TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 20, 2026, 3:00 p.m.
Courtroom 16 – Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV00250, Youngstown MHP LLC v. City of Petaluma

Plaintiff's Motion for Summary Judgment or Summary Adjudication DENIED.
Defendant's Motion for Summary Judgment or Summary Adjudication DENIED.

Facts

On August 22, 2024, Plaintiff filed its FAC alleging causes of action for: 1) Facial and As-Applied Violations of the Fair Housing Amendments Act; 2) Disparate Impact Pursuant to the Fair Employment and Housing Act ("FEHA"); 3) Familial Status Discrimination pursuant to the FEHA; and 4) Zoning Discrimination. Plaintiff seeks a declaratory judgment and an injunction enjoining the City from enforcing an ordinance requiring it to become seniors-only parks.

The FAC alleges that Plaintiff owns a mobile home park, Youngstown Mobile Home Park ("the Park"), in the City of Petaluma. The Park was historically limited to people 55 years or older. On June 22, 2023, the Park removed its "Community for Older Persons" sign and amended its rules and regulations to become an all-age park. Thereafter, the City adopted Ordinance No. 2865 (the "Ordinance") establishing a senior mobilehome overlay district and a zoning map amendment which requires the Park and four other mobilehome parks to be designated senior housing. The complaint alleges causes of action for: 1) Facial and as-applied violation of the Fair Housing Amendments Act; 2) Disparate Impact pursuant to the FEHA; 3) Familial Status Discrimination pursuant to the FEHA; and 4) Zoning discrimination.

On October 17, 2025, this court sustained Defendants' demurrer to the second and fourth causes of action without leave to amend. This leaves two outstanding causes of action: 1) facial and

as applied violation of the Fair Housing Amendments Act, and 3) familial status discrimination pursuant to FEHA.

Motions

In the first motion, Plaintiff moves for summary judgment on its complaint or, in the alternative, for summary adjudication of each cause of action in its complaint. Plaintiff contends that the Federal Fair Housing Act ("FHA") section 3604 prohibits discrimination in the sale, rental, or marketing of housing based on "familial status" with only one exception, operating housing for persons age 55 and older in accord with the Housing for Older Persons Act of 1995 ("HOPA"). It further contends that in order to restrict housing to persons 55 and older under HOPA, a facility must strictly comply with requirements that at least 80% of occupied units contain a person 55 or older, the facility publish and adhere to policies and procedures reflecting that intent, and the facility must maintain a system for periodic age verification. It contends that it failed to comply with the HOPA requirements for restricting residency to those 55 and older, therefore making it not only legal but mandatory that it open the Park to residents of all ages. Plaintiff argues that Defendant's Ordinance No. 2865 (the "Ordinance"), adopted in October 2023 and mandating mobilehome park owners in a "senior mobilehome park overlay district" meet requirements for renting to seniors, violates both the FHA and FEHA by compelling it, when it was lawfully operating as an all-ages park, to revert to a seniors-only park and thus discriminate based on familial status without complying with the exceptions allowing such discrimination.

Defendant opposes the motion. It argues that Plaintiff never legally operated the Park as an all-ages park since its own rules, loan agreement, and the California Mobilehome Residency Law ("MRL") all required it to continue operating as a seniors-only facility as it had been doing before. Accordingly, it contends, its Ordinance does not require Plaintiff to violate applicable state and federal law. It also assets that the Ordinance properly establishes a municipally zoned area for a "housing facility or community" for senior housing in compliance with state and federal regulations.

In the second motion, Defendant moves for summary judgment on the complaint or, in the alternative, summary adjudication. Defendant's motion, as noted above, is essentially the reverse of Plaintiff's motion. Defendant contends that the undisputed facts show that the court must enter judgment for Defendant.

Plaintiff opposes this motion, reiterating its arguments from its own motion.

Both parties have filed reply papers in support of their respective motions.

Authority Governing Motions for Summary Judgment or Summary Adjudication

Any party may move for summary judgment or summary adjudication. Code of Civil Procedure ("CCP") section 437c(a), (f). A party is entitled to summary judgment if demonstrating "that the action has no merit or that there is no defense to the action or proceeding." CCP section 437c(a). For summary adjudication, the "party" may seek adjudication of, among others, one or more causes of action, affirmative defenses, claims for damages, or issues of duty, or that a party did or did not owe a duty. CCP section 437c(f)(1). According to CCP section 437c(b)(4), a "reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers."

When a defendant moves for summary judgment, it has the burden of first making a prima facie showing that plaintiffs *cannot establish* at least one element of any cause of action for summary judgment, or there is a *complete defense* to every cause of action. CCP §437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. For summary adjudication, the moving party has the burden of demonstrating that plaintiff cannot establish at least one element of each cause of action at issue, each claim for punitive damages, an affirmative defense, or each issue of duty

addressed in the motion, or there is a complete defense to each cause of action addressed. CCP §437c(f)(1), (o); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.

A defendant can show that an element cannot be established only if its undisputed facts negate plaintiff's allegations *as a matter of law* and would make it impossible for plaintiff to show a *prima facie* case. *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1597.

Once the moving party has met its burden, the party opposing summary judgment or summary adjudication has the burden of demonstrating that there is a triable material issue of fact. CCP section 437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The opposing party must merely make a prima facie showing that there is such a triable issue. *Ibid*.

Inferences from circumstantial evidence can create a triable issue, as long as they are not based on speculation or surmise. *Joseph E. DiLoreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161; *Aguilar v. Atlantic Richfield Corp.* (2000) 78 Cal.App.4th 79, 117. These inferences must be "more likely than not." *Aguilar,* 117; *Leslie G. v. Perry & Assocs.* (1996) 43 Cal.App.4th 472, 487. There is also a policy to liberally construe the opposition's evidence and strictly construe the evidence of the moving party. *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 21; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839.

According to *Villa v. McFreen* (1995) 35 Cal.App.4th 733, at 749, and *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, at 187, a court in its discretion may not, and generally should not, grant summary judgment or adjudication where the moving party is relying on information about something which only the moving party will know and for which the opposing party is not likely to possess or obtain any other evidence, such as where only Defendant was present to observe communications that were the crux of the dispute, or about the declarant's state of mind. See also *Butcher v. Gay* (1994) 29 Cal.App.4th 388, at 404 (court has discretion not to grant summary judgment when based on moving party's state of mind or subjective knowledge). CCP section 437c(e), in fact, states, with emphasis added, that

> summary judgment *may be denied* in the discretion of the court, *where the only proof* of a material fact offered in support of the summary judgment is an affidavit or declaration made *by an individual who was the sole witness* to that fact; *or where a material fact is an individual's state of mind, or lack thereof*, and that fact is sought to be established solely by the individual's affirmation thereof.

Applicable Housing Authority

The key provision of the FHA for purposes of this litigation is 42 USC section 3607(b). This states, in full,

> (b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.
> (2) As used in this section, "housing for older persons" means housing--
> (A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
> (B) intended for, and solely occupied by, persons 62 years of age or older; or
> (C) intended and operated for occupancy by persons 55 years of age or older, and--
> (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall--
(I) provide for verification by reliable surveys and affidavits; and
(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.
(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:
(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections1 (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of subsections1 (2)(B) or (C); or
(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections1 (2)(B) or (C).
(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of Title 21.
(5)(A) A person shall not be held personally liable for monetary damages for a violation of this subchapter if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.
(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that--
(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

The Department of Housing and Urban Development ("HUD") established federal regulations implementing the statutory law. Both parties cite to, and rely on, these regulations. Pertinent provision for this litigation are found at 24 Code of Federal Regulations ("CFR") Subtitle B, Chapter I, Part 100 and govern discriminatory conduct under the FHA. Subpart E governs the exemption to the prohibitions on discrimination in Housing for Older Persons, or senior housing. According to 24 CFR 100.301(a), "The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304." 24 CFR 100.304 governs housing for persons age 55 and older. In subdivision (b), it defines "housing facility or community" for the purposes of that subpart and states, with emphasis added,

(b) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:
(1) A condominium association;
(2) A cooperative;
(3) A property governed by a homeowners' or resident association;
(4) *A municipally zoned area;*
(5) A leased property under common private ownership;
(6) A mobile home park; and

(7) A manufactured housing community.

