TENTATIVE RULINGS
LAW & MOTION CALENDAR
October 29, 2025 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

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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. 24CV01989, 505 SR Ave. LLC v. Anderson

Plaintiff 505 SR AVE LLC ("Plaintiff") filed the presently operative first amended complaint ("FAC") against defendants Eric Gustav Anderson ("Anderson"), Urban Green Foods, LLC ("Urban", together with Anderson "Defendants"), and Does 1-50.

Defendants' Counsel, the firm Moscone Emblidge & Rubens LLP, seeks to be relieved as counsel for Defendants. This motion raises several novel issues. Counsel provides no factual basis for withdrawal in their declaration attached to the motion, merely poses on the basis of notice to obtain other counsel, and citations to particular provisions of the Rules of Professional Conduct. The Court is forced to infer that the client has run afoul of Rule of Professional Conduct 1.16(b)(4) and (5), but no express statement is provided to this effect in the motion. Counsel's subsequent ex parte to shorten time on this motion includes a declaration confirming these facts (and the particular breach of the retainer agreement), but there is no evidence the ex parte was served to the client. As such, Defendants are left in a disadvantaged if they were inclined to respond to the request to withdraw.

Second, Counsel has sponsored a pro hac vice applicant on Defendants' behalf. Conceivably, counsel cannot appear absent local counsel, and so Counsel's withdrawal would otherwise void the previous Pro Hac Vice order. Despite this, there is no proof of service indicating that Pro Hac Vice counsel has any notice of this motion. This is also a significant issue.

The Court notes that the Declaration in Support states that Defendants were served electronically at their last known email address. However, that occurred before the clerk's office assigned the hearing date. There is no subsequent proof of service in the file that any affected party was served with actual notice of the hearing date. Plaintiff only has notice of the date because they were served with the ex parte. Defendants (nor Pro Hac Vice counsel) are reflected on the proof of service for the ex parte to shorten time. It appears that Defendants were not served with the hearing date, and therefore are not capable of either appearing or opposing the motion.

Therefore, Counsel's motion to be relieved as counsel for Defendants, is **DENIED without prejudice**.

2. 24CV06070, Dwyer v. Sonoma County Sheriff's Office

Plaintiff Jerry Devin Patrick Dwyer ("Plaintiff") filed the currently operative "First Amended Complaint" (the "Complaint") in this action against defendants the Sonoma County Sheriff's Office ("Defendant"), and Does 1-14, for multiple alleged causes of action arising out of alleged violations of Plaintiff's rights during his incarceration in the County of Sonoma.

This matter is on calendar for the demurrers by Defendant to each cause of action the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. Defendant's Demurrer is **SUSTAINED with leave to amend as to the entire Complaint.** Nonetheless, the Court will still make this matter **APPEARANCES REQUIRED** as Plaintiff has communicated an intent to appear remotely at the hearing.

I. Legal Standards

A. General 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). "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. 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.

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.

B. Government Claims Act

All claims for money or damages against a public entity must be presented in accordance with the provisions of the Government Code, unless it is subject to a specific exception. Gov. Code, § 905. These requirements are part of the "Government Claims Act" (the "Act"). See Gov. Code § 810, *et seq*. "The (Act) sets forth the general rule of immunity for public entities, abolishing all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, or if a statute ... is found declaring them to be liable." *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243, 1254 (internal quotations omitted).

C. Res Judicata

The prerequisite elements for applying res judicata to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgement on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.

The doctrine of res judicata prohibits a second suit between the same parties on the same cause of action. *Id*. at 788. In this context, the term "cause of action" is defined in terms of a primary right and a breach of the corresponding duty; the primary right and the breach together constitute the cause of action. *Ibid*. When two actions involving the same parties address the same harm, they generally involve the same primary right. *Id.* at 798. If two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery. *Eichman v. Fotomat Corp.* (1983) 147 Cal.App.3d 1170, 1174. If the same primary right is involved in two actions, judgment in the first bars consideration not only of all matters actually raised in the first suit but also all matters which could have been raised. *Ibid*. In other words, "The cause of action is the right to obtain

redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." *See Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 860. "If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it **could** have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202 (original emphasis).

D. Incarceration and Applicable Regulations

Under both state and federal law, a prisoner must exhaust available administrative remedies before seeking judicial relief. … The exhaustion requirement is jurisdictional: a court cannot hear a case before a litigant exhausts administrative remedies." *Wright v. State of California* (2004) 122 Cal.App.4th 659, 664–665. "Under a regulation promulgated by the Department, a prison inmate may appeal any departmental decision, action, condition, or policy adversely affecting the inmate's welfare. (§ 3084.1, subd. (a); Pen.Code, § 5058; *Muszalski*, supra, 52 Cal.App.3d at pp. 506–508, 125 Cal.Rptr. 286; *Thompson*, supra, 52 Cal.App.3d at p. 783, 125 Cal.Rptr. 261.)" *Id*. at 666.

"California courts have consistently employed federal decisions in assessing charges of unlawful conditions of confinement." *Inmates of the Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850, 859. Retaliation against a prisoner for exercising their rights is prohibited under the California Code of Regulations. Cal. Code Regs., tit. 15, § 3481(d). "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights,[11] and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson* (9th Cir. 2005) 408 F.3d 559, 567–568.

Incarcerated individuals have a protected liberty interest in disciplinary actions undertaken during incarceration, and there are accordingly due process requirements. *Wolff v. McDonnell* (1974) 418 U.S. 539, 564. However, once adjudicated, courts have incredibly limited power of review as to the findings of the administrative proceeding when the determination does not relate to custody credits or other protected due process rights. *In re Johnson* (2009) 176 Cal.App.4th 290, 298. When charges are pending against an incarcerated individual for rules violations, there are regulations governing the time in which the facility must act on those charges. Cal. Code Regs., tit. 15, § 1081 (b). "4. A charge(s) shall be acted on no later than 72 hours after an incarcerated person has been informed of the charge(s) in writing." Cal. Code Regs., tit. 15, § 1081(b)(4).

The canteen at prisons or other institutions under the Department of Corrections and Rehabilitation may not have articles offered for sale exceeding a 35% markup. Pen. Code, § 5005 (a). County detention facilities are required to develop policies allowing incarcerated initials at least 10 hours over a period of seven days, including time for exercise and recreation.

Cal. Code Regs., tit. 15, § 1065. "Double edged safety razors, electric razors, and other shaving instruments capable of breaking the skin, when shared among incarcerated people, must be disinfected between individual uses by the method prescribed by the State Board of Barbering and Cosmetology in Sections 979 and 980, Division 9, Title 16, California Code of Regulations." Cal. Code Regs., tit. 15, § 1265.

II. Procedural and Evidentiary Issues

Defendants request Judicial Notice of court filings both within Plaintiff's criminal case in this county, and those filings in the case filed by Plaintiff in the United States District Court Northern District of California.

Judicial notice is GRANTED as to the existence of the documents and their legal function. Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148.

