

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001650

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: SHAWNA SIMS vs. DEFENDANT: MARIN GENERAL HOSPITAL	
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NATURE OF PROCEEDINGS: MOTION - SEAL

RULING

Defendant's unopposed motion to seal is granted.

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

The Zoom appearance information for October, 2025 is as follows:

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Meeting ID: 161 516 2449

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002416

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: AMERICAN EXPRESS
NATIONAL BANK

vs.

DEFENDANT: KATE SCHERMERHORN

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

American Express National Bank's ("Plaintiff") unopposed Motion for Entering Judgment Pursuant to Defendant's Default Under Settlement Agreement is granted.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003633

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: TOMALES BAY FOREST
KEEPERS, ET AL

vs.

DEFENDANT: CALIFORNIA STATE
PARKS

NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

Petitioners Tomales Bay Forest Keepers and the California Chaparral Institute's ("Petitioners") petition for a writ of mandamus is DENIED.

BACKGROUND

This case concerns wildfire risk mitigation efforts. In 2019, California's Board of Forestry and Fire Protection ("Board") adopted the California Vegetation Treatment Program ("VTP"), a wildfire risk reduction program centered around "treat[ing] vegetation that could become fire fuel." (PARKS0011109.) The VTP entails wildfire risk reduction treatments on approximately 20.3 million acres of land throughout the state. (PARKS0012533, PARKS0012536.)

The Board prepared an environmental impact report ("EIR") to assess the VTP's environmental impacts ("VTP-EIR"). The VTP-EIR is a program EIR, meaning an EIR prepared on a series of actions that comprise one large project and are related in specified ways. (Cal. Code Regs., tit. 14 (hereafter "Guidelines"), § 15168, subd. (a); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1169.)

Under certain circumstances, a lead agency may rely on a program EIR to avoid having to prepare separate EIRs for each of the program's component actions. (Kostska & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed. Cal. CEB) § 10.15.) The entire program is treated as a single "project" for CEQA purposes. Activities "within the scope" of the program can be approved based on the program EIR with no activity-specific environmental review needed. (*Ibid.*; *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 233; Guidelines, § 15168, subd. (c)(2).)

On July 8, 2024, Respondent California State Parks (“Respondent”) approved the Tomales Bay State Park Forest Health and Wildfire Resilience Project (the “Project”). The Project is a wildfire risk mitigation effort consisting of the removal of trees and other vegetation from up to 1,590 acres of land in and around Tomales Bay State Park. (PARKS0000023.) Respondent found that the Project is within the scope of the VTP-EIR and so approved it on the basis of that document without any Project-specific treatment under CEQA. (PARKS0000064.)

Petitioners are environmentalists concerned about the impact of the Project on Bishop pine trees. They seek a writ of mandate setting aside Respondents’ approval of the Project on the basis that the Project unjustifiably relied on the VTP-EIR to evade any CEQA review.

LEGAL STANDARD

“[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage.” (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117.) CEQA and its related regulatory guidelines “‘have established a three-tiered process to ensure that public agencies inform their decisions with environmental considerations.’” (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 687 [quoting *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112].) This case concerns whether the Project is within the scope of the VTP-EIR.

“Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.” (Guideline, § 15168, subd. (c)(2); *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 702.) A reviewing court upholds an agency’s decision not to require a supplemental or subsequent EIR if the administrative record as a whole contains substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 611.) In the current context upon review of an agency determination that a project is within the scope of a program EIR, substantial evidence is evidence of ponderable legal significance that is reasonable in nature, credible, and of solid value. [Citation.] In applying the substantial evidence standard of review, all conflicts in the evidence are resolved in favor of the prevailing party and all legitimate and reasonable inferences are made to support the agency’s decision. [Citations.] When two or more inferences reasonably can be deduced from the evidence, we cannot substitute our deductions for those of the agency.” (*IBC Business Owners for Sensible Development v. City of Irvine* (2023) 88 Cal.App.5th 100, 120-121.)

