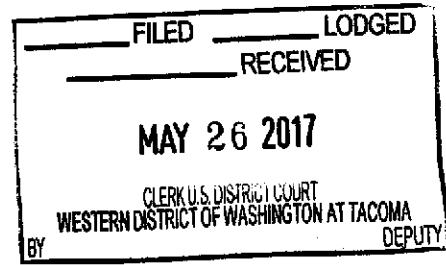


HONORABLE RONALD B. LEIGHTON



UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT TACOMA

MARINE VIEW BEVERAGE, INC.,

Plaintiff,

v.

PABST BREWING COMPANY, LLC,

Defendant.

CASE NO. C17-5151-RBL

ORDER ON MOTIONS

DKT. ##15, 16

THIS MATTER is before the Court on Defendant Pabst Brewing Company's Motion for Dismissal [Dkt. #15] and Plaintiff Marine View Beverage's Motion for Partial Summary Judgment [Dkt. #16].<sup>1</sup> This case concerns whether, when a beer supplier terminates its distributor's contract without cause, Washington's Wholesale Distributors and Suppliers of Spirits or Malt Beverages Act, chapter 19.126 RCW, provides the distributor with a single remedy: "compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights." RCW 19.126.040(4). Pabst notified Marine View of its plan to terminate their agreement on February 16, 2017. On February 24,

<sup>1</sup> This Order is nearly identical to those in *Stein Distributing, Inc. v. Pabst Brewing Company, LLC*, No. 17-5150-RBL, and *The Odom Corporation v. Pabst Brewing Company, LLC*, No. 17-5279-RBL.

1 Pabst terminated Marine View's distributor contract, and the next day, arranged for Columbia  
2 Distributing to service Marine View's former territory. Columbia purchased Marine View's  
3 existing inventory, but Columbia and Marine View have yet to agree on the fair market value of  
4 Marine View's lost distribution rights.

5 Marine View sued Pabst for its lost profits, business interruption, lost investment,  
6 reliance damages, and other losses, alleging Pabst breached their contract by terminating it  
7 without cause and by failing to provide sixty days written notice of its intent to terminate. Pabst  
8 asks the Court to dismiss Marine View's complaint because under the Act, Marine View's only  
9 viable, remaining claim is against Columbia Distributing for the fair market value of Marine  
10 View's terminated distribution rights. Alternatively, Pabst asks the Court to stay or abate the case  
11 until Marine View and Columbia have arbitrated the fair market value of those rights.

12 Marine View disagrees that its sole recourse for Pabst's termination of their agreement is  
13 against third-party Columbia Distributing. It argues the Act does not authorize terminations  
14 without cause and includes no statement of exclusivity. It contends RCW 19.126.040(4) provides  
15 a cumulative remedy for distributors whose contracts have been terminated wrongfully: statutory  
16 compensation from the successor distributor (in addition to the common law breach-of-contract  
17 damages they might receive from their supplier). Marine View asks the Court to resolve two  
18 legal questions: (1) whether the Act authorizes suppliers to terminate distributors' contracts  
19 without cause and (2) whether RCW 19.126.040(4) provides Marine View's sole remedy for  
20 relief.<sup>2</sup>

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21  
22 <sup>2</sup> Marine View also asks the Court to consider whether the Act requires a terminated distributor to arbitrate its claims  
23 against its former supplier under RCW 19.126.040(7). Pabst agrees the Act only requires terminated distributors and  
24 successor distributors to arbitrate the fair market value of the affected distribution rights if they cannot agree on a  
value; it does not require suppliers and terminated distributors to arbitrate their grievances. *See* Dkt. #20 (Pabst's  
Response to Marine View's Motion for Summary Judgment) at 5 n. 4; *see also* RCW 19.126.040(7). Accordingly,  
the Court GRANTS Marine View's motion for summary judgment on this point.



