

**May 15, 2026, Civil Law & Motion Tentative Rulings**

**1. CU0000090      Matthew Palleschi, et al. v. Daniel Fraiman Construction, Inc. et al.**

The March 16, 2026, motion by Plaintiff Matthew Palleschi “to compel Daniel Fraiman Construction, Inc. to provide full and complete verified responses to Plaintiff’s Requests for Admission (Set Three) and full and complete verified responses to Plaintiff’s Construction Form Interrogatory No. 326.1 without objections within 10 days, and imposing monetary sanctions....,” set for hearing on May 15, 2026, Mot. 1:12-20, is denied as moot.<sup>1</sup>

This Court previously considered:

Plaintiff Palleschi’s March 16, 2026, motion for an order deeming its Requests for Admission (Set Three) directed to Defendant Daniel Fraiman Construction, Inc. (“DFC, Inc.”) as admitted; Plaintiff’s motion for an order directing Defendant DFC, Inc. to provide further responses to Plaintiff’s Requests for Admission (Set Three) and related Plaintiff’s Construction Form Interrogatory No. 326.1; and Plaintiff’s request for monetary sanctions against DFI, Inc. and its counsel. April 20, 2026 Memorandum Decision and Order (“Order”).

The Court ruled as follows:

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<sup>1</sup> In its prayer for relief, Plaintiff requests:

[T]he Court grant Plaintiff’s Motion for an Order Compelling Daniel Fraiman Construction, Inc. to Provide full and complete Responses, with proper Code Compliant Verifications to Plaintiff’s Request For Admissions (Set Three) and Plaintiff’s Form Interrogatory-Construction No. 326 without Objections within 10 days, and impose monetary sanctions ....

Mot., 14:17-22.

In its notice of motion, however, Plaintiff states:

Plaintiff Matthew Palleshi will Move this Court for an ORDER, compelling Daniel Fraiman Construction Inc.(“DFC”) to Provide Verified Code Compliant Responses to Plaintiff’s Requests for Admission (Set Three) without objections within 10 days; and *to Provide Verified Code-Compliant Responses to Plaintiff’s Form Interrogatories Construction, Set Two* without objections within 10 days; and Imposing monetary sanctions against ....

Mot., 2:3-15 (italics added). Moreover, the motion appears to include some argument as to the same. Mot. 8:2-24.

The Court notes that no opposition or reply has been filed in connection with this motion.

The Court denies Plaintiff's motion for an order deeming its Requests for Admission (Set Three) directed to DFC, Inc. as admitted. The Court denies as moot, without prejudice, Plaintiff's motion for an order directing Defendant DFC, Inc. to provide further responses to Plaintiff's Requests for Admission (Set Three) and related Plaintiff's Construction Form Interrogatory No. 326.1. The motion for monetary sanctions is granted in part against counsel for DFI, Inc. solely.

Order, 3:15-18.

In light of all the above ruling, it appears that the issues raised in the instant motion are presently moot. The Court therefore denies the motion without prejudice on this ground.

**2. CU0001842 Charles Eugene Murdock vs. Jodi Michelle Andrews, et al.**

**Defendant Donald Ringen's Motion for Summary Judgment**

Defendant Donald Ringen's motion for summary judgment is denied.

Request for Judicial Notice and to File a Sur-Reply Brief

Defendant's unopposed request for judicial notice is granted. Plaintiff's request to file a sur-reply brief is granted; the objections to the same are overruled.

Relevant Factual History

This action arises from a motor vehicle accident on October 28, 2024, when Defendant Jodi Michelle Andrews ("Andrews"), while operating a vehicle *owned* by Defendant Donald Leslie Ringen ("Ringen"), collided with the rear of Plaintiff Charles Eugene Murdock's vehicle. Andrews, reportedly, was found to be under the influence of alcohol/drugs at the time of the collision. The operative complaint is Plaintiff's First Amended Complaint ("FAC"), filed on February 4, 2025, and adding defendant Ringen as Doe 1 on February 10, 2025, alleging causes of action against both Defendants for negligence and negligence *per se*. On May 23, 2025, Ringen's motion to strike punitive damages was granted with leave to amend. On December 16, 2025, Plaintiff dismissed the second cause of action for negligence *per se* as to Ringen. Ringen now moves for summary judgment as to the first cause of action for negligence, the sole remaining cause of action against him.

