

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 5, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723 6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 24CV00227, Chavez v. Morgan Properties, Inc.

Plaintiff Manuel Chavez (doing business as Bay Area Pro Painting) moved (after amendment) for an order compelling Defendant Morgan Properties, Inc.'s further responses to Set One of Form Interrogatories, Special Interrogatories, and Requests for Admission is **GRANTED**.

Sanctions are awarded in the amount of \$2,865.30 as requested in the Amended Motion.

I. PROCEDURAL HISTORY

On April 24, 2025, Plaintiff served Defendant with Form Interrogatories, Special Interrogatories, Requests for Admission, and Requests for Production of Documents. (Memorandum of Points and Authorities in Support of Plaintiff's Motion to Compel ["Motion"], 1:24-27, 2:1-2; Cortright Decl., ¶ 2, Ex. 1-4.) On request, Plaintiff allowed multiple extensions for Defendant to respond to the discovery. (Motion, 2:2-9.)

On June 6, 2025, Defendant's counsel emailed unverified responses to the Requests for Admissions, stating that verifications and responses to the other discovery would be served a few days later. (Motion, 2:9-11.) Defendant then failed to serve either the other responses or verifications and Defendant's counsel instead stated Defendant was out of town and still working on the responses. (*Id.* at 2:11-15.) On June 24,

2025, Defendant's counsel emailed various documents that Defendant would be referring to in the discovery responses, but failed to actually serve any of those responses or the verifications. (*Id.* at 2:16-22.) As such, Plaintiff's counsel stated an intent to file a motion to compel unless these were served by July 4. (*Id.* at 2:22-26.)

However, Defendant failed again to serve either the verifications or other discovery responses by July 4, so Plaintiff filed and served this motion to compel on Defendant's counsel electronically on July 7, 2024. (Cortright Decl., ¶¶ 8-9.) Initially, the motion sought to compel responses to the first set of discovery and to deem matters in the Requests for Admission as admitted. (Notice of Motion, 1:23-28, 2:1.)

Rather than opposing the motion to compel, Defendant served verified responses to all discovery requests on August 13, 2025. (Amended Memorandum of Points and Authorities ["Amended Motion"], 2:2-6; Second Cortright Decl., ¶ 3, Ex. 4-6.) Finding these deficient, Plaintiff's counsel met and conferred on these responses with Defendant's counsel on August 29, 2025, and Defendant later served further responses on September 15, 2025. (Amended Motion, 2:14-18; Second Cortright Decl., ¶ 7, Ex. 10.) Plaintiff's counsel attempted to meet and confer more about the remaining deficiencies, but Defendant's counsel indicated that no further responses would be provided. (Amended Motion, 2:26-27, 3:1-2; Second Cortright Decl., ¶ 10, Ex. 13.)

As a result, Plaintiff filed an Amended Motion and supporting documents seeking to compel further responses to Form Interrogatories, Special Interrogatories, and Requests for Admissions only. (Amended Notice of Motion, 1:21-27.) Defendant filed an Opposition to the Amended Motion, to which Plaintiff submitted a Reply.

II. ANALYSIS

In the case *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants* (2007) 148 Cal.App.4th 390, 396 ("*Sinaiko*"), the Court of Appeal held that, even if a party serves untimely responses *after* a motion to compel responses is filed, the untimely responses do not divest the trial court's authority to hear and grant the motion, whether or not those untimely responses reflect a good faith effort to comply with the party's discovery obligations. Following the ruling in *Sinaiko*, the Court still has the authority to, and chooses, to consider Plaintiff's Amended Motion timely served upon Defendant.

Plaintiff's Motion to Compel

a. Interrogatories

A propounding party may move to compel a further response to an interrogatory if: "(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general." (C.C.P. § 2030.300(a).) The motion to compel must be accompanied by a meet and confer declaration showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. (C.C.P. §§ 2016.040, 2030.300(b)(1).)

Plaintiff seeks further responses to Form Interrogatories Nos. 304.3, 305.1, 305.2, 305.14, 309.2, 314.2, and 326.1. (Separate Statement, pp. 1-4.) Plaintiff also seeks further responses to Special Interrogatories Nos. 2, 4-5, 7-15, and 19-20 (*Id.* at pp. 6-10.)

b. Requests for Admissions

A party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) an answer is evasive or incomplete; or (2) an objection is without merit or too general. (C.C.P. § 2033.290(a).) Parties must submit a meet and confer declaration when bringing a motion to compel further responses to a request for admissions. (C.C.P. § 2033.290(b)(1).)

Plaintiff seeks further responses to Request for Admissions Nos. 7-9 and 18-19. (Separate Statement, pp. 5-6.)

c. Sanctions

The court shall impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or requests for admission, unless the court finds that the sanctionable party acted with substantial justification or that other circumstances make it unjust to impose sanctions. (C.C.P. §§ 2030.300(d), 2033.290(d).)

