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

Law and Motion Calendar
Judge: HONORABLE SUSAN GREENBERG
Department 3
400 County Center, Redwood City
Courtroom 2B

Thursday, April 25, 2024 AT 2:00 PM

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

1. **EMAIL Dept3@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, OR**

2. **YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**

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 item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by *Zoom*, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

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Meeting ID: 161 828 3335
Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

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(Meeting ID and passwords are the same as above)

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
14:00 LINE: 1	
21-CIV-01560	CITY OF HALF MOON BAY VS. THOMAS J. GEARING, ET.AL.

CITY OF HALF MOON BAY	SARAH H. SIGMAN
THOMAS J. GEARING	PRO/PER

MOTION FOR RECONSIDERATION BY PLAINTIFF CITY OF HALF MOON BAY
TENTATIVE RULING:

Plaintiff City of Half Moon Bay's Motion for Reconsideration is GRANTED.

The City of Half Moon Bay ("the City") moves this Court to reconsider its March 14, 2024 entries of the [Supplemental] Order Granting City of Half Moon Bay's Motion to Compel Further Discovery Responses and For Sanctions ("Supplemental Sanctions Order") and the [Supplemental] Order Granting City of Half Moon Bay's Motion to Quash the Deposition Notice and Subpoena of Deborah Q. Ruddock and for a Protective Order ("Supplemental Order re Motion to Quash"; together, "Proposed Orders").

A. Reconsidering the Supplemental Order Granting City of Half Moon Bay's Motion to Compel Further Discovery Responses and For Sanctions

The order entered by this Court on March 6, 2024, on the motion to compel and for sanctions, in part, reads: "Defendants and Cross-complainants Thomas J. Gearing and Daniel K. Gearing shall each provide further responses to the City's [discovery requests]. … Thomas J. Gearing in his capacity as Daniel Gearing's attorney shall pay $3,345 in monetary sanctions to the city. Thomas Gearing shall pay a separate monetary sanction of $3,345 in monetary sanctions to the City of Half Moon Bay." Order After Hearing on Plaintiff's Motion to Compel, filed Mar. 6, 2024, at 1–2.

The City argues that this order constitutes two separate sanctions that cannot be aggregated for the purpose of meeting the $5,000 minimum required for interlocutory appeal. The Gearings contend that since both sanctions are owed by Thomas J. Gearing in two separate capacities, one as Daniel Gearing's attorney and another as a defendant himself, the total of $6,690 constitutes a single appealable sanction.

The Court of Appeal has held that when section 904.1 was amended to include a monetary threshold for sanctions order qualifiable for interlocutory appeal, the Legislature did not envision that multiple sanctions could be aggregated to reach that threshold. *Calhoun v. Vallejo City. Unified School Dist.* (1993) 20 Cal.App.4th 39, 43–44. Therefore, the purpose of adding subdivision (a)(11) was to restrict the number of appeals from sanctions orders. *Id*. at 44.

Prior to *Calhoun*, some Courts of Appeal suggested different methods by which sanctions could be aggregated in order to qualify for interlocutory appeal, but the *Calhoun* court found these methods to create too much uncertainty. *Calhoun v. Vallejo City Unified School Dist*., *supra*, 20 Cal.App.4th at 44–45. In fact, the *Calhoun* court made a statement quite apposite to this situation: "We endorse a bright line rule that a sanction order is nonappealable if it does not impose any sanction exceeding [$5,000], and thus an order requiring payments of multiple sanctions, none of which exceed [$5,000], is nonappealable even if the total aggregated sanctions exceed [$5,000]." *Id*. at 45.

As such, this Court must find that the order granting interlocutory appeal for the two sanctions levied against Defendants and Cross-complainants Thomas J. Gearing and Daniel K. Gearing (the "Gearings") on March 6, 2024, constitutes legal error that requires vacating the Supplemental Sanctions Order dated March 14, 2024.

B. Reconsidering the Supplemental Order Granting City of Half Moon Bay's Motion to Quash the Deposition Notice and Subpoena of Deborah Q. Ruddock and for a Protective Order

The City argues that the Supplemental Order re Motion to Quash includes extraneous argument. It also expands the scope of the question certified for interlocutory review from what this Court had agreed to certify at the hearing. The Court said that it would certify the question of whether a city councilmember is entitled to protection from depositions as a high government official. Instead, the Supplemental Order includes argument about the merits of the question and suggests that it is certifying additional portions of the Court's order for review, such as the Court's finding that the city's council is the highest legislative authority of the municipality.

The Gearings contend that copying the language from the March 6 order does not expand the scope of the question certified for interlocutory review as it includes the Court's recapitulation of each party's contentions at the hearing. Copying the text of the order does not expand the scope of the question that is certified for appeal.

The order entered by this Court on March 6, 2024, on the motion to quash, in relevant part, reads: "Generally, high government officials are not subject to deposition. The exception to this rule only applies when the deposing party shows that (1) the official has direct personal factual information pertaining to material issues of the case; and (2) the information is not otherwise available from another source. The parties dispute whether Ruddock, a city councilmember, is a high government official entitled to the protection of this rule. Indeed, no Court of Appeal has decided the issue one way or another. However, a city's council is the highest legislative authority of the municipality, and a city councilmember acts as a legislator, an administrator, and at times a quasi-judicial officer in exercise of that authority. There appears no good reason to consider councilmembers something other [than] high government officials simply because the government entity whose authority they wield is smaller than those of officials held to be protected. Accordingly, Ruddock is entitled to protection of the rule unless the Gearings show that she has direct personal factual information of material issues that are not available from any

other source." Order After Hearing on Plaintiff's Motion to Quash Deposition, filed Mar. 6, 2024, at 2 (internal citations omitted) (internal quotation marks omitted).

The order entered by this Court on March 14, 2024, on the motion to quash, in relevant part, reads: "The Court further certifies, pursuant to Code of Civil Procedure S 166.1 that the ruling turns on a 'controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation.' The parties dispute whether Ruddock, a city councilmember, is a high government official entitled to the protection of this rule. Indeed, no Court of Appeal has decided the issue one way or another. However, a city's council is the highest legislative authority of the municipality, and a city councilmember acts as a legislator, an administrator, and at times a quasi-judicial officer in exercise of that authority. There appears no good reason to consider councilmembers something other [than] high government officials simply because the government entity whose authority they wield is smaller than those of officials held to be protected." [Supplemental] Order on Motion to Quash, filed Mar. 14, 2024, at 2.

The Supplemental Order does not state exactly what the question certified for appeal is, and is thus vague in a crucial manner. One plausible reading is that all of the findings in the subsequent text quoted from the March 14 order is certified for appeal. Another plausible reading is that only one or two of the findings are certified for appeal. A third plausible reading is that only the question of whether a city councilmember is a high government official immune from deposition is the only question certified for appeal. As such, the City's argument has great merit and this Court should vacate this order so it can enter a different order clarifying to the Court of Appeal what question it is meant to decide upon.

C. Reconsidering both Supplemental Orders for Rule 3.1312 violations

On March 6, 2024, this Court held a hearing on the above-mentioned motions and granted them. At the hearing, the Court stated that it would prepare and enter the orders, which it did so the same day. However, the following day, on March 7, the Gearings emailed to the City and Court the Proposed Orders on the same motions that this Court previously granted in order to certify them for interlocutory appeal. The City immediately sent the Gearings their objections to the Proposed Orders. Subsequently on March 11, the Gearings filed their proposed orders without seeking the City's input or conveying the City's objections to the Court. On March 12, the City re-sent its objections to the Gearings, including a redlined version of the Supplemental Order re Motion to Quash to which the City would agree. The Gearings refused to withdraw their proposed orders. Thereafter the Gearings sent to the Court the redlined version of the Supplemental Order re Motion to Quash but did not convey any of the City's other objections to the proposed orders. On March 13, the City sent a letter to the Court stating its objections to the proposed orders. The Court signed the two orders on March 13 and entered them on March 14.

This Court notes that the City's arguments raised in this motion to reconsider are meritorious and were raised by the City prior to the Gearings filing their Proposed Orders with this Court. Irrespective of the merits of the case, parties are reminded to adhere to the Code of Civil Procedure and the Rules of the Court. They are not mere niceties or best practices. They are

procedural guardrails for all involved parties to ensure that civil proceedings before this Court remain ***civil***. All parties are hereby cautioned to pay close attention to the Code of Civil Procedure and Rules of Court when engaging with the Court going forward.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, the Court will sign the proposed order filed by the City on April 18, 2024.

