SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CIV2201850

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: AMICA MUTUAL INSURANCE COMPANY vs. DEFENDANT: JOEL ANTONIO JIMENEZ ARRIOLA	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

Plaintiff's unopposed motion to set aside dismissal and enter judgment pursuant to the stipulation of the parties is **GRANTED**. (Code Civ. Proc., § 664.6.)

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

The Zoom appearance information for November, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000437

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: TRISTA CARR vs. DEFENDANT: CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION	

NATURE OF PROCEEDINGS: MOTION - SUMMARY JUDGMENT

RULING

Defendant California Department of Corrections and Rehabilitation's ("Defendant" or "CDCR") Motion for Summary Judgment is **GRANTED**.

Allegations in the Complaint

Plaintiff Dr. Trista Carr ("Carr" or "Plaintiff") was employed by CDCR as a Senior Psychologist Supervisor assigned to San Quentin State Prison. (Compl., ¶ 9.) Beginning in 2020, Plaintiff teleworked during the COVID-19 pandemic. (Compl., ¶ 17.) As Defendant prepared to return employees to on-site work, Plaintiff requested an accommodation to work from home because her disability prevented her from wearing a mask. (Compl., ¶ 19.) Although the parties engaged in discussions regarding possible accommodations, Plaintiff asserts Defendant ultimately refused to provide any reasonable accommodation that would allow Plaintiff to continue performing her job, halted the interactive process, and prevented Plaintiff from doing her job. (*Id*.)

Requests for Judicial Notice

Defendant's Requests for Judicial Notice Nos. 1-2 are GRANTED. (Evid. Code, § 452, subd. (d).)

Plaintiff's Requests for Judicial Notice Nos. 1-6 are GRANTED. (Evid. Code, § 452, subds. (b), (h).)

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).) If all the evidence submitted, and all inferences reasonably deducible from the evidence and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law, the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

Similarly, a party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1.))

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; accord 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).)

When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment. (*Ibid*.; see also Code Civ. Proc., § 437c, subd. (c).)

Discussion

A. Summary

With this Motion, CDCR seeks Summary Judgment, or in the alternative, Summary Adjudication as to each of causes of action asserted in Carr's Complaint: (1) Disability Discrimination: Gov. Code, § 12940, subd. (a); (2) Retaliation for and Interference with Exercising CFRA Rights; (3) Failure to Accommodate: Gov. Code, §12940, subd. (m); (4) Failure to Prevent Harassment, Discrimination, and/or Retaliation, Gov. Code, § 12940, subd.

(k); (5) FEHA Retaliation: Gov. Code, § 12940, subd. (h); and (6) Failure to Engage in Interactive Process, Gov. Code § 12940(n). (See Code Civ. Proc., § 437c, subd. (f)(1).)

Procedural Note

The Court notes that the Notice of Motion seeks "summary adjudication as to each cause of action." (Notice of Motion, p. 2:11-15.) However it also lists certain issues as subparts of each cause of action; twenty-two issues in total. The issues do not appear to be issues of duty. (See Code Civ. Proc., § 437c, subd. (f)(1).) Rather, they appear to be comprised of the elements of each cause of action or reasons why the Motion should be granted as to that cause of action. Because no stipulation regarding summary adjudication of issues beyond those of duty has been filed, the Court does not intend to consider summary adjudication of each individual issue, but rather each cause of action as a whole. (See Code Civ. Proc., § 437c, subd. (t).)

First Cause of Action - Disability Discrimination (Gov. Code, § 12940, subd. (a))

CDCR argues that it is entitled to summary adjudication of the First Cause of Action because it is immune pursuant to Government Code section 855.4, because Carr did not suffer an adverse employment action due to any alleged disability discrimination, because Carr's requested disability accommodation was not reasonable and she was not able to perform the essential job duties of her CDCR employment position, and because Carr cannot establish that she meets the element of a qualified employee.

Second Cause of Action - Retaliation for and Interference with Exercising CFRA Rights

CDCR contends it is entitled to summary adjudication of the Second Cause of Action because CDCR is immune pursuant to Government Code section 855.4, because Carr was not harmed by any CDCR action, and because CDCR had legitimate, nonretaliatory reason for its actions.

Third Cause of Action - Failure to Accommodate (Gov. Code,§ 12940, subd. (m))

CDCR states that it is entitled to summary adjudication of the Third Cause of Action because CDCR is immune pursuant to Government Code section 855.4, because Carr did not suffer an adverse employment action, because Carr's requested disability accommodation was not reasonable as she was not able to perform the essential job duties of her CDCR employment position, and because Carr cannot establish that she meets the element of a qualified employee.

Fourth Cause of Action – Failure to Prevent Harassment, Discrimination, and/or Retaliation, (Gov. Code,§ 12940, subd. (k))

CDCR seeks summary adjudication of the Fourth Cause of Action on the grounds that CDCR is immune pursuant to Government Code section 855.4, and because Carr did not suffer an adverse employment action and because cannot prevail on her First Cause of Action.

Fifth Cause of Action – FEHA Retaliation (Gov. Code,§ 12940, subd. (h))

CDCR requests summary adjudication of the Fifth Cause of Action arguing that CDCR is immune pursuant to Government Code section 855.4, and because Carr did not suffer an adverse employment action, because CDCR had legitimate, nonretaliatory reason for its actions.

Sixth Cause of Action - Failure to Engage in Interactive Process (Gov. Code §12940(n))

CDCR argues it is entitled to summary adjudication of the Sixth Cause of Action because CDCR is immune pursuant to Government Code section 855.4, because Carr's requested disability accommodation was not reasonable and because she was not able to perform the essential job duties of her CDCR employment position.

B. Analysis

Immunity pursuant to Government Code Section 855.4

CDCR contends that this lawsuit is barred because CDCR is immune from liability under Government Code section 855.4 for all claims related to or arising from how CDCR decided to prevent or control Covid-19, including, as argued here, permitting employees like Carr to telecommute or mandating their return to onsite work and masking, and the CDCR's subsequent acts implementing those decisions.

Government Code section 855.4 immunizes a public entity from liability for its decision-making in preventing or controlling a disease. Section 855.4 provides as follows:

"(a) Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.

(b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a)."

The moving papers argue COVID-19 is an airborne disease that can be spread from person to person (*Another Planet Ent., LLC v. Vigilant Ins. Co*. (2024) 15 Cal.5th 1106, 1120), that CDCR is a public entity (Index, Exh. 1, ¶ 2; see also Govt. Code, § 12838, subd. (a)), and that the decision to permit employees to work remotely during COVID and then to require them to return to the office, masked, as well as acts carrying out those decisions are covered by section 855.4 immunity. The CDCR's argument is supported primarily by *Allos v. Poway Unified School Dist*. (2025) 112 Cal.App.5th 822, 834, review denied (Oct. 15, 2025).) ("*Allos"*).

Facts in Support of Motion

In support of its Motion, Defendant's Undisputed Material Facts ("UMF") Nos. 1-5 address immunity. UMF Nos. 1-2, and 4 are Undisputed. Plaintiff purports to dispute UMF Nos. 3 and 5.

UMF No. 3 states: "Beginning in March, 2020, CDCR decided to prevent or control the spread of COVID 19 at San Quentin by allowing Carr and others to telework. Index, Exh. 1, ¶ 24."

The Response to UMF ("Resp. to UMF") No. 3 states: "Disputed. The cited evidence does not support the contention made in UMF No. 3. Defendant cites paragraph 24 of the Complaint, but paragraph 24 does not support UMF No. 3. To the extent Defendant intended to cite paragraph 17 of the Complaint, that paragraph alleges the Governor issued emergency stay at-home orders in March 2020; it does not establish that CDCR made the asserted decision, that CDCR allowed Carr to telework for the stated reason, or that Carr's telework was merely a generalized COVID-control measure. (Complaint ¶ 17.)

Plaintiff does not dispute that, beginning in March 2020, CDCR allowed Carr to work remotely. Carr's remote work also reflected her disability-related medical risks, including MS-related heat sensitivity, inability to tolerate masks or face coverings, immunosuppression from B-cell-depleting therapy, and reduced vaccine protection. (Ex. A, Declaration of Trista Carr "Carr Dec." ¶¶ 10–13, 15–17, Exs. I, J, M, N.) Carr performed her Senior Psychologist Supervisor duties remotely after March 2020. (Ex. A, Carr Dec. ¶ 12, Ex. I.)"

This fact, however, is not truly in dispute. Plaintiff's Complaint admits that Plaintiff inquired what was going to be done to protect her from COVID and that at the beginning no one knew. (Compl., ¶ 16.) Next, she alleges that on March 16, 2020, the Governor of the State of California "requested all essential workers who were over 65, immunocompromised, or otherwise at high risk of contracting COVID and/or having a severe outcome should they contract COVID, to shelter in place at home and work remotely if their positions could be accommodated to do so." (Compl., ¶ 17.) The Complaint then alleges at that time, "McCarver turned to Plaintiff and stated: 'Dr. Carr, you and I are going home and we are not coming back until this is over.' " (*Ibid*.) The Complaint further states "McCarver and the acting CEO signed all the necessary paperwork permitting Plaintiff to work 100% remotely with no end date indicated. Nearly every staff member working with Plaintiff who were over 65, immunocompromised, and/or otherwise at high risk of COVID infection began working from home." (*Ibid.*)

Plaintiff cannot now recharacterize the Governor's words as a mandate. There is no genuine dispute of fact that CDCR permitted Plaintiff and others to work from home due to COVID. Accordingly, the Court treats UMF No. 3 as undisputed.

