April 17, 2026
Dept. 9
Tentative Rulings

1.	22CV0205	MULTI-HOUSING TAX CREDIT PARTNERS III v. CBM-96 LLC
Motion for Judgment on the Pleadings		

This case arises out of alleged construction defects in apartment buildings at the Placer Village Apartments located at 2789 Ray Lawyer Dr., Placerville, California (Placerville Apartments). Cross-Defendant, The CBM Group, Inc. ("Cross-Defendant" or "CBM") moves for judgment on the pleadings pursuant to Code of Civil Procedure ("CCP") § 438(c) as to all causes of action alleged in Cross-Complaint of Cross-Complainant, CBM-96, LLC ("CBM-96") on the grounds that the Cross-Complaint fails to state facts sufficient to constitute a cause of action.

Meet and Confer

> "(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. (Code of Civil Procedure, § 439(a))

Based on the Declaration of Nathaniel Patterson, the parties had a telephonic meet and confer which was unsuccessful in resolving the need for the current Motion.

Request for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

Defendant requests that the Court take judicial notice of certain pleadings that are contained within the Court's file. Pursuant to Evidence Code §452(d)(1), Defendant's request for judicial notice is granted.

Judgment on the Pleadings

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (*Sykora v. State Department of State Hospitals (*2014) 225 Cal.App.4th 1530, 1534.)

CBM argues that Multi-Housing Tax Credit Partners III's ("MHTCP") Complaint does not allege any cause of action or facts that would place liability on CBM, has not named CBM as a Defendant and cannot do so. Therefore, CBM argues, under the Cross-Complaint, there can be no indemnity owed by CBM to CBM-96 where there can be no liability by CBM for the claims alleged in MHTCP's Complaint.

CBM-96 opposes, arguing that under the Cross-Complaint filed by Placer Village Apartments, L.P. (the "Partnership") against CBM, if the Partnership prevails, CBM will be liable for damages arising from the same water intrusion that forms the basis of MHTCP's claims against CBM-96. Further, under California law, a defendant may file a cross-complaint for equitable indemnity against a party who was not named in the original complaint if there is a sufficient subject matter connection between the action and the cross-complaint. (*People ex rel. Dept. of Transportation v. Superior Court (1980) 26 Cal.3d 744.)*

Most importantly, as this is a motion for judgment on the pleadings, the Court must liberally construe CBM-96' s cross-complaint with a view to substantial justice between the parties. (Code Civ. Proc. § 452)

The Court reviewed CBM's Reply and it does not change the analysis.

TENTATIVE RULING #1: MOTION FOR JUDGMENT ON THE PLEADINGS 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).

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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2.	**25CV3424**	**WOPUMNES NISENAN AND MEWUK HERITAGE PRESERVATION SOCIETY OF EL DORADO COUNTY vs. CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE ET AL**
Transfer Venue/Stay Proceedings		

This is an unopposed motion to transfer the venue of this matter to Sacramento County pursuant to Code of Civil Procedure § 396b(a), which provides:

> Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. *Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court*.

According to the motion Defendant is headquartered in Sacramento County, and venue is proper there for this contract action. Code of Civil Procedure § 395.

TENTATIVE RULING #2: DEFENDANT'S MOTION IS GRANTED; THE MATTER SHALL BE TRANSFERRED TO SACRAMENTO COUNTY SUPERIOR COURT.

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3.	**26CV0565**	**CROCKER v. CITY OF SOUTH LAKE TAHOE**
Motion for Order and Judgment		

Plaintiff moved for an Order and Judgment. Plaintiff requests $51,102,000.00. Plaintiff argues that Defendant breached and failed to perform contractual obligations. Plaintiff asks the Court to enter judgment. Plaintiff does not cite to any legal authority for bringing this Motion. There is also no proof of service, showing that Defendant received a copy of the Motion or notice of the hearing. Motion is denied.

TENTATIVE RULING #3: PLAINTIFF'S MOTION FOR ORDER AND JUDGMENT IS DENIED.

