**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF SACRAMENTO**
**GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 04/15/2021 TIME: 10:45:00 AM DEPT: 53

JUDICIAL OFFICER PRESIDING: Shama Mesiwala
CLERK: E. Brown
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **34-2017-00220058-CU-NP-GDS** CASE INIT.DATE: 10/02/2017
CASE TITLE: **Single vs. Congregational Church Retirement Community**
CASE CATEGORY: Civil - Unlimited

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**EVENT TYPE**: Motion for Summary Adjudication - Civil Law and Motion - MSA/MSJ/SLAPP

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**APPEARANCES**

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**Nature of Proceeding: Ruling on Submitted Matter - Motion for Summary Adjudication**

**TENTATIVE RULING**

Plaintiffs Gloria Single and California Long-Term Care Ombudsman Association ("CLTCOA") (collectively, "Plaintiffs") move for summary adjudication in favor of Plaintiffs as to Defendant Cathedral Pioneer Church Homes II with regard to their first cause of action for violation of Health & Safety Code section 1430(b), and second cause of action for violation of Business & Professions Code section 17200, et seq., and against Defendants' Affirmative Defense Nos. 15, 32-34, and 38. As such, Plaintiffs cite to seven issues for summary adjudication. The motion is ruled on as follows.

The notice of motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06. Plaintiff is directed to contact defense counsel and advise them of Local Rule 1.06 and the Court's tentative ruling procedure and the manner to request a hearing. If moving counsel is unable to contact Defendants prior to hearing, moving counsel is ordered to appear at the hearing in person or by telephone.

The Court is aware of filings by the non-moving parties indicating that the Reply papers were not timely served prior to the original hearing date for this motion. However, since the hearing has been continued from December 17, 2020 to today's date, the Court finds that there has been ample time for the non-moving parties to review the Reply prior to the hearing.

The Court is also aware that Plaintiff's Reply papers included the Declaration of Athul K. Acharya that attached a hearing transcript that was not filed with the moving papers. The Court declines to consider evidence filed with a Reply at this procedural posture. (See, e.g., *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308 [trial court did not err in declining to consider new evidence filed with reply in support of summary judgment motion].)

**Parties**

The operative complaint is the Third Amended Complaint ("TAC"). Plaintiff's notice of motion states the

motion seeks summary adjudication against Defendant Cathedral Pioneer Church Homes II ("Pioneer House") with regard to the First and Second causes of action, with no other defendants listed. The notice of motion then states it seeks summary adjudication against "Defendants," plural, with regard to the affirmative defenses.

However, CLTCOA is not a proper moving party. The Court previously determined that CLTCOA lacks standing to maintain a cause of action against any defendant in this matter under Health & Safety Code section 1430(b) and Business & Professions Code §§ 17200, et seq. On January 8, 2018, March 14, 2018, and June 27, 2018, this Court sustained Defendants' demurrers to the second cause of action for Violation of Business & Professions Code §§ 17200 et seq. brought by CLTCOA on the grounds the allegations were insufficient to invoke standing. (See ROA 230 (June 27, 2018 order sustaining Defendants' demurrer regard to the challenge of CLTCOA's standing to pursue the first cause of action **without** leave to amend, and second cause of action with leave to amend).) Defendants demurred a fourth time, solely on grounds the TAC still lacks allegations sufficient to establish CLTCOA has standing to sue for unfair business practices. (See ROA 317 (October 10, 2018 order sustaining Defendants' demurrer **without** leave to amend with regard to CLTCOA's standing to pursue the first and second causes of action).)

CLTCOA has not shown that it can be a moving party on the instant motion. The affirmative defenses challenged in the instant motion are directed towards causes of action that the Court has already determined that CLTCOA lack standing to pursue.

**Accordingly, the Court will consider the motion solely with Plaintiff Gloria Single as the moving party.**

On July 16, 2019, the Court granted a motion substituting Plaintiff Aubrey Jones for deceased Plaintiff Gloria Single as her successor in interest. (See Register of Actions ("ROA") 403.) While Mr. Jones is technically the "Plaintiff" in this action, the Court's ruling below makes reference to Gloria Single as the "Plaintiff" and "Ms. Single."

**Background**

For each of Plaintiff's seven issues for summary adjudication, Plaintiff's Separate Statement lists a total of three Undisputed Material Facts ("MFs"), which are replicated for each of the seven distinct "issues" in the Separate Statement.

Pioneer House refused to readmit Ms. Single on March 23, 2017, after Sutter Hospital cleared Ms. Single to return home. (MF 1.) Before Pioneer House refused to readmit Ms. Single, it did not do at least one of the following things: (1) issue a written discharge notice, (2) issue a written bed-hold notice, (3) document the reason for the discharge planning and orientation, and (5) follow a lawful, written bed-hold policy. (MF 2.) Defendants did not seek a writ of mandate to try to overturn DHCS's [Department of Health Care Services] order finding that Pioneer House illegally discharged Ms. Single by leaving her in a hospital without providing statutorily-required notices and documents required upon a transfer/discharge. (MF 3.)

Plaintiff alleges that Pioneer House illegally discharged Ms. Single. The discharge requirements are codified in the Medicaid Act, 42 U.S.C. § 1996r(c), and related regulations at 42 C.F.R. § 483.15(c). California follows the requirements in the Medicaid Act in exchange for federal funds. (See, e.g., *Katie A. ex rel. Ludin v. Los Angeles County* (9th Cir. 2007) 481 F.3d 1150, 1153-1154 ("Medicaid is a cooperative federal-state program that directs federal funding to states to assist them in providing medical assistance to low-income individuals. . . . Once a state enters the program, the state must comply with the Medicaid Act and its implementing regulations.").)

Plaintiff argues that the case *St. John of God Retirement & Care Center v. State Dept. of Health Care Services* (2016) 2 Cal.App.5th 638 is the "only one California decision applying these rules, and it is directly controlling." (P&As at 7.) Plaintiff argues that in *St. John*, the Court of Appeal first held that "[a]fter a transfer for treatment in an acute care hospital, if a facility refuses to re-admit a resident under section 483.12, subdivision (b)(3), the refusal is tantamount to an involuntary transfer." (*Id.* at 653.) Plaintiff alleges that is what occurred here, citing MF 1.

*St. John* also sets forth five requirements when a nursing facility refuses to readmit a resident after a hospital stay. The decision states:

[W]hen a skilled nursing facility involuntarily transfers or discharges a resident because of circumstances described in section 483.12, subdivision (a)(2)(i) (for the resident's welfare and whose needs the facility cannot meet) or subdivision (a)(2)(iii) (for the safety of persons at the facility), the following requirements apply. First, the facility must identify the appropriate reason for transfer or discharge as specified in part 483.12(a)(2). Second, it must comply with the documentation requirements of part 483.12(a)(3). Third, as applicable to the case, it must comply with the notice provisions of part 483.12(a)(4), (a)(5), (a)(6), (b)(1), and (b)(2). Fourth, it must provide the resident with 'sufficient preparation and orientation . . . to ensure a safe and orderly transfer or discharge from the facility' as required by part 483.12(a)(7), including giving notice of the effective date of the transfer or discharge and the location to which the resident will be transferred or discharged (§ 483.12(a)(6)(ii) & (iii).) Fifth, it must follow a written policy consistent with part 483.12(b)(3), under which a resident who was transferred for 'hospitalization or therapeutic leave' is readmitted to the first available bed if the state bed-hold period (in California, a seven-day-bed-hold period (§ 7520)) has expired, and if the resident requires the services provided by the facility and is Medicaid eligible. Finally, a refusal to readmit is 'treated as if it were an involuntary transfer under federal law' (Health & Saf. Code § 1599.1(h)(2), meaning that absent compliance with the applicable involuntary transfer requirements under part 483.12, the refusal to readmit is improper.

(*St. John*, 2 Cal.App.5th at 653.) Plaintiff alleges Defendants did not comply with these enumerated requirements, citing MF 2.

Plaintiff also argues she is entitled to summary adjudication because Pioneer House "is bound by the DHCS Order because it did not challenge the decision by seeking a writ of mandate, and the time for it to do so has long expired." Plaintiff argues that a decision by DHCS is "final, binding, and conclusive on Pioneer House." (P&As at 14; see Exh. 1 to Declaration of Aubrey Jones ("Jones Decl.").)

In opposition, Defendants attempt to identify evidence giving rise to a dispute regarding Plaintiff's MFs, and also include 118 additional material facts. Due to the volume of these additional facts, the Court need not set them forth in full here.