Defendant's UMF No. 5 states: "After CDCR's initial COVID-19 response, CDCR decided that it could prevent or control COVID-19 by having employees who had teleworked return to in-person work at San Quentin on either a full-time or limited basis because COVID-19 could be prevented or controlled through mask wearing and other preventive measures. Index, Exh. 10, pp. 29:25-30:24, 32:3-22, 34:16-24, 35:4-36:20; Index, Exh. 23, CDCR_0657 to CDCR_0658, CDCR_0659 to CDCR_0661, CDCR_0686, CDCR_0932 to CDCR_0934; Index. Exh. 24; Declaration of Rachel Chen, ¶¶ 11."

Plaintiff's Resp. to UMF No. 5 states: Disputed. Defendant's characterization of Plaintiff's telework arrangement is incomplete and misleading. Plaintiff disputes Defendant's implication that CDCR could apply that generalized return-to-work decision to Carr without accounting for her individualized disability-related restrictions and subsequent requests for accommodation. (Ex. QQQ, Declaration of Michael Popovich ("Popovich Dec."), ¶¶ 6–9, 11.) Carr's medical restrictions were not merely a generalized fear of COVID-19. Carr had MS related heat sensitivity that made masks, face coverings, and heat-trapping PPE difficult or impossible to tolerate for extended periods, and she was immunocompromised because her MS treatment included B-cell-depleting therapy. (Ex. A, Carr Dec. ¶¶ 10, 13, 15–17, 21, 32–35, Exs. J, M, N, S, DD, EE, FF.) Chen knew Carr had medical conditions and knew Carr's telework permission was withdrawn in or around May or June 2022. (Ex. VVV, Deposition of Rachel Chen, Volume I ("Chen Vol. I Depo.") 42:6–43:23.) Coronel testified that, when Jenkins asked what had changed requiring Carr to return onsite, Coronel did not recall giving an answer and did not have authority to revoke telework. (Ex. WWW, Deposition of Cristal Coronel ("Coronel Depo.") 128:15–129:1.) Coronel further testified that Chen's explanation was that Carr was a supervisor, needed to supervise staff, and had tasks that had to be done in the institution, but Coronel did not recall Chen identifying any other essential duty beyond those discussed. (Ex. WWW, Coronel Depo. 130:5–131:3.) Carr's doctors advised CDCR that she could not tolerate masks or face coverings and recommended continued remote work because she could not mount a robust immune response to COVID vaccines and remained vulnerable to severe COVID complications. (Ex. A, Carr Dec. ¶¶ 21, 34 35, Exs. S, EE, FF.) Plaintiff further disputes any implication that mask wearing or other generalized preventive measures resolved Carr's restrictions, because Carr's disability prevented her from safely complying with those very measures. (Ex. A, Carr Dec. ¶¶ 10, 21, 32-35; Def. Ex. 24, Pages 94–122, also produced at Ex. FFF (many inmates and at least 26 staff deaths recorded by February 22, 2021); Ex _ -Depo. of Obrero at 39:7–14, 40:10–23 (knows of two coworkers that contracted COVID and one who died).) The threat to CDCR employees of death due to COVID was real. Both inmates and staff passed away from COVID during this period. (Def. Ex. 24, Pages 94–122, also produced at Ex. A, Carr Dec. ¶ 59, Ex. FFF (many inmates and at least 26 staff deaths recorded by February 22, 2021); Ex. YYY, Obrero Depo. 39:7–14, 40:10–23 (knows of two coworkers that contracted COVID and one who died); Ex. QQQ, Popovich Dec. ¶¶ 6–7.) Telework was recognized by CDCR during COVID as being a possible reasonable accommodation. (Exs. DDD, JJJ.) (Ex. QQQ, Popovich Dec. ¶¶ 8–10.)"

Again UMF No. 5 is not truly in dispute. The CDCR decided to return employees to the office. Plaintiff does not raise any genuine dispute of material fact with respect to this decision. Nor does Plaintiff raise any argument that the CDCR failed to carry out that decision with due care. Plaintiff instead attempts to dispute the result of CDCR's decision, not that it was made.

Indeed, Plaintiff's own Additional Material Facts ("AMF") support the applicability of the immunity statute. "CDCR's COVID policies required staff working on institutional grounds to wear face coverings or procedure masks." (AMF, No. 25.) "Those same policies instructed employees who could not wear an approved mask or face covering because of a medical, mental-health, or developmental disability to notify their supervisor and Return-to-Work Coordinator and engage in the interactive reasonable-accommodation process." (AMF, No. 26.) "As the policy dictated, Dr. Carr, as an employee who could not wear a face covering due to her disability, sought to engage in the interactive process with CDCR's return to work team." (AMF,

No. 27.) "By early 2021, Dr. Carr understood that the emergency stay at-home orders would not last forever and that returning onsite would renew the conflict between her disability and CDCR's workplace requirements because she could not safely tolerate face coverings and remained vulnerable to COVID-19." (AMF, No. 28.) "Dr. Carr requested remote work until masks or face coverings were no longer required on San Quentin grounds and until CDPH deemed California to have obtained herd immunity from COVID-19." (AMF, No. 33.) "On June 6, 2022, Dr. Carr provided CDCR with a letter from Dr. Green recommending that she continue working remotely from home 100% to reduce her risk of COVID infection." (AMF, No. 54.)

The Complaint also supports section 855.4's applicability. "Plaintiffs doctor advised Plaintiff that she was chronically immune suppressed, which increases her risk of contracting SARS-CoV-2 ('COVID'). Plaintiffs doctor recommended that Plaintiff work from home to reduce Plaintiffs risk of contracting COVID. During the height of the COVID pandemic, work from home was not a problem. (Compl., p.2:3-20.)

"Nearly every staff member working with Plaintiff who were over 65, immunocompromised, and/or otherwise at high risk of COVID infection began working from home. (Compl., ¶ 17.)

On May 27, 2022, Chen emailed Plaintiff ordering Plaintiff back to work on site as of June 20, 2022. Chen stated, "We are now well into 2022 and it is not sustainable to continue to allow you to work offsite 100% telework…" (Compl., ¶ 24.)

Legal Argument in Support of Motion

In *Allos,* the case primarily relied upon by the CDCR, plaintiff was an employee of a school district. She claimed, among other things, that she could not receive the COVID vaccine because of a medical disability and could not return to work in the office because she and her mother were immunocompromised with elevated risks of harm from COVID. Plaintiff sought leave to continue to work from home as an accommodation for her disability when the stay home orders lifted. After engaging in the interactive process multiple times, the district denied the request. Plaintiff sued for disability discrimination and failure to accommodate her disability under FEHA.

The district moved for Summary Judgment in part on the ground that it was immune from liability under Government Code section 855.4. The court granted Summary Judgment. The court framed the issues and ruled as follows:

"PUSD asserts that her claims are premised on its 'decision not to allow employees to work from home 100% of the time following the re-opening of schools during the COVID-19 pandemic.' PUSD argues this policy choice falls squarely within the immunity afforded by the statute. PUSD also asserts that to the extent Allos's claims are based on its decisions regarding employee COVID-19 vaccine requirements, they are also barred by section 855.4.

We agree with PUSD that to the extent Allos's claims are based on its decisions to allow employees to work from home and subsequently to require their return to in-office work, the claims are barred by the immunity afforded by section 855.4. (See *City of Los Angeles v.*

Superior Court (2021) 62 Cal.App.5th 129, 144, 276 Cal.Rptr.3d 332 [‘By its plain language, section 855.4, subdivision (a) immunizes any ‘decision’ relating to the control of the communication of disease that is ‘the result of the discretion vested in the public entity.’ Such a ‘decision’ is immune, ‘whether or not such discretion [was] abused.’ Under subdivision (b), immunity attaches to any act or omission performed while carrying out such a decision, as long as the act or omission was performed with due care.”].) Likewise, PUSD's decisions concerning vaccine requirements are also protected by this immunity. (*Ibid*.)”

(*Allos, supra,* 112 Cal.App.5th at p. 834.)

“Decisions of every division of the District Courts of Appeal are binding . . . upon all the superior courts of this state . . . . Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.” (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455--456.)

However, an opinion is not authority for the propositions not considered. An appellate decision is not authority for everything said in the court's opinion but only for the points actually involved and actually decided. (*People v. Knoller* (2007) 41 Cal.4th 139, 155. Internal citations omitted.)

