IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE DON R. FRANCHI
Department 15
1050 Mission Road, South San Francisco
Courtroom K

Monday, May 19, 2025

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. **EMAIL Dept15@Sanmateocourt.org BEFORE 4:00 P.M.** CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.

2. **YOU MUST CALL (650) 261-5115 BEFORE 4:00 P.M.** with the case name, number and the name of the party contesting.

AND

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

Appearances by Zoom are highly encouraged.

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TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case
2:00 Line: 1	
21-CIV-05293	JULIE DUDUM VS. SKECHERS USA INC.
JULIE DUDUM SKECHERS USA INC.	BRIAN M. CARTER RICHARD JAY SIMMONS

MOTION FOR SUMMARY ADJUDICATION BY DEFENDANT SKECHERS USA INC.
TENTATIVE RULING:

Defendant Skechers USA, Inc.'s Motion for Summary Adjudication is GRANTED IN PART and DENIED IN PART.

Plaintiff Julie Dudum's Evidentiary Objections are OVERRULED.

Defendant Skechers USA, Inc. Evidentiary Objections are OVERRULED.

Defendant Skechers USA, Inc. ("Skechers") moves here for summary adjudication of each of the five causes of action set forth in the First Amended Complaint (the "FAC"), as well its claim for punitive damages.

A. Legal Standard on Summary Adjudication

> "A party may move for summary adjudication as to one or more causes of action within an action, one or more defenses, … [or] one or more claims for [punitive] damages … if the party contends that the cause of action has no merit … ." (Code of Civ. Proc., § 437c, subd. (f)(1).) A cause of action has no merit if one or more of its elements cannot be separately established or an affirmative defense can be established. (*Id.*, at subd. (o).)

A defendant moving for summary judgment or summary adjudication has an initial burden of showing either that one or more elements of a cause of action cannot be established or that there is a complete defense to the cause of action. (Code of Civ. Proc., § 437c, subd. (p)(2).) Once the initial burden has been carried, the burden shifts to the opposing party to show that a triable issue of material fact exists as either to the cause of action or a defense thereto, as applicable. (*Ibid.*)

The moving party's ultimate burden of persuasion that there are no issues of triable fact, however, never shifts to the opposing party. (*Aguilar v. Atlantic Richfield*

Co. (2001) 25 Cal.4th 826, 850.) This burden is unaffected by the strength or weakness of the showing in opposition to the motion (*Scalf v. D.B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519), and summary adjudication must be denied—despite deficiencies in the opposition—if the burden has not been carried (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 416).

Because summary adjudication deprives an adverse party of the right to a trial on a cause of action, any doubts are resolved in favor of the party opposing the motion. (*Huynh v. Ingersoll-Rand* (1993) 16 Cal.App.4th 825, 830; *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.) Thus, "[t]he moving party's affidavits are to be strictly construed, and … all conflicts in the affidavits are to be resolved in favor of the opposing party and all reasonable inferences are to be drawn in favor of that party as well." (*Hufft v. Horowitz* (1992) 4 Cal.App.4th 8, 20.)

B. 1st Cause of Action: Wrongful Termination in Violation of Public Policy

The FAC alleges that Dudum was employed by Skechers as an assistant manager of a Skechers store until her employment was terminated on the pretext of time-card fraud in retaliation for her desire to comply with COVID-19 directives promulgated by the San Mateo County Department of Health and for advocating for employees who underwent testing for COVID-19 and who had contracted COVID-19. (May 31, 2023 First Amended Complaint ("FAC"), ¶¶ 5, 7–9.)

Contrary to Skechers' assertion, these allegations support a cause of action for wrongful termination in violation of public policy based on retaliation for resisting alleged unlawful activity, independent of the FAC's cause of action for disability discrimination. (See *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 708–709.) "The elements of a claim for wrongful discharge in violation of public policy are (1) an employer–employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm." (*Garcia-Brower v. Premier Automotive Imports of CA, LLC* (2020) 55 Cal.App.5th 961, 973.) When the violation of public policy is retaliation for the employee's resisting or reporting unlawful activity:

> the plaintiff must show (1) he or she engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) there exists a causal link between the protected activity and the employer/s action. Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. [Citation.] If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation "drops out of the picture," and the burden shifts back to the employee to prove intentional retaliation. [Citation.]

(*Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1453.)

