

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/2026    TIME: 1:30 P.M.    DEPT: L    CASE NO: CIV2202928

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:        JENNIFER LARSEN

vs.

DEFENDANT:      SHIRLEY DERNER, ET  
AL.

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NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

**RULING**

Pursuant to Marin County Rule, Civil 2.13B, on May 12, 2026, Gautam Jagannath was appointed to preside as Discovery Facilitator for Plaintiff’s Motion to Compel Further Response to Requests for Production Nos, 7 and 18, and sanctions. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that “[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party’s contentions.***” (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter has been or is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the parties fail to reach resolution through the facilitator, either party may request (by *ex parte* application) that the Court re-set the motion for an expedited hearing.

*Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.*

*IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.*

*FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are driving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/2026    TIME: 1:30 P.M.    DEPT: L    CASE NO: CIV2301597

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:        DANIEL BLUMHARDT

vs.

DEFENDANTS:    BLACKROCK INC., ET  
AL.

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NATURE OF PROCEEDINGS: MOTION – SEAL

**RULING**

Notice of settlement of the entire case was entered on May 29, 2026. Congratulations on reaching a settlement.

The matter is dropped from calendar.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/2026    TIME: 1:30 P.M.    DEPT: L    CASE NO: CV0003675

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: MARTIN G.

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PLAINTIFF:     JAMES A.  
COSCULLUELA

vs.

DEFENDANT:    BARBIER SECURITY  
GROUP

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NATURE OF PROCEEDINGS: MOTION – OTHER: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

**RULING**

On March 20, 2026, Plaintiff filed a motion seeking an order approving a representative settlement under California’s Private Attorney General Act, Labor Code § 2698, et seq.

Defendant stipulates to the settlement.

The terms are:

1. Defendant will pay a maximum of \$650,000.00, which will be distributed to approximately 782 Class Members on a pro rata basis according to the total Workweeks worked by each Class Member during the Class Period.
2. The Administrator will disburse the entire Gross Settlement Amount without requiring Participating Class Members to submit any claim as a condition of payment. Class Members need only take action if they wish to request exclusion from the Settlement;
3. The Settlement will release specified wage-and-hour claims for those Class Members who do not opt out of the Settlement, as well as specified claims for PAGA Penalties for all Aggrieved Employees. The settlement also broadly includes a release of including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring **outside** the Class Period.;
4. Allocation of \$50,000.00 to PAGA penalties, sixty-five percent (65%) of which (\$32,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA”), and thirty-five percent (35%) of which (\$17,500.00) will be paid to all persons currently or formerly employed by Defendant as a non-exempt employee in the State of California (“PAGA Members”) at any time during the period from August 14, 2023, to May 22, 2025 (“PAGA Period”) Any settlement checks that are mailed to the Class Members and

remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State of California's Unclaimed Property Fund or other recipient as directed by the Court

5. Cost of settlement administration shall be up to \$13,000 of the settlement fund;
6. Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Enhancement of up to \$7,500 for each Plaintiff, to be paid from the settlement fund;
7. Defendant does not oppose Class Counsel's application for fees of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be \$216,666.67) and up to \$60,000.00 in reimbursement of litigation costs to Plaintiffs' Counsel The total amount of PAGA civil penalties to be paid from the Gross Settlement Amount totals \$15,000.00 with 65% (\$9,750.00 (Nine Thousand Seven Hundred Fifty Dollars)) allocated to the LWDA PAGA Payment and 35% (\$5,250.00 (Five Thousand Two Hundred Fifty Dollars)) allocated to the Individual PAGA Payments..
8. Settlement fund residue is proposed to be returned to the state "unclaimed property fund" in the name of the class member.

The motion is not opposed, and the settlement amount is approved. However, Plaintiff's requests for approval of the settlement is DENIED.

Counsel for Plaintiff is to appear to support the request for 33% of the settlement fund, plus costs for a fee award of \$216,64500. Counsel also seeks recovery of costs in the amount of \$60,000. Within that award, counsel asks for a fee multiplier. The complaint was filed in August 2024 and answered in October 2024. There is no indication that the parties engaged in protracted litigation.

Counsel shall also be prepared to discuss how the contingency fee was determined, and how the attorney's fee issue was negotiated. Plaintiff's counsel should also be prepared to discussed the proposed lodestar fee, for a comparison to the proposed contingency award.

Counsel is also to address and support the request for recovery of \$60,000 in costs.

The class member release goes beyond the wage and hour issues listed in the complaint to include workplace discrimination and worker disability issues.. The waiver is expansive and it reaches beyond the class claim period. It is not approved.