On Reply, Defendants ask the Court to take judicial notice of more filings within the criminal cases, and the docket in one case. These are all appropriate with the proviso provided above. They are also GRANTED. However, in a footnote of the Reply itself. Defendant asks that the Court take judicial notice of the Plaintiff's status on the California Department of Corrections website. See Reply, pg. 2, fn. 2. This is neither contained in the separate request for judicial notice, nor does it appear to be a matter appropriate for judicial notice, in spite of Defendant's contention that it is not "reasonably subject to dispute". That request for judicial notice is DENIED.

III. Analysis

The Court has already sustained on demurrer to the Complaint with leave to amend. Plaintiff claims one cause of action for intentional tort based on various alleged violations of regulations under Title 15 of the California Code of Regulations ("15 CCR"). Plaintiff alleges violations of 15 CCR §§ 3481(d), 1065, 1081, 1200, 1206, 1265, 16 CCR 980, Health and Safety Code § 120290, Penal Code § 5005, and U.S. Const. amend. XIV. Plaintiff predicates all these factual issues under a single cause of action for "intentional tort". Defendant demurs to each of these averring that they have already been adjudicated against Plaintiff in the criminal and federal civil courts, that the claims are not viable predicated on governmental immunities, and that the claims are not adequately pled.

A. Government Claims Act

Defendant generally avers that Plaintiff cannot prevail on his monetary claims because they are otherwise immune under the Government Claims Act. This is not generally persuasive for two reasons. First, Defendant may be immune from "liability", Defendant concedes that injunctive relief is among Plaintiff's requests remedies. If Defendant believes that the damages requested

are inappropriate, a demurrer is not the vehicle by which to attack such contentions. Demurrers go to the sufficiency of a cause of action. Nor does the Government Claims Act preclude liability for non-torts, such as constitutional violations. As such, the Court proceeds to the sufficiency of the claims.

B. Res Judicata

Defendant also argues that Plaintiff has raised substantially similar claims as part of both a federal civil case (United States District Court Northern District of California, Case No. 24CV07010, the "Federal Case") and a writ of habeas corpus in his criminal matters (Sonoma County Superior Court Case Nos. SCR-758044-1, 24CV03186, and SCR-75677-1, the "Criminal Cases"). These claims have each been rejected by the other courts.

To the Criminal Cases, Defendant offers no authority showing that the court's order on habeas motions is a judgment as would be required to consider a matter res judicata. Res judicata is not a "finding of fact", but relates to Plaintiff's opportunity to raise and have claims adjudicated by the court on their merits.

The same analysis does not apply to the Federal Case, which took the form of a Civil 42 USC § 1983 claim predicated on what appears to be largely the same facts raised here. However, Defendant only provides the Order of Dismissal with Leave to Amend, which is *not* a judgment as would be required for res judicata. See, e.g., *Yourish v. California Amplifier* (9th Cir. 1999) 191 F.3d 983, 986 (subsequent order under Federal Rule of Civil Procedure 41(b) required after dismissal with leave to amend); *Applied Underwriters, Inc. v. Lichtenegger* (9th Cir. 2019) 913 F.3d 884, 892, fn. 5 (dismissal with leave to amend is not a final order); *contra Franceschi v. Franchise Tax Bd.* (2016) 1 Cal.App.5th 247, 259 (a Rule 12 (b)(6) dismissal with prejudice is a judgment on the merits for the purpose of res judicata). Given that there is no indication in the record that the Federal Case is finally adjudicated, the Court cannot rely on it for the purposes of res judicata.

C. Failure to Exhaust Administrative Remedies

Plaintiff pleads no exhaustion of administrative remedies anywhere within the Complaint. This is a necessary element of claims by prisoners under both state and federal law. *Wright v. State of California* (2004) 122 Cal.App.4th 659, 665–666. The failure to do so divests this Court of jurisdiction. *Ibid*. On this basis, the Court cannot interfere in the interactions between Plaintiff and an administrative agency.

The demurrer is SUSTAINED with leave to amend on this basis as to all claims. Regardless, analysis of the merits appears appropriate to avoid unnecessary and insufficient amendments.

D. Defendant's Demurrer to the Substance of Plaintiff's Claims

As an initial matter, as was noted by Defendant, Plaintiff's repeated assertion of violations of 15 CFR's sections are not intended to create private rights of action. *In re Johnson* (2009) 176 Cal.App.4th 290, 298. However, this appears to be an incomplete assessment. Some regulation

violations likely are actionable based on the applicable cases. See *Inmates of the Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850, 861. The analysis proceeds to each alleged violation of regulations.

1. Due Process

Plaintiff pleads that Defendants have failed to provide him a timely hearing for a major rules violation. Neither party addresses what the remedy for violations of 15 CCR § 1081 are, and the case law on the regulation is scant. Plaintiff avers that any charges were required to be "acted on" within 72 hours of Plaintiff being informed of the charges in writing. Plaintiff alleges that he was given written notice of the charges on August 15, 2024, and a hearing has still not yet occurred. The term "acted" remains entirely undefined within the regulation. A hearing *cannot* be had sooner than 24 hours after Plaintiff was informed about them in writing, *and* the hearing may be continued "through a written waiver by the incarcerated person, or for good cause". *Id*. at subd. (2). Given this other provision, the term "acted" appears to contemplate a speedy hearing. Plaintiff's allegation that there has been no hearing in the seven months between his notice of major violation and the filing of the currently operative Complaint, there facially appears to be a rules violation.

However, Plaintiff is not specific regarding what the resultant discipline was from these alleged rules violation. While it seems clear that Plaintiff has alleged a violation of 15 CCR § 1081, it is not clear that the Court has the power to *review* that process if it does not implicate Plaintiff's due process rights. *In re Johnson* (2009) 176 Cal.App.4th 290, 297. Accordingly, because Plaintiff has not pled facts sufficient to show the Court has the power to review this issue, Plaintiff has not pled facts sufficient to support a cause of action thereon.

2. Retaliation Under 15 CCR § 3481

Defendant argues that retaliation did not occur because Plaintiff has not pled a protected First Amendment activity to which retaliation occurred. This is persuasive. Plaintiff has no protectable interest in being held specifically at the Sonoma County Main Adult Detention Facility, and therefore his refusal to be transferred is not constitutionally protected. *Meachum v. Fano* (1976) 427 U.S. 215, 228; contra, *Pratt v. Rowland* (9th Cir. 1995) 65 F.3d 802, 806 (where transfer *is* the retaliatory conduct for *other* First Amendment protected conduct, it met the standard for a retaliation claim). Since Plaintiff has not pled the predicate of protected activity, he has not pled a necessary element of retaliation. The claim for retaliation is inadequately pled.

