

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002933

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: FEDERICO SANCHEZ

and

DEFENDANT: ASOMEO
ENVIRONMENTAL RESTORATION
INDUSTRY LLC, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – RELIEVE COUNSEL
2) MOTION – RELIEVE COUNSEL
3) MOTION – RELIEVE COUNSEL
4) MOTION – RELIEVE COUNSEL
5) MOTION – RELIEVE COUNSEL
6) MOTION – RELIEVE COUNSEL
7) MOTION – RELIEVE COUNSEL
8) MOTION – RELIEVE COUNSEL

RULING

Defense counsel filed motions to be relieved as counsel for each of the following Defendants: Asmeo Environmental Restoration Industry LLC, Thomas Cramer, Sean Hall, Sam Talamantes, Robert Bell, Marcus McCarthy, and Victoria Gonsalves. The motions were based on a breakdown in the attorney-client relationship which, according to defense counsel has created a conflict preventing the firm of Weintraub, Tobin from continuing its representation of Defendants. Defense counsel filed a declaration confirming notice of the motion to withdraw as well as confirmation of receipt by Defendants.

No opposition was received. Counsel is ordered to appear to confirm that a copy the files have been sent to Defendants. Upon confirmation, the Court shall grant the motions.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003822

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: GEOVANI JONATHAN
DUENAS, A MINOR, BY AND THROUGH
HIS GUARDIAN AD LITEM JONATHAN
DUENAS

and

DEFENDANT: SAN RAFAEL CITY
SCHOOLS

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETTLEMENT

RULING

San Rafael City Schools filed an application for good faith settlement determination after Plaintiff's lawsuit was consolidated and included other defendants. Notice of the application was filed on all parties and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the above, 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: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005526

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: MARINER'S LANDING,
LLC, AND MORGAN FAMILY 2018 TRUST,
DANIEL H. MORGAN, TRUSTEE

VS.

DEFENDANT: NORTHWESTERN PACIFIC
RAILROAD

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiff filed a motion for judgment on the pleadings to establish title to real property pursuant to Code of Civil Procedure 764.010.

Appearances required.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjiEOSHnzEGafG.1>

Meeting ID: 161 548 7764

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007308

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: CAPITAL ONE, N.A.
SUCCESSOR BY MERGER TO DISCOVER
BANK

vs.

DEFENDANT: MARILOU B. FRAGATA

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The unopposed motion for summary judgment by plaintiff Capital One, N.A. (“Plaintiff”) is GRANTED. (Code Civ. Proc., § 437c, subds. (c) and (p)(1).) Plaintiff has met its burden showing no triable issues of material fact exist as to any of the alleged causes of action.

Facts

Plaintiff filed this action on August 18, 2025 against defendant Marilou Fragata (“Defendant”) alleging a cause of action for breach of contract.

Defendant applied to Plaintiff for a credit card account and entered into a written agreement with Plaintiff to be bound by the terms and conditions set forth in the Cardmember Agreement, including that use of the issued card constituted acceptance of the agreement. (Plaintiff’s Separate Statement of Undisputed Material Facts (“SS”) No. 1-2.) Defendant used the credit card, making charges and payments, and Plaintiff complied with its obligations under the Agreement by paying vendors for all charges made on Defendant’s account. (SS Nos. 3-4.) There is no record of Defendant asserting an objection to the amount of the balance due and owing on the monthly statements that were provided to the Defendant, reflecting all debts and credits to Defendant’s account. (SS Nos. 5.)

The last payment applied to the account or transaction made by Defendant was on June 1, 2024. (SS No. 7.) Before April 21, 2025, Defendant defaulted in making the payments due under the terms of the Cardmember Agreement, thus Plaintiff accelerated the account balance so that the entire unpaid balance on the account became immediately due and payable. (SS No. 6.) Defendant owes Plaintiff \$20,360.10 on the principal balance. (SS No. 8.)

Standard for Summary Judgment

A plaintiff moving for summary judgment meets his or her burden of proof by showing there is no defense to each cause of action by proving each element of the cause of action. (Code Civ. Proc., § 437c(p)(1); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 [“summary judgment law in this state no longer requires a plaintiff moving for summary judgment to disprove any defense asserted by defendant as well as prove each element of his own cause of action. . . . All that the plaintiff need do is to ‘prove [] each element of the cause of action’ ”].) Once a plaintiff meets this burden, the burden shifts to defendant “to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (Code Civ. Proc., § 437c(p)(1).)

