SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2201507

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: DONNIE MARQUEZ, ET AL and DEFENDANT: PEET'S COFFEE	

NATURE OF PROCEEDINGS: MOTION – OTHER: FINAL APPROVAL HEARING

RULING

The unopposed motions of Plaintiffs for final approval of class-action and PAGA settlement, and for an award of attorney's fees, are both **GRANTED**.

The court confirms the findings from its October 8, 2024 Order Granting Preliminary Approval that the requirements for class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representative are typical of those of the class; and (c) the named representative can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4th 224, 240.)

After Court-approved notice, no party has objected to the settlement and no class member has requested to opt out.

Accordingly, the Court finally and unconditionally approves the gross settlement amount, the service awards to each of the class representative, and the expenses of the settlement administrator. The Court has reviewed class counsel's request for attorney fees and expenses and finds that the amount request is fair and reasonable under California law. The Court also approves the amounts allocated to resolve all PAGA claims.

Plaintiffs are directed to meet and confer with counsel for Defendant and submit a proposed order for the Court's signature.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for February, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2203536

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ALBA CECILIA GARCIA ARCHILA vs. DEFENDANT: CHRIS COLPITS, ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendants Chris Colpitts and Carolyn Colpitts' (collectively "Defendants") Motion for Summary Judgment is **GRANTED**.

Background

This case arises out of a workplace injury suffered by plaintiff Alba Cecilia Garcia Archila ("Plaintiff") on or about September 19, 2022 (the "Subject Accident"), while employed by Defendants. (Undisputed Material Fact ("UMF") No. 1.) Defendants are the insureds under an insurance policy issued by Bankers Standard Insurance Company which provides workers' compensation coverage. (UMF No. 4.) Plaintiff made a claim for workers' compensation benefits against Defendants arising out of the Subject Accident under the insurance policy issued by Bankers Standard Insurance Company. (*Id.*, No. 5.) On December 18, 2023, Plaintiff's claim for workers' compensation benefits against Defendants under the insurance policy issued by Bankers Standard Insurance Company was accepted. (*Id.*, No. 6.) Plaintiff filed a workers' compensation case against Defendants and Bankers Standard Insurance Company, administered by ESIS, Inc., with the State of California, Division of Workers' Compensation, Workers' Compensation Appeals Board, Case No. ADJ18706306. (*Id.*, No. 8.) Plaintiff's claim for workers' compensation benefits against Defendants and Bankers Standard Insurance Company, under the insurance policy issued by Bankers Standard Insurance Company, was resolved in June 2024 via the Order Approving Compromise and Release entered in the workers' compensation case filed by Plaintiff. (*Id.*, No. 9.)

Evidentiary Objections

Defendants' Objections to the Hashin Declaration Nos. 1-5 are OVERRULED.

Legal Standard

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "[I]f all the evidence submitted, and all inferences reasonably deducible from the evidence and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law," the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the party does so, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant ... has met that burden, the burden shifts to the plaintiff... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Med. Ctr.* (2008) 159 Cal.App.4th 463, 467.)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Avivi, supra*, 0159 Cal.App.4th at p. 467; see also Code Civ. Proc., § 437c, subd. (c).)

Discussion

Defendants move for summary judgment on the grounds that Plaintiff's sole cause of action for general negligence is barred by the workers' compensation exclusivity rule. The Workers' Compensation Act provides the exclusive remedy for an injury sustained by an employee in the course and scope of employment. (Lab. Code, §§ 3600, subd. (a), 3602, subd. (a); *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 813.) The rule is based on the "presumed 'compensation bargain"' in which, in exchange for limitations on the amount of liability, the employer assumes liability regardless of fault for injury arising out of and in the course of employment. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16.) The compensation bargain encompasses both psychological and physical injury arising out of and in the course of the employment. (Lab. Code, §§ 3600, subd. (a), 3208.3.)" (*Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 105.)

Defendants' undisputed material facts demonstrate that Plaintiff filed a workers compensation claim against them over the Subject Accident, was paid on that claim, and ultimately executed a Compromise and Release in the worker's compensation case. (UMF Nos. 1-9.) Plaintiff responds "Undisputed" to each of these facts. (See Plaintiff's Separate Statement in Opposition to Motion.) Thus, Defendants have made a prima facie showing that the workers' compensation exclusivity rule applies. The burden therefore shifts to Plaintiff to demonstrate the existence of a triable issue.

Plaintiff argues that Defendants failed to comply with Labor Code Section 5401, which requires an employer to provide a claim form and notice of potential eligibility for benefits within one working day of receiving notice or knowledge of the employee's injury. Plaintiff argues Defendants did not provide any notice to Plaintiff. However, Plaintiff does not provide any authority that the effect of the failure to give timely notice of eligibility would somehow exempt Plaintiff from the workers' compensation exclusivity law. When an employer with knowledge or notice of a work-related injury fails to inform the injured worker of his or her compensation rights, to the worker's prejudice, the statute of limitations for seeking benefits is tolled until the worker learns of those rights." (*Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 35 (citations omitted).) "The employer who fails to comply with the duty to provide a claim form would thus ordinarily also fail to provide the notice of potential eligibility and would .... suffer tolling of the limitation period. (*Id.*) As such, any failure to abide by the statutorily required notice does not create a triable issue of material fact.

