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

Law and Motion Calendar
HONORABLE NANCY L. FINEMAN
Department 4
400 County Center, Redwood City
Courtroom 4C

Tuesday, June 24, 2025

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING BEFORE 4:00 P.M. THE COURT DAY PRIOR TO THE HEARING:

New: You must email a copy of any reply briefs, or any Unlawful Detainer Opposition or Motion for Summary Judgment to: lawandmotionreplybriefs@sanmateocourt.org

1. **EMAIL Dept4@Sanmateocourt.org 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) 261-5104 AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**

3. **YOU MUST GIVE NOTICE BEFORE 4:00 P.M. THE COURT DAY PRIOR TO THE HEARING TO ALL PARTIES OF YOUR INTENT TO APPEAR PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.1308(a)(1).**

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

At this time, *appearances can be in person or by Zoom*. When you sign in to Zoom, use your first and last name. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS PROHIBITED.
Please check in by 1:50 pm.

Zoom Video/Computer Audio Information:

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Phone number: 1-669-254-5252

Meeting ID: 160 624 8977
Password: 230279

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.

2:00 PM
LINE 1
20-CIV-04787 CASEDRIA PARKER VS THE SALVATION ARMY

CASEDRIA PARKER	SHAUN SETAREH
THE SALVATION ARMY	ANGELA J RAFOTH

COMPLIANCE HEARING

TENTATIVE RULING:

On October 24, 2024, this court in a written order granted final approval of class settlement and set a compliance hearing for June 24, 2025 at 2:00 p.m.

On June 16, 2025, Mark Unkefer of American Legal Claim Services, LLC (ALCS), the settlement administrator, filed a declaration. In his declaration, he sets forth facts demonstrating that ALCS has properly distributed the settlement funds in accordance with the settlement agreement and final approval order. However, his declaration was executed in Jacksonville, Florida under the laws of the State of Florida and is hearsay and of no effect. (*Cal. Prac. Guide Civ. Pro. Before Trial*, § 9:47 (TRG June 2025 update); Code Civ. Proc., § 2015.5) Unkefer shall file and serve an amended declaration in the proper form within five court days of the hearing.

Further, the court ordered that the plaintiff submit a proposed judgment. (Order granting motion for final approval at pp. 3-4.) That proposed judgment was not submitted. Plaintiff shall submit a proposed judgment within five court days of the hearing.

Once the judgment is entered and the amended declaration in the proper form is filed, all conditions for disbursing the funds will have been performed and the case will have been completed in the trial court.

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.

2:00 PM
LINE 2
22-CIV-03427 GRAVITY SPEAKERS, LLC, ET AL. VS. KEITH HERMAN, ET AL.

GRAVITY SPEAKERS, LLC	JOSEPH R ASHBY
KEITH HERMAN	JENNIFER M MILLIER

MOTION TO BE RELIEVED AS COUNSEL AS TO KEITH HERMAN

MOTION TO BE RELIEVED AS COUNSEL AS TO INVESTMENT PROPERTY ADVISORS, INC.

TENTATIVE RULING:

Jennifer Millier's unopposed Motion to Be Relieved As Counsel for Keith Herman and Investment Property Advisors, Inc. is DENIED.

This case is set for trial on August 6, 2025 with a pretrial conference on July 21, 2025 (which is the first day of trial under this court's pretrial order). Defense counsel was present when the trial date was set and agreed to the date. If Millier's request to be relieved is granted, this would prejudice the defendants as trial is imminent. Trial preparation should be underway because pretrial documents are due to the court on July 7, 2025, two weeks away and the court's pre-trial order requires the parties to jointly file documents so that the parties should be in the throes of trial preparation. If Millier were to be relieved from her duties as attorney of record, defendants would have to find new counsel and said counsel would have a very short time to prepare for trial, which would significantly prejudice defendants. While it is generally true that a refusal to pay expenses pursuant to the client's contract with her attorney can be a ground for permissive withdrawal (see Rules of Prof. Conduct, rule 1.16(b)(5)), it does not necessarily entitle the attorney to withdraw: the potential prejudice to the client must still be considered. (See Rules of Prof. Conduct, rules 1.16(c), (d).) There is no showing that Millier has taken reasonable steps to avoid the foreseeable prejudice to defendants as required by the Rules of Professional Conduct. Thus, the court in exercising its discretion after weighing all the facts denies the request to withdraw finding that defendants would be prejudiced by a withdrawal of their counsel so close to trial.

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

2:00 PM
LINE 3
22-CIV-05368 MARIC ARRIAGA VS. COUNTY OF SAN MATEO, ET AL.

MARIC ARRIAGA	MICHAEL S SMITH
COUNTY OF SAN MATEO	ANTHONY N DEMARIA

DEFENDANT COUNTY OF ALAMEDA'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TENTATIVE RULING:

The Demurrer of Defendant County of Alameda ("Alameda") to the First Amended Complaint ("FAC") by Plaintiff Maric Arriaga ("Plaintiff") is SUSTAINED WITH LEAVE TO AMEND based on uncertainty.

The FAC alleges a single negligence cause of action against Alameda. However, the FAC alleges that liability against Alameda is based on Government Code sections 815.2, 815.4 and/or 815.6. (FAC, ¶ 56.) Plaintiff also states in opposition that this negligence cause of action is based both on Alameda's vicarious liability under Government Code sections 815.2 and 815.4, as well as Alameda's failure to discharge a mandatory duty under Government Code section 815.6. Accordingly, Plaintiff is to set forth these separate theories in separate causes of action. (See *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 9.) While a demurrer for uncertainty is disfavored and Alameda can determine the claims against it, based upon the combining of two separate theories of liability which have their own distinct and factual elements in one cause of action, the Court determines that there is sufficient uncertainty to sustain the demurrer. (*Id*. at p. 9.)

In order to assist plaintiff in drafting the first amended complaint and the parties meet-and-confer regarding any demurrer, the Court provides some preliminary observations concerning the additional arguments made by the parties on demurrer. As to Alameda's argument that Plaintiff fails to state a claim for failure to discharge a mandatory duty under Government Code section 815.6, the Court's initial leaning is to agree with that argument because the FAC fails to identify any statute or enactment under which a mandatory duty was imposed on Alameda, which statute was intended to protect against the type of harm suffered by plaintiff. As to the argument that the third cause of action is barred because of discretionary immunity, the Court's initial leaning is to agree with Plaintiff that *D.G. v. Orange County Social Services Agency* (2025) 108 Cal.App.5th 465 (*D.G.*) is more persuasive under these facts than *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606 (*K.C.*). The FAC alleges, as did the plaintiff in *D.G.* that plaintiff told the social work that abuse occurred, but that no action was taken and no investigation was completed. (FAC, ¶ 31; see also *id*., ¶¶ 32, 33, 35-38.) While *K.C.* came to a different conclusion, the Court believes that at the pleading stage an allegation that the abuse was reported and no action was taken or investigation completed is sufficient to state a claim. The foregoing are simply preliminary thoughts. The court is sustaining with leave on the issue of uncertainty and that is the

only issue upon which the Court will hear oral argument if the tentative ruling is contested. Since it is unclear how the Plaintiff will amend the complaint, the arguments regarding the immunity issue may change and thus it would be premature to hear argument on those issues. Alameda is not precluded from raising these issues again in a subsequent demurrer if it still believes the amended complaint is deficient.

