

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200965

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PETITIONER: MORDECHARY AMAR	
vs.	
DEFENDANT: HADAR WEITZMANN	

NATURE OF PROCEEDINGS: MOTION – COMPEL DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Mordechary Amar's Motion to Compel Responses to Requests for Production of Documents, Set One, is denied.

Initially, the court notes that both sides' papers fail to comply with California Rule of Court 2.108(1), which states that "[t]he lines on each page must be one and one-half spaced or double-spaced and numbered consecutively."

Although Amar's motion indicates that he seeks to compel responses, as confirmed by his citation of Code of Civil Procedure section 2031.300, the opposition of defendant Hadar Weitzman establishes that Weitzman served responses. (Weitzman decl. ¶3 and ex. A.) In his brief and declaration, Amar states that he did not receive "an adequate response." The remedy for inadequate responses is a motion to compel further responses pursuant to section 2031.310. Amar has not met the requirements for such a motion.

Weitzman's request for sanctions pursuant to section 128.5 is denied. Even if this motion was "frivolous or solely intended to cause unnecessary delay," Weitzman has not incurred attorney's fees since he is representing himself and he offers no evidence as to any other expenses he has incurred as a result of the motion.

The court notes that neither side has filed any further papers addressing the impact of the October 10 denial of Amar's most recent motion in the related case, no. CIV2103297.

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/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300028

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: KRISTE 5 VENTURES,
LLC

vs.

DEFENDANT: JONATHAN KAUFMAN,
ET, AL

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETTLEMENT

RULING

Defendant Kentfield Fire Protection District's motion to contest the good faith of the second settlement agreement is granted. Plaintiff has presented insufficient evidence regarding proportionate liability for the Court to determine the settlement is in good faith.

Procedural Background

Plaintiff Kriste 5 Ventures, LLC filed its original Complaint on January 6, 2023. Plaintiff alleged that it owns the real property at 70 Brushwood Lane in Kentfield, and that Defendants Foxhole Real Estate Investments LLC ("Foxhole") and Jonathan and Carey Kaufman (the "Kaufmans") own the property at 66 Brushwood that is situated uphill from Plaintiff's property. Defendants Aaron and April Axelrod (the "Axelrods") own the property at 21 Tamal Vista, which is situated downhill from Plaintiff's property and has collapsed, such that the Brushwood Lane access to Plaintiff's property has become impassable and dangerous. On July 15, 2011, a Road Maintenance and Usage Agreement (the "Road Agreement") was recorded. On August 1, 2022, Plaintiff sent Foxhole and the Kaufmans a letter seeking to submit a dispute regarding maintenance/repair to mediation. On October 24, 2021, Brushwood Lane failed and mudslides and earth movement occurred on Plaintiff's property. Plaintiff alleges that this failure was partly due to Foxhole/the Kaufmans' failure to maintain the roadway and hillside, and partly due to Defendant Kentwood Fire Protection District's ("KFPD") fire remediation, defensible space exercises and/or vegetation management/fuel reduction work. Plaintiff's First Cause of Action alleged nuisance against Foxhole/the Kaufmans and the Axelrods, the Second Cause of Action alleged negligence against Foxhole/the Kaufmans and the Axelrods, the Third Cause of Action alleged breach of contract against Foxhole/the Kaufmans, the Fourth Cause of Action alleged nuisance against KFPD, the Fifth Cause of Action alleged negligence against KFPD, the

Sixth Cause of Action alleged express contractual indemnity against KFPD, the Seventh Cause of Action alleged breach of contract against KFPD, the Eighth Cause of Action alleged trespass against all defendants, which also included Marin Municipal Water District (“MMWD”), and the Ninth Cause of Action requested declaratory relief against all defendants.

On March 3, 2025, the Court entered an Order determining that a settlement between Plaintiff, the Kaufmans, Foxhole, MMWD, and non-arty Paul Cunningham (the “First Settlement”), was in good faith.¹ On May 1, 2025, Plaintiff dismissed the Kaufmans, Foxhold and MMWD with prejudice.

On May 13, 2025, Plaintiff moved ex parte for a determination that a settlement it reached with the Axelrods, Kaufmans, Foxhole, MMWD and Mr. Cunningham (the “Second Settlement”), was in good faith. Plaintiff also asked that the Court affirm its March 3, 2025 Order in due to confusion as to whether KFPD was served with the application as to the First Settlement. The Court denied the ex parte application, stating that Plaintiff should bring a noticed motion to obtain the relief it requested.