Legal Standard

Code of Civil Procedure section 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action..." Code Civ. Proc. § 437c(f)(1) (italics added). The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine

whether the opposition has demonstrated the existence of a triable, material factual issue.” *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court’s consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741.

A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c, subd. (o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. As to *each* claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an essential element or defense, a court must grant a motion for summary adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; *see also See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.

### Analysis

Defendant argues Plaintiff cannot meet his burden of proof as to the negligence cause of action against Ringen because: (1) Ringen had no duty to prevent an unforeseeable act by the driver; (2) even if he had a duty, the undisputed facts establish Ringen did not breach a duty owed to Plaintiff; and (3) Plaintiff cannot raise a triable issue of material fact as to causation. The Court cannot agree.

The basic elements of a cause of action for negligence are (1) the existence of a legal duty; (2) breach of that duty; (3) causation; and (4) resulting damages. *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213; *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158; *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998. Separately, “[e]very owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a *negligent or wrongful act or omission in the operation of the motor vehicle*, in the business of the owner or otherwise, *by any person using or operating the same with the permission*, express or implied, of the owner.” Vehicle Code § 17150 (italics added); *see also* CACI 720 (elements motor vehicle owner liability-permissive use of vehicle).

At bar, Plaintiff’s FAC does not reference liability pursuant to Vehicle Code section 17150 specifically. However, it does plead the elements of such, alleging, “Defendant [Andrews] and DOES 1 [Ringen] through 50 were those *owning, operating, controlling, repairing, modifying*

*and maintaining* a certain 2007 Toyota Tundra, .... (hereinafter referred to as “Defendant’s vehicle”). FAC, ¶ 5 (italics added). Defendants [Andrews and Ringen], and each of them ...*negligently owned, managed, maintained, drove, and operated*” the vehicle, such that “each Defendant caused the respective vehicle whether owned and operated and/or owned and negligently entrusted to another to collide with Plaintiff’s vehicle, proximately causing ...injuries and damages to the Plaintiff ....” FAC ¶ 10.

Defendant Ringen’s burden on summary judgment is, “to identify and respond to all theories of liability reflected in the complaint, ‘even if not separately pleaded.’ Code Civ. Proc. § 437c(o)(2). “Thus, ‘[w]hile a plaintiff who has pleaded several causes of action based on the same set of facts need sustain its burden of proof only on one of the theories in order to prevail at trial, a defendant who seeks a summary judgment must define all of the theories alleged in the complaint and challenge each factually.’ ” *Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 714. “If ... the plaintiff pleads several theories ... the challenge to the opponent is made by the complaint, requiring the moving defendant to affirmatively react to each theory *and* excusing or justifying event, or condition which supports a theory, if the motion is to be successful.” *Onn v. National Can Corp.* (1981) 124 Ca.App.3d 630, 639.

In his motion, Defendant fails to address Vehicle Code section 17150 as a theory of liability. Because Defendant did not meet his threshold burden on this issue, the burden did *not* shift to Plaintiff to make a prima facie showing that a triable issue of fact exists.<sup>2</sup> On this record, Defendant is not entitled to judgment as a matter of law.

Given the disposition herein, the Court need not address the various objections to evidence and statements of undisputed facts interposed by the parties.

### **Defendant Donald Ringen’s Motion to Bifurcate Trial**

Defendant Donald Ringen’s motion to bifurcate the issues of liability and damages is granted.

