SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

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

DATE: 01-11-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

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 strongly prefers in person appearances. If you must 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

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV372258 Hearing: Order of Examination	CREDITORS ADJUSTMENT BUREAU, INC. vs CANVAS INFOTECH INC.	All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. Parties shall meet and confer to determine how and where the examination will take place. If all parties appear, the Court will administer the oath and the examination will take place off line. The parties are to report after the examination has been completed. If there is no appearance by the moving party, the matter will be taken off calendar.
LINE 2	17CV315072 Hearing: Demurrer	Gary Christensen et al vs Intero Real Estate Services Inc. et al	See Tentative Ruling. The Court will prepare the final order.
LINE 3	23CV413053 Hearing: Demurrer	Mary Volz vs R Cassibba et al	See Tentative Ruling. The Court will prepare the final order.
LINE 4	21CV385285 Motion: Quash	DEBRA PINNER et al vs CODY SALFEN et al	See Tentative Ruling. Defendant shall submit the final order.
LINE 5	21CV385285 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	See Tentative Ruling. Defendant shall submit the final order.

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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 6	21CV385285 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	See Tentative Ruling. Defendant shall submit the final order.
LINE 7	21CV385285 Motion: Compel	DEBRA PINNER et al vs CODY SALFEN et al	See Tentative Ruling. Defendant shall submit the final order.
LINE 8	22CV398340 Hearing: Confirm Arbitration Award	IPS3 Group Limited et al vs ADMI California, Inc.	Notice appearing proper, the unopposed motion is GRANTED. Moving party shall submit the final order.
LINE 9	22CV398913 Motion: Withdraw as attorney	JEFFREY MIZE et al vs KINETIC SYSTEMS, INC. et al	Notice appearing proper, the unopposed motion of Counsel for Plaintiff Jeffrey Mize is GRANTED. The Court will sign the proposed order. Next appearance is Jan. 30 at 11 am for a trial setting conference and identification of counsel. If Plaintiff or Defendants Vu and Kinetic Systems retain new counsel, new counsel must appear at that hearing.
LINE 10	22CV398913 Motion: Withdraw as attorney	JEFFREY MIZE et al vs KINETIC SYSTEMS, INC. et al	Notice appearing proper, the unopposed motion of Counsel for Defendants Vu and Kinetic Systems is GRANTED. The Court will sign the proposed order. Next appearance is Jan. 30 at 11 am for a trial setting conference and identification of counsel. If Plaintiff or Defendants Vu and Kinetic Systems retain new counsel, new counsel must appear at that hearing.
LINE 11	23CV418931 Motion: Withdraw as attorney	Hormoz Barandar et al vs Angel Vo	Notice appearing proper, the unopposed motion to withdraw by Counsel for plaintiffs is GRANTED. The Court will sign the proposed order. An identification of counsel hearing will be set for March 7, 2024 at 10 a.m.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(Dept 16 is now hearing cases that were formerly in Dept 2)

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

DATE: 01-11-24 TIME: 9 A.M.

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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 12			

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Calendar Line 2
Case Name: *Christensen, et al. v. Intero Real Estate Services Inc., et al.*
Case No.: 17CV315072

I. Factual and Procedural Background

Cross-complainant Intero Real Estate, Inc. ("Intero")[1] brings a Second Amended Cross-Complaint ("SAXC") against cross-defendants Diane and Montgomery Roach (collectively, "the Roaches"); NRT West, Inc. ("NRT") dba Coldwell Banker Residential Brokerage ("Coldwell"); and Cornerstone Title Company ("Cornerstone").

On or around May 29, 2015, the Roaches engaged Intero to market and sell their property (the "Property"), through real estate agents Janet Dayton ("Ms. Dayton") and Joe Alderese ("Mr. Alderese"). (SAXC, ¶ 9.) Intero and the Roaches subsequently entered into a Residential Listing Agreement. (*Id.* at ¶ 10.)

Mr. Alderese observed that the Roaches drove to and from the Property via Reynolds Drive and Montgomery Roach told Mr. Alderese that the Property could be accessed on Carlson Drive. (SAXC, ¶¶ 12-14.) Based on these representations, Mr. Alderese listed the Property as having access from Reynolds Drive and Carlson Drive. (*Id.* at ¶ 15.)

