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

Law and Motion Calendar

JUDGE: HONORABLE DON R. FRANCHI
DEPARTMENT 15
1050 MISSION ROAD, SOUTH SAN FRANCISCO
COURTROOM K

Wednesday, July 2, 2025 at 2 pm

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

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

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

AND

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

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

Appearances by Zoom are highly encouraged.

Zoom Video/Computer Audio Information:

https://sanmateocourt.zoomgov.com/

Meeting ID: 160 135 4419
Password: 845111

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

Dial in: +1 (669)-254-5252

(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

2:00
Line: 1

21-CIV-05580 BARBARA LUBBEN, ET AL VS. LARRY ANDERSON, ET AL

BARBARA LUBBEN	GREGORY J. WOOD
LARRY ANDERSON	THOMAS M. HARRELSON

DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT BY DEFENDANTS LARRY ANDERSON AND SANDRA ANDERSON

TENTATIVE RULING:

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

The Demurrer brought by Defendants Larry Anderson and Sandra Anderson is OVERRULED.

Background

The parties' own adjacent realty in Pacifica. Plaintiff alleges that Defendants built structures that trespass upon her property and create soil erosion issues, with damages continually flowing therefrom. In addition to damages, Plaintiff seeks the ejectment of the offending structures. Defendants cross-complain, seeking to quiet title on theories of their adverse possession or prescriptive easement as to the portions of Plaintiff's property that are at issue. The First Amended Complaint (the "FAC") alleges causes of action concerning both the property described in her grant deed (the "Grant Deed Property"), and Plaintiff's property to the centerline of the road per statute (the "Right of Way Property").

Through their Demurrer, the Defendants demur generally to "certain aspects" of the FAC (Demurrer, 1:26-27). Defendants' Memorandum of Points and Authorities in support of the Demurrer (the "MPA iSo Demurrer") indicates that the Demurrer is to the following:

(1) all causes of action related to structures erected or maintained within the public right-of-way ("Aspect 1");

(2) the cause of action for financial elder abuse ("Aspect 2");

(3) the causes of action for trespass and nuisance to the extent Plaintiff failed to plead facts sufficient to demonstrate that the garage, driveway, and driveway gate are "continuing" nuisances or trespasses ("Aspect 3"); and

(4) the cause of action for nuisance to the extent it relates to violations of setback, height, and permitting restrictions ("Aspect 4").

(MPA iSo Demurrer, 21:3-8.)

Legal Standards for Demurrer

California Code of Civil Procedure section 430.30 provides that an objection to a complaint may be made via demurrer when the ground for that objection appears on the face of the complaint, or via judicial notice. (Code Civ. Proc., § 430.30, subd. (a).)

Code of Civil Procedure section 430.10 sets forth eight possible grounds for demurrer. A demurrer such as the instant, founded on section 430.10(e), *i.e.*, which arises when an allegation essential to a cause of action is missing, is called a "general demurrer." (*McKenney v. Purepac Pharm. Co.* (2008) 167 Cal.App.4th 72, 77.) Accordingly, "[a] ruling on a general demurrer is thus a method of deciding the merits of a cause of action on *assumed facts* without a trial." (*Ibid.* (internal quotations omitted) (emphasis added).) Since a general demurrer "admits the truth of all material factual allegations in the complaint," a plaintiff's ability to prove these allegations "does not concern the reviewing court. The plaintiffs need only plead facts showing that they may be entitled to some relief." (*Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal.App.3d 590, 604 (internal quotations omitted) (superseded by statute on other grounds).) However, a court reviewing a demurrer does not "assume the truth of contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.) Nonetheless:

> If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer. "[W]e are not limited to plaintiffs' theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have ... long since departed from holding a plaintiff strictly to the 'form of action' he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained."

(*Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38–39 (citations omitted) (italics retained).) Moreover, when a plaintiff "has stated a cause of action *under any possible legal theory*," it is error to sustain a demurrer. (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200 (emphasis added).)