#### Legal Standard

The Court has wide discretion to bifurcate issues for trial. “The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action ... or of any separate issue or of any number of causes of action or issues ....” Code Civ. Proc. § 1048(b). The court may order certain issues tried before others “when the convenience of witnesses, the ends of justice or the economy and efficiency of handling the litigation would be promoted thereby.” Code of Civ. Proc. § 598.

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<sup>2</sup> Defendant Ringen asserts, for the first time in his reply, that permissive use liability is moot based on evidence of a policy-limit tender, citing Vehicle Code sections 17150 and 17151. This evidence comes too late and the Court declines to consider it. “ ‘ [T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case ...’ and if permitted, the other party should be given the opportunity to respond.” *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537–1538. Any reply evidence “should not have addressed the substantive issues in the first instance but only filled gaps in the evidence created by the . . . opposition.” *Id.* at 1538. As indicated, Defendant Ringen did not address the Vehicle Code section 17150 theory at all in his moving papers. In any event, as Plaintiff points out, a tender of policy limits does not moot this liability issue. The claim has not been finally adjudicated and it has not otherwise been finally resolved by the parties.

“[T]he primary purpose [of section 598] is to permit the issue of liability in personal injury cases to be tried prior to that of damages when, in the opinion of the court, the facts of a particular case justify it.” ... Such separate trial of the liability issue was considered desirable to avoid wasting court time in cases where the plaintiff loses on the liability issue, to promote settlements where the plaintiff wins on the liability issue, and to afford a more logical presentation of the evidence, thus simplifying the issues for the jury.

*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 888, n. 8.

In summary, “[t]he major objective of bifurcated trials is to expedite and simplify the presentation of evidence.” *Id.* at 888.

Again, this case arises out of a motor vehicle accident involving allegations that Plaintiff’s vehicle was hit from behind by Defendant Jodi Michelle Andrews while Andrews was operating a vehicle owned by her current/former employer Defendant Ringen. Defendant Ringen’s earlier motion to strike punitive damages was granted; however, Defendant Andrew’s motion to strike punitive damages was denied. Plaintiff contends that he suffered severe injuries as a result of the incident. In support of his motion, Defendant Ringen argues the witnesses regarding damages will number into the dozens, and litigating damages, if a jury has already concluded Ringen is not liable, would not be a good use of time and resources. The Court agrees.

The Court finds bifurcating the trial of this action so the issue of liability is tried before the issue of damages will simplify and organize the presentation of evidence which will be conducive to expedition and economy for the parties and the Court. At bar, it appears there will be little overlap in the testimony regarding liability and the damages claimed by Plaintiff. As such, bifurcating the trial likely will reduce the time/resources necessary for proof of the damages phase, if Defendant Ringen prevails on the liability phase with respect to the general negligence theory or the Vehicle Code section 17150 theory. See *Trickey v. Superior Court In and For Sacramento County* (1967) 252 Cal.App.2d 650, 653; *Foreman & Clark Corp.* (1971) 3 Cal.3d 875, 888 fn. 8. Alternatively, if Defendant is found liable in the first phase of trial, on either theory (and particularly if Defendant is found liable only under a Vehicle Code theory), such a finding may promote settlement, thus rendering the second damage phase unnecessary as to this Defendant. Lastly, and significantly, bifurcation will mitigate the risk that the jury, in deciding liability as to Defendant Ringen, will be improperly influenced by extensive damages evidence.

The motion is granted.

### **3. CU0002492      Bank of America, N.A. v. Prashant Tyagi**

Cross-Defendant Bank of America, N.A.’s unopposed motion for order setting aside and vacating default and any default judgment is granted.

Pursuant to Code of Civil Procedure section 473(b), “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 the attorney’s mistake, inadvertence,

surprise, or neglect, vacate any...resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment.”

At bar, Cross-Defendant's counsel attests that his mistake and inadvertence resulted in the default entered on December 26, 2026. The request to set aside default was timely filed on February 24, 2026 and is unopposed. Indeed, Cross-Complainant has offered to stipulate to the relief requested.