Skechers contends Dudum cannot make a prima facie showing of the third element of causation and cannot rebut Skechers' legitimate reason for terminating her employment. Skechers argues that Dudum's employment was terminated for her violations of its time-keeping policy, not in retaliation.

Skechers presents evidence in the form of the declaration of Anita Crandall, a human resources employee with the title of Senior Employee Relations and Compliance Manager, stating that Skechers decided to terminate Dudum's employment for violating its time-keeping policy after having been repeatedly coached for her performance deficiencies and inability to meet company expectations. (Nov. 18, 2024 Separate Statement of Undisputed Material Fact ("UMF"), no. 2.)

Dudum objects to this evidence as hearsay and lacking a basis in Crandall's personal knowledge. (See Apr. 29, 2025 Objection.) However, the declaration does state the information is based on Crandall's personal knowledge and a review of business records. (Nov. 18, 2024 Declaration of Anita Crandall ("Crandall Decl."), p. 2, ll. 2–4; *id.*, at ¶ 9.) The gist of Dudum's objection is that *parts* of the statement are false.

Nevertheless, in her separate statement, Dudum does not dispute the entirety of the statement; she only disputes that she was ever "coached" and that she was terminated for performance issues unrelated to the time-keeping violation. (Apr. 29, 2025 Separate Statement of Disputed Material Fact ("DMF"), no. 2.) According to Dudum's declaration, she was never counseled or coached regarding the time-keeping violation by either her supervisor, Ashley Brown, or by Crandall. (Apr. 29, 2025 Declaration of Julie Dudum ("Dudum Decl."), ¶¶ 4–5, 7–8.) Crandall testified in her deposition that she did not personally coach Dudum regarding the time-keeping violation and that there was no other performance-based reason for terminating Dudum's employment beyond the time-keeping violation. (Apr. 25, 2025 Declaration of Brian M. Carter ("Carter Decl."), exh. C, 51:18–52:1; *id.*, at exh. D, p. 13:4–15.) Thus, Crandall's statements that Dudum's employment was terminated "for poor performance" in addition to the time-keeping violation and that Crandall was personally involved in coaching Dudum are contradicted by her deposition testimony, calling into question the credibility of the sole declaration offered in support of the motion.

Courts have discretion to deny summary adjudication "if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or if a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof." (Code of Civ. Proc., § 437c, subd. (e).) Crandall testified that she was the person who recommended Dudum's employment be terminated, and thus the material fact of lack of retaliatory animus is established solely by Crandall's affirmation thereof.

Here, Skechers' assertion that Dudum was fired without warning for *underreporting* time, and an insubstantial amount of time at that, solely for violating *unwritten* policy strains credibility. Dudum declared that no other managers were ever *suspended* for such violations, though she does not mention terminations and though her attorney does not draw attention to that evidence. Furthermore, the declaration does not state that the time-keeping violation was the *sole* reason or that there were no other reasons substantially motivating the ultimate decision. As mentioned above, the declarations supporting the motion must be strictly construed, and, strictly construed, Crandall's declaration does not show that Dudum cannot establish that her COVID-19 protocol-related conduct was not a substantial motivating factor in the decision to terminate her employment.

The Court exercises its discretion to DENY the motion as to the first cause of action on the basis of subdivision (e) of Code of Civil Procedure section 437c.

C. 2nd & 3rd Causes of Action: Disability Discrimination & Slander

The FAC's second and third causes of action are for disability discrimination and slander, but Dudum concedes that summary adjudication should be granted as to these causes of action. Accordingly, summary adjudication is so GRANTED as to these causes of action.

D. 4th & 5th Causes of Action: IIED & Negligence

The FAC's fourth and fifth causes of action are for intentional infliction of emotional distress ("IIED") and negligence. (FAC, ¶¶ 35–42.) Skechers contends, *inter alia*, that both these causes of action, arising out of Dudum's employment, are preempted by the Workers' Compensation Act (the "WCA") and that workers' compensation is the exclusive remedy for her damages on these counts. Though Skechers does not frame it so, this contention is based on its affirmative defense rather than a defect in the cause of action.

> "California's Workers' Compensation Act (Lab. Code, § 3600 et seq.) provides an employee's exclusive remedy against his or her employer for injuries arising out of and in the course of employment." (*Wright v. State of California* (2015) 233 Cal.App.4th 1218, 1229.) "[W]hen the employee's claim is based on conduct normally occurring in the workplace, it is within the exclusive jurisdiction of the Workers' Compensation Appeals Board." (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148 ("*Cole*"), 151.)