The public policy purpose of California's **Private Attorneys General Act (PAGA)** is to enhance the state's ability to enforce labor laws by deputizing private citizens to act as law enforcement proxies). Regarding paragraph 8 above, the parties are ordered to meet and confer to discuss an award of the residual settlement to a non-profit organization whose purpose is tied more closely to the objective of PAGA.

Appearances are required.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0005317

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      ROBERT C. PLACAK &  
ASSOCIATES, INC.

vs.

DEFENDANTS:    DEBBY BAKER PAGE  
ET AL.

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NATURE OF PROCEEDINGS: MOTION – COMPEL ANSWERS TO INTERROGATORIES  
- DISCOVERY FACILITATOR PROGRAM

2) MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

**RULING**

The matter is transferred to the Presiding Judge, Hon. Stephen Freccero for reassignment. The hearing date will be continued to a law and motion date for the newly assigned judge. The parties will receive notice of the new hearing date.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0006536

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFFS:      SOO YOUNG KIM, ET  
AL.

vs.

DEFENDANT:    HARRIGAN  
WEIDENMULLER COMPANY

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NATURE OF PROCEEDINGS: DEMURRER

**RULING**

The demurrer by defendant Harrigan Weidenmuller Company (“Defendant” or “WBC”) to the First through Sixth causes of action in the First Amended Complaint (“FAC”) of Plaintiffs Soo Young Kim (“Kim”) and Erich Lichtblau (“Lichtblau”) (collectively “Plaintiffs”) is overruled as to the First, Second and Fifth Causes of Action. The demurrer to the Third, Fourth and Sixth Causes of Action is sustained with 30 days leave to amend. The demurrer on the uncertainty ground under Code of Civil Procedure section 430.10, subdivision (f), is overruled.

**Factual Background**

Plaintiffs were Defendant’s commercial tenants. On or about June 14, 2014, Plaintiffs and Defendant, through Timothy Muller (“Muller”), Defendant’s President and authorized agent, executed a 10-year lease for restaurant space at 115 San Anselmo Avenue in San Anselmo, plus the use of 1,000 square feet of basement space at no extra charge. Plaintiffs allege Defendant failed to provide them with a legible copy of the lease until December 2023, despite repeated requests beginning in 2014.

On June 6, 2025, Plaintiffs filed their initial complaint. On March 17, 2025, in response to a pending demurrer by Defendant, Plaintiffs filed their operative FAC alleging the following causes of action: 1) breach of contract; 2) breach of the covenant of good faith and fair dealing; 3) intentional interference with prospective economic advantage; 4) negligent interference with prospective economic advantage; 5) breach of contract; and 6) breach of the covenant of good faith and fair dealing.

The First through Fourth causes of action relate to Defendant’s alleged unreasonable refusal to allow Plaintiffs to sublease or transfer the lease. Plaintiffs allege that in May 2022, they contacted Defendant about a restaurant group principal interested in assuming the lease and paying Plaintiffs \$100,000 up front plus \$4,700 per month for the remaining lease term. Plaintiffs allege Defendant repeatedly refused to consider the assignment over more than one year, citing uncertainty about a Post Office lease extension and Defendant’s desire to redevelop or sell the building. Plaintiffs further allege that as a result, the prospective buyer lost interest and withdrew.

The Fifth and Sixth Causes of Action allege that Defendant failed to reimburse Plaintiffs for two types of costs that, under the Lease, were Defendant's responsibility. Plaintiffs allege they paid \$8,945 for fire sprinkler system compliance costs and seek reimbursement of \$9,746 in attorney fees and \$1,003 in contractor fees incurred in connection with basement flooding and related litigation against a sanitary district.

Defendant now demurs to all six causes of action on the ground each fails to state facts sufficient to state a claim under Code of Civil Procedure section 430.10, subdivision (e). Defendant also makes passing reference to uncertainty under Code of Civil Procedure section 430.10, subdivision (f).

## **Demurrer**

### **A. Untimely Opposition and Reply**

Oppositions must be filed by the ninth court day before the hearing. (Code of Civ. Pro., § 1005, subd. (b).) Replies must be filed and served at least five court days before the hearing. (Id.) Plaintiffs' opposition was filed and electronically served on June 4, 2026, less than nine court days before the hearing. The court has discretion to consider an untimely opposition. (See Cal. Rules of Court, rule 3.1300(d); *Slayton v. Sup. Ct.* (2006) 146 Cal.App.4th 55, 58, n. 2; *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29.) The substantive reply was also untimely, with Defendant waiving any defect or irregularity in the filing and service of the opposition. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) The Court gives consideration to the untimely opposition and reply.

