SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV2202265

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: LAURA ALLEN, ET AL vs. DEFENDANT: JOSEPH MAHAVUTHIVANIJ, ET AL	

NATURE OF PROCEEDINGS: MOTION – TAX COSTS

RULING

The motion to tax costs by defendants Songsak Mahavuthivanij, an individual and trustee of the Songsak Mahavuthivanij Revocable Trust, Marilyn Mahavuthivanij, and Joseph Mahavuthivanij (collectively "Defendants") is **CONTINUED to January 14, 2025**. Plaintiffs Laura Allen, Steven Allen, Jr., Jimesha Thornton, and Lavonne Vaugh (collectively "Plaintiffs") are ordered to provide the Court with a conformed copy of the filed memorandum of costs at issue at least 16 court days prior to the continued hearing date.

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 December, 2024 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

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: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV2300675

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: THE NOVATO BUSINESS CENTER CONDOMINIUM OWNERS ASSOCIATION, INC. vs. DEFENDANT: BARBARA HUSAK	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM #1
2) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM #2
3) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM #3

RULING

This matter is before the Court on Defendant's motions to compel discovery. On October 28, 2024, Attorney Derek Howard was appointed to preside as Discovery Facilitator on the motions, pursuant to Local Rule 2.13D.

On November 22, 2024, Defendant filed a Declaration of Non-Resolution. The declaration, however, simply stated that counsel had received a notice of assignment of a facilitator and that there had been no resolution of the issues. Plaintiff did not file a declaration (although one was required under the local rules).

The Declaration of Non-Resolution that was filed provides insufficient information. It is not clear from the declaration whether the parties have met with the Discovery Facilitator and whether there was any progress reached on any of the disputes.

Therefore, the Court is ordering as follows:

To the extent that the parties have not yet met with the Discovery Facilitator, they are hereby ordered to contact attorney Howard **forthwith** to set up a time and place to discuss the discovery disputes.

Once the parties have met with the Discovery Facilitator (or if they have already done so), then they are hereby ordered to submit meaningful declarations of non-resolution detailing the dates of such meetings or conference with the Facilitator, a summary of the topics discussed, and a list of any agreements reached. Both Plaintiff and Defendant **shall** file a declaration containing this

information no later than **January 3, 2025. The hearing on the motions is continued to January 14, 2025 at 1:30 pm in Courtroom A.**

The Parties are hereby placed on notice that the failure to participate in good faith in the Court's Discovery Facilitator Program may result in the imposition of financial or other sanctions.

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: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000194

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MARINERS LANDING, LLC vs. DEFENDANT: CHERYL YANNOTTI FOLAND	

NATURE OF PROCEEDINGS: DEMURRER – SECOND AMENDED COMPLAINT

RULING

This matter is continued until December 17, 2024 at 1:30 pm in Courtroom A.

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: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000350

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: SARAH ELLISON vs. DEFENDANT: MARIN HEALTH MEDICAL CENTER, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) DEMURRER

RULING

The demurrer of defendant Zhe Chen ("Chen"), joined by defendants Marin General Hospital dba MarinHealth and Marin Healthcare District ("the Marin Health defendants") (collectively "Defendants"), to the first cause of action in the second amended complaint is **OVERRULED**.

Discussion

The court agrees that Plaintiff did not comply with the court's earlier order. The demurrers were to the first cause of action for negligence and the order granted Plaintiff leave to amend *that* cause of action to base it on different facts, if she were able. Because there were allegations in that cause of action that were not included in the second cause of action for professional negligence (i.e., ratification), the order granted Plaintiff leave to *add* allegations to the second cause of action. Instead, Plaintiff retained the negligence cause of action without amending and dropped the professional negligence cause of action.

As noted in the prior order, "...the allegations in the body of the complaint, not the caption, constitute the cause of action against the defendant. ..." (*Davaloo* v. *State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 418.) Therefore, whether Plaintiff calls her cause of action "negligence" or "professional negligence" is not relevant. Whether the cause of action is subject to MICRA provisions will be determined based on the allegations in the body of the complaint, not the caption. The negligence cause of action is based upon the same facts as was the professional negligence cause of action. Sustaining the demurrer based on noncompliance with the prior order thus would accomplish nothing other than requiring a new round of pleadings.

