

**0SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CIV061492

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JAMES M. TACHERRA	
vs.	
DEFENDANT: ERNEST J. TACHERRA	

NATURE OF PROCEEDINGS: MOTION – OTHER: FINAL ACCOUNTING AND APPROVAL

RULING

On September 9, 2026, Lawrence A. Baskin (“Receiver”), filed a final report and funds accounting Pursuant to Code of Civil Procedure § 873.280. The motion is unopposed and the failure to respond by any opposing party is deemed consent. (Cal. Rules of Court, rule 8.54(c); Marin Local Rule Civ. 2.8G.1.)

The receiver’s motion is therefore GRANTED in its entirety.

Recent activity on this case includes the court’s entry of order on July 29, 2026, awarding Earnest Tacherra Reasonable Attorney’s fees; an order entered on September 14 setting the deadline to pay stipulated fees on behalf of the parties by September 10, 2026; and an order also entered on September 14 allocating attorney’s fees for Defendant’s counsel.

Although the Court appointed the Receiver in August 2006 to manage the partnership’s properties and other assets, it apparently allowed the farmworker housing to fall into dilapidation, prompting a lawsuit by the farmworker tenants. The court notes that James Tacherra and his wife, Susan Tacherra, also resided at and oversaw the operations and rentals at the Tacherra Ranch

Due to the housing conditions, the Tacherra Ranch tenants had to be relocated and provided with relocation benefits, certain violation notices from the County of Marin had to be cured, before the property was purchased by the Bolinas Community Land Trust (“BCLT”). The Receiver spent over \$200,000.00 to address the basic habitability violations. This investment was for basic housing elements, including water and sewage. The receiver reports that despite the housing conditions provided by the ranch, the County permitted the tenants to remain at the property The moving papers complain that the Receiver had to spend funds from prior property sales because the farmworkers ceased paying rent for the dilapidated, non-code-compliant housing.

On April 1, 2024, the Receiver and BCLT executed a Purchase Sale Agreement, in which BCLT agreed to purchase Tacherra Ranch for the appraised value of \$3,750,000.00.

Temporary housing and an RV park were secured to create suitable housing. BCLT was provided with access to parking on Tacherra Ranch, as required by the County of Marin and the California Coastal Commission to support and continue the tenants' temporary housing at an RV Park on the adjacent parcel located at 130 Mesa Rd, Bolinas, CA. The court approved this plan on May 16, 2024.

The Receiver and BCLT negotiated in good faith and agreed to remedy the housing and dumping Code Violations associated with the property, negotiating a "Remediation Cost Credit" of \$730,000.00 that adjusted the sales price to \$3,020,000. The final sale amount increased by \$10k to \$3,030,000, with escrow closing on March 2, 2026.

The court has reviewed the Receiver's accounting and it approves the actions the Receiver took as listed in the exhibits to the declaration filed in support of this motion.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CIV2204312

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: LIPOSOME
FORMULATIONS INC.

vs.

DEFENDANT: GIGIA L. KOLOUCH, ET AL

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

RULING

Counsel for the Defendants Renee Peters, submitted a declaration on September 28, 2026, pursuant to Marin County Rule, Civil 2.13B to update the court regarding Motion to Quash filed by nonparty Novato Business Center, and the Motion to Compel filed by the Plaintiffs.

On September 18, 2026, the parties informally resolved the discovery dispute by agreement among Plaintiffs, Travelers, and Travelers’ insured, Novato Business Center Owners Association (“NBCOA”). The resolution includes Travelers’ production of the requested documents subject to an Attorneys’-Eyes-Only Protective Order.

The court appreciates Ms. Patrice Goldman for volunteering as the Discovery Facilitator and assisting the parties in resolving this issue.

The court is available to sign the negotiated settlement stipulations if necessary.

The motions are dropped from calendar.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001441

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: EDNA MARCIA RIBEIRO

vs.

DEFENDANT: ALEXANDRE P. FRADE,
ET AL

NATURE OF PROCEEDINGS: ATTORNEY'S FEES

RULING

Plaintiff Edna Marcia Ribiero ("Plaintiff"), by and through her attorneys, has applied for fees from Alexandre P. Frade ("Defendant"), pursuant to Code Civ. Proc., § 1032(b), and Code Civ. Proc., § 1033.5(a)(10)(B) and (c)(5)(A), for violations of the Unruh Civil Rights Act (Civ. Code, §§ 51, 52) and Sexual Harassment in a Defined Relationship (Civ. Code, § 51.9).

Plaintiff's counsel seeks fees under the lodestar adjustment method; as required by California law. (See Plaintiffs Memorandum of Points and Authorities in Support of Motion for - Award of Attorney Fees (hereafter "Plaintiffs Memo")). Under that method, the Court first determines the "lodestar," the number of hours reasonably spent multiplied by the reasonable hourly rates for that work on a non-contingency basis. Once determined, the lodestar should be adjusted if necessary to provide Plaintiff's attorneys with an appropriate fee. "[T]he unadorned lodestar effects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider..." (*Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1138. Further, "the lodestar method requires the trial court to first determine a touchstone or lodestar figure based on careful compilation of the time spent and reasonable hourly compensation of each attorney [on a non-contingency basis]. The trial court may then augment or diminish the touchstone figure by taking various relevant factors into account." (*Vo r. Las Virgenes Water District*, (2000) 79 Cal. App. 4th 440, 445-46. (internal citations omitted))

The Court may adjust the lodestar based on factors including "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." (*Ketchum*, 24 Cal. 4th at 1137 (internal citations omitted))

On June 23, 2026, and following a three-week jury trial, a Marin County jury returned a verdict in favor of Plaintiff for sexual harassment in a defined relationship (Civ. Code, § 51.9) and for violation

of the violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 52), awarding \$100,000 in past emotional distress damages, \$150,000 in future emotional distress damages and \$150,000 in penalties under the Unruh Civil Rights Act (Civ. Code, §§ 51, 52).

Plaintiff was awarded \$400,000 by the jury.

The motion for a post-trial award of reasonable attorney's fees is GRANTED. The request for a multiplier is also GRANTED.

Evidentiary objections

In California, a court has broad discretion to consider all the evidentiary matters while acting as a judge ruling on a motion for attorney's fees in a matter which was tried before the Court. The court need not rule on evidentiary objections. (*Padilla v. McClellan*, (2001) 93 Cal. App. 4th 1100) The court emphasized that trial courts have wide discretion in setting the amount of attorney's fees and that an experienced trial judge is best qualified to decide the value of an attorney's services. *Id.*

Nevertheless, the court rules on Defendants objections 1-5 by denying them. Overruled.

Summary of Proceedings

Edna Marcia Ribeiro, represented by Victoria Shaw, Esq., and Ryan Kent, Esq., filed suit against Dr. Alexandre Frade, a Novato dentist, on November 29, 2023. The complaint was amended on March 26, 2024, to add allegations of Sexual Abuse (Cause of Action 2) and civil rights violations (Cause of Action 5), which trigger prevailing-party fee statutes.

Defendant filed multiple demurrers to the complaints, adding compensable time Plaintiff's billing ledgers. Discovery disputes also arose, forcing plaintiff file a motion to compel on October 23, 2025.

The parties prepared settlement conference statements, and were unable to settle with the assistance of a neutral. It is unclear if the parties ever attended mediation.

Defendant filed a Motion for a New Trial on July 20, 2026. pursuant to California Code of Civil Procedure ("CCP") §§ 657, creating additional compensable time opportunities for the Plaintiff. The motion was DENIED.

Defendant is a dentist. Plaintiff Edna Marcia Ribeiro ("Plaintiff") was his patient as defined by Business and Professions Code, § 1684.5(b). Plaintiff filed an opposition brief on July 27, 2026. Defendant filed a reply brief on July 30.

Summary of the Facts

Given the facts alleged in the complaint, this is the type of case the court believes should have settled quickly. Once those facts regarding the doctor's unprofessional conduct with his patient were presented at trial, it is no wonder the jury found for Plaintiff, awarding her \$400,000.00.

