SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
Law and Motion Calendar
HONORABLE NICOLE S. HEALY
800 N. Humboldt Street, San Mateo CA 94401
Department 28, Courtroom I

Wednesday April 9, 2025

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR *YOU MUST GIVE NOTICE TO THE COURT DAY BEFORE THE HEARING* as explained below:

1. **EMAIL: Dept28@sanmateocourt.org the day before by 4:00 P.M., COPIED IN THE SAME EMAIL TO ALL PARTIES OR THEIR COUNSEL OF RECORD. The email must include the name of the case, the case number, and the name of the party contesting the tentative ruling; or**

2. **TELEPHONE: YOU MUST CALL (650) 261-5128 BEFORE 4:00 P.M. and FOLLOW THE INSTRUCTIONS ON THE MESSAGE; and**

3. **YOU MUST GIVE NOTICE BEFORE 4:00 P.M. — BY TELEPHONE OR IN PERSON — to the COURT and to ALL PARTIES OF YOUR INTENT TO APPEAR pursuant to California Rules of Court, Rule 3.1308(a)(1).**

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

New: You must email a copy of any reply brief, or an Opposition to a Motion for Summary Judgment in an Unlawful Detainer matter to:

lawandmotionreplybriefs@sanmateocourt.org

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 STRICTLY PROHIBITED. Please check in by 1:50 pm.

Zoom Video/Computer Audio Information
(For remote appearances, ALL counsel must use a device with a camera)
https://sanmateocourt.zoomgov.com/

Meeting ID: 160 226 9361
Password: 289347

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 cases referenced; and (8) spell all names, even common names.

Case	Title / Nature of the Case

2:00 LINE 1

20-CLJ-03711 FORD MOTOR CREDIT CO. LLC VS. ANASTASSIA GEORGOPOULOS

FORD MOTOR CREDIT COMPANY LLC	ROBERT SCOTT KENNARD
ANASTASSIA GEORGOPOULOS	VISHTASP SOROUSHIAN

MOTION TO QUASH

TENTATIVE RULING:

Specially Appearing Defendant Anastassia Georgopoulos's (defendant or Georgopoulos) Motion to Quash Summons and Dismiss Suit (Motion) is **GRANTED.**

A. Background

The Complaint alleges breach of contract and common counts causes of action based on a written agreement regarding a retail installment sale contract for a 2018 Ford Escape. According to the Complaint, defendant failed to make the required monthly installment payments as of April 24, 2019, and the car was repossessed or surrendered on July 9, 2019.

The Proof of Service of Summons filed on September 15, 2020 (POS), states that on that day at 6:38 p.m., the process server served the summons, complaint, and related documents by personal service on someone who did not resemble defendant, at an address where she had not resided for well over a year.

On January 5, 2021, following no appearance by the defendant, plaintiff requested entry of default, which was granted on that day, and of default judgment, which was filed on March 9, 2021, and signed on June 25, 2021. Plaintiff did not file a memorandum of costs after judgment until July 9, 2024, and writ of execution issued on July 19, 2024.

Georgopoulos moved to vacate and set aside the entry of default and default judgment, and sought leave to defend the action, on the grounds that the POS was false and invalid. Granting the motion, this court held that a "false proof of service, which is the result of extrinsic fraud, empowers the Court to set aside the default on equitable grounds due to a lack of jurisdiction." (Order Granting Motion to Set Aside Entry of Default and Default Judgment, filed February 10, 2025 [Order], at p. 4:8-10.)

Georgopoulos now brings this Motion.

B. The Summons Is Quashed

The Summons is quashed for lack of jurisdiction over Georgopoulos due to failure of service. (Code Civ. Proc., § 418.10, subd. (a).)

As this court has found, the POS was false and fraudulent, because it falsely claimed that the process server had served Georgopoulos. The POS was filed before the time at which it declares service was effected, and the process server purportedly signed it under penalty of perjury a day *after* it was filed. (Order, at pp. 4:6-8, 4:17-22.)

C. The Action Is Dismissed

1. Service on Defendant Was Invalid

Plaintiff failed to effect service of the Summons within three years of filing suit. (Code Civ. Proc., § 583.210, subd. (a) ["The summons and complaint shall be served upon a defendant within three years after the … complaint is filed"]; and *id*., § 583.250, subd. (a)(2) ["If service is not made in an action within the time prescribed in this article … [t]he action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties."].)

> Only a valid service complies with the requirement of section 583.210 that the summons and complaint be served within three years. Accordingly, while a motion to quash is the procedure usually employed to challenge the validity of service, the same issue is raised by a motion to dismiss under section 583.210. Thus, the motion to dismiss was properly granted if the service on the defendants was invalid.

(*Dill v. Berquist Construction Co*. (1994) 24 Cal.App.4th 1426, 1433, internal citations omitted.)

2. No Tolling Applies

Only a statute could provide an exception to or tolling of the time within which service must be effected. (Code Civ. Proc., § 583.250, subd. (b).) Section 583.240 sets forth the conditions under which the time for service may be tolled.

> (a) The defendant was not amenable to the process of the court.
>
> (b) The prosecution of the action or proceedings in the action was stayed and the stay affected service.
>
> (c) The validity of service was the subject of litigation by the parties.
>
> (d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or

evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision.

(Code Civ. Proc., § 583.240, subds. (a)-(d).) "[T]he exceptions codified in section 583.240, subdivision (d) must be construed strictly against the plaintiff" (*Shipley v. Sugita* (1996) 50 Cal.App.4th 320, 326 (*Shipley*)), which bears the burden of proving that an exception applies. (*State ex rel. Edelweiss Fund, LLC v. JP Morgan Chase & Co*. (2020) 58 Cal.App.5th 1113, 1121.)

The first condition does not apply. With respect to the phrase "amenable to process," the California Supreme Court has stated that the "Legislature intended thereby to refer to the state's *authority to exercise jurisdiction over a defendant*, i.e., the determination whether he or she is *subject to being served*, rather than to the reasonable availability of that defendant for service of process." (*Watts v. Crawford* (1995) 10 Cal.4th 743, 755, emphasis in original.) Here, Georgopoulos continuously remained in the Bay Area since being forced from her home, and did not try to avoid process, but learned the action through her employer in September 2024. (Georgopoulos Decl., ¶¶ 10-14.)

