TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday 29, 2026, 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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

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

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1. 25CV00116, Powers v. Historical Restation & Development

Plaintiff Tammy Powers ("Plaintiff") filed the complaint ("Complaint") in this action against defendant Historic Restoration & Development Company, LLC ("HRDC") and McNear's Restaurant and Bar, Inc. ("McNear's", together with HRDC, "Defendants"), and Does 1-10 for causes of action for premises liability and general negligence.

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

I. Evidentiary and Procedural Issues

Both Plaintiff and Defendants tender nearly identical objections related to the contention that the reproduction of lighting conditions at the time of the incident are irrelevant or lack foundation. Given their similarity, neither party provides a reason why they should arrive at contrary results. Defendant's experts opine that they had the theater set to "normal live performance lighting conditions" (Suway Dec., ¶ 4), but there is no evidence produced by Defendant that normal live performance lighting conditions were the conditions under which the incident actually occurred. Defendants in turn argue that the Moore Declaration states that measurements were taken after Mr. Moore requested "the lights [] set to the performance level…" However, the Moore Declaration provides significantly more substantive analysis, and pictures of the illuminance readings, showing the condition under which the readings were taken. If Plaintiff's evidence in this regard is properly excluded, so is Defendants. Given that this would leave Defendants' motion essentially without expert evidence, it appears far more appropriate to evaluate all the evidence sharing this deficiency at this stage. As the Court addresses below, the viable bases of Defendants' shifted burden relies entirely on their expert opinions. Were both sets of evidence excluded, Defendants would fail to shift their burden entirely.

Defendants' objections related to the Moore Declaration Ex. D come to the same result. Moore lays adequate foundation for whom the social media post is by, and Defendant does not genuinely dispute its veracity. The information is sufficiently supported that its authenticity is "it is the writing that the proponent of the evidence claims it is". Evid. Code § 1400. Moreover, the content therein is the admission of Defendants, and therefore subject to a hearsay exception. In contrast, the newspaper clippings attached are pure hearsay.

Importantly, while Defendant argues strenuously that Plaintiff's expert is unqualified, they offer no authority showing that an expert's application of expertise must be so unerringly specific as to relate to something so restrictive as interior lighting conditions. Plaintiff's expert appears broadly qualified as a Forensic Engineer, that he holds various degrees, certifications and memberships related to that qualification, and that he has been performing this work since 2004. This appears more than sufficient to qualify him as an expert on the issues for which he provides opinions on. Defendant's objection truly goes to the weight that they believe should be accorded to the evidence presented by Mr. Moore, and that is a matter appropriately measured by a trier of fact. Again, the objection is left somewhat hollow by the apparent similar issue related to Mr. Suway, whose work appears based on his curriculum vitae to revolve around automotive forensics. Both appear more than qualified to serve as experts based on the information presented to the Court.

Similarly, Plaintiff's objections to the Brown and Suway Declarations argue that the declarations are conclusory, the Court is not persuaded. Both experts describe the area they inspected and their conclusions. Their conclusions appear fairly derived from their expertise, and not lacking factual foundation.

Plaintiff's objections are OVERRULED. Defendant's Objections on Reply ¶ 1, 2, 4-7, 10, and 12 are OVERRULED. Defendant's Objections ¶ 3, 8, 9, and 11 are SUSTAINED.

II. <u>Underlying Facts</u>

The Mystic Theater and Music Hall ("Theater") is located at 23 Petaluma Blvd N, Petaluma CA. Defendants' Separate Statement of Undisputed Facts, Undisputed Material Fact ("DUMF"), ¶ 1. The Theater is a commercial building used as a theater. DUMF ¶ 2. Plaintiff alleges she was injured while descending the right-most (facing the stage) upper balcony aisle steps of the Theater. DUMF ¶ 4.

When asked what statutes, ordinances, or regulations cause the incident, Plaintiff provided interrogatory responses stating that the Theater violated Petaluma Municipal Code 1.10.085 L1-I: Petaluma Municipal Code 1.10.085 D4, and California Residential Code R311.7.8. DUMF ¶ 7.

The building in which the Theater sits was built in or around the year 1911. DUMF ¶ 9. The Theater's managing owner is not aware of any renovations since 1992. DUMF ¶ 10. Defendants are unaware of any prior trip and fall incidents, or similar occurrences, at the Theater, including incidents at or near where Plaintiff fell. DUMF ¶ 17. Defendants do not recall and are not aware of any complaints, warnings, or other notices from patrons, employees, or any other persons regarding dangerous conditions on or around where Plaintiff fell. DUMF ¶ 18.

On August 25, 2025, Defendants had their expert, Dwayne Brown inspect the Theater, including where the incident occurred. DUMF ¶ 8. Mr. Brown found the area where Plaintiff fell to meet the standard of care. DUMF ¶ 11. On November 13, 2025, Defendants had their expert, Jeffrey Suway inspect the Theater, including where the incident occurred. DUMF ¶ 12. Mr. Suway measured illuminance at the Subject Location and found it to be between 0.20 and 0.85 foot-candles while the Mystic Theater was set to normal live performance lighting conditions. DUMF ¶ 13. He also observed that the stairs had contrast strips, which would be visible under normal live performance lighting conditions. DUMF ¶ 14. Mr. Suway found there was adequate lighting, contrast, and visual cues where Plaintiff fell that she could have safely navigated the steps under normal live-performance lighting conditions DUMF ¶ 15.

