January 16, 2026
Dept. 9
Tentative Rulings

1.	**25CV2109**	**NELSON v. RESCUE UNION SCHOOL DISTRICT**
Petition for Relief from Tort Claims Act Requirements		

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 16, 2026, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**25CV3216**	**WRIGHT ET AL v. EMERGENCY RESTORATION & CLEANING INC.**
Release Property from Mechanic's Lien		

On September 24, 2025, Respondent recorded a mechanic's lien against Petitioner's property in the amount of $77,546.60. Petition, Exh. 2. On October 14, 2025, Petitioners sent Respondent a demand seeking release of the lien pursuant to Civil Code § 8482, which requires a written demand to release a lien prior to filing a petition to the Court for its removal. Petition, Exh. 3.

Petitioners request the Court to release the lien pursuant to Civil Code § 8480[1] and for attorney's fees and costs.

Petitioners argue that the lien overstates the amount due, and for that reason should be declared to be void pursuant to Civil Code § 8422.[2]

Petitioners further argue that the lien includes improper charges, including:

- Amounts for additional work that was not actually performed or that was defective and departed from trade standards;
- Amounts for work described in a written change order that was not properly executed, citing Business & Professions Code §§ 7109, 7159;
- Overstated costs for materials;
- Amounts that were already paid; and
- Omission of a credit for materials that were never delivered, and for repairs and cleanup necessitated by Respondent's abandonment of the project.

Respondent argues that this Petition must be denied as untimely because the lien was recorded on September 24, 2025, no extension of credit was granted under Civil Code § 8460,

[1] **Civil Code § 8480(a):** The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

[2] **Civil Code § 8422:**

(a) Except as provided in subdivisions (b) and (c), erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien.

(b) Erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following:

(1) The claim of lien was made with intent to defraud.

(2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner.

(c) Any person who shall willfully include in a claim of lien labor, services, equipment, or materials not furnished for the property described in the claim, shall thereby forfeit the person's lien.

and the foreclosure action was filed on December 15, 2025. This Petition was filed on December 2, 2025. Accordingly, Respondents assert that Civil Code § 8480 bars this action as untimely.

On the merits, Respondent's Opposition state that Petitioners ceased making progress payments on the service contract and instructed Respondent to stop work, which Respondent did, leaving an unpaid balance of$77,546.60. Respondent argues that it filed a civil action to recover that amount and claims that this action is Petitioners' attempt to litigate disputed facts in the civil action. Respondents argue that this summary lien release petition procedure is not an appropriate venue to litigate disputed facts in the civil action.

Respondents further assert that the lien was not for excessive amounts and complies with the requirements of Civil Code § 8416(a)(1)'s requirement to state the claimant's demand after deducting all offsets. Even if it contains errors, the Opposition argues that it is not invalidated so long as there is no proof of willful false charges. Civil Code § 8422(a).

Analysis

Civil Code § 8480(a) provides that: "[t]he owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460."

Civil Code § 8460 requires a lien claimant to file an action to enforce the lien within 90 days after recording the lien. In this case the lien was recorded on September 24, 2025, no extension of credit was granted under Civil Code § 8460(b) that would extend the time for filing an action, and, according to the Opposition, the foreclosure action was filed on December 15, 2025, 82 days after the lien was recorded.

Accordingly, the Opposition argues that lien holder has filed an enforcement action within the statutory time period. However, the Opposition fails to establish the ultimate fact of the filing of the lien enforcement action on the record. The court orders appearances to determine whether this issue can be resolved in court without the need for a continuance.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 16, 2026, IN DEPARTMENT NINE.

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3.	**PC20160336**	**WESTMAN V. MISSION DENTAL**
Add Successor Corporation		

Sommers ("Assignee"), in pro per, is the assignee of a 2016 judgment pursuant to Code of Civil Procedure § 673, currently in the amount of $58,454.59, which he seeks to enforce. The Motion seeks to add Tooth Travelers, Travelers' Health and Dental and Julie Day, Julie A. Day and Julie Ann Day (collectively, "Opposing Parties") as parties.

Julie Day was the founder, Executive Director, CEO, Secretary, CFO and agent for the service of process for the judgment debtor, Mission Dental Corporation ("MDC"). Day formed the original MDC in 2014. Declaration of Julie Day, dated December 1, 2025, ("Day Declaration") at para. 5. Day appeared at the Labor Board hearing following which the judgment against MDC was entered. That corporation became inactive in 2016. Id. at paras. 5-7.

