

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200213

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: SHOSHANA SKLARE

vs.

DEFENDANT: KAISER FOUNDATION
HOSPITAL, INC., ET AL

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendants’ motion for summary judgment or summary adjudication is denied.

Allegations in Plaintiff’s First Amended Complaint

Plaintiff alleges that on her second day on the floor as a nurse at Kaiser, she was shadowing another nurse and was prohibited by Kaiser’s policies from acting independently. She was also not familiar with Kaiser’s particularized computer systems, charting system, and specific practices and procedures. (First Amended Complaint (“FAC”), ¶¶14-19.) A patient who presented with certain symptoms was discharged without a MRI and later died. (*Id.*, ¶¶21-24.) The family filed a wrongful death claim against Kaiser, whose legal department, through Andrew Ferguson, allowed Plaintiff to be deposed without preparation or representation. (*Id.*, ¶¶25, 26.) The patient’s family also filed a complaint with the Board of Registered Nursing (“BRN”) against Plaintiff and two other Kaiser nurses, alleging among other things that Plaintiff did not speak with or help the patient. (*Id.*, ¶29.) As the BRN investigated the complaint, Kaiser Legal advised Plaintiff that there was nothing for her to worry about and that Kaiser Legal would handle it, and allowed her to meet with the investigator without preparation or legal representation. (*Id.*, ¶¶30-36.) After the BRN investigation, the Attorney General notified Plaintiff she was being charged with gross negligence. (*Id.*, ¶38.) Kaiser hired Defendant Ann Larson, an attorney with Defendant Craddick, Candland & Conti, to represent Plaintiff against the charges. (*Id.*, ¶39.) Ms. Larson was also representing one of the other nurses, telling Plaintiff there was no conflict, and did not communicate with Plaintiff regularly and failed to give Plaintiff crucial information. (*Id.*, ¶¶43, 58, 60.) Ms. Larson failed to obtain documents and evidence that would have supported Plaintiff’s defenses. (*Id.*, ¶¶49, 50, 52-54, 56, 59.) Kaiser’s legal department undertook to represent Plaintiff, holding itself as protecting Plaintiff’s interests, but it never advised Plaintiff that their legal interests conflicted or of any adverse risks to Plaintiff’s future career, reputation or legal rights. Kaiser also never advised Plaintiff that she

had the option for different counsel. (*Id.*, ¶63.) Kaiser knowingly made untrue representations to Plaintiff to contain or minimize any evidence that may flow from the best defense for Plaintiff as it could expose Kaiser to greater legal liability. (*Id.*, ¶64.)

Plaintiff's First Cause of Action alleges, among other things, that Ms. Larson and Craddick, Candland & Conti (for this motion, "Defendants") breached their fiduciary duties to Plaintiff by, among other things, representing the interests of other clients (Nurse De La Cruz and Kaiser) whose interests conflicted directly with Plaintiff's interests, failing to obtain a conflict of interest waiver, failing to timely inform the BRN that the charges against Plaintiff would likely fail because of evidence that Plaintiff was on her second training shift and Kaiser policies prohibited Plaintiff from being responsible, failing to obtain the BRN's release of Plaintiff from the accusations or a better negotiated settlement that avoided a hearing, failing to present hospital daily records to the BRN that would show Plaintiff was unable to access the patient's chart and records, failing to fully inform Plaintiff of the impact of the deposition, interview and investigation on Plaintiff's further education and employment opportunities, failing to explain the risks of their proposed course of conduct or continued representation of Plaintiff, failing to explain the risk of representing multiple clients, and violating the attorney-client privilege by disclosing privileged information to Kaiser that prejudiced Plaintiff's rights. (*Id.*, ¶¶75, 76, 80-86.)

Plaintiff's Second Cause of Action alleges, among other things, that Defendants are liable for professional negligence because they acted below the level of skill and care that a reasonably careful attorney would use in similar circumstances. (*Id.*, ¶¶93-102.) The Third Cause of Action alleges, among other things, that Defendants knowingly and falsely represented that the conflict of interest between Plaintiff and Nurse De La Cruz was insignificant, that it was unnecessary to present the facts to the BRN that Plaintiff did not have access to the patient's charts, that Ms. Larson was getting evidence that exonerated Plaintiff and presenting it to the BRN when in fact she did not carry out this instruction from Plaintiff, and that Ms. Larson was keeping Plaintiff's privileged communications with her confidential when she in fact shared them with Kaiser. Plaintiff also alleges that Defendants failed to disclose to her that Ms. Larson was also representing Kaiser's interests and Nurse De La Cruz's interests, that they would not vigorously prosecute Plaintiff's case, and that there were risks to joint representation. (*Id.*, ¶109.)

Standard

Defendants have filed a motion for summary judgment or, in the alternative, for summary adjudication.

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal. App. 4th 1110, 1119.)

“On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact.” (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or summary adjudication “has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action.” (Code Civ. Proc. § 437c(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.” (Code Civ. Proc. § 437c(p)(2).) “A triable issue of material fact exists if the evidence reasonably permits a trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof.” (*Bakos v. Roach* (2025) 108 Cal.App.5th 390, 395.)

“When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment.” (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467; Code Civ. Proc. §437c(e).) The moving party’s evidence must be strictly construed, while the opposing party’s evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

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

Request for Judicial Notice

Plaintiff’s request for judicial notice of the Decision in the Matter of the Accusation against Plaintiff (Exhibit 1), the BRN’s Accusation against Plaintiff (Exhibit 3), the BRN’s Decision and Order for Nurse Girly Gargar and Stipulated Settlement and Disciplinary Order in BRN Case No: 2020-205 (Exhibit 7), and the BRN’s Accusation against Nurse De La Cruz, Case No. 2020-483 (Exhibit 12), is granted. (Evid. Code §§ 452, 453.)

Evidentiary Objections

Plaintiff’s Objection Nos. 1-3, 6 and 8-11 are overruled. Objection No. 5 is sustained as Defendants fail to submit the Declaration of Ann Larson. Objection No. 4 is sustained. (See *Great American Ins. Cos v. Gordon Trucking, Inc.* (2008) 165 Cal.App.4th 445, 450.) Objection No. 7 is sustained (foundation, authentication).

Defendants’ Objection Nos. 1, 3-17, 19, 21-25 to Plaintiff’s declaration, and to Exhibits 13, 20 and 21, are overruled. Objection Nos. 2 and 18 are sustained (foundation). The Court does not rule on Defendants’ Objection to Exhibit 8 because it is not material to the Court’s ruling. (Code Civ. Proc. § 437c(q).)

Second Cause of Action

Defendants move for summary adjudication of the Second Cause of Action for professional negligence on the ground that the evidence establishes there is no causal relationship between Ms. Larson's conduct and Plaintiff's alleged harm.¹

“[T]he plaintiff need not prove causation with absolute certainty. Rather, the plaintiff need only introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result.” (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1243 [citation and internal quotations omitted]; see also *Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509 [“To show damages proximately caused by the breach, the plaintiff must allege facts establishing that, but for the alleged malpractice, it is more likely than not the plaintiff would have obtained a more favorable result”] [citation and internal quotations omitted]; *Masellis v. Law Office of Leslie F. Jensen* (2020) 50 Cal.App.5th 1077, 1092 [recovery of compensatory damages in legal malpractice cases is governed by preponderance of the evidence standard].) “In legal malpractice claims, the absence of causation may be decided on summary judgment only if, under undisputed facts, there is no room for a reasonable difference of opinion.” (*Knapp v. Ginsberg* (2021) 67 Cal.App.5th 504, 526 [citation and internal quotations omitted].)

Defendants argue that Plaintiff cannot establish causation and resulting damages. However, a defendant cannot shift the burden to the plaintiff merely by stating that the plaintiff cannot meet her burden. (See *Scheidig v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 83.) “[A] defendant cannot simply ‘argue’ that a plaintiff lacks sufficient evidence to establish causation; the defendant must make an affirmative ‘showing’ that the plaintiff *cannot* do so.” (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 103 [emphasis in original]; see also *Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433, 1439 [“the defendant must make an affirmative showing that the plaintiff will be unable to prove its case by any means”].)

While Defendants do not cite to specific Undisputed Material Facts (“UMF”) that they contend support their causation/damages argument in their memorandum (see MPA pp. 20-21), which would have been helpful, the Court’s review of Defendants’ Separate Statement indicates that Defendants rely on their UMF 7, 10-18, 30-35, and 37-49 to satisfy their initial burden. UMF 10 is not established as the only evidence cited in support is the Declaration of Ann Larson, which is not included with Defendants’ papers, and UMFs 13, 14, 17, 18, 32, 35, 40, 41 and 49 are not established to the extent they rely on Defendants’ Exhibits 30 or 31 (see Ruling on Objection Nos. 4 and 7). The evidence supporting Defendants’ UMF 7, 11-16 and 18 establishes the following: the Accusation filed against Plaintiff sought to revoke or suspend Plaintiff’s license (UMF 7); the BRN statement to Plaintiff advised that if Plaintiff did not submit a written request for hearing within 15 days, she would be deemed to waive her right to a hearing and the BRN could proceed with a hearing and take any action as provided by law; further, a stipulated settlement could be available if consistent with the BRN’s established disciplinary guidelines (UMF 11); the proposed decision as to Plaintiff stated that the BRN had the burden to establish allegations by clear and convincing evidence (UMF 12, 13, 15); the BRN disciplinary guidelines

¹ The Court addresses the three causes of action in the same order as Defendants’ briefs and separate statement, i.e., Second, Third, and then First.

