SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: February 22, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED.

FOR ORAL ARGUMENT: **Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scscourt.org/general_info/court_reporters.shtml

FOR 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**.

Where to call:408-882-2430
When to call: Monday through Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	23CV412210	The Board of Trustees of The Leland Stanford Junior University vs County of Santa Clara	Defendant's demurrer is SUSTAINED and OVERRULED, IN PART. Please scroll down to line 1 for full tentative ruling. Court to prepare formal order.
2	23CV417426	Dana McManus vs Robert Miller	Plaintiff filed an amended complaint; this hearing is off calendar.
3	23CV425000	Jack Hansen vs Armando Sanchez et al	Defendants' Demurrers are Moot. Plaintiff timely filed a First Amended Complaint; Defendants' Demurrers are directed to the Complaint, which was superseded by the First Amended Complaint by operation of law. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884; see also *Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1144 ["an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading"]; see also *State Compensation Ins. Fund. v. Super. Ct.* (2010) 184 Cal.App.4th 1124, 1131 ["The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment"].) Accordingly, these demurrers are off calendar. The Court did review the judicially noticeable court records in the other pending cases between the parties. Based on that review, at a minimum, this matter should be transferred to Department 10 to join the first filed case for case management. This order will be reflected in the minutes.
4	23CV427456	David Williams vs Google LLC	Google's Demurrer to Plaintiff's first and second causes of action is SUSTAINED WITH 20 DAYS LEAVE TO AMEND, and to Plaintiff's third cause of action is SUSTAINED WITHOUT LEAVE TO AMEND. Please scroll down to line 4 for full tentative ruling. Court to prepare formal order. Parties ordered to appear for argument.
5	21CV391859	Amalia Lua vs Seaside Dining Group, Inc.	Seaside Dining Group, Inc.'s Motion for Summary Judgment is DENIED. Please scroll down to line 5 for full tentative ruling. Court to prepare formal order.
6	19CV359745	Juan Urias et al vs BMV Hotels, LP et al	Review: Case Status
7	23CV417104	Danica Coriloni vs Porsche Cars North America, Inc.	These four motions to compel were continued from January 9, 2024 to February 22, 2024 pursuant to stipulation of the parties to permit further discussions after the vehicle inspection took place. There has been no further update provided to the Court or oppositions filed to these motions. The parties are ordered to appear, provide an update on their ongoing discussions, and indicate whether these motions need to be reset or can be taken off calendar.
8	23CV417104	Danica Coriloni vs Porsche Cars North America, Inc.	Please see line 7, above.
9	23CV417104	Danica Coriloni vs Porsche Cars North America, Inc.	Please see line 7, above.
10	23CV417104	Danica Coriloni vs Porsche Cars North America, Inc.	Please see line 7, above.
11	23CV417360	Cristian Guerrero vs DOSANJH FAMILY AUTOMOTIVE RETAILING GROUP, INC.	This entire action was dismissed with prejudice on December 13, 2023 and should be closed.

12	23CV421142	Wells Fargo Bank, N.A. vs Benny Ooi	Wells Fargo Bank, N.A's Motion for Order that Matters in Request for Admission of Truth of Facts be Admitted is GRANTED. An amended notice of the motion with this hearing date was served on Defendant by regular mail on January 17, 2024. Defendant failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Plaintiff served its first set of requests for admission on Defendant November 3, 2023. To date, Defendant has served no responses. Plaintiff followed up with Defendant by letter dated December 12, 2023, providing additional time for responses. Defendant still did not respond. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the Requests for Admission deemed admitted—as Defendant has done here, the Court must order the Requests for Admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, the matters set forth in Plaintiff's first set of requests for admission to Defendant are deemed true. Court to prepare formal order.
13	22CV405430	Alison Perea vs Sidney Flores et al	The Court appreciates the continued efforts the parties are making to work together on their discovery issues. Based on the information in the parties' joint statement, this hearing is continued to April 4, 2024 at 9 a.m. in Department 6. The parties are ordered to submit a short joint statement outlining any remaining discovery issues left for the Court to decide on or before March 29, 2024. The parties are ordered to file, serve, and email the joint statement to Department6@scscourt.org. This order shall be reflected in the minutes.
14	23CV411763	Federal Insurance Company et al vs RSJ Construction, LLC et al	Mario Garcia Rivera's Motion to Intervene is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on January 12, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) The motion is also permitted under Labor Code section 3853. Court to prepare formal order.
15	24CV428934	Carl Bertelsen et al vs Norcal Pool Construction, Inc.	Petitioners' Petition to Expunge Mechanic's Lien is OFF CALENDAR. The Court is unable to locate a proof of service evincing service of the petition or the notice for this hearing date and time. Petitioners are directed to serve a new notice of motion with the correct hearing date and time in the notice and properly serve the papers to have their matter heard. A case management conference is set for May 14, 2024 at 10:00 a.m. in Department 6. These orders will be reflected in the minutes.

Calendar Line 1
Case Name: *The Board of Trustees of the Leland Stanford Junior University v. County of Santa Clara*
Case No.: 23CV412210

Before the Court is Defendant County of Santa Clara's, demurrer to Plaintiff The Board of Trustees of The Leland Standford Junior University, verified first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is an action for refund of property taxes on a single-family home, located at 838 Cedro Way in Stanford, County of Santa Clara ("Property".) The Property is owned by Plaintiff as part of its housing program located in a 450-acre subdivision and used exclusively to provide subsidized housing for eligible faculty. (FAC ¶¶ 3, 8, 33.)