Plaintiff seeks sanctions of \$2,865.30 for 7 hours of work drafting the moving papers, reviewing the opposition, preparing a reply, and anticipated to attend the hearing on the motion at a rate of \$395.00 per hour, as well as \$100.30 for filing fees. (Second Cortright Decl., ¶ 11.)

Defendant's Opposition

Defendant requests that the Court deny the motion because: (1) Plaintiff did not give sufficient time to respond to the September 16, 2025, meet and confer email; (2) Defendant has already provided enough information in the initial and amended responses and the voluminous documents produced to satisfy any discovery obligations to Plaintiff; and (3) Defendant is not able to measure the extent of damage caused by Plaintiff until the resolution of Defendant's Cross-Complaint filed in the *Dibari v. Morgan* matter (Case No. 24CV04060) on September 12, 2025. (Opposition, 3:7-20.)

Defendant concedes that sanctions may be awarded against it because it was tardy in responding to the discovery requests. (*Id.* at 3:22-23.) Defendant requests the Court award sanctions for the reduced amount of \$1,600.00, to be added to Plaintiff's costs or deducted from Defendant's costs at the end of the case. (*Id.* at 3:23-27.)

Finally, Defendant requests a stay in this action until the resolution of the *Dibari v. Morgan* matter. (*Id.* at 4:1-4.)

Plaintiff's Reply

Plaintiff points out in the Reply that Defendant submits no supporting declaration authenticating the attachments in the Opposition and that Defendant misstates the facts leading up to Plaintiff's Amended Motion. (Reply, 1:21-27, 2:1-17.) Furthermore, Defendant does not cite any legal authority to support any of the positions stated in the Opposition, such as that Defendant provided enough information to satisfy its discovery obligations. (*Id.* at 2:18-23.) Plaintiff otherwise reaffirms arguments made in the Amended Motion regarding sanctions and argues that a request for stay of this action is improperly stated in the Opposition. (*Id.* at 2:24-27, 3:1-23.)

Application

First, Defendant expressly stated in an email that Defendant would not provide "any further information, particularly in view of the fact the documents contained in the Dropbox file we emailed you contains all

of the information currently available to us.” (Second Cortright Decl., Ex. 13.) Defendant cannot now argue there was not sufficient time given to respond to the meet and confer email when Defendant’s counsel did respond with an express refusal and also, in the same email, accused Plaintiff’s counsel of abusing the discovery process.

Second, the Court is not persuaded by Defendant’s arguments that sufficient information was provided to satisfy any discovery obligations to Plaintiff or that a stay is warranted in this action. It is unclear as to what legal standards Defendant’s responses are sufficient enough to satisfy his discovery obligations. Furthermore, Defendant’s contentions were neither supported by any legal authority nor any supporting declaration by Defendant’s counsel.

Finally, though Defendant concedes sanctions are warranted here, there is no support offered and no authority cited regarding Defendant’s position that only \$1,600.00 should be awarded in sanctions or that the Court ought to wait until the end of this case to award such sanctions.

Based on the foregoing, Plaintiff’s Amended Motion is granted in its entirety, as well as the sanctions requested in the motion. Defendant did not argue sufficiently that the imposition of the sanctions would be unjust or that Defendant’s conceded delay in providing discovery responses or verifications had any substantial justification.

III. CONCLUSION

Plaintiff’s Amended Motion is **GRANTED**. Sanctions are awarded in the amount of **\$2,865.30** as requested in the Amended Motion. Plaintiff shall submit a written order to the Court consistent with this tentative ruling regarding the four discovery motions and in compliance with Rule of Court 3.1312(a) and (b).

2. 25CV00992, Elizabeth Joan Ramsay Palmer, Trustee v. Fairweather & Associates, Inc.

Defendants Fairweather & Associates, Inc., Simon Fairweather, Amanda Barlow, Simonetta Baldwin, and Jose Velez (together “Defendants”) demur to Plaintiff Elizabeth Joan Ramsay Palmer’s (“Plaintiff”) First Amended Complaint (“FAC”) as to the First through Fourth and Sixth through Eighth Causes of Action, pursuant to Code of Civil Procedure (“C.C.P.”) section 430.10(e).

The Demurrer is **SUSTAINED with leave to amend** as to the Seventh and Eighth Cause of Action. The Demurrer is **OVERRULED** as to the First, Second, Third, Fourth, and Sixth Causes of Action. The motion to strike punitive damages is **DENIED**. Plaintiff shall file the Second Amended Complaint within 20 days of service of notice of entry of this Court’s order on the Demurrer.