On July 9, 2015, Gary and Trish Christensen (collectively, "the Christensens")[2] through their real estate broker, submitted an offer to purchase the Property for $1,075,000. (SAXC, ¶ 16.) The Roaches accepted the offer on July 10, 2015, and the parties agreed to close escrow on September 4, 2015. (*Ibid*.) The Roaches denied the existence of any common feature of the Property with shared maintenance, denied the existence of any easements, denied use of any neighboring property, denied the existence of limitation of access to the Property, and denied being aware of the absence of or limitation of legal or physical access to the Property. (*Id.* at ¶¶ 17-19.)

On or around July 20, 2015, the Christensens acknowledged receipt of a Preliminary Report for the Property from Cornerstone, the title and escrow company for the purchase and sale transaction. (SAXC, ¶ 20.)

On August 4, 2015, the Christensens emailed Cornerstone's escrow officer Linda Conley ("Ms. Conley") to request clarification of the Property's legal description because it did not identify any easements. (SAXC, ¶ 21.) Gary Christensen specifically asked if there was legal access to the Property via Reynolds or Carlson Drive and for clarifying recorded documents. (*Ibid*.; Ex. A [Gary Christensen's email to Ms. Conley attached to SAXC].) Gary Christensen also asked Ms. Conley to clarify two recorded instruments identified in Cornerstone's preliminary title report. (*Id.* at ¶¶ 22-23.)

As a result of the Christensens' email, Ms. Conley raised these issues internally at Cornerstone and asked others, including Title Officer Richard Hofer ("Mr. Hofer") to look into the matter. (SAXC, ¶ 24; Ex. A [Ms. Conley's email with Mr. Hofer].) Mr. Hofer investigated

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[1] Intero is the Defendant in the original action and the Cross-Complainant in the SAXC currently at issue.
[2] The Christensens are the plaintiffs in the original action.

and determined that there was no legal ingress and egress over Reynolds or Carlson Drive but that it did not mean the Property could not be accessed through these roads. (*Id.* at ¶ 25.) Ms. Conley then forwarded this email only to Mr. Alderese. (*Id.* at ¶ 26.) Because Mr. Alderese was not the Christensens' agent, he had no reason to believe Cornerstone had not directly responded to them. (*Ibid.*) Ms. Conley failed to inform the Christensens of any findings. (*Ibid.*)

Thereafter, Cornerstone provided multiple amendments to the Preliminary Report. (SAXC, ¶ 27.) Cornerstone knew that no records existed for legal ingress and egress over Reynolds Drive or Carlson Drive for the Property. (*Id*. at ¶ 28.)

On September 4, 2015, escrow closed on the sale of the Property to the Christensens. (SAXC, ¶ 29.)

On or around August 25, 2017, the Christensens filed their initial complaint against Intero, among others. (SAXC, ¶ 30.) The Christensens later filed an amended complaint, alleging Intero was liable for damages arising from negligent misrepresentation and failure of the duty to investigate. (*Id.* at ¶¶ 30-31.)

On October 14, 2022, Intero filed its First Amended Cross-Complaint ("FAXC"). On February 17, 2023, Cornerstone filed a motion for judgment on the pleadings to the FAXC's second and third causes of action. On June 6, 2023, the Court (Hon. Kuhnle) granted the motion in its entirety with leave to amend.

On July 7, 2023, Intero filed its SAXC, asserting the following causes of action:

1) Express Indemnity [against the Roaches and Roes 1 through 25];
2) Equitable Indemnity [against all Cross-Defendants]; and
3) Declaratory Relief [against all Cross-Defendants].

On September 7, 2023, Cornerstone filed its demurrer to the SAXC's second and third causes of action.

A. Cornerstone's Request for Judicial Notice

In support of its demurrer, Cornerstone requests the Court take judicial notice of the following:

1) The Christensens' First Amended Complaint ("FAC") (Ex. A); and
2) Intero's SAXC (Ex. B).