The uncertainty demurrer is barred by Code of Civil procedure section 430.41, subdivision (b). Additionally, "'"[d]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond."' '"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures."'" (*A.J. Fistes Corp.* v. *GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695, citations omitted.) Defendants can easily admit or deny the allegations. To the extent any ambiguity actually exists as to what cause of action Plaintiff is attempting to allege, this would the type of matter that could easily be clarified through discovery. The court notes here that the professional negligence cause of action included allegations that Chen's conduct was "little more than a ruse for Defendant CHEN to molest and sexually abuse and batter her" and that she did not "consent to sexual touching, penetration or other sexual abuse…" (FAC ¶21.) Defendants did not seem to find the professional negligence cause of action uncertain based upon those allegations. Finally, the argument that the cause of action needs to be amended to make clear it is for professional negligence does not show that Defendants cannot admit or deny the allegations.

Plaintiff's request for sanctions is 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: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000419

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: PAUL ROY vs. DEFENDANT: WORLD WIDE WHEELS LT LSR, ET AL	

NATURE OF PROCEEDINGS: MOTION – RELIEF; DISCOVERY FACILITATOR PROGRAM

RULING

Defendants' motion for relief from default as to Defendant Hugo Ernesto Solorzano is **GRANTED**.

Plaintiff is entitled to his reasonable compensatory legal fees and costs. The briefing schedule for the fees and costs requested is set forth below. Plaintiff's request for sanctions is **DENIED**.

Factual and Procedural Background

This action concerns a motor vehicle collision. Plaintiff Paul Roy alleges that on August 12, 2022, he was a passenger in a van that was struck by Defendant Hugo Ernesto Solorzano ("Solorzano"), causing him personal injuries. Plaintiff alleges Solorzano was operating his vehicle in the course of his employment with Worldpac, Inc., erroneously sued as World Wide Wheels LT LSR ("Worldpac").

On July 17, 2023, Plaintiff filed his Complaint, asserting one claim for general negligence and one claim for negligence per se against both defendants. On August 19, 2023, Plaintiff filed his proofs of service of summons reflecting both defendants were served with process on August 7, 2023. On September 19, 2023, Plaintiff filed an errata to his complaint to name Worldpac as a defendant instead of World Wide Wheels LT LSR.

On October 10, 2023, Worldpac, Inc., through attorney Jamie Norman of Litchfield Cavo LLP, attempted to file an Answer, but it was rejected by the Clerk's Office as follows: "Worldpac, Inc., is not a named def. If Worldpac is appearing in the stead of World Wide Wheels, please state, 'erroneously sued as.' If appearing as new def, please indicate."

On January 4, 2024, attorney Ashley Morris of Litchfield Cavo LLP, appeared before the Court at the Case Management Conference on behalf of Worldpac only and agreed to mediate the matter. There was no appearance on behalf of Solorzano.

On February 1, 2024, Plaintiff requested, and the clerk entered, default as to both defendants. On February 9, 2024, Worldpac's Answer was filed.

On March 7, 2024, Defendants filed a motion seeking mandatory relief from Solorzano's default under Code of Civil Procedure 473(b).

On March 12, 2024, the Court sua sponte issued an Order that the Request for Entry of Default as to Worldpac be set aside/vacated. The Order noted that the clerk had incorrectly rejected the filing of Worldpac's Answer on October 10, 2023. Plaintiff filed a motion for reconsideration of the March 12th Order, which was denied on July 30, 2024. Defendants also filed a motion for reconsideration, arguing that Solozano's default should have been set aside as well. The Court denied that motion on September 3, 2024, pointing out among other things that the March 12th Order related to Worldpac's default only and that it was not subject to reconsideration in any event.