Code of Civil Procedure section 430.50 provides that a demurrer to a complaint may be taken to "any of the causes of action stated therein." (Code Civ. Proc. § 430.50, subd. (a).) However, the Court of Appeal "affirm[s] the rule that a party may not demur to a portion of a cause of action" (*PH II, Inc. v. Superior Ct.* (1995) 33 Cal.App.4th 1680, 1681 (citation omitted).)

Uncertainty (section 430.10, subdivision (f)) is generally a difficult ground on which to sustain a demurrer:

> Even though the complaint is in some respects uncertain, the courts often hold it good against demurrer on the theory that, "though not a model of pleading," its allegations, liberally construed, are sufficient to apprise the defendant of the issues that he or she is to meet.

(3 Witkin, *Cal. Proc.* 6th Plead. § 975 When Demurrer Will Be Overruled (2024) (citations omitted).) Demurrers for uncertainty are disfavored. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 (and citations therein).) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 (citations omitted).) A special demurrer for uncertainty should not be sustained when the allegations of the complaint "are sufficiently clear to apprise the defendant of the issues" which must be met. (*Bacon v. Wahrhaftig* (1950) 97 Cal.App.2d 599, 605 (citations omitted).) Such a demurrer should be "granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292 (citations omitted).)

Finally, "it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1379.)

Defendants' Demurrer as to Aspect 1 Is Overruled.

Defendants argue that a landowner has no right to assert causes of action related to encroachments on a public right-of-way, so that the FAC fails to state causes of action for ejectment, trespass, and private nuisance as to those parts of Defendants' driveway gate, driveway, cedar fence, and landscape that are wholly or partly within the public right-of-way without a required encroachment permit.

Defendants' argument fails. First, Defendants demur to all causes of action, or to those for ejectment, trespass, and private nuisance, as to the Right of Way Property. However, each cause of action is explicitly directed to Plaintiff's property including both the Grant Deed Property and the Right of Way Property. (FAC, ¶¶ 34, 39-40, 45-46, 53, 58, & 63.) A party may not demur to a portion of a cause of action. (*PH II, Inc. v. Superior Ct.* (1995) 33 Cal.App.4th 1680, 1681.)

Second, the Supreme Court of California holds that:

> When the sovereign imposes a public right of way upon the land of an individual, the title of the former owner is not extinguished, but is so qualified that it can only be enjoyed subject to that easement. The former proprietor still retains the exclusive right in all mines, quarries, springs of water, timber, and earth, for every purpose not incompatible with the public right of way.

(*Wright v. Austin* (1904) 143 Cal. 236, 240 (*Wright*) (internal quotation and citation omitted).) Further, when someone wrongfully takes the fee owner's land, the fee owner can maintain ejectment and trespass subject to the easement:

> Subject to this right of the public, he may take trees growing upon the land, occupy mines, sink watercourses under it, and generally has a right to every use and profit which can be derived from it consistent with the easement, and when disseized (as he may be) *can maintain ejectment, and recover possession subject to the easement, and can also maintain trespass for any act done to the land not necessary for the enjoyment of the easement, which would be an actionable injury if the land was not covered by a highway*.

(*Wright v. Austin* (1904) 143 Cal. 236, 241 (internal quotation and citation omitted) (emphasis added).) Accordingly, Plaintiff has a right to the uses and profits that can be derived from her Right of Way Property that are consistent with the easement, and can maintain causes of action for any act done to the land not necessary for the enjoyment of the easement, which would be actionable injuries if the Right of Way Property were not subject to the public easement. Defendants' encroachment of the Right of Way Property clearly is not necessary for the public's enjoyment of the easement.

Defendants' Demurrer as to Aspect 2 Is Overruled.

Defendants argue that Plaintiff lacks standing to being her cause of action for financial elder abuse, because she was not an elder under the law until February 2025. However, this cause of action is directed to Defendants' continuing conduct as of that date (FAC, ¶¶ 66, & 63), and a cause of action based on such actions clearly would not be barred by a four-year statute of limitations. For example, the FAC alleges Defendants' continued maintenance of their property in ways that they know or should know harm her (*id.*, ¶ 47), and that Defendants' use of their property continues to violate the law and therefore breaches their alleged duty of care to her (*id.*, ¶ 60).

