

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2000143

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: GAVIN SCOTT HAPGOOD, ET AL vs. DEFENDANT: AUBERGE RESORTS LLC	
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NATURE OF PROCEEDINGS: MINOR'S COMPROMISE

RULING

Petitioner filed an unopposed petition for approval of minor's compromise for Winn Hapgood. Based on the information provided in the petition, the court shall sign the order approving the compromise.

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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2002076

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: MARIE DEMARTINI

vs.

DEFENDANT: SAFELITE FULFILLMENT,
INC.

NATURE OF PROCEEDINGS: HEARING – OTHER: FINAL COMPLIANCE

RULING

This matter is on for final compliance hearing related to settlement of the class action. On February 25, 2025, the court granted final approval of the class action settlement and entry of judgment. A compliance hearing was set for August 20, 2025, regarding a final accounting report but was continued to November 26, 2025. Newly submitted documents, including the Declaration of Nathalie Hernandez of ILYM Group, Inc. demonstrate that the Settlement Administrative has mailed settlement award checks to 2,371 participating class members in the total amount of \$2,201,226.53. It has also mailed the enhancement checks to the class representatives. Additionally, the attorney's fees, costs settlement administrative fees, taxes, and PAGA payment of \$45,000 have been dispersed. As of November 6, 2025, \$219,079.73 remains outstanding. The outstanding settlement funds shall be submitted to the State Controller's Office per the agreement.

Absent any objections at the hearing, the court shall sign the proposed order submitted by Plaintiffs' counsel in connection with this hearing.

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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300516

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: HYPERCONSTRUCT CO.
ET AL

vs.

DEFENDANT: SHAW WALTERS

NATURE OF PROCEEDINGS: 1) MOTION – DISCOVERY - DISCOVERY FACILITATOR PROGRAM

2) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

3) MOTION – SANCTIONS – DISCOVERY FACILITATOR PROGRAM

RULING

Defendant and Cross-Complainant Shaw Walters' ("Walters") motion to compel nonparty Google to produce documents in response to the business records subpoena is continued to December 10, 2025 at 1:30 pm per the stipulation of the parties.

Walters' motion for sanctions against Plaintiffs and Cross-Defendants Hyperconstruct, Co., Laguna Labs, LLC, Williams Collins-Broza ("Hyperconstruct Parties") is unopposed. The docket reflects that a proof of service was filed showing that Hyperconstruct Parties were served with the motion and did not file an opposition. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).)

In light of the pleadings presented and the non-opposition, Defendant's motion for sanctions is granted in part. Monetary sanctions shall issue against the Hyperconstruct Parties payable to Walters in the amount of \$5,832.28, to be paid no later than by December 20, 2025. The parties shall appear for argument on whether evidentiary/issue sanctions, and/or terminating sanctions should issue.

Walters' motion to compel nonparty Discord, Inc. ("Discord") to produce documents in response to the business records subpoena served on May 8, 2025 is DENIED.

BACKGROUND

This is a dispute among software developers that began after a business relationship soured. Plaintiffs Hyperconstruct Co.; Laguna Labs, LLC; and Williams Collins-Broza (“Broza”), Hyperconstruct’s CEO and chairman and Laguna Labs’ managing member (collectively, “Plaintiffs”), allege that they “are in the business of developing software and other technology related to web-based immersive experiences, most commonly referred to as the ‘Metaverse.’” (Complaint, ¶¶ 2-3, 7.) Broza and Walters decided to explore opportunities to develop Metaverse applications together. (*Id.* at ¶ 8.) Their relationship unraveled and Plaintiffs sued Walters for, among other things, defamation. The defamation claim is based on the allegation that in the winter of 2023, Walters contacted various third parties through platforms like Twitter and Discord and made various false statements with the intent of injuring Plaintiffs’ businesses. (*Id.*, ¶ 47.)

On May 8, 2025, Walters served Discord with a subpoena demanding the production of business records. (Calabro Dec., ¶¶ 2, 4 and Ex. 1.) He now moves to compel Discord to produce the documents described in that subpoena. Walters did not submit a separate statement with his motion, and under the circumstances, his unopposed request that the Court allow him to proceed without a separate statement is granted. (See Cal. Rules of Court, rule 3.1345(b)(2).)

LEGAL STANDARD

“If a deponent fails to . . . produce any document, electronically stored information, or tangible thing under the deponent’s control that is specified in the deposition notice or deposition subpoena, the party seeking discovery may move the court for an order compelling that . . . production.” (Code Civ. Proc.,¹ § 2025.480, subd. (a).) Despite language suggesting that this statute applies only where the deponent has been asked to sit for a deposition (see, e.g., § 2025.480, subds. (b), (c)), it has been held applicable to subpoenas seeking only a production of records and not also an appearance at a deposition. (*Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 134.)

Where such a motion relates to the production of electronically stored information (“ESI”), “the deponent objecting to or opposing the production . . . of [ESI] on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.” (§ 2025.480, subd. (d).) Even if the deponent meets that burden, “the court may nonetheless order discovery if the deposing party shows good cause,” subject to certain limitations. (§ 2025.480, subd. (e).)

DISCUSSION

Walters’ subpoena requests that Discord produce “ALL DOCUMENTS and COMMUNICATIONS . . . sent by or to BROZA” during a five-year period that either reference specified terms or pertain to a specific post by Broza. (Calabro Dec., Ex. 1.) Discord does not dispute that the subpoena seeks relevant material. Instead, it argues that its obligation to comply

¹ All undesignated statutory references are to the Code of Civil Procedure unless otherwise indicated.

with the Stored Communications Act (18 U.S.C. §§ 2701 *et seq.*, “SCA”) renders compliance with the subpoena unduly burdensome.