DISCUSSION

As discussed above, an agency may rely on a program EIR to avoid any additional environmental impact analysis for a subsequent project upon making a finding that the subsequent project is “within the scope” of the program EIR. (Guidelines § 15168, subd. (c)(2).) To determine “whether later activities are within the scope of a *program* EIR,” the Guidelines direct the agency to apply the same test used to determine whether a *project* EIR requires a

subsequent EIR. (*IBC Business Owners, supra*, 88 Cal.App.5th 100, 119 [emphasis in original]; CEQA Guidelines, § 15168, subd. (c)(2).) A project EIR requires a subsequent EIR only if the agency determines based on substantial evidence that at least one of the following circumstances (hereafter, “the Section 15162 Criteria”) exists:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete . . . , shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR[];
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(Guidelines, § 15162, subd. (a); see also Pub. Res. Code, § 21166; *May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1327 [Guidelines § 15162 implements Public Resources Code, section 21166].) If no subsequent EIR would be required pursuant to Section 15162, then the agency may consider the subsequent project “within the scope” of the program EIR and no new environmental document is required. (Guidelines, § 15168, subd. (c)(2); *IBC Business Owners, supra*, 88 Cal.App.5th 100, 119; accord *May, supra*, 217 Cal.App.4th 1307, 1326 [“Where environmental review has been conducted through a program EIR, CEQA requires further review” only in the “limited circumstances” described in Public Resources Code, section 21166, and its implementing regulations, Guidelines §§ 15162 and 15168]; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 801-802.)

Determining whether a later activity is “within the scope” of a program EIR “is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR.” (Guidelines, § 15168, subd. (c)(2).) “Where the later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental

effects of the operation were within the scope of the program EIR.” (Guidelines, § 15168, subd. (c)(4).)

The foregoing described the use of a program EIR to *wholly avoid* further CEQA review for a subsequent project. Another use of a program EIR is “to address impacts and mitigation measures that apply to [a] program as a whole to simplify later environmental review for [individual] program activities.” (*Center for Biological Diversity, supra*, 234 Cal.App.4th 214, 233; see Guidelines, § 15168, subd. (d).) This use of a program EIR involves the process of “tiering.” “Tiering” refers to an EIR’s relying on “the analysis of general matters contained in a broader EIR[.]” (Guidelines, § 15152, subd. (a).) The “tiered” EIR will “incorporat[e] by reference the general discussions from the broader EIR” and itself “concentrat[e] . . . solely on the issues specific to” the smaller project that is the subject of the tiered EIR. (*Ibid.*)

A tiered EIR is required for a project consistent with a program EIR “when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.” (Guidelines, § 15152, subd. (f); *Save Berkeley’s Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226, 236.) Significant environmental effects have been “adequately addressed” in the prior EIR only if the agency determines that “they have been mitigated or avoided as a result of the prior [EIR]” or “they have been examined at a sufficient level of detail in the prior [EIR] to enable those effects to be mitigated or avoided . . . in connection with the approval of the later project.” (Guidelines, § 15152, subd. (f)(3).)

Petitioners urge the Court to hold that a project is outside the scope of a program EIR if it is “inconsistent” with the program EIR or if it “has the potential for significant adverse [environmental] effects that were ‘unstudied’” in the program EIR. (Opening Br., pp. 2.) Essentially, Petitioners want the Court to apply the test for when tiering is required to determine whether the Project is within the scope of the VTP-EIR.

Under *IBC Business Owners*, the Court is required to use the Section 15162 Criteria to determine whether the Project is “within the scope” of the VTP-EIR. On this point, *IBC Business Owners* follows the clear directive of the applicable regulation: “[An] agency can approve [an] activity as being within the scope of [a] project covered by [a] program EIR” “[i]f the agency finds that pursuant to [Guidelines] Section 15162, no subsequent EIR would be required[.]” (Guidelines, § 15168, subd. (c)(2) [emphasis added].) *IBC Business Owners* emphasized that whether a tiered EIR is required and whether a project is “within the scope” of a program EIR are two different inquiries with different considerations. (*Id.* at p. 120 [“Within the context of a program EIR, tiered review is only necessary if the later site-specific activity would have significant environmental effects that were not examined in the program EIR. . . . To reiterate, though, no subsequent EIR or negative declaration is required if the later activity’s environmental effects are within the scope of the program EIR.”].)