The FAC is not precise as to exactly what conduct Dudum asserts is the basis of these claims, but Skechers presents evidence that it terminated Dudum's employment and all further contacts with Dudum were made to communicate that fact and pay final wages. (UMF, nos. 2–9.)

In opposition, Dudum contends that claims for emotional distress caused by intentional acts that are not 'normal incidents of the employment relationship' are not preempted, citing *Cole*. She argues that the conduct here, "investigation of UNDER reporting time by a manager leading to termination weeks after she advocated for complying with orders from the Health department about COVID after a positive test of a store employee," are outside the normal incidents. (Apr. 29, 2025 Memorandum of Points & Authorities, p. 8, ll. 12–15.)

However, *Cole* itself rejects this argument:

> In order to properly manage its business, every employer must on occasion review, criticize, demote, transfer and discipline employees. Employers are necessarily aware that their employees will feel distressed by adverse personnel decisions, while employees may consider any such adverse action to be improper and outrageous. Indeed, it would be unusual for an employee not to suffer emotional distress as a result of an unfavorable decision by his employer. [Citation.]
>
> We have concluded that, when the misconduct attributed to the employer is actions which are a normal part of the employment relationship, such as demotions, promotions, criticism of work practices, and frictions in negotiations as to grievances, an employee suffering emotional distress causing disability may not avoid the exclusive remedy provisions of the Labor Code by characterizing the employer's decisions as manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance resulting in disability.
>
> … [¶]…
>
> If characterization of conduct normally occurring in the workplace as unfair or outrageous were sufficient to avoid the exclusive remedy provisions of the Labor Code, the exception would permit the employee to allege a cause of action in every case where he suffered mental disability merely by alleging an ulterior purpose of causing injury. Such an exception would be contrary to the compensation bargain and unfair to the employer.
>
> … [¶]…
>
> The cases that have permitted recovery in tort for intentional misconduct causing disability have involved conduct of an employer having a "questionable" relationship to the employment, an injury which did not occur while the employee was performing service incidental to the employment and which would not be viewed as a risk of the employment, or conduct where the employer or insurer stepped out of their proper roles.

(*Cole*, at pp. 160–161.)

The only other case relied upon by Dudum for this issue, *Renteria v. County of Orange* (1978) 82 Cal.App.3d 833, had its legal test supplanted by the California Supreme Court's test articulated in *Cole*, as recognized by *Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1429. Retaliatory terminations are not an exception and are preempted by the WCA, except to the extent they violate fundamental public policy, which would render the fourth and fifth causes of action wholly duplicative of the first cause of action in any case. (See *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 902–903, superseded by statute on other grounds.)

Thus, Skechers' evidence is sufficient to carry its initial burden of production in establishing the twenty-fifth affirmative defense set forth in Skechers' Answer to the FAC. (See Jun. 30, 2023 Answer, ¶ 25.) Dudum does not dispute the facts showing the conduct arose out of and in the course of her employment, and none of her additional facts raise a triable issue. (DMF, *passim*.) Accordingly, summary adjudication is GRANTED as to the fourth and fifth causes of action.

E. Punitive Damages

Finally, the FAC prays for punitive damages as to the first through fourth causes of action. (FAC, p.p 9–10.) According to the rulings above on these causes of action, only the first cause of action remains a basis for punitive damages.

To recover punitive damages against a corporate employer for the conduct of its employee, a plaintiff must show by clear and convincing evidence that "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" and that "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).) "[S]upervisors who have no discretionary authority over decisions that ultimately determine corporate policy [are] not … considered managing agents even though they may have the ability to hire or fire other employees." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 577.)

Skechers presents evidence that neither Crandall nor Brown had such discretionary authority. (UMF, nos. 10, 11.) This is sufficient to carry Skechers' initial burden of production.

Dudum failed to dispute these facts in her separate statement, which is itself grounds for granting the motion with respect to this claim. (DMF, *passim*; see *Oldcastle Precast, Inc. v Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 557–558.) But, further, the only evidence Dudum to which she directs the Court on this issue is

testimony from Brown stating that Brown supervised eight to twelve stores at the relevant time. The mere number of stores supervised does not allow an inference that the supervisor exercises discretionary authority over policy, and the evidence cited by Dudum here is distinct from the additional facts showing discretionary authority in the cases she cites in opposition.