The SCA provides that “a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of any communication while in electronic storage by that service[.]” (18 U.S.C. § 2702(a)(1).) An exception applies to disclosures made “with the lawful consent of the originator or an addressee or intended recipient” of the communication. (18 U.S.C. § 2702(b)(3).) The SCA “makes no exception for civil discovery” and applies where a communication service provider is served with a subpoena demanding discovery of its stored communications. (*O’Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1447.) Walters does not dispute that Discord is subject to the SCA.

Broza has consented to the disclosure of “all documents requested in the subpoena” subject to certain qualifiers. (Calabro Dec., Ex. 2.) This means he consented to Discord’s disclosure of any individual messages that were “sent by or to” him and that “reference” one or more of the terms set forth in the subpoena’s requests. (Calabro Dec., Ex. 1.) Broza did not consent to Discord’s disclosure of any portion of his Discord conversations except for those individual messages containing at least one of the identified search terms.

Discord exports its users’ communications in CSV files that correspond to conversations, not to individual messages. (Graves Dec., ¶ 3.) As the Court understands it, Discord’s system works as follows: Say two Discord users spoke via direct Discord message over a period of three years, and over that three-year period, they exchanged 2,000 individual messages. Discord could produce a searchable record of this in the form of a single file containing the entire three-year, 2,000-message interaction, but not in the form of 2,000 searchable files with each one corresponding to a single message from one user to the other. (*Ibid.*) Discord is not capable of exporting files corresponding to individual messages. (*Id.* at ¶ 4.) The result is that it cannot run a search for a given term and have that search produce only those individual messages that contain that term. (*Ibid.*) It can only run search terms against files containing whole conversations. (*Ibid.*) Discord can use this method to determine whether a particular *conversation* contains a term, but to produce only those portions of the conversation consisting of the very messages that contain the term, a Discord employee would have to comb through the conversation, identify each individual message that caused the conversation file to hit on the search term, and export the individual messages for production. (*Ibid.*) This task would be effectively impossible given the number of conversation files associated with Broza’s Discord account, the number of search terms at issue, and the time span of the requests, and Discord, which is not a party to this lawsuit, would have to bear the cost of doing it. (Graves Dec., ¶¶ 3, 5; Calabro Dec., Ex. 1.)

Walters contends that Discord need not undertake the task it describes in its opposition, because it can and should simply produce the conversations that hit on the search terms in their entirety. As he puts it: “This is how discovery normally works. When you run search terms, you produce the entire document (family and all) that contains the hit, not just the paragraph where the hit is found.” (Calabro Dec., Ex. 6, p. 3.) This ignores the fact that the SCA applies here and Walters has not argued that any exception to the SCA except for the one based on consent applies. Under these circumstances, the scope of what Discord is allowed to disclose consistent

with federal law is limited by the scope of Broza's consent. Broza's consent is much more limited than Walters believes it is.

The Court notes that each of the requests in the subpoena calls for "ALL DOCUMENTS and COMMUNICATIONS (including but not limited to Discord *conversations*) sent by or to BROZA, during the RELEVANT TIME PERIOD, that reference [the specified search terms]." (Calabro Dec., Ex. 1 [emphasis added].) The italicized language does not change the Court's position regarding the scope of Broza's consent, because no "conversation" can satisfy the qualification that it be "sent by or to" a specific person. Entire conversations are not "sent." Only the individual messages that collectively comprise an online chat conversation are capable of being "sent to or from" an identified user, so only individual messages are "requested in the subpoena" and thus within the scope of Broza's consent. (See Calabro Dec., Ex. 2.)

Discord has satisfied its burden to show that the material requested is from a source that is not reasonably accessible because of undue burden or expense. (§ 2025.480, subd. (e).) To merit an order compelling production notwithstanding this showing, Walters needs to show "good cause." (§ 2025.480, subd. (e).) The Court is not persuaded that he has done so, because he has not adequately addressed the idea that he can and should get these Discord messages from Broza himself. Walters argues that the requests seek metadata that only Discord can access (Memorandum, p. 5, 6; Calabro Dec., Ex. 1), but never gives any reason, let alone a good one, why he needs metadata. He also references Broza's disregard of discovery orders, including those pertaining to requests for Discord messages also sought by the instant subpoena, to suggest that continued attempts to seek this discovery from Broza will be fruitless. The Discovery Act provides methods of bringing a party who flouts discovery orders to account, and they do not include simply requiring nonparties to bear the cost of what should be the recalcitrant party's discovery obligations.

The motion is DENIED.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300645

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: DAVID ISHAM	
vs.	
DEFENDANT: THE PASHA GROUP	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendant The Pasha Group's ("Defendant") Motion to Compel Independent Mental Examination of Plaintiff David Isham ("Plaintiff") is DENIED.

FACTUAL BACKGROUND

In June 2001, Plaintiff started working for by Defendant as a senior software developer. In September 2021, Defendant imposed a Covid-19 vaccination requirement and Plaintiff submitted his request for religious exemption. Defendant denied Plaintiff's request and did not offer him any effective alternative as an accommodation. Plaintiff also alleges he attended a rally on February 14, 2021 which Defendant perceived to be political. Plaintiff was subsequently placed on unpaid leave and terminated effective January 1, 2022.

On March 8, 2023, Plaintiff filed this action against Defendant asserting causes of action for failure to provide reasonable accommodation under the Fair Employment and Housing Act ("FEHA"), violation of Title VII of the Civil Rights Act for failure to accommodate on the basis of religion, and retaliation and wrongful termination in violation of Labor Code sections 1101 and 1102. Plaintiff seeks, among other things, compensatory damages, injunctive and declaratory relief, and punitive damages.