14:00
LINE: 2

21-CIV-01560 CITY OF HALF MOON BAY VS. THOMAS J. GEARING, ET.AL.

CITY OF HALF MOON BAY	SARAH H. SIGMAN
THOMAS J. GEARING	PRO/PER

MOTION NUMBER TWO FOR DETERMINATION OF EVIDENTIARY AND LEGAL ISSUES AFFECTING THE DETERMINATION OF COMPENSATION PURSUANT TO CIVIL CODE OF PROCEDURE §1260.040 TO EXCLUDE IN LIMINE TAX DEFAULTED AND GIFTED TRANSACTIONS AND OTHER INADMISSIBLE TRANSACTIONS AND TO EXCLUDE EVIDENCE OF HMB AND CLT'S UNREASONABLE AND UNLAWFUL BLOCKING OF THE PUBLIC LEGALLY MAPPED ACCESS ROADS TO THE PROJECT WRR AREA AS THEY ARE IN VIOLATION OF CCP 1263.320; 1263.330(A); 1263.330(B); 1263.330(C); AND CAL. EVID. CODE 822(A) BY DEFENDANTS AND CROSS-COMPLAINANTS THOMAS J. GEARING AND DANIEL K. GEARING

TENTATIVE RULING:

For the reasons stated below, Defendants/Cross-Complainants Thomas and Daniel Gearings' "Motion Number Two for Determination of Evidentiary and Legal Issues Affecting the Determination of Compensation," filed Feb. 26, 2024 (and re-filed for some reason on Feb. 27, 2024) is GRANTED-IN-PART and DENIED-IN-PART. (Code Civ. Proc. Sect. 1260.040.)

In an effort to further the purposes for which the Legislature passed Sect. 1260.040, including the goal of encouraging/assisting pre-trial settlement discussions, the Court finds it appropriate to exclude the parties' valuation experts, and the fact finder, via this *in limine* ruling, from considering certain property sales that the court agrees are not "comparable" to the Gearings' subject parcels, and therefore may not be considered when determining the fair market value of the Gearings' subject parcels.

The Gearings' 2-27-24 Request for Judicial Notice is GRANTED. (Evid. Code Sect. 452(d).) The Gearings request judicial notice of 22 documents previously filed with the Court. The RJN provides no explanation of their relevance, although some of these documents appear to be referenced in the Gearings' Memorandum of Points and Authorities (MPAs). The Court takes judicial notice of their filing dates and contents, but does not take judicial notice of the truth of factual assertions in the documents. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483.)

The Gearings' 3-29-24 and 4-8-24 Requests for Judicial Notice are GRANTED. (Evid. Code Sect. 452(d).) The Court takes judicial notice of these documents' dates and contents, but not the truth of statements therein.

The Gearings' Objections to the Decl. of Sarah Sigman, Obj. Nos. 5-9, are OVERRULED. Hearsay objections apply. Further, the documents do not appear to be offered to establish the properties' value, but rather, they are offered to show the Gearings' acquisition date(s), which do not appear to be meaningfully disputed.

Page limit and other rule violations. The Court addressed this issue previously. (See 4-4-24 Order(s).) Because the Gearings filed this Motion before the Court gave its admonition regarding rules violations, the Court will not repeat that admonition here. The agrees that the Gearings' 2-27-24 Notice of Motion contains page-after-page of improper argument, which belongs in an MPAs, not in a Notice of Motion. (See CRC 3.1110 [contents of Notice of Motion] and CRC 3.1113 [MPAs are limited to 15-pages].) The Court will consider striking any future-filed Notice of Motion that repeats this practice.

Planned future requests for "additional pages." The Gearings' Reply brief indicates an intent to "ask for additional briefing pages in the future." (Reply at 7.) The parties are advised that the Court will be disinclined to grant any such request(s) for additional pages. The point of the Court's prior comments about page limits was to strongly encourage *shorter and more concise* arguments, no longer briefs/arguments.

Code Civ. Proc. Sect. 1260.040. "Section 1260.040 authorizes a party to an eminent domain action to file a motion requesting a ruling on an evidentiary or other legal issue affecting the determination of compensation." (*Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 855-56.) "The Legislature enacted section 1260.040 to promote earlier resolution of issues affecting the determination of compensation, thereby preventing these issues from improperly going to the jury and increasing the likelihood of pretrial settlement." (*Id*.) "In recommending the Legislature adopt section 1260.040, the Law Revision Commission expressed its hope that earlier decision of these issues would narrow the gap between competing expert valuations, thereby facilitating settlement through alternative dispute resolution." (*Id*.) A Section 1260.040 motion is a procedural tool applicable to eminent domain cases, but not inverse condemnation cases, and is not intended as a tool for the court to resolve factual disputes, such as a dispute over whether an unconstitutional "taking" has occurred. (*Id*.)

Evid. Code Sect. 816 states:

> When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued.

Code Civ. Proc. Sect. 1263.320 states:

> (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no

particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

"Fair market value." Under California law, the proper measure of compensation when the government takes private property "is the fair market value of the property taken." (Code Civ. Proc. Sect. 1263.310.) The fair market value, in turn, reflects the price that an informed but disinterested buyer would negotiate with a similarly positioned seller on the date of valuation, each with full knowledge of the property's highest and best use. (*Id.*, Sect. 1263.320, subd. (a); *City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 744.) The knowledge imputed to the parties in this hypothetical negotiation consists of "*all* the facts which would naturally affect [the property's] value" and "which enter into the value of the land in the public and general estimation, and tend to influence the minds of sellers and buyers." (*Merced Irrigation Dist. v. Woolstenhulme* (1971) 4 Cal.3d 478, 493 (*Woolstenhulme*), italics added.) This knowledge would encompass "lawful legislative and administrative restrictions on property, which a buyer would take into consideration in arriving at the fair market value." (*People ex rel. State Public Works Bd. v. Talleur* (1978) 79 Cal.App.3d 690, 695–696; *Metro. Water District of So. Cal. v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 965, 967-68 [in eminent domain cases, valuation witnesses generally must consider the current zoning laws and other applicable regulations]. "The jury—which, unless waived, is charged with determining the amount of compensation (Cal. Const. art. I, Sect. 19)—may consider this information, along with all the other relevant facts governing permissible uses of the property. Allowing the jury to weigh such information helps ensure that the compensation awarded is just to the public as well as to the landowner." (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 716; *City of Perris v. Stamper* (2016) 1 Cal. 5th 576, 607.)

The Motion is DENIED to the extent it seeks to exclude from consideration the sale of any properties whose value(s) were diminished by the LUP/specific plan requirement. The present Motion includes extensive argument regarding the alleged illegality/unconstitutionality of the City's LUP and its specific plan requirement. For the reasons the Court previously stated (see 4-4-24 Minute Orders), the Court declines to exclude evidence of any sales on the basis that the market value of such properties were impermissibly diminished due to the LUP/specific plan requirement(s).

The Motion is DENIED to the extent it seeks to exclude from consideration the sale of any properties whose value(s) were diminished by alleged inverse condemnation/taking, and/or where excluding such evidence would require a determination of pre-condemnation damages. For the reasons the Court stated previously (4-4-24 Minute Orders), the California Supreme Court's holding in *Weiss* precludes the Court from granting any Sect. 1260.040 Motion that would effectively adjudicate, or reach factual findings, as to the Gearings' takings/inverse condemnation claims. (See 4-4-24 Minute Orders.) The Gearings deny that this Motion requires such findings, but the Motion repeatedly argues that the City, together with Coastside Land Trust (CLT), engaged in inverse condemnation by taking various actions to diminish the value of the Gearings' lots (and other lots in the "WRR"). (See, e.g., MPAs at 1-4 [arguing the City engaged in "inverse condemnation per se," and a "per se taking"].) The Gearings

contend the City engaged in inverse condemnation by failing, for decades, to implement the LUP's specific plan requirement. (Id.) But as stated previously (4-4-24 Minute Orders), on a Sect. 1260.040 Motion, per *Weiss*, the Court cannot issue an *in limine* ruling on this basis.