Discussion

Plaintiff claims it is entitled to summary judgment against Defendant on the grounds that there is no defense to this action. Plaintiff alleges a breach of contract against Defendant.

The elements of a breach of contract cause of action are: (1) the existence of a contract; (2) the plaintiff's performance or excuse for nonperformance of the contract; (3) defendant's breach; and (4) damage to plaintiff resulting from the breach. (*State Compensation Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449 (“*ReadyLink*”).)

Here, Plaintiff proffers evidence of the agreement for the credit card, that Plaintiff performed its obligation under the terms of the agreement by extending funds to Defendant for various goods, services, and cash advances, that Defendant failed to honor the obligations under the terms of the credit card agreement by failing to pay the sums owed to Plaintiff, and that Plaintiff is owed a sum certain in the amount of \$20, 360.010. (SS Nos. 1-8.)

The Court finds that Plaintiff has met its burden establishing each element of its cause of action for breach of contract. (SS No. 1-8.) Without controverting evidence, the Court grants Plaintiff's motion for summary judgment.

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, 2026 is as follows:

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Meeting ID: 161 548 7764

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0008353

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: MARK ALLEN

vs.

DEFENDANT: CITY OF SAN RAFAEL

NATURE OF PROCEEDINGS: MOTION – PRELIMINARY INJUNCTION

RULING

Petitioner Mark Allen’s (“Petitioner”) Renewed Motion for Preliminary Injunction is DENIED.

BACKGROUND

On November 17, 2025, the City Council for the City of San Rafael (“Respondent” or “the City”) approved the City’s acquisition of property at 350 Merrydale Road for the purpose of providing shelter for unhoused individuals. The City’s plans include the development of an interim shelter to provide temporary housing for up to 65 unhoused individuals, as well as to eventually develop the site with permanent affordable housing.

Petitioner opposes the City’s plans. Following two unsuccessful ex parte applications filed in separate litigation (*Allen v. City of San Rafael*, Marin County Sup. Ct. Case no. CV0006338), Petitioner filed the present action, challenging the City’s compliance with the California Environmental Quality Act (“CEQA”) in its various actions relating to 350 Merrydale Road.

Petitioner sought a Preliminary Injunction which 1. Ordered the City to cease further implementation actions for the Merrydale project pending lawful CEQA compliance; 2. Prohibited reliance on the current CEQA Exemption Review; 3. Preserved the status quo to protect the Court’s jurisdiction; and 4. Granted such other relief as the Court deemed just.

Plaintiff’s Motion for Preliminary Injunction was scheduled for hearing on January 28, 2026, at 1:30 p.m., in this Court. At approximately 2:00 p.m., on January 27, 2026, the Court posted its tentative ruling to deny said Motion. No party contested said tentative ruling prior to 4:00 p.m., and it thus became the final order of the Court. The Order itself was filed February 10, 2026.

Petitioner sought reconsideration of that Order on May 6, 2026. That Motion was denied. On July 23, 2026, Petitioner filed the present “Renewed Motion for Preliminary Injunction.” He then filed – and the Court denied – two subsequent ex parte applications for temporary restraining orders.

PROCEDURAL ISSUES

On September 28, 2026, Petitioner filed, in draft form, supplemental papers for this Motion – including a supplemental memorandum of points and authorities, two additional declarations, a further request for judicial notice, all of which attached a combined total of 18 new exhibits. These additional papers, totaling over 25 pages, were not timely served on the City in advance of this hearing. Submitted with these papers was a draft Order for the Court’s signature, permitting their filing. The Court DENIES this request. Petitioner has repeatedly filed papers in excess of the statutory limits without good cause, a practice for which the Court has previously admonished him.

The Court STRIKES the supplemental papers filed September 28, 2026 sua sponte and has not considered them in ruling on this Motion.

OBJECTIONS TO EVIDENCE

The City’s Evidentiary Objections in support of its Opposition to Petitioner’s Renewed Motion for Preliminary Injunction Nos. 1-3 are SUSTAINED.¹ (*Western States Petroleum Ass’n v. Superior Court* (1995) 9 Cal.4th 559, 565; *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville* (2007) 157 Cal.App.4th 885, 898.) The Court need not rule on Objections 4-14 as they relate to materials contained in the supplemental papers, materials which the Court has stricken as described above.