On October 7, 2023, Plaintiff attended a concert at the theater and sat in the upper balcony. Plaintiff's Opposing Undisputed Material Facts ("POUMF"), ¶ 1. At intermission, Plaintiff got up from her seat and waited in line on the stairs. POUMF ¶ 2. Plaintiff observed that the stairs were dark, and she fell on the last stair. POUMF ¶ 3. On April 29, 2026, Plaintiff's expert, Zachary Moore, P.E., personally inspected the subject stairway and surrounding area at the Property and the subject stairway flight consisted of 6 risers and 5 treads. POUMF ¶ 4. There was carpet down the middle of the stairway and for those carpeted section, the height of the risers ranged from 5-11/16" to 6 5/8," (a maximum difference of 15/16"), and the lengths of the treads ranged from 11-1/4" to 34-1/2" (a maximum difference of 23-1/4"). POUMF ¶ 6. Non-carpeted sections were similarly variable. POUMF ¶ 7. There were white stripes at the end of each nosing; however, these were not reflective. POUMF ¶ 8. There was no handrail on either side of the stairs or down the middle. POUMF ¶ 9. In front of the last row (going down the stairs) there was a guardrail in front of the seats followed by one more step that protruded into the walkway. POUMF ¶ 10. With the lights on, the illuminance levels ranged from 0.501 foot-candles to 0.523 footcandles. POUMF ¶ 11. At Mr. Moore's request, the lights were set to the level they were when Plaintiff fell, going down the stairs, and with lights at that level, the illuminance levels ranged from 0.086 footcandles to 0.132 foot-candles. POUMF ¶ 12. In or about March 2023, the balcony floors of the Theater were sanded, fresh paint was laid down, and new chairs were installed. POUMF ¶ 14. Mr. Moore concludes that the area where plaintiff fell was in an unsafe condition at the time of Plaintiff's incident, as it was inadequately illuminated, contained no handrails, and had dimensional inconsistencies in the riser heights and tread lengths. POUMF ¶ 23.

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.

"[W]hen discovery has produced an admission or concession on the part of the party opposing summary judgment which demonstrates that there is no factual issue to be tried, certain of those stern requirements applicable in a normal case are relaxed or altered in their operation." *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21. However, the *D'Amico* rule "does not apply where there is a reasonable explanation for the discrepancy or countenance ignoring other credible evidence that contradicts or explains that party's answers or otherwise demonstrates there are genuine issues of factual dispute." *Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 658 (internal quotations omitted).

B. Negligence

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

"The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158; see also *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205; Civ. Code, § 1714(a). Specifically with respect to "premises liability," it is well-established that a landowner is not an insurer of the safety of all persons on his property. *Blodgett v. B.H. Dyas Co.* (1935) 4 Cal.2d 511, 512. Thus, "[a]n initial and essential element of recovery for premises liability ... is proof a dangerous condition existed." *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566. In addition, a plaintiff suing for premises liability has the burden of proving that the owner had actual or constructive knowledge of a dangerous condition in time to correct it, or that the owner was "able by the exercise of ordinary care to discover the condition." *Ortega, supra*, 26 Cal.4th at 1206. Liability is appropriate however, "where the landowner has actual knowledge of the danger, *e.g.*, where he has created the condition." *Robison v. Six Flags Theme Park* (1998) 64 Cal.App.4th 1294, 1304. Where a defendant has created the dangerous condition, proof of notice of the dangerous condition is not necessary. *Jones v. Hotchkiss* (1956) 147 Cal.App.2d 197, 203; *Moore v. Marshall* (1940) 41 Cal.App.2d 490, 493 (where property owner has installed a permanent improvement that created a dangerous condition, the owner could not maintain that she had no knowledge of the condition). Additionally, "dueling expert opinions create[ ] a factual dispute not appropriately resolved by way of summary judgment." *Hernandez v. KWPH Enterprises* (2004) 116 Cal.App.4th 170, 176 *citing Kockelman v. Segal* (1998) 61 Cal.App.4th 491, 505.

IV. Analysis

Defendants argue that Plaintiff cannot prevail on the causes of action for negligence because no dangerous condition existed and therefore Plaintiff cannot prove breach of a duty. Plaintiff provides evidence in response, averring that there are triable issues of material fact as to Defendants' motion.

A. Defendants Shift Their Burden

Plaintiff attempts to argue that Defendant fails to shift their burden because they do not show that the property was adequately inspected for dangerous conditions, but this is pure speculation and inference, and Plaintiff does not truly contend that there was any relevant matter Defendants were unaware of at the time of the incident. The alleged dangerous condition is the lighting conditions, and the design and maintenance of the stair area. Where a dangerous condition relates to the design, there is no issue of knowledge, knowledge is required for premises liability where the condition is brought about by third parties. *Jones v. Awad* (2019) 39 Cal.App.5th 1200, 1208. If Defendants can show that the standard of care was met, they have shifted their burden.

Plaintiff also argues that the failure to include citations to the compliance with the Building Code provisions renders the Separate Statement deficient. Compliance with the Building Codes appears to be a matter of law that is determined when facts are applied to the applicable provision. The "conclusion" of compliance with a Building Code provision, or its application to the Theater, appears to be sufficiently addressed if the underlying facts are present in the Separate Statement sufficient that the Court can apply the law. As is noted below, this leads to mixed results.