discuss 13 mandatory and 7 optional probation conditions to be included in probationary decisions/orders; recovery of investigatory and enforcement costs is included as a mandatory condition and therapy or counseling program is included as an optional condition (UMF 14-16); Plaintiff testified in her deposition that she did not know if the accusation would have been dropped if Ms. Larson provided information to the BRN earlier (UMF 18). The evidence supporting UMF 17, 30-32, 34 and 41 establishes the following: Mr. Tuss, the Deputy AG responsible for prosecuting the Accusation against Plaintiff, testified that if the BRN wants to settle a case, it transmits an offer to the accused party and if it is accepted, he drafts a stipulated settlement and sends it to the board for consideration (UMF 17, 41); Mr. Tuss sent an email to Ms. Larson on January 13, 2020 stating among other things “At this time, the Board of Registered Nursing is not extending an offer to respondents other than surrender” but that the BRN “may reconsider” if the respondents submitted certain mitigating evidence (UMF 30); Mr. Tuss had never entered into a written settlement with a nurse, who was subject to an accusation in disciplinary proceedings, where the settlement resulted in a complete dismissal with no probation or other conditions attached (UMF 31); Mr. Tuss did not recall extending a settlement offer to Plaintiff that did not contemplate any type of probationary conditions being imposed (UMF 32); and it is a usual and standard condition of entering into a settlement of a nurse who is subject to an accusation to include a condition that the nurse pay investigatory costs (UMF 34). The evidence supporting UMF 33 and 35 establishes that Plaintiff testified that a resolution that involved her being put on probation was not acceptable to her (UMF 33) and that she did not know if there was anything that could have been communicated to the BRN that would have led to a dismissal of the accusation prior to the disciplinary hearing (UMF 35). The evidence supporting UMF 37-40 and 42-49 establishes the following: the ALJ found that the BRN did not meet its burden and the case against Plaintiff should be dismissed, and that Plaintiff did not need to pay investigatory costs (UMF 37-39, 42); Plaintiff testified that a dismissal of the accusation would be the best outcome but that it was an unnecessary road getting there (UMF 40); Plaintiff admitted in an RFA response that Kaiser paid her attorney’s fees and costs (UMF 42); Plaintiff stated in discovery responses that Kaiser never terminated her employment, that she quit working for Kaiser voluntarily before the accusation was dismissed, and that she did not receive any consultation or examination from a health care provider for any injury incurred in connection with the proceedings; she also did not identify any physical injury she suffered (UMF 43, 45, 48); Plaintiff testified that the ALJ recommended the case against her be dismissed and the RJN adopted the ALJ’s findings (UMF 44); Plaintiff testified that no potential employer told her she could not be hired because there was an accusation pending against her (UMF 46); Plaintiff testified that she made a profit from selling her house in the approximate amount of \$250,000-300,000 (UMF 47); and Plaintiff testified that she had not had any contact with Defendants until after she was interviewed by the investigator (UMF 48).

As reflected above, Defendants have not submitted evidence that Plaintiff “cannot” establish resulting damages. For example, they do not submit “factually devoid” responses to discovery asking Plaintiff to identify “all facts” supporting causation or her damage claims. (See e.g., *Andrews*, 138 Cal.App.4th at p. 107.) Therefore, the burden does not shift to Plaintiff to make an affirmative showing supporting her damages.

Plaintiff has raised triable issues of fact in any event. In response to Defendants’ UMF 5, 17, 34, and 41, which Plaintiff disputes, Plaintiff submits Mr. Tuss’ testimony in which he testified that he referred to the investigator report when drafting the Accusation against Plaintiff,

the client the DOJ represents is able to withdraw an accusation once it has been signed and put into play, and he did not recall if he had ever offered a settlement to a nurse subject to an accusation that did not require the nurse to pay investigative costs. (Pl. Exh. 2 at 15:21-25, 16:1-25, 17:1-6, 19:14-25, 20:1-25, 21:1, 73:1-16.) In response to UMF 18 and 40, which Plaintiff disputes, Plaintiff submits her deposition testimony in which she testified that a better outcome would have been for her to have an attorney at the interview with the investigator, and an attorney who communicated with the AG about “the discrepancy between my charges and the reality of when I was in the hospital”; she also states in her declaration that Ms. Larson did not obtain evidence from Kaiser or advocate to the BRN before the hearing that its charges should be dismissed. (Pl. Exh. 4 at 115:4-18; Declaration of Shoshana Sklare (“Sklare Decl.”) ¶ 20.) In response to UMF 30, which Plaintiff disputes, Plaintiff refers to her declaration in which she states that Ms. Larson did not inform her of the BRN’s January 13, 2020 offer to surrender her license, of any strategy for having the BRN dismiss its action against her, or that the Accusation was a matter of public record. (Sklare Decl. ¶14.) In response to UMF 33, which Plaintiff disputes, Plaintiff refers to her declaration in which she states that Ms. Larson consistently informed her she should not worry about the Accusation, that she would handle it, and that at most, BRN would request that Plaintiff take some continuing classes on patient care. Ms. Larson did not make a recommendation about resolving the Accusation without going to a hearing. (*Id.*, ¶21.) In response to UMF 35, which Plaintiff disputes, Plaintiff submits Ms. Larson’s deposition testimony in which she testified that she had a call with Kaiser on January 9, 2020 about a potential conflict of interest in representing Plaintiff and another nurse, and that she sent a mitigation package to Mr. Tuss for Plaintiff dated January 5, 2021, six days before the hearing. (Pl. Exh. 15 at 110:5-112:1-15, 153:6-154:1-20; Pl. Exh. 22.) In response to UMF 42-45 and 47, which Plaintiff disputes, Plaintiff refers to her declaration in which she states that neither Kaiser nor Ms. Larson informed her that a background check would disclose the existence of the Accusation, Ms. Larson did not tell her she should not leave her job at Kaiser or ask for her job back, she left her job at Kaiser relying on Kaiser and Ms. Larson’s representations she did not have to worry about the Accusation, she would not have terminated her employment with Kaiser if she knew the Accusation was a matter of public record, she left Kaiser with the plan to enroll in the Nurse Practitioner program at Walden but was told by Walden that her application was on hold while the Accusation was pending, she did not believe Kaiser would rehire her with the Accusation pending, she did not reapply to Walden after the Accusation was dismissed because her financial situation had grown worse due to Defendants’ conduct and she needed to work, she was out of the work force for two years before she was able to secure employment, during the time she was unemployed she had to pay for health care for herself and her son out of pocket and had to borrow from her retirement and sell her home to pay living expenses, she paid \$2,000 in penalties for early withdrawal, she was 12 months behind on mortgage payments when she sold her home, she paid \$85,000 to prepare the home for sale and paid off private lenders with the sale proceeds, and she now pays \$750 more in rent than she paid in mortgage payments. (Sklare Decl., ¶¶17, 24.) In response to UMF 46, which Plaintiff disputes, Plaintiff submits her deposition testimony in which she states that after she was exonerated by the ALJ she did not apply for a nursing position because they would do a license check and see the public accusation and she did not want that record on her profile for each hospital, and despite the ruling hospitals would not risk giving her an interview due to her involvement. (Pl. Exh. 4 at 208:3-210:1-23.) In response to UMF 49, which Plaintiff disputes, Plaintiff submits Ms. Larson’s deposition testimony in which she testified that Plaintiff sent her an email on February 2, 2021 expressing her dissatisfaction with Ms. Larson’s representation, that she understood Plaintiff was concerned

about losing her license, and that she emailed Kaiser about Plaintiff's email. (Pl. Exh. 15 at 176:23-178:1-11, 184:11-187:1-13; Pl. Exh. 23.) She also refers to her declaration in which she states that she did not know that Ms. Larson disclosed her February 2nd email to Kaiser and did not consent to it, she did not know that Kaiser's in house counsel assisted Ms. Larson in drafting a response to her, and she experienced emotional distress feeling betrayed by Ms. Larson. (Sklare Decl. ¶ 25.) Plaintiff also submits evidence in support of her Additional Undisputed Material Facts ("AUMF"), which establishes the following. The Accusation was filed after Plaintiff's deposition and her meeting with the investigator, and was based in part on the investigator's report. (AUMF 19.) Kaiser's Zennie Caughlin emailed Ms. Larson stating that the Accusation had come "out of the blue" and that she just learned that Plaintiff was interviewed by the investigator, and further that she told Plaintiff they would have never scheduled a meeting of that nature without any prep. (AUMF 22.) Ms. Larson advised Plaintiff she would be representing her shortly after the Accusation was served. (AUMF 23.)

Plaintiff has adequately raised a triable issue of fact to support her theory that a different result could have occurred if more information had been provided by Defendants to the BRN earlier, i.e., the BRN could have withdrawn the investigation against her at an earlier point in time. While Ms. Larson did not become involved until shortly the Accusation was filed, Plaintiff has offered sufficient evidence about Defendants' conduct after her retention to raise a triable issue of fact as to whether Defendants could have obtained an earlier dismissal or withdrawal of the Accusation. Summary adjudication based on causation/resulting damage is therefore inappropriate. (See *Ganoe v. Metalclad Insulation Corp.* (2014) 227 Cal.App.4th 1577, 1584-1585 [plaintiff's evidence that he was present in building when defendant removed asbestos-containing insulation was sufficient to support inference he could prove causation, for purposes of opposing defendant's motion based on "no evidence" theory].)

Third Cause of Action

Detrimental Reliance

Defendants move for summary adjudication of the Third Cause of Action for intentional misrepresentation on the ground that the evidence conclusively establishes that Plaintiff cannot prove detrimental reliance, i.e., that she was damaged because she relied upon Ms. Larson's representations. Defendants do not cite to specific UMFs to support this argument in their memorandum, which as noted above would have been helpful. According to Defendants' Separate Statement, Defendants are relying on UMF 50-61 in support of their detrimental reliance argument. UMF 51, 52 and 55-61, regarding Plaintiff's claimed damages, essentially mirror UMFs cited to support Defendants' motion as to the Second Cause of Action. UMF 54 is not established as it cites only to Exhibit 30 which is subject to Objection No. 4 as noted above. UMF 53 addresses the information Ms. Larson shared with Kaiser and cites to Plaintiff's deposition testimony in which she stated that Ms. Larson told her she would discuss a possible conflict of interest with Kaiser, Ms. Larson's email to Plaintiff dated February 2, 2021 in which she stated among other things that "The best course, I believe, is that I forward your complaints to TPMG Legal, who retained me, and to get their input as to the best course of action", and Plaintiff's February 5, 2021 letter to the ALJ in which she stated among other things "I would like to explain to you that I am concerned about part of my representation."

