SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 10/31/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (10/30?2024) 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 prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV431077	JULIANNE MEJIA vs THE COUNTY OF SANTA CLARA et al	Hearing: Demurrer Ctrl Click (or scroll down) on Lines 1-2 for tentative ruling. The court will prepare the order.
LINE 2	24CV431077	JULIANNE MEJIA vs THE COUNTY OF SANTA CLARA et al	Hearing: Motion to Strike Ctrl Click (or scroll down) on Lines 1-2 for tentative ruling. The court will prepare the order.
LINE 3	24CV430066	Wells Fargo Bank, N.A. vs Adrian Chambers	Hearing: Motion Summary Judgment Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.

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LINE 4	23CV420446	BXP West El Camino LP, a Delaware limited partnership vs Flex Logix Technologies, Inc., a Delaware corporation	Motion: Compel Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	23CV425156	Katrina Vallejo et al vs Richard Hansen et al	Motion: Compel Ctrl Click (or scroll down) on Line 5 for tentative ruling. The court will prepare the order.
LINE 6	21CV389624	HUMAYUN KABIR vs GREG KRIKORIAN	Hearing: Motion for substitution of personal representative pursuant to Code of Civil Procedure ("CCP") section 377.310 for order substituting Hasina Begum as the Personal Representative of the Estate of Humayun Kabir, deceased, in place of Humayun Kabir as Plaintiff and Cross-Defendant. Unopposed and GRANTED. Moving party to submit order for signature by court.
LINE 7	23CV427937	Juan Cabrera vs FORD MOTOR COMPANY, a Delaware Corporation et al	Hearing: Motion hearings Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.
LINE 8	24CV432475	McArthur Gist vs PV Holding Corp et al	Motion: Withdraw as attorney OFF CALENDAR. No proof of service on client. [Note: The moving papers indicate this motion was personally served on client and that proof of service will be filed 5 days before the hearing. However, no proof of service on client has been filed.]

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DATE: 10/31/2024 TIME: 9:00 A.M.

LINE 9	24CV444998	City of San Jose, a charter city vs Kim Ho et al	Hearing: OSC TRO/Preliminary Injunction [**reset from 10/3/2024 D18a writ dept**] APPEAR. No written opposition was filed. The moving party shall prepare and bring a proposed order to the hearing. [Note: The temporary restraining order ("TRO"), order to show cause ("OSC") regarding preliminary injunction and appointment of receiver was granted on 8/22/2024.} The ex parte application for writ of possession of real property was granted on 9/12/2024. The $10, 000 bond was posted by the Receiver Gerald F. Kenna II on Aug. 27, 2024.]
LINE 10	1997-1-CV-764650	J. Ascencion Calderon vs Bhula M. Patel	Motion: Enforce Settlement Ctrl Click (or scroll down) on Line 10 for tentative ruling. The court will prepare the order.
LINE 11			
LINE 12			

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Calendar Lines 1-2
Case Name: *Julianne Mejia v. The Couty of Santa Clara dba O'Connor Hospital et al.*
Case No.: 24CV431077

I. Factual and Procedural Background

Plaintiff Julianne Mejia ("Plaintiff") brings her first amended complaint ("FAC") against defendant the County of Santa Clara dba O'Connor Hospital ("Defendant" or "the Hospital"). At 56 years old, Plaintiff is a dependent adult as defined by Welfare and Institutes Code section 15610.23. (FAC, ¶ 2.) Defendant is a government funded entity that holds a license to operate a General Acute Care Hospital. (FAC, ¶¶ 3-4.)

According to the allegations of the pleading, on or about July 23, 2023, Plaintiff was admitted to the Hospital with complaints of shortness of breath, lower extremity swelling, and chest pain. (FAC, ¶ 31.) She had no history of back pain or injuries. (*Ibid*.) Plaintiff was completely dependent on the Hospital staff for assistance with all of her daily activities. (FAC, ¶ 32.)

While admitted to the Hospital, its staff failed to adequately document Plaintiff's care, which led to a lack of continuous nursing care, prolonging Plaintiff's treatment and worsening her condition. (FAC, ¶ 35.)

On July 14, 2023,[1] Plaintiff was being transferred from a normal bed to a bariatric bed when the Hospital staff allowed her to fall by failing to adequately lock the wheels on the bed prior to Plaintiff's transfer. (FAC, ¶ 37.) As a result, the bed shifted and Plaintiff fell to the floor during the transfer. (*Ibid*.) A nurse witnessed the fall but failed to promptly inform Plaintiff's physician and no orders for imaging of her back were timely made. (*Ibid*.) On July 16, 2023, Plaintiff's doctor became aware that she fell directly on her back and ordered a CT and x-ray. (FAC, ¶ 38.)

Despite the multiple factors that rendered Plaintiff a high fall risk, the Hospital staff failed to implement adequate interventions and failed to properly supervise Plaintiff in order to prevent the fall and then concealed the nature of her fall. (FAC, ¶¶ 41, 43.) As a result, Plaintiff continues to suffer chronic back pain. (FAC, ¶ 46.)

On November 27, 2023, Plaintiff filed a Government Claim pursuant to Government Code section 910, et seq. (FAC, ¶ 17.) Plaintiff filed her initial complaint on February 13, 2024.

On August 2, 2024, Plaintiff filed her FAC, asserting the following causes of action against Defendant:

1) Dependent Adult Abuse and Neglect; and
2) Negligence/Negligence Per Se.

[1] Plaintiff first indicates that she was admitted to the Hospital on July 23, 2023 (FAC, ¶ 31) but also alleges that her fall occurred on July 14, 2023 (FAC, ¶ 37). While Defendant notes this in its demurrer, Plaintiff does not clarify the discrepancies in her opposition.