I. PROCEDURAL HISTORY

Plaintiff entered into a construction contract (the “Agreement”) with Defendant Contractor Fairweather and Associates, Inc. (“Fairweather”) to construct a new single-family residence at Plaintiff’s property located at 3655/3657 Westside Road, Healdsburg, California (“Project”). (FAC, ¶¶ 20-24, Exhibit A.) Per the Agreement, Fairweather was to furnish materials, supervise all subcontractors, and perform the labor necessary to construct the new residence, pool house, groundkeeper’s house, and barn. (FAC, Exhibit A.)

On February 6, 2025, Plaintiffs filed the initial complaint, which they later amended alleging eight causes of action for: (1) Intentional Misrepresentation; (2) Negligent Misrepresentation; (3) Fraud; (4) Financial

Elder Abuse; (5) Breach of Contract; (6) Unfair Competition (Cal. Bus. & Prof. Code § 17200); (7) Negligence (Construction Defects); and (8) Defamation. (FAC, ¶¶ 66-144.)

Defendants' counsel attempted to meet and confer regarding deficiencies in the FAC with Plaintiff's counsel via correspondence, emails, and a phone call. (Junginger Decl., ¶¶ 2-3, Exhibit A.) Ultimately, Plaintiff's counsel responded by respectfully disagreeing with the issues outlined in the FAC and refusing to amend the FAC. (*Id.* at ¶ 4.)

Defendants now demur to the FAC as to the First through Fourth and Sixth through Eighth Causes of Action on the basis that they failed to state facts sufficient to constitute a cause of action against Defendants under C.C.P. section 430.10(e). (Demurrer, 2:1-24.) Plaintiffs oppose the motion and Defendants submitted a reply to the opposition.

II. EVIDENTIARY OBJECTIONS

Defendants' objections to Paragraphs 9 and 10 and Exhibit 3 of the Declaration of K. Kasey Corbit in support of the opposition are **OVERRULED**.

III. DEMURRER

Plaintiff's Causes of Action for Fraud (First through Third)

Defendants argue that the First, Second, and Third causes of action for intentional misrepresentation, negligent misrepresentation, and fraudulent concealment all fail to meet the heightened pleading standard by pleading the alleged fraud with specificity to show "how, when, where, to whom, and by what means the representations were tendered." (Memorandum of Points and Authorities ["MPA"], pp. 5-8.) The Demurrer specifically refers to Defendants Barlow, Baldwin, and Velez regarding the concealment claim, and to Simon Fairweather regarding the intentional and negligent misrepresentation claims. (*Ibid.*) Furthermore, Defendants argue that the three causes of action fail to plead causation or reliance as to each individual defendant, though each element is required to plead claims for fraud. (*Id.* at 8:9-21.)

Plaintiff argues that the FAC specifically alleges facts as to each of these Defendants by stating that they generated invoices and manipulated billing data and otherwise participated in and approved the fraudulent acts described. (FAC, ¶¶ 97-105, 108-109; Opposition, 4:5-12.) Plaintiff also specifically stated which false representations Simon Fairweather, as an individual and acting agent of Fairweather & Associates, Inc., made to Plaintiff. (FAC, ¶¶ 67-88; Opposition, 7:1-13.) Otherwise, Plaintiffs argue that there were sufficient facts alleged to support the negligent misrepresentation claim and with respect to the elements of causation and reliance. (Opposition, pp. 9-10.)

In the Reply, Defendants find issue with the authority Plaintiff relied on in the Opposition and reaffirm the arguments made in the Demurrer. (Reply, pp. 1-5.)

The Court does find that Plaintiff has alleged facts with specificity as to the individual Defendants mentioned in the Demurrer and alleged facts regarding causation and reliance that are sufficient at the pleadings stage to constitute Plaintiff's three fraud claims. As such, the demurrer is **OVERRULED** as to the First, Second, and Third Causes of Action.

Plaintiff's Cause of Action for Financial Elder Abuse (Fourth)

Defendants argue that the FAC fails to allege that any Individual Defendant received funds or personally benefitted from the construction payments on the Project because these funds all went to the corporate

entity, Defendant Fairweather and & Associates, Inc. (MPA, 9:16-19.) Under Welfare & Inst. Code section 15610.30, Defendants state that Plaintiffs failed to state a claim for financial elder abuse. (*Id.* at 9:3-15.)

Plaintiff argues that financial elder abuse occurs when a person or entity engages in certain specified actions with respect to an elder's property, but also when they assist in doing so for a wrongful use or with an intent to defraud. (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 856.) In the Fourth Cause of Action, Plaintiff alleges that the Individual Defendants knowingly and willfully engaged in financial abuse by misleading Plaintiff about the guaranteed maximum nature of the Agreement, by overbilling Plaintiff, by inducing Plaintiff to sign off on various items that should have been included in the Agreement, and by lying to Plaintiff about the availability and capability of the requested subcontractors and specified materials. (FAC, ¶¶ 112-113.) Plaintiff also alleges that these acts were intentionally done with wrongful purposes of enriching each Defendant at Plaintiff's expense. (*Id.* at ¶¶ 115-116.)