REQUESTS FOR JUDICIAL NOTICE

Petitioner’s Unopposed Requests for Judicial Notice Nos. 1-2 are GRANTED. (Evid. Code, § 452, subds. (b), (c).) Request No. 3 is DENIED. See Objection to Evidence No. 3.

LEGAL STANDARD

Motions for reconsideration under section 1008, subdivision (a) and renewed motions under section 1008, subdivision (b) are closely related. (*Glob. Protein Prods., Inc. v. Le* (2019) 42 Cal.App.5th 352, 363. Internal citations omitted.) A party filing either a motion under section 1008, subdivision (a) or (b) is seeking a new result in the trial court based upon “new or different facts, circumstances, or law.” (*Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 159–60.)

Code of Civil Procedure section 1008, subdivision (b) provides:

¹ The Court notes that it has referred to each objection by sequential number for ease of reference. Counsel is instructed to individually number each objection moving forward for the same reason.

A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion.

There is no ten day limitation to file a renewed motion. (Code Civ. Proc., § 1008, subd. (b).) “Section 1008's purpose is “ ‘to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.’ ” (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1067 (2011-2012 Reg. Sess.), as amended Apr. 25, 2011, p. 4.) To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional, as subdivision (e) explains: “This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.” (Code Civ. Proc., § 1008, subd. (e).)

Case law has included the additional requirement that the party seeking to renew a previously denied motion based upon new or different facts “must provide a satisfactory explanation for the failure to produce the evidence at an earlier time.” (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212; see also *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46–47, fn. 15.)

DISCUSSION

This Motion is based on Petitioner’s assertion that (1) new or different facts and circumstances have arisen and (2) Petitioner is likely to prevail on the merits and injunctive relief is necessary to prevent irreparable harm.

Petitioner identifies three facts or circumstances that have arisen since the Court’s January ruling on the original Motion: (1) the administrative record was certified and lodged; (2) the City executed its site-preparation contract on August 28, 2026; and (3) excavation commenced on September 21, 2026. (Reply, p. 5:19–21; see also Memo. P. & A. in Support of Motion, pp. 5:23–27, 6:1–2.) The Court does not consider Petitioner’s fourth asserted circumstance—that “soil was photographed in the channel on September 23, 2026”—because Petitioner relies on supplemental papers that the Court has excluded from consideration for the reasons stated above.

Certification of the Administrative Record

The certification and lodging of the administrative record after the Court’s ruling on the original Motion does not, in and of itself, constitute a new or different fact or circumstance.

Rather, it may explain why Petitioner did not raise additional arguments concerning the merits at the hearing on the original Motion.

Petitioner contends that the certified administrative record contains evidence demonstrating that the City's findings concerning the absence of wetlands on or adjacent to the project site, the absence of habitat value for endangered, rare, or threatened species, the adequacy of utility services, and the consistency of project impacts with General Plan buildout were incorrect or unsupported by the record.

The Court need not, and does not, determine whether these matters constitute new or different facts or circumstances within the meaning of Code of Civil Procedure section 1008. Even assuming they do, Petitioner's Motion fails to identify new or different evidence addressing the applicability of the CEQA exemption for homeless shelter projects, including the Merrydale Project. The Court does not consider arguments presented in the supplemental papers for the reasons stated above. Accordingly, Petitioner has not demonstrated facts or circumstances which would alter the Court's prior determination that he failed to establish a likelihood of prevailing on the merits.

Commencement of Project Activities Following Execution of the Site-Preparation Contract

Petitioner's Motion for a Preliminary Injunction seeking to enjoin construction-related activities associated with the Merrydale Project was denied. Petitioner's subsequent Motion for Reconsideration of that denial was likewise denied.

The project's continued progression following those rulings is neither unexpected nor sufficient to establish a new or different fact or circumstance warranting renewal of the same request for injunctive relief. The execution of the site-preparation contract and the commencement of excavation do not, under the circumstances presented, provide a basis for granting the renewed Motion.

Nor do these developments alter the Court's prior determination that the balance of public interests weighs against issuance of a preliminary injunction. The public interest in providing shelter for unsheltered residents of the City remains substantial. Although the prevention of environmental harm is also a legitimate public interest, Petitioner's failure to establish a likelihood of prevailing on the merits weighs against injunctive relief. On balance, the relevant considerations do not warrant issuance of the requested preliminary injunction.

Accordingly, the Renewed Motion for Preliminary Injunction is DENIED.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009514

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: SAEED GHAFOORI ET AL.

vs.

