

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2300117

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: BRIDGEWAY MARINA
CORP.

vs.

DEFENDANT: DCR MORTGAGE 10 SUB
3, LLC, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – LEAVE
2) PETITION – OTHER: TO VACATE FINAL ARBITRATION AWARD
3) PETITION – OTHER: CONFIRM CONTRACTUAL ARBITRATION AWARD

RULING

Defendant's petition to confirm the arbitration award is granted, and Plaintiff's petition to vacate the arbitration award is denied, subject to the clarification that the arbitration award did not encompass Plaintiff's claim that Defendant charged excessive fees. Plaintiff's motion for leave to amend its Complaint is granted only with respect to Plaintiff's claim that Defendant charged excessive fees.

Procedural Background

On January 19, 2023, Plaintiff Bridgeway Marina Corp. filed its Verified Complaint for wrongful foreclosure, breach of contract, negligence and wrongful business practices against Defendants DCR Mortgage 10 Sub 3, LLC ("DCR") and Total Lender Solutions, Inc. ("TLS"). Plaintiff alleged that in 2015, it obtained a \$5 million loan from a lender called Sterling Bank and Trust, FSB ("Sterling Bank"), secured by a deed of trust on certain property in Sausalito. At the time of the loan, Cameron Rezavi ("Cameron") was the owner of Plaintiff, but in 2017 Cameron transferred ownership of Plaintiff to his father to repay certain debts. His father then transferred ownership to Peter Afrooz, trustee of a trust that benefits Cameron's minor children. (Complaint, ¶¶1, 8.) Cameron continued to be the manager of the property. (*Id.*, ¶9.) Plaintiff notified Sterling Bank of the change of ownership and Sterling Bank made no objection. (*Id.*, ¶10.) In 2021 or 2022, Sterling Bank sold Plaintiff's loan to DSR. At the time, Plaintiff's financial obligations under the loan were fully paid and current. However, DSR directed TLS to record a Notice of Default under the loan, demanding that Plaintiff pay the full accelerated amount due under the loan, in excess of \$4 million. (*Id.*, ¶¶2, 3, 13.) The Notice of Default cited the change in ownership, as well as a failure to meet DSCR requirements and allowing a junior

lien to be recorded against the property, as the bases for the notice. (*Id.*, ¶14.) Plaintiff alleged that the Notice of Default constituted an act of wrongful foreclosure, as well as a breach of contract, negligence, and wrongful business practice. (*Id.*, ¶4.) Plaintiff did not make allegations in its original Verified Complaint that fees charged by DCR were improper or excessive.

In April 2023, DCR filed a motion to compel arbitration of the four causes of action asserted against it.

Plaintiff filed a First Amended Verified Complaint on August 24, 2023, adding Sterling Bank as a defendant and a cause of action for breach of the implied covenant of fair dealing against Sterling Bank. As with its original Verified Complaint, Plaintiff did not make allegations in the First Amended Verified Complaint that fees charged by DCR were improper or excessive.

On September 20, 2023, the Court entered an Order granting DCR's motion to compel arbitration.

An arbitration hearing was conducted on March 10, 2025. On July 17, 2025, the arbitrators issued a Final Award in which they determined among other things that Plaintiff could not assert a wrongful foreclosure claim because no foreclosure sale had occurred and because DCR had properly triggered the due-on-sale provision in the loan documents.

Petition to Vacate Arbitration Award

Standard

Plaintiff moves to vacate the arbitration award as to DCR under Code of Civil Procedure Section 1286.2(a)(4), which provides that "the court shall vacate the award if the court determines . . . [t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted."

"Arbitrators may exceed their powers when they act in a manner not authorized by the contract or by law, act without subject matter jurisdiction, decide an issue that was not submitted to arbitration, arbitrarily remake the contract, uphold an illegal contract, issue an award that violates a well-defined public policy, issue an award that violates a statutory right, fashion a remedy that is not rationally related to the contract, or select a remedy not authorized by law. However, [a]rbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error." (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 868-869.)

Wrongful foreclosure

The arbitrators concluded that Plaintiff had no right to claim wrongful foreclosure because a foreclosure sale never occurred. Plaintiff argues that the panel erred because it followed a line of cases (including *Gomes vs. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149 and *Jenkins vs. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497) that Plaintiff contends may ultimately be found to be overruled based on a California Supreme Court case, *Yvanova v. New*

Century Mortgage Corp. (2016) 62 Cal.4th 919. In response, DCR argues that the panel did not actually rely on these cases, as they did not even cite *Jenkins* and only mentioned *Gomes* as having been previously cited by this Court. Instead, DCR argues, the arbitrators cited to *Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 525, Civil Jury Instruction 4920, *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 561-562, and *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104, which stand for the proposition that a foreclosure sale is an element of a wrongful foreclosure sale. Plaintiff does not discuss these authorities cited by the panel in either its moving papers or its Reply.

Plaintiff has failed to show the arbitrators exceeded their powers. Plaintiff does not argue that the arbitrators went beyond the authority granted to them under the arbitration agreement. Rather, Plaintiff argues only that there is a contested issue of law. Indeed, even with respect to the *Jenkins/Gomes* argument Plaintiff makes in its moving papers, Plaintiff acknowledges that there is no clear authority mandating a certain conclusion or outcome. Plaintiff merely argues that it expects or hopes the California Supreme Court might someday rule in a manner that supports its position on the applicable law. This is insufficient to set aside the arbitration award under Code of Civil Procedure Section 1286.2(a)(4). “When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator’s understanding of the case, to reach a decision. Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error, for [t]he arbitrator’s resolution of these issues is what the parties bargained for in the arbitration agreement.” (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1184 [citations and internal quotations omitted]).

Due on sale clause

The arbitrators concluded that DCR properly triggered the due-on-sale provision in the loan documents because there was a change in Plaintiff’s ownership. Plaintiff argues that the arbitrators improperly applied California law to determine whether a transfer of shares of a corporation constitutes a change of ownership of the real property. Plaintiff argues that this was improper because federal law applies and under federal law, a due on sale provision is not triggered until the property is actually conveyed. Plaintiff contends that this did not happen in this case. In its Opposition, DCR argues that the panel expressly relied on federal law, namely, the Garn-St. Germain Act of 1982, in addition to the California authority it cited. Plaintiff does not address this argument in its Reply.