The Court reaches the same conclusion to the Gearings' arguments regarding pre-condemnation damages. The Gearings argue that no sales should be considered where the properties were "diminished in value because of preliminary actions taken by HMB … [f]or example, denying water permits … failing to put the legal lots on the Housing Department's Inventory of Sites Suitable Residential Development, falsely claiming for 30 years that the WRR is habitat to the Garter Snake and Red-legged Frog when it is not, falsely claiming for 30 years that wetlands exist in the WRR," etc. (See MPAs at 6.) These appear to be pre-condemnation damages arguments which, as stated in *Weiss*, the Court cannot adjudicate via a Sect. 1260.040 Motion.

The Motion is GRANTED as to gift transactions. (See Code Civ. Proc. Sect. 1263.320 [permitting, in attempting to determine the fair market value of the condemned property, consideration of "sales" of comparable properties].) The City's Opp. at 10 states that "Evidence Code Sect. 816 already defines 'comparable properties' on which valuation witnesses may base their opinion of the property's value. This definition requires a sale, and thus does not include gifts." (See also the City's Opp. at 17, FN 10 ["This definition requires a sale, and thus does not include gifts. To this extent, Defendants' request is redundant and thereby unnecessary. And the City has not indicated any intent to rely on gifts as comparable transactions when valuing the Property."]) Given the City's acknowledgement that consideration of such gift transactions is improper, and that the City does not intend to rely on such transactions, this aspect of the Motion is granted. (Evid. Code Sect. 816 [referring to comparable "sales"].) It may be unclear in some cases whether a property transferred as via a gift or sale. Where a gift transfer is established, the gift transfer shall then be excluded from consideration.

The Motion is GRANTED as to foreclosure sales. The City's Opposition (at p. 10) recognizes that Evid. Code Sect. 816 excludes consideration of foreclosure sales ("The sale may not be 'forced,' such as through a foreclosure"), citing *Redevelopment Agency v. Zwerman* (1966) 240 Cal.App.2d 70, 75 (sale is forced if it involves "a compulsion on the part of the property owner to take whatever price is offered by the highest bidder, regardless of its relation to actual value or to the owner's willingness"). Accordingly, the Gearings' request to exclude foreclosure sales is granted. (Evid. Code Sect. 816.)

The Motion is GRANTED as to "subsequent purchases" / purchases made by the City as part of its Lot Retirement Program. (Code Civ. Proc. Sect. 1263.330.) The Motion seeks to exclude consideration of "Eminent Domain … and Purchase Transactions constituted after HMB instituted Eminent Domain against the Gearings and filed a lis pendens…" (Notice at 1-3; Mot. at 7 [discussing McDonald and Chen sales].) The City's Opposition states:

> The City has no intention of referencing subsequent purchases … [The Gearings] appear to refer to other acquisitions the City has recently made through its Lot Retirement Program. [The Gearings'] request is redundant with Evid. Code Sect. 822, which already prohibits consideration of other properties acquired for the same project. … The City has never indicated any intent to rely on these acquisitions in its valuation.

(3-28-24 Opp. at 19.) Given the City's acknowledgement that considering subsequent sales (properties acquired for the same project) would be improper, this aspect of the Motion is granted. This ruling excludes acquisitions by the City by purchase after instituting eminent domain against the Gearings.

The Motion is GRANTED as "tax-defaulted" property sales. Evid. Code Sect. 816 permits consideration of comparable sales that were "freely made in good faith …" Code Civ. Proc. Sect. 1263.320 states in part:

> (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, ...

The City, citing to *San Diego Gas & Elec. Co. v. 3250 Corp.* (1988) 205 Cal.App.3d 1075, 1082, argues there is no basis for excluding "tax-defaulted" property sales. *San Diego Gas & Elec. Co. v. 3250 Corp.* involved a bankruptcy sale where the property was first appraised by two separate appraisers, where the property then sold for an amount higher than both appraisals, and where the seller was in a position to object to the sale and could have objected, but did not. (*Id*. at 1083.) It was under these circumstances that the Court permitted consideration of this sale, even though it occurred in the context of a bankruptcy. (*Id*.)

Here, the Gearings also offer evidence that in some cases, buyers have purchased properties in HMB under distressed circumstances by paying only the delinquent property taxes. The Gearings' Reply brief argues:

> Coastside Trust ("CLT") had in the past acquired tax defaulted properties from the county by only payments of the past due taxes. Dep. Vidovich. Pg. 24-25. 9/14/2023. Also, HMB is currently trying to acquire twenty-five tax defaulted properties by just paying that tax default amount and not letting them go out to bid. EX. K. Dep. Vidovich. Pg. 22. 9/14/2023. Finally, Vidovich explains, "Q. So could you explain this transaction?" "A. So my memory was that it was quite a few people that had lots, and the City wouldn't let them do anything with it. They spent a lot of money trying to do stuff, and they got old, and they gave up. So, you know, I bought it, and I think it was a bargain. I know it was a bargain." Dep. Vidovich. Pg. 21-22. 9/14/2023.

Based on the evidence presented, the Court finds it appropriate to exclude tax-defaulted property sales, which would more appropriately be characterized as forced sales rather than sales entered into freely. (Evid. Code Sect. 816; Code Civ. Proc. Sect. 1263.320.)

The Motion is GRANTED as to the sale of lots that lacked the required square footage to build a home. The Gearings argue their parcels "are all existing conforming lots (i.e., with the requisite square footage to build a home) (6,000-7,500 ft.^{2}) so there is no need for a discretionary variance." (MPAs at 1.) They argue that the City's (Mr. Carneghi's) prior appraisal used, for valuation purposes, the sale(s) of lots much smaller than the Gearings' lots, on which a home could not have been permitted absent a variance. (Id. [stating that Mr. Carneghi used "substandard lots of 1,300 and 3,500 ft.^{2}"].) Assuming,

as the Gearings represent, that the Gearings' lots are all in excess of 6,000 square feet and would therefore qualify for a building permit (assuming all other requirements were met) without the need for a variance due to being "under-size," and assuming the variance/size cut-off is, as the Gearings appear to represent, roughly 6,000 ft.^{2} to build a home, the Court agrees that that under-sized lots on which a home could not be built without a variance should not be deemed "comparable" sales.

The Motion is GRANTED as to lots that were not legally subdivided. The same is true as to the sale of parcels that are/were not legally subdivided lots. The Gearings offer evidence, and it appears undisputed by the City, that the Gearings' subject parcels are all legally subdivided lots. The Court agrees that considering recent sales of non-subdivided, non-legal lots are not "comparable" sales.

The Motion is GRANTED as to the "bulk sale" of the 27 lots. (Code Civ. Proc. Sects. 1263.320; 1263.330(a)(b)(c); Evid. Code Sect. 822(a).) The Gearings also seek to exclude the "bulk sale" between two developers of 27 lots for a total of $25,000, or approximately $950 each, "eight of which are located west of Railroad Ave., and five of which are located in the WRR Project Area." The Gearing state that most of these lots were tax-defaulted properties, which the City does not appear to dispute. The Gearing also argue that these lots' values decreased as they were in the "Project Area." ("Project Influence Rule.") The Gearings also cite to deposition testimony from one of the developers, who opined that this bulk transaction was not a "normal arm's length transaction."

> A. […] I don't think he [Bill McComas] sold these things willingly. I think he had to. Q: But you wouldn't consider any particular one of these sales of these lots a normal arm's length transaction between both parties? A: Clearly not.

(2-27-24 T. Gearing Decl., Ex. QQ, JJ at p. 24 [9-14-23 Vidovich Tr.]) Based on the evidence presented, the Court finds that the bulk sale of these 27 lots do not appear "comparable," and therefore shall be excluded.

The Motion is otherwise DENIED WITHOUT PREJUDICE at this time as premature and/or because the request is not sufficiently supported, or not sufficiently clear/specific. The Court discusses a few of the other categories of sales raised in the Motion, below.

- As to the request to exclude "transactions that are not recent," or to exclude "old" sales, this request is too vague for the Court to issue an *in limine* ruling at this time. Evidence Code Sect. 816 already limits "comparable" sales to those that took place "sufficiently near in time to the date of valuation."

- As to the request to exclude sales that were not "arm's-length transactions where both parties deal with the other with full knowledge of all the uses and purposes for which the party is reasonably adaptable and available," this request is too vague for the Court to issue an *in limine* ruling.

