

TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, July 15, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBaE9LVHU2NVVpQlVRUT09>

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-273623, Alexander Valley Gourmet v. Industry West Commerce Center

Cross-Complainant Industry West Commerce Center LLC (“IWCC”)’s motion for summary adjudication is **DENIED**.

Cross-Defendant Alexander Valley Gourmet, LLC’s counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Evidentiary Objections:

Alexander Valley Gourmet, LLC (“AVG”)’s objections to Industry West Commerce Center LLC (“IWCC”)’s evidence are **OVERRULED**.

The Court declines to rule on IWCC’s objections to AVG’s evidence pursuant to CCP § 437c(q).

IWCC's request to strike AVG's Separate Statement of Additional Material Facts is **DENIED**. While the Court agrees that AVG's Additional Material Facts are excessively long (containing 313), the Court does not find this to merit striking the entirety of Plaintiff's additional facts. The Court has only regarded those which the Court found to be material to this dispute.

Summary of Allegations:

AVG filed suit against IWCC in July of 2023. Pursuant to the operative complaint, the Second Amended Complaint, AVG alleges causes of action against IWCC for (1) Rescission; (2) Termination; (3) Breach of Contract; and (4) Fraud. AVG alleges that IWCC knowingly and intentionally failed to honor the purpose of a lease contract for the premises located at 256 Sutton Place, Suite 103, Santa Rosa, CA (the "premises") that was specifically intended to serve as a food manufacturing and warehouse facility for AVG's fermented food business. AVG alleges that the premises was unsuitable for the purpose expressly stated in the lease. AVG further alleges that a key term of the lease grants AVG the right of first offer with respect to adjacent spaces at the premises that become available for rent. However, when an adjacent space became available for rent, AVG alleges that IWCC failed to provide proper notice and failed to lease the space to AVG because IWCC never intended and was in fact unable to lease the additional space to AVG without permission from a lender.

IWCC filed a Cross-Complaint, which it amended on December 4, 2023. The First Amended Cross-Complaint alleges causes of action for (1) Breach of Contract; (2) Negligence; (3) Enforcement Guarantee; and (4) Declaratory Relief. As pertinent to this motion, in the Fourth Cause of Action for Declaratory Relief IWCC seeks judicial declaration of the parties' rights and obligations relating to the following enumerated issues:

- (1) That there was a condition precedent to AVG having the Right of First Offer and that condition precedent (Bright Cellers, Inc. becoming available) had not yet occurred;
- (2) That IWCC did not represent to AVG or to anyone else that the property was suitable for AVG's permitted use; that AVG was solely responsible for determining whether the property was suitable for its permitted use;
- (3) That Cross-Defendants (including AVG) intended to close the food production operations of AVG at the property and transfer all food production operations to its Cleveland Ohio facility; accordingly, AVG is using its First Amended Complaint to cause IWCC to terminate its lease with AVG.

IWCC filed this motion for summary adjudication of its Fourth Cause of Action on November 25, 2025. In the motion, IWCC explains that it is only seeking summary adjudication of its allegations relating to the Right of First Offer that support its Fourth Cause of Action and that it is abandoning the remaining allegations (numbers 2 and 3 above). IWCC filed a request for dismissal on November 25, 2025, requesting dismissal of the "allegations in fourth cause of action in its First Amended Complaint (Declaratory Relief) other than those relating to Right of First Offer" without prejudice.

Though the dismissal was accepted by the Clerk of Court, it was not legally effective to dismiss only portions of the allegations of the Fourth Cause of Action. CCP § 581 provides that a party may dismiss his or her complaint "or any cause of action asserted in it, *in its entirety*" prior to trial.

(Emphasis added.) IWCC cites *Kaufman & Broad Bldg. Co. v. City & Suburban Mortg. Co.* (1970) 10 Cal.App.3d 206, 213, for the proposition that “a dismissal can be effectuated through any ‘clear, unequivocal and express intent to abandon the action’ on the record.” This is true, but it refers to an entire cause of action, not mere portions of it. An amendment to the pleading is required to abandon only portions of the allegations supporting a cause of action. Accordingly, the November 25, 2025 dismissal was not legally effective to dismiss the allegations of the Fourth Cause of Action not relating to the Right of First Offer.

