SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV061492

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: JAMES M. TACHERRA vs. DEFENDANT: ERNEST J. TACHERRA	

NATURE OF PROCEEDINGS: MOTION – OTHER: APPROVAL OF SALE

RULING

Receiver Lawrence A. Baskin's unopposed Motion for Approval for the Sale of Tacherra Ranch [A.P.N 188-170-11] and Close of Escrow if granted. The court will sign the Proposed Order that the receiver submitted on 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: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2003077

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: MARCO DESIGN GROUP vs. DEFENDANT: SAUSALITO CONSTRUCTION, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETLLEMENT

RULING

On December 15, 2025, Defendant Sausalito Construction Inc, filed a Notice of Settlement of Entire Case. The court concludes that the settlement resolves all pending motions and all causes of action in the Complaint and in all Cross-Complaints. Any party that disagrees with the court's conclusion is ordered to appear.

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: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201606

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: SUSAN DAVIA vs. DEFENDANT: PERFORMANCE HEALTH SUPPLY, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

After further briefing the following tentative decision, originally posted on December 4, 2025, has not changed:

Defendants Performance Health Supply, LLC, Formerly Known as Performance Health Supply, Inc. and ASP Global, LLC's ("Moving Defendants") Motion for Summary Judgment is GRANTED.

BACKGROUND

This is a Proposition 65 case. Plaintiff Susan Davia ("Plaintiff" or "Davia") alleges defendants improperly sold "Cervical Traction Sets with Vinyl Water Bag" without a Proposition 65 warning. On May 31, 2022, Davia filed her Complaint in this action, alleging a single cause of action for violation of Proposition 65 for failing to warn of exposure to DEHP from contact with the noticed product.

REQUESTS FOR JUDICIAL NOTICE

Moving Defendants' Requests for Judicial Notice Nos. 1-7 are GRANTED. (Evid. Code,§§ 452, suds. (c), (h).)

Moving Defendants' Supplemental Request for Judicial Notice No. 1 is DENIED. (Code Civ. Proc.,§ 437c, subd. (b)(4) [The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers].)

OBJECTIONS TO EVIDENCE

The Court need only rule on those objections to evidence that it deems material to its disposition of the motion. (See Code Civ. Proc., § 437c(q).)

LEGAL STANDARD

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "[I]f 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," the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the party does so, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant ... has met that burden, the burden shifts to the plaintiff... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Med. Ctr.* (2008) 159 Cal.App.4th 463, 467, as modified (Jan. 24, 2008).)

DISCUSSION

Moving Defendants contend they are entitled to summary judgment as a matter of law on the following separate and independent grounds:

(1) Plaintiff has not produced evidence that a consumer exposure to "DEHP" from the Cervical Traction Sets at issue in this action has occurred;

(2) Even if one assumes that a consumer exposure occurred, any such exposure would be less than the level that would require a warning; and

(3) Plaintiff's Notices of Violation failed to include all required information and are therefore defective.

Alternatively, Defendant ASP Global, LLC, successor in interest to Anatomy Supply Partners, LLC and Anatomy Supply Products, LLC, moves for summary adjudication in its favor and against Plaintiff, as follows:

Issue 1: Plaintiff's claims against Anatomy Supply Partners, LLC and Anatomy Supply Products, LLC fail because they no longer exist as claims other than those Plaintiff asserts against ASP Global, LLC.

The Court will address the notice argument first.

Pre-Suit Notices

Proposition 65 permits private persons to enforce Proposition 65 in the public interest after sending "notice of an alleged violation … to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator." (Health & Saf. Code, § 25249.7(d)(1).)

Pre-suit notice was designed to accomplish two things: (1) to provide the public prosecutor the means to assess whether to intervene on the public's behalf, and (2) to afford the target of the notice the opportunity to avoid litigation by settling with the plaintiff or by curing any violation. (*Consumer Advoc. Grp., Inc. v. Kintetsu Enters. Am.* (2007) 150 Cal.App.4th 953, 963–64.)

