

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV1900655

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: MELODI ZARET

vs.

DEFENDANT: CHARLES JOSEPH
FLYNN, JR., ET AL

NATURE OF PROCEEDINGS: 1) MOTION – ATTORNEY’S FEES
2) MOTION - STRIKE

RULING

Defendants Charles Joseph Flynn, Jr. (“Flynn”) and Flynn/MMB Mortgage Fund, LLC’s (“Fund”; together with Flynn, “Defendants”) joint motion for costs of proof is **DENIED** in full as to both Defendants.

Plaintiff Melodi Zaret’s (individually and in her capacity as trustee of the Zaret Hoffman Family Trust; “Plaintiff”) motion to strike costs is **DENIED**. Her motion to tax costs is **GRANTED in part** as discussed below. (Code Civ. Proc., §§ 1032, subd. (b); 1033.5.)

BACKGROUND

This case arises out of Plaintiff’s investment in the Fund, which was managed and operated by Flynn. Plaintiff accused Flynn of using the Fund as a vehicle to perpetrate a fraudulent scheme against his investors. All of her claims were ultimately decided in Defendants’ favor. The Court now considers Defendants’ motion for cost of proof fees and Plaintiff’s motion to tax or strike costs.

**DEFENDANTS’ MOTION FOR COST OF PROOF FEES
LEGAL STANDARD**

“If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under [Chapter 16 of the Civil Discovery Act, pertaining to requests for admissions], and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” (Code Civ. Proc., §

2033.420, subd. (a); see also *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529 [party seeking costs of proof bears the burden of proving these threshold requirements are met].) The court “shall” make such an order “unless it finds” that a statutory exception applies. (Code Civ. Proc., § 2033.420, subd. (b).) The party seeking to benefit from one of the exceptions carries the burden of establishing that the exception applies. (*Spahn v. Richards* (2021) 72 Cal.App.5th 208, 216.)

DISCUSSION

This motion is brought jointly by both Flynn and the Fund. However, all of the RFAs that are the subject of this motion were propounded exclusively by Flynn. (Quadra Dec., ¶ 2 & Ex. A.) The First District has held that a party may not recover costs of proof expenses based upon RFAs propounded by some other party. (*Design Built Systems v. Sorokine* (2019) 32 Cal.App.5th 676, 694.)

In *Design Built Systems*, the party seeking cost of proof expenses did so based on RFAs propounded by a *wholly unrelated* codefendant. (32 Cal.App.5th 676, 682, 693.) This case is different in that the Fund seeks cost of proof expenses based on RFAs propounded by a separate party who is its own principal. However, this distinction is not relevant in light of the First District’s reasoning in *Design Built Systems*, which was based on the plain language of the statute. The statute provides that costs of proof expenses are available upon a motion brought by “the party requesting the admission[.]” (Code Civ. Proc., § 2033.420, subd. (a); *Design Built Systems*, *supra*, 32 Cal.App.5th 676, 694.) The court that decided *Design Built Systems* was insistent that the issue is simple: If Party A propounded the RFA, and the party now seeking to recover costs of proof expenses is Party B, the motion must be denied as a matter of adherence to the statute. (32 Cal.App.5th 676, 694.) Flynn is not the same party as the Fund, regardless of the nature of the relationship between the two or the fact that they were represented by the same counsel. *Design Built Systems* is binding and requires the Court to deny the motion as to the Fund.

The Court considered whether this result compels the denial of Flynn’s motion as well because both motions for cost of proof expenses are based on the same evidence, and that evidence does not distinguish attorney hours spent working on behalf of Flynn from those spent working on behalf of the Fund. (See Quadra Dec., ¶¶ 11-17.) However, the evidence presented supports the idea that defense counsel did no work on behalf of one client that did not simultaneously serve the other, which is consistent with the Court’s recollection of this case.

Plaintiff argues that Flynn’s motion must be denied on the basis that Flynn has not “incur[red]” any attorney’s fees in this case. (Code Civ. Proc., § 2033.420, subd. (a).) The Fund is paying the fees associated with both its own and Flynn’s defenses. As a general rule, a party may “incur” legal fees even if he is not personally obligated to pay them. (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 373.) “[I]n cases involving a variety of statutory fee-shifting provisions, California courts have routinely awarded fees to compensate for legal work performed on behalf of a party pursuant to an attorney-client relationship, although the party did not have a personal obligation to pay for such services out of his or her own assets.” (*Ibid.*) The Court turns to the merits of the motion.

Section 2033.420 does not entitle a prevailing party to reimbursement of any attorney’s fees incurred in successfully litigating its case, writ large. It entitles a party who has proved the truth

of matters not admitted in RFAs to its reasonable expenses incurred in doing so. (Code Civ. Proc., § 2033.420, subd. (a).) The consequences of this limitation are twofold.

First, a party seeking costs of proof under Section 2033.420 must offer evidence sufficient to demonstrate that he in fact proved the truth of the matters his opponent failed to admit in her RFA responses. “That an issue be proved is an express statutory prerequisite to recovery” under the statute. (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865.; see also *Grace, supra*, 240 Cal.App.4th 523, 529 [“Costs of proof are recoverable only where the moving party actually proves the matters that are the subject of the requests.”]; Code Civ. Proc., § 2033.420, subd. (a).) “Proof is something more than just evidence. It is the establishment of a fact in the mind of a judge or jury by way of evidence. Until the trier of fact is exposed to evidence and concludes that the evidence supports a position, it cannot be said that anything has been proved.” (*Stull, supra*, 92 Cal.App.4th 860, 865-866.)

Second, the party seeking costs of proof must offer evidence sufficient to show the costs he incurred *in proving the truth of those matters*, as opposed to the costs he incurred for other aspects of the litigation. (See *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 736-737; *Grace, supra*, 240 Cal.App.4th 523, 529.)

Here, based on the RFAs that are the subject of Flynn’s motion (see Quadra Dec., Ex. A), he can only prevail on the motion to the extent that he demonstrates that he proved the following matters true:

1. Plaintiff, in her individual capacity, suffered no damages as a result of any purported mismanagement of the Fund. (This corresponds to RFA No. 17.)
2. Plaintiff, in her individual capacity, suffered no damages as a result of any self-dealing by Flynn with respect to the Fund. (RFA No. 18.)
3. Plaintiff, in her individual capacity, suffered no damages as a result of any conduct by Flynn or the Fund. (RFA Nos. 21 and 23.)
4. The Zaret Hoffman Family Trust suffered no damages as a result of any conduct by Flynn or the Fund. (RFA Nos. 22 and 24.)
5. The Fund is operated pursuant to a written operating agreement dated April 7, 2006. Plaintiff Melodi Zaret signed that agreement. (RFA No. 13.)
6. Plaintiff had no evidence that Flynn mismanaged the Fund. (RFA No. 16.)
7. Plaintiff had no evidence that Flynn knowingly made any misrepresentation to her regarding the Fund. (RFA No. 30.)
8. Plaintiff had no evidence that Defendants converted any money belonging to Melodi Zaret, personally, or to the Zaret Hoffman Family Trust. (RFAs No. 31 and 32.)
9. Plaintiff had no evidence that Defendants violated the Elder Abuse Act. (RFA No. 33.)
10. Plaintiff had no evidence that Defendants breached any contract entered into with Plaintiff Melodi Zaret. (RFA No. 34.)