1           **2.       Summary Judgment.**

2           Second, Marine View asks the Court to grant it partial summary judgment, declaring  
3 Pabst's interpretation of the Act incorrect, because RCW 19.126.040(4) does not eliminate  
4 Marine View's opportunities for relief under the common law. Summary judgment is appropriate  
5 when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine  
6 issue of material fact which would preclude summary judgment as a matter of law. Once the  
7 moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party  
8 fails to present, by affidavits, depositions, answers to interrogatories, or admissions on file,  
9 "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S.  
10 317, 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving  
11 party's position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th  
12 Cir. 1995). Factual disputes whose resolution would not affect the outcome are irrelevant to the  
13 consideration of a motion for summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
14 242, 248 (1986). In other words, "summary judgment should be granted where the nonmoving  
15 party fails to offer evidence from which a reasonable [fact finder] could return a [decision] in its  
16 favor." *Triton Energy*, 68 F.3d at 1220.

17           **B.       Termination of a Distribution Contract.**

18           Marine View asks the Court to determine whether the Act authorizes suppliers to  
19 terminate distributorships without cause. It argues the Act does not expressly or implicitly  
20 authorize termination without cause, and Washington courts have agreed. Pabst argues it could  
21 properly terminate Marine View's contract without cause because the Act contemplates such  
22 terminations, and their agreement allowed either party to cancel it at will after "a reasonable  
23 time."  
24

1 The Act “governs the relationship between suppliers of malt beverages and spirits and  
2 their wholesale distributors to the full extent consistent with the Constitution and laws of  
3 [Washington] and of the United States.” RCW 19.126.010(2). It directs a supplier to give a  
4 distributor at least sixty days written notice and an opportunity to cure before terminating their  
5 agreement, unless (1) the distributor acts fraudulently, (2) there’s “insolvency, the occurrence of  
6 an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days  
7 or revocation of a license issued by the state liquor board,” or (3) the supplier acquires a new  
8 brand and has another distributor handle it. RCW 19.126.040(2) (incorporating RCW  
9 19.126.030(5)):

10 A supplier must give the wholesale distributor at least sixty days  
11 prior written notice of the supplier’s intent to cancel or otherwise  
12 terminate the agreement, unless such termination is based on a  
13 reason set forth in RCW 19.126.030(5) or results from a supplier  
14 acquiring the right to manufacture or distribute a particular brand  
15 and electing to have that brand handled by a different distributor.  
16 The notice must state all the reasons for the intended termination  
17 or cancellation. Upon receipt of notice, the wholesale distributor  
18 has sixty days in which to rectify any claimed deficiency. If the  
19 deficiency is rectified within this sixty-day period, the proposed  
20 termination or cancellation is null and void and without legal  
21 effect.

22 RCW 19.126.040(2). RCW 19.126.030(5) says:

23 The supplier may cancel or otherwise terminate any agreement  
24 with a wholesale distributor immediately and without notice if the  
reason for such termination is fraudulent conduct in any of the  
wholesale distributor’s dealings with the supplier or its products,  
insolvency, the occurrence of an assignment for the benefit of  
creditors, bankruptcy, or suspension in excess of fourteen days or  
revocation of a license issued by the state liquor board.

RCW 19.126.030(5).

Notably, RCW 19.126.040(2) does include without cause terminations in the situations it  
exempts from the Act’s notice and opportunity-to-cure requirements, even though the Legislature

1 fully knew that suppliers sometimes terminate a distributor's rights without cause, and in fact  
2 used this language only two paragraphs later. See RCW 19.126.040(4) ("If an agreement of  
3 distributorship is terminated, canceled, *or not renewed for any reason other than for cause,* ...  
4 the wholesale distributor is entitled to compensation from the successor distributor for the laid-in  
5 cost of inventory and for the fair market value of the terminated distribution rights.") (emphasis  
6 added).

7 Pabst incorrectly asserts that the Act's acknowledgment of without-cause terminations in  
8 RCW 19.126.040(4) is synonymous with its authorization of them. It is not. Had the Legislature  
9 intended to permit suppliers to cancel a distributor's rights without cause, it would not have  
10 mandated that in most circumstances, a distributor must have an opportunity to cure the cause  
11 leading to its potential termination. The absence of "any reason other than for cause" from RCW  
12 19.126.040(2)'s list of exemptions from the Act's notice and opportunity-to-cure requirements  
13 similarly evidences the Legislature's intent that a distributor's rights not be terminated without  
14 cause.