Next, Plaintiff argues Defendants are estopped from arguing the exclusivity rule because of their failure to provide notice and due to their failure to identify the worker's compensation policy in their discovery responses. However, as discussed above, the lack of notice did not remove Plaintiff from the workers' compensation scheme nor did the failure to identify the policy prevent Plaintiff from making a workers' compensation claim and entering into a compromise and release of said claim. (See UMF Nos. 1-9.) This conclusory argument fails to create a triable issue of material fact. Finally, the Court has reviewed the Additional Material Facts ("AMF") submitted by Plaintiff and determines that none create a triable issue of material fact. (See AMF Nos. 1-13.) Plaintiff has failed to carry her burden and Defendants are therefore entitled to judgment as a matter of law.

Plaintiff argues that she should be allowed to amend her Complaint to "plead additional facts" if the Court intends to grant the motion. However, she fails to identify any such "additional facts," fails to provide a proposed amended complaint, and fails to state how amendment could cure the workers' compensation exclusivity issue. The request is abstract and unsupported. It is therefore denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2300720

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ASHWIN CHERIYAN vs. DEFENDANT: SIDE, INC., ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – GOOD FAITH SETTLEMENT
2) MOTION – LEAVE

RULING

Chelsea Lindman and Pacific Union International, Inc. dba Compass, Inc.'s motion for determination of good faith settlement is **GRANTED.** The motion for leave to file a First Amended Cross-Complaint by Brendan Quinlan, Angela Quinlan, and Brendan Quinlan and Angela Quinlan as Trustees of the Brendan Quinlan and Angela Quinlan Trust dated 9/15/2017, is **DENIED.**

Procedural Background

On May 3, 2023, Plaintiff Ashwin Cheriyan filed his First Amended Complaint against Brendan Quinlan, Angela Quinlan, Brendan Quinlan and Angela Quinlan as Trustees of the Brendan Quinlan and Angela Quinlan Trust dated 9/15/2017 (collectively, "Quinlan"), Side, Inc. ("Side"), Own PM Corporation ("Own PM"), and Wilson Leung ("Leung"). Plaintiff alleges that he purchased the property at 40 De Burgh Avenue in 2021 from DKV Home Solutions LLC ("DKV") and First Seed Properties, LLC ("First Seed"). First Seed's members are Joaquin Angbengco Marquez, Ryan M. Marquez and Corazon M. Marquez, and DKV's members are Rene Anies, Royce Anies, and Catalina Hughes. Defendants Side, Own PM and Leung were the listing agents for the 2021 transaction. First Seed purchased the property from Quinlan in 2019.

Plaintiff's First and Second Causes of Action for fraud against Quinlan alleged that Quinlan knew about significant landslide risks and the need for remediation and protective measures through reports by David Olnes but concealed these facts in the 2019 sale to First Seed. Plaintiff's Third Cause of Action against Side, Own PM and Leung alleged negligence for failing to disclose material facts.

On June 16, 2023, Side and Leung filed a Cross-Complaint against First Seed, DKV, Chelsea Lindman ("Lindman"), and Pacific Union International, Inc. dba Compass, Inc. ("Compass"), asserting causes of action for equitable indemnity, comparative indemnity and comparative contribution, equitable contribution, declaratory relief, and comparative negligence. Lindman and Compass represented Plaintiff in his purchase of the property in 2021 from First Seed and DKV.

On December 11, 2023, First Seed filed a Cross-Complaint against Side and Leung for indemnity and contribution.

Plaintiff filed a Second Amended Complaint on March 14, 2024, adding DKV, First Seed, Joaquin Angbengco Marquez, Ryan M. Marquez, Corazon M. Marquez, Rene Anies, Royce Anies, and Catalina Hughes as defendants. The Second Amended Complaint adds alter ego allegations regarding First Seed and DKV and their members, as well as causes of action for fraud, negligent misrepresentation, and breach of contract against DKV, First Seed and their members. The Second Amended Complaint also includes causes of action for fraud against Quinlan and negligence against Side, Own PM and Leung.

On April 16, 2024, Quinlan filed a Cross-Complaint against Lindman, Compass, DKV and First Seed for equitable/comparative indemnity and equitable/comparative contribution.

On May 24, 2024, DKV, First Seed, Joaquin Angbengco Marquez, Ryan M. Marquez, Corazon M. Marquez, Rene Anies, Royce Anies, and Catalina Hughes filed a Cross-Complaint against Side, Leung, Brendan Quinlan and Angela Quinlan for equitable indemnity, comparative indemnity and comparative contribution, equitable contribution, declaratory relief and comparative negligence.

I. Motion for Good Faith Settlement

Lindman and Compass (the "Compass Defendants") move for determination of good faith settlement following a settlement agreement they reached with Plaintiff in November 2024. Pursuant to the settlement agreement, the Compass Defendants agree to pay Plaintiff $290,000 in exchange for a general release and dismissal with prejudice. They request that the Court dismiss Quinlan's Cross-Complaint against them as well as the Cross-Complaint of Side and Leung.

Quinlan has filed an Opposition to the motion, as well as a motion to amend their Cross-Complaint (discussed below). Side and Leung have not filed any Opposition.