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Wrenching testimony described a dentist who, on the very day he extracted a tooth from his patient—whom he knew to be a massage therapist—scheduled her as his last patient and emptied the office of employees so the two were alone. The oral surgery occurred the evening of September 1, 2022. The dentist arranged it so that, after the surgery, she could give him a massage, having negotiated massages as payment for Plaintiff's oral surgery. Plaintiff credibly testified that, after the surgery, the dentist sexually assaulted her by groping her in his reception area. Testimony also supports that he demanded the massage *immediately* after the surgery, most likely while her mouth was bloody and she was numbed and medicated. Uncontroverted testimony showed that the patient even had to negotiate the dentist down from a full-body massage on a massage table that evening to a head-and-neck massage. The facts regarding the dentist's untoward behavior were hard for the jury to digest.

Plaintiff testified that she maintained a relationship with the Defendant after the surgery after September 1, 2022, to stay in his good-graces with the hope of resolving the continuing pain associated with the botched tooth removal. Testimony at trial is uncontroverted in that the tooth extraction was botched, with part of her tooth remaining in the oral cavity. The jury reviewed extensive texts and voicemail records in which the Patient expressed concerns about continued pain in her mouth because of the Defendant's tooth extraction. The jury heard testimony that the Plaintiff believed the Defendant would continue to help her repair the painful damage he caused to her mouth.

It is undisputed that Defendant told Plaintiff he had cancer, when he did not, in what the Plaintiff explained to the jury was a bizarre attempt for him to garner the Plaintiff's sympathy.

Defendant relented in the end, by agreeing to examine the Plaintiff nine (9) months later at his offices in June 2023. The doctor/patient relationship continued from September 2022, with the parties continuing to discuss the tooth issue in texts and voicemail messages, and with the dentist agreeing to once again examine his patient in June 2023. On the day of the examination and while at the Defendant's office, the Jury heard testimony that the Defendant changed his mind and refused to examine her. Plaintiff also testified that she had misgivings about this dentist performing any procedures on her mouth.

The matter came to trial with the jury finding for the Plaintiff.

Determining the Lodestar

Multiple statutes provide for an award of reasonable attorney's fees and costs to a prevailing party. Plaintiff is entitled to an award of attorney's fees under Code Civ. Proc., § 1032(b) and Code Civ. Proc., § 1033.5(a)(10)(B) and (c)(5)(A), as a prevailing party on her causes of action against Defendant for violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 52) and Sexual Harassment in a Defined Relationship (Civ. Code, § 51.9).

The Court's initial task in determining the lodestar is to determine the reasonable hourly rates for the plaintiff's attorneys. (*Ketchum*, 24 Cal. 4th at 1132.) The calculation of the lodestar is based on "the reasonable hours spent multiplied by the hourly prevailing rate for private attorneys in the community conducting *noncontingent* litigation of the same type... [T]he lodestar figure [is] subject to augmentation based on factors including the contingent nature of the litigation." (*Ketchum*, 24 Cal. 4th at 1133 (emphasis in original)).

The Principal Attorneys

Ryan Kent has been a member of the bar since 1994, with most of his practice devoted to personal injury actions. His requested rate is \$500 per hour.

Victoria Shaw is listed on the pleadings and attended every day of trial. While entitled to prevailing party fees, she does not ask for them.

The lawyers also do not request fees for paralegal or staff work.

Reasonable Rate

Mr. Kent seeks compensable fees of \$500.00 per hour. He does not seek fees for Ms. Shaw. Nor does he ask for compensation for staff time.

The lodestar method requires the trial court to determine a lodestar figure based on careful examination of reasonable hourly compensation of each attorney and consideration of the time spent to perform each task. (*Vo*, 79 Cal.App.4th 445-446.). "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, citing *Serrano v. Priest* (*Serrano III*) (1977) 20. Cal.3d 25, 49.)

In his opposition, Defendant objects to the requested \$500.00 rate because Mr. Kent's stated rate for non-contingency work is \$400. The Court must first determine the "prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type." (*Ketchum*, 24 Cal. 4th at 1132.)

In determining the appropriate attorney fee for a plaintiff attorney in a particular action, the Court assesses the fair market value by reviewing the level of skill necessary and the contingent nature of the case. (*Ketchum*, 24 Cal. 4th at 1132.) If the Court finds that the litigation involved high risk or required extraordinary legal skill, it may warrant "augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at 1132.) Such augmentation can be accomplished by increasing the hourly rate and/or by a multiplier. (*Id.* at 1132-1133.) "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*Id.* at 1132.)

The court has reviewed counsel's declaration. The court finds the requested rate of \$500.00 per hour eminently reasonable, and well in line with—if not below—the rates charged by Marin County attorneys of similar skill and experience.

Hours Worked.

A party who seeks attorney's fees has the initial burden of "documenting the appropriate hours expended." (*ComputerXpress Inc. v. Jackson*, (2001) Cal.App.4th 993, 1020.) Once a documented hour total has been submitted, the opposing party may make objections to the hours claimed. General objections that work is "excessive" or "unreasonable" are insufficient. The objections should be specific. (*Premier Med. Mgmt. v California Ins. Guarantee Ass'n*, (2008) 163 Cal.App. 4th 550, 563.)

The basis for calculating the lodestar "must be the actual hours counsel devoted to the case, less those resulting from ineffective or duplicative use of time." (*Horsford v. Board of Trustees of Cal. State*, (2005) 132 Cal.App. 4th 359, 395.) The court also recognizes these billing records of counsel constitute "verified time statements of the attorneys, as officers of the court, and are entitled to credence in the absence of a clear indication that the records are erroneous." *Id.* at 394.

Defendant objects to Plaintiff's request for recovery of 40% of his time apportioned to the sexual harassment and civil rights portion of the case, noting that the jury did not render a favorable verdict regarding the personal injury cause of action. The court considers counsel's requested apportionment of 40% as modest. In *Boquilon v. Beckwith* (1996) 49 Cal.App.4th 1697, 1722-1723, the court found no abuse of discretion in the trial court's determination that 50 percent of the plaintiffs' counsel's time was spent on issues on which the plaintiffs were entitled to fees. "We discern no abuse of discretion in the trial court's determination that half of the court's time and, by logical extension, half of plaintiffs' counsel's and expert's time, on less successful issues at trial, and that this time was not "reasonably" spent." (*Id.* at 1723.)

Defendant also objects to purported "block billing." Block billing is a practice where an attorney groups together under a single time charge a group of multiple task descriptions without separating out the actual time spent on each task. (*Bell v. Vista Unified School District*, (2000) 82 Al.Ap.4th 672, 689, (...we agree with VUSD that the blocked-billing entries render it virtually impossible to break down hours on a task-by-task basis...))

Courts have generally held that fee awards should be reduced for block billing as it tends to inflate the claimed hours spent and interferes with the ability to determine what time was spent on a particular task. (*Id.*) A district court imposed an across-the-board reduction of 20% due to block billing. The District Court arrived at its 20% reduction based on a report by the California State Bar's Committee on Mandatory Fee Arbitration, which concluded that blocking "may increase time by 10% to 30%." (See, The State Bar of California Committee on Mandatory Fee Arbitration, Arbitration Advisory 03-01 (2003) ("Fee Report"); *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942 (9th Cir. 2007)). The court finds this analysis helpful.

The court has reviewed the billing statements Mr. Kent submitted and finds them contemporaneously created. The court has no reason to doubt his declaration that he worked 329.5 hours.

It is difficult to determine if Plaintiff overbilled on tasks without a complete review of the billing generated by Defendant. Defendant may ask, and the court will grant the request, additional time to the lawyers with an exchange of contemporaneously billed statements to permit a comparison of the time spent by Plaintiff's counsel on the same litigation issues spent by Defendant's counsel. The issue of "block billing" should also be examined. Any attorney-client privilege has likely expired now that

a jury has resolved on the merits. Such a request, however, will likely trigger a request for the additional fees needed to continue the fee motion.

The court also notes that, in addition to not charging for Ms. Shaw's time, Plaintiff does not request fees for drafting and arguing the fee motion.

Compensation for the requested 329.5 hours of attorney time is GRANTED.

Multiplier.

The court recognizes that attorneys who accept these cases sacrifice their own resources to represent such plaintiffs, serving a valuable societal need. Because recovery is contingent, the burden is considerable: attorneys may work for months or years without compensation while advancing substantial costs for necessary depositions and expert fees. Courts have long recognized the importance of this role in the attorney-fee provisions. A California court of appeal explained:

If a potential defendant is too intimidating to the local bar or so replete with resources as to potentially overwhelm local counsel, or if the local plaintiffs' bar has not the resources to engage in complex litigation on a contingency-fee basis, the public interest in the prosecution of meritorious civil rights cases requires that the financial incentives be adjusted to attract attorneys who are sufficient to the cause.