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4.	**25CV2060**	**JP MORGAN CHASE BANK v. DIA**
Motion for Judgment on the Pleadings		

The Motion does not comply with Local Rule 7.10.05. Repeated failure to comply with the requirements of the Local Rules may result in sanctions, pursuant to Local Rule 7.12.13.

On August 8, 2025, Plaintiff filed a Complaint against Defendant alleging breach of contract for damages of $13,941.06. Plaintiff's Motion for Judgment on the Pleadings incorrectly states that Defendant admitted all material allegations, which is not true. On September 30, 2025, Defendant filed an Answer, generally denying all allegations. Since Defendant generally denied all allegations, Plaintiff must offer proof of the allegations of the Complaint. *Barasch v. Epstein* (1957) 147 Cal.App.2d 439.

TENTATIVE RULING #4: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED.

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5.	**25CV2768**	**DUTTA v. TESLA**
Motion for Preliminary Injunction		

Plaintiff filed a Petition for Court Appointment of an Arbitrator or, in the alternative, for a Preliminary Injunction. Defendant agrees that the Court should follow the procedures of Code of Civil Procedure ("CCP") §1281.6 to appoint a new arbitrator. Therefore, the Court will proceed under CCP § 1281.6 and it is unnecessary to address Plaintiff's request for a preliminary injunction.

Under § 1281.6, "When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration."

The Court hereby orders Defendant to obtain from AAA a list of arbitrators to present to the Court at this hearing. If this cannot be accomplished prior to the hearing, then the April 17, 2025, hearing will be used to select a new hearing date or timeline for compliance. The Court will use the list from AAA to nominate five people, and if the parties do not agree on an arbitrator within five days, the Court shall pick the Arbitrator.

TENTATIVE RULING #5: APPEARANCES ARE REQUIRED ON FRIDAY, APRIL 17, 2026, AT 8:30 AM IN DEPARTMENT NINE.

6.	**PC20210414**	**RICHTER vs. HILL**
Request for Dismissal		

TENTATIVE RULING #6: IN ACCORDANCE WITH THE PLAINTIFF'S REQUEST FOR DISMISSAL FILED ON MARCH 20, 2026, THIS MATTER IS DISMISSED WITH PREJUDICE.

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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7.	**22CV0690**	**BROST ET AL. vs. MARTINEZ**
Strike Damages in Second Amended Complaint		

This case involves Complaints, amended Complaints, Cross-Complaints and amended Cross-Complaints exchanged among a multitude of individual and institutional Defendants between May, 2022 and December 2025. As of August 25, 2025, the Court agreed with Plaintiff's position that the case required a "complex case" designation pursuant to California Rule of Court 3.403.

Following several years of pre-trial motions, the Second Amended Complaint ("SAC") most recently listed the following causes of action:

1. Breach of Contract;
2. False Promise;
3. Breach of Good Faith and Fair Dealing;
4. Fraudulent Inducement of a Contract;
5. Negligent Infliction of Emotional Distress;
6. Intentional Infliction of Emotional Distress;
7. Negligence;
9. General Fraud;
10. Violation Of Bus. & Prof. Code §17200 Et Seq.
11. Conversion;
12. Civil Conspiracy; and
13. Third Party Beneficiary Liability – Professional Malpractice.

Defendants Machado and Side, Inc. ("Defendants") bring this motion pursuant to Code of Civil Procedure § 435(b)(1) to strike the prayer for damages in the following categories:

1. Benefit of the Bargain Damages/Special Damages Outside of Out-of-Pocket Expenses
2. Emotional Distress
3. Attorneys' Fees and Costs
4. Punitive and Exemplary Damages
5. Treble Damages Under California Penal Code section 496(c)
6. Pre-judgment and Post-Judgment Interest
7. Injunctive Relief and
8. A Receiver

The prayer for relief in the SAC is not specific to particular Defendants, and this motion is specific to any prayer for damages that may be recoverable from these two moving Defendants.