The required contents of the notice are set out by regulation. (Cal. Code Regs. tit. 27, § 25903.) The portions relevant to this motion are:

> "(a) For purposes of Section 25249.7(d) of the Act, "notice of the violation which is the subject of the action" (hereinafter "notice") shall mean a notice meeting all requirements of this section. No person shall commence an action to enforce the provisions of the Act "in the public interest" pursuant to Section 25249.7(d) of the Act except in compliance with all requirements of this section.
>
> (b) Contents of Notice.
>
> …
>
> (2)… (A) For all notices, the notice shall identify:
> 1. the name, address, and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity…"

It is undisputed that Plaintiff's Notice and Supplemental Notice do not provide the phone number of the noticing individual as required. (Undisputed Material Fact ("UMF") No. 5.)

The parties do disagree about whether this omission is fatal to Plaintiff's claims, but this dispute is a purely legal one, suitable for resolution on motion for summary judgment.

The Legal Framework

There is a presumption that regulations require only substantial compliance. However, strict compliance with a statute is warranted when (1) "the Legislature has provided a detailed and specific mandate" or (2) "the intent of [the] statute can only be served by demanding strict compliance with its terms." (*Prang v. Los Angeles County Assessment Appeals Board No. 2* (2020) 54 Cal.App.5th 1, 19-20.)

The plain language of the Prop 65 notice regulation distinguishes between aspects that are specific and aspects that are more general. Certain matters in the regulation are specific, such as the inclusion of Appendix and stating the name, address, and telephone number of the noticing individual, the name of the alleged violator or violators, the name of each listed chemical involved in the alleged violation. (Cal. Code Regs. tit. 27, § 25903 (2)(A)(1), (2), and (4).) This specificity suggests that the regulation requires strict compliance with these matters. (*Prang v. Los Angeles County Assessment Appeals Board No. 2, supra,* 54 Cal.App.5th at pp. 19-20.)

Other matters in the regulation expressly permit less specificity, such as "the approximate time period during which the violation is alleged to have occurred" (*Id.,* subd. (2)(A)(3)), "a general identification of the discharge or release" (*Id.,* subd. (2)(B)), "the name of the consumer product or service … with sufficient specificity to inform the recipients of the nature of the items" (*Id.,* subd. (2)(D)), and "the general geographic location of the unlawful exposure " (*Id.,* subd. (2)(E)(1)). The general nature of the information required is expressly non-specific.

Where a regulation is specific in some matters and general in others, it strongly suggests that the regulation requires strict compliance with the matters that are specific.

Here, section 25903, subdivision (a) states "[f]or purposes of Section 25249.7(d) of the Act, 'notice of the violation which is the subject of the action' (hereinafter 'notice') shall mean a notice meeting all requirements of this section. No person shall commence an action to enforce the provisions of the Act 'in the public interest' pursuant to Section 25249.7(d) of the Act except in compliance with all requirements of this section." The Court finds that in providing such a specific mandate, the Legislature indicated its intent to require strict compliance with the statute.

Moreover where, as with a Prop 65 notice, a notice has both procedural and substantive effects, then the court should apply it in a matter that gives effect to both purposes. The notice to public law enforcement and to the alleged violator is in part the start of a procedural process because public law enforcement can decide to prosecute the matter and the alleged violator can remedy the violation. The notice also has substantive effect because a private Prop 65 enforcer cannot prosecute a claim "in the public interest" unless the private party has complied with the notice requirement even if public law enforcement elect to not prosecute the matter. Substantial compliance would serve the purposes of the procedural purpose, but not the substantive purpose. Strict compliance would serve both purposes. This also suggests that strict compliance is required.

In failing to include telephone contact information as required, Plaintiff's pre-suit notice did not strictly comply with section 25903(b)(2)(A). However, the Court notes that if substantial compliance were required, the notices would have substantially complied with the statute.

Failure to comply with pre-suit notice requirements is grounds for dismissal, and deficiencies cannot be cured after the complaint is filed. (*Council for Educ. & Rsch. on Toxics v. Starbucks Corp.* (2022) 84 Cal.App.5th 879, 900.)

For these reasons, Moving Defendants' Motion for Summary Judgment is GRANTED.