On October 9, 2024, Defendant filed a demurrer and motion to strike portions of the FAC. Plaintiff opposes both motions and Defendant filed replies.

II. Demurrer

Defendant demurs to each cause of action on the grounds they fail to state facts sufficient to constitute a cause of action, pursuant to Code of Civil Procedure section 430.10, subdivision (e) and are uncertain, pursuant to Code of Civil Procedure section 430.10, subdivision (f).

a. Legal Standard

In ruling on a demurrer, the Court treats it "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 (*Blank*).) "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.)

b. Defendant's Request for Judicial Notice

In support of its demurrer, Defendant requests the Court take judicial notice of 1) Plaintiff's Government Claim, dated November 27, 2023 (Ex. 1) and 2) Defendant's rejection of Plaintiff's claim, dated January 5, 2024 (Ex. 2). Here, both exhibits are referenced in Plaintiff's FAC. Additionally, Plaintiff indicates she has attached Exhibit 1 to her FAC as Exhibit A; however, it is not included. Accordingly, the request is GRANTED as to both exhibits.

c. First Cause of Action

Defendant asserts two arguments in support of its demurrer to the first cause of action: 1) the claim is barred because it is not disclosed in Plaintiff's government claim; 2) the first cause of action fails to state sufficient facts with the requisite particularity.

i. Government Claim

Defendant first contends that nothing in Plaintiff's government claim includes facts that the Hospital knowingly hired unfit employees, was responsible for understaffing, knowingly diverted funds and resources away from staff, or that it failed to discipline, retain, terminate, and/or suspend nursing staff. (Demurrer, p. 9:14-18.) It further argues that the government claim is devoid of fraud and does not reference dependent adult abuse at all. (*Id.* at p. 9:18-22.) Defendant asserts that to fulfil the government claim presentation requirement, the factual circumstance set forth in the claim must correspond with the facts alleged in the complaint. (*Id.* at p. 8:26-28, citing *Donohue v. State of Cal.* (1986) 178 Cal.App.3d 795, 802 (*Donohue*).)

In most instances, "[b]efore suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions].)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 [overruled by statute on other grounds].) The purpose of the Government Claims Act (Gov. Code, § 900 et seq.) is to apprise the governmental body of imminent legal action so the entity may investigate and evaluate the

claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473, 1477; see also *Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 262.)

In *Donohue*, the Court of Appeal explained that "[i]f a plaintiff relies on more than one theory of recovery against the State, each cause of action must have been reflected in a timely claim. In addition, the factual circumstances set forth in the written claim must correspond with the facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim." (*Donahue, supra*, 178 Cal.App.3d at p. 802 [internal citations and quotations omitted].)

In opposition, Plaintiff argues that additional factual details or causes of action in a complaint that were not included in the claim are not fatal where the basic facts are set out in the claim. (Opposition, pp. 4:25-5:1.) Plaintiff asserts that the claim fairly sets forth that this action is centered around Plaintiff's fall at the Hospital. (*Id.* at p. 5:12-13, citing *Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 277 (*Stevenson*).)

In *Stevenson*, the Court distinguished *Donahue*, explaining that it was an example of a case "in which the claim and the subsequent complaint referred to different factual circumstances. [The *Donahue* Court] precluded actions which were based on a different set of facts than was referenced in the claim to the public entity." (*Stevenson, supra*, at p. 277.) The *Stevenson* Court further explained that "[i]n other cases, courts have found that apparent differences between the complaint and the claim were merely the result of a plaintiff's addition of factual details or additional causes of action. This type of variance is not fatal where the basic facts are set out in the claim." (*Ibid*.)

The Court is persuaded by Plaintiff's argument that the factual basis for the claim and the FAC's causes of action are the same. (See e.g., *Stevenson, supra,* at p. 278 ["In *White v. Superior Court* (1990) 225 Cal.App.3d 1505, Division Three of this court surveyed several decisions which analyzed the need for a complaint's allegations to be fairly reflected in the claim filed with a public entity. The court reasoned that the addition of new allegations in the complaint was not fatal unless they were based on an entirely different set of facts. (Id., at p. 1510.) The claim in *White* stated that a bus driver was falsely arrested and beaten by a police officer. The subsequent complaint alleged causes of action for false imprisonment and negligent hiring, training, and retention of the police officer. The court stated that although the claim did not specify a legal theory of failure to train, it identified the police officer's acts as the principal cause of the injury."].)

With that said, the Court finds Defendant's argument that the elder abuse claim lacks the requisite specificity to be meritorious.

ii. Sufficient Facts

"The elements of a cause of action under the Elder Abuse Act [Welfare and Institutions Code sections 15600, et seq.] are statutory, and reflect the Legislature's intent to provide enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect." (*Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82.) The Elder Abuse Act is a statutory cause of action, and thus, the Court applies "the general rule that statutory causes of action must be pleaded with particularity." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 (*Covenant Care*).) "[Where] recovery is based on a statutory cause of action,

the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate." (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.)

Welfare and Institutions Code section 15610.07, subdivision (a)(1) states, "Abuse of an elder or a dependent adult" means . . . "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering."

Welfare and Institutions Code section 15610.57 goes on to state:

> (a) "Neglect" means either of the following:
>
> (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
>
> (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.
>
> (b) Neglect includes, but is not limited to, all of the following:
>
> [. . .]
>
> (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
>
> (3) Failure to protect from health and safety hazards.
>
> [. . .]

(See also CACI 3103.)