Plaintiff has failed to show that the arbitrators exceeded their powers with respect to the due on sale clause as it, again, argues only that the arbitrators incorrectly applied the law. Plaintiff does not show that the arbitrators exceeded their power in any way with respect to this issue. (*Cohen*, 31 Cal.App.5th at pp. 868-869; *Gueyffier*, 43 Cal.4th at p. 1184.)

Excessive Fees

As discussed below, Plaintiff does raise a valid point regarding the arbitrator's ability to dismiss Plaintiff's claim that DCR imposed excessive fees. The Court does not vacate the Final Award as requested by Plaintiff, but instead confirms the award with the clarification that the award does not cover Plaintiff's claim that DCR charged excessive fees.

Petition to Confirm Arbitration Award

DCR moves to confirm the arbitration award and for entry of judgment according to the award. DCR also seeks interest at the statutory rate from July 18, 2025, costs, and attorney's fees.

Standard

"Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award." (Code Civ. Proc. § 1285.) "If a petition . . . is duly served and filed, the court shall confirm the award as made . . . unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." (Code Civ. Proc. § 1286.) Accordingly, once a petition to confirm that meets the statutory requirements has been served, "the burden is on the party attacking the award to affirmatively establish the existence of error." (*Valencia v. Mendoza* (2024) 103 Cal.App.5th 427, 442 [citations and internal quotations omitted].)

Discussion

In its petition to confirm, DCR describes the dispute subject to arbitration as: "Respondents [Plaintiffs] contended Petitioner [DCR] wrongfully foreclosed on real property and recorded negligent or false Notices of Default on the property, along with various business torts. Petitioner contended that Petitioners [sic] breached the loan documents by transferring ownership of the real property, permitting junior encumbrances, and failing to maintain the contractual debt to service coverage ratio; all of which permitted a non-judicial foreclosure. Petitioner also contended that there was never a foreclosure." DCR essentially acknowledges in its petition that any claim for excess fees was not included in the claims compelled to arbitration.

The Court grants DCR's petition to confirm the arbitration award, subject to the clarification that the award does not cover Plaintiff's claim that DCR charged excessive fees.

DCR shall submit a separate motion for the attorney's fees and costs it seeks.

Motion for Leave to Amend

Plaintiff moves for leave to amend its First Amended Verified Complaint to assert a claim for excessive fees and charges demanded by DCR when Plaintiff paid off DCR and replaced it with a new lender. Plaintiff contends that it did not include this claim in its original Verified Complaint or its First Amended Verified Complaint, and thus it was not included in the claims that were compelled to arbitration. DCR argues that the parties' arbitration agreement required

arbitration of “all disputes, claims and controversies”, which it contends necessarily included Plaintiff’s claim for allegedly excessive fees.

A review of Plaintiff’s original Verified Complaint and First Amended Verified Complaint shows that Plaintiff did not make allegations regarding excessive fees in those pleadings. As a result, Plaintiff’s claim to recover excessive fees was not included in the claims ordered to arbitration. Further, there is no evidence that this claim was presented to the arbitrators, and the arbitrators did not address excessive fees anywhere in the Ruling Granting Dispositive Motions or the Final Award. Had the arbitrators done so, they would have exceeded their powers. (See *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 443 [“An arbitrator exceeds his powers when he . . . decides an issue that was not submitted to arbitration”].)

Further, as Plaintiff points out, an arbitrator exceeds his or her powers where the award violates a party’s unwaivable statutory rights and/or contravenes an express legislative expression of public policy. (See *Honchariw v. FJM Private Mortgage Fund, LLC* (2022) 83 Cal.App.5th 893, 899.) In *Honchariw*, the court found that the arbitrator exceeded its power by denying the plaintiff’s claims for unlawful late fees charged by the lender because the fee provision was an unenforceable liquidated damages clause in a consumer contract invalidated by Civil Code Section 1671. Here, had the Final Award included a dismissal of Plaintiff’s excessive fee claim, such a dismissal could have been in violation of Business & Professions Code Sections 10248.1 and 10242.5 and Civil Code Section 1671, as in *Honchariw*. This issue was not adjudicated, however, as the excessive fee claim was not presented to or decided by the arbitrators.

The Court grants Plaintiff’s motion for leave to amend its First Amended Verified Complaint to assert its claim regarding excessive fees charged by DCR. Leave to amend is granted only as to this particular claim only. Plaintiff shall file its Second Amended Verified Complaint no later than 10 days from the date of the hearing on this matter.

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

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

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

Meeting ID: 161 516 2449

Passcode: 073961

If you are unable to join by video, you may join by telephone by calling (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: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001330

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: PATRICIA CORNELL

vs.

DEFENDANT: CYNTHIA TRUTNER, ET
AL

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

RULING

The demurrer by defendants Cynthia Trutner, Bancroft & McCalister and Genevieve Moore (“Defendants”) is sustained in its entirety with leave to amend. (Code Civ. Proc., § 430.10(e), (f).)

Procedural Defects

The Court draws Defendants’ attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

Defendants also fail to file a separate notice of hearing on the demurrer and demurrer. At minimum, the papers filed in support of a demurrer must include:

- (a) the demurrer itself, (b) a notice of hearing on the demurrer, and
- (c) a memorandum in support of the demurrer. (C.R.C., Rule 3.1112(a).) Other papers, such as declarations, exhibits, appendices, or other pleadings, may also be filed. (C.R.C., Rule 3.1112(b).) These papers may be filed as separate documents or may be combined in one or more documents if the party filing a combined pleading specifies these items separately in the caption of the combined pleading. (C.R.C., Rule 3.1112(c).)

(5 Witkin, Cal. Procedure (6th ed. 2022) Pleading, §979.)

The caption of the Defendants' notice does not state that it is a notice of demurrer *and* demurrer. (See Cal. Rules of Court, rule 3.1112, subd. (c).) Notwithstanding this defect, the Court has addressed the merits asserted by Defendants below.

