

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001843

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: KYLE MAGER

vs.

DEFENDANT: THE MONEY SOURCE,
INC., ET AL

NATURE OF PROCEEDINGS: 1) MOTION – LEAVE
2) MOTION - LEAVE

RULING

The motion of Defendants The Money Source, Inc. and Servbank, SB for leave to take a second deposition of Plaintiff's former spouse, non-party Ashley Mager, is **GRANTED**. (Code Civ. Proc., 2025.610 subd. (b).) Defendants have demonstrated good cause for a second deposition limited to three hours on the topics identified in their notice of motion.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002212

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PETITIONER: FRIENDS OF HAUKE
PARK

vs.

DEFENDANT: CITY OF MILL VALLEY

NATURE OF PROCEEDINGS: DEMURRER

RULING

In light of the filing of an amended petition on September 16, 2026, the demurrer is moot and ordered off-calendar. (Code Civ. Proc., § 472 subd. (a).)

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-qov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003775

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: RADU MIHAILA

vs.

DEFENDANT: ULTRAGENYX
PHARMACEUTICAL, INC.

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

RULING

Plaintiff Radu Mihaila’s unopposed motion for relief under Code of Civil Procedure Section 473(b) is **GRANTED**. Plaintiff’s motion for determination of privilege claim, and to compel compliance of production of documents relating to Ms. Breedlove’s investigation, is **GRANTED**. Defendant is compelled to produce an unredacted version of ULTRAGENYX_000946–000947 and all documents pertaining to Ms. Breedlove’s investigation to Plaintiff within 10 days of the hearing. Plaintiff’s motion for sanctions in the amount of \$14,060 is **GRANTED**. Defendant’s request for sanctions is **DENIED**.

Plaintiff’s Motion for Relief from Waiver

Plaintiff moves for relief, pursuant to Code of Civil Procedure Section 473(b), from his failure to file its motion for determination of privilege claim and to compel compliance within the thirty day period prescribed by Section 2031.285(d)(1). The court’s docket reflects that no Opposition to this motion has been filed.

Plaintiff’s counsel transmitted his motion to the court for electronic filing on June 17, 2026 – the 30th day after Defendant served its claim of privilege – but his filing was rejected by the clerk because it was submitted as a single combined transaction rather than as separate transactions. The court’s system generated a confirmation of receipt on that day. (See Declaration of Jeannette A. Vaccaro, ¶4; Declaration of Megan Nicholson (“Nicholson Decl.”), ¶5 and Exh. A.)

Section 473(b) provides in part: “The court may, upon any terms as may be just, relieve a party or the party’s legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party’s mistake, inadvertence, surprise, or excusable neglect . . .”

Plaintiff's motion is granted. "When a court receives an electronically submitted document, the court must promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created." (Cal. Rules of Court, Rule 2.259(a)(1).) "Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day." (Code Civ. Proc. § 1010.6(e)(3).) The Court treats Plaintiff's motion as filed on the date it was submitted. (See *Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1282-83.) Accordingly, Plaintiff's motion for determination of privilege and to compel compliance is timely.

Plaintiff's Motion for Determination of Privilege and to Compel Compliance, and for Sanctions

I. Legal Standards

If a party who has agreed to comply with a demand for inspection thereafter fails to permit inspection in accordance with its statement of compliance, the demanding party may move for an order compelling compliance. (Code Civ. Proc. § 2031.320(a).)

"If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim." (Code Civ. Proc. § 2031.285(a).) "After being notified of a claim of privilege or of protection under subdivision (a), a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim." (Code Civ. Proc. § 2031.285(b).)

"The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship. Once that party establishes facts necessary to support a prima facie claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply." (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 [citations omitted].) A claim of privilege must be accompanied by information sufficient to enable the opposing party and the trial court to evaluate the merits of that claim. (Code Civ. Proc. § 2031.240(c)(1).)

II. Factual and Procedural Background

On April 1, 2025, Plaintiff served a set of document requests on Defendant. Request No. 11 seeks documents relating to any investigation into any complaints or reports of unlawful conduct, and No. 12 seeks documents relating to any investigation into complaints or reports of Defendant's failure to comply with any law, rule or regulation. In Defendant's supplemental response to Request No. 11, Defendant asserted a number of objections and stated it would "produce all non-privileged responsive documents in its possession, custody, and control related to Defendant's investigation of the concerns raised by Plaintiff regarding alleged retaliation and

Defendant's audit of the concerns raised by Plaintiff regarding alleged quality safety issues with the UX143 product following a diligent search and a reasonable inquiry." In response to Request No. 12, Defendant stated: "Defendant will produce all non-privileged responsive documents in its possession, custody, and control related to Defendant's investigation of the concerns raised by Plaintiff regarding alleged retaliation and Defendant's audit of the concerns raised by Plaintiff regarding alleged quality safety issues with the UX143 product following a diligent search and a reasonable inquiry." (Declaration of Jeanette A. Vacarro ("Vacarro Decl."), ¶4 and Exh. B.)

Defendant produced documents on a rolling basis, including on June 17, August 29, and November 18, 2025. Among the documents produced on August 29, 2025 was a partially redacted email chain Bates-numbered ULTRAGENYX_000946–000947 (the "Email Chain"). (*Id.*, ¶5 and Exh. C.) As to the Email Chain, Defendant's December 2025 privilege log and January 2026 privilege asserted only three grounds for the redactions: attorney work product, personal and third party privacy, and relevance. The log did not assert attorney-client privilege. (*Id.*, ¶¶8, 9 and Exhs. F and G.)

Plaintiff filed a motion to compel in March 2026 with respect to the Email Chain and other documents. Defendant opposed the motion as to the Email Chain on the grounds of attorney work product, third party privacy, and relevance only. (*Id.*, ¶10.)

After Plaintiff's counsel sent a meet and confer letter to Defendant about the Email Chain and other documents, on May 18, 2026, Defendant served a clawback letter demanding that Plaintiff destroy the Email Chain on the ground that it was protected by the attorney-client privilege. (*Id.*, ¶¶11, 12 and Exhs. H and I.)

On May 26, 2026, the Court heard argument on Plaintiff's motion to compel. At the hearing, Defendant's counsel described its document review and contended that Defendant was entitled to withhold the Email Chain on attorney work product, privacy, and relevancy grounds. The Court noted that it did not see any attorney-client privilege on the documents at issue, Defendant's counsel did not disagree, and the Court ordered Defendant to produce all documents at issue, including the Email Chain, for an in camera review. (*Id.*, ¶14 and Exh. J.) The Court's Order on the motion to compel, entered January 15, 2026, noted only that attorney work product, and not attorney-client privilege, had been asserted as the basis of Defendant's objections.

