TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, January 7, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252 US (San Jose)

PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1-3. 25CV01643, Marin v. City of Petaluma

Plaintiffs John Marin and Therese Crutcher-Marin (together "Plaintiffs"), filed the complaint in this action against defendants City of Petaluma ("Defendant") and Does 1-100, with causes of action for dangerous condition of public property, and loss of consortium (the "Complaint").

This matter is on calendar for the motions by Plaintiffs to compel further responses from Defendant to special interrogatories ("SIs"), Requests for admission ("RFAs") and requests for production of documents ("RPODs"), pursuant to CCP § 2031.310 (relating to RPODs), CCP § 2033.290 (relating to RFAs), and CCP § 2030.300 (relating to interrogatories). The motions to compel are **GRANTED** in part, and **DENIED**, in part, with details contained within this decision. The request for sanctions by both Plaintiff and Defendant is **DENIED**.

I. Legal Authority

A. Discovery Generally

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378. Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

B. "Meet and Confer" Requirement

C. A motion to compel must also be accompanied by a declaration stating facts showing a "*reasonable and good faith attempt*" to resolve informally the issues presented by the motion *before filing the motion*. (CCP §§ 2016.040, 2030.300(b)(1); Golf & Tennis Pro Shop, Inc. v. Sup.Ct. (Frye) (2022) 84 CA5th 127, 138, 300 CR3d 225, 233, fn. 9—declaration must accompany notice of motion, along with all other documents supporting notice of motion). The purpose of the meet and confer requirement is to force lawyers to reexamine their positions, and to narrow their discovery disputes to the irreducible minimum, before calling upon the court to resolve the matter. It also enables parties and counsel to avoid sanctions that are likely to be imposed if the matter comes before the court. (Stewart v. Colonial Western Agency, Inc. (2001) 87 CA4th 1006, 1016, 105 CR2d 115, 121-122). Failing to make a "reasonable and good faith attempt" to resolve the issues informally before a motion to compel is filed constitutes a "misuse of the discovery process." Monetary sanctions can be imposed against whichever party is guilty of such conduct, even if that party wins the motion to compel. (CCP §§ 2023.010(i), 2023.020; see CCP § 2023.050). However, efforts to "resolve informally" do not extend the 45-day limit within which the propounding party must move for further answers. (CCP § 2030.300(c); Vidal Sassoon, Inc. v. Sup.Ct. (Halpern) (1983) 147 CA3d 681, 683-684, 195 CR 295, 296-297). Sanctions.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents) provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. The Motion is Timely and Defendant Offers no Substantive Opposition

A. Meet and Confer Efforts

Defendant contends that Plaintiff has failed to adequately meet and confer, and as a result the Court should deny the motions. The evidence submitted by Plaintiffs with the motion shows that the Plaintiffs met and conferred with Defendant regarding the original responses, and that Defendants thereafter served amend responses to many of the discovery requests initially on June 23, 2025, and later in August 22, 2025, including a great number of those at issue in this motion. Defendant avers that there was no meet and confer efforts after the amended responses. Plaintiffs offer no evidence to dispute this lack of 'meet and confer' after Defendant served the amended responses. Stated alternatively, Plaintiffs failed its "meet and confer" obligations on the amended responses served on August 22, 2025. Plaintiffs confirm this on reply noting that the last communication it had with Defendant's counsel was by Zoom on July 28, 2025, nearly a month prior to the amended responses being served. (Reply at 2:16-23).

Plaintiffs are required to make a "reasonable and good faith attempt" to meet and confer before bringing motions to compel further responses. CCP §§ 2016.040, 2030.300, 2031.310, 2033.290. The purpose of the meet and confer requirement is not some perfunctory nod at civility before turning to the Court. The requirements under the Discovery Act are that efforts to resolve discovery disputes be "more than the mere attempt by the discovery proponent to persuade the objector of the error of his ways". *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294 (internal quotation omitted). Plaintiffs' election to file the motion without meeting and conferring on the amended responses does not achieve the goal to "lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435.