Request for Judicial Notice

Defendants request the Court take judicial notice of the following documents filed in the action titled *In re the Patricia Cornell Trust Dated November 16, 1993, as Amended and Restated*, Marin County Superior Court, case number PRO2003455 ("Probate Action"): 1) Statement of Decision, file stamped March 16, 2022; 2) Judgment, file stamped March 16, 2022; 3) Petition, file stamped December 29, 2020; and 4) first ten pages of Plaintiffs opening brief on appeal from the Judgment. Defendants Request for Judicial Notice of GRANTED. (Evid. Code, § 452, subd. (d).)

Allegations

This action concerns Plaintiff's mother's trust, The Patricia Cornell Trust Dated November 16, 1993, as Amended and Restated ("Trust"). Plaintiff alleges that she is a beneficiary under the Trust and her mother intended for Plaintiff to be able to reside in her home, 6 Madrona Street in San Rafael ("property"), after her death, even if the trustee elected to sell the property. Plaintiff alleges she suffered damages due to Defendants drafting of the trust, and has been locked out of the property and rendered homeless. Plaintiff alleges various violations of unspecified Probate Code sections in connection with the Probate Action. Plaintiff also alleges that she suffered trauma and sadness, lost disability benefits, lost money and seeks between \$17 million and \$40 million as well as punitive damages.

On November 3, 2023, Plaintiff filed her complaint. Following a successful demurrer, on June 17, 2024, Plaintiff filed her operative First Amended Complaint ("FAC") wherein she has labeled the following separate causes of action: 1) Legal Malpractice/Professional Negligence; 2) Failure to Appear Pursuant to a Subpoena; 3) Fraud and Embezzlement; 4) Conflict of Interest; 5) Violated Probate Codes; 6) Breach of Fiduciary Duty; 7) Failure to Comply with Trust Instructions; 8) Posing as a Trustee; and 9) Legal Malpractice/Professional Negligence.¹

Currently before the Court is Defendants demurrer to the entire FAC on the ground it fails to state a cause of action and is uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) Defendants also demur on the grounds Plaintiff's claims are barred by the statute of limitations, Plaintiff lacks standing and the Probate Action is still pending and has jurisdiction over these claims. Defendants have also filed a motion to strike the entire complaint on the ground it fails to comply with California Rules of Court, rules 2.104, 2.105, 2.108, 2.110 and 2.112.

Demurrer

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable

they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The 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.)

A demurrer for uncertainty will be sustained only where the complaint is so bad that defendant cannot reasonably respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) “Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given.” (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.)

Uncertainty

A demurrer for uncertainty will be sustained only where the complaint is so bad that defendant cannot reasonably respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.) Moreover, a demurrer for uncertainty may lie if the failure to label the parties and claims renders the complaint so confusing defendant cannot tell what he or she is supposed to respond to. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139 fn. 2.)

To the extent a pleading violates California Rules of Court, rule 2.112 by failing to explain the nature of the alleged cause of action, the trial court should provide an opportunity for the pleader to amend to correct this deficiency. (*A.J. Fistes Corp., supra*, 38 Cal.App.5th at 695–96.)

The Court agrees that the Complaint is uncertain and that this uncertainty makes it impossible for the Defendants to meaningfully respond to the pleading. The Court also acknowledges that the pleading does indeed fail to comply with California Rules of Court, rule 2.112, which only adds to its uncertainty.

Failure to State a Cause of Action

Moreover, to the extent Plaintiff's claim for negligence is best construed as a claim for legal malpractice, entirely devoid of allegations of fact to support any of the elements and appears to be time-barred. The elements of a cause of action for legal malpractice are: (1) an attorney-client

relationship; (2) a negligent act or omission; (3) causation; and (4) damages. (*Slovensky v. Friedman* (2006) 142 Cal.App.4th 1518, 152). A plaintiff must show that “but for the alleged malpractice, it is more likely than not that the plaintiff would have obtained a more favorable result.” (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1244.) Plaintiff has failed to allege facts showing she has standing as a trust beneficiary to assert such a claim. (*Gordon v. Ervin, Cohen, & Jessup* (2023) 88 Cal.App.5th 543, 556 [“courts will recognize a duty to a nonclient plaintiff—and thereby allow that plaintiff to sue the lawyer for legal malpractice—only when the plaintiff, as a threshold matter, establishes that the client, in a clear, certain and undisputed manner, told the lawyer, “Do X” (where X benefits the plaintiff)”].) Moreover, legal malpractice actions must be commenced within one year of the plaintiff’s discovery of facts constituting the wrongful act or omission or four years from the date of the wrongful act or omission, whichever occurs first. (Code Civ. Proc., § 340.6, subd. (a).)

Considering the above, the general and special demurrers are SUSTAINED.

The final issue is leave to amend. In response to the instant challenges to the pleadings, Plaintiff fails to provide assurances that she can effectively amend. Instead, she complains that this Court has violated laws and procedures and seeks a continuance. The request for a continuance is not properly before the court, is not supported by good cause and is therefore denied.

The Plaintiff fails to defend her claims as asserted or argue that she has any additional facts to state a cause of action. It also appears that the facts may not be in dispute and there may be no liability under substantive law. Finally, many of Plaintiff’s allegations are not causes of action. Nonetheless, the court will allow one last opportunity for plaintiff to amend. Any Second Amended Complaint must be filed within 10 days after service of notice of this order. (Code Civ. Proc., § 472b.)

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

Meeting ID: 161 516 2449

Passcode: 073961

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001650

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: SHAWNA SIMS	
vs.	
DEFENDANT: MARIN GENERAL HOSPITAL	

NATURE OF PROCEEDINGS: MOTION – COMPEL DISCOVERY FACILITATOR
PROGRAM

RULING

Plaintiff Shawna Sims's ("Plaintiff") Motion to Motion to Compel Further Responses to her Demands for Production Nos. 34 and 75 and Special Interrogatories Nos. 8 and 21 is GRANTED in part. Further responses shall be served on Plaintiff within twenty (20) days from the date of this Order.