The request for judicial notice of Exhibit A is DENIED. Intero has incorporated the allegations of the Christensens' FAC into its SAXC. Thus, judicial notice of the FAC is unnecessary. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

The request for judicial notice of Exhibit B is DENIED. Judicial notice of a complaint is unnecessary where it is the pleading under review. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 ["Judicial notice is unnecessary because, in our review of the demurrer ruling, we accept the allegations in the complaint and the facts in the exhibit as true"].)

B. Analysis

Cornerstone's notice of motion indicates it demurs to the second and third causes of action on the grounds they fail to state facts sufficient to constitute a cause of action and are uncertain.

a. Equitable Indemnity – Second Cause of Action

The doctrine of equitable indemnity applies only among defendants who are jointly and severally liable to the plaintiff. (*BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 852 (*BFGC*).) Such principles are designed, generally, to do equity among defendants who are legally responsible for an indivisible injury by providing a basis on which liability for damage will be borne by each joint tortfeasor "'in direct proportion to [its] respective fault.'" (*American Motorcycle Assn. v. Superior Ct.* (1978) 20 Cal.3d 578, 583, 598 (*American Motorcycle*), quoting *Li v. Yellow Cab Co.* (1975) 13 Cal. 3d 804, 813.)

"[A] defendant may pursue a comparative equitable indemnity claim against other tortfeasors either (1) by filing a cross-complaint in the original tort action or (2) by filing a separate indemnity action after paying more than its proportionate share of the damages through the satisfaction of a judgment or through a payment in settlement." (*Evangelatos v. Superior Ct.* (1988) 44 Cal.3d 1188, 1197-1198.)

Cornerstone argues Intero cannot assert an equitable indemnity cause of action against it because 1) neither the FAC alleges that Cornerstone and Intero are joint tortfeasors; and 2) nor does the FAXC allege any tort against Cornerstone. (Demurrer, p. 14:24-27.)

i. Joint Tortfeasors

Cornerstone first argues that the FAC does not allege that Cornerstone and Intero are joint tortfeasors. As Intero points out, Cornerstone cites to no authority to support this contention. (See e.g., *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [a point asserted without citation to authority will be disregarded].) Nevertheless, the California Supreme Court has stated that a defendant may cross-complain against a party from whom they seek equitable indemnity "even when such . . . tortfeasor has not been named a defendant in the original complaint." (*American Motorcycle*, *supra*, 20 Cal.3d at p. 607.)[3]

In this case, the FAC asserts tort causes of actions against Intero, including negligence. Intero now alleges equitable indemnity against Cornerstone for negligence. (See FAXC, ¶ 42; *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1127 ["[t]o state a claim for indemnification, a defendant must allege that the same harm for which he may be held liable is properly attributable -- at least in part -- to the alleged indemnitor"][superseded by statute on other grounds].)

Accordingly, the Court declines to sustain the demurrer to the second cause of action on this basis.

ii. Tort Allegations Against Cornerstone

[3] The Supreme Court noted exceptions to this general rule; however, none of these exceptions are applicable in this case. (*American Motorcycle*, *supra*, 20 Cal.3d at p. 607, fn. 9.)

Cornerstone next argues the FAXC does not allege any tort against Cornerstone.

A cause of action for equitable indemnity requires: 1) a showing of fault on the part of the indemnitor and 2) resulting damages to the indemnitee for which the indemnitor is equitably responsible. (*C.W. Howe Partners Inc. v. Mooradian* (2019) 43 Cal.App.5th 688, 700.)

"With limited exception, there must be some basis for tort liability against the proposed indemnitor." (*BFGC*, *supra*, 119 Cal.App.4th at p. 852.) In *BGCG*, the Court of Appeal acknowledged that on demurrer, "plaintiff's pleadings control" but determined that "plaintiff's own complaint torpedoes its claim. It alleges defendants breached their duties to district by failing to comply with the terms of their contracts. This is not a cognizable claim on which to base equitable indemnity." (*Id.* at pp. 852-853 [sustaining demurrer to equitable indemnity claim where there were no allegations of defendant's tortious conduct and misconduct was wholly based on alleged breach of contract].)