The second condition does not apply. This action was never stayed.

The third condition also does not apply. Georgopoulos challenged the validity of service on December 20, 2024, more than four years after the Complaint was filed, well after the three-year period for service had run.

The fourth condition does not apply. As the Court of Appeal explained in *Dale v. ITT Life Ins. Corp*. (1989) 207 Cal.App.3d 495, 502 (*Dale*), "entry of the default and default judgment against ITT tolled the dismissal period only if the claimed impracticability of service was due to causes beyond Dale's control. The facts indicate it was not." Accordingly, "Dale, like the plaintiff in *Ippolito*, must bear responsibility for his agent's failure to effect service of process." (*Ibid*.; see also *id*., at p. 503 ["As the court aptly stated in *Ippolito*: "Common sense and fairplay [*sic*] dictate that a plaintiff should not be able to hide behind the default obtained by a false return of service, ultimately force a defendant, long without notice, to litigate a stale claim."], citing *Ippolito v. Municipal Court* (1977) 67 Cal.App.3d 682, 688].)

Here, plaintiff and/or its counsel chose its process server, who did not actually serve Georgopoulos. Plaintiff is "charged with notice of the acts and declarations of his agent." (*Shipley*, *supra*, 50 Cal.App.4th at p. 327; *Bishop v. Silva* (1991) 234 Cal.App.3d 1317, 1321 (*Bishop*).) Service was alleged to have been effected on September 15, 2020, but was not. Plaintiff has not supplied any evidence supporting tolling.

D. Plaintiff's Arguments Are Unavailing

Plaintiff argues that the Motion should be denied because the window in which to bring the action to trial has not closed. Even if that were the case, it is irrelevant to the Motion. Moreover, in making this frivolous argument, plaintiff claims tolling due to the default *which*

the court has set aside. Plaintiff further argues that it has time to bring the action to trial and that defendant should answer "once service is complete." (Opp., at p. 3:20.) Effectively, plaintiff admits that it has yet to "complete" service.

Plaintiff also claims that it did not receive papers in this action, including notice of the motions to seal and to set aside the default and default judgment, though both defendant and the court have certified that they served the moving papers and the resulting Orders, respectively, upon plaintiff's counsel of record at his email address of record. Notably, the court filed its Affidavits of Service of the Order Regarding Application to File Under Seal on December 23, 2024, and of the Order on February 10, 2025.

Further, plaintiff misconstrues the relevant case law, including *Dale*, *Bishop*, and *Shipley*. Plaintiff asserts that because it claims that it has only recently learned of the problems with its service of the POS, it has not failed to discover facts relevant to those problems and should be afforded time to do so.

Finally, plaintiff asserts without support that defendant knew of this action because plaintiff's counsel's office spoke to defendant about the account on November 1, 2021. Even if this assertion were true, it would not render service of the POS valid.

The Complaint was filed almost four-and-a-half years ago, on September 1, 2020, and it was never served. Accordingly, this action is dismissed pursuant to Code of Civil Procedure section 583.250, subdivision (a)(2).

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 this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 2 **ETZEL WILLIAMS, III, ET AL VS. PENINSULA CORRIDOR JOINT POWERS BOARD, ET AL**
22-CIV-03763

ETZEL WILLIAMS
PENINSULA CORRIDOR JOINT POWERS BOARD

JESSICA DANIELSKI
DALE L. ALLEN

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

Defendant City of Burlingame's Motion for Summary Judgment, or in the Alternative, Summary Adjudication, is **DENIED.**

A. Background

On August 17, 2021, Cynthia Robinson (Ms. Robinson), the decedent, was driving northbound on California Drive in Burlingame and made a right turn onto Broadway towards Carolan Avenue. (UMF 14.) Train tracks run across Broadway between California Drive and Carolan Avenue, "at-grade" or at the same level as the street. (UMF 1.) As Ms. Robinson made the right turn and approached the rail crossing, the two cars ahead of her had driven across the tracks and stopped at the intersection of Broadway and Carolan. (UMF 15.) Before Ms. Robinson entered the rail crossing, the warning system had activated and the gate began to lower. (UMF 17.) However, the parties dispute whether Ms. Robinson had time to notice the lights and lowering gates in time to react to them. (UMF 17.) Due to the two cars stopped in front of her, there was not sufficient clearance on the other side of the rail crossing, and Ms. Robinson's car stopped on the tracks themselves. (UMF 19.) About twenty seconds after the gate was completely down and Ms. Robinson had stopped on the tracks, a train reached the crossing at a high speed. (UMF 20.) It struck Ms. Robinson's vehicle, killing her at the scene. (UMF 21.)

Defendant City of Burlingame (City or Burlingame) now moves for summary judgment, or in the alternative for summary adjudication, of both causes of action alleged against it in plaintiffs' operative First Amended Complaint (FAC).

As an initial matter, plaintiffs have withdrawn their negligence cause of action against the City. Therefore, the motion for summary judgment or adjudication is moot as to the negligence cause of action, and the court focuses on the dangerous condition of public property claim.

B. Standard for Summary Judgment or Adjudication

Summary judgment will be granted in a moving defendant's favor when that defendant shows there is no triable issue of material fact, and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "A defendant moving for summary judgment bears an initial burden of production to make a prima facie showing of

the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant may meet this burden either by showing that one or more elements of a cause of action cannot be established, or by showing that there is a complete defense. (*Ibid.*) If the defendant meets its prima facie case, then the burden of production shifts to the plaintiff to show the existence of a triable issue of material fact. (*Id.*, at 849.) Because summary judgment presents a risk of infringing on the opponent's rights, particularly the right to a jury trial, the court must strictly scrutinize the moving party's proofs while liberally construing those of the opposing party. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 758.)

Summary judgment law turns on issue finding rather than issue determination. (*Diep v. California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v. City of Long Beach* (1993) 15 Cal.App.4th 70, 76.) California summary judgment law requires a moving defendant to *present* evidence, and not simply point out through argument that the plaintiff does not possess and cannot reasonably obtain the needed evidence. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 110.)