24 CFR 100.305 sets forth the requirement that seniors occupy at least 80% of housing units. It states, in pertinent part,

> (a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.
> …
> (e) Housing satisfies the requirements of this section even though:
> …
> (5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:
> (i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and
> (ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.
> (f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

24 CFR section 100.307 sets forth requirements for verification of occupancy with respect to senior housing. It states, in pertinent part and with emphasis added,

> (a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.
> (b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. *Such procedures may be part of a normal leasing or purchasing arrangement.*
> (c) The procedures described in paragraph (b) of this section *must provide for regular updates, through surveys or other means*, of the initial information supplied by the occupants of the housing facility or community. *Such updates must take place at least once every two years.* A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.
> …
> (f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

"To qualify for HOPA's affirmative defense [allowing senior-only housing as an exemption to the prohibition on familial-status discrimination], a community must satisfy all three statutory and regulatory requirements." *Balvage v. Ryderwood Improvement & Serv. Assn., Inc*. (9th Cir. 2011) 642 F.3d 765, 777.

Plaintiff itself cites to *Putnam Family Partnership v. City of Yucaipa* (9th Cir. 2012) 673 F.3d 920, at 927 n.3, as upholding a city ordinance which required existing seniors-only parks to

remain seniors-only parks because the parks et the requirements for the senior exemption and already operated as senior housing, leaving "for another day" the question of whether an ordinance could require a legally operating all-ages park to convert to a seniors-only park.

California Government Code ("Gov.Code") section 12955 makes it unlawful for "the owner of any housing accommodation" to discriminate against any person because of familial status.

Under FEHA, a government entity may not "discriminate through public ... land use practices, decisions, and authorizations because of" protected characteristics. *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 268. In *Martinez*, the acts and omissions constituting the unlawful practice were identified in Martinez's allegation that the City failed to accommodate and to provide opportunities to develop lower income housing through its failure to comply with Housing Element Law. The failures to comply with the Housing Element Law were alleged in detail in Martinez's first three causes of action and those allegations were incorporated into her fifth cause of action alleging a violation of the FHA. Ibid. As Martinez alleged a cause of action under the FHA, she also alleged a cause of aciton under FEHA. Id., 271.

FEHA provides a "housing for older persons" exemption if the owners meet the federal standards. Govt. Code section 12955.9(a), (b).

California's Mobilehome Residency Law ("MRL") expressly allows seniors-only mobilehome parks. Civil Code ("CC") section 798.76. The MRL requires that when management proposes to amend a park's rules and regulations, it must first meet with park residents, it may only implement revisions immediately with resident consent or, without such consent, after 6 months' written notice. CC section 798.25(a)-(b).

The Ordinance

The Ordinance creates a senior overlay district over the five mobilehome parks in the city. It mandates that at least 80% of spaces be occupied by at least one residence age 55 or older; mandates that signage, leases, rental agreements, and rules and regulations specify that they are senior mobilehome parks; mandates that the park owners file with the city annual certification that they meet the senior-occupancy requirement and make documents available for inspection; and authorizes Defendant to seek various remedies for violations. FAC ¶¶44-47; Plaintiff's RJN Ex.1.

Plaintiff's Motion

Requests for Judicial Notice

Plaintiff requests judicial notice of Defendant's Ordinance No.2865, and both Chapter 5.060 and section 1.10.010 of Defendants City Code. These are judicially noticeable. The court grants the request.

Defendant requests judicial notice of a cross-complaint against Defendant which an alleged creditor filed in this court in a separate action. The court may judicially notice this document, the contents, and the purported legal effect but it may not judicially notice the truth of factual assertions made therein. *Scott v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 743, 753-755. As a result, the court cannot judicially notice the truth of the factual assertions made in the cross-complaint but can judicially notice that the cross-complaint was filed and contains the allegations made therein, including the allegations that Plaintiff in this action breached the alleged agreement at issue in that action. With this limitation, the court grants the request.

Separate Statement, Facts, and Evidence

Plaintiff's separate statement includes facts 1-8 for the first issue, which is the first cause of action, and facts 11-18 for the third issue, the third cause of action. The other facts relate to the other two issues, now moot because they are for adjudication of the two causes of action to which this court sustained the demurrer without leave to amend. Facts 11-18 merely repeat facts 1-8 so the court will simply discusses facts 1-8, with the same discussion and analysis applying to 11-18 as well.

Defendant states that facts 1, 7, 11, and 17 are undisputed. Plaintiff shows in these, 1) Plaintiff acquired the Park in Petaluma in November 2020; 7) Plaintiff, on about June 22, 2023, removed its "Community for Older Persons" sign and on about July 31, 2023, served residents with the rule change removing the minimum-age requirement for residency.

Defendant disputes Plaintiff's other facts, 2-6, and 8 as well as their counterparts in the third issue. Preliminarily, Plaintiff's cites evidence establishes all of these. It shows, 2) it never established or instructed anyone to establish policies or procedures for issuing, collecting, and recordkeeping of surveys or affidavits for the purpose of verifying the ages of the Park residents; 3) it never established or instructed anyone to establish policies or procedures for routinely verifying the ages of the Park residents; 4) it never established or instructed anyone to establish policies or procedures to require residents to comply with any age-verification procedures; 5) it never established and maintained, or instructed anyone to establish and maintain, a summary of age-verification surveys or affidavits collected in the park; 6) in early 2023, Plaintiff decided to formally open the Park to all ages; 8) by August 2023, Plaintiff began marketing and advertising the Park to all ages and accepting applications from people of all age. However, the court notes that portions of Plaintiff's own evidence, testimony of Plaintiff's onsite manager, Debbie Zetzer ("Zetzer") in her declaration (the "Zetzer Dec."), show that at least in several different years she sent surveys to residents asking them to verify their ages. Therefore, Plaintiff's own evidence creates a dispute in the material facts on this point, as discussed more below.

Defendant, moreover, disputes the facts. In response to facts 2-5, its cited evidence demonstrates that Zetzer admits to having sent surveys including requests for age verification to Park residents in late 2019, early 2022, and early 2023. The court one more notes that Zetzer's own declaration, which Plaintiff filed and cites as evidence in support of its motion and which Defendant cites as part of the evidence in support of these facts, expressly makes this admission. Defendant also shows that the surveys state that they were ostensibly sent to "comply with the Housing for Older Persons Act of 1995 (HOPA)" and that some surveys stated that pursuant to HOPA, "a housing facility/community [must] re-survey its lists of residents every two years to ensure that the 80% requirement is met."

In response to facts 6 and 8, Defendant does not directly dispute the asserted facts themselves but contends that the conduct violated Plaintiff's legal and contractual obligations. Defendant's evidence establishes its proffered facts that Plaintiff's decision to market the Park to all ages, and accept application from people of all ages, possibly violated its loan agreement (the "Loan") with its creditor since the Loan terms prohibit changes in the use of the Park. The court notes that in part the evidence cited includes the cross-complaint for which Defendant requests judicial notice, mentioned above. The court reiterates that it does not judicially notice the truth of the allegations in that cross-complaint, i.e., that Plaintiff did in fact breach the Agreement, but only that the cross-complainant claims that Plaintiff breached the agreement. The court also notes that Defendant relies on a copy of the Agreement, obtained from Plaintiff itself in discovery, which further support Defendant's assertions. Whether Plaintiff could legally do what it did, or violated CC section 798.25, is a legal argument, not a fact in of itself, and is addressed more below.