Horsford v. Board of Trustees of Cal. State, (2005) 132 Cal.App. 4th 359, 399. The Court is also aware that "the policy that promotes the right to seek and hold employment free of prejudice is fundamental. The Court considers the essential service provided by Plaintiff's counsel by protecting against sexual harassment in determining the hourly rates of the attorneys in this case. See also, (*Commodore Home Svs., Inc. v. Superior Court*, 132 Cal. 3d 211, 220 (1982) (job discrimination case.))

Counsel requests a multiplier of 2. Counsel request to increase his hourly rate of \$500 per hour by a factor of 1.5 to \$750 per hour, and add at .5 multiplier to the total lodestar.

Under California law, once the lodestar has been determined the Court may, in its discretion, make adjustments to the lodestar "based on factors including... (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent are of the fee award." Ketchum v. Moses, 24 Cal.4th 1122, 1132 (2001).

The primary purpose behind adjusting the lodestar is to "fix a fee at the fair market rate for the particular action. In effect, the court determines, retrospectively, whether the litigations involved a contingency risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." *Id.*

The Court elects to use an unadorned lodestar with a multiplier, rather than an adorned lodestar, to compensate for the risk of contingency work. Because Ms. Ribeiro lacked the financial resources to

pay attorney's fees or costs, counsel agreed to take the case on a contingent-fee basis and advanced the costs. The multiplier may also compensate for other factors, such as the novelty of the case, the exceptional skill of the representation, and "the extent which the nature of litigation precluded other employment by attorneys." (*Ketchum*, 24 Cal. 4th 1132-1133.)

The fact pattern makes clear that the matter involved hard-fought litigation. Defendant did not recognize the egregious nature of his sexual harassment of his female patient. This dogged stubbornness marched the case to trial, where the jury found for Plaintiff. A levelheaded approach and honest recognition of the risk would have saved Plaintiff substantial time, effort, costs, and expenses.

The case presented a high degree of contingent risk and required substantial skill to try. Plaintiff's lawyers expertly addressed Defendant's apparent argument that she "consented" to his conduct, irrespective of the dentist-patient relationship. Counsel also coordinated complicated trans-hemisphere communications and testimony involving medical professionals licensed in Brazil.

Beyond risk, the Court has also considered other factors including: the preclusion of taking on additional cases; the novelty and difficulty of the action, combined with the exceptional results obtained; and the public service Plaintiff's attorneys performed by enforcing California's laws protecting women and dental patients from sexual harassment from their doctors at no expense to taxpayers.

The court takes all this into account, including the exclusion of work and waiver of compensable attorney's fees by Ms. Shaw, in awarding Mr. Kent a 1.75 multiplier.

Fees on Fees.

Plaintiff's counsel does not request fees on fees.

An Awarded of Reasonable Fees

Mr. Kent is awarded a lodestar of \$164,750.00 (\$500.00 per hour × 329.5 hours worked).

In setting the multiplier, the court has considered all of Plaintiff's and Defendant's arguments. The lodestar of \$164,750 multiplied by a 1.75 multiplier equals \$288,312.5 in fair and reasonable compensable attorney's fees.

In *Center for Biological Diversity v. County of San Bernardino*, (2010) 185 Cal.App.4th 866, the trial court awarded the prevailing party a 1.5 multiplier based primarily on the contingency risk. The Court of Appeal rejected the appellant's argument that a "1.5 multiplier [was] improper because the litigation was not novel or complex." *Id.* at 900. A trial court has "sound discretion" when adjusting the lodestar and "there is no hard-and-fast rule limiting the factors" that must be considered. "There are-a number of factors,-and-their-equation is-entrusted to the trial court's sound discretion; in anyone of those factors may be responsible for enhancing or reducing a lodestar." *Id.* at 901 (internal citations omitted).

Plaintiff to prepare the order.

Plaintiff is also to prepare the order regarding the Order denying the Motion for New Trial entered on August 28, 2028.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001920

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: IVAN ARAUJO

vs.

DEFENDANT: CITY AND COUNTY OF
SAN FRANCISCO, A PUBLIC ENTITY, ET
AL

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR
PROGRAM

RULING

Plaintiff Ivan Araujo (“Plaintiff”) filed a Motion to Compel further responses to Request for Production of Documents (Set Four) Nos. 138[sic]/165-154[sic]/181, and 157[sic]/184-159[sic]/186 from Defendant Golden Gate Bridge Highway and Transportation District (“Defendant”).

The court appointed Discovery Facilitator, Mr. James Sell, on August 17, 2026, to resolve the dispute. Defendant informs the court that the Parties were unable to resolve their dispute as to any specific Request for Production (“RFP”) contained in Plaintiff’s Motion.

Plaintiff did not update the court on the discovery facilitator’s possible resolution of any issues raised in the motion.

Defendants submitted a declaration on September 24, 2026, to address their points of contention with Plaintiff’s Motion. In court appearances are required to resolve the issues. Plaintiff is to review the declaration and using it as a guideline, address the issues raised.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0002711

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: CATHERINE HANIFF

vs.

DEFENDANT: ESSEX PROPERTY
TRUST, INC., A CORPORATION ET AL

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

RULING

Defendants Essex Property Trust, Inc. and Essex Management Corporation (“Defendants”) filed a notice of withdrawal, without prejudice, of their Deposition Subpoenas for Personal Appearance and Production of Documents and Things. The Motion to Quash is therefore moot and is dropped.

Defendant filed a Motion to Compel responses to Defendants’ Form Interrogatories (Set One), Special Interrogatories (Set One), and Requests for Production of Documents (Set One.).

Pursuant to Marin County Rule, Civil 2.13, a list of Discovery Facilitators was provided to the parties, with the deadline to select one by September 28. There is no indication that a Facilitator was selected.

The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H, regarding the status of the discovery facilitation process.

The Court reminds the parties that MCR Civ 2.13H requires not only the timely filing of the Declaration of Non-Resolution by each party five court days before the hearing, but also that “[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party’s contentions.***” (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter has not progressed because a facilitator was not selected. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the

parties fail to reach resolution through the facilitator, either party may request, by ex parte application, that the Court reset the motion for an expedited hearing.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0004545

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: DELORES JEANETH
LEIVA

vs.

DEFENDANT: GENERAL MOTORS LLC

NATURE OF PROCEEDINGS: 1) MOTION – ATTORNEY’S FEES
2) MOTION – ATTORNEY’S FEES

RULING

Plaintiff Delores Leiva (“Plaintiff”) seeks an award of prevailing party compensable attorney’s fees after prevailing by settlement in a “lemon law” lawsuit under the Song-Beverly Consumer Warranty Act (“SBA”). The fee and cost Motion is GRANTED.

BACKGROUND

This motion for attorney’s fees follows a comprehensive settlement reached after a lawsuit was filed in November 2024. The defendant agreed to pay Plaintiff \$80,000 for alleged defects in her 2020 Chevrolet Silverado. Defendant comments in the opposition papers that “this case involved no hearing time, no depositions, no discovery disputes, no dispositive motions, no expert discovery, or trial preparation. In the approximately eleven months spent litigating this case, the parties solely engaged in (one-sided) standard discovery, all of which is routine to the Song-Beverly cases that Counsel “routinely prosecutes.” (Bowton Decl, ¶12). The litigation commitment appears minimal, indicating that the parties successfully resolved the dispute out of court—saving both sides fees.

Defendant General Motors (“GM”) argues that this case exemplifies the kind of low-friction litigation AB 1755 was designed to streamline in that it was filed, negotiated, and settled in just over 12 months. Defendant objects that counsel now seeks a total and fee cost recovery of \$35,588.90, consisting of: (1) \$26,795.50 in attorney fees; (2) \$754.75 in costs and expenses; and (3) a 0.3 multiplier enhancement on the attorney fees, or \$8,038.65

LEGAL STANDARD

Attorney's fees are permitted under California law pursuant to the Song Beverly Consumer Warranty Act (Civil Code §§ 1794(d)), which states in the relevant part:

If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as a part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action."

