

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 10, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1. 23CV00444, Looney v. Parmar

Plaintiff’s unopposed motion to compel responses to his Post-Judgment Request for Production of Documents and his Post Judgment Interrogatories is **GRANTED**. Plaintiff’s motion for monetary sanctions is also **GRANTED**. Defendants are ordered to pay Plaintiff \$60.00, the filing fee for the instant motion, within 30 days of service of the Court’s order on this motion. Defendants are also ordered to respond to Plaintiff’s discovery requests within 30 days of service of the order on this motion. Because Defendant failed to timely respond to Plaintiff’s discovery requests, objections to such discovery are waived.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling. Due to the lack of opposition, in compliance with Rule 3.1312 is excused.

I. Analysis

On September 26, 2023, Plaintiff George Looney, dba Collectronics of California, filed suit for money due, breach of contract, services sold and performed, open accounts, open account, accounts stated, quantum meruit, and unjust enrichment against Defendant Dinesh Parmar, both

individually and as the guarantor for Granada Liquor (“Defendant”). Defendant has not appeared in this matter. Plaintiff filed a Request for Entry of Default on December 4, 2023. Default judgment in the amount of \$4,006.65 was entered on December 21, 2023.

On January 8, 2024, Plaintiff propounded post-judgment discovery on Defendant, consisting of one request for production of documents and one set of interrogatories. Defendant has never responded. Plaintiff sent a letter requesting response to Defendant on February 27, 2024, and a second letter on March 12, 2024. Plaintiff has received no response to either letter.

Plaintiff’s motion to compel is granted. Defendant is ordered to respond to Plaintiff’s discovery requests. Any objections to the requests are waived. (CCP § 2031.300.)

With regard to sanctions, CCP § 2030.290(c) (relating to interrogatories) and CCP § 2031.300(c) (relating to requests for production of documents) each provides that a monetary sanction “shall” be imposed against the unsuccessful party on a motion to compel unless the court finds substantial justification for that party’s position or other circumstances making sanctions unjust. Monetary sanctions are to reimburse a party for “the reasonable expenses, including attorney’s fees, incurred by anyone as a result of” conduct constituting a misuse of the discovery process. (CCP § 2023.030(a).) However, Plaintiff cannot be awarded attorney’s fees because he is self-represented, and therefore has not become obligated to pay such fees. (*Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1177.) The Court grants Plaintiff’s \$60.00 in sanctions for reimbursement of the fee for filing the instant motion.

2. 23CV00448, Harris v. Rabb

Plaintiff’s attorney moves to be relieved as counsel because he has been diagnosed with lung cancer and is about to begin treatment. The motion is **CONTINUED** to August 14, 2024, at 3:00 p.m. to give counsel an opportunity to comply with the service requirement.

I. Background

This is an insurance bad-faith case involving an insurer’s non-payment of a claim after Plaintiff’s RV exploded in the back yard of Plaintiff’s house. The explosion occurred on September 18, 2021. The complaint was timely filed on September 12, 2023. The summons and complaint have not yet been served on any defendant. With the exception of the instant motion, there is no pending activity in the case.

According to counsel’s declaration, the following events preceded the filing of this motion:

- December 15, 2023: Counsel was diagnosed with lung cancer.
- January 10, 2024: Counsel informed Plaintiff by telephone of his need to withdraw. Plaintiff became upset, and the call was terminated.
- (Unspecified date): Plaintiff’s daughter, an attorney, contacted counsel. Counsel gave the daughter referrals, and “reassured her that I would continue representing her mother until substitute counsel was found.”

- Mid-February, 2024: In another telephone call with Plaintiff, Counsel learned that she had not attempted to find new counsel.
- February 27, 2024: Counsel sent a substitution of attorney form to Plaintiff to Plaintiff's address at 1123 Rutledge Ave.
- March 1, 2024: Counsel received a letter from Plaintiff mailed from the Rutledge Ave. address, but not the executed substitution form.
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The instant motion was filed on May 6, 2024. Plaintiff has filed no opposition.

II. Analysis

California Rules of Court, rule 3.1362(d) provides that the moving papers in a motion to be relieved as counsel must be served on the client, and that if service is by mail, it can be to the client's last known address if the attorney declares that he "has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved." (CRC 3.1362(d)(1)(B).)