Defendants assert that Plaintiff's allegations do not include facts sufficient to state a cause of action, but this cause of action incorporates by reference all of the FAC's earlier allegations (FAC, ¶ 63), which include numerous allegations of Defendants' wrongful taking of her property. The Demurrer as to this Cause of action cannot be sustained on grounds of uncertainty.

Remarkably, Defendants further argue that the required element of scienter is missing from the cause of action, stating that Plaintiff does not allege that Defendants knew nor should have known that the alleged acts would harm her. However, the FAC alleges exactly this:

> Defendants built various structures, gates, driveways, etc. either on Plaintiff's property or without adhering to the City's zoning and permit requirements, without consent permission, or authority and against the will of Plaintiff, and continue to maintain their property in a manner *they know or should know causes Plaintiff to suffer emotional distress and harm*[.]

(FAC, ¶ 47 (emphasis added)), and includes other allegations of scienter or from which scienter reasonably may be inferred (*see, e.g.*, FAC, ¶ 10).

Defendants' Demurrer as to Aspect 3 Is Overruled.

Defendants argue that the limitations period for permanent nuisance or trespass has ended, and that the FAC fails to plead facts sufficient to demonstrate that the garage, driveway, and driveway gate are "continuing" nuisances or trespasses.

> [O]ur Supreme Court acknowledged the " 'crucial test of the permanency of a trespass or nuisance is whether the trespass or nuisance can be discontinued or abated.' [Citation]." Under this test, sometimes referred to as the "abatability test", a trespass or nuisance is continuing if it "can be remedied at a reasonable cost by reasonable means."

(*Madani, supra,* 45 Cal.App.5th 602, 608-09 (multiple citations omitted).) Defendants' argument fails. The allegations of the FAC, which are taken to be true on demurrer, are that the offending garage could be demolished within a week (FAC, ¶ 17), and that the offending gate and driveway could be demolished within a day (*id*., ¶ 16). Defendants seek details showing that the cost and means of doing so are reasonable, but such a showing need not be made at the pleading stage.

Defendants note that "The cases finding the nuisance complained of to be unquestionably permanent in nature have involved solid structures, such as a building encroaching upon the plaintiff's land … ." (*Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 869 (citation omitted).) This is essentially an argument that Plaintiff fails to state a cause of action for continuing nuisance as to the garage. However, a party may not demur to a portion of a cause of action. (*PH II, Inc. v. Superior Ct*. (1995) 33 Cal.App.4th 1680, 1681.) Even in its broader form, the Demurrer is directed to the garage, driveway, and driveway gate, but the cause of action embraces "various structures, gates, driveways, etc." which Defendants built "on Plaintiff's property, without consent permission, or authority and against the will of Plaintiff." (FAC, ¶ 41.)

Defendants' Demurrer as to Aspect 4 Is Overruled.

The FAC includes multiple allegations of damage resulting from Defendants' violations of municipal ordinances governing setbacks and height restrictions, as well as violations regarding building permits.

Defendants argue that because Plaintiff alleges no facts showing that setback or height violations harm her, she lacks standing to maintain the action as to these. However, Defendants are incorrect that Plaintiff pleads no harm from these alleged violations (MPA iSo Demurrer, 18:22-23, 19:15-16 & 18-20, & 20:3-4). For instance, as to setback, the FAC alleges that:

> Plaintiff is informed and believes that Defendants' balconies surrounding their property do not meet the City's 5-foot setback, *which has caused water to drain from their balconies onto Plaintiff's property, whenever it rains, contributing to soil failure.*

(FAC, ¶ 29 (emphasis added)). Also, as to height, Plaintiff alleges that:

> As alleged above, Defendants were supposed to install a retaining wall at the easternmost garage and never did. Instead, defendants began to expand the footprint and height of the easternmost garage without permits, causing the City of Pacifica's Code Enforcement division to have to order them to stop work.