The moving Defendants argue that, notwithstanding Plaintiffs' articulation of thirteen separate causes of action based on statutes, contract and tort, the fundamental nature of the

action is necessarily contained within a single statute, and as such, the only measure of available damages are limited to those allowed by Code of Civil Procedure § 3343, which provides:

> (a) One defrauded in the purchase, sale or exchange of property is entitled to recover the difference between the actual value of that with which the defrauded person parted and the actual value of that which he received, together with any additional damage arising from the particular transaction, including any of the following:
>
> (1) Amounts actually and reasonably expended in reliance upon the fraud.
>
> (2) An amount which would compensate the defrauded party for loss of use and enjoyment of the property to the extent that any such loss was proximately caused by the fraud.
>
> (3) Where the defrauded party has been induced by reason of the fraud to sell or otherwise part with the property in question, an amount which will compensate him for profits or other gains which might reasonably have been earned by use of the property had he retained it.
>
> (4) Where the defrauded party has been induced by reason of the fraud to purchase or otherwise acquire the property in question, an amount which will compensate him for any loss of profits or other gains which were reasonably anticipated and would have been earned by him from the use or sale of the property had it possessed the characteristics fraudulently attributed to it by the party committing the fraud, provided that lost profits from the use or sale of the property shall be recoverable only if and only to the extent that all of the following apply:
>
> (i) The defrauded party acquired the property for the purpose of using or reselling it for a profit.
>
> (ii) The defrauded party reasonably relied on the fraud in entering into the transaction and in anticipating profits from the subsequent use or sale of the property.
>
> (iii) Any loss of profits for which damages are sought under this paragraph have been proximately caused by the fraud and the defrauded party's reliance on it.
>
> (b) Nothing in this section shall do either of the following:
>
> (1) Permit the defrauded person to recover any amount measured by the difference between the value of property as represented and the actual value thereof.
>
> (2) Deny to any person having a cause of action for fraud or deceit any legal or equitable remedies to which such person may be entitled.

The Court disagrees with Defendants' arguments and denies the motion. Substantively, the motion is in the nature of a reverse demurrer, requesting the Court to re-write the SAC and consolidate thirteen causes of action into a single fraud allegation in accordance with Defendants' theory of the case. Defendants ask the Court to adopt their view that the SAC should have been drafted as a single cause of action for fraud involving a piece of real estate, limited to the scope of single statute. The way the SAC is actually drafted by the Plaintiff is a mix of contract, tort and statutory causes of action that involve a variety of potentially applicable measures of damages based on alleged activities that include issues of contractual performance, misrepresentations, threats, and misappropriation of funds between multiple actors.

The damages for contract are generally governed by the principle of economic loss, which limits damages to actual economic losses, but are not limited to the calculation of value of a particular piece of real estate. An exception to the economic loss rule in the context of a contractual cause of action is the fraudulent inducement to enter a contract, which permits recovery of certain tort damages. Robinson Helicopter Co. v. Dana Corp., (2004) 34 Cal. 4th 979, 990. Fraudulent inducement to enter a contract is one of Plaintiffs' causes of action.

Plaintiffs also list Business and Professions Code § 17200, *et seq.* among their causes of action. These statutes expressly provide that "the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state." Business & Professions Code § 17205. This includes the Court's discretion to adopt specific or preventive relief "to enforce a penalty, forfeiture, or penal law" or to appoint a receiver "as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." Business & Professions Code §§ 17202-17203.

Treble damages, costs and attorneys' fees are authorized by Penal Code § 496(c) for cases involving theft of property and/or extortion, which is defined by Penal Code § 519 to include a threat "[t]o do an unlawful injury to the person or property of the individual threatened." The SAC includes several allegations of extortion and threats that, if proven, could bring the matter within the scope of Section 496.

Punitive damages require a plaintiff to plead "ultimate facts showing an entitlement to such relief. . . . In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.)" Clauson v. Superior Ct., (1998) 67 Cal. App. 4th 1253, 1255.

