SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2202643

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFFS: LINDA EVANS, ET AL. vs. DEFENDANT: EUGENIA BERSANO	

NATURE OF PROCEEDINGS: MOTION – TAX COSTS

RULING

Plaintiffs Linda Evans (also a cross-defendant), Fadi Elahamadie (also a cross-defendant), Theodore Evans, and Lucas Evans' ("Plaintiffs") motion to set aside or vacate the judgment is DENIED. Defendant and Cross-Complainant Eugenia Bersano's ("Defendant") motion to tax costs is GRANTED to the extent that Plaintiffs may not recover any of the costs associated with expert witnesses as described at Page 4, Item 8(b) of their Amended Memorandum of Costs ("Amended MOC"). (Cal. Rules of Court, rule 3.1700(b).) The motion to tax cost is otherwise DENIED.

BACKGROUND

Plaintiffs are a married couple and their two sons. (Complaint, ¶¶ 1-4.) Plaintiffs alleged that they lived at 15 Dutton Court in Sausalito, a property they rented from Defendant in 2020. (*Id.* at ¶¶ 5, 8, 13.) The complaint alleged that shortly after Plaintiffs moved in, Defendant hired workers to perform highly disruptive construction work at the property, which greatly affected the habitability of the premises. (*Id.* at ¶¶ 20-32.) Plaintiffs further alleged that the house was affected by mold and other biological contaminants, which made them ill. (*Id.* at ¶¶ 37-42.) The complaint asserted numerous causes of action, including (but not limited to) premises liability, breach of the implied warranty of habitability, intentional infliction of emotional distress, and retaliatory eviction.

Defendant responded with a cross-complaint against Linda and Fadi. She claimed they paid her no rent from February 2021 through March 2022, refused to cooperate with Defendant as necessary for her to obtain rent payments through COVID-19 rent assistance, and left the property in an unsatisfactory condition when Defendant ultimately evicted them in March 2022. (Second Amended Cross-Complaint, ¶¶ 17-19.) She asserted causes of action for, among other things, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional interference with prospective economic relations, and negligent interference with prospective economic relations.

This case was tried before a jury beginning in late March 2026. The jury awarded a total of $60,000 to Plaintiffs and $55,600 to Defendant. (Chapman Dec. in Supp. of Mot. to Vacate, Ex. 1, pp. 22, 32.)

Before the Court are Plaintiffs' motion for an order vacating the judgment and Defendant's motion to tax costs.

MOTION TO VACATE THE JUDGMENT

LEGAL STANDARD

"A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes[:] . . . (1) Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. (2) A judgment or decree not consistent with or not supported by the special verdict." (Code Civ. Proc., § 663.) For either circumstance to justify granting a motion under Section 663, the error must "materially affect[] the substantial rights of the party and entit[le] the party to a different judgment[.]" (*Ibid.*)

DISCUSSION

Plaintiffs point out that the jury found in their favor on their claims for premises liability and breach of the implied warranty of habitability, but found for Defendant on her claims for negligent and intentional interference with prospective economic relations, which were based on Plaintiffs' failure or refusal to facilitate Defendant's efforts to obtain COVID-19 rent relief from government programs. (See Chapman Dec., Ex. 1, pp. 28-31; SAXC, ¶¶ 57-74.) Plaintiffs seek relief on the basis that these findings are "inconsistent." (Memorandum, p. 2.) They cite no authority in connection with this argument and never articulate how the jury's conclusions are inconsistent.

The Court's best guess is that Plaintiffs' chain of logic proceeds like this: (1) The jury found that there were breaches of the implied warranty of habitability at the premises; (2) Thus, Plaintiffs were legally absolved of the obligation to pay Defendant rent for the premises; (3) Because Defendant was not entitled to any rent payments in connection with Plaintiffs' tenancy, she also was not entitled to COVID-19 rent relief, so Plaintiffs cannot have interfered with the economic relationships described in the SAXC and the jury should have found in their favor on the interference claims.

Assuming this is what Plaintiffs mean, this argument fails at (2). It is not the case that a tenant whose premises are in breach of the implied warranty of habitability is entitled to completely withhold rent from the landlord. The tenant owes reduced rent in the amount of the reasonable value of the property given its condition, not zero rent. (Code Civ. Proc., § 1174.2, subd. (a)(1); see also *Green v. Superior Court* (1974) 10 Cal.3d 616, 638.) This likewise addresses Plaintiffs' argument that the jury's findings on the warranty of habitability issue are inconsistent with its award to Defendant of damages for unpaid rent.

Plaintiffs also argue that the jury's finding in favor of Defendant on her interference claims was "legally unsupported" due to a lack of a "legally sufficient wrongful act[.]" (Memorandum, p. 2.) "[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.' " (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392-393 [quoting *Top Service Body Shop, Inc. v. Allstate Ins. Co.* (1978) 283 Or. 201, 209 [582 P.2d 1365, 1371].)

The verdict forms required the jury to find wrongful conduct in connection with these claims. (See Chapman Dec., Ex. 1, pp. 28 [VF-2202(3)], 31 [VF-2203(5)].) Plaintiffs do not contend that the jury was incorrectly instructed, or not instructed at all, on the meaning of "wrongfully" or "wrongful conduct" as used in these portions of the verdict forms. There is no evidence before the Court suggesting that Plaintiffs ever objected to these verdict forms. On the scant argument presented, the Court has no basis to conclude that the jury held Plaintiffs liable on Defendant's interference claims absent a legally sufficient wrongful act. The Court notes, as it did in its June 17, 2026 order denying Plaintiffs' motion for a new trial, that during the trial, "Cross-Complainant advanced sufficient evidence of independent wrongfulness upon which the jury's verdict would have been proper." (June 17, 2026 Order, p. 2.)

The motion to vacate is DENIED.

MOTION TO TAX COSTS

LEGAL STANDARD

"Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code of Civil Procedure, § 1032, subd. (b).) Code of Civil Procedure, section 1033.5 specifies what types of costs are recoverable under Section 1032(b). All allowable costs must be "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation" and "reasonable in amount." (§ 1033.5, subd. (c).) "[B]ecause the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.)

To recover costs, a prevailing party must file and serve a memorandum of costs. (Cal. Rules of Court, rule 3.1700(a)(1).) The memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items therein are correct and were necessarily incurred in the case. (*Ibid.*)

The opposing party may dispute items in the memorandum of costs through a motion to strike costs (if the entire memorandum of costs is challenged) or a motion to tax costs (if only particular items are challenged). (Cal. Rules of Court, rule 3.1700(b); Fairbank et al., Cal. Practice Guide: Civil Trials & Evidence (The Rutter Group 2024) ¶ 17:517 [there is no procedural difference between a motion to strike costs and a motion to tax them].) Unless the movant is objecting to the entire memorandum of costs, the motion "must refer to each item objected to by the same number and appear in the same order as the corresponding cost item claimed on the memorandum of costs and must state why the item is objectionable." (Cal. Rules of Court, rule 3.1700(b)(2).) The motion must be filed and served within 15 days of service of the prevailing party's memorandum of costs. (Cal. Rules of Court, rule 3.1700(b)(1).)

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that [they] were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs." (*Ladas*, *supra*, 19 Cal.App.4th 761, 774; accord *Oak Grove School Dist. of Santa Clara County v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699.) That an item "appear[s] to be proper" means that, on its face, it either falls within one of the categories expressly included as allowable costs under Code of Civil Procedure, section 1033.5, subdivision (a) or appears reasonably necessary to the litigation. (See *Ladas*, *supra*, 19 Cal.App.4th 761, 775-776 [placing burden on the party claiming costs where neither of these conditions was satisfied]; see also *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Whether a particular cost was reasonably necessary is a question of fact to be determined by the trial court. (*Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1487.)