Here, counsel declares that he has sent Plaintiff substitution of attorney forms at her last known address on Rutledge Ave., that he has confirmed by means of a background check that that is her current mailing address, that he received certified mail from her mailed from that address on March 1, and that his correspondence to her at that address has not been returned. All of this strongly suggests that the Rutledge Ave. address is in fact Plaintiff's correct mailing address, and that Plaintiff has chosen not to complete and return the substitution forms.

However, what counsel does *not* declare is that he served, or attempted to serve, the moving papers in the instant motion on Plaintiff by mail at Rutledge Ave. or anywhere else. It appears that he instead attempted to serve her in person: according to a Declaration of Non-Service filed on June 14, 2024, registered process server Joan Bland attempted unsuccessfully to serve the moving papers on Plaintiff at the Rutledge Ave. address between June 5 and June 8.

The notice of a motion to be relieved as counsel may be served by personal service, electronic service, or mail. (CRC 3.1362(d).) Here, it has not been served by personal service. It has also not been served by mail. Counsel has sent Plaintiff substitution of attorney forms by mail, which certainly put her on notice of his need to withdraw, but nothing in his declaration suggests that he has put her on notice that he intended to ask the Court to permit him to withdraw without her consent.

III. Conclusion

The hearing is continued to August 14, 2024, at 3:00 pm in order to give counsel an opportunity to comply with rule 3.1362(d). The Court notes that the instant motion was filed on May 6, and that counsel declares that he verified on May 3 that Plaintiff receives mail at the Rutledge Ave. address. Accordingly, Counsel has complied with all the requirements of rule 3.1362(d)(1)(B) other than actually mailing the notice of motion and motion, declaration, and proposed order to Plaintiff.

3. **SCV-245738, Liebling v. Goodrich**

I. **INTRODUCTION**

Defendants Dale Davis, Justin Poeng, Bill Hing, Jacinda Duval, Matt Zdanek, and Lenora Verne Fung (together “Defendants”) move to quash Plaintiff Richard Abel’s (“Plaintiff”) business records subpoena to Exchange Bank and for sanctions. The motion to quash is rendered **MOOT** given Plaintiff’s withdrawal of the subpoena after the motion was filed. However, Sanctions are **GRANTED** against Plaintiff for the reduced amount of \$2,937.50 for Plaintiff’s failure to show any reasonable justification either in issuing the subpoena or not withdrawing it earlier on Defendants’ request which necessitated the filing of this motion.

II. **PROCEDURAL HISTORY**

Plaintiff issued a deposition subpoena for business records to Exchange Bank to obtain Defendants’ counsel’s financial records. Plaintiff did not serve an accompanying affidavit showing any good cause for the subpoena and did not serve a notice to consumer to Defendants’ counsel. Defendants believe the subpoena was improperly issued to harass them and run up their attorney’s fees. Defendants had previously entered into a settlement agreement with Plaintiff to release all claims as well.

Defendants’ counsel met and conferred with Plaintiff to request him to withdraw the subpoena after learning from Exchange Bank that their private financial records were sought. As Plaintiff did not withdraw the subpoena, Defendants filed this motion to quash on the basis that the subpoena was procedurally deficient per California Code of Civil Procedure (“C.C.P”) sections 1985 and 1985.3. Plaintiff sent a letter to Exchange Bank two days after to withdraw the subpoena. Plaintiff filed a “notice of non-opposition” arguing the motion is now moot after having withdrawn the subpoena.

III. **REQUEST FOR JUDICIAL NOTICE**

Defendants’ request for judicial notice of the entire court record from Sonoma County Superior Court case number SCV-263456 and notice of settlement filed in that matter is **GRANTED** per Evidence Code section 452(d).

IV. **EVIDENTIARY OBJECTIONS**

Plaintiff objects to paragraphs 3, 15, and 19 of the Declaration of McCutchan. Defendant argues that they misstate the exhibit and that they are not applicable because Defendants’ counsel was not a party to the settlement agreement entered into between Plaintiff and Defendants. All three objections are **OVERRULED**.

Defendants’ counsel’s objections to the deposition subpoena to Exchange Bank are **OVERRULED** as moot because the subpoena has been withdrawn.