**Legal Standards**

The Court must grant a motion for summary judgment if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc. § 437c(c); *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 35.) Section 437c(c) imposes an affirmative duty on a Court to grant summary judgment motion in an appropriate case. (*Preach v. Moister Rainbow* (1993) 12 Cal.App.4th 1441, 1450.) The Court must decide if a triable issue of fact exists; if none does, and the sole remaining issue is one of law, the Court has a duty to determine it. (*Pittelman v. Pearce* (1992) 6 Cal.App.4th 1436, 1441; see also *Seibert Sec. Servs., Inc. v. Superior Court* (1993) 18 Cal.App.4th 394, 404.)

A plaintiff moving for summary judgment "has met his or her burden of showing that there is no defense

to a cause of action if that party has *proved each element* of the cause of action entitling the party to judgment on that cause of action." (Code Civ. Proc. § 437c(p)(1) (emphasis added). Once the moving party meets this burden of production, the burden shifts to the opposing party to produce admissible evidence demonstrating the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) In other words, once the plaintiff has met that burden, "the burden shifts to the defendant" to "show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Code Civ. Proc. § 437c(p)(1).) These showings must be supported by evidence, such as affidavits, declarations, admissions, interrogatory answers, depositions, and matters of which judicial notice may be taken. (Code Civ. Proc. § 437c(p)(2); *Aguilar*, 25 Cal.4th at 850, 855.) In ruling on the motion, the Court must consider the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. (*Aguilar, supra*, at 843.)

Summary judgment is properly granted only if the moving party's evidence establishes that there is no issue of material fact to be tried. (*Huynh v. Ingersoll-Rand* (1993) 16 Cal.App.4th 825, 830.) In evaluating a motion for summary judgment or summary adjudication the Court engages in a three step process. The Court first identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment or summary adjudication. (*FPI Dev. Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382.) Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (see *Lewis v. Chevron* (2004) 119 Cal.App.4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is "within the general area of issues framed by the pleadings" is properly before the court on a summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996) 49 Cal App.4th 1576, 1582-1583.) A party may not raise new issues in a declaration submitted in connection with a summary judgment motion. (Lewinter v. Genmar Indus., Inc. (1994) 26 Cal.App.4th 1214, 1223.)

Summary adjudication requires disposition of an entire cause of action, affirmative defense, or claim for damages. (Code Civ. Proc. § 437c(f)(1); *Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1256.)

**Evidentiary Objections**

*Defendant's Evidentiary Objections*

Defendant's Objections Nos. 1-11, and 13-15 are OVERRULED. The various objections on grounds of relevance, undue prejudice, legal conclusion, and the like, are not well-taken. The objections go to the weight of the evidence, not admissibility.

The Court will specifically address the Objections to the Department of Health Care Services ("DHCS") Order, as well as several other Objections, below.

Plaintiff's evidence in support of her motion is the affidavits of counsel, Matthew Borden, and Aubrey Jones, Plaintiff's son and power of attorney. (See ROA 582, 583.)
Plaintiff's evidence relies heavily on a former Department of Health Care Services ("DHCS") Order dated May 24, 2017. (Opp'n at 12.) Defendant objects to consideration of the DHCS Order on grounds it has not been properly authenticated. Defendant also argues the DHCS order is not binding in this proceeding.

Specifically, in Objection No. 7, Defendants object on various grounds to the DHCS Order attached as Exhibit 1 to the Jones Declaration, including lack of authentication.

Plaintiff responds that: "This argument makes no sense. Plaintiffs authenticated it through Aubrey Jones, who represented Ms. Single, his mother, at the hearing; who thus received the Order from DHCS; and

who therefore has firsthand knowledge of the Order and its authenticity." (Reply at 8 n.2)

The Court may consider the content of a document - here, the DHCS Order - in evaluating whether the foundational elements of authentication are present. (See *People v. Gibson* (2001) 90 Cal.App.4th 371, 383 ("Circumstantial evidence, content and location are all valid means of authentication.") (trial court did not err in finding manuscript documents to have been authenticated in part because the manuscript documents purported to be authored by "Sasha" and "no evidence showed that these items belonged to anyone else. Therefore the manuscripts were properly authenticated.") Similarly, a court can properly "rely on indirect and circumstantial evidence to establish the authenticity" of a document, such as a copy of a transcript from a prior proceeding. (*Young v. Sorenson* (1975) 47 Cal.App.3d 911, 915-916 ("[t]he transcript copy appeared to be a true report of the divorce proceedings transcribed by the court reporter who took them down . . . It was wholly reasonable for the court to find the transcript copy trustworthy and to accept its authentication.") (citing Evid. Code § 1410).)

Here, the DHCS Order is attached to the Declaration of Aubrey Jones, who undisputedly participated in the DHCS hearing on his mother's behalf, and who undisputedly thereafter received a copy of the DHCS Order. Mr. Jones declares that the Order is a "true and correct" copy. (Jones Decl. ¶ 7.) The DHCS Order itself also includes a cover letter with DHCS letterhead and lists Defendant as a "cc" recipient of a copy of the Order. (Exh. 1 to Jones Decl.) There has been no suggestion that any portion of the document has been altered and no suggestion that there is any reason to distrust the authenticity of the document. This is sufficient to lay a foundation and authenticate the DHCS Order attached to the Jones Declaration. Defendants' Objection No. 7 is therefore not well-taken.

As to Defendants' Objection No. 8 specifically, the objected-to evidence is Borden's testimony that Defendant's records produced in discovery do not show "findings by any doctor that Pioneer House was incapable of addressing Mrs. Single's needs before Pioneer House refused to readmit Mrs. Single." Defendants argue that this evidence is irrelevant, lacks foundation, is hearsay, and is speculative and conclusory, among others. The Court is not persuaded, and the objections are OVERRULED. Mr. Borden can properly testify as to how, on his review of documents that Defendant produced in discovery, the documents did not include a doctor's finding that Pioneer House could not address Plaintiff's needs at the time period in question. The objections go to weight, not admissibility. The Court does not treat the testimony as expert testimony or requiring specialized qualifications to review medical documents.

In regards to Defendants' Objection Nos. 9-10 specifically, Defendants object to Exhibits 1-2 to the Declaration of Matthew Borden ("Borden Decl."). However, these documents were discussed and authenticated through Robert Godfrey's deposition testimony for Defendants in this action. (Exh. 3 to Borden Decl.) Defendants' Objection Nos. 9-10 are therefore OVERRULED.

As to Defendants' Objection No. 11 specifically, wherein Defendants challenge the transcript excerpt from Robert Godfrey's deposition on behalf of Defendants in this action (Exhibit 3 to the Borden Declaration), the Objection is OVERRULED. The sworn testimony of Robert Godfrey is relevant and is not "materially misleading," unduly prejudicial, or an improper legal conclusion.

As to Defendants' Objection No. 12 specifically, the objection is not ruled upon because the Court did not consider the objected-to evidence in reaching its decision on the instant motion. The evidence is an excerpt from a Separate Statement of Undisputed Facts that Defendant filed previously in this action. (Exh. 4 to Borden Decl.) In granting or denying a motion for summary judgment or summary adjudication, the Court need rule on only those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review. (Code Civ. Proc. § 437c(q) (as amended effective Jan. 1, 2016).)

As to Defendants' Objection No. 13 specifically, wherein Defendants challenge the excerpt of the DHCS

hearing dated May 17, 2017 and attached as Exh. 5 to the Borden Declaration, the Objection is OVERRULED. The hearing transcript is relevant, Mr. Borden declares that it is a true and correct copy (Borden Decl. ¶ 7), and the excerpted portions are testimony by Defendant's representative, Robert Godfrey, such that they amount to party admissions.

As to Defendants' Objection No. 14 specifically, the Objection is OVERRULED. Mr. Borden declares that, to the best of his knowledge, and under penalty of perjury, Defendant was "represented by counsel and presented live witness testimony and documentary evidence" at the DHCS hearing. While Mr. Borden did not declare that he attended the hearing personally, this doesn't mean it's inadmissible. As discussed above, the Court can consider circumstantial evidence, indirect evidence, and the content of the document in finding a document to be properly authenticated. (See *People v. Gibson* (2001) 90 Cal.App.4th at 383; *Young v. Sorenson* (1975) 47 Cal.App.3d at 915-916; Evid. Code § 1410; *Chaplin v. Sullivan*, 67 Cal.App.2d at 734.) Here, the contents of the hearing transcript and the DHCS Order both indicate that Defendant was represented by counsel and presented live witness testimony and documentary evidence; Defendant has not made any showing to the contrary.