On May 30, 2025, Plaintiff filed a First Amended Complaint naming the Axelrods and KFPD as defendants. The First Cause of Action alleges negligence against the Axelrods, the Second Cause of Action alleges nuisance against KFPD, the Third Cause of Action alleges negligence against KFPD, the Fourth Cause of Action alleges express contractual indemnity against KFPD, the Fifth Cause of Action alleges breach of contract against KFPD, the Sixth Cause of Action alleges trespass against KFPD and the Axelrods, the Seventh Cause of Action seeks declaratory relief against KFPD, and the Eighth Cause of Action alleges inverse condemnation against KFPD.

On June 23, 2025, Plaintiff filed an application for determination that the Second Settlement was in good faith, and also for an affirmation that the First Settlement was in good faith.

On July 18, 2025, KFPD filed a motion to contest the good faith of the Second Settlement. This motion is currently before the Court.

On July 31, 2025, KFPD filed a demurrer to the Second, Third, Sixth and Eighth Causes of Action of the First Amended Complaint. On October 1, 2025, the Court sustained the demurrer to the Second, Third and Sixth Causes of Action with leave to amend, and overruled the demurrer to the Eighth Cause of Action. Plaintiff has not filed a Second Amended Complaint.

Standard

KFPD contests the good faith of the Second Settlement pursuant to Code of Civil Procedure Section 877.6(a)(2), which allows a nonsettling party to contest the good faith of a settlement. Although the party asserting the lack of good faith has the burden of proof on that issue (Code Civ. Proc., § 877.6(d)), where an application is contested, as here, the settling party must make a prima facie showing of all the *Tech-Bilt* factors, either through the moving papers or in counter-declarations. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1350, n. 6; *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261-

1262; Edmon & Karnow, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 12:872.) The principal *Tech-Bilt* factors include: a rough approximation of the plaintiff's total recovery and the settlor's proportionate liability; the amount paid in settlement; the allocation of the settlement proceeds among plaintiffs; a recognition that a settlor should pay less in settlement than he would if he were found liable after trial; settlor's financial condition and insurance policy limits; and existence of collusion, fraud or tortious conduct. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499; *Mattco Forge*, Cal.App.4th at p. 1349.) The prima facie showing must be based on facts presented through counsel's affidavits, expert declarations, or other means. Without such an evidentiary showing, there is no substantial evidence to establish the nature and extent of the settling party's liability. (*Mattco Forge*, 38 Cal.App.4th at p. 1350.)

The Parties' Positions

Given the unusual procedural background of this case, the Court will discuss the parties' respective positions in the order in which they have been made, beginning with Plaintiff's application for good faith settlement of the Second Settlement, filed on June 23, 2025.

Plaintiff's June 23, 2025 Application

The terms of the First and Second Settlements are set forth in Plaintiff's application filed on June 23, 2025. The First Settlement included a payment of \$135,000 from Foxhole, the Kaufmans and MMWD to Plaintiff to settle claims relating to the landslide event on October 24, 2021, and a payment of \$10,000 by Plaintiff to Jonathan Kaufman to settle claims relating to the cost to repave Brushwood Lane. For the \$135,000 payment to Plaintiff, \$125,000 is to be paid by Foxhole/the Kaufmans' insurance carrier, and \$10,000 is to be paid by MMWD. (Declaration of John E. Sharp, ¶10.) The Second Settlement includes a payment of \$75,000 from the Axelrods to Plaintiff to settle claims relating to the landslide event. (Id., ¶11.) The First Settlement and the Second Settlement were reached at a mediation attended by all parties except KFPD, (Id., ¶¶7-11.)

Plaintiff's counsel states in his declaration that Plaintiff seeks damages of no less than \$435,684 for the repair of Brushwood Lane, a private road maintained by Plaintiff, as well as damages for loss of use and reduced market value of Plaintiff's property, investigation costs, and attorney's fees. (Id., ¶6.)

Plaintiff argues that the two settlements are in good faith because they include total payments of \$210,000 to Plaintiff, which is within the ballpark of the total damages sought by Plaintiff. Plaintiff also contends that the payments represent a rough approximation of the settling defendants' proportionate liability and risk had the case proceeded to trial. The settlements were reached before the parties engaged in costly discovery, and insurance information through formal discovery was not exchanged.

KFPD's Moving Papers

KFPD states that Foxhole/the Kaufmans did not serve KFPD with the application for good faith settlement for the First Settlement until March 26, 2025, after the Court entered its

Order finding the settlement to be in good faith. (Declaration of Keaton D. Mendoza, ¶¶3, 4.) 2 However, KFPD has not filed any motion seeking to set aside that Order, so the propriety of service with respect to the application for good faith of the First Settlement and its impact, if any, on the Court's Order, is not currently before the Court. KFPD's papers address only the good faith nature of the Second Settlement in any event. (See Notice of Motion, pp. 1-2 [referencing settlement involving Axelrods, or the Second Settlement].)