Relief is warranted and the December 26, 2026, default in connection with the original complaint is vacated.

While this motion was pending, a First Amended Cross-Complaint was filed on May 4, 2026. Cross-Defendant Bank of America shall file a response to the same within 30 days of this Order.

#### **4. CU0002612      LGC Sierra Pines MHC LLC vs. Sierra Pines Mobile Home Park**

Prospective Intervenor SP MHC LP, LP and SP MHC GP, LLC's (collectively "SP Partners") unopposed February 24, 2026, motion to intervene is granted. SP Partners are granted leave to file the complaint in intervention attached to the moving papers within 10 days of this Order.

#### Legal Standard

“An intervention takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons” and joins a plaintiff in seeking relief, unites with a defendant in resisting the claims of a plaintiff, or demands relief adverse to both a plaintiff and a defendant. Code Civ. Proc. § 387(b). “The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment.” *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504.

Code of Civil Procedure § 387(d) provides as follows:

- (1) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied:
  - (A) A provision of law confers an unconditional right to intervene.
  - (B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless the person's interest is adequately represented by one or more of the existing parties.
- (2) The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both.

Code of Civil Procedure section 387(c) provides that a nonparty “shall petition the court for leave to intervene by noticed motion or by ex parte application. The petition shall include a copy

of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.”

The applicable standard for mandatory intervention is set forth in *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560:

Mandatory intervention is governed by Code of Civil Procedure section 387, subdivision (d)(1)—which “should be liberally construed in favor of intervention.” *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200. Under that section, “a party's proposed intervention must be timely.” *Lofton v. Wells Fargo Home Mortgage* (2018) 27 Cal.App.5th 1001, 1012, 238 Cal.Rptr.3d 626 (Lofton). If timely, then the proposed intervenor, to establish mandatory intervention under subdivision (d)(1)(B), must show (1) “ ‘an interest relating to the property or transaction which is the subject of the action’ ” *Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423, 79 Cal.Rptr.3d 915 (Siena Court); italics omitted; (2) “he or she ‘is so situated that the disposition of the action may as a practical matter impair or impede’ ” his or her “ ‘ability to protect that interest’ ” *id.* at p. 1424, 79 Cal.Rptr.3d 915; and (3) he or she is not “ ‘adequately represented by the existing parties’ ” *ibid.*

*Id.* at 572-73 (parentheses omitted).

At bar, the SP Partners are entitled to intervene as a matter of right under Code of Civil Procedure section 387(d)(1)(B). SP Partners have a concrete interest in the property and transaction at issue, *i.e.*, the sale of the mobile home park property; deciding this action without SP Partners’ participation would impair their ability to protect their interest in recovering on their investment; the existing parties will not adequately represent that interest; and SP Partners’ February 24, 2026, motion is timely in connection with the February 2, 2026, Complaint. Further, the motion is unopposed.

SP Partners’ motion is granted.

## **5. CU21-086089      George L Horner, et al vs. Deborah Carver**

Defendant Deborah J. Carver (“Carver”)’s requests to strike/disregard the Referee’s report/photographs and to compel inspection by a licensed inspector are denied.

Under Code of Civil Procedure section 873.060, Referee Brzezinski is authorized to “perform any acts necessary to exercise the authority conferred by the order of the court” to sell the property. No good cause has been stated to disregard the Referee’s report. From the reports of the Referee and the parties it is clear that the subject property needs further inspection and likely requires additional work before it can be marketed for sale. Within 60 days of this order, the Referee shall retain any professionals deemed necessary to perform inspections and provide estimates for repairs reasonably necessary to prepare the property for market. The Referee shall continue to be mindful of and considerate to all household occupants, including Carver’s mother. Any cost or expense associated with such retention (for recommendations and estimates only) shall be shared by the parties according to their respective ownership interests, to be reimbursed from the proceeds of the sale.

