SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2102498

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: SCOTT GREEN vs. DEFENDANT: TREK RETAIL CORPORATION	

NATURE OF PROCEEDINGS: HEARING - OTHER: FURTHER COMPLIANCE

RULING

On September 19, 2024, this Court preliminarily approved the class action settlement and its terms in this case, including the amount of the settlement ($285,000.00), with the net settlement amount to be paid to class members. It also preliminarily approved class counsel fees of one-third of the settlement amount, as well as a service award to Scott Green, and settlement administrative costs of up to $13,500. The court has reviewed the declarations of Madely Nava and approves the final distribution.

Plaintiff's counsel shall submit a proposed order in conformity with this ruling.

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, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001349

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: LEE HENRY GREENBERG

vs.

DEFENDANT: RONNIE BAKER, ET AL

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

The Court has reviewed the declaration filed by Counsel Tim Walsh regarding notice to Ronnie Baker and Angela Baker and Full Construction Solutions. The Court agrees that these parties were provided notice of Mr. Walsh's Notice to be Relieved of Counsel. No opposition was filed, and therefore, the motion is granted. Mr. Walsh shall prepare a proposed order.

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: 07/29//26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002924

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: LANDMARK HOME SOLUTIONS, LLC vs. DEFENDANT: FREDERICK SHEIN	

NATURE OF PROCEEDINGS: MOTION – LEAVE TO AMEND

RULING

Defendant/Cross-Complainant Frederick Shein ("Shein") filed a motion for leave to file a First Amended Cross-Complaint. The motion was served on Plaintiff/Cross-Defendant, and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the motion is granted. Shein shall file the First Amended Cross-Complaint within ten days of service of this order.

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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003639

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFFS: ROBERT VOG,T ET AL vs. DEFENDANT: AMERICAN HONDA MOTOR CO., INC.	

NATURE OF PROCEEDINGS: MOTION – ATTORNEY’S FEES

RULING

Plaintiffs’ motion for attorney’s fees and costs is granted in part and denied in part. Plaintiffs are awarded $42,675 in attorney’s fees and $5,379.71 in costs. Defendant American Honda Motor Company (“Honda”) is ordered to pay the total amount of $48,054.71 to Plaintiff within 60 days of the date of this Order.

Standard

“If a buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney’s fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.” (Civ. Code § 1794(d).) The buyer has the burden of showing that the fees incurred were reasonably necessary to the conduct of the litigation and were reasonable in amount. (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 817.) A reasonable hourly rate is determined by the prevailing rate charged by attorneys of similar skill and expertise in the relevant community. (See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

“A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether. ‘If . . . the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be a reduction of their fee to what they should have asked for in the first place. To discourage such greed, a severer reaction is needful . . . .’” (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 [citation omitted].)

Discussion

Attorney's Fees

Hourly Rates

The hourly rates requested by Sepehr Daghidian ($625) Michael Rosenstein ($700), Brian Shippen-Murray ($550), Michael Ortiz ($525), and Kristina Kousterian ($375) are not reasonable when reviewed against the Real Rate Report for General Liability in Los Angeles (reflecting rates of $304 for partner and $287 for associates). Plaintiff argues that the commercial rate should be applied and not the general liability practice rates, and that the 2021 report is outdated. This court agrees it should consider that the report reflects rates five years old, but does not agree that lemon law rates should reflect billing at the corporate rates used in commercial cases. Taking these factors into account the court reduces the rates as follows: Sepehr Daghidian ($550) Michael Rosenstein ($600), Brian Shippen-Murray ($400), Michael Ortiz ($375) and Kristina Kousterian ($300)

Attorney Hours

Plaintiff seeks attorney's fees and costs in the amount of $89,417.21. These fees include $56,025 in fees as its "lodestar", $28,012.50 for a 1.5 multiplier, and $5,379.71 in costs.

In support of her motion, Plaintiffs contends that after Defendant Honda failed to conform their vehicle to it written warranty within a reasonable number of repair attempts or to repurchase the defective vehicle, they filed this case on August 8, 2024, alleging violations of the Song-Beverly Consumer Warranty Act (the "Act"). Both parties issued written discovery and Plaintiff took the deposition of the person most knowledgeable, and defended Plaintiff's deposition. Plaintiff further argues that it drafted a motion to compel. The parties then attended two mediations and settled for a 998 offer. Plaintiff seeks to recover for .6 hours of work for Attorney Daghighian, 19.2 hours for Michael Rostenstein, 66.6 hours for Attorney Shippen-Murray's work, 10.2 hours for Attorney Ortiz's work, and .6 hours for Kousherian's work.

Honda does not dispute that Plaintiff is the prevailing party but argues that the amount requested by Plaintiff is excessive given the fact that many tasks were secretarial tasks, and the fact that the hours billed were at the highest attorney billing rate.

The Court grants Plaintiff's motion for attorney's fees in part.

The Court declines to award a multiplier as this case was a standard lemon law case with no novel issues. The case did not carry any particular unusual risk.