With respect to the Second Settlement, KFPD argues that Plaintiff has not made a prima facie showing of a rough approximation of its total recovery and the settling defendants' proportionate liability. While Plaintiff states that it seeks "no less than \$435,684" for the repair of Brushwood Lane, plus damages for loss of use, reduced market value, investigation costs and attorneys' fees, it provides no evidence or factual support for this number and no explanation as to the amount or nature of damages over the \$435,684 mentioned by Plaintiff. KFPD also argues that there is no evidence of the settling defendants' proportionate liability and instead only lists what each defendant contributed towards settlement.

Plaintiff's Opposition to KFPD's Motion

In connection with its Opposition, Plaintiff submits the declaration of one of Plaintiff's managers, Peter Cunningham. Mr. Cunningham states that as of the date of the settlement, the combined costs of repairing Brushwood Lane was \$444,374.44. (Declaration of Peter Cunningham, ¶7.) Mr. Cunningham also estimates that there would likely be a reduction of the sale price of the property in the amount of \$400,000, and likely no more than \$800,000 when including diminution and loss of use. The information available to the settling parties at the time of settlement regarding diminution of value and loss of use were limited to the claims set forth in Plaintiff's Complaint. (Id., ¶9.) Plaintiff also submits another declaration from attorney John Sharp, who states that he believes that diminution of value and loss of use damages may total \$400,000 and that attorney fees and expert witness fees will be in a very rough range of an additional \$100,000 to \$150,000. (Declaration of John Sharp, ¶13.) Mr. Sharp also states that in his experience, it is highly unusual for a public entity defendant to refuse to participate in mediation, which KFPD did here. Mediation here resulted in the First and Second Settlements with all other defendants. (Id., ¶26.)

KFPD's Reply

In its Reply, KFPD argues that Plaintiff still has not shown that \$210,000 is within the ballpark of the settling defendants' share of liability, particularly now that Plaintiff has provided an estimate of approximately \$1 million in total damages. KFPD contends that there is no evidence presented supporting the inference here that the settling defendants were only 21% responsible for Plaintiff's damages. KFPD further contends that it has no liability for Plaintiff's tort claims because it is a government entity.

Discussion

"The settling party's proportionate liability is one of the most important factors." (Long Beach Memorial Center v. Superior Court (2009) 172 Cal.App.4th 865, 873.) "Where 'good faith' is contested, conclusory allegations as to the settling parties' liability are insufficient." (Edmon & Karnow, Civ. Procedure Before Trial, ¶12:873 [emphasis in original]; *Greshko v.*

County of Los Angeles (1987) 194 Cal.App.3d 822, 852-853 [trial court abused discretion finding good faith where settling party provided only conclusory declarations regarding proportionate liability].) If “there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant’s liability, then a determination of good faith based upon such assumption is an abuse of discretion.” (*Mattco Forge*, 38 Cal.App.4th at p. 1350.) Plaintiff has not presented any evidence addressing the proportionate liability of the settling defendants and KFPD. Merely stating that the settlement amount accurately reflects proportionate liability is insufficient. KFPD’s motion contesting the good faith of the Second Settlement is therefore granted.

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

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Meeting ID: 161 548 7764

Passcode: 502070

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300340

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: TAMARA WATKINS

vs.

DEFENDANT: PRICE-SIMMS, INC., ET
AL

NATURE OF PROCEEDINGS: HEARING – OTHER: FINAL APPROVAL

RULING

On March 5, 2025, the court granted preliminary approval of class action settlement and certification of the settlement class based upon the motion papers. However, on April 15, 2025, the parties stipulated to continue the preliminary approval schedule. On September 23, 2025, a declaration was prepared by Nathalie Hernandez in support of motion for final approval of class action settlement. No other motion papers were filed.

Appearances required.

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

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Meeting ID: 161 548 7764

Passcode: 502070

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001892

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: YENIFER LOURDES GONZALEZ REYES vs. DEFENDANT: JORGE CAMPOS DIRZO, ET AL	
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NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

On July 22, 2025, Defendants filed a motion for leave to conduct a mental examination of Plaintiff. No opposition was filed. However, on August 13, 2025, a notice of settlement was filed asserting that a dismissal would be filed no later than February 13, 2026.

Appearances required.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001970

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: SIDRA TUFON, ET AL

vs.

DEFENDANT: DANIELLE LANE, ET AL

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiffs filed a motion to enforce settlement and for entry of stipulated judgment in the amount of \$6,870. The matter was initially set for August 27, 2025, but was continued because there was no proof of service indicating that Defendant had been served with the motion. On September 2, 2025, Plaintiff filed a proof of service indicating that Defendants had been served with the motion. No opposition has been 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.)