In its prior order, the Court noted that the FAXC was devoid of allegations regarding any agreement by Cornerstone to undertake a thorough search of the records and devoid of any allegations pertaining to acts or omissions of Ms. Conley, but the Court acknowledged that Intero may ultimately allege facts supporting a cause of action for equitable indemnity. (Court's June Order, p. 6.)

The SAXC now alleges the Christensens directly emailed Ms. Conley and requested documentation "that is either not contained or addressed in the preliminary title report" including about the legal access to the Property and for clarification or documentation to support legal ingress and egress. (SAXC, ¶ 20.) It further alleges that upon receiving this email, Ms. Conley raised these issues internally with Cornerstone, which resulted in further investigation. (*Id.* at ¶ 24.) Thereafter, Ms. Conley forwarded the information to Mr. Alderese without any comment and because Mr. Alderese was not the Christensens' agent, he had no reason to know that Cornerstone did not respond to them directly. (*Id.* at ¶ 26.) The second cause of action incorporates these allegations and further alleges that should Intero be held liable in connection with the Christensens' FAC, its liability is based on the acts or omissions of Cornerstone. (*Id.* at ¶¶ 40, 42 ["Cornerstone has joint tort liability for the damages claimed by Plaintiffs . . . arising from Plaintiffs' [FAC] as a direct and proximate result of Ms. Conley's negligence"].)

Intero then alleges the Christensens' damages were caused by Cornerstone and Ms. Conley's negligent or wrongful acts when they undertook an independent duty, irrespective of contractual obligations, to substantiate legal access to the Property in response to Gary Christensen's direct request. (*Id.* at ¶ 42.) Cornerstone and Ms. Conley discovered legal access could not be substantiated but failed to discharge their duty by communicating crucial findings back to the Christensens. (*Ibid.*)

Cornerstone acknowledges the SAXC's allegations of negligence but contends the allegations are an improper attempt "to convert Cornerstone's preliminary title report into an abstract of title as a means to impose upon Cornerstone an 'independent duty … to substantiate legal access.'" (Demurrer, p. 15:4-6.) Cornerstone further argues that Exhibit A to the SAXC does not include a response from Cornerstone accepting the obligation to provide an abstract of

title or an agreement to undertake a thorough search of the records or to disclose impediments to title. (*Id.* at p. 15:9-16.)

In opposition, Intero argues that an escrow holder such as Cornerstone can be liable for negligent conduct that occurs beyond the simple preparation of a preliminary title report. (Opposition, pp. 11:28-12:1, citing *Siegel v. Fidelity National Title Insurance Co.* (1996) 46 Cal.App.4th 1181, 1194 (*Siegel*).) Intero concedes Gary Christensen did not request an abstract of title but that the SAXC alleges he specifically charged Cornerstone with the duty to validate legal means of access to the Property. (*Id.* at p. 12:1-4.)

In *Siegel*, the Court of Appeal explained that it is "indisputably true that an escrow holder is the limited agent and fiduciary of all parties to an escrow and that as such it has a fiduciary duty to communicate to his principal knowledge acquired in the court of his agency with respect to material facts which might affect the principal's decision as to a pending transaction." (*Siegel*, *supra*, at p. 1194 [also acknowledging agency and fiduciary responsibilities are limited by the terms of escrow instructions].) Intero contends that, similar to *Siegel*, Cornerstone's liability is based on its negligent failure to follow escrow instructions and its negligent failure to provide known information to the parties to the escrow. (Opposition, p. 12:23-25.)

Here, the SAXC alleges the Christensens directly requested that Cornerstone, through Ms. Conley, provide them with documentation regarding legal ingress and egress not included in the preliminary title report. The SAXC further alleges this information was never given to the Christensens despite their request and that as a result, Cornerstone breached its duty to the Christensens. The Court finds this to be sufficient for pleading purposes. (See *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the "plaintiff's ability to prove . . . allegations, or the possible difficulty in making such proof"].)

Based on the foregoing, the demurrer to the second cause of action is OVERRULED.

b. Declaratory Relief – Third Cause of Action

Code of Civil Procedure section 1060, which governs actions for declaratory relief, provides: "Any person interested under a written instrument . . ., or under a contract, *or who desires a declaration of his or her rights or duties with respect to another* . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." (Code Civ. Proc., § 1060 [emphasis added].)