The request for a continuance pursuant to Code of Civil Procedure section 437c(h) is DENIED. That section permits a continuance if it appears from the affidavits that facts essential to justify opposition may exist but cannot, for reasons stated, be presented. Here the discovery at issue concerns the "level of exposure" argument. Since Moving Defendants raised three independent bases for the Motion and the Court has ruled on the "notice" argument, discovery addressing the "level of exposure" argument is not essential to the opposition and no continuance is warranted.

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: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002059

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: STEVEN E. SALAMANDRA vs. DEFENDANT: PETER M. LECHOWICK, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

This action arises from a construction project at real property owned by Peter and Kelly Lechowick ("Lechowicks"). On or about July 17, 2022, the Lechowicks entered into a home remodel contract with Salamandra for the Lechowicks' property at 10 Magnolia Ave., in Larkspur. (RJN Ex. 1 and 2, respectively - FACC, ¶9 and Salamandra's Complaint, ¶ 6.) On or around February 16, 2024, Salamandra sued the Lechowicks for failure to pay for his construction services and materials in breach of their home remodel contract. (RJN Ex. 2 – Salamandra's Complaint.) Thereafter, on or about March 22, 2024, the Lechowicks cross-complained against Salamandra for allegedly defective construction services and materials and property damage. (RJN Ex. 3 - Lechowicks' Cross-Complaint.) On or around June 6, 2025, Salamandra cross complained against the Lechowicks, the Lechowicks' design professional and civil engineer, and the City for indemnity, contribution, and declaratory relief, alleging that they each share in the responsibility for the Lechowicks' alleged damages. (RJN Ex. 4 – Salamandra's [Initial] Cross Complaint ["Initial CC"].) This was the first pleading naming the City as a party in this action.

The Initial CC alleged a sole cause of action against the City, for "Declaratory Relief," alleging that there existed an "actual controversy" with the City and other cross-defendants, entitling Salamandra to "equitable indemnity, implied indemnity, apportionment, and/or contribution…" (RJN, Ex. 4 – Salamandra's Initial CC, ¶¶ 27-29 – Fourth Cause of Action.)

The City met and conferred regarding the failure to allege compliance with the claims presentation statute and asserted that the Declaratory Relief cause of action was in essence one for indemnity for which a claim was required.

Thereafter, on August 28, 2025, Salamandra filed the presently operative FACC. The City contends the FACC failed to cure the issue and the FACC remains defective on this same ground.

REQUESTS FOR JUDICIAL NOTICE

Cross-Defendant's Requests for Judicial Notice Nos. 1-5 are GRANTED. (Evid. Code, §§ 451, subd. (f), 452, subds. (d), (g), and (h).)

Cross-Complainant's Requests for Judicial Notice Nos. 1-3 are DENIED. (See Objections to Evidence below.)

OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE

Objections Nos. 1-4 are SUSTAINED. The documents sought to be noticed are not relevant to the disposition of this Demurrer. (*OneTaste Inc. v. Netflix, Inc.* (2025) ___ Cal.Rptr.3d __ (2025 WL 3240319, at *10) [For courts to take Judicial Notice, the evidence must be relevant to the disposition of the matter, not merely relevant to the party's arguments].)

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.)

DISCUSSION

The sole cause of action alleged against the City in the FACC is the Fourth Cause of Action for Declaratory Relief. The City demurs to this cause of action on the grounds that the FACC fails to plead compliance with the California Government Code's claim presentation requirement and the "Declaratory Relief" cause of action is in essence a claim for indemnity, money, and/or damages, for which claim presentation is required as a prerequisite to filing suit. (*State of*

California v. Superior Court (1983) 143 Cal.App.3d 754; *Stronghold Engineering v. City of Monterey* (2023) 96 Cal.App.5th 1203.)

Specifically the FAC alleges:

17. SALAMANDRA is informed and believes that the allegations of LECHOWICK are based, in part or entirely, on the actions or inactions of HUBBELL DAILY, HUBBELL, DAC, ABOLHASSANI, LARKSPUR, or MOES 1-50 (all jointly referred to hereafter as "Cross-Defendants"), and that, as a result, these parties are **responsible for LECHOWICK's alleged injuries and damages**. Notwithstanding the above, SALAMANDRA seeks only declaratory relief from LARKSPUR, and not indemnity, contribution, or damages from LARKSPUR.