- As to the request to exclude sales that did not involve "oceanfront" and/or "ocean view" lots, the request is denied without prejudice at this time as too restrictive. The fact that another property is not "oceanfront," or lacks an "ocean view," does not necessarily mean that such a

sale cannot be considered "comparable" under Evid. Code Sect. 816. (See Sect. 816 [stating that the comparable property must be "sufficiently near" and "sufficiently alike" the subject property, such that the sales price of the comparable property can "shed[] light on the value of the property being valued.") The fact finder would presumably understand that an oceanfront property, and/or a property with an ocean view, will generally have a higher value than one that does not. This does not necessarily mean that a sale of a somewhat lower-value (somewhat less desirable) property would not be helpful in attempting to value the Gearings' parcels. Thus, this aspect of the Motion is denied without prejudice at this time.

- As to the request to exclude any sales involving the "Wavecrest, Surf Beach/Dunes Beach, and Venice subdivisions," or sales in any "early subdivisions," the Court lacks sufficient information at this time to issue a blanket exclusion of such sales. The Gearings appear to base this request, at least in part, on their argument that these properties were subject to the "unconstitutional" specific plan, which lowered their value, and/or because some of these lots were never legally subdivided. The Gearings have not sufficiently established a basis to exclude all such sales.

- As to the request to exclude all evidence of the City and/or CLT's blocking the streets, this request is denied without prejudice at this time. Code Civ. Proc. Sect. 1263.330(c) states that "[t]he fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following:

  (a) The project for which the property is taken.
  (b) The eminent domain proceeding in which the property is taken.
  (c) Any preliminary actions of the plaintiff relating to the taking of the property.

  If the City and/or CLT blocked access to the subject parcels as part of its eminent domain / lot retirement program project, then presumably, evidence of such actions would be inadmissible when assessing the Gearings' Property value. From the evidence presented, it is unclear to the Court when these actions took place and/or whether they are part of the City's current project.

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.

14:00
LINE: 3

21-CIV-04985 DEL SARTO 1997 FAMILY LMTD. PRTNRSHP, ET.AL. VS. LIAV LESHEM, ET.AL.

DEL SARTO 1997 FAMILY LIMITED PARTNERSHIP	P. KURT PETERSON
LIAV LESHEM	PAUL V. SAMONI

MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, SUMMARY ADJUDICATION RE: THE FIRST AMENDED CROSS-COMPLAINT AND EACH OF ITS CAUSES OF ACTION BY CROSS-DEFENDANTS DEL SARTO AND STEELE

TENTATIVE RULING:

On the Court's own motion this matter is continued to June 27, 2024 at 2 pm. The minute order shall be the order of the Court.

14:00
LINE: 4
21-CIV-04985 DEL SARTO 1997 FAMILY LMTD. PRTNRSHP, ET.AL. VS. LIAV LESHEM, ET.AL.

DEL SARTO 1997 FAMILY LIMITED PARTNERSHIP	P. KURT PETERSON
LIAV LESHEM	PAUL V. SAMONI

MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, SUMMARY ADJUDICATION RE: THE FIRST AMENDED CROSS-COMPLAINT AND EACH OF ITS CAUSES BY CROSS-DEFENDANTS DEL SARTO A LIMITED PARTNERSHIP AND STEELE TRUSTEES

TENTATIVE RULING:

Cross-defendants Thomas Del Sarto's, Rollen Steele's, and Angela Steele's Motion for Summary Judgment, or, Alternatively Summary Adjudication Re: the First Amended Cross-complaint and Each of Its Causes of Action is GRANTED in part and DENIED in part as set forth below.

Cross-defendants Thomas Del Sarto's, Rollen Steele's, and Angela Steele's Request for Judicial Notice is GRANTED as to all items.

This landlord-tenant case arises out of the lease of commercial real property located at 1129 Old County Road in San Carlos (the "Premises") by Plaintiffs and Cross-defendants Del Sarto 1997 Family Limited Partnership (the "Partnership") and Rollen H. Steele & Angela Pietro Steele as trustees of the Steele Family 2014 Trust dated March 26, 2014 (the "Trustees") to Defendant and Cross-complainant Dog Club Pool, LLC ("DCP"), whose members—Defendants and Cross-complainants Liav Leshem, Inbal Leshem, Michal Reznizki, and Ori Zaltzman (the "Members")—guaranteed DCP's obligations.

The various cross-defendants in this case have filed multiple motions for summary judgment on and adjudication of the operative cross-complaint. Cross-defendants Thomas P. Del Sarto and the Trustees (collectively, the "Individuals")—in their personal capacities only and not in their capacities trustees—move here for summary judgment on the First Amended Cross-complaint (the "FAX"), which alleges breaches of the lease agreement and separate torts leading to the close of DCP's business of operating swimming pools and related services for dog owners and their dogs. Though the notice of motion is ambiguous as to which causes of action are requested to be summarily adjudicated, the Court considers the Individuals to be moving for summary adjudication as to each of the eight causes of action in the FAX.

The Court notes that all parties have attempted to incorporate by reference argument from their briefs on the other pending motions for summary judgment and summary adjudication. Such is improper, and the Court has not considered any evidence or argument contained in papers filed in support of or in opposition to the other motions.

A. Legal Standard on Summary Judgment & Summary Adjudication

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a)(1).) Summary judgment will only 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." (*Id.*, at subd. (c).)

"A party may also move for summary adjudication as to one or more causes of action within an action … ." (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 judgment 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 judgment deprives an adverse party of the right to a trial, 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. Clarification of the Pleadings

As a preliminary matter, there is disagreement as to who has asserted which causes of action in the FAX against whom. It is necessary to resolve this dispute first, as "[s]ummary judgment proceedings usually are limited to the issues framed by the pleadings." (*Jones v. Awad* (2019) 39 Cal.App.5th 1200, 1211.) Typically, a plaintiff requests the court broaden the scope of the pleadings by liberal construction to include claims that might not be clearly alleged. (See, e.g., *ibid.*) Here, the Individuals request the FAX be interpreted to include additional causes of action against them , while DCP and the Members disavow ever asserting such claims against them.

First, the Individuals contend that the FAX asserts each of its causes of action against the Trustees in their personal capacity independent of and in addition to their capacities as trustees. However, as clarified by DCP and the Members in their opposition, the FAX does not assert any claims against

Angela Steele in her personal capacity. Indeed, this was apparently Angela Steele's understanding at the outset, as she did not file a separate answer to the FAX in her personal capacity in the manner Del Sarto and Rollen did. (See Aug. 18, 2023 Answer; cf. Nov. 22, 2023 Answer.) She has filed a separate motion for summary judgment in her capacity as trustee and thus will not be deprived of an opportunity to obtain summary judgment. Accordingly, the motion as brought by Angela Steele is denied as moot.

Second, as to Rollen Steele, DCP and the Members clarify that only the second, fourth, fifth, and sixth causes of action are asserted against him. Indeed, this is the most reasonable interpretation of the FAX, which names Rollen Steele in the caption separately to indicate his personal capacity, and uses the subheading "as to all Cross-Defendants" when he is intended to be included in that capacity. (See Jul. 11, 2023 First Amended Cross-complaint, pp. 1, 10, 12, 14.) There is also no dispute that the second, fourth, fifth, and sixth causes of action are the only causes asserted against Del Sarto. Accordingly, summary adjudication as brought by Del Sarto and Rollen Steele is denied as moot as to the first, third, seventh, and eighth causes of action.

Third, the Individuals contend that the Members are included with DCP on the first seven causes of action, while DCP and the Members clarify that the reference to 'Plaintiffs' and 'Cross-complaints' in the plural in the first seven counts were typographical errors. Unlike the disagreements above where DCP's and the Members' interpretation of their own pleading is persuasive, the FAX unambiguously asserts each cause of action on behalf of the Members and DCP together. As the Members impliedly concede the claims are without merit, summary adjudication is granted as to the second, fourth, fifth, and sixth causes of action as asserted by the Members against Del Sarto and Rollen Steele.

This leaves just four causes of action to be resolved: the second, fourth, fifth, and sixth as asserted by DCP against Del Sarto and Rollen Steele in their personal capacities.