Defendant now seeks to compel Plaintiff to submit to a mental examination with Dr. Andrew Mendonsa, Psy.D. Defendant argues Plaintiff claims he has suffered and will continue to suffer ongoing emotional distress thus putting his mental condition in controversy. Defendant argues it must be allowed to explore the nature and extent of Plaintiff's alleged emotional distress to defend against his claims.

STANDARD

A demand that Plaintiff undergo a mental examination requires leave of court and a showing of good cause. (Code Civ. Proc., § 2032.310.) The moving party must submit a meet and confer declaration showing that “a reasonable and good faith attempt” to arrange the examination by stipulation was unsuccessful. (*Id.*)

“Good cause” is established where there are specific facts justifying discovery and the inquiry is relevant to the subject matter of the action or reasonably calculated to lead to the discovery of admissible evidence. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 840.) “Determining that the mental ... condition of a party is in controversy is but the first step in [the court’s] analysis.” (*Ibid.*) The burden is on the moving party to demonstrate both. (*Id.*, at 840-842.)

DISCUSSION

A plaintiff does not place his mental condition in controversy merely by alleging routine emotional distress or “garden variety” symptoms such as anxiety, stress, humiliation or anger. (*Vinson, supra*, 43 Cal.3d at 840; *Doyle v. Superior Court* (1996) 50 Cal.App.4th 1878, 1886-1887.) Here, in his complaint, Plaintiff alleged he suffered “emotional distress.” (Complaint, ¶¶ 12, 18.) In response to written discovery, Plaintiff clarified that he suffered “garden variety emotional distress associated with employment termination. Also aggravation of pre-existing Asthma condition.” (Declaration of Dorothy L. Black, filed 10/9/25 (“Black Decl.”, ¶ 4, Exh. B.) In response to the initial meet and confer letter in advance of this motion, Plaintiff’s counsel again stated “Plaintiff has not pleaded any cause of action for intentional or negligent infliction of emotional distress, nor has Plaintiff alleged any psychiatric injury, sought psychiatric treatment, or disclosed any expert witness on mental health. Plaintiff did not take any medication for any mental or psychological issues relevant to his claims. Plaintiff only seeks garden-variety emotional distress damages commonly associated with wrongful termination – such as humiliation, frustration, and loss of enjoyment of life – that a typical juror is competent to evaluation without medical testimony.” (Black Decl. ¶ 7, Exh. G.)

Defendant has not met its burden to show Plaintiff has placed his mental condition “in controversy” as Plaintiff’s emotional distress claims are limited to garden-variety damages. A mental examination would be disproportionate to these narrowed issues and has thus not established “good cause” for a mental examination.

Moreover, “the court shall not order a mental examination...absent exceptional circumstances...[i]f a party stipulates...that no claim is being made for mental and emotional distress over and above that usually associated with the physical injuries claimed” and “no expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages.” (C.C.P., § 2032.320(b), (c).) In opposition to this motion, Plaintiff’s counsel declares he does not intend to call any expert witness at trial and is willing to stipulate to same. (Declaration of Arkady Itkin, ¶ 2.)

Defendant’s motion is denied. No sanctions were requested.

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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001435

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: SINA SHEKOU

vs.

DEFENDANT: FARROKH HOSSEINYOUN

NATURE OF PROCEEDINGS: MOTION -CONTINUE TRIAL

RULING

Defendant Farrokh Hosseinyoun's motion to continue trial is GRANTED. The mandatory settlement conference shall remain on calendar.

California Rules of Court, Rule 3.1332 governs trial date continuances and requires that a party establish good cause for the continuance. In this case, counsel for Defendant recently substituted into the case. It appears the parties had placed some discovery on hold while participating in mediation which was unsuccessful. Although the parties have engaged in written discovery and some depositions, some discovery is outstanding. Additionally, counsel has a medical procedure during the month of trial which will hamper her ability to prepare for and attend mediation. Plaintiff's counsel has failed to specify any prejudice to a brief continuance. On the whole, the court finds that good cause has been established for a brief trial continuance.

Accordingly, Defendant's motion is granted to continue the trial date for a few months. Discovery deadlines shall correspond to the new trial date. The parties shall appear and be prepared to present dates for trial in late April and May 2026.

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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003631

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: CHRISTOPER J. EMGE, ET
AL

vs.

DEFENDANT: PHILIP BUNDSCHU, ET
AL

NATURE OF PROCEEDINGS: MOTION – PRELIMINARY INJUNCTION

RULING

Plaintiffs' motion for preliminary injunction is denied without prejudice.

Procedural Background

Plaintiffs Christopher J. Emge ("Chris") and Kimberly Emge ("Kim") (collectively, the "Emges") allege that they own real property adjoining the property at 421 The Alameda (the "Property") owned by the Mary F. Bundschu Revocable Trust, dated March 21, 1989 (the "Trust"). Defendant Ellen B. McKnight ("Ellen") is the Trustee of the Trust. Ellen's brother, Defendant Philip Bundschu II ("Phil"), resides at the Property. Since Phil moved onto the Property in 2003, he has had outbursts that communicate violence, aggressiveness, hostility and anger, often when facing the Emges' property. The Emges assert causes of action for private nuisance, public nuisance, and nuisance per se.

On April 8, 2025, the Court appointed Rebecca J. Guyette as guardian ad litem for Phil.