Plaintiff has ten days to file and serve a Second Amended Complaint, which runs from service of written notice of entry of order. (Cal. Rules of Court, rule 3.1320(g); Code Civ. Proc., § 472b.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Alameda's counsel 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.

2:00 PM
LINE 4

22-CIV-05368 MARIC ARRIAGA VS. COUNTY OF SAN MATEO, ET AL.

MARIC ARRIAGA	MICHAEL S SMITH
COUNTY OF SAN MATEO	ANTHONY N DEMARIA

DEFENDANT COUNTY OF ALAMEDA'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

TENTATIVE RULING:

The Motion to Strike Portions of Plaintiff Maric Arriaga's ("Plaintiff") First Amended Complaint ("FAC") by Defendant County of Alameda ("Alameda") is ruled on as follows:

The Motion to Strike the reference to Government Code section 815.6 as set forth in paragraph 56, page 11, line 16, is DROPPED as MOOT in light of the Court's ruling sustaining Alameda's Demurrer to the negligence cause of action.

The Motion to Strike the reference to "*See* Cal. Welf. and Inst. Code § 16000.1(a)." at paragraph 16, page 4, line 17 is GRANTED WITHOUT LEAVE TO AMEND. This statute applies to the state. (See Welf. & Inst. Code, § 16000.1, subd. (a) ["The Legislature finds and declares…(1) [t]he state has a duty to care for and protect the children that the state places into foster care, and as a matter of public policy, the state assumes an obligation of the highest order to ensure the safety of children in foster care."].)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Alameda's counsel 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.

2:00 PM
LINE 5

23-CIV-05554 PETER P. FOURNIER VS. WINNIEBAGO INDUSTRIES INC., ET AL.

PETER P. FOURNIER	NEAL F MORROW
WINNIEBAGO INDUSTRIES INC.	THOMAS M. MURPHY

MERCEDES BENZ USA LLC'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

TENTATIVE RULING:

For the reasons stated below, defendant Mercedes-Benz U.S.A., LLC's (MBUSA) Motion for Summary Judgment (MSJ), filed March 27, 2025, is GRANTED. (Code Civ. Proc., § 437c.) MBUSA's alternative Motion for Summary Adjudication is therefore DENIED AS MOOT.

MBUSA's June 13, 2025 unopposed Request for Judicial Notice ("RJN") is GRANTED as to the Complaint (Evid. Code, § 452, subd. (d)), and GRANTED as to the undisputed fact that Bish's RV, from which Plaintiff purchased the subject vehicle, is located in Oregon. (Evid. Code, § 452, subd. (h).)

MBUSA's June 13, 2025 Objections to Evidence are immaterial to the disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).) The court agrees that plaintiff has not laid any foundation for this evidence (the Car Fax Report and MBUSA's discovery responses). The court notes, however, that even if these documents were admissible, they would not impact the court's ruling on the motion.

Factual background and the asserted claims. Plaintiff asserts claims against MBUSA under California's Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, *et. seq*.) and California's Unfair Business Practices Act (Bus. & Prof. Code, § 17200). Plaintiff Peter Fournier's November 21, 2023 complaint alleges that in 2022, plaintiff purchased a Winnebago (RV) from Bish's RV in Junction City, Oregon. In February 2022, plaintiff drove to Bish's RV in Oregon, where he signed a Purchase Agreement for the RV, paid the balance of the purchase funds, performed an inspection of the RV, received Owner's Manuals for the RV, took possession/delivery of the RV, and then drove it off the lot. According to plaintiff, he thereafter drove the RV back to California and registered it in California. As alleged in the complaint, plaintiff later experienced problems with the vehicle that defendant MBUSA did not repair to plaintiff's satisfaction. Plaintiff eventually filed this case, naming, as defendants, Winnebago Industries Inc. (Winnebago), Mercedes-Benz U.S.A., LLC (MBUSA), and Autobahn Motors (Autobahn). Plaintiff then voluntarily dismissed Winnebago from the case.

As against defendant MBUSA, the complaint asserts three causes of action, for (1) Breach of express warranty (Song-Beverly Act); (2) Breach of implied warranty (Song-Beverly Act); and

(3) violation of Business & Professions Code section 17200 (Unfair Competition). MBUSA moves for summary judgment, arguing that all asserted claims fail as a matter of law because the vehicle was not sold in California. As explained below, the court agrees with MBUSA.

Summary judgment standard. A motion for summary judgment shall be granted if the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant has met its burden of showing that a cause of action has no merit if the defendant shows that one or more elements of the subject cause(s) of action cannot be established, or that there is a complete defense to that cause of action. (*Id*., § 437c, subd. (p)(2).) If a defendant meets this burden, the burden then shifts to the plaintiff to show that a triable issue of one or more material facts exists to that cause of action, or a defense thereto. (*Ibid*.)

"A triable issue of material fact exists if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion, in accordance with the applicable standard of proof." (*Pasadena Metro Blue Line Constr. Auth. v. Pac. Bell Tel. Co.* (2006) 140 Cal.App.4th 658, 663; *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.)

Title transferred in Oregon, not in California, and therefore, California's Song-Beverly Act does not apply. "Application of the Song–Beverly Act is expressly limited to goods sold in California.… when title passes outside of California, the Song–Beverly Act does not apply." (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478 [Song–Beverly Act did not apply to motorhome sold in Idaho and then brought into California]; *Davis v. Newmar Corp.* (2006) 136 Cal.App.4th 275, 278 (Song–Beverly Act did not apply to sale of motorhome negotiated in California where contract required delivery in Nevada); *Cal. State Elecs. Ass'n v. Zeos Int'l Ltd*. (1996) 41 Cal.App.4th 1270, 1278 [Song–Beverly Act did not apply to goods where title passed in Minnesota upon shipment of goods from seller to buyer in California."]; Civ. Code, § 1793.2 ["Every manufacturer of consumer goods *sold in this state* and for which the manufacturer has made an express warranty shall …"]) (italics added.)

Commercial Code section 2401(2) states:

> Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods ....
>
> (a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
>
> (b) If the contract requires delivery at destination, title passes on tender there.

(Com. Code, § 2401(2).) Subsection (a) describes a "shipment" contract, whereas subsection (b) describes a "delivery" contract. Shipment contracts are the presumptive form in California. (*Wilson v. Brawn of California, Inc. (*2005*)* 132 Cal.App.4th 549, 556.)

Here, the undisputed facts establish that title to plaintiff's RV transferred in Oregon, not in California. MBUSA offers evidence that on September 24, 2021, plaintiff ordered the vehicle from Bish's RV, a business located in Junction City, Oregon. (MBUSA's Evidence, Ex. B.) The "Delivery Order" identified an "Orientation Date" as "2-28-22." (*Id*.) The Delivery Order did not identify any location for "delivery." (*Id*.)