Accordingly, there appears to be no triable issue of material fact, and summary adjudication is GRANTED as to the claim for punitive damages.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
Line: 2

23-CIV-02308 TEG PARTNERS, LLC VS. BRAD LUCAS, ET AL

TEG PARTNERS, LLC	CHARLES H. RIBLE
BRAD LUCAS	ELIZABETH M. PAPPY

MOTION FOR INJUNCTIVE RELIEF BY PLAINTIFF TEG PARTNERS, LLC.
TENTATIVE RULING:

The Motion of Plaintiff TEG Partners, LLC ("Plaintiff") for a Preliminary Injunction is DENIED.

On a motion for preliminary injunction the court evaluates two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits of the claim at trial, and (2) the interim harm the plaintiff would be likely to suffer if the injunction is denied as compared to the harm that the defendant would be likely to suffer if the injunction is granted. (*Amgen Inc. v. Health Care Services* (2020) 47 Cal.App.5th 716, 731.) The weighing of these harms involves consideration of the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177.)

Procedurally, the Third Amended Complaint was the operative pleading when Plaintiff filed this Motion on February 4, 2025. The Third Amended Complaint alleged three causes of action: (1) Quiet Title; (2) Declaratory Relief; and (3) Preliminary and Permanent Injunction. Subsequently though, the Court sustained with leave to amend the Demurrer by Defendants Brad Lucas and Melanie Lucas ("Defendants") to the quiet title claim in the Third Amended Complaint. (See Order filed April 7, 2025.) Plaintiff then filed a Fourth Amended Complaint on May 6, 2025 alleging the same three causes of action. Plaintiff states in reply that it is not seeking an injunction based on its quiet title claim, and that the Fourth Amended Complaint has no impact on this Motion. (Plaintiff's Reply, p. 6:12-23.)

In looking at whether Plaintiff establishes a likelihood of prevailing on its claims at trial, Plaintiff concedes that it is not seeking an injunction based on its quiet title claim. Plaintiff also fails to include any analysis of how it is likely to prevail on its declaratory relief cause of action. Instead, Plaintiff focuses on its third cause of action for preliminary and permanent injunction. Injunctive relief is a remedy, not a cause of action though. (*City of South Pasadena v. Dept. of Transportation* (1994) 29 Cal.App.4th 1280, 1293.) A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action for tort or other wrongful act against a defendant and that equitable relief is appropriate. (*Ibid*.) As such, Plaintiff has not established a likelihood of prevailing on any of his causes of action at trial.

Plaintiff also argues in its Memorandum that any obstructions and interference with Plaintiff's easement constitutes a private nuisance. (See Plaintiff's Memorandum, p. 9.) As Defendants point out though, Plaintiff has not alleged a nuisance claim. "[O]rdinarily, a preliminary injunction may be sought only when the underlying cause of action on which the provisional remedy rests is presented for decision through the pleadings (*Department of Fair Employment and Housing v. Superior Court of Kern County* (2020) 54 Cal.App.5th 356, 384–385, citing *Moreno Mut. Irr. Co. v. Beaumont Irr. Dist*. (1949) 94 Cal.App.2d 766, 778 ["A preliminary injunction is warranted only if there is on file a complaint which states a sufficient cause of action for injunctive relief of the character embraced in the preliminary injunction."].) Furthermore, Plaintiff's reply states that the injunction sought is not based on a nuisance cause of action. (Plaintiff's Reply, p. 8:2-7.)

Accordingly, Plaintiff has not shown a likelihood of prevailing on its causes of action.

Even if the Court were to consider the likelihood of Plaintiff prevailing on its declaratory relief cause of action despite Plaintiff's lack of analysis of this claim, Plaintiff has not shown a likelihood that he is entitled to a declaration in his favor. "Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another…may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." (Code Civ. Proc. § 1060.) The declaratory relief cause of action alleges that Plaintiff's easement includes the right to vehicular ingress and egress over the Hermosa Avenue Segment and to develop a paved roadway over it. (Fourth Amended Complaint, ¶ 57.) Plaintiff seeks a declaration to this effect. (*Id.*, ¶ 58.) Plaintiff alleges that Defendants contend the easement is limited to pedestrian ingress and egress, and that P does not have the right to develop a paved roadway. (*Ibid.*)