The Emges filed an Amendment to Complaint on June 26, 2025, changing Ellen B. McKnight as trustee of the Mary F. Bundschu Revocable Trust dated March 21, 1989 to Ellen B. McKnight, in her capacity as successor trustee of the PSB and MFB Residual Trust, and naming Ellen individually as Doe 2.

The Requested Injunction

The Emges seek an order: "(1) prohibiting defendant Philip Bundschu from harassing Christopher J. Emge and Kimberly K. Emge by screaming and yelling at them or screaming and yelling in such a way that they, or a reasonable person, can hear Philip Bundschu, while the

Emges' are on their property, whether in the Emges' backyard or in their residence; (2) prohibiting Philip Bundschu from screaming at Christopher J. Emge and Kimberly K. Emge from any location where the Emges might be located; (3) prohibiting Philip Bundschu from approaching Chris J. Emge and Kimberly K. Emge or coming within 10 yards of either of them; (4) prohibiting Philip Bundschu from residing at his current residence located at 421 The Alameda (the "property") or at any residence located within a 5-mile radius from the property, pending trial of this action, and (5) prohibiting Philip Bundschu from committing violence against any person in the neighborhood, making a credible threat of violence against any person in the neighborhood, or doing any act that would tend to seriously annoy, alarm or harass a person of reasonable sensitivity in the neighborhood and is done for no legitimate purpose, pending trial of this action; or from making any statement or utterance audible to a person in the neighborhood that would tend to be offensive to a person of reasonable sensitivity and is made or uttered for no legitimate purpose, pending trial of this action; and (6) prohibits Ellen B. McKnight, as owner of the property, from allowing Philip Bundschu to reside at the property pending trial of this action, or in the alternative, prohibiting her from allowing Philip Bundschu from residing in the property if he violates any of the orders (1) – (3) above."

The Emges break the requested relief into two parts: (1) the "Conduct Injunction" (paragraphs 1-3 and 5); and (2) the "Residence Injunction" (paragraphs 4 and 6).

Request for Judicial Notice

The Emges' request for judicial notice of criminal cases filed against Phil (Exhibit A), the register of actions in *People v. Philip Shelton Bundschu*, Case No. CR212929A (Exhibit B), report of calls for service at the Central Marin Policy Authority from January 11, 2023 through February 19, 2025 (Exhibit C), the District Attorney First Amended Complaint in *People of the State of California v. Philip Shelton Bundschu, II*, Case No. CR0002682 (Exhibit D), Failure to Appear – Arraignment in Case No. CR0002682 (Exhibit E), guilty plea in Case No. CR0002682 (Exhibit F), Court Order - Evaluation in Case No. CR0002682 (Exhibit G), court's acceptance of plea in Case No. CR0002682 (Exhibit H), Order of Probation in Case No. CR0002682 (Exhibit I), and criminal case records from Case No. CR0002682 (Exhibit J) is granted. (Evid. Code §§ 452, 453.)

Discussion

The Emges seek injunctive relief through two means: (1) a civil harassment restraining order under Code of Civil Procedure Section 527.6; and (2) an abatement of a nuisance by means of injunctive relief under Code of Civil Procedure Section 527.

I. Section 527.6

The Emges base part of their motion on Code of Civil Procedure Section 527.6. However, they failed to follow the proper procedure for relief under this section. The Emges did not file a Form CH-100, Request for Civil Harassment Restraining Orders, with the clerk to initiate a proceeding under this section, which would have been processed and calendared in accordance with civil harassment restraining order procedures. Further, subsections (d) through (i) of Section 527.6 explain that under this section, a petitioner first seeks a TRO, which is

granted or denied on the same day it is submitted or on the next day if it is filed too late in the day to permit effective review. The TRO remains in effect up to 25 days, during which time a hearing is held on the petition. If the court “finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” The Emges did not follow this procedure for relief under Section 527.6 and do not discuss the applicable standard in their papers.

The Emges’ motion is denied without prejudice to the extent it is based on Section 527.6. Their request for attorney’s fees is also denied as it is based solely on Section 527.6(s).

II. Section 527

A. Standard

With respect to the Emges’ request for injunctive relief to abate a nuisance, a traditional preliminary injunction analysis applies. A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint or the affidavits show satisfactorily that sufficient grounds exist, therefore. (Code Civ. Proc. § 527(a).) The purpose of a preliminary injunction is to preserve the status quo until a final determination on the merits. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) The power to issue preliminary injunctions is an extraordinary one and should be exercised with great caution and only where it appears that sufficient cause for hasty action exists. (*West v. Lind* (1960) 186 Cal.App.2d 563, 565.) The determination of whether to grant a preliminary injunction rests in the sound discretion of the trial court. (*Tahoe Keys Property Owners’ Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1470.) Trial courts evaluate two interrelated factors when deciding whether to issue a preliminary injunction. The first is the likelihood that the moving party will prevail at trial. The second is the interim harm that the plaintiff will likely sustain if the injunction were denied as compared to the harm that the defendant will likely suffer if the injunction were issued. (*Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1681-82.) “[T]he greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction.” (*Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361-62.) The burden of proof is on the plaintiff as the moving party “to show all elements necessary to support issuance of a preliminary injunction.” (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

“The usual purpose of a temporary injunction is to preserve conditions as they are until after trial and judgment.” (*Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 838.) “An injunction is prohibitory if it merely has the effect of preserving the subject of the litigation *in statu quo*, while generally it is mandatory if it has the effect of compelling performance of a substantive act and necessarily contemplates a change in the relative rights of the parties at the time injunction is granted. If an injunction compels a party to surrender a position he holds and which upon the facts alleged by him he is entitled to hold, it is mandatory. An injunction is prohibitory if its effect is to leave the parties in the same position as they were prior to the entry of the judgment, while it is mandatory in effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered.” (*Dosch v. King* (1961) 192 Cal.App.2d 800, 804 [citations omitted].)