The Court finds the time incurred by Plaintiff's counsel to be reasonable although it is sympathetic to Honda's argument that many of the mundane tasks were billed at a higher rate. As noted above, the Court has found the attorney hourly rates to be unreasonable and applies the rate noted above. Accordingly, the Court applies this rate to the hours identified in the Daghighian Declaration as follows: Daghighian ($550 x .6 hours = $330), Rosenstein ($600 x 19.2 hours = $11,520), Shippen-Murray ($400 x 66.6 hours = $26,640), Ortiz ($375 x 10.2

hours =$3,825), Kousherian ($300 x .6 hours = $180) for a total of $42,675. Plaintiff is therefore awarded $42,675 is attorney's fees.

Costs

While the usual method to recover costs as a prevailing party is by filing a Memorandum of Costs pursuant to California Rule of Court 3.1700, here the parties agreed by the language of their settlement agreement that Plaintiff would do so by motion along with their request for fees. The Court awards the $5,379.71 in costs requested, which are not challenged by Honda.

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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003911

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFFS: JACKIE LIN, ET AL

vs.

DEFENDANT: PETALUMA PEOPLE SERVICE CENTER, ET AL

NATURE OF PROCEEDINGS: MOTION – PRO HAC VICE

RULING

The unopposed application of Kristiana Zuccarini to appear as counsel pro hac vice 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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005201

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: KOFI OPONG MENSAH

vs.

DEFENDANT: DYLAN THOMAS HACKETT

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Plaintiff Kofi Opong-Mensah's ("Plaintiff") Motion for Summary Judgment, or in the alternative, Summary Adjudication is DENIED.

REQUESTS FOR JUDICIAL NOTICE

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

OBJECTIONS TO EVIDENCE

The Court need only rule on those objections to evidence that it deems material to its disposition of the motion. (See Code Civ. Proc., § 437c(q).)

BACKGROUND

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

LEGAL STANDARD

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims of damages, or one or more issues of duty. (Code Civ. Proc., § 437c(f).) A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion. (*Lomes v. Hartford Financial Service Group, Inc.* (2001) 88 Cal.App.4th 127, 131.)

A plaintiff moving for summary judgment must prove each element of the cause of action. (*Aguilar v. Atl. Richfield Co.*, *supra*, 25 Cal.4th at p. 853.) Once plaintiff has done so, the burden shifts to defendant to make its own prima facie showing of the existence of a triable issue of material fact. (*Id.*, at p. 850.)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Avivi v. Centro Medico Urgente Med. Ctr.* (2008) 159 Cal.App.4th 463, 467, as modified (Jan. 24, 2008); Code Civ. Proc., §437c(c).) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

DISCUSSION

Deficiencies in Separate Statement

California Rules of Court rule 3.1350, subdivision (d)(3) provides that any Separate Statement in support of a Motion for Summary Judgment must "be in the two-column format specified in (h). The statement must state in numerical sequence the undisputed material facts in the first column followed by the evidence that establishes those undisputed facts in that same column. Citation to **the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers**." (Emphasis added.)

Plaintiff fails to include the page and line numbers for all evidence cited. In addition, the Separate Statement frequently cites to Plaintiff's own SAC as the "evidence" supporting specific facts.

The Memorandum of Points and Authorities does not lend clarity to this deficit. The only cause of action specifically addressed therein is the breach of contract cause of action. That section merely states as "demonstrated" in Plaintiff's Separate Statement, each element of the causes of action in the complaint is proven "by the specific facts as contained in the declarations, in defendant's admissions and other discovery responses…." (Memo P & A p. 8:12-19. The Court notes page 8 is labeled as page 32.)

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. To that end, the rules dictating the content and format for separate statements submitted by moving and responding parties permit trial courts to expeditiously review complex motions for summary judgment to determine quickly and efficiently whether material facts are disputed." (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 72 (internal citations omitted).) "That goal is defeated where, as here, the trial court is forced to wade through stacks of documents,… in an effort to cull through the arguments and determine what evidence is admitted and what remains at issue." (*Ibid.*)

"The burdens imposed upon the trial court will be eased considerably if the court insists, as it should, on strict compliance with the required separate statement, because the court's ability to focus on and articulate the evidentiary basis for its ruling will be found in the separate statement. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 31 (internal citations omitted).) "That the fact *could have been found* in the filed documents is of no value." (*Id.*)

Pro per litigants are held to the same standard as an attorney. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Keitel v. Heubel* (2002) 103 Cal.App.4th 324, 334–335.) Over three decades ago, our high court explained that "[a] doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Here, the Court finds Plaintiff has not met his burden on Summary Judgment, due to his failure to properly cite evidentiary support for his "Undisputed Material Facts." Without such support he has failed to meet his burden of proving each element of each cause of action. The Court declines to go through the 1406 pages of Evidence filed in support of his Motion and perform this work for him.

For these reasons, the Motion for Summary Judgment, or in the alternative Summary Adjudication, is DENIED.

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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005730

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: JESSICA JOHL

vs.

DEFENDANT: LUHRS PROPERTY MANAGEMENT, INC., A CALIFORNIA CORPORATION, ET AL

NATURE OF PROCEEDINGS: MOTION – COMPEL DEPOSITIONS

RULING

On June 23, 2026, Plaintiff filed an ex parte application to compel deposition testimony and for monetary sanctions, or in the alternative, for an order shortening time to hear these motions. The Court advanced the hearing date to July 29, 2026, with the expectation that depositions would occur prior to then. Neither party has requested that this matter be taken off calendar. No subsequent pleadings were filed addressing the depositions.

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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006175

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: ALEXANDER XUE

vs.

DEFENDANT: ANCONA, INC.

