

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

**Department 16**

**(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: 07-16-24    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.

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to 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. Go to the Court's website at [www.scscourt.org](http://www.scscourt.org) to make the reservation.

**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
<a href="#">LINE 1</a>	24CV431959 Hearing: Demurrer	BEVERLY HUGHES vs SELECT PORTFOLIO SERVICING, INC. et al	Defendant's demurrer to Plaintiff's complaint is unopposed. The failure to file a written opposition "creates an inference that the motion or demurrer is meritorious." <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Defendant asks that the demurrer be sustained without leave to amend. If a plaintiff has not had an opportunity to amend the pleading in response to a motion challenging the sufficiency of the allegations, leave to amend is liberally allowed as a matter of fairness, unless the pleading shows on its face that it is incapable of amendment. (See <i>City of Stockton v. Super. Ct.</i> (2007) 42 Cal.4th 730, 747. Here, the pleading on its face does not show that it is incapable of amendment. The Demurrer is SUSTAINED WITH 20 DAYS LEAVE TO AMEND. Defendant shall submit the final order within 10 days of the hearing.
<a href="#">➤ ≥</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 3</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.

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<a href="#">LINE 4</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 5</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 6</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 7</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 8</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 9</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 10</a>	22CV405531 Motion: Compel	Duy Nguyen vs Fred Meeske et al	Continued to September 17, 2024 at 9 am per July 1, 2024 order.
<a href="#">LINE 11</a>	19CV354235	Orchard Yield Fund I, LP vs Double L. Ranches, LLC et al	The unopposed motion for leave to amend the complaint is GRANTED. Plaintiff shall submit the final order and file the amended complaint within 10 days.

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<a href="#">LINE 12</a>	22CV404340 Motion: Reconsider	Tam Nguyen et al vs Dzung Pham et al	<p>Plaintiff brings a motion to reconsider the Court's order sustaining the demurrer of Defendants 1405FA, LLC, Syed Hyder, and Ali Hasan. Defendant has failed to set out any new facts or law, as required for a motion for reconsideration under CCP 1008, other than the mistaken granting of the demurrer as to Defendant Pham. The issue regarding the email is not new, nor are the facts about it presented by Plaintiff. The notice of nonavailability has no relevance to the propriety of the demurrer, as the Court considered Plaintiff's opposition to the demurrer. The motion for reconsideration is DENIED. The request to vacate the dismissal of the case as against Defendant Pham is GRANTED.</p> <p>Because Pham is not a title holder to the property, as even Plaintiffs acknowledge in their FAC, his status has no effect on the mootness of the motion regarding the lis pendens. The expunged lis pendens was intended to restrain Defendant 1405 FA, LLC from freely conveying its property and to put others on notice of a lawsuit affecting title to the property. Once the demurrer was sustained without leave to amend, Plaintiffs no longer had an action pending that affected title to real property, and thus reconsideration of the expungement order became moot. Defendants shall submit within 10 days the final order denying the motion for reconsideration and vacating the dismissal of the action against Defendant Pham.</p>
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<a href="#">LINE 13</a>	22CV397604 Hearing: Compromise of Minor's Claim	AMY NAIM et al vs MICHAEL PICKENS	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
<a href="#">LINE 14</a>	22CV397604 Hearing: Compromise of Minor's Claim	AMY NAIM et al vs MICHAEL PICKENS	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
<a href="#">LINE 15</a>	22CV397604 Hearing: Compromise of Minor's Claim	AMY NAIM et al vs MICHAEL PICKENS	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
<a href="#">LINE 16</a>	22CV397604 Hearing: Compromise of Minor's Claim	AMY NAIM et al vs MICHAEL PICKENS	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
<a href="#">LINE 17</a>	20CV369919 Motion: Summary Judgment/Adjudication	Linh Tran vs Nakajima Yasutomo et al	See Tentative Ruling. Court will file the final order.