BACKGROUND

This case concerns defendant Marin General Hospital, a California Non-Profit Corporation's ("Defendant") alleged practice of recording patients in some its hospital rooms through a closed caption recording system without their knowledge or consent. Plaintiff asserts that Defendant did so in violation of the Health Insurance Portability and Accountability Act ("HIPAA"), the California Confidentiality of Medical Information Act ("CMIA") and other statutes and regulations protecting patient privacy.

Plaintiff, an employee of Defendant, became sick while at work and visited the emergency room. She alleges that she was asked to partially undress and did so, before realizing there was a camera filming her. Plaintiff alleges that she informed Defendant of the potential issues with recording patients receiving medical care without their consent, and the fact that security officers had access to the videos. Despite this, Plaintiff asserts that Defendant has not notified the other affected individuals about the unauthorized recording of their medical visits and that Defendant continues to benefit from its ongoing failure to comply with these laws (some of which impose an obligation to notify breach victims in a timely manner) by keeping the individuals in the dark so that they are prevented from seeking remedies and restitution for Defendant's privacy violation.

LEGAL STANDARD

This Motion is brought pursuant to Code of Civil Procedure sections 2031.310 and 2030.300.

Section 2031.310 provides that “[o]n receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:” (1) “A statement of compliance with the demand is incomplete”; (2) “A representation of inability to comply is inadequate, incomplete, or evasive”; (3) “An objection in the response is without merit or too general.” Section 2030.300 provides the same for responses to interrogatories.

A motion to compel further responses must include: (1) a declaration showing “a reasonable and good faith attempt” to resolve the issues outside of court (so-called “meet and confer”); (2) a separate statement in accordance with California Rule of Court, rule 3.1345, stating the specific discovery request, the response given, the factual and legal reasons for compelling further responses, etc.; and (3) “specific facts showing good cause justifying the discovery sought by the ... demand.” (Code Civ. Proc., § 2031.310, subds. (b)(1)-(2).)

To establish “good cause,” the burden is on the moving party to show both relevance to the subject matter (e.g., how the information sought would tend to prove or disprove some issue in the case); and specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Sup.Ct. (National Union Fire Ins. Co. of Pittsburgh, Pa.)* (1997) 53 Cal.App.4th 1113, 1117.) For the purpose of discovery, relevant information is “any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Proc., § 2017.010.) Courts interpret this provision liberally in favor of allowing discovery. (*Gonzalez v. Super. Ct.* (1995) 33 Cal.App.4th 1539, 1546–47.) A party may discover evidence “if it ‘might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement....’ [Citation.]” (*Ibid.*) If “good cause” is shown by the moving party, the burden is then on the responding party to justify any objections made. (*Kirkland v. Sup Ct. (Guess?, Inc.)* (2002) 95 Cal.App.4th 92, 98.) To some extent, even fishing expeditions are permissible. (*Stewart v. Colonial W. Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1013.)

Lastly, the only sanction that can be imposed on a motion to compel further responses is a monetary sanction against the losing party. (See Code Civ. Proc., § 2031.310(d).) Such sanction “shall” be imposed unless the court finds that party made or opposed the motion “with substantial justification” or other circumstances make sanctions “unjust.” (*Id.*)

DISCUSSION

On August 4, 2025, Plaintiff filed her motion seeking to compel Defendant to provide further responses to her Demands for Production 31, 34, 75 and Special Interrogatories 8 and 21. On August 27, 2025, Jill Michelle Manning was appointed as Discovery Facilitator over the dispute. On October 31, both parties filed declarations of non-resolution, which listed the following issues as remaining in dispute: Demands for Production Nos. 34, 75 and Special Interrogatories

Nos. 8 and 21. The Motion has been partially withdrawn with respect to Demand for Production No. 31.

Plaintiff now seeks to have Defendant ordered to produce all non-privileged documents responsive to Demand No. 34 (served on March 11, 2024); 2) to produce all non-privileged documents that are responsive to Demand No. 75 (served on March 25, 2025); and 3) to remove its objections and fully answer Special Interrogatory Nos. 8 and 21 (served on March 25, 2025).

DEMAND FOR PRODUCTION NO. 34

Demand No. 34 seeks “DOCUMENTS sufficient to IDENTIFY all individuals who visited the MARINHEALTH emergency room during CLASS PERIOD, the dates of their visit, the medical services they received, and the MARINHEALTH rooms in which they received medical care.”

Defendant responded as follows: “Defendant objects to the request because it is argumentative as to the term “CLASS PERIOD”. To date, no class has been certified. Accordingly, Defendant applies the time period of December 21, 2019 to the present in responding to this request. Defendant objects that the request seeks irrelevant information to the extent it seeks information regarding patients who are not a part of the litigation. Defendant objects that the request seeks information protected by the right to privacy in that the term “IDENTIFY” is defined in Plaintiff’s Requests for Production with respect to individuals to include private contact information that is not relevant to this litigation. Defendant objects to the request as it seeks information protected from disclosure by HIPAA and CMIA. Defendant objects to the request to the extent it seeks documents protected by the attorney-client privilege and/or the work product doctrine, as any attorney-client communications or attorney work product on the specified topic would be protected from disclosure. In response to Defendant’s objection to the term “CLASS PERIOD, the parties have agreed to substitute the term “RELEVANT PERIOD” as a neutral alternative to “CLASS PERIOD” without altering the definition. In response to Defendant’s privacy, HIPAA, and CMIA objections, the parties have agreed that Defendant will produce an anonymized list of patients who were recorded receiving medical care in non-public areas of Defendant’s facility during the RELEVANT PERIOD. This list shall include the following information regarding each such patient: patient number assigned solely for purposes of this litigation, the date(s) of visit(s), and for each visit, whether the visit included an examination, testing, diagnosis, treatment, prescription of medication, and/or separate statement of administration of medication as well as amount billed and paid. Defendant has now produced this list concurrently with the service of this supplemental response as document bates-stamped DEFENDANT016842.”