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Alexander Xue filed a motion to compel further responses to initial disclosures. Defendant Ancona opposes the motion arguing that Plaintiff's motion is untimely. The parties were referred to a discovery facilitator and a facilitator was appointed on July 6, 2026. Pursuant to local rule MCR 2.13, the parties were required file a Declaration of Non-Resolution if the matter did not resolve. No Declaration was filed and therefore, the court shall take the matter off calendar. Either party may place the matter back on calendar by filing a Declaration of Non-Resolution in compliance with local rule MCR 2.13, and by appearing ex parte to reschedule the hearing.

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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007954

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFFS: JPMORGAN CHASE BANK, N.A.

vs.

DEFENDANT: RICHARD J. FREITAS

NATURE OF PROCEEDINGS: MOTION – COMPEL ARBITRATION

RULING

Defendant Richard Freitas filed a motion to compel arbitration and to stay the proceedings in this Court. The motion was served on Plaintiff and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the motion 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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0008083

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: SAN DOMENICO SCHOOL, A CALIFORNIA CORPORATION

vs.

DEFENDANT: ANNA WANG

NATURE OF PROCEEDINGS: DEMURRER

RULING

Plaintiff/Cross-Defendant San Domenico School's demurrer to the First Cause of Action is sustained without leave to amend. The demurrer to the Third, Fifth, Sixth, and Seventh Causes of Action is sustained with leave to amend. The demurrer to the Second and Fourth Causes of Action is overruled.

Procedural Background

Plaintiff/Cross-Defendant San Domenico School ("San Domenico") filed its Complaint against Defendant/Cross-Complainant Anna Wang aka Jianghong Wang ("Ms. Wang") on November 4, 2025, alleging a single cause of action for breach of contract. San Domenico alleges that Ms. Wang is obligated under the parties' Enrollment Contract to pay a full year's tuition and fees for son Daniel because she did not provide written cancellation of his enrollment by May 1, 2025. San Domenico alleges that Ms. Wang owes $76,096.12, plus a $15 late fee.

Ms. Wang filed a Cross-Complaint on January 23, 2026, alleging that San Domenico's refusal to refund her $17,994.94 deposit for that school year violates California Code of Regulation 18805 and that San Domenico's refusal to release Daniel's grades violates the California Code of Regulations, Title 5, Section 438(c). Ms. Wang asserts causes of action for violation of Sections 438(c) and 18805, unjust enrichment, breach of the covenant of good faith and fair dealing, violation of Business & Professions Code Section 17200, conversion, breach of contract, and intentional infliction of emotional distress.

San Domenico demurs to all seven causes of action in the Cross-Complaint.

Procedural Deficiency

The Court draws San Domenico's attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

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.)

Notice of Hearing on Demurrer

Ms. Wang argued in her Opposition, filed on May 5, 2026, that San Domenico failed to provide the requisite 16 day notice for the hearing on the demurrer. At the case management conference on May 19, 2026, in response to the parties' request that the original hearing be continued, the Court set the hearing on the demurrer for July 29, 2026. Ms. Wang did not request that she be allowed to amend or supplement her Opposition. Accordingly, there is no longer any issue with the sufficiency of the notice provided.

Judicial Notice

The Court takes judicial notice, sua sponte, of the Enrollment Contract. This agreement is attached as an exhibit to San Domenico's Complaint and is referenced throughout Ms. Wang's Cross-Complaint. (See *Scott v. JPMorgan Chase Bank, NA* (2013) 214 Cal.App.4th 743, 752 ["the court may take judicial notice on its own volition"]; see also *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, n.3, disapproved on other grounds in *Leon v. County of Riverside* (2023) 14 Cal.5th 910; *Marina Tenants Ass'n v. Deauville Marina Dev. Co.* (1986) 181 Cal.App.3d 122, 130; *Salvaty v. Falcon Cable Television* (1985) 165 Cal.App.3d 798, 800, n.1; *Swiss Park, Inc. v. City of Duarte* (1982) 136 Cal.App.3d 755, 758.) The Court notes that the Enrollment Contract attached to San Domenico's Complaint may be from a prior academic year, but the parties do not dispute the terms or deadlines set forth in that agreement.

First Cause of Action

Ms. Wang's First Cause of Action alleges that by withholding Daniel's grades and transcript due to nonpayment, San Domenico violated California Code of Regulation Section 438, which provides: "(a) When a pupil transfers to another school district or to a private school, a copy of the pupil's Mandatory Permanent Pupil Record shall be transferred upon request from the other district or private school . . . . (c) Pupil records shall not be withheld from the requesting district because of any charges or fees owed by the pupil or his parent . . . ." (5 CA

ADC § 438.) The First Cause of Action also alleges that San Domenico's refusal to refund Ms. Wang's deposit violates Section 18805, which provides: "(a) Institutions approved or authorized pursuant to Education Code Sections 94310.2, 94310.3, and 94310.4, and 94311(d) shall, in the event of a student or applicant cancels enrollment prior to the completion of the course, promptly refund to each student the unused portions of paid tuition fees and other charges or reduce the amount due under the enrollment contract, as appropriate, in accordance with the following minimum standards . . . ." (5 CA ADC § 18805.) As a remedy, Ms. Wang seeks damages of $1 million. (Cross-Complaint, ¶29.)