Defendant also provides sites to the facts and evidence set forth in its own separate facts supporting its own motion for summary judgment or adjudication, heard with this motion. As noted in the discussion on that motion, below, the evidence establishes all of those facts and Plaintiff almost entirely admits that they are not disputed. These show, for the purposes of this motion, that the rules and regulations of the Park also include provisions and policies expressly stating that the Park is "designated as housing for older persons"; requiring a primary occupant to be 55 or older; prohibiting anyone under age 50 from staying more than 20 consecutive days or a total of 30 days per calendar year unless exempted by CC section 798.34. Plaintiff obtained the Loan for the Park

financing which states that Plaintiff will not "unless required by applicable law or Governmental Authority,… change the use of all or any part of the" Park; requires Plaintiff to comply with all applicable laws and regulations; requires Plaintiff to procure and maintain all required permits, licenses, etc., and all zoning laws; requires all residential leases to be on forms approved by the lender; requires Plaintiff to give the lender 30 days' notice of material changes to the Rules and Regulations or the form of the residential lease. The lease forms used at least part way through 2023, and perhaps through December 2023, required a representation that at least one lessee signing the agreement was at least 55. Plaintiff produced, the facts and evidence show, a lease agreement executed in December 2023 with the same 55-or-older requirement language as had been used in the lease form previously. Defendant also shows in its facts, and Plaintiff admits, that the Park was at all relevant times at least 80% senior occupied.

Plaintiff's Operation as a Seniors-Only or All-Ages Park

Preliminarily, Plaintiff makes several admissions about operation of seniors-only parks, citing the applicable authority as discussed above. First, it admits that applicable authority allows operation of seniors-only facilities meeting the applicable requirements. Second, it admits, and demonstrates in its cited authority, that a local government entity may legally enact an ordinance requiring parks already operating as seniors-only parks to remain seniors-only parks if they meet the requirements for the senior exemption. *Putnam Family Partnership, supra.*

Plaintiff contends that the Ordinance here improperly requires it, already operating as an all-ages park, to convert back to a seniors-only park. There is no dispute that prior to the enactment of the Ordinance Plaintiff had made the decision to change the Park from a seniors-only park to an all-ages park and had in fact already taken this step in its marketing, operation, and leasing, as set forth in the facts above, sending notice of the change on July 31, 2023.

The key factual issue here is therefore Plaintiff's contention that it had legally and validly made the change to an all-ages park prior to the enactment of the Ordinance. Plaintiff's contention is based on evidence showing that, prior to its decision to operate an all-ages park, it was not legally operating as a seniors-only park because it failed to meet the requirements discussed above. It also shows that it had issued the notices of the change on July 31, 2023, prior to the enactment of the Ordinance.

There is a triable material dispute as to whether Plaintiff was legally operating as a seniors-only facility prior to the 2023 change. Defendant, as noted above, has disputed Plaintiff's contention that it was not legally operating as seniors-only facility. In fact, Plaintiff's own evidence presented and cited in its motion, specifically the Zetzer Dec., provides evidence helping to create a triable material issue of fact on this point. As noted above, 24 CFR 100.307 sets forth the following requirements for maintaining a seniors-only facility. Again, this includes "procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. *Such procedures may be part of a normal leasing or purchasing arrangement.*" Additionally, these "procedures *must provide for regular updates, through surveys or other means*, of the initial information supplied by the occupants of the housing facility or community. *Such updates must take place at least once every two years.*" The facility must also establish policies for these requirements. The evidence, including Plaintiff's own evidence, shows that it did send out such surveys at least in 2019, 2022, and 2023, all in the period immediately prior to the 2023 decision to change to an all-ages facility. Defendant's evidence in opposition also shows that these surveys expressly stated that they were for compliance with the very statutory and regulatory requirements of FHA and HOPA, set forth above. Defendant further shows in its facts, and Plaintiff admits, that the Park was at all relevant times at least 80% senior occupied, as required under HOPA.

Plaintiff's evidence showing that it never had the intent, and never instructed employees, to operate such policies or comply with the law, is also the type of private information, available only to Plaintiff's own agents and declarants, of their own knowledge, intent, or state of mind, on which a court should not grant a motion for summary judgment or adjudication. As explained above, CCP section 437c(e) states, with emphasis added, that

> summary judgment *may be denied* in the discretion of the court, *where the only proof* of a material fact offered in support of the summary judgment is an affidavit or declaration made *by an individual who was the sole witness* to that fact; *or where a material fact is an individual's state of mind, or lack thereof*, and that fact is sought to be established solely by the individual's affirmation thereof.

See also *Villa v. McFreen, supra; Hagen v. Hickenbottom; supra; Butcher v. Gay, supra*. This court finds it improper to grant the motion based on the evidence of Plaintiff's own declarants about their intent on complying with the law. The court, moreover, notes that the objective evidence, which Plaintiff itself admits, showing that it sent out surveys to comply with the FHA and HOPA, refute Plaintiff's statements of its intent.

Defendant also provides facts, evidence, and analysis raising a triable issue regarding whether Plaintiff's purported change to an all-ages park in 2023 was allowed under the applicable Loan terms and the Park rules and regulations.

The rules and regulations of the Park also include provisions and policies expressly stating that the Park is "designated as housing for older persons"; requiring a primary occupant to be 55 or older; prohibiting anyone under age 50 from staying more than 20 consecutive days or a total of 30 days per calendar year unless exempted by CC section 798.34.

The Loan states that Plaintiff will not "unless required by applicable law or Governmental Authority,… change the use of all or any part of the" Park; requires Plaintiff to comply with all applicable laws and regulations; requires Plaintiff to procure and maintain all required permits, licenses, etc., and all zoning laws; requires all residential leases to be on forms approved by the lender; requires Plaintiff to give the lender 30 days' notice of material changes to the Rules and Regulations or the form of the residential lease. Plaintiff produced, the facts and evidence show, a lease agreement executed in December 2023 with the same 55-or-older requirement language as had been used in the lease form previously.

All of this demonstrates a triable dispute about whether Plaintiff's purported change to an all-ages facility was legally effective under the terms of its Loan and rules and regulations. AT the very least, they support a possible finding that Plaintiff had not complied with the applicable Loan terms or rules and regulations, because it was possibly not allowed to make that change, or change the lease agreements, without consent of the lender. Plaintiff has failed to demonstrate that it had the consent of the lender or complied with the requirements for making the changes to an all-ages facility.

Finally, Defendant persuasively argues that even had the change to an all-ages facility been legally valid, under California law, it could not have taken effect until at least 6 months following the July 31, 2023 notice to residents of the change, as set forth above. CC section 798.25(a)-(b). This means that when Defendant enacted the Ordinance in October 2023, Plaintiff could not have been legally operating as an all-ages facility but was at that time legal still only allowed to operate as a seniors-only facility. If that was indeed the case, that negates Plaintiff's argument that the Ordinance improperly would require an all-ages facility to change to a seniors-only facility. As discussed above, Plaintiff has admitted that under the applicable authority a local ordinance may require a seniors-only facility to remain as such.

Whether Defendant City is the Relevant "Housing Facility or Community"

Plaintiff also contends, in an argument which the court finds tortured and confusing, that the Ordinance is invalid because Defendant is not the relevant "Housing Facility or Community" for purposes of invoking the seniors-only exemption under HOPA. It contends that a municipality who is not the owner or operator of a mobilehome facility, may not decide to invoke the seniors-only exemption under HOPA.

According to HOPA, the entity for determining if a property is limited to seniors only is the applicable "housing facility or community." 42 USC section 3607(b)(2)(C). This language substituted "housing facility or community" for "owner or manager" in prior language.

As is noted above, under 24 CFR 100.304(b)(4), a "housing facility or community" is defined to include a "municipally zoned area." Plaintiff engages in a lengthy and tortured discussion of whether "municipally zoned area" is a "meaningful example of" the type of an entity falling under the definition for "housing facility community," but this argument is irrelevant because the very authorities on which Plaintiff relies include 24 CFR 100.304(b)(4), indisputably part of the law governing the designation of residential facilities or the like as being for seniors only. There is also no dispute that this provision expressly and clear states that a "housing facility or community" is defined to include a "municipally zoned area." Plaintiff's argument that a municipality can only make the decision for properties it owns and operates, as Defendant persuasively asserts, would also render the inclusion of "municipally zoned area" meaningless.