In February 2022, plaintiff travelled to Bish's RV in Oregon, where plaintiff (a) signed a "Purchase Agreement" for the subject RV; (b) performed a walk-through and inspected the RV (Plaintiff's Tr. at 30); (c) received multiple Owner's Manuals for the RV (id); (d) paid the remaining amount owed for the vehicle; (e) traded in (to Bish's RV) the "Tiffen" vehicle he had driven to Oregon, and completed the paperwork necessary to transfer title of the Tiffen to Bish's RV; (f) took possession/delivery of the subject RV; and (g) drove it off the lot. (Plaintiff's Tr. at 27-28, 34.) Plaintiff testified:

> Q. So you ordered it in September [2021] and then sometime thereafter, do you go up to Bish's RV [in Oregon] to finalize the purchase?
>
> A. Correct. I drove my Tiffin. They took the Tiffin [trade-in] from me. I signed the title over to them. We did the paperwork. I provided the additional funds, and I took delivery of the vehicle.
>
> Q. And you took delivery of the RV at Bish's RV [in Oregon]?
>
> A. Correct.
>
> …
>
> Q. Okay. So was this when you drove the Tiffin up to Bish's RV [in Oregon] to finalize the purchase?
>
> A. In February of 2022?
>
> Q. Yes.
>
> A. I don't recall, but that seems reasonable as far as the time frame.
>
> …
>
> Q. So after you signed the purchase contract at Bish's RV, you drove the RV off their lot?
>
> A. Correct.

(Plaintiff's deposition Tr. at 27-28; 34.)

The "Purchase Agreement" that Plaintiff signed on February 28, 2022 in Oregon (MBUSA's Evidence, Ex. B) identifies the "Delivery Date" as February 28, 2022, which is the same date that plaintiff signed it. The Purchase Agreement does not identify a delivery location. Plaintiff

contends that after completing the transaction at Bish's RV in Oregon, he drove the RV back to California and registered it in California.

The only conclusion as a matter of law that can be drawn from the evidence here is that title to the RV transferred in Oregon, which means that California's Song-Beverly Act does not apply. Plaintiff offers no declaration with his Opposition, nor any evidence suggesting that title transferred in California. Plaintiff argues that after the Oregon purchase, he drove the vehicle to California, registered it in California, and paid sales tax in California. But plaintiff offers no authority suggesting that registering and/or paying sales tax in California impacts the sole question here, which is where title transferred. Notably, in the *Cummins* case, the plaintiffs bought the subject vehicle in Idaho and then drove it back to California and registered it in California. Yet the Supreme Court held that title had transferred in Idaho, and therefore, the Song-Beverly Act did not apply. (*Cummins, Inc., supra,* 36 Cal.4th at pp. 487-490.)

Plaintiff's reliance on *Gaynor v. W. Recreational Vehicles, Inc.*, 473 F. Supp. 2d 1060, 1064 (C.D. Cal. 2007) is misplaced and not precedential authority. The facts there are not analogous. In *Gaynor*, the plaintiff purchased an RV from Saddleback RV in Irvine, California. Plaintiff negotiated and signed the purchase contract at Saddleback's location in Irvine, California. (*Id*. at p. 1063.) Plaintiff inspected and took delivery of the RV at Saddleback RV in Irvine, California. (*Ibid*.) The plaintiff also signed "Customer Acceptance Form" and California DMV "Application for Registration of New Vehicle" form prepared by Saddleback RV that indicated the "date first sold" and "date first operated" to be September 10, 2004. (*Id*.) On September 11, 2004, while at the seller's location in California, plaintiff moved his personal belongings into the RV. Plaintiff and his wife then slept in the RV on September 11 and 12, 2004 at the dealer lot in Irvine, California. (*Id*.) Given these facts, circumstances, the court held that title had transferred in California, before the RV was shipped out of state.

As explained above, the facts here are very different. Plaintiff here signed the Purchase Agreement, inspected the RV, received the Owner's Manuals, traded in his other vehicle, paid the balance of the purchase price, and took possession of the RV, *all in Oregon*. When plaintiff drove the RV off the lot in Oregon, the seller had clearly completed his performance. (UCC 2401(2) ["Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods ..."])

In his opposition, plaintiff also argues that "[d]uring the sales negotiations, plaintiff indicated his intent to take possession of the Vehicle in California, registered the vehicle in California, and paid the California Sales Tax." (Opp. at p. 6.) The Court disregards this argument on grounds that it is unsupported by any evidence. Further, even if the foregoing statement were supported by evidence, it would not make any difference. The evidence establishes that Bish's RV's obligations were complete by the time Plaintiff drove the RV off the lot in Oregon. Whether or not Bish's RV knew, or had been told, that plaintiff planned to take the RV to California does not change the location of where title transferred.

Conclusion. Because the sale here occurred in Oregon, not in California, California's Song-Beverly Act does not apply. And because plaintiff's Business & Professions Code section 17200 claim is entirely predicated on MBUSA's alleged violation of the Song-Beverly Act (which

Plaintiff's Opposition does not dispute), the section 17200 also fails as a matter of law. Therefore, MBUSA's Motion for Summary Judgment is GRANTED. (Code Civ. Proc., § 437c.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for defendant MBUSA 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.

2:00 PM
LINE 6
24-CIV-01020 MARIA GOMES VS. CONRAD MCKINNEY, ET AL.

MARIA GOMES	PRO SE
CONRAD MCKINNEY	ANDREW D. WINGHART

DEFENDANT CONRAD MCKINNEY'S MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE AND REQUEST FOR SANCTIONS IN THE AMOUNT OF $1,350.00

TENTATIVE RULING:

The court GRANTS defendant Conrad McKinney's motion compelling plaintiff Maria Gomes to produce responsive documents to defendant's first set of request for production of documents. Gomes shall produce all responsive documents within twenty (20) days of notice of entry of order.

Code of Civil Procedure section 2031.320 provides that if a party in response to a demand for documents states that documents will be produced and thereafter fails to produce documents, the propounding party may move for an order compelling compliance. On May 6, 2024, defendant served his first set of request for production of documents to Gomes and she responded on June 21, 2024 stating in effect that if documents were found, they would be produced. (Winghart Decl., ¶¶ 2, 4, Ex. A, B.) Defense counsel sent a follow-up email to plaintiff's then counsel on February 20, 2025, but no documents have been produced. (*Id*., ¶¶ 5, 6, Ex. 3.)

The court notes that the original motion was properly served on plaintiff's then counsel. This court granted plaintiff's counsel's motion to withdraw by order filed April 24, 2025, which order listed this motion to compel with the June 24, 2025 hearing date. On June 2, 2025, defendant served an amended notice with the June 24, 2025 hearing date, which was served on plaintiff in pro per at her address of record. On May 1, 2025, plaintiff's prior counsel served notice of entry of the order granting the attorneys' motion to be relieved as attorney of record. Documents mailed by the court to plaintiff in pro per have been returned. Defendant was entitled to rely on this address for service and it is Plaintiff's duty if she wanted to be served at a different address to notify the court and all parties. (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 31; Cal. Rules of Court, rule 2.200.) However, if defendant has an email address or alternative addresses, defendant shall serve at those addresses all further documents as well as serving at the address of record. Defendant has no duty to try to find out any alternative means of contact. As stated, it is plaintiff's duty to keep the court and parties advised of the current address.

Defendant also requests sanctions of $1,350 for three hours of work at $450.00 per hour. The court awards sanctions, but finds that an award of $900.00 is a reasonable amount of attorneys' fees for this motion.

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.

2:00 PM
LINE 7
24-CIV-02519 RHONDA LOUISE CARSON VS RAMON DEVERICK MEACHAM; ET AL.