In the Reply, Defendants argue that Plaintiff failed to detail any scheme by which Defendants intended to deprive Plaintiff of funds or property or take advantage of her as a result of her age or cognitive decline. (Reply, 5:9-25.)

The Court finds that Plaintiff alleges ultimate facts to claim that Defendants willfully and knowingly engaged or assisted in acts with the intent to defraud Plaintiff for a wrongful purpose, which is sufficient at the pleading stage. The demurrer is **OVERRULED** as to the Fourth Cause of Action.

Plaintiff's Cause of Action for Unfair Competition ("UCL") (Sixth)

Defendants claim that Plaintiff failed to allege what "unfair" or "fraudulent" acts Defendant Fairweather & Associates Inc. committed in violation of the UCL. (MPA, 9:23-28, 10:1-27.) Defendants also state that the allegations regarding the UCL are duplicative of the breach of contract claim and that the remedies sought in the FAC are inappropriate because compensation for damages is not available under the UCL. (*Id.* at 10:18-27, 11:1-7.)

Plaintiff argues that the FAC explicitly seeks restitution and injunctive relief as remedies regarding the violation of the UCL, and that the FAC sufficiently alleges that she suffered a loss of a substantial amount of money as a direct result of Defendants' unfair, unlawful, and fraudulent business practices. (Opposition, 12:3-28, 13:1-2.)

In the Reply, Defendants again emphasize that Plaintiff's UCL claim is derivative of the breach of contract claim. (Reply, 6:12-27, 7:1-2.)

The Court finds that in the FAC Plaintiff sufficiently alleged that Defendant Fairweather & Associate, Inc., engaged in unlawful, unfair, and fraudulent business practices in violation of the UCL and included the specific acts that resulted in financial harm to Plaintiff. The demurrer is **OVERRULED** as to the Sixth Cause of Action.

Plaintiff's Cause of Action for Negligence (Seventh)

Defendants argue that Plaintiff cannot seek tort damages for the same breach of duties that are stated in contractual obligations. (MPA, pp. 11-13.)

Plaintiff argues that there were sufficient facts alleged for a negligence claim because the FAC alleges independent duties outside of the contract, such as fraud. (Opposition, 13:4-26, 14:1-10.) While the

Seventh Cause of Action states various construction defects that allegedly were not up to code or performed in a workmanlike manner, Plaintiff claims that in other parts of the FAC Plaintiff alleges independent and tortious conduct such as misrepresentation, concealment, and deceptive billing practices. (*Id.* at 13:16-24.)

In the Reply, Defendants argue that the Economic Loss Rule bars Plaintiff's negligence claim for the reasons stated in the Demurrer and because Plaintiff failed to allege a breach of duty independent of the underlying Agreement. (Reply, 5:26-28, 6:1-11.)

The Court finds that, while the other portions of the FAC were incorporated into Seventh Cause of Action, Plaintiff's negligence claim is substantially based on breach of the same duties that were stated as part of Defendants' contractual obligations as opposed to independent duties outside of the Agreement. The demurrer is **SUSTAINED with leave to amend** as to the Seventh Cause of Action.

Plaintiff's Cause of Action for Defamation (Eighth)

Defendants argue that the defamation claim fails to state the basic elements for such a claim, including: (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage. (MPA, 13:14-27.) Plaintiff alleges that the Defendants' statement that Plaintiff "does not pay her bills" is defamatory and that multiple subcontractors refused to work with or for her because Defendants' statement damaged her reputation. (Opposition, 14:11-20.) Arguing that the bills are accurate and Plaintiff did not pay them, Defendants claim that the statement is true and that Plaintiff concedes to withholding payment. (MPA, 13:25-27.) Plaintiff otherwise claims that all other allegations made in support of the defamation claim were adequate. (*Id.* at 14:21-28, 15:1-7.)

The Reply reaffirms arguments made in the motion. (Reply, 7:4-11.)

The Court finds that Plaintiff has conceded within the FAC that she did not pay what she was billed by stating that she did "withhold payment." (FAC, ¶¶ 134.) Although she withheld payment as a result of alleged overbilling and failure to remediate defects, she nonetheless admittedly did not pay what was she was billed. As a result, the Court does not find that a false publication has been sufficiently alleged. The demurrer is **SUSTAINED with leave to amend** as to the Eighth Cause of Action.

IV. MOTION TO STRIKE PUNITIVE DAMAGES

Defendants in the Demurrer and Reply briefly request that the Court strike Plaintiff's prayer for punitive damages arguing that they are not supported by any factual allegations justifying such relief under Civil Code section 3294, and because punitive damages cannot be awarded in a claim for breach of contract. (MPA, 14:1-8; Reply, 7:18-22.)