As to Defendants' Objection No. 15 specifically, the Objection is OVERRULED. Mr. Borden declares that, to the best of his knowledge and under penalty of perjury, Defendants did not appeal the DHCS Order through a petition for writ of mandate or otherwise. The Objection is not well-taken for the same reasons discussed above. Defendant did not make any showing that Defendant ever appealed the DHCS Order in any way. The Court is not persuaded that this testimony by Borden is inadmissible on grounds it is irrelevant, unduly prejudicial, or speculative, or that the testimony lacks foundation or constitutes an improper legal conclusion.

*Plaintiff's Evidentiary Objections*

Plaintiff's evidentiary objections are ruled upon as follows. The objections to the Declarations of retired nursing home administrator Christopher Cherney and Dr. Jay Luxenburg are SUSTAINED in part as to the portions of those declarations reciting legal conclusions in the form of "professional opinions," such as whether Pioneer House discharged Plaintiff within the meaning of the regulations. (See *Hayman v. Block* (1986) 176 Cal.App.3d 629, 638-39 ("affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts").) The Court agrees with Plaintiff that this is not a medical malpractice or similar action necessitating expert testimony regarding the standard of care applicable in a particular medical situation. The Court did not consider the portions of these declarations that constitute legal argument, legal conclusion, or ultimate facts, nor did the Court consider any recitations of out-of-court statements for their truth.

**Judicial Notice**

*Defendant's Judicially-Noticed Materials*

Defendant's Request for Judicial Notice ("Def.'s RJN"), which attaches copies of declarations previously filed in this action, is unopposed and is granted.

In taking judicial notice of these documents, the court accepts the fact of their existence, not the truth of their contents. (See *Professional Engineers v. Dep't of Transp.* (1997) 15 Cal.4th 543, 590 (judicial notice of findings of fact does not mean that those findings of fact are true); *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

*Plaintiff's Judicially-Noticed Materials*

Plaintiff does not include a request for judicial notice of the DHCS Order, and instead attached the

DHCS Order to the declaration of Mr. Jones. (See Jones Decl. ¶ 7, Exh. 1.)

However, the Court *sua sponte* takes judicial notice of the DHCS Order (Exh. 1 to Jones Decl. (bearing the heading "State of California Department of Health Care Services Office of Administrative Hearings and Appeals"). As discussed above in the analysis of the evidentiary objections, the Court finds this document to be authenticated and admissible. For the sake of completeness, however, the Court **separately and independently** also *sua sponte* finds that this DHCS document is judicially noticeable.

A court "may take judicial notice of a prior judgment in a different case though such judgment or its content is not pleaded in the complaint, provided (a) the judgment is appropriately drawn to the court's attention and (b) the plaintiff has adequate notice and opportunity to be heard on the question of the effect of such judgment." (*Bank of America v. Department of Mental Hygiene* (1966) 246 Cal.App.2d 578, 581.) Further, Evidence Code 452(c) permits judicial notice of official acts and proceedings of State entities, and there has been no showing that the California Department of Health Care Services is not such an entity. (See e.g. *Ojavan Investors, Inc. v. California Coastal Com*. (1994) 26 Cal.App.4th 516, 527("trial court properly took judicial notice of the official acts of a government department" because they were explicitly crafted by the agency and not merely "documents prepared by a private party and filed with the Secretary of State").)

Finally, to the extent Defendants believe the DHCS Order is not subject to judicial notice, ***Defendants shall have the opportunity to further argue that point during the hearing***. The Evidence Code specifies a procedure for notice and an opportunity to be heard before the taking of judicial notice, when the matter "is of substantial consequence to the determination of the action." (Evid. Code § 455.) Where a party requests, or the court proposes to take, judicial notice of matters under Evidence Code section 452 (permissive judicial notice) or under Evidence Code 451, subdivision (f) (mandatory judicial notice of matters of generalized knowledge universally known such that they cannot be reasonably disputed), "the court shall afford each party reasonable opportunity, before the jury is instructed or before the cause is submitted for decision by the court, to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed." (Evid. Code, § 455, subd. (a), italics added.) Further, "[i]f the trial court resorts to any source of information not received in open court, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action and the court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken." (Evid. Code, § 455, subd. (b).)

**Discussion**

*Issue Preclusion*

Plaintiff's MF 2 cites, as its sole evidentiary support, an Order from the California Department of Health Care Services Office of Administrative Hearings and Appeals (Exh. 1 to Jones Decl. ("DHCS Order")). Accordingly, the Court must first determine whether that Order can properly serve as "evidence" in this case. **The Court finds that it can, and that the doctrine of issue preclusion applies here.**

Courts have "frequently used 'res judicata' as an umbrella term encompassing both claim preclusion and issue preclusion," but these are "two separate 'aspects' of an overarching doctrine." (*DKN Holdings, LLC v. Faerber* (2015) 61 Cal.4th 813, 823.)

Here, Plaintiff specifically urges application of the doctrine of "issue preclusion." (P&As at 15.) What follows is the Court's analysis of whether the doctrine of "issue preclusion" applies with respect to the DCHS Order.

Issue preclusion the "describes the bar on relitigating issues that were argued and decided in the first suit." (*DKN Holdings*, 61 Cal.4th at 823.) Issue preclusion prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action." (*Id.* at 824 (citations omitted).)

"There is a limit to the reach of issue preclusion, however. In accordance with due process, it can be asserted only against a party to the first lawsuit, or one in privity with a party." (*Id.* at 824 (citations omitted).) "Issue preclusion "does not bar entire causes of action. Instead, it prevents relitigation of previously decided issues." (*Id.*)

Further, issue preclusion "can be raised by one who was not a party or privy in the first suit." (*Id.*) "Unlike claim preclusion, issue preclusion can be invoked by one not a party to the first proceeding. The bar is asserted against a party who had a full and fair opportunity to litigate the issue in the first case but lost." (*Id*. at 826.) "The point is that, once an issue has been finally decided against such a party, that party should not be allowed to relitigate the same issue in a new lawsuit." (*Id*.)

"In summary, issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id.* at 825.)

"Any decision that an administrative agency makes while acting in a judicial capacity and resolv[ing] disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate can give rise to collateral estoppel." (*People v. Garcia* (2006) 39 Cal.4th 1070, 1076 (quotation marks omitted).) If the party against whom the issues are decided fails to "challenge[] the adverse findings made in that proceeding, by means of a mandate action in superior court," those findings are "binding in later civil actions." (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65.)

California courts have recognized the validity of an offensive use of collateral estoppel. (*In re Estate of Gump* (1991) 1 Cal.App.4th 582, 608 ("The offensive use of collateral estoppel occurs when a plaintiff seeks to foreclose a defendant from relitigating an issue the defendant has previously litigated unsuccessfully in another action against the same or a different party.").) While closer scrutiny is given to the offensive use of collateral estoppel due to its broader due process implications, the basic elements of the doctrine are the same. In *Imen v. Glassford* (1988) 201 Cal.App.3d 898, 906, the appellate court recognized the applicability of offensive collateral estoppel, while enumerating the additional due process concerns it invokes, as expressed by the Supreme Court in *Parklane Hosiery Co. v. Shore* (1979) 439 U.S. 322. The court in *Imen* acknowledged a trial court's broad discretion in applying offensive collateral estoppel while quoting the Supreme Court's concerns about a prior defendant's incentive to defend, the possible inconsistency of prior judgments, and the prior availability of procedural defenses. (*Imen*, 201 Cal.App.3d at 906.) Where none of those concerns are implicated, an application of offensive collateral estoppel is appropriate. (See *id.)*

*Prior Proceeding and DHCS Order*

Here, Plaintiff's evidence shows that after a hearing on May 17, 2017, the DHCS issued its "Decision and Order" on May 24, 2017. The unrebutted evidence of record, the declaration of Mr. Jones, provides that he represented his mom at the hearing, that "Pioneer had its lawyer at the hearing," and that "[a]t the hearing, both sides told our stories and presented evidence and cross-examined witnesses. All the statements were given under oath." (Jones Decl. ¶ 6; see also Borden Decl. ¶ 8.) It is undisputed that Pioneer House was a party to the DHCS proceedings and is the non-moving party in connection with the instant motion.