The moving party's ultimate burden of persuasion that there are no triable issues of material fact, however, never shifts to the opposing party. (*Aguilar, supra,* 25 Cal.4th at p. 850.) This burden is unaffected by the strength or weakness of the showing in opposition to the motion (*Scalf v. D.B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519), and summary judgment must be denied — despite deficiencies in the opposition — if the burden has not been carried. (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 416.)

C. Defendant Has Not Met its Burden

A public entity is not liable for an injury except as otherwise provided by statute. (Govt. Code, § 815.) Government Code, section 835 provides one such basis: a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee created this dangerous condition, or that the public entity had actual or constructive notice of the dangerous condition in time to have taken protective measures. (*Id.*, § 835.) A dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself, or when it possesses physical characteristics in its design, location, features, or relationship to its surroundings that endanger users. (*Hedayatzadeh v. City of Del Mar* (2020) 44 Cal.App.5th 555, 562.)

"As to what constitutes a dangerous or defective condition no hard-and-fast rule can be laid down, but each case must depend upon its own facts." (*Salas v. Dept. of Transportation* (2011) 198 Cal.App.4th 1058, 1069.) The existence of a dangerous condition is ordinarily a

question of fact, but can be resolved as a question of law if reasonable minds can come to only one conclusion. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.) A dangerous condition of public property may exist where the location of a public improvement, or more broadly, its relationship to its surroundings, exposes those who use the property to danger. (*Mathews v. State of Calif. ex rel. Dept. of Transportation* (1978) 82 Cal.App.3d 116, 120 [street intersection with malfunctioning traffic signals constituted dangerous condition of property].) Moreover, whether a condition is dangerous is judged by the risk it poses when used with due care by the public generally, and is not measured against the particular actions of a particular plaintiff or the user specifically in question. (*Ibid.*)

Plaintiffs' FAC alleges a dangerous condition of public property cause of action against defendant Burlingame primarily based on the City's alleged failure to properly install, maintain, and execute a traffic signal preemption system that would prevent the blockage of the tracks by vehicles. According to plaintiffs, such blockage occurs in large part due to Burlingame's failure to prevent vehicles from turning onto the tracks when a train is approaching. (FAC ¶¶ 37, 38.)

The parties differ in their characterization of what the "dangerous condition" is: according to plaintiffs, the dangerous condition is the combination of the railroad crossing and traffic light system which acts too slowly in clearing cars out of the approaching train's way. According to defendants, the dangerous condition is the train track itself.

The City's motion for summary judgment or summary adjudication argues that plaintiffs' claim is barred because the incident was proximately caused by Ms. Robinson's failure to regard warning signals that the train was approaching, rather than any dangerous condition. (MPA iso Summary Judgment [MPA] at p. 10.) The City also argues that the claim is barred because railroad tracks are an open and obvious danger, which serve as their own warning. (*Id.*, at p. 11.)

The City's first argument hinges on causation. In essence, the City attempts to show that causation, as a necessary element of the dangerous condition claim, is lacking because Ms. Robinson, not the dangerous condition, caused the incident. The City argues that its motion "established" that Ms. Robinson disregarded numerous warnings (flashing lights, bells, and lowering gate) that a train was approaching, and therefore caused the incident herself. (Reply, at p. 6.) However, the evidence upon which the City relies is not quite so clear-cut. As an initial matter, the flashing lights and bells are not perceivable in the video, so it is difficult to conclude when they would have activated in relation to Ms. Robinson's entrance into the intersection. (Declaration of Kevin E. Gilbert [Gilbert Decl.] iso Mot., Exh. 5.) Furthermore, while the gate does begin to lower as Ms. Robinson's car is moving into the right turn, reasonable minds could disagree as to whether the gate (and any attendant warning signals) were activated in time for a reasonable driver exercising due care to change their behavior. (*Ibid.*) While Burlingame's Reply brief insists that there was "more than enough time for her to stop and not attempt to cross the tracks" (Reply, at p. 7), this merely represents the City's opinion on the matter. In order to determine, as defendant wishes, that Ms. Robinson definitely could have and should have stopped before the gate came all the way

down, the court would have to weigh the evidence and give credence to defendant's version of events over plaintiffs' which the court cannot do on summary judgment.

The City argues that "[t]here can be no confusion that 'due care' means not driving into a railroad crossing if there is not sufficient space for your car on the other side of the tracks." (MPA, at p. 10.) This "common sense" statement of the issue elides the underlying factual questions that are meant to be answered in this case, however — including whether it would be apparent to a driver exercising due care while making a right turn that there was no space for their car, and if so, whether the City's actions or omissions contributed to, or caused, the lack of sufficient space. Reviewing the evidence presented by defendant without weighing its credibility or crediting a particular interpretation of such evidence, it seems clear that reasonable minds could differ, and the determination of whether the crossing and intersection were a dangerous condition is therefore not a question of law, but of fact — which cannot be resolved by this court on summary judgment.

Defendant has therefore not met its burden. The City does not convincingly argue that causation cannot be shown between the alleged dangerous condition as described by plaintiffs and the catastrophic incident. Defendant's focus on Ms. Robinson's alleged failure to abide by the warnings is misplaced. First, the evidence presented by the City does not conclusively show that Ms. Robinson failed to abide by these warnings. More importantly, even if the evidence *did* show this incontrovertibly, the failure to exercise due care by the decedent does not preclude a finding of a dangerous condition of public property. (*Cole*, *supra*, 205 Cal.App.4th at p. 768.) "The status of a condition as 'dangerous' for purposes of the statutory definition does *not* depend on whether the plaintiff or other persons were actually exercising due care but on whether the condition of the property posed a substantial risk of injury to persons who *were* exercising due care." (*Ibid.*) Since the City's causation argument hinges on Ms. Robinson's actions, it fails to carry its burden on summary judgment. (*Id.*, at p. 770 [discussing public entity's failed argument regarding causation of accident, which was based on the fact that driver who struck pedestrian was drunk, because driver's drunkenness did not preclude public entity's liability].) The video evidence presented by the City is subject to multiple interpretations — as to whether a person exercising due care would be able to see, and heed, the warning system while already executing a right turn, for example. Whether or not the court's own "sense of the probabilities" conforms with one party or another is beside the point on summary judgment, as the issue presented is one of fact reserved for the factfinder. (*Ibid.*)