(*Id*., ¶ 20.) The FAC also details harms flowing from Defendants' failure to install their retaining wall and instead having been ordered to stop work (*id*., ¶¶ 9-12). At a minimum, it is reasonable to infer from these allegations that the order to stop work contributed to these harms.

Similarly, Defendants argue that because Plaintiff alleges no facts showing that permit violations harm her, she lacks standing to maintain the action as to these as well. However, the FAC alleges that:

> *As a condition of Defendants'* teardown and rebuild *permit* obtained in 2009, *Defendants were required to* install a retaining wall and erosion mitigation landscaping along their easternmost garage to prevent soil erosion. *Defendants instead* built a foundation wall and moved their garage to the property line, without proper drainage[.] This pushed a substantial amount of water, that would have been captured by the Andersons' property and drained to the street, onto Plaintiff's property. *This caused soil erosion on Plaintiff's property and Plaintiff's retaining wall to fail.*

(FAC, ¶ 9 (emphasis added); *see also id*., ¶¶ 19-20.) Further:

> Defendants built various structures, gates, driveways, etc. either on Plaintiff's property or without adhering to the City's zoning and permit requirements, without consent permission, or authority and against the will of Plaintiff, and continue to maintain their property in a manner they know or should know causes Plaintiff to suffer emotional distress and harm[.]

(*Id*., ¶ 47.)

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

2:00
Line: 2

21-CIV-05580 BARBARA LUBBEN, ET AL VS. LARRY ANDERSON, ET AL

BARBARA LUBBEN	GREGORY J. WOOD
LARRY ANDERSON	THOMAS M. HARRELSON

MOTION TO STRIKE PLAINTIFFS' PRAYER FOR PUNITIVE DAMAGES AND RELATED PROVISIONS OF THE COMPLAINT BY DEFENDANTS LARRY ANDERSON AND SANDRA ANDERSON.

TENTATIVE RULING:

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

The Motion to Strike brought by Defendants Larry Anderson and Sandra Anderson is DENIED**.**

Background

The parties' own adjacent property in Pacifica. Plaintiff alleges that Defendants built structures that trespass upon her property and create soil erosion issues, with damages continually flowing therefrom. In addition to damages, Plaintiff seeks the ejectment of the offending structures. Defendants cross-complain, seeking to quiet title on theories of their adverse possession or prescriptive easement as to the portions of Plaintiff's property that are at issue. The First Amended Complaint (the "FAC") alleges causes of action concerning both the property described in her grant deed (the "Grant Deed Property"), and Plaintiff's property to the centerline of the road per statute (the "Right of Way Property").

Through their Motion to Strike (the "Motion"), Defendants move to strike Plaintiff's Prayer for punitive damages (FAC, Prayer No. 4), and directly supporting allegations (*id*., ¶¶ 44, 52).

Legal Standards for Motion to Strike

Code of Civil Procedure section 436 empowers the Court to, "Strike out any irrelevant, false, or improper matter inserted in any pleading" (Code Civ. Proc., § 436, subd. (a)), and to, "Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court" (*id*., § 436, subd. (b)).

The Motion to Strike is Denied.

Defendants assert and declare that Plaintiff does not "explain whether Defendants' alleged failure to comply with the law was intentional or erroneous" (Motion, 3:2; Sidebottom Decl. in Support of Motion, ¶ 11). However, that Defendants' failure to comply with the law is intentional is reasonably, directly inferred from Plaintiff's allegations:

> Defendants have and, on a daily basis, *refuse to correct these abuses*, and *specifically have ignored Notices of Violation* issued by the City of Pacifica, all to Plaintiff and the community at large's detriment.

(FAC, ¶ 32 (emphasis added).)

Defendants claim that "Plaintiff does not allege a single fact that would allow the Court to conclude that any such failure was done intentionally or with the purpose of oppressing or defrauding Plaintiff or of depriving her of her legal rights" (Motion, 5:27-6:1), except for the conclusory language of paragraphs 44 and 52. However, Defendants ignore Plaintiff's allegation that Defendants were aware of the harm they were causing her (for example):

> In or around the end of 2018, Mr. Anderson recognized that Defendants' property and the soil on it were moving downhill and putting pressure on Plaintiff's downhill retaining wall. Mr. Anderson spoke with Plaintiff and promised to take action to prevent further movement. Mr. Anderson specifically promised that metal rods would be placed to secure Defendants' house to the bedrock, and efforts would be made to prevent further soil erosion. Nothing was done until 2025.