C. 2nd Cause of Action: Breach of Covenant of Good Faith & Fair Dealing

The FAX's second cause of action is for breach of the covenant of good faith and fair dealing implied in the lease. It alleges that Del Sarto and Rollen Steele (hereafter "Del Sarto & Steele")—in their personal capacities—knew and intended to falsely assert that DCP had damaged the Premises and exaggerate the purported damage in order to cause DCP to quit the Premises before the expiration of the lease. (FAX, ¶¶ 39–40.)

When a cross-complainant's performance and conditions precedent are not at issue, the elements of a cause of action for breach of the implied covenant are: (1) the parties entered a contract; (2) the cross-defendant made an act or omission that prevented the cross-complainant from receiving the benefits of the contract; (3) the cross-defendant's conduct was done fairly or in good faith; and (4) the cross-complainant was harmed thereby. (See *Moore v. Wells Fargo Bank, N.A.* (2019) 39 Cal.App.5th 280, 291–292; CACI No. 325.)

Del Sarto & Steele contend DCP has waived this claim and that they had no contract with DCP.

1. *Del Sarto & Steele's Initial Burden of Production*

In support of their contention that this claim was waived by DCP, Del Sarto & Steele proffer undisputed evidence that DCP entered into a written lease agreement with the Partnership and the Trustees on June 5, 2018. (Apr. 11, 2024 Separate Statement ("DMF"), no. 5.) It is undisputed that the lease contains the following provision:

> Tenant and all successors, heirs, and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (i) the sole and exclusive remedy against Landlord shall be satisfied only out of Landlord's interest in the Premises … and that no other real or personal property of Landlord or Landlord's Parties shall be subject to levy on any judgment obtained against Landlord or Landlord's Parties; (ii) none of Landlord's Parties shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of Landlord); … (v) no judgment will be taken against any of Landlord's Parties; … . Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or at common law.

(Dec. 8, 2023 Compendium of Exhibits ("COE"), exh. 1, § 36(b).) The lease elsewhere defines "Landlord's Parties" as "Landlord, Landlord's partners, shareholders, officers, directors, members, managers, Trustees, beneficiaries, Trustors, agents, property managers, contractors, lenders, employees, successors and assigns, lenders, [and] ground lessors … ." (*Id.*, at § 26(a).)

Del Sarto & Steele contends that this waiver applies to all the claims in the FAX and thus offer little argument specific to any individual cause of action. Instead, they refer to the general principle that a person may waive a legal right intended for their individual benefit unless such conflicts with public policy, citing Civil Code section 3513. Meanwhile, DCP contends that contract to exculpate a person from liability from future intentional wrongs and gross negligence are unenforceable, citing Civil Code section 1668.

However, exculpatory provisions that limit liability for breaches of the implied covenant of good faith and fair dealing are valid and enforceable in the commercial context, whether caused by intentional conduct or not. (See *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371–376; *id.* at p. 376 fn. 14; *Kushner v. Home Service Co.* (1928) 91 Cal.App. 692, 698–699.) "[I]t is well established that the tenant under a commercial lease may agree to limit the scope of … the implied covenant of fair dealing." (*Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 43.)

Accordingly, the provision appears valid, and DCP appears to have agreed to waive any claim against Del Sarto & Steele for breach of the implied covenant. Therefore, Del Sarto & Steele have carried their initial burden on the second cause of action as asserted by DCP against them.

In support of their contention that they were not parties to the lease, Del Sarto & Steel refer to the lease. Its recitals and manner of execution reveal that it was entered only by DCP, the Members, the Partnership, and the Trustees in their capacity as trustees. (COE, exh. 1, *passim*.)

However, DCP points out that—as admitted by Del Sarto—Del Sarto is a general partner of the Partnership, which is a limited partnership. (DMF, no. 1.) He is accordingly liable for the Partnership's obligations and is expressly permitted to be joined in an action against the Partnership. (See Corp. Code, §§ 15904.04–15904.05.)

Thus, it appears that this alternative ground is only sufficient with respect to Rollen Steele's personal liability on the second cause of action.

2. *DCP's Shifted Burden*

DCP's contentions on the second cause of action are purely legal in nature and involve no additional evidence purporting to show the existence of a triable issue of material fact.

Accordingly, DCP has not carried its shifted burden, and summary adjudication is therefore granted as to the second cause of action as asserted by DCP against Del Sarto & Steele.

D. 4th & 5th Causes of Action: Intentional & Negligent Misrepresentation

The FAX's fourth and fifth causes of action are for intentional and negligent misrepresentation, respectively. They are based on the same set of misrepresentations, which are alleged to have been statements by Del Sarto & Steele that (1) the Partnership and Trustees "needed to perform a routine annual inspection for insurance reasons, even though [they] had not requested or performed any such 'routine annual' inspection in prior years" (FAX, ¶ 48); (2) the structure on the Premises was "'damaged' and 'sick'" (*id.*, at ¶ 49); (3) DCP's aboveground swimming pools "needed to be removed to allow further inspection of the concrete slab below for water damage" (*ibid.*); (4) the pools needed to be removed immediately to prevent further damage (*id.*, at ¶ 50); and (5) the Premises were unfit for pools (*ibid.*).

The elements of a cause of action for intentional misrepresentation are: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages." (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816; CACI No. 1900; see Civ. Code, §§ 1709–1710.) The elements are the same for negligent misrepresentation, except the falsity of the representation need not be known by the defendant—merely believed without reasonable grounds—and the intent need only be to induce reliance and not to defraud. (See *Borman v. Brown* (2021) 59 Cal.App.5th 1048, 1061.)

Del Sarto & Steele contend that waiver applies with equal force to these claims and that DCP cannot establish falsity, reasonable reliance, or damages.

1. *Del Sarto & Steele's Initial Burden of Production*

Del Sarto & Steele rely upon the same exculpatory provisions of the lease in arguing that these claims have been waived. However, while contractual obligations may be limited without conflicting public policy, liability for intentional or grossly negligent tortious conduct is not subject to the same freedom of contract.

"It is well-established in California that a party to a contract is precluded under section 1668 from contracting away his or her liability for fraud or deceit based on intentional misrepresentation." (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1500; see Civ. Code, § 1668 [contracts "to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another" are invalid].) "[N]egligent misrepresentation is included within the meaning of the word 'fraud' in section 1668." (*Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 404.)

On its face, the FAX alleges fraud, and Del Sarto & Steele offer no rebuttal to the argument that intentional torts are unwaivable in their reply. Accordingly, the exculpatory provision does no work to carry Del Sarto & Steele's initial burden on these causes of action.

Turning to the element of falsity, Del Sarto & Steele conclude that each of the alleged misrepresentations were mere opinions, citing only to *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 606–607. Indeed, "[r]epresentations of opinion, particularly involving matters of value, are ordinarily not actionable representations of fact." (*Id.*, at 606.) *Graham* itself concerned an appraisal of real property, and opinions of value are typically matters of opinion. (*Ibid.*)

But, "[w]herever a party states a matter which might otherwise be only an opinion, and does not state it as the mere expression of his own opinion, but affirms it as an existing fact material to the transaction, so that the other party may reasonably treat it as a fact and rely and act upon it as such, then the statement clearly becomes an affirmation of fact." (*Crandall v. Parks* (1908) 152 Cal. 772, 776; see *Southern Cal. Dist. Council, Assemblies of God v. Shepherd of the Hills Evangelical Lutheran Church* (1978) 77 Cal.App.3d 951, 960.)

Regardless, Del Sarto & Steele do not indicate which of the eighty-four 'material' facts and evidence in support thereof demonstrate that the alleged representations were mere opinions. "It is not the court's duty to rummage through the papers to construct or resuscitate [a litigant's] case." (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 75.) "Trial courts should not hesitate to deny summary judgment motions when the moving party fails to draft a compliant separate statement—and an inappropriate separate statement includes an overly long document that includes multiple nonmaterial facts in violation of the Rules of Court." (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 876, review filed and certified for partial publication (Jan. 16, 2024).)

Even so, when examined, none of the material facts refers to any specific alleged representation—which are particularly identified in the FAX by date—except for a denial that anyone represented the pools were to be permanently removed, which the FAX does not allege as having ever occurred. (See DMF, nos. 1–84.) A representation that the pools were damaging the Premises—in the layman's sense rather than as an assertion of legal liability—is sufficiently definite to be true or false and not mere opinion of value in the absence of any contextual evidence to the contrary.