Unable to escape the fact that the applicable law requires courts to use the Section 15162 Criteria to determine whether a project is “within the scope” of a program EIR, Petitioners urge the Court to “interpret[]” the Section 15162 Criteria “in harmony” with the standard for determining when a tiered EIR is required. (Opening Br., p. 17.) But these provisions cannot be harmonized because the standards are directly in conflict. The standard for determining whether a tiered EIR

is required asks whether the project “*may* cause significant effects on the environment that were not adequately addressed” in the program EIR. (14 Cal. Code Regs., § 15162, subd. (f); see also Pub. Res. Code, § 21094, subd. (c).) *Potential* environmental impacts are enough. The Section 15162 Criteria ask whether the project *in fact* involves significant environmental effects that are either new or substantially more severe as compared to those discussed in the program EIR. The latter standard is simply stricter. (See *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528 [the “standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed” than the standard set forth in Public Resources Code, section 21166, which Section 15162 was designed to implement] [superseded by statute on unrelated grounds as stated in *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 607].) One simply cannot “interpret” them in a harmonious matter. Nor, it appears, do Petitioners. Although Petitioners ask the Court to apply the Section 15162 Criteria in a way that somehow does justice to the tiered EIR standard, Petitioners’ briefing simply applies the tiered EIR standard and ignores the Section 15162 Criteria.

Petitioners explain that using the Section 15162 Criteria as the test for what “within the scope” means in the program EIR context creates a loophole. As the Court understands it, Petitioner argues that this allows an agency to certify a program EIR that expressly contemplates later site-specific projects; green light a subsequent site-specific project without any CEQA review; and then when challenged in court, argue that the later project is “within the scope” of the program EIR, forcing their opponent to satisfy the stricter Section 15162 Criteria rather than the more liberal standard for a tiered EIR, even though the program EIR expressly contemplated a tiering scenario.

Notwithstanding Petitioners’ concern, this Court considers itself bound by *IBC Business Owners. (Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455 [“Decisions of every division of the Courts of Appeal are binding . . . upon all the superior courts of this state[.] . . . Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.”]; *Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347, 354 [trial court “has no choice” but to follow published, on-point appellate case law].) The Court cannot simply ignore a recent and binding appellate decision indicating that courts are to determine whether a project is “within the scope” of a prior program EIR by reference to the Section 15162 Criteria.

Petitioners do not attempt to satisfy the test set forth in *IBC Business Owners*. The Court does not read them to even contend that Respondent’s actions do not satisfy that test. Instead, they argue that the Project is “inconsistent” with the VTP-EIR and “has the potential for” various significant adverse effects that were not studied in the VTP-EIR. (Opening Br., p. 2.) These are arguments tailored toward meeting the lower standard applicable to the determination of whether a tiered EIR is required. Neither inconsistency nor a mere potential for unaddressed environmental impact is sufficient to take a project outside the scope of a program EIR. (*IBC Business Owners, supra*, 88 Cal.App.5th 100, 119; Guidelines § 15162.) On the arguments raised, the Court denies the Petition.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006178

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: ERIC RUIZ

vs.

DEFENDANT: CALIFORNIA FRANCHISE
TAX BOARD

NATURE OF PROCEEDINGS: MOTION – CHANGE OF VENUE

RULING

The Court grants Respondent California Franchise Tax Board (“Respondent”) motion to transfer venue to Los Angeles. Petitioner is ordered to pay the costs and fees of transfer. (Code of Civ. Proc., § 399(a).)

FACTUAL BACKGROUND

Petitioner Eric Ruiz (“Petitioner”) alleges he filed his 2011 and 2012 California tax returns on February 1, 2012 and February 16, 2013, respectively. On March 15, 2022, Respondent issued a Notice of Proposed Assessment (“NPA”) for the 2012 tax year including \$200,000 in additional income. Petitioner alleges the income was placed in a trading account for the use of his corporation, Sales Jobs Inc. and was not received or disbursed to him until 2013. Petitioner reported the income as ordinary income on his 2013 return, and in 2016 after the IRS conducted a corporate audit, he amended his return to reclassify the income as dividend income. Petitioner made a \$30,000 good faith payment to Respondent for 2011 and 2012, but Respondent failed to apply, acknowledge or refund the payment.

On May 9, 2025, Petitioner filed a verified petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 and complaint for declaratory relief. Petitioner alleges that the NPA was untimely and void and no exception applies. Petitioner seeks a writ directing Respondent to vacate the assessments for 2011 and 2012, a judicial declaration that the NPA is void and unlawful and an order applying or refunding the \$30,000 payment.