Defendants fail to satisfy their burden that Plaintiff “cannot” prove detrimental reliance as they do not point to any “factually devoid” discovery responses from Plaintiff. Defendants’ argument that Plaintiff cannot prove Defendants could have obtained a better outcome is rejected for the reasons discussed above. Plaintiff presents evidence sufficient to raise a triable issue of material fact in any event. In response to UMF 52, which Plaintiff disputes, Plaintiff submits evidence that the BRN has the authority to dismiss Accusations against nurses. (Pl. Exh. 2 at 73:1-16). In response to UMF 53 and 61, which Plaintiff disputes, Plaintiff refers to paragraph 25 of her declaration in which she states that (i) she was very distressed about Ms. Larson’s failure to obtain and present exonerating evidence helpful for her defense, and wrote her February 2, 2021 email to Ms. Larson, (ii) she did not know that Ms. Larson disclosed the contents of her confidential email to Kaiser, and did not consent to it, and did not know that Kaiser’s inhouse counsel Gary Dulberg assisted in crafting Ms. Larson’s response to her, (iii) she discovered that Ms. Larson was disclosing her strategy and her negative view of her case to Kaiser while simultaneously assuring Plaintiff that she did not have anything to worry about, and (iv) the discovery that Ms. Larson was simultaneously representing Dr. Sax caused her additional emotional distress because she had confided to Ms. Larson repeatedly about her concerns that the patient should not have been discharged by Kaiser. In response to UMF 55 and 56, Plaintiff refers to paragraph 17 of her declaration in which she states that Ms. Larson did not tell her a background check would disclose the existence of the Accusation and that had she known the Accusation was a matter of public record she would not have terminated her employment with Kaiser to attend grad school. Plaintiff also refers to paragraph 24 (also cited in response to UMF 58 and 60) in which she states that she quit her job at Kaiser relying on Ms. Larson’s assurances that she did not have to worry about the Accusation, and then found herself unemployed with no health care benefits for her or her son. It took her two years to find another position, and during that time she had to borrow from her retirement and sell her house to pay bills. If Ms. Larson had told her she should not leave Kaiser while the Accusation was pending, she would have followed her advice. In response to UMF 57, which Plaintiff disputes, Plaintiff refers to paragraph 23 of her declaration in which she states that Ms. Larson never notified her that their attorney-client relationship had terminated and did not advise her as to how to have the Accusation removed from her public listing on the BRN website. The Accusation was attached to her license on the BRN's website for an extended period of time. In response to UMF 59, which Plaintiff disputes, Plaintiff cites her deposition testimony in which she testified that it is not a good look among nurses and employers that a nurse has had an accusation against them and the reason she did not apply for a nursing position after being exonerated is because she did not want that on her record in her profile for each hospital. She did eventually get a job. (Pl. Exh. 4 at 208:3-210:24.)

Plaintiff has adequately raised triable issues of fact to support her theory that she relied on representations or omissions by Ms. Larson to her detriment.

Knowledge of Falsity

Defendants move for summary adjudication on the additional ground that Plaintiff cannot prove Ms. Larson made a knowingly false representation. According to Defendants’ Separate Statement, Defendants rely on UMF 62-141 in support of this argument. UMF 62, which is undisputed, identifies eight misrepresentations or omissions Plaintiff alleges were made by Ms. Larson, which include: (1) she represented that the conflict of interest between Plaintiff and

Nurse De La Cruz was insignificant; (2) she represented that it was unnecessary to present facts during the disciplinary hearing that Plaintiff did not have access to the Patient's charts; (3) she represented that she was getting evidence that exonerated Plaintiff from allegations in the Accusation; (4) she represented that she was keeping Plaintiff's privileged communications confidential; (5) she failed to disclose she was representing Kaiser interests; (6) she failed to disclose that she would not vigorously prosecute Plaintiff's defense in the disciplinary proceedings; (7) she failed to disclose she was also representing Nurse De La Cruz and the risks of joint representation; and (8) she failed to advise Plaintiff of the risks presented by her conduct during the disciplinary proceeding.²

Knowledge of the party charged with the representation or concealment is a question of fact for the jury. (See *Buist v. C. Dudley De Velbiss Corp.* (1960) 182 Cal.App.2d 325, 332; *Intrieri v. Superior Court* (2004) 177 Cal.App.4th 72, 86-87; *Radinsky v. T.W. Thomas, Inc.* (1968) 264 Cal.App.2d 75, 80.)

Defendants once again fail to satisfy their burden of showing that Plaintiff "cannot" show that Ms. Larson made knowingly false representations, through factually devoid discovery responses or otherwise, and thus the burden does not shift to Plaintiff to present evidence supporting her allegation that Ms. Larson knew some or all of the representations or omissions were fraudulent.

First Cause of Action

Defendants move for summary adjudication of the First Cause of Action for breach of fiduciary duty on the grounds that the evidence establishes that Ms. Larson did not owe Plaintiff the alleged duties and there is no causal relationship between Larson's conduct and Plaintiff's alleged harm.

Fiduciary Duty

Defendants argue that Ms. Larson did not owe a fiduciary duty (1) to disclose a purported conflict of interest or withdraw from her representation of Nurse De La Cruz because the evidence shows the two nurses' interests were not in conflict, or (2) to provide advice outside the scope of the representation, such as advice about potential effects on Plaintiff's future educational or employment opportunities. However, Plaintiff alleges fiduciary duties that go beyond those briefly discussed in Defendants' brief with respect to this cause of action. (See First Amended Complaint, ¶¶80, 84-86; see MPA, pp. 27-28.) "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. § 473c(f)(1).) The motion is therefore not granted on the basis that Plaintiff cannot show Defendants owed her a fiduciary duty.

Resulting Damages

² The Court does not address whether these alleged misrepresentations and omissions are sufficient to support an intentional fraud claim, as Defendants do not make this argument in their papers.

Resulting damage is an essential element of Plaintiff's First Cause of Action for breach of fiduciary duty. (See *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 524.) Defendants suggest that a "but for" causation analysis may apply to this cause of action similar to the Second Cause of Action for legal malpractice (MPA, p. 4:21-25.) Because Plaintiff's First Cause of Action is based on intentional conduct (FAC, ¶¶83-85), it is subject to the substantial factor causation standard. (*Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1094 ["Substantial factor causation is the correct causation standard for an intentional breach of fiduciary duty"]; see also *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1095.)³

"To demonstrate causation, a plaintiff must show that the defendant's act or omission was a substantial factor in bringing about the injury. [The] actor's negligent conduct is not a substantial factor in bringing about harm . . . if the harm would have been sustained even if the actor had not been negligent." (*Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519, 1535-1536 [citations and internal quotations omitted].) "[C]ausation . . . is ordinarily a question of fact which cannot be resolved by summary judgment. The issue of causation may be decided as a question of law only if, under undisputed facts, there is no room for a reasonable difference of opinion. The question about what would have happened had [the lawyer] acted otherwise is one of fact unless reasonable minds could not differ as to the legal effect of the evidence presented." (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 864 [citations and internal quotations omitted]; see also *Ambriz*, 146 Cal.App.4th at p. 1532-1533.)

Defendants argue that "the undisputed facts conclusively establish that there is no causal relationship between Ms. Larson's conduct and Plaintiff's alleged [harm]." (MPA, p. 28:9-10.) This argument is rejected for the reasons discussed above in connection with the Second Cause of Action.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

³ Even if the First Cause of Action was also based in part on alleged negligent conduct, summary adjudication would be appropriate only if Defendants satisfied their burden in showing they were entitled to judgment as a matter of law on both theories (negligence and intentional conduct.) (See Code Civ. Proc. § 437c(f)(1).)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2200618

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: LILY FILMS, INC., ET AL

vs.

DEFENDANT: DATASAFE, INC., ET AL

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendants Dan Sawyer (“Sawyer”) and Daryl Savage’s (“Savage”; together, “Defendants”) motion for summary judgment is DENIED. Their motion for summary adjudication is GRANTED IN PART and DENIED IN PART as follows (Code Civ. Proc., § 437c, subd. (f)(1)):

Issue Nos. 1 (negligence claim), 4 (damages), and 5 (affirmative defense of limitation of liability) – Denied as to both Defendants.

Issue No. 2 (conversion claim) – Granted as to Savage and denied as to Sawyer.

Issue No. 3 (trespass to chattels claim) – Granted as to Savage and denied as to Sawyer.

Issue Nos. 6 (theft claim), 9 (punitive damages) – Granted as to both Defendants.

Issue Nos. 7 and 8 (deceit claims) – Motion moot.

BACKGROUND

This case concerns the destruction of certain artwork and writings created by the late artist and Grateful Dead musician Jerry Garcia. The SAC identifies Plaintiff Deborah Koons Garcia as Mr. Garcia’s widow. (SAC, ¶ 12.) Plaintiffs allege that they stored certain original drawings and writings (the “Artwork”) by Mr. Garcia in one of Defendant DataSafe, Inc.’s (“DataSafe”) storage facilities. (*Id.* at ¶¶ 8-9, 12.) Plaintiffs’ representative visited DataSafe’s facility to collect a lockbox containing the Artwork and found it empty. (*Id.* at ¶ 14.) DataSafe allegedly admitted that one of its employees had removed and destroyed the Artwork. (*Id.* at ¶ 16.) Once DataSafe learned of its potential liability to Plaintiffs, it allegedly rendered itself insolvent by transferring assets to Defendants Rob, Tom, and Scott Reis (“Reis Defendants”). (*Id.* at ¶¶ 6, 20.) Plaintiffs claim the Reis Defendants accepted those transfers with knowledge that DataSafe was liable to Plaintiffs and would be rendered insolvent by the transfers. (*Id.* at ¶ 20.)

Plaintiffs assert causes of action for trespass to chattels, conversion, negligence, breach of contract, deceit (two counts), theft, voidable transactions, and “liability of shareholders/members.” In January 2025, Plaintiffs filed a Doe amendment identifying Does 3 and 4 as Sawyer and Savage. The Court now considers Sawyer and Savage’s joint motion for summary judgment, or, in the alternative, summary adjudication.

LEGAL STANDARD

Any party may move for summary judgment. (Code of Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The motion “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th 826, 843.) Similarly, a party may move for summary adjudication as to a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) “A motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment.” (Code Civ. Proc., § 437c, subd. (f)(2).) The object of the summary judgment procedure is “to cut through the parties’ pleadings” to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th 826, 843.)

The “party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact.” (*Aguilar, supra*, 25 Cal.4th 826, 850; see Evid. Code, § 110.) “A prima facie showing is one that is sufficient to support the position of the party in question.” (*Aguilar, supra*, 25 Cal.4th 826, 851.) When the moving party is the defendant, the initial burden entails showing “that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).) Once the moving party has met its initial burden, the burden shifts to the opposing party to “show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (Code Civ. Proc., § 437c, subds. (p)(1)-(2).) “There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar, supra*, 25 Cal.4th 826, 845.)

Throughout the process, the trial court “must consider all of the evidence and all of the inferences drawn therefrom.” (*Aguilar, supra*, 25 Cal.4th 826, 856.) The moving party’s evidence is strictly construed, while the opponent’s is liberally construed. (*Id.* at p. 843.)

DISCUSSION

Plaintiffs’ Evidentiary Objections

Declaration of Robert Reis, Defendants’ Ex. A

1. Sustained as to first sentence. (Evid. Code, § 1200 [hearsay].)
2. Sustained as to the following: “After looking at the materials inside the canister, Mr. Sawyer and Mr. Savage believed that the contents belonged to a former employee, Carlos Cabrera. . . . [T]hey did not believe the canister contained client material[.] . . . They did not know it belonged to Plaintiffs and would not have destroyed it if they had known.”

