

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 20, 2026 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**, 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. 24CV04306, Sahati v. Windsong of Sonoma LLC

Defendant Windsong of Sonoma, LLC (“Windsong”) moves for summary judgment, or in the alternative summary adjudication, to all six causes of action in Plaintiff Michael Sahati’s (“Plaintiff”) Complaint. Pursuant to C.C.P. section 437c(f), summary adjudication is **GRANTED in part** and **DENIED in part**.

Summary adjudication is **GRANTED** as to the Third Cause of Action for Intentional Infliction of Emotional Distress and the Sixth Causes of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing. Summary adjudication is **DENIED** as to the First, Second, Fourth, and Fifth Causes of Action (Age Discrimination under FEHA, Work Environment Harassment, Retaliation and Wrongful Termination in Violation of Public Policy, and Age Discrimination under the ADEA, respectively) and Plaintiff’s request for punitive damages.

I. FACTUAL & PROCEDURAL HISTORY

This action arises out of Plaintiff’s employment with Defendant and his alleged wrongful termination and age discrimination. (See Complaint, filed July 22, 2024.) On October 4, 2022,

Windsong (senior living community in Petaluma) offered Plaintiff the position of Building Services Director. (Undisputed Material Facts [“UMF”], Nos. 1–2.) Plaintiff began working as the Building Services Director (“BSD”) on or around October 31, 2022. (UMF, No. 2.) The BSD job description included a list of 44 essential functions, duties and responsibilities (“EFDR”). (UMF, No. 3.) The Parties dispute as to whether Plaintiff received and acknowledged receiving the BSD job description and the Windsong Handbook at the time of hire. (UMF, Nos. 3, 13.) From early 2023 to May 2023, Windsong cites several performance issues with Plaintiff, including repeatedly clocking in several hours late, taking personal calls during work hours, and failing to report issues to the Executive Director, Deborah Savoie (“Savoie”), which resulted in Plaintiff being placed on a Success Plan on June 5, 2023, with specific areas for improvement and deadlines by which to achieve performance expectations. (UMF, Nos. 19–29.) On June 27, 2023, Plaintiff had memoranda placed in his personnel file based on negative interactions with Savoie and Director of Sales and Marketing, Kathleen Garber. (UMF, Nos. 31–32.) Plaintiff was terminated effective July 6, 2023. (UMF, No. 33.) Windsong states that Defendant was terminated due to his work performance while Plaintiff argues that he was terminated due to Windsong’s discriminatory animus. (UMF, No. 33 and Response.) Plaintiff argues that Savoie made repeated age-based comments about him, made him do tasks that were not his responsibility, and yelled at him about his age in front of Windsong residents and staff. (Plaintiff’s Additional Material Facts [“AMF”], Nos. 51–57.) Plaintiff contends that he made a complaint about Savoie’s behavior toward him and was later terminated and replaced by Mr. Echeverria, a 27-year-old employee. (AMF, Nos. 59, 61, 65.)

Plaintiff then file the instant action against Windsong alleging six causes of action for: (1) age discrimination, (2) work environment harassment, (3) intentional infliction of emotional distress (“IIED”), (4) retaliation and wrongful termination in violation of public policy, (5) violation of the Age Discrimination Act of 1967, and (6) breach of the implied covenant of good faith and fair dealing. Windsong moves for summary judgment as to all causes of action and Plaintiff’s request for punitive damages or summary adjudication in the alternative.

II. OBJECTIONS TO EVIDENCE

Defendant makes several hearsay and lack of foundation objections to Paula Delsid’s Declaration and Deposition submitted as Plaintiff’s evidence in support of his Opposition to the MSJ. These objections are **OVERRULED**.

III. ANALYSIS

A. Legal Standard

Pursuant to 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).)

Pursuant to 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.”

B. Windsong’s Motion for Summary Judgment/Adjudication

1. First and Fifth Causes of Action – Age Discrimination

Windsong first argues that Plaintiff’s age discrimination causes of action under the Fair Employment and Housing Act [Government Code § 12940] (“FEHA”) (First Cause of Action) and the Age Discrimination Act of 1967 [29 U.S.C. §§ 621-634] (“ADEA”) fail because Plaintiff cannot meet the burden of proof for an age discrimination claim. Windsong contends that Plaintiff was terminated for legitimate, nondiscriminatory means. (MSJ, 14:22–16:22.) Windsong further contends that California’s “same-actor interference” [“where the same actor is responsible for both the hiring and the firing of a discrimination plaintiff, and both actions occur within a short period of time, a strong inference arises that there was no discriminatory motive”] compels the Court to infer that neither Savoie nor Windsong had a discriminatory animus toward Plaintiff relying on *Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798. (*Id.* at 16:24–17:8.)

In opposition, Plaintiff argues that he has established a prima facie case for FEHA age discrimination because he was over 70, performed his duty satisfactorily, was terminated, and replaced by a 27-year-old. (Opposition, 6:9–18.) In addition to comments overheard by Plaintiff’s co-worker, Plaintiff alleges that he himself heard Savoie call him too old and slow. (*Id.* at 6:18–23.) Plaintiff contends that Savoie acted quickly to fill the empty BSD role by hiring Plaintiff since he was experienced but Savoie was secretly working on a plan to replace plaintiff with a much younger employee. (*Id.* at 7:5–17.) Plaintiff further argues that Windsong’s reasoning for terminating Plaintiff are disputed and triable issues exist on whether performance standards were selectively enforced against Plaintiff due to his age. (*Id.* at 7:18–26.) Additionally, Plaintiff argues that he established a prima facie case under the ADEA because he was over 40, qualified and performed well, terminated, and replaced by someone substantially younger, raising an inference of discrimination and cites to the same reasoning as the FEHA claim. (*Id.* at 13:1–20.)

In reply, Windsong asserts that Plaintiff failed to present any evidence that he performed his duties satisfactorily, which is directly contradicted by Plaintiff’s employment records including the Success Plan. (Reply, 3:1–8.) Windsong contends that the fact that Plaintiff’s successor was younger than him is insufficient and not substantial enough to create a rational inference of unlawful discrimination. (*Id.* at 3:8–21.) Windsong further states that Plaintiff’s assertion that his predecessor quit his job suddenly and Savoie had to act quickly to fill the role is directly contradicted by Savoie’s deposition where she said that she did not feel a sense of urgency to hire someone after Plaintiff’s predecessor left. (*Id.* at 4:4–14.) Windsong maintains that Plaintiff’s contention that Savoie was secretly working on a plan to replace Plaintiff with a younger person and Plaintiff’s other claims made in his opposition is not established by the evidence including the Complaint, Mr. Echeverria’s testimony, and Savoie’s testimony. (*Id.* at 4:15–5:14.)

