SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/09//26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2003539

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MARIO BARRERA, ET AL vs. DEFENDANT: APPLE AMERICAN GROUP, LLC, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: PETITION FOR ARBITRATION AWARD

RULING

The Petition to Confirm Arbitration Award is granted. The request for dismissal of plaintiff Francisco Varguez's non-individual PAGA claims is denied.

Background

Plaintiffs Mario Barrera and Francisco Varguez commenced this action under the Private Attorneys General Act of 2006 ("PAGA") to recover civil penalties for alleged violations of the Labor Code. On January 25, 2025, the parties filed a Stipulation and Order to compel Plaintiffs' individual PAGA claims to arbitration and to stay Plaintiffs' non-individual PAGA claims pending arbitration.

In the arbitration proceeding, Defendants filed a motion for judgment on the pleadings as to Varguez's claims, arguing among other things that Varguez's PAGA claim was barred by res judicata based on a final settlement in *Maningas-Ng* v. *Apple American Group LLC,* a Los Angeles Superior Court case, and that Varguez's individual, non-PAGA claims were barred by the statute of limitations. In his Opposition, Varguez conceded the PAGA claims were barred except for the suitable seating claim. Varguez also argued that the statute of limitations had not lapsed because his claims related back to his December 31, 2020 Complaint in this case. On September 23, 2024, the arbitrator issued an order granting the motion. The arbitrator concluded that Varguez's suitable seating claim was precluded by the *Maningas-Ng* settlement. She also concluded that Varguez's non-PAGA claims were time-barred because they were not brought to arbitration within three years following his termination as required under the parties' arbitration agreement.

Defendants requested that the Varguez Arbitration Order be applied equally to the arbitration involving Barrera. The arbitrator granted Defendants' request in an order dated December 6, 2024, and dismissed Barrera's claims.

Barrera moved for an order vacating the Barrera Arbitration Order. The Court granted the motion by order entered May 6, 2025. The Court concluded that "the arbitrator committed clear legal error with respect to her ruling that Barrera's PAGA claim was barred by res judicata." Although the Court found no "clear legal error" with respect to the statute of limitations portion of the Order, the Court was required to vacate the entire Order. It ordered a rehearing of Barrera's claims before a new arbitrator.

Defendants have now moved for an order confirming the arbitration award against Varguez. In opposition, Varguez argues that "the Court should deny the petition, vacate the Varguez Arbitration Order in its entirely, and remand for rehearing before a new arbitrator—the same relief this Court already granted to Plaintiff Barrera."

Confirmation of Arbitration Award

> As explained in *Law Finance Group, LLC* v. *Key* (2023) 14 Cal.5th 932, 945-946:
> … A party seeking to confirm the arbitral award may file a petition within four years of the service of the final award. (Code Civ. Proc., § 1288.) A party seeking to vacate the arbitral award, however, has much less time. A request to vacate may be made either in a petition to vacate (*id.*, § 1285) or in a response to the petition to confirm (*id.*, § 1285.2). Regardless of the method, the [California Arbitration] Act imposes the same deadline: "A petition to vacate an award…shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner" (*id.*, § 1288), and identically, "a response requesting that an award be vacated…shall be served and filed not later than 100 days after the date of service of a signed copy of the award" on the respondent (*id.*, § 1288.2).

(Brackets omitted.) The arbitrator issued the Varguez Arbitration Order on September 23, 2024. According to the Petition, a signed copy of the Order was served on that same date. (Petition ¶9b.) Varguez did not seek to vacate the Varguez Arbitration Order within 100 days. He relies upon the Supreme Court's holding in *Law Finance Group* that "section 1288.2's deadline for seeking vacatur of an arbitral award is a nonjurisdictional statute of limitations that is subject to equitable tolling and equitable estoppel." (*Id.* at 959-960.)

<u>Equitable Tolling</u>

Varguez has not established any basis for finding that equitable tolling extends the 100-day period to challenge the Varguez Arbitration Order. The delay (the "procedural detour") in the arbitration going forward has nothing to do with Varguez's failure to challenge the Order within 100 days. With respect to Varguez's argument that the 100-day period was equitably tolled by virtue of Barrera's filing of his petition to vacate the award against him, the 100-day period had already expired before Barrera filed his petition. Therefore his petition provides no basis for tolling the 100-day period for Varguez.

<u>Equitable Estoppel</u>

Varguez has not established any basis for finding that Defendants are equitably estopped from asserting the 100-day period. With respect to Defendants' concession that the California Arbitration Act and not the Federal Arbitration Act governs this proceeding, Varguez offers no explanation for why the position previously taken by Defendants caused him not to challenge the Varguez Arbitration Order within 100 days. With respect to Defendants' alleged "delay" in seeking to confirm the Varguez Arbitration Order, they are expressly allowed by statute up to four years to seek confirmation.

Non-Individual PAGA Claims

Adolph v. *Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 does not support Defendants' argument that the non-individual PAGA claims must be dismissed since Varguez's individual PAGA claims are time-barred. Defendants point to the Court's discussion at pages 1123-1124, which showed that if the arbitrator determined Adolph was not an aggrieved employee and the court confirmed that determination and reduced it to a final judgment, then Adolph could no longer prosecute his non-individual claims due to lack of standing. As will be discussed, it has not been determined that Varguez was not an aggrieved employee when he filed this action.