Since summary adjudication can be sought only as to a cause of action as a whole and not as to specific allegations supporting the cause of action, and since IWCC has not dismissed the cause of action a whole, this Court must analyze this motion based on all of the allegations contained within the Fourth Cause of Action of the First Amended Cross-Complaint to determine whether IWCC has sufficiently shown that the cause of action can be “completely dispose[d] of.” (CCP § 437c(f)(1).)

Summary of Facts:

This is the extent of the facts submitted by IWCC in support of its motion:

IWCC and AVG entered into a commercial lease, dated June 2, 2021, for the property commonly known as 256 Sutton Place, Suite 103, in Santa Rosa, California. (Undisputed Material Fact “UMF,” 1.) The IWCC-AVG lease contains the following provision:

“Right Of First Offer: Provided Tenant has not been in default under the Lease more than twice, Tenant shall have the right, subject to the priority rights of other tenants expressly listed below (if any), to make the first offer to lease the adjacent space within the Building if it becomes available during the initial Lease Term. Landlord shall notify Tenant of such availability, which notice shall set forth the monthly rental as established by Landlord as the Fair Market Rent. Tenant’s right shall expire within fifteen (15) business days of written notice to Tenant from Landlord that the space is available for lease. If Tenant elects to accept Landlord’s offer, then Landlord and Tenant shall have ten (10) more business days to agree to a Lease Amendment to lease said space. Otherwise, Tenant will be deemed to have rejected Landlord’s offer and Landlord shall be free to lease said vacant space to any other tenant on substantially the same terms and conditions set forth in Landlord’s notice, taking into account all concessions and incentives being offered. Any material change in the terms in Landlord’s notice shall trigger a renewed Right Of First Offer.”

(UMF, 2.) Suite 102 at 256 Sutton Place is a space adjacent to Suite 103. (UMF, 3.) During the time of AVG’s tenancy at Suite 103, Bright Cellars has been the tenant at Suite 102. (UMF, 4.) AVG alleges that in 2023 IWCC was obligated to lease Suite 102 to it and/or give AVG the initial notice described in the Right of First Offer provision. (UMF, 5.) IWCC alleges that it did not have any legal obligation to do so. (UMF, 6.)

AVG submitted additional facts, the most pertinent of which are:

Section 2.01 of the Bright Cellars lease provides in part:

Notwithstanding anything herein to the contrary, Tenant may notify Landlord of its intention to terminate this Lease at any time during the Term. Landlord shall terminate this Lease

upon re[p]lacing Tenant with a new tenant reasonably acceptable to Landlord, whose approval of such a replacement Tenant shall not be unreasonably withheld or delayed. Landlord shall use its best efforts to find a replacement Tenant. Tenant shall pay Landlord all related marketing and leasing expenses, and a termination fee equal to three (3) months' Rent, upon execution of a lease termination agreement.

(Add. Material Facts "AMF," 175.) In or around November 2022, Bright Cellars expressed to the defendant that it no longer needed Suite 102 and wanted to terminate its lease or assign that lease. (AMF, 176.) In response to being told the space was available, Vincent Rizzo (IWCC Principal) told Mr. Megibow (Bright Cellars CEO) that he would have to approve any new tenant for the space. (AMF, 177.) Defendant did not approve Bright Cellars' request to terminate or assign its lease and, instead, required Bright Cellars to sublease the space subject to the defendant's approval. (AMF, 180.)

At deposition, when asked about other conversations with Mr. Rizzo specifically about terminating the Bright Cellars lease, Mr. Megibow testified "Every single conversation I had with him was about we've got to get out of this lease. . . We were not in the building. We were not using the building. We had no people there. We exited. We were paying him every single month a huge amount of money for zero return on our value while I was firing employees to cover the cost of that, so every conversation I had was how do we get out of this lease." (AMF, 181.)

In early January 2023, Mr. Rizzo informed Bright Cellars that Plaintiff may be interested in the space that was available for lease. (AMF, 188.) After Bright Cellars inquired about Plaintiff's interest, Mr. Rizzo told Bright Cellars that he did not wish to lease the space to Plaintiff. (AMF, 189.) Mr. Megibow testified that "we never seriously pursued Alexander Valley Gourmet as a sublease option, as it was directed to us by both our real estate agent and through emails from Vincent that we -- they had no interest in -- in subleasing to them." (AMF, 190.)

