1.	26CV0193	CHRISHANA FIELDS VS. EL DORADO HILLS FIRE
DEMURRER AND MOTION TO STRIKE		

This matter is before the Court on two motions filed by Defendants on April 27, 2026: 1) Demurrer; and 2) Motion to Strike.

DEMURRER

Pursuant to Code of Civil Procedure §§ 430.10(e) and 430.10(f), Defendants, El Dorado Hills Fire Department, Michael Lilienthal, and Dustin Hall (collectively "Defendants"), demurrer to Plaintiff, Christina Field's "Plaintiff" First Amended Complaint ("FAC"). On May 19, 2026, Plaintiff filed an opposition. On May 29,2026, Defendants filed a reply.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Declaration of Mansour S. Chopan, counsel attempted to meet and confer with Plaintiff prior to filing, but the dispute could not be resolved.

Background

Plaintiff, Chrishana Fields ("Plaintiff"), filed a First Amended Complaint ("FAC") on March 17, 2026, asserting the following causes of action: 1) 1. Discrimination Based on Gender (Cal. Gov't Code § 12940(a)); 2) Discrimination Based on Race (Cal. Gov't Code § 12940(a)); 3) Harassment (Cal. Gov't Code § 12940(j)); 4) Retaliation for Engaging in Protected Activity (Cal. Gov't Code § 12940(h)); 5) Failure to Prevent Discrimination, Harassment, and Retaliation (Cal. Gov't Code § 12940(k)); and 6) Intentional Infliction of Emotional Distress.

Plaintiff asserts Defendants, El Dorado Hills Fire Department ("EDHFD"), Michael Lilienthal, and Dustin Hall, participated in a campaign of discrimination, harassment, and retaliation against Plaintiff who is the only sworn female chief officer at EDHFD, and a woman of color. Plaintiff alleges that Defendants systematically stripped Plaintiff of her authority, subjected her to disparate treatment, engaged in a pattern of humiliating and unfounded disciplinary actions, and retaliated against her for making a formal complaint for discrimination, harassment and retaliation. Defendants' actions were designed to constructively demote and force her out of a career to which she has dedicated over two decades of her life.

Legal Principles

[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.3d at p. 318.)

Discussion

1. First Cause of Action – FEHA Discrimination Based on Gender, Gov. Code § 12940(a) and Second Cause of Action – FEHA Discrimination Based on Race, Gov. Code § 12940(a) (against EDHFD)

    Defendants argue Plaintiff's First and Second Causes of Action in the FAC fail to plead materially adverse employment action and fail to plead ultimate facts supporting discriminatory motive beyond conclusions. In the alternative, Defendant's argue they are uncertain under CCP § 430.10(f), as they do not clearly identify which alleged act is the actionable adverse employment action, when it occurred, and how it materially affected employment terms.

To state a prima facie case of gender, race, color, or sexual orientation discrimination under FEHA, a plaintiff must show that: "(1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an **adverse employment action** ... and (4) some other circumstance suggests **discriminatory motive**." *Martin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 161–162.

A special demurrer should not be sustained where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *Jacobson v. Oakland Meat & Packing Co.*, 161 Cal. 425, 433, 119 P. 653, Ann.Cas.1913B, 1194; *Jones v. Iverson*, 131 Cal. 101, 104, 63 P. 135; *Hurwitz v. Gross*, 5 Cal.App. 614, 617, 91 P. 109; 21 Cal.Jur. 102. A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading, but is directed at the uncertainty existing in the allegations actually made. *Callahan v. Broderick*, 124 Cal. 80, 83, 56 P. 782; *Brea v. McGlashan*, 3 Cal.App.2d 454, 39 P.2d 877; *Smith v. Hollander*, 85 Cal.App. 535, 542, 259 P. 958; *Butler v. Wyman*, 128 Cal.App. 736, 740, 18 P.2d 354. *People v. Lim* (1941) 18 Cal.2d 872, 882–883 [118 P.2d 472, 478].

The Court finds the FAC's First and Second Causes of Action identify specific facts to support Plaintiff's claims under Gov. Code § 12940(a). (FAC ¶¶¶¶¶ 16, 18(a)-(j), 24-26, 32-34, and 43-46). The Court further finds such claims are sufficiently clear and not uncertain. Defendants' demurrer is overruled to the First and Second Causes of Action.

2. <u>Third Cause of Action – FEHA Harassment/Hostile Work Environment, Gov Code § 12940(j) (against all Defendants)</u>

Defendants argue Plaintiff's Third Cause of Action describe personnel management activity and workplace oversight, not severe or pervasive harassment "because of" sex or race as a matter of law. In the alternative, Defendant's argue they are uncertain under CCP § 430.10(f), as it does not plead dates for many "harassment" subparts, does not plead who communicated the "suppression qualified" criterion, who made what statements, and how particular actions are attributable to each defendant beyond conclusory group pleadings.

Gov. Code § 12940(j)(1) expressly makes it unlawful for an employer, labor organization, employment agency, or any other person, because of a protected characteristic, to harass an employee. To prevail on a harassment claim under FEHA, a plaintiff must produce evidence they were **subjected to "offensive comments or other abusive conduct"** that is (1) **based on a "protected characteristic"…** and (2) **"sufficiently severe or pervasive as to alter the conditions of [his] employment.**" (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 871, 172 Cal.Rptr.3d 732 (Serri).) To constitute harassment, **the conduct must be so objectively severe or pervasive as " 'to create a hostile or abusive working environment**.' " (*Id*. at p. 870, 172 Cal.Rptr.3d 732.) Factors to consider in this context include the frequency of the conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with the employee's work performance. (*Ibid*.) *Doe v. Department of Corrections & Rehabilitation* (2019) 43 Cal.App.5th 721, 736 [255 Cal.Rptr.3d 910, 923] (emphasis added).

A special demurrer should not be sustained where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *Jacobson v. Oakland Meat & Packing Co.*, 161 Cal. 425, 433, 119 P. 653, Ann.Cas.1913B, 1194; *Jones v. Iverson*, 131 Cal. 101, 104, 63 P. 135; *Hurwitz v. Gross*, 5 Cal.App. 614, 617, 91 P. 109; 21 Cal.Jur. 102. A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading, but is directed at the uncertainty existing in the allegations actually made. *Callahan v. Broderick*, 124 Cal. 80, 83, 56 P. 782; *Brea v. McGlashan*, 3 Cal.App.2d 454, 39 P.2d 877; *Smith v. Hollander*, 85 Cal.App. 535, 542, 259 P. 958; *Butler v. Wyman*, 128 Cal.App. 736, 740, 18 P.2d 354. *People v. Lim* (1941) 18 Cal.2d 872, 882–883 [118 P.2d 472, 478].

The Court finds the FAC's Third Cause of Action identifies specific facts to support Plaintiff's claim under Gov. Code § 12940(j). (FAC ¶¶¶ 16, 18(a)-(j), 51-55). The Court further finds such claims are sufficiently clear and not uncertain. Defendants' demurrer is overruled to the Third Cause of Action.