The Court previously noted that Cornerstone is correct in arguing that Intero cannot assert a declaratory relief cause of action pertaining to Cornerstone's preliminary title report. (See Court's June Order, p. 7:6-10; Demurrer, p.16:2-4, citing Ins. Code § 12340.11; see also *Herbert A. Crocker & Co. v. Transamerica Title Ins. Co.* (1994) 27 Cal.App.4th 1722, 1727, fn. 6 ["an action for negligence will no longer lie against a title insurance company on the basis of its representations in the preliminary report"].)

Here, however, Intero now alleges an actual controversy exists between it and Cornerstone concerning their respective liabilities as alleged joint tortfeasors. (SAXC, ¶ 50.) Intero seeks judicial determination of the rights and obligations of these parties based on such. (*Ibid.*) The Court finds this to be sufficient for pleading purposes. (See *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606 ["general demurrer to a cause of action for declaratory relief must be overruled as long as an actual controversy is alleged; the pleader need not establish it is entitled to a favorable judgment"]; *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 752 [general demurrer is usually not an appropriate method for testing the merits of a declaratory relief action because the plaintiff is entitled to a declaration of rights even if it is adverse to the plaintiff's interest].)

Accordingly, Cornerstone's demurrer to the third cause of action is OVERRULED.

c. Uncertainty

Cornerstone's notice of motion indicates it is demurring to the entire SAXC, and the second and third causes of action, on the ground they are uncertain. Cornerstone's memo in support of its demurrer, however, does contain any arguments related to uncertainty. Moreover, "demurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) It is apparent from Cornerstone's detailed general demurrer that it understands what each cause of action attempts to allege such that no true uncertainty exists. As such, the demurrer to the entire complaint, and the second and third causes of action, on the ground they are uncertain is OVERRULED.

II. Conclusion and Order

The demurrer to the second and third causes of action is OVERRULED in its entirety. The Court shall prepare the final Order.

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Calendar Line 3
Case Name: *Mary Volz v. Cassibba, et al.*
Case No.: 23CV413053

Factual and Procedural Background

Cross-complainants R J Cassibba, Vitoria L Cassibba, and the R J and Vitoria L Cassibba Revocable Trust ("Cross-Complainants") bring this cross-complaint ("XC") against cross-defendant City of Morgan Hill ("the City" or "Morgan Hill").

The XC incorporates by reference the allegations of plaintiff Mary Volz's ("Plaintiff") underlying action. (XC, ¶ III.)

On the evening of May 4, 2022, Plaintiff was walking northbound on the sidewalk of Church Street in Morgan Hill when she tripped on a protruding segment sidewalk. (Compl., p. 4, L-1.) Plaintiff fell, landed on her face, and suffered a broken nose and severe face bruising. (*Ibid.*)

On March 17, 2023, Plaintiff filed a Judicial Form Complaint against Cross-Complainants and the City asserting causes of action for premises liability and negligence.

On June 7, 2023, Cross-Complainants filed their XC against the City for indemnity contribution, alleging that if Plaintiff sustained injuries, it was a direct result of the negligence of the City. (XC, ¶ IV.)

On September 5, 2023, the City filed a demurrer to the XC. Cross-Complainants oppose the motion.

Demurrer

C. The City's Request for Judicial Notice

In support of its demurrer, the City requests the Court take judicial notice of the proposition that the City of Morgan Hill is a public entity entitled to the protections of California Government Code sections 905 et seq.

The request for judicial notice is DENIED. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

D. Analysis

The City demurs to the entire XC on the ground it fails to state sufficient facts to constitute a cause of action as it does not allege compliance with the applicable claims statutes. (Demurrer, p. 4:11-13, 24-27.)

"Presentation of a claim, where required by law, is a prerequisite to the maintenance of a cause of action against a public entity." (*Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 261 [overruled in part on other grounds] (*Gehman*); Gov. Code § 945.5.)

"A public entity cannot be sued for tort unless (1) a timely written claim has previously been presented to the governmental entity, (2) any late claim has been presented to the public entity and been excused by it or the court, or (3) conditions described by Government Code section 946.4 . . . have been met." (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 483.)