Finally, as noted above, Plaintiff itself acknowledge that the court in *Putnam Family Partnership, supra,* upheld a city ordinance which required existing seniors-only parks to remain seniors-only parks because the parks et the requirements for the senior exemption and already operated as senior housing, leaving "for another day" the question of whether an ordinance could require a legally operating all-ages park to convert to a seniors-only park. The city there issued an ordinance similar to this Ordinance. The plaintiff alleges that the ordinance violated the FHA by forcing a park to discriminate on the basis o familial status. The trial court dismissed on the grounds that the ordinance satisfied the seniors-only exemption and the appellate court affirmed, finding that HUD had the authority to interpret "housing facility or community" in its regulations and that a local ordinance could in fact establish zoning requirements obligating seniors-only parks to remain as such.

The Ordinance on its face creates municipal zoning in an area under Defendant's authority.

Conclusion: Plaintiff's Motion

The court finds there to be triable material issues of fact and, accordingly, DENIES Plaintiff's motion in full.

Defendant's Motion

Defendant's motion, as noted above, is essentially the reverse of Plaintiff's motion. Defendant contends that the undisputed facts show that the court must enter judgment for Defendant. The parties make the same basic arguments and rely on the same basic facts, evidence, and law. The same law and basis analysis applies but in this case the burden lies with Defendant as the moving party.

Separate Statement, Facts, and Evidence

As mentioned above, Defendant's cited evidence establishes its facts. Defendant sets forth facts 1-2 for the affirmative defense of failure to serve within 90 days. It sets forth facts 3-17 for the first issue and repeats these for the second issue as facts 18-32. Plaintiff admits that all are undisputed except for parts of facts 7, 10-11, 15, and the corresponding facts in the second issue. It also adds its own facts.

Defendant shows in its facts 1) the action challenges the October 16, 2023 adoption of the Ordinance; 2) Plaintiff filed this lawsuit on January 12, 2024 but did not personally serve the summons and complaint until January 22, 2024; 3) Plaintiff acquired the Park in November 2020; 4) Plaintiff obtained the Loan for the Park financing which states that Plaintiff will not "unless required by applicable law or Governmental Authority,… change the use of all or any part of the" Park; requires Plaintiff to comply with all applicable laws and regulations; requires Plaintiff to procure and maintain all required permits, licenses, etc., and all zoning laws; requires all residential leases to be on forms approved by the lender; requires Plaintiff to give the lender 30 days' notice of material changes to the Rules and Regulations or the form of the residential lease; 5) the rules and regulations of the Park through at least July 31, 2023 included provisions and policies expressly stating that the Park is "designated as housing for older persons"; requiring a primary occupant to be 55 or older; prohibiting anyone under age 50 from staying more than 20 consecutive days or a total of 30 days per calendar year unless exempted by CC section 798.34; 6) the lease agreements through at least October 14, 2021 The lease forms used at least part way through 2023, and perhaps through December 2023, required a representation that at least one lessee signing the agreement was at least 55; 7) lease agreements through November or December 2023 stated that at least one resident was required to be 55 or older, with Plaintiff producing a lease agreement executed in December 2023 with the same 55-or-older requirement language as had been used in the lease form previously; 8) when Plaintiff bought the Park, the sign stated it was a "Community for Older Persons"; 9) the Park was at all relevant times at least 80% senior occupied; 10) Plaintiff mailed a survey in early 2022 asking residents to verify that at least one person in each home was 55 or older; 11) Plaintiff did the same thin in early 2023; 12) in June 2023, Plaintiff notified residents that it intended to make the Park open to all ages; 13) in June 2023, Plaintiff removed the "Community for Older Persons" sign; 14) Plaintiff met with residents on July 21, 2023 to discuss proposed new rules and regulations; 15) on July 31, 2023, Plaintiff circulated to residents proposed new rules and regulations designating it as an all-age facility with no minimum age requirement; 16) multiple homeowners in the Park refused to consent to the new rules and regulations; 17) on October 16, 2023, Defendant adopted the Ordinance. The facts in the second issue repeat these.

Plaintiff shows in response to facts 7, 10-11, 15 and their counterparts in the second issue, 7) the last lease with the minimum age requirement executed prior to the decision to open the Park to all ages was in March 2023, its evidence admits that the Park did use forms with the minimum age requirements on leases through December 2023 but Plaintiff claims that this was inadvertent due to a failure to update the lease forms; 10) and 11) Plaintiff mailed surveys but did not "direct or authorize" such a mailing, as in its own motion discussed above; 15) Plaintiff circulated its final rule making the Park an all-age facility on July 31, 2023.

In response to Defendant's facts, Plaintiff does assert, very briefly without explanation, that many or not relevant or material. This is mere argument, not fact or evidence, and it is not a cognizable, proper, or valid objection, either technically or substantively. On a motion for summary judgment or summary adjudication, all "objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion" rather than in the separate statement. CRC 3.1354. Moreover, objections may only be to the evidence, not to "facts" in the separate statement. CRC 3.1352, 3.1354. Each objection must also "[i]dentify the name of the document in which the specific material objected to is located" as well as "the exhibit, title, page, and line number," must quote or set forth the objectionable evidence, and must state the grounds for objection. CRC 3.1354(b). When the opponent states that a fact is "undisputed," any objections to the evidence allegedly supporting that fact are waived. *Hurley Const. Co. v. State Farm Fire & Cas. Co*. (1992) 10 Cal.App.4th 533, 540-541. Moreover, such relevancy objections are groundless. In the context of summary judgment, as opposed to trial, this objection has no effective purpose. It

is the court's role to determine if evidence supports facts and if those fact then have any effect on the outcome of the motion. If anything truly is irrelevant or immaterial, it will not support the motion.

In its own additional facts, Plaintiff shows 1) the Ordinance was adopted on October 13, 2023; 2) Plaintiff e-filed the complaint, summons, and cover sheet on January 12, 2024; 3) Plaintiff mailed the papers to Defendant on January 12, 2024; 4) Plaintiff's counsel contacted the court clerk on January 16, 2024 to inquire about the processing and conformed copies and the clerk said it could be a few weeks; 5) the court returned conformed copies on January 19, 2024; 6) Plaintiff could not serve the documents that date because Defendant was closed, so Plaintiff served them the following business day, January 22, 2024; 7)) it never established or instructed anyone to establish policies or procedures for issuing, collecting, and recordkeeping of surveys or affidavits for the purpose of verifying the ages of the Park residents; 8) it never established or instructed anyone to establish policies or procedures for routinely verifying the ages of the Park residents; 9) it never established or instructed anyone to establish policies or procedures to require residents to comply with any age-verification procedures; 10) it never established and maintained, or instructed anyone to establish and maintain, a summary of age-verification surveys or affidavits collected in the park; 11) in early 2023, Plaintiff decided to formally open the Park to all ages; 8) by August 2023, Plaintiff began marketing and advertising the Park to all ages and accepting applications from people of all age; 12) Plaintiff removed the "Community for Older Persons" sign on June 22, 2023 and updated the rules and regulations to remove the age requirements by July 31, 2023; 13) by August 2023, Plaintiff was marketing and advertising the Park to all ages; 14) Defendant does not own or operate the Park or other parks. These facts 7-14 are basically identical to facts Plaintiff presents in its own motion, discussed above. The court again notes that portions of Plaintiff's own evidence, testimony of Plaintiff's onsite manager, Debbie Zetzer ("Zetzer") in her declaration (the "Zetzer Dec."), show that at least in several different years she sent surveys to residents asking them to verify their ages.

Finally, Defendant's reply separate statement is neither necessary nor proper, in light of the standards and burdens on this motion and the express language of CCP section 437c(b)(4), set forth above.

Timeliness of the Complaint

Defendant contends that the action is time-barred under the 90-day limitations period of Govt. Code section 65009. As it notes, section 65009(c) states, in pertinent part and with emphasis added,

> (c)(1) Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or *proceeding is commenced and service is made* on the legislative body within 90 days after the legislative body's decision:
> …
> (B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

After expiration of the limitations period, "all persons are barred from any further action or proceeding." Govt.Code section 65009(e); see also *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 767–768.