> In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 721, 34 Cal.Rptr.2d 898, 882 P.2d 894.) These statutory elements include allegations that the defendant has been guilty of oppression, fraud or malice. (Civ.Code, § 3294, subd. (a).) " 'Malice' " is defined in the statute as conduct "intended by the defendant to cause injury to plaintiff, or despicable conduct that is carried on by the defendant with a willful and conscious disregard for the rights or safety of others." (Civ.Code, § 3294, subd. (c)(1); *College Hospital, supra,* 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ.Code, § 3294 subd. (c)(2).) " 'Fraud' " is "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ.Code, § 3294, subd. (c)(3).)

Turman v. Turning Point of Cent. California, Inc., (2010) 191 Cal. App. 4th 53, 63.

The Court finds that the allegations in the SAC, if true, could meet the requirements of a showing to support punitive damages.

This is not a case that turns only on the difference between the value of a piece of real estate as received as compared to how it was represented, which is the scenario that Civil Code § 3343 is designed to address, in order to prevent a plaintiff from realizing a windfall.

If Defendants' argument is that the factual allegations of the SAC fail to include sufficient basis to support the causes of action listed in the SAC they can demur to those causes of action. However, they cannot completely eliminate Plaintiffs' causes of action by functionally eliminating all allegations other than the single overlapping fact of misrepresentations involving a piece of real estate.

> [Code of Civil Procedure § 436] does not authorize attacks on entire causes of action, let alone entire pleadings. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281, 45 Cal.Rptr.3d 222.) Its purpose is to authorize the excision of superfluous or abusive allegations. "[M]atter that is essential to a cause of action should not be struck and it is error to do so." (*Ibid.*) . . . The gist of these objections is that the complaint failed to state facts sufficient to constitute a cause of action. This is ground not for a motion to strike, but for a general demurrer.

Ferraro v. Camarlinghi, 161 Cal. App. 4th 509, 528-529 (2008)

TENTATIVE RULING #7: DEFENDANTS' MOTION TO STRIKE 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).

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8.	**24CV2747**	**DEMEYER v. PALASHEWSKI**
OSC re Defendant's Fee Waiver		

Plaintiff's Motion does not comply with Local Rule 7.10.05. Repeated failure to comply with the requirements of the Local Rules may result in sanctions, pursuant to Local Rule 7.12.13. Plaintiff was previously warned in the June 13, 2025, tentative ruling.

Pursuant to Cal. Gov't. Code §68632, the Court must grant permission for a litigant to proceed without paying court fees or costs when the litigant submits, under penalty of perjury, an application stating the applicant meets financial eligibility criteria. However, "if…the court obtains information…suggesting that a person whose fees and costs were initially waived is not entitled to a fee waiver…the court may require the person to appear at a court hearing." Cal. Gov't. Code §68636(b). "The court may require the person to provide reasonably available evidence, including financial information, to support his or her eligibility for the fee waiver." *Id*. "Under circumstances set forth in Section 68636, the court may reconsider the initial fee waiver and order the fee waiver withdrawn for future fees and costs or deny the fee waiver retroactively." Cal. Gov't. Code §68631. "[I]f the court determines that the person was not entitled to the initial fee waiver at the time it was granted, the court may order the waiver withdrawn retroactively. The court may order the person to pay to the court immediately, or over a period of time, all or part of the fees that were initially waived." Cal. Gov't Code §68636(d).

The statute refers to the court having the ability to reconsider a fee waiver based on new information. What the statute does not do is provide standing for other parties to the action to bring a motion to revoke the fee waiver. The grant or denial of a fee waiver is between the court and the individual. Other parties to the action are not parties to the fee waiver request. The request and the information supporting the request are not served on other parties and are in fact confidential to that party and the public. As Plaintiff has no standing to bring the motion, Plaintiff's motion is denied.

TENTATIVE RULING #8: PLAINTIFF'S MOTION 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).