On the element of reasonable reliance, Del Sarto & Steele argue that it is not reasonable for anyone to rely on a misrepresentation if the facts that are within his or her observation show that it is obviously false. As stated in the only case cited by Del Sarto & Steele on this point, a person "may not put faith in representations which are preposterous, or which are shown by facts within his observation to be so patently and obviously false that he must have closed his eyes to avoid discovery of the truth." (*Blankenheim v. E. F. Hutton & Co.* (1990) 217 Cal.App.3d 1463, 1474 [finding reliance justified].)

However, Del Sarto & Steele impliedly argue that—despite the fact that they themselves retained inspectors to investigate the extent of the damage—DCP should have and could have known there was no damage by performing its own investigation and thus unjustifiably relied on the misrepresentations. While some evidence is presented that signs of water damage to the Premises were apparent on visual inspection at some points around the Premises (see, e.g., Dec. 8, 2023 Declaration of Rollen Steele, ¶ 9), the Court is not directed to evidence tending to show that this water damage was caused by DCP or its pools rather than by preceding tenants or unrelated conditions. Nor is there sufficient evidence that the damage was patent and obvious—the law does not require a plaintiff to be diligent or to conduct its own investigation before justifiably relying on a misrepresentation. (See *Seeger v. Odell* (1941) 18 Cal.2d 409, 414–415.) This lack of evidence is notable given that, "[e]xcept in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact." (*Blankenheim v. E. F. Hutton & Co., supra,* 217 Cal.App.3d at p. 1475.)

On the element of damages, Del Sarto & Steele refer to limitations of liability in the lease contained in sections 26(a) and 36(a), which purport to exclude damages for property damage, loss of profits, and 'other damage to business.' (COE, exh. 1, §§ 26(a), 36(b).) Setting aside whether these provisions apply to these causes of action, the FAX alleges that DCP lost the benefit of the lease by having no choice but to vacate the Premises. (FAX, ¶ 54.) Damages for this loss are not excluded by the language of these provisions.

Accordingly, Del Sarto & Steele have failed to carry their initial burden on the fourth and fifth causes of action as asserted by DCP against them, and summary adjudication of these causes of action is therefore denied.

E. 6th Cause of Action: Intentional Interference with Prospective Economic Advantage

The FAX's sixth cause of action is for intentional interference with prospective economic advantage. It alleges that, by making the aforementioned alleged misrepresentations, Del Sarto & Steele interfered with DCP's economic relationship with its customers and caused DCP to vacate the Premises. (FAX, ¶¶ 61–64.)

"Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the

relationship; and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)

Del Sarto & Steele contend that DCP cannot establish wrongfulness, an intention to interfere, interference, causation, or damages.

1. *Del Sarto & Steele's Initial Burden of Production*

On the element of wrongfulness, Del Sarto & Steele argue that DCP cannot show their alleged conduct was wrongful independent of the alleged interference. While the conduct must indeed be an illegal act notwithstanding the interference (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393), Del Sarto & Steele rely on their arguments and evidence concerning the absence of fraud that are discussed above. For the same reasons there, Del Sarto & Steele have not made a prima facie case that DCP will not be able to prove fraud at trial here.

On the element of intent, Del Sarto & Steele again point to the Court to numerous facts they claim to be crucial to the disposition of the motion, forty-four in this instance. None appear to expressly address Del Sarto & Steele's states of mind. Instead, Del Sarto & Steele appear to rely on the absence of any interference as evidence of any intent to interfere.

On interference, the moving separate statement does include the purported facts that neither Del Sarto, Rollen Steele, nor any other person associated with the Partnership or Trustees interfered with DCP's business operations. (DMF, no. 51.) The evidence cited in support of this fact, however, is insufficient. The evidence consists of two bare legal conclusions from Del Sarto & Steele:

> There was no physical ouster or interference with DCP's business operations by [Del Sarto or Rollen Steele] or anyone representing the landlord. [Del Sarto, Rollen Steele,] and any other person representing Plaintiffs did nothing to prevent DCP from operating its business. DPC was free to operate its business at the Premises right up until the day it decided to leave and abandon the Premises in June, 2021. Had DPC fulfilled its Lease obligations, it was welcome to continue to operate its business throughout the remainder of the Lease term.

(COE, exh. 26, ¶ 37; *id.*, at exh. 27, ¶ 26.) This self-serving attestation that DCP could have stayed in possession of the Premises as long as it fulfilled what Del Sarto & Steele claim to have been DCP's obligations ignores the crux of DCP's claim—that Del Sarto & Steele fraudulently represented that DCP had damaged the Premises such that it had to pay for expensive repairs and would be forced to close its pools while inspections took place in order to have DCP fold under the threat of increasing liability and interruptions to its services. That is, the fact that DCP was free to maintain possession of the Premises and use its pools by resisting Del Sarto & Steele's inspection demands and paying for the costly repairs they claimed professional inspectors had decided were necessary does nothing to show that Del Sarto & Steele interfered with DCP's customer relations by making such demands based on misrepresentations.

The same reasoning applies to the element of causation, for which Del Sarto & Steele rely upon the same evidence. They argue that, because it was DCP's decision to vacate the Premises, it was the proximate cause of its loss of business. However, it alleges it did so while relying on Del Sarto & Steele's misrepresentations. The fact that DCP was allegedly deceived into believing that continued business with its customer was economically infeasible and thereon ended them is not so remote or independent of the deceptions so as to constitute an absence of proximate cause as a matter of law, and the evidence does not establish a prima facie case of a lack of causation.

Finally, on the element of damages, Del Sarto & Steele argue that the limitation on liability in the lease applies to preclude recovery for the lost prospective economic advantage DCP had with respect to its customers. However, because the interference is alleged to have been an intentional tort based in fraud, neither the exculpatory nor limitation provisions apply.

Accordingly, Del Sarto & Steele have failed to carry their initial burden on the sixth cause of action as asserted by DCP against them.

F. Conclusion

In summary, for the foregoing reasons, the Court rules as follows:

With respect to the FAX as asserted against Angela Steele in her personal capacity, summary judgment is DENIED AS MOOT. Summary adjudication of all causes of action is DENIED AS MOOT.

With respect to the FAX as asserted against Del Sarto & Steele in their personal capacities, summary judgment is DENIED. Summary adjudication of the second cause of action as asserted by DCP is GRANTED. Summary adjudication of the second, fourth, fifth, and sixth causes of action as asserted by the Members is GRANTED. Summary adjudication is DENIED as to the fourth, fifth, and sixth causes of action as asserted by DCP. Summary adjudication is DENIED AS MOOT as to the first, third, seventh, and eighth causes of action as asserted by DCP and the Members.

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.

14:00
LINE: 5
21-CIV-06121 FANGFANG OUYANG VS. XIDE LIN, ET.AL.

FANGFANG OUYANG	SHANSHAN ZOU
XIDE LIN	DEZHAN LI

MOTION FOR LEAVE TO FILE FIRST-AMENDED CROSS-COMPLAINTS BY DEFENDANTS AND CROSS-COMPLAINANTS XIDE LIN AKA CINDY LIN ("LIN"), SHUI HE AKA BROOKE HE ("HE"), AND RUOYA SHENG ("SHENG")
TENTATIVE RULING:

Cross-Complainants Shui He aka Brook He, Ruoya Sheng, and Xide Lin aka Cindy Lin's joint Motion for Leave to File First Amended Cross-Complaints is GRANTED pursuant to Cal. Code of Civil Procedure Sections 426.50, 473(a)(1), 576.

Amendment of a pleading may be allowed in the furtherance of justice and upon such terms as may be proper. Cal. Code of Civil Procedure Section 576. The court may allow amendment to a pleading in its discretion after notice to the adverse party. Cal. Code of Civil Procedure Sections 473(a)(1), 576.

California follows a policy of great liberality in allowing amendments to pleadings at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others, and absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. *Board of Trustees of Leland Stanford Jr. University v. Superior Court*, (2007) 149 Cal.App.4th 1154.

Here, procedural requirements have been satisfied. Plaintiff's Opposition does not demonstrate any prejudice, but rather indicates that discovery is ongoing with depositions taking place, and indicates that the proposed amended pleadings may be subject to motions to strike. This is not a sufficient basis to deny leave to amend. The Opposition also does not address the parties' prior agreement to sign a stipulation allowing for amendment of the pleadings.