It is the Court’s understanding that the outstanding issues are whether Defendant must produce documents identifying the specific medical services received by individual patients and which rooms treatment occurred in.

The Court finds Plaintiff has established good cause for the production of documents identifying the room(s) in which individuals received care during their visit(s). This information shall be provided in the format agreed upon above (whereby the anonymized patient’s room number is identified for each visit). However, as for the medical services provided, the Court find that the previously agreed upon parameters (“whether the visit included an examination, testing,

diagnosis, treatment, prescription of medication, and/or separate statement of administration of medication”) are sufficient and Plaintiff has failed to show good cause for requiring the production of more specific records, even in light of the patient anonymization. To the extent Defendant has not yet produced responsive documents, they shall be produced pursuant to this Order.

DEMAND FOR PRODUCTION NO. 75

Demand for Production No. 75 seeks “[t]he DOCUMENTS you IDENTIFIED in your response to Special Interrogatory No. 21.”

Defendant responded as follows: “MGH incorporates and reasserts its objections to Plaintiff’s definitions and instructions set forth above as if fully stated in response to this demand. MGH further objects that the anonymized list referenced in Special Interrogatory No. 21 does not identify any patients as having their medical visit recorded or transmitted through MGH’s security camera system while receiving care in a hospital room. Rather, the list encompasses patients that were treated in certain rooms that had a security camera at some point during the period from November 6, 2020 to March 30, 2024—though not necessarily a camera that was present or operational during the entire period or when each patient listed was treated in the room. For example, on October 24, 2023, MGH disabled (with tape) the cameras in rooms SPH 1, SPH 2, and SPH 3 and scheduled their removal, which occurred shortly later. MGH does not know and cannot reasonably ascertain from records which patients in the anonymized list were observed or recorded via a security camera in the rooms. MGH further objects to the demand to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other privilege or protection. Subject to and without waiving the foregoing objections, MGH responds that no nonprivileged documents responsive to this demand have ever existed because the anonymized list does not identify any patients as having their medical visit recorded or transmitted through MGH’s security camera system while receiving care in a hospital room, and MGH did not identify any documents in response to Special Interrogatory No. 21.”

Special Interrogatory No. 21 asks: “For each RECORDED PATIENT who is identified in the ANONYMIZED LIST, state whether the real-time video feed capturing that individual’s PATIENT RECORDING was displayed on one of the monitors in the VIDEO MONITORING ROOM and state the factual basis for your response.”

Given the Court’s ruling on Special Interrogatory No. 21 below, the Court also orders that further response be made to Demand for Production No. 75.

SPECIAL INTERROGATORY NO. 8

Special Interrogatory No. 8 asks: “For each RECORDED PATIENT identified in the ANONYMIZED LIST, (i) state whether that individual’s PATIENT RECORDING was used to identify, diagnose, or treat that patient; and, if applicable, (ii) explain with specificity how the recording was used to identify, diagnose, or treat that patient.”

Defendant responds: “MGH incorporates and reasserts its objections to Plaintiff’s definitions and instructions set forth above as if fully stated in response to this interrogatory. MGH further objects that the anonymized list referenced in this interrogatory does not identify any patients as having been recorded or observed while receiving care in a hospital room. Rather, the list encompasses patients that were treated in certain rooms that had a security camera at some point during the period from November 6, 2020 to March 30, 2024—though not necessarily a camera that was present or operational during the entire period or when each patient listed was treated in the room. For example, on October 24, 2023, MGH disabled the cameras in rooms SPH 1, SPH 2, and SPH 3 (first with tape and subsequently by removing the cameras from the rooms). MGH does not know and cannot reasonably ascertain from records which patients in the anonymized list were observed or recorded via a security camera in the rooms. MGH further objects that this interrogatory is unduly burdensome and compound in that it seeks information about 2,835 patients over a multi-year period included in the referenced anonymized list. MGH further objects that the interrogatory is compound and conjunctive in violation of Code of Civil Procedure section 2030.060(f). Subject to and without waiving the foregoing objections, MGH responds as follows: In general, security camera footage from rooms SPH 1, SPH 2, and SPH 3 would not be used to identify, diagnose, or treat a patient other than supporting treatment with security. On the other hand, the cameras in rooms SPH 18 and SPH 19 are used to monitor patients placed on a psychological hold. Such patients are often placed on a psychological hold because they have been deemed to be a danger to themselves or others, or are gravely disabled, as a result of a mental health disorder. Thus, the live video feed from these rooms are used to support or promote patient treatment.”

Plaintiff argues that Defendant should supplement its responses to Special Interrogatory No. 8 by reviewing the class members’ patient charts, its computer logs, and other information repositories for the requested information. If Defendant does not possess the requested information, it should affirmatively and unambiguously state that fact. Finally, if Defendant has not preserved the relevant computer logs for the past six years, Defendant should explain why that information was not preserved so that Plaintiff can ascertain whether to seek sanctions for spoliation of evidence.

The Court agrees that Defendant’s qualifying descriptors in the response makes it unclear whether it cannot ascertain (the requested information) from its records or whether it is not “reasonably” possible to do so because Defendant contends that such an exercise would be unduly burdensome.

The Court therefore orders Defendant to provide supplemental responses, without relying on its “burdensome” or “compound” objections, and to make it clear whether inquiry is impossible because the records do not exist. Defendant should specifically state whether it has reviewed the charts of patients on the anonymized list, its own computer logs, and or other information repositories in its custody or control in order to answer fully. For records which may have existed but were not preserved, Defendant should explain the facts and circumstances around their lack of preservation.

SPECIAL INTERROGATORY NO. 21

Special Interrogatory No. 21 asks: “For each RECORDED PATIENT who is identified in the ANONYMIZED LIST, state whether the real-time video feed capturing that individual’s PATIENT RECORDING was displayed on one of the monitors in the VIDEO MONITORING ROOM and state the factual basis for your response.”