Plaintiff is the prevailing party in this matter. (See *Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1263)

Defendant GM raises four arguments in opposition to the prevailing party fee motion. First, GM questions the requested reasonable rate of \$600.00 per hour for attorney time. Second, GM argues that the hours billed are excessive. Third, GM argues that a multiplier of the fee is unwarranted. Finally, GM argues this case does not warrant a multiplier to account for the risk taken by Plaintiff's counsel, arguing that this was a "typical" lemon law case that required no skill or expertise.

ATTORNEY'S FEES

The court scrutinizes the fee petition under the "lodestar" method, determining the lodestar as the number of hours reasonably spent multiplied by the reasonable hourly rate for that work on a non-contingency basis. This requires the trial court to set the lodestar based on careful examination of each attorney's reasonable hourly compensation and the time spent on each task. (*Vo v. Las Virgenes Water District*, (2000) 79 Cal.App.4th 440, 445-446.)

Reasonable Rate.

Plaintiff's counsel Alexander Khoubian, Esq., received his Bachelor of Arts from University of California San Diego, his J.D. from Southwestern University Law School, where he graduated on top of his class. He founded Alpha Law Firm PC, which he says focuses on consumer warranty, fraud cases, including class actions. His declaration describes that he has settled and litigated hundreds of cases involving consumer warranty, insurance, personal injury, and consumer fraud actions. He seeks fee compensation at a rate of \$575 per hour.

Philip McCabe, Esq. received his Bachelor of Arts from Loyola University New Orleans, with honors, and earned his J.D. from Loyola Law School, Los Angeles. Mr. McCabe has been practicing law for ten years. He seeks fee compensation of \$425.00 per hour.

Plaintiff also seek paralegal fee recovery at \$250 per hour.

The lodestar method requires the trial court to determine a lodestar figure based on careful examination of reasonable hourly compensation of each attorney and consideration of the time spent to perform each task. (*Vo*, 79 Cal.App.4th 445-446.). "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*PLCM Group, Inc. v.*

Drexler (2000) 22 Cal.4th 1084, 1095, citing *Serrano v. Priest* (*Serrano III*) (1977) 20. Cal.3d 25, 49.)

GM objects to the requested hourly rate as being excessive, arguing that the rates are “unreasonable”. GM argues that Mr. McCabe’s requested rate is \$430, which is the rate listed in the firm billing. He is asking \$225. The court will use his requested rate, which brings down the Plaintiff’s total lodestar demand from \$943 for 4.1 hours of work, to \$922.50 (\$20.50 difference). Defendant asks the court to consider the rates listed in 2025 Real Rate Report, which classifies “Consumer Related Claims”. That report sets rates at \$358 for partners and \$355 for associates, as the prevailing rates in Marin County. These rates might apply for defense counsel who negotiates fee litigation contract with a corporation like GM or insurance company. The contingent nature of plaintiff’s representation is addressed separately through a discretionary lodestar multiplier available to contingency counsel. This type of multiplier is not available to insurer-retained or corporate defense counsel. (See, *Nemecek & Cole v. Horn*, (2012) 208 Cal. App. 4th 641, 650. (the court refused to treat the \$100–\$215 hourly rate insurance-defense counsel billed the insurer as the maximum recoverable rate.)

Counsel bears the burden of proof to establish “reasonable rates in the local community as a basis for [the fee] award.” (*Nemecek*, 208 Cal. App. 4th 641, 652; see also *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 155 [explaining the reasonable hourly rate is that prevailing in the community for similar work].) “The relevant ‘community’ is that where the court is located.” (*Altavion, Inc. v. Konica Minolta Sys. Lab., Inc.* (2014) 226 Cal.App.4th 26, 71.) “[U]se of reasonable rates in the local community, as an integral part of the initial lodestar equation, is one of the means of providing some objectivity to the process of determining reasonable attorney fees.” (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1243.).

The court has reviewed counsel’s declarations. The court finds the hourly rates requested by both lawyers eminently reasonable and well in line with the rates charged by Marin County attorneys of similar experience.

Hours Worked.

A party who seeks attorney’s fees has the initial burden of “documenting the appropriate hours expended.” (*ComputerXpress Inc. v. Jackson*, (2001) Cal.App.4th 993, 1020.) Once a documented hour total has been submitted, the opposing party may make objections to the hours claimed. General objections that work is “excessive” or “unreasonable” are insufficient. The objections should be specific. (*Premier Med. Mgmt. v California Ins. Guarantee Ass’n*, (2008) 163 Cal.App. 4th 550, 563.)

The basis for calculating the lodestar “must be the actual hours counsel devoted to the case, less those resulting from ineffective or duplicative use of time.” (*Horsford v. Board of Trustees of Cal. State*, (2005) 132 Cal.App. 4th 359, 395.) The court also recognizes these billing records of counsel constitute “verified time statements of the attorneys, as officers of the court, and are entitled to credence in the absence of a clear indication that the records are erroneous.” *Id.* at 394.

GM argues that the time billed is excessive and that based on a review of the billing, the Court should be reduce the fees because the hours billed are unsupported and unreasonable. Defense cites examples of instances in which Defense and Plaintiff performed the same work, but Defense claims Plaintiff recorded significantly more time for this work. For example, GM argues that Plaintiff's counsel should not charge \$3,500 pre-retainer, intake and initial review. GM requests a reduction from the 7.1 hours of attorney time devoted to the vehicle surrender. GM objects to counsel's billing 4.7 hours for clerical tasks. GM requests the time spent reviewing discovery be reduced from 8 to 6.5 hours; and asks that "template" discovery response billing be reduced from 4 to 3 hours. GM requests that time devoted to correspondence and communications be reduced from 7.7 hours, to 6.7 hours. GM requests that time devoted to preparing the complaint be reduced from 2.6 hours to 2.1 hours. GM request that time spend drafting Case Management Statements be reduced from 1.8 hours to 1.5 hours. GM requests that document review hours be reduced from 2.8 hours to 1.8 hours. GM asks that the time devoted to mediation be reduced from 12 to 8 hours. In total, GM requests counsel's hours be reduced by at least 39.9 hours.

Defense counsel does not disclose how many defense hours were committed to drafting and replying to the complaint, answer, and discovery, making it difficult for the court to gauge whether Plaintiff's time was reasonable. Plaintiff's time records are treated as a verified, accurate record of the lawyers' billing. (See, *Horsford v. Board of Trustees of Cal. State*, (2005) 132 Cal.App. 4th 359, 395). Defense counsel argues that this case was a typical car case. If so, the court presumes plaintiff's counsel routinely expects to be paid for hours worked when they prevail. Either party may now request, and the court will likely grant, a continuance to conduct discovery of the billing invoices. Because the merits have been resolved, the actual billing statements are relevant to any accusations of overbilling.

California courts have consistently held that verified time statements from attorneys carry a presumption of accuracy when submitted in support of fee requests. In *Horsford*, the court articulated the standard that attorney billing records are presumed credible unless there is "a clear indication the records are erroneous." This principle has been repeatedly affirmed. In *City of Colton v. Singletary*, the court applied this exact standard, holding that "the verified time statements of (an) attorney (), as (an) officer() of the court, are entitled to credence in the absence of a clear indication the records are erroneous". ([City of Colton v. Singletary, \(2012\) 206 Cal.App.4th 751.](#)) The court further noted that when a party fails to point out specific errors in counsel's declaration, it is proper for the trial court to rely on that declaration.

Plaintiff's counsel submitted detailed contemporaneously created billing statements attached to the declaration filed in support of the fee request. The billing indicates the firm's lawyers dedicated 82.24 hours to this matter.

Atty/Staff	Hours	Rate	Lodestar
Khoubian	19.5	\$ 575.00	\$ 11,212.50
McCabe	4.1	\$ 225.00	\$ 922.50
Paralegal	58.64	\$ 250.00	\$ 14,660.00

The court has reviewed the billing statements attached as Exhibit A to the Khoubian Decl. and finds the records credible, reasonable, and contemporaneously created. The court notes that Defendant is not charged for administrative time. The declaration is submitted under penalty of perjury by an officer of the court. The court has no basis to doubt the accuracy of the declaration's statements regarding the work done to prevail in this case.

The total compensable time approved for Plaintiff's counsel is as follows: Khoubian, 19; McCabe, 4.1; and Paralegal, 55. This represents 29.3 hours, including a 4.14-hour cut from the requested hours. The resulting lodestar award is \$25,597.50.