3. <u>Fourth Cause of Action – FEHA Retaliation, Gov. Code § 12940(h) (against EDHFD)</u>

Defendants argue Plaintiff's Fourth Cause of Action fails to plead materially adverse action under FEHA retaliation standards and nonconclusory facts showing decisionmaker knowledge and causation. Additionally, Defendant's argue Plaintiff's Fourth Cause of Action is uncertain as to the alleged retaliatory acts, the decisionmakers, and the causal linkage to protected activity.

"The elements of a claim for retaliation in violation of [the FEHA], are: '(1) the employee's engagement in a protected activity ...; (2) retaliatory animus on the part of the employer; (3) an **adverse action by the employer**; (4) a **causal link between the retaliatory animus and the adverse action**; (5) damages; and (6) **causation**.' '' (*Le Mere v. Los Angeles Unified School Dist*. (2019) 35 Cal.App.5th 237, 243, 247 Cal.Rptr.3d 76.) *Miller v. Department of Corrections & Rehabilitation* (2024) 105 Cal.App.5th 261, 285 [325 Cal.Rptr.3d 746, 766].

A special demurrer should not be sustained where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *Jacobson v. Oakland Meat & Packing Co.*, 161 Cal. 425, 433, 119 P. 653, Ann.Cas.1913B, 1194; *Jones v. Iverson*, 131 Cal. 101, 104, 63 P. 135; *Hurwitz v. Gross*, 5 Cal.App. 614, 617, 91 P. 109; 21 Cal.Jur. 102. A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading, but is directed at the uncertainty existing in the allegations actually made. *Callahan v. Broderick*, 124 Cal. 80, 83, 56 P. 782; *Brea v. McGlashan*, 3 Cal.App.2d 454, 39 P.2d 877; *Smith v. Hollander*, 85 Cal.App. 535, 542, 259 P. 958; *Butler v. Wyman*, 128 Cal.App. 736, 740, 18 P.2d 354. *People v. Lim* (1941) 18 Cal.2d 872, 882–883 [118 P.2d 472, 478].

The Court finds FAC's Fourth Cause of Action identifies specific facts to support Plaintiff's claims under Gov. Code § 12940(h)). (FAC¶¶ 19-26, 61-65). The Court further finds such claims are sufficiently clear and not uncertain. Defendants' demurrer is overruled to the Fourth Cause of Action.

4. Fifth Cause of Action – Failure to Prevent Discrimination/Harassment/Retaliation, Gov. Code § 12940(k) (against EDHFD)

Defendants argue Plaintiff's Fifth Cause of Action fails because the underlying FEHA claims are not adequately pled. Additionally, Defendant's request a special demurrer if necessary.

As Plaintiff's FEHA claims have been determined to be adequately pled, Defendants' demurrer is overruled to the Fifth Cause of Action.

5. Sixth Cause of Action – Intentional Infliction of Emotional Distress (against Lilenthal and Hall)

Defendants argue Plaintiff's Sixth Cause of Action is barred pursuant to Gov. Code §§§ 915, 945.4, and 950.2, as the FAC alleges that Plaintiff only submitted a government claim to the California Department of General Services, Office of Risk and Insurance Management. Defendants further assert discretionary-act immunity pursuant to Gov. Code § 820.2 shields public employees' policy/managerial choices and the district is vicariously immune under Gov. Code § 815.2(b). Defendants contend the workers' compensation exclusivity bars tort claims predicated on the "normal" incidents of the employment relationship. Lastly, Defendants assert IIED fails as a matter of law. To the extent necessary, Defendant's request a special demurrer.

Gov. Code § 945.4 provides

> Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

Gov. Code § 915 requires (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by any of the following means:

> (1) Delivering it to the clerk, secretary, or auditor thereof.
>
> (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.
>
> (3) If expressly authorized by an ordinance or resolution of the public entity, submitting it electronically to the public entity in the manner specified in the ordinance or resolution.

Plaintiff's FAC is silent as to mailing the form to EDHFD, despite the proof of service indicating it was mailed simultaneously with the claim to the Government Claims Program. There is no mention of EDHFD's response, or lack thereof, within the FAC. For those reasons, Defendant's demurrer is sustained to the Sixth Cause of Action, with leave to amend. As Defendant's demurrer is sustained on this basis, the Court considers Defendant's remaining arguments moot.

MOTION TO STRIKE

Pursuant to Code of Civil Procedure §§ 435 and 436, Defendants, El Dorado Hills Fire Department, Michael Lilienthal, and Dustin Hall (collectively "Defendants"), move to strike specified portions of Plaintiff, Christina Field's "Plaintiff" First Amended Complaint filed April 27, 2026. On May 19,2026, Plaintiff filed an opposition. On May 29, 2026 Defendants filed a reply.

Defendants move to strike the following portions of the FAC:

1. Paragraph 82 (FAC, p. 18, ¶ 82), beginning with "Because the conduct underlying this cause of action falls outside the scope of the individual defendants' employment, Government Code section 950.2 does not operate as a bar to this claim."
2. Paragraph 83 (FAC, p. 18, ¶ 83), beginning with "Plaintiff's claim for intentional infliction of emotional distress is not barred by the workers' compensation exclusivity doctrine," through the end of the paragraph.

3. Paragraph 84 (FAC, p. 18, ¶ 84), beginning with "Government Code § 820.2 does not shield the individual defendants from liability," through the end of the paragraph.
4. Prayer paragraph (b) (FAC, p. 19, Prayer ¶ (b)) requesting the Court "Issue a judicial determination of the rights, duties, and obligations of the parties hereto," because Plaintiff has not pleaded any declaratory relief cause of action and the prayer seeks relief not tethered to any pleaded claim.

Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance*, supra, 8 Cal.App.4th at p. 1519.)

Discussion

1. <u>Paragraph 82 (FAC, p. 18, ¶ 82), Paragraph 83 (FAC, p. 18, ¶ 83), and Paragraph 84 (FAC, p. 18, ¶ 84)</u>

   Defendants argue paragraphs 82-84 do not plead operative IIED facts but are instead argumentative conclusions asserting (i) "outside scope," (ii) "not normal incident," and (iii) "no discretionary immunity." Defendants move to strike as improper matter under Code of Civil Procedure § 436.

   As currently plead in FAC:

   > 82. …Because the conduct underlying this cause of action falls outside the scope of the individual defendants' employment, Government Code section 950.2 does not operate as a bar to this claim.
   >
   > 83. Plaintiff's claim for intentional infliction of emotional distress is not barred by the workers' compensation exclusivity doctrine. The conduct alleged herein which contains a sequence of sustained, malicious, and discriminatory personal campaign to humiliate and professionally destroy Plaintiff because of her sex and race is not a normal risk of the employment relationship and does not arise from the ordinary incidents of employment. Such intentional discriminatory and harassing conduct

> falls outside the scope of workers' compensation exclusivity under Labor Code § 3600. (See Accardi v. Superior Court (1993) 17 Cal.App.4th 341.)
>
> 84. Government Code § 820.2 does not shield the individual defendants from liability for the conduct alleged herein. The individual defendants' actions were not basic policy decisions entitled to immunity but rather operational and personal acts of harassment, discrimination, and malicious targeting carried out for improper discriminatory and retaliatory purposes. Discretionary act immunity does not extend to conduct that is intentionally discriminatory, undertaken in bad faith, or designed to harm an employee on account of a protected characteristic.