DEFENDANT: BANK OF AMERICA
HOME LOANS ET AL.

NATURE OF PROCEEDINGS: MOTION – RECONSIDERATION

RULING

Plaintiffs Saeed and Gissou Ghafoori’s (“Plaintiffs”) motion for reconsideration and other relief is DENIED.

BACKGROUND

Plaintiffs’ complaint alleges that Defendant Bank of America, N.A. (“BANA”) wrongfully foreclosed on Plaintiffs’ home in Mill Valley, selling it at a trustee’s sale¹ on March 18, 2026. (Complaint, ¶ 1.) Plaintiffs claim that before the date of the scheduled trustee’s sale, they had obtained a bona fide purchase for the home and gone under contract to sell it for more than BANA ultimately obtained at the trustee’s sale, but BANA nevertheless proceeded to foreclose. (*Id.* at ¶¶ 2, 5.)

Plaintiffs filed their complaint on March 23, 2026. The following month, they recorded a lis pendens on the Mill Valley property. On May 14, Plaintiffs filed an ex parte application for a temporary restraining order prohibiting Defendants from selling the property. The Court heard the application ex parte on May 15 and denied Plaintiffs’ request for a TRO.

On June 16, 2026, Defendants filed an ex parte application to expunge the lis pendens. A proof of service indicates that Defendants served the application materials on Matthew R. Hamilton as counsel for Plaintiffs. Defendants argued that the Court had denied Plaintiffs a TRO because it determined that they did not have a likelihood of success on the merits of their claims, and such a likelihood of success is required to maintain a lis pendens.

The record is contradictory regarding whether Plaintiffs themselves appeared at the June 18, 2026 ex parte hearing on Defendants’ motion to expunge. (See Spann Dec., ¶ 4 [they

¹ The Court does not rule on Defendants’ request for judicial notice of the Notice of Trustee’s sale and other materials because none of these materials were relevant to the Court’s disposition of the motion.

personally appeared]; June 18, 2024 Civil Motion Minutes [Plaintiffs not present].) Mr. Hamilton did not appear on Plaintiffs' behalf at that hearing. (Saeed Ghafoori Dec., ¶ 4; June 18, 2024 Civil Motion Minutes.) The Court declined to rule on the lis pendens dispute ex parte, but set a shortened briefing schedule for Defendants' motion to expunge the lis pendens, with an opposition and reply due per code and a hearing on July 8, 2026. (See June 18, 2026 Order.)

Plaintiffs opposed the motion in pro per, submitting their opposition on June 24, 2026. In the declaration he submitted with that opposition, Plaintiff Saeed Ghafoori attested that he had been unable to communicate with his attorney, Mr. Hamilton, since approximately June 18, despite repeated attempts to do so, and that Plaintiffs had written their own opposition for this reason. (Saeed Ghafoori Dec. in Opp. to Mtn. to Expunge, ¶ 2.) On July 2, Plaintiffs, through Mr. Hamilton, submitted an ex parte application for leave to file a second opposition to Defendants' motion to expunge, this one written by Mr. Hamilton. This ex parte application did not in any way suggest that Plaintiffs were asking to file an additional opposition as a matter of basic fairness because their first one was written pro per due to attorney abandonment, and their attorney had finally shown up to represent them. Plaintiffs merely said they sought to file the second opposition to "provide[] a more complete presentation of the issues already before the Court[,] enable the Court to "decide Defendants' motion to expunge on a complete record[,] and "more clearly address[]" the governing law. (See Pltfs.' Jul. 2, 2026 Ex Parte Application, pp. 2, 4; Hamilton Dec. in Supp., ¶¶ 4, 7.) The Court denied the ex parte application to file additional opposition. (See Jul. 7, 2026 Ex Parte Minutes.)

Mr. Hamilton appeared on behalf of Plaintiffs at the July 8, 2026 hearing on the motion to expunge the lis pendens. Unbeknownst to anyone other than perhaps Mr. Hamilton, Mr. Hamilton was unauthorized to practice law on that day. His law license was suspended from July 1 through July 10, 2026 due to failure to complete his annual administrative requirements. (Saeed Ghafoori Dec., ¶ 9 & Ex. A.)