The Court sets a review hearing for July 24, 2026 at 10:00 a.m. in Department 6. Each party and the Referee shall file a status report of no more than three (3) pages in connection with preparation of the property for sale no later than two weeks prior thereto. No further briefing or declarations are authorized with respect the same.

Plaintiff Horner's request that Carver be ordered to vacate the premises is denied without prejudice. Carver's request for a stay is denied without prejudice. Any such requests must be made by noticed motion.

Carver's May 8, 2026, declaration and amended declarations, filed in violation of the Court's April 3, 2026, order and without leave, are ordered stricken.

The parties are reminded that they have an obligation to ensure that all legal citations *fully* and *accurately* represent the applicable law. This applies to parties represented by counsel and to those that represent themselves.

**6. CU0001978      Bridgett Higginbotham vs. Pacific Specialty Insurance, et al.**

**Defendant Greenspan Adjusters International, Inc.'s Demurrer to Pacific Specialty Insurance Company's Cross-Complaint**

Defendant Greenspan Adjusters International, Inc.'s ("GAI") demurrer to the Cross-Complaint of Pacific Specialty Insurance Company (PSIC) is overruled.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.*, 148 Cal.App.4th at 113-114.

"If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted." *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

## First Cause of Action: Equitable Indemnity

GAII argues its demurrer to PSIC's cause of action for equitable indemnity must be sustained because it requires joint liability in tort which is not alleged and does not exist. The Court disagrees.

“[T]he right to indemnity flows from payment of a joint legal obligation on another's behalf.” *AmeriGas Propane, LP v. Landstar Ranger, Inc.* (2014) 230 Cal.App.4th 1153, 1167. “The elements of a cause of action for indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is . . . equitably responsible.” *Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 217. California common law recognizes a right of partial indemnity under which liability among multiple tortfeasors may be apportioned according to the comparative negligence of each.’ The test for indemnity is thus whether the indemnitor and indemnitee jointly caused the plaintiff's injury.” *AmeriGas Propane, L.P. v. Landstar Ranger, Inc.* (2010) 184 Cal.App.4th 981, 989. For purposes of equitable indemnity, “it matters not whether the tortfeasors acted in concert to create a single injury, or successively, in creating distinct and divisible injury.” *Blecker v. Wolbart* (1985) 167 Cal.App.3d 1195, 1203.

In the context of equitable indemnity, joint and several liability is expansive, not limited to the traditional meaning of “joint tortfeasor,” and can apply to acts that are concurrent, successive, joint, or several, where they create a detriment caused by several actors. *Greystone Homes, Inc. v. Midtec, Inc.* (2008) 168 Cal. App. 4th 1194, 1208. *See, e.g. Considine Co. v. Shadle* (1986) 187 Cal. App. 3d 760, 769 (“A defendant sued for breach of contract may have a right of implied indemnity against a third person whose wrong caused the defendant's breach.”). “ ‘Where the transaction rests upon related facts, whether concurrent or successive, joint or several, which legally create a detriment compensable against multiple actors, the right of indemnity should follow....’ ” *GEM Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal.App.3d. 419, 431 (citation omitted).

Here, PSIC has alleged in its Cross-Complaint that any injuries suffered by Plaintiff were proximately caused not by their acts, but rather by the negligence or breach of fiduciary duty by GAII:

PSIC has denied, and continues to deny, each and every allegation of Plaintiff's First Amended Complaint, including all allegations of wrongdoing or breach of the policy on the part of PSIC. . . . [T]o the extent Plaintiff sustained any injuries or damages as alleged in her First Amended Complaint, the acts and/or omissions of Greenspan and Cross Defendants are the sole and direct proximate cause thereof due to their failure to accurately, honestly, timely, and reasonably advise Plaintiff regarding the amount of money and extent of coverage, including code upgrade coverage, that would be contractually afforded to Plaintiff under her homeowners' insurance policy, the laws and regulations in effect that would control which code upgrades were actually necessary to repair her residence, the selection of Defendant SELECT ENVIRONMENTAL to undergo demolition at the Property, and the legal, contractual, and financial ramifications of Plaintiff optionally choosing to raze her home and expand its foundational footprint.