Code of Civil Procedure § 436 authorizes the court to strike out any irrelevant, false, or improper matter inserted in any pleading, or to strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state.

The Court finds that although argumentative, FAC ¶ 82-84 are not irrelevant, false or improper as a matter of law. They are plead in anticipation of Defendants' affirmative defenses. <u>Defendants' motion to strike FAC ¶ 82-84 is denied</u>.

2. <u>Prayer paragraph (b) (FAC, p. 19, Prayer ¶ (b))</u>

Defendants argue Plaintiff's prayer seeking a free-standing "judicial determination" untethered to any pleaded cause of action is improper and should be stricken or clarified.

As currently plead in FAC:

> b. Issue a judicial determination of the rights, duties, and obligations of the parties hereto;

Gov. Code § 12965(d) provides that a Court may grant "any relief a court is empowered to grant in a civil action brought pursuant to subdivision (c)" i.e., FEHA, "in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part." Plaintiffs seek equitable relief under FEHA and the prayer for relief is tied to the FEHA claims. <u>Defendant's motion to strike prayer paragraph (b) is denied</u>.

TENTATIVE RULING #1:

DEFENDANTS' DEMURRER IS OVERRULED AS TO FAC'S FIRST, SECOND, THIRD, FOURTH, FIFTH CAUSES OF ACTION. DEFENDANT'S DEMURRER IS SUSTAIND WITH LEAVE TO AMEND AS TO FAC'S SIXTH CAUSE OF ACTION.

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).

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.

2.	22CV1577	COUNTY OF EL DORADO VS. WANDA H. NAGEL
DETERMINATION OF LEGAL/EVIDENTIARY ISSUES		

This matter before the Court relates to an eminent domain action wherein Plaintiff, County of El Dorado ("Plaintiff"), seeks to acquire a fee simple interest totaling 1,114 square feet (.030 acres), a slope and drainage easement totaling 2,031 square feet (.050 acres), and a 36-month temporary construction easement that covers a one-year warranty period, totaling 8,312 square feet (.190 acres) from the 204,129.72 square feet (4.687 acres) residential parcel located at 4820 Newton Road, Placerville, California.

Trial on the sole issue of the amount of just compensation Plaintiff will pay to Defendant, Wanda H. Nagel, Trustee of the Wanda H. Nagel 1999 Revocable Trust ("Defendant") is set for July 28, 2026. In particular, there is a dispute regarding the amount of severance damages that are due, if any, which are awarded when the remainder property is injured by the acquisition or the construction.

Plaintiff filed a Motion for Determination of Legal/Evidentiary Issues on May 29, 2026, seeking to exclude all testimony of real estate appraiser, Neil Lefmann (Mr. Lefmann), as to severance damages on the following grounds:

1. He incorrectly puts on blinders and ignores the real facts based upon a misunderstanding that he should ignore everything that occurred after the date of value ("DOV") and only consider what was known as of the DOV [December 15, 2022] when determining severance damages;
2. He incorrectly applies the same standard in evaluating temporary and permanent severance damages and, thus, does not differentiate the two when evaluating severance damages; and
3. His methodology is contrary to law, lacks foundation, and is based upon pure conjecture and speculation and is, therefore, inadmissible.

Plaintiff moves under Code of Civil Procedure § 1260.040 to exclude the testimony of Mr. Lefmann regarding severance damages, arguing that his opinion lacks foundation because he employed the sales comparison approach only to determine the before value of the property, but used no recognized methodology or market data to determine the after value. Plaintiff further argues the opinion is speculative because the appraiser relied solely upon his professional judgment and improperly limited his analysis to conditions anticipated as of the date of valuation. Additionally, Mr. Lefmann's failure to differentiate between temporary and permanent severance damages is contrary to law.

Code of Civil Procedure § 1260.040 provides if there is a dispute between plaintiff and defendant over an evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue. Courts have used Code of Civil

Procedure § 1260.040 to determine whether to exclude testimony based on a disputed valuation method. *Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 862.

Code of Civil Procedure § 1263.410(a) mandates that where the property acquired is part of a larger parcel, in addition to compensation for the part taken, compensation shall be awarded for the injury, if any, to the remainder. Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following: a) the severance of the remainder from the part taken; b) the construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken. Code of Civil Procedure § 1263.420.

> Such “severance damages” are typically measured by comparing the fair market value of the remainder before and after the taking. (*City of Carlsbad v. Rudvalis*, at p. 679, 135 Cal.Rptr.2d 194; *City of San Diego v. Neumann*, at p. 744, 25 Cal.Rptr.2d 480, 863 P.2d 725.) “In other words, ‘The value of the remaining property taken as a part of the whole, described as the “before condition,” must be compared with the value that portion has as a result of the take and the construction of the improvement in the manner proposed, described as the “after condition.” Damages are computed simply by subtracting the market value of the remainder in its after condition from the market value of the remainder in its before condition.’ ” (*Cushman*, supra, 53 Cal.App.4th at p. 926, 62 Cal.Rptr.2d 121, quoting 1 Condemnation Practice in Cal. (Cont.Ed.Bar 1995) Severance Damages, § 5.9, p. 198.)
>
> *City of San Diego v. D.R. Horton San Diego Holding Co.*, Inc. (2005) 126 Cal.App.4th 668, 680–681

The value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable. Code of Civil Procedure § 823.

Although Plaintiff correctly states that Mr. Lefmann did not use any comparable market data, the record reflects that Mr. Lefmann explained why such market data was unavailable. He testified that there was no credible market evidence of properties with similar impacts that would enable him to credibly value the remainder in the after condition using direct market data. He further explained that it is very infrequent that an appraiser can independently value the after-condition remainder using direct market data, which was supported by his peers.

Mr. Lefmann testified his opinion was based upon a personal inspection of the property, review of the County's project plans, the Resolution of Necessity, the tree survey, before-condition photographs, Google Earth imagery, and the specific physical impacts the project would have on the remainder, including the temporary construction easement, removal of mature trees, diminished visual screening and privacy, increased roadway exposure, and related effects that a prospective purchaser would consider. He further explained how those project characteristics would influence the market's perception of the remainder property. While Plaintiff disputes the reliability of those conclusions and the absence of market data, those criticisms go principally to the weight of the testimony rather than its admissibility.