Accordingly, the motion is granted. Plaintiff shall submit a proposed order consistent with this tentative.

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: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003769

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: CREDITORS
ADJUSTMENT BUREAU, INC.

vs.

DEFENDANT: SALT RIVER
CONSTRUCTION CORPORATION

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

Counsel for Defendant Salt River Construction filed a motion to be relieved as counsel. A proof of service indicates that all motion papers were served on Salt River Construction. 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).)

Based on the lack of opposition, the court is inclined to grant the motion upon the filing of a declaration from counsel indicating that counsel's file in this case has been transmitted to Salt River Construction. The court shall, therefore, continue this matter to October 29, 2025 at 1:30 pm for receipt of that declaration.

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: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005721

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: WILLIAM F. MCLAUGHLIN,
ET AL

vs.

DEFENDANT: JOHN R. WILKINSON, ET
AL

NATURE OF PROCEEDINGS: MOTION – ATTORNEY’S FEES

RULING

Defendants’ motion for attorney’s fees is denied.

Procedural Background

The complicated procedural background of this case is set forth in the Court’s Order Following Order to Show Cause (“Order”) filed on March 21, 2025. In that Order, the Court noted that this case originated as a SLAPP-back action in a different case, CV0001396. The Court stated that the SLAPP-back “cross-complaint” in CV0001396, filed by William F. McLaughlin (“McLaughlin”) and Ronald Earl Elijah (“Elijah”), was stricken and renamed as a Complaint in this case. The Court further stated that all pleadings relating to the “cross-complaint”, including the “amended cross-complaint”, are part of this action and shall be renamed “amended complaint”, and that McLaughlin and Elijah are designated as the plaintiffs in this action.

Before the Court entered its Order, HL Commercial Enterprises, Inc. (“HL”) and Robert R. Knez (“Knez”) filed a demurrer, arguing that they were not parties to the SLAPP action and they were improperly joined. While the demurrer was pending, on April 4, 2025, McLaughlin and Elijah dismissed HL and Knez as defendants.

Discussion

HL and Knez (“Defendants”) move for attorney’s fees pursuant to the anti-SLAPP statute, Code of Civil Procedure Section 425.16. Subsection (c)(1) provides in part that “a prevailing defendant on a special motion to strike shall be entitled to recover that defendant’s attorney’s fees and costs. If the court finds that a special motion to strike is frivolous or is solely

intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.”¹

Defendants are not entitled to recover attorney’s fees under Section 425.16 because they did not file or prevail on any anti-SLAPP motion. (See *S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 383 [“Under section 425.16, subdivision (c), only a ‘prevailing defendant on a special motion to strike’ may recover attorney fees and costs. (Italics added.) This statutory language is unambiguous, and makes the filing of a viable anti-SLAPP motion a prerequisite to recovering any fees and costs. As a matter of logic, a defendant must file a special motion to strike in order to prevail on one”]; *Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria v. Ceiba Legal, LLP*, 230 F.Supp.3d 1146, 1153-1154 (N.D. Cal. 2017) [defendants not entitled to fees under Section 425.16 where they filed Rule 12 motion to dismiss rather than anti-SLAPP motion].) Defendants’ motion for attorney’s fees is therefore 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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¹ The Court does not address Defendants’ arguments regarding costs as they have filed a Memorandum of Costs (\$911,40) that has not been challenged by Plaintiffs.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006275

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: JENNIFER OWENS

vs.

DEFENDANT: SUTTER HEALTH NOVATO
COMMUNITY HOSPITAL

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

RULING

Defendant Sutter Bay Hospitals' ("Defendant") demurrer to Plaintiff Jennifer Owens' ("Plaintiff") First Amended Complaint ("FAC") is SUSTAINED with leave to amend as to Plaintiff's Fifth Cause of Action (violation of Business and Professions Code, section 17200 *et seq.* ("UCL")) and otherwise overruled. (Code Civ. Proc., § 430.10, subd. (e).) Defendant's motion to strike is GRANTED with leave to amend to the extent described below. (Code Civ. Proc., § 436.)

BACKGROUND

This is a medical battery case. Plaintiff alleges that she is a breast cancer survivor and double mastectomy recipient with the BRCA2 gene mutation, which elevates her risk for a recurrence of cancer. (FAC, ¶¶ 6, 13.) Plaintiff alleges that her oncologist, a Dr. Jeske, advised her that she needed to avoid exposure to radiation and told her she should never have a mammogram again. (*Id.* at ¶¶ 9, 13.)