Instead of evidence that they proved each of these matters true, Defendants’ showing consists in large part of evidence that they defeated each of Plaintiff’s causes of action. For example, Defendants present evidence that each of them defeated Plaintiff’s causes of action for fraud,

negligent misrepresentation, and conversion at summary adjudication based on the statutes of limitations for those claims. (Quadra Dec., Ex. I.) But the grant of summary adjudication on these causes of action demonstrates that Defendants proved that these claims were untimely, nothing more. It is not evidence that Defendants proved anything related to whether the alleged conduct underlying those claims occurred or whether Plaintiff suffered damages in connection with that conduct. Similarly, Defendants defeated Plaintiff's claims under the Consumer Legal Remedies Act through a successful motion for nonsuit. (Quadra Dec., Ex. J.) The Court granted that motion on the basis that the case did involve anything amounting to a "good[] or service" within the meaning of the CLRA. (*Ibid.*) In other words, Defendants proved that the CLRA was inapplicable in this case. This is not evidence that they proved anything about whether the conduct underlying the CLRA claims occurred or damaged Plaintiff.

Similarly, Defendants contend that all of the legal fees they incurred defending against Plaintiff's accounting cause of action and defeating her motion for a receivership were incurred proving the truth of one or more matters listed above. (Quadra Dec., ¶¶ 12, 16.) The accounting claim was set to be tried, but the Court vacated the trial date and held the claim "in abeyance pending an explanation as to why there should be a hearing on the claim." (Quadra Dec., ¶ 6; see also Ex. G, 32:24-33:11 [the Court: "[I]t's not clear to me that anyone needs an accounting in this case, so . . . I'm vacating the trial date for the accounting. I'm going to order the parties, if you're not satisfied with the respective accounting that the parties have done and you believe you need a contested hearing or the appointment of a neutral accountant to review the documents, you should make the request to the Court. Otherwise the Court's holding the accounting cause of action in abeyance pending somebody explaining to me precisely what it is that we need a contesting hearing over."].) After that, "[n]either side requested any further proceedings on the accounting cause of action," so the Court dismissed it on that basis. (Quadra Dec., Ex. F, p. 3, fn. 3.) Defendants themselves describe the manner in which the accounting claim was resolved by saying that the Court dismissed it because "Zaret failed to prosecute" it. (Memorandum, p. 5.) It is unclear why Defendants believe they proved *anything*, let alone any of the matters set forth in the identified RFAs, in the course of addressing Plaintiff's accounting claim.

The same applies to defense counsel's work in connection with the motion for receivership. The Court denied that motion upon concluding that Plaintiff had not "demonstrated that a receiver is necessary to preserve her property or that there are no less intrusive remedies available." (Quadra Dec., Ex. H.) Again, nothing here establishes that Defendants proved any of the matters targeted in the RFAs through defense counsel's work in relation to the receivership motion.

Defendants believe that evidence that they prevailed on Plaintiff's claims is sufficient to establish that they proved the matters in the RFAs true, regardless of the *manner* in which Defendants prevailed on the claims. (See Reply, pp. 8-9 ["Defendants prevailed on all [Plaintiff's] causes of action, thereby proving that there was no evidence..."].) Defendants are incorrect. There are many ways a defendant can defeat a legal claim and many of them say nothing whatsoever about the state of the evidence as to whether the underlying conduct happened, or whether the plaintiff can satisfy a particular element, like damages.

It is not the case that *all* of Plaintiff's causes of action were resolved in a way that says nothing about the truth of the matters Plaintiff refused to admit in her RFA responses. However, even if Defendants have offered evidence sufficient for the Court to find that they did, in fact, prove the

truth of some of these RFAs (and the Court has not determined that to be the case), Defendants have not offered evidence that would permit the Court to distinguish the fees they incurred proving those matters from fees they incurred through other aspects of the litigation. Defendants acknowledge that only a subset of the work their attorneys performed was related to proving the matters Plaintiff did not admit in the RFAs. The problem is that to give any credence to Defendants' evidence of how much attorney time was spent on efforts to prove these matters true, the Court necessarily must rely on counsel's judgment as to which attorney tasks ultimately proved these matters true and which attorney tasks did not. The Court cannot do that because defense counsel has demonstrated that they are not credible declarants on this topic.

Defense counsel has placed before the Court evidence making it abundantly clear that no matter Plaintiff declined to admit in her RFA responses was subsequently proven through the resolutions of her cause of action for an accounting or her motion for appointment of a receiver. Regardless, defense counsel contends that 100% of the fees incurred in connection with both of those tasks qualifies as expenses incurred in proving matters Plaintiff failed to admit in her RFAs. (Quadra Dec., ¶ 16.) This amounts to 131.3 attorney hours, or \$131,300 in fees given the \$1,000 blended hourly rate Defendants request be used to calculate their costs of proof. (*Ibid.*; Memorandum, p. 18.) Similarly, defense counsel contends that all 28 hours spent working on *this motion* qualify for reimbursement under Section 2033.420. The costs of bringing a motion for cost of proof fees cannot be recovered under Section 2033.420, because those costs necessarily cannot be costs incurred *in proving* the matters described in the RFAs.

Counsel's testimony reveals a fundamental misunderstanding as to what constitutes proof of the truth of a matter listed in an RFA and what qualifies as attorney time spent to prove such truth. Against this background, the Court has no confidence in the accuracy of defense counsel's testimony on this critical topic. There is no other evidence here that would permit the Court to quantify the attorney's fees that are awardable as costs of proof. Accordingly, the motion must be denied.

PLAINTIFF'S MOTION TO STRIKE OR TAX COSTS

LEGAL STANDARD

"Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Code of Civil Procedure, section 1033.5 specifies what types of costs are recoverable under Section 1032(b). All allowable costs must be "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation" and "reasonable in amount." (Code Civ. Proc., § 1033.5, subd. (c).) "[B]ecause the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.)