It is fundamental that the language of a grant of an easement determines the scope of the easement. (*Schmidt v. Bank of America* (2014) 223 Cal.App.4th 1489, 1499.) The grant of an easement is to be interpreted in like manner with contracts in general. (*Ibid*.) The court should first look to the language in the written instrument to determine the intent of the contracting parties at the time of the grant. (*Id*. at p. 1500.) If the intent of the parties can be derived from the plain meaning, the court need not resort to technical rules of construction. (*Ibid*.) Otherwise, the court may consider parol evidence to show the nature and extent of the rights acquired. (*Ibid.*)

Plaintiff relies on the 1907 Subdivision Map and the 2020 Judgment entered in the prior action to argue that its easement includes vehicular access and the right to pave the roadway. The 1907 Subdivision Map states that "…all purchasers of any block or lot or other parcel of land shown hereon shall have such right of way for ingress or egress over said streets, avenues and

highways as may be necessary to the full enjoyment of the lands so purchased subject to such reasonable restrictions as said corporation owner may deem advisable." (Defendants' Request for Judicial Notice ("RJN"), Exh. L.) In the prior action, a judgment was entered finding that Plaintiff has an implied easement for ingress and egress over the Hermosa Avenue Segment. (Defendants' RJN, Exh. F.) On their face, it is not clear that the 1907 Subdivision Map and the 2020 Judgment support Plaintiff's interpretation. Plaintiff has a right of way for ingress or egress on the Hermosa Avenue Segment as may be necessary to the full enjoyment of the lands. Defendants point out that Plaintiff has access to Plaintiff's property from Miramar Drive. (Miller Decl., ¶ 15; Brad Lucas Decl., ¶ 2.) Therefore, it seems that extrinsic evidence may be needed to determine this issue. Plaintiff offers no other evidence to support its interpretation. Moreover, Defendants dispute Plaintiff's interpretation as to the implied easement. Since the burden is on Plaintiff to establish a likelihood of prevailing on its claims at trial, the Court finds that Plaintiff has not met that burden here.

Furthermore, in weighing the harms to each party, the Court finds that the balance weighs in favor of Defendants in denying the preliminary injunction. Plaintiff seeks an injunction ordering Defendants to remove and dispose all obstructions and to remove and dispose all planted trees in the Hermosa Avenue Segment. (See Plaintiff's proposed order.) Plaintiff also seeks to enjoin Defendants from interfering with the planning, constructing and use of a driveway to be built by Plaintiff over the Hermosa Avenue Segment. (*Ibid*.) Thus, Plaintiff seeks to make significant changes to the Hermosa Avenue Segment. In contrast, the harm articulated by Plaintiff is a delay in building a residence for Singh's mother, who was recently hospitalized. Plaintiff does not contend that his mother has no other place to reside though.

Further, the general purpose of an injunction is the preservation of the status quo until a final determination of the merits of the action. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) An injunction is prohibitory if it requires a person to refrain from a particular act, and it is mandatory if it compels performance of an affirmative act that changes the parties' positions. (*Davenport v. Blue Cross of Calif*. (1997) 52 Cal.App.4th 435, 446.) The substance of the injunction determines whether it is mandatory or prohibitory. (*Id*. at p. 447.) Mandatory preliminary injunctions are rarely granted. (*Brown v. Pacifica Foundation, Inc.* (2019) 34 Cal.App.5th 915, 925 [mandatory injunction should only be granted in extreme cases where the right thereto is clearly established].) Plaintiff primarily seeks a mandatory injunction here in seeking to remove trees and other obstacles from the Hermosa Avenue Segment and to pave a roadway.

For the above reasons, Plaintiff's Motion for a Preliminary Injunction is DENIED. Plaintiff has not established a likelihood of prevailing on any of its claims, and the balance of harms weighs in Defendants' favor.

Defendants' Evidentiary Objections to Plaintiff's Exhibits 1-12 attached to Plaintiff's Memorandum are SUSTAINED based on lack of authentication.

Defendants' Request for Judicial Notice is GRANTED, except the Court does not cannot take judicial notice of factual matters asserted in these documents.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
Line: 3

23-CIV-03998 BARTERRA WINERY LLC VS. ISIDORO PEREZ, ET AL

BARTERRA WINERY LLC	PAUL G. MINOLETTI
ISIDORO PEREZ	PRO PER

MOTION TO SET ASIDE DEFAULT BY DEFENDANTS PABLO ESTRADA and FATTORIA-E-MARE INC.