On March 6, 2024, Plaintiff visited Defendant's facility to have what was supposed to be a routine post-operative ultrasound. (FAC, ¶ 7.) During the appointment, the ultrasound technician allegedly pushed Plaintiff to receive a mammogram. (*Id.* at ¶ 8.) When Plaintiff resisted, she was introduced to Dr. Henry Chen, the head of the Radiology Department and another defendant in this case. (*Ibid.*) Dr. Chen allegedly "pressured Plaintiff to undergo a mammogram" over her repeated objections and her statements that her oncologist had told her never to have a mammogram again. (*Id.* at ¶ 9.) Dr. Chen suggested that he should call Dr. Jeske and left the room. (*Id.* at ¶ 10.) Plaintiff alleges that the ultrasound technician refused to do the ultrasound unless Plaintiff submitted to the mammogram, so she began packing her things to leave. (*Id.* at ¶ 11.) Dr. Chen returned to the room and told Plaintiff "that he spoke to Dr. Jeske and she had authorized the procedure." (*Ibid.*) Plaintiff was skeptical and suggested that Dr. Chen had spoken to a receptionist or a nurse, but Dr. Chen repeatedly told her that he had

personally spoken directly to Dr. Jeske. (*Ibid.*) As a result, Plaintiff agreed to the mammogram. (*Ibid.*) Plaintiff subsequently spoke to Dr. Jeske, who told her that she had never spoken to Dr. Chen and had never authorized the procedure. (*Ibid.*)

Plaintiff asserts causes of action for medical battery, negligence, intentional misrepresentation, intentional infliction of emotional distress (“IIED”), and violation of the UCL. Defendant now demurs to Plaintiff’s First, Fourth, and Fifth Causes of Action. Concurrently, Defendant moves to strike certain references to punitive damages and injunctive relief from the FAC.

DEMURRER

LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code. Civ. Proc., § 452.) 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 face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) “The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.” (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

DISCUSSION

Plaintiff’s Requests for Judicial Notice (for Both Demurrer and Motion to Strike)

Exs. A, B, D, E – These include an opinion in a federal case against Defendant out of the Northern District of California; complaints filed against Defendant before the Northern District of California and the Superior Court of San Francisco County; and a “Statement of Deficiencies & Plan of Correction” for “Sutter Davis Hospital.” Plaintiff explains that she is offering these as evidence of a pattern and practice of consent violations by Defendant. At this stage, all the Court is concerned with is the sufficiency of Plaintiff’s allegations. (*Hahn, supra*, 147 Cal.App.4th 740, 747.) Substantive evidence of her claims is irrelevant and so may not be judicially noticed. (See *AL Holding Co. v. O’Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, n. 4 “[A] court must

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decline to take judicial notice of material that is not relevant[.]”.) Even if these were judicially noticeable, the Court could not take judicial notice of the truth of any of the statements contained in these documents. (*Id.* at p. 1313.) Request denied.

Ex. C – This is a contract titled “Settlement and Release Agreement.” Plaintiff seeks judicial notice of this as a court record, claiming it is connected in some unspecified way to *State of California & Rockville Recovery Associates v. Sutter Health et al.* (Superior Court of Sacramento County, Case No. 34-2020-00079432). Nothing on Exhibit C indicates that this document is a court record or sheds light on where Plaintiff got it. Also, to the extent Plaintiff is offering a record of a settlement agreement to which Defendant is a party to corroborate her claims against Defendant, such corroboration is irrelevant at this stage. (See *Hahn, supra*, 147 Cal.App.4th 740, 747.) Request denied.

First Cause of Action – Medical Battery

A plaintiff may plead a medical battery claim by asserting (1) that the medical provider performed a medical procedure without her consent; (2) that she was harmed; and (3) that the medical provider’s conduct was a substantial factor in causing the harm. (CACI No. 530A.) “Consent” that is induced by fraud is not legally valid consent. (See *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 375 [plaintiff stated a cause of action for battery where she pleaded that her consent was “fraudulently induced,” which constituted “grounds for invalidating her consent and rendering [defendant’s] act a battery”].)

Here, Plaintiff has alleged that Dr. Chen performed, or a directed that a technician perform, a mammogram on her. (FAC, ¶¶ 11.) She further alleges that she consented to this procedure *only* because Dr. Chen represented that he had personally spoken to Plaintiff’s oncologist, Dr. Jeske, and Dr. Jeske had approved the mammogram. (*Ibid.*) Plaintiff asserts that this was false. (*Ibid.*) Plaintiff alleges that the mammogram exposed her to unnecessary risk of a recurrence of cancer, traumatized her, and led to a diagnosis of medically induced post-traumatic stress disorder. (*Id.* at ¶¶ 12-13, 15.) This states a claim for medical battery.