Mr. Reis' knowledge of Sawyer's and Savage's subjective beliefs, knowledge, and intentions necessarily could only have come from statements from Sawyer and Savage. This material is recounting those statements for their truth and so is hearsay. (Evid. Code, § 1200.)

3. Overruled.

Declaration of Daryl Savage, Defendants' Ex. C

4. Overruled.
5. Sustained as to "and told me that he could not identify the owner" through "speaking with other employees in the media vault" only. (Evid. Code, § 1200 [hearsay].)

Declaration of Dan Sawyer, Defendants' Ex. D

6. Overruled.
7. Overruled.
8. Sustained as to "she did not know" only. (Evid. Code, § 1200 [hearsay].)

Declaration of Diana J. Vernazza, Defendants' Ex. E

9. Sustained as to Defendants' Ex. M; overruled as to the paragraph of the Vernazza Declaration authenticating Ex. M. (Evid. Code, § 1200 [hearsay].)
10. Overruled. Plaintiffs argue that deposition transcripts are inadmissible hearsay. The summary judgment statute expressly provides that the motion "shall be supported by affidavits, declarations, admissions, answers to interrogatories, *depositions*, and matters of which judicial notice shall be taken." (Code Civ. Proc., § 437c, subd. (b)(1) [emphasis added]; see also Code Civ. Proc., § 437c, subd. (b)(2) [same rule for oppositions to motions for summary judgment].) The content of a deposition necessarily can only come before a court in hearsay form, i.e., in the form of a writing or video presenting the statements made during the deposition for their truth. If this were enough to render these statements inadmissible to support a summary judgment motion, Section 437c(b)(1) could have no effect. As long as the proceeding that generated a transcript qualifies as a "deposition," the transcript is not hearsay where offered to support a summary judgment motion. (See *Wong v. Stillwater Ins. Co.* (2023) 92 Cal.App.5th 1297, 1324.) Any portion of deposition testimony in which the deponent described an out-of-court statement would be inadmissible hearsay if offered for the truth of that statement, but the deponent's testimony itself is not inadmissible in connection with a motion for summary judgment simply because it was made outside of court and offered for its truth. The Court notes that Plaintiffs themselves are presenting deposition transcripts as evidence in support of their opposition.
11. Overruled.
12. Overruled.
13. Overruled.

Defendants' Evidentiary Objections¹

Almost all of Defendants' evidentiary objections are brought on the ground that the evidence at issue does not actually support the proposition for which Plaintiffs cite it in their responsive separate statement. This speaks to the weight of the evidence, not its admissibility. Those objections are OVERRULED. The sole objection to which this does not apply is Objection No. 5 to the extent it is based on hearsay, which is OVERRULED. This testimony is describing the declarant's own belief, not explicitly or impliedly recounting an out-of-court statement for its truth.

Merits

Spoliation Argument

Plaintiffs' opposition is based in part on the idea that DataSafe spoliated evidence regarding the sequence of events culminating in the destruction of the Artwork. They present no authority that a party may defeat a motion for summary judgment or adjudication based on what might appear from evidence they do not have and, due to spoliation, cannot obtain. On the contrary, a defendant may prevail on such a motion by showing that a plaintiff lacks and cannot reasonably obtain evidence to support her claims (*Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433, 1438), which is the case where a defendant has spoliated critical evidence. The remedy for spoliation is generally a discovery sanction designed to counteract the effect of the spoliated evidence's absence. (See *Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223.)

Issue No. 1: Third Cause of Action (Negligence)

To prevail on a cause of action for negligence, the plaintiff must prove the existence of a legal duty of care, a breach of that duty, and an injury proximately caused by such breach. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) California's default rule of duty dictates that every person has a duty "to exercise, in his or her activities, reasonable care" to prevent injury to others. (*Cabral v. Ralph's Grocery Co.* (2011) 51 Cal.4th 764, 768; *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214.)

Defendants argue that they owed Plaintiffs no duty of care "with respect to the Artwork" because they did not know that the property Plaintiffs were storing with DataSafe consisted of valuable Jerry Garcia memorabilia. (Memorandum, p. 8.) The default rule of duty dictates that Defendants owed Plaintiffs a duty to exercise reasonable care in their handling of any of the property Plaintiffs stored with DataSafe. Defendants do not present any authority to establish that the identity or value of the property is relevant to the applicability of the general duty of care, or that the facts of this case involve an exception to the applicability of that duty. The Court will not allow them to raise those arguments only in their reply brief. (See *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010 ["The salutary [sic] rule is that points raised in a reply brief

¹ The Court does not consider Defendants' "reply separate statement" because the summary judgment statute does not provide for such a submission. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 306 [abrogated in unrelated part as stated in *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 853, fn. 12].)

for the first time will not be considered unless good cause is shown for the failure to present them before.”)

Defendants argue that they did not breach any duty. A breach of the general duty of care occurs where the defendant’s conduct “ ‘falls below the standard established by law for the protection of others against unreasonable risk of harm.’ ” (See *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997 [quoting Res.2d Torts, § 282].) “Thus, as a general proposition one ‘is required to exercise the care that a person of ordinary prudence would exercise under the circumstances.’ ” (*Ibid.* [quoting *Polk v. City of Los Angeles* (1945) 26 Cal.2d 519, 525].) “Because application of this principle is inherently situational, the amount of care deemed reasonable in any particular case will vary, while at the same time the standard of conduct itself remains constant, i.e., due care commensurate with the risk posed by the conduct taking into consideration all relevant circumstances.” (*Ibid.*)

Defendants explain how the Artwork ended up in the shredder as follows. DataSafe stored the Artwork in a canister assigned the identification number C00010082. (See UMF No. 17; Plaintiffs’ Additional Material Facts (“AMF”) No. 52.) In November 2018, a representative of Plaintiffs, Carolina Santiago, visited DataSafe’s South San Francisco facility to inspect Plaintiffs’ property. (*Ibid.*) Santiago noticed that the protective foam in Canister C00010082 had degraded and reported this to DataSafe employee Donald Love, who told her he would take care of it. (UMF Nos. 20-22.)

In connection with the foam replacement, a DataSafe employee removed the Artwork from Canister C00010082 and placed it into a different container. (Defendants’ Evidence, Ex. M.) Had DataSafe followed its protocol, an employee would have added the new container to Plaintiffs’ account and removed Canister C00010082 from the account. (*Id.*; Ex. S at 55:7-56:9.) DataSafe did not follow its protocol. The new container holding the Artwork was not added to Plaintiffs’ account, and Canister C00010082, now empty, was reshelved with the rest of Plaintiffs’ property. (Ex. M to COE.) The new container was left in DataSafe’s vault without any identification linking it to Plaintiffs’ account with DataSafe.² (*Ibid.*; Ex. T at 47:4-49:11.)

In late 2018, DataSafe was in the process of moving its clients’ materials from its South San Francisco facility to a DataSafe facility in Newark. (UMF No. 24.) As part of the relocation process, Sawyer, an Operations Manager for DataSafe, was responsible for investigating any unidentified materials found at the South San Francisco facility and determining what to do with them. (UMF Nos. 25-26.) In late 2018, he was brought an unidentified canister from the South San Francisco facility. (UMF No. 27.) He attempted to identify the owner of the material in the canister by checking its barcode against DataSafe’s software system, but was unsuccessful. (UMF No. 28.) He also reviewed DataSafe’s older computer text files, but did not find any information that would link the unidentified canister to an owner. (UMF No. 29.) He asked employees at the South San Francisco facility about the unidentified canister and examined paperwork in DataSafe’s media vault, but did not uncover any leads. (UMF Nos. 30-31.) He

² Portions of the narrative as described in this paragraph are not supported by admissible evidence because Defendants’ Exhibit M is inadmissible. The Court provides these facts only for context. The facts supported by Exhibit M are not material to either Sawyer’s or Savage’s liability because, as discussed elsewhere in this ruling, it is undisputed that Sawyer and Savage were not involved in those events.

ultimately brought the matter to his supervisor, Savage, and described the steps he had already taken. (UMF No. 32.) Sawyer and Savage opened the canister together and discovered drawings and illegible writings without any identifying information. (UMF No. 33-35.) They believed the materials looked like sketches made by a former employee, a Carlos Cabrera. (UMF No. 36.) Sawyer spoke to various DataSafe employees who worked in the South San Francisco media vault, and to DataSafe account manager Pat Monderer, asking if they knew who the material belonged to. (UMF Nos. 37-38.) When all of this investigation proved unsuccessful, Savage and Sawyer agreed that the material should be designated for shredding, and Sawyer put it in a box of materials set to be sent to DataSafe's outside shredding service. (UMF Nos. 39-41.)

In May 2019, Santiago returned to DataSafe's facility to retrieve some of Plaintiffs' property. (UMF No. 42.) She discovered that Canister C00010082 was empty. (UMF Nos. 43.) Sawyer noted a resemblance between some of the other property Santiago was retrieving that day and the material DataSafe had designated for shredding. (UMF No. 45.) He contacted Savage and stated that he believed DataSafe had destroyed the contents of the empty canister. (UMF No. 46.) DataSafe later advised Santiago that it had destroyed the contents of Canister C00010082. (UMF No. 47.)

Plaintiffs dispute "the specific sequence of events through which [the Artwork] was separated from canister C00010082, misplaced, and ultimately destroyed[.]" (RSS No. 27.) They specifically dispute, among other things, whether the Artwork was moved from Canister C00010082 to a second and unidentified metal canister or, alternatively, a cardboard box; the precise timing of when Sawyer was presented with the Artwork; and the exact manner in which Sawyer and Savage described the Artwork. (RSS Nos. 27, 34.) These points are not material to Sawyer's or Savage's liability. As to the first point, Plaintiffs do not dispute that the Artwork was presented to Sawyer in some kind of container or box, cardboard or metal (see Opposition, pp. 7-8), and do not present any evidence implicating him or Savage in the events leading up to it being placed in that container. Under these circumstances, the exact path the Artwork took from Canister C0010082 to Sawyer's hands could not affect the outcome of the motion and so is not material. (See Cal. Rules of Court, rule 3.1350(a)(2).)

Plaintiffs also attempt to dispute certain UMFs by raising points that do not contradict them. For example, they dispute the fact that "Sawyer asked employees in the SSF media vault and customer service about the Unidentified Canister" (UMF No. 30) by pointing out that he "never asked Love, Huitron, or former employee Carlos Cabrera." (RSS No. 30.) UMF No. 30 does not say that Sawyer asked any particular employee, so the Court is treating this fact as undisputed. The same goes for Plaintiffs' response to RSS No. 40. These responses do not contradict the UMFs to which they apply, but instead raise new matter that the Court will be consider to the extent Plaintiffs raised it in their recitation of additional facts they contend preclude summary judgment, where it belongs.

