that this Court set aside the entries of default on the grounds that Defendants' lack of filing a timely Answer instead of the demurrer filing was due to Defendants' counsel's mistake as to the understanding of the December 18, 2024 Order, and that Defendants are blameless and without fault in this matter.

Defendants further request that the Answer previously filed on behalf of all three named Walgreens Defendants in this action on January 17, 2025 be deemed the operative Answer on behalf of all three named Walgreens Defendants.

The Court will GRANT the request to set aside the defaults against Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. as discussed in more detail below. However, the Court

wishes to clarify that the previously filed and withdrawn demurrer was only filed on behalf of Walgreen Co., and not either Walgreens.com, Inc. or Walgreens Boots Alliance, Inc. Therefore, regardless of whether or not counsel misunderstood the December 18, 2024 Order to permit a demurrer to be filed in lieu of an Answer within 20 days from the date of the order – no responsive pleading was filed on behalf of either Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. during that time period.

This appears to explain why Plaintiff took only their defaults and did not take Walgreen Co., who did file a demurrer within the Court ordered deadline. For these reasons, the entry of the January 14, 2025 defaults against Walgreens.com, Inc. and Walgreens Boots Alliance, Inc. have not been "already litigated" before this Court. They are new defaults, entered after these parties failed to file responsive pleadings after their first defaults were set aside.

Now that the procedural posture has been laid out, the Court turns to the merits of the Motion.
Section 473(b) is applied liberally where the opposing party will not suffer prejudice if relief is granted. (*Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1136.) Moreover, doubts in applying section 473 should be resolved in favor of a disposition on the merits of the case. The failure to notify the defendant's attorney (if known) that Plaintiff intends to take a default will usually be a sufficient ground for setting the default aside on motion under section 473. (*Nelson v. Southerland* (1960) 187 Cal.App.2d 140, 142.)

Upon review of both the moving papers and the opposition thereto, the Court determines that Plaintiff will not be prejudiced if the motion to set aside is granted. Moreover, the failure of the two defaulted parties to file a responsive pleading was excusable neglect in these circumstances.

For these reasons, the Court GRANTS the Motion to Set Aside based on section 473(b)'s discretionary relief provision. The Answer filed 1/17/25 shall be deemed filed as to all three named Walgreens Defendants, including the two moving defendants.

BRAND FIDELITY INTERNATIONAL LIMITED'S DEMURRER

Plaintiff objected and filed a procedural opposition to Brand Fidelity International Limited's Demurrer for failure to provide the requisite notice of the hearing. The Court therefore CONTINUES the hearing on the demurrer to August 27, 2025, in Department H at 1:30 p.m., in order to permit a hearing on the merits.

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: 07/16/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002989

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: TIMOTHY W. BAUGHMAN, ET AL vs. DEFENDANT: RICHARD H. HESS, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff filed a motion to compel verified written responses to requests for production of documents and to produce documents, and for monetary sanctions. The parties met with Discovery Facilitator Len Rifkind and reached agreement on some, but not all issues. This matter is continued to October 15, 2025. No later than by October 3, 2025, each party shall file an updated declaration regarding any outstanding issues related to Plaintiff's motion.

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: 07/16/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004420

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ADAM BLOCK, AN INDIVIDUAL AND AS TRUSTEE OF THE BLOCK FAMILY TRUST AND BLOCK & ASSOCIATES, LLC vs. DEFENDANT: FARMSHOP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM

RULING

Presently before the court is the motion of Adam Block and Block & Associates ("Block") to compel depositions and responses to requests for production.

Depositions

Although Block originally sought an order compelling the depositions of Jeffrey Cerciello ("Cerciello"), Farmshop Marin, LLC, and Jacqueline Barbosa, it appears that only Cerciello's deposition is still at issue. (Kassis decl. ¶8 and Landry Decl. of Non-Resolution ¶4.) The Court finds that the parties should be able to reschedule Cerciello's deposition without the Court ordering it to occur before the end of August. Block contends of that an order is necessary because of the "prior last-minute cancellation" of Cerciello's February 11 deposition. The Court does not think it was unreasonable for Cerciello to seek to delay the deposition until the Vesuvio entities appeared. Unlike the cases cited by Block, Cerciello was not claiming that discovery was premature because the pleading was deficient or that Block was not entitled to conduct discovery. (Cf. *Mattco Forge, Inc.* v. *Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, and *Budget Finance Plan* v. *Superior Court* (1973) 34 Cal.App.3d 794.) The Court also notes that Block's attorney rescheduled Cerciello's June deposition because document production was not complete, so it is unclear why Block wanted to go forward with the deposition in February when fewer documents had been produced. Cerciello has made clear he is willing to appear for his deposition so the motion is granted but the court orders the parties to work together to schedule a date for the deposition.

Requests for Production

The motion is granted in part and denied in part. The Court finds that Block has made a marginally sufficient showing of "good cause." (Code Civ. Proc, § 2031.310, subd. (b)(1).)