To recover costs, a prevailing party must file and serve a memorandum of costs. (Cal. Rules of Court, rule 3.1700(a)(1).) The memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items therein are correct and were necessarily incurred in the case. (*Ibid.*) The opposing party may dispute items in the memorandum of costs through a motion to strike costs (if the entire memorandum of costs is

challenged) or a motion to tax costs (if only particular items are challenged). (Cal. Rules of Court, rule 3.1700(b); see also Fairbank et al., Cal. Practice Guide: Civil Trials & Evidence (The Rutter Group 2025) ¶ 17:517 [there is no procedural difference between the two].) Unless the movant is objecting exclusively to the entire memorandum of costs, the motion “must refer to each item objected to by the same number and appear in the same order as the corresponding cost item claimed on the memorandum of costs and must state why the item is objectionable.” (Cal. Rules of Court, rule 3.1700(b)(2).) The motion must be filed and served within 15 days of service of the prevailing party’s memorandum of costs. (Cal. Rules of Court, rule 3.1700(b)(1).)

“If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that [they] were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs.” (*Ladas, supra*, 19 Cal.App.4th 761, 774; accord *Oak Grove School Dist. of Santa Clara County v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699.) That an item “appear[s] to be proper” means that, on its face, it either falls within one of the categories expressly included as allowable costs under Section 1033.5 or appears reasonably necessary to the litigation. (See *Ladas, supra*, 19 Cal.App.4th 761, 775-776 [placing burden on the party claiming costs where neither of these conditions was satisfied]; see also *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Whether a particular cost was reasonably necessary is a question of fact to be determined by the trial court. (*Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1487.)

DISCUSSION

Motion to Strike

Plaintiff first requests to strike the entire Memorandum of Costs on the basis that Defendants failed to adequately itemize and describe their costs.

Defendants’ Memorandum of Costs describes the \$120,747.94 in total costs as follows: \$10,632.32 in filing and motion fees; \$15,673.35 in deposition costs; \$45 in witness fees; \$13,927.50 in court-ordered transcripts; \$4,998.26 in models, enlargements, and photocopies of exhibits; and \$75,198.51 in “other”, which is broken down into \$5,747 for mediation, \$2,236.01 for “hotel during trial”; and \$67,215.50 for “post-998 expert fees.”

Plaintiff argues that Defendants submitted only Judicial Council Form MC-010, a one-page summary of the claimed costs, and not Judicial Council Form MC-011, a worksheet providing further detail. Form-MC-011 is an *optional* form. Plaintiff has not cited any authority establishing that this form is required or that Defendants’ initial presentation of their costs was legally inadequate. Defendants provided documentation for their claimed costs with their opposition to the motion, which is proper procedure. (See *Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 308; *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1265.)

The motion to strike the entire Memorandum of Costs is DENIED. Plaintiff added certain disputed costs to her motion to tax once Defendants provided documentation with their opposition to this motion, and those items (certain deposition costs) are addressed below.

Motion to Tax*\$5,747 for Mediation*

Plaintiff argues that this should be stricken because mediation fees are not recoverable as costs under Section 1033.5. Plaintiff misunderstands the statute. Section 1033.5 lists certain items that are expressly allowable as costs (Code Civ. Proc., § 1033.5, subd. (a)) and others that are specifically disallowed except where expressly authorized by law (Code Civ. Proc., § 1033.5, subd. (b).) That a particular cost is not expressly made allowable under Section 1033.5(a) does not mean that it is necessarily unrecoverable, provided it is not addressed by Section 1033.5(b). (*Gibson v. Bobroff* (1996) 49 Cal.App.4th 1202, 1207.) “Items not mentioned in [Section 1033.5] . . . may be allowed or denied in the court’s discretion.” (Code Civ. Proc., § 1033.5, subd. (c)(4).) They merely must be “reasonable in amount” and “reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.” (Code Civ. Proc., § 1033.5, subd. (c)(2)-(3).) “[M]ediation costs fall within the category of costs that may be awarded in the trial court’s discretion.” (*Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal.App.5th 1133, 1140.)

Because mediation costs are not expressly included as allowable costs in Section 1033.5(a), and because this charge does not appear reasonably necessary to the litigation on its face, Defendants shoulder the burden of proving that they are reasonable in amount and that incurring them was reasonably necessary to the conduct of the litigation. (See *Ladas, supra*, 19 Cal.App.4th 761, 775-776; Code Civ. Proc., § 1033.5, subd. (c).) Defendants offer invoices to prove that they incurred \$5,747 in charges associated with mediation in March 2022. (Coll Dec., ¶ 12 & Ex. H.) \$297 of this was a fee for Defendants to use a conference room to attend the virtual mediation. (*Ibid.*) The remaining \$5,450 was paid to ADR Services, Inc. in connection with the services of Hon. James McBride in preparing for and attending the mediation. (Coll Dec., Ex. H.)

Courts have rejected the idea that incurring mediation fees is inherently not reasonably necessary to the conduct of litigation on the basis that the goal of mediation is to *avoid* litigation. (*Gibson, supra*, 49 Cal.App.4th 1202, 1209; see also *Berkeley Cement, supra*, 30 Cal.App.5th 1133, 1142-1143 [discussing *Gibson*].) “[M]ediation is fundamental to the conduct of litigation as it encourages the parties to settle their disputes before trial[.]” (*Gibson, supra*, 49 Cal.App.4th 1202, 1209.) “[W]hether mediation fees should be awarded as costs in a particular matter must be determined based on the facts and circumstances of the particular action.” (*Berkeley Cement, supra*, 30 Cal.App.5th 1133, 1143.) *Berkeley Cement* noted that “[i]f the trial court orders a case to mediation, we may take that as an indication of the court’s belief mediation is reasonably necessary in that case.” (*Id.* at p. 1142.) Here, the Court did not order the parties to mediate, but it strongly encouraged them to explore means of resolving their dispute other than litigation. At a January 28, 2020 case management conference, the Court “urge[d] the parties to rethink their approaches and whether there are more meaningful ways to resolve this matter, i.e., jointly selecting a neutral person to go over the accountings.” At an April 12, 2022 case management conference, the Court ordered a mandatory settlement conference, which took place the following November 8. Clearly, the Court considered attempts to resolve the dispute short of continued litigation to be worthwhile and reasonably necessary under the circumstances of this case. The motion to tax these costs is denied.

\$2,236.01 for "Hotel During Trial"

These costs are not expressly deemed recoverable, nor do they appear reasonably necessary on their face given that defense counsel's offices are located in San Francisco. Defendants carry the burden of demonstrating that this charge is recoverable. (*Ladas, supra*, 19 Cal.App.4th 761, 774.) Defendants explain that defense counsel reside in New Jersey (Coll Dec., ¶ 6), so they had to stay in a hotel to attend the in-person trial in this case. The motion to tax is denied as to these costs.