On August 21, 2018, Plaintiff entered into a ground lease agreement with the Faculty Lessee for a term of 51 years. Plaintiff reserved a significant ongoing interest in the Property and granted only limited property rights to the Faculty Lessee. (FAC ¶ 36.)

After the executing of the lease, the Property was reassessed for tax purposes. On February 16, 2021, Plaintiff filed its College Exemption claim on the Property with the Assessor. On June 30, 2021, the Assessor issued its Notification of Assessed Value. On September 13, 2021, Plaintiff filed its Assessment Appeal Application, requested recognition of the Property's eligibility for College Exemption. On September 21, 2021, the Department of Tax and Collections of Defendant County (the "Tax Collector") created a property tax bill levying $37,217.38 in property taxes and assessments on the Property for tax year 2021-22. This bill levied property taxes on both the Plaintiff's Interest and the Faculty's possessory interest, without any reduction in taxable value for the College Exemption. On October 28, 2021, the Assessment Appeals Board rejected Plaintiff's Assessment Appeal application. (FAC ¶¶ 41-43.)

On November 4, 2021, Plaintiff paid the resulting $37,217.38 tax bill in full to the County. The Faculty Lessee reimbursed Plaintiff for the portion of the tax amount attributable to their interest. On February 22, 2022, Plaintiff filed a claim for partial refund under its College Exemption. On September 1, 2022, Plaintiff learned its partial refund was denied, and it was not until May 4, 2023, when it learned the Assessor had denied any College Exemption on the Property. (FAC ¶¶ 44-47.)

Plaintiff filed suit and amended its verified complaint on October 6, 2023, alleging causes of action for 2 counts of Refund of 2021-22 Property Taxes and 2 counts of violations of the Equal Protection clauses of the United States & California constitution.

II. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded

allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are false or sham." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are "irrelevant" or "improper." (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*).) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id*.)

III. Judicial Notice

Plaintiff requests the Court to take Judicial Notice of:

Exhibit A. A Legal Ruling issued on January 30, 2018, by the California Department of Tax and Fee Administration ("CDTFA").

Exhibit B. Property Tax Annotation 880.0208 and supporting letter issued by the California State Board of Equalization ("BOE") on March 25, 1999.

Exhibit C. Property Tax Annotation 880.0128.005 and supporting letter issued by the BOE on May 30, 2013.

Exhibit D. Property Tax Annotation 250.0001 and supporting letter issued by the BOE on January 8, 1982.

Exhibit E. A sampling of "College Exemption Claim" forms (Form BOE-264-AH) filed with the Santa Clara County Assessor (the "Assessor") by Santa Clara University for fiscal year / tax year 2021-22 and 2022-23 on certain real property Santa Clara University uses for its faculty housing, which were produced by Defendant in response to the public records act request.

Exhibit F. The annual secured property tax bills that correspond to the College Exemption Claim forms provided as Exhibit E.

Plaintiff's request as to Exhibits A-D and Exhibit F is GRANTED. They qualify as official acts of the state properly the subject of judicial notice. (*Fisher v. County of Orange* (2022) 82 Cal.App.5th 39, 48 [finding that judicial notice of advisory letters issued by the BOE to assessors was permissible under Section 452(c)].) Plaintiff's request as to Exhibit E is GRANTED, limited to its existence, filing, and legal effect.

IV. Analysis

Defendant demurrers to the FAC on the grounds (1) the first cause of action fails as a matter of law, (2) the second cause of action fails procedurally as well as substantively, and (3) causes of action for equal protection violations fail to state sufficient facts.

A. First Cause of Action; 2021-22 Property Tax Refund (Separate Interest)

Plaintiff alleges in the FAC and asserts in its opposition that its residual interest in the Property is exempt from property tax pursuant to Cal. Const., art. XIII §§ 3(d)-(e) and 5. Plaintiff relies on *Church Divinity School v. County of Alameda* (1957) 152 Cal.App.2d 496 (*Church*), *English v. County of Alameda* (1977) 70 Cal.App.3d 226 (*English*), and *Connolly v. County of Orange* (1992) 1 Cal.4th 1105 (*Connolly*).

Defendant contends this claim fails because (1) Revenue & Tax Code (RTC) §§ 60 and 61 treat a long-term lessee, having possessory interest for 35 years or more, as owning the equivalent of a fee simple interest for tax purposes, (2) assessment of a fee simple cannot be divided into a faculty interest

and a college interest, and (3) assessing a taxable possessory interest separate from an exempt reversionary interest is limited to tax exempt public properties.

Plaintiff is not challenging the assessment on the fee simple interest or the assessed value. Defendant levied a total of $37,217.38 in property taxes and assessments on the Property for the 2021-22 tax year. On November 4, 2021, Plaintiff timely paid this tax bill in full. On February 22, 2022, Plaintiff filed a claim for refund of $9,087.03 for its exempt residual/reversionary interest in the Property. Plaintiff contends Defendant's fee simple assessment has no bearing on the eligibility of its property interest for College Exemption. The Court agrees.

Plaintiff also is not claiming Defendant must separately assess the faculty lessee's possessory interest from its own residual interest. Plaintiff's cause of action is for a partial College Exemption. Plaintiff accepts an undivided tax assessment of the combined interests and seeks a percentage refund in accordance with its exemption status. Furthermore, Plaintiff contends Defendant's stance against separate assessment of its partial exemption lacks merit since the County Assessors regularly deal with situations where the exempt use of a property must be separately evaluated in assessing Property Use Exemptions, Homeowners' Exemptions, Public Schools Exemptions, Welfare Exemptions, and Religious exemptions. The Court agrees. For example, in addressing college housing where students move into an apartment complex as existing tenants leave, the State Board of Equalization' required County Assessors to segregate the exempt student units, in some logical way, and tax the remaining units occupied by non-student. (See Plaintiff's RJD, Ex. D.)

