

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0000291

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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| PLAINTIFF:      MARCIA MCGOVERN             |  |
| vs.                                         |  |
| DEFENDANT: KILLINGSWORTH<br>KENDRICK, ET AL |  |

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NATURE OF PROCEEDINGS: MOTION – EXTEND

**RULING**

Defendant Kendrick and Killingsworth’s (“Defendant”) motion to increase time limit for Plaintiff’s deposition is GRANTED. Plaintiff shall sit for deposition for an additional three hours.

Section 2025.290(a) of the Code of Civil Procedure allows a court to order additional time to depose a party where it is necessary to fairly conduct an examination. (Code of Civ. Proc. §2025.290(a); *Cahill Construction Co., Inc. v. Superior Court* (2021) 66 Cal.App.5<sup>th</sup> 777, 786.) In this case, Defendant has produced sufficient evidence that Plaintiff’s deposition took longer than anticipated, in part by her limited memory and non-responsive answers. Additionally, the court notes that there were several Defendants at the time of deposition and that the deposing party has since settled. Additional time is warranted so that Defendant can question Plaintiff.

Plaintiff opposes the motion on the basis that she has already sat for deposition for nine hours and that Defendants have filed motions for summary judgment, which is an acknowledgment that they have evidence in their possession which leaves no material fact in dispute. This Court disagrees. While Defendants may or may not have evidence which leaves no material fact in dispute, they are entitled to discovery.

Accordingly, Defendant shall be allowed up to three additional hours to complete the deposition. Plaintiff is admonished to provide straightforward answers so that the deposition can be concluded as expeditiously as possible.

***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 September, 2026 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHNgEGafG.1>*

**Meeting ID: 161 548 7764**

**Passcode: 502070**

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

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0000673

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      ASHLEY SHAH

vs.

DEFENDANT:      NITIN SHAH, ET AL

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

**RULING**

Before the Court are Defendant Nitin Shah's motion to compel Defendant Fareed Himmati's responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Demand for Production and Inspection of Documents, Set One. Defendant Nitin Shah also requests monetary sanctions incurred in bringing these motions. The Court also considers Defendant Nitin Shah's request for monetary sanctions for tardy responses to its Request for Admissions which it continued to be heard with these discovery disputes.

The parties were referred to Discovery Facilitator Mark de Langis. According to the Declaration of Non-Resolution filed by counsel for Defendant Nitin Shah, there was no response from Defendant Himmati and no responses have been served. Defendant Himmati did not bother to file a Declaration of Non-Resolution or to oppose any of these motions.

The Court has previously admonished Defendant Himmati for his failure to respond to discovery. It is unclear why Defendant Himmati is not getting the message.

Defendant is ordered to provide fulsome and code-compliant responses without objection to Defendant Nitin Shah's Form Interrogatories, Set One, Special Interrogatories, Set One, and Demand for Production of Documents, Set One, within ten days of service of this order. Sanctions for costs incurred in bringing all motions are mandated in favor of Nitin Shah and against Defendant Fareed Himmati in the amount of \$3,162.50, to be paid within thirty days of service of this Order.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in***

*accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

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**Meeting ID: 161 548 7764**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0000719

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      TERRY PICKETT

vs.

DEFENDANT: TOWN OF ROSS

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NATURE OF PROCEEDINGS: 1) MOTION – SUMMARY JUDGMENT  
2) MOTION – SUMMARY JUDGMENT

**RULING**

This matter is continued to October 7, 2026 at 1:30 pm.

***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 September, 2026 is as follows:***

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**Meeting ID: 161 548 7764**

**Passcode: 502070**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0001063

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF:      MAHER FAKHOURI

vs.

DEFENDANT: TAREQ FAKHOURI

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

**RULING**

Plaintiff Maher Fakhouri (“Plaintiff”) filed a motion to compel third party San Rafael Properties, LLC, to produced subpoenaed documents. From the papers it appears that the underlying motion has been resolved but Plaintiff is still seeking sanctions. Additionally, the parties were only recently referred to the Discovery Facilitator Program. The Court is of the opinion that the parties should proceed with the Discovery Facilitation Program and therefore, this matter is continued to November 25, 2026 at 1:30 pm. If the parties resolve this matter before then, Plaintiff can request that the matter be removed from calendar.