Accordingly, this Court considers itself bound by *Allos* unless there is a conflicting authority, a meaningful distinction, or an issue *Allos* did not address. Plaintiff did not identify any conflicting authority. Plaintiff attempts to differentiate *Allos* by arguing that CDCR’s assertion of Government Code section 855.4 Immunity is “inapt because her claims do not challenge CDCR’s authority to issue public safety rules, rather they challenge CDCR’s failure to accommodate her under its own policies.” (Oppo., p. 20:5-8.)

This Court acknowledges that *Allos* is distinguishable in some respects. In *Allos,* plaintiff failed to show a qualifying disability. (*Allos, supra,* 112 Cal.App.5th at p. 836-7.) Moreover, at the trial court level, the opposition failed to address the immunity argument. However, at the hearing Allos’s counsel asserted that because section 855.4 was in conflict with FEHA and the Labor Code provisions under which Allos brought her claims, section 855.4 was inapplicable. (*Allos, supra,* at p. 831.)

As far as the applicability of *Allos* to the present facts, these are differences without a distinction. The trial court and the Court of Appeal both found that Allos’s claims were barred by section 855.4 to the extent they were based on the district’s decisions to allow work from home and later to require a return to in-office work. (*Id.,* at p. 832-4.) Although they outlined secondary reasoning, that even if section 855.4 did not apply, Allos had failed to establish a triable issue of fact because she (1) had “not demonstrated she suffer[ed] from a protected disability that kept her from performing her job;” (2) could not perform all of her essential job functions remotely; and (3) had not experienced an adverse employment action, the court did not find immunity applied *because* of this failure. (*Ibid;* see also p. 836.) While the secondary rationale is distinguishable from this case, the primary rationale (immunity) is not.

As *Allos* stated, section 855.4 is part of the Government Claims Act, whose purpose is assuring judicial abstention in areas in which the responsibility for basic policy decisions has been committed to coordinate branches of government because any wider judicial review would place the court in the unseemly position of determining the propriety of decisions expressly entrusted to a coordinate branch of government. (*Id.,* at p. 833. Internal citations omitted.)

Like in *Allos,* critically, Plaintiff's briefing contains no reasoned argument to explain how her claims fall outside the immunity afforded by section 855.4. (*Id*., at p. 834.) Under *Greenwood* subdivisions (a) and (b) provide distinct immunities. (*Greenwood v. City of Los Angeles* (2023) 89 Cal.App.5th 851, 865.) A defendant need not show due care to claim subdivision (a) immunity for a decision. (*Ibid*.) Due care matters however for subdivision (b), which covers acts or omissions in carrying out the decision. (*Ibid*.)

Here, the Court notes that nowhere in the opposition does Plaintiff argue that Defendant's decisions re: permitting work from home/returning to office nor the masking mandate were exempt from the subdivision (a) immunity, nor does Plaintiff argue that the acts in carrying out those decisions were made without "due care." Instead Plaintiff seeks to distinguish her case from *Allos* arguing it "is differentiable in every legally material way. First, she does not challenge CDCR's policy requiring masking or return to work. Dr. Carr challenges CDCR's failure to perform its accommodation duties under the FEHA." (Oppo., p. 21:5-7.) Plaintiff's further argument that the CDCR's interpretation "would produce an absurd result: that a public employer may avoid its statutory duties under the FEHA by simply issuing a public-health policy related to it" neatly identifies the issue. (Oppo., p. 2:3-5.) However, it is not for this Court to second guess the legislature or a higher Court's ruling. Rather, once Defendant has met its burden (as it has here) to show their actions fall within the scope of section 855.4's immunity, Plaintiff must demonstrate a triable issue of material fact or provide a reasoned argument why the action is excepted from the statute's immunity. Here, Plaintiff has not attempted to argue that decision to return employees to in office itself falls outside the scope of the immunity nor that the acts implementing that decision fall outside of subsection (b)'s due care requirement. Nor has Plaintiff pointed out an exception for FEHA contained in the statute itself or provided by caselaw.

Bitner v. Dep't of Corr. & Rehab. (2023) 87 Cal.App.5th 1048 is applicable by analogy, although the immunity in question was separate from the immunity statute at issue in this case. In that case, the plaintiff nurses pled hostile work environment under Government Code section 12940, subdivision (j), and failure to prevent harassment under subdivision (k). CDCR pled section 844.6 as an affirmative defense and moved for Summary Judgment. The trial court granted the motion, and the Court of Appeal affirmed Summary Judgment for the CDCR on the FEHA claims. The court held that Government Code section 844.6 immunity applied and that FEHA was not among the statute's enumerated exceptions. It also held that a specific immunity prevails over a general liability statute absent a clear legislative indication otherwise, and that FEHA's direct duty does not remove the immunity. (*Ibid*.)

In reaching its holding, the court cited "well-established canons of construction" that a statutory governmental immunity overrides a statute imposing liability absent "a clear indication of legislative intent that statutory *immunity* is *withheld* or *withdrawn*." (*Id.*, at p.1058–59.)

That canon of construction would also apply here. Plaintiff failed to demonstrate triable issues of material fact or provide a reasoned argument why her claims fall outside the immunity afforded by section 855.4. For these reasons, Summary Judgment 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: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001341

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: MINNIE ROSE MCBRIDE vs. DEFENDANT: WILLIAM MONTI ET AL.	

NATURE OF PROCEEDINGS: ORDER – SHOW CAUSE - OTHER

RULING

Having considered the submissions of the parties in response to the Order to Show Cause, the Court finds as follows:

1. **Defendant's Right of Purchase**

The clerk served the October 31, 2024, determination of value by mail. To be effective, notice to the court of the of intent of a cotenant to purchase the property was required "not later than" 45 days after the notice of determination of value. (Code Civ. Proc., § 874.317 subd. (b).) Under Code of Civil Procedure section 1013, subdivision (a) the time to respond is extended by five calendar days when the notice is served by mail within California. Forty-five days from October 31, 2024 was December 15, 2024. The five-day mailing extension carried the period to December 20, 2024. The Notice of Election filed by Defendant on December 18, 2024, was therefore timely. Plaintiff's December 17, 2024, Notice of Failure of Election was premature.[1]

Because the Court did not send a notice pursuant to section 874.317, subdivisions (d)(1) or (d)(2), no payment date was set and thus no failure to pay has occurred. Further, until Plaintiff's survivorship claim was resolved against her on October 1, 2026, the fractional interest on which the purchase price depends was in dispute. Because Decedent's position passes to his estate, the Court will issue the notice required by section 874.317, subdivision (d), allocate the right to buy

[1] Even were the period not extended, the Court would reach the same result. The Court never sent a notice under section 874.317, subdivision (d)(3) which would be required in order to proceed under section 874.318. Absent the statutory extension, the Defendant's notice of intent to purchase would have been at most two court days late and the buyout was overtaken by Decedent's death and the stay of proceedings. Plaintiff has shown no prejudice from this asserted two-day delay.

if required, and set a payment date when the stay is lifted. Any party contending that the October 31, 2024, determination of value should be updated shall address that question in a written submission to the Court.

The Court finds that the December 18, 2024 Notice of Election to Buy was timely and effective. Plaintiff's request that the Court treat the buyout right as forfeited is denied.

2. Appointment of Referee

Under section 874.318 partition by sale is available only if the interests of the cotenant requesting sale are not purchased by other cotenants. Here, the buyout here has been invoked and has not failed. Plaintiff's contention that the buyout "impediment no longer exists" is therefore incorrect. In addition, a sale now would not be practical because no personal representative or trustee has been appointed for Decedent's estate or trust and record title to Decedent's one-third interest remains in his name.

Plaintiff's assertions of mismanagement are not supported by substantial evidence and do not support displacing Defendant's management of the Property at this stage. The Court's authority to order "allowance, accounting, contribution, or other compensatory adjustment among the parties" remains available. (Code Civ. Proc., § 872.140.) The Court will address the accounting when that claim proceeds.

Accordingly, Plaintiff's request for entry of an interlocutory judgment of partition by sale and appointment of a referee to manage, control, and sell the Property is denied without prejudice.

Upon the lifting of the stay, the Court will appoint a referee or order a reference under Code of Civil Procedure section 639, subdivision (a)(1), limited to an accounting of credits and charges among the cotenants, to which Defendant has consented. The parties shall meet and confer and, in their status reports, propose a referee, the scope of the reference, and allocation of the referee's fees.

3. Stay Pending Probate

The stay of the first, second, and third causes of action entered September 2, 2025 is extended subject to the following:

1. A status conference is set for **April 13, 2027 at 9 a.m. in Department A**. Each party shall file and serve a brief status report on Case Nos. PR0001344 and PR0001891 no later than ten court days before the status conference. In addition to summarizing any rulings from the Probate court, the report shall address matters related to this order, including whether regarding the October 31, 2024 determination of value should be updated, whether notice should be issued under section 874.317, whether a referee should be appointed.

2. The stay shall be lifted at the status conference, or earlier upon appointment of a personal representative or trustee with authority over Decedent's interest in the Property. Any party may move to substitute that person for Decedent.

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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https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002695

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: JAD I. SALEM vs. DEFENDANT: ROBERT J. BELES	

NATURE OF PROCEEDINGS: MOTION – OTHER: FOR APPOINTMENT OF COUNSEL

RULING

Plaintiff's motion for the appointment of counsel and for a stay is **DENIED**.