Atty/Staff	Hours	Rate	Lodestar
Khoubian	19	\$ 575.00	\$ 10,925.00
McCabe	4.1	\$ 225.00	\$ 922.50
Paralegal	55	\$ 250.00	\$ 13,750.00
	78.1		\$ 25,597.50

Multiplier.

Plaintiff seeks a multiplier of .3.

In considering whether to apply a multiplier, the Court should not consider factors which are already included in the lodestar amount, such as extraordinary skill and the difficulty of the question involved. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139.) "Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation." (*Id.* at p. 1139.)

The Court recognizes that Plaintiff's counsel must be compensated for the risk associated with contingency cases. (*Ketchum*, 24 Cal. 4th 1132-1133.) As noted in *Ketchum*, there are two methods a Court may employ to compensate for this risk. One method is to use an adorned lodestar rate, as discussed above. The other method is to use an unadorned lodestar rate and then to award a multiplier to compensate for the contingent nature of the case. The unadorned lodestar rate is the starting point, as it "reflects general local hourly rate[s] for *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or other factors." (*Id.* at 1132-33.) To justify an enhancement, Counsel needed to show: (1) that the case involved novel or complex questions and required a high level of skill; (2) that taking the case precluded other employment by Counsel; and (3) that the fee was contingent in that success was uncertain and Counsel risked nonpayment. (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal. App. 4th 785, 819; *Ketchum*, supra, 24 Cal.4th at 1132, 1139.)

The California Supreme Court has determined that the "contingent risk" in lemon-law cases is significantly mitigated by the statute's fee-shifting provision, which guarantees reasonable fees and costs to a prevailing buyer. (*Graham v. DamlerChrysler Corp.*, (2004) 34 Cal.4th 553, 579; see also Aispuro, 2020 WL 4582677 at *6 (rejecting any enhancement in Song-Beverly case

because the risk to counsel for taking the case on contingency was reduced by the possibility of recovering statutory fees).)

The Court elects to use the method of using an unadorned lodestar rate and applying a multiplier to compensate for the contingency risk in this case. The multiplier may also be used to compensate for other factors such as the novelty of the case, the exceptional skill of the representation, and “the extent which the nature of litigation precluded other employment by attorneys.” *Id.* at 1132.

The court concludes that this case does not warrant a multiplier. The record does not indicate hard-fought litigation. Rather, it involved good lawyers who recognized the value of resolving the case quickly, serving their clients with a high level of professionalism..

Costs

Plaintiff’s request for cost recovery of \$754.75 is GRANTED over GM’s objection.

CONCLUSION

After reviewing the papers, the Court adjusts the hours down to 78.1 and awards a total unadorned lodestar of \$25,597.50.

Plaintiff shall prepare the order.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

***IT IS ORDERED* Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court’s website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.**

***FURTHER ORDERED* Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party’s connection is inadequate, the Court may proceed in that party’s absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005785

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JOSE AVIGAIL GRAMAJO
ORDONEZ

vs.

DEFENDANT: GENERAL MOTORS LLC

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

This matter has been called and continued several times due to delays with the court's Discovery Facilitator Program. Pursuant to Marin County Rule, Civil 2.13 Bryan Kreft was appointed to preside as Discovery Facilitator for Plaintiff's motion to compel responses to documents, set one.

On September 28, 2026, the parties filed a joint statement apprising the court of the status of the discovery dispute. With Mr. Kreft's assistance, the parties agreed that GM would serve verified, amended responses before September 25, and that Plaintiff would first provide GM with revised definitions for the information sought. The parties explain that the scope of the updated definitions has slowed GM's ability to respond by the due date.

Appearances are required for an update regarding the exchange of information.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

***IT IS ORDERED* Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.**

***FURTHER ORDERED* Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006536

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: SOO YOUNG KIM, ET AL

vs.

DEFENDANT: HARRIGAN
WEIDENMULLER COMPANY

NATURE OF PROCEEDINGS: DEMURRER

RULING

The demurrer by defendant Harrigan Weidenmuller Company (“Defendant” or “WBC”) to the First through Sixth causes of action in the First Amended Complaint (“FAC”) of Plaintiffs Soo Young Kim (“Kim”) and Erich Lichtblau (“Lichtblau”) (collectively “Plaintiffs”) is overruled as to the First, Second and Fifth Causes of Action. The demurrer to the Third, Fourth and Sixth Causes of Action is sustained with 30 days leave to amend. The demurrer on the uncertainty ground under Code of Civil Procedure section 430.10, subdivision (f), is overruled.

Factual Background

Plaintiffs were Defendant’s commercial tenants. On or about June 14, 2014, Plaintiffs and Defendant, through Timothy Muller (“Muller”), Defendant’s President and authorized agent, executed a 10-year lease for restaurant space at 115 San Anselmo Avenue in San Anselmo, plus the use of 1,000 square feet of basement space at no extra charge. Plaintiffs allege Defendant failed to provide them with a legible copy of the lease until December 2023, despite repeated requests beginning in 2014.

On June 6, 2025, Plaintiffs filed their initial complaint. On March 17, 2025, in response to a pending demurrer by Defendant, Plaintiffs filed their operative FAC alleging the following causes of action: 1) breach of contract; 2) breach of the covenant of good faith and fair dealing; 3) intentional interference with prospective economic advantage; 4) negligent interference with prospective economic advantage; 5) breach of contract; and 6) breach of the covenant of good faith and fair dealing.

The First through Fourth causes of action relate to Defendant’s alleged unreasonable refusal to allow Plaintiffs to sublease or transfer the lease. Plaintiffs allege that in May 2022, they contacted Defendant about a restaurant group principal interested in assuming the lease and paying Plaintiffs \$100,000 up front plus \$4,700 per month for the remaining lease term. Plaintiffs allege Defendant repeatedly refused to consider the assignment over more than one

year, citing uncertainty about a Post Office lease extension and Defendant's desire to redevelop or sell the building. Plaintiffs further allege that as a result, the prospective buyer lost interest and withdrew.

The Fifth and Sixth Causes of Action allege that Defendant failed to reimburse Plaintiffs for two types of costs that, under the Lease, were Defendant's responsibility. Plaintiffs allege they paid \$8,945 for fire sprinkler system compliance costs and seek reimbursement of \$9,746 in attorney fees and \$1,003 in contractor fees incurred in connection with basement flooding and related litigation against a sanitary district.

Defendant now demurs to all six causes of action on the ground each fails to state facts sufficient to state a claim under Code of Civil Procedure section 430.10, subdivision (e). Defendant also makes passing reference to uncertainty under Code of Civil Procedure section 430.10, subdivision (f).

Demurrer

Untimely Opposition and Reply

Oppositions must be filed by the ninth court day before the hearing. (Code of Civ. Pro., § 1005, subd. (b).) Replies must be filed and served at least five court days before the hearing. (*Id.*) Plaintiffs opposition was filed and electronically served on June 4, 2026, less than nine court days before the hearing. However, the court has discretion to consider an untimely opposition. (See Cal. Rules of Court, rule 3.1300(d); *Slayton v. Sup. Ct.* (2006) 146 Cal.App.4th 55, 58, n. 2; *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29.) In filing a substantive reply, albeit untimely, Defendant waived any defect or irregularity in the filing and service of the opposition. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) The Court shall give due consideration to the untimely opposition and reply.

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. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) “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, 317.) “Liberality in permitting amendment is the rule, if a fair opportunity

to correct any defect has not been given.” (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.)

Merits

1st Cause of Action – Breach of Contract (Unreasonable Refusal to Sublease or Assign Lease)

The elements of a breach of contract claim are: 1) the existence of a contract; 2) plaintiff’s performance or excuse for nonperformance; 3) breach; and 4) damages. (*Wall Street Network, Ltd. v. N. Y. Times Co.* (2008) 164 Cal.App.4th 1171, 1178.) A commercial landlord may withhold consent to an assignment only for a commercially reasonable objection connected to the property itself. (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488, 493.) Defendant argues that Plaintiffs’ claim fails at the threshold because Plaintiffs did not comply with Paragraph 12.2(e) of the lease, which requires a written request accompanied by specified financial and operational information about the proposed assignee and a \$500 review fee. Defendant further contends the lease’s anti-waiver clause at Paragraph 24(a) precludes any waiver theory.