III. The Email Chain

The Email Chain is two pages and begins with an email from Lindsay Breedlove to John Pinion. In this email, Ms. Breedlove states among other things that "Wenchi [Liu] asked me to evaluate the scope of the potential whistleblower risk that Radu Mihaila presents", asks to read Joe George's report, and states that Mr. George "asked me to ask you directly because you had asked him to do the investigation in the first place." Mr. Pinion responded that he could share the report with her, and she responded she would keep it confidential. The remainder of the two pages is redacted. (*Id.*, ¶5 and Exh. C.)

IV. Discussion

Plaintiff moves to compel the production of an unredacted copy of the Email Chain and all documents relating to Ms. Breedlove's investigation.

A. The Email Chain

Plaintiff argues that Defendant waived the attorney-client privilege by voluntarily producing the Email Chain after a deliberate privilege review. Evidence Code Section 912(a) provides that "[e]xcept as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) . . . is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege."

1. Privilege

Defendant argues that the unredacted portions of the Email Chain show that Ms. Liu asked Ms. Breedlove, whom Ms. Abdolhosseini states are members of Defendant's legal department, to obtain information from Chief Quality Operations Officer and Executive Vice President John Pinion as part of Defendant's evaluation of the potential litigation risk Plaintiff posed for raising concerns that were subject of Defendant's separate compliance audit. Ms. Abdolhosseini states that the redacted portion of the Email Chain was made for the dominant purpose of seeking legal advice from in-house counsel. (Declaration of Michelle Abdolhosseini ("Abdolhosseini Decl."), ¶¶6, 7.)

Plaintiff contends that Defendant has failed to justify its assertion of the privilege by anyone with personal knowledge. The Court agrees that Defendant has failed to present the preliminary facts necessary to support the exercise of privilege over the Email Chain. Defendant presents only the declaration of Ms. Abdolhosseini, its outside counsel. Ms. Abdolhosseini did not review or produce the Email Chain and nothing in her declaration shows personal knowledge of Ms. Liu's or Ms. Breedlove's roles or assignments. Rather, Ms. Abdolhosseini relates what "Defendant clarified" to counsel after May 7, 2026 and offers her own conclusion about the communication's dominant purpose. (See Abdolhosseini Decl., ¶¶6-8.) Defendant offers no declaration from Ms. Liu, Ms. Breedlove, Mr. Pinion, or Mr. Lin to support Defendant's claim of privilege. Defendant has therefore made an insufficient showing to support its claim that the Email Chain is privileged.

2. Waiver

Plaintiff contends that even if the Email Chain was privileged, Defendant waived the privilege when it produced the document voluntarily after a deliberate, document-by-document privilege review, redacting only portions and producing the rest. At the motion to compel hearing, Defendant's counsel described the "painstaking effort" they went through to review documents and stated that they "carefully went through and produced the document." (Vaccaro Decl., ¶14 and Exh. J.) Plaintiff argues that Defendant's deliberate review shows the disclosure was not inadvertent, and this lack of inadvertence is further shown by the fact that Defendant provided

two privilege logs that asserted three grounds not including attorney-client privilege and also defended the redactions in connection with Plaintiff's motion to compel on those three grounds only. Further, Plaintiff argues, because Defendant did not claim attorney-client privilege as to the Email Chain in connection with the motion to compel proceedings, it allowed the Court to conduct an in camera review of the document, which is an inappropriate procedure where a party claims attorney-client privilege. (Evid. Code § 915(a); *Costco*, 47 Cal.4th at pp. 736-737, 739.)

Defendant contends that the Email Chain was reviewed by a junior attorney who had only been admitted to practice law for nine months, and who overlooked the attorney-client privilege. (Abdolhosseini Decl., ¶¶6, 7.) The Email Chain is two pages of 3,280 total pages Defendant produced in discovery and once Defendant discovered the inadvertent production, its counsel issued a clawback letter to Plaintiff. (*Id.*, ¶¶4, 8, 9.)

Defendant also argues that the privilege could not be waived by counsel, as counsel's mistake was not Defendant's consent. However, this is not a complete or accurate characterization of the law on waiver. "The attorney-client privilege may be waived, but only by the holder of the privilege. A waiver results when the holder, without coercion, (1) has disclosed a significant part of the communication, or (2) has consented to the disclosure made by anyone else. Under the second method of waiver, [c]onsent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege." (*McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1101 [citations and internal quotations omitted].)

Defendant presents no evidence to support its contention that it did not intend to waive the privilege. "The privilege holder's characterization of his or her intent in disclosing a privileged communication is an important consideration in determining whether the holder waived the privilege, but is not necessarily dispositive. When determining whether an inadvertent disclosure waived the attorney-client privilege, a trial court must examine both the subjective intent of the privilege holder and any manifestation of the holder's intent to disclose the information. Other relevant considerations include the precautions the holder took to maintain the privilege and the promptness with which the holder sought return of the inadvertently disclosed document." (*McDermott*, 10 Cal.App.5th at pp. 1102-1103 [citations and internal quotations omitted].)

Here, Defendant does not submit any declaration from anyone within its organization regarding its intent. Defendant submits only the declaration of its outside counsel. Further, the chronology of events reflects that Defendant maintained little to no precautions to maintain the privilege. Defendant did not seek to claw back the document for almost nine months after it was produced, produced two privilege logs that did not assert the privilege, and - even after Defendant discussed the privilege with counsel between May 7-18, 2026 (Opp., p. 6:23-25) - failed to assert the privilege before the document was submitted to the Court for an in camera review, without an attorney-client privilege designation. In the chart submitted to the Court, Defendant claimed work product for the Email Chain but not attorney-client privilege. After the Court overruled the work product objection, Defendant produced an unredacted version to Plaintiff. (Vaccaro Decl., Exhs. F and G; Supplemental Declaration of Jeanette Vacarro, ¶3 and Exh. O.)

Accordingly, the Court finds that Defendant waived any privilege by its repeated failure to assert it over the course of several months and by allowing the document to be submitted to the Court for in camera review, following the motion to compel hearing, without any attorney-client privilege designation.

B. The Breedlove Investigation Documents

Plaintiff argues that Defendant must be compelled to also produce the materials from Ms. Breedlove's investigation because they fall within the scope of what Defendant agreed to produce. Specifically, Defendant agreed to produce "all non-privileged responsive documents in its possession, custody, and control related to Defendant's investigation of the concerns raised by Plaintiff regarding alleged retaliation and Defendant's audit of the concerns raised by Plaintiff regarding alleged quality safety issues with the UX143 product following a diligent search and a reasonable inquiry." (Vaccaro Decl., ¶4 and Exh. B.)