**Line 18                    21C383107                    Giuliana Constr. vs Rancho HOA**  
**demurrer**

**Continued to 8/13/24 at 9 am. No  
further briefing allowed.**

**Calendar Line 17****Case Name:** *Tran v. Yasutomo et al.***Case No.:** 20CV369919**I. Factual and Procedural Background**

Plaintiff Linh Tran (“Plaintiff”), appearing in pro per, brings this personal injury action against Nakajima Yasutomo (“Yasutomo”) and Tuan Tran (“Tran”) (collectively, “Defendants”).

Plaintiff alleges that on March 29, 2020, he rented a one-bedroom unit in a property owned by Yasutomo and run by Tran. Soon after moving in, Plaintiff discovered that the interior walls were built illegally, dividing the property into many rental units to make them look like private apartments, and the ceiling duct vent was emitting hot air. Plaintiff brought these issues up with Tran but he did not want to discuss them.

On May 30, 2020, Plaintiff tripped and fell on the sidewalk leading to the laundry room because Tran had removed all of the outside lighting on the building after a building inspection, resulting in a pitch black sidewalk.

Thereafter, Plaintiff called the City of San Jose Enforcement to report the issues and Tran ordered Plaintiff to move out. Other tenants were not told to move out. The rental agreement was effective through October 2020; however, on July 4, 2020, Tran again informed Plaintiff he needed to move out. Then on August 6, 2020, a notice to vacate was taped to Plaintiff’s door. Additionally, Tran made harassing phone calls and secretly video-taped Plaintiff’s apartment and audio-taped his conversations without Plaintiff’s consent.

On September 2, 2020, Plaintiff filed a Judicial Form Complaint, asserting the following causes of actions against Defendants:

- 1) General Negligence;
- 2) Intentional Tort;
- 3) Premises Liability; and
- 4) Exemplary Damages

On March 25, 2024, Defendants filed a motion for summary judgment, or in the alternative summary adjudication as to each of the causes of action in the complaint.

**II. Request for Judicial Notice**

In support of their motion for summary judgment, Defendants request the Court take judicial notice of Plaintiff’s complaint. The request is DENIED. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 [judicial notice of a complaint is unnecessary where it is the pleading under review]; *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 477 [pleadings frame the issues to be resolved on summary judgment].)

### **III. Procedural Matters**

#### **a. Plaintiff's Opposing Memorandum and Separate Statement**

As an initial matter, the Court notes that Plaintiff did not file a code-compliant memorandum in opposition to the motion for summary judgment. (Cal. Rules of Court, Rule 3.1350, subd. (e)(1) [opposition to a motion must include a separate document with the opposing party's memorandum in opposition to the motion for summary judgment/adjudication].) Instead, Plaintiff filed what appears to be two declarations with evidentiary exhibits attached.

Further, Plaintiff did not submit a separate statement in response to Defendants' separate statement. "Code of Civil Procedure section 437c, subdivision (b)(3) requires that an opposition to a motion for summary judgment shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568 [internal citations omitted]; see also Cal. Rules of Court, Rule 3.1350, subd. (f) [specifying the content and format of a separate statement in opposition to a motion].)

While Plaintiff is appearing in pro per, he entitled to the same, but no greater consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Nevertheless, given that there is very little evidence in this case, the Court will exercise its discretion to consider the filed oppositions and Plaintiff's supporting evidence despite the procedural defects. (See *Purdum v. Holmes* (2010) 187 Cal.App.4th 916, 922 ["The policy of the law favors a hearing on the merits."].) Plaintiff is reminded that any future violations may result in the Court declining to consider Plaintiff's papers.

### **IV. Legal Standard**

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only 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." (*Ibid.*) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a

triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion.” (*Id.* at p. 856.)

Throughout the process, the trial court “must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]” (*Aguilar, supra*, 25 Cal.4th at p. 844 [internal quotations omitted].) The moving party’s evidence is strictly construed, while the opposing party’s evidence is liberally construed. (*Id.* at p. 843.)

Additionally, “a motion for summary adjudication may be made . . . as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.” (Code Civ. Proc., § 437c, subd. (f)(2).) “A party may seek summary adjudication on whether the cause of action, . . . or [] damages claim has merit[.]” (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630; Code Civ. Proc., § 437c, subd. (f)(1).)