Cross-Complaint ¶ 9. The Cross-Complaint of PSIC, thus, sufficiently alleges Cross-Defendant GAI's acts and/or omissions caused Plaintiff's injuries, for which PSIC likewise was sued. The Cross-Complaint also sufficiently alleges that Cross-Defendant GAI is liable to indemnify PSIC in a sum equal to the relative and comparative share of fault for any liability imposed upon Cross-Complainant PSIC in the underlying action. *Id.* ¶ 16. PSIC's allegations suffice to plead potential joint and several tort liability exposure for injury to Plaintiff and therefore is sufficient to state a claim for equitable indemnity.

#### Second Cause of Action: Contribution

GAI argues Cross-Complainant's cause of action for contribution fails for the same reason. The Court again disagrees.

Pursuant to Code of Civil Procedure section 875, "Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them...." Code Civ. Proc. § 875(a).

In this claim, PSIC incorporates the allegations of Paragraph 9 above and further alleges that Cross-Defendant GAI "contributed to the alleged damages purportedly sustained by Plaintiff as alleged in the operative First Amended Complaint" and that "PSIC is entitled to contribution from the Cross-Defendant[] for such sums which Cross-Complainant[ PSIC] may be found liable ...." Cross-Complaint ¶¶ 20-21.

PSIC's allegations suffice to plead potential joint and several tort liability exposure for injury to Plaintiff and are sufficient to state a claim for contribution.

#### Third Cause of Action: Declaratory Relief

GAI lastly argues that no claim for declaratory relief has been stated because the underlying indemnity and contribution theories fail. The Court is not persuaded.

A declaratory relief action may be brought under Code of Civil Procedure section 1060 to establish rights and duties of the parties. A complaint for declaratory relief must set forth facts establishing such an actual controversy and must request the court adjudicate the rights and duties of the parties under dispute. *Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 760.

Here, Cross-Complainant PSIC has adequately pled a claim for declaratory relief to delineate the rights and duties of the parties with respect to equitable indemnification and contribution for the reasons noted previously.

## Defendant Select Environmental's Motion for Determination of Good Faith Settlement

Defendant Select Environmental's ("Select") motion for determination of good faith settlement shall be continued for further hearing to allow the parties to conduct discovery related to the same. The parties shall appear to discuss a new hearing date and briefing schedule related thereto.

In an action alleging claims against multiple joint tortfeasors, a party may seek a good faith settlement determination under Code of Civil Procedure section 877.6(a) which, if granted, generally bars claims for contribution and indemnity by any other joint tortfeasor against the settling party. Code Civ. Proc. §§ 877.6(a)(1), (c).

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligators in a contract debt shall be entitled to a hearing of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligators...." Code Civ. Proc. § 877.6(a)(1). Rulings on a motion for good faith settlement must be made "in view of the equitable goals of the statute, in conformity with the spirit of the law and in a manner that serves the interests of justice," and must serve the goals of "encouraging settlement among all interested parties" and "equitably allocating costs among multiple tortfeasors," as opposed to allowing a party to obtain "protection from its indemnification obligation at bargain-basement prices." *Long Beach Memorial Medical Center v. Sup. Ct.* (2009) 172 Cal. App. 4th 865, 873, 876. The requirement of good faith is to protect the interests of the non-settling defendants. *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1263.