Defendant's second argument that the danger was open and obvious is also unavailing. The only evidence that the City raises in support of this argument is that photos of the location show that drivers have an unobstructed view of the rail crossing as they turn right onto Broadway from California. (UMF 11, 12.) These photos are Google Maps images captured in January 2025 and purport to show the street near the intersection as of March 2021 — about three months prior to the incident. (Gilbert Decl., Exh. 6.) Even crediting these photos as accurately depicting the conditions of the intersection as of the time of the incident, it is not clear from the photos that there is an "unobstructed view" of the railroad crossing as a driver

makes the right turn that Ms. Robinson made. The photos could also be said to show that, as a driver begins the right turn, the driver actually *cannot* see the tracks themselves, or how far away they might be, or how much clearance space a driver would have between the tracks and the next light. Reasonable minds could certainly disagree on the openness and obviousness of the danger—especially if the danger is characterized not just as the presence of the train itself, but as the risk of not being able to clear the stopped cars ahead of the crossing. The evidence on which defendant relies does not establish the absence of a triable issue of material fact, and therefore, summary judgment/adjudication in defendant's favor must be **DENIED**.

Plaintiffs' objection to defendant's Exhibit 3 is **OVERRULED**. As to defendant's objections to plaintiffs' evidence, the court declines to rule on them since none of the objected-to evidence was material to the court's determination. Because defendant failed to meet its burden of production, the burden never shifted to plaintiffs, and therefore the court had no occasion to rely upon plaintiffs' evidence. "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc., § 437c, subd. (q); *see Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 533 [court should focus its rulings on evidentiary matters that are critical in resolving the summary judgment motion].)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, plaintiffs' counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 3

22-CIV-04327 **MARTHA ELVIA GOMEZ VS. HOME DEPOT U.S.A., INC., ET AL**

MARTHA ELVIA GOMEZ	SIMON ESFANDI
THE HOME DEPOT, INC.,	GANETTE M GENETTI

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

For the reasons stated below, Defendant Home Depot U.S.A., Inc.'s (Home Depot) Motion for Summary Judgment, filed November 20, 2024, is **DENIED**. (Code Civ. Proc., § 437c.)

A. Brief Background and Asserted Claims

This case arises from plaintiff's alleged March 18, 2021 injury at a Home Depot store in Colma, California. The facts below are taking from defendant's Separate Statement of Undisputed Material Facts, many of which are undisputed. (See Nov. 20, 2024 SSUMF, Nos. 1-10.)

Plaintiff alleges that as a Home Depot employee was walking with plaintiff and helping her find an item in the store, plaintiff turned to her right and entered an aisle in which an unattended forklift was sitting, blocking the right side of the aisle in the direction in which plaintiff was travelling. Plaintiff admits that as she turned to her right and entered the subject aisle, she noticed the back side of the forklift, which faced in her direction. The front side of the forklift, which plaintiff contends she could not see when she entered the aisle, had protruding forks several feet in length, which were about 5.6 inches off the ground, and similar in color (grey) to the flooring. The body of the forklift was red and black. Plaintiff contends that she never saw or noticed the forklift's forks until after her fall.

The evidence indicates that plaintiff walked past part the forklift while she was looking at items on the shelves to her left. Because the forklift blocked a portion of the aisle, the remainder of the aisle was only wide enough for one person to walk past at a time. Plaintiff contends that when she noticed another customer seeking to pass, without looking at the floor behind her, she stepped backwards to allow the other customer to pass, and tripped on the forklift's forks that were behind her, thereby sustaining injury.

Plaintiff's Complaint asserts causes of action against Home Depot for (1) negligence; and (2) premises liability. Defendant contends that "the forklift" constituted an open and obvious danger, that defendant owed plaintiff no duty of care, that plaintiff's injury was not foreseeable, and that plaintiff's own negligence, not Home Depot's, caused her injury. Accordingly, defendant contends that plaintiff's asserted claims fail as a matter of law.

Viewing, as it must, the evidence in a light favorable to plaintiff, and drawing all reasonable inferences from the evidence, the court finds that triable issues of fact preclude the court from adjudicating plaintiff's claims via summary judgment. This is not to say that the court would find in plaintiff's favor, were the court the fact finder. But it is not the court's function, on summary judgment, to decide these issues where, as here, reasonable minds could differ.

B. Legal Standard on Summary Judgment

A motion for summary judgment shall be granted if the papers submitted 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., § 437, subd. (c).) A defendant has met its burden of showing that a cause of action has no merit if defendant shows that one or more elements of the cause 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 shifts to 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.)

Because summary judgment denies the adverse party a trial, it should be granted with caution. (*Assilzadeh v. California Fed. Bank* (2000) 82 Cal.App.4th 399, 409.) Summary judgment law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76.) Declarations of the moving party are strictly construed, those of the opposing party are liberally construed, and doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843-856.)

C. Relevant Legal Principles

The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1159; CACI 1000 ["Premises Liability — Essential Factual Elements"].) Premises liability "is grounded in the possession of the premises and the attendant right to control and manage the premises." But the duty arising from possession and control of property is adherence to the same standard of care that applies in negligence cases. (*Ibid*.)

Although a store or business owner is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise reasonable care in keeping the premises reasonably safe. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205; Civ. Code, § 1714, subd. (a).)

While a property owner must give warning of a "latent or concealed" danger, an owner "is not liable for injury to an invitee resulting from a danger which was obvious or should have been observed in the exercise of reasonable care." (*Beauchamp v. Los Gatos Golf Course* (1969) 273 Cal.App.2d 20.) In such situations, the obvious condition is itself the warning. (See *Christoff v. Union Pac. R.R. Co.* (2005) 134 Cal.App.4th 118 ["the presence of railroad tracks is a warning of an open and obvious danger"].) Even if there is an open and obvious danger, however, a landowner may still have a duty to remedy that danger if it is foreseeable that someone could be injured by it. (*Krongos v. Pac. Gas & Elec. Co.* (1992) 7 Cal.App.4th 387, 393.)