San Domenico demurs to the First Cause of Action on the ground that Section 438 does not support a cause of action against it because (1) there is no private right of action for violation of this section; and (2) Ms. Wang does not allege that Daniel is transferring to another school district. San Domenico also demurs on the ground that Section 18805 does not support a cause of action because (1) there is no private right of action for violation of this section; and (2) this section is found within Chapter 21 of Title 5, which governs "private postsecondary educational institutions", i.e., institutions offering education beyond high school. (Educ. Code §§ 94857, 94858.) Plaintiff does not allege that San Domenico is postsecondary educational institution.

The demurrer to this cause of action is sustained for the reasons articulated by San Domenico. Neither section applies to the alleged facts. Section 438 applies upon transfer of a student to another school and Section 18805 applies to postsecondary institutions. Plaintiff does not allege that any other school has requested Daniel's transcript or that San Domenico is a postsecondary institution. Further, neither section provides a private right of action for damages. "Adoption of a regulatory statute does not automatically create a private right to sue for damages resulting from violations of the statute. Such a private right of action exists only if the language of the statute or its legislative history clearly indicates the Legislature *intended* to create such a right to sue for damages. If the Legislature intends to create a private cause of action, we generally assume it will do so directly [,] . . . in clear, understandable, unmistakable terms . . . [Citation.]" (*Vikco Ins. Services, Inc. v. Ohio Indem. Co.* (1999) 70 Cal.App.4th 55, 62-63 [citations omitted] [emphasis in original].) Ms. Wang does not cite to any language in the regulations or elsewhere which indicates that the Legislature intended to provide for a private right of action for violation of either section.

Unless Ms. Wang can explain at the hearing how these defects can be remedied by amendment, the demurrer to this cause of action is sustained without leave to amend.

Second Cause of Action

Ms. Wang alleges in the Second Cause of Action for unjust enrichment that the terms of the Enrollment Contract are inequitable and unconscionable, and seeks damages in the amount of $1 million. (Cross-Complaint, ¶¶32-34.)

San Domenico demurs to this cause of action on the ground that quasi-contractual relief does not lie where an enforceable contract governs the same subject matter. "[A]s a matter of law, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights. When parties have an actual contract covering a subject, a court cannot—not even under the guise of equity jurisprudence—substitute the court's own concepts of fairness regarding that subject in place of the parties' own contract." (*California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, 172 [citation and internal quotations omitted].)

Ms. Wang argues that the demurrer should be overruled because she is allowed to plead claims in the alternative. "[A] plaintiff may plead inconsistent claims that allege both the existence of an enforceable agreement and the absence of an enforceable agreement . . . ." (*Klein v. Chevron U.S.A.* (2012) 202 Cal.App.4th 1342, 1389.) In her Sixth Cause of Action for breach of contract, Ms. Wang alleges that the parties entered into a "valid contract" and in her Second Cause of Action for unjust enrichment she alleges that the contract had "inequitable and unconscionable terms". (Cross-Complaint, ¶¶32, 54.) These allegations are sufficient to allege alternative claims for relief. The demurrer to the Second Cause of Action is overruled.

Third Cause of Action

Ms. Wang alleges in the Third Cause of Action for breach of the implied covenant of good faith and fair dealing that San Domenico failed to develop and use a fair, equitable and positive policy of incremental refunds of unused fees and other charges, and that San Domenico seeks to recover full tuition in bad faith.

San Domenico demurs to this cause of action on the ground that the implied cannot forbid conduct which is authorized by the express terms of a contract, and the parties' agreement expressly allows it to charge full tuition if the contract was not cancelled by a specific date. San Domenico further argues that the "incremental refund" policy Ms. Wang alleges should have been implemented adds a new term to the contract and the implied covenant cannot be used for this purpose.

"The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made*. The covenant thus cannot be endowed with an existence independent of its contractual underpinnings. It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Guz v. Bechtel Nat. Inc*. (2000) 24 Cal.4th 317, 349 [citations and internal quotations omitted] [emphasis in original].)

The demurrer to this cause of action is sustained. The policy of incremental refunds that Ms. Wang alleges should have been used is not included anywhere in the parties' contract, but is rather a different contract that Ms. Wang alleges should have been used. This cannot support an implied covenant cause of action. (*Id*.) Ms. Wang's allegation that San Domenico seeks to recover full tuition in bad faith is also insufficient to support this claim, as the parties' contract expressly allowed San Domenico to do so under the factual circumstances alleged, i.e., nonpayment by a specific date.[1] "[T]he *implied* covenant does not trump an agreement's *express* language. The general rule [regarding the covenant of good faith] is plainly subject to the exception that the parties may, by express provisions of the contract, grant the right to engage in

1 Paragraphs 5 and 7 of the Enrollment Contract provide that if a parent does not give written notice of cancellation by May 1, the parent's obligation to pay tuition for the school year becomes unconditional. Ms. Wang acknowledges that this May 1 deadline was in the Enrollment Contract. (Cross-Complaint, ¶54.)

the very acts and conduct which would otherwise have been forbidden by an implied covenant of good faith and fair dealing." (*Steiner v. Thexton* (2010) 48 Cal.4th 411, 419-420 [citation and internal quotations omitted] [emphasis in original]; see also *Storek & Storek, Inc. v. Citicorp Real Estate, Inc*. (2002) 100 Cal.App.4th 44, 55 ["an implied covenant of good faith and fair dealing cannot contradict the express terms of a contract"].)