Defendant, relying on *Cobbs v. Grant* (1972) 8 Cal.3d 229, argues that Plaintiff has not stated a cause of action for medical battery because “[a] medical battery occurs where ‘a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not obtained[.]’” (Memorandum, p. 3 [quoting *Cobbs, supra*, 8 Cal.3d 229, 239].) Defendant points out that the FAC alleges that Dr. Chen performed the procedure he said he was going to perform.

In *Cobbs*, the defendant doctor, prior to performing surgery on the plaintiff, did not disclose that the surgery at issue entailed a risk of injuries to the spleen necessitating further surgery. (8 Cal.3d 229, 235.) The plaintiff suffered a spleen injury during the procedure that ultimately required removal of his spleen. (*Ibid.*) The trial court instructed the jury that it could rule in favor of the plaintiff on a theory of medical battery if it concluded “that defendant’s failure to disclose the inherent risks of the initial surgery vitiated plaintiff’s consent to operate.” (*Id.* at p. 235.) The Supreme Court held that where, as in *Cobbs*, “the patient consents to certain treatment and the doctor performs that treatment but an undisclosed inherent complication with a low probability occurs,” the gravamen of the ensuing legal claim is that “the doctor in obtaining

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consent . . . failed to meet his due care duty to disclose pertinent information[.]” and the claim sounds in negligence, not battery. (*Id.* at pp. 240-241.) The Court contrasted this with a situation where “the patient gives permission to perform one type of treatment and the doctor performs another[.]” (*Id.* at p. 240.) There, it said, “the requisite element of deliberate intent to deviate from the consent given is present” and a cause of action for battery is appropriate. (*Ibid.*)

Nothing in *Cobbs* or in any case Defendant cites supports the idea that a claim for medical battery lies *only* when a doctor performs a procedure substantially different from the one for which he obtained consent. On the contrary, *Cobbs* suggests that a medical battery theory is appropriate whenever a doctor performs an operation “to which the patient has not consented[.]” provided “the requisite element of deliberate intent to deviate from the consent given is present.” (8 Cal.3d 229, 240; accord *Saxena v. Goffney* (2008) 158 Cal.App.4th 316, 324 [medical battery “occurs when a doctor performs a procedure without obtaining any consent”].) That is what Plaintiff is alleging here. She is claiming that the “consent” she gave was brought about by a lie and so does not legally qualify as consent, meaning she *did not consent* to the mammogram. (*Barbara A.*, *supra*, 145 Cal.App.3d 369, 375.) Plaintiff has not attempted to plead the theory of battery that *Cobbs* rejected, one where “the patient consents to certain treatment and the doctor performs that treatment but an undisclosed inherent complication with a low probability occurs[.]” (*Cobbs*, *supra*, 8 Cal.3d 229, 240.) That aspect of *Cobbs* – its discussion of the difference between a lack of *informed* consent and a lack of *consent*, period – is simply inapplicable to this case.

“To vitiate consent[.]” the misrepresentation “ ‘ “must extend to the essential character of the act itself, which is to say that which makes it harmful or offensive, [citation] rather than to some collateral matter which merely operates as an inducement[.]” ’ ” (*Freedman v. Superior Court* (1989) 214 Cal.App.3d 734, 738 [quoting *Rains v. Superior Court* (1984) 150 Cal.App.3d 933, 999].) Defendant contends that this element is missing on the facts alleged. The Court does not see how. As alleged, what made the mammogram harmful or offensive to Plaintiff was that, per her oncologist, the mammogram posed a special risk to Plaintiff’s physical health and safety due to her medical history. (FAC, ¶¶ 9, 11-13.) Dr. Chen allegedly misrepresented the mammogram as being approved for Plaintiff by her oncologist. (*Id.* at ¶ 11.) The implication of the oncologist’s supposed approval is that the procedure did not, in fact, pose a special risk to Plaintiff’s health and safety. Plaintiff has alleged a misrepresentation speaking directly to the essential character of the mammogram as a procedure that did not pose special risk to her due to her medical history.

The Court reads Defendant to argue that the *only* circumstances under which consent to a medical procedure is vitiated by fraud are those at issue in *Rains v. Superior Court* (1984) 150 Cal.App.3d 933 (discussed in *Freedman*, *supra*, 214 Cal.App.3d 734, 737-738). *Rains* concerned a medical provider securing “consent” from a patient by misrepresenting a “treatment” as being therapeutic in nature when, in reality, the purpose of the treatment was nontherapeutic (to obtain personal gratification for the medical provider). (150 Cal.App.3d 933, 936.) Neither *Freedman* nor *Rains* suggests that the only circumstance under which fraud vitiates a patient’s consent to medical treatment is where the medical provider has described a procedure as being intended to treat a medical condition when that is not the true goal of the physical contact. These cases are simply inapposite where the plaintiff does not contend that the defendant engaged in fraud as to

whether the treatment was intended to care for a medical condition. (See *Ashcraft v. King* (1991) 228 Cal.App.3d 604, 614.)