Day formed another corporation, Tooth Travelers in 2010, for which she was also the was the founder, Executive Director, CEO, Secretary, CFO and agent for the service of process. Tooth Travelers ceased operations and has remained inactive since 2014. (Day Declaration at paras. 2-4).

In 2024 Day formed a new corporation, Travelers Health & Dental, and that corporation is currently active. Day Declaration at para. 9.

This matter was initially heard on October 10, 2025, and was continued at that hearing to allow Opposing Parties an opportunity to obtain counsel. According to a stipulation filed on October 27, 2025, the parties agreed to a continuance to allow Day's new counsel to prepare for the hearing.

An Opposition was filed on December 1, 2025. The Opposition raises the following points:

1. Petitioner has not established the assignment of the judgment and so lacks standing.

2. Petitioner has not established any nexus between the judgment debtor and the proposed successor corporations other than the fact that they were owned by the same person in the same geographical region and performed similar services.

Judicial Notice

At the hearing of December 12, 2025, Day questioned the format of Assignee's judicial notice request, stating that it was not legally sufficient because it does not comply with the following requirements:

- California Rules of Court, Rule 3.1113: "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)."
- Rule 3.1306(c): "A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

  (1) Specify in writing the part of the court file sought to be judicially noticed; and
  (2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Assignee did provide copies of Secretary of State Statements of Information related to the three corporations at issue in this case. Assignee did provide legal authority for the Court to take judicial notice of those official documents pursuant to Evidence Code § 452. Opposing Parties had notice of the request and the materials for which judicial notice was requested, as evidenced by the fact that Opposing Parties in fact filed a written opposition to the request for judicial notice. However, in order to give Assignee an opportunity to file the Request for Judicial Notice as a separate motion in order to comply with the formatting requirements of the California Rules of Court, the matter was continued.

Assignee filed the request for judicial notice as a separate document on December 22, 2025.

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 16, 2026, IN DEPARTMENT NINE.

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ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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4.	**PC20200069**	**BURNLEY v. ERB**
Motion for Costs		

Following hearing on October 17, 2025, the Court granted Defendants' motion to dismiss the action for non-prosecution pursuant to Code of Civil Procedure § 583.310. Defendants filed a Memorandum of Costs on November 12, 2025.

Plaintiffs challenge Defendants' motion for costs, specifically the amount of $4,550 for mediation fees which, according to Plaintiffs, the parties agreed to split equally as part of their mediation agreement.

Defendants counter that there is no express or written agreement to split those costs in the record, and that they should be allowed pursuant to Code of Civil Procedure § 1033.5(a)(16), which allows as costs "[a]ny other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal." Further, that mediation fees are not included in the list of costs not recoverable under Code of Civil Procedure §1033.5(b).

Defendants further argue that the Exhibits A and B attached to the Declaration of Michael W. Thomas, dated November 12, 2025, in support of the Opposition are privileged and cannot be considered by the Court in deciding this matter. Evidence Code § 1119.[1]

Even if the Court considers these Exhibits, Defendants correctly point out that they do not reference any agreement to split mediation fees. The sole reference to fee splitting in the Declaration and its Exhibits is paragraph 2, wherein Mr. Thomas alleges that the parties agreed to split the mediation costs, referring to an invoice for partial payment sent by JAMS. The referenced invoice is expressly characterized as a "deposit" and not an equal share of the mediation fees. Accordingly, the Court need not consider these Exhibits, or the citations of authority governing the effect of an agreement to split costs for the purpose of deciding this motion.

[1] **Evidence Code § 1119:**
(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Plaintiffs have not argued that they in fact paid any of these costs such that they are entitled to an offset.

TENTATIVE RULING #4: PLAINTIFFS' MOTION TO TAX COSTS IS DENIED.

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5.	PC20190456	HELM v. LOVE, ET AL
Set Aside Default Judgment		

A breach of contract action was filed on November 2, 2015, by WestAmerica Bank for recovery of a commercial loan based on two promissory notes executed in 2011 (PC20150593). A default was taken against Defendant Love, who failed to appear. This left Defendant Helm as the only party against whom litigation could be directed by the Bank. Declaration of Gordon Helm, dated March 27, 2020 (Helm Declaration), para. 4. Helm paid $150,000 to satisfy the debt and terminate the lawsuit in June, 2019. Helm Declaration, para. 6.