3. 15 CCR § 1065

As to allegations that Plaintiff has not been entitled to sufficient exercise and recreation time, Defendant argues that the prison is entitled to substantial deference in the necessity of the restrictions which occurred. In support, Defendant's repeatedly rely on principles of law that rely on evidentiary showings. Citing to Penal Code § 2600, Defendant argues that Plaintiff may, as an incarcerated individual, may be "deprived of rights as is necessary to provide for the reasonable security of the institution in which he is confined and for the reasonable protection of the public". Demurrer, pg. 14:16-17. The code section provides, in relevant part: "A person

sentenced to imprisonment in a state prison or to imprisonment pursuant to subdivision (h) of Section 1170 may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests." Pen. Code, § 2600 (a). Nothing here indicates that such deprivation of rights is capable of being determined as a matter of law without some indication of propriety. Plaintiff's Complaint makes no such concession. The code section makes clear that it is a *constraint* on the deprivation of rights, not a grant of power to deprive rights. Defendant must show that any deprivation is "reasonably related to legitimate penological interests". Defendant does not indicate what facts within the Complaint would meet this standard as a matter of law. Defendant's cited caselaw (see, e.g., *Noble v. Adams* (9th Cir. 2011) 646 F.3d 1138, 1141) relate to findings based on evidence, and not dismissal at the pleading stage. Accordingly,

However, for the purposes of demurrer, particularly against a public entity, the claims made must plead facts, not conclusions. Plaintiff cites to 15 CCR § 1065 in claiming that he is entitled to 10 or more hours of exercise time over the course of a week. Plaintiff says that this did not occur between July 24, 2024, and October 9, 2024. This fails for two reasons. First, Plaintiff claims a period of time that the violations occurred, and that it occurred "multiple" times in that period. It is not clear from the pleading what weeks during that period the violations occurred and, or how many times the violations occurred. This brings the matter to the second point. There does not appear to be any case opining that monetary damages are appropriate for 15 CCR § 1065, and Plaintiff does not allege that these violations are ongoing (indeed, more than a year ago at this point) such that injunctive relief appears appropriate. The claim appears mooted by the very facts included in Plaintiff's Complaint.

4. Violations of 15 CCR § 1200

Plaintiff claims that Defendant has failed to provide necessary medical care for a bacterial infection, "Ureaplasma Parvum". Defendant argues that it clearly has immunity from any claim for damages as to this claim, as "Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody". Gov. Code, § 845.6. Plaintiff's allegations do not show that he initially expressed either symptoms of the condition for which he claimed, nor was he diagnosed followed by a failure to provide care. Instead, Plaintiff's request for care was entirely based on his wife's diagnosis. However, afterward, Plaintiff complained of "persistent itching of the penis and pain urinating." Complaint, pg. 5. Plaintiff claims that Defendant failed to provide testing or treatment as a result.[1] Complaint, pg. 5. Defendant's cited case, *Wright v. State of California* (2004) 122 Cal.App.4th 659, 672, is helpful, but not dispositive. "Liability under section 845.6 is limited to serious and obvious medical conditions requiring immediate care." *Watson v. State of California* (1993) 21 Cal.App.4th 836, 841; see also *Kinney v. County of Contra Costa* (1970) 8

[1] At demurrer, the Court does not consider the factual findings of the court in the Criminal Cases that Plaintiff was provided with medical care, and simply did not like the conclusions drawn by the healthcare professionals. It does not impact the disposition of the demurrer as presented, however it does not bode well for Plaintiff's claims in the long term. See *Castaneda v. Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1074 (liability under Gov. Code § 845.6 is discharged once the necessary medical help is summoned, regardless of the result afterward).

Cal.App.3d 761, 770 (complaints of untreated headaches not sufficient to be a serious medical condition under the statute). Weighing Plaintiff's complaints of itching and pain urinating against those facts described in *Kinney* (which was considered post-trial) appears to be a matter not well determined at the pleadings. Similarly, this does not necessarily foreclose injunctive relief. Accordingly, this does not appear to form a basis for sustaining the demurrer at this time.

5. 15 CCR § 1265

Plaintiff has adequately pled factual violations of 15 CCR § 1265. Subject to the constraints already addressed, Plaintiff may be able to prevail on the basis of injunctive relief if he can correct the above deficiencies that apply to the Complaint as a whole.

6. Penal Code § 5005

Plaintiff's claims for price gouging fails on several counts, but most clearly, Plaintiff fails to show the applicability of Penal Code § 5005 to local county facilities, as Penal Code § 5005 only applies to prisons and those facilities under the Department of Corrections and Rehabilitation, and Defendant is under the Board of State and Community Corrections. Accordingly, Penal Code § 5005 has no apparent application here.

IV. Conclusion

Based on the foregoing, the Defendant's Demurrer is **SUSTAINED with leave to amend as to the entire complaint. Plaintiff shall file an amended complaint within 30 days of notice of this order.**

The County'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).

3. 24CV06954, Taka v. R.A.K. Plumbing

Plaintiffs Rushan Taka ("Plaintiff") a filed the first amended complaint ("FAC") in this action against defendants Heyer Realty ("Heyer"), Lawrence Cristani ("Cristani"), P&L Property Management ("P&L", together with Cristani, "Landlord Defendants"), R.A.K. Plumbing (RAK, together with Heyer, Cristani, and P&L, "Defendants"), and Does 2-10 for two causes of action for premises liability and general negligence.

This matter is on calendar for motions by Landlord Defendants for summary judgment or, in the alternative, adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Landlord Defendants' motion for summary judgment is **DENIED** due to the presence of triable issues of material fact.

I. Evidentiary and Procedural Issues

First, as to the motion, Burbank requests summary judgment, or in the alternative summary adjudication. Burbank fails to provide many of the requirements for summary adjudication. Cal. Rule of Court Rule 3.1350 (the specific causes to be adjudicated must be stated in the notice of

motion and the separate statement.). Therefore, any request for summary adjudication is DENIED, and the Court analyzes the instant motion as one for summary judgment.

Plaintiff interposes various objections in opposition. Objections 1-4 are OVERRULED. Objection 5 is SUSTAINED, as the contention offered is a legal conclusion and not a "fact". The Court does not accept the representation that the hole was "open and obvious" as a legal conclusion, but does review the evidence to determine whether there is support for that legal proposition.

As to Plaintiff's Objection 6 to Landlord Defendants' Exhibit D, the evidence was submitted with the moving papers, but due to a clerical error, the foundation was not submitted with the moving papers. The photograph itself was allegedly produced by Plaintiff. This is not "new" evidence and given that Plaintiff was given notice of the evidence and its foundation due to his own production of that document in discovery. Objection 6 is OVERRULED.

Landlord Defendants proffer other entirely new evidence on reply in the form of Plaintiff's deposition. Defendants burden, as the party moving for summary judgment, is they must produce evidence sufficient to prove Plaintiff cannot prevail either due to an affirmative defense or an element of the cause of action not capable of being proven. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861. If Defendants make their initial burden of production, only then does the burden shift to Plaintiff to produce evidence sufficient to raise triable issues of fact. *Ibid*. at 861-862. Defendants are not afforded an opportunity to further prove their case and rebut Plaintiff's opposition on reply. See CCP § 437c(b)(4) ("The reply shall not include any new evidentiary matter."). Landlord Defendants' new evidence raised on reply are disregarded.

In turn, Plaintiff's Opposition contains references to Plaintiff's Declaration, which is not contained within the Court's file. The Court should not consider any separate statement contentions which are contained exclusively in evidence which was not submitted to the Court. On this basis, the Court does not weigh the facts in Plaintiff's Separate Statement in Opposition which exclusively rely on the evidence of Plaintiff's Declaration.