### **B. 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 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.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.)

### **C. Merits**

#### **1. 1<sup>st</sup> Cause of Action – Breach of Contract (Unreasonable Refusal to Sublease or Assign Lease)**

The elements of a breach of contract claim are: 1) the existence of a contract; 2) plaintiff's performance or excuse for nonperformance; 3) breach; and 4) damages. (*Wall Street Network, Ltd. v. N. Y. Times Co.* (2008) 164 Cal.App.4th 1171, 1178.) A commercial landlord may withhold consent to an assignment only for a commercially reasonable objection connected to the property itself. (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488, 493.) Defendant argues that Plaintiffs' claim fails at the threshold because Plaintiffs did not comply with Paragraph 12.2(e) of the lease, which requires a written request accompanied by specified financial and operational information about the

proposed assignee and a \$500 review fee. Defendant further contends the lease's anti-waiver clause at Paragraph 24(a) precludes any waiver theory.

The Court concludes the FAC adequately pleads breach of contract on waiver, estoppel, and excuse-of-condition theories. Waiver requires clear and convincing evidence of intentional relinquishment or abandonment of a contractual right. (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 569.) The FAC alleges when Plaintiffs twice asked Defendant to consider assigning the Lease in 2019, Defendant gave the requests full consideration without requesting Plaintiffs submit them in writing nor demanding that Plaintiffs pay \$500, or any other amount. (FAC, ¶ 29.) The pleading further alleges that during the 2022 assignment request, Muller flatly denied Kim's request and instructed her to approach him again in ten days; he did not state that Defendant needed the request in writing, nor that Plaintiffs needed to pay \$500. (FAC, at ¶ 32.)

When she called again in ten days, he cited again the purported uncertainty of the Post Office extension and Defendant's desire to redevelop or sell the building, and instructed Kim to call back in 30 days and again never mentioned wanting a request in writing or the \$500. (*Id.*) This process repeated for over a year with Muller consistently saying that Defendant was unwilling to consider an assignment while the lease with the Post Office was uncertain, and actually declaring in January 2023, "I am not going to do anything that helps you." (*Id.* at ¶ 32.)

These allegations plausibly allege waiver at the pleading stage by describing repeated substantive denials without invocation of the procedural prerequisites, plus alleged prior instances in which Defendant evaluated assignments without demanding the writing or fee. The anti-waiver clause at Paragraph 24(a) strengthens Defendant's position but does not categorically defeat waiver as a matter of law on demurrer. California law does not treat such clauses as immune from waiver by subsequent conduct.

Estoppel is also sufficiently pleaded. Estoppel requires detrimental reliance. (*Quach, supra*, 16 Cal.5th at 569.) The FAC alleges after the lease was executed by Tim Muller on behalf of Defendant, Brian Muller emailed a highly illegible copy to Plaintiffs on June 14, 2014. (FAC, ¶ 9.) Plaintiffs allege Defendant repeatedly denied its responsibility or simply ignored pleas for remediation, and Plaintiffs began to request a legible copy of the Lease and continued to do so for over eight years, by email, text and phone. (*Id.* at ¶ 15.) Defendant did not provide a legible copy until December 19, 2023, nine years after the first request and after the consent dispute had ended. (*Id.*) These allegations permit an inference that Plaintiffs were unaware of the detailed Paragraph 12.2(e) requirements because the lease copy they had was unreadable and Defendant withheld a legible one until after the assignment dispute concluded. The pleading also alleges a yearlong course of substantive denials that could have induced Plaintiffs to believe formal compliance was pointless.

The excuse-of-condition or anticipatory-breach theory is also adequately pleaded. California law permits excuse of a condition where the promisor's repudiation makes performance futile or unnecessary. (*Guerrieri v. Severini* (1958) 51 Cal.2d 12, 23.) The FAC alleges that Plaintiffs informed Defendant the prospective buyer did not require a lease extension (FAC, ¶ 31), then alleges repeated categorical refusals culminating in the statement "I am not going to do anything that helps you." (*Id.* at ¶ 32.) At the pleading stage, that is sufficient to allege a repudiation of any future evaluation process.

Defendant's argument that the pleaded facts show a commercially reasonable justification also does not support demurrer. The FAC alleges Defendant cited negotiations with the Post Office regarding a 10-year extension of its lease, ultimately signed mid-2023, which would also give Defendant or any new owner the Lessor's unilateral right to cancel (*Id.* at ¶ 31) and a desire to redevelop or sell. These allegations may ultimately bear on reasonableness, but the question is ordinarily factual, and the pleading does not conclusively establish a property-based justification as a matter of law. (*Kendall, supra*, 40 Cal.3d p. 493.)