DOUGHTY N MEACHAM	PRO SE
RAMON DEVERICK MEACHAM	PRO SE

MOTION FOR SUMMARY JUDGMENT CALIFORNIA CODE, CODE OF CIVIL PROCEDURE - CCP § 437C

TENTATIVE RULING:

Plaintiff Doughty N. Meacham's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

This action involves a dispute amongst brothers regarding their mother Ethel's care, and, eventual April 25, 2022 passing. A complaint was filed on April 25, 2024. The complaint alleged that defendant Ramon Meacham, Ethel's primary caregiver, neglected Ethel which contributed to or caused her premature demise. Plaintiff filed the instant motion on April 24, 2025. The motion is unopposed.

Initially, the Court notes there is no proof of service of the instant motion on file pursuant to Code of Civil Procedure, section 1010, *et seq*. "Section 1010 states in pertinent part as follows: 'Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice.' " (*Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 137.) Because strict compliance with service of process as set forth in Code of Civil Procedure section 1010 is required, the failure to provide proof of service deprives the court of jurisdiction. (*Dobrick v. Hathaway* (1984) 160 Cal.App.3d 913, 921-922.) Accordingly, this motion is DENIED WITHOUT PREJUDICE.

Moreover, even if service had been provided, the Court notes many – if not all — of the requirements set forth in Code of Civil Procedure section 437c for filing a Motion for Summary Judgment, have not been met. Thus, the motion would have been denied for these reasons as well.

For instance, not only must the party moving for summary judgment serve the notice of motion and supporting papers on the opposing party at least 81 days before the hearing (plus additional time depending on the method of service), the moving papers submitted must show there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. § 437c, subd.(c).) Moreover,

> [t]he motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. **The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion**.

(Code Civ. Proc., § 437c, subd. (b)(1), emphasis added.)

If movant establishes " 'a prima facie showing that justifies a [ruling] in the [plaintiff's] favor, the burden then shifts to the [defendant] to make a prima facie showing of the existence of a triable material factual issue.' " (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 950.) "[E]ven though the court may not weigh the plaintiff's evidence or inferences against the defendants' as though it were sitting as the trier of fact, it must nevertheless determine what any evidence or inference could show or imply to a reasonable trier of fact. … In so doing, it does not decide on any finding of its own, but simply decides what finding such a trier of fact could make for itself." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856.) Thus, in additional to the procedural issues, plaintiff has not established a prima facie case entitling him to relief as a matter of law.

If the tentative ruling is uncontested, it shall become the order of the Court without the need for a formal order.

2:00 PM
LINE 8

24-CIV-06967 CITY OF FOSTER CITY, ET AL. VS. ELIZABETH KARNAZES, ET AL.

CITY OF FOSTER CITY	BENJAMIN L. STOCK
ELIZABETH KARNAZES	PRO SE

SPECIALLY APPEARING DEFENDANT ELIZABETH KARNAZES'S MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

TENTATIVE RULING:

Specially Appearing Respondent Elizabeth Karnazes' Motion to Quash Service of Summons and Complaint is DENIED.

Specially Appearing Respondent Elizabeth Karnazes shall file and serve a response to the Petition no later than Monday, July 7, 2025.

"Compliance with the statutory procedures for service of process is essential to establish personal jurisdiction." (*Rios v. Singh* (2021) 65 Cal.App.5th 871, 880; see *Renoir v. Redstar Corp.* (2004) 123 Cal.App.4th 1145, 1152.) Before attempting service by publication, a plaintiff must establish that "the party to be served cannot with reasonable diligence be served in another manner specified" in the Code of Civil Procedure. (Code of Civ. Proc., § 415.50, subd. (a).)

On January 15, 2025, the City applied for an order permitting service of the summons by publication on Karnazes pursuant to Code of Civil Procedure section 415.50. The application was supported by a declaration showing that Karnazes receives mail at a post office box and frequents, if not resides at, the property that is the subject of this matter. (Jan. 15, 2025 Declaration of Eli Flushman, ¶¶ 5–6.) Prior notifications sent by email, by mailing to the P.O. box, and posting at the property were received. (*Id.*, at ¶ 7.) Reasonably diligent attempts were made to serve the summons at the P.O. Box and personally at the property. (See *id.*, at ¶¶ 8–10.) The City made further attempts to arrange service by contacting Karnazes through email. (*Id.*, at ¶ 11.) Accordingly, sufficient diligence was demonstrated in the attempts to locate and effect service upon Karnazes to support an order for service by publication.

Thereafter, pursuant to the Court's order, the summons was published for four consecutive weeks in the San Mateo Daily Journal—published within the county in which the property sits—and copies of the summons and petition were mailed to both the P.O. Box and the property and emailed. (May 2, 2025 Declaration of Eli Flushman, ¶¶ 14–16; Mar. 5, 2025 Proof of Service.)

The motion only contends that Karnazes was not served personally or by substituted service, and no reply disputing the propriety of service by publication has been filed.

Accordingly, Karnazes was properly served process pursuant to the Court's order and Code of Civil Procedure section 415.50, and the motion to quash is therefore denied.

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

2:00 PM
LINE 9
24-CLJ-08121 WELLS FARGO BANK, N.A. VS. ROBERT BARGANIER

WELLS FARGO BANK, N.A. HARLAN M. REESE
ROBERT BARGANIER

MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED AND OF NONAPPEARANCE

TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A.s unopposed Motion for Order Deeming Matters Admitted against defendant Robert Barganier pursuant to Code of Civil Procedure section 2033.280 is GRANTED.

Where a party to whom requests for admission have been directed fails to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction. (Code Civ. Proc., § 2033.280, subd. (b).)

Here, Plaintiff's Requests for Admissions, Set One were propounded by mail on January 30, 2025. (Agne Decl., ¶ 1.) Responses were due within thirty five (35) days of service, (Code Civ. Proc., § 2033.250, subd. (a).) No verified responses were received. (Agne Decl., ¶2.)

The matters in Plaintiff's Requests for Admissions, Set One, No.'s 1-12 are therefore deemed admitted. The proposed order shall attach the requests for admissions.

Sanctions

Monetary sanctions are to be imposed on a party whose failure to timely respond to a request for admissions necessitates a motion to deem matters admitted pursuant to Code of Civil Procedure section 2033.280 subdivision (c). Here, plaintiff has waived all sanctions (Notice of Motion at p. 1) and thus the court awards no sanctions.

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.

2:00 PM
LINE 10

24-UDL-01713 NEIGHBOR TO NEIGHBOR HOMES, LLC VS. LAURA TEALE, ET AL.

NEIGHBOR TO NEIGHBOR HOMES, LLC	SAM CHANDRA
LAURA TEALE	PRO SE

MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND REQUEST FOR MONETARY SANCTIONS AGAINST LAURA TEALE

TENTATIVE RULING:

The unopposed motion to compel is granted. Defendant shall provide verified responses, without objection, to plaintiff's Special Interrogatories, Set One, Form Interrogatories-Unlawful Detainer, Set One, and Form Interrogatories-General, Set Two, within 5 days after notice of entry of order.