“The judicial resistance to injunctive relief increases when the attempt is made to compel the doing of affirmative acts. A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal. The granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established.” (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625 [citation and internal quotations omitted].)

B. The Emges’ Position and Evidence

Kim states in her declaration that in the last five years, Phil’s conduct has become noticeably worse. His rants are more racist and misogynistic and in the last year, he screams at night. Phil can be up for 24 hours yelling, even 5 days in a row. His rants are angry and frightening. (Declaration of Kim Emge, ¶7.) Phil’s conduct has included expletive-filled screaming and yelling, delivered in an aggressive, hostile and threatening manner. He often faces the Emges’ property while yelling directly at them, making threats such as “I’ll cut your fucking head off with a samurai sword” and “I’ll get a shotgun and fill you in your sleep.” (*Id.*, ¶¶8, 9.) For the past few years, Phil has blown a whistle, sometimes early in the morning. His outbursts occur at all times during the day and night. Phil sometimes roams the neighborhood carrying a broomstick while yelling, threatening and taunting people. He directs offensive, threatening or degrading language at neighbors, often in the presence of children. (*Id.*, ¶¶10-13.) On May 7, 2024, Kim saw Phil trespassing into a neighbor’s yard, stealing fruit, and tearing down a sign, which he threw at Kim. (*Id.*, ¶14.) Phil’s conduct has caused her to alter her path in the neighborhood to avoid Phil, she and her family are often driven indoors during Phil’s yelling and whistling, and they rarely entertain guests due to the uncertainty of Phil’s behavior. (*Id.*, ¶16.) They have reported Phil’s behavior to county officials and law enforcement but no meaningful action has been taken. She and Chris have informed Ellen of Phil’s conduct but she fails to intervene. (*Id.*, ¶¶17, 18.) The Emges listed their property for sale in 2024. Phil screamed obscenities into their backyard during buyer visits. The buyers canceled their contract. (*Id.*, ¶19.) The Emges’ adult daughter tried to live in the unit above their garage in 2021 but moved out due to Phil, and the unit remains unrentable. (*Id.*, ¶20.) Phil has caused emotional distress, fear, anxiety, and loss of sleep. (*Id.*, ¶¶21-23.)

Chris makes similar statements in his declaration regarding Phil’s outbursts and describes a number of videos he took of Phil showing Phil’s erratic conduct. (Declaration of Christopher Emge, ¶¶2-11, 17.) He also states that Phil taunts men in what appears to be an effort to antagonize them into fighting, directs racially charged taunts to people of color and sexual and misogynistic rants towards women, and berates people even in the presence of children. (*Id.*, ¶12.) The outbursts have increased dramatically over the past three years. (*Id.*, ¶29.) Like Kim, Chris also tries to avoid Phil, even though he would like to be on the neighborhood street more often. (*Id.*, ¶¶15, 16.) The Emges have been unable to use their backyard as often as they would like because it is unbearable to hear Phil yelling, and they rarely entertain guests. (*Id.*, ¶¶17, 18.) They have asked Phil to stop, but it has made his conduct worse. (*Id.*, ¶19.) Government entities and Ellen have not done anything to stop Phil’s conduct. (*Id.*, ¶¶20, 21.) The potential buyers of their house who backed out threatened to sue the Emges due to their lack of disclosure of Phil’s past legal run-ins, and the Emges had to make a large financial payment to those buyers. (*Id.*, ¶22.) Chris and his family have suffered emotional and financial distress, including financial stress of not being able to sell the house. (*Id.*, ¶24.) Phil has a long criminal history going back

to 1983, and Phil's sister obtained a restraining order against Phil due to his aggressive behavior. (*Id.*, ¶¶25-27.) Phil also jumped up and down on the hood of a neighbor's car, causing damage to it. (*Id.*, ¶28.)

The Emges submit the declarations of Rick Nichelini, L. Creek Van Houten, Jennifer Donery, and Christine Featherstone, who live nearby and describe numerous incidents with Phil over the years, their fear or trepidation of being near Phil, and the impact his behavior has had on their lives and their families' lives. The Emges also submit a number of videos and/or transcriptions of videos in which Phil is speaking or yelling, or walking on a neighbor's property or the street. (Declaration of Kimberly Krawez, Exhs. 1-26.) The Emges also submit evidence showing that Ellen has been aware of Phil's behavior and mental condition for years and communicated with the court several years ago regarding a restraining order they obtained against Phil with respect to their mother. She has also communicated with her siblings and Chris Emge about Phil's conduct and condition. (Declaration of Elizabeth Brekhus, Exhs. C, D, H, K, O.)

The Emges argue that they are likely to prevail at trial because Phil's conduct constitutes a nuisance and is harassment, and Ellen has failed to abate the nuisance. They contend that the interim harm to them is likely to be great because they will continue to experience less enjoyment from their home and neighborhood, will continue to be unable to sell their house, and will continue to live with the constant threat of Phil's disturbing conduct. In contrast, they argue, Phil will not suffer any hardship from ceasing this conduct, as the conduct is not beneficial to him given he has been arrested for it before. The Emges argue that Ellen can remove Phil from the Property notwithstanding Section 5(c)(1) of the Trust, which grants Phil the right to use the Property during his life, because the Trust also gives Ellen the power "[t]o manage, control, grant options on, sell for cash or on deferred payments, convey, exchange, partition, divide, improve and repair" (¶7.d) "[t]o lease" "for any purpose" (¶7.e), "[t]o commence or defend . . . such litigation with respect to" assets "as [she] deems advisable" (¶7.k), and "[t]o carry insurance of such kind and in such amounts" as she deems advisable to protect the property (¶7.1.) They suggest that Ellen can use these powers to sell the Property and use the proceeds to purchase another place for Phil and to provide him with mental health care. The Emges also contend that even if Phil has a life estate in the Property, there is nothing that would preclude the Court from prohibiting him from living there as a means to abate the nuisance. They make the additional argument that Phil does not have a life estate under the Trust in any event, contending that he is only given the right to "use" the Property during his life and the Trustee has the broader powers noted above.