(FAC, ¶ 10)), and that their "pattern and practice of disobeying the law" (*id*., ¶ 18) consists of actions to which she has not consented (*id*., ¶ 36), which deprive her of her "right to exclusive possession and peaceful enjoyment of her property" (*id*., ¶¶ 42, 49), and are against her will and cause her "to suffer emotional distress and harm" (*id*., ¶ 47; *see also* ¶ 67 (alleging property damage and emotional distress)).

The facts stated in the FAC support Plaintiff's allegations of Defendants' malice, where:

> "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff *or* despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(Civ. Code, § 3294, subd. (c)(1) (emphasis added).) Further:

> Under the statute, "malice does not require actual intent to harm. [Citation.] Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. [Citation.] Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. [Citation.]"

(*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299 (citation omitted).) Here, Plaintiff has sufficiently pleaded facts that could be taken as direct evidence of Defendant Mr. Anderson's awareness of the probable dangerous consequences of his conduct in 2018, and of his

failure to take any steps to avoid those consequences until 2025, *i.e.*, of his malice. Moreover, a jury reasonably could infer malice from these facts (FAC, ¶¶ 10-11, & 16-17).

"Where a trespass is committed from wanton or malicious motives, or a reckless disregard of the rights of others, *or* under circumstances of great hardship or oppression, it is clear that punitive damages may be awarded." (*Haun v. Hyman* (1963) 223 Cal.App.2d 615, 620 (citation omitted) (emphasis added).) The FAC sufficiently pleads Defendants' trespass committed in reckless disregard of Plaintiff's rights.

Defendants infer that Plaintiff argues despicable conduct rather than their intent to harm her, but Plaintiff argues amply under the statutory definitions of malice. Plaintiff does not appear to concede that Defendants did not intend to harm her, nor does she "disclaim" in Opposition Defendants' intent to cause her harm (Reply iSo Motion, 2:3-4, & 4:18). Rather, Plaintiff points out that reckless disregard for her rights can constitute the requisite intent.

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

2:00
Line: 3

21-CIV-05580 BARBARA LUBBEN, ET AL VS. LARRY ANDERSON, ET AL

BARBARA LUBBEN	GREGORY J. WOOD
LARRY ANDERSON	THOMAS M. HARRELSON

CASE MANAGEMENT AND TRIAL SETTING CONFERENCE
TENTATIVE RULING:

Parties to appear.

2:00
Line: 4

23-CIV-02464 LITTLE MAD FISH LLC VS. JOHN S KRUG, ET AL

LITTLE MAD FISH LLC	FARID NOVIAN
JOHN S. KRUG	W. ETHAN MCCALLUM

MOTION TO CONSOLIDATE BY DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT LORTON AVENUE COMMERCIAL CONDOMINIUMS.

TENTATIVE RULING:

The instant action ("CD action") arises out of Plaintiffs' purchase agreement ("PSA") for a commercial condominium unit at 345 Lorton Avenue, Unit 105, in Burlingame CA. According to the operative First Amended Complaint ("FAC"), *inter alia*, Plaintiffs were misled as to the extent of water damage and mold in their unit and throughout the building, and were prevented from carrying out planned renovations and remodeling due to these issues.

Now pending before the Court is Defendant Lorton Avenue Commercial Condominiums ("Lorton")'s motion for complete consolidation of this action with Superior Court Case No. 24-CIV-02703 ("Massoomi Discrimination Action" or "Unruh Action"). Consolidation is a procedure for uniting separate lawsuits for trial, where the cases are pending in the same court and involve common questions of law or fact. (Code Civ. Proc. § 1048.) The purpose of consolidation is to enhance trial court efficiency by avoiding duplication of evidence and procedures, and to avoid the substantial danger of inconsistent adjudications as a result of trying the same issues before different factfinders. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979.)