Plaintiff points out that the punitive damages are claimed in connection with her three causes of action relating to fraud, so they are properly prayed for in the FAC. (Opposition, 15:7-23.)

The Court finds that Plaintiff seeks punitive damages in connection to her fraud claims, not her claim for breach of contract. For the reasons stated above, the Court found Plaintiff's allegations relating to the fraud claims sufficient at the pleading stage to constitute those causes of action. As such, the Court **DENIES** the motion to strike.

V. CONCLUSION

Based on the foregoing, the demurrer is **SUSTAINED with leave to amend** as to the Seventh and Eighth Causes of Action. The demurrer is **OVERRULED** as to the First, Second, Third, Fourth, and Sixth Causes of Action. The motion to strike is **DENIED**. Plaintiff shall file the Second Amended Complaint within 20 days of service of notice of entry of this Court's order on the demurrer. Defendants 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. 25CV01264, Discover Bank v. Giberson

Defendant Giberson's motion to vacate the default judgment entered May 2, 2025, is **CONTINUED** to be heard on November 19, 2025, at 3:00 P.M. in Department 17. Defendant failed to attach a copy of the proposed Answer to the Complaint that Defendant intends to file should the Court grant the motion, as required under C.C.P. section 473(b). Defendant shall file a copy of the proposed Answer for the Court to consider before the next hearing date. If Defendant fails to file one, the Court will deny the motion as procedurally deficient.

4. SCV-269497, Wilcox v. Culbertson, M.D.

Self-represented Plaintiff Lydia Wilcox's motion to vacate or reconsider the summary judgment entered on June 18, 2024, in favor of Defendant Eric Culbertson, M.D. is **DENIED**.

I. PROCEDURAL HISTORY

Plaintiff commenced this action against Defendants Culbertson and Santa Rosa Memorial Hospital alleging medical negligence. (Opposition, 2:13-16.)

Defendant Culbertson successfully brought an unopposed motion for summary judgment, which the Court granted on June 18, 2024. (Opposition, 3:6-26, 4:1-5.) Per Defendant Culbertson's Notice of Hearing for May 22, 2024, and Proof of Service for the Motion for Summary Judgment, he properly and timely served Plaintiff at her address at 2500 Road "L", Redwood Valley, California 94570 on February 16, 2024. (Notice of Hearing, dated February 21, 2024.)

Plaintiff now moves under C.C.P. section 473(d) to set aside the summary judgment due to lack of notice, or for reconsideration under C.C.P. section 1008. Defendant Culbertson opposes the motion.

II. MOTION TO VACATE

Section 473(d) provides in relevant part, the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.)

Plaintiff argues that she did not receive any notice of the hearing on the Motion for Summary Judgment and therefore was denied due process and the opportunity to oppose. (Motion, p. 3.) However, Defendant submitted evidence to the Court prior to the hearing on the summary judgment motion that the moving papers were timely served on Plaintiff on February 16, 2024. (Opposition, 3:6-12.) Plaintiff otherwise does not argue that the Notice of Hearing filed with the Court is invalid or that the address to which Defendant sent the moving papers was incorrect.

Based on the above, the Court will deny the motion to vacate under section 473(d) because Plaintiff has not argued there is any clerical error that ought to be corrected by the Court.

I. RECONSIDERATION

Plaintiff briefly mentions in the motion that under C.C.P. section 1008, a party may move for reconsideration based on new facts or law. However, Plaintiff's motion fails to offer any new facts or law that were not available either to her or the Court at the time the summary judgment motion was heard to warrant reconsideration. Failure to show new facts or law is jurisdictional; a motion for reconsideration that does not offer any new fact as to the merits of the underlying motion must be denied. (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 381.) For these reasons, the Court will deny Plaintiff's brief request for reconsideration.

III. CONCLUSION

Plaintiff's motion to vacate or reconsider the summary judgment is **DENIED**, under C.C.P. sections 473(d) and 1008. Defendant 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-271254, Ramirez v. Gaither, III

Defendant Board of Trustees of the California State University ("Board") moves for summary judgment, or in the alternative, summary adjudication ("MSJ-MSA") against Plaintiffs Hugo and Rosemarie Ramirez's Second Amended Complaint ("SAC"), pursuant to Code of Civil Procedure ("C.C.P.") section 437c. The motion is **DENIED**. Plaintiffs' requests for judicial notice are **GRANTED**. The parties' objections are addressed below.