Discussion

This is a civil action in which Plaintiff, an inmate at San Quentin prison, is suing his former attorney for negligence. Plaintiff is requesting that the court appoint an attorney to represent him in these proceedings.

Prisoners have a constitutional right of access to the courts and under state law they retain the right to initiate civil actions. (Pen. Code, § 2601.) For an indigent prisoner who files a bona fide civil action, the right includes a right of meaningful access to the courts to prosecute the action. (*Wantuch v. Davis* (1995) 32 Cal. App. 4th 786.) However, meaningful access does not require any particular remedy and a prisoner may not compel a trial court to appoint counsel. Whether meaningful access is in fact impeded is determined under the totality of the circumstances, which include "exceptional circumstances" factors outlined in *Smith v. Ogbuehi* (2019) 38 Cal. App.5th 453, 469–470.

Having weighed the totality of the circumstances, including the in factors outlined in *Smith v. Ogbuehi*, *supra*, the Court concludes in its discretion that Plaintiff has not shown that his access to the courts is being impeded or that appointment of counsel is the only feasible means of preserving it. Plaintiff concedes that the case "[is] not complex, per se." Plaintiff has also been able to prosecute this action to its current stage. His motion papers are organized and coherent and have accurately identified the governing authority. Plaintiff has demonstrated an understanding of the legal process and an ability to write coherently and can represent himself in pretrial proceedings. Plaintiff's lack of legal training is shared by nearly every self-represented

litigant. Self-represented litigants are entitled to the same, but no greater, rights than represented litigants. are entitled to the same, but no greater, rights than represented litigants. *Smith v. Ogbuehi*, *supra*, at pp. 468-469.)

The Court does not doubt that counsel would help Plaintiff, as counsel would help any self-represented litigant. But the court has no authority to compensate appointed counsel from public funds. (*Wantuch v. Davis* (1995) 32 Cal. App. 4th 786.) Plaintiff reports that he has already been unable to find counsel willing to take the case.

The Court finds that other measures currently available are practical and effective at this stage in providing meaningful access. (*Smith v. Ogbuehi, supra,* 38 Cal. App.5th at p. 467.) Plaintiff may continue to appear remotely by telephone or videoconference, at case management conferences, law and motion hearings, and other pretrial proceedings. Plaintiff may conduct and respond to discovery in writing. Plaintiff may seek relief under the Civil Discovery Act as to any discovery he contends Defendant has wrongfully withheld. Plaintiff may apply for appointment of an expert under Evidence Code section 730 by a properly noticed motion supported by a showing of need.

Plaintiff asks that the case be stayed "until the resolution of Defendant's refusal to relinquish discovery and issue of representation are addressed by the Court." As it relates to the request for counsel, that issue is resolved by this order and so that ground for a stay is moot. A stay is also not the appropriate vehicle for resolving a discovery dispute. The Civil Discovery Act lets a propounding party move to compel further responses to interrogatories and inspection demands that are evasive or incomplete, or that rest on meritless objections. Such a motion must be accompanied by a meet-and-confer declaration and is subject to statutory deadlines. Finally, a stay of indefinite duration would delay resolution of Plaintiff's own claims without any corresponding benefit. For these reasons the request for a stay is 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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004702

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: JOHN MAHONEY vs. DEFENDANT: FCA US LLC, ET AL.	

NATURE OF PROCEEDINGS: MOTION – ATTORNEY'S FEES

RULING

The motion of Plaintiff John E. Mahoney ("Plaintiff") for an award of attorney fees against Defendant FCA US LLC ("FCA") is **GRANTED in part**. Plaintiff is awarded $24,042.50 in attorney's fees and $10,282.47 in costs.

Background

Plaintiff filed this action on December 6, 2024. On December 23, 2025, FCA served a section 998 offer which Plaintiff accepted. As part of the offer, FCA agreed to pay "reasonable costs, expenses and attorneys' fees pursuant to Civil Code section 1794(d) as stipulated by the parties or, if the parties cannot agree, upon motion to the Court."

Plaintiff filed this motion for fees on August 28, 2026. In his motion, Plaintiff seeks a lodestar in the amount of $28,730.00 and a 1.5 multiplier of $14,365.00, for a total requested award of $43,095.00. He also seeks $10,282.47 in costs.

FCA does not challenge the claimed costs but does oppose the request for fees. FCA argues that (1) Plaintiff's motion is untimely; (2) the hourly rates should be capped at $500 for senior attorneys, $300 for associates, and $125 for paralegals and law clerks; (3) certain time entries should be disallowed; and (4) no multiplier, or a negative multiplier, should be applied.

Legal Standard

Under the Song-Beverly Act a prevailing plaintiff "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action."

(Cal. Civ. Code § 1794.) The prevailing party bears the burden of showing that the fees were reasonable. (*Goglin v. BMW of N. Am., LLC* (2016) 4 Cal. App. 5th 462, 470.)

The fee determination begins with the lodestar: the number of hours reasonably expended multiplied by a reasonable hourly rate. The lodestar may then be adjusted based on case-specific factors to fix the fee at the fair market value of the services provided. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1131–1134.) "Padding" in the form of inefficient or duplicative efforts is not compensable. (*Id.*) The court may not rubber-stamp a fee request, but must determine the number of hours reasonably expended, considering whether the case was overstaffed and whether the hours were reasonably expended. (*Morris v. Hyundai Motor Am.* (2019) 41 Cal. App. 5th 24, 38, 253.)

The lodestar may be adjusted upward based on (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the litigation precluded other employment, and (4) the contingent nature of the fee award. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579–580.) However, a court should not consider these factors to the extent they are already reflected in the lodestar. (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal. App. 4th 785, 822.) A multiplier is discretionary and the Court is not required to award one. (*Mikhaeilpoor v. BMW of N. Am., LLC* (2020) 48 Cal. App. 5th 240, 247–255.)

Discussion

1. **Timeliness**

A claim for attorney fees must be served and filed within the time for filing a notice of appeal. (Cal. Rules of Court, rule 3.1702 subd. (b).) A voluntary dismissal starts the clock even though the dismissal is not itself appealable. (*Hatlevig v. Gen. Motors LLC* (2026) 118 Cal. App. 5th 644, 649.) The deadline runs 60 days from service of notice of entry of dismissal or, if no such notice is given, 180 days from entry of the dismissal. (*Catlin Ins. Co. v. Danko Meredith L. Firm, Inc.* (2022) 73 Cal. App. 5th 764, 781–782.)

In this case, a dismissal was filed on March 10, 2026 and that Plaintiff filed the motion 171 days later, on August 28, 2026. No notice of entry of the dismissal was served on the parties and therefore the shorter 60-day period is not applicable. The motion was served and filed within 180 days after entry of dismissal and is therefore timely.

Even if the motion were late, the deadline is not jurisdictional, and the Court may extend the time for good cause. (Cal. Rules of Court, rule 3.1702 subd. (d).) The 998 offer expressly contemplated a fee motion and FCA has litigated the motion on its merits. To the extent necessary, the Court finds good cause and extends the time to the date of filing. FCA's alternative request that Plaintiff's timing "weigh against" the award is rejected because the timing of the motion has no bearing on whether the hours expended in the action were reasonable.

2. Hourly Rates

The reasonable hourly rate is the rate prevailing in the community for similar work. In setting rates, the Court may rely on its own knowledge of the legal market, the experience, skill, and reputation of the attorneys, the difficulty of the litigation, and evidence of rates awarded in other cases. (*Morris v. Hyundai Motor Am*. (2019) 41 Cal. App. 5th 24, 41.) A court may, however, reduce rates if the matter was not complex or if the work could have been performed by lower-billing personnel. (*Id.*)

The Court has considered the submission of the parties and it also relies on its own extensive experience reviewing fee requests in this County and in similar cases.

- Senior Attorneys Rotman and Underwood - the Court finds $600 per hour reasonable for these attorneys in this community.

- Associate Attorneys Sample, Gonzales-McCaulley, and Bootwala - The firm bills all three associates at a uniform $450 rate regardless of experience. The Court, exercising its independent judgment of the value of the services rendered in a routine matter of this kind, finds that $375 per hour is a reasonable rate for Mr. Sample and Ms. Gonzales-McCaulley. The Court finds $300 per hour reasonable for Ms. Bootwala, who had been out of law school for approximately seven months when she performed the work billed in this case.

- Paralegals - The requested paralegal rates of $300 (Evans) and $250 (Cespedes and Zaki) are approved.

3. Hours Expended

The Court has reviewed counsel's time records entry by entry and finds the total amount of hours requested is not facially excessive. The Court addresses FCA's specific objections as follows.

- Meet-and-confer letters of April 1 and 3, 2025**.** FCA objects to the time spent on meet-and-confer letters, including 1.0 hour each on April 3, 2025. The records reflect two separate letters addressing FCA's responses to two different sets of discovery. Meet-and-confer letters are a prerequisite to discovery motion practice, and one hour to prepare each letter is reasonable. This objection is overruled.