The *Gehman* Court recognized that other jurisdictions have taken the position that their claims statutes are inapplicable to third-party complaints for contribution and indemnity against public entities but plainly stated it "do[es] not find these cases persuasive as to California law." (*Id.* at p. 262.) Thus, "[w]here a cross-complaint seeks indemnity from a governmental entity stemming from an underlying personal injury action, compliance with the claims statute is required. Failure to allege compliance with the claims statute renders the complaint subject to general demurrer. A cause of action for damages is barred unless an exception relieves them of this requirement." (*Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 237 [internal citations and quotations omitted].)

In opposition, Cross-Complainants concede they did not allege compliance with the claims statutes. (See Opposition, p. 2:9-10 ["[i]t is defendant's position that no such claim was required and therefore not a requisite to pleading an equitable cross-complaint"].) They rely entirely on *Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473 (*Krainock*) to assert they were not required to present a claim to the City. (Opposition, p. 2:9-11.) For the reasons explained in detail below, *Krainock* is inapposite.

The *Krainock* Court first addressed the purposes of the claims act (Gov. Code § 900 et seq.). Its primary purpose is to apprise the governmental body of an imminent legal action so that the entity may investigate and evaluate the claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock, supra,* 216 Cal.App.3d at p. 1477; see also *Gehman*, *supra*, 96 Cal.App.3d at p. 262.) The Court then adopted a three-part criterion in determining the applicability of claims requirements to defensive cross-complaints. (*Id.* at p. 1478.)

First, the Court stated that situations where the claims act would not apply are limited to those cases *initiated by the public entity*, as opposed to those initiated by a third party in which a defendant seeks to cross-complain against a public entity not previously a party to the action. (*Krainock, supra,* 216 Cal.App.3d at p. 1478.) Second, to be exempt from the claims requirements, the defensive pleading must arise out of the same transaction or event forming the basis of the plaintiff's claim and may not introduce an unrelated claim. (*Ibid*.) Finally, the cross-complaint may only assert defensive matter. (*Ibid*.)

The *Krainock* Court decided that on the "unusual" facts before it, each criterion was met. (*Krainock, supra,* 216 Cal.App.3d at p. 1478-1479.) Unlike in *Krainock*, however, here no case was initiated by the public entity. Cross-Complainants argue that because the City is named as a defendant by Plaintiff it was apprised of the legal action and given an opportunity to investigate or elect to resolve the case "months prior to the cross-complaint being filed." (Opposition, p. 3:4-10.) However, the "purpose of the claims statutes is not to prevent surprise, but to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738 [internal quotations omitted].) While the City may have had the opportunity to investigate and settle with Plaintiff, it was not given the same opportunity with Cross-Complainants. Thus, "[e]ven if the public entity has actual knowledge

of the facts that might support a claim, the claims statutes still must be satisfied." (*DiCampli-Mintz v. County of Santa Clara (2012)* 55 Cal.4th 983, 990.)

Based on the foregoing, the demurrer is SUSTAINED. Cross-Complainants concede they did not present a claim to the City, thus they are unable to amend their XC to allege this fact. (See *Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 411 ["denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment'"].) Moreover, Cross-Complainants did not request leave to amend within their opposition. (See *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 . . . 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'"].) Accordingly, leave to amend is DENIED.

Conclusion and Order

The demurrer is SUSTAINED in its entirety without leave to amend.
The Court shall prepare the final Order.

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Calendar line 4
Case Name: Debra Pinner et al vs Cody Salfen et al
Case No.: 21CV385285

Plaintiff asks that any documents Defendant received from Degryse Electric pursuant to subpoena be excluded from evidence and returned. Plaintiff claims that because Defendant did not serve a copy of the subpoena on Plaintiff, such remedy is both authorized by CCP § 1987.5 and appropriate in this case. First it is inaccurate to state that § 1987.5 supports the remedy of exclusion. That provision specifically states "This section does not apply to deposition subpoenas commanding only the production of business records for copying under Article 4." Defendant states in its declaration that the subpoena at issue was a such a subpoena and Plaintiff does not dispute this. Decl of Lloyd at para. 4. Yet even if such a remedy were available, it is not appropriate in this case. Plaintiff provides no evidence that Defendant's failure to serve the subpoena on Plaintiff was anything other than an innocent mistake. Once brought to Defendant's attention, Defendant immediately provided a copy of the subpoena and the documents received to Plaintiff. Exhibits G and H attached to Lloyd Decl. Plaintiff's claim that Defendant failed to offer a copy of the subpoena is not correct. Plaintiff has also failed to demonstrate that it has been prejudiced in any way by the issuance of the subpoena. The motion is denied.