Defendants' evidence is sufficient to satisfy their burden to establish that neither of them was negligent in his handling of Plaintiffs' property. Their evidence places the beginning of their involvement with the Artwork, and thus the point at which any potential liability began, at the moment Sawyer was presented with the Artwork as unidentified material. Plaintiffs do not argue that either Sawyer or Savage did anything to cause the Artwork to be floating around DataSafe's facility without any identifier linking it to Plaintiffs, but instead take issue with the sufficiency of

their investigation. Plaintiffs contend that Sawyer and Savage were negligent by failing to check with former employee Cabrera to determine whether the Artwork was actually his. (AMF No. 65.)

Defendants have offered evidence that when the investigation failed to turn up any leads, they concluded that the material was likely Cabrera's and designated it for shredding on that basis. (Defendants' Ex. D [Sawyer Dec.] ¶ 7 ["At this point, having investigated the canister, reviewed its contents and believing the contents were not client materials but likely the drawings of Mr. Cabrera, Daryl Savage and I agreed that the canister should be designated for shredding."]; see also Defendants' Ex. C, ¶ 7 [explaining, as a reason for the destruction, that they "thought the materials inside the Box may belong to a former employee"].) In light of this evidence, a reasonable jury could conclude that the ordinarily prudent person would have contacted Cabrera to determine whether the Artwork was his, ruling out the possibility that it was a client's, before destroying it. That Defendants omitted to do this is not so clearly not a breach of the duty of care that they are entitled to summary adjudication of this cause of action.

Accordingly, summary adjudication of this Issue is DENIED.

Issue No. 2: Second Cause of Action (Conversion)

"Conversion is generally described as the wrongful exercise of dominion over the personal property of another. The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.)

Savage

Liability for conversion requires the defendant to take "some affirmative action to exercise dominion over or deprive a plaintiff of his or her property." (Memorandum, p. 9; see *Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 222 ["[C]onversion requires affirmative action to deprive another of property, not a lack of action."].)

According to Defendants, the two of them agreed that the material should be designated for shredding, Sawyer effectuated this by placing it in a container reserved for shredding by DataSafe's outside shredding service, and the materials were subsequently destroyed. (UMF Nos. 40-41, 47.) Deliberately causing the destruction of property is an affirmative act of dominion over the property that deprives its true owner of it. (See *Bufano v. City and County of San Francisco* (1965) 233 Cal.App.2d 61, 68 ["Any unwarranted assumption of authority over chattels, inconsistent with another's right of possession or subversive of his vested interest therein amounts to conversion."].) But the evidence demonstrates that Savage's involvement in the Artwork's destruction was limited to agreeing with Sawyer that it should be destroyed, i.e., stating his opinion regarding what should be its ultimate disposition. (UMF No. 40.) It was Sawyer who actually dumped the Artwork into a box slated to be sent to DataSafe's shredding service. (UMF No. 41.) Merely stating one's opinion on what should happen to a piece of personal property is not an act of dominion inconsistent with the true owner's right of possession and so cannot support conversion liability. (See *Bufano, supra*, 233 Cal.App.2d 61, 68; *Fremont Indemnity Co., supra*, 148 Cal.App.4th 97, 119.) Plaintiffs do not present any evidence

establishing that Savage did anything to cause the destruction of the Artwork beyond agreeing with Sawyer that it was appropriate to destroy it. Accordingly, Savage is entitled to summary adjudication on this Issue.

Sawyer

Sawyer also seeks summary adjudication on the basis that Plaintiffs cannot prove an affirmative act of dominion. As discussed above, Sawyer's depositing the Artwork in a container set for shredding is an affirmative act of dominion sufficient to support conversion liability. These facts are not like those of *Spates*, where the court rejected a claim for conversion of a dead body based on the defendant's "failure to take further steps to provide notification of the death (that is, inaction versus action)." (114 Cal.App.4th 208, 222; see also *Archer v. Coinbase, Inc.* (2020) 53 Cal.App.5th 266, 277 [cited by Defendants] [no conversion liability absent any evidence that defendant had taken any affirmative action to deprive the plaintiff of a property right or exercise dominion over the property].) *Simonian v. Patterson* (1994) 27 Cal.App.4th 773 is equally unconvincing. There, the Second District held that a father had not converted his daughter's ex-fiancé's personal property when he moved the items to the daughter's new apartment while helping her move out of the couple's home. (27 Cal.App.4th 773, 777-778.) The court noted that " 'the act of removing personal property from one place to another, without an assertion of ownership or preventing the owner from exercising all rights of ownership in such personal property, is not enough to constitute a conversion.' " (*Simonian, supra*, 27 Cal.App.4th 773, 782 [emphasis added] [citing *Itano v. Colonial Yacht Anchorage* (1968) 267 Cal.App.2d 84, 89].) Destroying the Artwork by shredding it prevents Plaintiffs from exercising any of the rights they enjoy in the property as its owner.

Sawyer next contends that liability for conversion requires "an intent to exercise ownership over property which belongs to another" (*Collin v. American Empire Insurance Company* (1994) 21 Cal.App.4th 787, 812) and that this element is missing. He is suggesting that a defendant must know that the property at issue belongs to someone else to be liable for conversion. This is incorrect. "Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial." (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066; *Los Angeles Federal Credit Union v. Madatyan* (2012) 209 Cal.App.4th 1383, 1387 [quoting *Burlesci*]; see also *Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1182 [even a completely innocent bona fide purchaser of goods can be held liable for conversion].) To be clear, there is an intent requirement. The defendant must "have intentionally done the act depriving the plaintiff of his or her rightful possession" of the property. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158; accord *Taylor v. Forte Hotels International* (1991) 235 Cal.App.3d 1119, 1124.) (For example, if Sawyer had tripped and knocked the Artwork into a paper shredder, there could be no conversion liability.) *Wrongful* intent in doing that act, though, is not required. (*Taylor, supra*, 235 Cal.App.3d 1119, 1124; *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1271.)

Sawyer turns to the law of bailors and bailees, arguing that "[i]f a bailee has lost or destroyed a bailor's property, the bailee may not be found to have exercised dominion over the property in a manner constituting conversion." (Memorandum, p. 11.) The case he cites for this, *George v. Bekins Van & Storage Co.* (1949) 33 Cal.2d 834, 838, does not support it. In *George*, the

plaintiffs' belongings were destroyed in a fire at the defendants' warehouse. (*Id.* at p. 837.) The opinion in *George* addresses a specific theory of conversion, one attaching liability to refusal of a bailee to redeliver goods to a bailor when the bailee has the power to do so. (*Ibid.*) The court stated the obvious – that if, for any reason, the bailee does not have the power to redeliver the goods, there can be no liability under this theory. (*Id.* at p. 1040.) Plaintiffs are not suing Sawyer for conversion on the theory that Sawyer merely failed to return the material at issue to Plaintiffs notwithstanding his power to do so, so this part of *George* is irrelevant. *George* does not support the proposition that a bailee can never be held liable for conversion on any theory in the event that a return of the property is impossible.

Sawyer further relies on *George*'s statement that “[n]egligence in caring for the goods is not an act of dominion over them such as is necessary to make the bailee liable as a converter.” (33 Cal.2d 834, 838.) Plaintiffs need not rely on Sawyer's mere alleged failure to exercise reasonable care in caring for the Artwork as the “act of dominion” underlying their conversion claim. His causing the Artwork to be destroyed in a paper shredder is a qualifying act of dominion, whether that act was the culmination of a breach of the general duty of care or not. In *George*, the defendant was accused of negligently causing a fire that happened to destroy the property in question. (33 Cal.2d 834, 838.) If *George*'s defendant had been accused of negligently starting a fire and then intentionally feeding the property at issue to the flames, which is closer to what is alleged here, the Court does not believe the conversion claim could have failed for want of an “act of dominion.” (See *Emmert v. United Bank & Trust Co. of Cal.* (1936) 14 Cal.App.2d 1, 4 [distinguishing, for purposes of conversion claim, “mere negligent conduct” resulting in loss of property from conducting involving “some affirmative act”].)

Sawyer's motion is DENIED as to this Issue.

Issue No. 3: First Cause of Action (Trespass to Chattels)

“The elements of a claim for trespass to personal property are (1) plaintiff owned, possessed, or had a right to property, (2) defendant's intentional interference with plaintiff's use or possession, (3) no consent by plaintiff, (4) harm, and (5) causation.” (Gaab & Reese, Cal. Practice Guide: Civil Procedure Before Trial Claims & Defenses (The Rutter Group 2025) ¶ 12:4 [citing *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1350-1351].)

For the same reasons the Court held that Savage did not commit any affirmative act of conversion, it concludes that, based on Defendants' evidence, he did not commit an act that intentionally interfered with Plaintiffs' use or possession of the Artwork. Plaintiffs' showing does not supply a qualifying act by Savage. He is entitled to summary adjudication of this cause of action. The Court proceeds to analyze this Issue as to Sawyer.

Sawyer argues that he did not have the intent required for trespass to chattels. He relies on *Jamgotchian v. Slender* (2009) 170 Cal.App.4th 1384, 1401, which quoted the Restatement Second of Torts when stating that this cause of action requires that the defendant “intentionally (a) dispossess[] another of the chattel, or (b) us[e] or intermeddl[e] with a chattel in the possession of another.” *Jamgotchian* did not discuss what this language means, so the Court turns to the source. The comments to Restatement Section of Torts, section 217 indicate that the intent required for trespass to chattels liability is present “when an act is done for the purpose of

using or otherwise intermeddling with a chattel or with knowledge that such an intermeddling will, to a substantial certainty, result from the act.” (Rest.2d Torts, § 217, com. c.) “‘Intermeddling’ means intentionally bringing about a physical contact with the chattel.” (Rest.2d Torts, § 217, com. e.) In other words, the intent required of this claim is the intent to do the act that effectuates the trespass. This is the same intent required of conversion, which the Court has already concluded that Sawyer had. (*Taylor, supra*, 235 Cal.App.3d 1119, 1124.) That the intent required of liability for trespass to chattels is not more onerous than that required for conversion is consistent with the view of trespass to chattels as essentially conversion-lite. (See *Jamgotchian, supra*, 170 Cal.App.4th 1384, 1400-1401.)