II. Underlying Facts

Plaintiff alleges that in the evening of March 2, 2023, at 4752 Harrow Court, Santa Rosa, CA (the "Property"), Plaintiff fell due to a hole. Landlord Defendants' Separate Statement of Undisputed Facts, Undisputed Material Fact ("LDUMF") ¶ 1. Cristani was the owner of the Property at that time. LDUMF ¶ 2. At that time, P&L was hired by Cristani to manage the Property. LDUMF ¶ 3. Plaintiff resided at the Property at the time of his fall. LDUMF ¶ 9. Landlord Defendants informed Plaintiff and the other tenants that plumbing work would be performed at their request and for their benefit. LDUMF ¶ 4. A hole was dug in the yard for this purpose. LDUMF ¶ 5. Plaintiff was aware of the hole two days before his fall. LDUMF ¶ 6. The hole was not filled on or covered over the two days between Plaintiff's awareness of the hole's existence and his fall. LDUMF ¶ 7.

Plaintiff fell at approximately 8:00 pm, and it was dark outside at the time. Plaintiff's Opposing Undisputed Material Facts ("POUMF"), ¶ 1. The concrete pathway to Plaintiff's residence was

littered with construction items and debris. POUMF ¶ 2. In order to avoid the obstructed path, Plaintiff attempted to walk around on the dirt near the path. POUMF ¶ 3. Plaintiff fell into the hole next to the concrete path. *Ibid*. The hole was 37.2 inches by 33.2 inches in length and width. POUMF ¶ 10. Lighting in the area was significantly below that required for visual detection of an unmarked hazard at the time of the incident. POUMF ¶ 11-12. Leaving the hole uncovered violated numerous applicable industry safety standards. POUMF ¶ 13.

III. The Burdens and Standards on Summary Judgment and Adjudication

A. Generally

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra,* 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"[W]hen discovery has produced an admission or concession on the part of the party opposing summary judgment which demonstrates that there is no factual issue to be tried, certain of those stern requirements applicable in a normal case are relaxed or altered in their operation." *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21. However, the *D'Amico* rule "does not apply where there is a reasonable explanation for the discrepancy or countenance ignoring other credible evidence that contradicts or explains that party's answers or otherwise demonstrates

there are genuine issues of factual dispute." *Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 658 (internal quotations omitted).

B. Negligence

"'[P]roperty owners are liable for injuries on land they own, possess, or control.' But … the phrase 'own, possess, *or* control' is stated in the alternative. A defendant need not own, possess and control property in order to be held liable; control alone is sufficient." *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1162 (original italics, internal citations omitted). The law considers that one who is in possession, occupation, *or* control of the land is the one in the best position to discover a danger or control the activities on the premises. CC § 1714(a).

"The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158; see also *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205; Civ. Code, § 1714(a). Specifically with respect to "premises liability," it is well-established that a landowner is not an insurer of the safety of all persons on his property. *Blodgett v. B.H. Dyas Co.* (1935) 4 Cal.2d 511, 512. Thus, "[a]n initial and essential element of recovery for premises liability ... is proof a dangerous condition existed." *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566. In addition, a plaintiff suing for premises liability has the burden of proving that the owner had actual or constructive knowledge of a dangerous condition in time to correct it, or that the owner was "able by the exercise of ordinary care to discover the condition." *Ortega, supra*, 26 Cal.4th at 1206. Causation is typically a question of fact to be determined by a jury, unless the facts are so undisputed as to make causation a determination as a matter of law. *Id.* at 1205. Similarly, "dueling expert opinions create[ ] a factual dispute not appropriately resolved by way of summary judgment." *Hernandez v. KWPH Enterprises* (2004) 116 Cal.App.4th 170, 176 *citing Kockelman v. Segal* (1998) 61 Cal.App.4th 491, 505.

"Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition." *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 446-447 ("*Jacobs*"), quoting *Krongos v. Pacific Gas & Electric Co.* (1992) 7 Cal.App.4th 387, 393. "In that situation, owners and possessors of land are entitled to assume others will 'perceive the obvious" and take action to avoid the dangerous condition.'" *Ibid*, quoting *Haberlin v. Peninsula Celebration Assn.* (1957) 156 Cal.App.2d 404, 408. However, "[a]n exception to this general rule exists when 'it is foreseeable that the danger may cause injury despite the fact that it is obvious (*e.g.*, when necessity requires persons to encounter it).'" *Ibid*, quoting *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 122. "In other words, while the obviousness of the condition and its dangerousness may obviate the landowner's duty to remedy or warn of the condition in some situations, such obviousness will not negate a duty of care when it is foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition." *Id*. at 447. Whether or not a condition is open and obvious is an issue of fact for a jury, and not properly an issue for summary judgment unless reasonable minds could not differ on the matter. *Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 24-26. Similarly, issues of comparative fault are issues of fact inappropriate for summary judgment. *Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1233.

IV. Analysis

Landlord Defendants argue that Plaintiff cannot prevail on the action for premises liability and general negligence because: 1) Landlord Defendants owed no duty because the injury was not foreseeable; and 2) the condition was open and obvious. Plaintiff provides evidence in response, averring that there are triable issues of material fact as to Landlord Defendants' motion.

A. Landlord Defendants fail to Shift Their Burden

Landlord Defendants' burden in moving for summary judgment is to produce evidence which amounts to a prima facie showing sufficient to display a lack of triable issue of fact. While Landlord Defendants' asserts the open and obvious nature of the hole as an argument separate from their general duty arguments, the open and obvious nature of a condition is an element of the foreseeable harm, and therefore directly determines the bounds of Landlord Defendants' duty. While duty is generally capable of being determined as a matter of law (*J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 396), whether a condition is open and obvious is a question generally best determined by a trier of fact. *Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 24-26.

As to whether a duty is owed, Landlord Defendants fail to appreciate the maxims of the law surrounding negligence claims. "Where an act is one which a reasonable man would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or of the particular manner in which it is done." *Crane v. Smith* (1943) 23 Cal.2d 288, 298; see also *United States v. Carroll Towing Co.* (2d Cir. 1947) 159 F.2d 169, 173 ("(T)he owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) The probability that she will break away; (2) the gravity of the resulting injury, if she does; (3) the burden of adequate precautions."). Landlord Defendants repeat this principle as applied to premises liability, citing *Rowland v. Christian* (1968) 69 Cal.2d 108, 119 (*superseded by statute on other grounds*), averring that the burden of a property owner is to act as a reasonable person in view of the probability of injury to others. This was restated in a more comprehensive manner by subsequent courts.

> "The question is whether in the management of his property, the possessor of land has acted as a reasonable person under all the circumstances. The likelihood of injury to plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor's degree of control over the risk-creating condition are among the factors to be considered by the trier of fact in evaluating the reasonableness of a defendant's conduct.

Sprecher v. Adamson Companies (1981) 30 Cal.3d 358, 372.

Landlord Defendants conclusionary aver that they owed no duty, but on the plain facts alleged, a duty is clearly owed. Landlord Defendants offer no evidence rebutting the duty alleged beyond that evidence which argues that the condition is open and obvious. Landlord Defendants offer

evidence to show that Plaintiff knew of the hole two days before he fell. Landlord Defendants contend that Plaintiff was not exercising reasonable care in carrying groceries from his car to his residence when he knew of the hole's existence, but issues of comparative fault are not appropriate for summary adjudication. *Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1233. The question Landlord Defendants may raise is not whether Plaintiff was also negligent, but whether he cannot prove their own negligence. Landlord Defendants' contention that leaving an uncovered hole mere inches from a walkway which was impeded with other debris is not persuasive that the probability of Plaintiff's injuries was not foreseeable. Landlord Defendants' duty extended to Plaintiff to undertake "the burden of reducing or avoiding the risk", and a mere warning does not appear sufficient to abrogate the risk imposed in this instance.