In *Johnson* v. *Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 929, the Court of Appeal held that "an employee, whose individual claim is time-barred, may still pursue a representative claim under PAGA." The Court explained:

> …Johnson is an "aggrieved employee" with standing to pursue her PAGA claim. Johnson alleged she is employed by Maxim and that she personally suffered at least one Labor Code violation on which the PAGA claim is based. The fact that Johnson's individual claim may be time-barred does not nullify the alleged Labor Code violations nor strip Johnson of her standing to pursue PAGA remedies. …

(*Id.* at 930, citation omitted.) At the time *Adolph* and *Johnson* were decided, "'aggrieved employee' meant anyone who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (California Practice Guide: Employment Litigation (TRG 2026) § 17:776, citation omitted.) However, "[f]or claims filed on or after June 19, 2024, the term now means 'any person who was employed by the alleged violator and personally suffered each of the violations alleged during the period prescribed under CCP § 340. …" (*Ibid.*, citation omitted.) The authors of California Practice Guide: Employment Litigation explain:

> *Effect of time-barred claims*: Under the prior version of the PAGA, the fact that individual claims were time-barred did not strip plaintiff of standing to pursue PAGA remedies on behalf of others (see *Johnson*[, *supra*] 66 CA5th 924, 930…). The PAGA amendments apparently are designed to legislatively overrule the holding in *Johnson*. Now, the employee must have 'personally suffered each of the violations alleged *during the period prescribed under Section 340 of the Code of Civil Procedure*.'" …

(*Ibid.*) While Varguez would not be an aggrieved party had he filed his action after June 19, 2024, it has not been shown that he was not an aggrieved party when he filed this action and proceeded to arbitration. Therefore he has standing to pursue the non-individual PAGA claims.

In reply, Defendants cite *Williams* v. *Alacrity Solutions Group, LLC* (2025) 110 Cal.App.5th 932. The Court of Appeal in that case disagreed with *Johnson* and held that "[t]o be a PAGA plaintiff (under the statute in effect prior to July 1, 2024), a private individual must, among other things, seek to recover civil penalties on his own behalf for that violation, and must establish that this so-called 'individual claim' is timely as to at least one Labor Code violation. …" (*Id.* at 937.) The Supreme Court has granted review. "Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for persuasive value only. …" (Cal. Rule of Court 8.1115(e)(1).) The Supreme Court has not ordered that the relevant portion of the *Williams* opinion has a binding or precedential effect. Therefore, while the opinion could have been persuasive in the absence of binding or precedential authority, here the *Johnson* case is such authority.

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

The Zoom appearance information for September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2200568

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: NAOMI TSEGGAI, ET AL

vs.

DEFENDANT: WESTERN VILLAGE OAKS ASSOCIATION, ET AL

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant Dollar Tree Stores, Inc.'s ("Dollar Tree") motion for summary judgment is continued to September 15, 2026 at 1:30 p.m.

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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2301648

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFFS: STANLEY TWOMEY GRAY, ET AL.

vs.

DEFENDANTS: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

NATURE OF PROCEEDINGS: MOTION – SANCTIONS – DISCOVERY FACILITATOR PROGRAM

RULING

Defendants Prima Medical Foundation and Winnie Wai Peng filed a motion for terminating sanctions Plaintiffs on July 16, 2026. The motion requests terminating sanctions pursuant to Code of Civil Procedure sections 2023.010, 2030.030, 2030.290, and 2031.300, on the grounds that they failed to comply with four prior discovery orders and have not provided responses to initial discovery propounded more than one year ago. A notice was served on Plaintiffs of the motion. Additionally, Plaintiffs' counsel was present at the ex parte hearing when the Court rescheduled the hearing date to September 9, 2026. Despite such notice, 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.)

Based on the non-opposition, and upon review of the Court's own docket, and the declarations filed in connection with this motion, the court grants the motion and orders that the complaint be stricken against Defendants Prima Medical Foundation and Winnie Wai Peng. In light of this ruling, the court denies Defendants' request for monetary sanctions.

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 September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001370

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFFS: MARK KELTNER vs. DEFENDANTS: MERCY HOUSING MANANGEMENT GROUP, ET AL	

NATURE OF PROCEEDINGS: MOTION - CONTINUE TRIAL

RULING

This matter is set for trial for October 7, 2026 and is approaching three years old. Defendant requests a six-month trial due to discovery delays allegedly on the part of Plaintiff. Plaintiff did not file an opposition to the motion. 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 September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002302

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: CHRIS B. BARGER vs. DEFENDANT: ANDREW W. LANDIES, ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY ADJUDICATION

RULING

Appearances required.

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

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

DATE: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005885

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: AMERICAN EXPRESS NATIONAL BANK

vs.

DEFENDANT: MERSHAD REZAYATI

NATURE OF PROCEEDINGS: MOTION – OTHER: TO VACATE THE CONDITIONAL DISMISSAL AND FOR ENTRY OF JUDGMENT

RULING

Plaintiff American Express National Bank moves to vacate this Court's conditional dismissal and for entry of judgment pursuant to Code of Civil Procedure section 664.6, and the parties' stipulation. On June 26, 2025, a stipulation and order was filed with the Court in which the parties agreed to a payment plan, and also agreed that if Defendant Rezayati failed to comply with the plan, the Court could enter judgment for the outstanding amount.

Plaintiff submitted a declaration of counsel averring that Defendant Rezayati has not made a payment since June 10, 2025 and is in default of the agreement. Notice of this motion was served on Defendant Rezayati 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).)

The motion to vacate the conditional dismissal and for entry of judgment 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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Meeting ID: 161 548 7764
Passcode: 502070

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006388

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JUAN ALBERTO PAREDES GUERRA

vs.