1. Privilege

Plaintiff argues that Defendant has not made any showing that these documents are privileged. They do not appear on any privilege log and Defendant has not provided any factual information about them to Plaintiff. Plaintiff argues that the privilege does not apply in any event because the communications were made for the dominant purpose of managing legal risk, not for seeking or rendering legal advice, as Defendant's own internal protocols required the investigation and documentation. Specifically, Defendant's Internal Investigations Protocol and its Global Investigations Protocol classify retaliation against a whistleblower as a Reported Compliance Incident and require that reports for RCI investigations be presented to Defendant's General Counsel. The protocols also require the lead investigator to document and file all activities relating to the investigation. (Vaccaro Decl., ¶6 and Exh. D.) Plaintiff contends that the Breedlove investigation was a business-risk management function and Defendant was only following its own internal policies. The fact that the materials may have been provided to counsel does not make them privileged.

Defendant's Opposition focuses only on the Email Chain; it does not address whether additional documents exist regarding Ms. Breedlove's investigation. Defendant is silent, for example, as to whether Ms. Breedlove prepared a report, memorandum, or notes, or whether she communicated with others in connection with her investigation. There are no declarations from anyone within Defendant's organization describing the investigation or any documents generated in connection with the investigation. As a result, Defendant has failed to satisfy its burden of showing that any Breedlove investigation documents, to the extent they exist, are privileged.

If additional documents relating to Ms. Breedlove's investigation exist, they must be produced to Plaintiff as Defendant agreed it would do in its interrogatory responses. All additional documents must be produced no later than 10 days from the date of the hearing on this matter. If additional documents do not exist, Defendant must produce a declaration from Ms. Breedlove to Plaintiff within that ten day period in which Ms. Breedlove states under oath that no such documents exist.

2. Waiver

Plaintiff argues that even if documents relating to Ms. Breedlove's investigation were originally privileged, Defendant has waived them by putting its investigations at issue. Defendant's Third and Fourth Affirmative Defenses, and responses to discovery, cite to and rely on its investigations. (Vaccaro Decl., ¶¶3, 17, 18 and Exhs. A, L and M.) In *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, the court held that "the employer's injection into the lawsuit of an issue concerning the adequacy of the investigation where the investigation was undertaken by an attorney or law firm must result in waiver of the attorney-client privilege and work product doctrine If a defendant employer hopes to prevail by showing that it investigated an employee's complaint and took action appropriate to the findings of the investigation, then it will have put the adequacy of the investigation directly at issue, and cannot stand on the attorney-client privilege or work product doctrine to preclude a thorough examination of its adequacy. The defendant cannot have it both ways. If it chooses this course, it does so with the understanding that the attorney-client privilege and the work product doctrine are thereby waived." (*Id.* at p. 128.) In *Paknad v. Superior Court* (2026) 119 Cal.App.5th 1256, the defendant employer retained an attorney Smethurst to investigate the plaintiff Paknad's complaints of discrimination, harassment, and retaliation. Smethurst produced two reports containing her findings and conclusions but only shared a summary with Paknad. After Paknad sued, the defendant cited Smethurst's investigations as an affirmative defense. The court held that the defendant "by its voluntary conduct, has waived attorney-client privilege *and* attorney work product protection as to (1) all Smethurst's factual findings about Paknad's allegations of discrimination, harassment, or retaliation, and (2) information—whether in Smethurst's reports or the underlying investigative materials—relevant to the scope or adequacy of Smethurst's investigation of Paknad's allegations." (*Id.* at p. 1263 [emphasis in original].)

Plaintiff argues that the Breedlove investigation was conducted parallel with other investigations into Plaintiff's complaints and falls within the waiver discussed in *Wellpoint* and *Paknad*. Plaintiff further contends that the documents are relevant to the issue of whether Defendant's investigations were truly independent inquiries or whether they were conducted in coordination with a parallel legal-department evaluation of Plaintiff and/or his complaints that Defendant has chosen to conceal.

Because Defendant does not acknowledge whether additional documents relating to Ms. Breedlove's investigation exist, or provide any competent evidence as to whether such documents would be privileged, it does not directly address whether there has been a waiver of the privilege as to any specific documents. Defendant generally argues that Ms. Breedlove's investigation was a risk evaluation by in-house counsel that was separate from the investigations that fall under *Wellpoint* and *Paknad*, i.e., the Employee Relations investigation and the compliance audit. Documents pertaining to those investigations have already been produced to Plaintiff. ("Abdolhosseini Decl.", ¶5 and Exhs. 1 and 2.) However, again, Defendant fails to produce any evidence that this investigation was separate from the other investigations or had a different purpose than those investigations. Defendant submits no declarations from anyone with personal knowledge to support this contention. Accordingly, even if Defendant had shown that these documents were privileged, the privilege would be subject to waiver under *Wellpoint* and *Paknad*.

C. Sanctions

When a motion to compel compliance is granted, the court shall impose monetary sanctions unless it finds that the party subject to the sanction acted with substantial justification or other circumstances make sanctions unjust. (Code Civ. Proc., § 2031.320, subd. (b).)

Plaintiff's request for sanctions in the amount of \$14,060 is granted. Defendant's request for sanctions is denied.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004757

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: HILLARY WHITMAN	
vs.	
DEFENDANT: SUPER73, INC.	

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

2) MOTION – PROTECTIVE ORDER – DISCOVERY FACILITATOR PROGRAM

RULING

A. Defendant's Discovery Motions

Defendant's motion to compel further responses from Plaintiff Whitman to Request for Production of Document Nos. 9, 13, 25, 29, is **GRANTED** and is **DENIED** as to Request Nos. 5, 31, 32, 34, 36. Defendant's motion to compel further responses from Plaintiff Heldund to Request for Production of Document Nos. 9, 12, 13, 25, 29, is **GRANTED** and is **DENIED** as to Request Nos. 3, 31, 32, 34, 36.

Defendant's motion to compel further responses to Special Interrogatories is **DENIED** in its entirety.

B. Plaintiffs' Motion for a Protective Order

To the extent Plaintiffs seeks to prevent the deposition of the children referenced in the First Amended Complaint, the motion is **DENIED**. Defendant may take the deposition of the children subject to reasonable limitations, including that the examination be limited to **four hours** (excluding breaks or extended attorney colloquy), and that the deposition schedule does not interfere with the children's attendance at school or school events. The parties are ordered to meet and confer regarding any further reasonable limitations.