First, Defendants argue that Plaintiff's discovery responses do not cite to applicable code sections when arguing what codes the Theater violated. Plaintiff's discovery responses state that the Theater was not compliant with Petaluma Municipal Code 1.10.085 L1-I: Petaluma Municipal Code 1.10.085 D4, and California Residential Code R311.7.8. Each of these sections is only applicable to residential properties, and accordingly the Theater would not be subject to these codes. Defendants have shifted their burden to show that Plaintiff cannot show these code violations as a predicate for breach of duty for a negligence claim.

Second, Defendants present evidence that the Theater met applicable codes and standards of care. The Suway Declaration provides evidence that the illumination of the Theater in "normal live-performance lighting conditions" comported with the standards under Building Code § 1008.2.1, and that the Theater conditions met the standard of care. See 24 CFR (hereinafter referred to as the "Building Code")§ 1008.2.1. The Brown Declaration generally addresses the sufficiency of the maintenance and compliance with the Building Code. Generally, this is sufficient in shifting their burden to show that Defendants satisfied their duty in maintaining the premises, and that there were no violations or breaches of the duty.

Defendants also argue that the Building Code provisions generally do not apply to the Theater under Building Code § 102.6. However, Defendants present no evidence that the Theater *is* a historical building, omitting any mention of any designation as a historic building, or the standard by which buildings may meet the definition of a historic building. Defendants argue that Building Code § 102.6 proscribes application of the standards within the Building Code to the Theater as an "existing building". Defendants fail to present evidence either regarding "continuous occupancy" or historical status and accordingly have not shown that there is a lack of triable fact. Therefore, they have failed to shift their burden as to this issue.

Analysis turns to Plaintiff's opposition, and whether they meet the shifted burdens.

B. <u>Plaintiff Meets the Shifted Burden as to Each Issue</u>

First, Plaintiff raises a triable issue of fact in that the lighting of the Theater did not return to appropriate levels during the intermission, and that itself is likely sufficient to raise a triable issue of fact. While the Building Code sections provide significantly lower standards for lighting during the live performance, Plaintiff avers that her fall occurred during intermission. Defendants offer no evidence of lighting conditions outside live performance conditions, and so do not prove that the Theater met the standards under the Building Code.

Second, Plaintiff offers the evidence of her expert, Mr. Moore, presenting evidence of various portions of the area where Plaintiff fell not conforming to the Building Code. Though Defendants object, Plaintiff adequately shows the lighting conditions, either at the time when the theater was generally lit or set to performance levels, falls short of the Building Code requirements. During normal lighting, the lighting met levels of below 0.6 foot-candles, short of the requirement of 1 foot-candle. Performance conditions did not exceed 0.132 foot-candles, short of the requirement of 0.2 foot-candles. See 24 CFR § 1008.2.1. Plaintiff shows this has been the requirement of the Building Code since at least 1989. This is sufficient to raise triable issues of fact.

Even if the above evidence relating to light levels was not admissible as Defendants argue, Plaintiff would still otherwise raise a triable issue of fact. The Moore Declaration opines that the stairs are of variable height and lacked reflective contrast strips that otherwise would be expected to meet the standard of care. The aisle lacked required handrails. This contradicts the opinions of Mr. Suway and Mr. Brown. Dueling expert opinions are properly determined by a trier of fact. *Hernandez v. KWPH Enterprises* (2004) 116 Cal.App.4th 170, 176 *citing Kockelman v. Segal* (1998) 61 Cal.App.4th 491, 505. This is sufficient to raise a triable issue of fact as to whether the Theater meets the standard of care.

Third, even if Defendant had carried their burden to show that the Theater was exempt under Building Code § 102.6, whether renovations that would have triggered new requirements occurred appears to be a triable issue of fact. While Defendant strongly argues that the evidence of remodel is not admissible, the Court has found that the 2023 post is admissible both in form and substance, occurring in March 2023 before the incident at issue in October. This is sufficient to show that there would be a triable issue of fact as to whether Defendants' property is exempt from modern building code requirements.

Therefore, Plaintiff has met the shifted burden as to each issue. There are triable issues of fact. Summary judgment is DENIED.

V. <u>Conclusion</u>

Defendants' motion for summary judgment and adjudication is **DENIED**.

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

2-5. <u>25CV01401, Michael Lennox v. Kuzman. M.D.</u>

Plaintiff Michael Lennox ("Plaintiff") filed the currently operative first amended complaint (the "Complaint") in this action against defendants Sutter Health ("Sutter Health"); Sutter Bay Hospitals ("Sutter Bay"); San Francisco Emergency Medical Associates ("SFEMA"); Kristin Kuzma, M.D. ("Kuzma"); Kristin Kuzma, Inc. ("KKI"); J. Richard Mendius, M.D ("Mendius", tother with PFL, NFL and SRFL, "Defendants"), and Does 1-10 for alleged medical malpractice and elder abuse. This matter is on calendar for the motion by Kuzma to compel responses to requests for production of documents ("RPODs") under Code of Civil Procedure ("CCP") § 2031.300, to compel further responses to special interrogatories ("SIs") and form interrogatories ("FIs") under CCP § 2030.290, and to deem admissions admitted under CCP § 2033.280.