DISCUSSION

Plaintiffs first filed a Memorandum of Costs on April 16, 2016 (the "Original MOC"). On April 23, 2026, Plaintiffs filed the Amended MOC. As compared to Original MOC, the Amended MOC changed only the amount claimed in connection with Item 8, witness fees. Both the Original MOC's Item 8 and the Amended MOC's Item 8 seek recovery of costs associated with the same three expert witnesses: James Cantrell, Steve Zivolich, and Erik Volk. The only change across the two documents is that Plaintiffs adjusted the time spent by Cantrell and Volk upward in the Amended MOC. (See Original MOC, p. 4, Item 8(b); Amended MOC, p. 4 Item 8(b).) Plaintiffs now seek $26,437.50[1] in expert witness fees where before they sought $22,089.25. (*Ibid.*)

First, Defendant argues that the Court should tax any costs asserted for the first time in the Amended MOC because the document was not timely filed. Memoranda of costs must be filed within 15 days of service of the notice of entry of judgment (Cal. Rules of Court, rule 3.1700(a)(1)), and Defendant contends that a timely filed memorandum of costs may not be amended outside that time frame. Given that the Original MOC was timely and there is no apparent prejudice to Defendant from the timing of the amendment (she was not deprived of her chance to contest the new charges, but in fact filed a complete set of moving papers directed specifically at the Amended MOC in addition to a set directed at the Original MOC), the Court will not tax the costs specific to the Amended MOC on timeliness grounds. (See *Pollard v. Saxe & Yolles Dev. Co.* (1974) 12 Cal.3d 374, 381 ["In the absence of prejudice, the trial court has broad discretion in allowing relief on grounds of inadvertence from a failure to timely file a cost bill."].) Ultimately, this decision is without consequence, because the Court is granting Defendant's motion to tax as to all of the expert witness charges, whether stated for the first time in the Amended MOC or not.

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[1] The Amended MOC lists the total amount sought for expert witnesses as $27,243.10. Plaintiffs explain that they are withdrawing their costs claim as to $805.60 of that sum because the vendor forgave the charge. (Chapman Dec., ¶ 26.)

The Court will address each challenged item in turn.

Item 4, Deposition Costs

The cost of "[t]aking, video recording, and transcribing necessary depositions" is expressly recoverable (Code Civ. Proc., § 1033.5, subd. (a)(3)(A)), so Defendant carries the burden of showing that these costs are not reasonable or necessary. (*Ladas*, *supra*, 19 Cal.App.4th 761, 774.) She takes issue with the following charges:

> $650 associated with the deposition of Community Action Marin: Community Action Marin was never deposed. (Gilg Dec., ¶ 6.) This was a cancellation charge. (Chapman Dec., ¶ 17.) This is recoverable under Section 1033.5(c)(4), which gives a court discretion to award costs for items not expressly deemed recoverable in Section 1033.5. This discretion is subject to the caveat that the costs must be "reasonably necessary to the conduct of the litigation" and "reasonable in amount." (Code Civ. Proc., § 1033.5, subd. (c)(2)-(3).) This was a reasonably necessary deposition given the nature of the claims in this case. (See Chapman Dec., ¶ 15.) Plaintiffs ultimately cancelled it shortly before it was to take place because the entity deponent failed to designate a person most knowledgeable and would not confirm that anyone would appear. (*Id.* at ¶¶ 16-17.) The amount of the charge is consistent with the Court's expectations of a last-minute deposition cancellation fee. The Court will permit Plaintiffs to recover this cost.
>
> $3,994.30 in total associated with the two depositions of Ronald Bongar Campos: Defendant takes issue with the fact that although Plaintiffs deposed Ron Campos and Defendant for the exact same amount of time (Gilg Dec., ¶¶ 8-9), they seek $2,161.35 more in connection with Campos' deposition than Defendant's. Her argument that this means the Campos deposition charge is necessarily excessive or unreasonable relies on the idea that Plaintiffs were charged for these depositions strictly based on time. This was not the case. (Chapman Dec., ¶ 11.) The $3,994.30 associated with Campos' deposition reflects separate charges for transcripts and videography, which are both expressly recoverable. (*Ibid.*; Code Civ. Proc., § 1033.5, subd. (a)(3)(A).)
> $3,025.30 associated with the deposition of Tod Schlesinger: Defendant's argument again depends on the idea that Plaintiffs were charged purely based on the length of the deposition, which was not the case. (Chapman Dec., ¶ 11 & Ex. E.) Defendant has not carried her burden as to this charge.

Item 5, Service of Process Costs

Defendant requests that the Court tax service of process costs associated with all of the following to $0: Community Action Marin; Romeo Bacnotan; Eric Faulks[2]; Paul Dingeldein; Thomas McCarville; and Jock McDonald. Because these charges are for service of process by a registered process server (see Amended MOC, p. 4, Item 5 & Attachment 5(d)), they are expressly recoverable and the burden of showing their unreasonableness or lack of necessity is on Defendant. (Code Civ. Proc., § 1033.5, subd. (a)(4); *Ladas, supra,* 19 Cal.App.4th 761, 774.)

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[2] Defendant's request for judicial notice is granted. (Evid. Code, § 452, subd. (d).) Plaintiffs' requests for judicial notice are likewise granted. (*Ibid.*)

Defendant argues that these charges were unnecessary and unreasonable because none of these people testified at trial. (Gilg Dec., ¶ 11.) These charges were incurred in connection with attempts to secure deposition or trial testimony from witnesses with clear relevance to the claims in this case. (Chapman Dec., ¶¶ 15, 18-22.) The Court is not persuaded that the fact that a witness was ultimately not called to testify at trial means that earlier efforts to secure that witness' testimony were unnecessary.

<u>Item 8, Expert Witness Costs</u>

Plaintiffs seek to recover costs associated with expert witnesses James Cantrell, Seve Zivolich, and Erik Volk. (See Amended MOC, p. 4, Item 8(b).) "Fees of experts not ordered by the court" are "not allowable as costs, except when expressly authorized by law[.]" (Code Civ. Proc., § 1033.5, subd. (b)(1).) There were no court-ordered experts involved in this case. (See Gilg Dec., ¶ 13.)

One statute expressly authorizing recovery of costs associated with expert witnesses, without regard to whether they were court-ordered, is Code of Civil Procedure, section 998. The statute provides that "[n]ot less than 10 days prior to commencement of trial . . . , any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time" – in other words, a settlement offer. (Code Civ. Proc., § 998, subd. (b).) "If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award . . . , the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial . . . , or during trial . . . , of the case by the plaintiff, in addition to plaintiff's costs." (Code Civ. Proc., § 998, subd. (d).)

In this case, Plaintiffs served Defendant with a joint offer under Section 998 on August 16, 2024. (Chapman Dec., ¶ 24 & Ex. F.) The offer proposed that "Defendant shall pay *Plaintiffs* the total sum of eighty thousand dollars ($80,000)" to settle the case, both sides would dismiss their pleadings with prejudice, and everyone would bear their own attorney's fees and costs. (*Ibid.* [emphasis added].) The joint offer did not specify any particular portion of the $80,000 total that should go to each of the four plaintiffs. Each of the four plaintiffs in this case ultimately recovered $15,000 on the complaint, for a total plaintiffs'-side recovery of $60,000. (Chapman Dec., ¶ 3 & Ex. A, p. 22.)

In *Gilman v. Beverly California Corp.* (1991) 231 Cal.App.3d 121, multiple plaintiffs similarly made an unapportioned joint Section 998 offer to the sole defendant and then collectively obtained a more favorable judgment than that offer against the defendant. (231 Cal.App.3d 121, 124.) The Sixth District held that the plaintiffs' Section 998 offer was invalid because its unapportioned and joint nature made it impossible for the defendant "to determine whether each individual plaintiff in fact obtained a more favorable judgment than [the] offer." (*Ibid.*) It denied the plaintiffs their expert witness fees under Section 998 on this basis. (*Id.* at p. 126; accord *Hurlbut v. Sonora Community Hospital* (1989) 207 Cal.App.3d 388, 408-409 [expert witness fees under Section 998 denied to prevailing plaintiffs because, among other reasons, the joint nature of their offer "preclud[ed] a determination of whether each plaintiff received a judgment more favorable than the offer"].)