A good faith determination is only denied if the settlement is "grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the settling defendant's liability to be." *Torres v. Union Pacific Railroad Company* (1984) 157 Cal.App.3d 499, 509. The following factors are considered in determining whether a settlement is within the ballpark of a reasonable settlement range: 1) a rough approximation of the plaintiffs' total recovery and the settling defendant's proportionate liability; 2) the amount paid in settlement; 3) recognition that the settling defendant should pay less in settlement than if it were found liable after trial; 4) the settlor's financial condition and insurance policy limits, if any; and 5) evidence of any collusion, fraud, or tortious conduct between the settlor and plaintiff aimed at making the nonsettling parties pay more than their fair share. *Tech-Bilt Inc. v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, 499. No one factor is outcome determinative. And not every factor will necessarily apply in every case. *Dole Food Co., Inc. v. Superior Court* (2015) 242 Cal.App.4th 894, 909.

That a settlement calls for the settling party to pay less than the party's theoretical proportionate share does not mean the settlement is made in bad faith; a good faith settlement does not require "perfect or even nearly perfect apportionment of liability." All that is necessary is that there be a 'rough approximation' between a settling tortfeasor's offer of settlement and his proportionate liability." *North County Contractor's Assn., supra*, 27 Cal.App.4th at 1090-1091 (citations omitted). In assessing the value of the settlement to the settling party and whether the settlement was reached in good faith, "a trial court must examine not only the settling tortfeasor's potential liability to the plaintiff, but also the settling tortfeasor's potential liability to all nonsettling tortfeasors." *PacificCare of California v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1465-1466 (citations omitted); *TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.

The court is entitled to rely on its judicial experience in evaluating the good faith of the settlement amount. *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 968. The determination of whether the settlement is a good faith settlement is left to the discretion of the trial court. *Id.*

Of note, “the trial court's consideration of the settlement agreement and its relationship to the entire litigation in a contested setting must proceed upon *a sufficient evidentiary basis* to enable the court to consider and evaluate the various aspects of the settlement.” *City of Grand Terrace*, 192 Cal.App.3d at 1263 (italics added).

Because *Tech-Bilt* mandates a rough approximation of the settling defendant's proportionate liability and consideration of all other defendants' proportionate liability and consideration of all other factors that might affect the fairness of the settlement as respects non-settling defendants, the affidavits, declarations or other evidence should provide the court with the facts necessary to evaluate the settlement in terms of the factors contemplated by *Tech-Bilt*. Without the facts, in a contested hearing, it is impossible for a court to exercise its discretion in an appropriate fashion.

*Ibid.*

“At the time of the hearing, the objecting non-settlor in many instances does not possess sufficient factual information to carry its burden of proof as to lack of good faith.” *Id.* at 1265. As such, an “objecting non-settlor [may] move for a continuance of the hearing, if necessary, for the purpose of gathering facts, which could include further formal discovery, to support its statutory burden of proof as to all *Tech-Bilt* factors non-settlors placed in issue in order that the matter can be fully and fairly litigated.” *Ibid.* “[T]his could necessarily lead to motions for further discovery, additional declarations, and counterdeclarations by the parties and a delay in the proceedings, but this procedure will ensure that the expanded scope of the hearing dictated by *Tech-Bilt* will be followed, the evidence will be intelligently assessed, and the objectives of *Tech-Bilt* will be attained.” *Ibid.*

At bar, Pacific Specialty Insurance Company (PSIC) opposes the settlement or alternatively seeks a continuance for targeted discovery regarding the same. The latter request has merit. While Select counsel has submitted a declaration in support of its motion, Select has presently provided minimal evidentiary support to establish that the settlement is in good faith and reasonable. As it stands, there is no developed record as to a rough approximation of the Plaintiff's total recovery, Select's proportionate liability, and why the proposed settlement by Select is reasonable under the totality of *Tech-Bilt* factors. Discovery for a limited period of time is appropriate to ensure that all parties can fully and fairly litigate the matter presented.

The parties shall be prepared to provide the Court with an estimate as to how much time is necessary to complete discovery regarding the proposed settlement. A hearing date and briefing schedule will then issue.