DEFENDANT: PAUL VINCENT KLAUS LELLOUCHE, ET AL

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Defendants filed a motion to compel further responses to Form Interrogatory Nos. 8.5 and 8.6 and Special Interrogatories and Requests for Production of Documents on the grounds that Plaintiff failed to identify the dates he missed work and lost income. Plaintiffs assert in response that they have served supplemental responses and supplemental discovery.

Defendants' Separate Statement only references Form Interrogatory Nos. 8.5 and 8.6 which ask for the date Plaintiff returned to work at each place of employment following the injury, and the dates he did not work and for which he lost income. Plaintiff's supplemental responses to these interrogatories state he does not know the exact date he returned to work, and that he missed various dates from 5/29/2023 to the present. There is no indication to date that the supplemental responses have been verified. Plaintiff also provided a sworn declaration stating that he made a good faith effort to respond but no longer has in his possession the dates he returned to work, but that he has contacted his employer.

Responses to interrogatories must be "as complete and straightforward as the information reasonably available to the responding party permits." (Code of Civ. Proc. §2030.220, subd. (a).) If a party is unable to secure details, he should set forth the efforts made to secure the information. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.)

In this case, the Court finds that while the Declaration provided sufficient information to supplement those responses, that information should be incorporated into the responses. No later than by September 25, 2026, Plaintiff shall amend the responses to include the information stated in his declaration, that he no longer has the dates in his possession, but he has contacted his employers to obtain the information. The further responses should be verified.

Defendants' motions to compel further responses to Request for Documents and responses to Special Interrogatories are denied as there is no Separate Statement referencing which responses are at issue.

Defendants' request for sanctions in the amount of $10,405 is denied as Defendants did not prevail on two of the three motions they brought.

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

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

DATE: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006575

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ESMERALDA LARIOS

vs.

DEFENDANT: LIFE GENERATIONS HEALTHCARE LLC, DBA SMITH RANCH SKILLED NURSING & REHABILITATION CENTER

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant's motion, whether characterized as a motion for summary judgment, motion for summary adjudication, or both, is denied.

Allegations in Plaintiff's Complaint

Plaintiff Esmeralda Larios alleges that on March 23, 2024, she was at Defendant Life Generations Healthcare LLC dba Smith Ranch Skilled Nursing & Rehabilitation Center's facility with a client to visit her client's mother. While she was walking outside along the sidewalk, her foot got caught in a sprinkler that was set close to the sidewalk. She stumbled and fell forward into a bench and suffered injuries. Plaintiff asserts causes of action for premises liability and negligence.

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.)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or summary adjudication "has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc. § 437c(p)(2).) "Once the defendant . . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc. § 437c(p)(2).) "A triable issue of material fact exists if the evidence reasonably permits a trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof." (*Bakos v. Roach* (2025) 108 Cal.App.5th 390, 395.)

"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 Medical Center* (2008) 159 Cal.App.4th 463, 467; Code Civ. Proc. §437c(c).) The moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) 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.)

Defendant's Motion

It is unclear from Defendant's papers if Defendant is seeking summary judgment, summary adjudication, or both. The Notice of Motion and Motion and the Amended Notice of Motion state in the caption that it is a motion for summary judgment, but then in the paragraph below the caption Defendant states it is moving for an order granting summary adjudication. Defendant's Separate Statement and Memorandum of Points and Authorities reference a motion for summary judgment only. The three declarations submitted by Defendants state that they are support of a motion for summary judgment or, in the alternative, for summary adjudication.

Given Defendant's use of both terms, the Court will treat Defendant's motion as a motion for summary judgment or, in the alternative, for summary adjudication. However, the Court cautions Defendant to be more careful when submitting documents with the Court.

Defendant presents the same set of 51 facts to support its motion as to all five grounds or issues identified in its Amended Notice of Motion and Motion and Separate Statement.

Evidentiary Objections

Plaintiff's Objection No. 1 is overruled as Mr. Roman may have personal knowledge of the inspections and repairs or replacements following such inspections. Objection No. 2 is overruled to the extent Mr. Roman refers to his own personal knowledge, but is sustained as to reports generally. Objection No. 3 is sustained.

Defendant's Objection Nos. 1, 5, 6, 22, 23 and 26 are sustained because the "unsafe depth" theory was not alleged in the Complaint. The Complaint alleges only that "The sprinkler's placement so close to the sidewalk constitutes a hazardous condition and posed a foreseeable risk to pedestrians, furthermore, the placement of the bench within tripping distance of the sprinkler posed a secondary hazard to pedestrians. The negligent placement of the sprinkler, the bench, and the lack of warnings was the proximate cause of Ms. Larios' injuries." "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].) Further, Mr. Moore does not state that he inspected the area so he lacks personal knowledge or foundation in any event.

For the reasons discussed above, Objection No. 3 is sustained as to the language "the landscaped area was not flush with the adjacent concrete walkway", No. 4 is sustained as to the language "no warning of the elevation change", No. 7 is sustained as to the language "no warning provided to alert pedestrians of the hazardous condition that the subject change in level . . . presented", No. 8 is sustained as to the language "the subject location not only continued the subject change in level", No. 9 is sustained as to the language "of the subject change in level", No. 10 is sustained as to the language "unsafe condition the change in level", No. 11 is sustained as to the language "to make it flush with the adjacent walkway", No. 12 is sustained as to the language "unsafe condition the subject change in level", No. 13 is sustained as to the language "the subject change in level", No. 14 is sustained as to the language "to be flush with the adjacent concrete walkway", No. 24 is sustained as to the language "as the landscaped area was not flush with the adjacent concrete walkway", No. 25 is sustained as to the language "the elevation change", No. 27 is sustained as to the language "a change in level", No. 28 is sustained as to the language "the subject change in level", No. 29 is sustained as to the language "subject change in level", No. 30 is sustained as to the language "subject change in level", No. 31 is sustained as to the language "the change in level", No. 32 is sustained as to the language "to make it flush with the adjacent walkway", No. 33 is sustained as to the language "subject change in level", No. 34 is sustained as to the language "subject change in level", and No. 35 is sustained as to the language "to be flush with the adjacent concrete walkway".