On May 29, 2024, the Court entered an Order denying Defendants' motion seeking mandatory relief from Solorzano's default, without prejudice. The Court found that Solorzano was not entitled to mandatory relief under Section 473(b) because no declaration of fault by Mr. Norman was filed to support the motion, and Ms. Morris failed to show that any of her conduct caused the entry of default as to Solorzano.

On August 29, 2024, Defendants filed a renewed motion seeking relief from Solorzano's default. The motion seeks both mandatory and discretionary relief and is based on the declarations of Mr. Noman and Ms. Morris.

Standard

Code of Civil Procedure Section 473(b) provides:

> "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken . . . . Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not

> in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties . . . ."

Code of Civil Procedure Section 1008(b) provides:

> "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown . . . ."

Discussion

Applicability of Section 1008(b)

Generally, renewed motions for relief under Section 473(b) must comply with the requirements for relief under Section 1008, including the requirement that the moving party to show diligence with a satisfactory explanation for not having presented the new or different information earlier. (See *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839.) However, here, Defendants' first motion was denied without prejudice. Section 1008 does not apply under these circumstances. (See *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1014-1015; *National Grange of the Order of Patrons of Husbandry v. California Guild* (2019) 38 Cal. App. 5th 706, n. 10.)

Discretionary Relief under Section 473(b)

The Court lacks jurisdiction to rule on Defendants' motion to the extent it seeks discretionary relief under Section 473 as it was brought more than six months after entry of default. Default was entered on February 1, 2024 and Defendants' instant motion for relief from default was filed on August 29, 2024. A court has no authority to grant discretionary relief under Section 473(b) unless an application is made within the six-month period. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, *Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 340.)

Defendants argue that even if their motion for discretionary relief is untimely, the Court can still grant the motion on equitable grounds. "After six months from entry of default, a trial court may still vacate a default on equitable grounds even if statutory relief is unavailable." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) "One ground for equitable relief is extrinsic mistake—a term broadly applied when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits. 'Extrinsic mistake is found when [among other things] . . . a mistake led a court to do what it never intended . . . .'" (*Id.* at p. 975 [citations omitted].) "Mistake has been defined as '. . . the doing of an act under an erroneous conviction, which act, but for such conviction, would not have been done.' The same reasoning logically applies to a failure to act,—an omission." (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal. App.3d 725,

738 [citation omitted].) "[T]hree elements must be satisfied to set aside a judgment based upon extrinsic mistake: first the defaulted party must show that it has a meritorious case; secondly it must articulate a satisfactory excuse for not presenting a defense to the original action; and lastly it must demonstrate that it was diligent in seeking to set aside the default once it had been discovered." (*Ibid.*)

The Court denies Defendants' request to set aside the default on the ground of extrinsic mistake. Defendants have not presented any evidence to satisfy the first element. To satisfy this element, Defendants must "prove facts from which it appears, at least prima facie, that if the judgment were set aside and the proceedings were reopened, a different result would probably follow." (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 554; accord, *In re Marriage of Grissom* (1994) 30 Cal.App.4th 40, 51-52; 8 Witkin, Cal. Procedure (6th ed. 2024) Attack on Judgment in Trial Court, § 243.) "It has long been established that merely attaching a verification to a proposed answer is sufficient to demonstrate meritoriousness." (*Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1148.) Defendants argue that they satisfied this element by attaching a proposed answer to their counsel's declaration in support of their first motion. However, while Defendants did in fact submit a proposed answer, no verification was attached. Defendants also failed to submit any declaration regarding the merits of their defense, which courts have also found to be sufficient. (See *Rappleyea,* 8 Cal.4th at p. 983 [unverified answer combined with declaration of "lawyer who informally aided defendants . . . that he believed 'these defendants have a very good (and certainly a justiciable) defense to the plaintiff's claim'" was sufficient].) Thus, Defendants have not presented a sufficient showing for equitable relief based on extrinsic mistake. (See *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290-291 [moving party must prove all three elements of extrinsic mistake].)