V. **ANALYSIS**

A. Legal Standard

Pursuant to C.C.P. section 1987.1, a party, witness, consumer per section 1985.3, or employee per section 1985.6, may bring a motion to quash, condition, or modify a subpoena requiring attendance or production of items before a court, at trial, or a deposition. The court may also on such a motion make an order “as appropriate to protect the person from unreasonable or oppressive demands....” (*Ibid.*)

The court in its discretion may award the amount of reasonable expenses incurred in making or opposing the motion to quash, including reasonable attorney’s fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive. (C.C.P § 1987.2(a).)

B. Moving Papers

Defendants argue that Plaintiff’s subpoena was procedurally deficient because he failed to serve the required accompanying affidavit that shows good cause for the production of the things described in the subpoena. Plaintiff also failed to serve Defendants’ counsel a notice to consumer regarding the subpoena even though counsel’s financial records were sought from Exchange Bank. Defendants also argue the information sought was privileged financial information that is not relevant to the subject matter of this action. Defendants request sanctions as well for misuse of the discovery process and serving the subpoena in breach of the terms of Plaintiff’s settlement agreement with Defendants. They request \$4,127.50, which includes: (1) counsel’s 5.7 hours of work billed at a rate of \$425.00 per hour for preparing and filing this motion; (2) 3.8 additional hours anticipated for work in reviewing any opposition, preparing a reply, and appearing at the oral argument; and (3) \$90.00 in filing costs.

Plaintiff filed a “notice of non-opposition” and objections to Defendants’ counsel declaration that does not address any of the points made in the motion. It only states the motion is moot now that the subpoena was withdrawn, and that moving Defendants have a duty to take the motion off calendar. The request for sanctions was not addressed, but Plaintiff makes three objections to the Declaration of Edward McCutchan in support of the motion, which is addressed in Section IV, above.

C. Application

Plaintiff’s failure to withdraw the procedural deficient subpoena when requested by Defendants necessitated the filing of this motion. Plaintiff has not offered any explanation or reasonable justification for the delay in withdrawing the subpoena and has not shown any good cause for issuing the subpoena in the first place. As such, the Court finds that, while the motion to quash is mooted by the withdrawal, the request for sanctions is warranted. Plaintiff also had not provided any substantial justification for the objections made to Defendants’ motion and evidence despite the voluntary withdrawal. The Court will award Defendants a reduced amount of sanctions for the time spent in preparing the motion and the filing costs for a total of \$2,937.50, which accounts for 6.7 hours of counsel’s time at \$425/hr. plus the \$90 filing fee.

CONCLUSION

Based on the foregoing, the motion to quash is **DENIED** as moot, but sanctions are **GRANTED** in the amount of \$2,937.50. Plaintiff is ordered to pay the sanctions within 10 days of receiving the notice of entry of the order on this motion. 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).

4. SCV-265714, County of Sonoma v. Castagnola

Appearances required.

5. SCV-270302, Kingsbury v. Magnell

Plaintiff Thomas Kingsbury (“Plaintiff”) filed the currently operative first amended complaint (“FAC”) in this action against defendants Kent Magnell (“Magnell”), Justin D. Takacs (“Takacs”, together with Magnell, “Defendants”), and Does 1-10 for causes of action for battery (against Takacs), premises liability (against Magnell) and general negligence (against Defendants).

This matter is on calendar for motions by Magnell for summary judgment or, in the alternative, adjudication pursuant to Cal. Code Civ. Proc. (“CCP”) § 437c. Magnell’s motion for summary judgment is **GRANTED**.