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

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**Meeting ID: 161 548 7764**

**Passcode: 502070**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0003520

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      JOE WILBUR  
HERNANDEZ, ET AL

vs.

DEFENDANT:    BUCKEYE ROADHOUSE,  
INC., A CALIFORNIA CORPORATION, ET  
AL

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NATURE OF PROCEEDINGS: 1) HEARING – OTHER: FINAL APPROVAL  
2) MOTION - OTHER: FINAL APPROVAL

**RULING**

Plaintiff's unopposed motion for final approval of class action and PAGA settlement is approved. On May 18, 2026, this Court granted preliminary approval of the settlement, and provisionally certified the class finding that the proposed class of 171 members were ascertainable and sufficiently numerous and that the claims met the commonality requirement and were typical of the class, and that Plaintiff and counsel could adequately represent the class. The Court also found that settlement appeared to be fair after reviewing the claims, the litigation, and the settlement amount.

As to the attorney's fees, the Court has reviewed the declarations and now finds that the requested fee of one-third is appropriate, given the hours expended on the case and the experience of counsel. As to Plaintiff's enhancement fee, the Court finds that an appropriate fee is \$10,000 instead of the \$15,000 proposed.

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

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**Meeting ID: 161 548 7764**  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0008414

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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| <p>PLAINTIFF:      RYAN LUGBAUER</p> <p style="text-align:center">vs.</p> <p>DEFENDANT:   VOLKSWAGEN GROUP<br/>OF AMERICA, INC. ET AL</p> |  |
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NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR PROGRAM

**RULING**

Defendant Volkswagen (“Defendant”) filed this motion to compel Plaintiff Ryan Lugbauer’s (“Plaintiff”) deposition and for sanctions. Defendant notified Plaintiff of its intent to depose him and the parties agreed to a deposition date of June 18, 2026. Two days prior to the deposition, Plaintiff informed Defendant he would not appear. Defendant informed him it intended to proceed with Plaintiff’s deposition. Plaintiff did not appear. Although Defendant has indicated that Plaintiff has since agreed to appear, Defendant seeks an order and sanctions.

Defendant’s request is reasonable in light of the late objections, the failure to set a new date and the impending trial. Plaintiff shall make himself available for deposition within 30 days of this order. Plaintiff shall also pay the out of pocket court reporter fees of \$1,349.65 within 30 days of service of this order.

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

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**Meeting ID: 161 548 7764**

**Passcode: 502070**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0008811

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:     RICHARD E. KEITH  
SURVIVORS TRUST

vs.

DEFENDANT:   JUDITH KEITH

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

**RULING**

Defendant and Cross-Complainant Judith Keith (“Judith”) filed motions to compel Plaintiff Matthew Keith (“Matthew”) to provide further responses to Special Interrogatories and Requests for Production of Documents. Judith also seeks sanctions against Matthew. At issue are responses to Special Interrogatories Nos. 1-8, and 10-17, and responses to Request for Production of Documents, Nos. 1-18. M Keith opposes the motions and also requests sanctions.

The parties were only recently referred to the Discovery Facilitator program. In the interest of avoiding delay, the court shall decide the dispute without the assistance of the Facilitator.

Special Interrogatories Nos. 1-8 and 10-17.

As a preliminary matter, Judith’s motion asserts that all objections must be removed because the responses are tardy. Matthew acknowledges that his responses were late by five days and were unverified, but he laments that Judith declined to provide an extension at the last minute even though he had previously provided her with an extension. Notwithstanding any assertions of gamesmanship, where responses are tardy, objections are waived.

Additionally, with the exception of response to No. 10, the remaining responses at issue are deficient as they fail to provide straightforward answers as required. (Cal. Code Civ. Proc. § 2030.220.) Responses to Interrogatories Nos. 1-5, 7-8, 11-13, 15, 16, they lack specificity. Some such as Nos. 15 and 16, made little attempt to even answer the question. In responding to

interrogatories, a party must state the whole truth and may not provide conclusory answers. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-784.) It is improper to generally refer to a stack of documents, or to prior answers as Matthew has done here in responses to Nos. 11, 12, 13, 15, 16. Some the responses such as Nos. 6, 14 and 17 contained only objections which must be removed.