Analysis:

IWCC seeks summary adjudication of the Fourth Cause of Action of the First Amended Cross-Complaint for Declaratory Relief in its favor because it submits that it had no obligation to lease the property under the Right of First Offer ("ROFO") provision of the IWCC-AVG lease or to give the initial notice described in such provision. As explained above, IWCC erroneously believed that it had effectively dismissed its remaining allegations supporting the Fourth Cause of Action. Therefore, IWCC has not included any facts regarding those two points in its separate statement nor explained in its motion how there lack triable issues of material facts regarding those allegations. The motion is denied on this ground. Notwithstanding, the Court will address the arguments made by the parties below. Even if IWCC had properly amended its Fourth Cause of Action to only seek declaratory relief regarding the ROFO dispute, the Court would still deny this motion as failing to meet the required burden of proof.

I. Interpretation of the ROFO Provision

The first issue to be determined here is the interpretation of the Right of First Offer ("ROFO") provision. IWCC argues that the ROFO can only be interpreted as requiring IWCC to notify/offer available properties when they become available for "lease" and not when they become available for "sublease." This argument is unpersuasive. The Court finds the key phrase of the ROFO to be

“becomes available.” IWCC’s obligations under the ROFO are triggered when a suite becomes available—regardless of whether it becomes available for lease or sublease. The language is not so narrow that such obligation would only be triggered when a direct lease becomes available as opposed to any type of lease.

IWCC argues that the property explicitly must be “vacant” to trigger the ROFO. The Court also finds this argument to be unpersuasive. Under such an interpretation, AVG would only be entitled to the ROFO if a tenant completely moves out before IWCC began its search for a new tenant. The ROFO provision does not lend itself to such an interpretation. Again, the Court finds the key phrase of the ROFO to be “becomes available.” A property can become available before it is vacant. The term “vacant” as used in the ROFO could mean one that is to become vacant if not leased to AVG. IWCC has not shown a lack of triable issue of material fact as to this.

Finally, IWCC argues the ROFO’s implementation mechanics—setting fair market rent, providing notice, executing an amendment of the lease and being able to dispose of “vacant space”—would “only make sense” if Suite 102 had no tenant. This argument is also not persuasive because all of these things can be—and routinely are—done while a tenant is still occupying the premises. Landlords routinely market and negotiate lease agreements while the premises are still occupied. IWCC has failed to show that the ROFO must be interpreted in the manner in which it suggests.

II. Sufficiency of Evidence

The next issue is the sufficiency of the evidence to show a lack of triable issue of material fact regarding IWCC’s obligations to notify/offer Suite 102 to AVG. The record does not reflect such lack of triable issue. The extent of the evidence submitted in support of IWCC’s motion is the declaration of Vincent Rizzo, the Principal of IWCC, in which he describes his own knowledge and understanding of the IWCC’s rights and obligations relating to the ROFO dispute. This declaration is insufficient to show a lack of triable issue of material fact.

Though Mr. Rizzo testifies that Suite 102 at all times relevant and up to present has been occupied by Bright Cellars, Inc., Mr. Rizzo also testifies that Bright Cellars, Inc. was looking for a subtenant to sublease Suite 102. IWCC contends that Bright Cellars still occupies Suite 102. However, AVG has submitted testimony evidence from the CEO of Bright Cellars stating that the suite has been vacant and was not being used by Bright Cellars, which is precisely why Bright Cellars was seeking someone to take over the lease.

IWCC argues that it could not have leased the premises to anyone else because Bright Cellars was still leasing it, but AVG has submitted evidence that IWCC turned down Bright Cellar’s request to terminate/assign its lease and, moreover, IWCC has approval rights over the sublessee and explicitly told Bright Cellars that AVG would not be approved as a sublessee. The record indicates that Bright Cellars was willing to sublease to AVG and that AVG was willing to sublease the suite, but that IWCC explicitly did not allow this.