Defendant responds as follows: “MGH incorporates and reasserts its objections to Plaintiff’s definitions and instructions set forth above as if fully stated in response to this interrogatory. MGH further objects that the anonymized list referenced in this interrogatory does not identify any patients as having been recorded or observed while receiving care in a hospital room. Rather, the list encompasses patients that were treated in certain rooms that had a security camera at some point during the period from November 6, 2020 to March 30, 2024—though not necessarily a camera that was present or operational during the entire period or when each patient listed was treated in the room. For example, on October 24, 2023, MGH disabled the cameras in rooms SPH 1, SPH 2, and SPH 3 (first with tape and subsequently by removing the cameras from the rooms). MGH does not know and cannot reasonably ascertain from records which patients in the anonymized list were observed or recorded via a security camera in the rooms. MGH further objects that this interrogatory is unduly burdensome and compound in that it seeks information about 2,835 patients over a multi-year period included in the referenced anonymized list. MGH further objects that the interrogatory is compound and conjunctive in violation of Code of Civil Procedure section 2030.060(f). Subject to and without waiving the foregoing objections, MGH responds as follows: MGH does not know and cannot reasonably ascertain which, if any, security camera feeds were displayed at the security monitoring station on any particular date or time in the anonymized list. That information is not tracked or trackable by MGH’s software systems.”

Plaintiff argues that this response is deficient because Defendant has avoided taking a clear position on whether class members’ patient records would indicate, at least for some class members, that camera feeds from their hospital visits were watched by Defendant’s security staff. Instead, it has offered an evasive and incomplete response which states that Defendant’s software does not track which videos were watched. And Defendant has qualified that response with its objection that it would be unduly burdensome for it to review class members’ medical records for this information.

The Court agrees that Defendant’s qualifying descriptors in the response makes it unclear whether it cannot ascertain (the requested information) from its records or whether it is not “reasonably” possible to do so because Defendant contends that such an exercise would be unduly burdensome.

The Court therefore orders Defendant to provide supplemental responses, without relying on its “burdensome” or “compound” objections, and to make it clear whether inquiry is impossible because the records do not exist. Defendant should specifically state whether it has reviewed the charts of patients on the anonymized list, its own computer logs, and or other information repositories in its custody or control in order to answer fully. For records which may have existed but were not preserved, Defendant should explain the facts and circumstances around their lack of preservation.

Sanctions

The Court notes that the motion did not request sanctions nor did Defendant address them in opposition. In light of this, the circumstances of the case would render the imposition of sanctions unjust.

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 November, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7FhrI3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001667

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: CATHERINE RUCKER

vs.

DEFENDANT: POINTE MARIN
ASSOCIATION

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The following Tentative Decision was originally posted on October 30, 2025. The hearing on the matter was continued to November 7, 2025.

Defendant Pointe Marin Association’s (“Defendant” or “PMA”) motion for summary judgment or, in the alternative, summary adjudication is **denied in full**. Plaintiff Catherine Rucker’s (“Plaintiff”) motion for summary judgment or, in the alternative, summary adjudication is likewise **denied in full**.

BACKGROUND

This is a dispute over homeowners association politics. The complaint alleges as follows. Defendant is a non-profit mutual benefit corporation formed to manage the Pointe Marin common interest residential development. (Complaint, ¶ 24.) Plaintiff owns two properties within the development. (*Id.* at ¶ 23.) On May 31, 2021, Defendant held a member election in which Pat Eklund (“Eklund”) and Michael Christian (“Christian”) were each elected to a two-year term as a director of Defendant. (*Id.* at ¶ 3.) In a separate member election held the same day, Defendant’s members approved Amended Bylaws. (*Id.* at ¶ 4.) The Amended Bylaws increased the number of directors from three to five. (*Id.* at ¶ 5.)

In May 2023, Eklund’s and Christian’s terms expired. (Complaint, ¶ 7.) In September 2023, Defendant decided to hold an election to fill only three of the five director positions. (*Id.* at ¶¶ 10, 12.) The October 16, 2023 notice announcing the election indicated that Eklund’s and Christian’s seats were not up for election and would not be voted upon. (*Id.* at ¶ 13.) The notice attached a “Nomination Application & Candidate Statement Form” containing the following

candidate “certification statement”: “I also certify that I am not seeking or engaged in legal action against the Association and/or the Board of Directors and/or any individual Board Member.” (*Id.* at ¶ 14.)

Plaintiff has been engaged in litigation against Defendant for alleged election irregularities for some time.¹ Her present complaint asserts four causes of action. The first two are for declaratory relief. The First Cause of Action seeks a judicial declaration “that the two PMA director positions that are being ‘held by’ Pat Eklund and Michael Christian expired in May 2023” pursuant to Civil Code, section 5100, subdivision (a)(2). (Complaint, ¶¶ 29-31.) The Second Cause of Action seeks a judicial declaration “that the PMA’s ‘certification statement’ on the nomination form is ‘unlawful’” under Civil Code, section 5105, subdivision (c). (*Id.* at ¶¶ 32-35.)

Plaintiff’s other two causes of action are styled as requests for injunctive relief. The Third Cause of Action requests “injunctive relief to stop the PMA’s election that excludes the two expired director positions.” (Complaint, ¶ 36.) The Fourth Cause of Action requests “injunctive relief to order the PMA to hold an election to fill all five director positions.”

Both Plaintiff and Defendant now seek summary judgment, or, alternatively, summary adjudication.

LEGAL STANDARD

Any party may move for summary judgment. (Code of Civ. Proc, § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The motion “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th 826, 843.) Similarly, “[a] party may seek summary adjudication on whether a cause of action, affirmative defense, or punitive damages claim has merit or whether a defendant owed a duty to a plaintiff. A motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment.” (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630, internal citations and quotation marks omitted; and see Code Civ. Proc, § 437c, subd. (f).) The object of the summary judgment procedure is “to cut through the parties’ pleadings” to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th 826, 843.)

The “party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact.” (*Aguilar, supra*, 25 Cal.4th 826, 850; see Evid. Code, § 110.) “A prima facie showing is one that is sufficient to support the position of the party in question.” (*Aguilar, supra*, 25 Cal.4th 826, 851.) When the moving party is the defendant, the initial burden entails showing “that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).) “Where the evidence submitted by a moving defendant does not support judgment in his favor, the court must deny the motion without looking at the opposing evidence, if any, submitted by the plaintiff.” (*Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 354; see also Code Civ.