To the extent the motion seeks to place time limitations on the deposition of spouses of named Plaintiffs the motion is **DENIED**.

No sanctions are imposed in connection with these motions.

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: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005199

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: L3 COMMERCIAL
TRAINING SOLUTIONS AIRLINE
ACADEMY, A COMMERCIAL FLIGHT
SCHOOL

vs.

DEFENDANT: COLIN J. HENRY, ET AL

NATURE OF PROCEEDINGS: 1) DEMURRER
2) DEMURRER

RULING

Plaintiff L3 Commercial Training Solutions Airline Academy's ("Plaintiff") demurrer to Defendant James R. Henry's ("Defendant") Second Amended Answer is **SUSTAINED with leave to amend as to the Third and Fourth Affirmative Defenses and otherwise OVERRULED.**

In amending his answer, Defendant is not permitted to add any new defenses. (See *Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456 [on the scope of permissible amendments after a demurrer is sustained].) If Defendant wants to add defenses that do not appear in the Second Amended Answer, he must file a noticed motion for leave to amend. He offers no authority for the idea that one can seek leave to amend a pleading to add content beyond the scope of what is challenged by a demurrer via opposition to that demurrer.

Background

This is a debt recovery action. Plaintiff is a commercial flight school. (Complaint, ¶ 1.) Plaintiff's complaint alleges that in 2015, Defendant and his co-defendant, Colin J. Henry, executed a promissory note for \$81,754.45 in favor of FMS Bank. (*Id.* at ¶ 7.) FMS Bank allegedly sold its interest under that note to Plaintiff in 2022. (*Id.* at ¶ 8.) According to the complaint, the defendants defaulted on the debt. (*Id.* at ¶ 12.) Plaintiff has declared all outstanding principal and interest due. (*Id.* at ¶¶ 13-14.) The complaint asserts causes of action for breach of the promissory note, money lent, and "indebtedness."

Defendant answered the complaint. The operative responsive pleading is his Second Amended Answer. Before the Court is Plaintiff's demurrer to that pleading.

Legal Standard

“When any ground for objection to . . . [an] answer appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading.” (Code Civ. Proc., § 430.30.) “A demurrer to an answer may be taken to the whole answer or to any one or more of the several defenses set up in the answer.” (Code Civ. Proc., § 430.50.) The grounds for a demurrer to an answer are as follows: “(a) The answer does not state facts sufficient to constitute a defense. (b) The answer is uncertain. . . . ‘[U]ncertain’ includes ambiguous and unintelligible. (c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral.” (Code Civ. Proc., § 430.20.)

“Generally speaking, the determination whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action.” (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) In reviewing a demurrer to an answer, the court is to accept the answer’s allegations as true and disregard any allegations of the complaint that the answer has denied. (*Id.* at p. 733.) The demurrer must be decided based only on the contents of the answer, the contents of the complaint, and any judicially noticeable material. (*Id.* at pp. 732-733.)

Discussion

An answer to a complaint must contain a “general or specific denial of the material allegations of the complaint controverted by the defendant” and “[a] statement of any new matter constituting a defense.” (Code Civ. Proc., § 431.30, subd. (b)(2).) The reference to “new matter” requires that affirmative defenses be pleaded in the answer to avoid waiver. (See *Advantec Group, Inc. v. Edwin’s Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627.) “Affirmative defenses must not be pled as ‘terse legal conclusions,’ but ‘rather . . . as facts “averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint.” ’ ” (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 812-813 [quoting *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384].) To plead a cause of action, a plaintiff must plead ultimate facts sufficient to establish every element of that cause of action. (*Williams v. Sacramento River Cats Baseball Club, LLC* (2019) 40 Cal.App.5th 280, 286; see also *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1027 [allegations of ultimate, rather than evidentiary, fact are sufficient].) It follows that to plead an affirmative defense, a plaintiff must plead ultimate facts sufficient to establish every element of that affirmative defense.

The parties primarily dispute whether Defendant’s affirmative defenses are, in fact, affirmative defenses, or are instead mere denials (or “traverses”), which can be pleaded more summarily. The phrase “affirmative defense,” or “new matter,” “refers to something relied on by a defendant which is not put in issue by the plaintiff. Thus, where matters are not responsive to essential allegations of the complaint,” they are “new matter” and must be pleaded as such. (*State Farm, supra*, 228 Cal.App.3d 721, 725 [internal citation omitted]; accord *Bevill v. Zoura* (1994) 27 Cal.App.4th 694, 698.) “Where, however, the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not ‘new matter,’ but only a traverse.” (*Ibid.*)

First and Second Affirmative Defenses

Defendant's First Affirmative Defense is lack of capacity to sue on the basis that Plaintiff is allegedly not licensed to collect consumer debt in this state. A plaintiff generally need not allege capacity to sue unless the cause of action is statutory and the governing statute requires such an allegation. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 994, fn. 4; *Advantec Group, supra*, 153 Cal.App.4th 621, 628.) Whether lack of capacity constitutes an affirmative defense is determined on a pleading-by-pleading basis based on whether the plaintiff has alleged capacity in the complaint. (See *Advantec Group, supra*, 153 Cal.App.4th 621, 628 ["Capacity to sue having been alleged in the complaint, a refutation of that capacity does not introduce new matter, and need not be specifically pleaded as an objection in abatement."].) Here, Plaintiff's complaint is silent as to Plaintiff's capacity to sue. Thus, Plaintiff's alleged lack of capacity is an affirmative defense and must be pleaded as such.

However, Defendant has satisfied that requirement. His answer sets forth the simple factual allegation upon which his "lack of capacity" defense rests: "Plaintiff . . . is not licensed to collect consumer debt in the State of California." It is unclear what else Plaintiff would like Defendant to allege here that would not be a legal conclusion or a statement of pure law. Nor is the First Affirmative Defense sufficiently uncertain to merit sustaining a demurrer. "[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3.) "[E]ven where a complaint is in some respects uncertain, . . . ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) Plaintiff can elicit more detail about this defense in discovery. Plaintiff has not raised the issue of whether this is a legally valid defense to any of its claims (i.e., whether a lack of a license would, in fact, mean that Plaintiff lacks capacity to pursue these claims), as opposed to the issue of whether it is either insufficiently pleaded or uncertain.

This analysis applies equally to Defendant's Second Affirmative Defense, which alleges that Plaintiff lacks standing to sue, again on the basis that it is not licensed to collect consumer debt in California. Even if this is considered a true affirmative defense, rather than a mere traverse, Plaintiff has pleaded the simple alleged fact upon which this defense rests and the pleading is not fatally uncertain.