15 Had the Legislature intended to permit suppliers to cancel distributorships without cause,  
16 it also could have borrowed language from Colorado's beer distributor statute: "The supplier  
17 shall have the right to terminate an agreement with a wholesaler *at any time* by giving the  
18 wholesaler at least ninety days' written notice...." Colo. Rev. Stat. Ann. § 12-47-406.3(3)  
19 (emphasis added). Because Washington's Wholesale Distributors and Suppliers Act does not  
20 include such or similar language, it does not grant suppliers permission to terminate a  
21 distributor's rights without cause.

22 Pabst next argues its contract with Marine View allows for either party to terminate their  
23 agreement at will under *Birkenwald Distributing Co. v. Heublein, Inc.*, 55 Wash. App. 1, 776  
24

1 P.2d 721 (1989) and *Cascade Auto Glass, Inc. v. Progressive Casualty Insurance Co.*, 135  
2 Wash. App. 760, 145 P.3d 1253 (2006). *Birkenwald* involves a contract that allowed a supplier to  
3 terminate its agreement with a distributor at will. *See* 55 Wash. App. at 6. The court upheld the  
4 contract because the parties had entered into it before the Wholesale Distributor and Supplier Act  
5 was established. *See id.* at 10. *Cascade* involved a terminable-at-will insurance agreement. *See*  
6 135 Wash. App. at 765. The court upheld the contract's cancellation because the terminating  
7 party had provided reasonable notice to the other. *See id.* at 767, 771. Pabst, however, points to  
8 no language in its contract with Marine View suggesting it is a terminable-at-will contract to  
9 which *Birkenwald's* and *Cascade's* reasoning applies.

10 The parties' contract explicitly sets forth when Pabst may cancel it. It allows Pabst to  
11 terminate with sixty-days written notice if Marine View submits an inaccurate application;  
12 commits fraud; attempts an unauthorized change in control or ownership; has its license or  
13 permits suspended or revoked; sells altered products; commits appointment, assignment, or  
14 amendment violations; fails to comply with an audit; receives a felony conviction; or becomes  
15 insolvent. *See* Dkt. #17-1 (Contract) at 12–13. It also permits Pabst to terminate if after notice  
16 and a sixty-day opportunity to cure, Marine View continues to violate their agreement. *See id.* at  
17 13. The contract does not permit Pabst to cancel it "at any time" after sixty days written notice,  
18 as it does for Marine View. *See id.* at 12. The contract therefore does not allow Pabst to  
19 terminate Marine View's distribution rights without cause.

20 Moreover, *Birkenwald* undercuts Pabst's interpretation of the Act. The court, and the  
21 parties, recognized that the 1984 Wholesale Distributors and Suppliers Act did not include a  
22 right for suppliers to terminate distribution contracts at will. *See* 55 Wash. App. at 4–5. The court  
23 understood that the Wholesale Distributors and Suppliers "Act grants several protections to  
24

1 wholesale distributors of wine and malt liquor, including a right of at least sixty days prior  
2 written notice of the supplier's intent to cancel a distribution agreement" that outlines the reasons  
3 for the intended cancellation and a right to rectify the claimed deficiency within sixty days. *See*  
4 *id.* at 4 (referencing RCW 19.126.040(2) and .040(4)) (1984). The same protections apply to  
5 distributors today. *See* RCW 19.126.040(2).

6 **C. Exclusivity of RCW 19.126.040(4).**

7 Pabst next argues the Act governs the entire relationship between a distributor and its  
8 supplier, and when a supplier terminates a distribution contract, the successor distributor makes  
9 the terminated distributor whole by purchasing its existing inventory and paying it the fair  
10 market value of the distribution rights it formally held. Pabst asks the Court to dismiss the case  
11 because Marine View's only recourse is to seek payment from Columbia in arbitration. Marine  
12 View argues the Act creates an additional remedy for terminated distributors; it does not, nor was  
13 it intended to, eviscerate their rights under the common law and to immunize suppliers from  
14 liability when they cancel an agreement without cause.