Defendant correctly argues that even if a party files the action within this deadline, the action is untimely if the party does not also serve it within the deadline, as the statutory language makes clear. *Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1119. As the Royalty Carpet court stated, "[e]ven if a petition is timely filed under Government Code section

65009, subdivision (c), if it is not personally served as required by statute, the petition must be dismissed. [Citation.]"

It is unequivocal that Plaintiff failed to serve the summons and complaint within the time required.

However, Plaintiff correctly argues that the deadline does not apply to an as-applied challenge to the Ordinance, only the facial challenge. *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 767, 774. Plaintiff clearly makes both facial and as-applied challenges, asserting that even if the Ordinance is lawful, Defendant has applied it improperly by using it to force a lawfully operating all-ages facility to change to a seniors-only facility.

Discussion of Substantive Arguments

The basic factual and legal analysis for this motion is the same as that for Plaintiff's motion set forth above. However, in this instance the burden lies with Defendant as the moving party. Because of this, the court must deny this motion as well. There is a factual material dispute about whether Plaintiff was properly and lawfully operating as a seniors-only facility prior to its formal change to an all-ages facility in July 2023, and as to whether Plaintiff was lawfully operating as an all-ages facility at the time that Defendant adopted the Ordinance.

Conclusion

The court DENIES this motion as well.

Conclusion

The court DENIES both motions. The prevailing party for each motion shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

2. 24CV00531, Knoop v. Knoop

The Order to Show Cause is Discharged and the hearing is DROPPED. The court issued the Order to Show Cause ("OSC") re Sanctions Against Defendants Subject to Code of Civil Procedure Section 128.7 on January 26, 2026, directing Defendants withdraw or correct their pending to motion to stay set for hearing of February 20, 2026. The court required compliance within 21 days of service of the OSC. Defendants have complied, withdrawing the motion on January 29, 2026.

Plaintiffs have alerted the court in a document filed in support of the OSC on February 6, 2026, that Defendants have another pending Motion for Terminating Sanctions ("Sanctions Motion") set for hearing on March 18, 2026, which cites the same false authority which prompted this OSC. However, not having been aware of this issue, the court had not given notice regarding that Sanctions Motion. The court therefore cannot issue the sanctions with respect to that motion at this time.

Accordingly, the court once more issues an Order to Show Cause ("OSC"), to Defendants with respect to their pending Sanctions Motion. This OSC is set for hearing on March 18, 2026, and incorporates the full analysis and notice of the OSC being dropped today. Defendants must withdraw or correct their pending Sanctions Motion by March 1, 2026, or they will be subject to the same sanctions set forth in the OSC set for, and dropped, today.

3. 24CV05643, Attorneys Real Estate Group v. Valera

The Motion is DROPPED as MOOT. The court has already entered judgment in favor of Plaintiff, the moving party.

4. 25CV00172, Looney v. Noble Hospital Group, LLC.

Motion to Compel Answers to Post-Judgment Discovery; and for Award of Monetary Sanctions GRANTED. Sanctions of $60 in costs awarded to the moving party.

Facts and History

Plaintiff complains that Defendants, operating a business in Los Angeles, California, entered into a written contract with Plaintiff's assignor, RNDC ("RNDC") to purchase alcoholic beverages but that although RNDC performed, Defendants breached the contract by failing to pay the amount owed. Plaintiff filed this action to collect the debt plus costs, legal fees, and interest.

Defendants failed to appear so Plaintiff obtained their default on April 24, 2025 and obtained a default judgment against them on May 16, 2025.

Post-Judgment Discovery

Plaintiff served Defendants by mail with post-judgment discovery on July 1, 2025; the discovery included one set of production demands and one set of interrogatories; responses were due on August 8, 2025, within the standard 30 days; however, Defendants have not responded even though Plaintiff made efforts to meet and confer. Looney Declaration.

Motion

Plaintiff moves the court to compel Defendants to respond to the post-judgment discovery. Plaintiff also seeks monetary sanctions of $60 in costs.

There is no opposition.

Substantive Discussion

Judgment creditors may propound written post-judgment interrogatories and demands for production on judgment debtors. CCP §§708.020(a), 708.030. These may be enforced in the same manner as regular discovery. CCP §§708.020(c), 708.030(a). This applies any time that "a money judgment is enforceable." CCP section 708.010. One limitation is that the judgment creditor may not serve this discovery on a judgment debtor if the latter has, within the preceding 120 days, responded to such discovery previously served under the provisions, or been examined. CCP §§708.020(b), 708.030(b).

Under CCP §§2030.290 and 2031.300, when no response has been made, the propounding party may move to compel responses. The moving party need simply demonstrate that the interrogatories were served, the time has expired, and no response has been made. There is no meet-and-confer requirement for a motion to compel response where none has been made. Nor is there a deadline other than the discovery cut-off, prohibiting the court from hearing a discovery motion within 15 days of trial, which logically would not apply to post-judgment discovery. CCP §§2024.010, 2024.020.

Plaintiff has met the burden. In addition to showing that Defendants have failed to respond to properly served discovery, Plaintiff meets the requirements for post-judgment discovery in §§708.020(b), 708.030(b). The court GRANTS the motion.

Sanctions

According to CCP §§2030.290, 2031.300, 2023.010, and 2023.030, if a party has failed to respond to interrogatories and a production request, the court may impose sanctions of the

reasonable costs. If the moving party asks for sanctions that appear reasonably related to the filing costs and the opponent does not refute the reasonableness, the sanctions should be granted. *Ghanooni v. Super Shuttle* (1993) 20 Cal.App. 4th 256.

The sanctions which pro-per litigants may recover is limited to out-of-pocket costs such as paying for legal research, copies, transportation, and the like. *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179.

Plaintiff requests sanctions for the actual out-of-pocket expense of the filing fee, $60. This is reasonable and proper. The court AWARDS Plaintiff $60 as requested.

Conclusion

The court GRANTS the motion and AWARDs Plaintiff $60 in costs. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing parties shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

5. 25CV00441, Cortez v. Vode Lighting LLC.

Demurrer OVERRULED in full. Defendant is required to answer within 10 days of service of the notice of entry of the order. California Rule of Court ("CRC") 3.1320(g). Plaintiff is to serve the notice of entry of this order within 5 days of entry of this order. CRC 3.1320(g).

Facts

In her second amended complaint ("SAC"), Plaintiff complains that when she was an employee of Defendant, she suffered various forms of discrimination, retaliation, and related violations of the Fair Employment and Housing Act ("FEHA"). After Plaintiff filed her original complaint, she filed a first amended complaint ("FAC"). Defendant demurrer to the FAC and, prior to the hearing on the demurrer, the parties entered into a stipulation to allow Plaintiff to file her SAC.

Complaint Allegations

Plaintiff alleges that she disability discrimination due to an actual or perceived disability related to a wrist injury and pregnancy. She asserts that in about September 2021 she informed her supervisor "Sean" that she had suffered a wrist injury which required modified work duties. Sean promised to temporarily assign her a different job but never did. Plaintiff then spoke to Defendant's Human Resources department ("HR"), which told her to obtain a doctor's note and her doctor ordered work restrictions with limited stress on the wrist. Defendant, instead of accommodating her with available modified duties, sent her home and placed her on medical leave. Plaintiff complained to another supervisor, Brian, about being forced to go on leave even though there were possible alternate job duties for her to perform without losing income, but Defendant still required her to go on leave. Her physician removed work restrictions in about February 2022, and, despite continued wrist pain, Plaintiff returned to work and did not report the continued pain out of fear of again being forced to take unpaid leave, so she worked without restrictions.

Late on or about December 29, 2022, Plaintiff informed Defendant's HR that she was pregnant and would in the future need to utilize medical leave related to that pregnancy. About five days after notifying Defendant of her pregnancy, on about January 3, 2023, Defendant informed Plaintiff that it had terminated her employment. Plaintiff asserts that Defendant terminated her because she had disclosed her pregnancy and the need to take future pregnancy-related leave and accommodation.