On August 30, 2019, Helm filed a Complaint against Defendants Love, an individual, and Response 1 Medical Staffing, the corporation owned by Love, for equitable indemnity and contribution.

Helm filed an *ex parte* request to extend time for serving the Complaint, alleging that Defendant Love, who was also the agent for service of process of Defendant Response 1 Medical Staffing, was avoiding service of process, and the Court granted an extension to November 30, 2019.

On November 19, 2019, Helm filed a Declaration of Diligence, requesting authorization to serve the Summons and Complaint by publication. The Declaration of Diligence states that Helm was familiar with Love's prior businesses and home addresses, as well as her mother's address, but was unable to locate her. The Declaration of Kirk E. Giberson, Helm's counsel, dated November 19, 2019, (Giberson Declaration) states that there were nine unsuccessful attempts to serve Love at her address of record as determined by to Google, Lexis and public records searches. Giberson Declaration, para. 4. Giberson's investigation revealed that Love may have been living with her mother, and so service was attempted three times at her mother's address between October 16-21, 2019, without success. Id., para 6.

The request to effectuate service by publication was granted by the Court on November 25, 2019, and the notice by publication was filed with the Court on January 14, 2020.

Helm then filed a Request for Entry of Default on February 24, 2020, and a subsequent request for Default Judgment on April 8, 2020, which was entered by the Court on April 9, 2020. Notice of the default judgment was mailed to Love on April 20, 2020, at the Placerville address at which service had been attempted.

On June 20, 2025, a Notice of Renewal of Judgment was served on Love at a South Lake Tahoe address, and on December 19, 2025, Love filed this motion to set aside or vacate the default judgment.

Love requests relief from the default judgment pursuant to Code of Civil Procedure § 473, on the basis that she "was never served and had no knowledge of any judgment filed against me until I received the application for renewal of judgment in [sic] June 20, 2025." The motion further states: "I was never served and had no idea I had any type of judgment against me until I received via email the application for renewal of judgment on June 20, 2025. In 2020 I was living in San Diego and never received any type of notification."

Code of Civil Procedure § 473(b) would allow the Court "upon any terms as may be just, relieve a party . . . from a judgment . . . taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

In this case, Defendant's motion is not accompanied by an Answer or any proposed pleading. Further, the motion was made more than five years after the judgment was entered.

Even allowing that the motion might be considered to be brought under Code of Civil Procedure § 473.5, the Court has no discretion to grant the motion. Section 473.5(a) provides:

> When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.

In this case, service of notice of the default judgment was mailed in April, 2020, and this motion was filed in December, 2025, well after the statutes allow.

TENTATIVE RULING #5: DEFENDANT'S MOTION TO SET ASIDE/VACATE THE DEFAULT JUDGMENT IS DENIED.

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6.	**24CV1204**	**BROWN ET AL v. SUMNER**
Leave to File Cross-Complaint		

Pursuant to Code of Civil Procedure § 426.50 Defendant requests leave to file a Cross-Complaint in this action. Defendant's counsel represents that an effort was made to reach agreement on filing the Cross-Complaint by stipulation but that Plaintiff's counsel did not respond. Declaration of Gregory P. Wayland, dated December 5, 2025. There is no Opposition to the motion in the Court's file.

Code of Civil Procedure § 426.50 provides:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

The requirements of the statute having been met, and no Opposition having been filed with the Court, the Court has no discretion to deny the motion.

TENTATIVE RULING #6: DEFENDANTS MOTION TO FILE A CROSS-COMPLAINT IS GRANTED. THE CROSS-COMPLAINT SHALL BE FILED WITHIN TEN DAYS OF THIS ORDER.

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7.	24CV0034	TAPIA v. TAPIA, ET AL
Motion for Attorney's Fees		

Defendant Villasenor ("Defendant") moves to recover attorneys' fees in this partition action pursuant to Code of Civil Procedure §§ 874.010[1] and 874.040[2].The total amount claimed is $28,765.13.