These are just some examples of factual disputes within the record that demonstrate triable issues of material fact. IWCC has failed to meet its burden of proving that each of the items on which it seeks declaratory relief (the three items outlined above) lack triable issues of material fact. Even if IWCC had properly dismissed its claims except those relating to the ROFO, IWCC has failed to meet its burden of showing a lack of triable issue of material fact on that issue.

2. 26CV00922, Wells Fargo Bank v. Covarrubias

Defendant's motion to quash service of summons is **DENIED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff filed its complaint against Defendant on February 4, 2026 and filed a proof of service of process on March 2, 2026. The proof of service is signed by a registered process server who declares under the penalty of perjury that Defendant was served personally on March 1, 2026 and that Defendant confirmed her identity by nodding when named.

Defendant filed an answer to the complaint on March 30, 2026. On April 10, 2026, Defendant filed this motion to quash service of summons claiming that she was served by mail but did not consent to service by mail.

There are several issues with Defendant's motion. First, Defendant filed an answer before filing this motion. Filing an answer without simultaneously filing a motion to quash service of summons constitutes a general appearance in the action. (CCP §§ 1014, 418.10(e)(1).) "[I]t has long been the rule in California that a party waives any objection to the court's exercise of personal jurisdiction when the party makes a general appearance in the action." (*Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341.) Accordingly, Defendant waived any objection to personal jurisdiction by filing the answer on March 30th.

Furthermore, CCP § 418.10(a) requires a motion to quash service of summons be made "on or before the last day...to plead..." Since the date of personal service was March 1, 2026, and since the last day to plead is 30 days following service of the summons, Defendant must have filed this motion no later than March 31, 2026. (CCP § 412.20(a)(3).) Defendant filed on April 10, 2026. Thus, the motion is untimely.

Notwithstanding the above, the filing of a proof of service that complies with statutory standards "creates a rebuttable presumption that the service was proper." (*Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795.) A declaration by a registered process server establishes a presumption, affecting the burden of producing evidence, of the facts stated in the declaration. (Evid. Code, § 647.)

The process server's declaration establishes that the Summons and Complaint were served at 329 Decker Street, Santa Rosa, CA 95401-5441, the same address on Defendant's Answer and motion. Furthermore, Defendant confirmed her identity by nodding in confirmation when named. Defendant attempted to refuse service by not taking the documents, but they were left with her within their view. The process server's declaration is sufficient to create a rebuttable presumption of validity. It is Defendant's burden to provide evidence to prove otherwise.

Defendant has failed to meet her burden of rebutting the presumptive validity of the process server's declaration of personal service. Defendant's own declaration stating that she was never personally served with the Summons and Complaint is insufficient considering the detailed description of

personal service included in the process server's declaration.

3. **24CV00586, Clifton v. Christopherson**

Plaintiffs' motion to compel further responses and privilege log; request for sanctions is **CONTINUED** to July 22, 2026, at 3:00 p.m. in Department 18.

The Court intends to appoint a discovery referee and is continuing the hearing in order to allow more time to obtain the discovery referee's consent and to issue the appointment order.

4-5. **25CV01117, Hernandez v. LoanDepot.com, LLC**

This is a joint ruling on Defendant LoanDepot.com, LLC's demurrer to the Second Amended Complaint ("SAC") and Defendant's motion to strike. The demurrer to the SAC is **SUSTAINED** in part and **OVERRULED** in part. The demurrer is **OVERRULED** as to the First Cause of Action and **SUSTAINED** as to the Second, Third and Fourth Causes of Action. Leave to amend the Second, Third, and Fourth Causes of Action is **DENIED**.

Defendant's motion to strike Plaintiff's prayer for treble and punitive damages is **GRANTED**. Leave to amend **DENIED**.

Defendant's request for judicial notice is **GRANTED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

I. **Demurrer**

This matter arises from the foreclosure sale of Plaintiff's property, which is a single-parcel property that includes two residences: 3101 and 3105 Hoen Avenue. Plaintiff alleges that there were irregularities in the foreclosure process that rendered the foreclosure sale void.

This Court has twice before sustained demurrers to Plaintiff's operative pleading for failure to state a claim. Most recently, the Court overruled Defendant's demurrer to the First Cause of Action but sustained as to the Second and Third. Though the Court originally issued a tentative ruling denying leave to amend the Second and Third causes of action, after hearing oral argument, the Court allowed Plaintiff one more opportunity to amend to state fraud with specificity.