Plaintiff's request for sanctions is granted pursuant to Code of Civil Procedure, section 2030.290(c). The court grants the request but for $410, which defendant shall pay plaintiff within 30 days of notice of entry of order. The court finds that a reasonable rate for this type of motion is $350. Thus the sanction is based upon one hour of work and $60 for the filing fee.

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.

2:00 PM
LINE 11

24-UDL-01713 NEIGHBOR TO NEIGHBOR HOMES, LLC VS. LAURA TEALE, ET AL.

NEIGHBOR TO NEIGHBOR HOMES, LLC	SAM CHANDRA
LAURA TEALE	PRO SE

MOTION FOR ORDER DEEMING MATTERS ADMITTED AND REQUEST FOR MONETARY SANCTIONS AGAINST LAURA TEALE

TENTATIVE RULING:

The unopposed motion is GRANTED. The genuineness of any documents and the truth of any matters in plaintiff's Requests for Admission, Set One, are deemed admitted. Plaintiff shall attach the requests to the proposed order.

Plaintiff's request for sanctions is granted pursuant to Code of Civil Procedure, section 2033.280(c). The court grants the request but for $410, which defendant shall pay plaintiff within 30 days of notice of entry of order. The court finds that a reasonable rate for this type of motion is $350. Thus the sanction is based upon one hour of work and $60 for the filing fee.

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.

2:00 PM
LINE 12
25-CIV-00194 DAVID BERNARD PARVIN VS. SANDEEP KHANNA, ET AL.

DAVID BERNARD PARVIN	NELSON W GOODELL
SANDEEP KHANNA	PRO SE

DEFENDANTS' DEMURRER TO FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Plaintiff's first amended complaint (FAC) seeks to, *inter alia*, enjoin and set aside the nonjudicial foreclosure sale by defendant Pointe Pacific Homeowners' Association (the HOA) and defendant Platinum Resolution Services, Inc. The HOA now demurs to each cause of action asserted against it in the FAC: (1) violations of Civil Code section 5705, (2) violations of Civil Code sections 5650 and § 5690, (3) negligence, (4) violation of the UCL (unfair business practices), (5) slander of title, and (7) wrongful foreclosure.

A party against whom a complaint has been filed may object by demurrer to the pleading on any one or more of the grounds laid out in Code of Civil Procedure section 430.10, including that the pleading does not state facts sufficient to constitute a cause of action. A ruling on a general demurrer is a method of deciding the merits of a cause of action on assumed facts without a trial, but the only issue involved in such a demurrer hearing is "whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77 [quoting *Griffith v. Dept. of Public Works* (1956) 141 Cal.App.2d 376, 381].) The question of a plaintiff's ability to prove their allegations does not arise on demurrer, and the court assumes the truth of the allegations in the complaint. (*Fisher v. San Pedro Hospital* (1989) 214 Cal.App.3d 590, 604.) If there is any reasonable possibility that plaintiff can cure the deficiency by amendment, then leave to amend should be granted even if the demurrer is sustained. (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1379.) Notwithstanding this liberal policy favoring amendment, a court may deny leave to amend when the pleading party fails to demonstrate the possibility of amendment to cure the pleading's defects. (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.)

The HOA's request for judicial notice is GRANTED pursuant to Evidence Code section 452 subdivisions (c) and (d). However, judicial notice is granted only as to the existence and legal effect of the documents, and not as to the truth of any factual matters contained therein. A court ruling on a demurrer also cannot take judicial notice of the proper interpretation of a document submitted in support of a demurrer. (*Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 115.) Judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be

judicially noticed. (*Id.* at p. 114.) The HOA seeks to have the court adjudicate facts, which is improper on demurrer.

First Cause of Action – Violation of Civil Code section 5705

Plaintiff's first cause of action alleges that the HOA violated Civil Code section 5705, which sets out requirements for a homeowners' association board's approval and initiation of a foreclosure. According to the FAC, defendants failed to comply with the statute because they failed to serve the plaintiff with notice of their decision to foreclose prior to the Notice of Default ("NOD") being recorded on April 19, 2023, and this failure is fatal to their attempt to non-judicially foreclose on plaintiff's home. (FAC ¶¶ 34, 35.) The FAC relies on *Diamond v. Superior Court* (2013) 217 Cal.App.4th 1172 (*Diamond*) for the proposition that personal service of the decision to foreclose is required before recordation of the NOD. The HOA argues that Civil Code section 5705 does not require that personal service of the Board's vote take place at any particular time, and therefore, plaintiff's claim is insufficient to demonstrate a violation of section 5705.

The parties do not disagree on the facts alleged, only on the proper interpretation of the statute's requirements. While the court accepts as true all facts properly pled in the complaint when evaluating a demurrer, the court does not accept as true the pleader's deductions, contentions, or conclusions of law. (*Doe 3, Family Services Organization v. Superior Court* (2025) 110 Cal.App.5th 571, 582 (*Doe 3*).) Questions of law are determined by the court on demurrer. (*Ibid.*)

This analysis on demurrer retreads the same ground that the court considered and determined when ruling on plaintiff's motion for preliminary injunction, and the same reasoning applies. Civil Code section 5705 provides the following required steps in order to foreclose: (1) offering the owner pre-foreclosure dispute resolution, (2) that the decision to initiate foreclosure be made only by the board, approved by a majority vote of the directors in executive session, recorded in the minutes of the meeting open to all members, at least 30 days prior to any public sale, and (3) that notice of the decision to foreclose be made by personal service in the manner set forth by Code of Civil Procedure section 415.10 *et seq.* (service of summons and complaint). With regard to personal service, Civil Code section 5705 states: "The board shall provide notice by personal service in accordance with the manner of service of summons . . . to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest…" (Civ. Code, § 5705, subd. (d).) The statute does not include any specifications on when personal service must be effected.

As the court explained in its tentative ruling on plaintiff's motion for preliminary injunction which ruling was adopted at the hearing, *Diamond*, *supra*, 217 Cal.App.4th 1172 is inapposite because of a slight, but crucial, difference in the statutory language between the since-repealed sections 1367.1 and 1367.4 of the Civil Code, and the relevant section 5705 of the Civil Code before this court. Contrary to plaintiff's assertion in opposition to the demurrer, the statutes are not "identical." Rather, and as this court noted previously, the *Diamond* court explained that section 1367.4, subdivision (c)(3) provides in part that "An association that seeks to collect delinquent regular or special assessments . . . may use judicial or nonjudicial foreclosure **subject**

to the following conditions: . . . The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) . . . to an owner of a separate interest who occupies the separate interest . . . if the board votes to foreclose upon the separate interest." (*Diamond,* supra, at p. 1196 [emphasis added].) The *Diamond* court agreed with the plaintiff that the phrasing of the statute meant that personal service on the homeowner of the board's vote to foreclose was a statutory condition precedent to the filing of an action for judicial foreclosure on an assessment lien. (*Ibid.*) The court concluded that "the plain language of section 1367.4, subdivision (c)(4), which we must strictly construe, requires an association to satisfy certain conditions before filing a judicial foreclosure action, including personal service of the notice of the board's vote to foreclose." (*Ibid.*)

Civil Code section 5705, by contrast, does not include phrasing that indicates personal service is a condition precedent to the recordation of a NOD, as plaintiff would have it. There is no language in subsection (d), governing personal service of the board's decision, that can be read to impose a timing or order requirement, unlike with section 1367.4. This is made more apparent when considering the statute as a whole, since the other subsections *do* make clear that the actions described therein must occur prior to initiating the foreclosure. For example, subsection (b) states that ADR must be offered "[p]rior to initiating a foreclosure on an owner's separate interest…" and subsection (c) states that "[a] board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale." (Civ. Code, § 5705, subd. (b), (c).) Legislators' omission of language, while using it with other laws enacted as part of the same legislation, suggests such omission was intentional. (*Seviour-Iloff v. LaPaille* (2022) 80 Cal.App.5th 427, 442, fn. 6.)