I. PROCEDURAL HISTORY

Plaintiffs filed this action as the surviving parents of Decedent Hugo A. Ramirez ("Decedent"), a Sonoma State University student who was struck and killed in a traffic collision while crossing East Cotati Avenue on or about noon on July 5, 2021. (Second Amended Complaint, ¶¶ 7-9; Undisputed Material Facts ["UMF"] No. 1.) Plaintiffs named the driver, the vehicle owner, the City of Rohnert Park, and the Board as defendants alleging various causes of action against them. (Second Amended Complaint, ¶¶ 10-34.) As to the Board, Plaintiffs only allege a claim for dangerous condition of public property. (*Id.* at ¶¶ 28-34.) Plaintiffs claim that the real property directly north of the portion of East Cotati Avenue where Decedent was killed, from which area Decedent entered the roadway, was owned and controlled by the Board, so they had the ability and legal right to modify its design to ensure the safety of a high volume of pedestrian traffic crossing in that area on a daily basis. (*Id.* at ¶¶ 28-31.) Plaintiffs argue that the area constituted a dangerous condition under Government Code section 830(a), posing a substantial risk even when used with due care in a reasonably foreseeable manner by the public. (*Id.* at ¶¶ 32-34.)

The Board moves for summary judgment and, based on the Board's showing of undisputed facts, argue that: (1) Plaintiffs have no direct evidence of a dangerous condition on campus; (2) no affirmative act on campus put users of it into danger from the adjacent city street; (3) Sonoma State did not owe a duty to Decedent because nothing on campus "magnified or obscured the danger posed by" jaywalking across East Cotati Avenue as Decedent did on the date of incident; (4) there was no "substantial risk of injury" from being hit by a car while jaywalking across East Cotati Avenue, which is off campus, connected to any alleged dangerous condition on campus; (5) Decedent failed to use due care in jaywalking; (6)

Decedent's injury was not proximately caused by any physical condition on campus; (7) Plaintiffs cannot make a showing under Government Code section 835; and (8) Sonoma State University has immunity. (Notice of Hearing and Motion, 2:8-22.)

Plaintiffs filed an Opposition and objections to evidence. The Board filed a Reply brief and also objections to Plaintiffs' evidence.

II. REQUESTS FOR JUDICIAL NOTICE

Plaintiffs request judicial notice of the following items:

1. Photographs of the environs between the north side of East Cotati Avenue and the Sauvignon Village Dormitory and surrounding parking lots and landscaping, as are publicly available from the "Google Streetview" software application, as of the dates closest in time to the incident as are available;
2. Overhead photographic imagery of the entirety of the Sonoma State University main campus and adjacent roads, as are publicly available from the "Google Maps" software Application;
3. Overhead map schematic imagery showing the location of retail food service businesses within the environs of the Sonoma State University main campus, as are publicly available from the "Google Maps" software application;
4. The existence of the December 13, 2016, public comment letter received by Defendant Rohnert Park and produced by Rohnert Park in this action, and the addressees of such letter. Judicial notice of the truth of the contents of the letter is not requested;
5. The existence of the July 15, 2021, correspondence of Defendant Rohnert Park, via its Director of Public Works Vanessa Garrett, as produced by Rohnert Park in this action. Judicial notice of the truth of the contents of the letter is not requested; and
6. The enrollment figures and trends depicted in the excerpt from the June 2021 report of the Sonoma State Division of Academic Affairs, entitled "2020-2021 Annual Report."

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to these above limitations, Plaintiffs' requests are **GRANTED**.

III. EVIDENTIARY OBJECTIONS

Plaintiffs' objections to Paragraphs 21, 22, and 23 of the Declaration of Missy Brunetta submitted in support of the MSJ-MSA, as lacking foundation and speculative are **OVERRULED**.

The Board's objections to each item requested to be judicially noticed by Plaintiffs are **OVERRULED**.

The Board's three objections to the Declarations of Christian Engelmann, Jack Reynolds, and Leonardo Villarama are **SUSTAINED**. Plaintiffs' counsel states that the three declarations were not in fact included in the filing or service of the opposing papers due to inadvertent error. (Sur-Reply, 2:4-15.) As argued by the Board, "material not presented in opposition to the summary judgment motion itself is not properly considered by the court in ruling on the motion." (*Roman v. BRE Props., Inc.* (2015) 237 Cal.App.4th 1040, 1054.) Plaintiffs have not provided the Court with any authority on which it may rely to consider the late-submitted declarations, so the Court will not consider these in its decision.

Finally, the Court rules as follows to the Board's objections to the Declaration of Christopher Garrett:

1. Objection 1 to Exhibit A as inadmissible hearsay and lacking foundation, personal knowledge, and authentication is **OVERRULED**.
2. Objection 2 to Exhibit G as inadmissible hearsay and lacking foundation, personal knowledge, and authentication is **OVERRULED**.
3. Objection 3 to Exhibit I as inadmissible hearsay, irrelevant, and lacking foundation, personal knowledge, and authentication is **OVERRULED**.
4. Objection 4 to Exhibit J as inadmissible hearsay, inadmissible subsequent remedial conduct, irrelevant, and lacking foundation, personal knowledge, and authentication is **SUSTAINED**.
5. Objection 5 to Exhibit L as inadmissible subsequent remedial conduct, irrelevant, inadmissible hearsay, and lacking foundation, personal knowledge, and authentication is **SUSTAINED**.