Third, Fourth, Fifth, and Sixth Affirmative Defenses

Defendant's Third through Sixth Affirmative Defenses all allege that Plaintiff is out of compliance with various statutes. Defendant states that these defenses allege that Plaintiff "cannot make the showings the debt-collection and student-loan statutes require as a precondition to judgment." (Opposition, p. 2.) As such, they merely "controvert [Plaintiff's] own right to collect" or "negate[] an element of [Plaintiff's] case[,]," so they are mere traverses, not affirmative defenses. (*Ibid.*)

Every defense stated in an answer controverts the plaintiff's right to recover in the action, so that characterization is of little value. And, at least as to the Third and Fourth Affirmative Defenses, Defendant never offers any authority to support his claim that these statutes "impose conditions

on [Plaintiff's] right to obtain a judgment on this debt[.]" such that these affirmative defenses amount to a claim "that the plaintiff cannot satisfy a statutory precondition to recovery" (Opposition, p. 5) or otherwise "negate[] an element of [Plaintiff's] case" (*id.* at p. 2). With respect to the Fifth and Sixth Affirmative Defenses only, the Court can at least look to the statute itself to determine whether pleading violation of the statute amounts to pleading that Plaintiff cannot satisfy a threshold element of its claim, in which case these defenses would be considered mere traverses. (See *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 543.) The Court addresses that below. But it cannot use this method with the Third and Fourth Affirmative Defenses because both cite only to wide swaths of statutory material and do not indicate which specific provisions Defendant is relying on. By all indications, these defenses raise new matter and do not simply assert that Plaintiff cannot satisfy an element of its claims. The Court concludes that the Third and Fourth Affirmative Defenses are true affirmative defenses which must be pleaded with the particularity generally required of a cause of action (*Quantification, supra*, 201 Cal.App.4th 758, 812-813), and that Defendant has not met this standard. All he has alleged is that Plaintiff "is unable to comply" with the Rosenthal Fair Debt Collection Practices Act and the California Fair Debt Buying Practices Act. This is a legal conclusion, and legal conclusions are insufficient against a demurrer. (See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) The demurrer is SUSTAINED with leave to amend as to the Third and Fourth Affirmative Defenses.

The Fifth Affirmative Defense alleges that Plaintiff "is not entitled to judgment" because it "violated [Civil Code, section] 1788.204[.]" Section 1788.204 is the statute of limitations provision for the Private Student Loan Collections Reform Act. It provides, "A private education lender or private education loan collector shall not bring suit or initiate an arbitration or other legal proceeding to collect a private education loan if the applicable statute of limitations for the private education lender's or private education loan collector's claim has expired." (Civ. Code, § 1788.204.) Under these circumstances, the Court need not determine whether this is an affirmative defense or a mere traverse. Either way, Defendant's method of pleading a statute of limitations defense is expressly allowed under Code of Civil Procedure, section 458: "In pleading the Statute of Limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section ____ (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure[.]" (Code Civ. Proc., § 458; see also Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2026) §§ 6:462, 7:51.1.) Defendant has done this by pleading (in connection with the Seventh Affirmative Defense) that "Plaintiff's causes of action are barred by the statute of limitations in California Code of Civil Procedure § 339."¹

The Fifth Affirmative Defense further alleges that Plaintiff "cannot comply with [Civil Code, section] 1788.206." The Court does not have occasion to consider the demurrer to the extent it

¹ By the terms of Code of Civil Procedure, section 458, a defendant pleading the statute of limitations as a defense must cite not merely to the section of the Code of Civil Procedure containing the applicable statute of limitations, but also the subdivision, if the section has subdivisions. (Code Civ. Proc., § 458; *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691.) This requirement is relaxed where, as here, there is only one subdivision that could possibly be applicable. (*Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1165 [discussing this with respect to Code of Civil Procedure, section 339, the same statute of limitations at issue here].)

targets this allegation. Generally speaking, the same rules that govern demurrers to complaints govern demurrers to answers. (See *South Shore Land Co.*, *supra*, 226 Cal.App.2d 725, 732-733.) A court may not sustain a demurrer to a portion of a cause of action (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119; *accord PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682), and it follows that it may not sustain a demurrer as to a portion of an affirmative defense, either. Because Defendant's Fifth Affirmative Defense passes muster to the extent it rests on Civil Code, section 1788.204, it survives demurrer. To attack this defense only to the extent it rests on Civil Code, section 1788.206, Plaintiff would need to file a motion to strike. The demurrer is OVERRULED as to the Fifth Affirmative Defense.

Defendant's Sixth Affirmative Defense alleges that the originator of the loan transaction, Plaintiff's predecessor in interest, "failed to supply [Defendant] with the required cosigner disclosure as provided by California Civil Code § 1799.91." Nothing about Civil Code, section 1799.91 suggests that the originator's providing the disclosure is an element a lender, or a lender's successor in interest, must prove to recover on the loan. Defendant has not cited any authority on this point and so has not provided any legal basis for his claim that this affirmative defense merely negates an element of Plaintiff's case. The Court considers this a true affirmative defense, not a traverse.

However, again, Defendant has pleaded this affirmative defense with the required particularity by setting forth the simple fact upon which it depends: Plaintiff's predecessor in interest allegedly did not give Defendant the notice described in Civil Code, section 1799.91. Again, Plaintiff has not raised the issue of whether this is a legally valid defense (i.e., whether failure to supply the notice would, in fact, defeat these causes of action as a matter of law), as opposed to the issue of whether it is either insufficiently pleaded or uncertain. The demurrer is OVERRULED as to the Sixth Affirmative Defense.

Seventh Affirmative Defense

Defendant alleges that Plaintiff's claims are barred by the statute of limitations of Code of Civil Procedure, section 339. As discussed, this defense is sufficiently pleaded. (See Code Civ. Proc., § 458; *Hydro-Mill Co.*, *supra*, 115 Cal.App.4th 1145, 1165.)

California Rule of Court, rule 2.112

Plaintiff argues that the answer does not comply with California Rule of Court, rule 2.112 (setting forth certain formatting requirements for pleadings), and that "[t]he failure to comply with Rule 2.112 renders a complaint subject to a special demurrer[.]" citing Code of Civil Procedure, section 430.10, subdivision (f). (Memorandum, p. 8.) Code of Civil Procedure, section 430.10, subdivision (f) does not say that, and also does not apply here, as it sets forth the grounds for an objection to a complaint or a cross-complaint, not an objection to an answer. (Code Civ. Proc., § 430.10.) The grounds for a plaintiff's objection to an answer by demurrer are found in Code of Civil Procedure, section 430.20 and do not include the answer's noncompliance with the California Rules of Court.