The Court likewise rejects Plaintiff's contention that Mr. Lefmann employed an incorrect legal standard by limiting his analysis to information known or reasonably anticipated as of the date of valuation. Code of Civil Procedure § 1263.320 provides

> (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
>
> (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

A hypothetical buyer and seller in this situation are deemed to have full knowledge of all uses and purposes for which the property is reasonably acceptable and available, including the nature and scope of the proposed public project as reflected in the Resolution of Necessity and project plans. Mr. Lefmann's methodology in evaluating the property's after condition from the perspective of knowledgeable market participants as of the valuation date, rather than relying upon hindsight or events occurring after that date is not erroneous.

Despite Defendant's argument that post-valuation events differed from anticipated project impacts does not render the opinion inadmissible. Whether Mr. Lefmann's assumptions accurately reflect what knowledgeable market participants would have anticipated on the valuation date presents a factual issue for cross-examination and competing expert testimony.

Plaintiff's request to exclude all testimony of Mr. Lefmann as to severance damages is denied.

TENTATIVE RULING #2:

PLAINTIFF'S REQUEST TO EXCLUDE ALL TESTIMONY OF MR. LEFMANN AS TO SEVERANCE DAMAGES 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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3.	23CV1809	JAMES A. WHITE ET AL VS. CHRISTOPHER S. WHITE ET AL
DISTRIBUTION OF FUNDS AFTER PARTITION		

Plaintiffs, James A. White, Wilderich A. White, Anna-Maria M. White, and Ilse-Maria Rosenberg (collectively the "Plaintiffs"), move for an order to: 1) to reallocate ownership interest in 5 Acres Birch Hill Ct., Georgetown, CA 95634, bearing El Dorado APN 061-691-012-000 ("Parcel 1") to Plaintiff James White, solely; 2) to reallocate ownership interest in 6530 Birch Hill Court, Georgetown, CA, bearing El Dorado APN 061-170-023-000 ("Parcel 2") to Plaintiff Wilderich A. White and Anna-Maria M. White, each as to a 50% tenant in common interest, and; 3) to distribute the deposited funds totaling $190,000 (the "residue") to Plaintiffs.

No opposition has been filed.

This matter stems from a partition action stemming from the real estate located at 6530 Birch Hill Court, Georgetown, California, 95634. On April 10, 2026, the Court granted Plaintiffs' motion for an order adopting the fair market value of the property in this matter, and approving Plaintiffs' agreement for partition of the property by appraisal. Pursuant to the Court's order, Plaintiffs, James A. White, Wilderich A. White, and Anna-Maria M. White (collectively "Purchasing Plaintiffs"), were required to deposit $190,000 into Court under Code of Civil Procedure §§ 572 and 573. On April 16, 2026, Purchasing Plaintiffs deposited $190,000 into the Court to buyout the respective 1/5 interests of Plaintiff Ilse-Maria Rosenberg and Defendant Christopher White ("Defendant").

Plaintiffs seek reimbursement from Defendant's share of the buyout; specifically: 1) distribution of Plaintiff, Ilse-Maria Rosenberg's full $95,000; and 2) distribution of the Defendant's $95,000 to themselves based on the following calculations for the Defendant's offset: Plaintiff Wilderich A. White's Property Expenses: $5,265.30 ; Plaintiff Anna-Maria M. White's Property Expenses: $5,537.56; Parcel Cleanup Costs $53,500; Attorneys' Fees $36,983.99; Amount Defendant Christopher White Owes $101,286.85.

Plaintiffs contend that they have a right to recover costs and expenditures made for the common benefit totaling $101,286.85, yet the amount allocated to Defendant is only $95,000. Purchasing Plaintiffs accordingly request distribution to themselves of the entire $95,000 allocated to Defendant pursuant to Code of Civil Procedure §§ 874.010 and 874.040.

REALLOCATION OF INTERESTS

Plaintiffs request the Court reallocate interests such that Plaintiffs Wilderich White and Anna-Maria White shall be the sole owners of Parcel 2, and James White shall be the sole owner of Parcel 1.

Code of Civil Procedure § 873.960 provides:

> At the hearing, the court shall examine the report and witnesses. If the court determines that the proceedings have been regularly conducted, that transfer of title to the interests may regularly be made, and that no facts appear which would make such transfer inequitable, it shall confirm the report and order the interests transferred to the acquiring parties in proportion to their respective interests, or in such other proportion as is set out in the agreement. The order shall be conditioned upon payment of the amounts fixed as the purchase price and any other amounts required by the agreement, the giving of any required security, and payment by the parties of the expenses of the procedure authorized by this chapter and of the general costs of the partition or an appropriate share thereof. Thereafter the court, upon motion of a party to the agreement or of the referee, made upon not less than 10 days' notice to the parties who have appeared, shall determine whether the conditions have been fulfilled and, if so, shall enter judgment confirming the transfer; otherwise, upon such further proceedings as may be ordered, the action or proceeding shall be ordered terminated.

The Court's April 10, 2026 order instructs: Upon receipt of the Buyout Amount, the Court, on application of any Party, shall issue an Order: (1) reallocating the ownership interests in Parcel 1 such that Plaintiff James White shall be the sole 100% owner of Parcel 1 in fee simple absolute; and (2) reallocating the ownership interests in Parcel 2 such that Plaintiffs Wilderich A. White and Anna-Maria M. White shall each be undivided one-half (50%) tenant in common owners of Parcel 2.

As the Buyout Amount has been deposited by the Plaintiffs, the Court grants Plaintiffs request for reallocation.

DISTRIBUTION OF FUNDS

Every partition action includes a final accounting according to the principles of equity for both charges and credits upon each co-tenant's interest. Credits include expenditures in excess of the co-tenant's fractional share for necessary repairs, improvements that enhance the value of the property, taxes, payments of principal and interest on mortgages, and other liens, insurance for the common benefit, and protection and preservation of title. (Code of Civ.Proc. § 872.140; Powell On Real Property (Rohan ed. 1989) vol. 4A, ¶ 607[6], p. 50–77.) *Wallace v. Daley* (1990) 220 Cal.App.3d 1028, 1035–1036.

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. Code of Civil Procedure § 874.040. When a cotenant makes advances from his own pocket to preserve the common estate, his investment in the property increases by the entire amount advanced. Upon sale of the estate he is entitled to be reimbursed his entire advancement before the balance is equally divided. *Southern Adjustment Bureau, Inc. v. Nelson* (1964) 230 Cal.App.2d 539, 541.

The costs of partition include reasonable attorney's fees incurred or paid by a party for the common benefit. Code of Civil Procedure § 874.010. The costs of partition include reasonable expenses, including attorney's fees, necessarily incurred by a party for the common benefit in prosecuting or defending other actions or other proceedings for the protection, confirmation, or perfection of title, setting the boundaries, or making a survey of the property, with interest thereon at the legal rate from the time of making the expenditures. Code of Civil Procedure § 874.020.

Plaintiff, James A. White, incurred $36,983.99 in attorneys' fees for the common benefit. Plaintiffs request reimbursement of their fees incurred. Underwood Declaration in Support of Motion to Distribute Funds After Partition provides a report for all the billable hours incurred by the Plaintiffs, which totals 83.9 hours.