IV. ANALYSIS

Legal Standard

Motion for Summary Judgment

Per C.C.P. section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "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." (C.C.P. § 437c(c).)

Summary Adjudication

Per C.C.P. section 437c(f), a party may move for summary adjudication "as to one or more causes of action within an action, one or more affirmative defenses... if the party contends that... that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs."

Dangerous Condition of Public Property

Under Government Code section 835, a public entity can be found liable for an injury caused by a dangerous condition of its property if a plaintiff can establish that: (1) the property was in a dangerous condition at the time of the injury; (2) that the injury was proximately caused by the dangerous condition; (3) that the dangerous condition created a reasonable foreseeable risk of the kind of injury incurred; and (4) that either a negligent or wrongful act or omission within the scope of employment of a public entity's

employee created the dangerous condition, or the public entity had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to take measures and protect against it. (Gov. Code § 835.)

The Board's MSJ-MSA

No Dangerous Condition on Public Property

The Board argues that its initial burden is met and Plaintiffs are not able to shift it back regarding whether there was a dangerous condition on campus because “no reasonable person would conclude any campus street or sidewalk caused users to dangerously jaywalk on an adjacent City Street, and no condition on campus caused Gaither to hit decedent.” (MSJ-MSA Memorandum of Points and Authorities [“MSJ-MSA”], 12:8-28, 13:1-9.)

No Evidence of Physical Characteristic Endangering Decedent

The MSJ-MSA states that Plaintiffs did not present any direct evidence of a dangerous condition on campus but rather speculate as to the design of campus sidewalks being too “inconvenient.” (MSJ-MSA, 13:12-28.) The Board argues that Decedent decided not to follow the road, curbs, or yellow markers on Vine Street, but rather crossed it and overcame multiple physical impediments on the way to East Cotati Avenue eventually resulting in him stepping on a river rock and falling backwards into traffic where he was struck by the vehicle driven by Gaither. (*Id.* at 14:5-12.) Furthermore, there is no direct evidence of a physical characteristic on campus which caused Decedent to jaywalk off-campus and walk west on East Cotati Avenue. (*Id.* at 15:9-14.)

No Dangerous Condition on Campus

The Board again re-emphasizes that nothing on campus entices people to dangerously walk outside crosswalks on East Cotati Avenue as Decedent did, but rather there are sidewalks to a controlled intersection, with two pedestrian crosswalks and control signals, to safely cross East Cotati Avenue. (MSJ-MSA, 15:17-27.) The Board cites *Bonanno v. Cent. Contra Costa Transit Auth.* (2003) 30 Cal.4th 139, 154, to argue that liability cannot apply because Decedent was not jaywalking across East Cotati Avenue to reach campus, but rather leaving campus, and because *Bonanno* does not apply to premises with fixed locations and landowners with no control over the relevant part of a public street. (MSJ-MSA, 17:8-18.) Finally, the Board argues that it did not owe Decedent a duty to prevent the obvious danger of jaywalking. (*Id.* at pp. 17-19.)

No Substantial Risk of Injury

Since Sonoma State University has no record of any prior injuries from jaywalking in the exact location that Decedent did, the Board argues that there is no substantial risk from the use of Vine Street or its nearby sidewalks, or lack of warning signs or a pedestrian barrier at the drainage ditch, to cause users to jaywalk intentionally. (MSJ-MSA, 19:5-27, 20:1-10.)

Due Care

The Board claims Decedent failed to use any due care when jaywalking because no reasonable person could conclude that a person walking on Vine Street or its nearby sidewalks who is exercising due care would intentionally have jaywalked across East Cotati Avenue. (MSJ-MSA, 20:12-28, 21:1-23.)

Proximate Cause

As there was nothing on campus that impaired Defendant Gaither's view of Decedent, or which caused him to be reckless, speed, or operate his car in a dangerous way, resulting in him striking Decedent, the Board argues that Plaintiffs cannot establish a causal link between the physical characteristics of campus and the traffic collision. (*Id.* at 22:2-28, 23:1-19.)

Government Code § 835

The Board argues that Plaintiffs have not shown that Sonoma State University or its employees created a dangerous condition or that it had notice of a dangerous condition that somehow posed a risk to pedestrians on campus who were jaywalking off campus. (*Id.* at pp. 23-25.)

Immunity

The Board claims that Sonoma State University campus has immunity under the following: (1) trivial defect immunity under Government Code section 830.2 for inconvenience of Vine Street and its nearby sidewalks; (2) traffic control defect immunity for failure to provide traffic control devices, like warning signs or a pedestrian barrier, under Government Code sections 830.4 and 830.8; and (3) trail or unimproved property immunity for the unimproved brush area under Government Code sections 831.4(b) and 832.1. (MSJ-MSA, 25:15-26, 26:1-13.)