Plaintiff has now filed a Second Amended Complaint. Plaintiff has re-alleged the same causes of action as before while adding one cause of action for fraud. The fraud cause of action is now alleged as the Third cause of action, while the previously alleged Third cause of action is now the Fourth. Defendant demurs again. Other than Plaintiff's formal assertion of a fraud cause of action and insertion of several new paragraphs of legal citations and legal argument, the ultimate facts remain materially unchanged.

Plaintiff's Causes of Action Are Not Uncertain

A demurrer for uncertainty pursuant to CCP § 430.10(f) will be sustained only where a defendant cannot reasonably respond, i.e. cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *see also A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 (“A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.”)

Defendant demurs to each cause of action on the basis of uncertainty. The causes of action are not uncertain, as it can easily be determined what claims must be admitted or denied. The demurrer on this basis is overruled.

First Cause of Action – Violation of Civil Code § 2923.55

Civil Code section 2923.55 requires mortgage servicers to contact or make diligent efforts to contact the borrower to assess the borrower's financial position and explore foreclosure prevention alternatives. “The remedies are different, depending on whether a trustee's deed upon sale has been recorded.” (*Bustos v. Wells Fargo Bank, N.A.* (2019) 39 Cal.App.5th 369, 376.) “If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.” (*Ibid.*) “After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale.” (*Ibid.*)

“A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust.” (*Karlsen v. Am. Sav. & Loan Assn.* (1971) 15 Cal.App.3d 112, 117, *see also Arnolds Mgmt. Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 578-579.) “This rule is premised upon the equitable maxim that a court of equity will not order that a useless act be performed.” (*Arnolds Mgmt. Corp. v. Eischen, supra*, at 578–79.)

Neither the HBOR nor California case law expressly defines the term “material” for purposes of section 2924.12. However, federal district courts applying California law have held that a violation is material if it affected the borrower's loan obligations, disrupted the loan-modification process, or otherwise harmed the borrower in connection with the borrower's efforts to avoid foreclosure.

(*Billesbach v. Specialized Loan Servicing LLC* (2021) 63 Cal.App.5th 830, 845.)

Plaintiff's allegations supporting this cause of action are materially the same as those in the FAC with the small difference of Plaintiff now re-wording the allegations to allege that the false statements in the Compliance Declaration were fraudulent, rendering the foreclosure sale void and, thus, not requiring any tender of indebtedness be made. As explained below, Plaintiff's allegations of fraud are insufficient.

Plaintiff has failed to allege tender. Plaintiff also failed to allege sufficient facts supporting his general allegations of fraud to support his contention that the foreclosure sale is void, rather than voidable. However, the tender requirement is a prerequisite only to setting aside the sale, not to recovery of economic damages, which Plaintiff seeks in the SAC. According to Civil Code § 2924.12, a lender shall be liable to a borrower for actual economic damages for violations of Civil Code § 2923.55. Therefore, while Plaintiff's prayer for equitable relief is unsupported, economic damages remain available to him for material breach.

Plaintiff has sufficiently alleged a material breach of the HBOR. He alleges that Defendant's failure to contact him or make diligent efforts under the statute prevented him from avoiding foreclosure. Such allegations are sufficient to state this claim.

Second Cause of Action – Violation of Civil Code § 2924f

Civil Code section 2924f requires a notice of sale to be published, posted and mailed 20 days before the sale and recorded 14 days before the sale after the trustee has waited three calendar months since the recording of the notice of default as required by section 2924b.

Plaintiff alleges that the notice of trustee's sale was not posted at Plaintiff's residence, located at 3101 Hoen Avenue, but was rather posted at 3105 Hoen Avenue, and was not published for three consecutive weeks or mailed via certified mail with return receipt. Plaintiff alleges that these failures prejudiced Plaintiff because he was unaware of the sale and was unable to act on it. These ultimate facts are unchanged from those previously alleged; although, Plaintiff has now omitted the allegation that no tender is required for void sales from this cause of action—previously paragraph 26 of the FAC, now not included.