¹ The Court grants Defendant’s unopposed request for judicial notice. (Evid. Code, § 452, subd. (d).)

Proc., §§ 437c, subd. (p)(2) [on defendant's motion for summary judgment, plaintiff has no burden to oppose until defendant has met initial burden.] Once the moving party has met its initial burden, the burden shifts to the opposing party 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, subds. (p)(1)-(2).)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra*, 25 Cal.4th 826, 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id.* at p. 843.)

DEFENDANT'S MOTION

Issue No. 1

Defendant frames this issue as follows: "Plaintiff's requests for declaratory relief lack merit because Plaintiff cannot establish every element of the declaratory relief causes of action." (Amended Notice of Motion, p. 2.) Although framed as a single issue, this amounts to a request that the Court summarily adjudicate each of Plaintiff's separate claims for declaratory relief (her First and Second Causes of Action).

Plaintiff brings both of her causes of action for declaratory relief pursuant to Civil Code, section 5145, part of the Davis-Stirling Common Interest Development Act (Civ. Code, § 4000, *et seq.*; "the Act"). Section 5145 permits a member of a common interest association to "bring a civil action for declaratory or equitable relief for a violation" of the Act's election provisions. (Civ. Code, § 5145, subd. (a).) The statute permits a court to award civil penalties to a common interest association member who has "prevail[ed]" in such a lawsuit. (Civ. Code, § 5145, subd. (b).) The test for who is the "prevailing party" under the Act "is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives." (*Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773; see also *Artus v. Gramercy Towers Condominium Assoc.* (2022) 76 Cal.App.5th 1043, 1051 [observing in the context of Civil Code, section 5145 that " 'in determining litigation success, courts should respect substance rather than form' "] [quoting *Hsu v. Abbata* (1995) 9 Cal.4th 863, 877].)

In this case, Defendant contends that Plaintiff's two declaratory relief claims should be summarily adjudicated in Defendant's favor for lack of an "actual controversy." (See Code Civ. Proc., § 1060; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79 [primary requirement for a successful claim for declaratory relief is an "actual controversy relating to the legal rights and duties of the respective parties"].) The problem is that "[a] motion for summary adjudication shall be granted only if it *completely disposes of* a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f) [emphasis added].) Even if the Court agreed that Plaintiff is not entitled to declaratory relief for want of an "actual controversy," that conclusion would not dispose of the declaratory relief causes of action in their entirety, because Plaintiff's requests for civil penalties exist within the context of her declaratory relief claims. A conclusion that Plaintiff is not entitled to declaratory relief does not necessarily affect her entitlement to civil penalties, because she could still be entitled to an award of civil penalties under Section 5145 even if she technically lost on her substantive claims, provided she

has achieved her main litigation objectives notwithstanding that loss. (*Almanor, supra*, 246 Cal.App.4th 761, 773.)

To be capable of completely disposing of the declaratory relief causes of action, Defendant's motion needed to establish that there is no dispute as to any fact material to Plaintiff's entitlement to civil penalties under Civil Code, section 5145. (Code Civ. Proc., §§ 437c, subds. (c), (f)(2); see *Aguilar, supra*, 25 Cal.4th 826, 850.) Defendant's moving papers are silent regarding the civil penalties issue. "If the defendant does not address an issue in a motion for summary judgment that has been raised in the plaintiff's complaint, it fails to meet its initial burden to show the plaintiff's action has no merit; the motion therefore fails to shift the burden to the plaintiff to oppose summary judgment." (*Hedayati v. Interinsurance Exchange of the Automobile Club* (2021) 67 Cal.App.5th 833, 846; see also *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 946 [defense motion for summary judgment should not have been granted where "the 'issues to be addressed' in this case, as defined by [defendant's] motion, did not entitle [defendant] to summary judgment"] [emphasis in original].)

Defendant argues in its reply² that Plaintiff is not entitled to civil penalties under Civil Code, section 5145. That is beside the point. Defendant's failure to address this issue at all in its moving papers means Defendant did not carry the initial burden associated with a motion for summary judgment or summary adjudication, so the Court cannot grant summary judgment and cannot summarily adjudicate the declaratory relief claims, regardless of what Defendant does with its reply. (*Y.K.A. Industries, supra*, 174 Cal.App.4th 339, 354; Code Civ. Proc., §§ 437c, subd. (p)(2).) That Defendant did not identify the civil penalties issue as a target of its motion for summary adjudication in the notice of motion further prohibits the Court from resolving that issue at summary adjudication. (See *Homestead Savings v. Superior Court* (1986) 179 Cal.App.3d 494, 496 [trial court abused discretion by summarily adjudicating issue not targeted by the motion for summary adjudication].)

Summary adjudication is denied as to Issue No. 1. Plaintiff's motion for summary judgment is necessarily denied as well.

Issue No. 2

Defendant describes this issue as, "Plaintiff's requests for injunctive relief are moot." (Amended Notice of Motion, p. 2.) Plaintiff's Third Cause of Action is entitled "Request for Injunctive Relief to Stop the PMA's Election that Excludes the Two Expired Director Positions[.]" Similarly, her Fourth Cause of Action is styled "Request for Injunctive Relief to Order the PMA to Hold an Election to Fill All Five Director Positions[.]" Defendant's Issue No. 2 amounts to a request that the Court summarily adjudicate each of these two separate "causes of action" for injunctive relief, although such request is framed as a single "issue."

² Both parties submitted a second separate statement along with their reply to the other party's motion. The summary judgment statute does not provide for a "reply separate statement." (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 306 [abrogated in unrelated part as stated in *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 853, fn. 12].) The Court has not considered either document.