> In short, neglect as a form of abuse under the Elder Abuse Act refers "to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 34, 82 Cal.Rptr.2d 610, 971 P.2d 986 (*Delaney*).) Thus, when the medical care of an elder is at issue, "the statutory definition of 'neglect' speaks not of the *undertaking* of medical services, but of the failure to *provide* medical care." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783, 11 Cal.Rptr.3d 222, 86 P.3d 290 (*Covenant Care*); see also *id.* at p. 786, 11 Cal.Rptr.3d 222, 86 P.3d 290 ["statutory elder abuse may include the egregious withholding of medical care for physical and mental health needs"].)

(*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404–405 (*Carter*) [emphasis original].)

> [W]e distill several factors that must be present for conduct to constitute neglect within the meaning of the Elder Abuse Act and thereby trigger the enhanced remedies available under the Act. The plaintiff must allege . . . facts establishing

> that the defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care (Welf. & Inst.Code, §§ 15610.07, subd. (b), 15610.57, subd. (b); *Delaney*, *supra*, 20 Cal.4th at p. 34, 82 Cal.Rptr.2d 610, 971 P.2d 986); (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs (*Sababin*, *supra*, 144 Cal.App.4th at pp. 85, 90, 50 Cal.Rptr.3d 266; *Benun*, *supra*, 123 Cal.App.4th at p. 116, 20 Cal.Rptr.3d 26; *Mack*, *supra*, 80 Cal.App.4th at pp. 972–973, 95 Cal.Rptr.2d 830); and (3) ***denied or withheld*** goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or ***with conscious disregard of the high probability of such injury*** (if the plaintiff alleges recklessness) (Welf. & Inst.Code, §§ 15610.07, subd. (b); 15610.57, subd. (b), 15657; *Covenant Care*, *supra*, 32 Cal.4th at pp. 783, 786, 11 Cal.Rptr.3d 222, 86 P.3d 290; *Delaney*, at pp. 31–32, 82 Cal.Rptr.2d 610, 971 P.2d 986). The plaintiff must also allege . . . that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. (Welf. & Inst.Code, §§ 15610.07, subds. (a), (b), 15657; *Perlin*, *supra*, 163 Cal.App.4th at p. 664, 77 Cal.Rptr.3d 743; *Berkley*, *supra*, 152 Cal.App.4th at p. 529, 61 Cal.Rptr.3d 304.) Finally, the facts constituting the neglect and establishing the causal link between the neglect and the injury "must be pleaded with particularity," in accordance with the pleading rules governing statutory claims. (*Covenant Care*, at p. 790, 11 Cal.Rptr.3d 222, 86 P.3d 290.)

(*Carter*, *supra*, 198 Cal.App.4th at pp. 406–407 [emphasis added].)

In this case, Plaintiff's assertion appears to be that, in providing Plaintiff care by transferring her from one bed to another, the Hospital committed dependent adult abuse by failing to ensure that the second bed was locked, resulting in Plaintiff's fall and subsequent back injury. (See FAC, ¶¶ 37-39, 41.)

As Defendant notes in its demurrer, California courts hold that the statutory framework of the Elder Abuse Act should not apply to situations involving mere professional negligence. (Demurrer, p. 11, citing *Delaney*, *supra*, 20 Cal.4th at pp. 31-32.) Rather, a plaintiff must allege either intentional, willful, or conscious wrongdoing, or more than "'inadvertence, incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a 'conscious choice of a cause of action . . . with knowledge of the serious danger to others involved." (*Delaney*, *supra*, at pp. 31-32.) While the FAC contains the relevant "buzzwords" such as alleging that Defendant is guilty of recklessness, fraud, oppression, or malice (see FAC, ¶ 78), it fails to allege facts to support these allegations. (See *Carter*, *supra*, 198 Cal.App.4th at p. 410 ["plaintiffs' 'use of such terminology as fraudulently and recklessly cannot cure the failure to point out exactly how or in what manner the Hospital has transgressed."].)

Moreover, other portions of the FAC allege that the Hospital staff *did* take action in assisting Plaintiff, but did so insufficiently. (FAC, ¶¶ 38, 40-41.) "[N]eglect refers not to the substandard performance of medical services but, rather, to the 'failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults . . . to carry out their custodial obligations.' . . . Thus, the statutory definition of 'neglect' speaks not of the undertaking of medical services, but of the ***failure to provide medical care***.'" (*Covenant Care*,

supra, 32 Cal.4th at p. 783 [emphasis added].) Here, the FAC specifically states that the Hospital "failed to provide [Plaintiff] with *adequate* care . . ." (FAC, ¶ 39.) Likewise, the opposition appears to concede this point by asserting that Defendant failed to provide adequate assistance, not that no assistance was provided to Plaintiff whatsoever. (See Opposition, pp. 6:2, 7:24.)

Based on the foregoing, the FAC fails to allege a claim under the Elder Abuse Act with the requisite particularity. Accordingly, the demurrer to the first cause of action is SUSTAINED with 10 days leave to amend and the Court need not address Defendant's remaining arguments.

d. Second Cause of Action

Plaintiff's second cause of action sounds in negligence. "The basic architecture of the [Government Claims] Act is encapsulated in Government Code section 815. Subdivision (a) of that section makes clear under the Act, there is no such thing as common law tort liability for public entities; a public entity is not liable for any injury 'except as otherwise provided by statute.' 'But even when there are statutory grounds for imposing liability, subdivision (b) of section 815 provides that a public entity's liability is "subject to any immunity of the public entity provided by statute."'" (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139 (*Los Angeles*) [internal citations omitted]; see also *Torres v. Department of Corrections & Rehabilitation* (2013) 217 Cal.App.4th 844, 850 ["Although the complaint sounds in negligence, there is no common law tort liability for public entities in California. . . . a public entity may be held liable only if there is a statute subjecting it to civil liability."].)