Just as the conclusion of the *Diamond* court was driven by the plain language of the statute, canons of statutory construction prevent this Court from reading language into the statute that is not there. (*Midwest Motor Supply Co. v. Superior Court* (2020) 56 Cal.App.5th 702, 710 [courts cannot read into a law a provision that does not exist and is not shown to be the intent of the lawmakers].) Plaintiff offers legislative history surrounding the Davis-Stirling Act (including Civil Code section 5705) which shows that legislators intended the notice provisions to be mandatory—and this court does not conclude otherwise. The Board was indeed required to provide notice by personal service, and it did. (Parvin Decl. ¶ 12.) But this court cannot read into the statute the specific requirement which plaintiff urges, which is that the entire nonjudicial foreclosure attempt is invalidated where the timing of the personal service of the Board's decision does not precede the recordation of the NOD. The statute simply does not support the reading of such a specific requirement, and plaintiff does not convincingly argue otherwise. "[The] court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed." (*That v. Alders Maintenance Assn.* (2012) 206 Cal.App.4th 1419, 1429.)

Therefore, as a matter of law, this court continues to conclude that Civil Code section 5705 does not impose a requirement that personal service of the Board's decision to foreclose must specifically be made before recordation of the NOD. Because the statute contains no such

requirement, an allegation that the requirement was not met does not sufficiently state a violation of the statute. Therefore, the demurrer is SUSTAINED with leave to amend.

Leave to amend is granted as this is the first time that plaintiff's complaint has been challenged via demurrer, and because the face of the complaint does not show that the defect is incurable by amendment. (*Doe 3, supra*, 110 Cal.App.5th at p. 590 ["It is appropriate to grant leave to amend where resolution of the legal issues does not foreclose the possibility that the plaintiff may supply necessary factual allegations. If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment."].)

Second Cause of Action – Violations of Civil Code section 5650 and 5690

Plaintiff's second cause of action cites to Civil Code section 5650, which provides that a regular or special assessment and its attendant fees and costs, including reasonable attorney's fees, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. (Civ. Code, § 5650.) The second cause of action also invokes Civil Code section 5690, which requires recommencement of the notice process at the HOA's cost due to failure to comply with procedures set forth in the statute. According to the FAC, the HOA failed to comply with Civil Code section 5650 when it charged him for around $20,000 in attorney's fees in connection with San Mateo County Case No. CLJ530144, and this violation requires recommencement of the notice process pursuant to Civil Code section 5690. The HOA argues that demurrer should be sustained to this cause of action because the claim based on the $20,000 in attorney's fees is time-barred. The HOA also argues that the attorney's fees were allowable under the CC&Rs which govern the property. (RJN Ex. 1.)

In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 342.)

The FAC does not state the date on which these attorney's fees were allegedly charged or paid. The Court therefore OVERRULES the demurrer on statute of limitations grounds given that neither the Complaint, FAC, or the judicially noticed documents reveal that the claim is clearly time-barred. The court cannot consider facts drawn from sources other than these on demurrer. When the relevant facts are not entirely clear, such that the cause of action might be, but is not necessarily, time-barred, the demurrer will be overruled. (*Schmier v. City of Berkeley* (2022) 76 Cal.App.5th 549, 554; *see also Winn v. McCulloch Corp.* (1976) 60 Cal.App.3d 663, 674 [cause of action which did not state date of breach did not show on its face that claim was barred by statute of limitations].)

The HOA also argues that a demurrer should be sustained because the CC&Rs allow for the attorney's fees which Plaintiff claims were improperly charged. While the court has taken judicial notice of the CC&Rs, it is beyond the scope of demurrer for the court to consider whether the HOA's interpretation of the language in them is the more correct interpretation (though the

court did do this on the preliminary injunction matter, the standards of analysis are obviously different). To adopt the view that the HOA urges would be to adjudicate the underlying merits of the dispute, which the court does not do on demurrer. (*McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77 [in evaluating a general demurrer, courts are not considered with the plaintiff's ability to prove their claims or which party should ultimately prevail; instead, there is only one question to be considered: whether the complaint states a cause of action].) Thus, the demurrer to the second cause of action is likewise OVERRULED on this ground.

Third Cause of Action: Negligence

Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury. (*Beacon Residential Comm. Assn. v. Skidmore, Owings & Merrill LLP* (2014) 59 Cal.4th 568, 573.) The FAC alleges that the HOA had a duty to properly calculate the amount of any alleged delinquency and to comply with the notice requirements of Civil Code section 5705. (FAC ¶ 53.) Plaintiff alleges that the HOA breached this duty by overcharging, requiring payment of improper attorney's fees, initiating foreclosure proceedings based on wrong figures and illegal interest, and violating the procedures set forth in Civil Code section 5705. (*Id.* ¶¶ 56, 57.) The HOA argues that their demurrer should be sustained because Plaintiff fails to allege the existence of a duty that was then breached.

The existence of duty is a question of law to be determined by the court. (*Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103, 117.) The HOA cites to *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513 for the proposition that an association has a fiduciary relationship with the membership as a whole, but owes no duty to individual members' interest. However, the portion to which the HOA cites concerned a claim for breach of fiduciary duty, not negligence. Earlier in the opinion, when analyzing the plaintiff's negligence claim, the California Supreme Court actually did conclude that the association had a duty to the plaintiff, and that the association should be held to the same standard of care as a landlord because of the control the association exerted over common areas. (*Frances T.*, *supra*, at p. 499.) The *Frances T.* court approvingly cited a previous California decision, *White v. Cox* (1971) 17 Cal.App.3d 824, 830, which concluded that since the condo association was a management body over which the individual owner had no effective control, the association could be sued for negligence by an individual member. (*Frances T.*, *supra*, at p. 500.) This is therefore contra the HOA's argument that HOAs have no duties to their individual members. In addition, the Court of Appeal has noted that "a homeowners association is also potentially liable for any violation of statute, administrative code regulation, or building code provision relating to the condition of the property…failure to comply with the statutory standard may give rise to a presumption of negligence on his part." (*Ritter & Ritter, supra*, at p. 120.)

The HOA also cites to *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024 for the idea that a duty to maintain common areas arises only out of the Davis-Stirling Act and the CC&Rs, rather than principles of negligence. *Martin* is of little help to the HOA, however, because it does not establish that an HOA cannot owe a duty to its members—rather, the *Martin* court concluded that the association in question owed a duty *only* to its members, i.e. the owners,

and not to the plaintiffs in that case, who were essentially subtenants of the separate interest owners. (*Id.* at p. 1037.)

The HOA has therefore not pointed to authority establishing the lack of a duty of care owed by an HOA to the owner of a separate interest. The question is whether Plaintiff's pleading adequately supports the existence of a duty of care on the part of the HOA in carrying out assessment, lien recordation, and foreclosure proceedings.