- Motion to compel compliance with subpoena**.** The motion was directed to a non-party dealership but was withdrawn after the party produced the records. The motion obtained the records it sought and thus the time was reasonably incurred.

- Meet-and-confer correspondence, April 28 to May 27, 2025. Some of these entries are duplicative or involve clerical or administrative tasks. The Court disallows 0.6 hour of Mr. Sample's time.

- As to anticipated time, Section 1794(d) permits recovery only for fees "based on actual time expended." The time spent on the reply was not documented. The Court therefore disallows the 2.3 hours of Ms. Rotman's time and the 0.3 hour of Ms. Evans's time associated with the reply. The Court allows 1.0 hour for the hearing and 0.3 hour for the notice of ruling and the dismissal with prejudice that the settlement requires.

- Prevailing parties are compensated for hours reasonably spent on fee-related issues and the amount sought is reasonable.

4. <u>Calculation</u>

Timekeeper	Hours Claimed	Hours Allowed	Rate Requested	Rate Allowed	Lodestar
Amy R. Rotman	8.7	6.4	$600	$600	$3,840.00
Jessica R. Underwood	6.4	6.4	$600	$600	$3,840.00
Kyle B. Sample	29.6	29.0	$450	$375	$10,875.00
Susanna Gonzales-McCaulley	1.7	1.7	$450	$375	$637.50
Safia Bootwala	4.3	4.3	$450	$300	$1,290.00
Rebecca Evans	3.5	3.2	$300	$300	$960.00
Katelynn Cespedes	9.5	9.5	$250	$250	$2,375.00
Dalia Zaki	0.9	0.9	$250	$250	$225.00
Total	**64.6**	**61.4**			**$24,042.50**

5. Multiplier

The Court declines to award a multiplier in this case. This was a routine lemon law case that presented no novel or complex legal questions. The case was resolved by the acceptance of a 998 offer before any dispositive motion or trial. Counsel's skill and experience are already reflected in the rates awarded. Any delay in payment is compensated by using current hourly rates. (*Graham v. DaimlerChrysler Corp., supra,* 34 Cal. 4th at pp. 579–580.) The risk here was modest and nothing in the record suggests that the litigation precluded counsel from other employment. FCA's request for a negative multiplier is also denied.

6. Costs

Plaintiff served and filed a Memorandum of Costs claiming $10,282.47. FCA did not file a motion to strike or tax and in its opposition to the fee motion states that it does not challenge the claimed costs. Costs are therefore allowed in the amount of $10,282.47.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004772

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: CITY OF MILL VALLEY vs. DEFENDANT: WILLIAM EARL MCGLASHAN, JR	

NATURE OF PROCEEDINGS: MOTION - ENFORCE

RULING

Defendant William Earl McGlashan Jr.'s motion to enforce settlement is **DENIED**.

Allegations

On January 3, 2023, Plaintiff Shanna Upton ("Plaintiff") was in the course and scope of her employment with Plaintiff City of Mill Valley ("City") when she was involved in a motor vehicle accident with Defendant. City filed this action against Defendant for reimbursement of workers' compensation benefits it paid to Plaintiff. Plaintiff thereafter filed a separate action against Defendant for personal injuries. On November 19, 2025, the parties entered into a stipulation to consolidate the actions which the Court ordered. On August 7, 2026, the parties attended a settlement conference and the matter was not settled.

Currently before the Court is Defendant's motion to enforce settlement. (Code Civ. Proc., § 664.6.)[1]

Legal Standard

"If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (§ 664.6, subd. (a).)

When considering a motion to enforce a settlement under section 664.6, the court seeks to determine whether the parties entered into a valid and binding settlement of all or part of the case. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905.) A party moving for entry of judgment under section 664.6 need not establish a breach of the settlement agreement; the court is authorized to enter judgment pursuant to the settlement regardless of whether the settlement's obligations were performed, breached or excused. (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1184-1185.)

"Because of its summary nature, strict compliance with the requirements of Code of Civil Procedure section 664.6 is prerequisite to invoking the power of the court to impose a settlement agreement." (*J.B.B. Inv. Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Discussion

Section 664.6 subdivision (a) requires that there be an agreement in writing, signed by the parties outside of the presence of the court or stipulated to orally before the Court. All parties to be bound must agree to the material terms and thus, absent oral assent in open court, a written settlement is enforceable under section 664.6 only if signed by the party against whom enforcement is sought and by the party seeking to enforce it. (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305; *Gallo v. Getz* (1988) 205 Cal.App.3d 329, 333.)

Here, Defendant presents no evidence of a signed settlement agreement nor is there any oral stipulation before the court. While defense counsel provides emails that Defendant argues show a settlement was reached, there is not a finalized settlement agreement with specific terms nor is there a single signature from any party. A trial court cannot apply the summary procedure for a judgment enforcing a settlement agreement where not all of the parties signed the settlement agreement. (*J.B.B. Investment Partners, Ltd.*, *supra*, 232 Cal.App.4th at 992 [finding error where the trial court enforced a settlement agreement under 664.6 based on it being "more likely than not" a party had agreed to settle after sending an email indicating acceptance but never signing a formal settlement agreement].) While section 664.6 subdivision (b)(2) does indicate a signature from a party's attorney will suffice, there is no such signature – only emails discussing the proposed settlement agreement and its terms therein. To the extent defense counsel declares that there was a statement at the settlement conference that Plaintiff's counsel stated he "intended to disregard his client's previous settlement agreement," this does not constitute a settlement agreement before the Court. Indeed, the Court's minutes reflect the matter was not settled. Defendant has not presented an enforceable settlement agreement for the Court to enter judgment upon.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise specified.

Accordingly, the request to enforce a settlement agreement pursuant to section 664.6 is 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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005211

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PETITIONER: DEBRA ROSALES vs. RESPONDENT: VIVALON	

NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR PROGRAM

RULING

Pursuant to Marin County Rule, Civil 2.13B, on September 22, 2026, attorney Robert James Begley was appointed to preside as Discovery Facilitator. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, five court days prior to the hearing on the motion set for November 24, 2026, 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 and expects that this discovery matter 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.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009002

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: LAURIE MARTIN vs. DEFENDANT: ERIC GORDON, ET AL.	

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

RULING

The Court expresses its appreciation for the assistance of the Discovery Facilitator, Attorney Patricia J. Medina.

The Court's rulings as to those discovery responses that remain in dispute are listed in the below table. The motions are granted and denied in part and the Court denies each side's request for sanctions.

Request	**Ruling**	
RFA 4	Denied	Objection compound sustained
RFA 8	Denied	
RFA 21	Granted	Defendant must indicate reasonable inquiry has been made
RFA 24	Denied	Objection unintelligible sustained
SROG 1	Denied	Objection compound sustained
SROG 5	Denied	
SROG 6	Denied	
SROG 7	Granted	

SROG 10	Granted	
SROG 11	Denied	
SROG 14	Denied	
SROG 17	Granted	
SROG 19	Denied	
SROG 20	Denied	
SROG 28	Denied	
SROG 31	Denied	
SROG 33	Denied	
FROG 2.6	Granted	Incomplete response
FROG 4.1	Granted	Incomplete response
FROG 12.1	Denied	
FROG 12.6	Denied	
FROG 15.1	Denied	
FROG 17.1	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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009951

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: WENDY VALENZUELA ESCOBEDO, ET AL vs. DEFENDANT: AS CONVENIENCE & ENERGY, INC., A CALIFORNIA CORPORATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – SEVER/BIFURCATE

RULING

Defendants AS Convenience & Energy, Inc. ("ASCE") and Salkhi Petroleum, Inc.'s ("SPI"; with ACSE, "Movants") motion to sever is **DENIED**.

Background

This is an employment discrimination, retaliation and harassment case. Plaintiffs Wendy Valenzuela Escobedo ("Valenzuela Escobedo"), Obdulio Orantes ("O. Orantes"), and Telma Orantes ("T. Orantes"; together, "Plaintiffs") allege as follows:

ACSE and SPI operate various gas stations and car washes in Marin County. (First Amended Complaint ("FAC"), ¶ 20.) They are different corporate entities but are owned by the same individual and operated as a single enterprise. (*Id.* at ¶ 46.) Valenzuela Escobedo began working for ASCE in October 2022 as a cashier at Grand Gasoline in Larkspur, which operates in conjunction with a Shineology car wash at the same site. (*Id.* at ¶¶ 8, 25.) O. Orantes, who has been romantically involved with Valenzuela Escobedo, worked at the same location as a customer service and sales representative. (*Id.* at ¶¶ 9, 38.)

Mazariegos was Valenzuela Escobedo's supervisor. (FAC, ¶ 26.) He began to sexually harass her at work in approximately June 2023, in one instance grabbing her buttocks while she was working. (*Id.* at ¶¶ 28-33.) Jose Son ("Son"), a manager and Mazariegos' supervisor, witnessed this and dismissed it. (*Id.* at ¶ 34.) In November 2023, Valenzuela Escobedo complained to Son

about her treatment by Mazariegos. (*Id.* at ¶ 36.) Although Son reported that he had spoken to Mazariegos, Mazariegos' behavior did not stop. (*Id.* at ¶ 37.)