The primary issue presented to the hearing officer on May 17, 2017 was whether Pioneer House's having advised the hospital that it "could not readmit" Ms. Single violated Ms. Single's "right to readmission pursuant to California Health and Safety Code § 1599.1(h)(1)." (Exh. 1 to Jones Decl. at 1.) The hearing officer assessed Pioneer House's arguments and evidence "relating to its decision to refuse [Ms. Single's] readmission." (*Id.* at 2.) The hearing officer described Defendant's evidence and arguments, including:

[After] Resident [Ms. Single] was transferred to the GACH [hospital], with police oversight under Welfare and Institutions Code § 5150 . . . Facility acknowledged that the GACH [hospital] requested readmission from Facility, later the same day. Facility informed the GACH that it could not readmit Resident. [ . . . ] Facility presented testimony and documentation associated with its contention that Resident's behavioral needs cannot be met in that her primary need is a mental health issue; she has no skilled nursing needs; she poses a risk to others; and is independent with her ADLs.

(Exh. 1 to Jones Decl. at 2-3.) The Order analyzed Defendants' arguments and evidence that Pioneer House could not "meet Resident's needs" such that it was permissible for Pioneer House to refuse to readmit Ms. Single when the hospital attempted to discharge her back to Pioneer House. (*Id.* at 3-6.) The DHCS Order rejects Defendant's arguments, and holds that under the *St. John* case (discussed below), Defendant's refusal to readmit Ms. Single on March 23, 2017, amounted to an involuntary transfer without the requirements for a transfer (i.e., a written bed-hold notice, etc.) having first been satisfied.

Plaintiff now moves for summary adjudication on the basis that the DHCS Order expressly concluded, with respect to the following issues:

- "Facility failed to meet the[] [statutory] bed-hold and notification requirements and the remedy to offer readmission to the first available bed applies." (Exh. 1 to Jones Decl. at 5.)

- "[A] facility must establish and follow a written policy permitting residents to return to their previous bed, if available, after the bed-hold period, or to the first available bed if the resident's bed is no longer available. When a facility determines that a resident cannot return, it must comply with the provisions outlined under 42 CFR § 83.15(c). Facility presented no exception to this federal requirement." (*Id*. at 5-6.)

- "In this case, Facility failed to provide Resident with the due process that is required at the time Facility determined that she could not be readmitted, as outlined under 42 CFR § 483.15(c), which include but are not limited to, issuing a written notice indicating the reason for the refusal. Refusing to readmit a resident after hospitalization is an inappropriate means to transact the permanent discharge of a resident." (*Id.* at 6.)

- "This tribunal finds Facility's refusal is clearly a transfer/discharge within the meaning of this federal law and it is not exempt from the next bed requirement. (*St. John of God Retirement Care Center v. Department, supra*, 2 Cal.App.5th at p. 653.) Therefore, I find that Facility failed to meet these readmission requirements." (*Id*. at 7.)

- "Facility failed to comply with 42 CFR § 483.15 pertaining to the transfer and readmission of Resident" because it "[f]ailed to issue a written bed-hold notice upon transfer"; "[f]ailed to readmit Resident during her bed-hold period"; and "[f]ailed to readmit Resident to the first available bed." (*Ibid*.)

(Exh. 1 to Jones Decl. at 5-7.) The DHCS Order ultimately concluded with a "Summary of Findings" holding that:

Facility failed to comply with 42 CFR § 483.15 pertaining to the transfer and readmission of Resident as follows:

- Failed to issue a written bed-hold notice, upon transfer;

- Failed to readmit Resident during her bed-hold period; and

- Failed to readmit Resident to the first available bed.

(Exh 1 to Jones Decl. at 7.)

The DHCS Order discussed the evidence and detailed the parties' arguments (*Id.* at 1-6), including Defendant's arguments related to the decision to refuse Ms. Single's readmission. (Exh. 1 to Jones Decl. at 1-6.) The decision summarized Defendant's various "arguments related to its decision to refuse Resident's readmission" on grounds it could not meet her needs. (*Id*. at 2-3.) Indeed, Defendant makes the same arguments in opposing the instant motion. (Opp'n at 16-19 (arguing that Defendant could not meet Ms. Single's needs).)

Plaintiff moves for summary adjudication on the basis that the DHCS Order - and thus the findings on the above-quoted issues - have become final and are not subject to collateral attack given Defendant's failure to seek judicial review. (MF 3; see also Borden Decl. ¶ 9.)

(The Court notes that in Plaintiff's MF 3, which states that Defendants did not seek a writ of mandate to try to overturn DHCS's order finding Pioneer House illegally discharged Plaintiff by leaving her in a hospital, Plaintiff cites to paragraph 10 of the Borden Declaration. Borden's declaration only has nine paragraphs. However, the MF should apparently cite to paragraph 9, which states: "Defendants declined to appeal the decision by the Department of Health Care Services through a petition for a writ of mandate or otherwise." (Borden Decl. ¶ 9.)

In the instant lawsuit, Plaintiff raises identical issues that were raised - and ultimately determined - in the DHCS Order. (See e.g. Third Amended Complaint ("TAC") ¶¶ 75-76 (alleging failure to timely provide written bed-hold notice for Ms. Single and refusing to readmit Ms. Single after hospital cleared her to return); TAC ¶ 62 (alleging failure to issue a written notice stating the reason for discharging Ms. Single).) Defendants argue that the DHCS Order did not truly determine "identical" issues to those presented here, but the Court is not persuaded. (Opp'n at 14-15.) While the DHCS did not expressly decide whether Pioneer House violated the specific statutes cited in TAC ¶¶ 62 and 75-76, **the DHCS expressly determined that Pioneer House failed to provide the statutorily-required written bed-hold notice to Ms. Single,** *and* that **Pioneer House's refusal to readmit Ms. Single back from the hospital amounted to a discharge or transfer triggering the written bed-hold (and other) statutory requirements**. (Exh. 1 to Jones Decl. 1-7.) Accordingly, these "issues" have been actually litigated and necessarily determined against Pioneer House and are identical to the issues presented here. Moreover, for purposes of application of the doctrine of issue preclusion, the "'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same." (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511-512 [citations omitted].)

Having reviewed the DHCS Order, the TAC, the admissible evidence, and the papers filed in connection with the instant motion, the Court concludes that: (1) there has been a final adjudication of the DHCS proceedings, culminating in the DHCS Order (Exh. 1 to Jones Decl.); (2) the instant action involves issues (see e.g. TAC ¶¶ 62, 75-76) that are identical to the issues that were (3) actually raised and necessarily decided in the DHCS Order (Exh. 1 to Jones Decl. at 1-7); (4) the DHCS Order's determinations on these issues are being asserted *against* Pioneer House, an entity that was a party to

the DHCS proceedings. (See *DKN Holdings*, 61 Cal.4th at 825.)

Defendants do not contest that DHCS was acting in a judicial capacity in issuing the DHCS Order. Indeed, DHCS held an adversary proceeding in which Pioneer House litigated the legality of Ms. Single's discharge through counsel using live witness testimony and documentary evidence, after which DHCS issued a detailed seven-page ruling with reasoned findings and conclusions. (Borden Decl. ¶ 9; Exh. 1 to Jones Decl.) There was a written transcript of the hearing proceedings. (Exh. 5 to Borden Decl.) These are all the hallmarks of an agency's acting in a judicial capacity. (*Pac. Lumber Co. v. State Water Res. Control Bd*. (2006) 37 Cal.4th 921, 944; *Marie Y. v. Gen. Star Indem. Co.* (2003) 110 Cal.App.4th 928, 955; *Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th 866, 878-79, 881.) Defendants neither argued nor presented any evidence indicating that they did not have an adequate opportunity to litigate the issues decided against them, or that DHCS was not acting in a judicial capacity.

Defendants have not attempted to make a showing that it would be unfair to allow the DHCS proceedings serve as the basis for issue preclusion against them; for example, they have not argued that they had little incentive to defend themselves vigorously in the DHCS proceedings. (See *Estate of Gump*, 1 Cal.App.4th at 608-09; *Imen,* 201 Cal.App.3d at 906.)

Finally, it is undisputed that there has been a final adjudication of issues decided in the DHCS Order. (Def.'s Resp. to UF 3.) Defendants never directly address their failure to appeal the DHCS Order by filing a writ of mandate, and they do not argue that the DHCS Order has yet to become final. (Opp'n at 12-15.) The doctrine of issue preclusion "is asserted against a party who had a full and fair opportunity to litigate the issue in the first case but lost." (*DKN Holdings*, 61 Cal.4th at 826 (emphasis added).) "The point is that, once an issue has been finally decided against such a party, that party should not be allowed to relitigate the same issue in a new lawsuit." (*Id*. (emphasis added).) In general, failure to seek judicial review of an agency's action prevents any later challenge to the merits of that action. (See e.g., *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 243-244.)