Matthew must provide amended responses to all Special Interrogatories at issue by removing the objections. With the exception to the response to No. 10, the amended responses must also contain full, complete and straightforward responses in conformity with Code of Civil Procedure 2030.220 and *Deyo v. Kilbourne* supra 84 Cal.App.3d at 783-784. (See also *Hernandez v. Superior Court* 112 Cal.App.4th 285, 293, “If an interrogatory asks the responding party to identify a document, an adequate response must include a description of the document.”)

Requests for Production of Documents Nos. 1-18.

As with the responses to Special Interrogatories, the responses to the Request for Production was untimely and therefore, the objections are waived. Additionally, Matthew’s responses are overbroad as they just refer to a drop box link rather than identify which responses correspond to each request. At a minimum, Matthew should identify which files in the dropbox correspond to each request.

Regarding sanctions, the Court agrees that sanctions are warranted, but the amount requested is excessive. The Court shall order sanctions in the amount of \$4,500.

***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: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0008880

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      KORY JACK KINDT

vs.

DEFENDANT:   MARIN HOUSING  
AUTHORITY, ET AL

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) ORDER – SHOW CAUSE – FAILURE TO APPEAR

**RULING**

Marin Housing Authority demurs to Plaintiff's First Amended Complaint on the grounds that it fails to state facts sufficient to state a cause of action as to each claim for relief. A notice of hearing was served on Plaintiff and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the Court shall sustain the demurrer with leave to amend, and allow Plaintiff one last opportunity to amend his complaint within 30 days of service of this order.

***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: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0008811

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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PLAINTIFF:      RICHARD E. KEITH  
SURVIVORS TRUST

vs.

DEFENDANT:    JUDITH KEITH

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

**RULING**

Defendant and Cross-Complainant Judith Keith (“Judith”) filed motions to compel Plaintiff Matthew Keith (“Matthew”) to provide further responses to Special Interrogatories and Requests for Production of Documents. Judith also seeks sanctions against Matthew. At issue are responses to Special Interrogatories Nos. 1-8, and 10-17, and responses to Request for Production of Documents, Nos. 1-18. M Keith opposes the motions and also requests sanctions.

The parties were only recently referred to the Discovery Facilitator program. In the interest of avoiding delay, the court shall decide the dispute without the assistance of the Facilitator.

Special Interrogatories Nos. 1-8 and 10-17.

As a preliminary matter, Judith’s motion asserts that all objections must be removed because the responses are tardy. Matthew acknowledges that his responses were late by five days and were unverified, but he laments that Judith declined to provide an extension at the last minute even though he had previously provided her with an extension. Notwithstanding any assertions of gamesmanship, where responses are tardy, objections are waived.

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Requests for Production of Documents Nos. 1-18.

As with the responses to Special Interrogatories, the responses to the Request for Production was untimely and therefore, the objections are waived. Additionally, Matthew’s responses are overbroad as they just refer to a drop box link rather than identify which responses correspond to each request. At a minimum, Matthew should identify which files in the dropbox correspond to each request.

Regarding sanctions, the Court agrees that sanctions are warranted, but the amount requested is excessive. The Court shall order sanctions in the amount of \$4,500.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 09/30/26      TIME: 1:30 P.M.      DEPT: H      CASE NO: CV0008880

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

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| <p>PLAINTIFF:      KORY JACK KINDT</p> <p style="text-align:center">vs.</p> <p>DEFENDANT:    MARIN HOUSING<br/>AUTHORITY, ET AL</p> |  |
|-------------------------------------------------------------------------------------------------------------------------------------|--|

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) ORDER – SHOW CAUSE – FAILURE TO APPEAR

**RULING**

Marin Housing Authority demurs to Plaintiff's First Amended Complaint on the grounds that it fails to state facts sufficient to state a cause of action as to each claim for relief. A notice of hearing was served on Plaintiff and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the Court shall sustain the demurrer with leave to amend, and allow Plaintiff one last opportunity to amend his complaint within 30 days of service of this order.