I. Underlying Facts

Magnell owned a triplex home located at 220 Hazel Street/330 Orange Street, Santa Rosa (the “Property”) from 2007 to 2022. Magnell’s Separate Statement of Undisputed Material Facts (“MSS”), ¶ 1. Magnell rented out multiple rooms on the Property, and among his tenants, several were involved in twelve step programs. MSS ¶ 2. Takacs referred Plaintiff to Magnell about tenancy at the Property. *Ibid*; MSS ¶ 8. Before living at the Property, Plaintiff lived in another sober living environment where he was required to attend Narcotics anonymous meetings. MSS ¶ 3-4. Plaintiff saw Takacs at those meetings, but never heard him speak about addiction issues. MSS ¶ 5. Plaintiff would work for Takacs occasionally driving cars from auctions. MSS ¶ 6. Plaintiff knew Takacs would also be residing at the Property when he moved in. MSS ¶ 8-9. Plaintiff moved into the Property in 2019. MSS ¶ 10. Magnell also resided at the Property at this time. MSS ¶ 11. Magnell lived on the second floor in a separate unit, while Plaintiff and Takacs had separate bedrooms but used shared common areas on the third floor. MSS ¶ 12.

Magnell had known Takacs since 2006. MSS ¶ 17. In that time, Magnell had never witnessed Takacs using drugs, nor had Takacs admitted as much to Magnell. MSS ¶ 18. Before Takacs moved into the property, Magnell had also never witnessed Takacs being violent, physically aggressive, or threatening to anyone. MSS ¶ 20. Magnell never saw Takacs handling firearms, knew that Takacs had previously been convicted of a crime, but did not know the nature of the offense. MSS ¶ 22. When Plaintiff moved into the Property, he and Takacs initially ate meals together, and Plaintiff would still work occasionally for Takacs. MSS ¶ 21. However, from mid-

December 2019 to the date of the incident, Plaintiff began to feel that Takacs' erratic and overbearing behavior was "scary". MSS ¶ 26-28. Takacs seemed angry and volatile. MSS ¶ 28. Plaintiff never expressed to Magnell that he feared Takacs would become physically violent. MSS ¶ 29. On March 1, 2020, Plaintiff was in his bedroom with the door shut. MSS ¶ 35. Takacs threw a glass water bottle, striking the wall next to the door of Plaintiff's room. *Ibid.* Plaintiff responded by texting a picture of the damage to Magnell. MSS ¶ 36. Plaintiff had consumed nitrous oxide about 5 or 10 minutes before Takacs threw the water bottle. MSS ¶ 40. Magnell came to confront Takacs about the incident at around 2pm. MSS ¶ 37. Later on that day, Plaintiff came out of his room to confront Takacs, which resulted in a verbal exchange. MSS ¶ 38. Eventually, Takacs pulled out a knife and used it to attack Plaintiff. *Ibid.*

Plaintiff's offered evidence in rebuttal shows that Magnell believed Takacs had relapsed into using methamphetamines in the months leading to the March 1, 2020, attack. Plaintiff's Separate Statement of Undisputed Material Facts ("PSS") ¶ 19. Takacs had yelled at Plaintiff about "stealing Takacs's tools" in front of Magnell. PSS ¶ 30. Plaintiff had multiple text conversations with Magnell's son who co-habited with Magnell about Takacs's erratic behavior. PSS ¶ 29. Plaintiff's lease contains multiple provisions regarding clean and sober living environments binding both parties. PSS ¶ 13. On March 1, 2020, after Magnell confronted Takacs over the water bottle incident, Takacs said "I will have to think about what I am going to do to him" in regards to Plaintiff. PSS ¶ 37. Magnell and Plaintiff both acknowledged that it sounded like a threat. *Ibid.* Magnell told Plaintiff that if Takacs did anything to him, to call the police. *Ibid.*

II. Evidentiary and Procedural Issues

Magnell's objections on reply 1, 2 and 4 are OVERRULED. Objection 3 is SUSTAINED as to Plaintiff's statement as to when he consumed the nitrous oxide, five to ten minutes before the water bottle incident, and otherwise OVERRULED.

III. The Burdens and Standards on Summary Judgment and Adjudication

A. Generally

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

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

A defendant cannot base its “showing” on the plaintiff’s lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

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

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

B. Negligence and Premises Liability

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

“The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury.” *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158; see also *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205; Civ. Code, § 1714(a). Specifically with respect to “premises liability,” it is well-established that a landowner is not an insurer of the safety of all persons on his property. *Blodgett v. B.H. Dyas Co.* (1935) 4 Cal.2d 511, 512. Thus, “[a]n initial and essential element of recovery for premises liability ... is proof a dangerous condition existed.” *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566. In addition, a plaintiff suing for premises liability has the burden of proving that the owner had actual or constructive knowledge of a dangerous condition in time to correct it, or that the owner was “able by the exercise of ordinary care to discover the condition.” *Ortega, supra*, 26 Cal.4th at 1206.