It is also undisputed that pursuant to Cal. Const. art. XIII §3(e), Plaintiff's buildings, land, equipment, and securities used exclusively for education purpose are exempt from taxation. (See also RTC § 203.) Residential use of school-owned property by faculty and staff have generally been characterized as a use incidental to and/or exclusively for school purpose, thus bringing the properties within the scope of the exemption. (See *Church*, 152 Cal. App. 2nd 496; *English*, 70 Cal. App. 3d 226; *Mann v. County of Almeda* (1978) 85 Cal. App. 3d 505 (*Mann*).) However, not all such residential uses are considered exempt. In *Connolley v. County of Orange* (1992) 1 Cal. 4th 1105 (*Connolley*), the California Supreme Court held university employees, holding ground leases on land owned by the university, were not exempt from taxation because privately owned leasehold interests used for the

private owner's residences are not properties used exclusively for the university purposes within the meaning of Cal. Const. art. XIII §3(d).

In accordance with the ruling in *Connolley*, Plaintiff accepts that it's on campus faculty residences are subject to taxation even while Plaintiff maintains its own tax-exempt residual or reversionary interest. Plaintiff now seeks a refund correlated to the value of its exempt residual interest, since the 2021-22 tax assessment pertained to an undivided fee simple interest. However, Defendant argues *Connolley* allowed separate assessments of residual and possessory interests only for publicly owned exempt properties leased to private parties.

In *Connolley*, university employees holding ground leases on land owned by the University of Irvine argued their interest should be exempt from taxation. The court examined the leasehold interests' tax burden under section 3(d) separate from the university's exempted reversionary interest. While *Connolley* did not specify the classification of the university's exemption, it emphasized that the university's exempted interest in the property it owns or leases from others was not at issue. Reference to "leased properties from others" leads to the reasonable conclusion that the university benefited from Public College Exemption under section 3(d) and not Public Owned Exemption under section 3(a). (*Connolley,* 1 Cal. 4th at 1116, 1122-24.)

Regardless, Plaintiff's first cause of action seeks a refund for its exempted residual interest and not a separate assessment of the faculty lessee's possessory interest. Accordingly, Defendant's demurrer to the first cause of action is OVERRULED.

B. Second Cause of Action; 2021-22 Property Tax Refund (Alternative Integrated Interest)

Plaintiff alternately alleges that its use of the Property meets the "exclusive use" requirement of Cal. Const. art. VIII § 3(e) and thus exempts the entire property from taxation. Defendant asserts this claim fails because (1) Plaintiff cannot petition this Court to rule on a refund claim that was neither made to nor rejected by the Board of Supervisors, and (2) Plaintiff has conceded that the faculty lessee's interest does not qualify for a tax exemption.

RTC § 5140 allows a person who paid the property tax to bring an action in Superior Court "against a county or a city to recover a tax which the Board of Supervisors of the County or the City Council of the City refused to refund on a claim filed pursuant to Article 1 (commencing with Section

5096) of this chapter." A court action may not "be commenced or maintained … unless a claim for refund has first been filed pursuant to Article 1 (commencing with Section 5096)." (RTC § 5142 (a).)

Plaintiff contends its second cause of action is an alternative legal theory supporting its claim for the College Exemption. However, even as an alternative legal theory, Plaintiff was required to submit a refund claim for the full assessed amount of $37,217.38. Plaintiff fails to submit a reviewable rejection of this refund claim to satisfy its claim requirement. Indeed, Plaintiff alleges it is only seeking a refund of $9,087.03 and not a refund for the full assessed amount. (FAC ¶ 17.)

Because Plaintiff's claim is procedurally defective, Defendant's demurrer to the second cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

C. Third Cause of Action; Violation of the Equal Protection Clause (Similarly Situated Public Colleges)

Plaintiff alleges (1) Connolly demonstrates that public colleges' reversionary or residual interests in college-provided faculty housing is exempt from tax, (2) as a non-profit private college, it is entitled to similar and equal treatment with respect to its residual interest in its faculty housing; and (3) the Board of Supervisor's denial and the Assessor's failure to grant Plaintiff an exemption for his residual interest is discriminatory and in violation of Equal Protection Clauses. (FAC ¶¶ 75-77.)

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." (*City of Cleburne, Tex. v. Cleburne Living Ctr*. (1985) 473 U.S. 432, 439.) "The right 'is essentially a direction that all persons similarly situated should be treated alike' by state actors." (*In re Jose Z.* (2004) 116 Cal.App.4th 953, 960.) The "initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" (*People v. Morales* (2016) 63 Cal. 4th 399, 408 (citation omitted.)

Defendant contends, in *Connolley*, the leasehold interest of a faculty member at U.C. Irvine in their private residence was found to be taxable despite a claim under section 3(d), and the leasehold interest of Plaintiff's faculty member in their private residence is similarly found to be taxable despite a claim under section 3(e). In its opposition, Plaintiff argues (1) Defendant mistakenly interprets *Connolley* to apply the Public Property Exemption to the university's reversionary interest instead of the

Public School Exemption, (2) the Public School Exemption and the College Exemption are parallel exemptions that are based on educational use of the property and serve the same policy of encouraging the cause of education, and (3) there is no rational basis to deny a private university the College Exemption on its reversionary interest.