Plaintiff identifies 9 causes of action: 1) disability discrimination in violation of FEHA; 2) gender and sex discrimination in violation of FEHA; 3) retaliation in violation of FEHA; 4) failure to prevent discrimination, harassment, and retaliation in violation of FEHA; 5) failure to provide reasonable accommodation in violation of FEHA; 6) discrimination in violation of the Pregnancy Disability Leave Law ("PDLL"); 7) failure to provide reasonable accommodation in violation of PDLL; 8) interference with, or denial of, rights in violation of PDLL; 9) violation of Labor Code ("Lab. Code") section 1102.5 preventing retaliation against an employee for raising complaints of, or refusing to participate in, actual or potential illegal activity.

Demurrer

Defendant demurs to the entire SAC on the ground that that it fails to state facts sufficient to constitute a cause of action. It also demurs to the fifth cause of action for failure to accommodate on the ground that it is untimely pursuant to Government Code section 12960(e)(5).

Plaintiff opposes the demurrer. She asserts that she has sufficiently pleaded each cause of action.

Defendant has filed a reply to the opposition, reiterating its position.

Applicable Authority

Authority Governing Demurrers

A demurrer can only challenge a defect appearing on the *face* of the complaint, exhibits thereto, and judicially noticeable matters. CCP section 430.30; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The grounds for a demurrer are set forth in CCP section 430.10. One of the grounds, in subdivision (e), is the general demurrer that the pleading fails to state facts sufficient to constitute a cause of action.

The demurring party must *separately* state each demurrer ground in a separate paragraph and must expressly state whether each demurrer is to the whole complaint or only part of it. CRC 3.1320(a).

The demurrer grounds must also be distinctly specified, or the court may disregard them. CCP section 430.60 states "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded."

Demurrer for failure to state facts sufficient to constitute a cause of action is a general demurrer, which must fail if there is *any* valid cause of action. CCP section 430.10(e); *Quelimane Co., Inc. v. Steward Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39; *Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal.App.4th 1068, 1078 ("as long as a complaint consisting of a single cause of action contains any well-pleaded cause of action, a demurrer must be overruled even if a deficiently pleaded claim is lurking in that cause of action as well"). For example, if a party directs a general demurrer against a cause of action labelled "fraud" based on failure to state that cause of action, the demurrer will fail if the complaint sets forth a valid cause of action for malpractice. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.

On a demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A.*

v. William S. Hart Union High School Dist. (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co*. (1962) 57 Cal.2d 463, 473.

A complaint which, on its face, affirmatively shows that it is not timely based on the applicable statute of limitations is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action. See *Saliter v. Pierce Bros. Mortuaries* (1978) 81 Cal.App. 3d 292, 299-300, fn. 2 (a general demurrer is the appropriate means to attack a complaint which discloses on its face that the action is time-barred); *Vaca v. Wachovia Mortg. Corp*. (2011) 198 Cal.App. 4th 737, 746 (a demurrer is proper where the complaint on its face or judicially noticeable matters demonstrate that the action is time-barred); *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (a general demurrer will lie only where a complaint clearly and affirmatively shows that the action is time barred).

In the furtherance of justice, complaints are to be liberally construed and disputes should be resolved on their merits. CCP section 452; *Hocharian v. Superior Court* (1981) 28 Cal.3d 714, 724; *CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1149. In light of this policy, leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

Applicable Authority Governing the Causes of Action Asserted

Generally, to show discrimination in a disparate-treatment case such as this, plaintiffs must make a prima facie showing that 1) plaintiffs were members of a protected class; 2) plaintiffs were qualified for the position or were performing competently; 3) plaintiffs suffered an adverse employment action; and 4) some other evidence to suggest a discriminatory motive based on protected status. *Guz v Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 354-355.

FEHA bars any discrimination based on any protected classification, i.e., "because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation." Govt. Code sections 12940(a), 12926(p). Under, FEHA neither an employer nor any other person may harass an employee on the basis of any protected classification. Govt. Code section 12926(d), 12940(j)(1).

Govt. Code section 12945 also prohibits an employer from interfering with an employee's exercise of rights under the Pregnancy Disability Leave Law ("PDLL"). This applies to pregnancy, childbirth, or a related medical condition. Govt. Code section 12945(a).

Govt. Code section 12926(r) specifies that "sex" includes pregnancy or pregnancy-related conditions.

The Fair Employment and Housing Act (FEHA) prohibits discrimination based on physical or mental disability or various medical conditions if the person is otherwise qualified for the job or position, specifically its "essential duties." Govt. Code section 12940(a). Thus, a plaintiff may have a valid claim under FEHA if the plaintiff was qualified for the position, or would have been qualified with reasonable accommodation. See *Hastings v. Dept. of Corrections* (2003) 110 Cal.App.4th 963. An employer may discharge or refuse to hire someone based on a disability only "where the employee, because of his or her physical or mental disability, *is unable to perform his or her essential duties even with reasonable accommodations*, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations. Govt. Code section 12940(a)(1), emphasis added.

A plaintiff may show disability discrimination by showing 1) that he or she suffers from a disability, 2) is qualified, and 3) was subject to adverse employment action as a result of the

disability. *Deschene v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 44. The employer may defend the claim by showing that there was a legitimate nondiscriminatory reason for the action, shifting the burden to the plaintiff to demonstrate that the reason was a pretext. *Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236.

Govt. Code section 12926 defines both "physical disability" and "mental disability" as disabilities falling under FEHA protection. Govt. Code section 12926(m) defines a "physical disability" with a list that it expressly states is non-exhaustive. Such a disability may include 1) "physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss" that "limits" one or more listed "body systems" and impairing a major life activity; 2) "[a]ny other health impairment" requiring "special education or related services"; 3) "a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer"; 4)-5) being regarded as having one of the above conditions. Govt. Code section 12926(k).

A condition "limits a major life activity if it makes the achievement of the major life activity difficult." Govt. Code section 12926(k)(1)(B)(ii). According to subsection (k)(1)(B)(iii), as with FEHA in general, '" [m]ajor life activities" shall be broadly construed and includes physical, mental, and social activities and working.'

FEHA states that protection from discrimination for physical or mental disability or medical condition is to be broadly construed and expressly states that this protection is more broad than under federal law. Govt. Code section 12926.1. Similarly, 2 California Code of Regulations ("CCR") section 11064(b) states, "These regulations are to be broadly construed to protect applicants and employees from discrimination due to an actual or perceived physical or mental disability or medical condition that is disabling, potentially disabling or perceived to be disabling or potentially disabling. The definition of disability in these regulations shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the Fair Employment and Housing Act (FEHA)." As explained in *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, at 258, "disability" under FEHA is broader than under federal law and requires only a "limitation" on a major life activity, which may include "working." In the court's words,

> The Legislature added a new Government Code section 12926.1, which contains its findings and declarations. Section 12926.1, subdivision (c), explains: "[T]he Legislature has determined that the definitions of 'physical disability' and 'mental disability' under the law of this state require a 'limitation' upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a 'substantial limitation.' This distinction is intended to result in broader coverage under the law of this state than under that federal act." [Citation.] The new provision goes on to state: "[U]nder the law of this state, 'working' is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

Under FEHA, "physical disability" is more broad than under the ADA, since under FEHA a disability need only "limit," not "substantially impair" a major life activity. See *Cripe v. City of San Jose* (9th Cir.2001) 261 F.3d 877, 895.

FEHA also requires an employer to reasonably accommodate an individual with a known disability, unless it can demonstrate that to do so would be an undue hardship on business operations. Govt. Code section 12940(m). Failure to provide reasonable accommodation can give rise to a COA for damages. *Bagatti v. Dept. of Rehabilitation* (2002) 97 Cal.App.4th 344.