Plaintiffs request the following distribution of funds:

- Plaintiff Ilse-Maria Rosenberg receives $95,000, plus one-quarter (1/4) of court accrued interest to date.
- Plaintiff Wilderich White receives $32,015.30, plus one-quarter (1/4) of court accrued interest to date, in addition to a one-half (50%) tenant in common interest in Parcel 2.
- Plaintiff Anna-Maria White receives $32,287.56, plus one-quarter (1/4) of court accrued interest to date, in addition to a one-half (50%) tenant in common interest in Parcel 2.
- Plaintiff James White to receive the remainder ($30,697.14), plus one-quarter (1/4) of court accrued interest to date, in addition to a 100% ownership interest in Parcel 1.

Plaintiffs have provided an accounting and evidentiary support documenting expenditures made by Plaintiffs Wilderich A. White and Anna-Maria M. White, as well an estimated cost to clean up Parcel 2. Plaintiffs request reimbursement of their fees and costs incurred. The Court accordingly grants Plaintiff's request to distribute the deposited funds totaling $190,000 as indicated herein.

TENTATIVE RULING #3:

PLAINTIFFS' REQUEST FOR REALLOCATION IS GRANTED. PLAINTIFF JAMES WHITE SHALL BE THE SOLE 100% OWNER OF PARCEL 1 IN FEE SIMPLE ABSOLUTE. PLAINTIFFS WILDERICH A. WHITE AND ANNA-MARIA M. WHITE SHALL EACH BE UNDIVIDED ONE-HALF (50%) TENANT IN

COMMON OWNERS OF PARCEL 2. PLAINTIFFS' REQUEST FOR DISTRIBUTION OF DEPOSITED FUNDS IS GRANTED AS INDICATED HEREIN.

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.

4.	**26CV1088**	**LIBERT AS FUNDING, LLC vs. KDC GLOBAL, INC**
MOTION TO VACATE		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

On May 26, 2026, Defendants filed a Motion to Vacate Sister-State Judgment. Plaintiff filed an Opposition on July 6, 2026.

Background

This matter stems from an Application for Entry of Judgment of Sister-State Judgment filed by Judgment Creditor/Plaintiff, Libertas Funding, LLC ("Plaintiff") on April 14, 2026. A Judgment on Sister-State Judgment was entered on April 20, 2026 (the "Judgment"). Pursuant to the Judgment, judgment was entered against KDC Global, Inc. and Kyndra Deeann Cheek (collectively "Defendants"), in the sum of $1,039,592.80 remaining unpaid on sister-state judgment, $435.00 filing fee for the underlying application, and $22,158.99 for accrued interest on the sister state judgment, in the total sum of $1,062,186.79.

Legal Principles

Code of Civil Procedure § 1710.40(a) provides a judgment entered pursuant to the Sister State Money Judgments Act may be vacated on any ground which would be a defense to an action in this state on the sister-state judgment. A defendant must move to vacate the judgment within 30 days. *Id*. at (b). However,

> [b]ecause a defendant may challenge lack of fundamental jurisdiction at any time (*Yu, supra,* 69 Cal.App.4th at pp. 1385–1386, 82 Cal.Rptr.2d 304), the 30–day limitations period applicable to other types of challenges to sister-state judgments under section 1710.40, including actions in excess of jurisdiction, does not apply to challenges based on lack of personal jurisdiction.
>
> *Airlines Reporting Corp. v. Renda* (2009) 177 Cal.App.4th 14, 20

Discussion

Defendants request the Court vacate the entry of Judgment pursuant to Code of Civil Procedure § 1710.40 on the grounds that the New York court never obtained personal jurisdiction over Defendants and the Judgment is therefore void and unenforceable in California. The Declarations of Kyndra Cheek and Steve Cheek attest that neither were personally served with a Summons and Complaint in the underlying New York action.

Defendants assert that under New York law, service of a Summons and Complaint must comply with CPLR § 308 or another authorized statute. New York CPLR § 312-a permits service by mail only when: 1) the summons and complaint are sent by first-class mail; 2) accompanied by two copies of a statement of acknowledgement and receipt; and 3) a return envelope with postage prepaid is enclosed.

Defendants contend Plaintiff attempted service solely by Priority Mail on September 16, 2024, which does not constitute valid service under New York law. Additionally, Plaintiff failed to provide a proof of a signed acknowledgement of receipt as required. As Defendants were not properly served, the New York judgment is void and unenforceable; therefore, the California entry of sister-state judgment must be vacated.

Plaintiff asserts that CPLR § 312-a does not apply as Defendants consented to service of process by USPS Priority Mail as part of an agreement with Plaintiff. Plaintiff contends the New York action arose out of a breach of contract. Plaintiff and Defendants entered into an Agreement of Sale of Future Receipts ("Agreement"), which Defendants defaulted. (Epstein Dec.; Ex, 1). To resolve their default, Defendants entered into a Stipulation of Settlement ("Stipulation") wherein Defendants agreed to make payments to Plaintiffs, which they further defaulted. (Epstein Dec.; Ex. 2). As the Parties consented to another form of method of service in the Agreement, Plaintiff indicates their agreed-upon manner of service prevails over the statutory requirements. *See Gilbert v Burnstine*, 255 NY 348, 355 [1931]; *Gallant Funding, L.P. v Tocci*, 34 Misc 3d 1220[A], 1220A, 2011 NY Slip Op 52486[U], *3 [Sup Ct, Kings County 2011]; Wynwood Capital Group LLC v Confluence Corp., 82 Misc 3d 1247[A], 2024 NY Slip Op 50557[U], *4 [Sup Ct, Kings County 2024].

Paragraph 27 of the Agreement provides:

> **Service of Process**. Merchant and Guarantor(s) consent to service of process and legal notices made by Certified or Priority Mail delivered by the United States Postal Service and addressed to the respective party's address set forth on the first page of this Agreement or any other address(es) provided in writing to Purchaser by Merchant or Guarantor(s), and unless applicable law or rules provide otherwise, any such service or legal notice will be deemed complete upon dispatch. Merchant and Guarantor(s) agree that it will be precluded from asserting that it did not receive service of process or any other legal notice mailed to the address located in the Merchant Information and Owner Information sections set forth on the first page of this Agreement if it does not furnish a certified mail return receipt signed by Purchaser demonstrating that Purchaser was provided with a notice of a change of address. (emphasis added)

Paragraph 10 of the Stipulation provides:

> Parties agree that the sending of any Summons and Complaint, in any proceeding commenced by Libertas, sent via the following methods: a) FEDEX or Certified Mail to the mailing addresses listed in this Settlement Agreement or otherwise provided to Libertas; or b) any other process required by any such court of proper jurisdiction, shall constitute valid and lawful service of process, without the necessity for service by any other means provided by statute, CPLR, or rule of court, but without invalidating service performed in accordance with any such other provisions. (emphasis added)

Plaintiff claims the service provision of the Agreement was not superseded by the Stipulation, as the Stipulation only modified the provision of the Agreement allowing for an additional acceptable method of service via FedEx. Plaintiff asserts that paragraph 10 of the Stipulation allows for methods of service "otherwise provided to Libertas," which includes Priority Mail per the Agreement.