C. Defendants' Positions and Evidence

Phil, through his guardian ad litem, argues that he is elderly, unemployed and mentally ill, and is entitled to live at the Property for life under the express terms of the Trust. (See Declaration of Kelly Perreault, Exh. 2 at § 5(c)(i) ["The real property commonly known as 421 The Alameda in San Anselmo, California this real property being the residence of the Settlers as of the date of this First Amendment, shall be reserved for the exclusive use of Philip S. Bundschu, II, during his life"].) The Trust grants him a vested beneficial interest, not a tenancy, and it requires Ellen as Trustee to preserve Phil's right to live in the Property for life. Phil also argues that the injunction requested by the Emges would require Ellen to evict him without

regard for the terms of the Trust, her fiduciary duties, or lawful eviction requirements. Further, he contends, the proposed restrictions are too vague to be enforceable and he has shown through past behavior that he lacks the capacity to conform his behavior to legal directives. He contends that the Emges are not seeking to preserve the status quo but instead seek permanent, coercive remedies which would render him homeless. Phil argues that the balance of equities and principles of fairness weigh strongly against issuing a preliminary injunction as it would compel him to be evicted from the only residence he has known for decades. Further, the requested injunction would compel Ellen to violate the express terms of the Trust and risk liability for doing so.

Ellen's daughter, Oona McKnight, submits a declaration stating that Ellen is currently suffering from Alzheimer's Disease. Oona submits copies of the Trust, the First Amendment to the Trust, and a Grant Deed pertaining to the Property. She also states that although Ellen attempted to have Phil restrained from the Property in 2003, she is not aware of any court order compelling Phil to leave the Property. (Declaration of Oona McKnight, ¶¶1-7.)¹

D. Discussion

The Emges' motion for preliminary injunction is denied. While the Emges have submitted substantial evidence supporting their claims, the injunction they seek is not an appropriate remedy at this stage. The requested "Residence Injunction" is a mandatory injunction as it does not seek to preserve the status quo (in which Phil currently resides at the Property), but rather asks the Court to require Phil and Ellen to take affirmative acts that would change the status quo and remove him from the Property. (See *Paramount*, 228 Cal.App.2d at p. 835 ["It has long been the law that 'an injunctive decree that compels the surrender of the lawful possession of real property amounts to the granting of affirmative relief and is mandatory in character'"] [citation omitted].) The Emges do not show extreme circumstances warranting such an injunction. The injunction would result in Phil being removed from a home where he has a lawful right to live and could potentially result in Phil being homeless as there is no plan in place to provide alternative housing to Phil. Further, by seeking Phil's eviction, the Emges appear to be requesting a permanent injunction rather than an injunction in place pending trial.

In addition, while the Emges may be entitled to some form of prohibitory injunction targeted towards Phil's conduct, the "Conduct Injunction" they propose is overbroad. "An injunction must be narrowly drawn to give the party enjoined reasonable notice of what conduct is prohibited. It must be sufficiently precise to provide a person of ordinary intelligence fair notice that her contemplated conduct is forbidden." (*Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 92 [citations and internal quotations omitted].) The injunction requested in paragraph 5 is vague and overbroad. The words "any person in the neighborhood" is ambiguous as it is unclear how far away from the Property an individual must be in order to be covered by the injunction. Further, even though several of the Emges' neighbors submit declarations describing their experiences with Phil and the negative impact on their lives, they are not plaintiffs and have not requested that any injunction including them within its scope. The Court encourages the parties to meet and confer to reach an agreement on the terms of an

¹ Oona McKnight's declaration is the only document the Court has in its file in connection with Ellen's opposition; there is no memorandum of points and authorities.

enforceable Conduct Injunction. The Court will not issue the requested Residence Injunction, at least at this time.

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/1615487764?pwd=Ob4B5J7LLKcpnkxzJjE0SHNzEGafG.1>

Meeting ID: 161 548 7764

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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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004036

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: UPHOLD HQ INC.

vs.

DEFENDANT: TAMMY MARIE BYRNE,
ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: PERMITTING SERVICE OF
SUMMONS BY ALTERNATIVE MEANS

RULING

Uphold HQ Inc.'s ("Uphold") motion for an order permitting service of summons by alternative means on Defendants Arturo Antonio Di Carlo Castro, George Pizarro, Ruben Rivero, Jr., Adelyn Rivero, Kalex Deshawn Lewis, Sean Le, Pavani Geetha Kellepati, Darian Jackson, and Blake David Herman is granted in part. Uphold's request to serve by electronic means is denied. Uphold's request to serve by publication pursuant to Code of Civil Procedure section 415.50 is granted. The publications shall be based on the Defendants' last known address and shall be made in the Miami Herald (Arturo Antonio Di Carlo Castro, George Pizarro, Ruben Rivero, Jr.), Las Vegas Review-Journal, (Blake David Herman), Macomb Daily (Darian Jackson), East Bay Times (Pavani Kellepati), Katy Times (Sean Le), and Tuscaloosa News, (Kalex Lewis), and shall also be by certified mail.

