SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV2200992

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: ONE SILVER SERVE, INC. vs. DEFENDANT: COLORADO STRUCTURES INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – SEVER/BIFURCATE

RULING

Plaintiff One Silver Serve, LLC's ("Plaintiff") motion to bifurcate is **GRANTED**. (Code Civ. Proc., § 1048.) Plaintiff's Second Amended Complaint ("SAC") shall be severed from the rest of this action.

Background

This is a nonpayment case run amok. Plaintiff asserts claims against CSI Construction Co. ("CSI"); Monahan-Parker, Inc.; 1201 Fifth Avenue LLC (this defendant and Monahan-Parker, Inc. together, "Owner Defendants"), and Fidelity and Deposit Company of Maryland. Plaintiff's operative SAC (see Gersh Dec.,[1] Ex. 1) alleges as follows: Owner Defendants hired CSI to build a hotel on Owner Defendants' property in San Rafael. (SAC, ¶¶ 3, 7.) In October 2021, the project, then in progress, was significantly damaged by water. (*Id.* at ¶ 8.) CSI then hired Pacific Restoration, Inc. to perform emergency remediation and restoration work. (*Id.* at ¶ 9.) The contracts between CSI and Pacific Restoration provided that the work would be performed on a time and materials basis and the cost to CSI would not exceed $499,280.15. (*Id.* at ¶ 13.) At the same time, the contracts also allegedly raised the possibility of an additional charge of approximately $377,468.00 and contemplated that the scope of the project might change and the costs could increase. (*Ibid.*)

Pacific Restoration began the work but quickly determined that the scope of work would need to be substantially larger than anticipated and that Pacific Restoration was not equipped to handle a project of this size on its own. (SAC, ¶ 15.) Plaintiff was brought in to take over the restoration and remediation work, and Pacific Restoration allegedly "effectively assigned its rights and obligations" under the contracts it had executed with CSI to Plaintiff. (*Ibid.*)

[1] Owner Defendants submitted objections to the Gersh Declaration. The Court has not relied on any of the material objected to and so does not rule on the objections.

Plaintiff alleges that it regularly communicated the nature and cost of the work to CSI as the scope of work continued to expand. (SAC, ¶¶ 19-21.) However, according to the SAC, CSI secretly never intended to pay Plaintiff more than the $499,280.15 "not to exceed" figure in its contracts with Pacific Restoration even as the cost of the remediation ballooned far beyond that number. (*Id.* at ¶ 25.) Plaintiff claims that it is now owed over $3 million in unpaid invoices. (*Ibid.*) CSI allegedly instructed Owner Defendants not to pay Plaintiff's outstanding bills because doing so could affect CSI's claim with its insurance carrier. (*Id.* at ¶ 30.) The SAC asserts claims for breach of written contract (two counts), breach of implied contract, promissory estoppel, quantum meruit, fraud, collection on a mechanic's lien, and various common counts.

Plaintiff's filing this case unleashed a deluge of additional claims by other parties. (Gersh Dec., ¶ 7.) There are now at least 43 parties involved in this case asserting claims primarily concerning construction defects, delays, and insurance issues. (*Ibid.*) No one has asserted a cross-claim against Plaintiff. (*Ibid.*) In March 2025, the Court found this case to be complex under California Rules of Court, rule 3.400 *et seq.* and appointed a special master. (*Id.* at ¶ 8.) In November 2025, Special Master Hon. Lynn Duryee (Ret.) issued Scheduling Order No. 4, which stayed depositions for the entire matter and provided that the parties would need to file a motion before her to take a deposition prior to mediation. (*Id.* at ¶ 9 & Ex. 2.) In January 2026, the Special Master issued Case Management Order No. 1, which "provide[d] that depositions regarding construction defect, delay, and related payment claims shall generally be deferred until after mediation" absent leave from the Special Master upon a showing of good cause. (*Id.* at ¶ 10 & Ex. 3.) Defense counsel has refused to provide dates for Plaintiff to depose CSI and Owner Defendants until mediation is over in reliance on these orders. (*Id.* at ¶ 11.) The parties have attended three mediation sessions, and additional sessions are scheduled through early December. (*Id.* at ¶ 13.) Plaintiff's counsel anticipates that mediation, and thus Plaintiff's inability to take depositions in connection with the SAC, will continue beyond early December. (*Id.* at ¶ 14.)