Objection Nos. 15, 17, 18, 36, 38 and 39 are overruled. Mr. Moore states that the 2018 Greenbook ("Greenbook") includes certain language and attaches excepts from the Greenbook to support his statement. At the summary judgment stage, courts must construe the opposing party's evidence liberally. (See *Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189.) While Mr. Moore could have done a better job authenticating the exhibit he attaches, he does include it with his declaration and Defendant does not contend that the exhibit attached is not what Mr. Moore says it is. The Greenbook is offered as the basis for some of Mr. Moore's opinions; it is not being admitted as independent proof of the facts, as that would be hearsay. Further, while Defendant argues the Greenbook is irrelevant or entitled to little weight because it pertains to public works and this case involves private property, this does not make the Greenbook or Mr. Moore's conclusions based on the Greenbook inadmissible. The same is true as to Defendant's questions about which version of the Greenbook would apply here. Defendant will have an opportunity to challenge the strength of the reasoning behind Mr. Moore's conclusions at trial.

Mr. Moore's declaration is sufficient at the summary judgment stage. "[I]t is the jury's role to decide the weight to accord the expert testimony and courts must . . . be cautious in excluding expert testimony so as not to usurp that role. Although [t]here is no bright line that divides evidence worthy of consideration by a jury ... from evidence that is not, many . . . arguments concerning reliability may be better understood as directed at the weight of the expert testimony, not its admissibility." (*People v. Veamatahau* (2020) 9 Cal.5th 16, n. 6 [citations and internal quotations omitted].) "The trial court's gatekeeping role does not involve choosing between competing expert opinions . . . the gatekeeper's focus must be solely on principles and methodology, not on the conclusions that they generate. The trial court's preliminary determination whether the expert opinion is founded on sound logic is not a decision on its persuasiveness. The court must not weigh an opinion's probative value or substitute its own opinion for the expert's opinion. Rather, the court must simply determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies. Rather, it conducts a circumscribed inquiry to determine whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid. The goal of trial court gatekeeping is simply to exclude clearly invalid and unreliable expert opinion." (*Garrett*, 214 Cal.App.4th at pp. 186-187 [citations and internal quotations omitted].) "The rule that a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact. In light of the rule of liberal construction, a reasoned explanation required in an expert declaration filed in opposition to a summary judgment motion need not be as detailed or extensive as that required in expert testimony presented in support of a summary judgment motion or at trial." (*Id*. at p. 189.)

Objection Nos. 16 and 37 are sustained (hearsay) to the extent Defendant challenges the quoted portions of the Greenbook as direct evidence.

Objection Nos. 19, 21, 40, 42, 43, 45, 46, 47 and 49 are overruled for the reasons discussed above in connection with objections to the Greenbook. Objection Nos. 20, 41, 44 and 48 are sustained (hearsay) to the extent Defendant challenges the portions of ASTM F1637-19, the Orbit material, or the Dearborn Real Estate Education material as direct evidence.[1]

Objection Nos. 50-54 are overruled.

To the extent Defendant's objections are not specifically sustained as set forth above, they are overruled.

Issue No. 1 (Duty)

Plaintiff's Complaint alleges that Defendant had a duty to maintain the premises in a safe manner and to warn of hazards.

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[1] To the extent Mr. Moore relies on these materials to support his theory regarding a change in level, however, the materials are irrelevant as this theory was not alleged in the Complaint.

Defendant' Issue No. 1 states only that Defendant "did not owe Plaintiff a duty." Defendant does not elaborate in its Issue No. 1 what duty, specifically, it did not owe to Plaintiff. The Court assumes Defendant is referencing the two duties alleged in the Complaint. "It is well settled that the pleadings set the boundaries of the issues to be resolved at summary judgment." (*Vulk,* 69 Cal.App.5th at p. 255.)

The Court denies Defendant's motion as to Issue No. 1. The Court will not rule that Defendant did not have a duty to maintain the premises in a safe manner or to warn of hazards.

Issue No. 2 (Second Cause of Action - Negligence)

As described in Defendant's Separate Statement, Issue No. 2 is that "the negligence cause of action fails because there is no evidence to suggest that [Defendant] breached a duty of care owed to Plaintiff."

Duty is an essential element of both Plaintiff's negligence and premises liability causes of action. (See *Nicoletti v. Kest* (2023) 97 Cal.App.5th 140, 145.)

On a preliminary note, Plaintiff does not dispute in her Opposition that the location of the bench did not create a dangerous or hazardous condition, and that Defendant was not required to place warning signs by the bench. (UMF 9, 13.)