In the instant motion, Respondent seeks to transfer venue to Los Angeles. (Rev. & Tax Code, § 19388 and Code of Civ. Proc., § 398.) Respondent argues a tax refund action must be brought in a place where an Attorney General has an office, and it does not have one in Marin County. Respondent states Los Angeles is among the closest cities to Petitioner’s current address in Henderson, Nevada where the Attorney General maintains an office. Respondent requests Petitioner may the costs and fees of transfer. (Code of Civ. Proc., § 399(a).)

LEGAL STANDARD

The grounds upon which a court may transfer the action are entirely statutory. (Cal. Prac. Guide Civ. Pro. Before Trial (The Rutter Group June 2025 Update), Ch. 3-D, § 3:549.) On timely motion, the court must order a transfer of an action “when the court designated in the complaint is not the proper court.” (Code of Civ. Proc., §§ 396b, 397(a); *Rycz v. Sup. Ct.* (2022) 81 Cal.App.5th 824, 836.) The question of whether venue is proper is determined at the outset of the action based upon the original complaint. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 482; *Armstrong Petroleum Corp. v. Superior Court* (1981) 114 Cal.App.3d 732, 738.)

“[A]fter payment of the tax and denial by the Franchise Tax Board of a claim for refund,” “any taxpayer claiming that the tax computed and assessed is void in whole or in part [to] bring an action, upon the grounds set forth in that claim for refund, against the Franchise Tax Board for the recovery of the whole or any part of the amount paid.” (Rev. & Tax. Code §§ 19382, 19385.) Revenue and Tax Code section 19388 provides that “[a]ny action against the Franchise Tax Board under this article shall be commenced and tried in any city or city and county in which the Attorney General maintains an office.”

DISCUSSION

In the instant action, Petitioner seeks a judicial determination that the NPA was untimely and void and thus that the assessments for 2011 and 2012 are vacated as well as an order applying or refunding the \$30,000 payment. In opposition, and despite his prayer for relief, Petitioner strenuously argues that he is not seeking a refund of the payment and is only seeking an order that the NPA is void. However, under the authority above, this also falls under the venue requirement that the action be tried in a county in which the Attorney General maintains an office. Respondent has met its burden of showing venue is proper in Los Angeles. Accordingly the motion is granted.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006626

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: RON CUPP

vs.

DEFENDANT: BASIL PLASTARIAS, ET
AL

NATURE OF PROCEEDINGS: 1) MOTION - QUASH

2) MOTION - QUASH

3) MOTION – QUASH

4) DEMURRER

5) MOTION - QUASH

6) MOTION – QUASH

RULING

Plaintiff's motions to quash are denied. Defendants' demurrer is sustained with leave to amend.

Allegations in Plaintiff's Complaint

Plaintiff Ron Cupp's ("Cupp") Complaint alleges that in 2007, Defendant Parkway Properties 12 LLC ("Parkway Properties"), through its counsel Defendants Basil Plastiras and Plastiras & Terrizzi ("Plastiras"), filed an action against Cupp. In 2013, Parkway Properties obtained and recorded a \$163,576.43 judgment against Cupp in Sonoma County. Cupp alleges that the judgment was discharged after Cupp filed for bankruptcy, but Plastiras thereafter filed an application for renewal of the judgment. The renewed judgment was recorded and disrupted a potential sale of the property. Cupp asserts a single cause of action for malicious prosecution.

Exhibit 6 to the Complaint is a letter to Cupp from Ramon Fuentes of Fuentes & Associates in which Mr. Fuentes states: "Upon review of your loan application, we discovered an Application for and Renewal of Judgment filed 7-28-2022 Document #2022-050849 and Notice of Attachment Document #2007-120413 filed 11-07-2007 in the Sonoma County Recorder's Office . . . Unfortunately, we are unable to continue with and cannot grant you the loan at this time for \$200,000 against your property . . . You will need to contact the company Parkway Properties 12, LLC or the attorney of record to make arrangements to remove this liability or indebtedness before any loan can be made to you."

Motions to Quash

Standard

Code of Civil Procedure Section 1987.1 provides that the court may, upon motion by a party, enter an order quashing a subpoena entirely, modifying the subpoena, or directing compliance with the subpoena upon certain specified terms and conditions. (Cal. Code Civ. Proc. § 1987.1.)