Before the Court is Plaintiff's motion to bifurcate its SAC from the rest of this sprawling litigation.

Legal Standard

"The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States." (Code Civ. Proc., § 1048, subd. (b).) "[W]hether there shall be a severance and separate trials of issues in a single action[] is matter within the discretion of the trial court." (*McArthur v. Shaffer* (1943) 59 Cal.App.2d 724, 727.)

Discussion

Plaintiff argues that its claims are narrow and distinct from those involved in the broader dispute (Gersh Dec., ¶¶ 7-8, 16), so severing its SAC from the rest of the action would allow for more efficient adjudication and relieve Plaintiff of the burden of having to wait on all the cross-claims.

Plaintiff also urges that the five-year deadline to bring its claims to trial under Code of Civil Procedure, section 583.330 will run on April 11, 2027, and its efforts to comply with the statute are hampered by having to wait on the other parties. (*Id.* at ¶ 19.)
Owner Defendants and CSI reject the premises of the motion, arguing that Plaintiff's SAC raises issues also presented by many of the cross-claims and that there is no risk that Plaintiff's claims will be dismissed under the five-year rule.

First, Owner Defendants and CSI argue that both the SAC and the broader construction litigation will require determinations as to the cause of the water damage; the delays, project sequencing, and other construction activities that preceded the damage; and ultimate responsibility for the resulting remediation costs. They explain that Owner Defendants intend to raise, as a defense to Plaintiff's claims, that CSI is responsible for paying Plaintiff for its work because CSI's negligence created the conditions necessary for the project to sustain water damage. (See Owner Defendants' Answer to Plaintiff's SAC [filed Nov. 18, 2025], Affirmative Defense Nos. 19 and 31; see also Klotsche Dec. in Supp. of CSI's Opposition, Ex. B [Owner Defendants' Second Amended Cross-Complaint] [Owner Defendants have sued CSI to compel it to indemnify Owner Defendants against any amount they are required to pay Plaintiff, alleging that any such liability is CSI's fault].)

This argument confuses the issues. The questions presented by Plaintiff's SAC are questions of contractual or quasi-contractual liability. The pleading alleges that Plaintiff was contracted to perform certain work, performed the work, and was not paid. These allegations do not place in issue the causes of the circumstances that created the need for the work.

Owner Defendants' affirmative defenses do not change this. The injury at issue in Plaintiff's SAC is *Plaintiff's nonpayment*. To the extent the water damage to the project is discussed at all in the SAC, it is for context – the pleading does not seek to recover for that injury, nor could it, because Plaintiff is not a victim of an injury to someone else's property. Because the injury at issue is Plaintiff's nonpayment, a successful affirmative defense of "wrongful acts of third parties" (Klotsche Dec., Ex. B, Affirmative Defense No. 19) or "acts or omissions of others" (*id.* at Affirmative Defense No. 31) would have to argue that third parties did something to *cause Plaintiff not to be fully compensated for the work*, not to cause the damage that necessitated the work in the first place. The Court is not persuaded that there is significant overlap between the issues presented by the SAC and the issues presented by the broader litigation.

CSI argues that "the amount [it] seeks from the Owner [Defendants] depends in part on whether CSI is deemed liable to [Plaintiff.]" (CSI Opposition, p. 2.) The Court does not follow why this would mean that the amount due from CSI to Plaintiff must be determined in the same proceeding as the amount due from Owner Defendants to CSI.
As to the five-year rule, of Code of Civil Procedure, section 583.310 provides that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." In this case, that is April 11, 2027. A court is required to dismiss an action on its own motion or the defendant's if the action is not brought to trial within the five-year period. (Code Civ. Proc., § 583.360.) The parties may stipulate to extend the deadline beyond five years. (Code Civ. Proc., § 583.330.) However, a plaintiff is not *required* to stipulate to an extension just because the defendants are willing to do so. The Special Master has observed that Plaintiff "is unwilling to waive the five-year statute and is not required to do so." (Gersh Reply Dec., Ex. A.) Stated

differently, Plaintiff is entitled to lean on Section 583.310 to drive Defendants to trial. The Court has entrusted the Special Master to manage this case and will not disturb her judgment on this point. In any event, the primary prejudice to Plaintiff should this motion be denied is not the five-year timeline, but Plaintiff's having to wait on the progress of dozens of only tangentially related claims to obtain relief.