"A duty of care exists when one person has a legal obligation to prevent harm to another person, such that breach of that obligation can give rise to liability." (*Issakhani v. Shadow Glen Homeowners Assn., Inc.* (2021) 63 Cal.App.5th 917, 924 [gathering cases].) "Whether a duty of care exists is not a matter of plucking some immutable truth from the ether; instead, the existence of a particular duty of care reflects a determination that the sum total of considerations of public policy should lead the law to say that the particular plaintiff is entitled to protection." (*Id.* at pp. 924-925.) A duty of care may arise from statute. (*J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, 803.) In such situations, the duty of care is grounded in, and thus "borrowed from," the public policy embodied in a legislatively enacted statute. (*Issakhani*, *supra*, at p. 929.) The creation of a negligence duty of care involves fundamental policy decisions. (*California Service Station* (1998) 62 Cal.App.4th 1166, 1176.) A statute can give rise to a duty of care actionable in negligence only if (1) the plaintiff invoking the statute is a member of the class of persons the statute was designed to protect, and (2) the harm the plaintiff suffered was one the statute was designed to prevent. (*Ramirez v. Nelson* (2008) 44 Cal.4th 908, 918.) Whether a statute satisfies these requirements is a question of law. (*Issakhani*, *supra*, at p. 931.)

The FAC contends that the defendants breached a duty they owed to plaintiff under the Davis-Stirling Act. The legislature adopted this act for the primary purpose of protecting homeowner rights. (*Doskocz v. ALS Lien Services* (2024) 102 Cal.App.5th 107, 113.) The FAC alleges (and defendants do not contest) that plaintiff is an owner of a property managed by the HOA. (FAC ¶¶ 13-15.) And at least as alleged in the FAC, the harm the plaintiff suffered was one the statute was designed to prevent. The notice requirements of the Davis Stirling Act were enacted to protect the interest of a homeowner who has failed to timely pay a "relatively small assessment" owed to a homeowners' association. (*See Diamond*, *supra*, 217 Cal.App.4th at p. 1190 [discussing legislative history of Davis-Stirling Act].) On demurrer, it is not the court's function to determine whether plaintiff's debts were actually inflated or whether the amount claimed was actually a relatively small assessment. Taking the facts plead in the FAC as true, as the court must on demurrer, plaintiff has adequately alleged the existence of a duty owed by the HOA under the statute. The demurrer to the negligence cause of action is therefore OVERRULED.

Fourth COA – UCL Violation

The HOA argues several grounds for demurrer to the UCL violation claim. First, the HOA asserts that it is not a business and thus cannot be subject to the UCL. Second, the HOA argues that plaintiff fails to allege any conduct by the HOA that could be classified as an unlawful, fraudulent, or unfair business act or practice. Finally, the HOA argues that plaintiff does not have

standing to assert this claim because he cannot allege an injury in fact as a result of the unfair competition.

While the UCL "borrows" violations of other statutes as possible predicates to assert a claim, a practice may also be deemed unfair even if not specifically proscribed by some other law. (*California Medical Assn. v. Aetna Health of California Inc.* (2023) 14 Cal.5th 1075, 1085.) To adequately allege standing to assert a UCL claim, a plaintiff must allege an injury in fact—in other words, lost money or property—as a result of the unfair competition or other action proscribed under the UCL. (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1349.) A causal connection must be alleged between the harm suffered and the unlawful business activity. That causal connection is broken when a complaining party would suffer the same harm whether or not a defendant complied with the law. (*Ibid.*)

The FAC fails to clearly and adequately allege an injury in fact. The FAC merely states that Plaintiff has "alleged multiple instances of clear statutory and common law violations, along with a myriad of fraudulent instruments that **culminated in forcing the Plaintiff to maintain ownership of his property**." (FAC ¶ 66 [emphasis added].) It is unclear whether this was phrased in error, but in any case, maintaining ownership of a property is not a loss of money or property which usually supports a UCL claim. In the next paragraph, plaintiff vaguely asserts that the unlawful charges "directly impaired the Plaintiff's ability to obtain any secured loans on the property, and damaged the Plaintiff in many other ways . . ." Again, it is not clear whether and how impairing plaintiff's ability to obtain loans, without more, is a loss of money or property, nor what the "many other ways" consist of. Finally, the FAC does not adequately allege the element of causation crucial to a UCL claim, as it is not clear from the FAC why plaintiff's admitted delinquency on the assessment lien would itself not break the causal connection, causing plaintiff to suffer the same harm whether or not the HOA complied with the law.

Therefore, the demurrer is SUSTAINED with leave to amend.

Fifth Cause of Action – Slander of Title

The elements of a cause of action for slander of title are (1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss. (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434.) The FAC alleges a cause of action for slander of title based on the recordation of the Notice of Trustee's Sale, recordation of the Notice of Assessment Lien, and Notice of Default. (FAC ¶ 75.) All of the procedural steps attendant to a nonjudicial foreclosure are privileged pursuant to Civil Code section 47, including the recording of the notice of default, notice of sale, and notice of trustee's sale. (Civ. Code, § 2924, subd. (d); *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336.) The privilege applicable to the nonjudicial foreclosure process is the qualified common interest privilege, rather than the absolute litigation privilege, because nonjudicial foreclosure sales involve a series of communications between interested parties, and by definition do not involve any judicial proceeding or other official proceeding authorized by law. (*Kaur v. Dual Arch Internat., Inc.* (2024) 107 Cal.App.5th 359, 368.) In order to overcome the qualified

common interest privilege, a plaintiff must plead malice—meaning that the defendant was (1) motivated by hatred or ill will towards the plaintiff, or (2) lacked reasonable grounds for its belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights. (*Ibid.*)

The question is therefore whether the FAC adequately pleads malice. Malice is a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy, or injure another person. (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 915.) Malice is not inferred from the communication itself. (*Ibid.*) Plaintiff alleges that defendants "maliciously and with a reckless disregard for the truth, asserted that they had a right to sell Plaintiff's home at a non-judicial foreclosure sale, notwithstanding that such sale was barred by California [sic] was false, knowingly wrongful, without justification, in violation of statute, unprivileged, and has resulted in the Plaintiff risking the loss of title to his property." (FAC ¶ 73.) Plaintiff has not adequately pled malice because the allegations are mere legal conclusions without supporting facts showing how the sale was *knowingly* wrongful and without justification. To the contrary, plaintiff's FAC discloses that he was in fact delinquent on assessments—though the parties disagree as to why the delinquency occurred—and therefore, according to plaintiff's own pleading, the debt forms a reasonable basis for the HOA's belief that they had a right to nonjudicial foreclosure. Plaintiff's pleading lacks factual support for his allegations, which are merely legal conclusions and not entitled to weight on demurrer. The demurrer to the fifth cause of action is therefore SUSTAINED WITH LEAVE TO AMEND.

Seventh Cause of Action – Wrongful Foreclosure

The elements of a wrongful foreclosure cause of action are (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale was prejudiced or harmed; (3) and in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. (*Crossroads Investors, L.P. v. Federal National Mortgage Assn.* (2017) 13 Cal.App.5th 757, 782.)