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9.	**21CV0266**	**REINDERS vs. VISMAN et al**
Dissolve Preliminary Injunction		

Defendants request the Court to dissolve a preliminary injunction issued in March, 2022, "to serve the ends of justice." This motion is made pursuant to Code of Civil Procedure §§ 532 and 533, which authorize a court to modify or dissolve an injunction, either for lack of notice or upon a showing of a material change in facts, a change in the law, or that the ends of justice would be served by such dissolution. Specifically, Defendant argues:

> [T]he Preliminary Injunction at issue is procedurally defective, substantively unsupported, and inequitable in light of subsequent developments, including the execution of a controlling 2014 easement agreement between Plaintiff and High Hill Ranch, LLC. Specifically, Plaintiffs have secured extraordinary equitable relief by presenting only a partial version of the 2011 Judgment—which forms the undisputed basis of the Preliminary Injunction while also omitting a controlling post-judgment 2014 Easement agreement directly with High Hill Ranch, LLC that materially alters, and effectively invalidates, the enforceability of the 2011 Judgment.

Request for Judicial Notice

Both parties have submitted requests for judicial notice of various judicial filings in the course of litigation between the parties and their predecessors.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States." Accordingly, both partes' requests for judicial notice are granted.

Lack of Notice

The 2011 Arbitration Award ("2011 Award") was initiated to enforce the terms of a 2002 Settlement Agreement between these parties, and was executed on January 26, 2011. Exhibit A of that Award contains most of the Award's substantive provisions, consisting of 26 pages of findings, analysis and conclusions. Exhibit B of the Award consists of less than one page of

substantive text responding to a request for clarification of the issue of "whether or not the green fence is to be ordered removed from the easement." The arbitrator concluded that the green fence "is necessary for safety purposes" and "does not constitute an unreasonable interference with Plaintiff's easement use. . . . Plaintiff's request for an order seeking removal of the green fence is denied." That is the full substance of Exhibit B. Defendant's Request for Judicial Notice, No. 1.

The parties to the arbitration award, including Jerry Visman and George Visman, executed a Stipulation for Confirmation of Arbitration Award on May 10, 2011.

Defendants argue that the omission of Exhibit B of the 2011 arbitrator's Award from the documents submitted in support of the 2022 preliminary injunction amounts to a failure of due process as to High Hill Ranch LLC, which is a party to this action and participated in the arguments leading to the issuance of the injunction, but was not a party to the 2010 arbitration which led to the 2011 Award.

The Court notes that High Hill Ranch LLC has relied upon the close agency relationship with its individual principals to its advantage in earlier stages of this litigation. This Court previously considered the issue of High Hill Ranch LLC's relationship to the individuals who were parties to the arbitration and who operated a proprietorship under the business name "High Hill Ranch" prior to the formality of incorporation. High Hill Ranch LLC was served with the Summons and Complaint in this action on February 3, 2022. On March 11, 2022, High Hill Ranch LLC filed a motion to compel arbitration in lieu of answering the Complaint. Plaintiffs objected to High Hill Ranch's motion to compel arbitration at that time because the LLC had not been a party to the arbitration. The Court noted the close identity of the individuals George and Jerry Visman in relation to the LLC in deciding that the LLC had a right to move to compel arbitration despite the fact that it was not a party to the arbitration:

> The court takes judicial notice of the records of the California Secretary of State concerning High Hill Ranch, LLC that the LLC was registered with the Secretary of State on April 22, 2011, prior to High Hill Ranch agreeing to confirmation of the arbitration award and entry of the award as a judgment in PCL-201100390 wherein the parties agreed that High Hill Ranch would be bound by confirmation of that award. The court further takes judicial notice of the records of the Secretary of State that defendant Jerry Visman is the sole member of the LLC, agent for service of process, and CEO, as reflected in the statement of information on the LLC on file with the Secretary of State. Defendant High Hill Ranch, LLC is at the very least a mere continuation of the High Hill Ranch proprietorship. Although defendants concede in the reply that defendant High Hill Ranch, LLC is not a signatory to the arbitration agreement and seek to move forward with arbitration between the plaintiff and defendant Visman with a stay of further

> proceedings in the case, defendant High Hill Ranch, LLC is allegedly the agent of all other defendants, including signatory defendant Visman, and, therefore, is entitled to move to compel arbitration.