A. Standard

Code of Civil Procedure Section 877.6 provides in part:

> (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the

> manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced . . .
>
> (b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
>
> (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.
>
> (d) The party asserting the lack of good faith shall have the burden of proof on that issue . . .

(Code Civ. Proc. § 877.6.)

Although the party asserting the lack of good faith has the burden of proof on that issue (Code Civ. Proc., § 877.6(d)), where the application is contested, as here, the settling party must make a prima facie showing of all the *Tech-Bilt* factors, either through the moving papers or in counter-declarations. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1350, n. 6; *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261-1262; Edmon & Karnow, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶ 12:872.) The principal *Tech-Bilt* factors include: a rough approximation of the plaintiff's total recovery and the settlor's proportionate liability; the amount paid in settlement; the allocation of the settlement proceeds among plaintiffs; a recognition that a settlor should pay less in settlement than he would if he were found liable after trial; settlor's financial condition and insurance policy limits; and existence of collusion, fraud or tortious conduct. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499; *Mattco Forge,* Cal.App.4th at p. 1349.) "[A] determination as to whether a settlement is in good faith must be left to the discretion of the trial court." (*Tech-Bilt*, 38 Cal.3d at p. 502.)

B. Factual Background

1. The Compass Defendants' Showing

When Quinlan owned the property, it consulted with a geotechnical engineer, David Olnes, P.E., to assess the stability of the lot for a planned remodel/addition. Mr. Olnes prepared three reports exclusively for Quinlan on March 16, 2016, April 27, 2016, and June 6, 2017. (Declaration of Liza Milanes ("Milanes Decl."), ¶8 and Exh. C.) The third report, dated June 6, 2017, with a re line of "Second Geotechnical Investigation Landslide Remediation," discussed "upper" slide on

the slope above the access road immediately west of the existing house and a much larger "lower" slide that was reactivated below the access road and lower cul-de-sac. For the upper slide, Mr. Olnes recommended a stout 6-foot tall and 50-feet long retaining wall along the upslope edge of the access road that could be designed as a soldier pile structure consisting of steel I-beam posts set in drilled piers. For the lower slide, Mr. Olnes recommended as a minimal treatment a line of approximately 20 "massive" piers approximately 150 feet long inter-connected with a large grade beam along the downslope edge of the roadway. (*Id.*, ¶9 and Exh. C.) Quinlan began communicating with Glen Williams, a real estate agent at McGuire Real Estate, and told him that they had soil reports for the property and that it was "really a land sale." (*Id.*, ¶¶10, 11 and Exh. E.) Quinlan emailed a link with architectural plans and "the soils/geotech report on the back road slide with remediation plan" to Mr. Williams on November 2, 2017. (*Id.*, ¶12 and Exh. F.) Quinlan completed a CAR Transfer Disclosure Statement ("TDS"), disclosing their awareness of the landslide issues, as well as a CAR Seller Property Questionnaire ("SPQ") disclosing other issues on the property. (*Id.*, ¶¶13, 14 and Exhs. G and H.)

In December 2017, Mr. Williams and Lynn Reid, who was co-listing the property with Mr. Williams, moved from McGuire Real Estate to Compass and took the listing with them. Quinlan entered into a new residential listing agreement ("RLA") with Compass in December 2017 for a listing price of $1.695M. (*Id.*, ¶15 and Exh. I.) After Quinlan did not receive a single offer, it took the property off the market in mid-2018. Quinlan continued to discuss landslide remediation measures with Mr. Olnes and contractor Millsap, Degnan & Associates ("Millsap"). Mr. Olnes sent an email to Quinlan on January 26, 2019 describing a recommended wall and stating among other things: "We would need to make it clear to future buyers that the minimal treatment described above would not prevent the slide mass below the wall from continuing to move during periods of heavy rains." (*Id.*, ¶16 and Exh. J.)

Quinlan sold the property to First Seed in 2019. Quinlan did not disclose to First Seed almost all of the disclosures it made in the 2017 TDS and did not provide First Seed with emails from engineers or architects, including Mr. Olnes' January 26th email. (*Id.*, ¶¶18, 19 and Exh. K.) Mr. Quinlan testified that he gave two of Mr. Olnes' reports to First Seed but he could not recall any specifics. (*Id.*, ¶20 and Exh. K.) First Seed's PMK testified that Mr. Quinlan never provided the reports. (*Id.*, ¶21 and Exh. L.) In lieu of providing the required seller disclosures under Civil Code Section 1102, Quinlan had an attorney prepare an "as is" addendum which specifically disclaimed any representations and warranties regarding landslides. (*Id.*, ¶22 and Exh. M.)

First Seed sold the property to Plaintiff in 2021. Lindman of Compass represented Plaintiff in the sale. Lindman reviewed the MLS history for the property and learned it had been previously listed by Mr. Williams and Ms. Reid, but she did not reach out to them to learn why as it is not standard practice to do so. (*Id.*, ¶23 and Exh, N.)

Plaintiff has not responded to discovery from Quinlan regarding the total amount of damages he is seeking from each party. (*Id.*, ¶25.)