While Plaintiffs contend that *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, does not create any requirement to meet and confer after amended answers, it does fully elucidate a standard for what constitutes a good faith meet and confer.

> A single letter, followed by a response which refuses concessions, might in some instances be an adequate attempt at informal resolution, especially

> when a legitimate discovery objective is demonstrated. The time available before the motion filing deadline, and the extent to which the responding party was complicit in the lapse of available time, can also be relevant. An evaluation of whether, from the perspective of a reasonable person in the position of the discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances (see, e.g., *Townsend, supra,* 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances.

Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 432–433

Here, there is no evidence of any contact by Plaintiffs to Defendant regarding the insufficiency of the amended responses. The Court notes that Defendant did not amend all the responses at issue, but the ratio of responses amended to responses seems substantive enough[1] that Plaintiffs were required to meet and confer further. Many of the amended responses offer substantive answers which Plaintiffs contend are incomplete, but have never been raised as part of the meet and confer process. Nor does the Plaintiffs fully elucidate why it contends that many of the amended responses were incomplete or evasive. The Court cannot find that this is a reasonable and good faith effort to resolve the issues. Insufficient meet and confer efforts *can* be jurisdictional. *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 433. Here, there has been literally no meet and confer efforts as to the majority of the responses on which Plaintiffs wish to compel further. Plaintiffs sat on the amended responses for 37 days before attempting to file the instant motions. While the initial meet and confer efforts were substantive, they were also fruitful. The subsequent motion is not supported, and Plaintiffs' delay without conferring has created a burden on both Defendant and the Court that otherwise may have been avoided.

Additionally, the Court assigned this matter to its Discovery Facilitator Program, and assigned Ms. Lauren M. Terk, Esq. to serve as the volunteer Facilitator. Ms. Terk reviewed the motions and oppositions and then held a conference call with the Parties on November 17, 2025. Per Ms. Terk's report to the Court "counsel for both parties agreed they prefer to continue their negotiations directly rather than pay for my additional time over the two hours allotted by the local rule." Ms. Terk followed up with the parties on December 5, 2025, and was informed by Mr. Gilbert that all discovery issues remain unresolved and Mr. Ganji never responded.

It is clear to the Court that "meet and confer" efforts effectively ceased after Defendant served its amended responses back on August 22, 2025. That is approximately 4 ½ months of wasted time on matters which could have been easily resolved by the Parties. Given this lack of engagement the Court will now decide these discovery disputes in the following manner:

B. Request for Further Responses to Special Interrogatories and Form Interrogatories

[1] At a glance, the single RFA at issue, and more than two-thirds of the interrogatories and RPODs had amended responses.

1. Special Interrogatory No. 1:

Plaintiffs' interrogatory asks Defendants to identify who "owned the ROAD" at the time of the "INCIDENT". Defendant provided only an initial response on June 17, 2025, asserting some objections but substantively stating "Pursuant to Civil Code section 831, the owner of property adjacent to a roadway is presumed to own to the midline of the road." The Court confirms that the initial response is somewhat evasive though it does provide Plaintiffs with information that ownership of the ROAD might be contingent upon which portion on Western Avenue (between Benjamin Lane and Hill Drive) the INCIDENT took place. The parties' failure to substantively engage in a discussion and to determine the exact location of the INCIDENT would have easily resolved this unnecessary dispute. Neither Plaintiffs' Complaint nor this special interrogatory do anything to identify the exact location where the INCIDENT occurred. Even more fatal here is that the original responses were served on June 17, 2025. The present motion was filed on September 29, 2025, that is 104 days after service of the original responses.
Therefore, the Court DENIES any further response as the motion is untimely pursuant to CCP §2030.300.