Tentative Ruling dated March 11, 2022, page 25, Plaintiff's Request for Judicial Notice No. 5.

Having used this agency relationship to its advantage in earlier stages of this litigation, High Hill Ranch LLC is not well positioned to argue that it is innocent of any knowledge of the substance of the 2011 Award.

If in fact High Hill Ranch LLC has been taken completely by surprise as to the contents of Exhibit B of the 2011 Award, the omission is not substantively significant or prejudicial to High Hill Ranch LLC. Although the preliminary injunction failed to attach the entirety of the 2011 Award by omitting Exhibit B, the only legal effect of Exhibit B was to deny Plaintiff's request to have "the green fence" removed. In other words, Exhibit B renders a decision that is in High Hill Ranch LLC's favor and requires no further action by either party. *See also,* Declaration of Frances Reinders, dated April 5, 2026, para. 29-35.

<u>Material Change</u>

High Hill Ranch LLCs second argument in favor of dissolving the injunction is that there has been a material change based on a 2014 easement agreement between High Hill Ranch LLC and Plaintiffs that it claims has invalidated the 2011 Award by realigning the easement that was in effect at the time of the 2011 Award. Defendants' motion was brought in 2026, four years after the preliminary injunction was issued, twelve years after the 2014 easement agreement was executed and fifteen years after the formation of the LLC, but only two months before the Order to Show Cause hearing scheduled to consider whether Defendants have violated the terms of the injunction.

The 2014 easement agreement, Defendants' Request for Judicial Notice No. 2, states that it is entered into "for the purpose of modifying the location of an easement previously granted . . . to accommodate an existing grantor encroachment . . . ." It does not reference the 2002 Settlement Agreement or the 2011 Award or in any way discuss, much less alter, the detailed operational arrangements between the parties for the management of vehicular and pedestrian access and signage within the easement.

Plaintiffs deny that the 2014 Agreement supercedes the prior 2002 Settlement Agreement or the 2011 Award. In support of this position, Plaintiffs make the following observations through the Declaration of Frances Reinders, dated April 5, 2026 ("Reinders Declaration"):

1. The 2014 Agreement does not state that it supercedes the 2011 Award or the 2002 Settlement Agreement, nor did the parties orally agree that it would do so. Reinders Declaration, para. 38.
2. Defendants have never argued that the 2014 Agreement supercedes the 2011 Award or the 2002 Settlement Agreement before the instant motion was filed. Id. at para. 39.
3. The 2014 Agreement only adjusts the configuration of the easement pathway to avoid further conflict associated with an encroaching structure on the original footprint of the easement. This issue was discussed in correspondence from Defendants' counsel between 2011 and 2014. Id. at para. 40, Exhibit E.

The preliminary injunction was requested and granted in order to ensure access of Plaintiff's landlocked commercial establishment for Plaintiffs, their vendors and their clientele. Both the 2010 arbitration and this 2021 lawsuit were initiated because the actions of Defendants consistently impeded this access. If the preliminary injunction is dissolved on the grounds that the 2011 Award has been superceded there will be no legal impediment to Defendants resuming the conduct that has led to decades of conflict between the parties and that has prevented Plaintiffs from freely accessing their property. The matter has been stayed pending the outcome of arbitration. Until that arbitration is concluded the Court does not perceive that Defendants have articulated any reason to change the status quo, and elects to preserve the positions of the parties by maintaining the preliminary injunction.

TENTATIVE RULING #9: BOTH PARTIES' REQUESTS FOR JUDICIAL NOTICE ARE GRANTED. DEFENDANTS' MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION 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).

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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.

10.	23CV1771	MADRONA VINEYARDS L.P. ET AL vs. VISMAN
Joinder of Indispensable Parties/Leave to Amend Cross-Complaint		

Plaintiffs are a trust and a business entity that operate from a landlocked parcel that has easements from the public roadway across the land of Defendants, also a business entity. Both Plaintiffs' and Defendants' businesses are visited by large numbers of people, which causes vehicle and pedestrian congestion on the easement that they both use for access by family, clientele and vendors. This Complaint was brought against Defendant based on allegations of blocking Plaintiffs' easement access and interfering with Plaintiffs' commercial signage in violation of Plaintiffs' rights to the use of the easements.