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

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Meeting ID: 161 548 7764

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 11/26//25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004420

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: ADAM BLOCK, AN
INDIVIDUAL AND AS TRUSTEE OF THE
BLOCK FAMILY TRUST AND BLOCK &
ASSOCIATES, LLC

vs.

DEFENDANT: FARMSHOP, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY, ET AL

NATURE OF PROCEEDINGS: DEMURRER

RULING

Presently before the court is Cross-Defendants' demurrer to the third amended cross-complaint.

The unopposed requests for judicial notice are granted.

Initial Procedural Comment

Cross-Complainants argue that the court must overrule the demurrer to the second, ninth and eleventh causes of action pursuant to Code of Civil Procedure section 430.41, subdivision (b). This argument fails as to cross-defendant Versuvio Bakery Tenth Avenue ("VBTA"), which has not filed a previous demurrer. This is its first appearance in this action. While the argument might otherwise apply to cross-defendants Block and Block and Associates ("the Block cross-defendants"), the issue is moot since the Court has concluded the demurrer to the ninth cause of action should be overruled, as will be shown below.

Tenth Cause of Action – Implied Indemnification

The demurrer is sustained without leave to amend. Cross-Defendants correctly argue that the claim is unripe.

In support of their argument, Cross-Defendants cite *Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 574, where the court stated:

... Ordinarily, for purposes of limitations periods, claims for equitable indemnity and implied contractual indemnity accrue “at the time the indemnity claimant suffers loss or damage—that is, at the time of payment of the underlying claim.”

(Citation omitted.) Cross-Defendants are not raising a statute of limitations issue. In *Boyajian v. Ordoubadi* (2010) 184 Cal.App.4th 1020, 1027, the court confirmed that “[t]he rule[that a cause of action for equitable indemnity does not exist until the underlying loss is paid], however, is one by which the *statute of limitations* is tested. ...” Claims for indemnity may be raised by cross-complaint prior to the time the indemnity claimant suffers loss or damage. However, such cross-complaints are filed in the action where the injured party is seeking relief from the one who seeks indemnity. In *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1197-1198, the Supreme Court stated in discussing equitable indemnity between tortfeasors that “a defendant may pursue a comparative equitable indemnity claim against other tortfeasors either (1) by filing a cross-complaint in the original tort action or (2) by filing a separate indemnity action after paying more than its proportionate share of the damages through the satisfaction of a judgment or through a payment in settlement. ...” “... The Supreme Court [has] praised the practical advantages of indemnity actions brought by way of a cross-complaint as permitting a complete determination of the dispute among all the parties by consolidating related evidence and matters of proof in a single judicial proceeding.” (*Postley v. Harvey* (1984) 153 Cal.App.3d 280, 286, citation omitted.)

Because of the Court’s conclusion above, it need not address the additional arguments raised by Cross-Defendants.

Seventh Cause of Action – Breach of Contract

The demurrer is overruled.

“... ‘A cause of action for breach of contract requires proof of the following elements: (1) existence of a contract; (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of the breach.’ ...” (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402.) “It is well settled a pleader must state with certainty the facts constituting a breach of contract. ...” (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 174.) “Facts alleging a breach, like all essential elements of a breach of contract cause of action, must be pleaded with specificity. (See generally 4 Witkin, Cal. Procedure (4th ed. 1996) Pleading, § 4495, pp. 585-586; *Bentley v. Mountain* (1942) 51 Cal.App.2d 95, 98... [general averments that defendants violated the contract insufficient; pleader must allege facts demonstrating breach]; *Thompson v. Purdy* (1931) 117 Cal.App. 565, 567... [general averments that defendant failed to perform duties or comply with contract insufficient].) ...” (*Levy v. State Farm Mutual Automobile Ins. Co.* (2007) 150 Cal.App.4th 1, 5-6.)

The Court finds that Cross-Complainants adequately allege a breach of the Agreement in paragraph 150c. Cross-Defendants argue that the Agreement does not obligate Block to “establish General Ledger codes and labor distributions...” The allegations are reasonably read

as alleging that Block *failed to ensure* the establishment of proper General Ledger Codes and labor distributions, and other routine accounting protocols and policies. This could be construed as a failure to oversee accounting. While the Court agrees with the Cross-Defendants that “financial confusion and discord” do not constitute damages resulting from that failure, Cross-Complainants allege that the failures resulted in “materially inaccurate Profits & Loss statements” which required the Farmshop entities to pay external accountants to correct the records. This establishes resulting damage.

Because of the Court’s conclusion above, it need not address Cross-Complainants’ additional alleged breaches. Even if the allegations are insufficient, a demurrer does not lie to part of a cause of action. (*County of El Dorado v. Superior Court* (2019) 42 Cal.App.5th 620, 624.)

Second Cause of Action – Receipt of Stolen Property

The demurrer is overruled.

Cross-Defendants argue that the cause of action is deficient because “the specific allegations of the cause of action do not make any allegations as to VBTA.” Contrary to this argument, the cross-complaint alleges that “Cross-Defendants received and held the funds stolen from the FARMSHOP ENTITIES” and “were aware that the funds were stolen from the FARMSHOP ENTITIES...” (§§ 85-86.) VBTA is one of the Cross-Defendants. Further, this cause of action incorporates all earlier allegations, including those in paragraph 42 which describe transfers to VBTA.