The employer must also engage in a "timely, good faith, interactive process" to determine effective reasonable accommodations. Govt. Code section 12940(n). The employer must also

engage in a "timely, good faith, interactive process" to determine effective reasonable accommodations. Govt. Code section 12940(n). "The 'interactive process' required by the FEHA is an informal process with the employee or the employee's representative, to attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively. [Citation.] Ritualized discussions are not necessarily required." *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1195. However, a failure to engage in the interactive process under "section 12940(n) imposes liability only if a reasonable accommodation was possible." *Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 981; see also *Scotch v. Art Institute of California-Orange County, Inc*. (2009) 173 Cal.App.4th 986, 1018.

The court in *Claudio v. Regents of Univ. of Calif.* (2005) 134 Cal.App.4th 224, at 247, addressed the issue of whether it was appropriate for an employee in that case to require the employer to go through an attorney, finding that it was appropriate under the circumstances but that *ordinarily* an employee cannot make such a demand. It also ruled, at 248-249, that the employer there had potentially failed to engage sufficiently because evidence showed that the employee may have been able to perform essential functions of the job.

Reasonable accommodation may include, among others, restructuring job schedules and responsibilities or providing or modifying equipment. 2 CCR section 7293.9. The employer also has an affirmative duty to inform the employee of other job opportunities and learn whether the employee is interested or qualified for them. *Prillman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 950. Ordinarily, whether accommodation is "reasonable" is a question of fact. See *Bell v. Wells Fargo Bank* (1998) 62 Cal.App.4th 1382, 1389, n.6.

An employer need not choose the "best" accommodation or the one which the employee seeks and has the final discretion in choosing an effective, reasonable accommodation. *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 226. The employer need not provide any reasonable accommodation if the employee cannot perform the essential functions of the job without endangering himself or others. Govt. Code sections 12940(a)(1), 12926(f).

Authority indicates that reassignment should be a last-resort accommodation that may be mandatory only when the employee cannot otherwise be accommodated. See *Spitzer v. The Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1389. An employer, as a result, may only be required to reassign an employee if the employee cannot perform the current job with reasonable accommodation. Moreover, under both the ADA and FEHA, an employer has no duty to create a new position for the disabled employee and may only be required to reassign if there is an available vacant post to which it can reassign the employee. *Spitzer v. The Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1389; *Wellington v. Lyon County Sch. Dist.* (9th Cir.1999) 187 F.3d 1150, 1155.

It is also illegal to retaliate against an employee who asserts rights under FEHA or opposes violations of FEHA. Govt. Code section 12940(h). A prima facie case for retaliation under FEHA requires the plaintiff to show 1) plaintiff was engaged in activity protected under FEHA; 2) defendant subsequently subjected plaintiff to adverse action; and 3) a causal link between the first to elements. *Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441. A plaintiff may demonstrate the causal link by showing that the adverse action took place after the protected activity and in reasonable proximity in time to the protected activity. *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal.App.3d 590. A lapse of several months may be sufficiently close in proximity to show a causal link. *Flait v. North Am. Watch Corp.* (1992) 3 Cal.App.4th 467, 478; see also *Nidds v. Schindler Elevator Corp.* (9th Cir.1996) 113 F.3d 912.

Govt. Code section 12940(k) makes it illegal for employers to fail to take all reasonable steps necessary to prevent discrimination or harassment. An employee may pursue a private cause of action for failure to take all reasonable steps necessary to prevent discrimination or harassment under section 12940(k) as long as actual discrimination or harassment has taken place. See, e.g.,

Caldera v. Dept. of Corrections and Rehabilitation (2018) 25 Cal.App.5th 31, 43-44; *Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1410.

Under FEHA, it is illegal to "discriminate against" someone "in compensation or in terms, conditions, or privileges of employment." Govt. Code section 12940(a). Section 12940(h) adds that it is illegal to "harass, discharge, expel, or otherwise discriminate" in retaliation for opposing conduct that violates FEHA or filing a complaint or the like.

As the Supreme Court explained in *Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, at 1050, the term "adverse employment action" is not in found in the statutes but has come to be used to mean the type of conduct that can violate FEHA, if based on the requisite illegal motive. In the court's words, the term "does not appear in the language of the FEHA or in title VII, but has become a familiar shorthand expression referring to the kind, nature, or degree of adverse action against an employee that will support a cause of action under a relevant provision of an employment discrimination statute."

Discriminatory acts occurring outside the 1-year limitations period may still be actionable and relevant if the plaintiff can show that they were part of a "continuing violation" of FEHA extending into the limitation period. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1058; *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798; *Accardi v. Sup.Ct.* (1993) 17 Cal.App.4th 341, 349. An employer may under this doctrine be liable for acts outside the limitation period if they were 1) sufficiently similar in kind to acts within the period; 2) occurred with reasonable frequency; and 3) had not acquired a degree of permanence outside the limitation period. *Yanowitz* 36 Cal.4th 1028, 1058; *Richards* 26 Cal.4th 798, 811. Regarding the last criterion, acts have a "degree of permanence" once a reasonable employee would know that further efforts to resolve the matter informally have become futile or if the adverse action or situation has become permanent and final. *Yanowitz* 36 Cal.4th 1028, 1058; *Richards* 26 Cal.4th 798, 811; *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031.

Lab. Code section 1102.5 forbids an employer from making or enforcing any rule or policy against, investigating or correcting, or reporting, certain violations meeting the criteria set forth in the provision, or retaliating against an employee who investigates, corrects, or reports such violations. Subdivision (a) states, in full,

> An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

As the court explained in *Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, at 1540, in a whistleblower retaliation lawsuit brought under Lab. Code section 1102.5(b), the plaintiff must show that the plaintiff engaged in protected activity, the employer subjected the plaintiff to an adverse employment action, and there is a causal link between the two. If the plaintiff meets this prima facie burden, the defendant has the burden to prove a legitimate, nonretaliatory explanation for its actions. The plaintiff then must show that the explanation is a pretext for the retaliation.

Discussion

1st Cause of Action: Disability Discrimination in violation of FEHA

Defendant argues that Plaintiff alleges that she was neither disabled nor perceived as disabled at the time of her termination. However, the allegations show that she was disabled or perceived as disabled prior to this, at the time that Defendant allegedly refused to provide reasonable accommodation and took adverse action in the form of forcing her to go on leave without pay, instead of allowing her to perform available modified duties. The allegations also present the possibility that she was disabled or perceived as disabled at the time of the termination. The facts that she had returned to work and did not disclose continued wrist pain interfering with her work do no not foreclose this possibility as a matter of law. The allegations also show that the termination occurred not long after Petitioner returned to work, and only within days of Plaintiff informing Defendant that she was pregnant and would need future accommodation and medical leave as a result. This raises an inference of possible termination due to disability, with the combination of the wrist condition and pregnancy issues potentially being a primary motivation.

2nd Cause of Action: Gender and Sex Discrimination in violation of FEHA

Defendant argues that this cause of action fails because Plaintiff has not alleged who the specific individual was at HR whom she informed of her condition or who informed her that she was terminated, or that the person had the authority to make the decision. Plaintiff hs alleged that Defendant terminated her, no further allegation of specific individual authority is necessary. In all other respect, these allegations which Defendant discusses are specific evidentiary facts and not necessary.

3rd Cause of Action: Retaliation in violation of FEHA

Defendant argues that this cause of action fails because one could reasonably interpret the decision to force Plaintiff to take leave, instead of other accommodation, was in fact an accommodation and not adverse action. This argument is groundless for the purposes of demurrer and turns the demurrer standard upside down. What matters is that the allegations raise the possibility this Defendant's conduct was not an accommodation but adverse action.

Defendant also argues that there is insufficient temporal proximity between the wrist-related disability and the termination. Even assuming this to be the case, it fails to take into account the allegation that forcing Plaintiff to take unpaid leave instead of giving her other accommodations including paid alternative duties was adverse action.

Finally, Defendant contends that Plaintiff's notification of pregnancy without notification of a need for accommodations means that the subsequent termination could not have been retaliatory. This argument also is groundless on demurrer since Plaintiff alleges that she put Defendant on notice of pregnancy and the possible need for future pregnancy accommodations, after which Defendant terminated her.