California courts apply a burden-shifting approach in evaluating claims of discrimination under FEHA pursuant to *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792. Plaintiff must establish a prima facie case of discrimination, which then shifts the burden to the employer to rebut the presumption of discrimination by offering a legitimate, nondiscriminatory reason for the adverse employment action. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355–56.) To state a prima facie

case of discrimination under FEHA, a plaintiff must show that: “(1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action ... and (4) some other circumstance suggests discriminatory motive.” (*Id.* at 355.) An employer meets its initial burden in moving for summary judgment by presenting evidence that (1) plaintiff failed to prove one or more elements of its prima facie case or (2) the employer acted for a legitimate, nondiscriminatory reason. (*Id.* at 355–56.) A “legitimate, nondiscriminatory reason” is defined as one that is unrelated to unlawful bias and, if true, would preclude a discrimination finding. (*Id.* at 358.) If the employer meets its burden, the burden shifts back to the plaintiff to show that the employer’s stated reason was a pretext for unlawful animus, creating a triable issue of fact showing to avoid summary judgment. (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1185–1186.) “If triable issues of material fact exist whether discrimination was a substantial motivating reason for the employer’s adverse employment action, even if the employer’s professed legitimate reason has not been disputed, the FEHA claim is not properly resolved on summary judgment.” (*Id.* at 1186.) Conversely, to establish a claim under the ADEA, “a plaintiff must prove that age was the ‘but-for’ cause of the employer’s adverse decision.” (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 216 [citations omitted].)

Here, Plaintiff is a member of a protected class—being over the age of 40—and was qualified for BSD position. Even though Plaintiff was placed on a Success Plan, there are triable issues of fact as to whether he was satisfactorily performing his duties as he was terminated only one month after being placed on the Success Plan and replaced by someone who was 27 years old, and what job responsibilities were under Plaintiff’s purview as BSD. Furthermore, there are triable issues of material fact as to whether age discrimination was the substantial motivating reason for the employer’s adverse employment action given the comments by Savoie and her treatment of Plaintiff. Regarding the same-actor interference, it “has lost some of its persuasive appeal in recent years” and while it “could generate an inference (and not a presumption) of nondiscrimination, ‘the effect should not be an a priori determination, divorced from its factual context[,] ... be placed in a special category, or have some undue importance attached to it, for that could threaten to undermine the right to a jury trial by improperly easing the burden on employers in summary judgment.’ ” (*Husman, supra*, 12 Cal.App.5th at 1188–1189 quoting *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243.) Thus, these claims are not properly resolved at summary judgment/adjudication. Summary adjudication is **DENIED** as to the First and Fifth Causes of Action.

2. Second Cause of Action – Work Environment Harassment

Windsong argues that three employees deny that the overheard comments about Plaintiff’s age, these comments were not made and even if such comments were made, they were not severe or pervasive enough to create a hostile work environment or constitute harassment. (MSJ, 18:4–20:21.)

Plaintiff argues that he raises triable issues through direct and circumstantial evidence of a pattern of abusive, age-motivated conduct showing that Savoie’s harassment was severe and pervasive, including yelling at Plaintiff in front of residents and staff. (Opposition, 8:1–9:2.) Plaintiff states that Savoie’s conduct was not isolated and occurred frequently over his tenure and creates a triable issue as to whether the work environment was abusive, Plaintiff’s employment conditions were altered, and Savoie’s biased practices created disparate impact. (*Id.* at 9:3–22.)

In reply, Windsong distinguishes the cases cited by Plaintiff from the facts in the instant case. (Reply, 6:1–16.) Windsong contends the Opposition presents no coherent argument of either disparate

impact or biased practices and that the few instances alleged by Plaintiff over eight months of employment are not sufficient to maintain this cause of action. (*Id.* at 6:17–7:4.)

To establish a prima facie case of a hostile work environment, plaintiff must show that (1) he is a member of a protected class; (2) he was subjected to unwelcome harassment; (3) the harassment was based on his protected status; (4) the harassment unreasonably interfered with his work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.) “A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff’s work performance or created an intimidating, hostile, or offensive working environment” and the “objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff’s position, considering ‘all the circumstances.’ ” (*Id.* at 582–583 [citations omitted].)

Here, Plaintiff is a member of a protected class based upon his age and was subjected to harassment by Savoie by her comments about his age to others and her treatment of him, including yelling at him based on his age. Plaintiff stated that Savoie’s treatment of him made him dread going to work and that she assigned him work outside of his normal duties as punishment. Based on this, there is a triable issue regarding the existence of a hostile work environment if Savoie’s conduct unreasonably interfered with Plaintiff’s work performance or created an intimidating, hostile, or offensive working environment. Thus, summary adjudication of the Second Cause of Action is **DENIED**.

3. Third Cause of Action – IIED

Windsong contends that the alleged conduct of Plaintiff’s coworker overhearing Savoie say that Plaintiff is too old and slow for the job does not rise to the level of outrageous conduct required by IIED. (MSJ 20:23–21:13.) Windsong also states that Plaintiff admitted that he has not suffered any emotional distress related to his work at Windsong and that his mental health was unaffected, which negates the element of any damages necessary for an IIED claim. (*Id.* at 21:15–18.)

In opposition, Plaintiff argues that Savoie’s conduct was outrageous because she was in a position of authority, subjected Plaintiff to repeated public yelling and ridicule, made explicit age-based insults in earshot of others, and overloaded Plaintiff with physical tasks knowing of his knee issues. (Opposition, 9:25–10:27.) Plaintiff contends that Savoie acted with intent or recklessness because the comments were deliberate and repeated, disregarding the obvious emotional harm and that Plaintiff suffered severe emotional distress which arose directly from the harassment. (*Id.* at 11:1–7.)

Windsong distinguishes the cases cited by Plaintiff and claims that the Opposition fails to address the fact that Plaintiff admitted that he has not suffered any emotional distress. (Reply, 7:6–28.)

A claim for IIED must show “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 [citations omitted].) Extreme and outrageous conduct must be “so extreme and outrageous “as to go beyond all possible bo[u]nds of decency, and to be regarded as atrocious, and utterly intolerable in a

civilized community.” (*Hailey v. California Physicians’ Service* (2007) 158 Cal.App.4th 452, 474 [citations omitted].)

Here, viewed most favorably to Plaintiff, Plaintiff fails to present evidence that Savoie’s conduct was extreme, outrageous, or beyond all bounds of decency. Even if Savoie yelled at Plaintiff about his age in front of Windsong staff and employees and made other comments about Plaintiff’s age that were overheard by others, such actions are not extreme or outrageous. While such behavior may be improper, it is not “utterly intolerable in a civilized community” and does not rise to the level of extreme or outrageous conduct as a matter of law. (See *Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 102 [finding that while a reasonable trier of fact could conclude plaintiff’s superintendent acted improperly by refusing to listen to plaintiff’s complaints about retaliation, encouraged plaintiff’s direct supervisor’s effort to silence plaintiff, and participated in the Department’s retaliation against plaintiff, the superintendent’s actions were not extreme or outrageous as a matter of law].) Therefore, the Court **GRANTS** summary adjudication as to the third cause of action for IIED.

4. Fourth Cause of Action – Retaliation and Wrongful Termination in Violation of Public Policy

Windsong argues that there is no evidence of protected activity, let alone a causal link between protected activity and its decision to terminate Plaintiff’s employment, which is required for a retaliation claim. (MSJ, 21:20–22:14.) Windsong maintains that since Plaintiff cannot establish an issue of material fact that could support a decision in his favor on a retaliation claim, Plaintiff’s claim for wrongful termination must also fail since it is predicated on the same allegations underlying statutory discrimination, harassment, and retaliation claims. (*Id.* at 22:15–22:21.)