Under the circumstances described in the FAC, Plaintiff's "consent" to the mammogram was conditioned on her oncologist, Dr. Jeske, having approved the procedure. (FAC, ¶ 11.) A patient is allowed to place conditions on her consent, and "[t]o label such a condition merely 'collateral'" such that its nonoccurrence does not vitiate consent "is to ignore the patient's 'right, in the exercise of control over [her] own body to determine whether or not to submit to lawful medical treatment.' " (*Ashcraft, supra*, 228 Cal.App.3d 604, 614 [quoting *Cobbs, supra*, 8 Cal.3d 229, 242].)

The demurrer to this cause of action is overruled.

Fourth Cause of Action – IIED

To prove IIED, a plaintiff must plead (1) extreme and outrageous conduct by the defendant, (2) intent to cause emotional distress or reckless disregard of the risk of causing the same, (3) severe emotional distress, and (4) causation. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.) To qualify as "extreme and outrageous," the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*Id.* at p. 496 [quoting Rest.2d Torts, § 46, com. d, p. 73].) "Liability for intentional infliction of emotional distress 'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051 [quoting *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1122 (overruled on another ground by *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 853, fn. 19)].) That the facts alleged are insufficiently extreme and outrageous as a matter of law is a proper ground on which to sustain a demurrer. (*Cochran, supra*, 65 Cal.App.4th 488, 494.)

First, Defendant argues that the conduct alleged in the FAC is insufficiently extreme and outrageous to support a cause of action for IIED. The Court disagrees. Plaintiff alleges that Dr. Chen deliberately lied to a cancer survivor to get her to cooperate with a medical procedure that he knew the patient's treating oncologist had advised her *never to receive again* because of the risk that it would cause a recurrence of a potentially fatal illness. (FAC, ¶ 9.) This is sufficiently extreme and outrageous to survive demurrer.

Defendant next argues that Plaintiff has not sufficiently pleaded that Dr. Chen acted with the purpose of causing her emotional distress. She did not need to plead that. Reckless disregard of the risk of causing extreme emotional distress is sufficient. (*Cochran, supra*, 65 Cal.App.4th 488, 494.) Taking the FAC's allegations as true, Dr. Chen had before him a patient who had survived a potentially fatal illness, and had undergone an invasive surgical procedure to prevent that illness from returning and possibly causing her death. (FAC, ¶ 6.) The patient was "vehemently" resisting getting a mammogram to the point of having a "contentious" verbal altercation with the ultrasound technician, one serious enough that the ultrasound technician escalated the issue to the head of the Radiology Department. (*Id.* at ¶¶ 8-9.) The patient essentially told Dr. Chen that due to what her oncologist had told her, she believed getting a mammogram would cause her potentially fatal illness to return. (*Id.* at ¶ 9.) The patient made

clear that it was critical that she not receive a mammogram against her oncologist's medical advice, and when it appeared that the providers would not respect her wishes, she began to leave. (*Id.* at ¶¶ 8-11.) She agreed to the procedure only after Dr. Chen assured her multiple times that he had personally spoken to Dr. Jeske, and that the oncologist had approved Plaintiff's mammogram. (*Id.* at ¶ 11.) Under these circumstances, it would be obvious that subsequently learning that Dr. Jeske *did not* approve the mammogram and in fact never spoke to Dr. Chen at all would cause Plaintiff to fear that the mammogram had placed her at risk for a recurrence of breast cancer. The potential for severe emotional distress in this scenario is self-evident. Plaintiff has pleaded that Dr. Chen recklessly disregarded the risk that his conduct would cause her severe emotional distress.

Finally, Defendant argues that Plaintiff has not pleaded emotional distress of sufficient severity to support an IIED claim. Defendant's argument on this point is copy-pasted in from another case's brief and does not address Plaintiff's allegations as to the severity of her distress. Plaintiff alleges that she felt traumatized and was diagnosed with medically-induced PTSD. (FAC, ¶¶ 12, 15.) These allegations are sufficient.

The demurrer is overruled as to this cause of action.

Fifth Cause of Action – UCL

The UCL authorizes a court to enjoin “[a]ny person who engages, has engaged, or proposes to engage in unfair competition.” (Bus. & Prof. Code, § 17203.) “Unfair competition” is defined in relevant part to “mean and include any unlawful, unfair or fraudulent business act or practice[.]” (Bus. & Prof. Code, § 17200.) Because this language is disjunctive, the practice at issue need only be unlawful, unfair, or fraudulent, not all three, to qualify as unfair competition. (*Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236-237.)