To support its contention that it did not breach a duty to maintain the premises in a safe manner or to warn of hazards, Defendant presents the following evidence:

- The sidewalk is compliant with both the American with Disability (ADA) and California Building Code (CBC) requirements for width (Defendant's Undisputed Material Fact ("UMF") 4);
- There are no local building code regulations that address how close sprinklers can be placed near sidewalks on private property (UMF 5);
- Defendant's expert Brad Wong states in his declaration that "Common practice in the building industry is to place sprinkler heads approximately 1-6 inches away from the edge, while ensuring nozzles are adjusted to spray away from the walkway . . . this practice is not to prevent tripping hazards from pedestrians, since pedestrians are not reasonably expected to be walking in the landscaped area, but rather should stay on the designated path of travel, i.e., the cement walkway" (UMF 6);
- Mr. Wong measured that the sprinkler head in question (in a corner where two pieces of sidewalk meet) was approximately 5 ¾ inches from one side of the sidewalk and 6 1/8 to the sidewalk from the other side. He concludes that as a result, the placement complied with standard industry practice for placement of landscaping sprinkler heads and did not constitute a dangerous condition (UMF 7);
- Plaintiff walked down the pathway, past the sprinkler, once and did not trip and fall that first time (UMF 21);
- Plaintiff turned back suddenly to go back to the doors to get help, carrying flowers, and tripped (UMF 25);
- Jose Pepsi Roman, Defendant's maintenance supervisor, states in his declaration that before the incident, a decision had been made to no longer use the sprinkler system in

question and that it had not been used for months if not over a year, but it was in good working order (UMF 40, 41, 44);

- Mr. Roman further states that the irrigation system was inspected at least annually and repairs were made if needed, and that he walks the premises at least daily (UMF 42, 43, 45);
- Mr. Roman states that he is aware of no other reported incidents of people tripping and falling over a sprinkler head in his 26 years working at the facility and he has not received complaints about placement of the sprinkler heads (UMF 47-49); and
- Mr. Roman states that the bench had been in its location for years before the incident and did not impede the walking path (UMF 50).

In her Opposition, Plaintiff submits the following evidence (excluding evidence relating to the change in depth theory):

- California regulations prohibit overhead irrigation within 24 inches of any non-pervious surface (Response to UMF 5);
-
- Mr. Wong's measurements were taken from the center of the mechanism that was there the day he took photographs and not the sprinkler head that was there on the day of the incident. Mr. Wong also did not measure from the edge of the sprinkler head (Response to UMF 7);
- Plaintiff testified in her deposition that when she turned around to help with someone else's wheelchair, her shoe came across the sprinkler and got caught on it. The sprinkler was on the corner and she never went onto the landscape or touched the dirt. She stayed on the concrete. She tripped because her foot was caught. The sprinkler head was "a little bit more up" relative to the surrounding area (Response to UMF 10; Plaintiff's Additional Undisputed Facts ("AUMF") 1, 3-6);
- Defendant produced two "proposals for irrigation work" from 2022 and 2023 showing issues involving the irrigation system including broken sprinkler heads (Response to UMF 44);
- Plaintiff's expert Zachary Moore states in his declaration that the location constituted a dangerous condition because there was an exposed sprinkler head, creating a trip/misstep hazard for pedestrians. Absent barriers or warnings, it is foreseeable that there will be instances of pedestrians traversing/entering the landscape area, especially if turning near the corner. The walkway turns 90 degrees adjacent to the sprinkler head location so it is foreseeable that while turning, a pedestrian's left foot could remain on the concrete walkway while their right leg and foot could swing over the corner of the landscaped area. This is true even if the sprinkler head was 5 ¾ inches away from the walkway (AUMF 7, 15);
- Mr. Moore further states that the landscaped area violated applicable industry standards reflected in the 2018 Greenbook, ASTM F1637-19, and materials from Orbit, which supplies irrigation products worldwide. Mr. Moore concludes: "the subject location . . . contained the . . . exposed sprinkler head at the time of Plaintiff's incident [and] was also in violation of applicable industry standards" (AUMF 7, 12, 16, 17); and
- Mr. Moore states that there were no barriers preventing pedestrians from traversing/entering the landscape area around the sprinkler head and no warning signs (AUMF 9-12.)

The Court denies the motion as to Issue No. 2. Breach of a duty is ordinarily a question of fact for the jury's determination. (See *Lawrence v. La Jolla Beach & Tennis Club, Inc.* (2014) 231 Cal.App.4th 11, 32.) Further, Defendant has not satisfied its initial burden to show the standard of care and a breach of that standard because its expert provides no factual basis for the conclusions he makes in his declaration. Mr. Wong, a mechanical engineer with experience in accident reconstruction and premises liability, states that based on his background, education, training and experience, he is familiar with the standard of care applicable to concrete pathways and placement/installation of sprinkler systems and sprinkler heads. He states that the intended path of travel was the sidewalk, which had a width that complied with ADA and CBC standards, and that there are no specific local building code regulations addressing how close sprinklers can be placed on sidewalks on private property. Mr. Wong then states that "Common practice in the building industry is to place sprinkler heads approximately 1-6 inches away from the edge, while ensuring nozzles are adjusted to spray away from the walkway. The main reason sprinkler heads are placed an inch or so away from the sidewalk is to protect the sprinkler head itself from damage from lawn edgers and also to minimize water spraying onto the sidewalk itself. Stated differently, this practice is not to prevent tripping hazards from pedestrians, since pedestrians are not reasonably expected to be walking in the landscaped area, but rather should stay on the designated path of travel, i.e., the cement walkway." (Declaration of Brad Wong, ¶¶6.1, 6.2.) Mr. Wong does not provide any basis or underlying support for this statement. There is no explanation where these numbers or measurements come from; Mr. Wong just states it as a fact. Mr. Wong then concludes that because the corner sprinkler head was 5 ¾ inches from one part of the sidewalk and 6 1/8 inches from the other part of the sidewalk, it "complied with standard industry practice for placement of landscaping sprinkler heads." (*Id.*, ¶6.2.) He also concludes that "Given the oversized sidewalk and the sprinkler head being installed more than 5 inches away from the sidewalk on either side, I can conclusively attest that to a reasonable degree of engineering certainty, the sprinkler head which Plaintiff allegedly tripped over, did not create a dangerous or hazardous condition in and of itself, or when someone is walking on the sidewalk using reasonable care." (*Id.*, ¶6.3.)

