

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 11-26-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:**

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). You must use the current link.

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 11-26-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23CV416455 Hearing: Demurrer	N. Charles Podaras vs Valerie Weirauch et al	See Tentative Ruling. Moving party shall submit the final order.
<a href="#">LINE 2</a>	24CV432055 Hearing: Motion Summary Judgment	Wells Fargo Bank, N.A. vs Timothy Stewart, an individual	Notice appearing proper and good cause appearing, the unopposed motion for summary judgment is GRANTED. Plaintiff shall submit the final order.
<a href="#">LINE 3</a>	20CV361307 Motion: Compel	Kristy Bailey et al vs Vintage Towers et al	Off calendar
<a href="#">LINE 4</a>	20CV361307 Motion: Compel	Kristy Bailey et al vs Vintage Towers et al	Off calendar
<a href="#">LINE 5</a>	20CV361307 Motion: Admissions Deemed Admitted	Kristy Bailey et al vs Vintage Towers et al	Off calendar
<a href="#">LINE 6</a>			
<a href="#">LINE 7</a>			
<a href="#">LINE 8</a>			
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 11-26-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

- oo0oo -

**Calendar Line 1****Case Name:** *Podaras v. Weirauch, et al.***Case No.:** 23CV416455

Plaintiff N. Charles Podaras (“Plaintiff”) filed his First Amended Form Complaint (“FAC”) against defendants Valerie Weirauch, Tasha McDonald, Barry Vickery, Marsha Dyslin, and Does 1-25 (collectively, “Defendants”).

The factual allegations of the FAC indicate that in early 2019, Plaintiff moved onto a property in San Jose (“the Property”), owned by Weirauch. The parties verbally agreed that Plaintiff could reside at the Property. Plaintiff and Weirauch agreed that Plaintiff would help take care of the house and dogs; however, Plaintiff did not believe he was an employee. Plaintiff alleges there was no understanding that he would no longer be allowed to reside at the Property if Weirauch no longer wanted assistance with the dogs or house.

On April 28, 2022, Weirauch texted Plaintiff that he needed to have his belongings out by Saturday. On April 30, 2022, Weirauch repeatedly asserted that Plaintiff needed to leave and eventually began yelling at Plaintiff. Plaintiff closed his door to end the conversation. Thereafter, Weirauch sent Plaintiff multiple demands to move out and threatened to call law enforcement if he did not move out.

On May 11, 2022, Weirauch and McDonald knocked on Plaintiff's door and handed him a paper that stated he had 3 days to move out. On May 14, 2022, Plaintiff responded to the letter indicating he had rights under California's laws and requested she stop pressuring him to leave. After this, Plaintiff lost WiFi access and hot water pressure.

On May 23, 2022, Plaintiff received notice of Weirauch's CHRO/TRO legal proceeding against him. He discovered he was no longer allowed back in the home where his belongings were, including medication and medical devices. On October 25, 2022, the CHRO was denied and the TRO was lifted. Plaintiff was informed that his belongings were packed up in Weirauch's garage without Plaintiff's permission.

On November 18, 2022, Plaintiff visited the Property on an arranged appointment to get his belongings. He was denied entry by Vickery and Dyslin. Upon leaving, Vickery followed Plaintiff almost 70 yards down the street and indicated he was a lawyer. Plaintiff alleges that Vickery retired from his law career in 2016.

On December 30, 2022, Plaintiff requested San Jose Police escort him to the Property to retrieve belongings.

On December 18, 2023, this Court (Hon. Rosen) issued its order sustaining Vickery and Dyslin's demurrer to Plaintiff's initial complaint and providing 20 days leave to amend.

On January 10, 2024, Plaintiff filed his FAC, which does not appear substantively different from his original complaint.

On February 15, 2024, defendants Bryan Vickery and Marsha Dyslin (collectively, “Moving Defendants”) filed a demurrer to the FAC. The demurrer was unopposed and on July

12, 2024 it was sustained in its entirety without leave to amend. On September 24, 2024, Plaintiff filed a notice of appeal of the order sustaining the demurrer.

On July 25, 2024, Weirauch filed a demurrer to the FAC, on the grounds it is ambiguous or uncertain.

As an initial matter, the Court finds that Plaintiff untimely filed his FAC after the Court granted him 20 days leave to amend. Next, while the Court does not find the pleading to be so uncertain or ambiguous that Weirauch is unable to respond, the Court does find the allegations related to Weirauch to be insufficient to state a cause of action for general negligence. (See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [“[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.”]; *Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th 627, 634 [“The elements of a negligence cause of action are duty, breach, causation, and damages.”].) The FAC is devoid of sufficient allegations that Weirauch owed Plaintiff a duty that she subsequently breached.

As for Plaintiff’s three counts, contained at the bottom of his factual allegations in the FAC, the Court finds each count to be insufficient. Statutory causes of action must be pled with specificity. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1020 [general rule that statutory causes of action must be specifically pled].) Plaintiff’s three counts, alleging violations of various sections for which he does not specify to which code the number relates, are not pled with any specificity whatsoever.

Finally, as stated above, Plaintiff did not file an opposition to Weirauch’s demurrer, creating an inference that the demurrer is meritorious. (See *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

This Court has already provided Plaintiff with the opportunity to amend his pleading, and he has been unable to state valid claims to overcome a pleading challenge on demurrer. Further, Plaintiff has not requested leave to amend or explained how any further amendments will change the legal effect of his pleading. Therefore, the demurrer is SUSTAINED without leave to amend. (See e.g., *Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App5th 1125, 1145 [“The onus is on the plaintiff to articulate the ‘specifi[c] ways’ to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend ‘only if a potentially effective amendment [is] both apparent and consistent with the plaintiff’s theory of the case.’”].)

The unopposed demurrer is SUSTAINED in its entirety without leave to amend. Defendant Weirauch shall prepare the final order.

- oo0oo -