The First Amended Complaint ("FAC") in this action was for partition, declaratory relief and accounting regarding a property that was held in equal shares by the three parties to the action. Declaration of Abel Edens, dated December 12, 2025 ("Edens Declaration"), Exhibit 1.

Defendant successfully demurred to the FAC and causes of action for declaratory judgment and accounting were stricken without leave to amend. Edens Declaration, Exhibit 2.

Following the death of Defendant Tapia, who transferred his one-third share to Defendant prior to his death, Defendant's counsel was unable to obtain a stipulation to the validity of the transfer from Plaintiff, thus requiring discovery which ultimately led to a concession of Defendant Villasenor's now two-thirds ownership of the property. Edens Declaration, para. 6-7.

Defendant's counsel drafted a Stipulated Interlocutory Judgment that was filed with the Court on February 28, 2025. Edens Declaration, Exhibit 3. Following appraisal, Defendant's counsel drafted a Joint Stipulation to Determination of Fair Market Value and Cotenant Buyout. Edens Declaration, Exhibit 4.

Defendant successfully opposed Plaintiffs' Demurrer to the Answer, which Demurrer was moot at the time it was filed because of the parties' execution of the Stipulated Interlocutory Judgment, and which was ultimately withdrawn. Edens Declaration, Exhibits 5 and 6.

[1] **Code of Civil Procedure § 874.010**: The costs of partition include:
(a) Reasonable attorney's fees incurred or paid by a party for the common benefit.
(b) The fee and expenses of the referee.
(c) The compensation provided by contract for services of a surveyor or other person employed by the referee in the action.
(d) The reasonable costs of a title report procured pursuant to Section 872.220 with interest thereon at the legal rate from the time of payment or, if paid before commencement of the action, from the time of commencement of the action.
(e) Other disbursements or expenses determined by the court to have been incurred or paid for the common benefit.

[2] **Code of Civil Procedure § 874.040:** Except as otherwise provided in this article, the court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable.

Defendant's counsel filed the Notice of Election of Cotenant Buyout and Proposed Order with the Court, and unopposed *ex parte* motion to revise that Order in order to allow additional time for Defendant to deposit the funds. Edens Declaration, paras. 11-12.

Defendant's counsel drafted and finalized the Order Reallocating Interests. Edens Declaration, para. 14. The Court entered the final Joint Stipulation to Reallocation and Disbursement and Order on August 1, 2025.

Subsequent to the Court's Order, Plaintiff demanded $10,000 for the execution of a Quitclaim Deed, requiring a written exchange of communication between counsel. Another exchange of communication was required to request Plaintiff to remove a *Lis Pendens* from the property. Edens Declaration, Exhibits 9-10.

Defendant's counsel has filed a Declaration of Elijah Underwood, dated December 12, 2025, ("Underwood Declaration") documenting 87.6 billable hours spent on this matter, Exhibit 11, and costs incurred, Exhibit 12.

Attorney rates range from $500 per hour (Elijah Underwood, 0.2 hours) to $350 per hour (Abel Edens) for attorney time, $200 per hour for paralegal time, and $150 per hour for law clerk time. The expense report lists $3,555.13 for billable expenses.

Finally, Defendant's counsel claims $60 in filing fees and 3.6 hours of time to prepare the instant motion. As the motion is unopposed, the anticipated additional time (3 hours) for reviewing the Opposition, drafting a Reply and appearing to argue the motion is not required. Defendant's counsel claims a rate of $350 per hour. Accordingly, the recoverable fees for this motion are $1,260 (3.6 x 350) plus $60 in filing fees.

Including fees and costs incurred in preparing the instant motion, the total claim for attorneys' fees is $24,100 ($22,840+1,260) and $3,615.13 in costs ($3,555.13+60). The Court finds these amount to be reasonable.

TENTATIVE RULING #7: DEFENDANT'S MOTION FOR ATTORNEYS' S FEES IN THE AMOUNT OF $24,100 AND COSTS IN THE AMOUNT OF $3,615.13 IS GRANTED.

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8.	**24CV1518**	**WALLACE v. JONES**
Motion for Summary Judgment		

Plaintiff was riding his motorcycle on Highway 49 when he slipped on a patch of fluid on the roadway and sustained serious injuries. Plaintiff attributes the existence of the fluid to leakage from Defendant's Ford truck, which he alleges was the result of a breach of Defendant's duty to repair and maintain his truck, and which in turn was the proximate cause of Plaintiff's injuries.