Sawyer further argues that “trespass to chattels is only available for an interference with property that is ‘minor’ and not ‘sufficiently important’ to be classified as a conversion.” (Memorandum, p. 12.) This is a reference to authorities characterizing trespass to chattels as the “ ‘little brother of conversion’ ” and as targeting an interference “ ‘not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered.’ ” (*Intel Corp., supra*, 30 Cal.4th 1342, 1350; *Jamgotchian, supra*, 170 Cal.App.4th 1384, 1401.) Sawyer’s position is that the total destruction of the Artwork supports conversion, if anything, and is too serious an interference to support liability for trespass to chattels. That the interference be “minor” is not an element of trespass to chattels. Liability can lie provided the interference “have caused some injury to the chattel or to the plaintiff’s rights in it.” (*Jamgotchian, supra*, 170 Cal.App.4th 1384, 1401 [quoting *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1566]; accord *Intel Corp., supra*, 30 Cal.4th 1342, 1350.) A total destruction of the property necessarily satisfies the requirement that there be “some injury.” Sawyer presents no authority for the implied contention that Plaintiffs cannot pursue both causes of action.

Finally, Sawyer argues that Plaintiffs are seeking the full value of the property, which is available only for conversion and not for trespass to chattels. (See *Intel Corp., supra*, 30 Cal.4th 1342, 1351.) This is not an argument that Plaintiffs’ cause of action for trespass to chattels “has no merit” (Code Civ. Proc., § 437c, subd. (f)(1)), but that if they prevail on this cause of action, they will be entitled to less than they are demanding. A court cannot grant a motion for summary adjudication on this basis. (*Ibid.*)

Issue No. 4: Damages

Defendants argue that any liability is limited to \$2.00 due to a limitation of liability provision in Plaintiffs’ contract with DataSafe and certain statutory provisions.

“A party may move for summary adjudication as to . . . one or more claims for damages[.]” (Code Civ. Proc., § 437c, subd. (f)(1).) However, this is limited to claims for *punitive* damages. (*DeCastro West Chodorow & Burns, Inc. v. Superior Court* (1996) 47 Cal.App.4th 410, 421.) This meaning is clear on the face of the statute through its provision that a party may seek summary adjudication as to a claim for damages “if the party contends . . . that there is no merit to a claim for damages, *as specified in Section 3294 of the Civil Code* [pertaining to punitive damages].” (Code Civ. Proc., § 437c, subd. (f)(1) [emphasis added].) Even if a motion for summary adjudication as to a claim for damages were not limited to punitive damages, it could still only be granted if doing so would “completely dispose[] of” the claim for damages at issue. (*Ibid.*) Defendants’ acknowledge that they can be held liable for at least *some* damages

regardless of the success of their argument. A party's ability to seek summary adjudication of a "claim for damages other than punitive damages that does not completely dispose of a cause of action" is governed by Code of Civil Procedure, section 437c, subdivision (t). Such a motion may be brought only with leave of court granted based upon the parties' joint stipulation. (Code Civ. Proc., § 437c, subd. (t)(1)-(2).)

The Court recognizes that *Markborough California, Inc. v. Superior Court* (1991) 227 Cal.App.3d 705, cited by Defendants, held that a trial court properly granted a motion for summary adjudication that limited the defendants' liability to a certain amount of damages based on a limitation of liability clause. (227 Cal.App.3d 705, 709.) *Markborough* did not discuss the propriety of such a motion as a matter of procedure, and cases are not authority for propositions not therein considered. (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 537.) Also, regardless of what the court did in *Markborough*, this Court is not free to ignore *DeCastro*, which postdates *Markborough* and holds that Code of Civil Procedure, section 437c, subdivision (f)(1)'s provision for summary adjudication of a "claim for damages" is limited to claims for punitive damages.

Summary adjudication is DENIED as to this Issue.

Issue No. 5: Sixteenth Affirmative Defense (Limitation of Liability)

"A party may move for summary adjudication as to . . . one or more affirmative defenses . . . if the party contends" either "that there is no affirmative defense to the cause of action, [or] that there is no merit to an affirmative defense as to any cause of action[.]" (Code Civ. Proc., § 437c, subd. (f)(1).) In other words, a *plaintiff* may move for an order summarily adjudicating an affirmative defense, provided granting the motion would "completely dispose of" the affirmative defense, eliminating it as an issue to be covered at trial. (*Ibid.*) A defendant may make use of an affirmative defense on a motion for summary adjudication, but that entails moving for summary adjudication as to a cause of action and arguing "that the cause of action has no merit" on the basis that a particular affirmative defense bars liability. (*Ibid.*) Such a motion can only be granted if doing so would dispose of the entire cause of action at issue. (*Ibid.*)

Defendants cite *Los Angeles Cellular Telephone Co. v. Superior Court* (1998) 65 Cal.App.4th 1013, where the Second District held that a trial court should have granted a defense motion for summary adjudication of a limitation of liability affirmative defense and entered an order limiting the movant's maximum liability to a particular sum in the event the movant was found liable at trial. (65 Cal.App.4th 1013, 1020.) *Los Angeles Cellular* did not discuss the propriety of doing this and did not grapple with the language of the summary judgment statute. (See 65 Cal.App.4th 1013, 1016 [merely pointing out that a party is permitted to summarily adjudicate an affirmative defense, and such motion may be granted if granting the motion would completely dispose of that defense].) The summary judgment statute does not merely specify the permissible subjects of a motion for summary adjudication (i.e., a cause of action, an affirmative defense, a claim for damages, or an issue of duty). (Code Civ. Proc., § 437c, subd. (f)(1).) It does that and then further specifies the exact grounds upon which a movant may seek summary adjudication as to those subjects. (*Ibid.*) The permissible grounds for a motion for summary adjudication are: (1) a cause of action has no merit; (2) there is no affirmative defense to a cause of action; (3) an affirmative defense has no merit; (4) a claim for damages has no merit; and (5) a defendant either

owed or did not owe a duty to the plaintiff. (*Ibid.*) There is no statutory authorization for a motion for summary adjudication requesting an order that an affirmative defense is *meritorious*, except in the sense that a defendant may seek summary adjudication of a cause of action and argue that an affirmative defense means the cause of action fails.³ (*Ibid.*; see also Code Civ. Proc., § 437c, subd. (p)(2) [defendant meets burden of showing that a cause of action has no merit by showing either that an element cannot be established or “that there is a *complete defense* to the cause of action”] [emphasis added].) That is not the motion Defendants have filed. They are arguing that their affirmative defense of limitation of liability caps Plaintiffs’ recovery at \$2.00. Accordingly, the affirmative defense is not capable of eliminating their liability on these claims and thus disposing of these causes of action in their entirety.

Between the clear language of the summary judgment statute and *Los Angeles Cellular*, which did not discuss the critical portion of that language and did not analyze the procedural issue Plaintiffs have raised, the Court is compelled to follow the language of the summary judgment statute. Perhaps the statute should permit a litigant to do what Defendants are attempting to do here. Until such time as the statute is amended or an appellate court holds that the statutory language has some meaning broader than what naturally appears from its wording, the Court cannot read into the statute words that are not present.

Defendants also argue that the economic loss rule prevents Plaintiffs from recovering in tort for DataSafe’s alleged breach of its contract with Plaintiffs. The rule provides that “[i]n general, there is no recovery in tort for negligently inflicted ‘purely economic losses,’ meaning financial harm unaccompanied by physical or property damage[.]” (*Moore v. Centrelake Medical Group, Inc.* (2022) 83 Cal.App.5th 515, 534-535 [quoting *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922].) Plaintiffs are not alleging purely economic loss. This case concerns physical damage to personal property. (SAC, ¶ 22.)

Summary adjudication of this Issue is DENIED.

Issue No. 6: Seventh Cause of Action (Theft)

California Penal Code, section 496 (“Section 496”) gives certain victims of theft a private right of action to recover for particular conduct in connection with stolen property. (Pen. Code, § 496, subd. (c).) This cause of action is reserved for people injured by violations of Penal Code, section 496, subdivision (a) or (b). (*Ibid.*) The conduct prohibited by those provisions is as follows:

1. “[B]uy[ing]” or “receiv[ing] any property that has been stolen or that has been obtained⁴ in any manner constituting theft or extortion, knowing the property to be so stolen or obtained” (Pen. Code, § 496, subd. (a))

³ This was the argument in *Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118. The defendant moving for summary judgment (or, alternatively, adjudication) argued that a limitation of liability provision outright barred the recovery of *any* damages on several of the plaintiff’s causes of action (209 Cal.App.4th 1118, 1123, 1129), which renders the case distinguishable.

⁴ The Court originally considered granting summary adjudication on this Issue on the ground, not raised by Defendants, that the plain language of the statute requires that the defendant have come into possession of the

2. “[C]onceal[ing], sell[ing], withhold[ing], or aid[ing] in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained” (*ibid.*)
3. “[B]uy[ing] or receiv[ing] any property . . . that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the [defendant] to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it,” and then not making that reasonable inquiry. (Pen. Code, § 496, subd. (b).) Criminal or civil liability under this provision requires the defendant to be a swap meet vendor, as defined in Business and Professions Code, section 21661; a “person whose principal business is dealing in, or collecting, merchandise or personal property”; or an agent, employee, or representative of the latter. (*Ibid.*)

This cause of action is based on the allegation that Defendants’ treatment of the Artwork constitutes theft under California Penal Code, sections 484 and/or 485. (SAC, ¶¶ 51-52.) Section 484 consolidated several formerly distinct offenses (e.g., larceny, embezzlement, obtaining property by false pretenses) into the single crime of “theft.” (*People v. Davis* (1998) 19 Cal.4th 301, 304.) The statute defines “theft” as, among other things, “felonious[ly] . . . tak[ing] . . . the personal property of another[.]” (Pen. Code, § 484, subd. (a).) The intent required to commit theft under Section 484 is the specific intent to permanently deprive the owner of her property. (*People v. Shannon* (1998) 66 Cal.App.4th 649, 653-654.)

Penal Code, section 485, provides that “[o]ne who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.” (Pen. Code, § 485.) A conviction under Section 485 – and thus civil liability on a Penal Code, section 496 claim premised on a violation of Section 485 – does not require any specific intent. (*People v. Zamani* (2010) 183 Cal.App.4th 854, 865.) The perpetrator must merely have “knowledge of or means of inquiry as to the true owner[.]” (Pen. Code, § 485; *Zamani, supra*, 183 Cal.App.4th 854, 863.)