Request for Judicial Notice

Defendants' request for judicial notice of the Complaint, the Statement of Information by Fuentes & Associates, excerpts from Cupp's Complaint in the US District Court for the Northern District of California, and the Deed of Trust is granted. (Evid. Code §§ 452, 453.)

Discussion

Cupp has filed multiple motions to quash subpoenas served on Ramon Fuentes and/or Fuentes & Associates ("Fuentes") on the grounds that they seek private, confidential or privileged information, they are overbroad and unduly burdensome, they seek information that is not relevant, and that compliance would result in unnecessary annoyance, embarrassment or oppression.

Defendants argue that they are entitled to Fuentes' records concerning Cupp because, among other things, there was other preexisting "liability or indebtedness" on the property that would have shown up in a title search (i.e., a deed of trust securing a \$2.3 million loan by "Trust Knot Us" and a lis pendens filed by the County of Sonoma arising out of a case brought by the County against Cupp) but, for some reason, Fuentes' letter only mentions Defendants' judgment. Defendants state that the "Trust Knot Us" deed of trust is of particular concern to them because they have been unable to find any record of that organization. Defendants argue that Fuentes' files are relevant to both liability and damages because Defendants' recordation of the renewal of judgment may not have been an actual or proximate cause of Cupp's alleged damages if Cupp was not qualified to obtain the loan anyway based on the other encumbrances. Defendants also argue that they are entitled to discover if Cupp disclosed the judgment, the bankruptcy or the bankruptcy discharge, or the other encumbrances, to Fuentes in his loan application. They further contend they are entitled to discover when Fuentes knew about Cupp's bankruptcy for statute of limitations purposes, and to discover communications Fuentes had with Cupp and potential lenders or other third parties about Cupp. Defendants state they are also entitled to look into Cupp's relationship with Fuentes given Fuentes' mention of only the judgment and not the \$2.3 million Trust Knot Us deed of trust or the County lis pendens as a reason for not approving the \$200,000 loan.

The Court denies the motions to quash. Defendants have established the relevancy of the documents requested for purposes of defending on issues of causation and damages. The Court will enter an appropriate protective order to protect financial and other sensitive information if requested by the parties. Plaintiff's request for sanctions is denied.

Demurrer

Standard

“The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law.” (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint “ordinarily is sufficient if it alleges ultimate rather than evidentiary facts” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case “with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent” of the plaintiff’s claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court “assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law.” (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Discussion

“A plaintiff must plead and prove three elements to establish the tort of malicious prosecution: a lawsuit ‘(1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice.’” (*Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 872 [citation omitted].)

Defendants argue that Plaintiff fails to adequately allege the first element, i.e., the commencement of a lawsuit, because no action or lawsuit has been filed since 2013, after which judgment was entered against Cupp. Defendants further argue that the renewal of the judgment in 2022, which is the basis for Plaintiff’s claim, is not sufficient to satisfy the first element.

The demurrer is sustained on this basis. “[S]ubsidiary procedural actions . . . cannot be the basis for malicious prosecution claims . . . courts have refused to permit malicious prosecution claims when they are based on a prior proceeding that is . . . a continuation of an existing proceeding.” (*Merlet v. Rizzo* (1998) 64 Cal.App.4th 53, 59-60.) In *Merlet*, the court held that a motion for a writ of sale was a subsidiary procedural action that could not serve as the basis of a malicious prosecution claim because it “occurs after liability and damages have been determined, and it does not result in a separate and distinct proceeding . . . A writ . . . is part of the remedy to effectuate the action by the enforcement of the judgment.” (*Id.* at pp. 61-62.) “[A] writ of sale occurs after liability has been determined and a judgment ordered. The court will not issue a writ of sale without proof of a valid, unsatisfied judgment (Code Civ. Proc., § 712.010), making this procedure the continuation, or the enforcement, of the prior action, and not a separate proceeding.” (*Id.* at p. 63.)

Like the writ in *Merlet*, the renewal of a judgment is also a continuation of an existing action. A renewal is a ministerial act performed by the clerk which merely serves to extend the time to enforce a judgment. The renewal “has no independent existence from the original judgment.” (*Rubin v. Ross* (2021) 65 Cal.App.5th 153, 165.) The renewal does not constitute a new or separate judgment. (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262.) Plaintiff does not allege the commencement of a lawsuit by Defendants as the basis for his malicious prosecution cause of action and instead relies only on a renewal of an existing judgment. Plaintiff therefore fails to allege the first element of a malicious prosecution claim.