Determination of duty, such as whether a landlord has a duty to protect against third party crime, is a question of law for the court to resolve. *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213. The inquiry of the court in reviewing a landlord’s duty to prevent criminal acts against tenants is limited to the specific action the plaintiff claims the particular landlord should have taken in a particular case. *Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 280. “Only after the scope of the duty under consideration is defined may a court meaningfully undertake the balancing analysis of the risks and burdens present in a given case to determine whether the specific obligations should or should not be imposed on the landlord.” *Ibid.*

First, the court must determine the specific measures the plaintiff asserts the defendant should have taken to prevent the harm. This frames the issue for the court's determination by defining the scope of the duty under consideration. Second, the court must analyze how financially and socially burdensome these proposed measures would be to a landlord, which measures could range from minimally burdensome to significantly burdensome under the facts of the case. Third, the court must identify the nature of the third party conduct that the plaintiff claims could have been prevented had the landlord taken the proposed measures, and assess how foreseeable (on a continuum from a mere possibility to a reasonable probability) it was that this conduct would occur. Once the burden and foreseeability have been independently assessed, they can be compared in determining the scope of the duty the court imposes on a given defendant. The more certain the likelihood of harm, the higher the burden a court will impose on a landlord to prevent it; the less foreseeable the harm, the lower the burden a court will place on a landlord.

Castaneda v. Olsher (2007) 41 Cal.4th 1205, 1214, quoting *Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 285, fn 10.

IV. Analysis

A. There are No Triable Issues as to Plaintiffs' Cause of Action for Negligence Against Magnell

Magnell shifts his initial burden. Magnell presents evidence that there were no prior reported violent incidents between Takacs and anyone else on the Property prior to the attack on Plaintiff. Magnell had no knowledge of Takacs having violent incidents before. Magnell had never heard of Takacs making violent threats. Takacs threw a water bottle at the wall outside Plaintiff's bedroom on March 1, 2020. As a result of the water bottle incident, Magnell told Takacs that he would evict him in 10 days. Plaintiff plead no actions which Magnell had a duty to undertake to prevent the subsequent violence. Based on the evidence presented in the moving papers, Magnell has adequately shown that the attack which occurred later on March 1, 2020, was not foreseeable, and therefore Magnell had no duty to prevent the incident. Determinations of duty such as this are matters appropriately determinations of law, properly decided by the Court. There being no duty, Magnell cannot therefore be held negligent. Magnell shifts his initial burden on summary judgment and adjudication.

In response, Plaintiff argues that there are triable issues of fact, as there were several actions which Magnell should have undertaken to prevent the March 1, 2020, attack. Plaintiff avers (dispersed across multiple papers) that the actions Magnell should have taken to prevent the attack was to: 1) evict Takacs for violating the sober living agreement (Kingsbury Declaration, ¶ 42); have Takacs arrested for illegal drug use (*Id.* at ¶ 43); called the police about Takacs possession of guns and ammunition (*Id.* at ¶ 44.); 4) evicted Takacs on March 1, 2020, for threatening Plaintiff; 5) move Plaintiff to a downstairs apartment so he was more removed from

Takacs or vice versa (See Memorandum of Points and Authorities in Opposition, pg. 12:16-17.). Each of these fails as measures for a variety of reasons.

Plaintiff argues that Magnell's admitted knowledge of Takacs's drug use while under the subject of the sober living tenancy presents adequate reason to deny summary judgment, as it shows that eviction was adequately supported. There are several deficiencies with this line of reasoning. First, while anecdotal evidence of violent incidents resulting from methamphetamine use is plentiful and pervasive, Plaintiff provides no evidence that would allow the Court to draw any meaningful conclusions on what effect Takacs's drug use has on the foreseeability of the violent incident. No expert testimony is presented. Statistical evidence linking methamphetamine use to violence is not provided. Therefore, Magnell's knowledge of Takacs methamphetamine use is only relevant for the purpose of showing the effect it had on Takacs's demeanor. Second, any averment that Magnell had an affirmative duty to evict Takacs based solely on drug use is undercut on two bases. Plaintiff provides no authority showing that a landlord has an affirmative duty to evict individuals based on drug use, even in the context of a sober living environment. Additionally, Plaintiff's admitted use of nitrous oxide on the date of the attack would equally require that Magnell evict him on this same logic. See Kingsbury Declaration, ¶ 26. However, none of that is probative to show that Magnell had an affirmative duty to evict Takacs.