In opposition, Plaintiff asserts that Windsong asserts no protected activity, no causation, and legitimate reasons for termination. (Opposition, 11:23–26.) Plaintiff states that he engaged in protected activity by complaining to Savoie and management about age discrimination, harassment, and yelling before his termination, which he argues was an adverse action by which causation can be inferred since there was only a matter of weeks between Plaintiff’s complaints and his termination. (*Id.* at 11:27–12:7.) While Windsong articulates performance reasons, Plaintiff claims that these reasons are pretextual and that disputes over whether complaints were made are credibility issues for trial. (*Id.* at 12:8–16.)

In reply, Windsong argues that it has no written records of any of Plaintiff’s complaints and Plaintiff cannot produce a copy of any written complaints he submitted. (Reply, 8:2–17.) Windsong further distinguishes the cases relied upon by Plaintiff. (*Id.* at 8:18–9:2.)

To establish a claim for wrongful termination in violation of public policy, a plaintiff must plead and prove (1) a termination or other adverse employment action; (2) the termination or other action was a violation of a fundamental public policy, as expressed in a constitutional, statutory, or regulatory provision; and (3) a nexus between the adverse action and the employee’s protected status or activity. (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 660, overturned on other bases due to legislative action expanding conduct covered by Gov. Code § 1290.) To establish a prima facie case of retaliation under FEHA, a plaintiff must show (1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action.” (*Yanowitz v.*

L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1042 [citations omitted].) “Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action.” (*Ibid.*) “If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation ‘drops out of the picture,’ and the burden shifts back to the employee to prove intentional retaliation. (*Ibid.*)

Here, the Parties offer arguments regarding protected activity, which is an element for retaliation under a FEHA claim. However, as presented in Plaintiff’s Complaint, this is a tortious common law cause of action for retaliation and wrongful termination *in violation of public policy* stated in FEHA against age discrimination, not a discrimination action for retaliation under FEHA. (*Phillips v. St. Mary Regional Medical Center* (2002) 96 Cal.App.4th 218, 225–226 [“The tort cause of action for wrongful termination in violation of public policy provides a vehicle for recourse that otherwise would be unavailable under general rules of the at-will employment doctrine.”]; see also *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 909 [finding that “the Legislature has expressly declared that the FEHA’s remedies shall be cumulative to all other state law remedies... includ[ing] common law tort claims such as a claim for wrongful discharge in violation of public policy.”].)

Neither party presents the standard for retaliation in violation of public policy or any persuasive authority that Plaintiff must establish a prima facie case for retaliation under FEHA in order to shift the burden to Windsong for a claim of retaliation *in violation of public policy*. Regardless, this claim is based on the same alleged FEHA violations for age discrimination. As found above, there are triable issues of fact as to whether Plaintiff was satisfactorily performing his duties since he was terminated only one month after being placed on the Success Plan and replaced by someone who was 27 years old, what job responsibilities were under Plaintiff’s purview as BSD, whether Plaintiff’s complaints about Savoie and management were sufficient to constitute a protected activity, whether age discrimination was substantial motivating reason for Plaintiff’s termination given the comments by Savoie and her treatment of Plaintiff. Summary adjudication of the Fourth Cause of Action is **DENIED**.

5. Sixth Cause of Action – Breach of the Covenant of Good Faith and Fair Dealing

Windsong states that since Plaintiff’s employment is governed by the terms in his offer letter, which stated that he was an at-will employee, Plaintiff cannot establish a claim for breach of the implied covenant under an express or implied theory or establish any breach of any contractual term and therefore cannot allege any conceivable contractual damages. (MSJ, 22:23–24:28.)

Plaintiff argues that Savoie’s exhibited bad faith by terminating Plaintiff pretextually for performance while driven by age animus, as shown by discriminatory comments, ignored complaints, and immediate younger replacement. (Opposition, 14:5–14.) Plaintiff’s termination deprived him of wages, benefits, and job security he reasonably expected. (*Id.* at 14:14–15.) Plaintiff reasons that Windsong terminated Plaintiff in bad faith to avoid addressing his complaints, and the termination was driven by an age bias, thereby creating triable issues as to Windsong’s motive. (*Id.* at 14:18–24.)

In reply, Windsong contends that there is no written employment contract, only the offer letter, which itself is not a contract of employment. (Reply, 9:15–19.) Under an implied contract theory, Windsong asserts that there was no implied promise limiting its ability to terminate Plaintiff’s employment and asserts that it had good cause in terminating Plaintiff. (*Id.* at 9:20–10:6.)

The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made*. (*Guz, supra*, 24 Cal.4th at 349 [citations omitted].) “[I]f the employer’s termination decisions, however arbitrary, do not breach such a substantive contract provision, they are not precluded by the covenant.” (*Id.* at 350.) “Because the implied covenant protects only the parties’ right to receive the benefit of their agreement, and, in an at-will relationship there is no agreement to terminate only for good cause, the implied covenant standing alone cannot be read to impose such a duty.” (*Id.* at 350 citing *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 698, fn. 39.)

Here, it is undisputed that Plaintiff’s employment was at-will and the contract governing his employment was his signed offer of employment. The parties did not execute a separate contract of employment and the signed offer letter states that it is not a contract of employment. Plaintiff has failed to identify any term that limited Windsong’s termination rights, such as Windsong’s personnel policies and practices. (See *Guz, supra*, 24 Cal.4th at 352 [“the employer’s personnel policies and practices may become *implied-in-fact terms* of the contract between employer and employee. If that has occurred, the employer’s failure to follow such policies when terminating an employee is a breach of the contract itself”].) Plaintiff cites to *Cotran v. Rollins Hudig Hall Intern., Inc.* (1998) 17 Cal.4th 93, but this case involved facts where the employee was hired under an implied agreement that specified that the employee should not be dismissed except for “good cause,” which is factually distinguishable to the case at hand as the signed offer letter contained no such term. Plaintiff alleges bad faith; however, such allegations do not stand. (*Guz, supra*, 24 Cal.4th at 352–353, [“Allegations that the breach was wrongful, in bad faith, arbitrary, and unfair are unavailing; there is no tort of ‘bad faith breach’ of an employment contract”].) Plaintiff cannot point to a term, agreed to by the Parties, which limits Windsong’s termination rights and that supports a cause of action for the breach of the covenant of good faith and fair dealing. Thus, summary adjudication is **GRANTED** as to the Sixth Cause of Action.

6. Punitive Damages

Lastly, Windsong maintains That plaintiff cannot establish by clear and convincing admissible evidence that Plaintiff’s former supervisor engaged in malicious, oppressive, or fraudulent conduct to support a claim for punitive damages. (MSJ, 25:2–19.)

Plaintiff contends that Savoie’s conduct demonstrates malice and oppression because as Executive Director with authority over operations and personnel at Windsong, she intentionally discriminated by making repeated age-based remarks, ridiculing Plaintiff publicly, and terminating him pretextually after complaints. (Opposition, 15:17–16:11.) Plaintiff further argues that Windsong ratified Savoie’s acts by failing to investigate complaints or discipline Savoie, allowing the conduct to persist, and any disputes over intent and ratification are factual issues for the jury. (Opposition, 16:11–14.)

Windsong argues that there is no evidence demonstrating malicious, oppressive, or fraudulent conduct and even if Plaintiff could demonstrate such conduct, the punitive damages still fail because Savoie was not a managing agent authorized by Windsong to exercise independent and substantial authority and judgment in corporate decision making for Windsong. (Reply, 10:8–21.)