Defendant's argument in support of the motion is simply stated as follows:

> 1. Plaintiff will be unable to establish breach by Defendant of his duty to inspect, repair and maintain his vehicle prior to the incident as there is no evidence of any such failure;
>
> 2. Even if there was, arguendo, evidence of breach of the duty to inspect, repair and/or maintain, Plaintiff will be unable to establish that such breach was the substantial factor in causing the subject incident.

The factual issues, then, are 1) whether Defendant's repairs and/or maintenance of his vehicle breached a duty, and 2) whether such breach if established, was the proximate cause of Plaintiff's injuries.

Analysis

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

The parties present conflicting evidence from competing experts as to whether the Defendant's vehicle was adequately repaired and/or maintained as would be expected from a reasonably prudent person. UMF Nos. 1-5, 13-15.

The parties present conflicting evidence as to whether the fluid Plaintiff observed on the roadway had its origin in Defendant's vehicle. UMF No. 31, 33-34, 40-41.

The parties disagree on whether, if the fluid was leaking from Defendant's vehicle, it was the proximate cause of Plaintiff's accident and resulting injuries. UMF Nos. 18-19, 28-30.

In short, there are multiple issues of triable material facts that remain unresolved at this stage of the proceedings, rendering the matter unsuitable for summary judgment at this stage.

TENTATIVE RULING #8: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9.	**25CV1737**	**VIANI ET AL v. LEASURE ET AL**
Demurrer		

The Court notes that, while the demurrer is unopposed, Plaintiffs filed a First Amended Complaint on January 2, 2026. Code of Civil Procedure § 472 allows a party to file an amended Complaint after a demurrer is filed so long as it is filed before the Opposition to the demurrer is due.

The demurrer was filed on August 29, 2025, and was set for hearing on January 16, 2025. The First Amended Complaint was filed on January 2, 2026. As such, it was filed timely under Code of Civil Procedure § 1005, at least nine court days before the hearing date.

The demurrer, directed at the July 7, 2025, Complaint, is rendered moot by the filing of the First Amended Complaint.

TENTATIVE RULING #9: DEFENDANTS' DEMURRER IS MOOT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10.	**25CV1850**	**MANZER v. POWELL**
Demurrer		

Plaintiff's First Amended Complaint ("FAC") alleges that Defendant failed to honor an agreement that would grant Plaintiff an ownership interest in Defendant's real property based on Plaintiff's contributions of money and labor. The Complaint sets forth the following causes of action:

1. Breach of Implied Contract
2. Unjust Enrichment
3. Quiet Title
4. Resulting Trust
5. Constructive Trust
6. Equitable Lien
7. Declaratory Relief
8. Constructive Fraud
9. Promissory Estoppel
10. Specific Performance

Statute of Frauds

Defendant's demurrer largely relies upon the application of the Statute of Frauds, codified in Civil Code § 1624 and Code of Civil Procedure § 1971:

> (a) The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:
>
> * * *
>
> (3) An agreement for . . . the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

Civil Code § 1624.

> No estate or interest in real property, other than for leases for a term not exceeding one year. . . , nor any power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by the party's lawful agent thereunto authorized by writing.

Code of Civil Procedure § 1971.

Exceptions to the Statute of Frauds Requirements

Plaintiff argues that multiple exceptions to the Statute of Frauds exist in this case, such that the demurrer must be overruled on to the extent it relies on this issue.

The Legislature clarified that Code of Civil Procedure § 1972 allows for relief in some cases where the Statute of Frauds might otherwise bar an action under some circumstances, including partial performance or where an equitable trust might arise to provide a remedy:

> (a) Section 1971 shall not be construed to abridge the power of any *court to compel the specific performance of an agreement, in case of part performance thereof*.
>
> (b) Section 1971 does not affect the creation of a trust under Division 9 (commencing with Section 15000) of the Probate Code *nor prevent any trust from arising or being extinguished by implication or operation of law*.

Code of Civil Procedure § 1972 (emphasis added).