A plaintiff alleging premises liability must show that the defendant was negligent in the use or maintenance of the property. (CACI 1000.) "The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

D. Typically, the Breach of Duty and Causation are Issues of Fact that Cannot be Decided on Summary Judgment

Defendant correctly notes that the question of whether defendant owed a duty of care is a legal question for the court to decide. However, the negligence elements of (a) breach of a duty, and (b) and causation, "are ordinarily questions of fact for the jury's determination." (*Lawrence v. La Jolla Beach & Tennis Club, Inc.* (2014) 231 Cal.App.4th 11, 32; *Parker v. City and County of San Francisco* (1958) 158 Cal.2d 597, 604 ["Generally, the issue of negligence is a question for the jury."]; *Garcia v. Hoffman* (1963) 212 Cal.App. 2d 530,542 ["Even where the facts are undisputed, if reasonable minds might draw different conclusions upon the question of negligence, the question is one of fact for the jury."]; *Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1029–1030 ["Whether a defendant's conduct actually caused an injury is a question of fact . . . that is ordinarily for the jury."].)

The evidence here raises a triable issue of fact as to whether the forklift's forks constituted an open and obvious danger. (See UMF 5 [the parties disputing whether "the forklift" was "easily visible"].)

Defendant argues that "the forklift" is a "large, inanimate" device that plaintiff admits having seen from its rear when she first entered the aisle in question. Defendant appears to draw no distinction between the forklift's *body* (which plaintiff clearly saw prior to her allegedly injury) and its protruding forks. Plaintiff contends that she never saw or noticed the forks prior to her injury, and she contends the forks were difficult to see or notice, in part because they were only a few inches off the ground and similar to color (grey) to the flooring, which contrasted with the forklift's red body. The evidence appears unclear as to whether plaintiff even knew (prior to the injury) that the device was a forklift, which might have given her reason to expect that its front side would have forks. Defendant argues that plaintiff carelessly stepped backwards into the forklift that plaintiff had already seen. If plaintiff had stepped backwards *into the body* of the forklift, then this would be a very different case. But

defendant does not even appear to argue that plaintiff ever saw the forks before her injury. Nor does defendant appear to address plaintiff's contention that the low, grey forks were difficult to notice — unlike its large, very visible, red body. The court finds that the evidence raises a triable issue as to whether the forklift forks, which is the relevant part of the forklift here, constituted an open and obvious danger that plaintiff should have been expected to avoid using due care.

Defendant cites to, and attaches, an unpublished decision in *Sassoon v. Lowe's HIW, Inc.* (Ninth Cir., Mar. 22, 2016) 643 Fed. Appx. 624 [Nov. 20, 2024 Compendium of Evidence, Exh. F].) In this unpublished decision, a Lowe's customer, while walking down an aisle in Lowe's, kicked (with his toe) the edge of a ladder that was sitting in the middle of an aisle, thereby injuring his toe. The district court granted summary judgment for defendant, finding that defendant owed no duty of care to plaintiff because the ladder constituted an open and obvious danger that plaintiff should have avoided by exercising due care. (*Ibid*.)

Even if the *Sassoon* decision were published and binding on this court, which it is not, the facts nonetheless appear distinguishable. Here, although the forklift's large body was "open" and clearly visible, there is a triable issue as to whether its forks were open and obvious. It appears undisputed here that the forks were not visible from the rear. And it seems logical (*i.e*., a reasonable fact finder could conclude) that the forks, which matched the floor color and were only inches off the ground, would be much less visible (much less "obvious") than the large ladder at issue in *Sassoon*, which the court there appears to have concluded was virtually impossible to miss.

The court finds that the evidence here raises a triable issue as to whether the forklift's forks presented an open and obvious danger that plaintiff should have been expected to avoid, and whether plaintiff's injury was foreseeable.

The evidence also raises a triable issue as to whether defendant's acts or omissions caused plaintiff's alleged injur(ies). On pages 15-16 of its moving papers, defendant argues that despite having seen the back of the forklift when she entered the aisle, and despite knowing that she was standing near the forklift, plaintiff carelessly stepped backwards (to let a customer pass by) without looking at the floor behind her, thereby negligently causing her own injury. Defendant cites to two cases from the 1930s, apparently arguing that plaintiff's own negligence bars her recovery. This argument seems to ignore the principles of comparative negligence. The two cited cases long predate the implementation of the comparative negligence doctrine in California.

A defendant's conduct is a cause in fact of a plaintiff's injury if it was a *substantial factor* in bringing about the injury. (*Gordon v. Havasu Palms, Inc.* (2001) 93 Cal.App.4th 244, 252.) A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. (CACI 430 [Causation-Substantial Factor].) It must be more than a remote or trivial factor, but *it does not have to be the only* cause of the harm. (*Ibid*.) As with the issue of "breach," causation normally presents an issue of fact, and thus typically is not amenable to summary adjudication. (*Ibid*. ["The issue of causation is usually

a question for the jury."]; *Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 152 [proximate cause can in some cases be decided as a matter of law, but it normally presents a fact issue].)

Regardless of whether plaintiff was negligent, the evidence here raises a triable issue as to whether defendant's acts or omissions were *also* a "substantial factor" in causing plaintiff's alleged injur(ies). Even assuming plaintiff acted carelessly or negligently, it does not matter for purposes of this Motion, because a reasonable fact finder could conclude that defendant's acts or omissions were also a substantial factor in causing the injury. (See CACI 430 ["It does not have to be the only cause of the harm."].) Plaintiff's alleged negligence would be relevant in determining comparative fault (see CACI 405), but it is not a basis for granting summary judgment. Whether plaintiff was the *only* negligent party is an issue for the fact finder to decide. (*See Aguilar, supra*, at pp. 843-856 [doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party].)