As an initial matter, there is no proof of service in the file reflecting Kuzma has served the hearing date of the above motions on the Defendant. There is no proof of service showing that

Plaintiff has served the hearing date, as the proofs of service on file reflects that the motions were served on April 7, 2026, and Notice of Informal Conference and Sanctions was served. The hearing date was assigned on April 16, 2026. Parties are required to provide notice of a motion, including the hearing date assigned by the Clerk. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). Kuzma served a non-opposition on July 24, 2026, both too late to give Plaintiff notice of the instant date, and late for showing service under the Rules of Court. Cal. Rule of Court, Rule 3.1300(c). The proof of service was required to be filed on July 22, 2026, and no proof of service is on file. Cal. Rule of Court, Rule 3.1300(c). The motion not being served in accordance with CCP § 1010, there is no cause to consider the merits.

Kuzma's motion is **DENIED without prejudice**.

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

6. 25CV04169, Herrejon Mendoza v. American Honda Company, Inc.

Plaintiffs Francisco Herrejon Mendoza and Indira L. Alvarado Gonzalez (together "Plaintiffs") filed the complaint (the "Complaint") in this action against defendants American Honda Motor Co., Inc., ("Defendant" or "Manufacturer"), and Does 1-50. The Complaint contains causes of action for violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") related to Plaintiffs' purchase of a 2024 Honda Civic (the "Vehicle").

This matter is on calendar for the motion by Plaintiffs to compel further production directed at the document requests set forth in Plaintiffs' demand for inspection, set one, served to Defendant (the "RPODs") under CCP § 2031.310. The Motion is **GRANTED in part, and DENIED in part**.

I. Governing Law

Regarding RPODs, a party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.*

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must "set forth specific facts showing 'good cause' justifying the discovery sought by the demand." CCP §2031.310(b)(1). Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing 'good cause' simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. *See also Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98. Once good cause is shown, the burden shifts to the responding party to justify its objections. *See Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 220-221.

"If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." CCP, § 2031.240 (c)(1). However, failure to provide a privilege log does not, in and of itself, waive attorney client privilege. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1131. The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378.

Motions to compel must be brought within 45 days of a verified response to a discovery request. See CCP §§ 2030.300(c), 2031.310(c), and 2033.290(c). The 45-day time limit for discovery motions is jurisdictional, and if a motion to compel further responses is filed after this period, the court cannot compel further answers. *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685; *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.

II. Analysis

Plaintiffs served RPOD, Set one to Defendant requesting inspection of 71 categories of documents. Defendant tendered objections to various categories. Plaintiffs request the Court compel further responses to RPOD ¶¶ 10, 16-17, 20-25, 41-42, and 71. The initial burden is on Plaintiffs as the moving party to show good cause for the production. Thereafter, the burden shifts to Defendant to justify their objections.

A. For Most Requests, Good Cause is Apparent

Many of Defendant's objections go to relevance, which is part of the good cause analysis, not an objection in and of itself. For the majority of the requests, good cause is apparent from the subject of the request and the allegations of the Complaint. Defendant raises some particular arguments in response to categories of information which merit addressing.

1. RPOD ¶ 10

RPOD ¶ 10 has a clerical issue that Defendant concedes is non-prejudicial, asking for 2024 Manly Honda Vehicles instead of 2024 Honda Civic Vehicles. Cutting to the merits, Plaintiffs requests that Defendant produce "A copy of the Workshop Manual specifying diagnosis and repair procedures for vehicles of the same year, make, and model as the SUBJECT VEHICLE." RPOD ¶ 10. Defendant contends that no such document exists. Plaintiffs have not defined the term "Workshop Manual" for the purposes of RPODs. Plaintiffs only aver that it should specify diagnoses and repairs for the Vehicle. If Defendant does not have a catch-all repair manual, "the Workshop Manual" would not exist for the purposes of the RPODs. While Defendant could assume Plaintiffs' intention that any document relating to any diagnoses and repair procedures were responsive, that does not appear to be their burden. Moreover, that would entirely overlap with the preceding RPOD ¶ 9. Defendant states that they have no responsive document, and Plaintiff's demand does not require that the Court infer that this is non-responsive. The motion is DENIED as to RPOD ¶ 10.

2. Matters Outside the Vehicle

Plaintiffs request documents related to Defendant's decisional processes for repurchase, their investigation of pervasive defects for the make, model and year of the Vehicle, and Defendant's response to similar complaints. Defendant argues that these categories are not relevant to this case, even those documents which might show pervasive defects in cars of the same make, model and year. The Court disagrees. The documents requested are sufficiently specific to show relevance to the instant case based on the Complaint and the claims of willfulness. See Civ. Code § 1794(c). The principle of similar vehicles having relevance is supported by the findings in *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 144, where expert testimony was admitted as to the findings of similar problems in other similar vehicles. Discovery procedures are generally designed to support the production of evidence relevant to the case. CCP §2017.010; *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546; *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790. Defendant repeatedly cites the *Donlen* decision, but this cuts *against* their point that anything except the subject vehicle is irrelevant. The *Donlen* decision found that information gathered related to other cars of the same make and model was admissible. There is nothing in that decision countermanding that other vehicles may lead to admissible evidence, which is the burden on good cause for production.