Partial Performance

In addition to the statutory exception, case law also recognizes the partial performance exception to the Statute of Frauds:

> [W]here assertion of the statute of frauds would cause unconscionable injury, part performance allows specific enforcement of a contract that lacks the requisite writing. (Earhart v. William Low Co. (1979) 25 Cal.3d 503, 514, 158 Cal.Rptr. 887, 600 P.2d 1344.) The doctrine most commonly applies in actions involving transfers of real property. (Code Civ. Proc., § 1972, subd. (a) [part performance available to enforce agreement to convey real property absent writing required under § 1971 of same code]; Paul v. Layne & Bowler Corp. (1937) 9 Cal.2d 561, 564, 71 P.2d 817; Sutton v. Warner (1993) 12 Cal.App.4th 415, 422, 15 Cal.Rptr.2d 632; Trout v. Ogilvie (1919) 41 Cal.App. 167, 174, 182 P. 333.)

In re Marriage of Benson, 36 Cal. 4th 1096, 1108–09 (2005).

> In any event, to constitute part performance, the relevant acts either must "unequivocally refer[ ]" to the contract (*Trout v. Ogilvie, supra,* 41 Cal.App. at p. 172, 182 P. 333), or "clearly relate" to its terms. (*Sutton v. Warner, supra,* 12 Cal.App.4th at p. 422, 15 Cal.Rptr.2d 632, citing *Paul v. Layne & Bowler Corp., supra,* 9 Cal.2d at p. 564, 71 P.2d 817.) Such conduct satisfies the evidentiary function of the statute of frauds by confirming that a bargain was in fact reached. (See *Casa Herrera, Inc. v. Beydoun, supra,* 32 Cal.4th 336, 345, 9 Cal.Rptr.3d 97, 83 P.3d 497.)

In re Marriage of Benson, 36 Cal. 4th 1096, 1109 (2005).

> The doctrine of part performance by the purchaser is a well- recognized exception to the statute of frauds as applied to contracts for the sale or lease of real property. (1 Miller &

> Starr, Cal. Real Estate 2d (1989) § 1:60, p. 168.) "Under the doctrine of part performance, the oral agreement for the transfer of an interest in real property is enforced when the buyer has taken possession of the property and either makes a full or partial payment of the purchase price, or makes valuable and substantial improvements on the property, in reliance on the oral agreement." (1 Miller & Starr, supra, § 1:60, p. 168, italics in original, fn. omitted.) Payment of the purchase price alone, without the buyer obtaining possession or making substantial improvements to the property, is not sufficient part performance to preclude application of the statute of frauds. (1 Miller & Starr, supra, at p. 170.) The part performance by the buyer must clearly relate to, and must be pursuant to, the terms of the oral agreement. (Paul v. Layne & Bowler Corp. (1937) 9 Cal.2d 561, 564 [71 P.2d 817]; 1 Miller & Starr, supra, at p. 169; 1 Witkin, Summary of Cal. Law, supra, at p. 300.)

Sutton v. Warner, 12 Cal. App. 4th 415 (1993) (footnotes omitted).

In this case, the Complaint alleges that Plaintiff provided one hundred percent of the down payment amount for the purchase of the property (Complaint, paras. 11, 14) pursuant to an agreement between the parties that he would ultimately be granted an ownership interest in the property in consideration of his contributions (Complaint, paras. 15, 20). Plaintiff alleges that his financial and in-kind contributions to the property related to, and were made pursuant to the alleged agreement between the parties. This is sufficient for the purpose of a demurrer to avoid the application of the Statute of Frauds to invalidate the agreement.

Estoppel

Although the Court need not reach a second reason to uphold the alleged agreement as to the demurrer's Statute of Frauds challenge, there is further authority under the theory of equitable estoppel:

> The doctrine of estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable injury or unjust enrichment. (Monarco v. Lo Greco (1950) 35 Cal.2d 621, 623–624, 220 P.2d 737.)

Tenzer v. Superscope, Inc., 39 Cal. 3d 18, 27 (1985).

Having determined that the enforcement of the alleged agreement is not barred by the Statute of Frauds at this stage of the litigation, following is an analysis of the demurrer's challenges individual causes of action listed in the Complaint.

1. Breach of Implied Contract

Civil Code 1621 provides: "An implied contract is one, the existence and terms of which are manifested by conduct."