The Court concludes the FAC adequately pleads breach of contract on waiver, estoppel, and excuse-of-condition theories. Waiver requires clear and convincing evidence of intentional relinquishment or abandonment of a contractual right. (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 569.) The FAC alleges when Plaintiffs twice asked Defendant to consider assigning the Lease in 2019, Defendant gave the requests full consideration without requesting Plaintiffs submit them in writing nor demanding that Plaintiffs pay \$500, or any other amount. (FAC, ¶ 29.) The pleading further alleges that during the 2022 assignment request, Muller flatly denied Kim’s request and instructed her to approach him again in ten days; he did not state that Defendant needed the request in writing, nor that Plaintiffs needed to pay \$500. (FAC, at ¶ 32.) When she called again in ten days, he cited again the purported uncertainty of the Post Office extension and Defendant’s desire to redevelop or sell the building, and instructed Kim to call back in 30 days and again never mentioned wanting a request in writing or the \$500. (*Id.*) This process repeated for over a year with Muller consistently saying that Defendant was unwilling to consider an assignment while the lease with the Post Office was uncertain, and actually declaring in January 2023, “I am not going to do anything that helps you.” (*Id.* at ¶ 32.)

These allegations plausibly allege waiver at the pleading stage by describing repeated substantive denials without invocation of the procedural prerequisites, plus alleged prior instances in which Defendant evaluated assignments without demanding the writing or fee. The anti-waiver clause at Paragraph 24(a) strengthens Defendant’s position but does not categorically defeat waiver as a matter of law on demurrer. California law does not treat such clauses as immune from waiver by subsequent conduct.

Estoppel is also sufficiently pleaded. Estoppel requires detrimental reliance. (*Quach, supra*, 16 Cal.5th at 569.) The FAC alleges after the lease was executed by Tim Muller on behalf of Defendant, Brian Muller emailed a highly illegible copy to Plaintiffs on June 14, 2014. (FAC, ¶ 9.) Plaintiffs allege Defendant repeatedly denied its responsibility or simply ignored pleas for remediation, and Plaintiffs began to request a legible copy of the Lease and continued to do so for over eight years, by email, text and phone. (*Id.* at ¶ 15.) Defendant did not provide a legible copy

until December 19, 2023, nine years after the first request and after the consent dispute had ended. (*Id.*) These allegations permit an inference that Plaintiffs were unaware of the detailed Paragraph 12.2(e) requirements because the lease copy they had was unreadable and Defendant withheld a legible one until after the assignment dispute concluded. The pleading also alleges a yearlong course of substantive denials that could have induced Plaintiffs to believe formal compliance was pointless.

The excuse-of-condition or anticipatory-breach theory is also adequately pleaded. California law permits excuse of a condition where the promisor's repudiation makes performance futile or unnecessary. (*Guerrieri v. Severini* (1958) 51 Cal.2d 12, 23.) The FAC alleges that Plaintiffs informed Defendant the prospective buyer did not require a lease extension (FAC, ¶ 31), then alleges repeated categorical refusals culminating in the statement "I am not going to do anything that helps you." (*Id.* at ¶ 32.) At the pleading stage, that is sufficient to allege a repudiation of any future evaluation process.

Defendant's argument that the pleaded facts show a commercially reasonable justification also does not support demurrer. The FAC alleges Defendant cited negotiations with the Post Office regarding a 10-year extension of its lease, ultimately signed mid-2023, which would also give Defendant or any new owner the Lessor's unilateral right to cancel (*Id.* at ¶ 31) and a desire to redevelop or sell. These allegations may ultimately bear on reasonableness, but the question is ordinarily factual, and the pleading does not conclusively establish a property-based justification as a matter of law. (*Kendall, supra*, 40 Cal.3d p. 493.)

The demurrer to the First Cause of Action is OVERRULED.

2nd Cause of Action – Breach of Covenant of Good Faith and Fair Dealing (Unreasonable Refusal to Sublease or Assign Lease)

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. The implied covenant applies where one party is vested with discretionary contractual power affecting another's rights, but it cannot override or contradict an express lease term. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349.)

The Second Cause of Action is adequately pleaded because breach of a specific express term is not always a prerequisite to a covenant claim where discretionary contractual power is exercised in bad faith. The same facts supporting the First Cause of Action support an allegation that Defendant exercised or purported to exercise its consent discretion categorically and for self-interested reasons disconnected from any good-faith evaluation of the proposed transaction. Yet, for over a year, Defendant, through its agent Tim Muller, unreasonably and arbitrarily refused to allow Plaintiffs to assign or sublet the Lease. (FAC, ¶ 28.) In offering this late extension despite Plaintiffs asking only for an assignment, Defendant sought to lock in for another five years the same tenant who had since 2014 done virtually all the work in cleaning, maintaining and coordinating the repair of the Building. (*Id.* at ¶ 33.) The covenant claim overlaps substantially with the contract claim, but at this stage it is not wholly duplicative because it pleads bad-faith exercise of contractual discretion as an alternative theory. The FAC does not plead that Defendant simply exercised an unqualified express right; it pleads that Defendant refused to engage the consent process in good faith. (*Carma Developers (California), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342.)

The demurrer to the Second Cause of Action is OVERRULED.

3rd Cause of Action – Intentional Interference with Prospective Economic Advantage

To state a claim for intentional interference with prospective economic advantage, a plaintiff must plead an economic relationship with probable future benefit, the defendant's knowledge, intentional acts designed to disrupt, actual disruption, proximate economic harm, and independently wrongful conduct beyond the interference itself. (*LiMandri v. Judkins* (1997) 52 Cal. App.4th 326; *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159.)

The FAC adequately pleads an economic relationship and knowledge. It alleges in May of 2022; a restaurant group's principal mistook a Craigslist posting for a different restaurant and contacted Kim about purchasing Plaintiffs' restaurant. (FAC, ¶ 30.) The buyer agreed to pay Plaintiffs \$100,000 up front and pay Plaintiffs \$4,700 per month in rent for the remaining term of the Lease. (*Id.*) Kim alleges she was scrupulous in informing Defendant that this buyer did not require an extension, calling Muller in late May 2022 to ask him to allow the assignment of the Lease for its remaining term. (*Id.*) Kim emphasized that the buyer was well aware that the Building was for sale and subject to being re-developed on this and each of several more phone calls with Muller. (*Id.* at ¶ 31.) Credited as true, these allegations are sufficient to plead knowledge of a prospective economic relationship even without the buyer's identity, written offer, or financial package. The FAC also pleads disruption and resulting loss. (*Id.* at ¶ 36.)

The defect lies in independent wrongfulness. After *Korea Supply*, wrongfulness must be supplied by a legal standard independent of the interference itself. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134.) The FAC identifies as wrongful that Defendant improperly and unreasonably withheld consent for the sublease or assignment of the lease at 115 San Anselmo Avenue, San Anselmo, California, knowing that doing so would prevent Plaintiffs from selling their restaurant to a ready, willing, and able buyer. (FAC, ¶ 47.) That describes the alleged breach of the lease obligation itself. Although the Court has concluded that Plaintiffs adequately plead a lease-based claim under waiver, estoppel, and excuse theories, the independent-wrongfulness element for the tort requires a separate legal standard beyond the contractual duty. The FAC does not presently identify a statutory, regulatory, common law tort, or other noncontractual legal standard that Defendant violated. Because a more specific independently wrongful predicate might be alleged, there is a reasonable possibility of cure by amendment.

The demurrer to the Third Cause of Action is SUSTAINED WITH LEAVE TO AMEND.

4th Cause of Action - Negligent Interference with Prospective Economic Advantage

Negligent interference with prospective economic advantage requires a legal duty of care with respect to the plaintiff's prospective economic relationship. (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786.) An ordinary commercial landlord-tenant relationship does not create a special duty to protect a tenant's prospective sale transaction. (*Girard v. Delta Towers Joint Venture* (1993) 20 Cal.App.4th 1741, 1747.)

The FAC pleads no facts taking this dispute outside that rule. It alleges only a standard commercial lease relationship. Nothing pleaded suggests a professional-services undertaking or other special relationship that the law contemplates. (*North American, supra*, 59 Cal.App.4th 764.) Applying the *Girard* factors does not change the outcome, because although harm to Plaintiffs may have been foreseeable, the relationship remains purely contractual, and the claimed loss is purely economic. While it is doubtful that an amendment would convert this ordinary landlord consent dispute into a negligence-duty case, given this is the first challenge to the pleadings, the Court permits an opportunity to amend.