Defendant repeatedly avers that Plaintiffs need not provide evidence of defect about any vehicle except their own in order to prevail. This is true. However, Defendant misconstrues the required elements of Plaintiffs' causes of action with the outer bounds of materiality. Plaintiffs only need to prove defects in the Vehicle, but *how* Plaintiffs carry that burden can encompass a wide variety of methods. Absent the current objections, Plaintiffs may find evidence of a particular pervasive defect that matches the symptoms of the Vehicle and thereafter obtain evidence that the defect *is* present in the Vehicle. Defendant asks that we constrain Plaintiff's paths of meeting their burden but provides no authority showing the Court should do so. Where Defendant seeks to avoid producing documents, neither the Plaintiffs nor the Court can effectively presume their irrelevance.

Defendant's argument in this regard is also unpersuasive in its interpretation of the willfulness remedy of the Act. Defendant again attempts to impose the myopic view that Plaintiffs need only prove (and must prove) that Defendant refused to repurchase the Vehicle willfully. Much as a personal injury plaintiff would prove the extent of the harm suffered in order to prove their damages, evidence of willfulness is relevant for showing an element of claims under the act. Whether Defendant was aware of prevalent failures of the same type or failed to gather available information of those failures, addresses the factors of willfulness. The cases provided by Defendant show particular categories of information that may be relevant for determination of willfulness, but no case provided avers that it forms the comprehensive list of all evidence which may be relevant for that determination. That one category of evidence may be used to show willfulness is not preclusive of other relevant categories of information meeting the same burden. Policies that affect repurchase decisions for the instant vehicle are relevant for determining willfulness. *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1105. Therefore, information about other vehicles with the same litigable claims as Plaintiffs are salient to the instant case, because it shows whether there was reasonably available information which Defendant may have ignored in assessing repurchase and have sufficiently shown the relevance of the requested information and have therefore shown good cause.

3. Electrical Defect and Powertrain Defect

RPODs ¶ 16, 20, 22, and 24 all relate to Plaintiffs' defined term Electrical Defect. RPODs ¶ 17, 21, 23, and 25 all relate to Plaintiff's defined term Powertrain Defect. Defendant tenders objections as to the terms of Electrical Defects or Powertrain Defects. Defendant's arguments that the definition of the Electrical Defects or Powertrain Defects is comprised of vague symptoms is largely not persuasive. The party with adequate information to determine something more than the symptoms present in the Vehicle is Defendant, not Plaintiff. Plaintiffs need discovery to obtain additional information. Defendant's argument to the contrary is not persuasive. All of the symptoms described under Electrical Defect appear sufficiently specific, for the purposes of determining *what* Plaintiffs are looking for and its apparent relevancy, for Defendant to appropriately respond.

The same is mostly true for the purposes of Powertrain Defect, but Defendant calls attention to two terms within Powertrain Defect that are problematic. "Manual transmission replacement" and "replacement transmission assembly" both appear overbroad for the purposes of the defects alleged. As Defendant argues, these could encompass replacement of the transmission for any reason, including from accidents or unrelated issues. Those categories particularly appear overbroad, and therefore do not appear appropriately discoverable absent Plaintiffs showing good cause thereon. For RPODs ¶ 17, 21, 23, and 25, the defects on which documents are to be produced are: difficulty placing the vehicle in reverse gear; transmission sticking; harsh shifting; engine overheating; a manual transmission replacement; replacement transmission assembly; vehicle hesitating; activation of fault code P0100; and any other concern identified in the repair history for the Vehicle.

4. Defects Which Arguably are not Actionable.

As to Defendant's contention that Plaintiffs have not tendered their vehicle sufficient times for the Electrical Defects or the Powertrain Defects to be relevant, the Court simply notes that the Complaint incorporates these claims. Defendant cites to *Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1208, averring that the Vehicle was not tendered for repair of any of the specific symptoms multiple times, but rather that each of the multiple repairs was to address a different deficiency. First, Defendant overstates the holding of *Silvio.* In that case, the car had been tendered for repair only one time. *Id*. at 1207. Defendant's argument is distinguishable, opining that repeated tender of the Vehicle for multiple, non-recurring issues does not trigger Defendant's obligations under the Act. No case supports this particular contention, nor does it appear to be in accord with the policies the Act is intended to support. It would be a direct frustration of the Act if it were interpreted to require consumers to play "whack-a-mole" with repeated symptoms that may stem from a common source, or innumerable separate issues. The Act requires multiple repair attempts on the Vehicle, not multiple repair attempts per alleged nonconformity. Second, if Defendant has an argument for the claim not being viable, there are motions and procedures by which they can attack those allegations. Defendant provides no authority showing that the Court may restrict discovery based on unlitigated alleged deficiencies in the Complaint. The pleadings determine what is relevant for discovery. These allegations are still in the operative complaint. Therefore, the allegation remains relevant, and discovery thereon appears supported.

5. CCP § 871.26 (h)

Defendant repeatedly asserts that CCP § 871.26 codifies what is relevant in Song-Beverly cases. Defendant argues that the categories of documents contained in CCP § 871.26 (h) is the complete list of documents which are relevant for the purpose of this case, and that further production should therefore not be ordered. Defendant states that the Legislature has offered their own judgment as to what is relevant, and this Court should not order further responses. This contention fails for multiple reasons.