Based on the limited information provided in Mr. Wong's declaration, his conclusions and opinions lack foundation and are speculative and conclusory, and thus insufficient to satisfy Defendant's initial burden. (See *Zaragoza v. Adam* (2025) 109 Cal.App.5th 113, 119 ["A moving defendant's 'burden to show the absence of any genuine issue of material fact cannot be satisfied by an expert declaration consisting of ultimate facts and conclusions that are unsupported by factual detail and reasoned explanation, even if it is admitted and unopposed'"] [citation omitted]; *Lynn v. Tatitlek Support Services, Inc.* (2017) 8 Cal.App.5th 1096, 1115 ["The trial court may strike or dismiss an expert declaration filed in connection with a summary judgment motion when the declaration states expert opinions that are speculative, lack foundation, or are stated without sufficient certainty"].)

Because Defendant has failed to satisfy its initial burden, the burden does not shift to Plaintiff to raise a triable issue of fact. (See *McAlpine v. Norman* (2020) 51 Cal.App.5th 933, 938-939 ["To be entitled to summary judgment, [defendant] had the initial burden to present evidence that would require a reasonable trier of fact to find that [defendant's] treatment of [plaintiff] was within the standard of care, thereby negating an essential element of [plaintiff's] negligence claim. If [defendant] failed to meet his initial burden, the motion must be denied"].)

Plaintiff has presented sufficient evidence to raise a triable issue of fact in any event. While Mr. Moore's declaration is not particularly strong and Defendant raises questions about the reasonableness of Mr. Moore's conclusions, the declaration is sufficient to avoid summary judgment or summary adjudication.

Issue No. 3 (First Cause of Action – Premises Liability)

As described in Defendant's Separate Statement, Issue No. 3 is that "the premises liability cause of action fails because there is no evidence to suggest that [Defendant] breached a duty of care to Plaintiff." The motion as to Issue No. 3 is denied for the reasons discussed above.

Issue No. 4 (Notice)

As described in Defendant's Separate Statement, Issue No. 4 is that Defendant "was not on actual or constructive notice of the condition of the sprinkler, moreover, the condition was a trivial defect which did not require repair." To the extent this issue is part of a motion for summary adjudication, it is improper as Defendant does not tie this to the complete disposition of a cause of action, an affirmative defense, or a claim for damages. (Code Civ. Proc. § 437c(f)(1).) While Section 437c(t) allows a party to move for summary adjudication of a legal issue that does not completely dispose of a cause of action, affirmative defense, or claim for damages, the party must follow the steps set forth in that section. Defendant does not do so here, so this section is not available to it. Defendant's motion for summary adjudication is therefore denied as it pertains to its "Issue No. 4." The Court notes that there is a triable issue of material fact as to this issue in any event, as Defendant's own evidence indicates that it was aware the sprinkler head was in that location for years. (UMF 42-45.) To the extent this issue applies to a motion for summary judgment, the motion is denied as Defendant does not show how it disposes of both of Plaintiff's causes of action. (Code Civ. Proc. § 437c(a); Edmon & Karnow, Cal. Practice Guide: Civ. Procedure Before Trial (Rutter Group July 2026 Update) § 10:28 ["The result is that summary judgment lies only where the opponent has no case at all (not merely a weak case)"].)

Issue No. 5 (Warning Signs)

As described in Defendant's Separate statement, Issue No. 5 is that Defendant "was not required to place warning signs by the sprinkler head or bench." The motion is denied as to "Issue No. 5" for the reasons discussed above in connection with Issue Nos. 2-4. Further, Defendant's argument that no warning signs were needed is premised on its other argument that the placement of the sprinkler head was appropriate and did not constitute a hazardous condition. If this other argument is incorrect and the sprinkler head was too close to the sidewalk, there is a triable issue as to whether some kind of warning sign for that sprinkler head would be needed.

Remaining Issues in Defendant's Motion

Defendant discusses causation in its Memorandum, but causation is not identified as a basis for Defendant's motion in the Amended Notice of Motion and Motion, or as one of the issues in Defendant's Separate Statement. (See Code Civ. Proc. § 1010; Cal. Rules of Court 3.1112, 3.1350.) Rather, these documents focus exclusively on the existence of a duty or breach of that duty. Accordingly, the Court need not consider Defendant's arguments regarding causation. The court notes that causation is ordinarily a question of fact for the jury in any event. (*Lawrence*, 231 Cal.App.4th at p. 32.) Plaintiff presented evidence, i.e., her deposition testimony, that the sprinkler head caused her to fall. (Response to UMF 30; AUMF 1, 3, 5.) This is sufficient to raise a triable issue of fact.

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 September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006636

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: PAUL SOLON

vs.

DEFENDANT: DAVID SONG ET AL.

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

RULING

Defendants have demurred to Plaintiff's First Amended Complaint and also move to strike all portions of Plaintiff's claim for punitive damages. The Court continued the hearing on Plaintiff's motion for extension of time to oppose the demurrer. Notwithstanding the continuance, Plaintiff did not oppose the demurrer or motion to strike. 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 Defendant's motions in light of the non-opposition and sustains the demurrer as to the causes of action two through fifteen with leave to amend. The Court grants the motion to strike punitive damages without leave to amend. The amended complaint shall be filed 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.