Landlord Defendants simply proffer the conclusion that the hole was "open and obvious", none of which manages to address important facts raised by the Complaint. LDUMF ¶ 7. Landlord Defendants cite generally to their evidence without page numbers or citations therein, with only scant highlighting provided. This is generally insufficient. Cal. Rule of Court, Rule 3.1350(d)(3) ("Citation to the evidence in support of each material fact must include reference to the exhibit, title, **page, and line numbers.**") As far as the Court can determine based on a thorough review of Landlord Defendant's evidence, none of the evidence provided by Landlord Defendants avers the sufficiency of the lighting conditions were at the time of the accident, to say nothing of the portions highlighted. Landlord Defendants are required to present sufficient evidence to constitute a preponderance, but the Court must "strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64. Landlord Defendants generally fail to provide any direct evidence that lighting conditions were sufficient at the time of the incident. Accordingly, whether the condition was open and obvious is reviewed accordingly.

The picture provided by Landlord Defendants does not dispose of triable issues of fact. See Landlord Defendants' Exhibit D in Support. Depicted in the image is someone facing the trunk of a car outside, with what is ostensibly the hole at issue nearby. It is dark outside, but there is additional lighting apparent from the image. The hole is surrounded on one side by gravel (closest to the car), on another by the walkway, with the other two sides demarked by wood and white plastic. There is also white plastic apparent on the sidewalk itself, narrowing the available walkway. Defendants aver that Plaintiff should have seen the white plastic near the hole, remembered exactly where the hole was and navigated around it regardless of whatever other task he was performing. In reviewing the evidence in the light most favorable to Plaintiff, the state of the sidewalk sufficiently "forces" Plaintiff to encounter the dangerous condition and that the defense of "open and obvious" is clearly triable on Landlord Defendants' own evidence. See, e.g., *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 122. This is to say nothing of the nature of Plaintiff's allegations, which are specific that Plaintiff fell into the hole "(i)n the evening when it was dark". Complaint, pg. 5; see also LDUMF ¶ 1. This is further supported by more exhibits presented by Landlord Defendants themselves, as they submit Plaintiff's special interrogatories. Plaintiff's answer to Special Interrogatory ¶ 7 describes almost the precise facts to which the picture lends itself. Defendant's Exhibit C, pg. 8:7-24. Plaintiff saw the obstructions which had been left on the paved walkway of the property. *Ibid*. He then fell in the hole when attempting to navigate around the debris. *Ibid*. In this manner, the argument of open and obvious

condition fails to shift the burden. There are triable issues of fact apparent when considering only the evidence submitted by Landlord Defendants.

Despite this, the Court provides analysis as to Plaintiff's opposition, and whether they meet the burdens had they been shifted.

B. Plaintiff Would Meet any Shifted Burden as to Each Issue

Assuming, *arguendo*, that Landlord Defendants had shifted the burden to the Plaintiff, Plaintiff produced articulate, effective evidence to meet any shifted burden. As an initial matter, Plaintiff presents evidence in the form of expert testimony regarding the standard of care, lighting conditions, possible abrogation measures, and whether the condition was open and obvious. While the standard of care relates mostly to whether a duty was breached, not whether one exists, Plaintiff presents adequate evidence to show a triable issue of fact as to breach as an element (though one unraised by Landlord Defendants). Furthermore, the evidence of the cost to avoid the unsafe condition (see Moore Dec. ¶ 13) is particularly relevant to the basic concepts of duty owed to Plaintiff. The costs of elimination would be "minimal", involving the use of plywood as a temporary cover. Weighing the harm to Plaintiff alleged against the minimal costs, the Court is drawn back to the (persuasive) aphorism opined by Justice Learned Hand. See *United States v. Carroll Towing Co.* (2d Cir. 1947) 159 F.2d 169, 173. The work performed was not done in a manner which abrogated the risks of harm with minimal efforts to avoid the foreseeable harm. As is already analyzed above, the harm was sufficiently foreseeable that Landlord Defendants fail to shift their initial burden, but even were the burden shifted, Plaintiff's evidence sufficiently raises triable issues of fact regarding the foreseeability of the harm that summary judgment is inappropriate. Landlord Defendants owed Plaintiff a duty.

Plaintiff also presents evidence regarding the lighting present in the area at the time of the incident, and that it fell well below expected standards for seeing any allegedly "open and obvious" condition. Open and obvious nature of the condition is further shown by Plaintiff to be a matter best determined by a trier of fact. *Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 24-26.

Therefore, Plaintiff would have met any shifted burden as to each issue. Landlord Defendants' motion for summary judgment is **DENIED**.

V. Conclusion

Landlord Defendants motion for summary judgment is **DENIED**.

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).

4. 25CV03803, Molland v. Braswell

Plaintiff Barbara Molland ("Plaintiff"), both individually and as the personal representative of the estate of Michael Molland ("Decedent"), filed the currently operative first amended

complaint (the "FAC") in this action against the County of Sonoma (sued both as the County of Sonoma and the Sonoma County Sheriff's Department, hereinafter the "County"), Eddie Engram ("Engram"), Darin Braswell ("Braswell"), Miguel Garcia ("Garcia"), Micah Hope ("Hope" together with the County, Engram, Braswell, and Garcia, "Defendants"), and Does 1-50 with causes arising out of a criminal incident at Plaintiff and Decedent's home which resulted in Decedent's death. This matter is on calendar for the motion by Alfaro to stay this matter pending resolution of his criminal case arising from the same facts. The Motion is **DENIED**.

I. Underlying Facts

Plaintiff brought the instant action against Defendants resulting from the alleged murder of Decedent by Adrian Yanez ("Yanez"), a non-party to this case. Plaintiff alleges that Yanez was stopped by Braswell, Garcia and Hope as members of local law enforcement on November 16, 2024. Plaintiff alleges that Defendants had a duty to take additional actions when interacting with Yanez. Thereafter, per the FAC, Yanez was allowed to leave on his own recognizance, and subsequently broke into Plaintiff and Decedents home. Yanez allegedly killed Decedent at that time. Yanez was arrested for murder.

The County thereafter brought charges against Yanez in the Sonoma County criminal case 24CR09360 on November 18, 2024 (the "Criminal Case"). That case does not yet have a setting for trial. Plaintiff filed this case on June 2, 2025.

II. Procedural Issues

Plaintiff asks that the Court take judicial notice of three news articles. These are irrelevant and therefore not properly matters for judicial notice. *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Judicial notice is DENIED.