In his original response to the requests, Cerciello responded to a majority of the requests as follows:

> Subject to and without waiving these or any General Objections, Responding Party responds as follows: Responding Party will produce nonprivileged responsive documents in his possession, custody, or control, if any, located following a reasonable search.

Block complains about the general and other objections asserted in those responses. Contrary to Block's assertions, *Korea Data Systems Co.* v. *Superior Court* (1997) 51 Cal.App.4th 1513 does not hold that "[g]eneral objections are not permitted." In that case, the original response was solely "general objections," which was not the case here. (See *id. at* 1514.) As to all of the objections except privilege, they are moot since Cerciello stated he will produce documents. There is no ambiguity as to whether all responsive documents will be produced.

In his supplemental response, Cerciello added new objections. Cercillo also provided the following language as to most of the requests:

> Subject to Responding Party's objections, production in response to this Request will be allowed in whole, in accordance with Responding Party's understanding of the Request, and all non-privileged responsive documents located following a reasonable and diligent search will be produced. Responding Party reserves the right to supplement or amend this Response.

Cerciello has waived the new objections as they were not timely made. (Code Civ. Proc. § 2031.300.) With those objections gone, there is no ambiguity that Cerciello has agreed to produce documents.

With respect to the requests which Cerciello has not agreed to produce in response to (requests 3-5, 10, 53, 64-69, and 76-79), the motion to compel further responses is granted as to all of these requests with the exception of requests 76-79. As to all of these requests, Cerciello responded that meet and confer was needed "with respect to the nature and scope of this request." As to requests 3-5 Cerciello stated in his supplemental response that "[p]roduction will not be allowed," but it is unclear why. This appears to raise the "vague, ambiguous, and overbroad" objection. The court agrees that requests 76-79 are overbroad. They seek "[a]ll COMMUNICATIONS" between Cerciello and Needleman with no attempt to limit the communications to those which relate to the allegations in this action. The remaining requests are not vague, ambiguous, or overbroad, and shall be produced.

Regarding any documents withheld on the basis of privilege, Cerciello shall produce a privilege log. (§ 2031.240, subd. (c)(1).)

In conclusion, Cerciello shall provide a code-compliant further response to requests 3-5, 10, 53 and 64-69 within ten days of service of this order. To the extent Cerciello has not produced documents he has agreed to produce, he is ordered to do so no later than by August 8, 2025. His production must comply with section 2031.240, subdivision (c)(1).) He is also ordered to produce a privilege log by that date.

Sanctions

Block's request for sanctions is denied. Both sides have prevailed in part on this motion.

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: 07/16/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005256

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ESTATE OF MARC PANKIN vs. DEFENDANT: COUNTY OF MARIN, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

The County of Marin's demurrer to the First through Fourth Causes of Action is overruled.

Allegations in Plaintiffs' Complaint

On January 30, 2025, Plaintiffs filed their Complaint against Defendants the County of Marin ("County"), City of San Rafael ("City"), San Rafael Airport LLC ("Airport"), PG&E Corporation, and Pacific Gas & Electric Company, alleging that decedent Marc Pankin ("Marc") died after a small airplane in which he was a passenger struck a poorly lit power line when trying to make a routine landing.[1] Plaintiffs allege that the power line was maintained and owned by PG&E and sat on land believed to be the property of the County, the City, or both. Specifically, Plaintiffs allege that "County . . . is believed to be the property owner of the parcel of land where the power lines in question were located ('Power Line Parcel'), and PG&E is believed to have right of use (by easement or otherwise) for the operation of its power lines. PG&E is believed to be the owner and operator of the power lines into which Plaintiff's aircraft flew and ultimately crashed." (Complaint, ¶20.) Plaintiffs further allege that the County was aware of the public safety hazard related to the overhead lines. (*Id.*, ¶¶20, 24.)

Plaintiff Matthew Pankin ("Matthew") is Marc's son and representative of Marc's estate, and legal guardian of Marc's minor children, Plaintiffs A.M. and L.M. Plaintiffs assert claims for wrongful death, survival action under Code of Civil Procedure Section 377.34, and premises liability.

[1] Plaintiffs have dismissed PG&E Corporation and the City as defendants, without prejudice.

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.)

Request for Judicial Notice/Extrinsic Evidence

The County's request for judicial notice of an Aviation Investigation Preliminary Report of the National Transportation Safety Board ("NTSB") (Exhibit B), the grant deed dated September 1, 1972 (Exhibit C), and the easement deed dated October 26, 1960 (Exhibit D), is granted. However, the court does not take judicial notice of the truth of matters stated therein. (See *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

The Court disregards the emails submitted by Plaintiffs in connection with their Opposition. (See *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 359 ["[A] demurrer looks *only* to the face of the pleadings and to matters judicially noticeable and not to the evidence or other extrinsic matter"][citation and internal quotations omitted] [emphasis in original]; *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77 [only issue in demurrer hearing is "whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action"] [citation and internal quotations omitted].)