Fourth Cause of Action

Ms. Wang alleges in her Fourth Cause of Action that San Domenico violated Business & Professions Code Section 17200 by seeking full tuition even though Daniel withdrew by the first payment date and prior to the school's July 2025 termination date, by enforcing an inequitable contract in bad faith, and by withholding Daniel's grades. While the Court has sustained San Domenico's demurrer to the First, Third, Fifth, Sixth and Seventh Causes of Action, it overrules the demurrer to the Second Cause of Action for unjust enrichment. "[A] practice may violate the UCL even if it is not prohibited by another statute. Unfair and fraudulent practices are alternate grounds for relief." (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 370.) "A business practice is unfair, when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." (*Community Assisting Recovery, Inc. v. Aegis Security Ins. Co.* (2001) 92 Cal.App.4th 886, 894 [citation and internal quotations omitted].) As unjust enrichment potentially falls within the scope of "unfair" practices – an issue that has not been briefed by the parties - the Court overrules the demurrer to this cause of action.

Fifth Cause of Action

Ms. Wang alleges in her Fifth Cause of Action that San Domenico committed conversion when it withheld Daniel's grades and transcript and refused to refund any money to Ms. Wang.

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Hodges v. County of Placer* (2019) 41 Cal.App.5th 537, 551 [citation and internal quotations omitted].) "To establish a viable cause of action for conversion, [the plaintiff] must establish an actual interference with his ownership or right of possession of property. To do that he must have 'either ownership and the right of possession or actual possession [of the property] at the time of the alleged conversion thereof.'" (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1041 [citation omitted].)

<u>Grades/Transcript</u>: The parties do not cite any authority addressing the issue of whether a transcript can be the subject of a conversion cause of action. On the one hand, conversion may include the taking of intangible property rights when those rights are represented by evidentiary documents. (See *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 209-210.) On the other hand, it is not clear whether a school transcript belongs to the student or the school. (See *Juras v. Aman Collection Service, Inc.* (9th Cir. 1987) 829 F.2d 739, 742.)[2] The Court does not

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[2] Ms. Wang argues that "[a] student's right to their transcript is strongly protected as a form of intellectual and educational property right in California", citing Civil Code Section 1788.91. However, Section 1788.92 does not support this statement, as it provides only that a "debt" means "any money, obligation, claim, or sum, due or owing,

reach this determination in the context of this demurrer. However, the Court sustains the demurrer on the ground that Ms. Wang does not sufficiently allege the element of damages. (See Civ. Code § 3336.) She seeks damages of $1 million but does not allege sufficient facts linking this amount to the value of the withheld transcript.

Deposit: To state a cause of action for conversion, Ms. Wang must allege that San Domenico's retention of the deposit was wrongful. However, Ms. Wang agreed in the contract she signed that San Domenico could retain the deposit under the facts alleged in the Cross-Complaint. Accordingly, Ms. Wang does not state facts to support a cause of action based on San Domenico's retention of her deposit.

The demurrer to this cause of action is sustained.

Sixth Cause of Action

Ms. Wang alleges in her Sixth Cause of Action that San Domenico breached the Enrollment Contract by failing to release Daniel's grades and refusing to refund her deposit. She also alleges that she was unaware of Daniel's health condition by the May 1st deadline and gave notice six days later on May 7th. Accordingly, she alleges, San Domenico's insistence on requiring her to pay full tuition for missing the deadline was not justified, as it could have terminated Daniel's enrollment in July 2025 under another term of the contract.

San Domenico demurs to this cause of action on the ground that Ms. Wang fails to identify any term of the Enrollment Contract she contends was breached by San Domenico and, in fact, merely acknowledges her own breaches. The demurrer is sustained on this basis. Ms. Wang does not identify any provision of the Enrollment Contract which obligates San Domenico to release Daniel's grades under any particular circumstances, and the contract itself states that San Domenico is not required to refund a deposit where notice is given after May 1.

Seventh Cause of Action

Ms. Wang alleges in her Seventh Cause of Action for intentional infliction of emotional distress that San Domenico's conduct is outrageous because it should know that withholding Daniel's grades would prevent Daniel from receiving an education and refusing to refund the deposit would prevent Daniel from paying tuition for future education.

"The elements of a prima facie case of intentional infliction of emotional distress consist of: (1) extreme and outrageous conduct by the defendant with the intent to cause, or reckless disregard for the probability of causing, emotional distress; (2) suffering of severe or extreme emotional distress by the plaintiff; and (3) the plaintiff's emotional distress is actually and proximately the result of defendant's outrageous conduct. Extreme and outrageous conduct is conduct that is so extreme as to exceed all bounds of that usually tolerated in a civilized community and must be of a nature which is especially calculated to cause, and does cause, mental distress. [I]t is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery."

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or alleged to be due or owing, from a student, but does not include the fee, if any, charged to all students for the actual costs of providing the transcripts." (Civ. Code § 1788.92 (b).)

(*Chang v. Lederman* (2009) 172 Cal.App.4th 67, 86-87 [citations and internal quotations omitted].)