2. Quinlan's Showing

On February 14, 2018, Quinlan sent an email to Mr. Williams and Ms. Reid attaching documents from Mr. Olnes. (Declaration of Brendan Quinlan, ¶2 and Exh. A.) Compass' original discovery

responses denied that Compass had Mr. Olnes' reports in its possession. The responses remained unchanged at the time Plaintiff and the Compass Defendants signed their settlement agreement, despite Quinlan's counsel's inquiries regarding the completeness of Compass' discovery responses and document production. (Declaration of Jason Skaggs ("Skaggs Decl."), ¶¶5, 6, 16 and Exhs. 4 and 5.) On December 10, 2024, Compass produced a number of documents which included Mr. Quinlan's February 14, 2018 email to Ms. Reid and Mr. Williams with attachments. (Id., ¶7 and Exh, 7.)

Plaintiff's counsel has verbally told Quinlan's counsel that Plaintiff's damages are in the general range of $600,000-700,000. (Id., ¶13.)

C. Discussion

1. Rough approximation of Plaintiff's total recovery and the Compass Defendants' proportionate liability

"In the end, '[t]he ultimate determinant of good faith is whether the settlement is grossly disproportionate to what a reasonable person at the time of settlement would estimate the settlor's liability to be.' '[A] 'good faith' settlement does not call for perfect or even nearly perfect apportionment of liability. In order to encourage settlement, it is quite proper for a settling defendant to pay less than his proportionate share of the anticipated damages. What is required is simply that the settlement not be grossly disproportionate to the settlor's fair share.'" (*PacifiCare of California v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1465 [citations omitted].) The party asserting lack of good faith, who has the burden of proof on the issue, should be permitted to demonstrate, if it can, that the settlement is so far "out of the ballpark" as to be inconsistent with the objectives of Section 877.6. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 960.)

The Compass Defendants argue that the amount they have agreed to pay Plaintiff represents 81% of Millsap's 2019 estimated cost ($357,590.87) for remediation work and is a reasonable estimate of the Compass Defendants' proportionate share of potential liability for any indemnity or contribution claims. They argue that this is more than a reasonable approximation of their fair share of potential liability because, at most, they are accused of failing to uncover Quinlan's earlier disclosures regarding the landslides. Further, Quinlan's fraud in failing to disclose the landslide issues in the sale to First Seed overwhelms any potential liability of the Compass Defendants.

Quinlan argues that the settlement amount is not within the reasonable range required by Section 877.6 because it is less than half of Plaintiff's estimated $600,000-700,000 claim, and the Compass Defendants are solely liable for Plaintiff's damages based on their possession of the Olnes report ever since Quinlan gave it to agents Reid and Williams in 2018. As Plaintiff's agent, Quinlan argues, Compass had a fiduciary duty to disclose that information to Plaintiff before he purchased the property in 2021. Quinlan cites to *Horlike v. Coldwell Banker* (2016) 1 Cal.5th 1024, in which the court found that a broker's duty to its client to disclose information in a particular transaction extends to information about that transaction known to its agents, as the brokerage is presumed to be aware of facts known to its agents. Quinlan also argues that Plaintiff's indirect fraud theory against it is without merit because the Compass agents'

knowledge of the landslide issues is imputed to Plaintiff, and Mr. Quinlan testified that he gave the Olnes report to First Seed (which First Seed denies). Finally, Quinlan contends that the Compass Defendants' reliance on the remediation estimate to justify their payment is misplaced because the estimate is six years old and construction costs have since skyrocketed.

There are a number of factors that are uncertain in this analysis. Plaintiff's claimed damages are uncertain as Quinlan presents only a $600,000-700,000 value he states was given to him verbally by Plaintiff's counsel. Further, the cost to remediate at this stage could be higher than the cost estimated in 2017, which is the number the Compass Defendants use to justify their settlement amount. The potential liability of both the Compass Defendants and Quinlan are also uncertain. While they both argue that they have little to no liability, neither has proven this to be the case and both have some potential exposure to Plaintiff. While Quinlan relies on *Horlike, supra*, that case is distinguishable in that it involved a broker's knowledge of facts with respect to the same transaction. Here, the relevant facts pertained to a transaction that happened years before the one in which Plaintiff purchased the property. The parties do not cite any case law addressing an agent's duty to discover and disclose facts that were known to a different agent from the same broker in a different transaction several years prior.

The Court need not determine the exact extent of the Compass Defendants' liability here, as the relevant inquiry is whether the settlement amount is within the "ballpark". The Court finds that it is. The record reflects that both Quinlan and the Compass Defendants may have some liability to Plaintiff – the Compass Defendants for failing to discover and disclose the Olnes reports and landslide conditions to Plaintiff, and Quinlan for failing to disclose the reports and landslide conditions to First Seed thereby triggering liability under *Geernaert v. Mitchell* (1995) 31 Cal.App.4th 601. Even if the Compass Defendants breached their fiduciary duty to Plaintiff, Quinlan could have also been the cause of some or all of Plaintiff's damages under *Greernaert*.[1] The Compass Defendants are offering to pay slightly less than the verbal estimate of damages Quinlan's counsel states was provided by Plaintiff's counsel. This is within the ballpark of the Compass Defendants' potential proportionate liability.