***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: 09/30/26      TIME: 9:00 A.M.      DEPT: D      CASE NO: CV1700712

PRESIDING: HON. ANDREW E. SWEET

REPORTER:

CLERK:

PLAINTIFF:      JESSICA DURAN  
SOBALVARRO

vs.

DEFENDANT:    VIBRA HEALTH CARE, ET  
AL

NATURE OF PROCEEDINGS:    MOTION- LEAVE TO AMEND JUDGMENT

**RULING**

Defendants' motion to amend the judgment is denied.

***Procedural Background***

Plaintiff Jessica Duran Sobalvarro filed this action on February 24, 2017, alleging that she was sexually abused over the course of several months while in the custody and care of Defendant Vibra Health Care ("Vibra"), which owned and operated Kentfield Hospital ("Kentfield"). Plaintiff alleged the abuse was by Defendant Kene Orleans ("Orleans"), an employee of Vibra who was assigned to provide custodial care to Plaintiff. Plaintiff alleged causes of action for dependent adult abuse/neglect, negligence, battery, and assault.

Following a trial, on May 8, 2023, the jury returned a special verdict finding that Orleans did not touch Plaintiff with intent to harm or offend her, did not physically abuse Plaintiff, and was not negligent. The jury found that Vibra and Kentfield were negligent and that their negligence was a substantial factor in causing harm to Plaintiff. The jury awarded Plaintiff \$500,000 for past non-economic loss and \$500,000 for future non-economic loss. A judgment in conformity to the special verdict was entered on May 9, 2023.

Defendants Vibra and Kentfield filed a motion for judgment notwithstanding the verdict. The Court granted the motion on July 21, 2023, concluding that the only potential theory for liability of negligence by Defendants would be a violation of the Patients Bill of Rights, 22 C.C.R. § 72527, and that causation under that theory was lacking. Plaintiff appealed and the Court of Appeal reversed. The Court of Appeal held that there was substantial evidence to support a finding that Plaintiff would have opted to be cared for by a female nurse if it had been offered to her, and the jury could have permissibly inferred that some measure of Plaintiff's emotional distress had to do with receiving daily intimate care by a male nurse, contrary to her wishes, as a

result of Kentfield's negligence. The Court of Appeal directed this Court to "reinstate the judgment in conformance with the jury's special verdict."

### *Discussion*

Defendants move to amend the judgment to comply with Civil Code Section 3333.2. At the time the jury verdict was entered, this section provided:

- (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.
- (b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars (\$250,000).
- (c) For the purposes of this section:
  - (1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;
  - (2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

### Jurisdiction

Plaintiff argues that the Court does not have jurisdiction to hear a motion to amend a judgment because the Court of Appeal directed this Court only to reinstate the judgment in conformance with the jury's verdict and nothing more. The Court disagrees with Plaintiff's position, as the Court can reinstate the judgment in conformance with the jury verdict as directed, and then impose the mandatory MICRA cap to the extent it is applicable. "The MICRA damages cap is not concerned with the manner in which a plaintiff's noneconomic losses and a defendant's liability are determined, but with the ultimate result. It is a blunt but effective instrument to

ensure that a defendant's liability for noneconomic damages will not exceed [the applicable cap], whatever the jury's verdict and generally applicable principles would otherwise dictate." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 328.) Reducing the reinstated judgment pursuant to MICRA would not conflict with the Court of Appeal's ruling as the Court of Appeal did not address the MICRA cap issue.

### Timeliness

Plaintiff contends that Defendants' "post-trial" motion is untimely because a motion to set aside and vacate a judgment or a motion for new trial must be filed within 15 days of the date of mailing of notice of entry of judgment by the clerk. The 15 deadline here, Plaintiff argues, expired on May 24, 2023.