Sanctions are denied to both parties. Plaintiff is not the prevailing party and therefore is not entitled to sanctions. Defendant has failed to cite any authority for granting sanctions, and instead cites only to CCP § 2023.010. As explained in *City of Los Angeles v. Pricewaterhouse*Coopers, LLC (2022) 84 Cal. App. 5th 466, 475, "Section 2023.010 describes conduct that is a misuse of the discovery process, but does not authorize the imposition of sanctions."

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Calendar Lines 5-7
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Defendant Cody Salfen (Defendant) brings three motions to compel against Plaintiff. In the First, Defendant moves to compel further responses to Requests for Admission, Set One Numbers 6, 24-31, 40-41, and 46-48. Defendant also brings a motion to compel further responses to requests for production of documents 23, 26, 28, 35, 39-43, 47, 49-51, and 59-63. Finally, Defendant moves to compel further responses to interrogatories, special numbers 4, 19, and 29 and form numbers 2.2, 2.6, and 2.7. For the first and third motion, Defendant requests sanctions of $3,895 for Plaintiff's abuse of the discovery process. For the second motion Defendant requests sanctions of $3,921.

Admissions

Plaintiff objects to further requests for admission numbers 24-31, 40-41, and 46-48, claiming Defendant failed to meet and confer and that even so, the questions are not relevant or likely to lead to admissible evidence. Plaintiff claims she answered #6, but mislabeled it. The Court finds that Defendant did engage in sufficient meet and confer. Even after Plaintiff provided supplemental responses, Defendant responded by email indicating his belief that the answers were still insufficient. Plaintiff did not respond to this email. While Defendant filed his motion a few days later, Plaintiff makes no showing that she attempted to resolve the issues between the time of receiving the email and the filing of the motion. Given that the parties had been discussing discovery for over one year by this point, no further effort by Defendant was required. The Court also finds the questions are sufficiently relevant. Relevancy for discovery purposes is to be construed liberally and broadly. Therefore, the motion is GRANTED in its entirety.

Production of Documents

Again, the Court finds that Defendant sufficiently met and conferred. Request #23 is denied, as Defendant has provided the answer to this request. Should Plaintiff try to admit additional documentation at trial on this question, Defendant would be justified in moving to exclude such documentation for failure to provide it in discovery. Request #26 is granted. This question does not depend on future conduct and must be answered. Requests 35, 39-43, and 47, and 49-50 are granted. The Court finds that Defendant has made a sufficient showing of relevancy given the liberal standard for purposes of discovery.

Plaintiff objects to requests 51 (tax records) and 59-63 (records relating to Redwood Estates Services Association (RESA)) on relevancy grounds. Defendant has presented nothing to explain how these documents may be relevant. In fact, Defendant has failed to explain what RESA is or how it relates to the case. For these reasons requests 51 and 59-63 are denied.

In sum, Requests 23, 51, and 59-63 are DENIED. Requests 26, 35, 39-43, 47, and 49-50 are GRANTED.

Interrogatories

Plaintiff has refused to answer form interrogatories 2.2, 2.6 and 2.7 as not relevant. The court finds they meet the standard for relevancy. The motion as to these request is GRANTED. Plaintiff has also refused to answer special interrogatories 4, 19, and 29. The Court agrees with Plaintiff that #19 requires expert opinion and denies this request. The court also agrees with Plaintiff that #29 has already been answered and denies this request. The request is granted as to #4.

In sum, Requests 2.2, 2.6, 2.7 and 4 are GRANTED. Requests 19 and 29 are DENIED.

Sanctions are granted to Defendant in the amount of $3,450 (12 hr @ $260 and 1 hr @ $330) for Plaintiff's discovery violations. Defendant shall submit the final order.

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