Because the demurrer is sustained on this basis, the Court does not address Defendants' additional argument that the Court lacks subject matter jurisdiction over this cause of action.

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

The Zoom appearance information for October, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/17/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006628

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: VERA JOYCE DANIELS

vs.

DEFENDANT: SAN RAFAEL OPERATING
COMPANY, L[P]

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

RULING

Defendant's demurrer to the First, Fourth and Fifth Causes of Action is sustained with leave to amend. The motion to strike is granted with leave to amend.

Allegations in Plaintiff's Complaint

Plaintiff alleges that she was admitted to Pine Ridge Care and Rehabilitation Center ("Pine Ridge") on February 2, 2021 for long term care. Plaintiff had a history of experiencing dizzy spells and Pine Ridge was aware of this condition. On May 19, 2023, Plaintiff informed staff that she was feeling dizzy and unwell, but Pine Ridge failed to monitor or assist her. That same day, Plaintiff fell "while attempting to use or return from a bedside toilet, which had been improperly placed and unsafely used without adequate supervision." Plaintiff sustained severe injuries including a spinal injury and loss of mobility.

Plaintiff's First Cause of Action alleges elder abuse, the Second Cause of Action alleges negligence, the Third Cause of Action alleges violation of patients' rights under Health & Safety Code Section 1430, the Fourth Cause of Action alleges intentional infliction of emotional distress, and the Fifth Cause of Action alleges negligent infliction of emotional distress.

Procedural Deficiency

The declaration of Defendant's counsel reflects a failure to adequately engage in the meet and confer process as required under Code of Civil Procedure Sections 430.41(a) and 435.5(a), which requires the party filing the demurrer and motion to strike to meet and confer "in person [or] by telephone". The demurrer and motion to strike will not be overruled on this basis. (Code Civ. Proc. § 430.41(a)(4), 435.5(a)(4).) The Court nevertheless admonishes Defendant to follow all applicable rules when filing matters with the court.

Plaintiff's Declaration

The Court does not consider Plaintiff's declaration when ruling on the demurrer. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905 [citations omitted].) The Court also does not consider the declaration when ruling on the motion to strike, as the Court evaluates Plaintiff's request for punitive damages based on the allegations made in the Complaint.

Demurrer

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Uncertainty

Defendant demurs to the First, Fourth and Fifth Causes of Action on the ground that they are uncertain. In the First Cause of Action, Plaintiff alleges that Defendant's failure to monitor and assist her, despite knowing her condition, constitutes neglect and abuse under Welfare & Institutions Code Section 15610.57. In the Fourth Cause of Action, Plaintiff alleges that Defendant's conduct was extreme, outrageous and beyond the bounds of decency expected in civilized society. In the Fifth Cause of Action, Plaintiff alleges that Defendant's negligent conduct caused her severe emotional distress.

"Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (e) are disfavored. A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. A demurrer for uncertainty should be overruled when the facts as to which the complaint is uncertain are presumptively within the defendant's knowledge." (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 [citations and internal quotations omitted].)

The demurrer to these three causes of action on the ground of uncertainty is overruled. Plaintiff alleges sufficient facts to inform Defendants of the factual bases of her claims.

First Cause of Action/Elder Abuse

To recover enhanced remedies under the Elder Abuse Act, a plaintiff must prove “by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or abandonment as defined in Section 15610.05, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse” (Welf. & Inst. Code § 15657 [emphasis added].) “The latter three categories involve intentional, willful, or conscious wrongdoing of a despicable or injurious nature. Recklessness refers to a subjective state of culpability greater than simple negligence, which has been described as a deliberate disregard of the high degree of probability that an injury will occur. Recklessness, unlike negligence, involves more than inadvertence, incompetence, unskillfulness, or a failure to take precautions but rather rises to the level of a conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32 [citations and internal quotations omitted].) “The Elder Abuse Act does not apply to simple or gross negligence by health care providers.” (*Worsham v. O’Connor* (2014) 226 Cal. App. 4th 331, 336.)