> The elements of a breach of oral contract cause are: "(1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239, 70 Cal.Rptr.3d 667 [elements of breach of contract]; *Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453, 183 Cal.Rptr.3d 186 [elements of breach of oral contract and breach of written contract claims are the same].)

Aton Ctr., Inc. v. United Healthcare Ins. Co., 93 Cal. App. 5th 1214, 1230 (2023).

The Court finds that the Complaint includes sufficient factual allegations to survive demurrer as to this cause of action.

2. Unjust Enrichment[1]

The demurrer seeks invalidation of "all causes of action" in the Complaint. However, because the concept of unjust enrichment is mutually exclusive of the allegation of the existence of a contract, Defendant's general demurrer to the Complaint on the basis of the Statute of Frauds would not reach this cause of action, and the demurrer does not present any arguments specific to this element of the Complaint.

Accordingly, while "unjust enrichment" is not considered a distinct cause of action under California law[2] the question is beyond the scope of this motion

3. Quiet Title

The content of a Quiet Title cause of action is governed by Code of Civil Procedure § 761.020, as follows:

---

[1] Unjust enrichment is a claim based in equity, and allows a Plaintiff to recover the value provided that is unjustly retained by another. The elements of an unjust enrichment claim are the "'receipt of a benefit and [the] unjust retention of the benefit at the expense of another."' (Lectrodryer v. SeoulBank (2000) 77 Cal.App.4th 723, 726, 91 Cal.Rptr.2d 881.)." Peterson v. Cellco P'ship, 164 Cal. App. 4th 1583, 1593 (2008).

[2]

> Courts have repeatedly held that "a plaintiff may not plead the existence of an enforceable contract and simultaneously maintain a quasi-contract claim unless the plaintiff also pleads facts suggesting that the contract may be unenforceable or invalid." Tsai, 2017 WL 2587929, at *7; Adtrader, Inc. v. Google LLC, 2018 WL 3428525, at * 11 (N.D. Cal. July 13, 2018) ("[T]o assert such a claim [for unjust enrichment], Plaintiffs must allege that the parties do not have an enforceable contract pertaining to Google's advertisement services."); Deras v. Volkswagen Grp. of Am., Inc., 2018 WL 2267448, at *3 (N.D. Cal. May 17, 2018) ("[A] quasi-contract action for unjust enrichment does not lie where express binding agreements exist and define the parties' rights." (quoting Gerstle v. Am. Honda Motor Co., 2017 WL 2797810, at *14 (N.D. Cal. June 28, 2017))).

Brodsky v. Apple Inc., 445 F. Supp. 3d 110, 133 (N.D. Cal. 2020)

> The complaint shall be verified and shall include all of the following:
> (a) A description of the property that is the subject of the action. . . . In the case of real property, the description shall include both its legal description and its street address or common designation, if any.
> (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. . . . .
> (c) The adverse claims to the title of the plaintiff against which a determination is sought.
> (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.
> (e) A prayer for the determination of the title of the plaintiff against the adverse claims.

The demurrer asserts that the pleadings are insufficient to meet the requirements of Code of Civil Procedure § 761.020 in that the "Complaint fails to allege any facts as to the type of title allegedly held by Plaintiff." However, the Complaint para. 38 alleges that "Plaintiff asserts an equitable ownership interest in the Subject Property arising from his financial contributions to the purchase price and improvements, and from Defendant's promises and conduct recognizing Plaintiff's interest."

The demurrer further argues that the Complaint fails to specify "the date as of which a determination is sought**."** While the Complaint does not list a specific date, it does reference at para. 13 Plaintiff's understanding and expectation of when he would receive the promised transfer of an interest in the property, as follows: "The parties agreed that once Plaintiffs personal financial matters (including child support obligations) were resolved, legal title to the Subject Property would be transferred to reflect Plaintiff's ownership interest." The Court finds that this is a sufficient statement of the timing of the transfer of a property interest to satisfy the statute.

Finally, the demurrer argues that the Complaint fails to include "a prayer for such a determination . . . ." However, in the Prayer for Relief, para. A, the Complaint requests: "To quit [sic] title in favor of Plaintiff to the extent of his equitable ownership interest."

For these reasons the Court finds that the demurrer must be overruled as to this cause of action.