2. Recognition that a settlor should pay less in settlement

In light of the strong public policy in support of settlements, courts have acknowledged that a settlor should pay less in settlement than he would if it were found liable after a trial. (See *Tech Bilt, Inc.*, 38 Cal.3d at 499; see also *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) This factor weighs in favor of granting the Compass Defendants' motion.

3. Financial condition and insurance policy limits

The Compass Defendants argue that this factor is irrelevant because the amount of their payment has nothing to do with their financial condition or availability of insurance. Quinlan argues that this factor weighs against granting the motion because the Compass Defendants have a $10 million insurance policy. However, a settling party does not need to submit evidence of its

[1] Quinlan's reliance on Plaintiff's deposition testimony – that he would not have bought the property if he had known about the landslide issues – supports a finding of liability against Quinlan to the same extent it does against the Compass Defendants.

financial condition or liability insurance policy limits for a settlement to be found in good faith. (*Cahill*, 194 Cal.App.4th at p. 968.) This factor usually comes into play in "cases where a defendant is insolvent and/or lacks insurance, and courts will find a settlement with a payment of little or no money to be in good faith. In such cases, the defendant will be unable to pay much, if anything, to both the plaintiff *and* the defendants that have cross-claims for indemnity, and there is no logical reason to deny a good faith settlement motion, even if the defendant is paying far less than its proportionate share of liability." (*TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 168 [citations omitted] [emphasis in original].) That situation does not exist here. This factor neither weighs in favor nor against granting the motion.

4. Collusion, fraud or other tortious conduct

The Compass Defendants argue there is no evidence of collusion, fraud or other tortious conduct. The settlement was reached after a mediation with Judge Lynn Duryee (ret.), and after extensive discovery. Quinlan argues there is evidence of wrongful conduct because the Compass Defendants produced evidence they had the reports only after they reached a settlement. The Court does not find this to be a factor weighing against a determination that the settlement is in good faith as the Compass Defendants' failure to produce the documents earlier appears inadvertent. In any event, this evidence is part of the record before the Court when ruling on this motion so there is no prejudice to Quinlan.

5. Other factors

The Compass Defendants argue that Plaintiff's only cause of action against Quinlan is for fraud. If Quinlan is found liable, therefore, it would only be for fraud, and Quinlan cannot obtain indemnity for its conduct from other parties who may have been negligent only. The Compass Defendants have not been sued for any intentional tort. Accordingly, the Compass Defendants argue, Quinlan cannot obtain indemnity from the Compass Defendants in any event. Quinlan argues that the Compass Defendants' breach of fiduciary duty to Plaintiff amounts to fraud, an intentional tort, and therefore they cannot avoid indemnity or contribution to Quinlan. The Court does not consider this factor in its determination as it is unclear what claim, if any, Plaintiff would assert against the Compass Defendants. The Compass Defendants have not been named as a defendant in Plaintiff's Second Amended Complaint. The Court decides this matter based solely on the *Tech-Bilt* factors discussed above.

II. Motion for Leave to File First Amended Cross-Complaint

Quinlan moves for leave to file a First Amended Cross-Complaint to add Mr. Williams, Ms. Reid, Kathy Mehringer and Compass California II, Inc. as cross-defendants and to add allegations regarding Mr. Williams and Ms. Reid's failure to maintain a compliant broker file and Ms. Lindman's failure to contact Mr. Williams and Ms. Reid. The proposed First Amended Cross-Complaint would also add causes of action for negligence, breach of fiduciary duty, and unfair business practices against all Compass parties, except Ms. Lindman, based on the alleged failure to maintain a compliant broker file.

A. Standard

Motions for leave to amend are directed to the sound discretion of the court. (See Code Civ. Pro. § 473(a)(1) ["The court may, in furtherance of justice, and on any such terms as may be proper, allow a party to amend any pleading . . ."].) "This discretion should be exercised liberally in favor of amendments, for judicial policy favors resolution of all disputed matters in the same lawsuit." (*Kittredge Sports Co. v. Sup. Ct.* (1989) 213 Cal.App.3d 1045, 1047.)

Although generally "leave to amend should be liberally granted . . . , unwarranted delay justifies denial of leave to amend." (*Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 739.) "[E]ven if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial. The cases indicate that the denial may rest upon the element of lack of diligence in offering the amendment after knowledge of the facts . . . ." (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939-940.) Further, "the liberal policy favoring leave to amend applies only [w]here no prejudice is shown to the adverse party. Prejudice exists where the proposed amendment would require delaying the trial, resulting in added costs of preparation and increased discovery burdens." (*Miles*, 56 Cal.App.5th at p. 739 [citations and internal quotations omitted]; *Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 849 ["[d]enying a request to amend a complaint may be appropriate when an unreasonable delay in seeking amendment prejudices the defendant. [Citation.] Prejudice can include the time and expense associated with opposing a legal theory that a plaintiff belatedly seeks to change."].)

B. Discussion

Quinlan argues that it only recently discovered Mr. Williams and Ms. Reid's failure to maintain a compliant broker file through the Compass Defendants' supplemental discovery responses and the deposition testimony of Ms. Mehringer in November 2024, and that it discovered Mr. Lindman's failure to communicate with Mr. Williams and Ms. Reid about the listing during her deposition in September. Quinlan further argues that no trial date has been set, discovery is ongoing, and no party will be prejudiced if it were allowed to amend its Cross-Complaint.