San Domenico's retention of the deposit is authorized under the terms of the contract Ms. Wang signed, and therefore is not a sufficient basis for an intentional infliction of emotional distress cause of action. The contract does not address the withholding of grades for nonpayment, but this conduct is not so outrageous or extreme so as to support a cause of action. (Cf. *Fields v. Credit Management Systems*, No. EDCV 14-1853 JGB (SPx), 2015 WL 11367930, *8 (C.D. Cal. Nov. 23, 2015) ["Neither is it unfair for a college to withhold a student's transcript until she has settled her debt to the school"].) The demurrer to this cause of action is sustained.

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, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1

Meeting ID: 161 548 7764
Passcode: 502070

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009539

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: PAUL SUNAK

vs.

DEFENDANT: USHA SUNAK, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – ANTI SLAPP 425.16
2) DEMURRER
3) MOTION - STRIKE

RULING

Defendants Usha Sunak, Gurbax Sunak, Simran Sunak, and Komal Sunak's (together, "Defendants") special motion to strike is DENIED.

BACKGROUND

This is a dispute among family members over possession of real property. Plaintiff Paul Sunak ("Plaintiff") alleges that beginning in November 2015, he leased real property at 5 Harbor Drive in Novato from Usha and Gurbax. (Complaint, ¶¶ 1-3, 8, 14.) The parties contemplated that that the property would be used as a gas station and later as a marijuana dispensary. (*Id.* at ¶ 18.) They allegedly agreed that Defendants would lease a portion of the property to a third-party tenant to generate income while plans to develop the property into a gas station or dispensary were underway. (*Id.* at ¶ 19.) In December 2015, Defendants leased some portion of the property to A&C Towing and Transportation, Inc. on a month-to-month basis. (*Id.* at ¶ 20.)

Plaintiff alleges that in early 2022, he began to have unspecified "personal disagreements" with Defendants. (Complaint, ¶ 23.) In September 2022, Defendants allegedly repudiated their lease with Plaintiff and their agreement to develop the property into a gas station. (*Ibid.*) Plaintiff claims they broke the locks on his leased area of the property in order to keep him out and have denied him entry since, although they continue to lease his portion of the property to A&C Towing and Transportation. (*Ibid.*)

According to the complaint, the parties' lease agreement relating to 5 Harbor Drive in Novato was "part of a broader agreement regarding sharing and management of multiple real properties." (Complaint, ¶ 51.) Plaintiff claims Defendants permitted him to live at a residential property they owned in Vallejo in exchange for $75,000 per year. (*Ibid.*) He alleges that

Defendants wrongfully ejected him from the Vallejo Property "by throwing [him] out on the street, without a valid court order or justification, using armed 'security guards[,]'" adding that they interfered with $300,000 worth of his personal possessions during this ejection. (*Id.* at ¶ 63.) The complaint's Seventh Cause of Action for conversion is based on this incident. (*Id.* at ¶¶ 118-119.) Its Fourth Cause of Action for wrongful eviction rests in part on allegations that Defendants wrongfully ousted Plaintiff from the Vallejo property. (*Id.* at ¶ 82.)

The Court now considers Defendants' motion to strike the entire Seventh Cause of Action and portions of the Fourth Cause of Action under the anti-SLAPP statute.

LEGAL STANDARD

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) The purpose of this statute is to identify and dispose of lawsuits brought to chill the valid exercise of a litigant's constitutional right of petition or free speech. (Code Civ. Proc., § 425.16, subd. (a); *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055-1056.)

Courts use a two-step process to evaluate anti-SLAPP motions. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) First, the moving defendant must show that the challenged lawsuit arises from protected activity. (*Ibid.*) To establish protected activity, the defendant must demonstrate that "the act or acts underlying the plaintiff's claim falls within one of the four categories [of protected activity] identified in section 425.16, subdivision (e)." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 538; *accord Howard Jarvis Taxpayers Assn. v. Powell* (2024) 105 Cal.App.5th 955, 968.) In determining whether a complaint or a subset of it "arises from" protected activity, "[t]he critical consideration is whether the cause of action is *based on* the defendant's free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [emphasis added]; see also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) "Courts deciding an anti-SLAPP motion . . . must consider the claim's elements, the actions alleged to establish those elements, and whether those actions are protected." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1015; accord *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.) If the defendant makes this "threshold showing[,]" the court proceeds to the second step, where the plaintiff must demonstrate a probability of prevailing on the merits of the claims at issue. (*Equilon Enterprises*, *supra*, 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16, subd. (b)(1).) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning *and* lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Navellier, supra*, 29 Cal.4th 82, 89 [emphasis in original].)

DISCUSSION

Procedural Matters

The same day he filed his opposition to Defendants' anti-SLAPP motion, Plaintiff filed a First Amended Complaint. When a plaintiff amends his complaint while an anti-SLAPP motion is pending against it, the court is still required to rule on the anti-SLAPP motion even though it is directed at a superseded pleading. (See *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 679.) This is because the defendant's potential entitlement to attorney's fees if its motion would have been successful (see Code Civ. Proc., § 425.16, subd. (c)(1)) survives the amendment. (See *Sylmar, supra,* 122 Cal.App.4th 1049, 1056; see also *Dickinson, supra*, 17 Cal.App.5th 655, 679.)