Plaintiff presents evidence that Takacs suffered paranoid delusions. However, the only evidence presented which could be construed as an indication of violent intent is that Takacs asked Plaintiff to help him kill the "invisible people". See Declaration of Kingsbury, ¶ 18. Plaintiff presumes that Takacs was referring to Magnell and his son. *Ibid.* In presenting this evidence, Plaintiff presents nothing to show that Magnell had any knowledge of Takacs's intent to "kill" anyone. Therefore, it presents nothing probative to the analysis of whether Takacs's actions were foreseeable. Similarly, Plaintiff's text messages to Magnell's son do not present evidence that his concerns were actually communicated to Magnell. Therefore, Plaintiff's presentation of these conversations does not provide any material basis for finding the attack foreseeable.

Plaintiff's presentation of evidence that Takacs was in possession of knives also appears inadequate to display a basis for Magnell's liability. The only evidence of the knives being used for an improper purpose is the attack which led to Plaintiff's injuries. There is no evidence presented that Magnell was aware that Takacs had knives or any other dangerous items until after the March 1, 2020, incident. See Plaintiff's Exhibit 1, Deposition of Magnell, pg. 77:17-78:9, 79:7-17 (Magnell found the Takacs knives for the first time when cleaning out his room after the March 1, 2020 attack). The same applies to the guns found by Magnell after the incident. *Id.* at 60:22-61:8. Therefore, in determining what was foreseeable, Takacs weapons and Magnell's contemporaneous knowledge of them is of little consequence. Even if Magnell had been aware, it is of limited probative value, as Plaintiff has presented no basis to show that Takacs's possession of knives was somehow illegal or otherwise prohibited.

In reviewing the foreseeability based on Takacs's paranoia, knife possession, and apparent drug use, *Davis v. Gomez* (1989) 207 Cal.App.3d 1401 appears controlling. In that case, a tenant named Ms. Townsend murdered another tenant by shooting him as he walked by her door. *Id.* at 1402-1403. The plaintiffs were the murdered tenant's parents, who sued both Townsend and the landlord. *Ibid.* Landlord moved for summary judgment based on a lack of foreseeability that

Townsend was likely to murder someone. *Id.* at 1403. Before the trial court, evidence was presented that Townsend was prone to erratic behavior, including talking to herself, and “casting spells”, each corroborated by multiple tenant complaints. *Ibid.* There were also several reports that Townsend had a gun. *Ibid.* “By May 1986, it was apparent that Ms. Townsend was “losing her mind.” *Ibid.* Despite multiple complaints, the landlord undertook no action to evict Townsend before the shooting. *Ibid.* The trial court found that without some physical violence or threat of bodily harm, there was insufficient indicia to make the shooting foreseeable. *Ibid.* Townsend’s general behavior as a nuisance did not create an obligation to evict her in order to prevent the unforeseeable harm. *Ibid.* The Court of Appeal agreed. They posited that it was erroneous to assume that the landlord would have discovered anything indicative of Townsend’s possibility for violence even had they investigated further based on the complaints, in spite of the fact that Townsend had been convicted of shooting her husband. *Id.* at 1406.

Plaintiff attempts to distinguish by citing to *Barber v. Chang* (2007) 151 Cal.App.4th 1456, 1464 (“*Barber*”) and *Madhani v. Cooper* (2003) 106 Cal.App.4th 412, 415 (“*Madhani*”). Each of these cases are distinguished from the facts at bar. In each case, there were actual violent incidents of which the landlord had demonstrable knowledge from three weeks (*Barber* at 1464) to six months (*Madhani* at 414) before the tort occurred. As is addressed below, there is simply inadequate time between any plausible indication of violent tendencies and the tortious event for these cases to be applicable, as no prescriptive action offered could do so in the intervening time frame.