.....

28. By way of the LECHOWICK Cross-Complaint, LECHOWICK states that the damages to the Project were the fault of SALAMANDRA. SALAMANDRA disputes this, asserting other parties, including Cross-Defendants, **caused the damage averred by LECHOWICK** therein.

29. SALAMANDRA is informed and believes and based thereon alleges that a dispute has arisen and an actual controversy now exists between SALAMANDRA and Cross-Defendants, including HUBBELL DAILY, HUBBELL, DAC, ABOLHASSANI, LARKSPUR, and MOES 1 through 50, inclusive, as to which of the Cross-Defendants, if any, **are responsible for the damages** to the Project alleged by the LECHOWICKS, if any there were. Accordingly, SALAMANDRA **seeks a judicial determination of the allocation of responsibility among all parties**, including all Cross-Defendants.

(Cross-Defendant's RJN Ex. 1 - FACC, pp. 4,6, ¶¶ 17, 28, 29, emphases added.)

Government Code section 945.4 provides: Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

To state a cause of action against a public entity for indemnity, a cross-complainant is required to plead compliance with the claims presentation requirements in their cross-complaint. (*State of California v. Superior Ct., supra,* 143 Cal.App.3d 754.) Failure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action. (*State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239.)

The title of the cause of action (i.e. Declaratory Relief) is not dispositive when it in essence states claims for which a claim presentation is required. (*State of California v. Superior Ct., supra,* at p. 757*; S. California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 238.) When a complaint is functionally equivalent to an indemnification action, multiple courts

have concluded that it must be preceded by a written claim to the government entity. (*Stronghold Eng'g Inc. v. City of Monterey* (2023) 96 Cal.App.5th 1203, 1209–10, review denied Feb. 14, 2024.)

Although Cross-Complainant cites to *Stronghold*'s conclusion that the declaratory relief cause of action alleged in that lawsuit did not require compliance with claims presentations requirements, *Stronghold* is distinguishable. In that case the public entity was a party to a contract. Stronghold filed suit seeking a declaration of its rights and duties under the contract and the change order. The Court held, "unlike indemnity—where a defendant subject to a suit for damages seeks to hold a third party liable for those damages—here no damages would flow solely from a declaratory judgment entered in Stronghold's favor." (*Ibid.*)

In this case, Cross-Complainant alleges that Cross-Defendants "**are responsible for the damages** to the Project alleged by the LECHOWICKS, if any there were" and "**seeks a judicial determination of the allocation of responsibility among all parties.**" (FACC, ¶ 29. Emphases added.) The Declaratory Relief cause of action is in essence a claim for equitable indemnity and damages, the prayer seeks a judgment declaring the "...proportional responsibility of each of the parties herein for the damages claimed by LECHOWICKS." (FACC, Prayer ¶ 4.)

For these reasons, the Court concludes that in order to state a claim for indemnity against the City, even if framed as a claim for declaratory relief, Cross-Complainant must either allege facts demonstrating or excusing compliance with the claim presentation requirement. The demurrer is SUSTAINED with leave to amend. (See *State of California v. Superior Ct., supra,* 143 Cal.App.3d 754 [leave to amend to allow such allegations is appropriate].)

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: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003322

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: ANNA DUBROVSKY vs. DEFENDANT: NATIONWIDE MUTUAL INSURANCE COMPANY, ET AL	

NATURE OF PROCEEDINGS: ORDER- SHOW CAUSE - OTHER; WHY THE STAY SHOULD NOT BE LIFTED

RULING

Appearances required.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0005142

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: BLUE SKY UTILITY 2017 II LLC vs. DEFENDANT: 3902 ANNADALE LANE, LP, ET AL	

NATURE OF PROCEEDINGS: MOTION – PRO HAC VICE

RULING

The Application of Harrison K. Goo to Appear as Counsel for Plaintiff Blue Sky Utilities 2017 II LLC is Granted. The court will sign the proposed order that Plaintiff submitted on October 23, 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: 12/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0007196

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: KATHY TAYLOR vs. DEFENDANT: JEANINE JOHNSON, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Plaintiff Kathy Taylor's ("Plaintiff") demurrer to Defendant Jeanine Johnson's ("Johnson") answer is SUSTAINED in part with leave to amend to the extent described below. (Code Civ. Proc., § 430.20.)