Moreover, Plaintiff's argument that the answer is noncompliant with Rule 2.112 – that Defendant "has failed to designate the cause of action to which each affirmative defense is

asserted” – is meritless. (Memorandum, p. 8.) As to an answer, Rule 2.112 requires that each defense be identified by number and nature, e.g., “First Affirmative Defense – Assumption of Risk.” (Cal. Rules of Court, rule 2.112(1)-(2).) It does not require an answer to designate the cause of action against which each defense is asserted. If Defendant’s answer is noncompliant with Rule 2.112, it is because he did not specify the nature of each affirmative defense in a brief subheading (i.e., in the prior example, he would have omitted “– Assumption of Risk”). Plaintiff’s argument that any lack of compliance with Rule 2.112 by Defendant renders the answer uncertain is without merit. So is the argument that the answer’s failure to identify which affirmative defenses are levied against which causes of action renders the pleading uncertain regardless of whether such failure violates Rule 2.112. The answer offers every stated affirmative defense against each of Plaintiff’s causes of action.

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/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFqFZa.1>

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005493

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: TERRA MARIN SCHOOL	
vs.	
DEFENDANT: MILL VALLEY UNIFIED SCHOOL DISTRICT	

NATURE OF PROCEEDINGS: MOTION - COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

The motion was withdrawn. The discovery dispute was resolved through the assistance of the Discovery Facilitator Lawrence Strick, Esq. The Court expresses its appreciation for Mr. Strick's service to the parties and the Court in 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 September, 2026 is as follows:

<https://marin-courts-ca-qov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFqFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007359

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: CRISTOBAL URIAS
DUARTE COLINDRES

vs.

DEFENDANT: DENISE SHANNON, ET
AL

NATURE OF PROCEEDINGS: 1) DEMURRRER
2) DEMURRER

RULING

Cross-Defendant State Compensation Insurance Fund's ("State Fund") Demurrer to Abner Cortez's (erroneously sued as Abner Cortes) ("Cortez") Cross-Complaint is **SUSTAINED with leave to amend.**

Cross-Defendant Everest Premier Insurance Company's ("Everest") Demurrer to Cortez' Cross-Complaint is **SUSTAINED with leave to amend.**

ALLEGATIONS IN CROSS-COMPLAINT

In the underlying action, Cristobal Urias Duarte Colindres ("Plaintiff") alleges he was injured on August 30, 2023, while performing construction-related work at real property located at 70 San Benito Way, Novato, California, owned and controlled by Denise Shannon, when a load of cement fell on him. (Cross-Complaint ("XC"), ¶ 11.) The Complaint names Cortez and Shannon as defendants and asserts claims for negligence, premises liability, and violations of Labor Code provisions relating to unlicensed contractors. (XC, ¶ 12.)

Cortez denies liability and certain allegations in the Cross-Complaint are pled solely in the alternative, without any admission of wrongdoing. (XC, ¶¶ 13-14.) Cortez alleges that, since at least 2021, he organized day laborers, including Colindres, to perform manual labor on projects being performed by and for De Silva and System Pavers, and that he had no independent direct contract with Shannon, De Silva, or System Pavers for the project at issue. (XC, ¶¶ 15-16.)

Rather, Cortez functioned as a labor intermediary and de facto superintendent/agent for System Pavers and/or De Silva. (XC, ¶ 16.) Cortez further alleges that the work was performed under the contracting operations, supervision, direction, and licensing authority of De Silva and/or System

Pavers; that De Silva was itself acting as a subcontractor or lower-tier contractor for System Pavers; and that System Pavers and De Silva exercised control over the means, manner, timing, and conditions of the work, including jobsite safety protocols, material handling, staffing, and supervision. (XC, ¶¶ 17-20.)

Cortez alleges that System Pavers and/or De Silva understood and represented, expressly or impliedly, that workers supplied for the project, including Colindres, were working within the scope of and subject to workers' compensation coverage maintained by those entities, and that after Colindres's alleged injury, funds were transmitted weekly, at System Pavers' direction, through De Silva to Cortez for Colindres's benefit, because System Pavers and De Silva understood Colindres and similarly situated workers to be working under their project operations and coverage structure. (XC, ¶¶ 21-22.) Cortez alleges that any liability that may be imposed on him would be secondary, derivative, imputed, comparative, or technical, and that primary and active fault lies with the Cross-Defendants, "including De Silva, System Pavers, Shannon, and the insurers and indemnitors." (XC, ¶ 26.)

Cortez alleges that State Fund is the issuer of a workers' compensation and/or employer's liability policy, including but not limited to Policy No. 9257345, effective July 13, 2021 through July 13, 2024, issued to or for the benefit of System Pavers, De Silva, and/or entities and operations associated with the project, providing coverage for employees, statutory employees, and/or other covered persons performing work within the course and scope of the project. (XC, ¶ 6.)

Cortez alleges that Everest Premier Insurance Company is the workers compensation insurer for System Pavers, LLC under policy number SW3WC000732. (XC, ¶ 4.)

Cortez further alleges that the policies issued by Everest, Valley Forge, State Fund, and the Roe insurer defendants include provisions requiring those insurers to defend, indemnify, and reimburse claims for bodily injury arising from the project, including claims asserted against persons and entities acting for, through, or under the authority of the named insureds, and that Cortez qualifies, or may qualify, as an insured, additional insured, implied insured, permissive insured, statutory employee, covered person, indemnitee, or otherwise protected party under one or more of the policies issued to System Pavers and/or De Silva, based on the role he is alleged to have played in supplying labor and coordinating workers for the project. (XC, ¶¶ 27-28.)

Cortez alleges that a tender of defense and indemnity has been made or sought, that one or more insurer Cross Defendants have failed, refused, delayed, limited, or disputed their obligations to provide a defense and indemnity, and that an actual and present controversy exists concerning the parties' respective obligations for defense, indemnity, contribution, reimbursement of defense costs, allocation of fault, and responsibility for any judgment or settlement. (XC, ¶¶ 29-30.)

On April 20, 2026, Cortez cross-complained against De Silva, System Pavers, Shannon, Everest, Valley Forge, and State Fund for equitable indemnity, comparative indemnity, contribution, declaratory relief, negligence, premises liability, and declaratory relief regarding duties to defend and indemnify.

Presently before the Court are State Fund and Everest's Demurrers to the Cross-Complaint.