There are two types of consolidation available. Complete consolidation may be ordered where the parties are the same and the causes of action could have been joined. (*Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147-1148.) The pleadings are regarded as merged, one set of findings is made, and one judgment is rendered. (*Ibid.*) Parties who appear in either action are then subject to the court's jurisdiction in the merged action. (*Ibid.*) The trial court exercises substantial discretion in deciding whether and how to consolidate actions, and the fact that the parties are not identical does not bar consolidation. (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.)

The cases may also be consolidated for all pretrial purposes, such as discovery (i.e. a deposition taken in one case may be used in all), but the cases will not be tried together. ([12:341.2] E. Consolidation, Coordination and Bifurcation, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 12(I)-E.) Conversely, the case may be consolidated only for the purpose of trial.

Defendant/Cross-Complainant Lorton Avenue Commercial Condominiums ("Lorton") moves to completely consolidate the instant action alleging negligence, breach of contract, and more based on building and unit defects ("the CD action") with an action brought by the same plaintiffs against primarily the same defendants ("the Unruh action"). Both cases spring from Plaintiffs' purchase of the commercial condominium unit at 345 Lorton Avenue, Unit 105, in Burlingame California. (RJN Exs. A, B.) Both complaints allege causes of action based on Plaintiffs' inability to operate her oral surgery practice because of water damage and an inability to renovate the unit as planned. Therefore, common questions of law and fact run throughout both cases. Moreover, while there are some parties that are in one action and not the other, there is significant overlap in the parties across both cases. Discovery around the same factual issues will be duplicated if the actions remain separate. Furthermore, discovery is in its early stages, especially with regard to the Unruh action. No depositions have been conducted, including expert witnesses, fact witnesses, and inspections of the unit. (Cutler Decl. ¶ 4.) Therefore, the interests of judicial economy and other considerations underlying consolidation will be served by ordering the cases combined.

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. Note that the parties must comply with the requirements of California Rules of Court, Rule 3.350, in filing the resultant order and any subsequent documents. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
Line: 5

24-CIV-00502 YANHONG ZOLLY, ET AL VS. CONCORD FARMS INC., ET AL

YANHONG ZOLLY	BRADLEY R. BOWLES
CONCORD FARMS INC.	ROBERT H. STELLWAGEN

MOTION TO STRIKE PORTIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT BY DEFENDANT CONCORD FARMS, INC.

TENTATIVE RULING:

Defendant Concord Farms, Inc.'s Motion to Strike Portions of Plaintiff Yanhong Zolly's Second Amended Complaint is GRANTED WITHOUT LEAVE TO AMEND.

Defendant Concord Farms, Inc. shall file its answer no later than ten (10) days after entry of the Court's formal order.

After granting Defendant California Terra Garden, Inc.'s motion to strike, Plaintiff Yanhong Zolly was given leave to file an amended complaint alleging "facts sufficient to support [the] claim for punitive damages" directed at Defendants California Terra Garden, Inc. ("Terra") and Concord Farms, Inc. ("Concord"). (Apr. 9, 2025 Order, p. 2, ll. 4–5; Mar. 24, 2025 Minute Order.) After the minute order was entered, Zolly filed the Second Amended Complaint ("SAC"), which adds new defendants, a new cause of action, and allegations not directed at supporting a claim for punitive damages against Terra or Concord. (Apr. 3, 2025 Second Amended Complaint, *passim*.) Zolly does not dispute that the additional allegations are outside the scope of the Court's order. She instead argues that the liberal policy of amendment should excuse her failure to seek and receive leave of court. The argument is without merit.

After the complaint is amended once, further amended requires leave of court. (Code of Civ. Proc., §§ 472, 473.) "Amendments allowed in the court's discretion require an application for leave to amend." (5 Witkin, Cal. Proc. (6th ed. 2025) Pleading, § 1284 [parenthetical omitted].)