BACKGROUND

This is a property dispute between a former romantic couple. According to the complaint, Plaintiff and Defendant own real property at 76 Cottonwood Drive in San Rafael as tenants in common. (Complaint, ¶¶ 1-2.) Plaintiff alleges that Defendant abused her throughout their relationship and describes a tumultuous breakup in May 2024. (*Id.* at ¶¶ 10, 14-17.) Since the couple ended their relationship, Defendant has allegedly prevented Plaintiff from physically accessing the property and has maintained control over all of Plaintiff's belongings within the home. (*Id.* at ¶¶ 21-22.) Plaintiff alleges that Defendant's abuse and harassment has continued even though they no longer live together. (*Id.* at ¶¶ 24-25.) She brings this suit for partition of the property, ouster, and intentional infliction of emotional distress. Among other relief, she requests an "allowance, accounting, contribution or any compensatory adjustments among the parties according to the principles of equity under Code of Civil Procedure section 872.140 and 872.430." (*Id.* at Prayer, ¶ A.)

Defendant filed an answer on October 16, 2025. Plaintiff now demurs to that answer.

LEGAL STANDARD

"When any ground for objection to . . . [an] answer appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading." (Code Civ. Proc., § 430.30.) "A demurrer to an

answer may be taken to the whole answer or to any one or more of the several defenses set up in the answer." (Code Civ. Proc., § 430.50.) The grounds for a demurrer to an answer are as follows: "(a) The answer does not state facts sufficient to constitute a defense. (b) The answer is uncertain. . . . '[U]ncertain' includes ambiguous and unintelligible. (c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral." (Code Civ. Proc., § 430.20.)

"Generally speaking, the determination whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) In reviewing a demurrer to an answer, the court is to accept the answer's allegations as true and disregard any allegations of the complaint that the answer has denied. (*Id.* at p. 733.) The demurrer must be decided based only on the contents of the answer, the contents of the complaint (because the adequacy of the answer is determined by reference to the pleading at which it is directed), and any judicially noticeable material. (*Id.* at pp. 732-733.)

DISCUSSION

Demurrer to Affirmative Defenses

An answer to a complaint must contain a "general or specific denial of the material allegations of the complaint controverted by the defendant" and "[a] statement of any new matter constituting a defense." (Code Civ. Proc., § 431.30, subd. (b)(2).) The reference to "new matter" requires that affirmative defenses be pleaded in the answer to avoid waiver. (See *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627.) "Affirmative defenses must not be plead as 'terse legal conclusions,' but 'rather . . . as facts "averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint".' " (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 812-813 [quoting *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384].) To plead a cause of action, a plaintiff must plead ultimate facts sufficient to establish every element of that cause of action. (*Williams v. Sacramento River Cats Baseball Club, LLC* (2019) 40 Cal.App.5th 280, 286; see also *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1018 [what those facts are is determined by the substantive law defining the cause of action], 1027 [allegations of ultimate, rather than evidentiary, fact are sufficient].) It follows that to plead an affirmative defense, a plaintiff must plead ultimate facts sufficient to establish every element of that affirmative defense.

First Affirmative Defense – Waiver

"Waiver is the intentional relinquishment of a known right after knowledge of the facts." (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107.) It "may occur by intentional relinquishment or by conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." (*Harper v. Kaiser Cement Corp.* (1983) 144 Cal.App.3d 616, 619.) To plead an affirmative defense of waiver, a defendant's answer must simply set forth "the facts upon which a claim of waiver could be based." (*Id.* at p. 621.)

Defendant asserts an affirmative defense of waiver against Plaintiff's cause of action for ouster and as to Prayer, Paragraph A's request for relief to the extent it requests relief "up to January 23, 2023[.]" (Answer, p. 8, ¶¶ 1-2.).