Defendant contends the cause of action fails because, under the Government Claims Act, there is no common law tort liability for publicities entities and all government tort liability must be based on statute. (Demurrer, p. 19:4-6.) Defendant asserts that the second cause of action does not state a specific statute to base liability on. (*Id.* at p. 19:7-8.) In opposition, Plaintiff argues that the FAC must be read as a whole and that Defendant failed to adhere to its duties defined by Welfare and Institutions Code section 15610.57. (Opposition, p. 11:17-18.) Even reading the FAC as a whole, Plaintiff does not allege a specific statute that subjects Defendant to civil liability. Moreover, the Welfare and Institutions Code, referenced by Plaintiff in opposition, does not create a negligence cause of action against a public entity. Further, the Court is not persuaded by the argument that "Plaintiff outlined the duties and responsibilities under the various statutes at several points within her complaint. They do not need repeating." (See Opposition, p. 12:14-16.) While there are numerous statutes cited throughout the FAC, it is not clear which statute the second cause of action is based on or whether any of the cited statutes provide for public entity liability based on negligence, and Plaintiff's unwillingness to cite to the specific statute in her opposition is concerning.

Accordingly, the demurrer to the second cause of action is SUSTAINED with 10 days leave to amend for failing allege sufficient facts. The Court declines to sustain the demurrer on uncertainty grounds.

III. Motion to Strike

Defendant moves to strike three portions of the FAC pursuant to Code of Civil Procedure section 436. Given this Court's ruling on Defendant's demurrer, the motion to strike is MOOT.

IV. Conclusion and Order

The demurrer is SUSTAINED in its entirety with 10 days leave to amend. The motion to strike is MOOT.

The Court shall prepare the final order.

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Calendar Line 3
Case Name: *Wells Fargo Bank, N.A. v. Adrian T. Chambers*
Case No.: 24-CV-430066

Motion for Summary Judgment to the Complaint by Plaintiff Wells Fargo Bank, N.A.

Factual and Procedural Background

This is a collection action brought by plaintiff Wells Fargo Bank, N.A. ("Plaintiff") against defendant Adrian T. Chambers ("Chambers").

On January 30, 2024, Plaintiff filed a Judicial Council Form Complaint against defendant Chambers alleging causes of action for breach of contract and common counts for money lent, money paid, open book account, and account stated.

On April 30, 2024, defendant Chambers, represented by counsel, filed an answer generally and specifically denying allegations of the complaint and asserting affirmative defenses.

On June 28, 2024, Plaintiff filed the motion presently before the court, a motion for summary judgment to the complaint. Defendant Chambers filed written opposition. Plaintiff filed reply papers.

A short cause trial is scheduled for March 10, 2025.

Discussion

Defective Separate Statement

As a preliminary matter, it appears defendant Chambers has not submitted a separate statement *in response* to the separate statement by Plaintiff in compliance with the Code of Civil Procedure and the California Rules of Court.

"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.' [Citation.]" (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568-569.)

California Rules of Court, rule 3.1350(f) specifies the content and format of a separate statement in opposition to a motion. It provides that "[o]n the right side of the page, directly

opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is 'disputed' or 'undisputed.' An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. Citation to the evidence in support of the position that a fact is controverted must include reference to the exhibit, title, page and line numbers." (Cal. Rules of Court, rule 3.1350(f).)

"The requirement of a separate statement from the moving party and a responding statement from the party opposing summary judgment serves two functions: to give the parties notice of the material facts at issue in the motion and to permit the trial court to focus on whether those facts are truly undisputed." (*Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal.App.4th 1197, 1210.) As one court explained:

> "Separate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for SAI and summary judgment to determine quickly and efficiently whether material facts are disputed."

(*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.)

Here, defendant Chambers has submitted a separate statement consisting of disputed facts and evidentiary support. Chambers however has not filed an opposing separate statement specifically responding to the facts in Plaintiff's separate statement as "disputed" or "undisputed" with citation to supporting evidence if disputed. Therefore, Chambers' failure to file the appropriate opposing separate statement is a violation of court rules.

When the opposing party fails to file a sufficient separate statement, the trial court is presented with three choices: the court may grant the motion for summary judgment, continue the motion to permit the filing of a proper separate statement, or reach the merits of the motion. (*Batarse v. Service Employees Intern. Union Local 1000* (2012) 209 Cal.App.4th 820, 828.) "However, an immediate grant of summary judgment is, in most instances, too harsh a consequence. '[T]he proper response in most instances, if the trial court is not prepared to address the merits of the motion in light of the deficient separate statement, is to give the opposing party an opportunity to file a proper separate statement. …' [Citations.]" (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 74.) A court should reach the merits when the case involves a simple issue with minimal evidentiary support. (*Security Pacific Nat. Bank v. Bradley* (1992) 4 Cal.App.4th 89, 94.)

Given the circumstances of this case, the court is not inclined to grant the motion for summary judgment based on the absence of a proper separate statement or consider the merits of the motion. Instead, the court will continue the motion and afford defendant Chambers the opportunity to file and serve a code compliant separate statement.

Defendant Chambers' Declaration in Support of the Opposition

The court notes also that defendant Chambers relies on his declaration in support of his opposition to the motion for summary judgment. Said declaration however has not been filed with the court for consideration with the opposition. But, according to the proof of service, the

declaration of defendant Chambers has been served along with the opposition on Plaintiff's counsel. In fact, Plaintiff refers to the Chambers' declaration throughout the reply papers. Thus, in the interests of justice, the court will continue the motion for summary judgment to allow Chambers the opportunity to file his declaration with the court.