2. Special Interrogatory No. 2:

Plaintiffs' interrogatory requests the identification of who "controlled the ROAD" at the time of the "INCIDENT." Defendant provided an initial response littered with boilerplate objections on June 17, 2025. An amended response was later served on August 22, 2025, which included the same objections but substantively stated "Defendant was responsible for maintaining the subject roadway, on Western Avenue, between Benjamin Lane and Hill Drive, at the time of the subject incident. Plaintiffs do not argue the merits of the substantive response, though they claim it is still evasive and incomplete but do not explain how it is so. Defendant contends that the question of ownership and control along Western Avenue is legally and factually complex because it involves multiple layers of public and private interests. Defendant relies once again on Civil Code §831, which it did in Special Interrogatory No. 1, to state that there is a presumption of fee title to the centerline of any roadway to any property owners adjacent to it. Moreover, Defendant has offered to stipulate to the "control" element as outlined in CACI VF. No. 1101, but Plaintiffs refused.

The Court finds that Defendant has fully answered the interrogatory, and it has additionally offered to stipulate to the issue of" "control" of the ROAD at issue. Plaintiffs have provided no reasonable explanation for why they refuse to execute such stipulation as it would conclusively establish at least one element of their claim. Therefore, a further response to Special Interrogatory No. 2 is DENIED.

3. Special Interrogatory No. 3:

Plaintiff's interrogatory requests the name, address, and phone number of all persons/entities that have "inspected the ROAD in the last ten years." Defendant provided an initial response on June 17, 2025, and later amended the same on June 23, 2025, and again on August 22, 2025. The second amended response provides great detail as to how the roadways are inspected and

identifies the Bay Area Metropolitan Transportation Commission ("MTC"), MTCs' unidentified third-party vendor inspectors, Pavement Engineering, Inc. and City Staff. Absent from the response are the actual names of any of these individuals (including City staff) and vendors and the dates on which such roadway inspections were conducted. Also missing are the identifications of any individuals or vendors who may have input information into the StreetSaver and EngageEPetaluma programs, which appear to be inspection-related data points.

Plaintiffs also complain that Defendant withheld identifying information as to who performed maintenance, when such maintenance was performed, and how the maintenance was performed on the roadway. Plaintiffs claim that the second amended response is incomplete because it is missing this information. That assertion is wholly erroneous. Plaintiff special interrogatory never requested this information in the first instance. Moreover, as was evident to the Court in the prior interrogatories, it appears that Plaintiff is more concerned with eliminating objections than it is with analyzing any of the substantive responses which defendant has provided.

The Court GRANTS, in part, and DENIES in part, Plaintiffs' request for a further response to Special Interrogatory No. 3, as the second amended response is still missing identifying information (if it exists) as which individuals/entities performed inspections of the ROAD, and when, within the last 10 years.

4. Special Interrogatory No. 4:

Plaintiffs' special interrogatory is similar in nature as the one above. For the reasons outlined above, the GRANTS Plaintiffs' request for a further response to Special Interrogatory No. 4, as the second amended response is still missing identifying information (if it exists) as which individuals/entities performed maintenance of the ROAD, and when, within the last 10 years.

5. Special Interrogatory No. 6:

Plaintiff special interrogatory requests a description of Defendants inspection system in regard to bike lanes in the City of Petaluma. Defendant objected to this interrogatory on the grounds that it was overbroad as to time. The Court agrees. Substantively, Defendants amended response of August 22 fully details the manner in which Defendant conducts inspections either independent Bentley or through third-party vendors of its bike lanes. Therefore, a further response to Special Interrogatory No. 6 is DENIED.

6. Special Interrogatory No. 12:

Plaintiffs' special interrogatories request a listing of every complaint made "about hazards for bicyclists' or "complaints about bicycle lanes" in the City of Petaluma in the last 10 years". Defendant objected to this interrogatory on the grounds that it was overbroad as to time and scope. The Court agrees. Plaintiff's failure to "meet and confer" to further clarify what is meant by "hazards" and explain why such information is required for the entirety of the City for the last 10 years proves fatal to this request. Therefore, further responses to Special Interrogatory Nos. 12 and 13 are DENIED.