\$2,959.75 in Deposition Costs

Plaintiff disputes \$2,959.75 worth of Defendants' claimed deposition costs, which is related to the depositions of Karen Doiron (\$426.95), Holly Larsen (\$749.80), and Randy Sugarman (\$1,783). Plaintiff argues that these witnesses did not testify at trial and two of them pertained to issues surrounding Marin Mortgage Bankers Corp., which were excluded at trial at Defendants' request. Only certain expenses associated with "necessary" depositions are expressly recoverable under Section 1033.5 (see § 1033.5, subd. (a)(3)(A)), and the declarations Defendants offer do not include any evidentiary facts to establish that these were necessary depositions. Accordingly, the Court will tax these costs.

\$67,215.50 in Code Civ. Proc., § 998 Penalties

"Not less than 10 days prior to commencement of trial . . . , any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time." (Code Civ. Proc., § 998, subd. (b).) If such an offer made by a defendant "is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff . . . shall pay the defendant's costs from the time of the offer." (Code Civ. Proc., § 998, subd. (c)(1).) Such costs expressly may include certain postoffer costs associated with expert witnesses. (*Ibid.*)

Defendants seek to recover \$42,140¹ in expert witness fees incurred after their unaccepted Section 998 offers, which they served on December 18, 2023. (Coll Dec., ¶ 14; Malloy Dec., ¶¶ 2-3 & Exs. A-B.) Both Defendants offered to waive any recovery of legal fees or costs if Plaintiff dismissed the lawsuit with prejudice. (Malloy Dec., Exs. A-B; Coll Dec., ¶ 2.)

"[O]nly good faith settlement offers qualify as valid offers under section 998." (*Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692, 698.) "[T]o qualify as a good faith offer, it must be 'realistically reasonable under the circumstances of the particular case' and must carry with it some reasonable prospect of acceptance." (*Arno v. Helinet Corp.* (2005) 130 Cal.App.4th 1019, 1024 [quoting *Wear v. Calderon* (1981) 121 Cal.App.3d 818, 821].)

"Where . . . the [Section 998] offeror obtains a judgment more favorable than its offer, the judgment constitutes prima facie evidence showing the offer was reasonable and the offeror is

¹ The Memorandum of Costs requested \$67,215.50. Defendants explain that upon further review, they discovered that this figure included expert fees prior to the date they served their Section 998 offers, so they have revised the figure downward. (Coll Dec., ¶ 14.)

eligible for costs as specified in section 998.” (*Elrod, supra*, 195 Cal.App.3d 692, 700.) The “offeree” has the burden of proving otherwise. (*Ibid.*) “[I]t is the 998 offeree who bears the burden of showing that an otherwise valid 998 offer was not made in good faith.” *Covert v. FCA USA, LLC* (2022) 73 Cal.App.5th 821, 834; accord *Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal.App.5th 918, 926.)

Plaintiff argues that the burden of showing good faith is on the offeror (here, Defendants), relying exclusively on *Taing v. Johnson Scaffolding Co.* (1992) 9 Cal.App.4th 579. *Taing* stated that “[t]he burden of assuring that the offer *complies with section 998* falls on the offeror.” (9 Cal.App.4th 579, 585 [emphasis added].) Within the context of *Taing*, the Court reads this statement as meaning that the offeror carries the burden of demonstrating the sufficiency of aspects of the offer other than its good faith nature. This is consistent with other cases that distinguish “the burden of showing that [the] offer is valid” from “the burden of showing that an otherwise valid 998 offer was not made in good faith” and place only the former on the offeror. (*Licudine, supra*, 30 Cal.App.5th 918, 926.) *Taing* did not discuss the good faith issue in any way, but concerned itself with other aspects of the offer.

First, Plaintiff characterizes the offers at issue here as “token” offers. The Court disagrees. Plaintiff was offered a chance to walk away without paying any of Defendants’ costs. Given the nature of this litigation, it was always obvious that the losing party’s exposure to costs would be substantial. These offers were not comparable to the token offers in Plaintiff’s authorities.

To prove the circumstances of the case at the time the Section 998 offers were made, Plaintiff provides a list of facts she contends “discovery had already revealed” by that time. (Memorandum, p. 11.) To support that list, she cites to her own post-trial brief. (*Id.* at p. 12; Malloy Dec., Ex. E.) Statements in a brief are not evidence. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 139; accord *Villacorta v. Cemex Cement, Inc.* (2013) 221 Cal.App.4th 1425, 1433.) They do not acquire evidentiary value because the brief is submitted as an exhibit to a declaration. More importantly, Plaintiff filed and served that brief on March 24, 2025. (Malloy Dec., ¶ 6 & Ex. E.) The facts described in the brief reflect what Plaintiff contended was proven, or could be proven, as of that date. Defendants issued their Section 998 offers on December 18, 2023, over a year before that. (Malloy Dec., ¶¶ 2-3 & Exs. A-B.) Plaintiff has not offered any evidence to show that any of the facts on which her “lack of good faith” argument depends had been revealed through discovery at the time Defendants made their Section 998 offers. “The reasonableness of [a Section 998] offer depends upon the information available to the parties as of the date the offer was served.” (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 130.) Based on the citations in the post-trial brief, the testimony that is the source of these facts all occurred in June 2024 and afterward, by which time Plaintiff admits the Section 998 offers had expired. (Memorandum, p. 11 [expiration date was January 19, 2024].)

The only other argument Plaintiff offers on the good faith issue is that right before the offers were issued, Plaintiff learned that four of her claims would proceed to trial. Absent any evidence to support the idea that Plaintiff had evidence supporting the *merits* of those claims while the offers were pending, this argument does not aid Plaintiff’s position that there was no reasonable chance that she would accept the offers. The Court understands that those claims survived summary adjudication, but the manner in which they did so does not reveal whether Plaintiff was likely to prevail on them. (See Malloy Dec., Ex. C [the Court’s summary adjudication ruling].)

The Court concludes that Plaintiff has not met her burden to show that the Section 998 offers were in bad faith.

Plaintiff also contends that Defendants cannot recover costs in reliance on Section 998 because the offers were procedurally invalid. She argues that there are two plaintiffs in this case – Plaintiff in her individual capacity and Plaintiff in her capacity as trustee – and that each defendant’s Section 998 offer was directed at both together. (See Malloy Dec., Exs. A-B [both Section 998 offers are directed “To Plaintiff Melodi Zaret, individually and in her capacity as trustee of the Zaret Hoffman Family Trust”].)