This matter was filed in October, 2023. Plaintiffs requested and received a Temporary Restraining Order against Defendants conduct that interfered with Plaintiffs' use of the easements on October 18, 2023, which was followed by a December 12, 2023, preliminary injunction addressing the same conduct by Defendants. Defendants filed a Cross-Complaint on June 21, 2024, requesting quiet title to access roads and rights to post signage for which Plaintiffs claim a prescriptive easement, and alleging trespass for Plaintiffs' use of those access roads, and unfair business practices and implied-in-fact contract as against Plaintiffs based on Plaintiffs' enjoyment of the benefits of Defendants' traffic management, road maintenance and advertising without compensating Defendants.

Trial of this matter is scheduled for July, 2026.

Request for Judicial Notice

Both parties have submitted requests for judicial notice of various judicial filings in litigation between the parties and their neighbors.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States." Accordingly, both parties' requests for judicial notice are granted.

Leave to Amend Cross-Complaint

Defendants request leave to amend the Cross-Complaint to add another neighboring property owner, Fudge Factory" as a party, asserting that "the factual basis for amendment was only recently discovered" and that granting leave to amend the Cross-Complaint "will promote a complete resolution of all related disputes in a single action." Defendants propose to add causes of action against Fudge Factory for comparative fault, equitable indemnity and contribution.

Whether a court should allow amendment of a pleading is governed by several sections of the Code of Civil Procedure.

Section 473(a)(1) provides:

> The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; . . .

Section 576 allows a court "at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." Finally, Section 428.50 allows for leave to file a cross-complaint in the interest of justice "at any time during the course of the action."

> It is well established that "California courts 'have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others.' [Citation.] Indeed, 'it is a rare case in which "a court will be justified in refusing a party leave to amend his [or her] pleading so that he [or she] may properly present his [or her] case." ' [Citation.]" (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158, 263 Cal.Rptr. 473.) Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)

Bd. of Trs. v. Superior Ct., 149 Cal. App. 4th 1154, 1163 (2007).

> While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court, the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. (*Richter v. Adams,* 43 Cal.App.2d 184, 187 [110 P.2d 486]; *Eckert v. Graham,* 131 Cal.App. 718, 721 [22 P.2d 44].) (2) And it is a rare case in which "a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case." (*Guidery v. Green,* 95 Cal. 630, 633 [30 P. 786]; *Marr v.*

> *Rhodes,* 131 Cal. 267, 270 [63 P. 364].) (3) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson v. Superior Court,* 97 Cal.App.2d 78 [217 P.2d 119]; *Estate of Herbst,* 26 Cal.App.2d 249 [79 P.2d 139]; *Norton v. Bassett,* 158 Cal. 425, 427 [111 P. 253].)

Morgan v. Superior Ct. of Cal. In & For Los AngelesCounty, 172 Cal. App. 2d 527, 530 (1959).

Indispensable Party

The necessity to amend the Cross-Complaint is based upon Defendants' asserted need to include an indispensable party, Fudge Factory. Defendant's recent discovery, in February, 2026, of Fudge Factory's activities affecting roadway access is described as a series of questions and answers in the course of a deposition of Madrona's owner, who indicated that Fudge Factory's patrons contribute to the pedestrian crowds that "overburden" the easement.

This issue is governed by Code of Civil Procedure § 389(a):

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

"The controlling test for determining whether a person is an indispensable party is, 'Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party." Save Our Bay, Inc. v. San Diego Unified Port Dist., 42 Cal. App. 4th 686, 692 (1996) (Citations omitted.) The California Supreme Court expressed this rule as follows: "Thus, "[a] person is an indispensable party [only] when the judgment to be rendered necessarily must affect his rights." (*Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 262, 73 P.2d 1163.)" Olszewski v. Scripps Health, 30 Cal. 4th 798, 808–09 (2003).