The demurrer to the First Cause of Action is OVERRULED.

2. 2<sup>nd</sup> Cause of Action – Breach of Covenant of Good Faith and Fair Dealing (Unreasonable Refusal to Sublease or Assign Lease)

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. The implied covenant applies where one party is vested with discretionary contractual power affecting another's rights, but it cannot override or contradict an express lease term. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349.)

The Second Cause of Action is adequately pleaded because breach of a specific express term is not always a prerequisite to a covenant claim where discretionary contractual power is exercised in bad faith. The same facts supporting the First Cause of Action support an allegation that Defendant exercised or purported to exercise its consent discretion categorically and for self-interested reasons disconnected from any good-faith evaluation of the proposed transaction. Yet, for over a year, Defendant, through its agent Tim Muller, unreasonably and arbitrarily refused to allow Plaintiffs to assign or sublet the Lease. (FAC, ¶ 28.) In offering this late extension despite Plaintiffs asking only for an assignment, Defendant sought to lock in for another five years the same tenant who had since 2014 done virtually all the work in cleaning, maintaining and coordinating the repair of the Building. (*Id.* at ¶ 33.) The covenant claim overlaps substantially with the contract claim, but at this stage it is not wholly duplicative because it pleads bad-faith exercise of contractual discretion as an alternative theory. The FAC does not plead that Defendant simply exercised an unqualified express right; it pleads that Defendant refused to engage the consent process in good faith. (*Carma Developers (California), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342.)

The demurrer to the Second Cause of Action is OVERRULED.

3. 3<sup>rd</sup> Cause of Action – Intentional Interference with Prospective Economic Advantage

To state a claim for intentional interference with prospective economic advantage, a plaintiff must plead an economic relationship with probable future benefit, the defendant's knowledge, intentional acts designed to disrupt, actual disruption, proximate economic harm, and independently wrongful conduct beyond the interference itself. (*LiMandri v. Judkins* (1997) 52 Cal. App.4th 326; *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159.)

The FAC adequately pleads an economic relationship and knowledge. It alleges in May of 2022; a restaurant group's principal mistook a Craigslist posting for a different restaurant and contacted Kim about purchasing Plaintiffs' restaurant. (FAC, ¶ 30.) The buyer agreed to pay Plaintiffs \$100,000 up front and pay Plaintiffs \$4,700 per month in rent for the remaining term of the Lease. (*Id.*) Kim alleges she was scrupulous in informing Defendant that this buyer did not require an extension, calling Muller in late May 2022 to ask him to allow the assignment of the Lease for its remaining term. (*Id.*) Kim emphasized that the buyer was well aware that the Building was for sale and subject to being re-developed on this and each of several more phone calls with Muller. (*Id.* at ¶ 31.)

Credited as true, these allegations are sufficient to plead knowledge of a prospective economic relationship even without the buyer's identity, written offer, or financial package. The FAC also pleads disruption and resulting loss. (*Id.* at ¶ 36.)

The defect lies in independent wrongfulness. After *Korea Supply*, wrongfulness must be supplied by a legal standard independent of the interference itself. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134.) The FAC identifies as wrongful that Defendant improperly and unreasonably withheld consent for the sublease or assignment of the lease at 115 San Anselmo Avenue, San Anselmo, California, knowing that doing so would prevent Plaintiffs from selling their restaurant to a

ready, willing, and able buyer. (FAC, ¶ 47.) That describes the alleged breach of the lease obligation itself. Although the Court has concluded that Plaintiffs adequately plead a lease-based claim under waiver, estoppel, and excuse theories, the independent-wrongfulness element for the tort requires a separate legal standard beyond the contractual duty. The FAC does not presently identify a statutory, regulatory, common law tort, or other noncontractual legal standard that Defendant violated. Because a more specific independently wrongful predicate might be alleged, there is a reasonable possibility of cure by amendment.

The demurrer to the Third Cause of Action is SUSTAINED WITH LEAVE TO AMEND.

4. 4<sup>th</sup> Cause of Action - Negligent Interference with Prospective Economic Advantage

Negligent interference with prospective economic advantage requires a legal duty of care with respect to the plaintiff's prospective economic relationship. (North American Chemical Co. v. Superior Court (1997) 59 Cal.App.4th 764, 786.) An ordinary commercial landlord-tenant relationship does not create a special duty to protect a tenant's prospective sale transaction. (Girard v. Delta Towers Joint Venture (1993) 20 Cal.App.4th 1741, 1747.)