CCP § 871.26 became effective on January 1, 2025. It delineates the pre-complaint responsibilities of the parties in an action for restitution or replacement of a motor vehicle in any case filed after the effective date. Among the responsibilities of the parties are document disclosures to occur before mandatory mediation. CCP § 871.26 (d-i). Defendants are required to produce seventeen categories of documents, along with a person most qualified to be deposed. CCP § 871.26 (h-i). Outside of these required categories of information required to be exchanged pre-mediation, discovery is otherwise stayed. CCP § 871.26 (e).

As to the general contention that CCP § 871.26 (h) produces an exhaustive list of the documents relevant to a case under the Song-Beverly Act, Defendant is also unpersuasive. While Defendant is correct that the Legislature has spoken, it is incorrect about what was said. Nothing within the statute serves to preclude or preempt statutory discovery, and the language of CCP § 871.26 expressly countermands this theory. These initial disclosures are required "within 60 days after the filing of the answer or other responsive pleading", "without awaiting a discovery request". CCP § 871.26 (b). Other discovery methods are stayed until after mediation is concluded. CCP § 871.26 (e). CCP § 871.26 **does** provide guidance as to what is relevant, but counter to Defendant's position, CCP § 871.26 (h) represents the **minimum** of what is relevant, not the outer bounds of relevancy. Given the manner in which the objection is asserted, it merits no further consideration.

B. That Responses were Otherwise Provided are Insufficient

Defendant raises that they provided responses to Plaintiffs' requests. Some of the responses were indicative that, "(s)ubject to and without waiving" the objections, Defendant had performed a diligent search and found no responsive documents. See PROD ¶¶ 16, 17, 20, 21, 41, and 42. RPOD ¶ 71 provided a partial response "(s)ubject to and without waiving" the objections. The meaning of these responses is clear. The reasonable reading of these requests is that the objections still apply, and it is not clear whether documents have been withheld as a result. The Court interprets this response as still withholding documents under objections, and makes orders appropriately. That Defendant has produced some form of response as to these requests does not preclude ordering further responses once Defendant's objections have been overruled. Defendant does not aver that they have produced any documents that were subject to the objections. Defendant has provided no information to either Plaintiffs or the Court as to what documents have been withheld subject to these objections. Defendant is both entitled to make objections and withhold those documents subject to objection while producing all unobjectionable relevant documents. See CCP § 2031.220. However, that does not mean that Plaintiffs cannot move to have meritless objections overruled and compel production of documents which were responsive and previously withheld. CCP § 2031.310 (a)(3). Defendant provides no authority stating that their partial production somehow obviates any need to produce documents withheld under unsupported objections. Plaintiffs are entitled to know whether Defendant has documents which were withheld due to the objections, in light of their lack of merit. Therefore, this argument does not provide a basis for denying Plaintiffs further responses.

There is sufficient basis to compel further responses to RPOD ¶¶ 16-17, 20-25, 41-42, and 71. Further responses are ordered as to RPODs ¶ 17, 21, 23, and 25 as narrowed above. The motion is accordingly GRANTED.

III. <u>Conclusion</u>

Based on the foregoing, Plaintiffs' motion to compel further responses to RPOD, Set One, is **GRANTED in full as to RPOD ¶¶ 16, 20, 22, 24, 41-42, and 71.** The motion is **GRANTED in part as to RPOD ¶¶ 17, 21, 23, and 25**. Defendant is to produce objection free code-compliant responses and any documents previously withheld within **30 days** of notice of the court's order. The motion is **DENIED as to RPOD ¶ 10**.

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

7. <u>25CV05117, Belluomini v. A0690 Windsor LP</u>

Plaintiff Brandon Belluomini ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants A0690 Windsor LP ("Windsor"), Buckingham Property Management ("Buckingham"), Nations Finest ("Nations"), Urban Housing Communities ("Urban", together with all other defendants, "Defendants"), and Does 1-50. This matter is on calendar for Nations' demurrer to Plaintiff's Complaint.

Plaintiff has filed a motion for leave to amend the Complaint, and requests that the Court continue the instant demurrer until after the Court has been able to consider the merits of that motion. This appears to be in the interest of both judicial efficiency and clarity of pleading. First, from taking notice of the content of the motion for leave to amend, Plaintiff seeks to withdraw multiple causes of action, and to add factual allegations that may address Nations' raised concerns. The scope of leave to amend is constrained at demurrer unless the Court specifically orders otherwise. *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.

Therefore, this matter is **CONTINUED** to **<u>September 23, 2025 at 3:00 pm in Department 19</u>**. Given that Plaintiff has filed a substantive opposition, no further briefing is allowed.

8. <u>SCV-273199, Mendez v. Bello</u>

Plaintiffs, Richard Mendez ("Mendez"), Natasha Khallouf ("Khallouf") and Sean Musgrove ("Musgrove, together with Mendez and Khallouf, "Plaintiffs"), have filed the currently operative first amended complaint ("FAC") against defendants Tony Bello, trustee of the Tony Bello Living Trust Date 06/26/1997 ("Bello"), PLM Loan Management Services Inc. ("PLM", together with Bello, "Defendants"), and Does 1-25 regarding the property commonly known as 6972 Saint Helena Road, Santa Rosa, California (the "Property"), with causes of action for: 1) wrongful foreclosure; 2) cancellation of instrument; 3) quiet title; 4) violation of Civ. Code § 2924f; 5) violation of Civ. Code § 2923.5; and 6) violation of Business and Professions Code § 17200 et. seq.