The arguments Zolly raises in her opposition regarding the propriety of the new allegations are properly made in a motion for leave to amend. Though there may not be any merit to arguments opposing the addition of the new allegations, a plaintiff cannot deprive defendants of their opportunity to present those arguments in opposition to a motion for leave to amend.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant Concord Farms, Inc. shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and

the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
Line: 6

24-CLJ-01118 WELLS FARGO BANK, N.A. VS. MELE M. FILIMOEHALA

WELLS FARGO BANK, N.A.	HARLAN M. REESE
MELE M. FILIMOEHALA	PRO PER

MOTION FOR JUDGMENT ON PLEADINGS BY PLAINTIFF WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A.'s unopposed Motion for Judgment on the Pleadings is GRANTED pursuant to Cal. Code of Civil Procedure Section 438(c)(1)(A).

Plaintiff's unopposed Request for Judicial Notice ("RJN") is GRANTED pursuant to Cal. Evidence Code Section 452(d).

A motion for judgment on the pleadings is to be granted under essentially the same standard as that applied in the case of a general demurrer; under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law. (*Shea Homes Ltd. Partnership v. County of Alameda* (2003) 110 CA4th 1246, 1254.) The court is generally confined to the facts alleged in the challenged pleading, and facts which a subject to judicial notice, and extrinsic evidence is not to be considered. *(Gerawan Farming, Inc. v. Lyons* (2000) 24 C4th 468, 515-516; *Sykora v. State Dep't of State Hosps.* (2014) 225 CA4th 1530, 1534.) Where a defendant's answer raises any material issue or sets up any affirmative matter constituting a defense, a motion for judgment on the pleadings should be denied. (*Allstate Ins. Co. v Kim W.* (1984) 160 CA3d 326, 330–331.)

Here, Plaintiff's Judicial Council Form Complaint alleges common count causes of action for Open Book Account and Account Stated in the amount of $10,175.46. Defendant filed an Answer on March 22, 2024 which does not generally or specifically deny any statements in Plaintiff's Complaint or assert affirmative defenses. (RJN, Exh. A.) It does state that Defendant applied for an unspecified debt forgiveness program. (*Id*.) Plaintiff filed a Motion to Deem Requests for Admissions Admitted on July 25, 2024. (RJN, Exh. B.) The underlying Requests for Admissions included, *inter alia*, requests to admit that Defendant owes Plaintiff at least $10,175.46, that Defendant does not have a credit defense and/or does not qualify for its benefits, and that any affirmative defenses asserted lack merit and evidentiary support. (*Id*.) The motion was granted and the truth of the matters asserted in the Requests for Admissions was deemed admitted on February 3, 2025. (RJN, Exh. C.) Defendant's Answer, taken together with the facts deemed admitted, does not raise a material issue and/or set up an affirmative matter constituting a defense.

Judgment is therefore to be entered in favor of Plaintiff Wells Fargo Bank, N.A. and against Defendant Mele M. Filimoehala in the total sum of $10,175.46.

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

2:00
Line: 7

25-CIV-01750 WAYNE OGATA VS. XIANG GU, ET AL

WAYNE OGATA	DAVID B. MONKS
XIANG GU	AARON P. MORRIS

MOTION TO STRIKE BY DEFENDANT XIANG GU (CCP § 425.16).
TENTATIVE RULING:

The Special Motion to Strike (C.C.P. Section 425.16) by Defendant Xiang Gu ("Defendant") is CONTINUED. PARTIES TO APPEAR on July 2, 2025 at 2:00 p.m. in Department 15 via Zoom to select a new hearing date.

Defendant's Notice of Motion incorrectly states the address for Department 15. Department 15 is located at 1050 Mission Road in South San Francisco.

Defendant conditionally lodged certain exhibits under seal in support of this Motion. However, Defendant did not file an application or motion to have these documents filed under seal. A party requesting that a record be filed under seal must file an application or motion for an order sealing the record, which must include a memorandum and declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).)

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) A record must not be filed under seal without a court order, and cannot be sealed based solely on an agreement by the parties. (Cal. Rules of Court, rule 2.551(a).) The court may only order that a record be filed under seal if it makes certain express findings, including that the proposed sealing is narrowly tailored. (Cal. Rules of Court, rule 2.550(d).)