The FAC pleads no facts taking this dispute outside that rule. It alleges only a standard commercial lease relationship. Nothing pleaded suggests a professional-services undertaking or other special relationship that the law contemplates. (North American, supra, 59 Cal.App.4th 764.) Applying the Girard factors does not change the outcome, because although harm to Plaintiffs may have been foreseeable, the relationship remains purely contractual, and the claimed loss is purely economic. While it is doubtful that an amendment would convert this ordinary landlord consent dispute into a negligence-duty case, given this is the first challenge to the pleadings, the Court permits an opportunity to amend.

The demurrer to the Fourth Cause of Action is SUSTAINED WITH LEAVE TO AMEND.

5. 5<sup>th</sup> Cause of Action – Breach of Contract (Failure to Reimburse Fire Sprinkler and Flooding Costs)

The FAC pursues two distinct reimbursement theories, fire sprinkler costs and flooding costs. Because a demurrer does not lie as to a part of a cause of action, the claim survives if either theory is sufficiently pleaded. (PHI II, Inc. v. Sup. Ct. (1995) 33 Cal.App.4th 1680, 1682.)

As to the sprinkler theory, the FAC alleges the property's sprinkler system be in good operating condition and Lessor's responsibility for their installation, maintenance, and operation. (FAC, ¶ 17.) It quotes Paragraph 7.2 of the lease: "Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems." (Id.) Despite the foregoing warranty, the fire sprinklers were not in good working order when Plaintiffs took possession and Defendant forced Plaintiffs to pay half the cost (\$8,945) of putting the system in compliance with the Lease's warranty clause. (Id.) The FAC clearly alleges that the fire sprinkler system covered the entire building, including the 14,000 square foot basement. (Id.)

Reading Paragraphs 7.2 and 4.2 together, the plain meaning is not that every sprinkler expense is necessarily shifted to Plaintiffs; Paragraph 7.2 places the repair obligation on lessor, subject to whatever reimbursement Paragraph 4.2 may authorize. Contract language is read in its ordinary sense, and apparently inconsistent clauses must be reconciled, if possible, to give effect to the whole agreement. (Civ. Code, §§ 1644, 1652.) Defendant's reliance on an email purportedly stating the system covered only Plaintiffs' premises does not conclusively defeat the claim on demurrer; that email is extrinsic evidence, and even if referenced in the FAC it does not override the pleaded factual allegation about the system's scope for purposes of this motion. Because the FAC alleges a building-

wide sprinkler system and a lease clause assigning the fire sprinkler system to lessor's obligations, the sprinkler theory is sufficiently pleaded.

The flooding theory is more doubtful. The FAC relies on Section 6.2(e) of the lease, which addresses “Lessor Indemnification” and provides that lessor shall “indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees.” (FAC, ¶ 27.)

The FAC alleges that Defendant’s gross negligence caused hundreds of thousands of gallons of raw sewage to damage Plaintiffs' property and cause Plaintiffs to incur expenses and that Defendant refused to reimburse Plaintiffs for their damages. (Id. at ¶¶ 23-27.) The clause is framed in environmental and hazardous-substance terms, and the FAC does not clearly plead why raw sewage falls within “environmental damages” or “Hazardous Substances” as defined in the lease, or why the clause reaches first-party attorney and contractor fees incurred by Plaintiffs in their own remediation efforts and related litigation. The word “reimburse” helps Plaintiffs, but the current allegations do not clearly bridge the rest of the contractual language.

Nonetheless, because the sprinkler theory adequately states a breach-of-contract claim, however, the Fifth Cause of Action as a whole survives. The Court does not sustain a demurrer to only part of a cause of action. The demurrer to the Fifth Cause of Action is **OVERRULED**.

6. 6<sup>th</sup> Cause of Action – Breach of Covenant of Good Faith and Fair Dealing ((Failure to Reimburse Fire Sprinkler and Flooding Costs)

A covenant claim tied to reimbursement obligations is legally viable in the abstract, but the FAC does not plead an independent covenant theory distinct from the Fifth Cause of Action. Unlike the consent-setting claims, the reimbursement dispute does not involve obviously discretionary contractual judgment; it is pleaded as a straight refusal to pay amounts allegedly due under the lease. The FAC therefore states a claim that is wholly derivative of the contract theory and adds no separate bad-faith conduct beyond the alleged breach itself. (Carma Developers (California), Inc. v. Marathon Development California, Inc. (1992) 2 Cal.4th 342.) Because Plaintiffs might amend to identify a distinct discretionary or bad-faith claims-handling theory if one exists under the lease and the facts, there is a reasonable possibility of cure.