The Court finds that bifurcation of Plaintiff's SAC from the broader action "will be conducive to expedition and economy[.]" (Code Civ. Proc., § 1048, subd. (b).) It will also greatly reduce the prejudice Plaintiff would suffer if forced to litigate its discrete contract claims amid the sprawling construction defect litigation. Accordingly, the motion is GRANTED. The discovery stay imposed by the Special Master shall not apply to discovery directed to OSS' claims or to defenses to those claims.

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, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000437

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: TRISTA CARR vs. DEFENDANT: CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION	

NATURE OF PROCEEDINGS: MOTION - SUMMARY JUDGMENT

RULING

The hearing in this matter is continued to **November 24, 2026 at 1:30 pm in Courtroom A.**

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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004757

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: HILLARY WHITMAN vs. DEFENDANT: SUPER73, INC.	

NATURE OF PROCEEDINGS: MOTION - COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

The motion of Plaintiff to compel further responses to requests for admissions is **GRANTED in part and DENIED in part**.

Based on Plaintiffs' Declaration of Non-Resolution filed on November 10, 2026, the Court rules as follows on the remaining disputes:

Request	**Ruling**
RFA 1 (numerosity)	Granted
RFA 2 (5,000 California purchasers)	Granted in limited part. Super73 should serve a further response that (a) admits or denies the request as to purchasers from its direct sales and (b) for retail-channel units, makes the § 2033.220(c) statement or denies.
RFA 3	Not at issue
RFA 4	Not at issue
RFA 5	Not at issue (only FI 17.1 as to RFA 5)
RFAs 7, 8, 9 (non-disclosure)	Granted
RFA 10 (knowledge of third-party app use)	Not at issue
RFAs 11	Granted as to SuperDuper and Bikee; denied as to unknown apps
RFA 12	Not at issue

Request	Ruling
RFA 13 (requests to SuperDuper/Bikee)	Granted
RFA 14 (intent re Super73 app)	Granted
RFA 17 (abstract UCL proposition)	Denied
FI 17.1	Granted as to RFAs 1, 5, 7–9, 13-14; granted in limited part as to RFAs 2, 11; denied as to RFA 17
RFPs 40, 41	Granted in limited part (derivative of further RFA/FI 17.1 responses; identify withheld RFA 15 materials)

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, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005199

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: L3 COMMERCIAL TRAINING SOLUTIONS AIRLINE ACADEMY, A COMMERCIAL FLIGHT SCHOOL vs. DEFENDANT: COLIN J. HENRY, ET AL	

NATURE OF PROCEEDINGS:1) MOTION – STRIKE – SECOND AMENDED CROSS-COMPLAINT
2)) MOTION – STRIKE – SECOND AMENDED CROSS-COMPLAINT

RULING

In light of the stipulation of the parties filed on October 29, 2026 and the Court's order of November 10, 2026, these matters are moot and ordered **OFF-CALENDAR.**

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, 2026 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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005211

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PETITIONER: DEBRA ROSALES vs. RESPONDENT: VIVALON	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The unopposed motion of Plaintiff Debra Rosales for summary adjudication of Defendant Vivalon's Fifth Affirmative Defense is **GRANTED.** (Code Civ. Proc., § 437c, subd. (f)(1).) Plaintiff has sustained her burden of proof with the submission of evidence in support of Undisputed Material Facts Nos. 1-24. Defendant has not come forward with any evidence to rebut this showing.

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:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005598

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PETITIONER: MARC AXELBAUM vs. RESPONDENT: FCA US LLC	

NATURE OF PROCEEDINGS: MOTION – OTHER – MANDATORY PENALTIES

RULING

The parties have stipulated to continue the hearing on this matter. The hearing is hereby **continued to December 29, 2026 at 1:30 p.m. in Courtroom A.**

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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0006962

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: JANE ROE, AN INDIVIDUAL vs. DEFENDANT: SAN RAFAEL CITY SCHOOLS, A PUBLIC ENTITY, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: RELATE CASES

RULING

Presently before the Court is Plaintiff Jane Roe's motion to relate this case with Case No. CV0008405 and Case No. CV0010006. Defendant San Rafael City Schools ["SRCS"], joined by Defendant Tim Bosque ["Bosque"], opposes the motion.