The Court will begin with the waiver defense as applied to Prayer, Paragraph A. Defendant's answer alleges that the parties were in a domestic partnership and legally dissolved it. (Answer, p. 1, ¶ 1; p. 8, ¶ 1.) In connection with that dissolution, they executed a Marital Settlement Agreement that "stated that each party waives all rights to reimbursement for *Epstein* credits . . . and *Watts* credits[.]" (*Id.* at p. 8, ¶ 2.) "As such, there should be no allowance, accounting, contribution or any compensatory adjustments among the Parties up through January 23, 2023 [the date the Marital Settlement Agreement became effective]." (*Id.* at p. 8, ¶ 2.)

Understanding Defendant's references to "*Epstein*" and "*Watts*" requires a brief foray into family law. Where a married couple is divorcing and one spouse enjoyed "the exclusive use of a community asset during the period between separation and [divorce] trial, that spouse may be required to compensate the community for the reasonable value of that use." (*In re Marriage of Garcia* (1990) 224 Cal.App.3d 885, 890.) Such compensation is known as a "*Watts* charge" after the case that developed the rule. (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 978.) Where the property in question "is not owned outright by the [marital] community but is being financed, and the monthly payments equal or exceed the reasonable value of the asset's use," the spouse who enjoyed exclusive use of the property during the period between separation and divorce trial "may satisfy the duty to compensate the community for use of the asset by taking the monthly finance payments from his or her separate property." (*Garcia*, *supra*, 224 Cal.App.3d 885, 890-891.) Those payments are known as "*Epstein* credits," also after the case that designed the rule. In California, former registered domestic partners enjoy the same legal rights and carry the same legal burdens as former spouses, regardless of the source of those rights and burdens. (Fam. Code, § 297.5.) It follows that the rules of *Epstein* and *Watts* apply to ex-domestic partners just as to ex-spouses.

Paragraph A of the Prayer invokes Code of Civil Procedure, section 872.140. Section 872.140 establishes that incident to a partition action, a court can "order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity." Plaintiff's request for "contribution" or a "compensatory adjustment" incident to her partition claim can be reasonably interpreted to include a request for compensation for the time Defendant spent in exclusive possession of the property during the period between the end of their romantic relationship and the legal dissolution of their relationship. Taken as true, the allegation that Plaintiff signed a contract waiving any rights she might otherwise have had under *Epstein* and *Watts* supports a claim of waiver of such rights by intentional relinquishment. This meets the requirement that Defendant set forth "the facts upon which a claim of waiver could be based." (*Harper*, *supra*, 144 Cal.App.3d 616, 621.) To the extent Plaintiff contends that the allegations pertaining to this affirmative defense do not put her on notice of the nature of the defense (Memorandum, p. 3), the Court disagrees. Defendant has clearly stated which rights she contends Plaintiff waived (any right to *Epstein* and *Watts* payments attributable to the time prior to January 24, 2023) and how Defendant claims Plaintiff waived them (by signing the Marital Settlement Agreement).

The Court finds it unusual that this affirmative defense is directed at a portion of a discrete request for relief and not the whole of a cause of action. It need not address whether this is proper, however, as Plaintiff has not raised this issue.

Turning to the cause of action for ouster: This cause of action alleges that on June 1, 2024, "Defendant ousted the Plaintiff from the Property by changing the locks and refusing the [sic] let the Plaintiff back into the Property[.]" (Complaint, ¶ 42.) Plaintiff claims that she has been unable to access the home since that date and that Defendant has refused to let her back in to collect her belongings. (*Id.* at ¶ 43.) Defendant's answer asserts that this cause of action is waived "because Plaintiff voluntarily vacated the Property." (Answer, p. 8, ¶ 3.) The Court reads this as an attempt to assert waiver by conduct "so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." (*Harper*, *supra*, 144 Cal.App.3d 616, 619.) The right Plaintiff seeks to vindicate by her cause of action for ouster is the right of any property owner "to full use and occupancy of the property." (Complaint, ¶ 41.) The bare allegation that she "voluntarily vacated the property" without any further detail does not allege conduct so inconsistent with ownership rights as to induce a reasonable belief that Plaintiff was abandoning those rights.