Discussion

The County demurs to all four causes of action on the ground that there are no facts alleged demonstrating that it owns or controls the power lines at issue in this case. (See Gov. Code § 835; *Goddard v. Dep't of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 359 ["A public entity may not be held liable under section 835 for a dangerous condition of public property that it does not own or control."].) The County points out that Plaintiffs allege the power lines are owned by PG&E pursuant to an easement on the County's parcel (Complaint, ¶20), and easements are expressly excluded from the definition of public property under the Government Code. (See Gov. Code § 830(c).) The owner of the easement has the duty to keep the easement in a safe condition to prevent injury to third parties and to the servient tenement. (See Civ. Code § 845; *Dunn v. Pac. Gas & Elec. Co* (1954) 43 Cal.2d 265, 275.)

Plaintiffs do not dispute that all four of their causes of action are premised on the allegation that the power lines were a dangerous condition of public property. Rather, they argue that the fact that PG&E has an easement on the property does not absolve the County of liability because the County retained some control over the property. Plaintiffs point to the following bolded language in Section 830(c), which defines "public property" as "real or personal property

owned or controlled by the public entity, but does not include easements, encroachments and other property that are located on the property of the public entity ***but are not owned or controlled by the public entity***." Thus, Plaintiffs argue, a public entity which retains control over property subject to an easement can still be liable. (See *Mamola v. State of California ex rel. Dept. of Transportation* (1979) 94 Cal.App.3d 781, 788 ["For liability to be imposed on a public entity for a dangerous condition of property, the entity must be in a position to protect against or warn of the hazard. Therefore, the crucial element is not ownership, but rather control"].) "[C]ontrol exists if the public entity has the 'power to prevent, remedy or guard against the dangerous condition.'" (*Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 990.)

In *Holmes v. City of Oakland* (1968) 260 Cal. App. 2d 378, the minor plaintiff sued the City of Oakland for injuries suffered when he was hit by a train. The plaintiff alleged that the City owned a street and right-of-way which was close to an elementary school, that railroad tracks were located on the street next to an elementary school, that students crossed the tracks on their way home from school, and that the City knew these facts but failed to take any steps to protect the children. The court rejected the City's argument that Section 830(c) precluded liability based on the railroad company's franchise to run trains on the property, finding that a City ordinance indicated that the railroad franchise was under the control of the City and the City retained the right to inspect the property. The court explained:

> It is apparent from the foregoing provisions of the ordinance that the property subject to the railroad franchise is under the control of the City and is included within the meaning of "property of a public entity" or "public property" under section 830, subdivision (c). The "Law Revision Commission Comment" following section 830 [FN] notes that the exclusion of easements, encroachments and similar property from the meaning of "property of a public entity" is based upon the theory that it is the duty of the person or entity that owns the easement, encroachment or similar property to inspect such property for hazards, rather than being the duty of the owner of the servient estate. In the instant case it appears that the City has reserved unto itself under the ordinance the right to make such inspection, and therefore has a concomitant duty to inspect. Certainly, under the terms of the ordinance we cannot say that as a matter of law the City did not control the property under franchise or that it did not have the duty to inspect such property.

(*Id.* at p. 835.)

Here, to show that they sufficiently alleged the County's control over the subject property, Plaintiffs point to their allegation the County passed Resolution 2010-119 which acknowledged public safety issues associated with the overhead power line and conveyed an easement to PG&E for undergrounding existing power lines. (Complaint, ¶20.) The County argues that it cannot be liable because the easement deed makes it clear that PG&E is responsible for maintaining the power lines. This argument fails for two reasons. First, this argument is dependent upon the easement deed establishing the County's ownership and control. As noted above, the Court does not take judicial notice of these documents for purposes of establishing facts stated therein. Second, the County focuses on control over the power lines and not the

property upon which the power lines sit. Plaintiffs allege that the County owns or controls the parcel of land where the power lines were located, not the power lines themselves. (Complaint, ¶¶5, 20, 21.) Plaintiffs allege, and may potentially be able to show, liability based on control of that parcel of property. (*Id.*, p. 7:4-6, ¶¶22-24.) The extent of the County's control and liability arising out of that control are factual disputes inappropriate for determination on demurrer. Further, "hazards present on adjoining property may create a dangerous condition of public property when users of the public property are necessarily exposed to those risks." (*Bonanno v. Central Contra Cost Transit Authority* (2003) 30 Cal.4th 139, 149.) In other words, a public entity can be liable for an injury occurring on property it neither owns nor controls if a condition of its own property, such as its physical situation, causes users of the entity's property to be at risk from the immediately adjacent property. (*Id.* at p. 151.) Plaintiffs here allege sufficient facts that could potentially impose liability on the County under this authority.

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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