Plaintiff's equal protection claim rests on treatment of its exempted residual interest in the faculty housing and not on the taxability of the faculty lessee's possessory interest. At the minimum, whether public and private universities are similarly situated with respect to this exemption is a question of fact that cannot be resolved by a demurrer.

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

D. Fourth Cause of Action; Violation of the Equal Protection Clauses (Similarly Situated Private Colleges)

Plaintiff alleges (1) other similarly situated private colleges, such as Santa Clara University, received a full College Exemption on property used by the college to house their faculty and staff, and (2) equal protection requires that its Property receive a full College Exemption as well.

As stated above, Plaintiff fails to submit a refund claim for the full value of the taxes paid on the Property as required by RTC § 5140. In the absence of the Board of Supervisors' rejection of this refund claim, Plaintiff cannot maintain its claim for a full College Exemption.

Accordingly, Defendant's demurrer to this claim is SUSTAINED WITHOUT LEAVE TO AMEND.

Calendar Line 4
Case Name: *David Williams vs Google LLC*
Case No.: 23CV427456

Before the Court is Defendant Google LLC's Demurrer to Plaintiff David George Williams' Complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling below.

I. Background

This is a wrongful termination case. Plaintiff alleges he received an employment offer from Google on December 9, 2021, began working at Google on January 4, 2022, and was terminated on September 25, 2023. Plaintiff is a controlling shareholder of a separate entity, Cynthi.io Inc. Google's termination letter—sent only to Mr. Willaims—accuses Plaintiff of conducting work for Cynthi.io using Google's time and resources, including his corporate laptop. Plaintiff vehemently denies very sentence of the termination letter, referencing both his pre-hiring correspondence with other Google personnel and his cooperation during Google's investigation of this alleged conflict of interest that lead to his termination. Plaintiff claims Google lied in its termination letter and the real reason he was terminated was in retaliation for his reports to Google human resources that his manager was abusive and creating a hostile work environment.

Plaintiff filed this lawsuit against Google on December 12, 2023, alleging wrongful termination in breach of his Google employment contract, retaliation, and defamation.

II. Matters the Court Considered on this Demurrer

A. Plaintiff's Supplemental Declarations

After filing his Complaint, Plaintiff filed two additional documents: "Supplemental Declaration to Complaint: Analysis of Legal Violations and Basis for Claim" and "Supplemental Declaration to Complaint: Analysis of Anticompetitive Behaviors." These filings are improper. Parties asserting claims for relief cannot file seriatim papers supplementing their complaints over time in the manner Plaintiff did here. (See Code Civ. Pro. § 472 (explaining when amendments are permitted); Cal. Rule of Court 3.1324 (outlining requirements for a motion to amend).) While Plaintiff is self-represented, under the law, self-represented litigants are 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.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of

civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ("A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.").)

The Court did, however, review all three of these documents and consider them in the context of Google's demurrer. The document called Complaint and the Supplemental Declaration to Complaint: Analysis of Legal Violations and Basis for Claim largely contain the same information and relate to Plaintiff's three causes of action. The Supplemental Declaration to Complaint: Analysis of Anticompetitive Behaviors contains irrelevant material seemed designed only to be disparaging, and the Court therefore strikes the second "Supplemental Declaration" on its own motion. (Code Civ. Proc., § 436, subd. (a), (b), (c) (motion to strike proper where allegations are "irrelevant" or "improper;" irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281.)

Plaintiff is cautioned to keep in mind the above articulated legal principles and to adhere to the requirements of the California Code of Civil Procedure, California Rules of Court, and Santa Clara County's General and Civil Local Rules.

B. Google's Request for Judicial Notice

Google asks the Court to take judicial notice of: (1) Plaintiff's signed offer letter, (2) Plaintiff's At-Will Employment, Confidential Information and Invention Assignment Agreement, and (3) Plaintiff's BARD August 30, 2023 and September 21, 2023 BARD chats, each of which is attached to the Declaration of Rebecca Krieger.

Plaintiff references and relies on his employment contract, including by reciting its terms, in his Complaint, and the Court may thus take judicial notice of items (1) and (2). (*Align Technology, Inc. v. Bao Tran* (2009) 179, Cal.app.4th 949, 956, n.6; *Scott v. JPMorgan Chase Bank, N.A.*(2013) 214 Cal.App.4th 743, 755.)

While Plaintiff also references the BARD chats in his Complaint, the Court finds they are not the proper subject of judicial notice for purposes of a demurrer. By way of example only, there is no way for the Court to know whether the print outs are complete or written by Plaintiff.

Accordingly, Google's request for judicial notice of (1) and (2) is GRANTED, and its request as to (3) is DENIED.

III. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Google demurs to each cause of action on the ground they fail to allege sufficient facts to state a claim. (Code Civ. Proc., § 430.10, subd. (e).)

IV. Analysis

A. Breach of Contract

To allege a cause of action for breach of contract, a plaintiff must allege (1) the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 921 (*Bushell*).) Here, Plaintiff alleges he and Google entered an employment contract. He further alleges Google breached that contract when it terminated his employment. However, Plaintiff fails to allege that he performed or was excused from performing or what action Google took that could constitute a breach. The parties' employment relationship was at-will; the agreements clearly state Google could terminate Plaintiff's employment at any time and without any reason.

Accordingly, Google's demurrer to Plaintiff's breach of contract claim is SUSTAINED WITH 20 DAYS LEAVE TO AMEND from service of this formal order.

B. Retaliation

Labor Code §1102.5(b) states:

> An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

To establish a prima facie case of retaliatory discharge under section 1102.5, a plaintiff must show that "(1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two.' [Citation.]" (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 468.) An employee engages in protected activity when he/she discloses to a government agency "reasonably based suspicions" of illegal activity. (*Id*. at p.