7. Form Interrogatories Nos. 15.1 and 17.1:

It appears that Plaintiffs seek to revive through this motion the compelling of original responses with Defendant made to these interrogatories. Those original responses were served on June 17, 2025. The present motion was filed on September 29, 2025, that is 104 days after service of the original responses. Therefore, the Court DENIES any further response to these interrogatories as the motion is untimely pursuant to CCP §2030.300.

C. Request for Further Responses to Requests for Admissions

1. Request for Admission No. 2:

This request seeks Defendant's "control" of the ROAD at the time of the Incident. The Court's analysis on the topic has been fully outlined in Special Interrogatory No. 2, above. Effectively, Defendant has conceded this point and is prepared to execute a stipulation to that effect. Under that representation, the Court will not require any further response to this request. Therefore, a further response to Request for Admissions No. 2 is DENIED.

D. Request for Further Responses to Production of Documents

1. Request Nos. 20, 21, 34, 35, 55, 64, and 65:

Plaintiff acknowledges that it received original responses to these requests from Defendant back on June 17, 2025. The present motion was filed on September 29, 2025, that is 104 days after service of the original responses. Therefore, the Court DENIES any further response as the motion is untimely pursuant to CCP §2031.310.

2. Requests Nos. 3, 14, 15, 16, 29, 30, 31, 32, 33, 61, 66, 67, 68, 69, and 70:

Plaintiffs' Requests Nos. 14, 15, 16, 29, 30, 31, 32, 33, 66, 67, 68, 69, and 70 ask for production of documents dating back to 2000 and/or regarding irrelevant locations (roads and bike lanes throughout the City of Petaluma, other than the subject ROAD). Defendant correctly objected to these categories and provided solid reasoning as to why these requests are overbroad as to time and scope. The Court has reviewed all these requests, and they do appear to have no correlation to the INCIDENT and no nexus with the ROAD at issue. Plaintiffs' present motion fails to provide any explanation as to why these requests are not overbroad and any responsive documents even remotely relevant. Had Plaintiffs engaged Defendants in a meaningful meet and confer, it is quite possible that some compromises could have been made. That was not the case here. In the absence of these efforts, the Court must now DENY any further responses and document production based off these requests given the overly broad scope and timeframe and Plaintiffs' failure to meet and confer on the amended responses.

Request Nos. 3 is GRANTED.

Request No. 14 is GRANTED in part, but Defendant is only required to produce budgets from 2017 to the present.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification or other circumstances that would make sanctions unjust for interrogatories and RPODs. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Defendant. There is no such exception for RFAs. Plaintiff's counsel has failed to engage with Plaintiff in any substantive way, and as such the necessity of the motion appears to fall in whole from counsel's advice. Joint liability is proper.

Defendant requests sanctions of $6,000 jointly and severally against Plaintiff and his counsel in their omnibus opposition. They request "at least" $3,000. Defendant supports this request with a "reasonable blended" attorney rate of $300 per hour, and the averment that opposing the motions has required 20 hours of attorney time. The Court finds two problems with this request.

First, while Defendant contends that the $300 rate is "reasonable", there is no evidence that this rate is at all reflective of the rate actually being charged to Defendant. The request for not being supported by evidence of actual costs, it is improper, as discovery monetary sanctions are required to be reasonable **and actual**. *See Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181.

Second, even if the rate were properly supported, the time on the oppositions exceeds what is reasonable. Based on the bar numbers at issue, it is apparent that counsel is experienced, which otherwise should be indicative of expertise sufficient that 12 hours across the single opposition to three motions to compel further responses (not accompanied by a separate statement from Defendant) is excessive. The reasonable time expended is twelve hours.

Defendant's request for sanctions is DENIED.

IV. Conclusion

Plaintiff's motions are **GRANTED** in part, and **DENIED** in part. The Parties' request for sanctions are **DENIED**.

Defendant's counsel shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, Defendant shall provide notice of the order per CCP § 1019.5.