Legal Standard

California Rule of Court 3.300(a) provides:

> A pending civil case is related to another pending civil case, or to a civil case that was dismissed with or without prejudice, or to a civil case that was disposed of by judgment, if the cases:
>
> (1) Involve the same parties and are based on the same or similar claims;
>
> (2) Arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact;
>
> (3) Involve claims against, title to, or damages to the same property; or
>
> (4) Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

The purposes for relating cases are "to promote efficiency, to avoid duplicative effort, to combat judge-shopping, and to minimize the prospect of conflicting results." (*Harris* v. *Rojas* (2021) 66 Cal.App.5th 817, 820.)

Discussion

The motion is granted. As to Bosque, the cases do not involve "the same or substantially identical transactions, incidents, or events." Each of the plaintiffs' claims against him (childhood sexual abuse and intentional infliction of emotional distress) will be based exclusively on evidence individual to them. However, as to SRCS, there are "the same or substantially identical" questions of fact. As Plaintiff argues in her reply, "plaintiffs will be asserting and gathering the very same evidence to establish liability in all three cases: The complaints that were asserted as to Defendant Bosque's conduct, investigation of those complaints, steps taken to monitor Defendant Bosque as a teacher, policies and guidelines implemented to prevent sexual abuse and harassment of students, any disciplinary actions against Defendant Bosque, and other items of evidence."

SRCS argues that the cases should not be consolidated and that if deemed related SRCS would suffer prejudice because it would "risk[ ] the perception of compounded sexual abuse." Plaintiff, however, has not sought consolidation and an order relating cases does not mean the same jury will hear the claims. Under the circumstances, the Court finds that it is appropriate that the cases should be related to at least allow "coordination of case management conferences and discovery schedules" as suggested by both SRCS and Bosque.

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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0009500

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: C. IBARRA

PLAINTIFF: MALFRED C. SPENCER vs. DEFENDANT: MARTIN C. JOHNSON	

NATURE OF PROCEEDINGS: MOTION – AMEND

RULING

Plaintiff's motion to amend his complaint is **DENIED without prejudice**.

A party requesting leave to amend must comply with California Rules of Court, rule 3.1324. Compliance with the Rules of Court is satisfied by including a copy of the proposed amended pleading, detailing what changes will be made from the previous pleading by stating what allegations are to be deleted or added as compared to the previous pleading including page, paragraph and line number, and attaching a declaration by plaintiff's counsel, as to: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) why the request was not made earlier. Plaintiff has not complied with this rule because he does not list the new or changed amendments and has not provided a declaration indicating when the facts were discovered and why the request was not made earlier.

The motion is denied without prejudice to Plaintiff submitting a new or renewed motion that complies with the Rules of Court.

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: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0010006

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: JANE ROE M.G., AN INDIVIDUAL vs. DEFENDANT: SAN RAFAEL CITY SCHOOLS, A PUBLIC ENTITY, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: RELATE CASES

RULING

Presently before the Court is Plaintiff Jane Roe's motion to relate this case with Case No. CV0008405 and Case No. CV0010006. Defendant San Rafael City Schools ["SRCS"], joined by Defendant Tim Bosque ["Bosque"], opposes the motion.

Legal Standard

California Rule of Court 3.300(a) provides:

> A pending civil case is related to another pending civil case, or to a civil case that was dismissed with or without prejudice, or to a civil case that was disposed of by judgment, if the cases:
>
> (1) Involve the same parties and are based on the same or similar claims;
>
> (2) Arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact;
>
> (3) Involve claims against, title to, or damages to the same property; or
>
> (4) Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

The purposes for relating cases are "to promote efficiency, to avoid duplicative effort, to combat judge-shopping, and to minimize the prospect of conflicting results." (*Harris* v. *Rojas* (2021) 66 Cal.App.5th 817, 820.)