“To be effective, an offer to multiple parties under section 998 must be explicitly apportioned among the parties to whom the offer is made so that each offeree may accept or reject the offer individually.” (*Palmer v. Schindler Elevator Corp.* (2003) 108 Cal.App.4th 154, 157.) However, the First District has rejected the idea that when a single person sues in multiple capacities, that person constitutes multiple parties for purposes of a Section 998 offer. (*Peterson v. John Crane, Inc.* (2007) 154 Cal.App.4th 498, 506.) In *Peterson*, where a single person sued in three capacities – as an individual, as a successor-in-interest to a legal claim, and as a legal heir – the appellate court held that “there was only one offeree plaintiff for purposes of section 998” and the section 998 offer was valid notwithstanding that it was a single offer directed at the plaintiff in all three capacities. (*Id.* at p. 508.) *Peterson* is controlling here. Plaintiff attempts to distinguish *Peterson* on the ground that its plaintiff alleged different causes of action in each of her three legal capacities (154 Cal.App.4th 498, 506), but that is a distinction without a difference in light of the First District’s reasoning in the case. (See *Peterson, supra*, 154 Cal.App.4th 498, 506-508.)

Finally, Plaintiff contends that Defendants should not recover the expert witness fees associated with Venk Reddy (\$7,340) and Scott Harms (\$16,500) because neither was a disclosed expert and neither was deposed or testified at trial. (Malloy Reply Dec., ¶¶ 2-3, Ex. F.) Defendants seek to recover Reddy’s and Harms’ fees as post-Section 998 offer costs. Such costs are not expressly deemed recoverable under Section 1033.5, nor do these charges appear reasonably necessary to the litigation on their face, so Defendants carried the burden of establishing that these are recoverable. (*Ladas, supra*, 19 Cal.App.4th 761, 775-776.) Defendants have not presented any evidence that would allow the Court to conclude that Reddy’s or Harm’s involvement was reasonably necessary to the conduct of this case, a prerequisite to the recoverability of any cost. (Code Civ. Proc., § 1033.5, subd. (c).) The Court agrees with Plaintiff that the \$23,840 in expert fees associated with Reddy and Harms is not recoverable.

Conclusion

The motion to tax is GRANTED as follows: The \$67,215.50 originally requested for post-Section 998 offer expert witness fees is taxed to \$18,300 (the reduced \$42,140 value Defendants requested in post-Section 998 offer costs minus the \$23,840 associated with Reddy and Harms). The deposition costs are taxed from \$14,327.95² to \$11,368.20 (\$14,327.95 - \$2,959.75 associated with Doiron, Larsen, and Sugarman). Defendants reduced the amount requested for

² Defendants’ Memorandum of Costs requested \$15,673.35 in deposition costs. Defendants subsequently reduced this number. (Coll Dec., ¶ 8.)

certain other costs through their opposing papers, so the Court taxes the costs for filing and motion fees from \$10,632.32 to \$10,557.32 (Coll Dec., ¶ 7) and the costs for certain trial exhibits from \$4,998.26 to \$4,998.16 (compare Memorandum of Costs, Item 13 to Coll Dec., ¶ 11). The motion to tax is DENIED in all other respects.

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 December, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnz06lyz2dKaw.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: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2200992

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: ONE SILVER SERVE, INC.

VS.

DEFENDANT: COLORADO STRUCTURES
INC., ET AL

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL ANSWERS TO
INTERROGATORIES – DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY
FACILITATOR PROGRAM
3) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY
FACILITATOR PROGRAM
4) MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM
5) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY
FACILITATOR PROGRAM

RULING

The Court assumes that these discovery matters have been referred to the Special Master and are therefore 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 December 2025 is as follows:

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000350

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: SARAH ELLISON

vs.

DEFENDANT: MARIN HEALTH
MEDICAL CENTER, ET AL

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

This matter was resolved by the Court's order of October 13, 2025.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nz06lyz2dKaw.1>

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003592

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: JESSIANE MARQUES

vs.

DEFENDANT: FABRIZIA BARBOSA

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Plaintiff's motion for summary judgment is **GRANTED**. Plaintiff is entitled to damages in the amount of \$30,371.42 with respect to the five causes of action alleged in her Complaint. Adding the \$1,312.50 in sanctions previously imposed against Defendant that Defendant has not paid, the total amount of the judgment against Defendant is **\$31,683.92**.

Procedural Background

Plaintiff Jessiane Marques filed her Complaint against Defendant Fabrizia Barbosa on August 2, 2024. Plaintiff alleges that she worked for Defendant, who operates Kind Care Daycare aka Kind Care Infants and Toddlers, from February 2023 to May 2024. Plaintiff's First Cause of Action alleges failure to pay overtime wages in violation of Labor Code Sections 510, 1194, 1198 and Section 3 of the Wage Order. The Second Cause of Action alleges failure to provide meal periods in violation of Labor Code Sections 226.7 and 512. The Third Cause of Action alleges failure to provide rest breaks in violation of Labor Code Section 226.7. The Fourth Cause of Action alleges failure to provide accurate wage statements in violation of Labor Code Section 226. The Fifth Cause of Action seeks waiting time penalties under Labor Code Sections 201, 202 and 203.

On April 28, 2025, the Court entered an Order granting Plaintiff's unopposed motions to compel responses to Form Interrogatories, Set One, and to deem facts admitted. The Court also imposed sanctions against Defendant in the amount of \$1,312.50, to be paid within 20 days of the Order. Defendant has not yet paid this amount to Plaintiff. (Declaration of T.P. Skinner ("Skinner Decl."), ¶3.)

Standard

The purpose of a motion for summary judgment "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in

fact necessary to resolve their dispute.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) “Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and ‘all inferences reasonably deducible from the evidence’ and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal. App. 4th 1110, 1119.)

“On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact.” (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) The burden on a plaintiff moving for summary judgment is defined by Code of Civil Procedure § 437c(p)(1); the plaintiff must “prove[] each element of the cause of action entitling the party to judgment on that cause of action.” (Code Civ. Proc. § 437c(p)(1); *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241.)

“When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment.” (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th at 467; Code of Civ. Proc. §437c.) The moving party’s evidence must be strictly construed, while the opposing party’s evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

A party who objects to evidence presented on a motion for summary judgment must either timely file separate written objections or object orally at the hearing. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 851 n. 11; Cal. Rules of Court, Rule 3.1352.) “Evidentiary objections not made at the hearing shall be deemed waived.” (Code Civ. Proc. §437c(b)(5).)

Evidentiary Record

Plaintiff presents the following facts which are established by her declaration and/or the deemed admissions.