The Court is not persuaded by Defendants' argument that a *state agency's* decision cannot be the basis for issue preclusion, or the argument that only a prior *judicial* decision can be the basis for issue preclusion. Indeed, "[a]ny decision that an administrative agency makes while acting in a judicial capacity and resolv[ing] disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate can give rise to collateral estoppel." (*People v. Garcia* (2006) 39 Cal.4th 1070, 1076 (quotation marks omitted); see also *Murray v. Alaska Airlines* (2010) 50 Cal.4th 860, 867 ("It is settled that the doctrine of collateral estoppel or issue preclusion is applicable to final decisions of administrative agencies acting in a judicial or quasi-judicial capacity."); *Pacific Lumber Co. v. State Water Resources Control Bd*. (2006) 37 Cal.4th 921, 944 ("[c]ollateral estoppel may be applied to decisions made by administrative agencies.") and ("For an administrative decision to have collateral estoppel effect, it and its prior proceedings must possess a judicial character," including "indicia" such as "a hearing before an impartial decision maker; testimony given under oath or affirmation; a party's ability to subpoena, call, examine, and cross-examine witnesses, to introduce documentary evidence, and to make oral and written argument; the taking of a record of the proceeding; and a written statement of reasons for the decision."); *People v. Sims* (1982) 32 Cal.3d 468).)

The Court is not persuaded by Defendant's argument that this Court must analyze the doctrine of "judicial exhaustion." First, that issue is not presented in the moving papers. Second, judicial exhaustion prevents a plaintiff from initiating an administrative proceeding and then relitigating the result in a court if she does not like the result. (*See Murray,* 50 Cal.4th at 867.) Third, even assuming that doctrine of "judicial exhaustion" applied, it is undisputed (MF 3) that the DHCS Order is now "final" such that the administrative matter can now be said to have been taken "to completion." (See *id.* at 867 ("respect for the administrative decision making process requires that the prospective plaintiff continue that process to completion, including exhausting any available judicial avenues for reversal of adverse

findings.") Thus, this is not a case where the plaintiff has "abandoned" the underlying administrative action or declined a full, quasi-judicial hearing as part of the administrative action. (*See id.* at 868-69.) Defendant has not shown that the doctrine of "judicial exhaustion" allows it to now avoid the preclusive effects of the underlying adverse administrative hearing before the DHCS and the DHCS Order resulting therefrom.

The Court finds that the doctrine of issue preclusion applies with respect to the above-quoted issues stated within the DHCS Order.

*Interim Discovery Ruling*

The Court clarifies that a prior interim discovery ruling in this action does not resolve the issue here as urged by Defendants. (Opp'n at 12-14 (arguing that Court already ruled, in a prior discovery ruling, that the DHCS Order has no preclusive effect).)

Previously in this case (ROA 309, Order issued 9/18/18), the Honorable Judge David I. Brown issued an interim discovery ruling holding in pertinent part:

As to Plaintiffs' argument that the DHCS findings are res judicata on Defendants, the Court is not persuaded the doctrine applies against Defendants, who were not the parties who filed the complaint with the DHCS and are not the parties who initiated this lawsuit.

Judicial exhaustion is a species of res judicata and governs what may be litigated. Unless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action [Code of Civil Procedure section 1094.5] in superior court, those findings are binding in later civil actions." (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70.) As the California Supreme Court found in *Murray v. Alaska Airlines, Inc.*, "judicial exhaustion may arise when a party initiates and takes to decision an administrative process-whether or not the party was required, as a matter of administrative exhaustion, to even begin the administrative process in the first place." (50 Cal. 4th 860, 867 (emphasis added).) Generally, once a party elects a particular forum he or she "must exhaust 'the chosen administrative forum's procedural requirements.'" (*Page v. Los Angeles Co. Probation Dept.* (2004) 123 Cal. App. 4th 1135, 1142 (emphasis added).)

Thus, generally, if a complainant fails to overturn an adverse administrative decision by writ of mandate, "and if the administrative proceeding possessed the requisite judicial character (see *Pacific Lumber Co. v. State Water Resources Control Bd*. (2006) 37 Cal.4th 921 (emphasis added)), the administrative decision is binding in a later civil action brought in superior court." (*State Bd. of Chiropractic Examiners v. Superior Court (Arbuckle)*, (2009) 45 Cal.4th 963, 976; *Runyon v. Board of Trustees of California State University* (2010) 48 Cal. 4th 760, 773.)

As noted above, Defendants did not initiate the action before the DHCS or elect a particular forum in this action. On reply, Plaintiffs cite to *Denio v. City of Huntington Beach* (1946) 74 Cal.App.2d 424, 431, in support of their contention that res judicata applies regardless of which party initiated the action. However, *Denio* concerned whether a judgment in a former court action is res judicata and conclusive such that the defendant is estopped from raising the matters of defense alleged in its answer. Accordingly, *Denio* is distinguishable since the prior decision here arose from an administrative proceeding, not a court judgment. Further, Plaintiffs have not established the "findings" against Pioneer House are identical to those at issue in this action. (See *Pacific Lumber, supra*, 37 Cal.4th at 943 [as a predicate to the application of the doctrine of res judicata, "the issue sought to be precluded from relitigation must be identical to that described in the former proceeding."].) Therefore, the Court is not persuaded the DHCS findings have any res judicata effect against them in this civil action.

(ROA 309; Order of 9/18/18.)

The Court does not view the above-quoted portion of the interim discovery ruling as pre-determining this Court's analysis of the issue preclusion arguments currently before it on the instant motion for summary adjudication. That ruling analyzed whether the doctrine of "judicial exhaustion" applied, but Plaintiff's instant motion **does not** urge application of the "judicial exhaustion" doctrine. Instead, Plaintiff's moving papers urge application of the doctrine of issue preclusion, **not** "judicial exhaustion."

While Defendants' Opposition papers argue that the issue of "judicial exhaustion" has already been decided, Defendants largely ignore the authorities in the moving papers (P&As at 12-16) specifically on the issue of **issue preclusion**. (Opp'n at 12-14.) The Court is not persuaded that Defendants' "judicial exhaustion" arguments- and/or a prior interim discovery ruling discussing "judicial exhaustion" - can simply replace Plaintiff's *actual* argument, i.e., that the doctrine of issue preclusion applies here.

The Court also notes that the prior interim discovery ruling concluded that Plaintiffs at that time had not shown that the *Denio* case was analogous, given that the prior proceeding in that case was a judicial proceeding, not an administrative proceeding. The Court does not view the interim discovery ruling as determinative here, however, because Plaintiff's moving papers do not rely solely on *Denio* for any particular argument. Indeed, Plaintiff's papers cite to other "issue preclusion" cases involving a prior *administrative* proceeding, not a prior judicial proceeding as in *Denio*. (Reply at 10 (citing *French v. Rishell* (1953) 40 Cal.2d 477, 482 (administrative proceeding); *Marie Y. v. General Star Indemnity Co.* (2003) 110 Cal.App.4th 928, 954-55 (administrative proceeding) ("When an administrative agency acts in a judicial capacity to resolve disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, its decision will collaterally estop a party to the proceeding from relitigating those issues.").) Accordingly, the interim discovery ruling's conclusion that Plaintiffs had not shown *Denio* to be analogous does not prevent application of the issue preclusion doctrine here.

Finally, the Court clarifies that it does not view the above-quoted interim discovery ruling as determinative with respect to whether Plaintiff can *presently* establish that the prior administrative "findings" against Pioneer House are "identical to those at issue in this action." While the interim discovery ruling concluded *that at that time*, Plaintiff had not made such a showing, the discovery ruling in no way purports to make a prospective, merits-based determination to the effect that Plaintiff would never have another opportunity to attempt such a showing, such as on the instant motion for summary adjudication.

*No Genuine Issue of Material Fact with Respect to Plaintiff's MF 1-3*

Plaintiff's MF 1 states: "Pioneer House refused to readmit Ms. Single on March 23, 2017, after Sutter Hospital cleared Ms. Single to return home."

Plaintiff's MF 2 states: "Before Pioneer House refused to readmit Ms. Single, it did not do at least one of the following things: (1) issue a written discharge notice, (2) issue a written bed-hold notice, (3) document the reason for the discharge in her medical chart, (4) engage in discharge planning and orientation and (5) follow a lawful, written bed-hold policy."