Conclusion

The hearing on the motion for summary judgment to the complaint is CONTINUED to December 12, 2024 at 9:00 a.m. in Department 3. Defendant Chambers shall file and serve his code compliant separate statement in opposition to the motion on or before November 15, 2024. Defendant Chambers shall file his declaration (which was previously served on Plaintiff's counsel) with the court on or before November 15, 2024. **Defendant Chambers shall not submit any additional documents to the court in opposition to the motion**. Plaintiff may file and serve any supplemental reply papers in response to the code compliant separate statement submitted by Chambers which shall be due in accordance with Code of Civil Procedure section 437c, subdivision (b)(4) and the new hearing date.

The court will prepare the Order.

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Calendar line 4

Case Name: BXP West El Camino LP, a Delaware limited partnership vs Flex Logix Technologies, Inc., a Delaware corporation

Case No.: 23CV420446

Plaintiff BXP West El Camino LP ("Plaintiff")'s motion to compel compliance with (set one) request for production of documents ("RPD") against defendant Flex Logix Technologies, Inc. ("Defendant") is DENIED AS MOOT.

RPD Nos. 1-7

Plaintiff's motion to compel Defendant's compliance with RPD Nos. 1-7 is DENIED AS MOOT.

RPD Nos. 1-6 seek "All non-privileged DOCUMENTS related to YOUR payment of RENT for the PREMISES for the month[s] of [June 2023 to November 2023.]

RPD No. 7 seeks "All non-privileged DOCUMENTS related to YOUR payment of RENT for the PREMISES at any time since June 1, 2023."

Defendant's response to RPD Nos. 1-7 were objections, followed by the statement:

> Subject to and without waiving the preceding objections, Responding Party will produce non-privileged documents responsive to this request currently in its possession that are located after a diligent search and reasonable inquiry.

Defendant's opposition page 4 to this motion confirms:

> The first seven of the ten requests seek documents which don't exist—i.e. documents evidencing payment of rent during various time periods. BXP of course knows that no such documents evidencing payment of rent during those times exist because BMX's entire Action is based on the non-payment of rent during those time periods.

RPD Nos. 8-10

Plaintiff's motion to compel compliance with RPD Nos. 8-10 is DENIED AS MOOT.

RPD No. 8 seeks "All non-privileged DOCUMENTS related to YOUR financial statement(s) for the year 2023, as defined by Article 17 of the OFFICE LEASE."

RPD Nos. 9 seeks "All non-privileged DOCUMENTS related to YOUR letter of credit, as defined and referenced as "L/C" in Article 21 of the OFFICE LEASE, from June 2023 to the present."

RPD No. 10 seeks: "All non-privileged DOCUMENTS related to your financial statements for the years 2021 through 2023, as defined by Article 17 of the OFFICE LEASE**."**

Defendant's response to RPD Nos. 8-10 were objections. However, during the meet and confer between counsel Defendant agreed to produce those financial records so long as a protective order was entered into.

A protective order was signed by the parties one day *before* Plaintiff filed this motion and the order was not entered until 5 days *after* Plaintiff filed this motion.

In his email attaching the protective order Mr. Hifai signed on 7/31/2024, he stated "our supplemental responses to the FROGs and **RFPD**s are being served on your office today." (Haifai Decl, Ex. B [emphasis added.])[2]

[2] Although not discussed in the papers, it appears this may have been a typographical error by Defendant's counsel. It appears he meant to say "RFAs" not "RFPDs", but he never admits this mistake in his papers.

Defendant served a supplemental response to form interrogatories (FROGs) and Request for Admissions (RFAs) on 7/31/2024, *but no documents* to the RFPDs (RPD Nos. 1-10) were produced by 7/31/2024.

7/31/2024 was the deadline Defendants had given Plaintiff to produce records to RPD Nos. 1-10.

According to the reply, "after being informed Plaintiff would not withdraw its Motion and 17 days after the Court signed the protective order, Flex Logic finally produced a paltry 21 pages." (Reply, p. 9.) "Out of the 21 pages produced on August 22, 2024, only three were marked "confidential" consisting of a supposed balance sheet with no supporting documentation."

CCP section 2031.320, subdivision (a) provides that "[i]f a party filing a response to a demand for inspection, copying, testing, or sampling … fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance. (CCP §2031.320(a); see also (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1127, fn. 4 ["if the responding party serves a response stating the party will permit inspection, but then fails to do so, the propounding party may move for an order compelling the responding party to permit inspection in compliance with its response. (§ 2031.320.)"]) A motion under section 2031.320 seeks the production of documents the responding party has agreed to produce.

"There is *no* fixed time limit on this motion. And, *no* "attempt to resolve informally" need be shown. All that has to be shown is the responding party 's failure to comply as agreed. (Weil & Brown, (The Rutter Group 2024) Cal. Prac. Guide: Civil Procedure Before Trial, ¶8:1508.1, citing CCP §2031.320(a); see *Standon Co., Inc. v. Sup. Ct. (Kim)* 225 Cal.App.3d 898, 903].)

Here, Plaintiff points out that the Lease requires Flex Logix to provide financial statements either "upon a default by Tenant beyond any applicable notice and cure period" or "upon Landlord's request no more than once per calendar year for any reason[.] (Motion, p. 9; Compl. Ex. A, Art 17.) However, the Defendant points out that it also states:

> Provided that in all such cases, Landlord executes a non-disclosure agreement in form reasonably acceptable to Landlord and Tenant, agrees that distribution of such information will be limited to those with a need to know basis, and instructs any third parties with whom such information is shared to comply with the terms of the non-disclosure agreement.

(See Opp. p. 3: Compl. Ex. A at Article 17.)

Defendant's opposition contends that the financial documents for RPD Nos. 8-10 were produced after the protective order was entered into by the court.