The Compass Defendants oppose Quinlan's motion on the ground that the new claims are just disguised indemnity and contribution claims, and Quinlan has known about the facts underlying its new claims since April 2024 when it produced the broker file which did not include the Olnes reports or 2017 TDS. The Compass Defendants also responded to Quinlan's RFAs in May 2024 and August 2024 denying these documents were in the broker file.

The Court denies Quinlan's motion. The First and Second Causes of Action for indemnity and contribution are barred based on the Court's ruling on the Compass Defendants' motion for determination of good faith settlement. (Code Civ. Proc. § 877.6(c).) The new causes of action for negligence and breach of fiduciary duty also seek to recover amounts Quinlan may have to pay Plaintiff in this case. (See Proposed First Amended Cross-Complaint, ¶¶25, 29.) To the extent they seek this relief, these causes of action are barred under Section 877.6(c) as well. (See *Gackstetter v. Frawley* (2006) 135 Cal.App.4th 1257, 1274 ["a party may not avoid a section 877.6 motion by providing different labels for what are in reality indemnity or contribution claims"]; *Cal-Jones Properties v. Evans Pacific Corp.* (1989) 216 Cal.App.3d 324, 328.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for February, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2301286

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: JAMES SCHAFER, ET AL vs. DEFENDANT: VERONICA SMITH, ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE TO AMEND COMPLAINT

RULING

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002246

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: GUADALUPE VERTIZ vs. DEFENDANT: CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

Defendant's motion to set aside default and grant leave to defend the action is **GRANTED**. Defendant is granted five (5) days leave from the date of the order to file an answer or otherwise respond to the complaint.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002837

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MARCO RANGEL-ROJAS, AN INDIVIDUAL vs. DEFENDANT: JOHN CAPPIELLO, AN INDIVIDUAL	

NATURE OF PROCEEDINGS: 1) MOTION – RELIEVE COUNSEL
2) CASE MANAGEMENT CONFERENCE

RULING

In light of the substitution of counsel filed with the Court on January 23, 2025, Attorney Brian Jacobson's motion to be Relieved as Counsel for Plaintiff is moot. The parties are to appear on the hearing date for a case management conference.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/18/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003320

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: PATRICIA BALDWIN vs. DEFENDANT: CITY OF NOVATO, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) MOTION – STRIKE
3) MOTION – STRIKE

RULING

Defendant City of Novato's ("the City") demurrer to Plaintiff Patricia Baldwin's ("Plaintiff") Second Amended Complaint ("SAC")[1] is **OVERRULED**.

The City's motion to strike is **GRANTED without leave to amend**. (Code Civ. Proc., § 436; see *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

Defendant Lorraine Sullivan's ("Sullivan"; together with the City, "Defendants") motion to strike is likewise **GRANTED, but with leave to amend**. (*Ibid.*)

Background

This is a dispute over flood damage to Plaintiff's property. Plaintiff owns a home at 2537 Center Road in Novato. (SAC, ¶ 1.) The SAC alleges that the City owns, operates, and maintains a concrete drainage ditch ("V-ditch") running on City-owned property behind and along Plaintiff's back fence. (*Id.* at ¶ 2.) The same V-ditch allegedly runs across Sullivan's property. (*Id.* at ¶ 3.) Plaintiff claims that Sullivan "owns and maintains a fence that directly crosses the drainage ditch in violation of applicable laws." (*Ibid.*)

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[1] At the City's request, the Court takes judicial notice of the SAC and the Claim Form Plaintiff submitted to the City (Slentz Dec., Ex. A). (Evid. Code, § 452, subds. (c), (d); *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1.) The City's requests for judicial notice of the City's Notice of Return Without Action (Slentz Dec., Ex. B) and Notice of Rejection (*id.* at Ex. D) are likewise granted. (Evid. Code, § 452, subd. (c); see also *Citizens' Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 465, fn. 2 [taking judicial notice of official acts of a city under Evidence Code, section 452, subdivision (c)].) The City's request for judicial notice of the letter Plaintiff sent to the City on April 5, 2024 (Slentz Dec., Ex. C) is denied. This letter is not part of the claim Plaintiff served on the City, but merely a communication relating to the claim. None of the authorities the City cites support taking judicial notice of this document.

The SAC alleges that during January 2023, at a point upstream from Plaintiff's property, the V-ditch became clogged with dirt, debris, and vegetation. (SAC, ¶ 9.) During the same period, downstream from Plaintiff's property, Sullivan's fence, and material in and near the V-ditch around the fence, allegedly created a clogging hazard. (*Ibid.*) Plaintiff alleges that debris traveled from upstream and accumulated at these clogging hazards on Sullivan's property, creating a large pond behind Plaintiff's property and forcing debris and water onto her property. (*Id.* at ¶ 10.) City personnel responded to the flood, removing detritus from the City's V-ditch, clearing the portion of the ditch on Sullivan's property, and removing part of Sullivan's fence so that water would stop flowing onto Plaintiff's property. (*Id.* at ¶ 11.)