#### **V. First Cause of Action – General Negligence and Third Cause of Action – Premises Liability**

“The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury.” (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) “The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages.” (*Ibid.*)

“In a negligence action the plaintiff must show the defendant’s act or omission (breach of duty) was a cause of the plaintiff’s injury. The element of causation generally consists of two components. The plaintiff must show (1) the defendant’s act or omission was a cause in fact of the plaintiff’s injury, and (2) the defendant should be held responsible for negligently causing the plaintiff’s injury. The second component is a normative or evaluative one that asks whether the defendant should owe the plaintiff a legal duty of reasonable care under the circumstances of the case.” (*Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 288 (*Vasquez*).)

“The first component of causation in fact generally is a question of fact for the jury. Causation in fact is shown if the defendant’s act or omission is ‘a substantial factor’ in bringing about the plaintiff’s injury.” (*Vasquez, supra*, 118 Cal.App.4th at p. 288 [emphasis original].) “The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.” (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1104.)

“The issue of causation may be decided as a question of law only if, under undisputed facts, there is no room for a reasonable difference of opinion.” (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 864; see also *Dawson v. Toledano* (2003) 109 Cal.App.4th 387, 396 [instances in which breach of duty and proximate cause can be resolved as matters of law are rare].)



Defendants assert there is no triable issue of material fact as to Defendants' breach of a duty of care to support a cause of action for general negligence. While Defendants have labeled the heading of their argument as being about a lack of breach, the arguments raised by Defendants address causation. Plaintiff alleges his injury was caused by Tran when he removed all outdoor lighting, resulting in a pitch black sidewalk. (Form Complaint, p. 4.) Additionally, he alleges that as a result of harassing phone calls and secret video/audio-taping, he has suffered lost sleep, anxiety, and fear. (*Ibid.*)

Defendants argue that the material facts show they did not fail to carry out their duties in accordance with the applicable standard of care because Plaintiff's medical records indicate he fell after his front door knocked him backward and not because Tran removed all of the outdoor lights.<sup>1</sup> To support this contention, Defendants provide Plaintiff's medical records which indicate that Plaintiff fell at home when his door knocked him backwards. (See UMF 4, citing Tran Decl., ¶ 9, Ex. B.)<sup>2</sup>

Additionally, Defendants contend that the Court granted their motion for admissions to be deemed admitted and that Plaintiff therefore admitted that Defendants did not make harassing phone calls or secretly audio/video-tape their conversations, and that Plaintiff was not in fear for his life. (UMF 1, citing Tran Decl., ¶ 8, Ex. A.) Admissions in response to Requests for Admissions are treated in effect as stipulations to the truthfulness of the matters admitted. Thus, no other evidence is necessary to establish the point at trial and no contrary evidence is admissible unless leave of court is obtained to withdraw or amend the response. (See Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2023) ¶¶ 8:1387-1388, citing *Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 736.) Accordingly, Defendants have made a showing of the nonexistence of a triable issue of material fact as to the cause of Plaintiff's injuries.

Based on the foregoing, Defendants have met their burden at the first step of the summary judgment analysis as to the first and third causes of action, and the burden now shifts to Plaintiff to establish a triable issue of fact.

To support his burden, Plaintiff asserts: 1) Tang's Declaration contains lies; 2) that the apartment contained illegally built walls; 3) he was harassed by Tran; 4) he fell and hurt his back because of a lack of outdoor lighting; and 5) Defendants breached their contract with Plaintiff.

As to Plaintiff's first argument that the Tang Declaration is improper because the date of the meet and confer states March 19, 2020, it appears that this is a repeated typographical error meant to state March 19, 2024. (See Tang Decl., ¶¶ 5-6.)

Regarding Plaintiff's second argument, it is unclear how the allegations regarding the apartment walls speak to the negligence or premises liability claim. "On a motion for summary judgment, the issues are framed by the pleadings since it is those allegations to which the

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<sup>1</sup> Defendants do not assert individual arguments to each of the causes of action. Instead, they refer the Court to page 5:12-28 and page 6:1-6 of their memorandum of points and authorities in support of their motion for summary judgment.