In turn, Bello has filed a cross-complaint (the "Cross-Complaint") against Plaintiffs, Michael Musgrove, Ronald Cupp ("Cupp"), the Trust Knot Us Foundation ("TKU", together with Michael Musgrove, Cupp and Plaintiffs, "Cross-Defendants"), and Does 1-100, for causes of action for: 1) Ejectment; 2) Money Judgment on Note; and 3) Avoidance and Recovery of Fraudulent Transfer. Michael Musgrove has in turn filed a cross-complaint for indemnity and abrogation of damages against the other Cross-Defendants.

This matter is on calendar for the motion by Bello for Judgment on the Pleadings as to the First, Second, Third, Fifth and Sixth causes of action. It is **DENIED**.

I. <u>Evidentiary and Pleading Issues</u>

Bello asks that the Court take judicial notice of 42 documents that are to be presented as evidence at trial. Exhibits 1-35 relate to the underlying loan, title, foreclosure and discovery within this case. Exhibits 36-42 are pleadings filed within this case.

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under CCP § 452. CCP § 453. However, the court may, on its own motion, take judicial notice of any matter under CCP § 452. Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148. Courts may take notice of public records but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Id.* Discovery documents that are not part of the filed records of the court are not capable of being judicially noticed. *People v. Nadey* (2024) 16 Cal.5th 102, 208. Discovery responses are not properly the subject of judicial notice. *TSMC North America v. Semiconductor Manufacturing Internat. Corp.* (2008) 161 Cal.App.4th 581, 594, fn. 4.

Exhibits 1-35 appear to be outside the bounds of judicial notice, and therefore incapable of consideration at this juncture. Bello cites *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5 ("*Saltarelli*"), in arguing that a nonstatutory motion may take judicial notice of trial exhibits. Bello overreads the nature of that holding. First, nothing in that case states that the exhibits at issue were "trial" exhibits. Second, the court there *did* take judicial notice of the exhibits submitted but expressly found the attached declarations as "superfluous to the decision".

Bello is not generally persuasive. Bello asks that the Court expand the bounds of a motion for judgment on the pleadings beyond its titular subject matter. Nonstatutory or not, a motion for judgment on the pleadings goes to the pleadings, and those matters judicially noticeable. Nothing within *Saltarelli* describes the nature of the exhibits at issue. The case dealt with whether matters had been discharged in bankruptcy, and there is nothing within that decision to indicate that the content of the exhibits was not relevant to the propriety of judicial notice. There is no basis to presume that *Saltarelli* expanded judicial notice beyond those matters already found to be within its scope under Evid. Code §452. Moreover, Bello's error is apparently based on the vehicle used by the Court in *Saltarelli*. The court there took *judicial notice* of exhibits that were submitted. It was found the declarations could not be considered, clearly denoting a distinguishing nature to the types of documents at issue. Judicial notice is clearly and explicitly defined by statute (Evid. Code § 452), and the nonstatutory nature of the instant motion would not affect the bounds of judicial notice. Nothing within *Saltarelli* indicates the contrary.

Therefore, to Exhibits 1-35, Bello fails to express their relevance to the degree that they *are* capable of judicial notice. While the Court can take judicial notice of recorded documents, the notice goes to the nature of the recording, not the truth of the contents therein. *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194 ("A recorded deed is an official act of the executive branch, of which this court may take judicial notice."); *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 854 ("While we may take judicial notice of ... official acts of state agencies [citation], the truth of matters asserted in such documents is not subject to judicial notice."). Judicial notice of Ex. 1-35 is DENIED.

Exhibits 36-42 are the pleadings in this case, and properly the subject of judicial notice. Notice of those documents is GRANTED. Review proceeds to Bello's arguments to the degree they remain viable after exclusion of these documents.

II. Governing Law

A. *Judgment on the Pleadings*

A motion for judgment on the pleadings may only be made on the grounds specified in the statute. CCP § 438(c)(1). "A motion for judgment on the pleadings is analogous to a general demurrer." *So v. Shin* (2013) 212 Cal.App.4th 652, 662. If the moving party is a defendant, the motion may be made on the grounds that the complaint does not state facts sufficient to constitute a cause or causes of action against the defendant. CCP § 438(c)(1)(B). A motion for judgment on the pleadings may be targeted to the entire complaint, or to any of the causes of action therein. CCP § 438 (c)(2)(A). "The fundamental question for the reviewing court is whether any cause of action is framed by the facts alleged in the complaint." *Surina v. Lucey* (1985) 168 Cal.App.3d 539, 541; cited by *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508 ("Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory."). As with a demurrer, the challenged pleading must be "liberally construed, with a view to substantial justice between the parties" and the court should give the pleading "a reasonable interpretation, reading it as a whole and its parts in their context." Code Civ. Proc. §452; see also, *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238 (where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant.").

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts which the court may judicially notice, and not upon other extrinsic evidence. CCP § 438 (d). Where the motion is based on matters the court may judicially notice (under Evidence Code §§ 452, 453), such matters must be specified in the notice of motion or supporting points and authorities. CCP § 438(d); compare *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5. "The common law ground for a motion for judgment on the pleadings is identical to the statutory ground: 'The complaint does not state facts sufficient to constitute a cause of action.'" *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1055.