Plaintiff's MF 3 states: "Defendants did not seek a writ of mandate to try to overturn DHCS's Order finding that Pioneer House illegally discharged Ms. Single by leaving her in a hospital."

Plaintiff relies upon these same three MFs for each of the seven "issues" listed in the Separate Statement.

The DCHS Order is the evidentiary basis for the facts asserted in MFs 1-2 of Plaintiff's Separate

Statement. As discussed above, the Court finds the DHCS Order to be admissible and to have preclusive effect for purposes of issue preclusion in this action.

Defendant's responsive Separate Statement does not reveal any genuine material factual dispute with respect to MFs 1-3. The Court has considered the evidence offered in support of MFs 1-3, Defendants' objections thereto, and Defendants' evidence offered in rebuttal of Plaintiff's evidence and/or to reveal a material factual dispute. The Court finds that Plaintiff's cited evidence supports each of Plaintiff's MFs 1-3 and that Defendant's evidence does not reveal any genuine material factual disputes.

Defendant's response to MFs 1-2 are essentially the same: that Pioneer House did not "refuse" to readmit Plaintiff on March 23, 2017. Yet Defendant's evidence does not contradict Plaintiff's evidence regarding the events of March 23, 2017. The evidence of record is that the hospital attempted to discharge Plaintiff on March 23, 2017 (MF 1), the evidence offered in support of MF 1-2 shows that Pioneer House did not allow Plaintiff's return on that date. Indeed, it is undisputed that Plaintiff *did not in fact return* to Pioneer House after the hospital attempted to discharge her on March 23, 2017 (MF 1-2), and the unrebutted evidence of record indicates that she remained in the hospital for *weeks* after March 23, 2017.

Instead of truly disputing MFs 1-2 and or identifying evidence contradicting them, Defendants offer evidence attempting to **excuse or justify** Pioneer House's action to prevent Plaintiff's return on March 23, 2017, the date the hospital undisputedly attempted to discharge Plaintiff back to Pioneer House. Defendants' evidence appears to be offered to support Defendants' position that Pioneer House acted reasonably, or with justification, in declining the hospital's attempt to discharge Plaintiff on March 23, 2017. The evidence suggests that Pioneer House was unsure whether it could properly care for Plaintiff in her current condition and whether Plaintiff posed a danger to other residents in her current condition. Defendants argue that it was therefore reasonable for Pioneer House to want additional time to assess Ms. Single's needs and its ability to meet them.

**However**, the evidence also undisputedly reflects that Pioneer House refused to accept Ms. Single back from the hospital when the hospital cleared her to return. Under *St. John*, such a refusal is a "tantamount to an involuntary transfer." (*St. John,* 2 Cal.App.5th at 653.)

The *St. John* case further provides that the refusal to allow a resident's return from the hospital shall be deemed a discharge, and that the time it occurs, the various documentary "transfer and discharge" requirements are triggered, including the requirement that a *written* "bed-hold" notice be provided "at the time of transfer." (*St. John*, 2 Cal. App.5th at 650-53.) (According to Plaintiff, 42 C.F.R. § 483.12(a)(3) is the predecessor to 42 C.F.R. § 483.15(c), but the requirements are the same in both regulations (P&As at 9 n.3); Defendant has not shown otherwise.) It is undisputed that Pioneer House did not timely provide Ms. Single with written notices required before a transfer on March 23, 2017. It is also undisputed that Pioneer House did not bring Ms. Single back to the facility while it was reassessing its ability to continue to meet Ms. Single's needs.

Indeed, *St. John of God* is analogous to the facts in this case. It undercuts Defendants' suggestion that a facility can, in some situations, delay in complying with involuntary transfer requirements. *St. John* stands for the proposition that "a refusal to readmit is 'treated as if it were an involuntary transfer' . . . meaning *that absent compliance with the applicable involuntary transfer requirements* under part 483.12, the refusal to readmit is improper." (*St. John of God Retirement & Care Center v. Department of Health Care Services Office* (2016) 2 Cal.App.5th 638, 653 (emphasis added).) In that case, a skilled nursing facility refused to permit its resident to return after a hospital stay, which was determined to be an illegal discharge. (*Id.* at 644.) The case holds that any time a nursing facility that declines to accept its resident back from a hospital stay in connection with the resident's acute medical circumstance, the nursing facility involuntarily transfers the resident. (*Id.* at 650-53.)

In fact, the court in *St. John* specifically rejected the argument Defendant makes here, i.e., that Defendant's declining to accept its resident back from the hospital should not be deemed an involuntary transfer and should be excused because Defendant needed more time to assess whether it could continue to satisfy its statutory obligations to meet the resident's needs. (Opp'n at 16-19.) The court in *St. John* rejected the argument, finding that the facility's "concern" about being found in violation of Health and Safety Code § 1432 - and the requirement that it be able to meet the resident's needs- "is unfounded" because, the court reasoned, the facility could have simply accepted the resident back from the hospital, *then* analyzed the facility's ability to meet the resident's needs and "complied with the requirements of a discharge under part 483.12, and thereafter discharged" the resident *afterward*. (*St. John,* 2 Cal.App.5th at 657 (emphasis added).) The same is true for Pioneer House in this case; it could have accepted Ms. Single back from the hospital, assessed its ability to meet her needs, and then provided her with the requisite written notices and five required transfer/discharge processes *before* "later discharging her." (See *id.* at 657; Plaintiff's MF 2 lists the five conditions before a transfer can occur.)

Even drawing all reasonable inferences in favor of Defendants as the non-moving parties, as the Court must do, the Court does not find that the evidence reveals a material factual dispute. This is because neither the controlling case, *St. John of God,* nor the applicable regulations and statutes cited in the parties' papers, provide that a nursing facility has the option to decline to accept a resident back from a hospital stay as long as the facility is still gathering information to assess the resident's current condition and/or whether it properly can care for her in that condition. Defendant's evidence offered to support the reasonableness of its desire for more medical information from the hospital is therefore not determinative and has no impact on the analysis required under *St. John*.

Defendants have not meaningfully distinguished *St. John.* The fact that a hospice provider was involved in the resident's admission to the hospital in that case is analogous to the fact that police were involved in Ms. Single's admission to the hospital in this case. As held in *St. John*, the involvement of a third party in a resident's admission to the hospital does not change the nursing facility's obligations to the resident upon the hospital's clearing the resident for discharge. Again, absent authorities holding that a facility can potentially be excused from readmitting a resident upon hospital discharge if the facility believes it needs more time or information to assess the resident's needs, the Court does not create such an exception to the holding in *St. John*.

Defendants have not shown that under the applicable law, Pioneer House's not accepting Plaintiff back from the hospital on March 23, 2017 can be justified - *even if* the non-acceptance was motivated by an intention to provide the best care for Plaintiff and the other residents, and *even if* the non-acceptance occurred *in part* because the hospital delayed in providing certain records for the facility's review.

*St. John* requires that a facility declining to accept a resident back from a hospital must satisfy five conditions (i.e., those listed in MF 2), and the evidence of record here shows it is undisputed that Pioneer House failed to satisfy at least one of these conditions, the most obvious being the *written* "bed hold" notification requirement. (MF 2.) Defendant's own evidence includes an admission that this requirement was not satisfied. (Exhs. A to Declaration of Matthew Schroeder ("Schroeder Decl."); Exh. E to Schroeder Decl. at 182-83 (deposition testimony of Robert Godfrey on behalf of Defendant, admitting that a written bed hold notice form "was not sent timely" for Ms. Single).)

Defendant repeatedly disputes whether Plaintiff was "discharged" under the applicable law. (Def.'s Responses to MFs 1-3.) Under *St. John*, however, the Court is not persuaded.

Defendants attempt to dispute Plaintiff's MF 3, Defendants' experts Dr. Luxenburg and Mr. Cherney set forth that Pioneer House **did not timely receive** the medical records outlined as a predicate condition in

the DHCS order. (See Luxenburg Decl. ¶¶ 39-40, 49; Cherney Decl. ¶¶ 68-70, 76.) By the time the Pioneer House received the records, Plaintiff's counsel had notified Pioneer House and the Court that Plaintiff no longer wanted to be readmitted to Pioneer House. (*Id.* ¶ 46.) But whether Pioneer House took Plaintiff back as a resident *after* the DHCS order (and any "predicate condition" it established) is not before the Court. Instead, the issue is whether **on March 23, 2017**, when the hospital attempted to discharge Plaintiff back to Pioneer House, whether Pioneer House satisfied the five above-listed conditions (see *St. John* at 650-53) at that time.