Regarding the parties' evidentiary objections:

The Court's ruling on this motion is based on its conclusion that Defendants did not carry their burden to establish that the claims they request to be stricken arise out of protected activity. (*Equilon Enterprises*, *supra*, 29 Cal.4th 53, 67.) It did not have occasion to reach Plaintiff's showing of a probability of success on the merits of his claims. The Court does not rule on Defendants' evidentiary objections to Plaintiff's declaration because the declaration was not material to its disposition of the motion. Based on Plaintiff's opposition brief, Plaintiff intended to file evidentiary objections to defense counsel's declaration. Those evidentiary objections do not appear in the Court's record. It appears that Plaintiff may have accidentally filed a second copy of his request for judicial notice instead of his evidentiary objections.

Regarding the parties' requests for judicial notice:

All are granted. (Evid. Code, § 452, subd. (d) [court records].)

<u>Protected Activity</u>

Defendants argue that all of the claims they wish to strike arise out of protected activity because of their relationship to a successful eviction action in which Defendant Gurbax Sunak ejected Plaintiff from a property in Vallejo. They explain that on January 10, 2023, Gurbax filed an unlawful detainer complaint against Plaintiff in the Solano County Superior Court to recover possession of real property at 6216 Pebble Beach Drive in Vallejo. (Bittencourt Dec., ¶ 5 & Ex. 1.) That case was tried and resulted in a March 1, 2023 judgment awarding possession of 6216 Pebble Beach Drive to Gurbax and terminating the lease. (*Id.* at ¶ 6 & Ex. 2.) According to Defendants, a writ of possession issued based on that judgment, and Defendants recovered possession of the Vallejo residence pursuant to that writ. (*Id.* at ¶ 6.) Defendants claim Plaintiff's allegations regarding his ejectment from an unidentified property in Vallejo are merely describing his being removed from 6216 Pebble Beach Drive in adherence to the judgment in the unlawful detainer action.

Defendants rely on Code of Civil Procedure, section 425.16, subdivisions (e)(1) and (e)(2). These provisions deem activity protected by the anti-SLAPP statute to include "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" (Code Civ. Proc., § 425.16, subd. (e)(1)) and "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law" (Code Civ. Proc., § 425.16, subd. (e)(2)). Defendants point out that filing a lawsuit constitutes protected activity (*Navellier*, *supra*, 29 Cal.4th 82, 90) and argue that claims targeting the manner of their repossession of 6216 Pebble Beach Drive arise out of protected activity because of the relationship between this conduct and the unlawful detainer action.

The Court will begin with the Fourth Cause of Action for wrongful eviction. The Court reads this claim to allege that Defendants wrongfully evicted Plaintiff both from 5 Harbor Drive in Novato and from an unidentified Vallejo property Defendants claim is 6216 Pebble Beach Drive. (See Complaint, ¶¶ 75-83.) (Defendants move to strike only the allegations pertaining to the Vallejo property.) The elements of wrongful eviction are the plaintiff's possession of the premises and the defendant's forcible entry, which may be shown by demonstrating that the defendant ejected the plaintiff without resorting to judicial process. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1039; see *Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 655 ["If a tenant is forcibly removed from premises without judicial process, such tenant can sue for wrongful eviction and obtain actual damages, including consequential damages, and (upon a proper showing) punitive damages."].)

The Fourth Cause of Action alleges that Defendants ousted Plaintiff from both properties without filing any unlawful detainer action and without obtaining a court order, instead resorting to self-help eviction methods. (*Id.* at ¶¶ 85-86.) Defendants maintain that these allegations are false, at least as to 6216 Pebble Beach Drive. However, at the first step of the anti-SLAPP analysis, a court does not concern itself with whether what the plaintiff is alleging is true. The Court's task is to identify the activity the pleading alleges as the basis for the claim and determine whether that activity is protected. The claim Defendants request stricken here is based on their allegedly ousting Plaintiff from a property without bringing an unlawful detainer action and without obtaining a court order. Such a claim necessarily cannot arise out of any defendant's filing or prosecuting an unlawful detainer action or retaking possession of a property pursuant to a court order. (See *Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 883 ["[T]he act or acts underlying a claim for purposes of an anti-SLAPP motion *is determined from the plaintiffs' allegations*."] [emphasis in original].)

The Seventh Cause of Action, for conversion, likewise does not arise out of protected activity under Section 425.16(e)(1) or (e)(2). "'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages.'" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 [quoting *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208] [internal quotation marks omitted].) Defendants do not identify how Gurbax's filing or maintaining an unlawful eviction proceeding supplies any of these elements for Plaintiff's Seventh Cause of Action. Their theory is that "the wrong Plaintiff complains of . . . is the recovery of possession of the Vallejo Residence and the consequent handling of the personal property he left behind. That recovery of possession was affected through the Vallejo UD Action and the writ of possession issued on the judgment." (Memorandum, p. 4; see also p. 5 [characterizing "[t]he recovery of possession" at the center of the claims at issue here as the "result of" the unlawful detainer proceeding].)