The Zoom appearance information for September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0008270

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

IN THE MATTER OF:

SAUSALITO YACHT CLUB MEMBERS FOR FAIR GOVERNANCE

NATURE OF PROCEEDINGS: MOTION – ADMISSIONS – DISCOVERY FACILITATOR PROGRAM

RULING

This matter is continued to October 14, 2026, at 1:30 pm to be heard in conjunction with several other discovery motions set for that date, and for the parties to participate in the Discovery Facilitator Program.

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 September, 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: 09/09/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009539

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: PAUL SUNAK

vs.

DEFENDANT: USHA SUNAK, ET AL

NATURE OF PROCEEDINGS: MOTION - PRELIMINARY INJUNCTION

RULING

Plaintiff Paul Sunak's ("Plaintiff") motion for a preliminary injunction is DENIED.

BACKGROUND

This is a dispute between family members over possession of real property. Plaintiff alleges that beginning in November 2015, he leased real property at 5 Harbor Drive in Novato from Defendants Usha and Gurbax Sunak, who are Plaintiff's parents. (FAC,[1] ¶ 17 & Ex. B [commercial lease]; Sunak Dec., ¶ 2.) According to Plaintiff, the 5 Harbor Drive property "is primarily a commercial property with attached space that can be used as residential living space." (FAC, ¶ 16.) Plaintiff leased the property for business purposes. (*Id.* at ¶ 18; see also Sunak Dec., ¶ 3.) He alleges that he renewed his lease in August 2025. (FAC, ¶ 20.)

Plaintiff asserts that he and his parents contemplated that the property would be developed into a gas station and/or a marijuana dispensary. (FAC, ¶ 21.) 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 ¶ 22.) In December 2015, Defendants leased a garage on the property to A&C Towing and Transportation, Inc. on a month-to-month basis. (*Id.* at ¶ 23 & Ex. D.) According to the FAC, A&C Towing has since vacated the garage or transferred its interest in the garage to Valley Towing. (*Id.* at ¶ 28.)

[1] At the time Plaintiff filed this motion, the operative complaint was the original complaint, not the FAC. The FAC has not made any changes that are significant for purposes of this motion. Under these circumstances, Plaintiff's amending the complaint does not affect the order to show cause nor moot his motion for a preliminary injunction. (See *Ramos v. United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass'n, Local No. 40 et al.*, 113 Cal.App.2d 31, 36.)

Plaintiff alleges that in early 2022, he began to have unspecified "personal disagreements" with Defendants. (FAC, ¶ 26.) 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 portion of the property in order to keep him out and have denied him entry since. (*Ibid.*)

According to the complaint, the parties' lease agreement relating to 5 Harbor Drive in Novato was "one of several related and integrated agreements regarding sharing and management of multiple real properties." (FAC, ¶ 61.) 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 writ of possession or legal justification, using armed 'security guards[,]'" adding that they interfered with $300,000 worth of his personal possessions during this ejection. (*Id.* at ¶ 62.)

The FAC asserts a cause of action for breach of the lease agreement relating to 5 Harbor Drive. (FAC, ¶¶ 35-38.) Plaintiff requests both specific performance and injunctive relief in connection with this claim. (*Id.* at ¶¶ 45, 51, 57-58.) He further asserts claims for breach of the implied covenant of quiet enjoyment relating to 5 Harbor Drive (*id.* at ¶¶ 67-70); wrongful eviction from both 5 Harbor Drive and the Vallejo property (*id.* at ¶¶ 78-81); conversion, based on Defendants' allegedly taking possession of rental funds from A&C Towing and Valley Towing that properly belonged to Plaintiff (*id.* at ¶¶ 96-97); tortious interference with business relations, on the theory that Defendants interfered with Plaintiff's entitlement to A&C Towing's rent payments and that Defendants' kicking Plaintiff out of 5 Harbor Drive interfered with his business (*id.* at ¶¶ 104-109); conversion, based on Defendants' allegedly interfering with Plaintiff's possessions when ejecting him from the Vallejo property (*id.* at ¶¶ 117-118); and fraud, on the theory that Defendants made false representations to induce Plaintiff into entering into the parties' agreements regarding 5 Harbor Drive and the Vallejo property (*id.* at ¶¶ 123-125).

Plaintiff now seeks a preliminary injunction requiring Defendants to give him possession of 5 Harbor Drive, refrain from interfering with that possession, and refrain from giving any third party a right to possess or occupy that property in a manner inconsistent with Plaintiff's rights under the lease. (See Plntf.'s Proposed OSC.)

LEGAL STANDARD

A preliminary injunction may be granted, among other circumstances, "[w]hen it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action." (Code Civ. Proc., § 526, subds. (a), (b).) The purpose of a preliminary injunction is to preserve the status quo until a final determination on the merits. (*Continental Baking Co. v Katz* (1968) 68 Cal.2d 512, 528.) The determination of whether to grant a preliminary injunction rests in the sound discretion of the trial court. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1470 ("*Tahoe Keys*").)

Motions for a preliminary injunction must be based on a verified complaint or on declarations. (Code Civ. Proc., § 527, subd. (a).) Trial courts evaluate two interrelated factors when deciding whether to issue a preliminary injunction. (*Pro-Family Advocates v. Gomez*

(1996) 46 Cal.App.4th 1674, 1680.) The first is the likelihood that the moving party will prevail at trial. (*Id.* at pp. 1680-1681.) The second is the interim harm the movant would likely sustain if the injunction were denied as compared to the harm the opposing party would likely suffer if the injunction were issued. (*Id.* at p. 1681.) "[T]he greater the [movant's] showing on one" of the two preliminary injunction factors, "the less must be shown on the other to support an injunction." (*Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361-62.) The burden is on the moving party "to show all elements necessary to support issuance of a preliminary injunction." (See *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

DISCUSSION

Mandatory preliminary injunctions, those that require a defendant to perform an affirmative act that changes the position of the parties, are rarely granted. "The granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." (*Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493 [citation and internal quotations omitted]; see also *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446.) Plaintiff is seeking a mandatory injunction.