Plaintiffs' Opposition

In the Opposition, Plaintiffs argue that the Board/Sonoma State University had notice as early as 2015 that its campus design had unsafe crossings on East Cotati Avenue based on reports and records from individuals that were a part of Rohnert Park's public safety committee and Bicycle and Pedestrian Advisory Committee. (Opposition, pp. 4-6, 9-10.) Plaintiffs argue that, under *Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206, there is no hard and fast rule as to what constitutes a dangerous condition, but it can depend on the facts of the case. (*Id.* at 11:5-9.) While a dangerous condition must include a "physical characteristic" of the property, the design of a property can qualify as a physical characteristic giving rise to liability. (*Id.* at 11:9-18.) Here, Plaintiffs argue that the campus' design and associated pedestrian infrastructure constitutes a dangerous condition because the landscaping and location of the sidewalk paths had a predictable effect of inducing pedestrians to cross East Cotati mid-block outside of a controlled intersection. (*Id.* at 12:24-28, 13:1.)

Plaintiffs also argue that the Board misstates the relevant standard for causation in arguing that Plaintiffs must establish that the dangerous condition caused or contributed to Defendant Gaither's conduct. (MSJ-MSA, 15:13-14.) Plaintiffs argue that, under *Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1106, a plaintiff's burden is to show that the allegedly dangerous condition (a condition that creates a substantial risk of injury to the public) proximately caused the fatal injuries the Decedent suffered because of a traffic collision. (Opposition, 15:13-27.) Under *Cordova*, a plaintiff is not required under Government Code section 835 to show that the allegedly dangerous condition also caused the third-party conduct that precipitated the accident. (*Ibid.*) Additionally, while the parties cannot know with certainty what Decedent's state of mind was at the time of the incident, there is direct and circumstantial evidence based on the testimony of Decedent's roommate that: Decedent had a typical practice of travelling to the Sonoma State University athletic center and parking in the Wolf Den Plaza parking lot; and he would jaywalk mid-block because the path was more convenient compared to the substantially longer and slower "official sidewalk" route on campus. (*Id.* at 17:1-16.)

In addition, Plaintiffs argue that the Board mischaracterizes Decedent's conduct and misapplies the due care standard. (Opposition, 17:19-28.) As stated in *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th

749, 768, “the status of a condition as ‘dangerous’ for purposes of the statutory definition does not depend on whether the plaintiff or other persons were actually exercising due care, but on whether the condition of the property posed a substantial risk of injury to persons who were exercising due care.” Here, Decedent’s conduct is a matter of contributory negligence according to Plaintiffs, and whether, actually, he exercised due care is irrelevant to the question of whether a dangerous condition existed. (*Id.* at 18:1-8.) Plaintiffs claim that there was a foreseeable use that some fraction of the high volume of students and other pedestrians using reasonable care would elect to cross East Cotati midblock. (*Id.* at pp. 18-19.)

Finally, Plaintiffs argue that no other statutory immunities bar liability here because Plaintiffs are not claiming that liability is based on a lack of traffic signs, markings, control devices, or care of unimproved property. (Opposition, 19:18-27, 20:1.) Instead, Plaintiffs’ argument is that the design of the campus created the dangerous condition and lacked design features to mitigate the known problem of mid-block crossing of East Cotati Avenue as part of straight-line pedestrian travel to and from campus. (*Ibid.*)

Reply to Opposition

In the Reply, the Board reaffirms the arguments made in the MSJ-MSA that nothing on campus caused Decedent to jaywalk outside of campus beyond his own recklessness and no act of the Board or Sonoma State University or its employees endangered Decedent, magnified or obscured the obvious dangers of jaywalking, created a substantial risk of injury, or proximately caused Decedent’s injury. (Reply, pp. 5-11.)

Application

The Court concludes that a triable issue of material fact still remains as to whether the design of the campus constitutes a dangerous condition. This is because the campus lacked features to mitigate the foreseeable use of mid-block crossing on East Cotati Avenue to travel to and from campus because the officially laid-out sidewalk paths were substantially longer and inconvenient.

The Court also finds that, under *Cordova*, Plaintiffs burden here was to show that an allegedly dangerous condition existed on campus that created a substantial risk of injury to the public and that proximately caused Decedent’s death because of a traffic collision. The standard is not, as the Board argues, that Plaintiffs must show that the allegedly dangerous condition caused Defendant Gaither’s conduct that precipitated the accident.

Finally, the Court does not find that the various immunities claimed by the Board are applicable to these facts as Plaintiffs are claiming the design of the campus created the dangerous condition, as opposed to traffic signals or mechanisms or unimproved growth.

As such, the Court will deny the Motion.

V. CONCLUSION

Based on the foregoing, the MSJ-MSA is **DENIED**. Plaintiffs shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).