Plaintiff's demurrer to the affirmative defense of waiver is OVERRULED to the extent that defense is directed at the request in Prayer, Paragraph A. It is SUSTAINED with leave to amend to the extent such affirmative defense is directed at Plaintiff's cause of action for ouster. (Code Civ. Proc., § 430.20, subd. (a).)

Second Affirmative Defense – Ratification

"[R]atification is the approval or sanctioning of some deed or act." (*Danning v. Bank of America* (1984) 151 Cal.App.3d 961, 973.) Here, Defendant invokes ratification as an affirmative defense to Plaintiff's cause of action for ouster, alleging that Plaintiff ratified Defendant's conduct. As alleged in the complaint, the conduct at issue was Defendant's excluding Plaintiff from the property and refusing to let her back in to collect her belongings. (Complaint, ¶¶ 18-22.) Defendant alleges that Plaintiff ratified this in that she "voluntarily vacated the Property, and gradually removed her personal belongings from the Property over time." (Answer, p. 8, ¶ 6.) That does not describe ratification. Plaintiff's "ratifying" Defendant's conduct would have looked like Plaintiff *acquiescing* in Defendant's excluding Plaintiff from the property against her will and preventing Plaintiff from accessing her belongings. Defendant is alleging that Plaintiff was not, in fact, excluded against her will or deprived of her possessions at all. This simply denies the truth of Plaintiff's ouster allegations. In other words, these allegations do not plead any affirmative defense. (See *State Farm Mut. Auto Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725 [describing the difference between an affirmative defense [or "new matter"] and a simple denial [or "traverse"].)

The Court also questions the applicability of ratification as an affirmative defense here. "Ratification can be used to imbue a voidable transaction with full legal force and effect, or to adopt as one's own an act purportedly performed by an agent on one's behalf." (*Knapp v. Ginsberg* (2021) 67 Cal.App.5th 504, 529.) The Second District has suggested that this affirmative defense is not properly invoked outside these contexts. (*Ibid.*) Defendant clarifies that

she is invoking ratification as a "contract principle" (Answer, p. 8, ¶ 7), but whatever Plaintiff's ouster cause of action is, it does not appear to be a contract claim.
The demurrer to the ratification affirmative defense is SUSTAINED with leave to amend. (Code Civ. Proc., § 430.20, subds. (a), (b).)

Third Affirmative Defense – Equity

Defendant mounts an affirmative defense of "equity" to the ouster claim on the basis that "Plaintiff voluntarily vacated the Property." (Answer, p. 9, ¶ 9.) The Court knows of no affirmative defense referred to as simply "equity" and has not found any legal authority supporting its existence (nor has Defendant offered any). One cannot tell what legal principle Defendant is trying to invoke here. To the extent Defendant is merely disputing Plaintiff's allegation that she was excluded from the property against her will, that is merely a denial and need not be pleaded as an affirmative defense. (See *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 543.)

The demurrer to this affirmative defense is SUSTAINED with leave to amend. (Code Civ. Proc., § 430.20, subds. (a), (b).)

Sixth Affirmative Defense – Consent

As to both the request in Paragraph A of Plaintiff's Prayer and her cause of action for ouster, Defendant invokes the principle that "[a] person who consents to an act is not wronged by it." (Civ. Code, § 3515.) As applied to Paragraph A of the Prayer, Defendant's consent defense is functionally identical to her waiver defense. (See Answer, p. 9, ¶ 14 [alleging that Plaintiff consented to the loss of any rights she might have under *Epstein* and *Watts* by waiving such rights in the Marital Settlement Agreement].) This states a defense for the same reasons Defendant's allegations in support of her waiver defense do.

As applied to Plaintiff's ouster cause of action, an affirmative defense of "consent" does not make sense. Defendant alleges that Plaintiff "consented" to the ouster by "voluntarily vacat[ing] the Property." (Answer, p. 9, ¶ 15.) Within the context of the Answer, what Defendant is alleging here is that Plaintiff was not ousted at all, but left of her own volition. This is a denial of Plaintiff's ouster allegations, not an affirmative defense. (See *State Farm, supra*, 228 Cal.App.3d 721, 725.) Defendant has included specific denials of the allegations relating to the ouster cause of action in her Answer outside the Affirmative Defenses section. (See Answer, p. 4, ¶¶ 20-24; p. 6, ¶¶ 41-45.) The Answer is uncertain to the extent it pleads these same denials as affirmative defenses, because a straightforward denial and an affirmative defense are two different things and equating them creates confusion about the nature of Defendant's defense to the Complaint.