Plaintiff alleges that throughout January 2023, Defendants failed to maintain their respective properties and the V-ditch free of dirt, vegetation, and debris, and thereby caused water and debris to flood the area behind and on Plaintiff's property. (SAC, ¶ 12.) She claims that Defendants' actions caused damage to the entire length of her house along the back, a retaining wall, and a brick patio, among other features of her property, and caused Plaintiff to incur expenses in the amount of $86,310.84. (*Id.* at ¶¶ 15, 18.) In addition to these damages, Plaintiff seeks damages for pain and suffering. (*Id.* at ¶ 18.)

The SAC alleges that Plaintiff submitted a Claim Form to the City on December 21, 2023. (SAC, ¶ 17.) The City originally rejected it on timeliness grounds, but ultimately considered it. (*Ibid.*) The City formally rejected the claim on May 31, 2024. (*Ibid.*)

The SAC asserts claims for negligence, inverse condemnation, public nuisance, private nuisance, trespass, and premises liability. The City now demurs to the Third Cause of Action (public nuisance) only. Both Defendants concurrently move to strike portions of the SAC.

MOTIONS TO STRIKE

Legal Standard

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice.[2] (*Id.*, § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro*, *supra*, 63 Cal.App.4th 761, 768.)

Discussion

The City's Motion

The City requests that the Court strike portions of Paragraphs 18 and 31. The portion of Paragraph 18 consists of a request for "damages for pain and suffering" and for an award in a dollar amount that incorporates those emotional injuries. The portion of Paragraph 31 is an allegation of fact offered in support of Plaintiff's request for damages for pain and suffering.

[2] For this reason, the Court disregards the declaration Plaintiff submitted in opposition to all three motions at issue here. A party is not permitted to introduce evidence in connection with a demurrer or motion to strike. (See Code Civ. Proc., § 437, subd. (a); *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) This renders Sullivan's evidentiary objections to the declaration moot.

Before a plaintiff can maintain a lawsuit against a public entity, she must submit a written claim describing the alleged injury to the public entity. (See *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239; Gov. Code, §§ 945.4.) "[T]he 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." (*Nelson v. State of California* (1982) 139 Cal.App.3d 72, 79.)

The City argues that Plaintiff cannot recover for emotional distress because her written claim did not mention that she had incurred any personal injury or any damages for emotional distress. In her Claim Form, Plaintiff stated that she had incurred $64,621.72 in damages, attributable exclusively to remediating the physical damage to the property and to two weeks of missed work. (Slentz Dec., Ex. A, pp. 1, 10.) Asked in the Claim Form what "specific injuries, damage, [or] losses the claimant receive[d]," Plaintiff exclusively listed damage to property. (*Id.* at Ex. A, p. 2.) However, in her SAC, she requests $258,932.52 in damages and attributes only $86,310.84 of that to repair expenses, leaving a balance of $172,621.68 evidently attributable to pain and suffering. (SAC, ¶ 18.) The Court notes that $86,310.84 is exactly one third of $258,932.52. Plaintiff's SAC seeks treble damages based on emotional distress.

The purpose of the claim presentation requirement is not merely to "prevent surprise." (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455.) Instead, it is to "provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*Ibid.*; accord *Shelton v. Superior Court* (1976) 56 Cal.App.3d 66, 82.) The SAC's request for emotional distress damages triples the size of Plaintiff's ask on a basis she never mentioned in the Claim Form. The disparity is enough to significantly change the nature and scope of her claim, and as a result, the Claim Form did not sufficiently notify the City or provide it with enough information to make an informed decision about settlement.

Accordingly, the City's motion to strike is granted. Leave to amend is denied because the Court does not see any way for Plaintiff to replead her requests for emotional distress damages to adhere to the scope of her Claim Form. (See *Vaccaro, supra*, 63 Cal.App.4th 761, 768 [court should allow leave to amend only where there is a "reasonable possibility" that amendment could cure the defect].)

Sullivan's Motion

Sullivan moves to strike Plaintiff's requests for punitive damages.[3]

Civil Code, section 3294 provides that punitive damages are available "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice[.]" To state a claim for punitive damages, plaintiff must plead facts supporting the position that "defendant has been guilty of oppression, fraud, or malice." (See *Smith v. Superior Court* (1992) 10 Cal.App.4th

[3] Sullivan requests that the Court strike, among other things, "Paragraph 22 of the First Cause of Action for Negligence." The SAC is misnumbered and contains two Paragraph 22s. To be clear, Sullivan's motion relates to the second Paragraph 22, meaning the last numbered paragraph on Page 6 of the SAC. (See Cochrane Dec., ¶ 4 & Ex. B.)

1033, 1041; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166; see also Civ. Code, § 3294, subd. (a).) "Oppression" refers to "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Code Civ. Proc., § 3294, subd. (c).) "Fraud" refers to "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Ibid.*) "Malice" refers to "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (*Ibid.*)

Plaintiff alleges that Sullivan has a fence that is placed illegally (SAC, ¶ 3); left her fencing in place after a neighbor told her its placement was "illegal and dangerous" (*id.* at ¶ 14); and allowed debris to accumulate and form clogging hazards in the portion of the V-ditch near her fence, which resulted in water flowing onto Plaintiff's property and created conditions harmful to public welfare (*id.* at ¶¶ 9-12, 16, 29). The Court agrees that these allegations are insufficient to plead oppression, fraud, or malice. The allegation that Sullivan "acted . . . with oppression, fraud, [or] malice, or alternatively, in . . . conscious disregard of PLAINTIFF'S rights and safety" (*id.* at ¶ 22) is a legal conclusion unsupported by factual allegations and so can be disregarded. (See *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7 [parroting the language of the punitive damages statute is permissible only where sufficient facts are otherwise alleged to support the allegation of "oppression, fraud, and malice"].) Accordingly, Sullivan's motion is granted with leave to amend.