"A motion for judgment on the pleadings is properly granted when the 'complaint does not state facts sufficient to constitute a cause of action against that defendant.' (Citation.) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (Citation.) The trial court must accept as true all material facts properly pleaded, but does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed." *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219–1220; see also *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal. 4th 861, 872.

If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (CCP § 438(h)(1).) In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co*. (1961) 56

Cal.2d 836, 841–842. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. However, "(i)f there is no liability as a matter of law, leave to amend should not be granted." *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.

B. *Actions to Set Aside Foreclosure Sale and the Homeowner's Bill of Rights*

"(T)he elements of an equitable cause of action to set aside a foreclosure sale are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104. "Because the action is in equity, a defaulted borrower who seeks to set aside a trustee's sale is required to do equity before the court will exercise its equitable powers." *Id*. at 113. "Consequently, as a condition precedent to an action by the borrower to set aside the trustee's sale on the ground that the sale is voidable because of irregularities in the sale notice or procedure, the borrower must offer to pay the full amount of the debt for which the property was security." *Ibid*.

There exist several exceptions to the general rule, including any case where plaintiff does not rely on equity to attack the deed, because the transfer is void. "(I)n the context of overcoming a voidable sale, the debtor must tender any amounts due under the deed of trust." *Dimock v. Emerald Properties LLC* (2000) 81 Cal.App.4th 868, 877. However, where a purported trustee is not the trustee at the time of the sale, they have no power to convey the property, and any transfer they effect is void. *Id.* at 876. In those cases, no tender is required. *Ibid*; see also *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104.

Homeowners who qualify under Civ. Code § 2924.15 are entitled to additional protections under Civil Code Section 2924(a)(5) and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 in the event of default and foreclosure, otherwise known as the Homeowner's Bill of Rights ("HBOR"). Civ. Code § 2924.15(a). HBOR protections only apply to properties that are "owner occupied", which "means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes." Civ. Code, § 2924.15 (b). Prior versions of the statute effective in 2022 and 2023 included protections for tenant occupied properties, if the property was occupied due to "a lease entered pursuant to an arm's length transaction before, and in effect on, March 4, 2020." See former Civ. Code, § 2924.15, effective 1/1/2022-12/31/2022 and 1/1/2023-12/31/2024.

Where a party moves to sell a property pursuant to a deed of trust or mortgage, the foreclosing party at least 20 days before the sale must publish or post the notice of sale in a newspaper or public place, and post the notice in a conspicuous place upon the property. Civ. Code § 2924f. Additionally, the notice of default must be mail served 10 days after it is recorded on the last known address of record of the borrower and notice of sale must be mail-served at least 20 days before trustee sale. Civ. Code § 2924b.

C. *Unfair Competition Law*

Business & Professions Code ("Bus. & Prof. Code") section 17200 (commonly called the Unfair Competition Law, or "UCL"), prohibits "any unlawful, unfair or fraudulent" business practices." Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999). "Prevailing plaintiffs [under the UCL] are generally limited to injunctive relief and restitution. Plaintiffs may not receive damages ... or attorney fees." *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 371 (internal quotations omitted). Punitive damages are not recoverable under the UCL. *Id*. at 376.

A business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827. "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted).

III. Analysis

1. *HBOR Causes of Action (First, Second, Third, Fifth and Sixth)*

Defendants attempt to convert the motion for judgment on the pleadings into a quasi-summary judgment motion, putting forward various pieces of evidence under the banner of judicial notice. Given that judicial notice was denied, the Court is left with a narrow question, whether the FAC has facts sufficient to state the relevant causes of action. *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1055.

Bello asks that the Court find he has no liability because PLM has been granted summary judgment. The conduct and duties of Bello and PLM are different, and accordingly it would be improper to presume that PLM's summary judgment would be dispositive as to Bello. Bello's motion for summary judgment had been denied without prejudice, and if he intended to have the Court examine the merits of the issue, that was the appropriate motion to file. The instant motion for judgment on the pleadings cannot be treated in that manner because "the motion is permitted only where it complies with the requirements for a motion for summary judgment." *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.

Bello makes one purely legal contention that goes directly to the pleading. Bello is correct that declarations under Civ. Code § 2923.5 are *not* required to be under declaration of perjury. *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 233. However, he fails to express how this lone argument renders any particular cause of action deficient.

Therefore, Bello's motion for judgment on the pleadings is DENIED as to the first, second, third, and fifth causes of action.

2. *UCL Claim*

Bello posits that the UCL claim fails based on the exhibits submitted, but that contention fails for all the reasons already addressed. Bello's attack on the UCL cause of action for pleading for improper relief is also misplaced. Bello avers that the prayer asks for relief not contemplated by the UCL but fails to show how judgment on the pleadings is the appropriate vehicle to remedy the deficiency. The FAC states a cause of action for breach of the UCL by its elements and therefore is not properly attacked via demurrer. Improper remedies are addressed by a motion to strike. *See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214; *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561 (demurrer not proper vehicle for challenging improper damage claims).

Bello's motion for judgment on the pleadings is DENIED as to the sixth cause of action.

IV. <u>Conclusion</u>

Based on the foregoing, the motion for judgment on the pleadings is **DENIED**.

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

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