Defendants seek summary adjudication on the grounds that they did not have the specific intent required for theft and that their conduct does not amount to theft within the meaning of Penal Code, section 485. Defendants have established that they made reasonable and even thorough efforts to reunite the Artwork with its true owner. Regardless of whether they in fact took every step required by their standard of care, this evidence is not consistent with the idea that either of them subjectively intended to permanently deprive the true owner of the property. (See *Shannon, supra*, 66 Cal.App.4th 649, 653-654.) Plaintiffs agree that this is the intent required for theft, but contend that it is satisfied based on the bare fact that Defendants caused the destruction of the property. (Opposition, p. 24.) That a person takes an action that has the effect of permanently depriving the owner of the property is not the same thing as his having the specific intent to

property after it was stolen, and that it is undisputed that this did not happen in this case. (See *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 70 [regarding a court’s authority to grant summary judgment or adjudication on a ground not raised by the moving party].) This outcome would be inconsistent with the Supreme Court’s reading of Penal Code, section 496, subdivision (a). (See *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 353, fn. 15].)

achieve that outcome, and Plaintiffs' argument otherwise would convert theft into a general intent crime, which it is not. (See *People v. Davis* (10 Cal.4th 463, 518, fn. 15 [on the difference between general and specific intent]; *People v. MacArthur* (2006) 142 Cal.App.4th 275, 280 [theft is a specific intent offense].)

To the extent Plaintiffs' Section 496 claim is premised on a violation of Section 485, the "appropriation of lost property" statute, Defendants have demonstrated that they made "reasonable and just efforts to find the owner and to restore the property to [her]" prior to making any disposition of the Artwork. (Pen. Code, § 485.) Plaintiffs' opposition does not attempt to defend the merits this cause of action to the extent based on Section 485.

Summary adjudication is GRANTED as to this Issue.

Issue Nos. 7 and 8: Fifth and Sixth Causes of Action (Deceit)

The motion is moot as to these Issues. Plaintiffs withdrew these causes of action as to Sawyer and Savage with their opposition to the motion. (Opposition, p. 16, fn. 3.)

Issue No. 9: Punitive Damages

To obtain punitive damages, a plaintiff must prove by clear and convincing evidence that the "defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) " 'Malice' means 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." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).) Summary judgment or adjudication on the issue of punitive damages is proper only " 'when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud, or oppression.' " (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159 [quoting *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 762].)

"[M]ere negligence, [e]ven gross negligence, is not sufficient to justify an award of punitive damages." (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894.) The evidence Defendants offer establishes that they were negligent at most. Plaintiffs do not make a serious attempt to oppose the motion as to the punitive damages issue, but merely state their disagreement with the idea that no reasonable jury could find clear and convincing proof of malice, fraud, or oppression in this case. (Opposition, p. 25.) They do not direct the Court to any facts and evidence they contend support Sawyer's or Savage's malice, fraud, or oppression.

Summary adjudication is GRANTED on this issue.

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300516

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: HYPERCONSTRUCT CO.
ET AL

vs.

DEFENDANT: SHAW WALTERS

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Cross-Complainants Shaw Walters, Lea Walters, and Nexus City Holdings, LLC (“Cross-Complaints”) move for leave to file a Fourt Amended Cross-Complaint to add alternative legal theories for bases for recovery.

Under Code of Civil Procedure section 473, subdivision (a)(1), the Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding. As judicial policy favors resolution of all disputed matters in the same lawsuit, courts liberally permit amendments of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.)

Generally, arguments attacking the merits of the proposed amendments do not justify denial of the motion. Courts allow the amendment and then let the parties test the legal sufficiency in other appropriate proceedings such as a demurrer. (*See Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048, and *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760.) However, where a proposed amendment which is subject to demurrer is also proposed on the eve of trial, the court may properly deny it. (*Yee v. Mobilehome Park Rental Review Bd.* (1989) 62 Cal.App.4th 1409, 1428-1429.)

A party requesting leave to amend must also comply with California Rules of Court, rule 3.1324. Compliance with the Rules of Court is satisfied by including a copy of the proposed amended pleading, detailing what changes will be made from the previous pleading by stating what allegations are to be deleted or added as compared to the previous pleading including page, paragraph and line number, and attaching a declaration by plaintiff's counsel, as to: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) why the request was not made earlier. (Cal. Rules of Court, rule 3.1324(a)-(b).)

The court finds that Cross-Complainants have complied with the California Rules of Court. Additionally, the case has not yet been set for trial and thus, there is no prejudice to opposing parties. Accordingly, the motion for leave is granted.

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 April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHNzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002799

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: FORD MOTOR CREDIT
COMPANY LLC

vs.

DEFENDANT: OLIVER ALMONOR

NATURE OF PROCEEDINGS: MOTION – AMEND

RULING

The Court, having reviewed, the motion papers and the pleadings in this file, shall sign the proposed amended default judgment nunc pro tunc, in the amount of \$21,856.56.

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 April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003769

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: CREDITORS
ADJUSTMENT BUREAU, INC.

vs.

DEFENDANT: SALT RIVER
CONSTRUCTION CORPORATION

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

RULING

On February 18, 2026, this Court issued a tentative ruling which granted Plaintiff's motion to strike Salt River Construction Company's answer based on Salt River's failure to procure counsel. However, the Court stayed the matter for approximately two months to allow Salt River one last opportunity to procure counsel.

Appearances required.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcPnkxzJjiEOSHnZEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005602

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: JORDAN KRETCHMER

vs.

DEFENDANT: SAN FRANCISCO
INVESTMENT DEVELOPMENT, INC.

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

RULING

Plaintiff and Cross-Defendant Jordan Kretchmer's ("Cross-Defendant" or "Kretchmer") Demurrer to the First Amended Cross-Complaint ("FAXC") is SUSTAINED in part.

Cross-Defendant's Motion to Strike is DENIED.

BACKGROUND

This action arises from a residential construction project at Kretchmer's Mill Valley home. Kretchmer allegedly entered into a written construction contract with Defendant/Cross-Complainant San Francisco Investment Development, Inc. ("Cross-Complainant" or "SFID"), which was later expanded through change orders and work orders. On March 11, 2025, Kretchmer filed a complaint alleging SFID failed to perform the work in a timely and competent manner, used unlicensed and unsupervised labor, and left the residence uninhabitable, forcing him to incur more than \$60,000 in temporary housing costs. In turn, on July 7, 2025, SFID filed a Cross-Complaint. On October 23, 2025, after Kretchmer's Demurrer, SFID filed the FAXC alleging that it fully performed its obligations under the contract, work orders, and change orders, but that Cross-Defendant failed to pay for all work completed. (FAXC ¶¶ 9-12, 17, 43.) SFID alleges it performed over \$1,059,843.36 in work and materials at Kretchmer's property, of which only \$709,740.53 has been paid, leaving an unpaid balance of \$350,102.83. (*Ibid.*)

Kretchmer's Demurrer to the FAXC and Motion to Strike Punitive Damages are presently before the Court.

LEGAL STANDARD – DEMURRER

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) “The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.” (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) The onus is on the plaintiff to articulate the “specifi[c] ways” to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend “only if a potentially effective amendment [is] both apparent and consistent with the plaintiff’s theory of the case.” (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

DISCUSSION – DEMURRER

Cross-Defendant demurs to the Sixth Cause of Action for Promissory Fraud on the grounds that it does not plead facts sufficient to constitute a fraud claim and demurs to the Seventh Cause of Action for Unjust Enrichment on the grounds that California does not recognize unjust enrichment as an independent cause of action.

Sixth Cause of Action

Promissory fraud is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. (*Behnke v. State Farm Gen. Ins. Co.* (2011) 196 Cal.App.4th 1443, 1453. Internal citations omitted.) The elements of promissory fraud (i.e., of fraud or deceit based on a promise made without any intention of performing it) are: (1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promisee. (*Ibid.*)

Fraud must be pled specifically. The effect of this rule is twofold: (1) General pleading of the legal conclusion of ‘fraud’ is insufficient; the facts constituting the fraud must be alleged; and (2) Every element of the cause of action for fraud must be alleged in the proper manner (i.e. factually and specifically), and the policy of liberal construction of the pleadings will not

ordinarily be invoked to sustain a pleading defective in any material respect. (*Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 638. Internal citations omitted.)

Here, the FAXC alleges that starting in or around January 2023, and during the course of construction, Cross-Defendant made repeated promises that he had the financial resources and ability to pay for the construction work, and would pay. The FAXC further alleges that at the time he made these promises he did not intend to perform, that he made the promises to induce SFID to enter into the contract to perform work at his property, that SFID reasonably relied on these promises in deciding to enter into the contract and various change orders, that SFID performed under the terms of the contract, work orders and change orders, while Cross-Defendant breached his obligations under them, and that this breach resulted in damage to SFID. (FAXC, ¶¶ 8-17, 48-56.)

This is sufficient to state a cause of action for Promissory Fraud. (*Lazar, supra*, 12 Cal.4th at p. 638; *Walker v. Signal Companies, Inc.* (1978) 84 Cal.App.3d 982, 994-5. [Plaintiffs' claim of fraud was based upon their contention the conduct inducing the contractual relationship was tortious starting with the defendants' initial fraudulent intention not to perform within the time specified in the contract. However, double recovery for damages under both the breach of contract and fraud causes of action is not permitted].)

The Demurrer to the Sixth Cause of Action is therefore OVERRULED.

Seventh Cause of Action

There is no cause of action in California for unjust enrichment. (*Melchior v. New Line Prods., Inc.* (2003) 106 Cal.App.4th 779, 793; *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387–88.) However, as SFID points out, it may be possible to state a cause of action based on the theories raised in the current “Unjust Enrichment” cause of action.

Accordingly, the Demurrer to the Seventh Cause of Action is SUSTAINED with leave to amend.

LEGAL STANDARD – MOTION TO STRIKE

On noticed motion, the Court also may strike out “any irrelevant, false, or improper matter inserted in any pleading,” and “all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc., § 436.) The basis for granting the motion to strike must appear on the face of the challenged pleading or else be judicially noticeable. (Code Civ. Proc., § 437, subd. (a).) When the defect that justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

DISCUSSION – MOTION TO STRIKE

SFID seeks to strike allegations in the FAXC as follows: “Cross-Defendants committed the aforementioned acts which were oppressive and malicious within the meaning of California Civil Code Section 3294 in that they subjected Cross-Complaint to cruel and unjust hardship in

willful and conscious disregard of his rights, thereby entitling Cross-Complainant to an award of punitive damages (FAXC, p. 12:1-5) and “For Punitive damages according to proof” (*id.*, p. 14:11).

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including facts showing that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

As stated above, the FAXC adequately alleges a cause of action for Promissory Fraud. This is sufficient to support a prayer for punitive damages at this stage in the pleadings. For these reasons, the Motion to Strike 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 April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006187

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PETITIONER: CODY MOLICA

vs.

RESPONDENT: MARIN GENERAL
HOSPITAL

NATURE OF PROCEEDINGS: DEMURRER

RULING

Appearances required.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006259

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: ISRAEL BARRERA, ET AL

vs.