In November 2023, O. Orantes complained to Son regarding Mazariegos' treatment of Valenzuela Escobedo. (FAC, ¶ 60.) Within days of this, he faced discipline in the form of a written warning. (*Id.* at ¶ 61.) In February 2024, O. Orantes, who was Valenzuela Escobedo's boyfriend by at least this time, again complained to Son regarding Mazariegos' treatment of Valenzuela Escobedo and also confronted Mazariegos directly. (*Id.* at ¶¶ 38, 62.) Son issued O. Orantes another written warning for insubordination. (*Id.* at ¶ 63.) O. Orantes was then required to transfer from the Larkspur Shineology to a different Shineology location in Mill Valley for the stated purpose of keeping him away from Mazariegos. (*Id.* at ¶ 64.) In April 2024, O. Orantes was suspended from work until further notice. (*Id.* at ¶ 65.) Two days later, he was fired. (*Id.* at ¶ 67.) O. Orantes alleges that this was in retaliation for his reporting Mazariegos' harassment of Valenzuela Escobedo. (*Id.* at ¶ 68.)

Shortly after O. Orantes' February 2024 complaint, Son told Valenzuela Escobedo not to report for work for three days. (FAC, ¶ 39.) When she returned to work, she was told that she was being transferred to another location. (*Id.* at ¶ 41.) Son told her that this was because of O. Orantes' complaint. (*Id.* at ¶ 42.) Valenzuela Escobedo was transferred to the Chevron gas station in Mill Valley. (*Id.* at ¶ 45.) This was not the same site to which O. Orantes has been transferred. (*Id.* at ¶¶ 45, 64.) SPI operated the Chevron station and was Valenzuela Escobedo's employer as of February 2024. (*Id.* at ¶ 8.) Valenzuela Escobedo is the only plaintiff who alleges that she was ever formally employed by SPI, as opposed to ACSE.

Working at the Chevron in Mill Valley was less satisfactory to Valenzuela Escobedo than working at the Grand Gasoline in Larkspur for various reasons, and she was treated poorly relative to other employees, which she alleges was retaliatory. (FAC, ¶¶ 47, 53.) Mazariegos continued to harass Valenzuela Escobedo even after she switched workplaces. (*Id.* at ¶ 50.) When she reported this to management, Valenzuela Escobedo was accused of provoking Mazariegos and issued a written warning not to contact him upon threat of termination. (*Id.* at ¶¶ 51-52.) On October 23, 2024, the defendants received a demand letter from Valenzuela Escobedo's counsel regarding harassment and retaliation. (*Id.* at ¶ 56.) She was fired the same day. (*Ibid.*)

T. Orantes, O. Orantes' mother, had worked at the Shineology in Mill Valley – the same location to which O. Orantes was transferred after reporting Mazariegos' conduct – as a car washer and detailer for well over a decade. (FAC, ¶¶ 69-70, 84.) Beginning in 2023, T. Orantes was subjected to sexual harassment by her supervisor, Reyes, in the form of graphic and vulgar sexual comments. (*Id.* at ¶¶ 71-72.) Reyes also harassed T. Orantes based on her age. (*Id.* at ¶¶ 75-76.) T. Orantes complained of this to Son, among other management personnel, but saw no change. (*Id.* at ¶ 78.) On October 23, 2024, the day the defendants received a demand letter regarding the harassment and retaliation claims involving her son, O. Orantes, and fired

Valenzuela Escobedo, T. Orantes was fired for reasons she alleges were pretextual. (*Id.* at ¶¶ 81-84.) She asserts that she was fired in retaliation for her son's workplace dispute and her own claims of sexual harassment. (*Id.* at ¶¶ 56, 84.)

The FAC asserts claims for hostile work environment harassment based on sex and age, employment discrimination based on sex and age, failure to prevent harassment and discrimination, and retaliation, all under FEHA, plus negligent hiring, supervision, and/or retention and wrongful termination. Before the Court is Movants' motion to sever. They request an order severing each plaintiff's claims from those of the other plaintiffs.

Legal Standard

"The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States." (Code Civ. Proc., § 1048, subd. (b).) "[W]hether there shall be a severance and separate trials of issues in a single action[] is matter within the discretion of the trial court." (*McArthur v. Shaffer* (1943) 59 Cal.App.2d 724, 727.)

Discussion

Movants argue that Plaintiffs have improperly joined their claims. Misjoinder is required to be raised by demurrer or answer and is waived if not raised in either of those fashions. (Code Civ. Proc., §§ 430.10, subd. (d); 430.80, subd. (a).) Movants have neither demurred to the FAC nor answered it.

The Court considered whether to treat this motion to sever as a demurrer. However, if this motion is construed as a demurrer, it was not timely filed. A demurrer must be filed within 30 days of service of the complaint. (Code Civ. Proc., § 430.40, subd. (a).) Plaintiffs filed the FAC on July 22, and Movants were served with the FAC electronically, via email to their counsel, on July 28. (See Proof of Service filed July 31, 2026.) By filing this motion, they made a general appearance and so waived any objection to service. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 7-8; Code Civ. Proc., § 410.50, subd. (a).) Given the July 28 service date and the fact that two court days are added due to the electronic nature of the service (Code Civ. Proc., § 1010.6, subd. (a)(3)(B)), a demurrer would be due no later than August 31. Movants filed their motion to sever on September 1.

The effect is that the issue of misjoinder is not properly before the Court. This means the Court will not entertain Movants' arguments about whether the prerequisites to permissive joinder under Code of Civil Procedure, section 378 are present in this case. It does not mean Movants have no basis to request severance. Even where plaintiffs are properly joined under Code of Civil

Procedure, section 378, "the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require." (Code Civ. Proc., § 379.5.) Code of Civil Procedure, section 1048 likewise operates without regard to whether the parties are properly joined.

Movants argue that they will be unfairly prejudiced if the jury that hears Valenzuela Escobedo's claim of sexual harassment by Mazariegos is exposed to evidence of Reyes' alleged sexual harassment of T. Orantes, and vice versa. Movants believe this exposure can only occur if the two women's claims are heard in the same trial. They explain that evidence of Reyes' alleged sexual harassment of T. Orantes will be inadmissible as to Valenzuela Escobedo's claim, and evidence of Mazariegos' alleged sexual harassment of Valenzuela Escobedo will be inadmissible as to T. Orantes' claim, because evidence of workplace harassment of other people is only relevant to a plaintiff's harassment claim if the plaintiff knew about it. Movants assert that neither Valenzuela Escobedo nor T. Orantes knew of the other's treatment.

The Court need not address whether Movants have correctly stated the law. The basis for Movants' belief that neither woman had personal knowledge of the other's treatment is that the FAC does not affirmatively allege that either one knew what was happening to the other at work. (Memorandum, pp. 12-13.) That the FAC is silent on this issue cannot sustain Movants' assumption. On the arguments presented, Movants have no basis to assume that evidence of one woman's treatment will necessarily be irrelevant to and inadmissible in the other woman's case due to a lack of personal knowledge.

Ultimately conceding that "me too" evidence may, in fact, be admissible in FEHA cases, with any prejudicial effect tempered by a limiting instruction (Memorandum, p. 13), Movants insist that this procedural safeguard is necessarily ineffective in cases where two employees have joined their FEHA claims. (*Ibid.*) The Court does not see why the effectiveness of a limiting instruction would turn on the identity of the party offering the "me too" evidence.

Movants express concern that if the claims against Mazariegos and the claims against Reyes are adjudicated in the same proceeding, the jury "will resolve the case against these individuals on an accumulated impression rather than on the proof against each[.]"[1] (Memorandum, p. 13.) This is speculative and assumes, without any particular basis, that juries cannot or will not follow the law and the instructions provided to them. The same applies to Movants' worry that the jury will improperly conflate the evidence for purposes of punitive damages.

Movants also argue that requiring SPI to sit through weeks of evidence about what happened to O. Orantes and T. Orantes when SPI allegedly employed only Valenzuela Escobedo is a waste of SPI's time. Regardless of whether SPI was the employing entity for O. Orantes and T. Orantes, the operative pleading does include claims by those plaintiffs against SPI, perhaps inadvertently

[1] Movants' counsel does not represent either Mazariegos or Reyes.

or perhaps intentionally on the theory that ACSE and SPI are but two branches of the same enterprise. (See FAC, ¶ 46.) Although SPI clearly takes issue with the fact that it is named as a defendant for purposes of O. Orantes' and T. Orantes' claims, SPI has not filed a demurrer or a motion for judgment on the pleadings attempting to eliminate O. Orantes' and T. Orantes' claims against it. Until such time as those claims are removed from the action, it is perfectly appropriate for SPI to "sit through weeks of evidence" in relation to the Orantes' claims (Memorandum, pp. 13-14), because it is being sued on those claims.