Plaintiff represents that on February 29, 2020 (the day before the attack) he heard Takacs repeatedly kick a door on Magnell’s level. Plaintiff presents no evidence regarding how he knew Takacs was kicking a door, as Plaintiff does not aver to have witnessed what occurred or any observable damage. Kingsbury Declaration ¶ 25. There is no evidence that Magnell was present to hear the alleged incident, and therefore it does not present anything of probative value.

Plaintiff also points to the March 1, 2020, incident where Takacs threw a green glass water bottle, and it struck the wall next to Plaintiff’s closed door. Kingsbury Declaration ¶ 26. Plaintiff’s conclusion that the water bottle as being thrown at him is unpersuasive. Plaintiff and Takacs were not engaged with each other, and Takacs threw the water bottle outside of Plaintiff’s wall while Plaintiff was in his room with the door closed. There is no evidence presented that the action of throwing the water bottle was an act particularly directed at Plaintiff. Without any articulable intent, this act is destructive, but not indicative of a violent intent toward Plaintiff. The only incident of which Plaintiff provides evidence of actual, physical violence is the incident which occurred later on March 1, 2020.

Plaintiff avers that Magnell could have evicted Takacs that day based on Takacs statement that “I will think about what I am going to do to him.” Plaintiff provides no authority displaying this constitutes a criminal threat. Plaintiff has not shown that Magnell knew there was adequate basis to evict Takacs on any basis other than being a nuisance until the very day of the incident. Despite Plaintiff’s averment to the contrary (without supporting authority), eviction proceedings are subject to numerous timing safeguards for the protection of tenants. A three-day notice to quit is the common requirement for nuisance or even unlawful activity. CCP §1161 (4). Simply put, there was no opportunity to evict Takacs between the threat and the attack. Plaintiff’s

prescriptive action is untenable as a result. The argument that moving either Takacs (who had been told he was being evicted in 10 days), or Plaintiff (who presumably did not feel he needed to avoid any further contact with Takacs before the attack) to the first floor is similarly unmoving.

In meeting the shifted burden, Plaintiff must show that there was foreseeable harm, and that there were prescriptive actions which Magnell could have taken for which the burden of the action was not outweighed by the risk to Plaintiff based on the foreseeability. Plaintiff fails to present evidence that Takacs had dangerous tendencies or a propensity for violence. *Barber v. Chang* (2007) 151 Cal.App.4th 1456, 1464. The lone incident which might have prompted some foreseeability is the water bottle interaction earlier on March 1, 2020. The prescriptive actions proposed by Plaintiff fail to either be legally viable or relate to the foreseeable results of Magnell's known facts. Having tenants such as Takacs arrested or evicted, with the information that was available to Magnell at the time of the incident, places a great burden on Magnell as a landlord. It is unquestionable that Plaintiff suffered severe injuries as a result of Takacs actions. However, Plaintiff fails to demonstrate that Magnell had adequate information where Plaintiff's injuries were foreseeable. There being no foreseeability, Magnell did not have a duty to take the burdensome prescriptive measures Plaintiff asserts would have prevented the incident. Plaintiff fails to meet the shifted burden.

Defendants' motion for summary adjudication of the cause of action for negligence is **GRANTED**.

B. The Premises Liability Cause of Action Also Fails

As is noted above, the elements of premises liability and negligence are the same. Therefore, the analysis to this cause of action is the same as that reflected above. Magnell's motion for summary judgment and adjudication is **GRANTED**.

V. Conclusion

Magnell's motion for summary judgment and adjudication is **GRANTED**.

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

6-8. SCV-273578, County of Sonoma v. Cupp

In this property abatement action, the County of Sonoma (the "County") filed the complaint (the "Complaint") against defendant Ronald Cupp ("Defendant"), as owner of the property commonly known as 4640 Arlington Avenue, Santa Rosa, California (the "Property"), in the County of Sonoma.

This matter is on calendar for the motions by Defendant to compel further responses to requests for admission, form interrogatories, and special interrogatories. These motions are continued to August 7, 2024, at 3:00 pm in Department 19 to be heard at the same time as the County's

motion for protective order which appears to turn on similar considerations. No further briefing on the motions to compel is permitted.

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