The Court granted the motion to expunge the lis pendens, determining that while "several of Plaintiffs' asserted causes of action, if proven, would affect title to specific real property[,] such causes of action were not "supported by evidentiary merit" and Plaintiffs had not "demonstrated [their] probable validity . . . by a preponderance of the evidence." (Jul. 8, 2026 Order, p. 5.) The Court further ordered Plaintiffs to pay Defendants \$6,300 for fees and costs incurred in bringing the motion to expunge the lis pendens, but stayed enforcement of this aspect of the order for 14 days. (*Id.* at p. 9.)

Before the Court is Plaintiffs' motion for reconsideration of the July 8, 2026 order expunging the lis pendens and similar relief.

DISCUSSION

Reconsideration under Code of Civil Procedure, section 1008, subdivision (a)

"When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may . . . make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (Code Civ. Proc., § 1008, subd. (a).) The motion

must be “based upon new or different facts, circumstances, or law” and must be filed “within 10 days after service upon the [movant] of written notice of entry of the order[.]” (*Ibid.*) It must be accompanied by an affidavit stating “what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” (*Ibid.*) “The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time.” (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.)

“[B]ecause the requirements of section 1008 are jurisdictional with respect to applications by civil parties litigant for reconsideration of previous orders or renewing previously denied motions, any action by the trial court on such an application not in compliance with the dictates of section 1008 would be in excess of its jurisdiction.” (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 394, fn. 22.)

The “new or different facts, circumstances, or law” on which Plaintiffs pin their motion for reconsideration are as follows: (1) Plaintiffs’ counsel abandoned them for part of the period that Defendants’ motion to expunge was pending; (2) Mr. Hamilton did not provide Plaintiffs with a copy of Defendants’ moving papers, so Plaintiffs submitted a pro per opposition to the motion to expunge without knowing what Defendants’ arguments were; and (3) Mr. Hamilton was unauthorized to practice law when he appeared on Plaintiffs’ behalf at the hearing on the motion to expunge the lis pendens and concealed this.

The circumstances described in (1) and (2) existed and were known to Plaintiffs before the Court’s ruling on Defendants’ motion to expunge the lis pendens. As such, they are neither “new” nor “different” and so cannot serve as a basis for reconsideration under Code of Civil Procedure, section 1008. (Code Civ. Proc., § 1008, subd. (a).)

Circumstance (3), Mr. Hamilton’s licensure defect, is arguably new in that it was unknown to Plaintiffs and the Court at the time the Court ruled on the motion to expunge. However, the Court does not follow Plaintiffs’ theory for how Mr. Hamilton’s licensure status at the hearing would affect the Court’s ruling on the motion to expunge. The Court’s ruling was based on Plaintiffs’ failure to demonstrate the probable validity of their real property claims by a preponderance of the evidence. (See Jul. 8, 2026 Order, p. 5; Code Civ. Proc., § 405.32 [court “shall” order that a lis pendens be expunged if it “finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim”].) This was a ruling based on the merits of Plaintiffs’ claims, and Plaintiffs do not cogently explain how their attorney’s licensure status bears on those merits. They appear to argue that the evidentiary gaps that drew the Court to the conclusion that Plaintiffs had not carried their burden were a result of the fact that Plaintiffs’ opposition to the motion to expunge was drafted by laypeople, not a licensed attorney. But Plaintiffs did not submit their opposition pro per because their attorney was unlicensed for a short period (beginning *after* Plaintiffs submitted the opposition). They did so because their attorney was unreachable and deficient in his duties to them as clients. There is no reason to believe that, had Mr. Hamilton paid his annual dues and avoided the weeklong suspension of licensure from July 1 to July 10, he would have fulfilled his professional and ethical obligation to draft and file an opposition to the motion to expunge on his clients’ behalf. The two simply are not logically connected. Mr. Hamilton’s licensure status did not, as Plaintiffs

argue, “caus[e] the deficient record on which the Court relied” in granting the motion. (Memorandum, p. 5.)

Also, the nature of the remedy Plaintiffs are proposing is confusing. Their notice of motion requests that the Court “permit the proposed Supplemental Opposition and supporting evidence to be filed” (Notice of Motion, p. 2), i.e., entertain a do-over opposition. Plaintiffs have not actually submitted the proposed Supplemental Opposition with their moving papers. Moreover, Plaintiffs have fired Mr. Hamilton and filed documents indicating that they are proceeding pro per. (See Substitutions of Attorney, filed Aug. 6, 2026.) They submitted this motion for reconsideration pro per. If, as they claim, the problem with the July 8 order is that it was entered when they lacked licensed counsel, then reconsidering it when they still lack licensed counsel would simply give Plaintiffs a second chance to attack Defendants’ motion to expunge pro per with the benefit of the Court’s feedback on their initial attempt. This is exactly what the statutory limits on motions for reconsideration are designed to avoid. (See *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1157 [“Section 1008 is designed to conserve the court’s resources by constraining litigants who would attempt to bring the same motion over and over.”].)