Plaintiff misinterprets this provision. Paragraph 10 of the Stipulation provides that service may be effectuated by "FedEx or Certified mail to the mailing addresses listed in this Settlement Agreement or otherwise provided to Libertas." This reference does not extend service to Priority Mail per the Agreement but rather indicates the mailing addresses service may be made upon via FedEx or Certified Mail.

Plaintiff further argues paragraph 10 allows for service by any other process required by any such court of proper jurisdiction and thus, the court would allow for service by Priority Mail based on the Agreement. However, per the Stipulation, the Parties' prior Agreement is no longer binding as indicated in paragraph 16 of the Stipulation:

> 16. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written representations, negotiations, understandings and agreements, with regard to the subject matter hereof.

Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement. Code of Civil Procedure § 1856(a).

> New York, like California, applies the parol evidence rule to exclude evidence of any prior oral or written agreements and any contemporaneous oral agreements that contradict, vary, add to, or subtract from the terms of an agreement when, as here, the agreement has been reduced to an integrated writing (*see, Marine Midland Bank v. Thurlow,* 53 N.Y.2d 381, 387; Prince, Richardson on Evidence § 11–101 [Farrell 11th ed]). An integrated agreement is one that represents the entire understanding of the parties to the transaction (*Morgan Stanley High Yield Securities, Inc. v. Seven Circle Gaming Corp.,* 269 F Supp 2d 206, 214 [SDNY]). When an agreement contains a merger clause, it requires full application of the

> parol evidence rule in order to bar the introduction of extrinsic evidence to vary or contradict the terms of the writing (*Primex Intl. Corp. v. Wal–Mart Stores,* 89 N.Y.2d 594, 599). A merger clause accomplishes this objective by establishing the parties' intent that the agreement be considered a completely integrated writing (*Id.* at 599–600).
>
> *Theatrical Services and Supplies, Inc. v. GAM Products, Inc.* (N.Y. Sup. 2012) 34 Misc.3d 1224(A) [946 N.Y.S.2d 69]

Accordingly, the terms of the Stipulation apply, rendering the service of the Summons and Complaint must be effectuated by FedEx, certified mail or any other process required by any such court of proper jurisdiction. Service of the Summons and Complaint was effectuated by Priority Mail service, not in compliance with paragraph 10(a) of the Stipulation; therefore, service must have been effectuated by any other process required by any such court of proper jurisdiction.

CPLR 312-a provides:

> (a) Service. As an alternative to the methods of personal service authorized by section 307, 308, 310, 311 or 312 of this article, a summons and complaint, or summons and notice, or notice of petition and petition may be served by the plaintiff or any other person by mailing to the person or entity to be served, by first class mail, postage prepaid, a copy of the summons and complaint, or summons and notice or notice of petition and petition, together with two copies of a statement of service by mail and acknowledgement of receipt in the form set forth in subdivision (d) of this section, with a return envelope, postage prepaid, addressed to the sender.

The Court in *Uzamere v. Uzamere* (N.Y. Sup. Ct. 2010) 28 Misc.3d 1207(A) [957 N.Y.S.2d 639], aff'd (N.Y. App. Div. 2011) 89 A.D.3d 1013 [933 N.Y.S.2d 336] instructed

> CPLR § 312–a service is voluntary and contingent upon plaintiff's compliance with the statute. It requires plaintiff to mail two copies of the statutory statement of service and an acknowledgment of receipt pursuant to the statutory form (CPLR § 312–a [d]), with “a return envelope, postage prepaid, addressed to the sender” (CPLR § 312–a [a]), with defendants executing and returning the form. If the acknowledgment of receipt is not mailed or returned to the sender, the sender is required to effect personal service in another manner. (emphasis added).

Plaintiff does not dispute that Defendants did not return an acknowledgment of receipt. Plaintiff indicates that Defendants’ counsel, Stephan M. Brown, confirmed receipt of the Summons and Complaint in a letter to Plaintiff’s counsel (Epstein Dec.; Ex. 4); however, by failing to provide an executed acknowledgment of receipt, Plaintiff was required to effect personal service in another manner which they failed to do.

Plaintiff further argues that Defendants waived objections to jurisdiction pursuant to the Agreement and Stipulation.

Paragraph 46 of the Agreement provides:

> This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York, without regard to any applicable principles of conflicts of law. Any lawsuit, action or proceeding arising out of or in connection with this Agreement shall be instituted exclusively in any court sitting in New York State (the "Acceptable Forums"). <u>Each party signing this Agreement agrees that the Acceptable Forums are convenient, and irrevocably submits to the jurisdiction of the Acceptable Forums and waives any and all objections to inconvenience of the jurisdiction or venue</u>. Should a proceeding be initiated in any other forum, the parties waive any right to oppose any motion or application made by either party to transfer such proceeding to an Acceptable Forum. (emphasis added).

Paragraph 9 of the Stipulation provides:

> This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance, or breach hereof, shall be instituted in any court sitting in the State of New York, (the "Acceptable Forums"). <u>Parties agree that the Acceptable Forums are convenient to it, submit to the jurisdiction of the Acceptable Forums, and waive any and all objections to jurisdiction, venue, or choice-of-law</u>. Should such proceeding be initiated in any other forum than the Acceptable Forums, Merchant waives any right to oppose any motion or application made by Libertas to transfer such proceeding to an Acceptable Forum.

Plaintiff's argument is unavailing. Despite agreeing to jurisdiction in New York, proper service must nevertheless be effectuated. As Plaintiff failed to properly serve Defendants pursuant to the terms of the Stipulation or CPLR § 312-a, New York never acquired personal jurisdiction over Defendants. <u>In the absence of proper service, no personal jurisdiction was acquired over the defendants</u>. *Klein v. Educational Loan Servicing, LLC* (N.Y. App. Div. 2010) 71 A.D.3d 957, 958 [897 N.Y.S.2d 220, 222].

If service of process in a sister-state action was not made or was defective, the sister-state judgment is void for lack of fundamental jurisdiction and therefore unenforceable in California. <u>*Conseco Marketing, LLC v. IFA & Ins. Services, Inc.*</u> (2013) 221 Cal.App.4th 831, 841.

Where the original court lacked jurisdiction over the judgment debtor, the judgment is unenforceable *ab initio* and cannot be enforced in California. *WV 23 Jumpstart, LLC v. Mynarcik* (2022) 85 Cal.App.5th 596, 608.

Defendants' Motion to Vacate Sister-State Judgment is granted.

TENTATIVE RULING #4:

DEFENDANTS' MOTION TO VACATE SISTER-STATE JUDGMENT IS GRANTED.

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.