Defendant employed Plaintiff at Defendant’s business, Kind Care Daycare. Plaintiff’s primary task was to take care of children – feeding them, supervising them, changing diapers and so forth – between the ages of four months to three years. Plaintiff did not live at the workplace. (Undisputed Material Fact (“UMF”) 1.) Plaintiff worked for Defendant from February 3, 2023 through May 8, 2024. (UMF 2.) Plaintiff worked for Defendant for 61 five-day weeks between February 2023 and November 2024, plus 4 days (February 3, 2023; November 13, 14 and 15, 2023). (UMF 3.) Plaintiff did not work on the following dates: June 26, 2023 through June 30, 2023; December 25, 2023 through January 5, 2024, November 16, 2024 through November 17, 2024, and November 20, 2024 through November 24, 2024. (UMF 4.) Plaintiff worked for Defendant 5 days a week for shifts of 10 hours between 7:30 A.M. through 5:30 P.M. for which Defendant compensated Plaintiff \$20.00 per hour throughout Plaintiff’s employment. (UMF 5.) Defendant did not compensate Plaintiff with overtime premiums for Plaintiff’s hours worked in

excess of 8 hours in one workday, nor for Plaintiff's hours in excess of 40 hours in one workweek, at any point during Plaintiff's employment for Defendant. (UMF 6.) Plaintiff did not receive any rest breaks during her 10 hour workdays at any time during her employment. (UMF 7.) Defendant did not compensate Plaintiff with any premium wages for her failure to provide rest breaks premiums. (UMF 8.) Plaintiff did not receive any meal breaks during her 10 hour workdays. (UMF 9.) Defendant did not compensate Plaintiff with any premium wages for Defendant's failure to provide any meal breaks. (UMF 10.) Defendant did not provide Plaintiff with any wage statements throughout Plaintiff's employment. (UMF 11.) Defendant did not pay Plaintiff all wages due upon termination due to Defendant's failure to pay Plaintiff overtime premiums and premium wages for missed meal and rest breaks. (UMF 12.) Plaintiff's employment from February 3, 2023 through May 8, 2024 encompassed 67 weeks. (UMF 13.)

Discussion

Plaintiff cites to Wage Order No. 15 in support of some of her claims. Wage Order No. 15 applies to "household occupations", which is defined as "all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder." Wage Order No. 5 applies to the "public housekeeping industry", which includes child nurseries and childcare institutions. Here, Defendant identifies the business address as her address on her Answer, indicating that she may run the childcare business out of her private residence. Wage Order No. 5 could potentially apply rather than Wage Order No. 15 as Plaintiff worked for the day care business rather than Defendant as a private householder. However, the Court notes that the relevant sections of Wage Order No. 5 (Section 11050) include the same or similar language as the relevant sections of Wage Order No. 15 (Section 11150), cited in Plaintiff's brief, so the result would be the same under either order. The Court will cite the relevant provisions of both in its discussion below.

First Cause of Action

Under Labor Code Section 510(a) and Wage Order No. 5 (Section 11050(3)(A)(1))/Wage Order No. 15 (Section 11150(3)(C)), Defendant was required to pay employees working more than 8 hours a day at a rate of 1.5 times the regular rate of pay for all hours worked in excess of 8 hours in a day, and 1.5 times the regular rate for all hours worked over 40 hours per week.

Plaintiff worked 10 hour days but was not paid overtime premium wages. (UMF 5, 6.) In Plaintiff's typical work week, Defendant compensated Plaintiff with \$1,000 for working 50 hours at a rate of \$20/hour. (UMF 5.) Defendant should have compensated Plaintiff with overtime premium wages on 10 of those 50 hours at a rate of \$30/hour. Thus, for two hours per work day, Defendant failed to pay Plaintiff with overtime premium wages of \$10/hour, resulting in an overtime violation of \$20 per workday, or \$100 per week. Plaintiff worked 61 full weeks of 5 days, plus 4 additional days. (UMF 3.) In the 61 full weeks, Defendant failed to pay Plaintiff a total of \$6,100 (61 weeks x \$100) in overtime premium wages. In those 4 remaining days, Defendant failed to pay Plaintiff \$80 in overtime premium wages (4 x \$20). Defendant therefore owes Plaintiff \$6,180 in overtime premium wages, exclusive of prejudgment interest.

A plaintiff recovering unpaid overtime in an action against her employer is entitled to recover prejudgment interest at 10%. (Lab. Code §§ 218.6, 1194(a); Civ. Code § 3289(b); *Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138, 1147.) Plaintiff seeks prejudgment interest for the 463 days since her last day of employment on May 8, 2024, through the date she filed her motion on August 14, 2025, which amounts to \$783.92. (Skinner Decl., ¶6.) Plaintiff is entitled to a total of \$6,963.02 (\$6,180 + \$783.92) in connection with her First Cause of Action.

Second Cause of Action

Under Labor Code Section 512(a) and Wage Order No. 5 (Section 11050(11)(A))/Wage Order No. 15 (Section 11150(11)(A)), an employer must provide a meal period of not less than 30 minutes for any period of work more than 5 hours. Labor Code Section 226.7(c) and Section 11050(11)(B)/11150(11)(D) require an employer who fails to provide this meal period one additional hour of pay at the regular rate for each day the meal period was not provided.

Plaintiff's work days consisted of no less than 10 hours, but Defendant did not provide a 30-minute, duty-free meal period for Plaintiff or any premium wages in lieu thereof. (UMF 5, 9, 10.) Plaintiff worked for Defendant for 309 days (61 five-day weeks, plus 4 additional days). Defendant therefore owes Plaintiff \$6,180 (309 x \$20).

The statute providing for 10% prejudgment interest does not apply to claims alleging meal and rest break violations. (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 121.) Instead, a 7% rate applies. (*Id.* at pp. 121-125.) Interest for 463 days at 7% is \$548.75. (Skinner Decl., ¶7.) Plaintiff is entitled to a total of \$6,728.75 (\$6,180 + \$548.75) in connection with her Second Cause of Action.

Third Cause of Action

Under Wage Order No. 5 (Section 11050(12)(A))/Wage Order No. 15 (Section 11150(12)(A)), an employer must provide a rest period of not less than 10 minutes for any period of work more than 4 hours. Labor Code Section 226.7(c) and Section 11050(12)(B)/11150(12)(B) require an employer who fails to provide this meal period one additional hour of pay at the regular rate for each day the meal or rest period was not provided.

Plaintiff's work days consisted of no less than 10 hours but Defendant did not provide Plaintiff with any duty-free rest breaks or premium wages in lieu thereof. (UMF 5, 7, 8.) A plaintiff can claim two premium hours of wages per workday, one for missed meal breaks, and one for missed rest breaks. (*United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57, 70.) Plaintiff worked for Defendant for 309 days. Defendant therefore owes Plaintiff \$6,180 (309 x \$20). With the 7% prejudgment interest, the amount is \$6,728.75. (Skinner Decl., ¶7.) Plaintiff is entitled to this amount in connection with the Third Cause of Action.

Fourth Cause of Action

Labor Code § 226(a) requires an employer to provide an employee with wage statements which include information about their compensation. Defendant did not provide any wage statements to Plaintiff. (UMF 11.) Plaintiff's employment spanned 67 weeks. (UMF 13.) Labor Code §

226(e) provides for a penalty of \$50 in the first pay period and \$100 thereafter for failure to provide wage statements. There are 34 pay period violations; the first pay period violation provides for \$50 in damages, and the remaining 33 provide for \$100 per pay period, totaling \$3,350. Plaintiff is entitled to this amount in connection with the Fourth Cause of Action.