The request for relief under Section 1008 is denied.

Discretionary relief under Code of Civil Procedure, section 473, subdivision (b)

Plaintiffs also request relief under Section 473(b), which permits a court to “relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against the party through the party’s mistake, inadvertence, surprise, or excusable neglect.” The movant bears the burden of showing by a preponderance of the evidence that relief under Section 473(b) is warranted. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 624.) The movant’s showing must consist of specific facts showing that one of the statutory conditions (i.e., mistake, inadvertence, surprise, or neglect) was present and brought about the adverse order at issue. (Code Civ. Proc., section 473, subd. (b); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶¶ 5:310 [citing *Hopkins & Carley, supra*, 200 Cal.App.4th 1401, 1410]; *Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653, 657 [quoting *Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921]; *Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 442.)

As the “mistake, inadvertence, surprise, or excusable neglect” they contend brought about the July 8, 2026 order, Plaintiffs cite their counsel’s becoming unreachable, failing to give them a copy of the moving papers, and failing to disclose that he was unlicensed when he appeared at the hearing. (Reply, p. 6.) The only one of these that can readily be described as “mistake, inadvertence, [or] surprise” is Plaintiffs’ lack of knowledge about Mr. Hamilton’s licensure status. Mr. Hamilton’s licensure defect and appearance while unlicensed did not figure in Court’s reasoning and so did not bring about the order, as discussed. To the extent Plaintiffs rely on the fact that they apparently drafted their opposition without reading the moving papers, that does not qualify as “excusable neglect.” (Code Civ. Proc., § 473, subd. (b).) Plaintiffs knew, in advance of filing their opposition and in advance of the hearing, that Defendants had filed a motion to expunge the lis pendens. Those moving papers were publicly available and Plaintiffs should have gone to the clerk’s office and asked for a copy.

To the extent Plaintiffs are relying on Mr. Hamilton's neglect of his professional obligations to them, they would need to show that such neglect was excusable to merit relief under Section 473(b)'s discretionary provision. (Plaintiffs state that they are not seeking relief under the portion of Section 473(b) providing for mandatory relief based on attorney fault, nor could they, as they have not provided the required declaration from Mr. Hamilton and the mandatory relief provision only applies to defaults, default judgments, and dismissals. [Code Civ. Proc., § 473, subd. (b).]) Mr. Hamilton's neglect was, by all indications, inexcusable, and Plaintiffs do not argue otherwise.

Court's equitable powers

In *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, an attorney filed a complaint and an amended complaint on his client's behalf and then vanished, ceasing to perform any work on the client's case and ultimately having his licensure suspended. (170 Cal.App.3d 725, 739.) When the client failed to respond to discovery served exclusively on the absent attorney, the defendant successfully obtained a judgment of dismissal on this basis. (*Id.* at p. 731.) The trial court subsequently vacated the dismissal "based upon [its] inherent equity power to vacate a judgment obtained under circumstances of extrinsic fraud or mistake." (*Id.* at p. 736.)

"[T]he terms 'fraud' and 'mistake' . . . tend to encompass almost any set of circumstances which deprive a party of a fair adversary hearing." (*Aldrich, supra*, 170 Cal.App.3d 725, 738.) The Second District explained that "to set aside a judgment [under the court's equitable powers] based upon extrinsic mistake," the party seeking relief must, among other things, "articulate a satisfactory excuse for not presenting a defense to the original action[.]" (*Ibid.*) In *Aldrich*, that excuse, which the Second District accepted, was that the plaintiff "had been effectively abandoned by the positive misconduct of his attorney[.]" (*Ibid.*) "Positive misconduct is found where there is a total failure on the part of counsel to represent his client[.]" and it was present in *Aldrich* because there was zero evidence of the attorney's existence after he filed the amended complaint on the plaintiff's behalf. (*Id.* at p. 739.)