469.) A section 1102.5 claim can be based on an assertion that an employee was retaliated against for reporting illegal activity by a fellow employee. (*Id*. at 471.) To prove a claim of retaliation under Labor Code §1102.5(b), a plaintiff must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment. Minor or relatively trivial adverse actions by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee do not materially affect the terms or conditions of employment. This requirement guards against both judicial micromanagement of business practices and frivolous suits over insignificant slights. Absent this threshold showing, courts would be thrust into the role of personnel officers, becoming entangled in every conceivable form of employee job dissatisfaction. (*Francis v. City of Los Angeles* (2022) 81 Cal.App.5th 532, 540-541.)

While not requiring the same specificity as a fraud claim, the general rule is that statutory causes of action must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

Plaintiff fails to plead a retaliation claim. Plaintiff fails to allege he engaged in protected activity—a complaint regarding his manager's behavior does not qualify under this statute or to identify any statute or other law Google violated in connection with his reporting regarding his manager. And, while the timing of an employee's reporting and the employer's adverse employment action may be circumstantial evidence of a causal link, it is not sufficient on its own, and Plaintiff fails to allege sufficient facts of a causal link here.

Accordingly, Google's demurrer to Plaintiff's retaliation claim is SUSTAINED WITH 20 DAYS LEAVE TO AMEND from service of this formal order.

C. Defamation

"Defamation is an invasion of the interest in reputation. The tort involves the intentional *publication* of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 (emphasis added); see also CACI, Nos. 1700 – 1705.)

Fatal to Plaintiff's defamation claim is that Google did not *publish* the September termination email. (*Ringler Associates Inc. v. Maryland Cas. Co.* (2000) 80 Cal.App.4th 1165, 1179.) That email

was sent only to Plaintiff. For Plaintiff to state a claim for defamation, that email had to be sent to third parties. That did not happen here.

The September termination letter is also not defamatory. It expresses Google's opinion that there was a conflict of interest. That opinion cannot be the basis for a defamation action.

Plaintiff's entire defamation claim is based on the September termination letter. The Court sees no manner in which Plaintiff can amend this claim to state a claim for defamation. Accordingly, Google's demurrer to Plaintiff's defamation claim is SUSTAINED WITHOUT LEAVE TO AMEND.

The Court's permission to amend the breach of contract and retaliation claims allows Plaintiff to add allegations, not new causes of action or parties. (*Patrick v. Alacer Corp*. (2008) 167 Cal.App.4th 995, 1015.) If Plaintiff adds new causes of action in his next complaint that are not directly related to this order granting leave to amend, those new causes of action are likely to be stricken. If Plaintiff wants to add new causes of action or parties, Plaintiff must file a motion asking the Court for permission. Again, although Plaintiff is self-represented, he must follow the California Rules of Court and the Code of Civil Procedure, just as represented parties do. (*Burnete v. La Cases Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 (*Burnete*).)

Calendar line 5
Case Name: *Amalia Lua v. Seaside Dining Group, Inc.*
Case No.: 21CV391859

Defendant Seaside Dining Group, Inc. ("Seaside") moves for summary judgment against plaintiff Amalia Diaz Lua. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

This is an action for negligence and premises liability. On December 3, 2019, Lua slipped and fell on a liquid substance on the floor of the premises owned by Seaside which caused substantial injury to Lua. (Complaint, p. 4.)

Lua initiated this action on December 3, 2021, asserting claims for negligence and premises liability. On October 4, 2023, Seaside filed the instant motion, which Lua opposes.

II. Evidentiary Objections

Lua's objections to Seaside's evidence do not need to be ruled upon because they do not comply with Rule of Court 3.1354. Rule 3.1354 requires two documents to be submitted when evidentiary objections are made: the objections and a separate proposed order on the objections, both of which must be in one of the two approved formats set forth in the rule. (*Vineyard Spring Estates v. Super. Ct.* (2004) 120 Cal.App.4th 633, 642 (*Vineyard*) [trial courts only have duty to rule on evidentiary objections presented in the proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 (*Hodjat*) [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].) Lua submitted only one document with the objections, in violation of Rule 3.1354. Consequently, the Court declines to rule on the evidentiary objections. Objections not ruled on are preserved for appellate review. (See Code of Civ. Proc., § 437c, subd. (q).)

III. Legal Standard

Any party may move for summary judgment. (Code of Civ. Proc., §437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").) The motion "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 of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, at p.

843.) The object of the summary judgment procedure is "to cut through the parties pleading" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, at p. 843.)

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, supra*, 25 Cal.4th at p. 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in questions. (*Aguilar, supra*, at p. 851.)

Where a plaintiff (or cross-complainant) seeks summary judgment, the burden is to produce admissible evidence on each element of a "cause of action" entitling him or her to judgment. (Code Civ. Proc. § 437c, subd. (p)(1); See *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287, disapproved on other ground in *Aguilar*; *S.B.C.C., Inc. v. St. Paul Fire & Marine, Ins. Co.* (2010) 186 Cal.App.4th 383, 388.) This means that plaintiffs, who bear the burden of proof at trial by a preponderance of evidence, therefore "must provide evidence that would require a reasonable finder of fact to find any underlying material fact more likely than not—otherwise, he would not be entitled to judgment as a matter of law but would have to present his evidence to a trier of fact." (*Aguilar, supra*, at 851; See also *LLP Mortgage v. Bizar* (2005) 126 Cal.App.4th 773, 776 [burden is on plaintiff to persuade court there is no triable issue of material fact].)