Stated differently, the unlawful detainer action resulted in Gurbax's obtaining a writ of possession, and that in turn led to the conduct at the center of the claims at issue here. But that filing or prosecuting a lawsuit triggers an event that is later offered as the basis for a cause of action is not enough to conclude that the cause of action arises out of the filing or prosecution of the lawsuit. (See *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2020) 54 Cal.App.5th 738, 747, fn. 6 [“The mere fact that a claim may have been *triggered* by protected activity (such as service of unlawful detainer papers) does not necessarily mean it *arose from* that activity.”] [emphasis in original]; accord *Ulkarim v. Westfield LLC* (2014) 227 Cal.App.4th 1266, 1275; *Navellier*, *supra*, 29 Cal.4th 82, 89.) Because Defendants are relying on the filing and prosecution of the unlawful detainer action as the protected activity on which their anti-SLAPP motion rests, they needed to show that this conduct *itself* supplies an element of the causes of action at issue. (See *Ulkarim*, *supra*, 227 Cal.App.4th 1266, 1275-1276; *Bonni*, *supra*, 11 Cal.5th 995, 1015; *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887.) They have not done that. In fact, a description of the elements of either conversion or wrongful eviction is conspicuously absent from their brief. (See *Littlefield v. Littlefield* (2024) 106 Cal.App.5th 815, 823 [affirming denial of anti-SLAPP motion where movants “ ‘fail[ed] to state the elements of the challenged claim and identify what actions by [the defendants] supply those elements and form the basis for liability’ ” [quoting the trial court’s decision]; see also *Young v. Midland Funding LLC* (2023) 91 Cal.App.5th 63, 97-98 [suggesting that a defendant moving to strike a pleading under the anti-SLAPP statute is required to discuss the allegations of protected activity in the context of the elements of the plaintiff’s claims].)

Another problem with Defendants’ reliance on Section 425.16(e)(1) and (e)(2) is that on their faces, these provisions cover “written or oral statement[s] or writing[s]” (Code Civ. Proc., § 425.16, subds. (e)(1), (e)(2)) and do not embrace other conduct. Again, Defendants themselves characterize these claims as taking issue with “the recovery of possession of the Vallejo Residence and the handling of the personal property [Plaintiff] left there[.]” (Memorandum, p 2.) Even if this activity were considered part and parcel of a judicial proceeding, it could not claim the benefit of Section 425.16(e)(1) or (e)(2) given that it does not consist of a writing or a statement. (See *Semaan v. Mosier* (2026) 118 Cal.App.5th 460, 470, fn. 5 [“Plaintiffs’ claims did not arise out of Mosier’s written or oral statements and therefore do not fall within section 425.16(e)(1) or (2).”].) Defendants’ reliance on Section 425.16(e)(1) and (e)(2) is also flawed for temporal reasons. Per Defendants, by the time the activity Plaintiff complains of occurred, the unlawful eviction proceeding was over, complete with a judgment and a writ. The conduct at issue in Plaintiff’s claims cannot have occurred “before a . . . judicial proceeding” (Code Civ. Proc., § 425.16, subd. (e)(1)), because there no longer was such a proceeding, and cannot have been “in connection with an issue under consideration or review by a . . . judicial body” (Code Civ. Proc., § 425.16, subd. (e)(2)), because judicial consideration of the issues involved in the proceeding ended when the proceeding did.

The cases Defendants rely on are distinguishable. In *Olivares v. Pineda* (2019) 40 Cal.App.5th 343, the plaintiff sued for wrongful eviction, and as alleged, the central act underlying that claim was the service of a notice of eviction as a predicate to an unlawful detainer action. (40 Cal.App.5th 343, 349.) The plaintiff also sued for malicious prosecution, and there, the activity underlying the claim consisted of filing and prosecuting an unlawful detainer action. (*Id.* at p. 350.) The plaintiff’s claim for breach of the covenant of quiet enjoyment was based on the same conduct. (*Ibid.*) The plaintiff did not bring claims centered on activity that merely related to or resulted from a successful unlawful detainer action. The claims were based on the acts of filing and maintaining the unlawful detainer action themselves. *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, also cited by Defendants, is no longer reliable authority given the First District's subsequent commentary on the case in *Oakland Bulk*, *supra*, 54 Cal.App.5th 738, 747, fn. 6.

Defendants also rely on *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232. They claim that *Action Apartment* "reached the same result" as *Feldman*, concluding "that the prosecution of an unlawful detainer action and the service of a notice to quit are both protected activities" under the anti-SLAPP statute. (Memorandum, p. 4.) *Action Apartment* did not do this, as it interpreted the litigation privilege of Civil Code, section 47 and did not address the anti-SLAPP statute. *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, also cited by Defendants, similarly focused on the scope of the litigation privilege. It issued no holding relating to the anti-SLAPP statute. Defendants are likely offering law on the scope of Civil Code, section 47's litigation privilege because Section 47 and Section 425.16(e) contain similar language and have sometimes been interpreted consistently. (See *Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1517.) However, "conduct protected by the anti-SLAPP statute does not equate with conduct covered by the litigation privilege . . . and, therefore, the applicability of the litigation privilege does not resolve whether a communication is protected activity under section 425.16(e)(1) or (2)." (*Semaan*, *supra*, 118 Cal.App.5th 460, 469 [internal citations omitted].)

Having concluded that Defendants have not carried their burden at the first step of the anti-SLAPP inquiry, the Court DENIES the 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: 07/29/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009547

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK:

PLAINTIFF: ROBIN DOW

vs.

DEFENDANT: STRONGIN LLP, ET AL

NATURE OF PROCEEDINGS: MOTION - COMPEL ARBITRATION

RULING

Defendants Strongin, LLP, Daniel Libbey, Kseniya Stupak, and Eric Strongin filed a motion to compel arbitration and to stay litigation in this matter. The motion was served on Plaintiff and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the motion 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.

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