Recovery of punitive damages requires Plaintiff to show that the defendant is guilty of “oppression, fraud, or malice” by clear and convincing evidence. (*Aquino v. Superior Court* (1993) 21 Cal.App.4th 847, 856–857 citing Civil Code § 3294(a).) “An act of oppression, fraud or malice, by an officer, director or managing agent, is sufficient to impose liability on a corporate employer for punitive damages, without any additional showing of ratification by the employer.” (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 420.) “To demonstrate that an employee is a true managing agent under [Civil Code] section 3294, subdivision (b), a plaintiff seeking punitive damages would have to show that the employee exercised substantial discretionary authority over significant aspects of a corporation’s business.” (*Davis v. Kiewit Pacific Co.* (2013) 220 Cal.App.4th 358, 366 quoting *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 573.) “If there exists a triable issue of fact regarding whether a corporate employee is a managing agent under the *White* test, that factual question must be determined by the trier of fact and not the court on a motion for summary adjudication.” (*Ibid.*)

Here, Plaintiff has raised triable issues of facts relating to malice or oppression by Savoie’s intentional conduct and treatment of Plaintiff discussed above. Additionally, it is undisputed that Savoie was the Executive Director of Windsong. While Executive Directors of businesses necessarily exercise substantial discretionary authority over significant aspects of a corporation’s business, the determination of whether Savoie is a managing agent of Windsong is properly made by the trier of fact and not the Court at this stage. Summary adjudication is **DENIED** as to Plaintiff’s request for punitive damages.

IV. CONCLUSION

Plaintiff’s motion for summary adjudication is **GRANTED** as to the Third and Sixth Causes of Action. Summary adjudication is **DENIED** as to the First, Second, Fourth, and Fifth Causes of Action and Plaintiff’s request for punitive damages.

Defendant’s counsel 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).

2. 24CV04812, Debra Helmey v. Sonoma Specialty Hospital, LLC

Defendant Prime Health Services – Shasta, LLC (doing business as Shasta Regional Medical Center)(“Shasta”) moves for summary judgment, or in the alternative summary adjudication, (“MSJ-MSA”) as to the First, Second, and Third Causes of Action in Plaintiffs Amanda, Cheyanne, Debra, and Jerney Helmey’s (“Plaintiffs”) First Amended Complaint (“FAC”).

Pursuant to Code of Civil Procedure (“C.C.P.”) section 437c OR 437cf, summary judgment OR adjudication is **DENIED**. Shasta’s objections to evidence submitted in support of Plaintiffs’ Opposition are **OVERRULED**.

I. PROCEDURAL HISTORY

Plaintiffs are heirs and successors in interest of Decedent Christopher Helmey (“Decedent”). (FAC, ¶¶ 1-4.) Decedent was a dependent adult with multiple amputations and multiple medical issues, who was unable to care for his own basic needs and unable to walk or reposition his own body. As a result, he needed assistance caring for his basic needs and changing positions to avoid developing

pressure ulcers. (FAC, ¶¶ 12-14; Ransbury Decl., ¶¶ 8-9.) Decedent had a specific care plan with orders to reposition him at least every two hours, otherwise he had a high risk of developing such pressure ulcers, and to use pressure reducing devices. (FAC, ¶¶ 19-21.)

Shasta is a medical provider who treated Decedent from May 8, 2023, through May 25, 2023. (FAC, ¶¶ 5-11; Undisputed Material Fact [“UMF”] No. 1.) Plaintiffs allege that Shasta knew that Decedent could not provide for his own basic needs, needed assistance changing positions, and had a special care plan, but failed to follow the care plan while Decedent was admitted causing Decedent to develop multiple pressure ulcers that Shasta ignored and failed to treat. (FAC, ¶¶ 13-16.) Shasta claims that a skin assessment was performed on Decedent when he was admitted that showed he had an open abrasion on his lower back, the pressure stage of which was not known at the time. (UMF No. 2.) Shasta performed a further wound assessment on Decedent on May 9, 2023, which documented that Decedent had a pressure wound the stage of which was unknown. (UMF No. 3.) Shasta performed various other procedures and assessments while Decedent was receiving care at their facility. (UMF Nos. 4-19.)

Plaintiffs allege that Decedent was transferred to Defendant Sonoma Specialty Hospital on May 25, 2023, at which facility his pressure ulcers continued to worsen and to tunnel to his bone. (FAC, ¶ 17; UMF No. 20.) On June 14, 2023, Decedent was transferred again to Santa Rosa Memorial Hospital, at which point his pressure ulcers were crater-like and reached stage 4, extending across his entire lower back and buttocks. (FAC, ¶ 18; UMF No. 20.) Ultimately, Decedent died on July 2, 2023, from infected stage 4 pressure ulcers. (FAC, ¶ 23; UMF No. 21.)

Based on the above allegations, Plaintiffs’ FAC alleges three causes of action for: (1) Wrongful Death/Negligence; (2) Willful Misconduct; and (3) Elder Abuse. (FAC, ¶¶ 29-45.) Shasta moves for summary judgment, or adjudication, as to each of these causes of action, arguing that they fail as a matter of law as to Shasta because the applicable standard of care was met at all times when treating Decedent and because Shasta did not cause or contribute to Decedent’s injuries or death. (Motion for Summary Judgment or Adjudication [“MSJ-MSA”], 2:10-24; UMF Nos. 22-27.) Plaintiffs oppose the MSJ-MSA and Shasta submitted a reply to the opposition along with objections to evidence addressed below.

II. OBJECTIONS TO EVIDENCE

The Court rules as follows to Shasta’s objections to Plaintiffs’ opposing evidence:

1. Shasta’s objection to Paragraph 20 of the Declaration of Michael Amendola as speculative, conclusory, and lacking foundation is **OVERRULED**;
2. Shasta’s objections to Paragraphs 1, 2, 5, and page 4 lines 19 to 21 (erroneously labeled as lines 1-3 in the objection) of the Declaration of Lisa Moore as speculative, conclusory, and lacking foundation are **OVERRULED**; and
3. Shasta’s objections to the Exhibits 14, 15, and 16 of the Declaration of Brian G. Lance as inadmissible hearsay and lacking authentication are **OVERRULED**;
4. Shasta’s objections to the Exhibits 22, 23, and 24 of the Declaration of Brian G. Lance as inadmissible hearsay are **OVERRULED**; and

5. Shasta's objections to the Exhibits 25, 26, and 27 of the Declaration of Brian G. Lance as inadmissible hearsay are **OVERRULED**.