E. Conclusion

For the foregoing reasons, the Motion is denied. Plaintiff's Opposition also argues that defendant should have parked the forklift in another location, and plaintiff cites to portions of its expert's declaration, in which the expert opines that defendant was negligent. However, because the court finds ample grounds to deny the Motion as explained above, the court need not reach these additional arguments.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, plaintiff's counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 4

24-CIV-01929 STATE COMPENSATION INSURANCE FUND VS. E.W.S.F. INC., ET AL

STATE COMPENSATION INSURANCE FUND	NATHALIE TANG
E.W.S.F. INC.	BARBARA L. MILLER

MOTION FOR LEAVE

TENTATIVE RULING:

The unopposed motion to amend is **DENIED WITHOUT PREJUDICE**. The motion was filed on February 25, 2025 and the proof of service indicates the moving papers were served electronically on the same date. However, the hearing date was changed from April 2 to April 9, 2025 at the time of filing, and it is unclear whether the notice served was the original or the amended version.

If, however, plaintiff appears and provides proof that all parties received proper notice, the motion will be granted. Public policy is in favor of amendment and the lack of any opposition or facts showing prejudice to defendants also counsels granting the motion. No trial date has been set and the only other pending hearing in this matter is a case management conference on April 30, 2025.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, plaintiff's counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 5

24-CIV-05688 KENT TAYLOR VS.SAN MATEO COUNTY SHERIFF'S DEPARTMENT, ET AL

KENT TAYLOR	PRO SE
SAN MATEO COUNTY SHERIFF'S DEPARTMENT	SHEILA VASANTHARAM

HEARING ON DEMURRER

TENTATIVE RULING:

Defendant San Mateo County Sheriff's Office's (erroneously sued as San Mateo County Sheriff's Department) Demurrer to Plaintiff's Complaint **is SUSTAINED with leave to amend** pursuant to Code of Civil Procedure, section 430.10, subdivision (e); Government Code, section 945.4.

Plaintiff's Opposition to Defendant's Demurrer, filed April 4, 2025, was untimely and has not been considered.

A. Privilege to Detain

Defendant argues that the deputy alleged to have detained plaintiff was operating with a lawful privilege based on a good faith suspicion justifying detention or investigation of plaintiff. (Demurrer, at p. 4:16-23, citing *Easton v. Sutter Coast Hospital* (2000) 80 Cal.App.4th 485, 496; *Dawkins v. City of Los Angeles* (1978) 22 Cal.3d 126, 133.) Reading the Complaint liberally, and taking the factual allegations as true for purposes of this demurrer, there was no basis for a good faith suspicion that plaintiff was in violation of the law by loading purchased items into his vehicle in a Walgreens parking lot, where the deputy was not responding to a call for service.

The Demurrer on this basis is therefore **OVERRULED**.

B. Failure to Discharge a Mandatory Duty

As to the second cause of action in plaintiff's Complaint, defendant argues that it "fails to allege facts sufficient to state a cause of action against the San Mateo County Sheriff's Office because Plaintiff has not identified a mandatory duty that the San Mateo County Sheriff's Office violated." (Demurrer, at p. 6:15-17.) The cause of action alleges that "defendants had the mandatory duties imposed by those relevant constitution, statutes, rules and regulations that were designed to protect against the risk of false arrest, imprisonment, search, seizure, detention, conspiracy, violence, threat, punishment, retaliation, discrimination, intimidation, interference, and oppression, but failed to discharge the duties." (Complaint, ¶ 16.) These allegations sufficiently identify, at minimum, mandatory duties imposed by the United States and California Constitutions which each guarantee protection from, *inter alia*, unreasonable search and seizures.

The Demurrer on this basis is therefore **OVERRULED**.

C. Government Claim Requirement

Because the defendant in this action is a public entity, no suit for money or damages may be brought against it until a written claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. (Govt. Code, § 945.4.) A plaintiff suing a local public entity must allege facts demonstrating either compliance with the claim presentation requirement, or an excuse for noncompliance as an essential element of the cause of action. (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 65.) A claim for an "injury to person" must be presented not later than six months after the accrual of the cause of action. (Govt. Code, § 911.2.) "A cause of action that is subject to the statutory claim procedure must allege either that the plaintiff complied with the claims presentation requirement, or that a recognized exception or excuse for noncompliance exists. . . . If the plaintiff fails to include the necessary allegations, the complaint is subject to attack by demurrer." (*Nasrawi v. Buck Consultants LLC* (2014) 231 Cal.App.4th 328, 338 [citation omitted].)

Plaintiff alleges he is required to comply with a claims presentation statute and that an application to file an untimely claim was filed with the board of supervisors on August 19, 2024 and August 30, 2024. (Complaint, ¶ 9.a.) Plaintiff's Petition for Relief from Government Claims Filing Requirement, in which he showed that the County had rejected his application for leave to present a late claim, was denied on March 5, 2025. (March 5, 2025 Minute Order.) Plaintiff's Complaint therefore does not allege compliance with the claims presentation requirement or that a recognized exception or excuse for noncompliance exists, and is subject to demurrer, so the demurrer on this basis is **SUSTAINED with leave to amend.**

Plaintiff may file a First Amended Complaint within ten (10) days of notice of entry of this order.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendant's counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 6

24-UDL-01570 CITY OF REDWOOD CITY VS. ERIN COLEMAN, ET AL

CITY OF REDWOOD CITY	KEVIN D. SIEGEL
ERIN COLEMAN	PRO SE

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

The Motion of plaintiff City of Redwood City (City) for Summary Judgment or in the alternative, Summary Adjudication, is **CONTINUED to May 14, 2025** for failure to establish proper service of this Motion on defendant Erin Coleman (defendant).

However, if Mr. Coleman appears at the hearing or the City otherwise is able to demonstrate that the Motion was properly served, the court will **GRANT** the motion for summary judgment.