4-5. 25CV01828, John W. Conomos v. Lansdown

Plaintiff John W. Conomos ("Plaintiff") filed the presently operative complaint ("Complaint") for unlawful detainer of the property commonly known as 1670 Chiquita Road, Healdsburg California (the "Property") against defendants Melissa Lansdown ("Defendant"), Ellis Greenberg ("Greenberg")[2], as well as and Does 1-20.

[2] Greenberg has made no appearance in the case, and as such is not relevant to determination of this motion.

This matter is on calendar for the motion by the Plaintiff for summary judgment or in the alternative adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437c as to the Complaint. This matter is also on for Plaintiff's motion to deem admissions admitted under CCP § 2033.280, and sanctions thereon.

On both motions, the parties are **REQUIRED TO APPEAR.**

6-7. 25CV03006, Richard A. Chavez v. Rideout Memorial Hospital

Plaintiff Richard A. Chavez ("Plaintiff"), both individually and as successor-in-interest to decedent Kathleen Warner ("Decedent"), filed the currently operative first amended complaint ("FAC") in this action against defendants Rideout Memorial Hospital ("Rideout"), Sonoma Specialty Hospital, LLC ("Sonoma Specialty"), (all together, "Defendants"), and Does 1-100, arising out of Defendants' care of Decedent. The FAC contains causes of action for: 1) Dependent Adult Abuse under the Elder Abuse and Dependent Adult Protection Act (the "Act"); 2) negligence; 3) wrongful death due to dependent adult abuse; and 4) wrongful death due to negligence. This matter is on calendar for Rideout's demurrer to the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action, as well as Rideout's motion to strike pursuant to CCP § 435 et seq. The motion to strike is **OVERRULED**. The Demurrer is **OVERRULED.**

I. Governing Law

A. Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. 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.") (internal citation omitted). Furthermore, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present

documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 115.

At 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. 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. "(A) demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint." *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1562.

B. Wrongful Death

> To prevail against (defendant) on (a) claim of wrongful death, plaintiffs must prove "(1) a 'wrongful act or neglect' on the part of one or more persons [(that is, negligence)] that (2) 'cause[s]' (3) the 'death of [another] person.' " (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 390, 87 Cal.Rptr.2d 453, 981 P.2d 79.) A person may be liable either for (1) *his own* negligence, in which case he is *directly* liable for the resulting death, or (2) *someone else's* negligence, in which case he is *vicariously* liable because—in the eyes of the law—the other person's negligence is deemed to be his own. (E.g., *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 210, 115 Cal.Rptr.2d 853, 38 P.3d 1081; *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247, 67 Cal.Rptr.3d 253.) A person acts negligently only if he " 'had a duty to use due care' " and " 'breached that duty.' " (*Brown, supra*, 11 Cal.5th at p. 213, 276 Cal.Rptr.3d 434, 483 P.3d 159.)

Musgrove v. Silver (2022) 82 Cal.App.5th 694, 705.

Put another way, "(t)he elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary loss* suffered by the *heirs. Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968 (emphasis original, internal quotations omitted).

C. Elder Abuse

Elder abuse is defined under the Welfare and Institutions Code to include "(p)hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" and "(t)he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Welfare and Institutions Code ("WIC") § 15610.07 (a)(1-2). Neglect is "(t)he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." WIC § 15610.57 (a)(1). "Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs. . . . (4) Failure to prevent malnutrition or dehydration. *Id*. at (b).

Courts have consistently held that neglect is more than simple or even gross negligence. *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405 ("*Carter*"). "'(N)eglect' . . . does not refer to the performance of medical services in a manner inferior to 'the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing' (*Citation*), but rather to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." *Delaney v. Baker* (1999) 20 Cal.4th 23, 34 ("*Delaney*").

> The difficulty in distinguishing between "neglect" and "professional negligence" lies in the fact that some health care institutions, such as nursing homes, perform custodial functions *and* provide professional medical care. When, for example, a nursing home allows a patient to suffer malnutrition, defendants appear to argue that this was "professional negligence," the inability of nursing staff to prescribe or execute a plan of furnishing sufficient nutrition to someone too infirm to attend to that need herself. But such omission is also unquestionably "neglect," as that term is defined in former section 15610.57.