Plaintiff has not alleged that she “lost money or property as a result of the unfair competition[.]” which is a requirement for standing under the UCL. (Bus. & Prof. Code, § 17204.) The demurrer to this cause of action is sustained with leave to amend.

MOTION TO STRIKE

LEGAL STANDARD

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc., § 437.) “When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend.” (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

DISCUSSION

References to Punitive Damages¹

“In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed.” (Code Civ. Proc., § 425.13, subd. (a) (“Section 425.13”).) The court may enter such an order “on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294² of the Civil Code.” (*Ibid.*)

It is not the case that only claims against health care providers *for negligence* are subject to Section 425.13. “[W]henever an injured party seeks punitive damages for an injury that is directly related to the professional services provided by a health care provider acting in its capacity as such, then the action is one ‘arising out of the professional negligence of a health care provider,’ and the party must comply with section 425.13(a).” (*Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 191-192.) “[I]dentifying a cause of action as an ‘intentional tort’ as opposed to ‘negligence’ does not itself remove the claim from the requirements of section 425.13(a). The allegations that identify the nature and cause of a plaintiff’s injury must be examined to determine whether each is directly related to the manner in which professional services were provided. . . . The Clear intent of the Legislature is that any claim for punitive damages in an action against a health care provider be subject to the statute if the injury that is the basis for the claim was caused by conduct that was directly related to the rendition of professional services.” (*Id.* at p. 192.)

In *Central Pathology*, the plaintiffs’ claims for fraud and IIED were held subject to Section 425.13 because they “emanate[d] from the manner in which defendants performed and communicated the results of medical tests, a matter that is an ordinary and usual part of medical professional services.” (*Central Pathology, supra*, 3 Cal.4th 181, 193.) In the instant case, Plaintiff seeks punitive damages in connection with her IIED and fraud claims. (FAC, ¶ 26 & Prayer, ¶ 3.) Those claims are related to the manner in which Dr. Chen secured her consent to medical treatment. Obtaining consent is an ordinary and usual part of rendering professional medical care. Plaintiff was not permitted to include requests for punitive damages in her pleading unless and until she received leave of court to do so through a motion pursuant to Section 425.13. Plaintiff’s contention that Section 425.13 “requires a plaintiff to obtain leave of court [only] before *recovering* punitive damages” (Opposition, p. 4 [emphasis in original]) and does not govern whether a plaintiff is permitted to *plead* entitlement to such damages is incorrect. On its face, the statute governs what a plaintiff can plead. (Code Civ. Proc., § 425.13, subd. (a).)

The motion to strike this material is granted with leave to amend.

¹ Prayer, ¶ 3; “justifying the imposition of exemplary damages pursuant to Civil Code § 3294” at ¶ 26. The Court reminds Defendant that when requesting to strike less than an entire paragraph of a pleading, the movant is required to quote the material requested to be stricken in full, verbatim. (Cal. Rules of Court, rule 3.1322(a).)

² Civil Code, section 3294 governs awards of punitive damages. It provides that in actions “for the breach of an obligation not arising from contract,” a plaintiff may recover punitive and/or exemplary damages only upon proof “by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice[.]” (Civ. Code, § 3294, subd. (a).)

References to Injunctive Relief³

Plaintiff's requests for injunctive relief are based on her UCL claim. Because the Court has sustained the demurrer to that cause of action with leave to amend, it will likewise sustain the motion to strike this material with leave to amend. That said, Defendant's description of the material to be stricken is overbroad. That Paragraph 28 "contain[s] a request for injunctive relief" (Amended Notice of Motion, p. 2) is not sufficient justification for striking the portion of that paragraph having nothing to do with injunctive relief. The motion to strike is granted with leave to amend as to the following material:

- Prayer, ¶ 4, in full
- The following from Paragraph 28: "and merits injunctive and equitable relief" at lines 11-12; the sentence "Plaintiff seeks injunctive relief to prevent recurrence of such conduct and to hold Defendants accountable for violating the public's right to ethical, transparent, and medically appropriate care."
- Paragraph 29, in full

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/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>

³ Prayer, ¶ 4; ¶¶ 28, 29

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/22/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007656

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: TARMO THAT, ET AL	
vs.	
DEFENDANT: JINGSHU XU	

NATURE OF PROCEEDINGS: PETITION – OTHER: TO CORRECT CONTRACTUAL
ARBITRATION AWARD

RULING

Petitioner has filed a motion to correct an arbitration award. Respondent Xu has filed a denial to the motion. The court shall schedule a hearing for November 12, 2025 at 1:30 pm. Respondent shall file its opposition to the motion no later than by October 29, 2025.

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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