<sup>2</sup> Plaintiff failed to respond to the separate statement, so he makes no arguments disputing the UMFs, and he did not object to the evidence presented by Defendant.

motion must respond.” (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640.) Here, both the first and third causes of action allege that Defendants breached their duty by removing lights and harassing Plaintiff, resulting in his injuries. There are no allegations to support a negligence or premises liability claim for the illegally built walls. Similarly, Plaintiff does not assert a breach of contract claim in his complaint, thus, any argument regarding a breach of contract is not well taken.<sup>3</sup>

Regarding the third and fourth arguments, Plaintiff proffers no evidence to establish that he fell because of the lighting. Further, he does not address the medical records submitted by Defendants, which indicate a different cause of Plaintiff’s injuries. As to the harassment argument, as noted above, no contrary evidence to deemed admissions is admissible and in any event, Plaintiff does not support the assertions with any evidence.

As such, Plaintiff fails to meet his burden to show a triable issue of material fact as to the first and third causes of action.

## **VI. Second Cause of Action – Intentional Tort**

It is not clear to the Court which intentional tort Plaintiff is alleging. Defendants list the elements of battery; however, there is no mention of battery in the pleading. Additionally, Plaintiff has marked that Count Two is for a Willful Failure to Warn, pursuant to Civil Code section 846. (See Form Complaint, p. 6, Prem. L-3.) Civil Code section 846 applies to recreational property, which is not at issue here. Section 846 states in part that an “owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreation purpose or to give warning of hazardous conditions . . .” (Civ. Code, § 846, subd. (a).) Here, there are no allegations regarding recreational use of property and neither party presents evidence, or addresses, the recreational use of property. Based on the allegations that Plaintiff was being harassed and requested a restraining order against Tran, the Court will infer that Plaintiff intended to allege civil harassment.<sup>4</sup>

“The elements of unlawful harassment, as defined by the language in [Code of Civil Procedure] section 527.6, are as follows: (1) ‘a knowing and willful course of conduct’ entailing a ‘pattern’ of ‘a series of acts over a period of time, however short, evidencing a continuity of purpose’; (2) ‘directed at a specific person’; (3) ‘which seriously alarms, annoys, or harasses the person’; (4) ‘which serves no legitimate purpose’; (5) which ‘would cause a reasonable person to suffer substantial emotional distress’ and ‘actually cause[s] substantial emotional distress to the plaintiff’; and (6) which is not a ‘[c]onstitutionally protected activity.’” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.)

Defendants contend there is no triable issue of material fact with regard to whether they acted willfully to cause Plaintiff harm. Defendants rely on the same evidence as above. Specifically, Plaintiff’s admission that Tran did not make any harassing phone calls, secretly audiotape conversations, or videotape Plaintiff’s apartment. (See UMF 13, citing Tran Decl., ¶ 8, Ex. A [Plaintiff’s deemed admissions].)

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<sup>3</sup> No contract is attached to the Form Complaint or the opposition.

<sup>4</sup> Even if the intentional tort Plaintiff intended to allege is battery, the Court would still grant the motion due to lack of evidence of intentional injury.

As noted above, Plaintiff admitted that Tran did not make harassing phone calls or audio/videotape him. Plaintiff is bound by those admissions. (See e.g., *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271 [“The law on this topic is well settled by venerable authority. Because an admission . . . forbids the consideration of contrary evidence, any discussion of such evidence is irrelevant and immaterial.”].) Further, Plaintiff submits no additional evidence to support a claim of harassment.

Thus, while Defendants meet their burden, Plaintiff is unable to meet his burden as to the second cause of action for intentional tort.

Based on the foregoing, the motion for summary judgment is GRANTED as to the pleading’s three causes of action.

#### **VII. Exemplary Damages**

“It is settled . . . that a claim for punitive damages is one of the substantive areas which is properly the subject of a motion for summary adjudication.” (*Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 92.) In this case, given the Court’s ruling above, there are no remaining claims to support Plaintiff’s request for exemplary damages. Thus, the motion for summary adjudication of exemplary damages is GRANTED.

#### **VIII. Conclusion and Order**

The motion for summary judgment/adjudication is GRANTED in its entirety. The Court shall prepare the final order.

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