The Court disagrees with Plaintiff here as well. Once the Court granted the motion for judgment notwithstanding the verdict, the original May 9, 2023 judgment no longer had any effect. (See *Amell v. Amell* (1937) 10 Cal.2d 153, 155 ["If for any reason a judgment is vacated and another and different judgment is entered in lieu thereof, as was the case here, the new and different judgment becomes the only judgment in the case"]; *Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 330 ["A motion for judgment notwithstanding the verdict essentially asks the trial court to vacate the judgment entered on the verdict and to enter a new judgment despite the verdict"]; *In re Marriage of Micalizio* (1988) 199 Cal.App.3d 662, 578.) Any appeal or post-judgment motions that could be filed at that point were to the judgment notwithstanding the verdict. (*Amell*, 10 Cal.2d at p. 155.) Accordingly, Defendants did not waive any challenge by failing to file post-judgment motions as to the original judgment.

### Jury Instructions

Plaintiff argues that Defendants waived their right to challenge the jury verdict or seek amendment of the judgment when they withdrew the jury instructions for professional negligence. The MICRA cap applies only to actions based on professional negligence.

Defendants argue that the professional negligence instructions were withdrawn because Plaintiff strenuously argued at trial that this was a case of intentional sexual abuse, not medical negligence, and the Court had already stated it would not give those instructions.

Defendants did not waive the applicability of the cap by failing to insist on the professional negligence jury instructions. Plaintiff's case focused on the intentional conduct of Orleans. Defendants also asserted Section 3333.2 as an affirmative defense in their Answer. Moreover, Plaintiff presents no authority that the jury must make an express finding that there was professional negligence before a court can impose the cap under MICRA.

### Applicability of the MICRA Cap to Plaintiff's Claim

Finally, Plaintiff argues that the \$250,000 cap does not apply because her case was not an "action for injury against a health care provider based on professional negligence". (See Civ. Code § 3333.2(a).) This argument has merit.

Some health care institutions perform custodial functions *and* provide professional medical care. (*Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5<sup>th</sup> 364, 379.) “[O]nly acts or omissions by a skilled nursing facility in its capacity as a health care provider fall under the banner of professional negligence. By contrast, a failure to fulfill custodial duties owed by a custodian who happens also to be a health care provider . . . is at most incidentally related to the provider’s professional health care services. The failure to provide basic necessities, such as assistance in personal hygiene, food, hydration, or clothing, are paradigmatic examples of a failure to fulfill custodial duties. The same is true of a failure to provide an adequate and habitable living space or protect from routine safety hazards. Similarly, a failure of staff to attend to, monitor, or assist a resident in obtaining appropriate medical care generally falls on the custodial side of the line because such omissions involve not . . . the *undertaking* of medical services, but the failure to *provide* medical care.” (*Id.* at p. 380 [citations and internal quotations omitted] [emphasis in original].) “Neglectful elder abuse . . . is the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults . . . to carry out their *custodial* obligations.” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 785 [citations and internal quotations omitted] [emphasis in original].) “Neglect includes the failure to assist in personal hygiene, or in the provision of food, clothing, or shelter; the failure to provide medical care for physical and mental health needs; the failure to protect from health and safety hazards; and the failure to prevent malnutrition or dehydration.” (*Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 88.)

Defendants pay little attention to this issue, addressing it only briefly on the last page of their Reply. Defendants argue that the MICRA cap applies because they were found liable for “an affirmative decision about how intimate personal care would be staffed and delivered” which was a “judgment call about the manner of rendering professional nursing services” and a “decision about the undertaking of care, not a custodial failure to monitor or attend to Plaintiff’s basic needs.” (Reply, p. 6:7-12.) This is an incorrect characterization of Plaintiff’s claims and the jury’s verdict. The negligence theory upon which Plaintiff prevailed against Defendants was based on their failure to give Plaintiff the option of being cared for by a female nurse. This is not a failure to undertake medical care. Rather, it is a failure to fulfill custodial duties by failing to ensure or protect Plaintiff’s comfort, dignity, and state of mind. As this failure did not involve professional negligence, the MICRA cap does not apply. Defendants’ motion to amend is therefore denied.

***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 September, 2026 is as follows:***

**<https://marin-courts-ca-gov.zoomgov.com/j/1601114119?pwd=p6bV9Ef8WHjm1j7jzyTrwjExIV0by4.1>**

Meeting ID: 160 111 4119

Passcode: 636308

***If you are unable to join by video, you may join by telephone by calling 1-669-254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court’s website: [marin.courts.ca.gov](https://marin.courts.ca.gov)***