The HOA demurs on several grounds. First, the HOA argues that plaintiff frivolously and without basis asserts that if the $20,000 had been applied to his account, he would not have been in default. This is a factual argument that the parties vigorously dispute, and the court cannot look to the factual assertions contained in the judicially noticed exhibits to adjudicate the truth of the matter on demurrer. Therefore, this is not a basis for sustaining a demurrer.

Second, the HOA argues that there is no prejudice caused by "mere irregularities" in the process, and that the sale took place solely because of plaintiff's own failure to pay his HOA assessments. Again, the court on demurrer is not in a position to decide whether the reason for the sale was *solely* plaintiff's own failure to pay, since the FAC alleges that there were other factors and causes, and the court must take the factual allegations pled as true on demurrer. This argument is therefore also not a basis for sustaining a demurrer.

Third, the HOA argues that a valid and viable tender is a prerequisite to any cause of action challenging a foreclosure sale, and that since plaintiff failed to tender, he cannot challenge the sale. Normally, as a condition precedent to an action to set aside a trustee's sale on the ground that the sale is voidable because of irregularities in the sale notice or procedure, the borrower must offer to pay the full amount of the debt for which the property was security. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1454.) However, there are several exceptions to the tender requirement. (*Ibid.*) One of these arises when the borrower's action attacks the validity of the underlying debt. (*Ibid.*) In such cases, a tender is not required because tendering would constitute an affirmation of the debt. (*Id.* at p. 1455.)

Here, the FAC attacks the validity of the underlying debt. Taking the allegations as true, and considering only the pleading itself and judicially noticeable matters, as the court must on demurrer, plaintiff has sufficiently alleged that he is excused from the tender requirement. Whether plaintiff will ultimately be able to prove this is of no concern to the court on demurrer. As such, the demurrer to the wrongful foreclosure cause of action is OVERRULED.

Plaintiff has ten (10) days from service of written notice of entry of order to file and serve an amended complaint. (Cal. Rules of Court, rule 3.1320(g); Code Civ. Proc., § 472b.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for defendant HOA 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.

2:00 PM
LINE 13
25-CIV-02200 DEBORAH SNEAD VS PFIZER, INC

DEBORAH MAJEEDA SNEAD	RUTH T RIZKALLA
PFIZER, INC	GEORGE L GIGOUNAS

VERIFIED APPLICATION OF KOREY A. NELSON FOR ADMISSION PRO HAC VICE

VERIFIED APPLICATION OF AMANDA K. KLEVORN FOR ADMISSION PRO HAC VICE

VERIFIED APPLICATION OF ELLEN E. SHORT FOR ADMISSION PRO HAC VICE

VERIFIED APPLICATION OF CRISTINA R. DELISE FOR ADMISSION PRO HAC VICE

TENTATIVE RULING:

The court DENIES without prejudice the verified applications for pro hac vice because there are too many procedural defects.

First, the proof of service is of no effect because it was executed in New Orleans, Louisiana under the laws of the United States. As a leading California treatise explains: "Some declarations, especially from out-of-state declarants, fail to conform to [Code of Civil Procedure] § 2015.5, instead stating they are made under penalty of perjury only under the laws of some other state or of the United States; such declarations are inadmissible in California courts." (*Cal. Prac. Guide Civ. Pro. Before Trial*, § 9:47 (TRG June 2025 update).) Code of Civil Procedure section 2015.5 provides the requirements for a declaration.

Second, the applications state that they are verified, but they are not verified.

Third, the declaration of Ruth Rizkella regarding the payment of the applicable fees is conclusory and not based upon personal knowledge. There is no evidence of what fees were actually paid to make sure that the applicants paid the correct fees.

If the tentative is not contested, it will become the order of the court without the need for a formal order.

2:00 PM
LINE 14
25-CLJ-02354 XU CHEN VS. SPV CONSTRUCTION

XU CHEN SEONG H. KIM
SPV CONSTRUCTION

VERIFIED PETITION TO RELEASE PROPERTY FROM RESPONDENT SPV CONSTRUCTION'S MECHANIC'S LIEN

TENTATIVE RULING:

Petitioner Xu Chen's unopposed Verified Petition to Release Property from Respondent SPV Construction's Mechanic's Lien is GRANTED pursuant to Civil Code section 8460 subdivision (a).

The Petition pertains to Respondent's September 14, 2023 recordation of a mechanic's lien, series number 2023-044452, on the real property located at 447 Westridge Drive, Portola Valley, CA 94028, APN 077-253-010 (the Property) in the amount of $100,000, for labor, services, equipment, or materials furnished for a work of improvement on the Property. The legal description of the Property is:

> Property located at the municipal address of 447 WESTRIDGE DR, PORTOLA VALLEY, CA 94028. In the county of San Mateo County. APN 077-253-010, Briefly described as LOT 37 WESTRIDGE SUB NO 2 RSM 28/37 38 39 40, Subdivision: WESTRIDGE SUB NO 2. Legal Lot 37.

The owner of property affected by a mechanic's lien may petition for release of the lien upon the failure to timely enforce the lien by prosecution. (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435.) A mechanic's lien claimant is required to commence an action to enforce the lien within 90 days after recordation of the claim of lien or the claim of lien expires and is unenforceable. (Civ. Code, § 8460, subd. (a).) At least 10 days before filing the petition for release of lien, the owner of the affected property must give the lien claimant notice demanding that the claimant execute and record a release of the claim of lien in accordance with notice requirements for works of improvement and stating the grounds for the demand. (*Id*., §§ 8100 to 8119, and 8482.) A copy of the petition and notice of the hearing must be served in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant at the statutorily authorized location at least 15 days before the hearing.

Here, respondent SPV Construction filed a Claim of Mechanic's Lien on September 14, 2023. (Kim Decl., ¶4, Exh. A.) Respondent did not bring an action to enforce the lien within 90 days of recordation. (*Ibid*., ¶5.) Petitioner sent Respondent a written demand to release the lien by certified mail on February 26, 2025 and Respondent did not respond within 10 days, nor at all as

of March 18, 2025. (*Ibid*., ¶¶6-7, Exh. B.) The Petition was served postage prepaid, return receipt requested, on March 18, 2025. (Proof of Service.) No Opposition has been filed.

The Petition is accordingly GRANTED.

Attorney's Fees

The prevailing party on a petition to release mechanic's lien is entitled to reasonable attorney's fees pursuant to Civil Code section 8488 subdivision (c). Petitioner's counsel avers that their hourly billing rate is $400, with paralegals billing at an hourly rate of $250, and that the firm has spent $3,000 to research, draft, and prepare the Petition and supporting materials. (Kim Decl., ¶8.) The Court based upon its experience finds the time and hourly rates reasonable. (*Reynolds v. Ford Motor Company* (2020) 47 Cal.App.5th 1105, 1113-114 ["The trial court acted well within its discretion in using the prevailing market value in the community for similar legal services relying on its personal knowledge and familiarity with the area legal services, as the touchstone' for determination" of the reasonable hourly rates."].) Petitioner's request for an additional $500 in anticipated fees and request for $500 in costs are not supported at this time.

Petitioner Xu Chen is therefore awarded reasonable attorney's fees in the amount of $3,000 payable by respondent SPV Construction within 30 days of notice of entry of this order.

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

POSTED: 3:00 PM