Defendant raises the same arguments regarding tender as it did for the first cause of action. As explained above, Plaintiff has failed to allege tender, offer of tender or an exception to the tender requirement. As explained below, Plaintiff's fraud allegations are insufficient. Furthermore, unlike with Plaintiff's first cause of action, Civil Code § 2924.12 does not provide for economic damages for violations of Civil Code § 2924f. Therefore, Plaintiff has failed to state facts sufficient to allege this cause of action.

Third Cause of Action – Fraud

The general elements of fraud are “misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages.” (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) “To withstand demurrer, facts constituting every element of fraud must be alleged with particularity.” (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) “This particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

“ ‘ “A plaintiff asserting fraud by misrepresentation is obliged to ... ‘ “establish a complete causal relationship” between the alleged misrepresentations and the harm claimed to have resulted therefrom.’ ” [Citation.]’ [Citation.] This requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's

misrepresentations caused the alleged damages. [Citation.] [¶] ‘ “ ‘ “Misrepresentation, even maliciously committed, does not support a cause of action unless the plaintiff suffered consequential damages.” ’ ’ ’

(*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1007–1008.)

Here, Plaintiff alleges that on or about March 20, 2024, LoanDepot, acting through its authorized agent Lucy Shirley Nart, executed and caused to be recorded with the Sonoma County Official Records a “Beneficiary Declaration of Compliance with (or Exception from) Civil Code Section 2923.5” attached to the Notice of Default. Plaintiff alleges that Ms. Nart made false representations in that declaration regarding LoanDepot’s attempts to contact Plaintiff.

Plaintiff alleges that Ms. Nart either knew the statements were false when executing the declaration or acted in reckless disregard of their truth or falsity. Plaintiff alleges that LoanDepot executed and filed the declaration containing a misrepresentations with intent to

- (1) Deceive the Sonoma County Recorder into accepting and recording the NOD as validly executed;
- (2) Induce Prestige, as trustee, to believe that the legal preconditions to recording a NOD had been satisfied;
- (3) Prevent Plaintiff from discovering the fraud, because once a false declaration is on record, borrowers rarely think to challenge the stated facts in litigation.

(SAC ¶ 57.) As alleged, Prestige, as trustee, relied on the False Compliance Declaration in good faith when it recorded the NOD and later caused the NOS and TDUS to be recorded. Furthermore, Plaintiff justifiably relied on the apparent regularity of the recorded documents and assumed that a proper NOD could not have been recorded without compliance with statutory preconditions. As alleged, had Plaintiff known that the declaration was false, he would have immediately filed suit for fraud and sought injunctive relief to prevent the foreclosure.

Plaintiff has failed to allege a cause of action for fraud. Plaintiff does not allege that he relied on the misrepresentation himself. He instead alleges that he relied on the documents as being apparently regular. Such cannot support a cause of action for fraud. Plaintiff must allege that he relied on the specific misrepresentation. He must also allege a causal nexus between the misrepresentation and his damages and Plaintiff has not done so. Plaintiff has alleged misrepresentations made to other parties, and intent to induce other parties, reliance by other parties, but has not alleged sufficient facts to link the alleged misrepresentation to his own reliance and subsequent damages. Plaintiff alleges several instances of fraud within this one single cause of action. They each suffer from the same deficiencies.

Fourth Cause of Action – Cancellation Instruments

Civil Code section 3412 provides that: “A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.” However, “because a cause of action to cancel a written instrument under section 3412 sounds in equity, a debtor must generally allege tender or offer of tender of the amounts

borrowed as a prerequisite to such claims.” (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 819.)

Plaintiff has amended this cause of action to include several new paragraphs of legal citations and legal argument. However, the ultimate facts remain unchanged. As explained above, Plaintiff has failed to allege tender, offer of tender, or an exception to the tender requirement. Therefore, Plaintiff has failed to state this cause of action.

II. Motion to Strike

Defendant seeks to strike Plaintiff’s prayer for punitive damages, arguing that Plaintiff has failed to allege facts substantiating Plaintiff’s allegations of willful, oppressive, or fraudulent conduct. Punitive damages may be stricken where the facts alleged do not rise to the level of “malice, fraud or oppression” required to support a punitive damages award. (*Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.) The Court agrees that Plaintiff has failed to sufficiently allege his fraud allegations. Therefore, Plaintiff has failed to allege facts to support the prayer for punitive damages.