Discussion

The motion is granted. As to Bosque, the cases do not involve "the same or substantially identical transactions, incidents, or events." Each of the plaintiffs' claims against him (childhood sexual abuse and intentional infliction of emotional distress) will be based exclusively on evidence individual to them. However, as to SRCS, there are "the same or substantially identical" questions of fact. As Plaintiff argues in her reply, "plaintiffs will be asserting and gathering the very same evidence to establish liability in all three cases: The complaints that were asserted as to Defendant Bosque's conduct, investigation of those complaints, steps taken to monitor Defendant Bosque as a teacher, policies and guidelines implemented to prevent sexual abuse and harassment of students, any disciplinary actions against Defendant Bosque, and other items of evidence."

SRCS argues that the cases should not be consolidated and that if deemed related SRCS would suffer prejudice because it would "risk[ ] the perception of compounded sexual abuse." Plaintiff, however, has not sought consolidation and an order relating cases does not mean the same jury will hear the claims. Under the circumstances, the Court finds that it is appropriate that the cases should be related to at least allow "coordination of case management conferences and discovery schedules" as suggested by both SRCS and Bosque.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/17/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0011715

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: DOUGLAS IVEY vs. DEFENDANT: SELENE FINANCE LP, ET AL	

NATURE OF PROCEEDINGS: ORDER – SHOW CAUSE -OTHER; PRELIMINARY INJUNCTION

RULING

The request for a preliminary injunction is **DENIED** without prejudice. The TRO issued on October 27, 2026 is dissolved.

Background

Plaintiff Douglas K. Ivey ("Plaintiff") seeks to enjoin a non-judicial foreclosure of his residence at 3330 Paradise Drive, Tiburon. Two defendants are named in the action: Selene Finance LP ("Selene"), the servicer, and National Default Servicing Corporation ("NDSC"), the foreclosure trustee. The sale had been postponed from September 24 to October 29, 2026. The Court issued a TRO and OSC on October 27, 2026.

On November 10, 2026, Selene filed a late opposition to the Court's Order to Show Cause. Given the expedited circumstances of the litigation, the Court exercises its discretion to consider the filing. NDSC filed a declaration of non-monetary status on November 12, 2026.

Legal Standard

A preliminary injunction may be granted, among other circumstances, "[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of" and "[w]hen it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action." (Code Civ. Proc., § 526, subds. (a), (b).)

Trial courts evaluate two interrelated factors when deciding whether to issue a preliminary injunction. (*Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1680.) The first is the

likelihood that the moving party will prevail at trial. (*Id.* at pp. 1680-1681.) The second is the interim harm the movant would likely sustain if the injunction were denied as compared to the harm the opposing party would likely suffer if the injunction were issued. (*Id.* at p. 1681.)

Discussion

Plaintiff's only theory is dual tracking under Civil Code section 2923.6. This section is triggered by a *complete* first lien modification application submitted at least five business days before a scheduled sale. Once it applies, the servicer may not conduct a sale while that application is pending. Plaintiff claims that he submitted a complete application on October 19, 2026. Selene, however, points to section 2923.6(h) and argues that an application is "complete" only once the borrower has supplied all documents the servicer requires within the servicer's timeframes. Selene submits correspondence to Plaintiff dated October 27 that states his package "has been deemed incomplete." It lists missing business bank statements for account #5224 and a missing letter of explanation. Next, Selene's November 6 letter to Plaintiff gives a received date of October 21 for the application, a "facially complete" date of November 5, and a decision deadline of December 5. Based on this record, the Court is unlikely to find that the application was completed before the October 29 sale date. Even if the application had been completed earlier, the sale never took place. On this record, Plaintiff has not shown an uncorrected violation for an injunction to restrain.

As to the interim harm, Plaintiff argues correctly that the loss of a unique residence is irreparable and that a sale to a bona fide purchaser could prevent the sale from ever being unwound. Although this is a type of serious harm, in this case no harm is imminent because Selene has committed in writing not to sell before a decision issues, which will be no later than December 5. The mere possibility of harm in these circumstances does not justify the issuance of an injunction.

For these reasons, the request for preliminary injunction is denied without prejudice and the TRO is dissolved and vacated.

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, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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