Delaney, supra, 20 Cal.4th at 34–35.

"(I)f the neglect is 'reckless,' or done with 'oppression, fraud or malice,' then the action falls within the scope of section 15657 and as such cannot be considered simply 'based on ... professional negligence' within the meaning of section 15657.2." *Id.* at 35.

"'Dependent adult' includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility…" Welf. & Inst. Code, § 15610.23 (b). A complaint which states sufficient facts to show that WIC § 15610.23 (b) applies has sufficiently pled the Act may apply. *Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, 102.

To adequately plead neglect under a cause of action for elder abuse plaintiff must plead that "defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care (Citation); (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs (Citation); and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent

adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness)." *Carter, supra,* 198 Cal.App.4th at 406. The plaintiff must also allege causation, the facts constituting neglect, and "the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims." *Id.* at 406–407. "In order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages." *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789.

In elder abuse causes of action, attorney's fees and costs are recoverable where the plaintiff is able to prove "neglect as defined in Section 15610.57 . . . and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse". WIC § 15657. To permit recovery against a corporation under WIC § 15657, the standards under Civ. Code § 3294 (b) must be satisfied. WIC § 15657(c).

D. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). And 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. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

E. Pleading Punitive Damages and Other Damages

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an

exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. An employer's failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.

II. Analysis

A. Demurrer

1. Plaintiff Sufficiently Pleads Decedent's Status as a Dependent Adult

Rideout contends that the FAC fails to allege facts sufficient to show that Decedent was either an elder or dependent adult, and as such the Act does not apply. This contention relies on omission of substantive law on the subject. Dependent adults include individuals admitted to any inpatient facility for more than 24 hours. WIC § 15610.23 (b). Allegations of said admission are sufficient to meet the pleading requirements for dependent adult status. *Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, 102. The FAC alleges that Decedent was admitted to Rideout's facility on January 2, 2024. FAC ¶ 15. Decedent was transferred to Sonoma Specialty in "early February" of the same year. *Ibid*. Given that there are clear factual allegations that Decedent was admitted for approximately a month, there is no coherent construal of the FAC where Decedent is not, factually, a dependent adult. The Act therefore applies.

2. Custodial Care

Rideout contends that the FAC fails to allege facts sufficient to show neglect because there are not facts sufficient to show a custodial relationship. This contention fails for several reasons.

At the outset, Rideout depends on caselaw which is materially distinguishable from the facts alleged here. Rideout relies on *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148 to opine that custodial relationships turn on facts sufficient to show care or custody for neglect claims under the Act. *Winn* is inapposite. In *Winn*, the decedent had undergone a series of outpatient examinations related to circulatory issues. *Id*. at 153. The alleged repeated failure to provide treatment for the underlying condition eventually resulted in wounds on her legs, eventually resulting in amputation of decedents legs and her death. *Id*. at 153-154. Our Supreme Court found that these facts were insufficient to state a custodial relationship as a matter of law. *Id*. at 158. The high court defined such a custodial relationship as "a relationship where a certain party has assumed a significant measure of responsibility for attending to one or more of an elder's basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance." *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 158. Accordingly, the court found there was no custodial relationship resulting from the outpatient care. *Ibid*.

Rideout's citation to *Oroville Hospital v. Superior Court* (2022) 74 Cal.App.5th 382, also fails to be persuasive. In *Orville*, the defendant provided decedent with in home wound care every few days for less than a month. *Id*. at 434-435. Her wound worsened and she was admitted to the hospital, before being discharged again four months later for further in home wound care. *Id*. at 435-436. Her condition continued to worsen at home and decedent was again admitted, but ultimately died, allegedly from the result of her long term injuries. *Ibid*. The trial court granted the defendant's motion for summary judgment, finding that the ongoing, repeated in home wound care was not sufficient to state a custodial relationship under the Act. *Id*. at 440. Court of appeal affirmed. *Id*. at 442-443.