TENTATIVE RULING:

For the reasons stated below, Defendants PABLO ESTRADA's and FATTORIA E MARE, INC.'s Motion to Set Aside Default, filed Nov. 26, 2024, is DENIED. (Code Civ. Proc. Sect. 473(b).)

Because Defendants seek discretionary relief from their defaults under Code Civ. Proc. Sect. 473(b), Defendants were required to file the Motion within six months of entry of their defaults. (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 39 ["The six-month period for granting relief under section 473, subdivision (b), runs from entry of default, not entry of judgment."]; *Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 970 ["The general rule is that the six-month period within which to bring a motion for discretionary relief under section 473, subdivision (b), runs from the date of the default and not from the judgment taken thereafter."]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980 ["more than six months had elapsed from the entry of default, and hence [discretionary] relief under section 473 was unavailable"]); *The Rutter Group: Civ. Proc. Before Trial:* Sect. 5:279 ["Defendant may seek discretionary relief from default under CCP § 473(b) on grounds of mistake, inadvertence, surprise, or excusable neglect. The motion … must be filed within 6 months after the clerk's entry of default. The motion is ineffective if filed thereafter, even if it is within 6 months after entry of the default *judgment*."]) The six-month requirement is jurisdictional. (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 340 [court has no authority to grant relief if motion not made within six-month period].)

Here, Defendants' defaults were entered on March 1, 2024. Defendants filed this Motion on Nov. 26, 2024, almost nine months later. Accordingly, the Motion is denied.

2:00
Line: 4

23-CIV-04063 MARIGOLDYZP I LLC VS. 88 TUSCALOOSA AVE LLC, ET AL

MARIGOLDYZP I LLC	CATHERINE S. ROBERTSON
ALI SADEGHI	MATTHEW S. KENEFICK

MOTION FOR JUDGMENT ON THE PLEADINGS BY CROSS-DEFENDANTS DELIA FEI AND RON GABLE.

TENTATIVE RULING:

The underlying action concerns the construction and financing of real property at 88 Tuscaloosa Ave, Atherton CA. The Cross-Complaint ("XC") filed by Pierre and Elizabeth Buljan against various Cross-Defendants, including Cross-Defendants Delia Fei and Ron Gable ("Compass Agents"), alleges that the Buljans were induced into making a loan guarantee in favor of MarigoldYZP I LLC based on misrepresentation and fraud. The Compass Agents move this Court for judgment on the pleadings.

A motion for judgment on the pleadings fulfills the same function as a general demurrer but is made after the time for demurrer has expired. (*Templo v. State of Calif.* (2018) 24 Cal.App.5th 730, 735.) The motion may be made where the complaint does not state facts sufficient to constitute a cause of action against the defendant, and, as with demurrers, the grounds must appear from the face of the pleading or from facts judicially noticeable. (Code Civ. Proc. § 438(d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759.) The parties have met and conferred as required. (Code Civ. Proc. § 438; Pallares Decl. ¶¶ 4, 5.) A motion for judgment on the pleadings may be granted with or without leave to amend, and leave to amend is routinely and liberally granted so long as the pleading does not show on its face that it is incapable of cure by amendment. (*Virginia G. v. ABC Unif. School Dist.* (1993) 15 Cal.App.4th 1848, 1852.)

The Compass Agents move for judgment on the pleadings as to both causes of action alleged against them: (1) fraud and (2) negligent misrepresentation. As to the Compass Agents in particular, the Cross-Complaint alleges the following:

- Cross-Defendants Eric Yuan and Sherry Yuan, "utilizing the services of Delia Fei and Ron Gable, executed a purchase agreement for the property located at 88 Tuscaloosa Avenue…" (XC ¶ 13.)
- Eric Yuan and Sherry Yuan "utilized Delia Fei and Ron Gable to effectuate this scheme [to induce Ali Sadeghi to continue work on the Property without paying the debt outstanding on the property] and through their numerous demands for changes, they drove

the costs associated with the construction on the property well over the agreed upon purchase price of $37,000,000." (XC ¶ 17.)

- None of the Cross-Defendants, including Delia Fei and Ron Gable, informed Pierre Buljan that construction costs had exceeded $37,000,000, and they deliberately withheld this information to induce Pierre Buljan to make the guarantee. (XC ¶¶ 22, 23.)