The Cross-Complaint as currently drafted seeks to negate Plaintiffs' claims of prescriptive easements asserts that Plaintiff has committed trespass and violation of unfair competition laws, and that an implied-in-fact contract exists between Plaintiffs and Defendants such that Plaintiffs

should compensate Defendants for its traffic management and road maintenance services. None of these issues implicate Fudge Factory or its use of the easement.

The Complaint alleges that Plaintiff holds certain prescriptive easements across Defendants' property. Only "Easement 1" is shared by Fudge Factory. Plaintiff's "Easement 2" and prescriptive easements Plaintiffs claim for signage have no relationship to Fudge Factory. All of the claimed easements are located on Defendants' property, and have no relationship to the real property owned by Fudge Factory. The conduct that the Plaintiff's Complaint addresses is Defendant's intentional conduct in blocking easement access (posting "road closed" signs, placing physical obstacles in the road, demanding compensation for use of the easement and for hiring parking attendants, misdirecting traffic to parking places far from Madrona or prohibiting traffic to pass, misdirecting traffic, and removing signage) that amounts to intentional interference with Madrona's business, unfair competition, and trespass to Plaintiffs' chattel (removing Plaintiffs' signs), to the extreme that Plaintiffs' request punitive damages. Complaint, paras. 10, 30, 31, 32, 37, 39, 40, 42, 43, 44, 46, 152-162, 163-173, 174-186, 187-198, 199-212, 213-223, 224-234, 235-245, 253-261.

There are some allegations about "expanding its business in a reckless manner so that it overburdens Madrona's easements" Complaint, paras. 10, 30, 155. This is the lynchpin of Defendants' motion, which argues that because Fudge Factory also uses the easement across Defendants' property it also contributes to the congestion. This is not sufficient to make Fudge Factory an indispensable party. Every element of the Complaint without exception addresses Defendant's alleged *intentional* conduct. The fact that Fudge Factory happens to use the same shared easement in no way creates liability for contribution, indemnification or comparative fault for Defendant's alleged intentional wrongful conduct. Whether or not Fudge Factory also has rights to access "Easement 1" does not affect the legal determination of Plaintiffs' rights to access "Easement 1". Nothing about Fudge Factory's use of the easement is part of the analysis in determining whether Plaintiffs have trespassed on Defendant's property, have engaged in unfair competition or have an implied-in-fact contract with Defendants for road maintenance or traffic management.

The purpose of judicial economy would not be served by adding Fudge Factory to this litigation. To the contrary, Defendants and Fudge Factory are currently engaged in arbitration and another lawsuit over the same issues regarding Defendant's activities in "Easement 1". (21CV0266; 25CV2707). To add to this litigation the issues that are currently being arbitrated and litigated between different parties would result in duplicative legal processes and potentially conflicting outcomes.

It also strains credulity to accept Defendants' statement that it only became aware that Fudge Factory's use of the "Easement 1" road contributed to congestion on that road, as Fudge Factory and Defendants have been locked in interminable and continuing litigation over that very issue for nearly 25 years. Defendants' Reply Request for Judicial Notice No. 1.

Defendants' motion is not "timely made", as it comes more than two years after the litigation was filed, nearly two years since the Cross-Complaint was filed, and it was filed four months before the matter is set for trial. The motion will prejudice Plaintiff by re-opening discovery and almost certainly would result in delaying the trial date.

Nor will Defendants be "deprived of the right to assert a meritorious cause of action" if the motion is denied. There are not less than two active lawsuits pending between Defendants and Fudge Factory in which these issues could be inserted, and given their history, no reason to think Defendants would not be able to file additional actions for contribution, indemnity or comparative fault against Fudge Factory if the facts can support such an action. See, M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc. (2012) 202 Cal.App.4th 1509, 1536.

TENTATIVE RULING #10: BOTH PARTIES' REQUESTS FOR JUDICIAL NOTICE ARE GRANTED. DEFENDANTS' MOTION TO AMEND THE CROSS COMPLAINT AND TO ADD AN INDISPENSABLE PARTY ARE 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).

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