A. The Proof of Service is Unclear

The proof of service states "NAME OF PARTY" followed by defendant's name. (Proof of Service filed April 2, 2025.) The manner of service is described as follows:

> Service was made by delivery to the party's residence between the hours of eight in the morning and six in the evening, by leaving the notice or other papers with some person of not less than 18 years of age. If the party's residence is not known, the notice or other papers were served by delivery to the clerk of the court, or the judge if there is no clerk, for the party. ([CCP 1011(1)]

(*Ibid*.) The proof of service does not identify the person who was served. It is also unclear whether the City is claiming personal service or substitute service. Thus, the City has not established proper service of this Motion on defendant.

B. If the City Demonstrates that it Has Properly Effected Service, the Court Will Grant the Motion

For purposes of a motion for summary judgment and summary adjudication, a plaintiff has met its burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) Once the plaintiff has met that burden, the burden shifts to the defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid*.)

The City moves for summary judgment arguing that viewing the evidence in the light most favorable to defendant, he was a licensee rather than a mere trespasser. The City contends that it must prove three elements to prevail: (1) defendant's status as a licensee; (2)

the license granted by the City to defendant ended, and (3) defendant's continued use of the premises without the City's permission. (See *City of Riverside v. Greyhound Lines, Inc*. (C.D. Cal. July 12, 2017) 2017 WL 3575289 at p. *2 [unpub. opn.] (*City of Riverside*); see also Code Civ. Proc., § 1161(1).) Moreover, even if defendant were not considered a licensee, the City argues that defendant would be a trespasser, and a property owner may file an unlawful detainer action if a trespasser does not leave. (California Landlord-Tenant Practice (2d ed. Cal. CEB), § 1.19, "Trespassers.")

The occupancy of a rental boat slip in navigable waters amounts to an occupancy of real property for purposes of unlawful detainer. (*Smith v. Municipal Court* (1988) 202 Cal.App.3d 685, 690.) In *Smith*, the Court of Appeal found that unlawful detainer was available as a legal remedy against a defaulting tenant, a Redwood City boat user. (*Id*., at p. 691.)

An unlawful detainer action is authorized and governed by statute. (*Borden v. Stil*es (2023) 92 Cal.App.5th 337, 344, citing Code Civ. Proc., §§ 1161, et seq.) This remedy is available by an owner against a licensee whose relationship has terminated. (*Ibid*.) An unlawful detainer may be brought where a tenant continues in possession after the expiration of the term for which it is let, including the case where the person to be removed became the occupant of the property as a licensee. (Code Civ. Proc., § 1161, subd. (1).)

In *City of Riverside*, *supra*, 2017 WL 3575289, at p. *2, the court found that based on case law and Code of Civil Procedure section 1161, subdivision (1), three elements needed to be established in order to prevail on an unlawful detainer action against a licensee: (1) the defendant's status as a licensee, (2) that the license granted by the plaintiff to the defendant ended, and (3) that the defendant's continued use of the property was without the defendant's permission.

Although *City of Riverside* is an unpublished opinion, the City asserts that it may properly rely on it since it is an unpublished federal opinion. (See *Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 [citing unpublished federal opinions does not violate Cal. Rules of Court, rule 8.1115].) Rule 8.1115 prohibits citation or reliance on an opinion of a California Court of Appeal or superior court appellate division, except as provided in Cal. Rules of Court rule 8.1115(b). (Cal. Rules of Court, rule 8.1115(a).) However, this rule does not apply to the citation of unpublished federal cases. Thus, it seems that the Court may apply the elements as set forth in *City of Riverside*.

The City proffers sufficient evidence to establish the first element regarding defendant's status as a licensee. "A license in land confers on the licensee no interest in the premises. It is a mere personal privilege. It is personal and revocable." (*Goetze v. Hanks* (1968) 261 Cal.App.2d 615, 617, citing *Fisher v. General Petroleum Corp*. (1954) 123 Cal.App.2d 770, 776.) "The test . . . 'whether an agreement for the use of real estate is a license or a lease is whether the contract gives *exclusive possession of the premises against all the world, including the owner,* in which case it is a lease, or whether it merely confers a privilege to occupy under the owner, in which case it is a license, and this is a question of law

arising out of the construction of the instrument.'" (*Kaiser Co. v. Reid* (1947) 30 Cal.2d 610, 619, citing *Von Goerlitz v. Turner* (1944) 65 Cal.App.2d 425, 429.) The City shows that defendant purchased the barge-based vessel from the City at an auction in 2019. (City's Sep. Statement of Undisputed Material Facts [City's SSUMF] no. 10.) The terms of the auction were posted prior to the auction. (City's SSUMF no. 11.) The terms of the auction provided that the boat must be removed from city property no longer than 15 days from the final sale date, and that it is the sole responsibility of the buyer to arrange to have the boat transported. (City's SSUMF no. 12.) The terms of the auction in no way authorized an individual to purchase and then occupy the berth that it was located for more than 15 days, or to live on board the vessel. (City's SSUMF no. 13.) Defendant purchased the barge-based vessel. (City's SSUMF no. 14.) Therefore, the terms of the auction support defendant's status as a licensee.

The City's evidence also establishes that the license ended. The license gave defendant 15 days from the sale date to remove the vessel. The City terminated defendant's status as a licensee by personally serving him with a 30-day notice to quit that notified him of the termination and directed him to vacate by November 15, 2024. (City's SSUMF nos. 26-29.)

Lastly, the City shows that defendant continued to use the premises without the City's permission. The November 15, 2024 deadline has passed, and defendant's vessel remains at the marina to this day. (City's SSUMF no. 30.)

Therefore, the City has met its initial burden of establishing all the elements of this unlawful detainer action. At this time, no opposition appears in the court's records. Thus, defendant fails to raise a triable issue of material fact to any of these elements or an affirmative defense.

Plaintiff's Motion for Summary Adjudication of Defendant's Affirmative Defenses is therefore denied as **MOOT**.

C. City's Request for Judicial Notice

The City requests judicial notice of: (1) City of Redwood City Resolution 15550 (Exh. A); (2) the City's SSUMF nos. 1-5 that rely on Resolution 15550; and (3) Statutes 1954, chapter 34, conveying jurisdiction to Redwood City over Docktown, that is, the marina. (Exh. B). The court grants the City's Request for Judicial Notice of Exhibits A and B.