4. Resulting Trust
5. Constructive Trust
6. Equitable Lien

Both parties agree that these theories of recovery are generally considered remedies, and not causes of action. Stansfield v. Starkey, 220 Cal. App. 3d 59, 76 (1990). Plaintiff cites Fid. Nat'l Title Ins. Co. v. Schroeder, 179 Cal. App. 4th 834 (2009) to argue that California courts have allowed these remedies to be stated as a cause of action. However, that case held that a judgment lien can attach to an equitable interest under common law theories, including resulting trust, notwithstanding the existence of the comprehensive statutory scheme codified in the Uniform Fraudulent Transfer Act, Civil Code § 3439, *et seq.* It does not specifically authorize the characterization of remedies as causes of action.

This is not to say that Plaintiff is not entitled to equitable remedies that are properly pled as remedies to effectuate transfer of a property interest assuming the right to such interest is proven under applicable causes of action.

7. Declaratory Relief

The Seventh Cause of Action listed in the Complaint at paras. 54-56 is for Declaratory Relief.

> Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

Code of Civil Procedure § 1060.

> To qualify for declaratory relief under section 1060, plaintiffs were required to show their action (as refined on appeal) presented two essential elements: "(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410, 256 Cal.Rptr. 240 (*Brownfield*).)

Lee v. Silveira, 6 Cal. App. 5th 527, 546 (2016) (footnotes omitted).

The Court finds that the Complaint adequately pleads the fact of an actual controversy regarding the rights and obligations of the parties, supported by the factual allegations of the Complaint, paras. 1-53.

8. Constructive Fraud

> "Constructive fraud is a unique species of fraud applicable only to a fiduciary or confidential relationship." [Citation.] [¶] "[A]s a general principle constructive fraud comprises any act, omission or concealment involving a breach of legal or equitable duty, trust or confidence which results in damage to another even though the conduct is not otherwise fraudulent. . . ." (Assilzadeh v. California Federal Bank (2000) 82 Cal.App.4th 399, 415, 98 Cal.Rptr.2d 176.)

Lazar v. Bishop, 107 Cal. App. 5th 668, 680 (2024).

Defendant objects to this cause of action on the grounds that it fails to allege that Defendant knew the alleged representation was false when it was made, and that is not sufficiently specific to meet the requirements for an allegation of fraud. However, a cause of action for constructive fraud is not required to meet every element of actual fraud, as established by the Legislature in Civil Code § 1573:

> Constructive fraud consists:
> 1. In any breach of duty which*, without an actually fraudulent intent*, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
> 2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Civil Code § 1573 (emphasis added).

Accordingly, Plaintiff is specifically not required to plead every element of actual fraud to make this claim; it is sufficient that there is alleged an act of concealment that represents a breach of duty upon which the plaintiff relies to their detriment. The Complaint is sufficient to survive demurrer on this point.

9. Promissory Estoppel

> The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. (Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority (2000) 23 Cal.4th 305, 310, 96 Cal.Rptr.2d 747, 1 P.3d 63; see Rest.2d Contracts, § 90, subd. (1).)

West v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 780, 803 (2013).

The Opposition makes no specific arguments addressing this count. The Court finds that the allegations of the Complaint are sufficient to overcome any demurrer to this cause of action.

10. Specific Performance

This cause of action relates to a different residential property in Georgetown. There are no factual allegations in the Complaint supporting Plaintiff's claims against this property. Accordingly, the demurrer must be sustained on this count. However, the Court notes that Defendant has filed a partition action with respect to that property, and so the parties' rights will be more properly addressed through that process.

TENTATIVE RULING #10:

DEFENDANT'S DEMURRER OVERRULED AS TO THE FIRST (BREACH OF IMPLIED CONTRACT), THIRD (QUIET TITLE), SEVENTH (DECLARATORY RELIEF), EIGHTH (CONSTRUCTIVE FRAUD), AND NINTH (PROMISSORY ESTOPPEL) CAUSES OF ACTION.

DEFENDANT'S DEMURRER IS SUSTAINED AS TO THE FOURTH (RESULTING TRUST), FIFTH (CONSTRUCTIVE TRUST), SIXTH (EQUITABLE LIEN) AND TENTH (SPECIFIC PERFORMANCE – GEORGETOWN PROPERTY) CAUSES OF ACTION, WITH LEAVE TO AMEND WITHIN TEN DAYS OF SERVICE OF THE SIGNED ORDER.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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