Finally, Movants argue that a three-plaintiff case will be too complicated for the jury to reliably decide, which will result in prejudice to the defendants. Movants expressly assume that this case will be tried by jury as currently pleaded, with three plaintiffs, four defendants, and eight causes of action. (Memorandum, p. 14.) This case is at such an early stage of litigation that the two corporate defendants have not filed an answer and, so far as the Court can tell, neither of the two individual defendants has participated in the case in any way. It is therefore too soon to be making decisions on the assumption that this case will make it to trial in the exact form in which it exists now. (One of the individual defendants, Reyes, is already out of the case at present, his default having been entered on June 30.) Even if it did, the trial Movants describe is not beyond the court's ability to manage.

Concerns of prejudice do not justify a severance in this case.

A court may sever a case based on considerations of convenience and economy, even absent prejudice. (See Code Civ. Proc., § 1048, subd. (b).) Movants argue that "[t]he witness lists" for each plaintiff's case "barely overlap." (Memorandum, p. 14.) Even on Movants' hypothetical witness lists, all three cases share two critical witnesses in common. (*Ibid.*) Movants also rely heavily on the contention that O. Orantes' claims are unrelated to either of the two female plaintiffs. O. Orantes claims that he was fired in retaliation for reporting unlawful activity, and the unlawful activity at issue was the alleged sexual harassment of Valenzuela Escobedo. O. Orantes' and Valenzuela Escobedo's claims are directly related. T. Orantes' claims are less obviously related to either of the other two plaintiffs. Nonetheless, Movants' claims of inconvenience and inefficiency at this point are speculative.

The motion is 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 November, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0010696

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: PETER HAUBOLD, ET AL. vs. DEFENDANT: DOUGLAS FORMBY, ET AL.	

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

RULING

Defendants Douglas Formby and Heather Formby's ("Defendants" or "Formbys") Demurrer to the Verified Complaint (the "Complaint") of plaintiffs Peter Haubold, Cynthia Haubold, and the Cynthia and Peter Haubold 2005 Family Trust (collectively "Plaintiffs" or "Haubolds") is **OVERRULED**.

Defendants' Motion to Strike portions of the Complaint is **GRANTED**.

Requests for Judicial Notice

Defendants' unopposed Requests for Judicial Notice in Support of Motion Nos. 1, 3-9 are GRANTED. (Evid. Code, §§ 452, subds. (c),(d).) Request No. 2 is DENIED. Judicial notice is proper under Evidence Code section 452, subdivision (d)(1), of the records of "any court of this state." However, such a court record would normally show a conformed file stamp or other evidence of reliability. (*Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 914–15, citing *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 743.) Even though no opposition was filed to this judicial notice request, the Court declines the request because the document offered is not a file stamped endorsed copy.

Plaintiffs' unopposed Requests for Judicial Notice in Support of Opposition Nos. 1-3 are GRANTED. (Evid. Code, § 452, subd. (d).)

Background

This is the second lawsuit between neighbors over their shared property boundary. In *Formby v. Haubold*, Marin County Superior Court Case No. CIV2103050 ("2021 Action"), the Formbys sued the Haubolds to quiet title to a portion of the parties' shared boundary. Judgment was entered for the Formbys and affirmed on appeal.

The Haubolds now sue the Formbys over a different stretch of their shared boundary line, which the Haubolds call the "Remnant Fence" area. The Haubolds assert causes of action For Quiet Title, Violation of the Good Neighbor Fence Act, Nuisance, and Declaratory Relief. (Compl. ¶¶ 7–23.) They allege that in December 2025 they asked Defendants to split the cost of a new fence under the Good Neighbor Fence Act, that Defendants refused unless Plaintiffs agreed to build the new fence on the existing (allegedly incorrect) footprint, and that Defendants' counsel sent a letter declining to pay half the cost. (Compl. ¶¶ 10, 12.)

Demurrer – 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. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 162.) 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, 318.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

Demurrer - Discussion

Defendants demur to the Complaint as a whole and as to each cause of action in it. In support of their Motion, Defendants argue that Plaintiffs were obligated to bring their claims as a compulsory cross-complaint in the 2021 Action because Plaintiffs' claims arise from the same transaction, occurrence, or series of transactions or occurrences as the claims litigated in it. Due to their failure to raise them by cross-complaint in the 2021 Action, Defendants conclude Plaintiffs are barred from asserting those claims in this subsequently filed action pursuant to Code of Civil Procedure section 426.30.

As a second and separate basis for the demurrer to the Second Cause of Action for relief under Civil Code section 841, the Good Neighbor Fence Act, Defendants assert that the Complaint does not state facts sufficient to constitute a cause of action against Defendant because the action is not ripe, the notice was invalid, and the fence at issue is not covered by the statute.

Failure to Raise Claims in 2021 Action

Section 426.30 makes a cross-complaint compulsory for related claims. Except as otherwise provided by statute, a party against whom a complaint has been filed and served and who fails to plead a related cause of action it held against the plaintiff when it served its answer may not assert that claim in another action. (Code Civ. Proc., § 426.30, subd. (a).) A claim is related when it arises from the same transaction, occurrence, or series of transactions or occurrences. (Code Civ. Proc., § 426.10, subd. (c).) Courts apply a broad logical relationship standard to decide whether a claim is related. (*Align Tech., Inc. v. Tran* (2009) 179 Cal.App.4th 949, 960.) The bar reaches only claims that existed when the answer was served. (*E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 505-6.)

Defendants argue that at the time the Haubolds served their Answer in the 2021 Action, they were aware of the facts alleged in the current Complaint regarding the location of the "Remnant Fence." Accordingly, Defendants contend that the Haubolds cannot now allege that the Remnant Fence issue is a new or later arising dispute unconnected to the litigation the parties already conducted over this same boundary line.

The Court declined to take Judicial Notice of the Answer for the reasons stated above. Even if the Court were to take Judicial Notice of the date when the 2021 Action's Answer was filed and served (October 25, 2021) this would not cure the fact a demurrer hearing may not become a contested evidentiary hearing through the guise of noticing documents whose truth or proper interpretation is disputable *(Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369.) *Joslin* adopted the formulation that judicial notice on demurrer is dispositive only where there is not, or cannot be, a factual dispute concerning the matter sought to be noticed. *Panterra* restates that

rule and adds that a demurrer is not the appropriate procedure for determining the truth of disputed facts. (*Panterra GP, Inc. v. Superior Ct. of Kern Cnty.* (2022) 74 Cal.App.5th 697.)

Here, there is room for interpretation regarding the facts related to accrual and notice of the claim compared to the service of the Answer in the 2021 Action. First, the trial transcript of Peter Haubold's testimony only states that though he was aware of the survey monument in or around October of 2019, he did "not really" understand what it was when he first saw it, and that he made no effort to figure out why they suddenly appeared. (Defendant RFJN No. 4, pp. 531:14-28; 532:1-9; 572:17-24.) Cynthia Haubold's testimony that she learned the Formbys "had" the DeLong survey in May 2021. (Def. RFJN No. 7, p. 724:14-17.) She further testified that when she first saw the survey, she didn't really know what she was looking at. (*Id.* p. 725:17-27.) The documents before the Court raise factual issues.

It may well be that the continued boundary line disputes are barred by the failure to raise then in the 2021 Action. However, the Court finds that a demurrer is not the appropriate vehicle to resolve the issue of a potential section 426.30 bar. The Demurrer is therefore overruled on this ground.

Good Neighbor Fence Law Claim

With regards to the Second Cause of Action, Defendants demur on the grounds that the claim is not ripe because Plaintiffs have not yet expended funds to construct a new fence that replaces an existing fence on the boundary line nor have they provided the requisite notice to the Formbys under the statute.

In support of their ripeness argument, Defendants cite 54A Cal. Jur. 3d Real Estate (2026) § 978 for the proposition that "[a] landowner who is entitled to contribution for the construction of a division fence may enforce the right by action and may recover the proportionate share of the fence's value **after proving its erection**, its value at the time of enclosure, and a demand for contribution." (Emphasis added.) This treatise cites to *Meade v. Watson* (1885) 67 Cal.591, 593 in support of the quoted statement. *Meade* in turn cites to

> "[t]he fifth section of the act of 1855 was amended in 1860 (Statutes 1860, p. 141) to read as follows: 'When a fence **has been erected** by any person on the line of his land, and the person owning the land adjoining thereto shall make, or cause to be made, an inclosure on the opposite side of such fence, so that such fence may answer the purpose of inclosing his ground also, such person shall pay the owner of such fence already erected one-half the value of so much thereof as serves as a partition fence between them,' etc." (Emphasis added.)

Defendants point to no similar language in the current statute requiring a fence to have already been erected, nor has the Court been able to located any. The Court finds no basis to impute the "already erected" language from the treatise to the current statute. (Civ. Code, § 841.)

Defendants next claim that Plaintiffs have failed to provide the requisite notice to the Formbys under the statute. However, the Complaint alleges that the "Haubolds have complied with the requirements of the good neighbor fence act by requesting the Formbys pay for half the cost of a new border fence. The Formbys have refused to pay for their half share of a new wooden fence, and are insisting that any new wooden fence be built on the wrong property line, which would give them portions of the Haubold Property that they are not entitled to. It is absolutely proper for the Haubolds to request a new wooden fence that matches the existing wooden fence be built on the correct property line." (Compl., ¶ 17.) The Haubolds requested the Court order the Formbys to pay half the cost of a new wooden fence on the correct property line between the Haubold Property and the Formby Property. (*Id*., ¶ 18.)