III. 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."

Negligence/Wrongful Death

A cause of action for wrongful death is purely statutory. (*Barret v. Superior Court* (1990) 222 Cal.App.3d 1176, 1184.) The cause of action requires a tortious act to be alleged that caused the resulting death and damages, which include pecuniary loss suffered by plaintiff's decedent heirs. (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) In actions for wrongful death resulting from negligence, the complaint must allege all the elements of actionable negligence. (*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 195.) The essential elements a plaintiff must allege to state a cause of action for negligence are that: (1) there was a duty to use due care; (2) defendant breached that duty or standard of care; (3) plaintiff was injured; and (4) defendant's breach was the proximate or legal cause of plaintiff's injury. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

Willful Misconduct

Generally, in California Law the established meaning of "willful misconduct" is "intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results." (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 681, 689.) In terms of negligence, "willful misconduct" is interchangeable with "wanton misconduct", "reckless disregard", "recklessness" or some combination of these; they all identify an aggravated form of negligence. (*Ibid.*)

Elder Abuse

The California Welfare & Institutions Code section 15600 et seq. allows a plaintiff remedy for elder abuse. A claim for elder abuse based on neglect can include "negligent failure of an elder

custodian ‘to provide medical care for [the elder’s] physical and mental health needs...’” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783; Welf. & Inst. Code § 15610.57.) Plaintiff must allege that there is a caretaking or custodial relationship between defendant and the elder who suffered harm such that defendant assumed significant responsibility for attending to one or more of the elder’s basic needs that an able-bodied and fully competent adult would otherwise be capable of managing without any assistance. (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 155.) If defendant did not have a substantial caretaking or custodial relationship that involved ongoing responsibility for one or more basic needs with the elder, then the Elder Abuse act does not apply. (*Id.* at p. 152.)

Punitive Damages

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that “the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ. Code § 3294(b).) “With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.” (*Ibid.*) Where punitive damages are alleged against an employer under Civil Code section 3294(b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code section 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.) Plaintiff must plead facts sufficient to show either knowledge or ratification by an officer, otherwise claims for punitive damages are inadequately pled. (*Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1433.)

Shasta’s MSJ-MSA; Plaintiffs’ Opposition; Shasta’s Reply

Shasta argues that it is entitled to summary judgment or adjudication as to each cause of action in the FAC.

Whether Shasta Met the Applicable Standard of Care

Shasta relies on the Declaration of Mary Ransbury, R.N., to claim that any of Plaintiffs’ contentions against the care and treatment rendered to Decedent are eliminated because at all times, Shasta complied with the requisite standard of care towards Decedent. (MSJ-MSA, pp. 16:9-26, 17:1-20; Ransbury Decl., ¶¶ 30-37.) Shasta claims that its staff appropriately repositioned Decedent, utilized specialty mattresses, engaged wound care consults, and updated the plan of care as needed, yet the development of Decedent’s unstageable sacral pressure wound was unavoidable because his chronic medical issues rendered him physiologically incapable of resisting tissue breakdown. (*Ibid.*)

Plaintiffs argue that summary judgment is improper because, if the evidence and all inferences reasonably drawn therefrom are viewed in the light most favorable to Plaintiffs, a jury could conclude that Shasta violated the applicable standard of care. (Opposition, 12:14-21.) Plaintiffs’ position is that there is clearly a triable issue of fact as to whether the applicable standard of care was met because the parties’ medical experts are in stark disagreement about it. (*Id.* at 13:11-12.) Plaintiffs’ expert would care nurse, Lisa Moore, states that Shasta breached its standard of care in the lack of care provided to Decedent by failing to properly prevent, assess, monitor, treat, and document his pressure wound and by failing to abide by his special care instructions. (*Id.* at 13:1-10.)

In its Reply, Shasta concedes that, should the Court accept the opinions of Plaintiffs' experts Lisa Moore and Michael Amendola as true, a triable issue of fact exists with respect to Plaintiffs' negligence claim.

Whether Shasta Caused Decedent's Injuries

Based on the expert opinions described in the Declaration of Willis Wagner, Shasta argues that, to a reasonable degree of medical probability, Decedent's injuries were not caused by Shasta's medical treatment or lack thereof, but rather Decedent was a profoundly vascularly compromised patient whose medical issues caused complications rendering him physiologically incapable of resisting tissue breakdown. (MSJ-MSA, pp. 17-20; Wagner Decl., ¶¶ 31-36.)

Plaintiffs argue that there is clearly a triable issue of fact as to whether Shasta caused Decedent's injuries because Plaintiffs' own retained experts state that the pressure ulcer was a significant condition contributing to Decedent's death and that, though Shasta diagnosed Decedent's pressure ulcer as "unstageable", it developed and worsened extensively in the time that Decedent was admitted at Shasta. (Opposition, pp. 13-15.)

As mentioned above, Shasta concedes in the Reply that, should the Court accept the opinions of Plaintiffs' experts Moore and Amendola as true, a triable issue of fact exists with respect to Plaintiffs' negligence claim.

Plaintiffs' Claim for Elder Abuse

As a matter of law, Shasta argues that the elder abuse claim in the FAC must fail because the Declaration of Mary Ransbury establishes that there is no evidence of withholding of care as to Decedent during his admittance at Shasta's facility and that it cannot be established that he was neglected by Shasta simply because he developed a pressure injury. (MSJ-MSA, pp. 20-25.)

Plaintiffs argue that an aspect of neglect as defined in the Welfare & Institutions Code section 15610.57 is "failure to provide medical care for the physical and mental health needs" of an elder dependent adult. (Opposition, 15:5-24.) Because Shasta repeatedly failed to follow Decedent's care plan, the pressure ulcer worsened while Decedent was treated by Shasta which constitutes recklessness. (*Id.* at pp. 15-20.) Finally, Plaintiffs claim there is need for further discovery because, though Plaintiffs diligently noticed the depositions of the charge nurse and director of nursing at Shasta, these dates were moved by Shasta to a date beyond Plaintiffs' deadline to oppose the MSJ-MSA so Plaintiffs have not fully been allowed the opportunity to discover where there is a managing agent who ratified reckless treatment of Decedent. (*Id.* at pp. 20-21.)

In reply, Shasta generally reaffirms the arguments made in the MSJ-MSA and requests summary adjudication as to the claim for elder abuse. (Reply, pp. 2-4.) Shasta argues that Plaintiffs cannot establish recklessness in Shasta's treatment of Decedent or that a managing agent ratified such behavior. (*Id.* at pp. 7-10.)

Plaintiffs' Claim for Punitive Damages

Shasta argues that there are no facts to show that Shasta acted with the requisite "despicable conduct" or "evil motive" to establish that punitive damages ought to be awarded against Shasta

because Shasta acted within the standard of care in the treatment of Decedent and Shasta's actions did not constitute neglect, abandonment, recklessness, fraud, oppression, or malice. (MSJ-MSA, 26:9-14.)

Plaintiffs argue that conscious disregard is established to satisfy an award for punitive damages because there was a repeated failure to turn and reposition Decedent, which worsened his pressure ulcer. (Opposition, pp. 21-22.) Plaintiffs argue that Shasta has been fined for chronic understaffing, which resulted in staff failing to turn and reposition Decedent in a timely manner according to his care instructions. (*Ibid.*)

Punitive damages were not addressed in the reply, but as stated above, Shasta argues that Plaintiffs cannot establish recklessness in Shasta's treatment of Decedent. (Reply, pp. 7-10.)

Application

The Court concludes that summary judgment is improper as to Plaintiffs' causes of action because there still remains a triable issue as to the following material facts:

1. Whether Shasta performed a satisfactory skin assessment of Decedent when he was first admitted to its facility and noted that he had an "open abrasion" with an unstageable pressure injury. (UMF Nos. 2-3.)
2. Based on the conflicting opinions of Plaintiffs' and Shasta's medical experts, whether Shasta did in fact comply with the requisite standard of care in treatment Decedent's injuries and whether Shasta caused or contributed to Decedent's injuries or death. (UMF No. 22, 24.)
3. Whether Shasta adequately complied with Decedent's established care plan. (UMF Nos. 25-27.)