4th Cause of Action: Failure to Prevent Discrimination, Harassment, and Retaliation in violation of FEHA

Defendant basis its argument regarding this cause of action on the above causes of action and arguments, contending that there was no underlying discrimination. Because of the analysis above finding sufficiently pleaded discrimination, this argument is unpersuasive.

5th Cause of Action: Failure to Provide Reasonable Accommodation in violation of FEHA

Defendant reiterates its arguments regarding the forced unpaid leave, discussed above, in its attack on this cause of action. This argument therefore fails for the reasons explained above.

Defendant also contends that this cause of action is time barred because it can only be based on the conduct in August 2021. This is incorrect. As explained, the decision to terminate instead of consider proper accommodation in January 2023 may also support this cause of action. Moreover, the prior conduct may also be part of continuing violations since the allegations raise the possibility that all of the conduct towards Plaintiff was related in the required manner.

6th Cause of Action: Discrimination in violation of PDLL

In its attack on this cause of action, Defendant repeats its argument that there could have been no violation because Plaintiff only informed it of her pregnancy, not pregnancy-related conditions, disabilities, or accommodations. As explained above, this argument is groundless on demurrer. Plaintiff has sufficiently pleaded this cause of action because she alleges that she put Defendant on notice of pregnancy and the possible need for future pregnancy accommodations, after which Defendant terminated her. There is no requirement that she allege additional specific details, particularly given that she alleges that Defendant terminated her almost immediately upon this notification, prior to Plaintiff having the chance to make more specific or immediate requests for accommodation.

7th Cause of Action: Failure to provide reasonable accommodation in violation of PDLL

Defendant essentially repeats its arguments again for this cause of action. Plaintiff has sufficiently pleaded this cause of action because she alleges that she put Defendant on notice of pregnancy and the possible need for future pregnancy accommodations, after which Defendant terminated her. There is no requirement that she allege additional specific details, particularly given that she alleges that Defendant terminated her almost immediately upon this notification, prior to Plaintiff having the chance to make more specific or immediate requests for accommodation.

8th Cause of Action: Interference with, or denial of, rights in violation of PDLL

The argument against this cause of action is a repetition of those above and is unpersuasive for the same reasons.

9th Cause of Action: Violation of Lab. Code section 1102.5

Defendant again attacks this cause of action with the argument, addressed above, that there is no temporal link between the termination and the protected activity occurring in 2021 regarding the wrist injury. This ignores the other allegations and the totality of the circumstances presented in the complaint and, as explained above, is unpersuasive.

Conclusion

The court OVERRULES the demurrers in full. Moreover, because Defendant has, with the exception of the fifth cause of action, only demurred to all causes of action collectively in the demurrer, aside from the fifth cause of action, the court would overrule the demurrer as long as any one of the causes of action is found to be viable. Here, in any case, the court finds all causes of action to be sufficiently pleaded to survive demurrer.

The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

6. 25CV01793, Lorenzini v. Volkswagen Group of America Inc.

Motion to Compel Initial Responses to Form Interrogatories, Set One; and Request for Monetary Sanctions GRANTED. Sanctions of $850 awarded to the moving parties against Plaintiff and her counsel. Plaintiff must comply with this order within 30 days of the notice of entry of this order.

Motion to Compel Initial Responses to Special Interrogatories, Set One; and Request for Monetary Sanctions GRANTED. Sanctions of $850 awarded to the moving parties against Plaintiff and her counsel. Plaintiff must comply with this order within 30 days of the notice of entry of this order.

Facts

Plaintiff complains that she purchased a 2023 Volkswgen Tiguan ("the Vehicle") for which Defendant provided warranties ("the Warranties") but Defendant knew that the Vehicle was defective and dangerous and Defendant concealed this with misleading advertising, and conducted only deficient recalls which did not address the true problems, despite complaints regarding other vehicles with the same components. Plaintiff asserts that Defendant's conduct violated the Song-Beverly Consumer Warranty Act ("Song-Beverly") is at Civil Code ("CC") section 1790, et seq.

Discovery

Defendants served Plaintiff with Form Interrogatories, Set One and Special Interrogatories, Set One on September 12, 2025, along with other discovery not the subject of these motions; the deadline for responding was November 4, 2025 but Plaintiff failed to provide responses by the deadline; despite Defendants' efforts to resolve the matter informally, Plaintiff never responded to those efforts and never sent discovery responses. Declarations of Kimberly L. Phan in Support of discovery motions, filed December 1, 2025 ("Phan Decs.").

Motion

In one motion, Defendants move the court to compel responses to the form interrogatories and they seek monetary sanctions of $2,035 against Plaintiff and her counsel.

In the other motion, Defendants move the court to compel responses to the special interrogatories and they seek monetary sanctions of $2,035 against Plaintiff and her counsel.

There is no opposition.

Discussion

Where a party seeks to compel responses under CCP § 2030.290, the moving party need only demonstrate that the discovery was served, the time has expired, and the responding party failed to provide a timely response. See *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411. Failure to provide a timely response waives all objections. CCP section 2030.290. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP §2030.290.

The responding party must verify substantive responses. CCP § 2030.250. Where a response is unverified, the response is ineffective and is the equivalent of no response at all. See *Appleton v Sup.Ct.* (1988) 206 Cal.App.3d 632, 636.

Moving parties have met the burden here. As demonstrated in the facts above, Plaintiff failed to serve any responses and the deadline has long since passed.

Sanctions

For compelling responses to interrogatories and production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP §§2023.010, 2023.030, 2030.290. In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP § 2023.040. The sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

In discovery, the court may impose the monetary sanctions against the party, person, or attorney. CCP § 2023.030(a). The court may impose the sanctions against a party's counsel if it appears that the counsel was at least partly responsible for engaging in the behavior at issue. CCP § 2023.030(a); *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261.

Defendants seek sanctions of $2,035 for each motion. Their attorney states that she spent no fewer than 2 hours reviewing the file and preparing the motion at $395 an hour, spent $60 on the filing fee, and she anticipates additional time. Phan Decs. They seek the sanctions against Plaintiff and her counsel.

Defendants are entitled to sanctions but not the amount requested. These motions are very simple and reasonably do not support such a large award. The time actually spent does not reflect the amount sought, as well. These motions are also identical, except for the specific discovery at issue, and identical to the prior motions which this court already heard, in which Defendants also sought the same amount of sanctions. In those motions, the court awarded reduced sanctions as well, for facially reasonable sanctions based on actual, reasonable time spent according to the evidence. The court may also only award sanctions for actual and reasonable expenses, not those only anticipated.

The court AWARDS sanctions of $850, for $790 in attorney's fees and $60 in costs, against Plaintiff and her counsel. It appears from the face of the matters presented that Plaintiff's counsel is at least partly responsible. CCP § 2023.030(a); *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261.

Conclusion

The court GRANTS the motions and awards the reduced sanctions as set forth above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

7. 25CV05028, Sapango, Inc. v. Cognetti

Motion to Compel Arbitration and Dismiss the First Amended Complaint or, in the Alternative, Stay Proceedings Pending the Completion of Arbitration GRANTED in PART, DENIED in PART.

The request to compel arbitration and stay the proceedings pending arbitration is GRANTED. The request to dismiss is DENIED. Plaintiff has filed a statement of non-opposition to compelling arbitration, stating that it agrees to submit to arbitration and stay these proceedings pending arbitration. It opposes the request to dismiss.

Code of Civil Procedure ("CCP") §§1281.2 and 1281.4 allow a party to an arbitration agreement to petition the court to compel arbitration and then to stay legal proceedings pending the outcome of the arbitration. *Nathan v. French Am. Bilingual School* (1969) 2 Cal.App.3d 279 states that if the parties entered into a binding, applicable arbitration agreement, generally it is "abuse of discretion not to stay proceedings and order arbitration unless record establishes waiver as matter of law."

Stay the proceedings is appropriate according to the governing authority and Plaintiff's statement of non-opposition. There is no basis, or need, for dismissing the proceedings while arbitration is pending and the matter stayed.

The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.