In *Stallman v. Bell* (1991) 235 Cal.App.3d 740, the Second District cautioned that courts addressing Section 998 disputes should not "mechanically apply a rule that renders void any joint offers[.]" (235 Cal.App.3d 740, 746.) Instead, courts should "look[] beyond the simple fact of joint offer to see if it [can] be determined whether the party [requesting] costs [] actually received the more favorable judgment." (*Id.* at p. 746.) In *Stallman*, there was an unapportioned joint offer from two plaintiffs and "a unitary award of damages to both" of them that did not specify how much was to go to each. (*Id.* at p. 747.) Given that there was "but a single verdict to be compared to a single offer," it could "be clearly determined whether or not the [plaintiffs] received a more favorable judgment[,]" and the Section 998 offer was valid notwithstanding that it was unapportioned and joint. (*Ibid.*) *Stallman* distinguished this from a situation involving an unapportioned Section 998 offer followed by separate verdicts awarding individualized damages to each of multiple plaintiffs. (*Ibid.*)

This case presents the fact pattern the Second District distinguished in *Stallman*. Given that Plaintiffs' joint Section 998 offer did not apportion the proposed $80,000 settlement figure among the four plaintiffs, it is impossible to know what to compare each Plaintiff's $15,000 award to and so impossible to say that Defendant "fail[ed] to obtain a more favorable judgment or award" as to any given plaintiff. (Code Civ. Proc., § 998, subd. (d).) The Court does not have discretion to award expert witness costs under these circumstances. The motion to tax is GRANTED as to the expert witness costs.

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 August, 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: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2300516

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: HYPERCONSTRUCT CO., ET AL

vs.

DEFENDANT: SHAW WALTERS

NATURE OF PROCEEDINGS: MOTION - COMPEL

RULING

On July 1, 2026, the parties appeared and reported they continued efforts to reach a solution such that the motion to compel would be unnecessary. The Court ordered the parties to file a Declaration of Non-Resolution detailing what remained of the requests if the parties did not resolve the matter. No Declaration of Non-Resolution was filed, and therefore, the Court assumes the parties resolved this matter.

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 August, 2026 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: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2301381

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JOHN MCNEILLY, ET AL.

vs.

DEFENDANT: FCA US, LLC, ET AL.

NATURE OF PROCEEDINGS: 1) MOTION – SEAL
2) MOTION – GOOD FAITH SETTLEMENT

RULING

FCA US LLC filed a motion for determination of good faith settlement and a motion to seal "unredacted" settlement agreement and release limited to the settlement amount between Plaintiffs and FCA US LLC. The motion was served on all parties 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.)

The Court grants the motions in light of the non-opposition.

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 August, 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: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001622

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: FELIPE GONZALEZ MARTINEZ, ET AL vs. DEFENDANT: 1125 SIR FRANCIS DRAKE BOULEVARD OPERATING CO., LLC	

NATURE OF PROCEEDINGS: 1) MOTION – SANCTIONS
2) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiffs Felipe Gonzalez Martinez and Leonardo Tamayo Gallegos filed a motion to compel answers to what they refer to as "Round Two Discovery" of Interrogatories, Requests for Admission, Request for Production of Documents, and Form Interrogatories. Plaintiffs further request sanctions. The first round of discovery also prompted the filing of a request to participate in the discovery facilitator program. On November 19, 2025, the Court issued an order granting Plaintiffs' motion in part, finding that several of the responses to requests were improper.

The Round Two Discovery pertains to discovery which has been at issue for quite some time. On August 28, 2025, the parties stipulated to participate in the discovery facilitator program on Round Two before filing a motion to compel.

The parties had been working with Discovery Facilitator Janet Lee Miller who was appointed on September 18, 2025. Plaintiffs assert that as part of the agreements with the Facilitator Miller, Defendant had agreed to produce and respond in full compliance with the discovery, but Defendants have failed to comply with numerous items, and have remained evasive in their responses. They assert that their failure to comply with the court's order and with agreements made with Facilitator Miller is evasive and akin to violating a court order.

Defendant 1123 Sir Frances ("Defendant") prepared a declaration stating that they were never opposed to signing the agreement with the Facilitator, but did not say they had done so. Defendant further asserts it is not opposed to continuing to work with the Facilitator as an appointed referee. The court voices its concern that despite propounding this discovery over one year ago, a few of the responses and documents may still be outstanding.

The parties shall appear and explain whether they intend to hire Janet Lee Miller as a referee to deal with the outstanding disputes.

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 August, 2026 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/26 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 – SUMMARY ADJUDICATION

RULING

The motion for summary adjudication filed by Plaintiffs/Cross-Defendants Timothy W. Baughman and Julie A. McMillan is granted as to Issue Nos. 1, 2, 5, 6, and 9 and is denied as to Issue Nos. 3, 4, 7, and 8.

Procedural History

On October 17, 2024, Plaintiffs/Cross-Defendants Timothy W. Baughman and Julie A. McMillan, individually and as Trustees of the Baughman McMillan 2016 Trust ("Baughman/McMillan") filed their Complaint against Defendants Richard H. Hess ("Hess") and Gonzalo Azcona ("Azcona") (together, "Hess/Azcona"), alleging that Baughman/McMillan own the property at 35 Crest Road in Ross, that Hess owns the neighboring property at 45 Crest Road, and that Azcona and Hess are married and reside at 45 Crest Road. Baughman/McMillan further alleged that after they obtained an arborist report recommending removal of a bay tree on their side of the fence, the Town of Ross approved their application to remove the tree. Hess/Azcona objected to the removal of the tree, claiming it could be on their property, and demanded that Baughman/McMillan obtain a survey. The survey confirmed the tree is exclusively on Baughman/McMillan's property and that a fence between the two properties is not representative of the property line; specifically, 45 Crest encroaches upon 35 Crest approximately 853 square feet. Baughman/McMillan further allege that Hess/Azcona have harassed them and their son, placed them under surveillance, threatened their safety, made false accusations about them, and refused to cooperate with the property line. Baughman/McMillan assert claims for intentional infliction of emotional distress, stalking, invasion of privacy, defamation, trespass, nuisance, quiet title, and slander of title.

On October 17, 2024, Hess/Azcona filed a Cross-Complaint against Baughman/McMillan, alleging that Baughman/McMillan have bullied, harassed, and slandered them and other neighbors. Hess/Azcona further allege that the tree is over the fence line and provides them shade and privacy, and the arborist advised them it did not recommend that the tree be taken down. Baughman/McMillan hired another surveyor, Muir, who came onto their property, and then advised they would be rebuilding the fence along the new survey line. Hess/Azcona commissioned a survey investigation which cast doubt on the Muir survey. Hess/Azcona assert causes of action for quiet title, equitable easement, prescriptive easement, quiet title by adverse possession, assault, nuisance, trespass, slander of title, and intentional infliction of emotional distress, and seek declaratory and injunctive relief.

Baughman/McMillan have filed a motion for summary adjudication as to the Second Cause of Action for equitable easement, Third Cause of Action for prescriptive easement, Fourth Cause of Action for quiet title by adverse possession, Fifth Cause of Action for assault, Seventh Cause of Action for trespass, Eighth Cause of Action for slander of title, and Ninth Cause of Action for intentional infliction of emotional distress.

Request for Judicial Notice

Baughman/McMillan's request for judicial notice of their Complaint (Exh. 1), Hess/Azcona's Answer (Exh. 2), Hess/Azcona's Verified Cross-Complaint (Exh. 3), the Baughman/Azcona grant deed (Exh. 4), and the Hess grant deed (Exh. 5), is granted. (Evid. Code §§ 452, 453.) 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.) Hess/Azcona's request for judicial notice of a letter from the State of California Fair Political Practices Commission is denied as this is not a proper subject for judicial notice. This document would not impact the Court's analysis in any event.