Shasta conceded that there may be a triable issue of fact remaining as to Plaintiffs' negligence claim so summary adjudication will not be granted as to the wrongful death/negligence claim. Shasta also failed to address the punitive damages request in the Reply and the Court finds that there remains a triable issue of fact as to the issue of recklessness/conscious disregard in Shasta's treatment of Decedent.

Based on the above, issues remain as to several material facts, so the Court also finds that summary adjudication is not appropriate as to Plaintiffs' elder abuse claim. Shasta was aware of Decedent's care plan and there remains a triable issue of fact as to whether Shasta was reckless in not adhering to the instructions described in the care plan. As such, Plaintiffs may be able to establish a failure to provide medical care as needed.

IV. CONCLUSION

Based on the foregoing, the Court **DENIES** Shasta's MSJ-MSA in its entirety. Shasta's objections are also **OVERRULED** as Plaintiffs' evidence submitted in support of the Opposition. 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).

3. 24CV05683, Jones v. Deutsche Bank National Trust Company

APPEARANCES REQUIRED. Defendant Deutsche Bank National Trust Company notified the Court that a motion to lift stay in this matter was E-filed on February 18. The motion is not currently before the Court as it has not been processed into the Court’s record and had a hearing date set, but the Court requires all parties to appear and notify the Court of the status of the pending bankruptcy action against Plaintiff.

4. 24CV06305, Eden Housing, Inc. v. ATI Restoration, LLC

Cross-Complainant A&A Dream House Construction (“A&A”) moves for judgment on the pleadings (“JOTP”) pursuant to Code of Civil Procedure (“C.C.P.”) section 438 as to the First Cause of Action for Express Contractual Indemnity asserted in A&A’s Cross-Complaint against Cross-Defendant ATI Restoration, LLC (“ATI”).

The JOTP Motion is **GRANTED**. The Court **GRANTS** A&A’s requests for judicial notice and, on its own motion, the Court **GRANTS** judicial notice of the docket in this matter and the docket in *ATI Restoration, LLC v. A&A Dream House Construction* (Case No. 23CV00071)(“ATI Action”).

I. PROCEDURAL HISTORY

In the underlying action *Eden Housing, Inc. v. ATI Restoration, LLC* (Case No. 24CV06305)(“Underlying Action”), Plaintiffs Eden Housing, Inc., Eden Housing Management, Inc., and Santa Rosa Quail Run LP (“Plaintiffs”) allege that they contracted with ATI to remediate fire damage to their property, Quail Run Apartments, located at 1018 Bellevue Avenue, Santa Rosa, California (the “Property”). (Complaint, ¶¶ 9-10; Memorandum of Points and Authorities [“JOTP MPA”], 5:3-8.) ATI subcontracted with A&A to undertake aspects of the restorative work. (Complaint, ¶¶ 11; JOTP MPA, 5:3-8.)

One year before Plaintiffs filed their underlying action against both A&A and ATI, ATI had filed a separate action, titled the ATI Action, against A&A for breach of contract, express and implied contractual indemnity, equitable indemnity, unjust enrichment and declaratory relief. (Request for Judicial Notice [“RJN”], Exhibit 1.) A&A and ATI settled this action with the following relevant provisions:

“ATI agrees to release, defend, indemnify, and hold harmless A&A from and against any liens or claims (including subrogation claims) that may arise or may have arisen in favor of any insurer or third party for any damages, charges, or expenses directly or indirectly related to the claims that give rise to this Agreement. This indemnification protection includes all penalties, attorney fees and costs.”

(A&A Cross-Complaint, Exhibit B, Settlement Agreement, § 5.b.) A&A filed a Cross-Complaint in this action against ATI pursuant to the parties’ Settlement Agreement regarding the ATI Action, which alleges a First Cause of Action for express indemnity per the Settlement Agreement (A&A Cross-Complaint, ¶ 17.) ATI filed an Answer to the Cross-Complaint asserting affirmative defenses to the First Cause of Action on grounds of mistake, estoppel, and lack/failure of consideration. (ATI Answer, 3:11-27.)

Now, A&A moves for judgment on the pleadings regarding the First Cause of Action based on the above-stated terms of the parties' Settlement Agreement. (JOTP, pp. 1-2.) Prior to the filing of the JOTP Motion, the parties met and conferred as required through counsel via telephone to discuss the issues raised in the motion, but the parties did not reach a resolution. (Blute Decl., ¶¶ 1-5.) ATI filed an Opposition to the JOTP Motion. A&A filed its Reply on February 11, 2026.

II. REQUEST FOR JUDICIAL NOTICE

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 the above limitations, the Court **GRANTS** A&A's request for judicial notice of:

1. The Complaint filed in the matter of *ATI Restoration, LLC v. A&A Dream House Construction* (Case No. 23CV00071); and
2. The Master Subcontract Agreement between ATI and A&A governing A&A's work at the Property at issue in this lawsuit.

ATI joined A&A's request for judicial notice of the above, and also separately requested judicial notice in the Declaration of ATI's counsel of the docket in this action, of the ATI action, and other actions of actual residents impacted by A&A's alleged negligence filed, including *Perez v. Eden Housing Management* (Case No. SCV-270230.) Pursuant to Evidence Code sections 452 and 453, the Court takes judicial notice of the docket in this action and in the relevant ATI action on its own motion. The Court will not take notice of the *Perez* action, finding that it will not be relevant to the First Cause of Action in A&A's Cross-Complaint.

III. JUDGMENT ON THE PLEADINGS

Legal Standard

Plaintiff or Cross-Complainant's Judgment on the Pleadings (or "JOTP")

Where the moving party is a plaintiff (or cross-complainant), a motion for judgment on the pleadings (or “JOTP”) may be brought on the grounds that the complaint (or cross-complainant) states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. (C.C.P. § 438(c)(1)(A).) The grounds for a JOTP motion must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (C.C.P. § 438(d).) If the JOTP motion is based on judicially noticed matters pursuant to Evidence Code sections 452 or 453, “the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise

permit.” (*Ibid.*) A plaintiff or cross-complainant may only file a JOTP motion after the defendant or cross-complainant has already filed his or her answer to the complaint or cross-complaint and the time to demur to the answer has expired. (C.C.P. § 438(f)(1).)

Meet and Confer Requirement for JOTP

Before filing a motion for judgment on the pleadings, the moving party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. (C.C.P. § 439.) If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. (*Ibid.*)

Express Contractual Indemnity

For a cause of action for indemnity, the plaintiff can allege that an obligation of indemnity arose from indemnity expressly provided for by a contract, indemnity implied from a contract not specifically mentioning indemnity, or from the equities of a particular circumstances. (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1157.) Express indemnity arises “by virtue of express contractual language establishing a duty in one party to save another harmless upon the occurrence of specified circumstances.” (*Id.* at p. 1158.) Express indemnity “generally is not subject to equitable considerations or a joint legal obligation to the injured party; rather, it is enforced in accordance with the terms of the contracting parties’ agreement.” (*Ibid.*)

A&A’s JOTP Motion

A&A’s JOTP Motion argues that the First Cause of Action in A&A’s Cross-Complaint states facts sufficient to constitute a cause of action against ATI because by virtue of the parties’ Settlement Agreement regarding the ATI Action, A&A has fully performed its obligations under the Indemnity Clause’s express terms, under which terms Plaintiffs’ claims in this action squarely lie. (JOTP MPA, pp. 8-11.) Furthermore, A&A argues that the sole exception to the Settlement Agreement’s Indemnity Provision does not apply, which provision states that:

“... nothing herein will amend, adjust, revise, change, or eliminate any of the other rights and obligations under the Contract which will survive this Agreement including but not limited to warranty and indemnity obligations owed by A&A for any of work performed by A&A at the Project unrelated to the repairs and restoration work as a result of the Incident, if any.”