5.	25CV3134	LOGAN PECK VS GREGORY PORTER ET AL
MOTION FOR SERVICE BY PUBLICATION		

Plaintiff filed a Motion for Order for Service by Publication on May 15, 2026. An Answer to Complaint was filed July 7, 2026, rendering Plaintiff's motion moot.

TENTATIVE RULING #5:

PLAINTIFF'S MOTION FOR ORDER FOR SERVICE BY PUBLICATION IS DENIED AS 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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6.	25CV1844	LUCKY DONG 168, INC., A CALIFORNIA CORPORATION VS. 888 ZHU LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ET AL
MOTION TO STRIKE AND DEMURRER		

This matter is before the Court on two motions filed by Defendants: 1) Demurrer; and 2) Motion to Strike.

DEMURRER

Pursuant to Code of Civil Procedure §§ 430.10(e) and 430.10(f), Defendants, 888 Zhu LLC, Sau Nhit Ch, Nhit Phu Chi, and Peng Cheong (collectively "Defendants"), demurrer to Plaintiff's First Amended Complaint filed May 12, 2026. On June 25, 2026, Plaintiff, Lucky Dong 168, Inc., a California Corporation ("Plaintiff"), filed an opposition. On July 10,2026, Defendants filed a reply.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Declaration Jackie Sueyres, counsel attempted to meet and confer with Plaintiff prior to filing, but no response was received.

Background

On April 6, 2026, Plaintiff filed a First Amended Complaint ("FAC") for: 1) Breach of Accord and Satisfaction; 2) Misappropriation of Trade Secrets Under CUTSA; 3) Fraud; and 4) Unfair Competition in Violation of Business and Professions Code § 17200, Et Seq.,; Injunctive Relief.

Plaintiff asserts that the Parties entered into contracts regarding the sale of Plaintiff's business. Plaintiff provided to Defendants $66,000 to fulfill the purchase of Plaintiff's business. During these business dealings, Plaintiff alleges Defendants copied Plaintiff's menu, recipes, marketing materials, trade logo, etc. The Parties thereafter mutually agreed to rescind the contracts. The Parties agreed that the return of the $66,000 would satisfy any and all obligations of the Parties under the contracts and no terms or conditions or further obligations would remain between the Parties. Defendants returned the $66,000 to Plaintiff.

Thereafter, Plaintiff learned Defendants opened a business in San Andreas, California with the same trade name of "Hong Kong Inn" spelled in the same stylistic font, identical logo, identical menu layout, identical menu items, etc. Defendants' Statement of Information filed with the Secretary of State lists Plaintiff's mailing address despite having no connection to the business.

Legal Principles

[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.3d at p. 318.)

Discussion

1. First Cause of Action – Breach of Accord and Satisfaction

   Defendants argue that Plaintiff's FAC alleged that the accord and satisfaction nullified and all obligations of the Parties under the Contracts so long as Defendants received a full refund, which occurred. There were no other terms, conditions, or further obligations on either Party in consideration of terminating the contracts. Plaintiff failed to identify any term in the alleged oral accord acquiring Defendants to refrain from later using any trade name, logo, menu, trade dress, recipe, goodwill, customer information, vendor information, or operational procedure. Plaintiff pleads that after the refund, no contractual obligations remained.

Code of Civil Procedure § 1521 provides an accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction. Code of Civil Procedure § 1523. Where a party fully performs, the accord merges into the satisfaction and the original obligations are extinguished.

Moreover, an accord and satisfaction is characterized as a new matter constituting an affirmative defense, which must be specifically pleaded before it is available to a defendant. *Southern California Disinfecting Co. v. Lomkin* (1960) 183 Cal.App.2d 431, 444.

Plaintiff pleads that the Parties orally agreed to mutually rescind their contracts in exchange for a full refund, the refund was paid and acknowledged. Importantly, Plaintiff provides

> The accord and satisfaction nullified any and all obligations of the Parties under the Contracts. <u>There were no other terms or conditions or further obligations placed on either of the Parties in consideration for terminating the Contracts</u>. Plaintiff retained no consideration from Defendant after the Parties "walked away" from the terms under the Contracts; Defendants did not reject any refund from Plaintiff or re-tender the consideration at any point to Plaintiff. (FAC ¶ 18) (emphasis added)

Plaintiff pleads that the accord is fully executed and satisfaction is complete, rendering the Contracts extinguished. The accord released obligations under the contract; it did not create new restrictions on future conduct unless the agreement expressly provides, which Plaintiff confirms it did not. <u>Defendants' demurrer is sustained without leave to amend, finding there is no reasonable possibility of curing the defect.</u>

2. <u>Second Cause of Action – Misappropriation of Trade Secrets Under CUTSA</u>

Defendants argue that Plaintiff's CUTSA cause of action mixes potentially secret information, such as recipes or vendor terms, with plainly public-facing materials which are not trade-secrets. Defendants request the Court sustain the demurrer to the Second Cause of Action to the extent it rests on public-facing materials and require Plaintiff, if leave is granted, to separate any alleged trade secrets from public branding and to plead the allegedly secret information with sufficient clarity.

As defined by the plain language of the statute, misappropriation of a trade secret under the California UTSA consists of only two elements: (1) existence of a trade secret, and (2) improper acquisition, use, or disclosure of that trade secret. *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 569–570.

A "trade secret" means information including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Code of Civil Procedure § 3426.1(d).

Plaintiff's FAC provides specific information which they contend constitutes trade secrets. (FAC ¶¶ 45, 49). Defendants' assertion that public-facing materials cannot be trade secrets is a question of fact that is not properly resolved on demurrer. <u>The Court overrules Defendants' demurrer to the Second Cause of Action</u>.

3. <u>Third Cause of Action – Fraud</u>

Defendants argue the Third Cause of Action fails to provide the specificity required for fraud. Defendants contend Plaintiff's allegations omit the required particulars, such as which Defendant made each alleged representation, the exact words used, the date each statement was made, where each statement was made, whether the statement was oral, written, or implied, who received each statement on Plaintiff's behalf, how each statement was communicated, facts showing the statement was false when made, facts showing each speaker's intent not to perform at the time of the statement, or facts establishing reliance by the corporate Plaintiff on each specific representation. Plaintiff pleads that all Defendants acted jointly and severally, independently, and in collusion which is insufficient to the specification requirements for a claim of fraud.

> In California, fraud must be pled specifically; general and conclusory allegations do not suffice. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74, 269 Cal.Rptr. 337; *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268, 258 Cal.Rptr. 787; 5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 662, pp. 111–112.) "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] **This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered**." (*Stansfield*, supra, 220 Cal.App.3d at p. 73, 269 Cal.Rptr. 337, italics in original.) **A plaintiff's**

> **burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written."** (*Tarmann v. State Farm Mutual Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157, 2 Cal.Rptr.2d 861.)
>
> *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 [49 Cal.Rptr.2d 377, 385, 909 P.2d 981, 989] (emphasis added)

Plaintiff has failed to satisfy the particularity requirement for an allegation of fraud. The Court sustains Defendants' demurrer to the Third Cause of Action with leave to amend.