The XC does not allege that the Buljans had any kind of agency relationship with the Compass Agents, that they entered into any contract, that the Compass Agents were involved in any way with contacting Pierre Buljan and asking for the guarantee, or that the Compass Agents discussed the guarantee or any other issue with the Buljans directly. The allegations against the Compass Agents are limited to the passive, indirect, and vague language that the Compass Agents were "utilized" by Eric and Sherry Yuan, but there are no allegations detailing how this "utilization" actually played out.

Both causes of action rest on the allegation that the Compass Agents (among other Cross-Defendants) concealed the fact that the guarantee would not be used to finish construction on the property and that the loan would never be satisfied because of the construction cost of the property. (XC ¶¶ 25, 40.)

The essential elements of a fraud claim, generally, are (1) a misrepresentation; (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 211.) A real estate agent may be held liable for fraud in certain circumstances, depending on the scope of the agent's disclosure duties—usually where the seller's agent knows of facts materially affecting the value and desirability of a property, and the seller's agent also knows that such facts are not known to, or within the reach of the diligent attention and observation of, the buyer. (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 445.)

Here, however, the fraud claim is brought against the buyer's agent, and does not relate to a characteristic of the real property itself, but rather to an aspect of its financing—despite the fact that the Cross-Complaint does not clearly allege whether, or how, the Compass Agents were actually involved in procuring the loan guarantee. (*Cf.* XC ¶ 21, "Around this time, Sadeghi reached out to Pierre Buljan and asked him for the Guarantee to complete the construction that would be paid back when the construction was to be completed in April of 2023.") The Cross-Complaint only includes conclusory legal language, but no factual allegations of any detail or substance, that the Compass Agents misled the Buljans, nor what their fraudulent statement or omission consisted of, nor that the Compass Agents had knowledge of the falsity of whatever statement or omission they allegedly made, nor that they had intent to induce reliance. The Cross-Complaint also does not allege how the Buljans would have justifiably relied on such a statement or omission, if it existed, given that the Cross-Complaint does not detail any basis for their dealings or communications with the Compass Agents at all. Therefore, the Cross-Complaint is devoid of facts to support the elements of a fraud claim against the Compass Agents.

As for negligent misrepresentation, this tort requires a statement made without a reasonable basis for a belief that it is accurate, or a statement that is incomplete and misleading

where the broker negligently fails to disclose the information needed to make it complete and not misleading. (Miller and Starr, § 3:56. Fraud; negligent misrepresentation, 2 Cal. Real Est. § 3:56 (4th ed.).) Mere silence or implication does not support a cause of action for negligent misrepresentation—an actual "assertion" or statement is required. (*Wilson v. Century 21 Great Western Realty* (1993) 15 Cal.App.4th 298, 306.)

Liability for nondisclosure is ordinarily not actionable unless there is some fiduciary or confidential relationship giving rise to a duty to disclose. (*Kovich v. Paseo Del Mar Homeowners' Assn.* (1996) 41 Cal.App.4th 863, 866.) Cross-Complainants acknowledge that the Compass Agents had no contractual or fiduciary relationship with Pierre Buljan, but argue under *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397 that the Compass Agents owed him a duty of disclosure despite their nonprivity.

Bily involved the question of CPA auditor liability to third persons. The Supreme Court analyzed the claims in the context of the auditor as a party who holds itself out as possessing superior knowledge to a plaintiff who is so situated that it may reasonably rely on such supposed knowledge, information, or expertise. (*Id.* at 408.) On the question of when a defendant might owe a duty to a third party with whom it was not in privity, the Court set forth a checklist of factors to consider in assessing the presence or absence of such a duty, including but not limited to: the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, and the closeness of the connection between the defendant's conduct and the injury suffered. (*Id.* at 397.)