The Court may properly take judicial notice of the City's Resolution. (See *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 599 [court may take judicial notice of records reflecting the official acts of local and state agencies, including resolutions, minutes and agendas].) However, a court may not take judicial notice of specific factual representations within these documents. (*Ibid.*)

The Court may also properly take judicial notice of Exhibit B since it is a legislative enactment. (See Evid. Code, § 452, subd. (c).) The City requests judicial notice to show that it holds title to the water and tidelands underneath the docks at Docktown.

As to the request for judicial notice of the City's SSUMF nos. 1-5 that rely on Exhibits A and B, the court has granted judicial notice as to these documents. However, the City appears to be requesting judicial notice of the facts themselves and it is not clear why the court should take judicial notice of facts nos. 1-5 in the separate statement. Further, fact no. 3 does not cite to the City's Request for Judicial Notice. Therefore, the Court **DENIES** the request as to SSUMF nos. 1-5.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for the City shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), provide notice of the ruling to all parties who have appeared in this matter.

2:00 LINE 7

25-UDL-00048 EQUITY RESIDENTIAL MANAGEMENT, LLC VS. SAMUEL BERHANE, ET AL

EQUITY RESIDENTIAL MANAGEMENT, LLC	RYAN NG
SAMUEL BERHANE	JULIET M BRODIE

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

Defendant Samuel Berhane's Motion for Summary Judgment (Motion) is **GRANTED.**

Initially, the Court notes that Defendant has not provided the correct address for the hearing. Department 28 is located at the Central Courthouse, Courtroom I, 800 North Humboldt Street, San Mateo, CA 94401. (*See* Cal. Rules of Court, rule 3.1110 [the Notice "must specify" the location of the hearing].)

A. Background

Plaintiff is the agent of the owner of the premises at issue, at 1015 Cadillac Way, # 310, Burlingame, California 94010 (the Premises). (Complaint, p.1, boxes 4, 3.a.) Plaintiff alleges that defendant owed $800.00 in rent when the Three-Day Notice to Pay Rent or Thirty-Day Notice to Quit (Notice) was served. (*Id*., at, p. 3, box 12, and p. 6, Exh. 2.) Plaintiff does not attach a copy of the Lease to the Complaint, because "this action is solely for nonpayment of rent." (*Id*., at p. 2, box 6.f.2.) Plaintiff attaches to the Complaint the Notice (*id*., Exh. 2), and a Declaration of Service of the Notice by posting and by mail on November 1, 2024. (*Id*., Exh. 3.) The longer period stated in the Notice expired on December 2, 2024. (*Id*., at p. 3, box 9.b.)

Defendant brings the Motion pursuant to Code of Civil Procedure, section 1170.7.

B. Summary Judgment in the Context of Unlawful Detainer

In the unlawful detainer context, "Summary judgment shall be granted or denied on the same basis as a motion under Section 437c." (Code Civ. Proc., § 1170.7.)

A defendant has met its burden of showing that a cause of action is meritless, if: "the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant meets this burden, then "the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid*.)

A motion for summary judgment be granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) The Court must consider all of the evidence and inferences reasonably drawn from the evidence "in the light most favorable to" the party opposing the motion. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

Here, the undisputed facts include the language of the Notice (Complaint, Exh. 2), and that the federal Coronavirus Aid, Relief and Economic Security (CARES) Act applies to defendant's tenancy in the Premises. (*Ibid.*) The CARES Act provides in pertinent part that, "The lessor of a covered dwelling unit — (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." (15 U.S.C. § 9058(c)(1).)

In the unlawful detainer context, California has a long history of holding that "every intendment and presumption is against the person seeking to enforce the forfeiture." (*Horton-Howard v. Payton* (1919) 44 Cal.App.108, 112 (*Horton-Howard*).) The legal term, "intendment," refers to the actual intention of a piece of legislation, and its longstanding use by the Supreme Court of California is especially pertinent to the instant case. Our Supreme Court explains that "statutes which create a forfeiture or impose a penalty [are] to be strictly construed; and every intendment and presumption is in favor of the defendant in such cases." (*Irvine v. McKeon* (1863) 23 Cal. 472, 474-475 (*Irvine*).)

Here, while it is undisputed that the Notice provides defendant three days to cure and thirty days to quit (Complaint, Exh. 2), there is an ambiguity as to which facts the *statute* makes essential to create defendant's liability. If the CARES Act requires a thirty-day cure period, then the Notice facially shows that defendant is not liable. If instead, the CARES Act only requires notice of thirty days to quit, and permits a lesser period of time to cure, e.g., three days, then defendant may be liable. The question here is the intendment of the CARES Act — and on summary judgment, every intendment must be found against plaintiff who is seeking to enforce the forfeiture (*Horton-Howard*, *supra*, 44 Cal.App. at p. 112) and in favor of the defendant. (*Irvine, supra,* 23 Cal. at pp. 474-475.)

No reported decisions address the notice period under the CARES Act. Under plaintiff's analysis, however (see Opp. at p. 4), if defendants paid their rent on Day 4 after the notice was issued, they would remain in breach and their only option would be to vacate within the 30-day notice window. Addressing a statute with a similar notice provision, one California Court of Appeal held that a landlord's agent's efforts to terminate tenancies on less than 30 days' notice for nonpayment of rent under the HOME Investment Partnerships Program (42 U.S.C., §§ 12741-12756) was ineffective where, with certain exceptions, the statutes and regulations required 30 days' notice. (See *Campbell v. FPI Mgmt., Inc*. (2024) 98 Cal.App.5th 1151, 1163-1165 [affirming order denying plaintiffs' motion for summary judgment and reversing in part denial of summary judgment to tenants who asserted that notices terminating tenancies of HOME properties on less than 30 days' notice violated Unfair Competition Law and Consumer Legal Remedies Act].) The CARES Act would likewise

seem to require that a tenancy subject to that statute could not be terminated on less than 30 days' notice, and that the cure period was also 30 days.

Accordingly, defendant's motion for summary judgment is **GRANTED.**

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendant's counsel shall prepare a written order consistent with this ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), 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.