Evidentiary Objections

Hess/Azcona's Objections No. 1 (personal knowledge, foundation, speculation, improper opinion) and No. 2 (hearsay, foundation, improper opinion) are sustained. Objection No. 3 is overruled. The evidence objected to in Objection No. 3 would not impact the Court's ruling in any event.

Baughman/McMillan's Objection Nos. 1 and 2 (legal conclusion, foundation) and No. 4 (hearsay and personal knowledge, as to the alleged homophobic epithet incident) are sustained. Objection No. 3 is overruled to the extent Hess states he has incurred expenses.

Issue No. 1/Second Cause of Action

Hess/Azcona's Second Cause of Action for equitable easement alleges that Hess has been openly using the alleged encroaching area (the "Disputed Area") since at least 1996, that his use was innocent, unknowing and inadvertent, and that Hess believed at all times that the disputed area was owned by him. Hess/Azcona further allege that there is no hardship to Baughman/McMillan if there is an equitable easement because Hess has been using this area for at least 28 years, and the hardship to Hess/Azcona would be significant and greatly disproportionate to any hardship to Baughman/Miller because Hess/Azcona have made substantial improvements to the area.

"California courts have [] the discretionary authority to deny a landowner's request to eject a trespasser and instead force the landowner to accept damages as compensation for the judicial creation of an easement over the trespassed-upon property in the trespasser's favor, provided that the trespasser shows that (1) her trespass was innocent rather than willful or negligent, (2) the public or the property owner will not be irreparabl[y] injur[ed] by the easement, and (3) the hardship to the trespasser from having to cease the trespass is greatly disproportionate to the hardship caused [the owner] by the continuance of the encroachment. Unless all three prerequisites are established, a court lacks the discretion to grant an equitable easement." *(Shoen v. Zacarias* (2015) 237 Cal.App.4th 16, 19 [citations and internal quotations omitted].) "Overarching the analysis is the principle that since the defendant is the trespasser, he or she is the wrongdoer; therefore, doubtful cases should be decided in favor of the plaintiff. Moreover, courts approach the issuance of equitable easements with [a]n abundance of caution. When courts compare the hardships or conveniences, the scales begin tipped in favor of the property owner due to the owner's substantial interest in exclusive use of her property arising solely from her ownership of her land." (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 1004 [citations and internal quotations omitted].)

The parties here focus on the hardship element. Baughman/McMillan's Issue No. 1 states: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' equitable easement claim because Defendants' hardship is not greatly disproportionate to the hardship caused to Plaintiffs by the continuance of Defendants' encroachments."

The evidentiary record establishes the following. Baughman/McMillan hold record title to 35 Crest Road, although Hess/Azcona dispute both the ownership of the Disputed Area and the Muir survey obtained by Baughman/McMillan. (Baughman/McMillan ("B/M") Fact No. 1.) The Disputed Area is approximately 853 square feet and has two parts: (a) a 199 square foot area outside Hess/Azcona's gate consisting of a dirt wall and another area with a retaining wall, fencing, driveway, and planted vegetation and trees, and (b) a 654 square foot area inside Hess/Azcona's gate that includes a fence and a portion of their parking area. (B/M Fact No. 5.) While Hess/Azcona challenge ownership of the Disputed Area, they do not present evidence from a survey or otherwise showing that *they* have title to that area. (Hess/Azcona ("H/A") Response to B/M Fact No. 1.)[1] Hess/Azcona have parked their cars in the Disputed Area and use the space to turn vehicles around. They have also improved and maintained the area, with a retaining wall outside the gate, their own fencing, an asphalt driveway, irrigation lines, plantings and ivy, and a tree. (H/A Response to B/M Fact No. 5.) If Hess/Azcona are required to stop using the Disputed Area, they would still have a parking area in front of their garage sufficient to park vehicles. (B/M Fact No. 7.) However, Hess/Azcona would lose the parking area beside the garage and a portion of the driveway, they could no longer turn a vehicle around on the property, and they would need to back their vehicles down their steep driveway onto Crest Road to exit the

[1] The declaration of Hess/Azcona's surveyor states only that maps that depict boundary lines "are not dispositive of, nor final determination of, the rights of occupation of the parties whose properties lie on either side of the boundary, or the fence lines depicted on the same maps. The survey process must take into account additional physical features of property, including fences and other improvements." (Declaration of Philip A. Danskin, ¶¶6, 7.) Even if this statement were admissible, it proves little. Mr. Danskin does not actually state that the Muir survey is incorrect or that the property line is somewhere other than what is shown on the Muir survey. Hess/Azcona have not provided any other evidence to dispute the accuracy of the Muir survey. There are no "conflicting surveys", as Hess/Azcona suggest. (See Opp. p. 5:9-10.)

property. (B/M Fact No. 8; H/A Response to B/M Fact Nos. 7 and 8.) In August 2018, the Town issued a permit to remove a 19 foot Bay Tree and a 15 foot Bay Tree which an arborist stated posed a moderate risk. (B/M Fact No. 9; H/A Response to Fact No. 9.) Baughman/McMillan have not removed the trees for fear of exposing themselves to an allegation of impermissible self-help. (B/M Fact No. 10.) Baughman/McMillan have been unable to use the Disputed Area to install a fence along what they contend is the property line, to expand their garden as a result of Hess/Azcona's use of the Disputed Area, or to use and possess their property. (B/M Fact Nos. 11 and 12.)

Baughman/McMillan argue there are no triable issues of fact as to the Second Cause of Action because the balance of hardships clearly favors them. They argue that without the equitable easement, Hess/Azcona would still have a sufficient parking area in front of their garage and their only "hardship" would be having to back out their vehicles to exit rather than turning around on-site, and to remove improvements they put in the Disputed Area. In contrast, with the requested easement, Baughman/McMillan would not be able to remove two trees due to Hess/Azcona's occupation of that area, their enjoyment of an adjacent garden would be negatively impacted, and they would lose 853 square feet of their own property.

The Court agrees that Hess/Azcona have not raised a triable issue of fact that any hardship they would suffer from not having an equitable easement is "greatly disproportionate" to the hardship Baughman/McMillan would suffer in losing use and possession of their property and the ability to remove trees they believe pose some risk to their property. The scales are already tipped in favor of Baughman/McMillan as the property owner, and the hardship to Hess/Azcona is not significant. Hess/Azcona would still be able to park cars outside their garage and exit the property via their driveway, albeit now in a manner that is more inconvenient to them. McMillan states in paragraph 15 of her declaration that before Hess/Azcona's depositions in May 2025, she never saw them turn around in their driveway and instead backed down the driveway. Hess/Azcona do not dispute this in their opposing declarations. Further, while Hess/Azcona would no longer have possession or control over any improvements in the Disputed Area such as vegetation or irrigation, this hardship, if any, is minimal as there is no evidence that these serve any particular purpose for the safety or functionality of the Hess/Azcona property. Hess/Azcona do not identify any such purpose in their response to Baughman/McMillan's separate statement, focusing instead on the driveway issue. The hardship to Hess/Azcona is similar to that in *Shoen*, *supra*, in which the hardship the trespassing party suffered was having to remove patio furniture, having to use a stairway that led to her neighbor's property, and not being able to use the property. The court held the trespasser's hardship was not enough to outweigh the property owner's hardship with respect to the loss of her property. In contrast, courts have found greatly disproportionate hardship where, for example, a party's property would be landlocked without an equitable easement. (See e.g., *Hinrichs v. Melton* (2017) 11 Cal.App.5th 516; *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259.) That kind of significant hardship does not exist here.

The motion for summary adjudication of Issue No. 1 is granted.