The demurrer to the Sixth Cause of Action is **SUSTAINED WITH LEAVE TO AMEND**.

**D. Uncertainty**

Defendant’s passing reference to uncertainty under Code of Civil Procedure section 430.10, subdivision (f) is not developed. The demurrer presents failure-to-state theories but does not present a distinct uncertainty analysis. Uncertainty demurrers are strictly construed and are generally overruled where the facts alleged are sufficiently clear to allow a response. (Khoury v. Maly’s California, Inc. (1993) 14 Cal.App.4th 612, 616.) The uncertainty ground is **OVERRULED** as unsupported.

The demurrer to the First, Second and Fifth Causes of Action are **OVERRULED**. The demurrer to the Third, Fourth and Sixth Causes of Action are **SUSTAINED WITH LEAVE TO AMEND**. The demurrer on the uncertainty ground under Code of Civil Procedure section 430.10, subdivision (f), is **OVERRULED**.

*Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.*

*IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.*

*FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are driving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE 06/12/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0006906

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      GT’S LIVING FOODS, LLC

vs.

DEFENDANT:    JOHN DOE 1, ET AL

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NATURE OF PROCEEDINGS: MOTION – LEAVE TO ISSUE AND SERVE DEPOSITION  
SUBPOENA FOR BUSINESS RECORDS AND TESTIMONY

**RULING**

Plaintiff GT Living Foods, Inc.’s (“Plaintiff”) motion for leave to issue and serve a subpoena (see Mayer Dec., Ex. 1) on Glassdoor LLC (“Glassdoor”) is GRANTED. The Court takes no position on the enforceability of the subpoena or on any of Glassdoor’s objections at this time.

**I. BACKGROUND**

This is a defamation lawsuit based on statements posted anonymously on Glassdoor.com, “a website that allows members to post anonymous reviews of their employment experience with a current or past employer.” (Complaint, ¶ 14.) Plaintiff describes itself as a prominent seller of “living foods,” i.e., kombucha and similar fermented foods. (*Id.* at ¶¶ 10-11.)

Plaintiff alleges that in mid-April 2025, Defendant John Doe 1 posted a review of Plaintiff on Glassdoor.com. (Complaint, ¶ 16.) The review was entitled “Great products, good people, insincere Founder.” John Doe 1 identified himself as a former area sales manager located in Sacramento. He stated that Plaintiff’s “kombucha line was probably not organic for a long time[,]” but Plaintiff only disclosed this “after more stringent organic certification audit processes” were put in place. John Doe 1 further stated that for two consecutive years, Plaintiff laid off 40% of its sales staff two weeks before bonuses were due to be paid. He reported that one of these instances occurred during the COVID-19 pandemic, at a time when Plaintiff’s expectation that its sales staff would be physically present in stores placed them at risk. According to John Doe 1, “[e]veryone complied” with this directive, “revenue and marketshare [sic] increased YOY [year over year] and still the company did not have the grace to pay out bonuses to people that earned it.” (*Ibid.*)

Plaintiff alleges an additional defamatory Glassdoor.com post in April 2025, this one by Defendant John Doe 2, who identified himself as a former sales associate who worked for Plaintiff in Los Angeles. (Complaint, ¶¶ 18-19.) This review was entitled “Horrible Experience

– Pathological [sic] liar.” John Doe 2 stated that a person identified only as “GT” “is a pathological liar to Consumers, Retailers and horrible to his employees.” The Court infers from the complaint that Plaintiff understands “GT” to refer to its CEO, George Thomas Dave. (*Id.* at ¶ 11.) John Doe 2 stated that over 19 senior executives had left Plaintiff’s employment over the three years preceding the review, and the “common denominator” in these departures was “GT[,]” who John Doe 2 deemed “impossible to work for.” He also stated that “GT” had brought in a new CEO “with the intent of stepping back[,]” but that he (John Doe 2) did not believe “GT” would actually “let this industry expert do what they do best.” (*Id.* at ¶ 19.)

Plaintiff alleges that John Doe Nos. 1 and 2’s statements are false, and that these defendants knew they were false. (Complaint, ¶¶ 17, 20.) It brings a single claim for defamation as to both defendants.

Plaintiff has yet to identify John Doe Nos. 1 and 2 and so has not yet served the complaint. Before the Court is Plaintiff’s motion for leave to issue and serve upon Glassdoor, which operates Glassdoor.com (North Dec., ¶¶ 1-2), a subpoena designed to unmask these defendants. Glassdoor opposes the motion.