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. (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra,* at p. 850.) A triable issue of material fact exists "if, and only if, the evidence would allow of reasonable trier of fact to find the underlying facts in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id*. at p. 843.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra*, 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id*. at 843.)

Pursuant to Code of Civil Procedure section 437c, Seaside moves for summary judgment on the grounds Plaintiff can't establish causation and she cannot prove Seaside had sufficient notice of a dangerous condition.

IV. Analysis

A. Parties' Undisputed Material Facts

Seaside's undisputed material facts are as follows: Since July 2019, Seaside has operated a Denny's Restaurant in San Jose (the "Property"). (Seaside's Undisputed Material Facts ("UMF"), No. 1.) On December 3, 2019, between 11:00 a.m. and noon, Lua, her daughter, Crystal Gomez; and her granddaughter, Kimberly Martinez Gomez entered the restaurant.[1] (Seaside's UMF, No. 2.) After entering the restaurant, Lua went off in the wrong direction to find a restroom. (Seaside's UMF, No. 3.) Crystal and Kimberly shouted to Lua that she was going in the wrong direction, she then turned and went in the correct direction. (Seaside's UMF, No. 4.) Lua fell on the way to the restroom. (Seaside's UMF, No. 5.)

Lua's complaint alleges she slipped on "a liquid substance". (Seaside's UMF, No. 6.) The prehospital care report from Santa Clara Valley Ambulance states that "Pt was walking back to her table, when she felt a 'pop' to her right knee, causing her to fall to the ground." (Seaside's UMF, No. 7.) Lua did not feel like she had come into contact with a foreign object. (Seaside's UMF, No. 8.) She did not feel either foot lost traction, and she did not remember either foot coming out from under the other. (Seaside's UMF, No. 9.)

Lua saw a wrinkled paper napkin close to her feet when lifted onto a gurney by paramedics. (Seaside's UMF, No. 10.) Lua does not know what she slipped on. (Seaside's UMF, No. 11.) Crystal was looking at her mother when she fell, but a table blocked her view of her mother's lower body. (Seaside's UMF, No. 12.) Crystal saw a sugar packet near where her mother's right leg had been when she was lifted into a gurney, but she was not sure whether her mother had slipped on it. (Seaside's UMF, No. 13.) Lua does not know how long the napkin she observed had been on the floor. (Seaside's

[1] As all the individuals in the matter share a surname, the Court will refer to each of them by their first names for purposes of clarity. No disrespect is intended. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 131, 1136, fn. 1.)

UMF, No. 14.) Crystal does not know how long the sugar packet she observed had been on the floor. (Seaside's UMF, No. 15.)

All restaurant employees are expected to assist with general housekeeping. (Seaside's UMF, No. 16.) Seaside conducts regular (monthly) safety meetings to remind employees of their housekeeping obligations. (Seaside's UMF, No. 17.) Restaurant employees are trained to be constantly on the lookout for gum, debris, and spills. (Seaside's UMF, No. 18.) Restaurant employees are trained to clear debris immediately if their hands are free and either return to clear debris or alert a colleague to do so if their hands are not free. (Seaside's UMF, No. 19.)

According to Lua, on the day of the incident, Seaside had possession, custody, control of the Property, which it leased to a Denny's restaurant on the Property. (Lua's Additional Material Facts, No. 3.) Under its lease, Seaside had a duty to maintain the Denny's in good order, condition, and state of repair. (Lua's AMF, No. 4.) Seaside undertook the duty of ensuring that Denny's maintained a clean, safe, and healthy environment for its employees and patrons. (Lua's AMF, No. 5.) Seaside employees on the restaurant floor were responsible for constantly monitoring and immediately responding to any kind of safety hazards that they observed on the floor. (Lua's AMF, No. 6.)

The inspections by Seaside's employees were visual in nature. (Lua's AMF, No. 7.) The Denny's was so small that Seaside's employees could see the entire restaurant from a fixed position on the dining room floor. (Lua's AMF, No. 8.) After waiting to be seated at Denny's, an employee showed Lua and her family to their booth, which was close to the incident. (Lua's AMF, No. 9.) Before sitting down, Lua decided to wash her hands in the restaurant's bathroom. (Lua's AMF, No. 10.) Because it was her first time in the restaurant, she began to walk in the wrong direction, before her granddaughter ran after her to direct her in the right direction. (Lua's AMF, No. 11.) The same employee that showed Lua to her table, then had a clear view of the aisle and the floor where the incident occurred a minute later. (Lua's AMF, No. 12.) Seaside considered this walkthrough one of its visual inspections in fulfillment of this employee's duties before the incident. (Lua's AMF, No. 13.)

After this inspection, Seaside's employees failed to take any action before walking away from the location of the incident, despite several later accounts that small pieces of paper and/or sugar packets littered the floor in the immediate area. (Lua's AMF, No. 14.) Lua doubled back to walk where

Seaside's employee performed an inspection when she slipped and fell as she started to pass the booth where her daughter was now sitting. (Lua's AMF, No. 15.)

The part of the floor where Lua fell was slippery due to small pieces of paper and/or sugar packets on the floor. (Lua's AMF, No. 16.) After her fall, Lua noticed that in addition to debris, the surface of the floor was not dry. (Lua's AMF, No. 17.) The floor where Lua fell appeared dirty and scuffed with black stains, and at least one sugar packet was observed in the immediate area. (Lua's AMF, No. 18.)

On December 7, 2019, assistant manager Alejandro Sanchez sent an email to Seaside's owner and reported the incident. (Lua's AMF, No. 19.) He reported that he rushed over to Lua while she was still on the floor and saw two sugar packets on the floor near where the incident took place. (Lua's AMF, No. 20.)