III. Governing Law

A party may assert the Fifth Amendment privilege in a civil action to request a stay in the civil action until disposition of the criminal matter. *Pacers, Inc. v. Sup. Ct.* (1984) 162 Cal.App.3d 686, 690 ("Where, as here, a defendant's silence is constitutionally guaranteed, the court should weigh the parties' competing interests with a view toward accommodating the interests of both parties, if possible. An order staying discovery until expiration of the criminal statute of limitations would allow real parties to prepare their lawsuit while alleviating petitioners' difficult choice between defending either the civil or criminal case.") In *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 324 the Ninth Circuit explained that "[t]he Constitution does not ordinarily *require* a stay of civil proceedings pending the outcome of criminal proceedings." (emphasis added) (internal citations omitted). It explained that the decision-maker should consider the competing interests involved, and generally consider the following factors: "(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of

persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation." *Id.* at 324-325.

The court has an interest in expeditiously processing matters, so "convenience of the courts is best served when motions to stay proceedings are discouraged." *Alpha Media Resort Investment Cases* (2019) 39 Cal.App.5th 1121, 1132, quoting *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 888. "Indeed, California courts are 'guided by the strong principle that any elapsed time other than that reasonably required for pleadings and discovery is unacceptable and should be eliminated." *Ibid*., quoting Cal. Stds. Jud. Admin. §2. "To that end, courts must control the pace of litigation, reduce delay, and maintain a current docket so as to enable the just, expeditious, and efficient resolution of cases." *Ibid.*; *Avant! Corp.*, supra, 79 Cal.App.4th at 887.

> There may be cases where the requirement that a criminal defendant participate in a civil action, at peril of being denied some portion of his worldly goods, violates concepts of elementary fairness in view of the defendant's position in an inter-related criminal prosecution. On the other hand, the fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both civil and criminal litigation. The overall interest of the courts that justice be done may very well require that the compensation and remedy due a civil plaintiff should not be delayed (and possibly denied). The court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side.

People v. Coleman (1975) 13 Cal.3d 867, 885, quoting *Gordon v. Federal Deposit Ins. Corp.* (D.C. Cir. 1970) 427 F.2d 578, 580.

However, "Where…a defendant's silence is constitutionally guaranteed, the court should weigh the parties' competing interests with a view toward accommodating the interests of both parties, if possible." *Pacers, Inc. v. Superior Ct.* (1984) 162 Cal.App.3d 686, 690. "This remedy is in accord with federal practice where it has been consistently held that when both civil and criminal proceedings arise out of the same or related transactions, an objecting party is generally entitled to a stay of discovery in the civil action until disposition of the criminal matter." *Ibid*.

IV. The Factors do not Justify a Stay

Defendants argue that a stay is not just proper but necessary given the pendency of the criminal case. Defendants say that the civil proceeding could prejudice the criminal proceeding, but more importantly that the Criminal Case will prevent Defendants from obtaining necessary discovery from Yanez, due to his Fifth Amendment rights against self-incrimination. Plaintiff has filed an opposition.

In their motion, Defendants repeatedly aver that they are not asking for an "indefinite" stay, only while "the criminal case is still ongoing". Memorandum in Support, Conclusion pg. 11:20-21. Defendants' construal of "indefinite" is not persuasive. Indefinite is defined as "Not clearly known, expressed, or ascertainable; having no fixed and exact limits, dimensions, amounts, etc.;

vague and undefined" INDEFINITE, Black's Law Dictionary (12th ed. 2024). Defendants seek to set a condition on which this case would resume, but given that the criminal case is not currently set for trial, even if this matter were immediately resumed thereafter, that date could be far in the future. The time between now and then is not definite. The stay requested is of an indefinite duration. This problem is further compounded by the inexact terms offered. Defendants offer no definition of "ongoing". They include reference to waiting until the criminal matter is "fully adjudicated and resolved". Memorandum in Support, Conclusion pg. 11:23. This still does not provide any precision on which Plaintiff or the Court can rely. Would any stay extend to any appeal of Yanez's murder charges? The requested stay has every possibility of lasting several years if that were the case, and the matter would not be "fully adjudicated and resolved" unless the judgment were final and unappealable.

On Reply, Defendants attempt to allay these reasonable conclusions with vague references to possible specified periods of time, "four to eight months". This is neither the nature of the relief they requested, nor something that they have provided Plaintiff with an opportunity to respond to, having raised it for the first time on Reply. The Court takes Defendants at their word that *any* progress on this case would be otherwise prejudicial. To suggest otherwise only shows that Defendants suffer no prejudice at all, since the criminal case has already had nearly a year to progress, but a new Information was filed on June 18, 2025. See Defendants' Exhibit F. There is nothing to indicate that a stay of a few months would do anything except prejudice Plaintiff. To that end, analysis proceeds to the merits of the motion as filed.

Plaintiff here has a strong interest in proceeding on the matter expeditiously. Plaintiff is 77 years of age, and therefore entitled to the accelerated procedures under CCP § 36. Plaintiff avers that if she were to file a motion under CCP § 36, the Court would be without discretion to issue any stay here. Plaintiff raises this hypothetical, but no such motion is before the Court. Despite this, the apparent interest of Plaintiff in adjudicating this matter speedily is clear and persuasive.

Defendants aver that they have significant prejudice in attempting to litigate this case during the pendency of the Criminal Case. While it is clear that there is some discovery which might otherwise be foreclosed due to Yanez's Fifth Amendment rights, Defendants fail to express that Yanez is the exclusive source by which such discovery may occur. It appears some prejudice is possible, but at this juncture the presented shortfall is too hypothetical to present any genuine prejudice. Defendants include the officers who were at the scene with Yanez at the time of the interaction before the murder. This is the interaction on which Plaintiff's allegations of negligence stem. Defendants express no possible theory for why Yanez's subsequent thoughts or conduct might be relevant to their negligence defenses, only that it *may* be relevant. Their claim of having to both prosecute the criminal matter and defend themselves here simultaneously is also unpersuasive. Defendants fail to show how a stay will have any effect on the costs of defending the civil lawsuit. Even if the criminal matter resolves, this case would merely be waiting on the other end. Resolving the criminal case would not have any effect on the civil case absent Yanez's acquittal, and even then would not be dispositive due to the differing evidentiary standards. The lawyers involved are entirely separate. Defendants' argument of a "war on two fronts" is not persuasive.

Nor does Defendants motion show that there is any possible efficiency to be garnered by staying the instant case. As is addressed above, the two matters are likely to proceed regardless of the outcome of either. The "effects" of the two cases proceeding simultaneously is only postured in theoretical terms, and as such fails to be persuasive that the factors are in favor of a stay.

The interests of third parties are also not apparently implicated in a prejudicial manner. Yanez, as a criminal defendant, might plead the Fifth to any civil discovery which comes No genuine impact on his rights is displayed.

Defendants also aver that the investigative file is protected, citing *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 768[2]. However, they fail to appreciate the significance of that holding. In that case, no charges had been brought at the time the civil case had been filed. *Id*. at 762. Plaintiffs there sought discovery of the investigative file *while the case remained unsolved*. *Ibid*. The court of appeal determined that the trial court's order of disclosure was error. *Id*. at 770. This was because of the prejudice which might color the yet incomplete criminal investigation. *Id*. at 768-769. And despite these facts, the Court of Appeal opined that the first remedy was **a discovery order** limited to staying the disclosure of the investigative file. *Id*. at 768. If it became necessary thereafter, staying the whole matter would be appropriate to avoid statutory dismissal of the civil case. *Ibid*. The power to avoid that issue lay entirely in the hands of plaintiffs. "At any time the Wus could request the trial court to lift a stay of the action and proceed to trial without discovery of the investigative file. Privilege issues certain to arise at trial would simply have to be dealt with as they might come up, including the knotty problem of the County attempting to rely on the investigative file in its defense." *Id*. at 768, fn. 3.

