# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 07/24/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001668

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: NINA POSTOLOVSKAYA<br>and<br>DEFENDANT: DENNIS C. BIRKHIMER | |

NATURE OF PROCEEDINGS: 1) MOTION TO STRIKE
2) DEMURRER

RULING

The demurrer and motion to strike complaint filed by Defendant Dennis Birkhimer are continued to August 28, 2024, at 1:30 pm in Department H.

***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 July, 2024 is as follows:***
Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614
Meeting ID: 160 781 1385
Passcode: 082614

***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: 07/24/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002036

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: PETER MORGAN, ET AL<br>and<br>DEFENDANT: GARY ARMOR | |

NATURE OF PROCEEDINGS: MOTION – OTHER: JUDGMENT ON THE PLEADINGS

RULING

Plaintiff's motion for judgment on the pleadings is GRANTED with leave to amend. Plaintiff filed this motion for bad faith retention of security deposit and for breach of contract on February 13, 2024. Defendant answered the complaint on March 25, 2024. Plaintiff now moves for judgment on the pleadings on the basis that the answer fails to deny any of the allegations set forth in the complaint.

Notice of the motion was served on Defendant Gary Armor ("Defendant") and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that the opposing party has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

Plaintiff's motion is premised on the assertion that the complaint states facts sufficient to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense. (Code Civ. Proc. §438(c)(3)(A).) The court agrees that Plaintiff's complaint states causes of action against Defendant, and that Defendant's answer fails to set forth a defense.

In light of the above, the motion for judgment is granted with leave to amend. (Code of Civ. Proc. §438(h)(2).) Defendant shall have thirty (30) days from service of this order to file an amended answer.

**Any oral argument properly requested pursuant to local Rule 2.10B will be held on August 14, 2024 at 1:30 p.m. in Department H.**

***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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