In addition to the above code sections, Cross-Complainants bring their motion pursuant to Code of Civil Procedure Section 426.50 on the grounds that the causes of actions in the proposed first amended cross-complaints arise out of the same transaction, occurrence, or series of transactions or occurrences as the causes of action which the plaintiff alleges in her First Amended Complaint. This basis for amendment is supported by the declarations supporting the Motion. See Okdie Decl., ¶¶3-4; Xu Decl., ¶4; Li Decl., ¶¶19-20.

Cross-Complainants' respective First Amended Cross-Complaints may be filed within one court day of this order. Cross-Complainants request for continuance of trial is denied.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Cross-Complainants 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.

14:00
LINE: 6

22-CIV-00540 CREDITORS ADJUSTMENT BUREAU, INC. VS. OMAR A. HERNANDEZ, SR., ET.AL.

CREDITORS ADJUSTMENT BUREAU, INC.	JOSEPH JYOO
OMAR A. HERNANDEZ	PRO/PER

MOTION FOR ORDER FOR TERMINATING SANCTIONS, STRIKING DEFENDANT'S ANSWER AND ENTERING DEFAULT; REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF $2,076.57 BY PLAINTIFF CREDITORS ADJUSTMENT BUREAU, INC.

TENTATIVE RULING:

Plaintiff Creditors Adjustment Bureau, Inc.'s ("CAB") Unopposed Motion for Terminating Sanctions is GRANTED in part and DENIED in part.

On April 6, 2023, the Court ordered Defendant Omar A. Hernandez Sr. aka Omar Hernandez Lopez aka Omar Alberto Hernandez Sr. aka Alberto Lopez aka Omar Alberto Hernandez Lopez ("Hernandez") to serve verified and objection-free responses to CAB's document requests and to special interrogatories, no later than April 28, 2023, or fourteen (14) days after the service of CAB's Notice of Ruling. This Court also ordered Hernandez to pay monetary sanctions to CAB in the amount of $510.00 for each motion to compel, or a total sum of $1,020.00. Hernandez was ordered to pay sanctions no later than April 28, 2023, or seven (7) days after the service of CAB's Notice of Ruling. On October 17, 2023, this Court denied CAB's motion to grant terminating sanctions but instead awarded CAB a monetary sanction of $2,076.57. To this date, Hernandez has failed to adhere to any of these orders. Now, CAB moves this Court to again grant terminating sanctions by striking all defenses from the answer and entering a default against Hernandez. However, it is not immediately apparent that terminating sanctions is the next logical step.

This Court has the power to grant terminating sanctions after considering the totality of the circumstances, including but not limited to: (1) the willfulness of the party's conduct; (2) detriment to the propounding party; and (3) the number of formal and informal attempts to obtain discovery. *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390. Where the violation is willful and preceded by a history of discovery abuses, and it is clear that less severe sanctions would not result in compliance with discovery rules, this Court is justified in imposing terminating sanctions. *Ibid*.

CAB alleges that Hernandez's conduct is willful, as evidenced by the noncompliance with the two orders entered by this Court thus far. However, CAB has not alleged the extent to which its client has been injured by this lack of responsiveness, aside from the monies that have been requested as sanctions to reimburse CAB for the expense of filing discovery-related motions. Furthermore, CAB has not specified its informal attempts to obtain discovery aside from what the record already reveals, i.e., its attempt to procure a motion to compel prior to having an informal discovery conference ("IDC"), two successful motions to grant monetary sanctions, and an unsuccessful motion to grant terminating sanctions. One could even argue that the record contains more attempts

to procure a particular response from this Court, namely a judgment in CAB's favor, as opposed to attempts to procure discovery responses from Hernandez.

In the present case, there is no dispute that CAB's motions were properly noticed, or that Hernandez failed to timely comply with the Court's orders granting those motion. This Court is empowered to grant terminating sanctions for failure to comply with court orders. However, it is not immediately apparent from the record that this Court should jump to terminating sanctions as the next step. Code of Civil Procedure section 2023.030 allows this Court to also impose issue sanctions or evidentiary sanctions, aside from monetary sanctions and terminating sanctions.

From the minute notes of the IDC that Hernandez attended, it appears that CAB knows Hernandez' mobile phone number. Though the motion and declaration emphatically state that Hernandez has not made any attempts to contact CAB, neither does it state anywhere that CAB has made attempts to contact Hernandez regarding all these discovery issues and sanctions. While the record does paint a rather poor picture for Hernandez, it does not necessarily mean that CAB should not be held to a standard of engaging in good faith with the opposing side in order to resolve this matter.

Terminating sanctions are justified when the court evaluates the sanctioned party's history of repeated discovery abuses, and deems that lesser sanctions are insufficient to compel a party to act in accordance with discovery rules. *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1106 (internal citation omitted). It is also justified where the court found that obtaining discovery responses from the defendant was "like pulling teeth," and that defendant's evasive responses to discovery resulted in the court having to vacate the trial date. *Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1616.

Here, CAB asked this Court to grant a motion to compel. After discovery deadlines had expired, CAB immediately decided to jump to terminating sanctions. There is not a long record of a history of repeated discovery abuses whereas lesser sanctions were shown to be insufficient to compel a party to act in accordance with discovery rules. CAB has sought neither issue nor evidentiary sanctions, though both could very well materially advance this case towards a final judgment.

Aside from terminating sanctions, this Court also has the power to impose issue sanctions "ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process." Code Civ. Proc., § 2023.030(b). The Court can also impose issue sanctions by issuing an order "prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses." *Ibid.* In addition to issue sanctions, this Court can also grant evidentiary sanctions by issuing an order "prohibiting any party engaging in the misuse of the discovery process from introducing designated matters into evidence." Code Civ. Proc., § 2023.030(c).

This Court decides that it will impose evidentiary sanctions against Hernandez for his noncompliance with court orders. Hernandez will be prohibited from introducing into evidence any document that is responsive to CAB's request to produce documents. In other words, this Court thus orders the parties can legally conclude that no such documents that CAB has requested in discovery actually exist.

This Court has the power to impose a monetary sanction if a party fails to obey an order compelling an answer. Code Civ. Proc., § 2030.290(c). Due to Hernandez's failure to comply with court orders thus far, this Court imposes a $2,076.57 monetary sanction against him, which is the amount of attorney's fees and costs that CAB had to expend to prepare and file this motion for terminating sanctions. A monetary sanction in total of $2,076.57 is thus awarded and payable to Plaintiff Creditors Adjustment Bureau, Inc. within thirty (30) days.

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.

14:00
LINE: 7

22-CIV-01544 TEOFILIN CRUZ VS. JESUS FAJARDO, ET.AL.

TEOFILIN CRUZ	MARK C. WATSON
JESUS FAJARDO	MICHAEL S. CASHMAN

MOTION TO BIFURCATE TRIAL BY DEFENDANTS/CROSS-COMPLAINANTS JESUS FAJARDO AND AFFORDABLE POWDER COAT CORPORATION

TENTATIVE RULING:

The unopposed Motion to Bifurcate Trial is GRANTED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendants 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.

14:00
LINE: 8
23-CLJ-02570 DISCOVER BANK VS. SHU GUO

DISCOVER BANK ROBERT COX
SHU GUO

MOTION TO SET ASIDE NOTICE OF SETTLEMENT AND ENTER JUDGMENT PURSUANT TO STIPULATION BY PLAINTIFF DISCOVER BANK

TENTATIVE RULING:

The Motion of Plaintiff Discover Bank ("Plaintiff") to Set Aside Notice of Settlement and Enter Judgment Pursuant to Stipulation is DENIED IN PART and GRANTED IN PART, as set forth below.

Plaintiff seeks to set aside the Notice of Settlement filed August 11, 2023, but has not set forth a basis to set aside the Notice. The Stipulation Agreement states that if Defendant Shu Guo ("Defendant") defaults under the terms of the Stipulation, Plaintiff shall apply to the court to have the ***dismissal without prejudice (if applicable) set aside and vacated*** and to have judgment entered under the terms of this stipulation, concurrently with applying to the court for entry of judgment. (Stipulation Agreement, ¶ 8 (emphasis added).) Plaintiff acknowledges that the parties entered into a settlement agreement and seeks to enter judgment based on this same settlement agreement. (Cox Decl. ¶¶ 2, 5, and Exh. 1.) Plaintiff fails to point to any language in the settlement agreement providing for setting aside the Notice of Settlement. As such, there appears to be no ground for setting aside the Notice of Settlement since Plaintiff admits there is an enforceable settlement agreement between the parties. The Motion to Set Aside the Notice of Settlement is therefore DENIED.