## II. LEGAL STANDARD

A plaintiff “may serve a deposition notice without leave of court” provided the plaintiff does so at least 20 days after any defendant has been served with the summons in the case or has made an appearance in the case. (Code Civ. Proc., § 2025.210, subd. (b) (“Section 2025.210(b)”.) Prior to that date, however, a plaintiff needs leave of court to serve a deposition notice. (*Ibid.*) The court may grant such leave “for good cause shown[.]” (*Ibid.*) Although Section 2025.210(b) speaks of “deposition notice[s][,]” the First District has treated its predecessor (the equivalent statute in force prior to the nonsubstantive reorganization of the Discovery Act in the early 2000s) as applying to deposition subpoenas. (*California Shellfish Inc. v. United Shellfish Co.* (1997) 56 Cal.App.4th 16, 25.)

## III. DISCUSSION

The parties’ arguments treat this motion as if it is a motion to compel compliance with the subpoena, or to quash it, instead of a motion for leave to issue and serve the subpoena in the first instance. Both parties treat the subpoena’s enforceability as relevant to whether there is “good cause” to serve it (Code Civ. Proc., § 2025.210, subd. (b)), presumably on the theory that there is no good cause to serve a subpoena that will inevitably be deemed unenforceable.

The Court is not persuaded. Section 2025.210(b) is not intended to permit a court to pre-approve the substance of a deposition notice, but instead to enable it to police a plaintiff’s ability to serve *any* deposition notice too early in a case. This provision is concerned with timing, not the substance of the subpoena. (See *California Shellfish, supra*, 56 Cal.App.4th 16, 23-24 [statute is designed to ensure that “at least one defendant is on notice [of the discovery effort], and has the opportunity to place some adversarial limits upon the plaintiff’s pursuit of discovery”].) The question before the Court is not whether this particular subpoena has merit, but whether there is good cause for Plaintiff to take *any* discovery from Glassdoor by way of a deposition notice or a

deposition subpoena given that no defendant has yet been served with process or made an appearance in this case.

The Court is following in its predecessor judge's example. This is the second time Plaintiff has sought leave to serve a subpoena on Glassdoor in this action. On August 13, 2025, Plaintiff filed a functionally identical motion for leave to serve a business records subpoena on Glassdoor. As compared to the subpoena that is the subject of this motion, the subpoena at issue in the August 2025 motion sought a substantially identical collection of documents, but did not request an appearance to testify at a deposition. (See Aug. 13, 2025 Motion for Leave to Issue and Serve Subpoena, Ex. 1.) Glassdoor did not oppose the motion and Honorable Judge Andrew Sweet, the first judge assigned to this case, granted it. In doing so, the Court stated, "The court takes no position as to any legal issues that may be raised regarding this subpoena." (See Civil Motion Minutes [Nov. 7, 2025].) Problems with evidentiary issues are better explored through the discovery motion process.

Good cause exists to give Plaintiff leave of court to issue and serve this subpoena. It is up to an entity or party to oppose or compel the discovery request.

In *California Shellfish*, *supra*, 56 Cal.App.4th 16, the plaintiff similarly argued that unless it was freed from Section 2025.210(b)'s predecessor statute's time constraints, the litigation would be doomed, because the plaintiff needed to obtain the discovery described in the subpoena to serve the defendant. (56 Cal.App.4th 16, 24.) On appeal, the court believed the plaintiff was bringing the difficulty upon itself by using the wrong legal strategy. (*Id.* at pp. 24-25.) In the instant case, Plaintiff alleges a wrong. Plaintiff sues these defendants on the presumptively a proper legal theory. Unlike in *California Shellfish*, Plaintiff may be deprived of a remedy if it is not permitted to take discovery until at least one defendant is served or enters an appearance.

The motion is GRANTED. Plaintiff or an entity may choose to move to compel compliance with the subpoena or quash it. The arguments raised in those possible motions will be considered at that time.

If a motion to compel is filed, Plaintiff will have to make a prima facie showing of the elements of its defamation claim against the John Does. (See *ZL Technologies, Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 613 [discussing *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154]; *Krinsky*, *supra*, 159 Cal.App.4th 1154, 1172.) Plaintiff itself invited the Court to determine that Plaintiff had satisfied its obligations under *Krinsky* in connection with this motion. (See Memorandum, p. 6.) *Krinsky* requires the moving party to present the Court with *evidence* in support of its defamation claim, and particularly of falsity – until its reply brief. (*Krinsky*, *supra*, 159 Cal.App.4th 1154, 1172, fn. 14 [making clear that the *Krinsky* court was requiring '[p]rima facie evidence . . . which will support a ruling in favor of its proponent if no controverting evidence is presented' "] [quoting *Evans v. Paye* (1995) 32 Cal.App.4th 265, 280, fn. 13] [emphasis added]; see also *ZL Technologies, supra*, 13 Cal.App.5th 603, 633 [to compel disclosure of an anonymous speaker's identity in a defamation case, plaintiff must make a prima facie evidentiary showing specifically including evidence of falsity, even if the burden of proving truth versus falsity will ultimately be on the defendant if the case proceeds].)