This is sufficient to allege notice compliance with section 841 at this stage in the pleadings.

Finally, Defendants argue that the statute does not apply to the fence described in the Complaint. Civil Code section 841 subdivision (b)(1) presumes that adjoining landowners share an equal benefit from any fence dividing their properties. Unless the parties have agreed otherwise in a written agreement, each is presumed equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence. Subdivision (a) separately makes adjoining owners equally responsible for maintaining the boundaries and monuments between them.

At this stage in the pleadings, the Complaint adequately alleges a fence which may satisfy section 841's requirements. (See Compl., ¶¶ 8, 10, 14, 15, 16, 17.)

For these reasons the Demurrer is overruled in its entirety.

Motion to Strike – Legal standard

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter, or has not been drawn or filed in conformity with laws. (Code Civ. Proc., § 436.) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc., § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

Motion to Strike – Discussion

Defendants move the Court for an order striking the following portions of the complaint: 1. Paragraph 13, page 4, lines 8–10, beginning "The Formbys are behaving maliciously" and ending "are entitled to their full attorney's fees."; 2. Prayer for Relief, paragraph 2, page 6, lines 12–15, in its entirety ("For attorney's fees under the Tort of Another Doctrine … are recoverable as a matter of equity").

Under the tort of another doctrine, a person who through the tort of another has been required to act in protection of their interests by bringing or defending an action against a third person, is entitled to recover compensation for the reasonably necessary attorney's fees, loss of time, and other expenditures thereby incurred. (*Mega RV Corp. v. HWH Corp.* (2014) 225 Cal.App.4th 1318, 1337–1338.) The doctrine is not treated as an exception to the American rule regarding attorney's fees, rather it is an application of the ordinary measure of tort damages when fees are recoverable as a form of consequential damages. (*Sooy v. Peter* (1990) 220 Cal.App.3d 1305, 1310.) Recovery is limited to necessary attorney fees incurred in litigation with a third party that was proximately and foreseeably caused by the defendant's tortious conduct. (*David S. Karton, a L. Corp. v. Musick, Peeler Garrett LLP* (2022) 83 Cal.App.5th 1027, 1043–1045.) The doctrine does not allow recovery of fees incurred in litigating directly against the tortfeasor itself, nor does it extend to fees incurred in the plaintiff's own action to recover fees from the tortfeasor. (*Id.,* pp. 1046-7; see also *Guinnane Constr. Co. v. Chess* (2026) 119 Cal.App.5th 689, 702.)

Plaintiffs allege that the "Formbys are behaving maliciously" and "have forced the Haubolds to file this unnecessary litigation," and that "[u]nder the Tort of Another Doctrine, the Haubolds are entitled to their full attorney's fees." (Compl., ¶ 13.) The Prayer for Relief repeats this theory, seeking "attorney's fees under the Tort of Another Doctrine, as the "Formbys have specifically stated their goal was to force the Haubolds to file this lawsuit and incur attorney's fees," asserting that "the Haubold's attorney's fees are recoverable as a matter of equity." (Prayer ¶ 2.) Every defendant named in this lawsuit, Douglas Formby and Heather Formby, is also the party Plaintiffs allege forced them to sue. (Compl., ¶¶ 2, 13; Prayer ¶ 2.) No third party is named or referenced anywhere in the Complaint.

The Court agrees that on the face of the complaint, the Tort of Another Doctrine is inapplicable. Therefore the Motion to Strike is GRANTED. The Motion is granted without leave to amend.

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

The Zoom appearance information for November, 2026 is as follows:

https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0010614

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: DULCINEA LAI, ET AL vs. DEFENDANT: JOSEPH DRIMMER	

NATURE OF PROCEEDINGS: MOTION – STRIKE

RULING

Defendant Joseph Drimmer's motion to strike is **GRANTED** with leave to amend.

Allegations in the Complaint

On July 10, 2026 Plaintiffs Dulcinea Lai and Alessandro Lai filed their Complaint against Defendant Joseph Drimmer. The complaint alleges that Defendant undertook to test drive a vehicle that did not belong to him on a public roadway, with Plaintiff Dulcinea Lai seated inside the vehicle as a passenger with no ability to control the vehicle or remove herself from the danger Defendant was about to create. Defendant deliberately operated the vehicle at speeds far in excess of what was safe or lawful under the circumstances, in an attempt to "race" the vehicle. Defendant thereafter deliberately crossed over a solid double yellow line into a lane of oncoming traffic, at a high rate of speed, for the purpose of passing another vehicle. Defendant made a deliberate choice to drive in a manner he knew was dangerous to human life, for his own thrill or bravado, in conscious disregard of the probable consequences to Plaintiff. Defendant lost control of the vehicle and crashed, causing injury to Plaintiff. Plaintiffs assert claims for motor vehicle negligence, negligence, and loss of consortium.

Standard

The court may, upon a motion made pursuant to Code of Civil Procedure Section 435, strike out any "irrelevant, false, or improper matter inserted in any pleading." (Cal. Code Civ. Proc. § 436.) Improperly pled damages claims may be challenged by motion to strike. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.)

Punitive damages are generally available where a defendant is guilty of oppression, fraud or malice. (Civ. Code § 3294(a).) "'Malice' is defined as 'conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others'; 'oppression' is 'despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.' 'Despicable conduct' is 'conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' [Citation.] 'The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.'" (*Colucci v. T-Mobile USA, Inc*. (2020) 48 Cal.App.5th 442, 454-55 [citations omitted].) Evidence of negligence, gross negligence, or even recklessness is not sufficient to support an award of punitive damages. (*Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 88.)

"[A] common law action for loss of consortium is a civil action sounding in tort, and therefore punitive damages are available." (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 796.) "In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff . . . judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 [citations omitted].) "The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves*, 157 Cal.App.3d at p. 166 [citations omitted].)

Discussion

Defendant moves to strike Plaintiffs' request for punitive damages on the ground that there are insufficient facts alleged to support this request. Defendant relies on *Taylor v. Superior Court* (1979) 24 Cal.3d 890, in which the court indicated that disobedience of traffic laws generally does not support a punitive damages award. In *Taylor*, the court first held that "the act of operating a motor vehicle while intoxicated may constitute an act of 'malice' under section 3294 if performed under circumstances which disclose a conscious disregard of the probable dangerous consequences." (*Id*. at p. 892.) The court rejected the defendant's argument that the plaintiff had to allege an intent by the defendant to harm the plaintiff, stating that "a conscious disregard of the safety of others may constitute malice within the meaning of section 3294 of the Civil Code. In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." (*Ibid*.) The court declined to consider the defendant's argument that one who wilfully disobeys traffic signals or

speed limits does not possess the requisite state of mind and culpability, stating that "[t]hat case is not before us and we express no opinion on it." (*Id*. at p. 899.) The court did state, however, that "[a]lthough the circumstances in a particular case may disclose similar wilful or wanton behavior in other forms, ordinarily, routine negligent or even reckless disobedience of traffic laws would not justify an award of punitive damages." (*Id*. at pp. 899-900.)

The court in *Herrick v. Superior Court* (1987) 188 Cal.App.3d 787 noted the specific circumstances relating to drunk driving considered by the court in *Taylor*: "*Taylor* justified imposing punitive damages upon the 'deliberate' drunk driver for many reasons, including the high degree of foreseeability of injury and damage flowing from driving while intoxicated. The court says the essential allegation is '[d]efendant became intoxicated and thereafter drove a car while in that condition, despite his knowledge of the safety hazard he created thereby.' (*Taylor v. Superior Court*, *supra.*, 24 Cal.3d at p. 896.) The decision also discusses the serious havoc wrought by intoxicated drivers nationwide and equates the act of deliberately driving while under the influence with a conscious and deliberate disregard of the interests of others which may be described as willful or wanton. (*Taylor v. Superior Court*, *supra.*, 24 Cal.3d at p. 899.) Such conduct, the court said, has traditionally been a basis for awarding punitive damages." (*Id*. at p. 790.)

In this case, however, Plaintiffs' allegations are insufficient to support a punitive damages award. Once the legal and other conclusory allegations are stripped away, the Complaint alleges only that Defendant was driving at an unsafe and unlawful speed and crossed over a solid double yellow line into a lane with oncoming traffic for the purpose of passing another vehicle. There are no allegations that Defendant was drunk, otherwise impaired, or had any kind of intent to injure Plaintiff or to put her at risk. While Plaintiffs' allegations may support a finding of reckless disobedience of traffic laws, *Taylor* indicates that such reckless disobedience is insufficient. Defendant's motion to strike is therefore granted, with leave to amend.

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

The Zoom appearance information for November, 2026 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/24/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0010721

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: WASHINGTON TOWN CENTER, LLC vs. DEFENDANT: ALEXANDER DICHIARA	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

In light of the acknowledgment of satisfaction filed on September 17, 2026, this matter is ordered off-calendar.

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

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