LEGAL STANDARD

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. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 159.) 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 – STATE FUND DEMURRER

State Fund demurs to the First, Second, Third, Fourth, and Seventh Causes of Action against it, arguing that workers' compensation exclusivity bars each claim against it and, separately, that each challenged cause of action is independently deficient.

The Workers' Compensation Act (Lab. Code, § 3200 et seq., “WCA”) is “a comprehensive statutory scheme” covering injuries incurred in the course and scope of employment. (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1046 (*King*), quoting *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810 (*Vacanti*).)

In *Columbo v. State of California* (1991) 3 Cal.App.4th 594, the court of appeal affirmed the sustaining of a general demurrer without leave to amend, holding that “[w]here the complaint affirmatively alleges facts indicating coverage by the workers’ compensation laws, if it fails to state additional facts negating application of the exclusive remedy provision, no civil action will lie and the complaint is subject to a general demurrer.” (*Columbo*, at 599, quoting *Roberts v. Pup ‘N’ Taco Driveup* (1984) 160 Cal.App.3d 278, 284.)

Here, the Cross-Complaint alleges that Plaintiff's injuries were sustained in the course and scope of employment. (XC, ¶ 11.) It further alleges that State Fund was the issuer of a workers’ compensation and/or employer’s liability policy, including but not limited to Policy No. 9257345, effective July 13, 2021 through July 13, 2024, issued to or for the benefit of System Pavers, DeSilva Construction, and/or entities and operations associated with the project

described herein, which provided coverage for employees, statutory employees, and/or other covered persons performing work within the course and scope of said project. (XC, ¶ 6.)

The Cross-Complaint further alleges Cortez is informed and believes, and on that basis alleges, that the policies issued by Everest, Valley Forge, State Compensation Insurance Fund and the Roe insurer defendants include provisions requiring those insurers to investigate, defend, indemnify, reimburse, and/or otherwise respond to claims for bodily injury arising out of the project operations, including claims asserted against persons and entities acting for, through, or under the authority of the named insureds. (XC, ¶ 27.)

Cortez also contends that, under one or more applicable insurance policies issued to System Pavers and/or De Silva in connection with the project at issue, Everest, Valley Forge, State Compensation Insurance Fund, and/or the Roe insurer Cross-Defendants owe duties to defend Cortez, indemnify Cortez against covered liability, reimburse Cortez for defense fees and costs already incurred, and otherwise provide the benefits of insurance coverage applicable to the underlying bodily injury claims. (XC, ¶ 61.)

Demurrer is SUSTAINED with leave to amend as to the First, Second, Third, Fourth, and Seventh Causes of Action on the ground that the pleading affirmatively alleges facts suggesting that this matter is covered by workers' compensation laws and fails to state additional facts negating application of the exclusive remedy provision. (See *Columbo, supra*, at p. 599; *Roberts v. Pup 'N' Taco Driveup, supra*, at p. 284.) While Cortez does plead the existence (in the alternative) of an employer liability policy, the Cross-Complaint pleads no facts which indicate that policy may apply.

DISCUSSION – EVEREST DEMURRER

The Court acknowledges that the Opposition was untimely filed and served. The Court has reviewed Cortez' explanation for this and Everest's arguments in response. It appears that the matter has been fully briefed and the Court elects to resolve the issues on the merits. However, to the extent Everest contends it requires additional time to fully brief the issue, the Court is willing to entertain requests to continue the hearing date.

The Cross-Complaint asserts five causes of action against Everest: (1) Equitable Indemnity; (2) Comparative Indemnity; (3) Contribution; (4) Declaratory Relief Regarding the Duty to Indemnify, Contribute to any Liability, Reimburse Defense Costs, and Bear Responsibility for Its Comparative Share of Fault and Legal Obligation; and (7) Declaratory Relief Regarding Duties to Defend and Indemnify. Everest demurs to each of them, asserting that it cannot be liable because it is not a tortfeasor, and that Cortez cannot obtain a declaration of coverage because a workers' compensation policy does not respond to a civil suit.

The Cross-Complaint makes the following allegations regarding Everest:

Cross-Complainant is informed and believes that Everest Premier Insurance Company is the workers compensation insurer for System Pavers, LLC under policy number SW3WC000732. (XC, ¶ 4.)

Cortez is informed and believes, and on that basis alleges, that the policies issued by Everest, Valley Forge, State Compensation Insurance Fund and the Roe insurer defendants include provisions requiring those insurers to investigate, defend, indemnify, reimburse, and/or otherwise respond to claims for bodily injury arising out of the project operations, including claims asserted against persons and entities acting for, through, or under the authority of the named insureds. (XC, ¶ 27.)

Cortez contends that, under one or more applicable insurance policies issued to System Pavers and/or De Silva in connection with the project at issue, Everest, Valley Forge, State Compensation Insurance Fund, and/or the Roe insurer Cross-Defendants owe duties to defend Cortez, indemnify Cortez against covered liability, reimburse Cortez for defense fees and costs already incurred, and otherwise provide the benefits of insurance coverage applicable to the underlying bodily injury claims. (XC, ¶ 61.)

Coca-Cola Bottling Co. v. Lucky Stores, Inc. (1992) 11 Cal.App.4th 1372, 1378–1379 discussed the distinction between indemnity and contribution as applied in California. That court explained that indemnity either imposes the entire loss on one of two or more tortfeasors or apportions it on the basis of comparative fault, while contribution is a creature of statute that distributes the loss equally among all tortfeasors. Critically, the court stated that a right of contribution can come into existence only after rendition of a judgment declaring more than one defendant jointly liable to the plaintiff.

Here, Everest is correct that the Cross-Complaint makes no allegations regarding joint liability. Moreover, as stated above, the pleading affirmatively alleges facts suggesting that this matter is covered by workers' compensation laws, and fails to state additional facts negating application of the exclusive remedy provision. (See *Columbo*, *supra*, at p. 599; *Roberts v. Pup 'N' Taco Driveup*, *supra*, at p. 284.) The Court notes there are no employer liability coverage allegations regarding Everest's policy.

For these reasons, the Demurrer to the First through Fourth and Seventh Causes of Action is SUSTAINED 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.

The Zoom appearance information for September, 2026 is as follows:

<https://marin-courts-ca-qov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFqFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

If you are unable to join by video, you may join by telephone by calling 1-669-254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009183

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

IN THE MATTER OF:

EVERVIEW LTD

NATURE OF PROCEEDINGS: MOTION – ATTORNEY’S FEES

RULING

Petitioner’s motion for an award of attorney’s fees is **GRANTED in part.** (Civ. Code, § 8488 subd. (c).) Based on a review of the materials submitted in connection with the motion, the Court awards **\$21,032.50** to Petitioner as attorney’s fees reasonably incurred as the prevailing party in this proceeding.