The Cross-Complaint's negligent misrepresentation claim as against the Compass Agents suffers from a number of infirmities. There is no basis for a relationship, fiduciary or otherwise, alleged in the Cross-Complaint. Nor is there even a connection stated between the Buljans and the Compass Agents with regard to either the real property transaction or the solicitation of the guarantee. To the extent that the Compass Agents were "utilized" in some undefined way, this allegation is far too vague to support the existence of a duty, as it is not even clear from the pleadings that the Compass Agents acted in any way or made any kind of assertion or statement to the Buljans whatsoever. The Opposition brief insists that the Compass Agents "knew that the construction costs had far exceeded the $37,000,000 purchase price that would ultimately be used to satisfy the loan, because, as alleged in the Cross Complaint, the Compass Agents had themselves been involved in making the demands for construction changes on behalf of the buyers." (Opp. at 2.) However, the four corners of the Cross-Complaint itself do not contain this allegation so clearly: all that Cross-Complainants allege is that Delia Fei and Ron Gable were "utilized" in some manner to "effectuate this scheme," leaving it not at all clear that the Cross-Complaint intends to allege that the Compass Agents knew that the construction costs had exceeded the purchase price. (XC ¶ 17.) The connection between making change demands, and knowing that the loan could never be satisfied, is also not articulated in the Cross-Complaint. Even evaluating the allegations using the *Bily* factors as the Buljans urge, therefore, there is nothing to support the existence of a duty based on the allegations of the Cross-Complaint. Cross-Complainants have therefore failed to state facts supporting a cause of action for negligent misrepresentation.

The Compass Agents also urge this Court to find that, as a matter of law, judgment on the pleadings in their favor is warranted because Cross-Complainants waived their claims as part of the Loan Guaranty, attached to the Cross-Complaint as Exhibit A. The Court declines to so decide at this juncture. First, fraud claims cannot be waived by contract. (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1500.) Second, waiver is ordinarily a question of fact. (*California-American Water Co. v. Marina Coast Water Dist.* (2022) 86 Cal.App.5th 1272, 1292.) Adjudication of factual questions is unsuitable on a motion for judgment on the pleadings, as is the case on demurrer. (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1068.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Cross-Defendants shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
Line: 5

24-CIV-02320 DENIZ BOLBOL, ET AL VS. BRIGITTE SHEARER, ET AL

DENIZ BOLBOL	JESSICA L. BLOME
BRIGITTE SHEARER	MINDY K. JIAN

DEMURRER TO SECOND, THIRD, AND FOURTH CAUSES OF ACTION BY RESPONDENTS/DEFENDANTS CITY OF BELMONT AND BRIGITTE SHEARER.
TENTATIVE RULING:

Parties to Appear.

2:00
Line: 6

24-UDL-01146 PABLO O'BRIEN VS. STEVEN JOHANN, ET AL

PABLO O'BRIEN	ANDREW J. DITLEVSEN
STEVEN JOHANN	PRO PER

MOTION TO SET ASIDE AND VACATE DEFAULT JUDGMENT AND ENTER ANOTHER AND DIFFERENT JUDGMENT BY DEFENDANT STEVEN JOHANN.

TENTATIVE RULING:

Initially, the Court notes that Defendant has not provided the address for the hearing. Department 15 is located at the Northern Branch, Courtroom K, 1050 Mission Road, South San Francisco, CA 94080. (See Cal. Rules of Court, rule 3.1110 [the Notice "must specify" the location of the hearing].)

Defendant Steven Johann's Motion to Set Aside and Vacate Default Judgment and Enter Another and Different Judgment (the "Motion") is DENIED without prejudice.

Notice Is Defective, and the Motion Is Not Properly Before the Court.

The proof of service of the Motion, filed on May 2, 2025 (the "PoS"), fails to declare any date of service (PoS, box 4). (Code Civ. Proc., § 1013a, subd. (1) (emphasis added.))

Further, Plaintiff's counsel declares that as of May 13 (the date of his Declaration), Plaintiff had yet to be served with the Motion, and that he only learned of it when his office called the Clerk seeking a copy of the signed Judgment. (Coe Decl., ¶ 4.)

Therefore, the Motion is not properly before the Court. As the Court of Appeal instructs:

> we conclude that an application for relief under section 473, subdivision (b), is a motion and that an application for relief under the statute is deemed to be made *upon filing in court of a notice of motion and service of the notice of motion on the adverse party*. (*Garcia v. Gallo* (1959) 176 Cal.App.2d 658, 669, 1 Cal.Rptr. 539.) Therefore, absent service on the adverse party, there is no "*application*" for relief.

(*Arambula v. Union Carbide Corp*. (2005) 128 Cal.App.4th 333, 341 (italics retained).)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare for the Court's signature a written order consistent with the Court's ruling, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

POSTED: 3:00 PM