Plaintiffs' reliance on *Aldrich* is problematic in two ways. First, it is unclear how to apply *Aldrich* where the order from which the moving party seeks relief is not a result of the party's inaction. The premise of the relief at issue in *Aldrich* is that the moving party failed to act and is asking to be absolved of the consequences. The party seeking relief is required to present a satisfactory excuse for failing to come before the court and litigate the case. (*Aldrich, supra*, 170 Cal.App.3d 725, 738.) Here, Plaintiffs *did* oppose Defendants' motion to expunge. They filed a pro per opposition, and then Mr. Hamilton resurfaced, attempted to submit a second opposition, and appeared on Plaintiffs' behalf at the hearing. Under these circumstances, *Aldrich* appears simply inapplicable. Second, and relatedly, there was not a "total failure" on Hamilton's part "to represent his client." (*Id.* at p. 739.) Mr. Hamilton's conduct was unacceptable and certainly merits a complaint to the California State Bar, at minimum, but it was not the disappearing act that justified equitable relief in *Aldrich*. Plaintiffs were wronged, but they were not deprived of a fair adversarial hearing on the merits any more than any other victim of a disorganized or otherwise ineffective attorney. The Court is not persuaded that garden-variety legal malpractice necessarily entitles the client to relief from any order that can be said to spring from the poor representation.

Code of Civil Procedure, section 286

In reply, for the first time,² Plaintiffs invoke Section 286: “When an attorney . . . is removed or suspended, or ceases to act as such, a party to an action, for whom he was acting as an attorney, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.” (Code Civ. Proc., § 286.) The Fourth District recently held that “any party who *becomes aware* that an opponent’s attorney has been made involuntarily inactive and ineligible to practice law by the State Bar must promptly give notice to his or her opponent under section 286.” (*Prato v. Gioia* (2025) 112 Cal.App.5th 651, 656 [emphasis added].) Even assuming a violation of Section 286 would justify the relief Plaintiffs seek here, there was no violation of Section 286 in this case because defense counsel was unaware of the suspension of Mr. Hamilton’s license until after he had been reinstated and after the July 8 order granting the motion for reconsideration had issued. (Spann Dec., ¶ 5.)

The motion is denied.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjiEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court’s website: <https://www.marin.courts.ca.gov>

² Raising an argument for the first time in a reply brief creates a “potential [for] unfairness to the opposing party, who is deprived of the opportunity to respond to the new argument.” (*Contractors’ State License Bd. v. Superior Court* (2018) 23 Cal.App.5th 125, 130, fn. 3; see also *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010 [“The salutary [sic] rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before.”])

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009839

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: MONIKA CHACE

vs.

DEFENDANT: ZACHARY DUBOC

NATURE OF PROCEEDINGS: 1) MOTION – PRO HAC VICE
2) MOTION – PRO HAC VICE

RULING

Having reviewed the pro hac vice application of Michael J. Thomson, the application is hereby 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, 2026 is as follows:

<https://marin-courts-ca-qov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjiEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0009898

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: BLUE SKY FOREVER

vs.

DEFENDANT: SPECIALTY AUTO PARTS
U.S.A., INC.

NATURE OF PROCEEDINGS: MOTION – OTHER: TO APPROVE PROPOSITION 65
SETTLEMENT AND CONSENT JUDGMENT

RULING

Plaintiff Blue Sky Forever’s (“Plaintiff”) motion for approval of Proposition 65 settlement is GRANTED and the Consent Judgment with Defendant Specialty Auto Parts U.S.A. Inc. (“Defendant”) is APPROVED. The court finds that the settlement was the result of arm’s length negotiations by the parties, and that it is in the interest of the public. Plaintiff filed the action on April 24, 2026, and the parties subsequently exchanged confidential case-specific information to engage in negotiations over the course of several months. The settlement requires Defendant to provide clear and reasonable health hazard warnings for all products not reformulated to remove the heavy metal Lead, pursuant to the requirements of California Health & Safety Code §25601 et. seq. It also requires that Defendant pay the civil penalty for the alleged violations in the amount of \$1,500, to be allocated pursuant to Health and Safety Code section 25249, and Plaintiff’s attorney’s fees of \$15,000. The attorney’s fees which were negotiated are less than the lodestar, and the court finds them to be reasonable.

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, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjiEOSHNgEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0010320

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: ASHLEY TORRETTO

vs.

DEFENDANT: AUDI OF AMERICA, INC.,
ET AL

NATURE OF PROCEEDINGS: MOTION – SANCTIONS

RULING

Continued to November 6, 2026 at 1:30 pm in Department L.

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, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNgEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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