The court cannot reach the merits of Defendant's Motion without first determining whether Defendant may file these exhibits under seal. The hearing is therefore continued for Defendant to file an application or motion to seal that resolves the sealing issue prior to the continued hearing.

2:00
Line: 8

25-CIV-03680 ALISA GIORGI, ET AL VS. STEVEN GIORGI

ALISA GIORGI	ANTHONY D. PHILLIPS
STEVEN GIORGI	MICHEL RENEE HUFF

ORDER TO SHOW CAUSE RE PRELIMINARY INJUCTION AND TEMPORARY RESTRAINING ORDER BY PLAINTIFFS GIORGI BROS. FURNITURE, ALISA GIORGI AND THOMAS GIORGI.

TENTATIVE RULING:

Plaintiffs Giorgi Bros. Furniture, Alisa Giorgi, and Thomas Giorgi's motion for Preliminary Injunction enjoining Defendant Steven Giorgi, pursuant to the terms stated below, is GRANTED. Plaintiffs' request to present oral testimony at the hearing is DENIED. The facts were adequately presented to the Court by the declarations and documents and proffered by Plaintiffs.

The underlying action seeks, in part, the dissociation of Defendant from the family business which operates as a general partnership under California law. The instant motion seeks immediate relief by way of a preliminary injunction enjoining Defendant Steven Giorgi from any involvement in the family business pending the resolution of the underlying action. Defendant opposes the motion, alleging there is no factual or legal basis for the preliminary injunction and that Plaintiffs are "exploiting a family crisis for commercial gain." (Opposition at p. 2.)

An injunction may be granted in the following circumstances:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
(4) When pecuniary compensation would not afford adequate relief.
(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
(7) Where the obligation arises from a trust.

(Code Civ. Proc., § 526, subd. (a).)

In making the determining whether or not to issue a preliminary injunction the Court considers: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177.) "'The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo.' [Citation.]" (*Ibid*.)

Here, Plaintiffs seek the following preliminary injunction, restraining Defendant (and anyone acting at his direction or on his behalf) from:

1. Any further participation in the partnership;
2. Entering into any agreement with any third party on behalf of the partnership or that would bind the partnership;
3. Access to the partnership's bank accounts, credit cards, email accounts, computer systems, files and records;
4. Physically visiting and from coming with 500 feet of the Giorgi Bros. Furniture showroom located at 211 Biden Avenue, South San Francisco CA 94080; and,
5. Engaging in communication in any form to or with any partnership employee or customer.

(Notice of Ex Parte application at p.2.)

Upon review of the verified complaint, Plaintiffs' declarations and the parties' moving papers, the Court is satisfied that Defendant's affirmative acts of deleterious conduct, intoxication and disruption of the workplace provide ample bases for dissociation. The opposition offers no argument in dispute, apart from an unrelated discussion regarding the gun violence restraining order against him and a conclusory, unsupported alleged violation of "due process and equal protection." (Opp. at p.2.) Thus, the Court is satisfied that success on the merits of the dissociation claim, the first prong under *Donahue, supra*, is established. With respect to the second prong, it is undisputed that Defendant has not worked at the business since December 2023. (Opp. at p. 4; Declaration of A. Giorgi filed May 16, 2025 ¶5; Declaration of A. Giorgi filed June 20, 2025 ¶¶ 8-9.) The declarations of Alisa Giorgi also make clear that the partnership business will continue to lose money and incur debt while Defendant remains a partner and draws funds without generating revenue. (June 20, 2025 A. Giorgi Decl., ¶¶ 9-10.) Furthermore, as a general partnership, Plaintiffs cannot make strategic business decisions and changes without agreement of all three partners. Accordingly, the Court finds there is a pattern of behavior that supports the Preliminary Injunction and Plaintiffs' motion is GRANTED, except as to the 500 ft stay away order. Which shall be modified to state Defendant shall be restrained from Physically

visiting or entering the property of the Giorgi Bros. Furniture showroom located at 211 Biden Avenue, South San Francisco CA 94080

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

POSTED: 3:00 PM