Mandatory Relief under Section 473(b)

Defendants also seek mandatory relief under Section 473(b). A motion for mandatory relief based on attorney fault must be made "no more than six months after entry of judgment." The six-month period runs from entry of the default judgment, not the original default. (*Sugasawara v. Newland* (1994) 27 Cal.App.4th 294, 295 ["The plain language of section 473 makes it clear that the six-month period starts to run from the entry of judgment"].) "If no default judgment has been entered, there appears to be no time limit on a motion for relief based on an attorney affidavit of fault." (Edmon & Karnow, California Practice Guide: Civil Procedure Before Trial (The Rutter Group June 2024 Update) § 5:305.2; see also 40A Cal. Jur. 3d Judgments § 291 (Aug. 2024 Update) ["where relief is mandatory on the submission of an attorney affidavit of fault, the six-month period begins to run from the date the default judgment is entered, rather than earlier when default is entered".) Accordingly, Defendants' motion for mandatory relief is not untimely.

To support a showing of attorney fault, Defendants submit the declaration of their former counsel, Jamie Newman. Mr. Norman states: "Upon my exit from the firm, I inadvertently failed to file an Answer on behalf of Mr. Solorzano and I believed an Answer had been filed and accepted on behalf of Worldpac, Inc. It was my mistake in failing to resolve the final issue of our representation of Mr. Solorzano before I resigned and it is further my inadvertent failure in advising Ms. Morris of this open issue that needed resolution prior to filing a responsive pleading." (Declaration of Jamie Newman, ¶9.)

Mr. Newman's declaration is sufficient for a showing of attorney fault. Where an attorney declaration of fault is filed, relief must be granted even where the default resulted from inexcusable neglect by defendant's attorney. (*Jimenez v. Chavez* (2023) 97 Cal.App.5th 50, 57; *Gee v. Greyhound Lines, Inc.* (2016) 6 Cal.App.5th 477, 491-492.) Motions for relief based on attorney fault have no diligence requirement. (*Dollase v. Wanu Water, Inc.* (2023) 93 Cal.App.5th 1315, 1323; *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1147-1148.) Defendants' motion for mandatory relief is therefore granted.[1]

Attorney's Fees and Costs

Section 473(b) provides: "The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." Plaintiff is entitled to the fees and costs he incurred in opposing this motion. Briefing for these fees and costs shall be as follows:

Plaintiff's Brief and Supporting Declarations: **December 10, 2024**
Defendants' Opposition: **December 16, 2024**
Plaintiff's Reply: **December 20, 2024**

Sanctions

Plaintiff's request for sanctions is 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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[1] Defendants have not submitted a copy of Solorzano's answer or other pleading proposed in connection with the instant motion. However, they do reference in their papers a proposed answer filed in connection with their first motion. Defendants have substantially complied with this requirement. (*See Carmel, Ltd. v. Tavoussi* (2009) 175 Cal.App.4th 393, 403.)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000742

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: JEREMY NIEUWENHUIJS vs. DEFENDANT: GOOD EARTH NATURAL FOODS, INC.	

NATURE OF PROCEEDINGS: HEARING – OTHER: FINAL APPROVAL OF CLASS ACTION SETTLEMENT

RULING

Plaintiff's unopposed motion for final of class-action and PAGA settlement is **GRANTED**.

The court confirms the findings from its August 20, 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, only one class member requested exclusion. No member has objected to the settlement.

Accordingly, the Court finally and unconditionally approves the gross settlement amount, the service award to the class representative, expenses of the settlement administrator, and the class counsel's attorney fees and expenses. The Court also approves the amounts allocated to resolve all PAGA claims.

Absent objection, the Court will sign the proposed order of final approval and judgment submitted by Plaintiff.

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: 12/03/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003559

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: LINA BERMUDEZ vs. DEFENDANT: THE REDWOODS, A COMMUNITY OF SENIORS	

NATURE OF PROCEEDINGS: MOTION – STAY

RULING

This matter is ordered off-calendar as moot in light of the Court's order of October 7, 2024 staying the matter.

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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