Seaside readily admits that it is possible that Lua's negligence did not cause the incident and does not contend that the negligence of another caused the incident. (Lua's AMF, No. 21.) Due to the slip and fall, Lua's right knee popped out of place and a bone in her right leg could be visibly observed sticking out. (Lua's AMF, No. 22.) Seaside does not contend that Lua was not injured as a result of the incident. (Lua's AMF, No. 23.)

Once the paramedics arrived and lifted her to a gurney, Lua observed a wrinkled piece of paper underneath her right leg and recognized it as what had caused her to slip. (Lua's AMF, No. 24.) Lua was diagnosed with a displaced tibia facture. (Lua's AMF, No. 25.)

Seaside did not schedule its employees' visual inspections of the restaurant floor and no such inspection was scheduled on the day of the incident. (Lua's AMF, No. 26.) Seaside does not maintain any records of the visual inspections that it claims are conducted by its employees on a daily basis. (Lua's AMF, No. 27.) The only documentation of any visual inspection would have been preserved in a "Ops Analitica" checklist, in which each of the two alternating managers documented a single visual inspection that they each performed once during their consecutive ten-hour shifts. (Lua's AMF, No. 28.) The checklist does not document the time of day a manager performed their visual inspection and managers are given discretion to perform this inspection at any given point during their shift. (Lua's

AMF, No. 29.) The checklists are maintained by Seaside for twelve months before they are recorded over unless a letter of preservation is received prior to the twelve-month mark. (Lua's AMF, No. 30.)

On November 19, 2020, before the checklists were scheduled to be recorded over, Seaside received notice of Lua's pending lawsuit and a request for preservation of evidence. (Lua's AMF, No. 31.) Despite the notice, Seaside still recorded over the evidence. (Lua's AMF, No. 32.) Seaside is not in possession of any written documentation made by its employees in the regular course of business which shows its employees did, in fact, perform a single inspection of the restaurant floor. (Lua's AMF, No. 33.)

Despite surveillance at Denny's operating continuously, storing video footage to two locations, Seaside has only produced video footage starting a minute and four seconds before the incident, as any earlier footage was recorded over. (Lua's AMF, No. 34.) The video footage contains a thirty second gap, where the action of Seaside's employees cannot be accounted for. (Lua's AMF, No. 35.) After the incident, Sanchez created a "Guest Incident Report," that was provided to the restaurant's general manager, which has not been produced in this lawsuit and no objection to its production has been made. (Lua's AMF, No. 36.) Lua repeatedly and clearly testified that she did not feel a "pop" in her right knee immediately before the incident and does not recall ever saying that to emergency responder personnel. (Lua's AMF, No. 38.)

B. First and Second Cause of Action: Negligence and Premises Liability

"An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach of a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673.) "Premises liability is a form of negligence … and is described as follows: The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

1. Actual or Constructive Notice of a Dangerous Condition

To establish liability for negligence, "[t]here must be some evidence... to support the conclusion that the condition has existed long enough for the proprietor, in the exercise of reasonable care, to have

discovered and remedied it." (*Girvetz v. Boys' Market* (1949) 91 Cal.App.2d 827, 829; see also *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1206 [the owner must have had actual or constructive knowledge of the dangerous condition or have had the ability, through exercise of ordinary care, to discovery it, and sufficient time to correct it.].)

Where a plaintiff produces evidence from which a reasonable inference can be drawn that the dangerous condition was created by defendant or its employees, defendant is charged with notice of the dangerous condition. (*Getchell v. Rogers Jewelry* (2012) 203 Cal.App.4th 381, 382.) To establish "actual notice," there must be some evidence that [Defendant] had knowledge of the particular dangerous condition in question. (*State v. Super. Ct. of San Mateo County* (1968) 263 Cal.App.2d 396, 399 (*State*).) Typically, the question of whether a condition existed so long as to be discoverable within a reasonable time is a question of fact to be decided by the jury. (*Hatfield v. Levy Bros.* (1941) 18 Cal.2d 798, 807.)

Before constructive notice is imputed to a business owner, a plaintiff must establish that a defect or hazardous condition existed long enough before an incident to permit the owner's employees the opportunity to discover and remedy the condition; the mere possibility that a defendant could notice the condition is not enough. (*Ortega, supra,* 26 Cal.4th at pp. 1205-1206.) If there is no substantial evidence from which it can be reasonably inferred that the condition existed for a sufficient period of time to charge the defendant with constructive notice of its presence and to remedy the condition, a defendant may be entitled to judgment as a matter of law. (*Perez v. Owl* (1962) 200 Cal.App.2d 559, 562.)

Seaside states that its employees are expected to assist with general housekeeping, it conducts monthly safety meetings to remind employees of their obligations. (Seaside's UMF, Nos. 16-17; Ali Decl., p. 2:2-4, 7-8; Exh. H, p. 35; Cuyco Decl., p. 1:9-10.) It also states restaurant employees are trained to be constantly on the lookout for gum, debris, and spills. (Seaside's UMF, No. 18; Ali Decl., p.2:1-2; Cuyco Decl., p.1:14-15; Jimenez Decl., p. 1:13-14.) It further states restaurant employees are trained to clear debris immediately if their hands are free and either return to clear debris or alert a colleague to do so if their hands are not free. (Seaside's UMF, No. 19; Ali Decl., p. 2:4-11; Cuyco Decl., p.1:8-12; Jimenez Decl., p. 1:8-12.) However, none of the declarants were present on the day of the

incident and Seaside fails to provide any evidence that such an inspection was conducted prior to the incident.