Here, there has been no request as to the criminal investigative file. Were that the question before us, *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759, provides some framework of when such discovery may be appropriate, or properly stayed. The request here attempts to stymy Plaintiff's ability to progress her case at all, predicated on a hypothetical discovery issue. This is not a basis to stay the entirety of the instant case.

There is no indication that the criminal trial will be "finally adjudicated and resolved" in any reasonable time frame. A stay, in the factual circumstances before the Court, is not proper. The motion is DENIED.

V. Conclusion

The Motion for stay is **DENIED**.

Plaintiff'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).

5. SCV-264530, Pelayo v. Utility Partners of America, LLC

[2] Defendants cite the case as *County of Orange v. Superior Court* (2000) 791 Cal.App.4th 759, 768. The erroneous citation appears typographical in nature.

Plaintiffs David Pelayo, Roberto Hernandez, Edmond Andre, Bryan Munoz and Brian Medeiros ("Plaintiffs"), filed the complaint in this action against Utility Partners of America, LLC ("UPA"), the City of Santa Rosa (the "City") and Does 1-250 arising out of alleged violations of employment law (the "Complaint"). This matter is on calendar for Plaintiff's motion to compel further responses to post-judgment production of documents ("RPODs") under Code of Civil Procedure ("CCP") § 2031.310. The motion is **GRANTED**.

I. Governing Law

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.

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030. "No pretrial discovery by the plaintiff shall be permitted with respect to (the profits the defendant has gained by virtue of the wrongful course of conduct of the nature and type shown by the evidence or the financial condition of the defendant) unless the court enters an order permitting such discovery pursuant to this subdivision. " Civ. Code, § 3295 (c). "Upon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and

opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294." CCP § 3295 (c).

B. Requests for Production of Documents

Regarding the RPODs, a demand for production may request access to "documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control" of another party. A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.* CCP § 2031.240(c)(1) provides that when asserting claims of privilege or attorney work product protection, the objecting party must provide "sufficient factual information" to enable other parties to evaluate the merits of the claim, "including, if necessary, a privilege log."

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must "set forth specific facts showing 'good cause' justifying the discovery sought by the demand." CCP §2031.310(b)(1). Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing 'good cause' simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. *See also Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98. Once good cause is shown, the burden shifts to the responding party to justify its objections. *See Coy*, 58 Cal.2d at 220–221. It is insufficient to claim that a requested document is within the possession of another person if the party has control over that document. *Clark v. Superior Court of State In and For San Mateo County* (1960) 177 Cal.App.2d 577, 579.

II. Analysis

The complaint in this case turns on class action allegations for violations of the Labor Code. Plaintiffs and UPA came to a settlement agreement on January 16, 2024. As part of the terms of the settlement agreement, UPA agreed to pay attorneys' fees to Plaintiffs as Plaintiffs were the prevailing party in the action. The Court heard Plaintiffs' motion for fees and awarded $1,817,328.23 in fees and costs. See Court's May 28, 2024 Order After Hearing. UPA timely

appealed the attorneys' fee order, but paid the particularized amount outlined in the settlement agreement. Plaintiffs served discovery to UPA seeking post-judgment RPODs on October 3, 2024. UPA served objection only responses on October 30, 2024. Plaintiffs thereafter filed the instant motion to compel on December 3, 2024. The Court continued the matter once during the pendency of the appeal, as the Plaintiffs' status as a judgment creditor was dependent on the attorneys' fees order, since the base settlement amount had been paid. Remittitur issued from the Court of Appeal on October 10, 2025, affirming the attorney's fees order. UPA has filed no opposition to this motion.

Good cause here is apparent on the face of the requests. As affirmed by the appeal, Plaintiffs are a judgment creditor for the attorneys' fees amounts ordered by the Court. Plaintiffs are entitled to discovery as a judgment creditor. "A judgment creditor may conduct discovery directly against the judgment debtor by means of a judgment debtor examination (§ 708.110), written interrogatories (§ 708.020), and requests for production of documents (§ 708.030)." *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 751–752. "The judgment creditor may demand that any judgment debtor produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made in the manner provided in [CCP § 2031.010, *et seq*.], if the demand requests information to aid in enforcement of the money judgment. The judgment debtor shall respond and comply with the demand in the manner and within the time provided by [CCP § 2031.010, *et seq*.]." CCP, § 708.030 (a). Plaintiffs' discovery requests go to the collectability of the judgment, seeking to assess UPA's corporate structure and financial condition. Good cause exists, and further responses are appropriate unless UPA can meet the shifted burden to show that their objections are justified.

There is no opposition on file to the motion. In an abundance of caution, the Court reviews UPA's objections for some facial validity. UPA's objections based on lack of relevance and discovery cutoff fails to appreciate the right of a judgment creditor already addressed above. They are without merit. Similarly, UPA's reliance on Civ. Code § 3295 is misplaced. Such discovery is only precluded "pretrial". *Ibid*. This matter is postjudgment, and so Civ. Code § 3295 has no application. The appeal stay has dissolved due to remittitur. As to UPA's right to privacy, privacy objections are inherently balancing tests which place the burden on the party asserting the objection to justify the asserted protection. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Given that there is no opposition, the privacy objection is not supported. The requested information is relevant to the collection of the judgment. Further responses are required.

The motion compel is GRANTED.

III. Conclusion

Plaintiffs' motion to compel further responses to RPODs is **GRANTED**. UPA will serve code compliant, objection-free responses within 30 days of notice of this order.

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).

6. SCV-270865, Doe 7017 v. Foppoli

Plaintiff Jane Doe 7017 ("Plaintiff"), filed the complaint in this action against the Dominic Foppoli ("Foppoli"), Two Kings Wine Company, LLC ("Two Kings", together with Foppoli, "Defendants") and Does 1-50 with causes arising out of the alleged sexual assault of Plaintiff by Foppoli (the "Complaint"). This matter is on calendar for the motion by Foppoli to compel further answers to questions in deposition against Plaintiff under Code of Civil Procedure ("CCP") § 2025.480. The Motion is **DENIED**.

I. Governing Law

A. Depositions – Compelling Further Answers

CCP § 2025.480(a), provides: "If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production." CCP, § 2025.480. In compelling further answers to deposition, the burden is on the objecting party to justify their refusal to answer. A motion to compel further answers "shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040." CCP § 2025.480(b). Along with the motion, all supporting documentation papers must be filed within and 60 days of completion of the deposition record. *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 321. "Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion." CCP § 2025.480(h).

A deposition reporter shall give notice that the transcript is available for "reading, correcting and signing" to the deponent and all parties who attended the deposition. CCP § 2025.520 (a). For 30 days thereafter, the deponent may change the form or substance of the answer to a question, and may either approve or refuse to approve the transcript. CCP § 2025.520 (b).