The Court finds that there are no genuine issues of material fact with respect to MFs. 1-3. The Court has also reviewed Defendant's additional facts and does not find that they reveal any genuine issue of material fact with respect to MFs 1-3.

**However**, as discussed below, while Plaintiff has shown entitlement to judgment as a matter of law given the undisputed facts in connection with the First Cause of Action (Issue 1 in the Separate Statement), Plaintiff has **not** made such a showing with respect to the Second Cause of Action (Issue 2 in the Separate Statement) or the challenged affirmative defenses (Issues 3-7 in the Separate Statement).

***ISSUE 1: "Summary Adjudication in Favor of Plaintiffs as to Defendant Cathedral Pioneer Church Homes II ('Pioneer House')'s Liability under the First Cause of Action (Violation of California Health and Safety Code § 1430(b))"***

Plaintiff's Motion for Summary Adjudication is GRANTED as to Issue 1.

The First Cause of Action in the operative pleading (TAC ¶¶ 74-88) alleges violation of Health and Safety Code § 1430(b).

Health & Safety Code § 1430(b) provides:

A current or **former resident or patient of a skilled nursing facility**, as defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, **may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation**. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. **The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue.** An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(Health & Safety Code § 1430(b) (emphasis added).)

The Court notes that Plaintiff has neither sought, nor made any attempt to prove up, any monetary damages in connection with this cause of action. Indeed, the statute does not provide for recovery of damages, and instead provides that the facility "shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue."

Because the Court finds that there are no genuine issues of material fact with respect to MFs 1-3 underlying Issue 1 of Plaintiff's Separate Statement, given the Court's foregoing discussion of the doctrine of issue preclusion/collateral estoppel in connection with the DHCS Order, and pursuant to *St. John*, Plaintiff has shown entitlement to judgment as a matter of law as to the first cause of action in the TAC.

In so ruling, the Court clarifies that Defendants have not shown that any of the affirmative defenses, including but not limited to those specifically challenged in Plaintiff's moving papers, prevent entry of summary adjudication in Plaintiff's favor on this cause of action.

***ISSUE 2: "Summary Adjudication in Favor of Plaintiffs as to Defendant Pioneer House's Liability under the Second Cause of Action (Violation of California Business & Professions Code §§ 17200 et seq."***

The motion for summary adjudication is DENIED as to Issue 2.

The First Cause of Action in the operative pleading alleges that Defendants' conduct was unlawful, fraudulent, ***or*** unfair in violation of Business and Professions Code §§ 17200 et seq., ***and*** that Ms. Single "has lost money or property" as a result. (TAC ¶¶ 89-91.)

Plaintiff's Motion for Summary Adjudication must be DENIED with respect to the Second Cause of Action because Plaintiff has not provided any evidentiary support for her alleged "lost money or property" (TAC ¶ 91). Similarly, the instant motion fails to identify *which specific provisions* of Business & Professions Code §§ 17200 "et seq." are the provisions upon which Plaintiff seeks summary adjudication. Section 17200 itself states only this "definition": "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code." Plaintiff's papers do not state which prong (unlawful vs. fraudulent vs. unfair) Plaintiff contends has been violated. The moving papers, Separate Statement, and Reply are silent on these issues.

Plaintiff's papers also fail to specify each distinct legal element of the cause of action, and do not identify evidence to support each element. Again, a plaintiff moving for summary judgment "has met his or her burden of showing that there is no defense to a cause of action if that party has proved *each element* of the cause of action entitling the party to judgment on that cause of action." (Code Civ. Proc. § 437c(p)(1) (emphasis added).) Plaintiff has not satisfied the burden upon a moving party here.

Plaintiff has not shown entitlement to judgment as a matter of law as to the Second cause of action in the TAC for Violation of California Business & Professions Code §§ 17200 et seq.

***ISSUES 3-7 (Defendant's Affirmative Defenses No. 15 (Defendants Acted 'In Good Faith at All Times'); No. 32 (Defendants' Business Practices Complied At All Times With Underlying Law); No. 33 (Defendant' Business Practices Were 'Authorized By Law'); No. 34 (Defendants' Conduct Was Taken Against Ms. Single For 'Lawful Reasons'); No. 38 ('All Acts And/Or Omissions Attributable To Defendants That Form The Basis Of The Instant Lawsuit Were Expressly Or Impliedly Authorized By State And/Or Federal Regulations And/Or Statutes.").)***

Summary adjudication is DENIED with respect to these affirmative defenses.

When a plaintiff moves for summary adjudication on an affirmative defense, the court shall grant the motion "only if it completely disposes" of the defense. (Code Civ. Proc. § 437c(f)(1).) Plaintiff bears the initial burden to show there is no triable issue of material fact as to the defense and that he or she is entitled to judgment on the defense as a matter of law. (*See's Candy Shops, Inc. v. Sup. Ct. (Silva)* (2012) 210 Cal.App.4th 889, 900.) "If a cause of action contained within an affirmative defense is not shown to be barred ***in its entirety***, the court cannot grant a plaintiff's summary adjudication motion." (*Id.* at 908 n.7 (emphasis added) (citing *McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 975; *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 95-97).)

Plaintiff here has not shown any one of these affirmative defenses to be barred in its entirety. For instance, in *McCaskey,* the trial court entered summary adjudication in favor defendant on the affirmative defense of "statute of limitations" even though the plaintiffs' various claims in that case triggered different time limits in which to sue. In reversing the trial court's grant of summary adjudication with respect to the affirmative defense of "statute of limitations," the appellate court explained: "the operation of the statute of limitations varies depending on the nature of the claim under scrutiny. That a contract cause of action is (or is not) barred does not mean that a FEHA cause of action is (or is not) barred. Here, as we have concluded, the statute of limitations did not bar the contract cause of action. It does not follow, however, that it did not bar the FEHA causes of action. Unfortunately, neither the parties nor the court gave the latter question the independent attention it requires." (*McCaskey*, 189 Cal.App.4th at 975-976.)

Here, Plaintiff's moving papers, Separate Statement, and Reply fail to separately discuss the challenged affirmative defenses in a meaningful way or connection with Plaintiff's separate and distinct causes of action. (P&As at 16.) Plaintiff simply asserts that "equitable defenses may not be asserted to wholly defeat a UCL claim" (*id.* (citing *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 179). But *Cortez* actually held that "we agree that equitable considerations may enter into the court's disposition of a UCL action" and that "what would otherwise be equitable defenses may be considered by the court when the court exercises its discretion over which, if any, remedies authorized by section 17203 should be awarded. (*Id.* at 179-180.) Further, "[a] court cannot properly exercise an equitable power without consideration of the equities on both sides of a dispute." (*Id.* at 180.) The Court therefore does not find that *Cortez* stands for the proposition that summary adjudication is appropriate whenever an "equitable defense" is raised as against any UCL claim. Moreover, Plaintiff has offered *no* authorities with respect to equitable defense to *non-UCL claims*, even though Plaintiff's pleading also includes a declaratory relief cause of action.

Plaintiff has not shown that the above-listed affirmative defenses would necessarily apply in the same exact way *across all causes of action in the TAC*. It appears to the Court that concepts of acting in "good faith," having "lawful reasons," "complying with law" etc., could all have different meanings in different contexts, and across different causes of action. At the very least, Plaintiff has not shown otherwise here. (P&As at 16.)

As a result, Plaintiff has not met the initial burden with respect to the above-listed affirmative defenses. Likewise, Plaintiff has not shown entitlement to judgment as a matter of law as to these affirmative defenses for *all* purposes - and across all causes of action - in this case.

(The Court clarifies that Defendants have not shown that any affirmative defense prevents judgment as a matter of law in favor of Plaintiff in connection with the First Cause of Action for Violation of Health and Safety Code § 1430(b*).*)

**Conclusion**

Plaintiff's Motion for Summary Adjudication is GRANTED with respect to the First Cause of Action for Violation of Health and Safety Code § 1430(b) as against Defendant Cathedral Pioneer Church Homes II ("Pioneer House").

Plaintiff's Motion for Summary Adjudication is DENIED with respect to the Second Cause of Action for Violation of Business & Professions Code § 17200.

Plaintiff's Motion for Summary Adjudication is DENIED with respect to Defendants' Affirmative Defenses Nos. 15, 32-34, and 38.