Monetary Sanctions

Plaintiff's request for monetary sanctions is DENIED. The one subject to sanctions acted with substantial justification or other circumstances make the imposition of sanctions unjust. Here Plaintiff filed this motion to compel compliance which included Nos. 8-10 one day after the protective order was signed *before* the court entered the protective order. The language about the need for a protective order in Article 17 of the Lease was *not* cited in the initial moving papers.

Defendant's request for monetary sanctions is DENIED. The one subject to sanctions acted with substantial justification or other circumstances make the imposition of sanctions unjust. Here, Defendant's response to Nos. 1-7 indicated that Defendant would be producing documents, yet *none* of the meet and confer correspondence between counsel *before* this motion was filed made clear that there were *no* responsive documents to these requests. None of these documents would require a protective order under Article 17 of the Lease.

The court will prepare the order.

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Calendar Line 5
Case Name: Katrina Vallego, et al vs Richard Hansen, et al
Case No.: 23CV4325156

Plaintiffs Katrina Ballejo, Jose Espinoza, Heavenly Espinoza, by and through her guardian ad litem, Katrina Vallejo and Elisa Tadeo, by and through his guardian ad litem, Katrina Vallejo ("Plaintiff)'s motion to compel *further responses* to request for production of documents ("RPD") No. 3 from defendants Richard R. Hansen, Christina M. McKillan, Robert Collins, Manuel Dominquez, Danial Rico and Cal West HMS Property Management ("Defendants") pursuant to Code of Civil Procedure ("CCP") sections 2017.210 and 2031.310 is DENIED.

This DENIAL is WITHOUT PREJUDICE to Plaintiff filing a motion to compel compliance with Defendants' response to RPD No. 3 under CCP section 2031.320.

Plaintiffs' request for monetary sanctions is DENIED. The one subject to sanctions acted with substantial justification or other circumstances make the imposition of sanctions unjust.

The court will prepare the order.

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Calendar Line 6

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Calendar Line 7
Case Name: Juan Cabrera vs Ford Motor Company, et al.
Case No.: 23CV427937

Plaintiff's motion for attorney's fees pursuant to Civil Code section 1794(d) in the amount of $22,978.50 is GRANTED IN PART. Under the "loadstar" method, Plaintiff's reasonable attorney's fees of **$12,220** are GRANTED.

In addition, Plaintiff's motion for costs pursuant to Civil Code section 1794(d) in the reasonable amount of $**1,240.99** are GRANTED.

Defendants FORD MOTOR COMPANY and SUNNYVALE FORD shall pay these amounts (which total **$13,460.99)** to Plaintiff within fifteen (15) days of this order.

Background

This is a lemon law case filed on December 18, 2023. Plaintiff alleges that he purchased a new 2018 Ford Mustang in 2019 and that his vehicle was the subject of at least 2 repair visits for defects present within the subject vehicle, related to electrical system, transmission and gear box, and other serious non-conformance. Plaintiff alleged and maintained during the ligation that Defendants failed to properly repair the defects, with the total days down for repairs being approximately 5 days. The parties resolved their dispute with the Defendants paying Plaintiff $87,501 pursuant to a Code of Civil Procedure ("CCP" section 998 settlement offer, and Plaintiff surrendering the vehicle. The parties could not agree on an amount of reasonable fees and costs, thus this motion followed.

The CCP 998 settlement offer accepted by Plaintiff on May 31, 2024, states:

> The fees and costs claimed by Plaintiff's counsel may be resolved by the Court, upon formal noticed motion to the Court, to be set on a date mutually agreeable to the Court, and to both parties. Plaintiff shall be deemed the prevailing party in any such fees/costs motion, and such fees/costs shall be determined by the Court.

Analysis

An attorney's fees award to the prevailing party is mandatory under the Song-Beverly Act: "If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd (d); *Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1262.) A prevailing party is also entitled to reasonably incurred costs. (Civ. Code, § 1794, subd (d).)

> The Song-Beverly Act is "'manifestly a remedial measure, intended for the protection of the consumer.'" (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990.) To this end, [Civil Code] section 1794, subdivision (d) provides that a prevailing buyer

> in an action arising under the Song-Beverly Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees *based on actual time expended,* determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Italics added.) In enacting this provision, the "Legislature has provided injured consumers *strong encouragement* to seek legal redress in a situation in which a lawsuit might not otherwise have been economically feasible." (*Murillo v. Fleetwood Enterprises, Inc., supra*, at p. 994, italics added.)
>
> The "plain wording" of section 1794, subdivision (d) requires the trial court to "base" the prevailing buyer's attorney fee award "upon actual time expended on the case, as long as such fees are *reasonably* incurred—both from the standpoint of time spent and the amount charged." (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 817.) Likewise, when the prevailing buyer has a contingency fee arrangement, he or she is entitled to recover "reasonable attorney fees for time reasonably expended." (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 105, fn. 6.) This is consistent with California's approach to determining a reasonable attorney fee in various statutory and contractual contexts, which approach "ordinarily begins with the 'lodestar,' i.e., the number of hours *reasonably* expended multiplied by the *reasonable* hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added.)
>
> The lodestar figure may then be adjusted based on factors specific to the case, in order to fix the fee at the fair market value of the legal services provided. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 ["[T]he lodestar is the basic fee for comparable legal services in the community."]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49 .) These case-specific, lodestar adjustment factors may include, without limitation: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.]" (*Ketchum v. Moses, supra*, at p. 1132.) The "procedural demands" of the case may also be considered. (*Nightingale v. Hyundai Motor America, supra*, 31 Cal.App.4th at p. 104.) The lodestar adjustment method "anchors the trial court's analysis to an objective determination of the value of the attorney's services," and thus ensures that the amount awarded is not arbitrary. (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095.) A prevailing buyer in an action arising under the Song-Beverly Act has the burden of establishing that his or her requested attorney fees were "'allowable,'" "'reasonable in amount,'" and "'reasonably necessary to the conduct of the litigation.'" (*Goglin, supra*, 4 Cal.App.5th at p. 470.)