Issue No. 2/Third Cause of Action

Hess/Azcona's Third Cause of Action for prescriptive easement alleges that Hess has utilized the Disputed Area as part of his property for over five years, in an open and obvious way such that Baughman/McMillan have had actual or constructive notice of the use. Hess' use has been continuous, uninterrupted, open and easily observable, and not subject to Baughman/McMillan's permission.

"'To establish the elements of a prescriptive easement, the claimant must prove use of the property, for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right.'" (*Hansen v. Sandridge Partners, LP* (2018) 22 Cal.App.5th 1020, 1032 [citation omitted].) "An easement gives a nonpossessory and restricted right to use a specific use or property upon another's property, which right must be *less* than the right of ownership." (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1306 [emphasis in original].) "'An exclusive prescriptive easement is . . . a very unusual interest in land. The notion of an exclusive prescriptive easement, which as a practical matter completely prohibits the true owner from using his land, has no application to a simple backyard dispute. . . An easement, after all, is merely the right to use the land of another for a specific purpose - most often, the right to cross the land of another. An easement acquired by prescription is one acquired by adverse use for a certain period. An easement, however, is not an ownership interest, and certainly does not amount to a fee simple estate.'" (*Id*. at p. 1302 [citation omitted].)

Where a neighbor's use is not in the nature of an easement but instead is an exclusive use, the neighbor cannot claim a prescriptive easement. (See *Kapner v. Meadowlark Ranch Assn.* (2004) 116 Cal.App.4th 1182, 1186.) A formal fence or walls is not required. For example, in *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1094, the neighbor installed trees, planter boxes, and an irrigation system which prevented the property owner from putting in a driveway, running utility lines, installing a fence along the boundary line, or using it for any other practical purpose. The *Harrison* court concluded that because of the exclusive nature of the neighbor's use, the neighbor was not entitled to a prescriptive easement. (*Ibid*.)

The parties here focus on the issue of exclusive use by Hess/Azcona. Baughman/McMillan's Issue No. 2 states: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' prescriptive easement claim because Defendants enclose and possess the encroachment areas."

Baughman/McMillan's Fact No. 5 states: "Defendants have fully enclosed and possessed both the 199-Square -Foot Encroachment Area and the 654-Square-Foot Encroachment Area to the exclusion of Plaintiffs' use and enjoyment." Baughman/McMillan cite to Hess's and Azcona's deposition testimony in which they discuss the improvements they made in the Disputed Area, and McMillan's statement in paragraph 5 of her declaration in which she states: "Defendants have fully possessed both the 199-Square-Foot Encroachment Area and the 654-Square-Foot Encroachment Area, to the complete exclusion of my husband's and my use and enjoyment of those portions of our property." Notably, Hess/Azcona do not dispute that their use of the Disputed Area has been exclusive and that they seek to continue this use by way of prescriptive easement. Both Hess and Azcona confirm their use has been exclusive in their declarations. Azcona states in his declaration that they have "used and possessed the area behind our electric gate and fence as our own" and Hess states that he has "continuously and exclusively used and possessed that area as part of my own property . . . No one else has shared that use."

While Hess/Azcona argue that the Disputed Area was enclosed even before Baughman/McMillan purchased their property, they do not explain how this changes the prescriptive easement analysis. The analysis focuses on exclusive use, and there is no dispute that Hess/Azcona's use has been exclusive such that Baughman/McMillan have been unable to use the property themselves for any practical purpose. Hess/Azcona's exclusive use is inconsistent with the concept of a prescriptive easement.

The motion for summary adjudication of Issue No. 2 is therefore granted.

Issue No. 3/Third Cause of Action

Baughman/McMillan's Issue No. 3 also pertains to the requested prescriptive easement, and provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' prescriptive easement claim because Defendants' possession and use of the encroachment areas is not adverse."

Baughman/McMillan argue that Hess/Azcona cannot prevail on their prescriptive easement claim because they cannot show their use was adverse or hostile to Baughman/McMillan. "The term 'adverse' in this context is essentially synonymous with 'hostile' and 'under claim of right."' [Citations.] A claimant need not believe that his or her use is legally justified or expressly claim a right of use for the use to be adverse. [Citations.] Instead, a claimant's use is adverse to the owner if the use is made without any express or implied recognition of the owner's property rights. [Citations.] In other words, a claimant's use is adverse to the owner if it is wrongful and in defiance of the owner's property rights. [Citation.]" (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1181 [citation omitted].) "'Use with the owner's permission . . . is not adverse to the owner.'" (*Ibid*. [citation omitted].)

Baughman/McMillan contend that Hess/Azcona's use was not adverse or hostile because Baughman/McMillan gave them permission to use it. Specifically, they argue that they (Baughman/McMillan) knowingly constructed the existing fence on their own property, which constituted implied permission for Hess/Azcona to use the Disputed Area outside the fence, and the parties enjoyed friendly relations for 22 years after Hess purchased his property. They further contend that the only statements Hess/Azcona made resembling a claim of right to the property were in 2018 when they demanded evidence that the tree was on Baughman/McMillan's property before it was removed, and even then they acknowledged uncertainty about the boundary. Hess/Azcona argue that their use was adverse because both sides agree that they treated the Disputed Area as if it was theirs.

The motion for summary adjudication of Issue No. 3 is denied. Hess/Azcona have raised a triable issue of fact as to whether their use was hostile or adverse. Among other things, a triable issue of fact exists as to whether Baughman/McMillan knew that the Disputed Area was part of their property and were merely allowing Hess/Azcona to use it. Ms. McMillan's declaration appears to be drafted carefully so as to avoid actually making this statement. (See McMillan Decl., ¶¶10-13.)

Issue No. 4/Fourth Cause of Action

Baughman/McMillan's Issue No. 4 provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' claim for quiet title by adverse possession because Defendants' possession and use of the 654-square foot encroachment area and 199-square foot encroachment area is not adverse."

The motion for summary adjudication of Issue No. 4 is denied for the reason discussed above in connection with Issue No. 3, as both issues are based on whether Hess/Azcona's use was hostile or adverse. The Court does not address Baughman/McMillan's arguments regarding taxes as these were raised for the first time in their Reply and Hess/Azcona have not had a meaningful opportunity to respond.

Issue No. 5/Fifth Cause of Action

Hess/Azcona's Fifth Cause of Action alleges assault. In paragraph 23b of the Cross-Complaint, Hess alleges that Baughman "roughly brushed Hess with his car while Hess was walking his dog." "The elements of a cause of action for assault are: (1) the defendant acted with intent to cause harmful or offensive contact, or threatened to touch the plaintiff in a harmful or offensive manner; (2) the plaintiff reasonably believed he was about to be touched in a harmful or offensive manner or it reasonably appeared to the plaintiff that the defendant was about to carry out the threat; (3) the plaintiff did not consent to the defendant's conduct; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing the plaintiff's harm." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 890.)

Baughman/McMillan's Issue No. 5 provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' assault claim because the claim is barred by the applicable statute of limitations."

Baughman/McMillan argue that any claim based on the alleged car brushing incident (which they dispute happened) is untimely under the two year statute of limitations for assault under Code of Civil Procedure Section 335.1. Notably, Hess/Azcona do not dispute Baughman/McMillan's Fact No. 5, which states: "The alleged car-brushing incident occurred more than two years prior to the filing date of Defendants' cross-complaint." To this, Hess/Azcona respond: "Undisputed but immaterial."