Plaintiff shall submit an order pursuant to California Rule of Court 3.1312 and Code of Civil Procedure § 437c(g).

**COURT RULING**

The matter was argued and submitted. The matter was taken under submission.

**SUBMITTED MATTER RULING FROM 02/04/2021**

The Court heard oral arguments regarding Plaintiff Gloria Single's ("Plaintiff") Motion for Summary Adjudication as against Defendant Cathedral Pioneer Church Homes II ("Defendant") on February 4, 2021.

The Court's tentative ruling, which was issued the day before the hearing, stated in pertinent part: "to the extent Defendants believe the DHCS Order is not subject to judicial notice, ***Defendants shall have the opportunity to further argue that point during the hearing***." (emphasis in original.) The tentative ruling further stated,

[T]he court shall afford each party reasonable opportunity, before the jury is instructed or before the cause is submitted for decision by the court, to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed." (Evid. Code, § 455, subd. (a), italics added.) Further, "[i]f the trial court resorts to any source of information not received in open court, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action and the court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken." (Evid. Code, § 455, subd. (b).)

(ROA 618.)

On February 4, 2021, the day of the hearing, Defendant filed a "Supplemental Brief Re: Request for Judicial Notice." (Register of Actions ("ROA") 619.) During the hearing, the Court heard arguments on whether the Court should take judicial notice of the DHCS Order at the heart of Plaintiff's motion, among other arguments.

The Court took the matter under submission after the hearing on February 4, 2021.

On February 16, 2021, Plaintiff filed a "Response" (ROA 622) to Defendant's Supplemental Brief (ROA 619). Plaintiff's Response was filed with the Declaration of attorney Matthew Borden (ROA 623).

On February 18, 2021, Defendants filed a "Sur Reply" (ROA 625) and the Declaration of attorney Matthew Schroeder (ROA 626).

The Court did not order the filing of any of these post-hearing briefs. However, the Court's tentative ruling **did** invite additional argument/evidence on whether the DCHS Order should be deemed judicially noticeable and accepted for the truth of the matters stated therein, as Plaintiff argues, i.e., on grounds of issue preclusion.

Defendants have asked the Court to take judicial notice of an "October 3, 2018 Order of Dismissal" which was purportedly a "stipulation between Pioneer House and the California Department of Public Health regarding all matters that form the basis of the Class 'B' Citation." (ROA 619; Exh. 1 to ROA 619.) Defendant argues that this document is relevant to this action because it was the true "final" determination of Ms. Single's claims. **However, no "Class 'B' Citation" has been filed in this action.**

It therefore remains unclear what issue(s) or claim(s) the October 3, 2018 Order of Dismissal (Exh. 1 to ROA 619) actually settled.

Defense counsel's filings assert that the "October 3, 2018 Order of Dismissal" (Exh. 1 to ROA 619) has some connection to the events alleged in Ms. Single's pleading in this case. However, no supporting declaration serves as evidentiary support for the assertion. Moreover, the text of the October 3, 2018 Order of Dismissal does not itself refer to Ms. Single or describe the incidents at issue in this action.

Plaintiff's filings (ROA 622-23) argue that the October 3, 2018 Order of Dismissal have no connection to Ms. Single's alleged incident or her claims in this case, and are instead simply Defendants' attempts to muddy the waters as to whether the DHCS Order was truly "final" for purposes of issue preclusion.

The matter remains under submission. To ensure completeness of the record and a full and fair opportunity for both sides to be heard, **the Court hereby orders supplemental briefing on the following** limited issue.

On or before **March 24, 2021**, Defendants shall file and serve no more than seven (7) pages of legal argument explaining, in a straightforward manner, **how** the Class B Citation - and the October 3, 2018 Order of Dismissal that Defendants claim settled the matters raised in that Citation - are connected to **Ms. Single** and her specific claims in this action, and the extent to which the October 3, 2018 Order of Dismissal should be considered the "final" adjudication of Ms. Single's claims for purposes of issue preclusion. Defendants' filing shall bear the caption: Defendants' Court-Ordered Supplemental Brief. The filing shall also be supported by a declaration under penalty of perjury, and shall be accompanied by a copy of the "Class B Citation" that was purportedly "settled" via the October 3, 2018 Order of Dismissal (Exh. 1 to ROA 619). Any portion(s) of that Class B Citation that reveal a connection to Ms. Single's lawsuit shall be highlighted/underlined.

On or before **April 5, 2021**, Plaintiff shall file and serve a responsive brief with no more than seven (7) pages of legal argument, and may include a responsive declaration and any objections to the evidence accompanying Defendants' filing. Plaintiff's filing shall bear the caption: Plaintiff's Court-Ordered Responsive Supplemental Brief.

Arguments and evidence outside this scope will not be considered.
In the event any party fails to timely file the above-described supplemental briefing, the Court will issue its ruling based on the record before it.

The Court does not intend to hold an additional hearing following receipt of these filings. However, should the Court see a need for such a hearing, one will be scheduled sua sponte via Minute Order.

The minute order is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

**FINAL SUBMITTED MATTER RULING**

The Court took the matter under submission on 2/4/21. After having received Defendant's filing on the day of the hearing, as well as post-hearing filings by both sides, the Court ordered supplemental briefing on 3/3/21. (ROA 628.) That ruling is fully incorporated by reference here. The supplemental briefing was ordered to allow Defendant to present arguments as to whether the DHCS Order should be considered judicially noticeable and "final" for purposes of issue preclusion, and to allow Plaintiff to respond to those limited arguments.

The Court now rules as follows.

The Tentative Ruling is AFFIRMED, with the following addition:

Having considered all the evidence and arguments properly before it, the Court finds that the DHCS Order is both judicially noticeable and admissible for purposes of issue preclusion.

The tentative ruling of 2/4/21 stated, "it is undisputed that there has been a final adjudication of issues decided in the DHCS Order. (Def.'s Resp. to UF 3.) Defendants never directly address their failure to appeal the DHCS Order by filing a writ of mandate, and they do not argue that the DHCS Order has yet to become final. (Opp'n at 12-15.)" (ROA 618 (tentative ruling of 2/4/21) at 11.)

Thus, Defendant's argument that the DCHS Order was not the "final" adjudication of Ms. Single's claims against the facility was not timely raised in Defendant's Opposition. Defendant's argument that it did not have an incentive to fully litigate in the DCHS proceedings was also not timely raised. Indeed, Plaintiff's moving papers put the "finality" and the "incentive to litigate" issues squarely before Defendant (see, e.g., MF 3), but Defendant's Opposition did not address them.

Defendant attempted to raise these arguments through the narrow "judicial notice" avenue that the Court's tentative ruling left open to Defendant. (ROA 619.) However, these arguments do not bear on the "judicial notice" issue, and no compelling explanation has been given as to why were not raised sooner. Plaintiff's motion for summary adjudication was filed on 9/25/20 and not heard until 2/4/21. Yet Defendant waited until the day of the hearing to argue that the DCHS Order was not "final" and that Defendant lacked incentive to litigate in the DCHS proceeding. Defendant has not persuaded the Court that the Court can properly consider its arguments/evidence that go beyond the "judicial notice" issue.

The Court thus does not consider the late argument/evidence that Defendant "lacked incentive to fully litigate" the DCHS Order. However, the Order directing supplemental briefing permitted Defendant to present arguments regarding the judicial noticeability of the DHCS Order ***and*** the "extent to which the October 3, 2018 Order of Dismissal should be considered the 'final' adjudication of Ms. Single's claims for purposes of issue preclusion." (Order of 3/3/21.)

The Court has considered the supplemental briefing on the issue of "finality," and finds that Defendant's supplemental briefing does not reveal a material factual dispute as to Plaintiff's MF 3 or the "finality" of the DHCS Order. Defendant has not shown that the settlement of the California Department of Public Health's ("CDPH") "Class B" penalty/charge against the facility could serve as the "final" adjudication of Ms. Single's own individual claims against the facility. Defendant has not shown that settlement of a citation between *a facility and CDPH* could undo - or render not "final" - an adjudication by DHCS between *the facility and an individual resident*. Defendant has not shown that it is possible to reverse a DHCS order in favor of an individual resident by appealing a CDPH citation against the facility, especially where the DHCS Order expressly states: "This is the FINAL DECISION AND ORDER of the Department. No further administrative remedies are available." (ROA 583 ¶ 7; Exh. 1 at 7.)

Accordingly, for all the foregoing reasons, the tentative ruling is affirmed.

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