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/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

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: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0009328

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFFS: SONOMA FIT NOVATO
LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY, ET AL.

VS.

DEFENDANTS: UG2 NOVATO CA, LP, A
DELAWARE LIMITED PARTNERSHIP ET
AL.

NATURE OF PROCEEDINGS: WRIT OF POSSESSION HEARING

RULING

The Application for Writ of Possession is granted.

Background

Plaintiffs summarize their action as follows in the introduction section of their complaint: “This action arises from Defendants’ knowing and ongoing detention, use, and threatened disposition of valuable gym equipment and related business property owned by Plaintiffs, following an unlawful detainer judgment that adjudicated only possession of real property—not ownership of personal property. After evicting Plaintiffs **Sonoma Fit Novato LLC** and **Sonoma Fit LLC** from the premises at 1727 Grant Avenue, Novato, Defendant **UG2 Novato CA, LP** refused to permit inspection or retrieval of Plaintiffs’ equipment, demanded unlawful conditions for its release, and affirmatively allowed Defendant **IconFit Novato LLC** to operate a competing gym using Plaintiffs’ equipment for Defendants’ commercial benefit. Plaintiffs seek immediate return of their property, damages, and injunctive relief. ...” Plaintiffs’ complaint includes the following causes of action: claim and delivery, conversion, trespass to chattels, conspiracy, unjust enrichment, and intentional interference with economic relations. At present, Plaintiffs seek a writ of possession.

Legal Standard

In order to obtain possession of personal property through a writ of possession, the plaintiff must establish, *inter alia*, the basis of the plaintiff’s claim, that it is entitled to possession of the property, and that the property is wrongfully detained by the defendant. (Code Civ. Proc., § 512.010, subs. (b)(1) and (b)(2).) The court shall issue a writ of possession if the plaintiff has established the probable validity of the plaintiff’s claim and the undertaking requirements of

section 515.010 are satisfied. (§ 512.060, subd. (a).) The plaintiff establishes “probable validity” “where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.” (§ 511.090.)

Discussion

The declaration of Adam Kovacs and the verified complaint establish that it is more likely than not that Plaintiffs will obtain a judgment against Defendants.

In opposition, Defendants first argue that Plaintiffs have no rights in the Equipment because a Dissolution Judgment between Kovacs and his former spouse awarded such rights to his former spouse. The Court takes judicial notice of that Judgment. Contrary to Defendants’ argument, the Judgment did not award Ms. Bruen “any and all rights to the equipment that were previously held by Mr. Kovacs.” The Judgment clearly states that “[a]ny gym equipment present in any of these business *that is not secured* and is in Mr. Kovacs’ control shall be assigned and turned over to Ms. Bruen *to pay down the debt that Mr. Kovacs owes her at the market value established by sale.*” (Emphasis added.) Ms. Bruen would not be able to sell encumbered equipment to pay down the debt, and Defendants themselves acknowledge that “*all of the property at issue is encumbered...*”

Defendants next argue that if Ms. Bruen is not the “sole rightful ‘owner,’” “Mr. Kovacs’ rights remain subordinate to those of third-party creditors, who retain the right to control disposition of the property and have not provided their consent to its removal from the premises.” After default, a secured party may take possession of the collateral. (Comm. Code, § 9609, subd. (a)(1).) It may do this “[w]ithout judicial process, if it proceeds without breach of the peace.” (§ 9609, subd. (b)(2).) While the UCC Financing Statement shows that the SBA has a security interest in the tangible and intangible personal property of Sonoma Fit Novato, Defendants have offered no admissible evidence that Sonoma Fit Novato is in default to the SBA. The statement by Defendants’ attorney that he “ha[s] been reliably informed that Plaintiffs made no payments to the SBA and that the loan is currently in receivership” is hearsay and lacks personal knowledge.¹ Additionally, the statement of Charles Grieve that the SBA representative told him the equipment cannot be removed from the premises is also hearsay, and the Court rejects it on this basis.² The Defendants have not established that the SBA has the right to control the equipment.

Finally, Defendants argue that Plaintiffs are not entitled to a writ of possession because they have refused to reimburse UG2’s reasonable costs of storage. (See Civ. Code, § 1987, subd. (a).) Defendants’ evidence does not show that UG2 demanded a specific amount from Plaintiffs. Nor does their evidence show what the “fair rental value of the space reasonably required for that storage” is. (§ 1990, subd. (c).) Further, it appears to the Court that UG2 has not incurred costs to store the equipment since IconFit leased the premises and began using the equipment. While the Court might otherwise condition granting of the application on Plaintiffs’ payment of

¹ Plaintiffs objected on this basis (see Obj. no. 5) but later withdrew all their objections without explanation. Notwithstanding the withdrawal, the Court finds the proffered evidence inadmissible.

² Plaintiffs also objected on this basis but later withdrew the objection.

reasonable storage costs for the period between Plaintiffs' eviction and IconFit's lease of the premises, the information before the Court indicates that there may have been no such period. (See verified complaint ¶11 and ex. 1 to Kovacs' decl.)

The Court generally must require an undertaking before issuing a writ of possession. (Code Civ. Proc., § 515.010, subd. (a).) However, "[i]f the court finds that the defendant has no interest in the property, the court shall waive the requirement of the plaintiff's undertaking and shall include in the order for issuance of the writ the amount of the defendant's undertaking sufficient to satisfy the requirements of subdivision (b) of Section 515.020." (§ 515.010, subd. (b).) Defendants argue that the Court should require Plaintiffs to post an undertaking of no less than \$1 million based upon the information set forth in paragraph 7 of Mr. Grieve's declaration. Even assuming IconFit may incur \$500,000 in costs if the Court grants the application, this does not mean that IconFit has a \$500,000 interest in the equipment. Indeed, Defendants never argue that they have any interest in the equipment. Instead, they argue that Ms. Bruen and/or the SBA have interests in the equipment. Therefore, the Court waives the requirement of Plaintiffs' undertaking. The Court sets the amount of Defendants' undertaking for purposes of section 515.020 at \$10,000.

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 September, 2026 is as follows:

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 09/29/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009903

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PLAINTIFF: DEVI KIMBROUGH
KUSHNER

vs.

DEFENDANTS: BANK OF AMERICA, ET
AL.

NATURE OF PROCEEDINGS: ORDER – SHOW CAUSE - DISMISS

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.

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