Plaintiff also seeks a judgment pursuant to the settlement agreement. Plaintiff establishes that it is entitled to a judgment of $5,156.16, which consists of the $5,946.16 owed under the settlement agreement minus $790.00 payments by Defendant. The Motion to Enter Judgment Pursuant to Stipulation is therefore GRANTED. Judgment is to be entered in the amount of $5,156.16 against Defendant.

The Court will sign and enter the proposed Judgment submitted by Plaintiff.

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.

14:00
LINE: 9
23-UDL-00700 SAMMY SHUN CHOW MA VS. ATHANASIOS N. BROERS, ET.AL.

SAMMY SHUN CHOW MA	EDWARD C. SINGER
ATHANASIOS NICHOLAS BROERS	ANDREW G. WATTERS

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT BY DEFENDANTS YASSIN OLABI AND ATHANASIOS BROERS
TENTATIVE RULING:

Defendants Athanasios Nicholas Broers and Yassin Olabi's (collectively, "Defendants") Motion for a Judgment Notwithstanding the Verdict is DENIED.

A. Legal standard

A judgment notwithstanding the verdict ("JNOV") is proper only when no substantial evidence and no reasonable inference therefrom support the jury's verdict. *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110. If the evidence viewed in the light most favorable to the party securing the verdict cannot support that verdict, then may a JNOV motion be granted. *Ibid*. In ruling on a JNOV motion, a court cannot weigh the evidence or judge the credibility of witnesses. *Ibid*. (citing *Quintal v. Laurel Grove Hosp.* (1964) 62 Cal.2d 154, 159; *Knight v. Contracting Engineers Co.* (1961) 194 Cal.App.2d 435, 442). If the evidence is conflicting, or if several reasonable inferences may be drawn, then the JNOV motion must be denied. *Ibid*. (citing *McCown v. Spencer* (1970) 8 Cal.App.3d 216, 226; *Hozz v. Felder* (1959) 167 Cal.App.2d 197, 200). In addition, if there is any substantial evidence or reasonable inferences to be drawn in support of the verdict, then the JNOV motion must be denied. *Ibid*. (citing *Brandenburg v. Pacific Gas & Elec. Co.* (1946) 28 Cal.2d 282, 284).

B. Review of the record

Defendants move this Court for a judgment notwithstanding the verdict ("JNOV") because no reasonable jury could have found for Plaintiff Sammy Shun Chow Ma ("Plaintiff") in regards to three matters: (1) the physical existence of the in-law unit; (2) whether Plaintiff cashed checks; and (3) whether Plaintiff was retaliating against Defendants.

First, Defendants contend that no reasonable jury could have found that an in-law unit on the Property was not physically located on the Property. Such argument is related to whether the in-law unit constitutes an Accessory Dwelling Unit ("ADU") in violation of the City of San Mateo zoning code. However, Plaintiff contends that there was no illegal in-law unit, because Plaintiff had proffered evidence to show that he remediated that problem after he received notice from the City of San Mateo in January of 2015. The City of San Mateo conducted a satisfactory final inspection on March 31, 2015. Furthermore, Defendants also ask this Court to consider the transcript of the

restraining order hearing held on November 6 and 9 of 2023, which this Court had already excluded from evidence.

Defendants' arguments are largely based on evidence that was either proffered by them or excluded from trial. It is not for this Court to weigh the evidence in ruling upon this motion, and it is improper for this Court to consider evidence that was purposefully excluded from the jury's consideration. Given these considerations, it does not appear from the record so plainly that there was an illegal second unit on the property such that no reasonable jury could have found for the Plaintiff. The jury found that the in-law unit did not constitute an ADU as defined by City of San Mateo zoning code, not that said unit did not exist whatsoever. Therefore, this Court finds this argument unpersuasive.

Second, Defendants contend that no reasonable jury could have found that Plaintiff did not cash Defendants' rent checks, since funds were held by Plaintiff for the month in which he received the rent payment and then subsequently returned via cashier's checks. Plaintiff contends that the evidence shows that Defendants were attempting to tender rent payment over Plaintiff's objections after the end of the sixty-day notice to quit. The evidence shows that when Defendants attempted to pay rent by check, Plaintiff returned those checks. The evidence also shows that when Defendants attempted to pay rent by direct deposit, Plaintiff returned those amounts by cashier's checks.

Defendants' arguments are unavailing because they are trying to characterize the elapsed time between when Defendants tendered rent by direct deposit to the time Plaintiff returned those funds via cashier's checks as "acceptance of rent payments." This is disingenuous. Even from the face of the JNOV motion, it reads clearly that the Plaintiff returned all rent payments to Defendants. There exists no evidence to the contrary. As all the evidence supports the verdict, the Court also finds this argument unpersuasive.

Third, Defendants contend that no reasonable jury could have found that Plaintiff did not tender eviction notices as a retaliatory measure for reporting the Property to the City of San Mateo Community Development Department. According to Civil Code § 1942.5(a)(2), a landlord retaliates by filing an unlawful detainer action within 180 days of the tenants filing a complaint with an appropriate agency for the purpose of obtaining correction of a condition related to tenancy conditions, so long as the landlord has notice of this complaint. Plaintiff contends that Defendants' citation to Civil Code § 1942.5(a)(2) is unavailing, as the retaliation statute only applies to claims that were made in good faith. Plaintiff offered substantial evidence to show that Defendants had ulterior motives for making a complaint to the City of San Mateo. Those ulterior motives were: (1) Defendant Yassin Olabi ("Olabi") wanted to take over the master lease for the Property; (2) after Plaintiff declined Olabi's offer to take over the master lease, Olabi began making and documenting complaints; (3) Olabi's lawsuit against Plaintiff gave Olabi a financial incentive to bring complaints; and (4) Olabi had filed a writ of mandate suit against the City of San Mateo to compel it to issue code violations; and (5) Olabi's complaint referenced a condition that was caused by another party well before Plaintiff started managing the Property.

Again, it is not the purview of this Court to weigh the evidence. A jury could plausibly give great weight to Plaintiff's evidence that the complaints brought to the City of San Mateo were done so in

bad faith. Because substantial evidence shows that Civil Code § 1942.5(a)(2) does not apply to this case, the Court finds this argument unpersuasive as well.

This Court finds that substantial evidence exists to support the verdict for Plaintiff on all three grounds that Defendants contend form a basis for a JNOV motion. Accordingly, this Court in its discretion denies Defendants' motion for a judgment notwithstanding the verdict.

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.

14:00
LINE: 10
23-UDL-01552 BRANDON TRAN VS. MAUREEN BENAVIDES

BRANDON TRAN	JOHN SAADEH
MAUREEN BENAVIDES	PRO/PER

MOTION TO SET ASIDE AND VACATE DEFAULT JUDGMENT BY DEFENDANT MAUREEN BENAVIDES

TENTATIVE RULING:

Before the court is Defendant Maureen Benavides' motion to set aside judgment and vacate default judgment pursuant to California Code of Civil Code section 473, subdivision (b). The court has also reviewed and considered plaintiff's motion in opposition, the declaration of John Sadeh, and memorandum of points and authorities in support.

A party may be relieved of a judgment taken against him through surprise, mistake, inadvertence, or excusable neglect. (Code Civ. Proc., § 473, subd. (b).) Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. (*Ibid*.) "Neglect is excusable if a reasonably prudent person under similar circumstances might have made the same error." (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 929.) This showing must be made by a preponderance of the evidence, and a court has no discretion to grant relief if it is not made. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.)

Here, defendant has not satisfied the requirements of Code of Civil Procedure, section 473, subdivision (b) because she has not attached or otherwise accompanied her motion with the pleading she would propose filing. (*Id.*) Although relief from default may be granted even where there is "substantial compliance" and a proposed answer is filed separately from the notice of motion (but before the motion hearing) nothing has been filed here. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 5:386, p. 5-114.) Accordingly, Defendant's motion to set aside and vacate default judgment is DISMISSED WITHOUT PREJUDICE.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, 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.