(A&A Cross-Complaint, Exhibit B, Settlement Agreement, § 1.d.) A&A argues that Plaintiffs claims involve the same “repairs and restoration work” as were described in the Settlement Agreement, and the carve-out provision is regarding work unrelated to the repairs and restorations that resulted from the incident. (Opposition, pp. 10-11.)

A&A also argues that ATI’s Answer fails to state facts sufficient to state any valid defenses to the First Cause of Action. (*Id.* at 11:19-22.) A&A argues that the three affirmative defenses fail because: (1) no factual allegations explain what fact the parties were mistaken about or misunderstood about the Settlement Agreement; (2) the estoppel defense fails as there

is a carve-out provision regarding the Indemnity Provision in the Settlement Agreement; and (3) there are no factual allegations supporting the lack/failure of consideration when the Settlement Agreement contains a specific settlement payment. (*Id.* at pp. 11-13.)

ATI's Opposition

In the Opposition, ATI argues that there is an Indemnity Provision in the parties' subcontract that requires A&A to indemnify ATI against Plaintiffs, so even if the parties have settled the ATI Action regarding the same factual circumstances that give rise to Plaintiffs' claims, ATI argues that the Settlement Agreement did not include the much more extensive costs of tenant rehousing, rent, food, personal property damage, litigation costs, experts, and attorney fees that Plaintiffs outlined in this action. (Opposition, pp. 2-3.)

The Opposition takes issue with the requests made in the JOTP Motion and argues that the dockets from this case and the ATI Action that the Court took judicial notice of demonstrate that there are facts sufficient to constitute an affirmative defense to the First Cause of Action. (*Id.* at pp. 4-7.)

The Opposition also finds it improper that the JOTP Motion seeks to have the Court go beyond the face of the Cross-Complaint and make judicial interpretations of two contractual documents. (*Id.* at pp. 7-8.)

A&A's Reply

In its Reply, A&A mostly reiterates the argument made in its moving papers, namely that the Settlement Agreement is clear and unambiguous, and unequivocally requires ATI to defend and indemnify A&A. Consequently, there is no basis under which parol evidence should be considered by the Court. In addition, A&A addresses ATI's additional arguments about the defenses contained in their Answer to the Cross-Complaint. First, A&A points out that any claim that A&A was negligent is irrelevant as any such claims were encompassed by the Settlement Agreement's indemnity provision. (Reply, p. 7.) Second, A&A asserts that ATI's claimed defense that A&A failed to mitigate damages is invalid for a want of factual support. (*Ibid.*)

Finally, A&A rebuts the newly added contractual indemnity claim by ATI, which was added after the filing of the instant motion. (Reply, p. 9.) ATI claims the indemnity provision does not apply because there is an exception in the Agreement for "warranty and indemnity obligations owed by A&A for any work performed by A&A at the Project **unrelated** to the repairs and restoration work as a result of the Incident." (*Ibid.*) However, as A&A points out, ATI's underlying Complaint explicitly alleges that Plaintiff's alleged damages are related to those repairs and restoration work incurred while ATI completed the necessary repair work. (*Ibid.*)

Application

First, the Court addresses the Opposition's arguments that the JOTP motion improperly seeks to go beyond the face of the Cross-Complaint and make judicial interpretations of two contractual documents. The First Cause of Action is a contractual claim. To support this claim, it is required to attach the contract(s) upon which the claim is based. As such, A&A attached the master subcontract and the settlement agreement as Exhibits A and B to the Cross-Complaint. Thus, they are part of the face of the Cross-Complaint and need to be assessed and treated as true in order to determine the JOTP Motion.

Second, the master subcontract’s indemnity provision limits indemnity to “the Work (including defects in workmanship or materials and/or design defects [if the design was that of Subcontractor or its agents]) or Subcontractor’s presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor...)” (RJN, Exhibit B, Master Subcontract, § 8(a).) The parties’ Settlement Agreement releases A&A from any liens or claims arising from the claims that give rise to the Settlement Agreement, namely Plaintiffs’ claims in the underlying action, for work and repairs performed. (A&A Cross-Complaint, Exhibit B, Settlement Agreement, § 5.b.) The Court does not find that “tenant rehousing, rent, food, personal property damage, litigation costs, experts, and attorney fees that Plaintiffs outlined in this action” can be included within the terms of the master subcontract’s indemnity provision when ATI and A&A have expressly settled on all claims arising from any errors, negligence, and defects in A&A workmanship as outlined in the Indemnity Provision of the master subcontract. For these reasons, the Court finds that the First Cause of Action sufficiently states facts to constitute a claim for Express Indemnity against ATI.

Finally, though the Opposition argues that the dockets judicially noticed from this case and the ATI Action demonstrate that there are facts sufficient to constitute an affirmative defense to the First Cause of Action, the Court finds that the facts outlined on pages 6 and 7 of the Opposition do not adequately demonstrate facts sufficient to constitute the three affirmative defenses of mistake, estoppel, or lack/failure of consideration claimed in ATI’s Answer.

For these reasons, the Court will grant the motion.

IV. CONCLUSION

Based on the foregoing, the JOTP Motion is **GRANTED**. The Court **GRANTS** A&A’s requests for judicial notice and, on its own motion, the Court **GRANTS** judicial notice of the docket in this matter and the docket in the ATI Action, as mentioned above.

A&A shall submit a written order on their motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 24CV07007, Pomeroy v. Molinar

Plaintiff Robert Pomeroy’s motion for leave to file the First Amended Complaint (“FAC”) is **GRANTED**, pursuant to Code of Civil Procedure (“C.C.P.”) section 473(a)(1). Plaintiff shall file and serve the proposed FAC within 10 days of service of this Court’s order.

I. PROCEDURAL HISTORY

Plaintiff alleges that he owns a “1973 Chevrolet short bed step side small window 4x4 mounted upon a 1973 chassis with a 455 Olds motor, turbo 400 transmission with a stall converter, air locker rear end on rally wheels with 33inch BF Goodrich tires” (the “Vehicle”) valued at \$30,000.00. (*Id.* at ¶ 10.) As the Vehicle was a unique custom build, Plaintiff alleges that it had a pending CHP VIN verification and pending brake and lamp safety inspections. (Complaint, ¶ 10.) On May 28, 2023, Plaintiff alleges that Defendants took possession of the Vehicle from a residence at 13410 Arnold Drive by using resources of and under color of authority of Defendant Sonoma Valley Fire District

without Plaintiff's consent. (*Id.* at ¶ 11.) A photograph attached as Exhibit 1 to the Complaint shows a fire truck towing the Vehicle. Plaintiff's Complaint alleges causes of action for conversion, auto theft, and theft under color of authority against Defendants Jorge, Virginia, and James Molinar, and Sonoma Valley Fire District. (Complaint, ¶¶ 17-30.) Per the Complaint, Plaintiff demanded return of the Vehicle on several occasions, including by a written letter dated August 8, 2023, which identified the VIN as "3A570105760." (Veres Decl., ¶¶ 4-5, Exhibits A-C.)