DEMURRER

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading (including those in any exhibit attached to the pleading) are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code. Civ. Proc., § 452.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian*, *supra*, 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

Discussion

The term "nuisance" is defined in relevant part to mean "[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property[.]" (Civ. Code, § 3479.) "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, § 3480.) "In determining whether something is a public nuisance, the focus must be upon whether an entire neighborhood or community or at least a considerable number of persons are affected in the manner and by the factors that make the thing a nuisance under Civil Code[,] section 3479." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1209.) The City argues that Plaintiff has not sufficiently alleged that anyone other than herself was affected by the flooding.

The SAC alleges that the conditions Defendants created "affected and threatened a substantial number of people within the general public," as "[t]he damaging effects of Defendants' maintenance of flood hazards and the ensuing threat of flooding affect the public at large." (SAC, ¶¶ 29-30.) It further alleges that these conditions "unreasonably interfere[] with the comfortable enjoyment" and "free use" not just of Plaintiff's property, but of properties belonging to "other residents of the 2500 block of Center Road." (*Id.* at ¶ 33.) This is consistent with Plaintiff's allegation that the V-ditch runs along Plaintiff's neighbors' back fences, as along her own. (*Id.* at ¶¶ 3, 9.)

The City says these allegations are improperly conclusory. The Court disagrees. At the demurrer stage, the allegations of the complaint are to be interpreted liberally. (*Teva Pharmaceuticals, supra*, 217 Cal.App.4th 96, 102.) Plaintiff's allegation that the condition affected properties belonging to "Plaintiff[] and other residents of" a city block, liberally interpreted, is roughly consistent with the idea that it affected a "considerable number of persons[.]" (Civ. Code, § 3480; *Beck Development Co., supra*, 44 Cal.App.4th 1160, 1209.) In *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, the Second District upheld a public nuisance claim against a demurrer based on allegations that the condition affected any guests of a single apartment complex while they were present at certain locations on the property. (169 Cal.App.4th 1540, 1548.) If that is enough people, then Plaintiff has alleged that enough people have been affected here.

The City also suggests that Plaintiff has not alleged that any other properties actually flooded. When Plaintiff alleges that the nuisance "unreasonably interferes with" and "obstructs the free use of" properties belonging to "other residents of the 2500 block of Center Road," she is alleging that other properties have been affected. (SAC, ¶ 33.) The allegations that Plaintiff and her affected neighbors are similarly situated with regard to proximity to the V-ditch (SAC, ¶ 3 ["Its course runs along the back sides of the fences of neighbors in Plaintiff's block (similar to Plaintiff's)"]), and that the threat to the public involves "flooding" and issues with "proper drainage" (*id.* at ¶ 30), support the idea that the others allegedly affected are "affected in the manner and by the factors that make the thing a nuisance[.]" (*Beck Development Co., supra*, 44 Cal.App.4th 1160, 1209.) Plaintiff has sufficiently alleged that properties other than her own flooded.

While Plaintiff's has not alleged the number of people affected and how they were affected with the degree of specificity the City would like, allegations of ultimate fact, e.g. "the condition 'affect[ed] a substantial number of people at the same time[,]'" (*Birke*, *supra*, 169 Cal.App.4th 1540, 1548) are generally permitted at the pleadings stage. (*Ibid.*) The Court reads the City to demand that Plaintiff plead evidentiary facts. She is not required to do that at this juncture so long as she pleads enough to apprise Defendants of the factual basis for her public nuisance claim, and she has done that. (*Id.* at pp. 1548-1549.)

"To state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (*Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 819.) The City argues that Plaintiff has not pleaded that the hazardous condition "affects at the same time an entire community or neighborhood, or any considerable number of persons" (Civ. Code, § 3480) with the particularity required of a tort claim against a government entity. If Plaintiff had merely alleged that "a lot of other people are affected," then the City might have a point, but Plaintiff has gone further than that. First, she describes what City-owned instrumentality is causing the flooding (the V-ditch) (SAC, ¶ 10), the mechanism causing that instrumentality to produce a hazardous condition (the City's failure to properly clear it) (*id.* at ¶¶ 12, 16), and why the condition is affecting her specifically (the V-ditch runs along her property line at the back of the property and is overflowing onto her property) (*id.* at ¶¶ 2-3, 10). She then alleges that her neighbors are similarly situated (the V-ditch runs adjacent to their properties as well) (*id.* at ¶ 3) and that both she and other residents of her block are experiencing interference with their use of their properties as a result of the conditions (*id.* at ¶ 33). The "who," "what," and "how" are present here. Plaintiff has complied with the particularity requirement.

Accordingly, the City's demurrer to the Third Cause of Action is overruled.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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