Defendant correctly argues that there is no such thing as a cause of action for injunctive relief. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356.) Injunctive relief is a remedy, and a cause of action must exist as a prerequisite to injunctive relief. (*Ibid.*) Perversely, Defendant's correct statement of the law requires the Court to deny its request for summary adjudication. Summary adjudication can only be granted as to a "cause[] of action," an "affirmative defense[]," a "claim[] for damages," or an "issue[] of duty[.]" (Code Civ. Proc., § 437c, subd. (f).) A request for injunctive relief is none of those things. Plaintiff's erroneously pleading her requests for injunctive relief as causes of action does not render them appropriate subjects for summary adjudication, because however it is pleaded, a request for equitable relief divorced from the context of a substantive claim contains nothing to adjudicate. Defendant should have filed a motion to strike the "causes of action" for injunctive relief under Code of Civil Procedure, section 436. The summary adjudication statute is not suited to resolving pleading issues.

Summary adjudication is denied as to Issue No. 2.

PLAINTIFF'S MOTION

Plaintiff's Notice of Motion requests summary adjudication of four issues: the merits of each of the four causes of action in the complaint. Her brief, however, states that she files this motion "for a determination as to her entitlement to attorney fees, costs and civil penalties, as well as declaratory relief as to two remaining election issues." (Memorandum, p. 5.) The "two remaining election issues" are (1) Plaintiff's request for declaratory judgment as to the "certification statement" issue at the center of her Second Cause of Action, and (2) a further request for declaratory judgment "correct[ing] the Inspector of Elections' final election report[.]" which "mis-states that the April 10th election was held by acclamation." (*Ibid.*) Plaintiff's separate statement's recitation of the issues on which she seeks summary adjudication mirrors the recitation in her brief, except that it also indicates that Plaintiff seeks summary adjudication of various "sub-issues."

The rules governing motions for summary adjudication require the moving party to specify the issues for which summary adjudication is sought and describe those issues consistently throughout the moving papers. (See Cal. Rules of Court, rule 3.1350(b) ["If summary adjudication is sought . . . , the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts."].) Plaintiff's failure to comply with this requirement means her moving papers do not provide Defendant fair notice of what Plaintiff seeks to have summarily adjudicated and therefore what Defendant needs to do to defeat the motion. (See *University Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 ["The due process aspect of the separate statement requirement is self-evident – to inform the opposing party of the evidence to be disputed to defeat the motion."]) [superseded by statute in unrelated part as stated in *Certain Underwriters at Lloyds of London v. Superior Court* (1997) 56 Cal.App.4th 952, 957, fn. 4]; see also *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316 ["Where a remedy as drastic as summary judgment is involved, due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail."].) Plaintiff's noncompliance also prevents the Court from knowing what Plaintiff is asking it to summarily adjudicate.

A separate statement in support of a motion for summary adjudication “must separately identify . . . [e]ach cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion” and “[e]ach supporting material fact claimed to be without dispute *with respect to* the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion.” (Cal. Rules of Court, rule 3.1350(d)(1) [emphasis added].) This requires the separate statement to be divided up by issue, listing all facts relevant to a given issue under a subheading for that issue. (See Cal. Rules of Court, rule 3.1350(h).) The obvious purpose of this rule is to enable the opposing party and the court to easily determine which facts they must contend with to defeat or decide the motion (whatever the case may be) as to each issue. (See *Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 74.) Plaintiff’s separate statement is not formatted in the manner required by California Rule of Court, rule 3.1350(h). Plaintiff has provided a chart containing *every* purportedly undisputed material fact relevant to her motion. The chart includes a column indicating which issue(s) and sub-issue(s) each fact relates to. Some of the facts are offered in connection with three or four different issues. One cannot readily distinguish the facts that are relevant to a given issue from the facts that are not on the face of this separate statement.

A moving party’s failure to comply with the separate statement requirement “may in the court’s discretion constitute a sufficient ground for denying the motion.” (Code Civ. Proc., § 437c, subd. (b)(1); see also *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 876 [“Trial courts should not hesitate to deny summary judgment motions when the moving party fails to draft a compliant separate statement[.]”].) Plaintiff’s separate statement deviates from the applicable rules enough that it cannot be used for the purposes a separate statement was designed to serve.

The Court notes that even if it were to reach the merits of Plaintiff’s motion on the assumption that the issues Plaintiff wants adjudicated are those in the separate statement, the overwhelming majority of those issues are, on their face, inappropriate issues for summary adjudication. Issue Nos. 3 and 4 are the only ones that seek adjudication of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) Issue No. 4 seeks summary adjudication of a declaratory relief claim that was not pleaded in the complaint and so is irrelevant to this case. “The materiality of a disputed fact is measured by the pleadings, which ‘set the boundaries of the issues to be resolved at summary judgment.’” (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1131-1132 [quoting *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 648].) Issue Nos. 1 and 2, and all five of their “sub-issues,” ask the Court to adjudicate Plaintiff’s entitlement to attorney’s fees and costs or to simply to make various findings of fact or law. (See, e.g., Sub-Issue No. 2c, which asks the Court to “summarily adjudicate” that “Litigation was necessary” and a host of facts bearing on how and why it was necessary.)

The Court denies Plaintiff’s motion in full for failure to comply with the separate statement requirement.

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 November, 2025 is as follows:

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

Meeting ID: 161 516 2449

Passcode: 073961

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002545

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: ARBAK MKHITARYAN

vs.

DEFENDANT: NAUTILUS HYOSUNG
AMERICA, INC., A DELAWARE
CORPORATION

NATURE OF PROCEEDINGS: MOTION – ATTORNEY’S FEES

RULING

Arbak Mikhitaryan’s (“Plaintiff”) unopposed Motion for Approval of Private Attorney General Act Settlement Agreement and Award of Attorney’s Fees and Costs, Individual Release Fee, and Settlement Administration Costs 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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Meeting ID: 161 516 2449

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/07/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006906

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: GT'S LIVING FOODS, LLC	
vs.	
DEFENDANT: JOHN DOE 1, ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

GT's Living Foods, LLC's ("Plaintiff") Motion for Leave to Issue and Serve Subpoena is **granted**. The court takes no position as to any legal issues that may be raised regarding this subpoena.

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 November, 2025 is as follows:

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

Meeting ID: 161 516 2449

Passcode: 073961

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