Leave to Amend

The Court has granted Plaintiff leave to amend twice before. Though this is Plaintiff’s first time formally asserting a cause of action for fraud, Plaintiff has included fraud allegations in each of the previous versions of the complaint. It is clear that Plaintiff will be unable to sufficiently allege the causes of action on which the Court has sustained the demurrer and will be unable to plead sufficient facts to support punitive damages. Accordingly, leave to amend is denied.

6. 25CV07194, Monemi v. Petaluma City Schools

Plaintiff’s motion to compel further responses from Defendant City of Petaluma to Plaintiff’s Request for Production of Documents, Set One is **GRANTED** in part and **DENIED** in part, as explained below. Plaintiff’s request for monetary sanctions is **GRANTED**. Monetary sanctions are imposed against Defendant in the amount of \$2,085.00.

Defendant shall provide supplemented responses as explained below within 20 days of notice of entry of an order on this motion. Defendant shall also pay the monetary sanctions within that same timeframe, 20 days of notice of entry of order.

Plaintiff’s counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This is a trip and fall case where Plaintiff alleges that she tripped on an uneven portion of sidewalk on City of Petaluma property and sustained injuries. On February 2, 2026, Plaintiff served Requests for Production of Documents, Set One (“RPDs”) on Defendant City of Petaluma. On March 4, 2026, Defendant provided responses which Plaintiff submits contained objections and evasive and incomplete answers. At issue in this motion are RPDs Nos. 2, 3, 8, 11, 12, 14, 16, 17, 18, 19, 23, which seek documentation relevant to Defendant’s actual or constructive notice of the dangerous

sidewalk where Plaintiff fell, Defendant's internal policies and practices for inspecting and repairing sidewalks, and Defendant's training of its employees regarding sidewalk safety.

Defendant opposes the motion on the grounds that Plaintiff's meet and confer efforts were insufficient and its objections to the RPDs are valid. The Court does not agree that Plaintiff's meet and confer efforts were insufficient. The Code requires a good faith effort to meet and confer. The record reflects such. Plaintiff's counsel emailed Defendant's counsel on March 23, 2026 providing a draft of Plaintiff's separate statement in support of its motion to compel as its way of stating the reasons Defendant's responses were deficient. Defendant takes issue with the fact that Plaintiff stated the reasons Defendant's responses were deficient in a drafted separate statement rather than in a letter. The Court fails to see how providing a clear and delineated separate statement of issues constitutes a failure to meet and confer in good faith.

Defendant's counsel responded to Plaintiff's email on April 1, 2026 outlining their position regarding the allegedly improper form of Plaintiff's meet and confer effort but not actually addressing any of Plaintiff's concerns regarding the responses. Plaintiff's counsel responded to that email on April 2, 2026 providing additional information and offering to speak by telephone if desired. Plaintiff's counsel received no response to the April 2nd email. Accordingly, it was Defendant who ceased cooperating with informal dispute resolution. Based on the record before the Court, Plaintiff made sufficient attempts to meet and confer.

RPDs No. 2

Defendant responded to this RPD by stating objections, but also substantively stating "Defendant will produce all relevant non-privileged documents in its possession, custody or control concerning the incident." This is a code-compliant response. (CCP § 2031.210(a)(1).) No further response is necessary. Although, the Court finds Defendant's objections to be unsubstantiated. They are overruled.

RPD No. 3

Defendant responded to this RPD with objections and by stating, "Defendant is not presently aware of any non-privileged responsive documents in its possession, custody or control. Discovery is ongoing, and Defendant reserves its right to supplement and/or amend this response."

This is not a code-compliant response. Defendant does not state an inability to comply with the request, but instead alludes to the possession of privileged documents that may be responsive. However, Defendant did not provide a privilege log for these privileged documents. Defendant shall supplement its response to be compliant under the Code. If the responsive documents in Defendant's possession are privileged, Defendant shall provide a complete and compliant privilege log. All other objections raised to the RPD are unsubstantiated and are overruled.