Fifth Cause of Action

California Labor Code § 203 provides that if an employer willfully fails to timely pay wages upon termination of the employment, the wages “shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced”, for a maximum of 30 days. Overtime premiums are considered wages. (See *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 107.)

Defendant did not pay all wages due at Plaintiff’s termination, as discussed above, so Plaintiff is entitled to thirty days of wages as waiting time penalties pursuant to Labor Code § 203. Plaintiff’s regular rate of compensation was \$20 and she worked 10 hours per day. (UMF 5.) Plaintiff states that her compensation should have been \$200 in regular compensation per day plus \$20 in overtime premiums, for a total daily rate of \$220. This daily rate multiplied by 30 days is \$6,600. Plaintiff is entitled to this amount in connection with her Fifth Cause of Action.

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 December, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0004292

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: WELLS FARGO BANK, N.A.

vs.

DEFENDANT: ARIAN A. PERAMAS, AN
INDIVIDUAL

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The hearing on the motion for summary judgment by plaintiff Wells Fargo Bank, N.A. (“Plaintiff”) is **CONTINUED TO December 30, 2025** to allow Plaintiff an opportunity to file a supplemental separate statement of undisputed material facts addressing both causes of action alleged in Plaintiff’s complaint and in accordance with Plaintiff’s notice of motion filed on August 14, 2025. (See Notice of Motion and Motion for Summary Judgment, p. 1:25-28.) The supplemental separate statement shall be filed no later than Monday, December 15, 2025.

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

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005353

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: OPTIMAL PARTNERS, A
CALIFORNIA GENERAL PARTNERSHIP

vs.

DEFENDANT: SAMIA MANAGHEBI, ET
AL

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants Samia Managhebi and Brannon Adlesh's (collectively "Defendants") Demurrer to the Complaint as a whole, and to each cause of action therein, is **OVERRULED**.

Background

The Complaint alleges that Defendants submitted a higher bid at the trustee's sale for property located at 165 Grove Road, Bolinas, California (hereinafter the "Property"), by falsely representing themselves as "eligible bidders" and "prospective owner-occupants" under Civil Code section 2924m, when they had no intent to occupy the Property as their principal residence. Instead, Defendants' bid interfered with Plaintiff's acquisition of the Property as the initial high bidder, rendering the subsequent trustee's deed to Defendants void or voidable.

The Complaint makes the following allegations:

1. On August 18, 2023, Defendant Vylla Trustee Solutions, LLC ("Vylla") recorded a Notice of Default and Election to Sell Under Deed of Trust ("NOD") initiating foreclosure on the Property. (Compl., ¶ 7.)
2. The Property was sold at public auction on April 4, 2024. Plaintiff, as an eligible bidder, submitted the high bid of \$1,105,000.01 and tendered full payment. (*Id.*, ¶¶ 9-10.)
3. While Plaintiff's bid was pending acceptance, Defendants submitted a higher bid of \$1,110,000 to Vylla. In doing so, Defendants falsely represented themselves as "eligible bidders" and "prospective owner-occupants." (*Id.*, ¶ 11.)

4. Vylla accepted Defendants' bid based on these representations and issued the trustee's deed to Defendants, rejecting Plaintiff's bid. (*Id.*, ¶¶ 13-14.)
5. These representations were false. Defendants had no intent to occupy the Property within 60 days and did not do so. (*Id.*, ¶¶ 12, 15.) Even after Defendants obtained a judgment for possession of the premises on August 28, 2024, the Property remained unoccupied. (*Id.*, ¶ 16.)
6. The Property remains vacant and Defendants reside at a property on Clay Street in San Francisco that Defendant Managhebi purchased at foreclosure as a prospective owner-occupant under Civil Code section 2924m. (*Id.*, ¶ 12.)
7. As a direct result of Defendants' wrongful conduct, Plaintiff lost the opportunity to acquire the Property, suffering damages including lost economic advantage, costs of bidding, and related expenses. (*Id.*, ¶¶ 17-20.).

The Complaint asserts causes of action for (1.) Intentional Interference with Prospective Economic Advantage; (2.) Negligent Interference with Prospective Economic Relations; (3.) Violation of Civil Code sections 2924g, 2924h, and/or 2924m; (4.) Cancellation of Instruments; (5.) Declaratory Relief; (6.) Quiet Title to Real Property; and (7.) Unfair Business Practices.

Request for Judicial Notice

Defendants' Request for Judicial Notice No. 1 is granted. (Evid. Code, § 452, subd. (d).)

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) 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.)

Discussion

Defendants demur to each cause of action contending they fail to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Defendants argue that all of the causes of action in the Complaint are predicated on the allegation that Defendants were not “eligible bidders” because they did not intend to occupy the Property as their principal residence within 60 days of the trustee's deed being recorded and to maintain such occupancy for at least one year. Defendants contend that an applicable exception to this rule applies.

“Prospective owner-occupant” means a natural person who presents to the trustee an affidavit that they will occupy the property as their primary residence within 60 days of the trustee's deed being recorded and that they will maintain their occupancy for at least one year. (Civ. Code, § 2924m(a)(1)(A), (B).) However, a prospective owner-occupant shall not be in violation of this section if a legal owner's compliance with the requirements of section 2924n renders them unable to occupy the property as their primary residence within 60 days of the trustee's deed being recorded. (Civ. Code, § 2924m(g).) Section 2924n requires the new owner to comply with applicable law regarding the eviction or displacement of tenants (aka “Unlawful Detainer” law). Defendants argue that since a judgment for possession was not entered until August 28, 2024, their failure to reside at the residence is excused. (See Compl., ¶ 16; RFJN No. 1.)

Plaintiff counters that proper way to interpret section 2924m(g) is that an eviction proceeding tolls the occupancy requirement, not eliminates it entirely.

The Court agrees with Plaintiff's interpretation. Section 2924m was enacted during the COVID-19 pandemic, which resulted in widespread job loss and financial distress that raised the prospect that many California homeowners would soon default on their mortgage payments (if they had not done so already) and a wave of home foreclosures could follow. (*Bird Rock Home Mortg., LLC v. Breaking Ground, LP*, (2025) 114 Cal.App.5th 492. Internal citations omitted.) The Legislature enacted provisions intended to mitigate against blight, vacancy, and the transfer of residential property ownership from owner-occupants to landlord investors in the event that California experienced another wave of foreclosures.” (*Ibid.*)

Reading the statute as Defendants propose would render the occupancy requirement inapplicable in the large majority of sales of occupied properties and would allow landlord investors to benefit from the priority given to “prospective owner-occupant” bids without any intention of actually occupying the property.