The demurrer to the consent affirmative defense is SUSTAINED with leave to amend as applied to Plaintiff's ouster claim. (Code Civ. Proc., § 430.20, subd. (b).)

Eighth Affirmative Defense - Collateral Estoppel

Collateral estoppel precludes the relitigation of an issue where (1) the issue is identical to an issue decided in a prior proceeding; (2) the issue was actually litigated; (3) the issue was

necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding or in privity with a party to the prior proceeding. (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.) "Even assuming all [of these] threshold requirements are satisfied, however, [the] analysis is not at an end." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.) The court "must also consider whether application of collateral estoppel in a particular case will advance the public policies which underlie the doctrine." (*Younan v. Caruso* (1996) 51 Cal.App.4th 401, 407; *Lucido*, *supra*, 51 Cal.3d 335, 342-343; *People v. Sims* (1982) 32 Cal.3d 468, 477 [court "must consider whether the traditional . . . policy reasons for applying collateral estoppel were satisfied by the facts of [the] case"].) Those public policies are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigants[.]" (*Lucido*, *supra*, 51 Cal.3d 335, 343.)

Defendant is asserting collateral estoppel as an affirmative defense to the request in Prayer, Paragraph A for "compensatory judgments" and similar relief. She alleges that the Marital Settlement Agreement, which was "attached" to the parties' court judgment of dissolution, determined Plaintiff's entitlement to reimbursement under *Epstein* or *Watts*, and implies that Plaintiff is thus precluded from litigating the issue. (Answer, p. 10, ¶ 21.)

To plead the affirmative defense of collateral estoppel, Defendant needed to allege ultimate facts sufficient to satisfy all of the requirements for application of the doctrine as set forth in *Zevnik*. (See *Williams*, *supra*, 40 Cal.App.5th 280, 286; *Foster*, *supra*, 61 Cal.App.5th 998, 1018, 1027.) She has not. She asserts merely the existence of the Marital Settlement Agreement and the fact that it included a waiver by each party of her rights under *Epstein* and *Watts*. (Answer, p. 10, ¶ 21.) She has not pleaded, among other things, that the issue of Plaintiff's entitlement to compensation under *Epstein* or *Watts* was actually litigated and was decided by a court.

The demurrer to this affirmative defense is SUSTAINED with leave to amend. (Code Civ. Proc., § 430.20, subd. (a).)

"Information and Belief" Denials

Plaintiff demurs to the entire answer on the ground that specified paragraphs therein "make allegations on information and belief without stating the basis for the belief." (Memorandum, p. 6.) What Plaintiff refers to as "allegations [made] on information and belief" are *denials* based on Defendant's lack of sufficient information or belief to admit or deny the allegation at issue. (See, e.g., Answer, ¶ 5 ["In answering Paragraph 3 of Plaintiff's Complaint, Defendant is without sufficient information or belief to admit or deny the allegations and on that basis denies generally and specifically the allegations therein."].) This is expressly allowed by Code of Civil Procedure, section 431.30, subdivision (e).

In her reply, Plaintiff clarifies that her position is that Defendant cannot make denials based on information and belief without "show[ing] that she lacks both information and belief[.]" (Reply, p. 1.) She insists that Defendant cannot "merely assert[] that she lacks information or sufficient knowledge [upon which] to base a belief[.]" (*Ibid.*) The Court is very confused as to what Plaintiff is saying Defendant needs to plead here. It is unclear what a "positive" denial based on

information and belief, as distinguished from "a mere statement that Defendant has no information or belief" (*ibid.*) would look like. None of the cases Plaintiff cites clarifies this.

The demurrer is OVERRULED to the extent it rests on Plaintiff's arguments regarding Defendant's "information and belief" denials.

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/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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