Hess/Azcona attempt to avoid summary adjudication by relying on the continuing violation doctrine. "Allegations of a pattern of reasonably frequent and similar acts may, in a given case, justify treating the acts as an indivisible course of conduct actionable in its entirety, notwithstanding that the conduct occurred partially outside and partially inside the limitations period." (*Aryeh v. Canon Business Solutions, Inc*. (2013) 55 Cal.4th 1185, 1198.) Hess/Azcona argue that Baughman/McMillan engaged in a continuing course of hostile and threatening conduct towards them, including a "persistent practice of glaring at Defendants in a hostile and threatening manner when encountering them on Crest Road". Hess/Azcona cite to paragraph 13 of Hess' declaration, in which Hess discusses conduct involving Baughman/McMillan and their family. The interactions involving Baughman/McMillan's son, the parties' neighbors, the Ross

School District representative, and surveyors are not relevant to any alleged assault by Baughman or McMillan on Hess. With respect to Baughman and McMillan, Hess states that they "glare at us in a hostile and threatening manner" and train cameras and audio recording devices on their property.

Hess/Azcona's argument fails. Even assuming an assault claim can be based on these additional allegations – for which Hess/Azcona cite no authority – the continuing tort doctrine would not apply here. For this doctrine to apply, the conduct must be sufficiently similar in kind. (See *Yanowitz v. L'Oreal* USA, Inc. (2005) 36 Cal.4th 1028, 1059; *Trovato v. Beckman Coulter, Inc*. (2011) 192 Cal.App.4th 319, 326.) The alleged car brushing incident and the alleged "persistent glaring" and other allegations are not sufficiently similar in kind to support application of this doctrine to Hess/Azcona's assault claim here. Accordingly, the motion for summary adjudication of Issue No. 5 is granted.

Issue No. 6/Seventh Cause of Action

Hess/Azcona's Seventh Cause of Action for trespass alleges that Braughman/McMillan wrongfully entered onto Hess/Azcona's property. "Trespass is an unlawful interference with possession of property." (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406.)

Baughman/McMillan's Issue No. 6 provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' trespass claim because Muir Consulting had permission to enter Defendants' property under Civil Code § 846.5, and any such entry was lawful, necessary to locate monuments and mark property boundaries, and incidental to locating topical features shown on the recorded survey."

Civil Code Section 846.5(a) provides: "The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying and it shall be the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable."

Baughman/McMillan argue that there was no "unlawful" interference with Hess/Azcona's property because the individuals who went on the property were from a licensed surveying firm (Muir) performing a boundary survey (B/M Fact No. 4), and thus their presence on their property was privileged and allowed under Section 846.5. Hess/Azcona argue that Section 846.5 only allows for entry and does not authorize damage to the property. They contend that the surveyors damaged a natural retaining wall, causing soil to fall on the driveway.

While Hess/Azcona's argument may be valid if they had stated a negligence or similar claim for property damage, the cause of action at issue here is trespass. The Cross-Complaint alleges wrongful entry and nothing more. (See Cross-Complaint, ¶87.) "It is well settled that the pleadings set the boundaries of the issues to be resolved at summary judgment. Thus, a defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers. [Citation.] To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings." (*Vulk v. State Farm General Ins. Co*. (2021) 69 Cal.App.5th 243, 255 [citations and internal quotations omitted].) Accordingly, Hess/Azcona cannot defeat summary adjudication on the basis of a property damage claim not actually alleged in the Seventh Cause of Action.

Hess/Azcona also argue that the surveyors entered four times, staking inconsistent lines, and conceded that only a slight entry was possible. Therefore, Hess/Azcona contend, there is a triable issue of fact as to whether the surveyors exceeded any right of entry. However, there are no limits on the number of entries set forth in Section 846.5. The statute authorizes entry to "investigate and utilize boundary evidence, and to perform surveys." Hess/Azcona do not submit evidence that the surveyors entered for any other purpose, and therefore there is no evidence in the record that the surveyors exceeded the authority granted to them under the statute. The motion for summary adjudication of Issue No. 6 is granted.

Issue No. 7/Eighth Cause of Action

Hess/Azcona's Eighth Cause of Action for slander of title alleges that Baughman/McMillan made statements to third parties, including but not limited to Town of Ross officials, and to neighbors, that cast doubt upon Hess' ownership of the Disputed Area. They further allege that they suffered financial harm by incurring legal expenses necessary to remove the doubt cast by Baughman/McMillan and to clear title, and by suffering inconvenience and loss of time.

"To establish slander of title, a plaintiff must show: (1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." (*Klem v. Access Ins. Co*. (2017) 17 Cal.App.5th 595, 612-613 [citation and internal quotations omitted].)

The parties here focus on the last element. Baughman/McMillan's Issue No. 7 provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' slander of title claim because Defendants cannot establish that they suffered a direct and immediate pecuniary loss."

Baughman/McMillan rely on their Fact No. 4, which states that Hess/Azcona have not sold their property or identified a pending property sale that has been disturbed by this litigation. In response to this fact, Hess/Azcona state: "Undisputed that 45 Crest Road has not been sold and that no pending sale has been disrupted; disputed that Defendants have suffered no pecuniary loss, and immaterial."

Hess/Azcona argue that a lost sale is not the only type of damage that can support a slander of title cause of action. They cite to paragraph 14 of Hess' declaration, in which he states: "As a result of Plaintiffs' statements and their recorded survey casting doubt on my title, I have incurred, and continue to incur, expenses to remove that doubt and clear the title to my property, As the owner of 45 Crest Road, it is my opinion that Plaintiffs' recorded survey and their statements have reduced the market value of my property." Hess/Azcona also point to their verified Cross-Complaint in which they allege in paragraph 98 that they have incurred legal expenses, inconvenience, and loss of time.

"In an action for wrongful disparagement of title, [FN] a plaintiff may recover (1) the expense of legal proceedings necessary to remove the doubt cast by the disparagement, (2) financial loss resulting from the impairment of vendibility of the property, and (3) general damages for the time and inconvenience suffered by plaintiff in removing the doubt cast upon his property." (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 865.) Here, while Hess/Azcona make a weak showing as to damages in that they fail to identify any damages with specificity, Hess' statement that he has suffered some damage by way of legal expenses and general damages for time and inconvenience is sufficient to survive summary adjudication of this issue. Baughman/McMillan have not shown that Hess/Azcona *cannot* prove damages, and therefore summary adjudication is inappropriate. The motion for summary adjudication as to Issue No. 7 is denied.

Issue No. 8/Ninth Cause of Action

Hess/Azcona's Ninth Cause of Action for intentional infliction of emotional distress alleges that Baughman/McMillan's conduct was outrageous and intended to cause Hess/Azcona severe emotional distress, and that they should have known Hess was particularly more susceptible to emotional distress given his mental health disorder.

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

Baughman/McMillan's Issue No. 8 provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' claim for intentional infliction of emotional distress because Plaintiffs' conduct in seeking to resolve the property dispute was legitimate and was not extreme or outrageous." Baughman/McMillan cite to Hess' deposition testimony in which he stated that the conduct underlying this cause of action was: (1) Baughman/McMillan sent Hess/Azcona emails concerning the tree and property line dispute, beginning in 2018; (2) Baughman/McMillan obtained a boundary survey in March 2022; (3) in January 2023, Baughman/McMillan notified Hess of their intent move the fence; and (4) Baughman/McMillan filed the underlying civil action on May 2024. Hess/Azcona state that Hess testified as to additional conduct underlying this cause of action as well, namely, (1) Baughman/McMillan's adult son Jack yelled "faggot, faggot, faggot" at Hess from the pool house, within Hess's view; (2) Baughman/McMillan told neighbors that they were taking legal action against Hess "because of criminal behavior"; (3) McMillan, an elected Ross Town Council member, influenced the exclusion of 45 Crest Road from the Ross School District; and a school administrator told Hess to "Ask Julie McMillan"; (4) Baughman/McMillan made false complaints that Hess characterized as a means "to harass, to create fear, to intimidate"; and (5) there was a pattern of bullying and harassment by Baughman/McMillan and their two sons.

Hess/Azcona have raised a triable issue of fact as to whether Baughman/McMillan's conduct was sufficiently extreme and outrageous so as to support a cause of action for intentional infliction of emotional distress. The motion for summary adjudication of Issue No. 8 is denied.