(*Warren v. Kia Motors America, Inc.* (2018) 30 Cal.App.5th 24, 35-36 ("*Warren*".)

It is inappropriate and an abuse of a trial court's discretion to tie an attorney's fee award to the amount recovered in a Song-Beverly Act action. (*Id.*, 30 Cal.App.5th at p. 38; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 164 ("Graciano").)

The first step is to determine the number of hours reasonably expended in the litigation. (*Serrano v. Priest* (1971) 20 Cal.3d 25, 48, fn. 23.) The reasonable number of hours expended

can also include the time spend preparing and litigating the fee application. (Serr*ano v. Unruh* (1982) 32 Cal.3d 621, 639.) The next step is to determine "the prevailing rate in the community for comparable professional services". (*Graciano, supra,* 144 Cal.App.4th at 156; see *PLCM Group, Inc. v. Drexler, supra,* 22 Cal.4th at p. 1096 [reasonable hourly rate is that prevailing in community for similar work]; *Warren, supra,* 30 Cal.App.5th 24, 38-39.)

The lower rates charged by Defendants' attorneys are not a good comparison, given that plaintiff's attorneys work pursuant to contingency arrangements and defense attorneys do not. (*Warren, supra,* 30 Cal.App.5th at p. 40.) Attorney's rates are reasonable if they are within the range of rates customarily charged by that attorney and others in the community for similar work. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997.) "The court may [also] rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.)

"[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.)

The court has reviewed the itemized time records of Plaintiff's counsel that are attached the declaration of Plaintiff's counsel, Michael Saeedian, and the declarations and evidence submitted by both sides. It has also read and considered the moving, opposition and reply papers.

Reasonable Time Incurred

Defendants contend that 4.2 hours of charged *attorney time* for intake case evaluation time should either (1) not be charged to a client or (2) should be conducted by a *paralegal*. The court does *not* find this argument persuasive. Plaintiff reasonable incurred this time, most of which was billed by primary biller on this account Jorge Acosta.

Defendants contend that the filing of the complaint is pro forma for a lemon law action and that 1.9 hours (including 1.4 hours for the complaint itself) is excessive. The court does not find this argument persuasive. The itemized billing record shows that the entry on 12/18/2023 was 1.4 hours for "Review file, draft Complaint." This is a reasonable amount for the four cause of action complaint that was filed in this action. The other .5 hours on the billing record is broken down into 3 itemized entries of 0.1 hours on 12/18/2024 and 1 itemized entry of 0.2 on 12/12/2024 that were reasonably incurred.

Defendant disputes the 3.4 hours on April 5, 2024, and 1.7 hours on April 24 and 25, 2024 for discovery motions that were later withdrawn. However, the court is familiar with those motions that are in the court's file and finds that the amount of time sought on Plaintiff's itemized billing record was reasonably incurred for those motions.

Defendants contend that on April 29, 2024, Defendant Ford issued a CCP 998 offer to resolve the case and [erroneously contends] that opposing counsel did not discuss the CCP 998 with Plaintiff until May 28, nearly 30 days later, so that some 11.2 hours of claimed time between those dates should not be allowed. However, the court does *not* find this argument persuasive. Plaintiff's itemized billing record shows that on 4/30/2024, Plaintiff's counsel had

a "[c]ommunication with client regarding settlement offer and repurchase figures and possible outcomes." This communication was within 1 day of receiving the offer. The time spent by Plaintiff's counsel between 4/29/2024 and 5/18/2024 dates are itemized by Plaintiff's counsel on the billing record and were reasonable.

Defendant's counsel claims that 7.2 hours on 4/11/2024 to review defendant Ford's discovery responses is an example of inefficiency and reasonable time expenditure. The court does *not* find this argument persuasive. Defendants did not support this argument in its opposition points and authorities. Furthermore, the court has reviewed the itemized billing records for that date and the description and time spent by Plaintiff's counsel are reasonable.

Defendant's counsel claims that an estimated 40% of the total time billed by Plaintiff's attorneys was for tasks that should have been performed by paralegals, not attorneys. The court does *not* find this argument persuasive. Defendants failed to identify what entries they categorized as paralegal time (other than the 4.2 hours of intake time discussed above) in their opposition points and authorities.

Defendant contends that Plaintiff should not be awarded the 4 hours spent preparing this motion because Plaintiff's counsel failed to meet and confer with defense counsel to first explore resolution of their fees and costs claim. The court does not find this argument persuasive. Defendant cites no authority that a meet and confer is required before filing a motion for attorney's fees and costs. In any event, the CCP 998 settlement offer accepted by Plaintiff on May 31, 2024, states:

> The fees and costs claimed by Plaintiff's counsel may be resolved by the Court, upon formal noticed motion to the Court, to be set on a date mutually agreeable to the Court, and to both parties. Plaintiff shall be deemed the prevailing party in any such fees/costs motion, and such fees/costs shall be determined by the Court.

Plaintiff has provided itemized billing records showing the reasonable amounts of time incurred preparing this motion.