The Court finds that the allegations of the complaint are sufficient to survive demurrer. The demurrer is therefore overruled.

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: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006155

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: STAYCE SULLIVAN

vs.

DEFENDANT: PROGRESSIVE HOME
ADVANTAGE, ET AL

NATURE OF PROCEEDINGS: MOTION – PRO HAC VICE

RULING

The unopposed application to admit Bradley J. Aiken as Counsel Pro Hac Vice for Defendants PennyMac Loan Services, LLC and American Security Insurance Company is **GRANTED**.
(Calif. Rules of Court, rule 9.40.)

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: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006263

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: ERIC RUIZ

vs.

DEFENDANT: AMRIT KAUR, ET AL

NATURE OF PROCEEDINGS: ORDER – SHOW CAUSE – OTHER: WHY THIS CASE
SHOULD NOT BE CONSOLIDATED WITH SC0000959 ANS SC0000960

RULING

In light of Plaintiff's voluntary dismissal of small claims cases SC0000959 and SC0000960, the Court's Order to Show Cause is discharged and the hearing date is **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 December 2025 is as follows:

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007096

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

IN THE MATTER OF:

RUDY MAX REID

NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

This matter was resolved by the Court's order of November 4, 2025.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 12/02/25 TIME: 1:30 P.M. DEPT: A CASE NO. CV0007171

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: CAMILO IBARRA

PLAINTIFF: DEMERGASSO RANCHES,
INC.

vs.

DEFENDANT: ETHOS VETERINARY
HEALTH LLC, A DELAWARE LIMITED
LIABILITY COMPANY

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant GSV Holding, LLC's ("GSV") Demurrer to the First Amended Complaint for Declaratory Relief (the "FAC") of Plaintiff Demergasso Ranches, Inc. ("Plaintiff") is **OVERRULED**.

Background

This dispute arises out of the interpretation of a commercial lease. The FAC's sole cause of action is for declaratory relief under Code of Civil Procedure section 1060. Plaintiff requests that the Court interpret two related clauses contained in a paragraph of the commercial lease between Plaintiff, as landlord, and GSV, as tenant veterinary facility.

Section 22(f) of the Lease provides as follows:

Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(f) The abandonment of the Premises by Tenant; provided, however, Tenant's vacation of the Premises or ceasing business operations shall not constitute an abandonment so long as Tenant continues to pay monthly rent, perform its maintenance and repair obligations, maintain insurance required under Section 15, and perform all other Tenant's obligations under this Lease. In the event Tenant's vacation of the Premises or cessation of business operations exceeds ten (10) consecutive months, resulting in the potential termination of the conditional use permit issued by the City of San Rafael, Landlord, at its option, shall have the right to recapture the Premises after sending a thirty (30) day written notice to Tenant and, upon expiration of such

cure period, may then recapture the Premises. Tenant shall surrender the Premises or resume operations in the Premises prior to end of the cure period or Landlord shall have the right to declare Tenant in default under this Lease and exercise all available remedies set forth in Section 23 below.

(FAC, ¶ 14; Ex. A at pp. 16-17.)

The FAC alleges a dispute between Plaintiff and GSV as to the meaning of “cessation of business operations” for purposes of Section 22(f) (“Cessation of Business Operations Issue”). (*Id.*, ¶ 16.) The FAC also alleges a dispute between Plaintiff and GSV as to the 10-month period set forth in Section 22(f). (*Id.*, ¶ 17.) The FAC characterizes the Parties’ positions on this issue (the “Recapture Right Issue”) as follows: (a) Plaintiff contends that under Section 22(f), GSV may cease business operations in the Premises for up to 10 consecutive months, after which Plaintiff shall have a recapture right subject to notice and a 30-day cure period; (b) GSV contends that, so long as the City of San Rafael has not actually taken steps to potentially terminate the conditional use permit, then it may keep the Premises vacant and unused for the entirety of the Lease term, i.e., until 2029. (*Id.*, ¶ 17(a)-(b).)

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) 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

Any person interested under a written instrument ...or under a contract, ...may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties ... including a determination of any question of construction or validity arising under the instrument

or contract. (Code Civ. Proc., §1060; *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605-06; *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 549.)

The general rule is that an action for declaratory relief is sufficient if the complaint sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties and requests that the rights and duties be adjudged. (*Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224, 235–36 [internal citations omitted].) If these requirements are met, the court must declare the rights of the parties whether or not the facts alleged establish that the plaintiff is entitled to a favorable declaration. (*Ibid.*) A general demurrer is usually not an appropriate method for testing the merits of a declaratory relief action, because the plaintiff is entitled to a declaration of rights even if it is adverse to the plaintiff's interest. (*Ibid.*)

Nevertheless, a trial court may properly sustain a general demurrer to a declaratory relief action without leave to amend when the controversy presented can be determined as a matter of law. (*Ibid.*, citing *Jefferson, Inc. v. Torrance* (1968) 266 Cal.App.2d 300, 303, [“where a complaint sets forth a good cause of action for declaratory relief regarding only a disputed question of law, declarations on the merits unfavorable to a plaintiff have been upheld although such determinations were made in the form of a judgment sustaining a demurrer”].) The rationale for this rule is that while sustaining the demurrer might be technically incorrect, reversing would merely provoke further appellate recourse since the record discloses that the trial court dismissed the case on the merits and the legal issues are clearly presented by the pleadings. (*Childhelp, supra*, at p. 236.) Moreover, while a plaintiff who states a valid cause of action for declaratory relief is entitled to a declaration of rights and duties even if the eventual declaration may be adverse, any error a judge may commit in refusing to entertain the action is not prejudicial if it is clear from the face of the complaint that the plaintiff's position is untenable and that a declaration adverse to the plaintiff will end the matter. (*Nede Mgmt. Inc. v. Aspen Am. Ins. Co.* (2021) 68 Cal.App.5th 1121, 1131.)

Here, Plaintiff adequately alleges a cause of action of declaratory relief (see FAC, ¶¶ 20-24). GSV does not argue otherwise, rather it contends that the Recapture Right Issue presents a question of pure law that should be decided in GSV's favor on Demurrer, and, if the Court does so, then the Cessation of Business Operations Issue is irrelevant to the actual determination of any right Plaintiff could have to recapture the Premises.

The Court determines that Plaintiff has alleged sufficient facts to satisfy the pleading requirements under Code of Civil Procedure section 1060 and finds no basis to depart from the general rule that this is sufficient to survive demurrer. Plaintiff is entitled to the declaration it seeks, whether or not that declaration is ultimately favorable.

For these reasons, the demurrer to the FAC is overruled.

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