15 The Act provides that if a supplier terminates a distributorship without cause and  
16 contracts with a new distributor, the successor distributor must purchase the terminated  
17 distributor's existing inventory and compensate it for the fair market value of its lost distribution  
18 rights:

19 If an agreement of distributorship is terminated, canceled, or not  
20 renewed for any reason other than for cause, failure to live up to  
21 the terms and conditions of the agreement, or a reason set forth in  
22 RCW 19.126.030(5), the wholesale distributor is entitled to  
23 compensation from the successor distributor for the laid-in cost of  
24 inventory and for the fair market value of the terminated  
distribution rights.

23 RCW 19.126.040(4).



1 The Act also prevents a terminated distributor from receiving a windfall, and the fair  
2 market value of distribution rights from being falsely inflated, by discounting the amount a  
3 successor owes (for the rights) by any amount already paid. The Act does not force a supplier or  
4 third party to make this prior payment; it merely recognizes the possibility that a supplier might:

5 (5) When a terminated distributor is entitled to compensation under  
6 subsection (4) of this section, a successor distributor must  
7 compensate the terminated distributor for the fair market value of  
8 the terminated distributor's rights to distribute the brand, less any  
9 amount paid to the terminated distributor by a supplier or other  
10 person with respect to the terminated distribution rights for the  
11 brand.... A terminated distributor may not receive total  
12 compensation under this subsection that exceeds the fair market  
13 value of the terminated distributor's distribution rights with respect  
14 to the affected brand. Nothing in this section may be construed to  
15 require any supplier or other third person to make any payment to a  
16 terminated distributor.

17 RCW 19.126.040(5).

18 Pabst argues *Potter v. Washington State Patrol*, 165 Wash.2d 67, 196 P.3d 691 (2008),  
19 provides the framework for analyzing whether the Act abrogates its contractual rights under the  
20 common law and makes compensation from Columbia its sole opportunity for relief. Marine  
21 View disagrees *Potter* controls. It argues the Act does not strip Marine View of its common law  
22 rights because it is incorporated into their agreement, and it only limits Marine View's right to  
23 seek compensation for its without-cause termination but not for other grievances.

24 *Potter* involved a vehicle owner whose car Washington State Patrol ordered impounded  
after he was cited for driving with a suspended license. *See* 165 Wash.2d 67, 72, 196 P.3d 691  
(2008). *Potter* sued claiming conversion, and the WSP moved to dismiss his claim as barred by  
the statute governing redemption of impounded vehicles. *See id.* at 75. The Court considered  
whether the statute "strip[ped] *Potter* of his ability to bring a conversion claim" by setting forth  
an exclusive remedy for relief.

1 This Court applied *Potter* when considering *Continental Cars, Inc. v. Mazda Motor of*  
2 *America, Inc.*, No. C11-5266BHS, 2011 WL 4026793, at \*2 (W.D. Wash. Sept. 9, 2011), which  
3 considered whether a statute provided the exclusive remedy for challenging car dealership  
4 terminations, or whether a terminated dealer could bring a breach of contract claim too. It  
5 recognized that *Potter* sets “out the manner by which a court determines whether a statutory  
6 scheme provides the exclusive remedy for an aggrieved party to seek relief for harms alleged”—  
7 exactly what is at issue here. *Cont’l Cars, Inc. v. Mazda Motor of Am., Inc.*, No. C11-5266BHS,  
8 2011 WL 4026793, at \*2 (W.D. Wash. Sept. 9, 2011).

9 As in *Potter* and *Continental*, Pabst asks the Court to dismiss Marine View’s common  
10 law claims, arguing Marine View’s sole recourse is against Columbia. It is of no moment that the  
11 Act might “only” limit Marine View’s contractual right to relief to issues surrounding its  
12 termination. That Pabst argues the Act forecloses Marine View’s avenues of relief for its  
13 termination in any way—the harm allegedly suffered here—supports the Court’s need to undergo  
14 an exclusivity analysis under *Potter*.