In addition, Defendant disputes the anticipated 5.5 hours for prospective time that will be spend responding to this opposition and attending a hearing relative to the motion. Plaintiff's reply papers show that the reply took 3.4 hours to draft, edit and finalize and that the accompanying opposition to the declaration of Keven Tully took 0.4 hours to complete. (See Reply, p. 12, Decl. of Christopher Turner, ¶ 4.) The court finds that these 3.8 hours incurred were reasonable. The court reduces the 5.5 hours requested in the initial papers by 1.7 hours because it is posting a tentative ruling and a hearing may or may not be requested by the parties.

The court reviewed Plaintiff's counsel's itemized billing records in the moving papers, the declaration of Plaintiff's counsel, Michael Saeedian, the declaration of Defendants' counsel, and the reply declaration of Christopher Turner (and the arguments by both sides) and finds that (56.1 minus 1.7 for) a total of **54.4 hours** incurred by Plaintiff's counsel were reasonable and necessary for this litigation.

Case complexity. There were no special or complex issues raised by this lemon law case. The matter was simple and routine. The law firm handing this case is called "the Lemon Pros, LLP." They are experts in this area.

Staffing. Plaintiff's counsel staffed 5 different billers on this case. However, two of the billers, Stefany Montoya had only 0.3 hours and Sergio Aivazov had 0.9 hours, respectively. Accordingly, it was primarily staffed by only 3 attorneys, and most of the hours were incurred by Jorge L. Acosta (who incurred 35.4 hours at attorney rate plus 4.6 at law clerk rate for a total of 40 hours). Michael Saeedian (the most experienced attorney) only incurred 7.3 hours and 5.5 (of the only 7.6) hours claimed by Christopher Urner (the next most experienced attorney) was for prospective time related to the present motion. (As discussed previously above, the court reduced the prospective time for Christopher Urner by 1.7 hours based on the actual time incurred on the reply papers.) Accordingly, the court does *not* find the case was overstaffed in the present action.

Hours spent. As discussed above the court finds that **54.4 hours** incurred by Plaintiff's counsel were reasonable and necessary for this litigation.

Billable rates. The court finds that "the prevailing rate in the community for comparable professional services" is **$350 per hour** for Michael Saeedian, **$300 per hour** for Christopher Umer and **$200 per hour** for Jorge L. Acosa, Stefany Montoya and Sergio Aivazov. In making this determination, the court considered the experience, skill and reputation of the attorney requesting fees. The rates charged by Plaintiff's counsel were too high for this case in Santa Clara County. Each side points to cases where courts have accepted or rejected Plaintiff's billing rates. Those rates awarded in other cases are *not* binding on this court. Each trial court is independent and is tasked with making that assessment for each case. Here the court finds the billing rates requested by Plaintiff's counsel high in this community (Santa Clara County) for comparable professional services in this type of case.

Based on this analysis, the court awards reasonable attorney's fees of **$12, 200** based on the following:

7.3 hours of Michale Saeedian's time at $300 per hour for a total of $2,190.
[7.6 minus 1.7 equals] **5.9** hours of Christopher Urner's time at $300 per hour for a total of $1,770.
35.4 hours of Jorge L. Aosta's time at $200 per hour for a total of $7,080.
0.3 hours of Steffany Montoya's time at $200 per hour for a total of $60.
0.9 hours of Sergio Aivazov's time at $200 per hour for a total of $180.
4.6 hours of Jorge L. Acosta (law clerk rate) at $200 per hour for a total of $920.

These amounts total $**12,200** for the reasonable attorney's fees incurred in this action. In addition, Plaintiff reasonably incurred costs in the amount of $1,240.

Defendants' Objections to Evidence

Defendants' objections to the declaration of Kevin Tully, Esq. in opposition to this motion (filed 10/24/2024) are OVERRULLED.

Conclusion/Order

Plaintiff's motion for attorney's fees pursuant to Civil Code section 1794(d) in the amount of $22,978.50 is GRANTED IN PART. Under the "loadstar" method, Plaintiff's reasonable attorney's fees of **$12,220** are GRANTED.

In addition, Plaintiff's motion for costs pursuant to Civil Code section 1794(d) in the reasonable amount of $**1,240.99** are GRANTED.

Defendants FORD MOTOR COMPANY and SUNNYVALE FORD shall pay these amounts (which total **$13,460.99)** to Plaintiff within fifteen (15) days of this order.

The court will prepare the order.

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Calendar Line 8

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Calendar line 9

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Calendar line 10
Case Name: J. Ascencion Caderon, et al. vs Bhula m. Patel, et al.
Case No..: 1997-1-CV-764650

Motion of Plaintiffs J. Ascencion Calderon and Mabiela R. Calderon ("Plaintiffs) to enforce settlement/status conference.

Plaintiffs purchased certain property from defendants Bhula M. Patel and Vanita Patel ("Defendants") which is located at 1620 Story Rd., in San Jose, California. Due to massive petroleum contamination of the property Defendants were required to commence the remediation of the property by order of this court.

This court continues to retain jurisdiction to enforce the settlement agreement by court order.
The matter is here for motion to enforce settlement/status conference for the parties to report on the progress of the remediation ordered by the court.

The court has reviewed the parties' joint status conference statement, the declaration of Edward A. Kraus (Plaintiffs' counsel) and the declaration of Ladd Cahoon (Defendants' counsel) filed 10/24/2024. A key Corrective Action Plan is set to be uploaded by November 15, 2024, which will inform the next steps.

Accordingly, **the court GRANTS the parties' request to continue this motion/status conference until Thursday January 9, 2025, at 9am in Dept. 3** to allow the parties the opportunity to evaluate whether Defendants are complying with their obligations to remediate the property as required by the Court's order and the Order attendant to this motion to enforce.

The court instructs the parties to meet and confer and submit up to 5-page brief at least 10 calendar days prior to the next hearing detailing the progress made at meet and confer.

The court will prepare the order.

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Calendar line 11

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