"The scope of available preliminary [injunctive] relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) This means that for a court to award a preliminary injunction, the nature of the injunction must be tied to the nature of the plaintiff's claims. The plaintiff cannot request by preliminary injunction relief which, while it may have some relation to the facts of his lawsuit, is substantively unrelated to his claims or exceeds the scope of the relief he seeks in the case.

Here, Plaintiff is requesting that the Court issue a preliminary injunction granting him possession of the "entire[ty]" of 5 Harbor Drive in Novato, "including both the commercial and residential portions thereof[,]" and restraining Defendants from interfering with such possession. (Plntf.'s Proposed OSC.) Since filing the moving papers, Plaintiff has stated that he seeks narrower relief and only wants possession of "the residential portion of the property" via preliminary injunction. (Plntf.'s Dec. in Opp. to Defs.' Special Motion to Strike [filed July 17, 2026], ¶ 19.) Either way, the relief sought exceeds the scope of the access to 5 Harbor Drive Plaintiff could obtain if he won his lawsuit.

Plaintiff's entitlement to possession of 5 Harbor Drive is based on the commercial lease agreement between him and his parents. (See FAC, ¶¶ 17, 20, 26, 35-38 [alleging breach of the lease], 41, 45-51 [requesting specific performance of the lease], 67-70 [breach of the implied covenant of quiet enjoyment claim based on the lease], 76-80 [wrongful eviction claim based on the lease] & Exs. B [commercial lease], C [August 2025 renewal].) Pursuant to that lease, Plaintiff did not rent the entirety of the property at 5 Harbor Drive. He rented approximately 70% of the total square footage of rentable space at the property, an area expressly limited to the garage and the parking lot(s). (See FAC, Ex. B, §§ 1, 41 ["Rented premises include garage area and parking lots. Excluding premises needed for operation of Rossi's Black Point Station, which operates convenient [sic] store and deli. Lease area is garage and the parking lot."].)

Plaintiff has stated in a sworn declaration that the portion of 5 Harbor Drive he is trying to take possession of via preliminary injunction "IS NOT" the garage, but instead "the residential portion of the property." (Plntf.'s Dec. in Opp. to Defs.' Special Motion to Strike, ¶ 19.) Based on Plaintiffs' depiction of the premises (*Ibid.* [referring the Court to Exhibit A to the FAC; FAC, Ex. A), what Plaintiff refers to as the "residential portion"[2] is affiliated with the deli/market at the property and so is not within the area Plaintiff rented according to the express terms of the commercial lease. (FAC, Ex. B, § 41; see also Usha Sunak Dec., ¶ 14.) Plaintiff cannot obtain possession of the "residential portion" of 5 Harbor Drive even if he is ultimately successful in this lawsuit to enforce his rights under the lease, so he cannot obtain it by preliminary injunction. His entitlement to that portion of the property is simply not at issue in this case on the face of the complaint, and his requested preliminary injunction is not tailored to the nature and scope of his lawsuit. It does not make sense to assess Plaintiff's likelihood of success on the merits under these circumstances, because the potential success of his claims has no bearing on whether he will ultimately be found entitled to relief consistent with what he seeks via preliminary injunction.

Plaintiff's showing of hardship is based primarily on his and his family's difficulty finding housing. Plaintiff's moving papers explain that before this dispute began, he, his wife, and his three children were living in a home in Vallejo belonging to his parents. (Plntf.'s Dec. in Supp. of Mot. for TRO, ¶¶ 2-3, 13.) Plaintiff states that his parents wrongfully evicted the family. (*Id.* at ¶ 13.) Plaintiff and his family moved into a converted garage on a friend's property in Contra Costa County. (*Id.* at ¶ 15.) That property was subsequently red-tagged, and the owner commenced eviction proceedings against Plaintiff. (*Ibid.*) Plaintiff's moving papers explain that he seeks a preliminary injunction giving him access to 5 Harbor Drive so that he can house his family there, because at the time he filed the moving papers on May 12, he expected that his family would be displaced from the garage in Contra Costa County, would have no realistic hope of finding alternative housing, and would be homeless. (*Id.* at ¶¶ 17-18, 23.) This exigency has passed. As of at least mid-July, Plaintiff and his family have had housing. (See Plntf.'s Dec. in Opp. to Defs.' Special Motion to Strike, ¶ 18.) To the extent Plaintiff's motion is also based on irreparable harm to his business interests due to loss of access to 5 Harbor Drive (see Memorandum, p. 10), Plaintiff has not provided evidence of any concrete, non-speculative business opportunity he stands to imminently lose due to his loss of access to this property.

The motion for a preliminary injunction 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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[2] Defendants offer evidence that no portion of the property is equipped for residential living. (Usha Sunak Dec., ¶¶ 16-22.) According to Defendants, the area Plaintiff calls the "residential portion" consists of stockrooms serving the deli/market of the property and a small bathroom with a toilet and a sink. (*Id.* at ¶¶ 17-19.) The tiled shower area in that bathroom is nonfunctional and is used to store cleaning equipment. (*Id.* at ¶ 19 & Ex. B.) There is no kitchen, only a three-compartment sink for washing dishes and produce. (*Id.* at ¶ 21.)

The Zoom appearance information for September, 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