Plaintiff now seeks leave to amend the Complaint to instead state that the Vehicle was a "Special Construction Chevrolet short bed step aside small window 4x4 mounted upon a 1973 chassis with a 455 Olds motor, turbo 400 transmission with a stall converter, air locker rear end on rally wheels with 33inch BF Goodrich tires." (LemMon Decl., Exhibit A, Proposed FAC, ¶ 10.) Defendants opposed the motion, to which Plaintiff filed a reply brief.

II. ANALYSIS

Legal Standard

Motions for leave to amend pleadings are in discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, the court may allow the amendment of any pleading at any time before or after trial begins if it is in the furtherance of justice. (C.C.P. § 576.) C.C.P. section 473 and California Rules of Court, rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted. When the plaintiff is the moving party, proximity to the trial date is not a ground for denial absent a showing of prejudice to defendant. (See *Mesler v Bragg Mgt. Co.* (1985) 39 Cal.3d 290, 297.) Even if some prejudice is shown, leave to amend may be permitted upon conditions imposed by the Court, such as, continuation of the trial date, reopening discovery, or ordering the party seeking amendment to pay opposing party's costs and fees incurred in preparing for trial. (C.C.P. §§ 473, 576; *Fuller v Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400.)

Plaintiff's Motion for Leave

Plaintiff's proposed FAC only seeks to amend the description of the vehicle to state that it is a "Special Construction" because it has parts and pieces from Chevy Pickups from 1955 onward. (Memorandum of Points and Authorities, 1:23-28, 2:1.) Plaintiff and his counsel were unaware of this issue until Plaintiff's deposition on September 19, 2025, during which the parties discovered that there was confusion as to the nomenclature of the alleged stolen vehicle as opposed to the one other 1957 Chevrolet Pickup which was a separate vehicle lost in a fire. (LemMon Decl., ¶¶ 5-6.) Plaintiff argues that this amendment is necessary and proper to allow Plaintiff to pursue claims against the parties and denial would result in injustice to Plaintiff. (MPA, 3:3-9.) Plaintiff also argues that there will be no undue burden on Defendants or any prejudice because Defendants have been on notice of allegations since 2024 and can address the clarifications through targeted discovery. (*Id.* at 2:27-28, 3:1-2.)

Defendants' Opposition

Defendants oppose the motion arguing that prejudice will result from the filing of the FAC because Plaintiff seeks to replace the central factual allegation of the lawsuit with a materially different vehicle after his sworn testimony revealed that the vehicle identified in the Complaint was destroyed years before the alleged conversion. (Opposition, 2:6-9.) Defendants argue that the relevant vehicle

was not a 1957 Chevrolet, but a 1955 Chevrolet instead, and that the 1957 Chevrolet referenced in the Complaint had been completely destroyed in a fire in 2017, the remains of which were “hailed off.” (Veres Decl., Exhibit C; Opposition, 3:10-16.) Of most important note, the VIN listed on the Certificate of Title for the 1957 Chevrolet matches the VIN identified in Plaintiff’s letter demanding the car be returned. (Opposition, 3:17-21.) Plaintiff also testified that his hobby is to restore and build old cars and that he dismantled and rebuilt both the 1955 and 1957 Chevrolets multiple times. (*Id.* at 3:22-27.) Defendants urge the Court to deny the motion as the proposed FAC is a sham pleading and because Plaintiff failed to comply with California Rules of Court, Rule 3.1324, which requires a motion to identify, by page, paragraph, or line number, the specific changes sought. (*Id.* at pp. 4-8.)

Reply

In the Reply, Plaintiff cites to *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 20, in which matter the California Supreme Court held that “an amendment may not be permitted where the effect of such amendment is to state ‘another and distinct cause of action’.” (Reply, 2:2-17.) Furthermore, Plaintiff cites to *Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575 as support to generally argue that as long as an amendment does not alter the essential nature of the action, then it should be liberally allowed so that cases can be decided on their merits rather than on technical pleading defects. (Reply, 2:18-28.)

Plaintiff is arguing here that correcting a VIN does not change the incident or theory of liability, but rather aligns the pleadings with the correct facts. (Reply, 3:16-18.) Plaintiff points to *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408-409, in which matter the California Supreme Court held that, in order for an amended complaint to relate back to the original one, the amended complaint must “(1) rest on the same general set of facts, (2) involve the same injury, and (3) refer to the same instrumentality, as the original one.” Here, Plaintiff asserts the amendment does all three things, so Plaintiff should be allowed to make the correction proposed in the FAC.

Application

Overall, the Court is not persuaded that Defendants will be prejudiced by the filing of the FAC to correct the name of the Vehicle description to include “Special Construction.” All other general facts remain the same, the same injury is being alleged and by the same instrumentality. No new parties or causes of action are requested to be added. Furthermore, trial has been continued until May 2026, so there remains time to conduct any additional targeted discovery that Defendants may need to conduct. However, not allowing Plaintiff to file the FAC will allow an essential factual error to remain in the Complaint, which may make it difficult for the parties to obtain the proper redress or relief from their claims. Thus, it will further justice to allow leave to file the FAC so that the parties’ claims can be resolved on their merits.

III. CONCLUSION

Plaintiff’s motion is **GRANTED**. The proposed FAC shall be served and filed within 10 days of this Court’s order. Plaintiff shall prepare and serve a proposed order consistent with this tentative ruling and in accordance with California Rules of Court, Rule 3.1312.

6. 25CV00133, American Express National Bank v. Pizeno

Counsel Garrett Charity's unopposed motion to be relieved as counsel for Defendant David Pizeno is **GRANTED**, per Code of Civil Procedure section 284(2).

Counsel declares that, "the client engages in other conduct that renders it unreasonably difficult to carry out the employment effectively... there has been an irreconcilable breakdown in the attorney-client relationship." (Counsel Decl., ¶ 2.) Counsel timely and properly served the parties and client with the moving papers and notice of the hearing date. (See Proof of Service dated November 6, 2025.) No opposition or objection to the motion has been filed. The next hearing set in this matter is a Case Management Conference set for February 23, 2026, as noted in Counsel's Declaration.

Unless oral argument is requested, the Court will sign the proposed order lodged with this unopposed motion.

7. 25CV01532, Luria v. Patterson

The hearing on specially appearing Defendant The Invus Group, LLC's Motion to Quash the Service of Summons is **CONTINUED** to Wednesday, June 10, 2026, at 3:00 P.M. in Department 17 to be heard on the same date as Defendant Patterson's Demurrer and Motion to Strike. Plaintiff filed an opposition under seal for which no motion for seal was filed with the Court. Plaintiff's counsel notified the Court that the intent is to file the motion for seal regarding the opposition to this Motion to Quash, so the matter is continued to allow Plaintiff time to do so. If the motion for seal receives a later hearing date than June 10, 2026, then Plaintiff has the option to file a procedurally appropriate request for the Court to advance that hearing to hear both motions on the same date.