Issue No. 9/Ninth Cause of Action

Baughman/McMillan's Issue No. 9 also challenges the Ninth Cause of Action, and provides: "The Court should grant summary adjudication in Plaintiffs' favor on Defendants' claim for intentional infliction of emotional distress because Plaintiffs' alleged outrageous conduct predates the limitations period, except for Plaintiffs' filing of the initial complaint on May 31, 2024."

The statute of limitations for an intentional infliction of emotional distress cause of action is two years. (Code Civ. Proc. § 335.1.) Hess/Azcona filed their Cross-Complaint on October 17, 2024. (B/M Fact No. 6.) Therefore, Hess/Azcona's cause of action must have accrued no earlier than October 17, 2022 to be timely.

The parties' positions on the conduct in dispute is the same as their positions with respect to Issue No. 8; Baughman/McMillan contend it is the conduct they identify in their Separate Statement, while Hess/Azcona contend it is also the additional conduct they identify in respect to their Separate Statement. As Hess testified as to all of this conduct in his deposition, the Court considers the additional conduct identified by Hess/Azcona in determining whether this cause of action is timely.

Hess/Azcona do not dispute that the conduct identified by Baughman/McMillan in their separate statement (B/M Fact No. 1) does not, alone, support a cause of action. This is because the conduct either occurred before October 17, 2022 and because the filing of a complaint cannot support their claim. (See H/A Response to B/M Fact Nos. 1 and 11 ["Defendants' claim does not rest on Plaintiffs' filing of the civil action"].) Instead, Hess/Azcona on Hess' testimony that there has been a "pattern" of harassment which they argue continued through the filing of the Cross-Complaint. Hess/Azcona contend that their claim is timely under the continuing tort or continuing violation doctrine.

Hess/Azcona do not raise a triable issue of fact as to whether there was a continuing violation. The only specific conduct they identify that occurred after October 17, 2022 is Baughman/McMillan advising them in January 2023 that they intended to move the fence, Baughman/McMillan glaring at them, and Baugman/McMillan placing cameras in their direction. Hess/Azcona appear to concede that the other conduct they rely on occurred before October 17, 2022. With respect to the January 2023 conduct, a neighbor telling another neighbor that they intend to move a fence to a property line identified in a survey does not support a cause of action for intentional infliction of emotional distress. Further, it is undisputed that Baughman/McMillan have not even moved the fence. (B/M Fact No. 9.) Glaring and camera placement similarly do not support such a cause of action. This conduct is also not sufficiently similar to the primary conduct supporting Hess/Azcona's claim (e.g., homophobic slurs, referencing criminal behavior), which falls outside the limitations period, to support the continuing violation doctrine.

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 August, 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: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005468

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MICAELLA CRISTINA CAPELLI

vs.

DEFENDANT: MARIN HEALTH, ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: TO POST AN UNDERTAKING

RULING

Defendant Marin Health filed this motion against Plaintiff Micaella Capelli to post an undertaking. A notice of the motion was served on counsel for 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 and after review of the pleadings, the court grants the motion in part. The court agrees that Defendant has fulfilled the requirements for the posting of an undertaking but disagrees as to the amount. Defendant has filed a summary judgment motion which, if granted, would obviate the need for expert testimony fees at trial, and all other related costs. The court shall require an undertaking of $3,500 to be deposited within 30 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.

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

DATE: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006454

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: BANK OF AMERICA, N.A.

vs.

DEFENDANT: VERONICA M. AJIBOYE

NATURE OF PROCEEDINGS: MOTION – QUASH SERVICE OF SUMMONS

RULING

Defendant Veronica Ajiboye filed a motion to quash service of summons. The motion was served on Plaintiff's counsel Gregory Parks 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.)

The
Court grants the motion in light of the non-opposition.

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: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006803

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: CABOUCHON PROPERTIES, LLC

vs.

DEFENDANT: L L & L LLC

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Cabouchon Properties, LLC, ("Plaintiff") filed a motion to compel further responses to written discovery and for sanctions in the amount of $4,500 against Defendant LL&L, LLC, ("Defendants").

The discovery requests and responses at issue encompass Form Interrogatories, Special Interrogatories, and Requests for Production. At issue are Defendant's responses to Form Interrogatory Nos. 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 14.1 and 16.1, which object to the term "INCIDENT" and do not otherwise provide any responses. Plaintiff also moves to compel further responses to 15.1. As to the Special Interrogatories, Plaintiff takes issues with nos. 3-6, 9-11, 14-23, 26-37, 43, 45-47, 58-62, 69-82. Plaintiff also moves to compel further responses/documents in response to nos. 1-8, 19, 21-23, 28-32 on the basis that no documents have been produced and Defendant's responses fail to identify the documents that are responsive to the request.

Defendant opposes this motion on the basis that a separate statement was not filed, but this is incorrect. Defendant also asserts that some documents have been produced and that amended responses were filed. Defendant attached amended responses to a few of the requests for documents. However, it appears that no responses have been provided that address the alleged deficiencies to the Form Interrogatories or the Special Interrogatories.

On July 13, 2026, Jill Manning was appointed as the Discovery Facilitator to preside over this dispute. It is unclear whether the parties had an opportunity to meet with Ms. Manning. Pursuant to local rule MCR 2.13, the parties were required file a Declaration of Non-Resolution if the matter did not resolve with the Discovery Facilitator. No Declaration was filed and therefore, the court has no information as to the status of the dispute.

Appearances required.

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

The Zoom appearance information for August, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1

Meeting ID: 161 548 7764
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007352

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: CHARLES NORMAN

vs.

DEFENDANT: EDWARD PAGE ALLINSON, ET AL

NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Charles Normal filed a motion to compel further responses to discovery related to Requests for Production of Documents, Form Interrogatories, Requests for Admission, and Special Interrogatories. On June 22, 2026, Michael Lopez was appointed as the Discovery Facilitator to preside over this dispute. The parties have had adequate time to meet with the Facilitator.

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.

The Zoom appearance information for August, 2026 is as follows:
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Meeting ID: 161 548 7764
Passcode: 502070

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0008950

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: EVAN QUADJOVIE

vs.

DEFENDANT: SAN FRANCISCO BAY AUTOS LLC, ET AL

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

RULING

Defendant American Contractors Indemnity Company's ("Defendant") Demurrer to the First, Third and Fourth Causes of Action in plaintiff Evan Quadjovie's ("Plaintiff") Complaint is SUSTAINIED with leave to amend.

Defendant's Motion to Strike is GRANTED with leave to amend.

LEGAL STANDARD – DEMURRER

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

DISCUSSION – DEMURRER

Defendant demurs to the First, Third, and Fourth Causes of Action on the grounds that they fail to state facts sufficient to constitute causes of action against Defendant. (Code. Civ. Proc., § 430.10, subd. (e).)

Defendant is a surety that executed a Motor Vehicle Dealer Bond for San Francisco Bay Autos, LLC ("Dealer"), Bond No. 100856210, pursuant to Sections 11710 and 11711 of the California Vehicle Code ("Bond"). Plaintiff alleges on October 20, 2026, Plaintiff went to Dealer's business to attempt to purchase a 2018 Honda CR-V. (Compl., ¶ 6). Plaintiff alleges at the time of sale, Dealer stated that it was giving Plaintiff a warranty. (*Id.*, ¶ 7). Plaintiff alleges that Dealer failed to repair the vehicle, and failed to register and title the vehicle for several months, and when it was later registered and titled it incorrectly stated the vehicle was a commercial vehicle. (*Id.*, ¶ 8). Plaintiff alleges that Dealer has not paid any title transfer penalty. (*Id.*,¶ 9). Plaintiff alleges Defendant is the Bond Holder in the amount of $50,000.00 on behalf of Dealer. (*Id.*, ¶¶ 2, 3, 10). Plaintiff alleges his cause of actions arise out of Defendants' misrepresentations, breach of warranty, and violations of law, and he seeks damages against the Defendants for incidental, consequential, exemplary, and actual damages, including interest, costs, and actual attorney fees. (*Id.*, ¶ 11).