The demurrer to the Fourth Cause of Action is SUSTAINED WITH LEAVE TO AMEND.

5th Cause of Action – Breach of Contract (Failure to Reimburse Fire Sprinkler and Flooding Costs)

The FAC pursues two distinct reimbursement theories, fire sprinkler costs and flooding costs. Because a demurrer does not lie as to a part of a cause of action, the claim survives if either theory is sufficiently pleaded. (*PHI II, Inc. v. Sup. Ct.* (1995) 33 Cal.App.4th 1680, 1682.)

As to the sprinkler theory, the FAC alleges the property's sprinkler system is to be in good operating condition and is Lessor's responsibility to install, maintain, and operate. (FAC, ¶ 17.) It quotes Paragraph 7.2 of the lease: "Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems." (*Id.*) Despite the foregoing warranty, the fire sprinklers were not in good working order when Plaintiffs took possession and Defendant forced Plaintiffs to pay half the cost (\$8,945) of putting the system in compliance with the Lease's warranty clause. (*Id.*) The FAC clearly alleges that the fire sprinkler system covered the entire building, including the 14,000 square foot basement. (*Id.*)

Reading Paragraphs 7.2 and 4.2 together, the plain meaning is not that every sprinkler expense is necessarily shifted to Plaintiffs; Paragraph 7.2 places the repair obligation on lessor, subject to whatever reimbursement Paragraph 4.2 may authorize. Contract language is read in its ordinary sense, and apparently inconsistent clauses must be reconciled, if possible, to give effect to the whole agreement. (Civ. Code, §§ 1644, 1652.) Defendant's reliance on an email purportedly stating the system covered only Plaintiffs' premises does not conclusively defeat the claim on demurrer; that email is extrinsic evidence, and even if referenced in the FAC it does not override the pleaded factual allegation about the system's scope for purposes of this motion. Because the FAC alleges a building-wide sprinkler system and a lease clause assigning the fire sprinkler system to lessor's obligations, the sprinkler theory is sufficiently pleaded.

The flooding theory is more doubtful. The FAC relies on Section 6.2(e) of the lease, which addresses "Lessor Indemnification" and provides that lessor shall "indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees." (FAC, ¶ 27.) The FAC alleges that Defendant's gross negligence caused hundreds of thousands of gallons of raw

sewage to damage Plaintiffs' property and cause Plaintiffs to incur expenses and that Defendant refused to reimburse Plaintiffs for their damages. (*Id.* at ¶¶ 23-27.) The clause is framed in environmental and hazardous-substance terms, and the FAC does not clearly plead why raw sewage falls within “environmental damages” or “Hazardous Substances” as defined in the lease, or why the clause reaches first-party attorney and contractor fees incurred by Plaintiffs in their own remediation efforts and related litigation. The word “reimburse” helps Plaintiffs, but the current allegations do not clearly bridge the rest of the contractual language.

Because the sprinkler theory adequately states a breach-of-contract claim, however, the Fifth Cause of Action as a whole survives. The Court does not sustain a demurrer to only part of a cause of action. The demurrer to the Fifth Cause of Action is **OVERRULED**.

6th Cause of Action – Breach of Covenant of Good Faith and Fair Dealing ((Failure to Reimburse Fire Sprinkler and Flooding Costs)

A covenant claim tied to reimbursement obligations is legally viable in the abstract, but the FAC does not plead an independent covenant theory distinct from the Fifth Cause of Action. Unlike the consent-setting claims, the reimbursement dispute does not involve obviously discretionary contractual judgment; it is pleaded as a straight refusal to pay amounts allegedly due under the lease. The FAC therefore states a claim that is wholly derivative of the contract theory and adds no separate bad-faith conduct beyond the alleged breach itself. (*Carma Developers (California), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342.) Because Plaintiffs might amend to identify a distinct discretionary or bad-faith claims-handling theory if one exists under the lease and the facts, there is a reasonable possibility of cure.

The demurrer to the Sixth Cause of Action is **SUSTAINED WITH LEAVE TO AMEND**.

Uncertainty

Defendant’s passing reference to uncertainty under Code of Civil Procedure section 430.10, subdivision (f) is not developed. The demurrer presents failure-to-state theories but does not present a distinct uncertainty analysis. Uncertainty demurrers are strictly construed and are generally overruled where the facts alleged are sufficiently clear to allow a response. (*Khoury v. Maly’s California, Inc.* (1993) 14 Cal.App.4th 612, 616.) The uncertainty ground is **OVERRULED** as unsupported.

Ruling

The demurrer to the First, Second and Fifth Causes of Action are **OVERRULED**. The demurrer to the Third, Fourth and Sixth Causes of Action are **SUSTAINED WITH LEAVE TO AMEND**. The demurrer on the uncertainty ground under Code of Civil Procedure section 430.10, subdivision (f), is **OVERRULED**.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006897

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JPMORGAN CHASE BANK,
N.A.

vs.

DEFENDANT: PAUL A. GOLDMAN

NATURE OF PROCEEDINGS: MOTION - DISMISS

RULING

Defendant Paul Goldman filed a Request for Dismissal on June 30, 2026, based on Plaintiff's alleged failure to link the debt to the moving party.

Plaintiff has not responded to or opposed the motion. The failure to oppose is deemed consent to granting it. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) Defendant's motion is therefore GRANTED in its entirety.

The case is dismissed without prejudice (which means the Plaintiff may re-file the case).

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0008133

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JONATHAN BRILL, ET AL vs. DEFENDANT: THE HEADLANDS HOMEOWNERS ASSOCIATION, A CALIFORNIA NONPROFIT CORPORATION	
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NATURE OF PROCEEDINGS: MOTION - ENFORCE SETTLEMENT

RULING

Plaintiffs Jonathan Brill, Rebecca McDonald, and Cheryl Contee's ("Plaintiffs") Motion to Enforce Settlement Agreement with defendant The Headlands Homeowners Association ("Defendant" or "HOA") is GRANTED in part. Judgment shall be entered pursuant to the terms of the Settlement Agreement and Plaintiffs are awarded \$5,000 in attorney's fees and costs.

Defendant shall deliver payment of the \$5,000 in attorney's fees and costs to Plaintiffs' counsel within twenty (20) days of the date of this Order.

OBJECTIONS TO EVIDENCE

Defendant's Objections to Evidence Nos. 1 and 2 are SUSTAINED. (Evid Code, §§ 1200, 1401, 1521.) Objections Nos. 3-26 are OVERRULED.

Plaintiffs' Objections to Evidence Nos. 1-3, 6, 7, 9, 10-13, and 16 are SUSTAINED. (Evid Code, §§ 800, 1152, 1200.) Objections Nos. 4, 8, and 15 are OVERRULED.

LEGAL STANDARD

Code of Civil Procedure section 664.6 provides a summary procedure to enforce a settlement agreement by entering judgment pursuant to the terms of the settlement if certain conditions are satisfied. (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 309. Internal citations omitted.)

To take advantage of the statute's expedited procedure, a party must establish the agreement at issue was set forth "in a writing signed by the parties" or was made orally before the court. (*Ibid.* Note, under the current version of section 664.6, subd. (b), a writing is now deemed signed by a party if it is

signed by: (1) the party; (2) an attorney who represents the party; or (3) in certain circumstances, an authorized agent of an insurer defending and indemnifying the party.)

The Court must then determine whether the parties entered a valid and binding settlement. (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566. Citing *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 99.) This inquiry includes determining that: (i) all material settlement terms are defined, (ii) the parties understand those terms, and (iii) the parties expressly acknowledged their understanding and agreement to be bound by those terms. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911.) If no meeting of the minds has occurred on the material terms of a contract, basic contract law provides that no contract formation has occurred. (*Weddington Prods., Inc. v. Flick* (1998) 60 Cal.App.4th 793, 797.) A judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment, however, nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon. (*Id.*, at p. 810.)

Notably, a party bring a motion under section 664.6 does not need to establish a breach of the settlement agreement; the court is authorized to enter judgment pursuant to the settlement regardless of whether the settlement's obligations have been performed or excused. (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185.)