The closest case to supporting Rideout's position is the passing mention of *Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, in which the Court of Appeal affirmed the summary judgment for hospital after the decedent filed a case under the Act. There, the decedent had spent approximately two days in their care. *Id*. at 1132. Within hours of admission, decedent had been injured by a nurse performing a MRI while ECG pads were attached. *Id*. at 1116, 1129. The court of appeal found that no custodial relationship existed because the nature of the injury received did not turn on deprivation of "goods or services necessary to meet the elder or dependent adult's basic needs." *Id.* at 1136. Accordingly, the facts were not sufficient to state a custodial relationship.

Here, the Decedent was admitted by Rideout around a month before her discharge. FAC ¶ 15. She was admitted with a care plan that required pressure ulcer prevention. FAC ¶ 86. Despite this, Decedent allegedly developed her pressure ulcer while under Rideout's care, leading to her eventual death. FAC ¶ 34. It continued to worsen during the duration of her stay. FAC ¶ 35. Part of the alleged cause of the pressure sores is that Decedent was left in soiled diapers for hours "daily". FAC ¶ 17. Pressure sores are not typical in able-bodied adults for precisely this reason. Their causes can be avoided by tasks "that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance." *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 158. Given that Decedent was admitted to Rideout for a month, and that she clearly needed basic assistance with diapering and toileting, there is sufficient allegations of a custodial relationship to support an elder abuse cause of action. Plaintiff has sufficiently stated

conduct which is capable of meeting the definition of "neglect" under the Act. WIC § 15610.57. Accordingly, the first cause of action is adequately pled.

3. Conduct Under WIC § 15657

While Rideout avers that the FAC fails to state sufficient facts to be entitled to enhanced remedies, this is an argument properly applied (and addressed) in a motion to strike. Demurrers are targeted to causes of action, not remedies. *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1562. Therefore, the Court addresses the allegations of recklessness, oppression, fraud or malice below.

The demurrer to the first cause of action is therefore OVERRULED.

The wrongful death cause of action relies on the elder abuse cause of action. Given that the first cause of action has survived, so too does the third cause of action for wrongful death due to elder neglect. The demurrer to the third cause of action is OVERRULED.

B. Motion to Strike

Rideout's contentions within the motion to strike rely on many of the contentions already rejected above. The remaining issue raised is whether the conduct alleged by Plaintiff rises to the level of recklessness required to prevail on punitive damages under WIC § 15657, and Civ. Code § 3294.

Under Civ. Code § 3294 (a), drawn into application by *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, Plaintiff must plead facts "essentially equivalent to conduct that would support recovery of punitive damages." *Id*. at 789. Plaintiffs must plead facts that support a finding of "recklessness, oppression, fraud, or malice". WIC § 15657. Additionally, Plaintiff must adequately allege facts which constitute abuse under WIC § 15610.07. "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur." *Delaney, supra,* 20 Cal.4th at 31. Not only this, the conduct alleged must not be medical in nature, instead relating to "attending to the basic needs and comforts of elderly or dependent adults". *Delaney, supra,* 20 Cal.4th at 34. As the Court has already addressed above,

Plaintiff avers that the Decedent was allowed to sit in diapers filled with waste matter for hours at a time, resulting in development of the pressure sores. Plaintiff also avers that the management of Rideout was aware of the neglectful conduct. FAC ¶ 17. Plaintiff alleges that Management knew that Decedent had doctor's orders for pressure ulcer prevention, and failed to provide that basic care due to imposition of staffing and training policies designed to lower costs and maximize profits. FAC ¶ 89-91, 105. This is sufficient to plead recklessness and corporate knowledge to support punitive damages under WIC 15657(c). *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1349.

The motion to strike is DENIED.

III. Conclusion

Based on the foregoing, the Motion to Strike is **DENIED**

The Demurrer is **OVERRULED**.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

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