First Cause of Action - Violation of the Consumers Legal Remedies Act

Pursuant to Civil Code section 1770, subd. (a), "The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful…"

With its Motion, Defendant argues that Plaintiff makes no allegations that Defendant undertook in any "unfair methods of competition and unfair or deceptive acts or practices" as a person. Plaintiff also fails to allege that Defendant was a "person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." Plaintiff will be unable to allege any such facts, because Defendant is merely the bonding company for San Francisco Bay Autos, LLC (Complaint ¶ 2, 3, 10), and Defendant was not part of any transaction in the sale of the vehicle to the Plaintiff (Complaint ¶ 6-9). As such, Defendant concludes, Plaintiff cannot maintain a First Cause of Action against Defendant for violation of the Consumer Legal Remedies Act.

In Opposition, Plaintiff cites to *Pierce v. Western Surety Co.* (2012) 207 Cal.App.4th 83 (*Pierce*) arguing that the surety's liability is commensurate with the principal's. Plaintiff argues, if the principal is liable under the Consumer Legal Remedies Act, the surety is as well and because Defendant does not contend that Plaintiff failed to state a cause of action against the principal, the cause of action stands.

However, this interpretation ignores the important nuance of *Pierce*. *Pierce* stands for the proposition that "a surety's liability is commensurate with that of the principal *within the express terms of the bond and any applicable statutes*." *(Pierce, supra*, 207 Cal.App.4th at p. 93. Emphasis added. See also *Milliron v. Dittman* (1919) 180 Cal. 443, 446 (underlying conduct intended to be protected by the bond was determinative as to whether a surety would be held liable for obligations of the principal).)

Pierce was clear that CLRA violations *can* fall within the terms of a section 11711 bond, but not all CLRA violations will do so. *(Pierce, supra*, 207 Cal.App.4th at pp. 91-2. Emphasis added.)

Vehicle Code section 11711, subdivision (a) (bond statute) provides a person shall have a right of action against the surety bond for any "loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman and such person has possession of a written instrument furnished by the licensee, containing stipulated provisions and guarantees which the person believes have been violated by the licensee."

Civil Code section 1770 (CLRA) describes 24 separate acts that may constitute a CLRA violation. Some of those acts could violate section 11711 (bond statute), i.e., fraud or fraudulent representation. *(Pierce, supra*, 207 Cal.App.4th at p. 92.) For example, "[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another"; "[a]dvertising goods or services with intent not to sell them as advertised"; "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions"; and "[r]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not," etc. (*Ibid.*, citing Civ. Code, § 1770, subd. (a)(7), (a)(9), (a)(13) & (a)(16).)

Here, the Complaint alleges:

"By virtue of the misrepresentations made during the course of the sale, including that the vehicle would be registered and titled free and clear to Plaintiff, that the vehicle was being sold for personal use, and that Dealer would be repair the vehicle pursuant to his warranty, Defendants have engaged, or attempted to engage, in unlawful methods, acts, or practices during the relevant time period herein pursuant to CLRA, including, but not limited to, California Civil Code § 1770(a):

> (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.
> (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.
> (9) Advertising goods or services with intent not to sell them as advertised.
> (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law."

(Compl., ¶ 17.)

In order to state a cause of action seeking to recover under the bond, Plaintiff must allege an act of fraud committed by the dealer. Here, Plaintiff has not done so.

The words "fraud" and "fraudulent representation" in sections 11710 and 11711 of the Vehicle Code were intended by the Legislature to be used in the normal meaning of fraud as defined by sections 1571, 1572, and 1573 of the Civil Code and the cases construing those sections. (*Beverly Finance Co. v. American Cas. Co. of Reading, Pa.* (1969) 273 Cal.App.2d 259, 268.)

The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure), (2) knowledge of falsity (or scienter), (3) intent to defraud, i.e., to induce reliance, (4) justifiable reliance, and (5) resulting damage. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979.) "There are 'four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]" ' (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.)

Fraud must be specifically pleaded. The effect of this rule is twofold: (a) General pleading of the legal conclusion of 'fraud' is insufficient; the facts constituting the fraud must be alleged. (2) Every element of the cause of action for fraud must be alleged in the proper manner (i.e. factually and specifically), and the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. (*Vaughn v. Certified Life Ins. Co. of Cal.* (1965) 238 Cal.App.2d 177, 181–82.)

Although Plaintiff alleges one conclusory sentence in the Second Cause of Action (not challenged by way of Demurrer) stating "[t]hese representations on the contract were fraudulent," this is a general pleading of the legal conclusion of fraud without the facts constituting fraud. (Compl., ¶ 29.) With respect to the misrepresentations themselves, the Complaint alleges "The contract for purchase stated that Dealer would title and register the vehicle to Plaintiff." (Compl., ¶ 6.) "At the time of sale, Dealer stated that it was giving Plaintiff a warranty on the vehicle and that Dealer would be 100% of labor and parts for 90 days or 4,500 miles. However, Dealer has failed to repair the vehicle in that period of time." (*Id.*, at ¶ 7.) After the purchase Dealer failed to register and title the vehicle for several months. (*Id.*, at ¶ 8.) On January 5, 2026, Plaintiff demanded that Dealer provide him with his title and title transfer penalty. Dealer has still not paid the title transfer penalty. (*Id.*, at ¶ 9.)

Here the Complaint fails to allege knowledge of falsity, intent to defraud, justifiable reliance, etc. Because the CLRA cause of action as presently alleged does not adequately allege fraud and the only right of recovery against the bond stems from such a claim, the Demurrer to the First Cause of Action is SUSTAINED with leave to amend.

<u>Third Cause of Action - Breach of Implied Warranty of Title (Magnuson-Moss) and Fourth Cause of Action – Failure to Transfer Title (Veh. Code, § 5753)</u>

The Opposition provides no briefing on the Third and Fourth Causes of Action. Under the heading on the First Cause of Action, Plaintiff merely repeats the refrain "The surety's liability is commensurate with the principal's. Thus, if the principal is liable under the Consumer Legal Remedies Act, the surety is as well. If the principal is liable under the Magnusson Moss Act, the surety is as well. If the principal is liable under the Vehicle Code, the surety is as well."

For the reasons stated above, this statement is overbroad. The express terms of the bond and any applicable statutes limit surety liability within that of the principal. *(Pierce, supra*, 207 Cal.App.4th at p. 93.) As further stated above, in order to state a cause of action seeking to recover under the bond, Plaintiff must allege an act of fraud committed by the dealer. Plaintiff makes no such allegations vis a vis the Third and Fourth Causes of Action.

For these reasons, the Demurrer to the Third and Fourth Causes of Action is also SUSTAINED with leave to amend.

LEGAL STANDARD – MOTION TO STRIKE

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

The motion must be served and filed within the time allowed for a responsive pleading (*id*., § 435, subd. (b)(1)), or as otherwise allowed at the Court's discretion (*id*., § 436). The notice of motion must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count or defense. (Cal. Rules of Court, rule 3.1322.) When the defect that justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

DISCUSSION – MOTION TO STRIKE

With this Motion, Defendant seeks to strike 1. Plaintiff's prayer for punitive damages; 2. Plaintiff's prayer for penalties pursuant to the Vehicle Code of $7,500; and 3. Plaintiff's prayer for injunctive relief under Civil Code section 1780.

The sole cause of action remaining against Defendant after the Demurrer is the Second Cause of Action for Violation of Vehicle Code section 11710 against Bond Holder. Because the Demurrer to the causes of action giving rise to claims for punitive damages, the $7,500 penalty, and section 1780 injunctive relief was sustained and those causes of action are effectively no longer part of the operative Complaint, the Motion to Strike is GRANTED with leave to amend.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in

accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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