“‘Neglect’ means . . . The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise . . . [and] includes, but is not limited to . . . [f]ailure to provide medical care for physical and mental health needs . . . [f]ailure to protect from health and safety hazards” (Welf. & Inst. Code § 15610.57(a), (b).) “[N]eglect . . . refers to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations. Thus, when the medical care of an elder is at issue, the statutory definition of neglect speaks not of the *undertaking* of medical services, but of the failure to *provide* medical care.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404 [citations and internal quotations omitted] [emphasis in original].) “The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult’s basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness). The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. Finally, the facts constituting the neglect and establishing the causal link between the neglect and the injury must be pleaded with particularity, in accordance with the pleading rules governing statutory claims.” (*Id.* at pp. 406-407 [citations and internal quotations omitted].)

Defendant argues that Plaintiff’s allegations – which pertain to a single fall that occurred when Plaintiff used or returned from a bedside toilet she claims was improperly placed and unsafely used without proper supervision – are insufficient to state a cause of action for elder neglect abuse, which requires more than professional negligence. Defendant notes that there are no allegations that Defendant’s staff ignored Plaintiff’s medical conditions, deprived her of needed

care in any significant sense, or displayed an intention of harming her by withholding treatment, as required under *Carter, supra*. Accordingly, Defendant argues, Plaintiff fails to adequately allege neglect and the minimum of recklessness conduct, both of which are required to state an elder abuse claim.

Defendant is correct that Plaintiff does not allege a denial or withholding of medical care, as opposed to negligence in the care provided, sufficient to satisfy the standard set forth in *Carter*. The demurrer is sustained on this basis.

Fourth Cause of Action/Intentional Infliction of Emotional Distress

“The elements of a prima facie case of intentional infliction of emotional distress consist of: (1) extreme and outrageous conduct by the defendant with the intent to cause, or reckless disregard for the probability of causing, emotional distress; (2) suffering of severe or extreme emotional distress by the plaintiff; and (3) the plaintiff's emotional distress is actually and proximately the result of defendant's outrageous conduct. Extreme and outrageous conduct is conduct that is so extreme as to exceed all bounds of that usually tolerated in a civilized community and must be of a nature which is especially calculated to cause, and does cause, mental distress. [I]t is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery.” (*Chang v. Lederman* (2009) 172 Cal.App.4th 67, 86-87 [citations and internal quotations omitted].)

Defendant demurs to the Fourth Cause of Action on the ground that Plaintiff fails to allege extreme and outrageous conduct, as well as intent, both of which are required to support a cause of action for intentional infliction of emotional distress. “In order to avoid a demurrer, the plaintiff must allege with ‘great[] specificity’ the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community.” (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 [citation omitted].)

“Whether conduct qualifies as outrageous is usually a question of fact, but a court may determine in the first instance whether, as a matter of law, alleged conduct may reasonably be regarded as so extreme and outrageous as to allow the matter to proceed to a trier of fact.” (*Sandoval v. Pali Institute, Inc.* (2025) 113 Cal.App.5th 616, 635; see *Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1009 [affirming order sustaining demurrer where the plaintiff did not allege adequate facts showing outrageous conduct]; *Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1109 [same].)

The demurrer to this cause of action is sustained. Plaintiff's allegations are based on Defendant's alleged negligent conduct in failing to provide adequate staffing to monitor Plaintiff despite being familiar with her condition, and/or for an improperly placed toilet. These facts are insufficient to support Plaintiff's allegation that Defendant's conduct was extreme and outrageous, or that Defendant acted with the intent to cause, or reckless disregard for the probability of causing, emotional distress.

Fifth Cause of Action/Negligent Infliction of Emotional Distress

Defendant demurs to the Fifth Cause of Action on the ground that negligent infliction of emotional distress is not an independent tort that is separate from a negligence cause of action.

Plaintiff already alleges negligence in her Second Cause of Action which is not challenged in this demurrer. The Court agrees with Defendant and sustains the demurrer to the Fifth Cause of Action on this basis. (See *Belen v. Ryan Seacrest Productions, LLC* (2021) 65 Cal.App.5th 1145, 1165.)

Motion to Strike

The court may, upon a motion made pursuant to Code of Civil Procedure § 435, strike out any “irrelevant, false, or improper matter inserted in any pleading.” (Code Civ. Proc. § 436.) Improperly pled damages claims may be challenged by motion to strike. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.)

Defendant’s motion to strike the language in the Complaint seeking punitive damages under Welfare & Institutions Code Section 15657 is granted, as Plaintiff has failed to state a cause of action for elder abuse for the reasons discussed above.

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

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