The statutory procedure for enforcing settlement agreements under section 664.6 is not exclusive. Thus, even when the summary procedures of section 664.6 are not available, a party can still seek to enforce a settlement agreement by, among other things, prosecuting an action for breach of contract. (*Harris, supra*, at p. 306.)

DISCUSSION

Plaintiffs own real properties which are part of the HOA. A dispute arose after Plaintiffs began a fire break plan landscaping project (“the Buckelew Project”). On June 2, 2025, counsel for the HOA issued a Notice of Non-Compliance and Demand to Cease and Desist regarding the Buckelew Project, asserting that no adjacent-owner signatures or Board approval had been obtained for the Buckelew Project. On November 7, 2025, Plaintiffs filed a Complaint for Breach of Equitable Servitudes - Governing Documents (Civil Code § 5975) and Declaratory Relief.

On November 10, 2025, Plaintiffs filed an ex parte application for a temporary restraining order prohibiting and enjoining the HOA from removing the Buckelew Project and taking any related enforcement action against the Plaintiffs. (Lopez Decl., ¶ 5.) On November 10, 2025, Plaintiffs and the HOA, represented by corporate counsel Berding Weil, participated in informal dispute resolution (“IDR”). (Lopez Decl., ¶ 6.) From November 10, 2025, through December 17, 2025, the parties continued negotiating a potential resolution to the dispute, postponed the HOA’s removal efforts for the Buckelew Project, and took the ex parte off calendar. (Lopez Decl., ¶ 7.)

On or about December 18, 2025, the parties entered into a Settlement Agreement authorizing a landscaping installation which incorporates a walkway using flagstone and pea gravel substrate serving as a landscape and firebreak improvement in the undeveloped back area of the Buckelew Building and required the HOA to donate certain pavers upon removal (in order to install the flagstone path). (Lopez Decl., ¶ 8, Ex. 1.)

Work began on the landscaping installation. On March 31, 2026, Plaintiffs sent a demand letter to the HOA regarding perceived deficiencies in the work, including that the Flagstone feature varied significantly in width, failed to provide the continuous fifteen-foot firebreak depicted in the Landscape Installation Plan, departed from the agreed design, and raised concerns regarding grading, perimeter plantings, and overall compliance with the Settlement Agreement. Plaintiffs requested that the Association confirm how it intended to bring the project into compliance while construction remained ongoing. (Lopez Decl., ¶ 9.) Plaintiffs also contend that the agreed upon donation has yet to occur.

The Settlement Agreement paragraph 24 provides:

“Stipulation to Judicial Enforcement of Agreement. Each Party to this Agreement stipulates that, in the event of a breach of the terms of this Agreement, this Agreement may be enforced by the Superior Court of California for the County of Marin (hereafter “Superior Court”) pursuant to Code of Civil Procedure sections 664.6 and 664.7 and the Superior Court shall retain jurisdiction over the Parties to enforce the Agreement. In the event any Party files a motion to compel, and/or a petition or action seeking, enforcement of the terms of this Agreement and/or for breach of this Agreement, such hearing, petition, or action shall be in the Superior Court, with the prevailing Party entitled to reasonable attorney’s fees and costs associated with such motion and/or action.”

Section 664.6, subdivision (a) provides:

“If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

Subdivision (f)(1) then provides:

If the Court enters judgment or dismisses the case without prejudice pursuant to this section, the following shall apply: (1) A party may file a motion or other document pertaining to the settlement, including an application for determination of good faith settlement, a motion for the reduction or determination of a lien, a petition related to the compromise of the claim of a minor or person with a disability, or, if the terms of a settlement are not performed, a motion based upon such terms. Responsive filings and related documents may also be filed.

(*Id.*)

Subdivision (f)(1) makes it clear that performance of the settlement terms (and alleged breaches thereof) are dealt with in a motion filed *after* entry of judgment pursuant to section 664.6. (see, *Hines v. Lukes*, *supra*, 167 Cal.App.4th at p. 1185 [entry of judgment occurs regardless of breach; *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795–96])

Thus, Plaintiffs' request for a determination that the completed installation materially departs from the agreed terms and that the HOA has failed to satisfy material obligations under the Settlement Agreement, as well as an order compelling the HOA to specifically perform its remaining contractual obligations, is premature.

Section 664.6 creates a summary procedure for enforcing certain types of settlement agreements by converting them into judgments. (*Weddington Prods., Inc. v. Flick, supra*, 60 Cal.App.4th at p. 797.) Before judgment can be entered, the Court must determine whether a contract was formed and whether it is evidenced in a writing signed by the parties, containing the material terms. (*Id.*)

The litigants must first agree to the material terms of a settlement contract before a judgment can be entered "pursuant to the terms of the settlement." If no meeting of the minds has occurred on the material terms of a contract, basic contract law provides that no contract formation has occurred. If no contract formation has occurred, there is no settlement agreement to enforce pursuant to section 664.6 or otherwise. (*Id.*)

The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe. (*Weddington Productions v. Flick, supra*, 60 Cal.App.4th at p. 811.) In other words, mutual consent is gathered from the reasonable meaning of the words and acts of the parties, and not from their unexpressed intentions or understanding. (*Id.*)

After-the-fact disputes as to the meaning or legal effect of the terms of a contract do not, on their own, require the conclusion that the parties did not have a "meeting of the minds" (i.e., there was no mutual consent), as to such terms, and that no contract therefore exists. (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 352 ["few contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached"]; and *DuBarry International, Inc. v. Southwest Forest Industries, Inc.* (1991) 231 Cal.App.3d 552, 567 ["disputes as to the terms of a contract or the meaning or legal effect of those terms do not constitute a denial of contract existence"].)

Here, the Agreement's terms are plain and clear, and the parties objectively, mutually consented to them. (Lopez Decl., Ex. 1.) No party disputes that a valid contract was formed; they dispute only whether it has been breached. It is also undisputed that the parties signed the Settlement Agreement. (*Ibid.*)

For these reasons, enforcement of the Settlement Agreement via entry of judgment under section 664.6 is proper and the Motion is GRANTED in part. Counsel for Plaintiffs shall prepare a Proposed Judgment, circulate it to counsel for Defendant for approval as to form, then submit it for the Court's consideration. The Judgment shall contain the same terms as stated in the Settlement Agreement and shall not be modified based on one party's interpretation of those terms.

The Motion is DENIED as to the requests to determine whether breach has occurred and to order specific performance. Those requests are premature for the reasons outlined above.

Plaintiffs are the prevailing party on this Motion and are thus entitled to reasonable fees and costs pursuant to the Agreement. Plaintiffs seek fees and costs in the amount of \$7,140. After reviewing

the declaration of Attorney Lopez and in view of the fact that much of the Motion was spent prematurely addressing breach, the Court reduces the award to \$5,000.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

***IT IS ORDERED* Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.**

***FURTHER ORDERED* Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0008488

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: FREDERIC KLASKE

vs.

DEFENDANT: VOLKSWAGEN GROUP OF
AMERICA, INC., ET AL

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

RULING

Motions to Compel discovery responses were filed by Defendant Volkswagen Group on July 10, 2026.

Pursuant to Marin County Rule, Civil 2.13D, a slate of proposed Discovery Facilitators was sent to the parties on September 18, 2026. The parties are encouraged to work with the Facilitator, once selected, to resolve the motion out of court. The Court continues the hearing on the motions to November 13, 2026 at 1:30 pm in Dept. L to give the parties time to resolve the issues.

The Court reminds the parties that MCR Civ 2.13H requires not only the timely filing of the Declaration of Non-Resolution by each party five court days before the hearing, but also that “[t]he Declaration shall not exceed three pages and **shall briefly summarize the remaining disputed issues and each party’s contentions.**” (MCR Civ 2.13H(1), emphasis added.)

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/02/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009709

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: RODRIANCHRIS MORALES

vs.

DEFENDANT: NOVATO HEALTHCARE
CENTER LLC, ET AL

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Plaintiff Rodrianchris Morales filed a motion on August 5, 2026, seeking leave to file a first amended complaint. Defendant Novato Healthcare Center filed on September 17, a notice of non-opposition to the request.

Plaintiff's request is GRANTED, with the first amended complaint on file within 30 days of entry of order.

Plaintiff to prepare the order.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

***IT IS ORDERED* Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.**

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