Cross-Defendants additionally argue that the cause of action is deficient because “Penal Code § 496 does not apply extraterritorially.” They cite *Dfinity USA Research LLC v. Bravick* (N.D. Cal. 2023) 2023 WL 2717252 in support of their argument. As *Dfinity* recognizes, Penal Code section 778a, subdivision (a) permits extraterritorial jurisdiction. (*Id.* at *5.) The court granted the motion to dismiss with leave to amend on the basis that it could not conclude that amendment would be futile. In *Scosche Industries, Inc. v. S & T Montgomery Distributing, Inc.* (C.D. Cal. 2024) 2024 WL 4003894 at *4, the court found that plaintiff had not alleged more than a *de minimis* preparatory act in California and therefore dismissed the cause of action with prejudice. Here, Cross-Complainants allege that Block initiated the ACH transfers “while in California” and that he was “acting in a representative capacity of both the FARMSHOP ENTITIES and Vesuvio Bakeries.” (§42.) The Court finds that this is more than a *de minimis* act pertaining the VBTA’s receipt of stolen property.

Cross-Defendants’ uncertainty argument fails. “”Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” ...” (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695, brackets omitted.) VBTA can respond to the allegations.

In the reply, Cross-Defendants argue that Cerciello has admitted that the cause of action lacks merit. The discovery response they point to pertains to the transfer of product to VBTA. This cause of action does not involve product transfers.

Ninth Cause of Action – Misappropriation of Property of Another

The demurrer is overruled.

The elements of a cause of action for common law misappropriation are: ‘(1) the plaintiff “has made a substantial investment of time, effort and money into creating the thing misappropriated such that the court can characterize the ‘thing’ as a kind of property right,” (2) the defendant “has appropriated the ‘thing’ at little or no cost, such that the court can characterize defendant’s actions as ‘reaping where it has not sown’” and (3) the defendant “has injured plaintiff by the misappropriation.”’” (*Hollywood Screentest of America, Inc. v. NBC Universal, Inc.* (2007) 151 Cal.App.4th 631, 650, citation omitted.)

Even if money is not a “thing” for purposes of a misappropriation cause of action, Cross-Complainants have stated a cause of action for conversion. “”Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages...” ... Money may be the subject of conversion if the claim involves a specific, identifiable sum; it is not necessary that each coin or bill be earmarked.” (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208-209.) Contrary to Cross-Defendants’ argument, the cause of action is not duplicative of the third cause of action. That cause of action involves funds that were transferred by Block to Block and Associates. VBTA is not named in the cause of action. Even if some of the money which Block and Associates refused to return was ultimately transferred to VTBA, this cause of action clearly seeks more than that.

The uncertainty argument fails for the same reason as it did previously.

With respect to the reply argument, this cause of action is based in part on the transfer of product to VBTA. However, as already stated, a demurrer does not lie to part of a cause of action. Additionally, Cerciello’s statement that invoices were generated for the Vesuvio product transfers does not establish that it is untrue that VBTA received the product at below cost.

Eleventh Cause of Action – Constructive Trust

The demurrer is overruled.

“Three conditions must be shown to impose a constructive trust: (1) a specific, identifiable property interest, (2) the plaintiff’s right to the property interest, and (3) the defendant’s acquisition or detention of the property interest by some wrongful act.” (*Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 659.)

Cross-Defendants argue that the remedy sought by Cross-Complainants is “untethered to any cognizable claim against VBTA.” This argument appears to be based on their assumption that VBTA will succeed in its demurrer to the second and ninth causes of action. As shown above, the Court finds that those causes of action have been adequately pled.

Cross-Defendants raise the same uncertainty argument as was raised in connection with the previous two causes of action. Again, the argument lacks merit. And again, the fact that Cerciello states in his discovery response that invoices were generated for the Vesuvio product transfers does not establish that it is untrue that VBTA received the product at below cost.

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: 11/26/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006655

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: FRANCES SEETO

vs.

DEFENDANT: MONICA SICILIA, ET AL

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

RULING

Defendants Monica Sicilia and Lynda Goldman's ("Defendants") Demurrer to the Complaint is SUSTAINED with leave to amend in the entirety. Defendants' Motion to Strike is moot in light of the ruling on the Demurrer and is therefore ORDERED off calendar.

REQUEST FOR JUDICIAL NOTICE

Defendants' Requests for Judicial Notice Nos. 1 and 2 are GRANTED. (Evid. Code, § 452, subds. (g) and (h).)

LEGAL STANDARD – 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.)

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.) The onus is on the plaintiff to articulate the “specifi[c] ways” to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend “only if a potentially effective amendment [is] both apparent and consistent with the plaintiff’s theory of the case.” (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

DISCUSSION

This is a dispute between neighbors over the construction of a playground. Plaintiff Frances Seeto, Trustee of the Moki Family Trust dated August 18, 2009 (“Plaintiff”) contends that Defendants knowingly and intentionally constructed a play area on real property owned by Plaintiff. In response, Plaintiff filed this lawsuit alleging causes of action for Trespass, Nuisance, Quiet Title, Permanent Injunctive Relief, and Negligence.

Defendants demur, in part, on the grounds that Plaintiff lacks capacity to sue, or in the alternative there is a defect or misjoinder of parties, because the trust has two trustees and the second trustee was neither named as a plaintiff nor signed the verification to the Complaint.

The default rule in California is that co-trustees must act unanimously. Unless otherwise provided in the trust instrument, a power vested in two or more trustees may only be exercised by their unanimous action. (Prob. Code, § 15620.)

Exhibit 1 to the Complaint shows title to property is held by two trustees to the Moki Family Trust. There are no allegations in the Complaint alleging that the trust instrument provides for the unilateral exercise of the Trustees’ powers. Therefore, the defect appears on the face of the Complaint. The Demurrer is SUSTAINED in its entirety with leave to amend.

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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