RPD No. 8

Defendant argues that this RPD is overbroad, unduly burdensome and harassing because it has no time limitation. Defendant also argues that it assumes facts not established; namely, that Defendant

had a duty to perform any inspection or maintenance, and therefore it was not reasonably calculated to lead to the discovery of admissible evidence.

The Court agrees that the scope of the request is overbroad. There is no time limitation, so presumably the City would have to produce documents since the City's inception though the incident is alleged to have occurred in May of 2025. This is overly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. However, Plaintiff is entitled to such documents in a limited scope. Defendant shall produce responsive documents from the period of May 21, 2021 (four years before the incident) through May 21, 2025 (the date of the incident).

As for Defendant's objection based on assuming facts not established, this objection is overruled. The question does not assume a duty by Defendants. It simply seeks documents relating to the City's policies regarding sidewalk maintenance and inspection. All other objections raised by Defendant are overruled as unsubstantiated.

RPD No. 11

As with RPD No. 8, Defendant argues that this RPD is overly broad because it is not limited in scope. The Court agrees and applies the same analysis as for RPD No. 8. Defendant shall produce responsive documents from the period of May 21, 2021, through May 21, 2025. All other objections are overruled as unsubstantiated.

RPD No. 12

Defendant raises the same arguments as to this RPD as it did for RPD No. 8, that it is overbroad and that it assumes facts not established. The Court applies the same analysis here. Defendant shall produce responsive documents from the period of May 21, 2021, through May 21, 2025. All other objections are overruled as unsubstantiated.

RPD Nos. 14, 16, and 17

Defendant argues only that these RPDs assume facts not established. This objection is overruled as explained above. All other objections are overruled as unsubstantiated.

RPD Nos. 18 and 19

Defendant argues that RPDs No. 18 and 19 are overbroad because they seek all documents over a four-year period reflecting "*all work of any nature performed by any department of the City of Petaluma*" within 100 yards of the street tree and "*any work*" performed by "*any City employee*" near a bus stop. As argued, these overly broad requests would encompass such prosaic day-to-day City work as trash collection. The Court does not agree with Defendant that these requests are overbroad considering they contain a reasonable time limitation and considering that evidence relating to the City's work in the immediate vicinity of the sidewalk defect could be relevant on issues of constructive notice.

Defendant also argues that these requests assume facts not established. For the reasons explained above, this objection is overruled. All other objections are overruled as unsubstantiated.

RPD No. 23

Defendant argues that this RPD is overbroad because it asked the City to produce documents relating to “safety training” of every City employee “concerning public sidewalk safety.” The Court does not agree that it is overbroad.

Defendant argues that the RPD is impermissibly vague and ambiguous because it requires the City to guess what Plaintiff means when stating “safety training” of City employees “concerning public sidewalk safety,” which could encompass anything from documents related to training City employees in occupational safety practices when performing construction work on public sidewalk or documents relating to training City employees in how members of the public could use sidewalks safely. The Court does not find the request to be vague or ambiguous. Defendant shall provide a substantive response to this request.

Sanctions

The Court finds sanctions to be warranted pursuant to CCP § 2031.310(h). Plaintiff seeks \$2,085.00 in monetary sanctions to be imposed against Defendant and Defendant’s counsel of record. While the Court finds the amount of sanctions requested to be reasonable, the Court does not find circumstances warranting the imposition of sanctions jointly against Defendant’s counsel. Sanctions shall be imposed against Defendant in the amount of \$2,085.00.

7. **25CV03763, Drips v. The Empire Smoke & Vape Shop**

Plaintiff’s motion to vacate default is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

Plaintiff filed a complaint against Defendant The Empire Smoke & Vape Shop on May 30, 2025. Plaintiff filed proof of service of process on Defendant on June 26, 2025. After Defendant failed to answer the complaint, upon Plaintiff’s request, the Court entered the default of Defendant on December 30, 2025.

Plaintiff now seeks to set that default aside pursuant to CCP § 473(b) because Plaintiff intends to file a First Amended Complaint that cures defects in the complaint and adds additional defendants. Plaintiff has submitted a copy of the proposed First Amended Complaint as required by CCP §473(b). The requested relief is granted.

*****This is the end of the Tentative Rulings*****