II. Analysis

Plaintiff's deposition was taken June 9, 2025. Foppoli filed the instant motion on August 25, 2025. Foppoli moves to compel further answers from the deposition of Plaintiff, averring that Plaintiff failed to provide full and complete responses to six questions. One of the issues raised, both by Plaintiff in the deposition, and in her opposition to the motion, is a concern that answering the questions at issue would be a violation of federal law as a dissemination of classified or confidential information. The Court previously continued this matter for the parties to provide additional briefing on federal authority for confidentiality or classification, and if responses were subject to an articulable confidentiality objection. The parties each submitted timely supplemental briefs on the issue. Analysis proceeds to the motion in full. On further review, the motion is beset by additional issues not immediately apparent before the Court asked for supplemental briefing. The Court addresses the procedural issues, and the substance of the motion.

The statute requires that Foppoli, as the moving party, lodge a **certified** copy of the transcript at least five days before the hearing. CCP § 2025.480(h). The Court notes that Foppoli asserts that he has "certified" these issues. See Declaration of Andrew Watters, ¶ 8. However, this does not obviate the need to provide a certified transcript. This is key, because it is not apparent from the face of the record that the motion is timely. Generally, deposition records are completed upon notice from the reporter that the transcript is available for review. Said notice, and subsequent signatures are usually conducted after each session, unless the parties agree otherwise *on the record*. CCP § 2025.520(a). No such evidence is presented to the Court. No party provides evidence allowing the Court to determine whether the motion was brought within 60 days of certification. Therefore, it is unclear whether the Court has any jurisdiction over any of the matters contained in Plaintiff's deposition. Plaintiff has submitted a copy of the deposition under seal to the Court, but the reporter's signature, while present, **is not dated.** Similarly, the reporter fails to denote what occurred after notice was sent under CCP § 2025.520. This is not Plaintiff's burden to prove, and so it is not regarded as an admission on whether the motion is timely. While Plaintiff does not raise the issue, failure to move timely is jurisdictional, and it is Foppoli's burden as the moving party to show the Court has jurisdiction. Foppoli's failure to provide the required certified copy of the transcript is a defect, and as a result the Court cannot determine whether the motion is timely. For both these reasons, the motion is DENIED. In the event Foppoli can cure this issue, the Court also looks to the substance of the motion.

Foppoli moves to compel additional answers as to six questions. Most of the answers at issue appear complete. The substance of Plaintiff's answer to question 1 is clear. Foppoli's counsel asked the outcome of Plaintiff's background. Plaintiff responds, "I -- it was -- I'm not sure what the status is right now." As the leading treatise on California civil procedure opines "'I don't know' and 'I can't recall' are valid answers to deposition questions." Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8E-12 [8:695] Conduct of Deposition. What Plaintiff says thereafter does not negate the sufficiency of this response. Question 2 is much the same. Counsel asks Plaintiff about her clearance, and Plaintiff responds that she has not yet received a denial letter. When Counsel presses Plaintiff if she doesn't know, or just refuses to share the information, she responds clearly and substantively. "It's because I don't know. And I do believe it was cleared…"

Question 3 and 6 both appear to be incomplete answers to Foppoli's query but turn on the federal information on which the Court solicited further briefing. The Court addresses these arguments below.

Questions 4 and 5 are also sufficiently answered. In "Question" 4 Counsel asked several questions of Plaintiff regarding the identity of her security interviewer wherein she responded multiple times that she did not know the information. This is a sufficient response. It also appears subject to the same protections as analyzed for Question 6 below. Question 5 follows much the same pattern as prior queries. Foppoli asks if Plaintiff has a grant or denial on her security clearance, to which she responds, "I don't know".

Moving next to Question 6, asking for the identity of Plaintiff's background check interviewer, it is not clear whether Plaintiff's actual recollection, as opposed to the availability of the information, is at issue. Plaintiff's access to the information is apparent, but neither party

provides briefing on whether further answers are appropriately provided based on external, accessible information. However, if Plaintiff is not allowed to disclose the information, whether it is accessible becomes irrelevant. The analysis turns to the federal authorities. Foppoli argues that the Privacy Act of 1974 may only be applied to disclosures sought directly from an agency. This argument is not availing here. Such an interpretation appears unduly vulnerable to abuse. If this position were adopted, anyone involved in a lawsuit with a federal employee could utilize discovery methods to extract information otherwise protected by the Privacy Act of 1974. Foppoli provides no case authorizing such a gaping vulnerability in information privacy clearly intended to be protected by statute.

While both parties cite *Londrigan v. Federal Bureau of Investigation* (D.C. Cir. 1981) 670 F.2d 1164, it appears quite distinguishable from the instant facts. Like most of the apparent jurisprudence derived from background investigations for prospective federal employees, the plaintiff there was the employee, and was seeking to learn the contents of his investigative file which was generated prior to the existence of the Privacy Act. *Id*. at 1167. The very remedy sought by Plaintiff's lawsuit was the disclosure of the investigative file. *Ibid*. Defendant moved for summary judgment, and the district court granted the motion. *Id*. at 1167-1168. The Circuit court reversed, finding that the record did not support the conclusion that there was no triable issue of fact. *Id*. at 1175. In coming to that conclusion, the Circuit court determined that the defendant had *some* burden to produce evidence of an implied understanding of confidentiality with the source. *Id*. at 1172. The evidence before the district court had not been sufficient to meet this burden such that *summary judgment* was appropriate.

Given that this matter is a discovery motion, not summary judgment, the burdens differ substantially from *Londrigan*. Nor does *Londrigan* address the issues of identity of inspectors or interviewers themselves. Therefore, it does not dictate the result here. Simply put, the identity of the investigators *has* been found to be protected information within the jurisprudence on 5 USC § 552(a). *Doe v. U.S. Dept. of Justice* (D.D.C. 1992) 790 F. Supp. 17, 22. Foppoli displays no reason to override this protection. Accordingly, further answers to Question 6 are precluded by the Privacy Act of 1974.

As to question 3, the identity of Plaintiff's supervisor, this seems most clearly addressed by Plaintiff's citation to 43 Code of Federal Regulations ("CFR"), § 2.280-2.290. Foppoli, for his part, does not address this citation in his supplemental brief. 43 CFR §§ 2.280-2.282 appear the most salient for the instant purposes. Those sections delineate Department of Interior regulations for information requests covered by *U.S. ex rel. Touhy v. Ragen* (1951) 340 U.S. 462, 466 ("*Touhy*"). Department of Interior regulations prevent Plaintiff from "(t)estimony by employees in Federal court civil proceedings in which the United States is not a party concerning information acquired while performing official duties or because of an employee's official status". 43 CFR § 2.280; 43 CFR § 2.281 (b) ("No Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department…"). Absent express authorization under these sections, Plaintiff cannot provide information derived from her "official status". The process for obtaining such permission is clearly defined. 43 CFR § 2.282. The identity of Plaintiff's supervisor appears protected absent permission from the Department to disclose this information. Further answers to Question 3 are therefore precluded on Department of Interior regulations and *Touhy*.

Therefore, Foppoli's motion is also denied on its substance.

Not prevailing on the motion to compel, Foppoli's request for sanctions is therefore also DENIED.

III. Conclusion

Foppoli's Motion to compel further answers to deposition is **DENIED**. His request for sanctions is **DENIED**.

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.*****