Seaside contends Lua cannot establish it had notice of a dangerous condition. It directs the Court to Lua's testimony, in which she stated she did not know how long the napkin was on the floor, when she first saw it. (Lua Depo., p. 27:25-28:3.) It also provides Crystal's testimony, in which she stated she had no way of knowing one way or the other how long the sugar packet was on the floor before her mother went on top of it. (Crystal Depo., p. 19:8-11.) This is sufficient to meet Seaside's initial burden that no triable issue of material fact exists. Thus, the burden shifts to Lua to establish there is a triable issue of material fact.

Lua states the restaurant was so small that an employee could see the entire restaurant from a fixed position on the dining room floor and an employee walked her and her family over to their table, which was immediately next to the area of the incident. (Lua's AMF, Nos. 8-9; Crystal Decl., p. 14:4-8; Exh. 14.) As Kimberly ran after Lua, the same employee had a clear, unobstructed view of the aisle and the floor when Lua fell a minute later. (Lua AMF, No. 12, Exh. 14.) Lua contends she was only provided video footage beginning at one minute and four seconds prior to the incident. (Opp., p. 18:24-28.) Given the size of the restaurant, the supposed frequency of the visual inspection, and the supposed response time, this is sufficient to raise a triable issue of material fact as to whether the employee had the opportunity to discover and remedy the condition. (See *Ortega, supra,* 26 Cal.4th at pp. 1205-1206.) Thus, Lua meets her burden here and summary judgment cannot be granted on this basis.

2. Causation

"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. [Citations.]" (*Vasquez, supra,* 118 Cal.App.4th at p. 288.) "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.)

"Causation is also ordinarily a question of fact which cannot be resolved by summary judgment. 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." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 864 (*Kurinji*).)

Seaside contends Lua is unable to establish causation without conjecture or speculation. In support, Seaside directs the Court to the prehospital care report, which states, "Pt was walking back to her table, when she felt a 'pop' to her right knee, causing her to fall to the ground." (Seaside Exh. E.) It also provides the following portions of Lua's deposition testimony:

> Q. O.K. when you were falling, did you feel like - that you had come in contact with a foreign object?
>
> A. No. I just remember slipping. That's it.

(Lua Depo. (Seaside Exh. C), p. 21:20-23.)

> Q. In your own mind, what caused you to slip and fall?
>
> A. That something was spilled on the floor.
>
> Q. Like liquid?
>
> A. I don't know.
>
> Q. Did you ever see anything that you believe you slipped on?
>
> A. After I had fallen and I was on the ground, I saw that, over to the side, there were some towels strewn about.

(Lua Depo., p. 15:16-25.)

Q. You talked about seeing a piece of paper. How big was it?

A. It was wrinkled. It looked like one of those towels that they give you to clean your mouth with.

Q. Okay. It looked like a napkin?

A. Yes, like that. But it wasn't extended. It was wrinkled like it becomes when you clean yourself.

Q. How—what were the dimensions of this napkin?

A. Well, it was like – it wasn't the whole napkin. It was a piece of the napkin.

Q. Okay. Well, had it been ripped off a larger napkin?

A. Yes. Like if you were to tear a napkin or something.

(See Lua Depo., p. 22:15-23:1.)

Seaside also provides Crystal's testimony in which she stated her view of her mother's knees to her feet were blocked as she was seated at a table when her mother fell. (Crystal Depo., p. 15:6-22.) She further testified that she noticed sugar packets when the ambulance picked her up and she thought Lua slipped on them, but she wasn't really sure. (Crystal Depo., p. 17:21-18:1.) This is sufficient to meet Seaside's initial burden on the issue of causation.

In opposition, Lua argues she repeatedly testified that her fall was caused by small pieces of paper, which were later identified by others as sugar packets. She directs the Court to her deposition testimony, in which she states:

Q. Do you think you slipped and fell because the ground underneath you or the floor was more slippery than it should have been?

A. Well, it was slippery, and there was—therefore, there must have been something on the floor…

Q. Fair enough. But your daughter testified that when your right leg was lifted, someone found a small paper packet under it.

A. That's what I'm trying to tell you. That when they picked me up, there was a piece of paper on my foot, and that's what I slipped on….

Q. When did you first see the piece of paper?

A. When they lifted me up and moved me, the paper was there…

A. The thing is that they lifted me up, and I saw the paper, but I don't know what part it was under.

(Lua Depo., 17:19-23; 20:6-12, 21-23; 21:3-4.)

Lua also testified that the floor was slippery when she fell. (Lua Depo., 22:4-6.) She provides her daughter's testimony:

Q. Okay. How far away was the – was it a packet?

A. Yes, a packet.

Q. Was it broken, or was it still closed?

A. I don't remember. I didn't get it. I was more worried about my mom with her knee.

Q. How far away from her was this packet when you first saw it?

A. Right next to her.

Q. In terms of distance.

A. When I seen it?

Q. Yeah.

A. I seen it when they picked her up.

Q. Okay.

A. She was on it.

Q. She was lying on top of it?

A. Yeah. Like – well, like by her leg right there. It was – she was in the -- on it.

(Crystal Depo., 17:21-18:18.)

Lua also relies on Sanchez's email, which states: "There were two sugar packets on the floor but that was about 5 feet away from where the incident took place." (Lua Exh. 28.)

While some of this evidence is speculative, the Court finds, on balance, there is enough here to create a triable issue of fact as to whether Lua slipped on some kind of paper on the floor. Accordingly, summary judgment is DENIED.