“The salutary [sic] rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before.” (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010; see also *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537. “[N]ew evidence is not permitted with reply papers.”.) “[A] court has discretion to accept arguments or evidence made for the first time in reply” (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1009). Given *Krinsky*’s plain language and Plaintiff’s own suggestion that the Court rule, on this motion, that Plaintiff met its burden under *Krinsky*, there is no reasonable justification for Plaintiff’s decision to offer evidence in support of its defamation claim only with its reply brief.

Finally, “to balance properly a plaintiff’s reputational interests with the First Amendment rights of anonymous defendants, a court must ensure reasonable efforts are made to notify the defendants, permitting them an opportunity to respond, before disclosure of their identities may be compelled.” (*ZL Technologies, supra*, 13 Cal.App.5th 603, 615.) There is nothing presently before the Court to indicate that John Doe Nos. 1 and 2 have been made aware that Plaintiff is suing them and attempting to force Glassdoor to identify them. Clarification on the status of notice should be included in any future discovery motion practice on this issue, if any.

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*IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.*

*FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party’s absence. If it is determined that you are diving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/12/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0008235

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      PATRICIA WELLS KEEL

vs.

DEFENDANT:    STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY

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NATURE OF PROCEEDINGS: MOTION - COMPEL

RULING

Respondent State Farm Automobile Insurance Co. (“State Farm”) seeks to compel a neuropsychological examination conducted by neuropsychologist pursuant to Code of Civil Procedure §§ 2032.310 and 2032.320, on Plaintiff Patricia Keel. The proposed exam will include (1) a clinical interview, lasting approximately 2.0 hours, and (2) a series of neuropsychological tests lasting 6 hours. The proposed interview is to cover a psychosocial history, educational background, work history, medical history, personal history, psychiatric history, an account of the events underlying the issues at hand, the difficulties resulting from those events, and other factors that State Farm believes be relevant to understanding the Plaintiff’s psychological, neurological, and/or neuropsychological condition.

In her objection to Demand 1, she asks that: 1) she shall not assume financial responsibility for any of the medical billings arising out of the medical examination regardless, including cancellation; 2) the scope of interview be further defined and not a full “psychosocial history, educational background, work history, medical history, personal history, psychiatric history; and 3) the timing of the exam must be limited and defined.

These requests are not unreasonable. While a plaintiff “may place his mental state in controversy by a general allegation of severe emotional distress, the opposing party may not require him to undergo psychiatric testing solely on the basis of speculation that something of interest may surface.” *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 840. Merely placing one’s mental status in controversy is only the “first step” in assessing whether to compel a mental examination, i.e., that is not a substitute for good cause. *Id.*

The Defendant is correct that the Plaintiff does not dispute that a mental exam may be appropriate. However, here Plaintiff asks for greater structure and also an agreement regarding the scope and length of the testing before the exam.

The court, after review of the moving and opposition papers, finds good cause to GRANT the Defendant's motion in part. There shall be an examination. However, the matter is referred to a session with a discovery facilitator to sort the details regarding setting the exam for less than 8 hours, and to create protocols to limit the diagnostic testing so it is streamlined to obtain the information sought by the least intrusive means.

The claimant shall not be responsible for the cancellation fees. Should Plaintiff miss the examination, Defendant could then seek sanctions.

The request for sanctions is denied.

Given this guidance, the parties shall meet and confer to attempt to informally resolve this matter by June 26, 2026. Marin County Rule, Civil 2.13B, establishes the procedures available for the Discovery Facilitator Program. Unfortunately, this matter was never forwarded to the program, nor was a facilitator appointed. The matter is now referred to the discovery facilitator program. The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and **shall briefly summarize the remaining disputed issues and each party's contentions.**" (MCR Civ 2.13H(1), emphasis added.)

Hearing on the discovery motion is continued to July 24, 2026, at 1:30 pm in this department, after the parties have had the opportunity to meet and confer, and meet with the discovery facilitator if necessary.

Counsel for Defendant to prepare the order.

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