15 *Potter* explains courts hesitate to recognize an abrogation of, or derogation from, the  
16 common law absent an explicit statement or clear evidence that the legislature intended to make  
17 a statutory remedy exclusive. *Id.* at 76–77; *see also Norfolk Redevelopment & Hous. Auth. V.*  
18 *Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35–36, 104 S. Ct. 304, 78 L.Ed.2d 29  
19 (1983) (“It is a well-established principle of statutory construction that the common law ought  
20 not to be deemed repealed, unless the language of a statute [is] clear and explicit for [that]  
21 purpose.”) (internal punctuation omitted). A statute abrogates the common law when its  
22 provisions are “so inconsistent with and repugnant to the prior common law that both cannot  
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1 simultaneously be in force.” *Id.* at 77 (citing *State ex rel. Madden v. Pub. Util. Dist. No. 1*, 83  
2 Wash.2d 219, 222, 517 P.2d 585 (1973)).

3 To determine whether a statutory remedy is exclusive, a court examines the statute’s  
4 language, and if that is inconclusive, it turns to “other manifestations of legislative intent.” *See*  
5 *id.* at 79 (citing *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wash.2d 46, 54, 821 P.2d 18  
6 (1991)). A court first searches for an exclusivity provision. *See id.* at 80 (citing *Wilmot*, 118  
7 Wash.2d at 62, 821 P.2d 18). If the statute does not contain one, a court will examine the  
8 statute’s language and provisions to determine whether clear evidence shows the legislature  
9 intended the statutory remedy to supplant the common law remedy, even though it did not  
10 explicitly say so. *See id.* at 81 (citing *Wilmot*, 118 Wash.2d at 54, 821 P.2d 18). For example, a  
11 court will consider whether the statutory remedy and the common law remedy can operate in  
12 tandem. *See id.* at 82. “In the absence of statutory language or provisions clearly establishing the  
13 exclusivity of a remedy,” a court looks at other manifestations of the legislature’s intent: It will  
14 consider the adequacy or comprehensiveness of the statutory remedy, the statute’s purpose, and  
15 whether the common law remedy predates the statutory remedy. *See id.* at 84 (citing *Wilmot*, 118  
16 Wash.2d at 61–65, 821 P.2d 18).

17 **1. Legislative Intent Evidenced by the Act’s Language.**

18 A court first examines a statute’s language for clear evidence that the legislature intended  
19 the statute’s remedy to abrogate the common law. *See id.* at 81–82. Marine View argues the  
20 Wholesale Distributors and Suppliers Act’s statutory language and provisions do not limit its  
21 damages to the purchase of its inventory and the fair market value of its lost distribution rights.  
22 Rather, it expands the relief available to it.

1 Pabst argues the Act contains a statement of exclusivity because (1) if a distributor  
2 agreement is not renewed for any reason other than one for cause, RCW 19.126.0404(4) limits  
3 the terminated distributor to recovering the fair market value of its formerly-held rights from the  
4 successor distributor, and (2) RCW 19.126.040(5) prohibits a terminated distributor from  
5 recovering damages from a supplier or a third party.

6 Pabst's selective and convoluted reading of these provisions does not convert them into  
7 an exclusivity statement. First, whether taken separately or together, these provisions do not say  
8 what Pabst says they do. RCW 19.126.040(4) acknowledges that terminations without case  
9 happen, and when they do, it mandates that the successor distributor purchase the terminated  
10 distributors' inventory and compensate it for its lost distribution rights. RCW 19.126.040(5)  
11 explains, though, that a successor distributor may deduct from the amount it owes any payments  
12 already made by another party. This provision prevents the terminated distributor from receiving  
13 a windfall, prevents the fair market value calculation from being falsely inflated, and allows  
14 suppliers and successor distributors to negotiate between themselves who will compensate the  
15 terminated distributor for its lost distribution rights, and if they decide both will, allows them to  
16 determine how much each will contribute.