DEFENDANT: MCCLINTOCK
PROPERTIES LP, A CALIFORNIA LIMITED
PARTNERSHIP

NATURE OF PROCEEDINGS: MOTION –STRIKE

RULING

Defendants McClintock Properties, LP (“McClintock Properties”); Scott McClintock; Reed B. McClintock; Ronald T. Shafer; Donna L. Shafer; Steven A. Sloan; Michi Kaneko Sloan; Dennis M. Burns; Judith A. Burns; and Terry P. Noyer’s¹ (together, “Defendants”) motion to strike is GRANTED. (Code Civ. Proc., § 436.)

BACKGROUND

This is a landlord-tenant dispute relating to the condition of a Novato apartment. Plaintiffs Israel Barrera, Erika Abarca Hernandez, and Jhovany Israel Barrera (“Plaintiffs”) allege that they began leasing an apartment at the Hill Road Apartments in Novato in 2015. (FAC, p. 4,² ¶ 23.) After they took possession, Plaintiffs allegedly discovered “numerous serious and persistent habitability defects” that they contend violate the implied warranties of habitability and quiet enjoyment. (*Id.* at p. 5, ¶ 27.) These included, among other things, absence of a functioning heating system, frequent electrical issues, rodent and insect infestations, water damage, mold growth, and intrusion of cold air and water into the living space. (*Ibid.*) Plaintiffs allege that at no point since they began living there in 2015 has the unit had a functioning heat source, and that they cannot even ameliorate this problem with space heaters because using them trips the circuit breaker, which causes outages and increases fire risks. (*Id.* at p. 6, ¶¶ 17-18.) They further allege approximately \$4,000 in damage to furniture and personal belongings associated with cockroaches and rodents. (*Id.* at p. 6, ¶ 19.) They describe a “strong, offensive odor” resulting from mold. (*Id.* at p. 6, ¶ 21.)

¹ Most of the individual defendants are being sued in their capacities as trustees of various trusts, and some of those are also being sued in their individual capacities.

² Due to a formatting error in the FAC’s paragraph numbering, the Court will be citing paragraphs by both page and paragraph number.

Plaintiffs allege that they have repeatedly notified McClintock Properties of the conditions of the unit and the company has not taken timely or adequate action to fix these problems. (FAC, pp. 5-6, ¶¶ 15, 16, 19, 20, 21.) Plaintiffs claim that McClintock Properties has not remediated the issues, and has not even taken “meaningful steps” to do so, even when faced with a formal notification by municipal code enforcement “cit[ing] numerous violations of health, safety, and zoning laws that posed a threat to the life, health, and safety of the occupants and the public.” (*Id.* at p. 7, ¶¶ 23-24.) The FAC asserts on information and belief that McClintock Properties has the financial means and ability to correct the conditions identified by the City’s Notice of Violation, but has willfully failed to do so “as part of a calculated effort to pressure and displace Plaintiffs from their home.” (*Id.* at p. 7, ¶ 25.)

The FAC asserts causes of action for violation of the Unfair Competition Law, breach of the implied warranty of habitability, breach of the implied covenant of quiet enjoyment, nuisance, negligence, and violation of Civil Code, section 1942.4 (landlord liability for accepting rent for uninhabitable premises). Defendants now move to strike punitive damages allegations from the FAC.

LEGAL STANDARD

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, (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, subs. (a)-(b).) 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.)

DISCUSSION

Civil Code, section 3294 provides that punitive damages are available “[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice[.]” To state a claim for punitive damages, the plaintiff must plead facts supporting the position that “defendant has been guilty of oppression, fraud, or malice.” (See *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041; *Grievess v. Superior Court* (1984) 157 Cal.App.3d 159, 166; see also Civ. Code, § 3294, subd. (a).) “Oppression” refers to “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (Civ. Code, § 3294, subd. (c).) “Fraud” refers to “an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.” (*Ibid.*) “Malice” refers to “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.” (*Ibid.*)

The conduct described in the pleading includes knowingly permitting one’s tenants to live in a unit that has no heat and is riddled with vermin, failing to take adequate action in response to ten years’ worth of complaints (see FAC, ¶ 17 [Plaintiffs brought at least one serious

habitability issue to the property manager's attention during their initial walk-through of the unit in 2015], and persisting in that failure even in the face of a finding from the local government that the property is dangerous to human health. These allegations are at least minimally sufficient to amount to "oppression" or "malice" and so to state a claim for punitive damages. (See Civ. Code, § 3294, subd. (c).) The Court has little trouble concluding that being a slumlord qualifies as " 'base,' 'vile,' or 'contemptible' " conduct. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725 [defining "despicable conduct" as used in Civil Code, section 3294, subd. (c)].) Defendants' claim that Plaintiffs are alleging mere negligence simply ignores the FAC's allegations.

However, the FAC alleges that the perpetrator of all of this conduct was "Defendants." (See FAC, p. 5, ¶ 27-p. 7, ¶ 25.) If the pleading did not define that term, the Court would presume it referred to all defendants named in the action. But the pleading does define it, and defines it to include only McClintock Properties and the Doe defendants. (See FAC, p. 2 [first paragraph at the top of the page, before the paragraph numbering begins].) Having not alleged that the other defendants in this action did anything, Plaintiffs necessarily have not alleged that those defendants have "been guilty of oppression, fraud, or malice[.]" (Civ. Code, § 3294.) The motion is GRANTED as to all defendants other than McClintock Properties on this basis.

Defendants argue that Plaintiffs have not included allegations sufficient to state a cause of action against the entity defendants.³ "An employer shall not be liable for [punitive damages], based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) To state a claim for punitive damages against McClintock Properties, Plaintiffs needed to allege that an "officer, director, or managing agent" of McClintock Properties engaged in the conduct described in Civil Code, section 3294, subdivision (b). (*Ibid.*)

Plaintiffs allege that individual defendant Scott McClintock is the trustee of the Survivors and Decedents Trust Created Under the Reed and Susan McClintock Family Revocable Trust, and that this trust is a general partner of McClintock Properties. (FAC, ¶¶ 5-6.) Plaintiffs argue that as trustee of the Survivors and Decedents Trust, Scott McClintock effectively assumes the trust's status as general partner of McClintock Properties and so is an "officer, director, or managing agent" of McClintock Properties. Regardless of whether this is legally sound, this argument cannot succeed absent allegations that Scott McClintock engaged in the conduct

³ Defendants make this argument as to not only McClintock Properties, but also the trusts. No trust is a defendant in this case, nor could one be, as a trust cannot be sued in its own right. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473.) The trust-affiliated defendants in this case are individuals who Plaintiffs are suing in their capacities as trustees of various trusts. Defendants present no authority establishing that a trust is an "employer" for purposes of Civil Code, section 3294, subdivision (b). The idea that a trust could qualify as an "employer" who may "be liable for [punitive] damages" (*ibid.*) is in tension with the nature of a trust. Because a trust cannot be sued in its own right, it cannot itself "be liable" for anything. (*Portico, supra*, 202 Cal.App.4th 464, 473.)

described in Civil Code, section 3294, subdivision (b). (See Opposition, p. 5.) As discussed, while the FAC names Scott McClintock as a defendant in his individual capacity, it does not actually allege any conduct by him. It alleges conduct by McClintock Properties and by “Defendants,” a term Plaintiffs defined to exclude Scott McClintock.

Accordingly, the motion is GRANTED with leave to amend. Should Plaintiffs opt to amend their complaint, the Court requests that they fix the paragraph numbering for ease of reference moving forward.

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 April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006310

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: PLAYA DE PERROS LLC,
ET AL

vs.

DEFENDANT: RICHARD WODEHOUSE,
ET AL

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Plaintiff filed a motion for leave to file a first amended complaint. Under Code of Civil Procedure section 473, subdivision (a)(1), the Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding. As judicial policy favors resolution of all disputed matters in the same lawsuit, courts liberally permit amendments of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.)

A notice of hearing was served on opposing parties and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the above, the court grants Plaintiff's motion and orders that the amended complaint be filed within ten days of service of entry of this order.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0006399

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: RONALD MALLET

vs.

DEFENDANT: LYDIA J. SARKISSIAN, ET
AL

NATURE OF PROCEEDINGS: MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff brings this motion to compel further responses to documents and for sanctions against Mr. Thomas Loew. The motion was filed on October 24, 2025. Mr. Loew's counsel substituted out on November 21, 2025 and Mr. Loew has been in pro per status since then.

This matter was initially heard on February 4, 2026. A report by the Discovery Facilitator indicated that responses are not code compliant, but there was concerns as to whether Mr. Loew would be able to comply with these requests. Mr. Loew is in his mid-eighties and in poor health, having recently been hospitalized and diagnosed with a brain tumor, which causes double vision.

In meet and confer correspondence with counsel dated September 30, 2025, counsel for Mr. Loew agreed to provide amended responses to demand numbers 4, 5, 7 and 10, but stood on objections to request numbers 1, 2, 3, 6 and 8. The majority of responses indicated documents would be produced, or in the alternative, that no documents existed within Mr. Loew's control. No agreement was reached.

There has been no updated status from the parties except for an opposition from Mr. Loew in which he indicates that he is unable to get medical correspondence regarding his ability to engage in discovery because corporate policy from the Cleveland Hospital Group prohibits doctors from providing any letters that could be used as evidence in a lawsuit. However, he indicated he would be able to sit for a deposition starting May 1, 2026.

Given Mr. Loew's ability to now sit for deposition, the court concludes that he should also be able to engage in some discovery. Accordingly, the court orders that the parties appear to discuss the outstanding discovery dispute regarding Plaintiff's responses to the requests for documents.

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 April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/01/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007830

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: ALINA ANDRES

PLAINTIFF: ODK CAPITAL, LLC

vs.

DEFENDANT: AGROMEAL
INTERNATIONAL, INC. ET AL

NATURE OF PROCEEDINGS: MOTION – QUASH

RULING

Plaintiff ODK Capital LLC (“Plaintiff”) filed a complaint against Agromeal International Inc. and Daniel Poore (“Defendants”). Plaintiff has filed unsuccessful proofs of service which indicate it has not been able to serve Defendants. Nonetheless, Defendant Poore has filed a motion to quash service of summons , arguing that Plaintiff improperly left documents on his doorstep, which is improper service.

In light of the fact that there has been no proper service as of yet, there is nothing to quash. Accordingly, the motion to quash is not properly before the court at this time. It is therefore, denied.

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

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

<https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjiEOSHnzEGafG.1>

Meeting ID: 161 548 7764

Passcode: 502070

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