17 Second, exclusivity statements are more explicit than Pabst's rendering. For example, the  
18 statute governing health care peer reviews in Washington says, "[T]his section shall provide the  
19 *exclusive remedies* in any lawsuit by a health care provider for any action taken by a professional  
20 peer review body of health care providers...." RCW 7.71.030 (2013) (emphasis added). And the  
21 Industrial Insurance Act "*abolished*" all civil actions, creating a new statutory remedy "to the  
22 *exclusion* of every other remedy, proceeding or compensation," when it announced that the  
23 common law system governing workers' compensation contradicts modern industrial conditions.  
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1 RCW 51.04.010 (2017) (emphasis added). Similarly, Colorado’s and Kentucky’s beer  
2 distributor statute’s declare arbitration to be the sole remedy for relief available to a terminated  
3 distributor disputing the fair market value of its lost rights (when a supplier transfers its business  
4 to a successor supplier, and the successor supplier hires a successor distributor). *See* Colo. Rev.  
5 Stat. Ann. § 12-47-406.3(4)(c)(V) (“Any arbitration held pursuant to this paragraph (c) shall be  
6 *in lieu of all other remedies and procedures.*”) (emphasis added); *see also* Ky. Rec. Stat. Ann. §  
7 244.606(2)(h) (“Any arbitration held pursuant to this subsection shall be *instead of all other*  
8 *remedies and procedures.*”) (emphasis added).

9 Tellingly, Washington’s Wholesale Distributors and Suppliers Act does not contain such  
10 language. Had the Legislature wanted to declare compensation from successor distributors the  
11 “exclusive remedy” available to terminated distributors, it could have said so, “abolishing”  
12 common law rights under distribution contracts. It could have borrowed Colorado’s and  
13 Kentucky’s language. But, it did not.

14 Pabst also argues that when the Legislature amended the 2009 version of the Act to  
15 clarify that successor distributors shall compensate terminated distributors, it clearly intended  
16 that terminated distributors could not also receive compensation from their former suppliers. The  
17 Court disagrees.

18 The Act, as amended, does not mandate that successor distributors alone must  
19 compensate terminated distributors. Rather, it allows successor distributors and suppliers to  
20 negotiate with one another about who will pay the terminated distributor, and if each does, by  
21 how much. RCW 19.126.040(5) says that if a supplier or a third party has already compensated a  
22 terminated distributor, the successor distributor need not pay that amount.

1 Also, the Act's remedy and a common law remedy for a breach of contract can coexist.  
2 The Act controls how a terminated distributor's inventory is treated and ensures that the  
3 distributor receives compensation for its lost distribution rights. The Act does not affect how a  
4 distributor is compensated for its lost profits, reputational damages, or reliance damages, if  
5 owed. Nor does it address how a terminated distributor is compensated when its former supplier  
6 does not hire a successor distributor. Under Pabst's interpretation, a supplier could terminate a  
7 distributor's contract without cause and could take its operations in-house without owing the  
8 terminated distributor any compensation. The statute's provisions do not evidence a clear intent  
9 to effectuate such an imbalance between suppliers and distributors.

10 **2. Other Manifestations of Legislative Intent.**

11 If the statutory language does not evidence an intent by the legislature to establish an  
12 exclusive remedy, a court turns to other manifestations of intent. It considers the adequacy or  
13 comprehensiveness of the statutory remedy, the statute's purpose, and the statute's origin.

14 Marine View argues none of these considerations evidences the Legislature intended  
15 RCW 19.126.040 to offer a terminated distributor's exclusive remedy for relief. It argues the Act  
16 is far from comprehensive because it only addresses part of the loss wrongful termination causes;  
17 enhances, not limits, the contractual rights and responsibilities between suppliers and  
18 distributors; and postdates one's right to bring contractual claims under the common law. Pabst  
19 identifies no manifestation of an intent by the Legislature to make the Wholesale Supplier and  
20 Distributor's remedy exclusive.

21 The Court agrees with Marine View that the Act is far from comprehensive. It does not  
22 address how a supplier—the party who actually contracted with the terminated distributor—  
23 compensates a distributor whose contract it terminates without cause. It offers no compensation  
24



1 the Act does not authorize suppliers to terminate distributorships without cause, and (2) it does  
2 not command the exclusive remedy available to terminated distributors. Marine View has  
3 therefore asserted a plausible claim for relief against Pabst, which it may pursue. Accordingly,  
4 Pabst's Motion for Dismissal [Dkt. #15] is DENIED, and Marine View's Motion for Partial  
5 Summary Judgment [Dkt. #16] is GRANTED.

6 IT IS SO ORDERED.

7 Dated this 26 day of May, 2017.  
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10 Ronald B. Leighton  
11 United States District Judge  
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