4. Fourth Cause of Action – Unfair Competition Under Business and Professions Code Section 17200

Defendants argue Plaintiff's Fourth Cause of Action seeks relief beyond what is available under UCL, as Plaintiff may not recover damages, punitive damages, treble damages, lost profits, lost market share, or Defendants' profits unless the requested money is restitutionary. Defendants request the Court sustain the demurrer to the extent the UCL seeks unavailable monetary remedies and the corresponding allegations and prayer should be stricken.

Defendants further argue that Plaintiff's UCL claim rests heavily on the same nucleus of facts as the CUTSA claim. Defendants contend that to the extent the UCL claim merely repackages alleged trade-secret acquisition and use, it is displaced by CUTSA.

> CUTSA includes a specific provision concerning preemption. That provision, section 3426.7, reads in pertinent part as follows: '(a) Except as otherwise expressly provided, this title does not supersede any statute relating to misappropriation of a trade secret, or any statute otherwise regulating trade secrets. [¶] (b) This title does not affect *(1) contractual remedies, whether or not based upon misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a trade secret,* or (3) criminal remedies, whether or not based upon misappropriation of a trade secret.' Section 3426.7 thus 'expressly allows contractual and criminal remedies, whether or not based on trade secret misappropriation.' [Citation.] '**At the same time, § 3426.7 implicitly preempts alternative civil remedies based on trade secret**

> **misappropriation**.
>
> *Angelica Textile Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, 505 [163 Cal.Rptr.3d 192, 201], as modified (Oct. 29, 2013), as modified on denial of reh'g (Nov. 7, 2013) (emphasis added)

Section 3426.7(b) preempts common law claims that are "based on the same nucleus of facts as the misappropriation of trade secrets. (*Digital Envoy, Inc. v. Google, Inc.*, supra, 370 F.Supp.2d at p. 1035.) *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 958 [90 Cal.Rptr.3d 247, 261] .

Business and Professions Code § 17203 authorizes courts to enjoin unfair competition and to restore any person money or property acquired by means of unfair competition; however, the code does not authorize punitive damages, treble damages, or nonrestitutionary disgorgement. *See Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1152 ("We hold that nonrestitutionary disgorgement of profits is not an available remedy in an individual action under the UCL.")

Plaintiff's Fourth Cause of Action is premised on the same nucleus of facts pertaining to Defendants' alleged taking of trade secrets that forms the basis of Plaintiff's CUTSA claim. <u>The Court sustains Defendants' demurrer to the Fourth Cause of Action, with leave to amend</u>. The Court finds the proper procedure for Defendants' remedies argument is within Defendants' motion to strike.

<u>MOTION TO STRIKE</u>

Pursuant to Code of Civil Procedure §§ 435 and 436, Defendants move to strike specified portions of Plaintiff's FAC. On June 25,2026, Plaintiff filed an opposition.

Defendants move to strike the following portions of the FAC:

1. Paragraph 53, page 16, lines 13-19, including the request for "exemplary damages in the form of triple the combined sum of the general and special damages," to the extent it seeks treble damages or exemplary damages beyond those authorized by Civil Code section 3426.3(c).
2. Paragraph 64, page 18, lines 18-22, including the request for "punitive damages" and "treble damages" based on the fraud cause of action, because the fraud claim is not pleaded with specificity and the punitive-damages allegations are conclusory.
3. Paragraph 77, page 21, lines 23-28 through page 22, lines 1-2, including the request for "disgorgement of all improper gains Defendant(s) achieved," to the extent it seeks nonrestitutionary disgorgement under the UCL.
4. Paragraph 82, page 23, lines 3-9, including the request for punitive damages and treble damages under or in connection with the UCL cause of action.

5. Prayer for Relief, paragraph D, page 23, lines 20-21, seeking punitive damages "equal to treble all general and special damages."
6. Prayer for Relief, paragraph E, page 23, lines 22-23, seeking "Restitution" to the extent it seeks nonrestitutionary disgorgement or money in which Plaintiff has no vested ownership interest.
7. Prayer for Relief, paragraph F, page 23, lines 24-27, seeking a reasonable royalty of Defendants' revenues and incomes "derived from use of Plaintiff's intellectual property and trade dress," to the extent it seeks CUTSA royalty remedies for non-trade-secret intellectual property, public trade dress, or publicly visible materials.
8. Prayer for Relief, paragraph H, page 24, lines 3-10, to the extent it seeks an overbroad injunction prohibiting Defendants from "contacting or soliciting any of Plaintiff's customers, vendors or business partners" without limitation to protectable trade secrets, confidential information, or independently unlawful conduct.
9. Prayer for Relief, paragraph I, page 24, lines 11-12, seeking attorney's fees and costs "if deemed appropriate by this court," to the extent no contractual or statutory basis exists apart from any properly pleaded CUTSA claim.
10. Prayer for Relief, paragraph K, page 24, lines 15-17, seeking a constructive trust over "all profits generated from Defendants and its successors and assigns," to the extent it seeks nonrestitutionary disgorgement or profits not traceable to money or property in which Plaintiff has a vested ownership interest.

<u>Legal Principles</u>

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance*, supra, 8 Cal.App.4th at p. 1519.)

<u>Discussion</u>

1. **<u>Paragraph 53, page 16, lines 13-19, Paragraph 64, page 18, lines 18-22, Paragraph 82, page 23, lines 3-9, Prayer for Relief, paragraph D, page 23, lines 20-21</u>**

   Defendant moves to strike punitive and treble damages allegations that are unsupported or unavailable. Defendant argues that punitive damages cannot be supported by conclusory labels. Additionally, Defendant asserts the FAC seeks "triple" damages under CUTSA which are not authorized. Lastly, Defendant contends that punitive and treble damages are unavailable under the UCL.

> **53.** Defendant committed the acts averred fraudulently, maliciously and oppressively, with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is entitled to recover exemplary damages in the form of triple the combined sum of the general and special damages from Defendant(s) jointly and severally, as provided by California Civil Code section 3426.3(c), plus an award of reasonable attorneys' fees, as provided by California Civil Code section 3426.4, in amounts according to proof.

Code of Civil Procedure § 3426.3(c) provides the Court with the discretion to award exemplary damages in an amount not exceeding twice any award made under subdivision (a) or (b) upon a showing of willful or malicious misappropriation. An award of attorney’s fees and costs may be ordered by the Court to the prevailing party on a claim of misappropriation made in bad faith. Code of Civil Procedure § 3426.4.

Plaintiff seeks triple the combined sum of general and special damages from Defendants provided by Code of Civil Procedure § 6426.3(c), which is improper. <u>The Court grants Defendants’ motion to strike in part and denies in part. The Court strikes the following from Paragraph 53, “in the form of triple the combined sum of the general and special damages”. Defendant’s motion to strike the remainder of Paragraph 53 is denied</u>.

> **64.** As a result of the willful misconduct of Defendant(s) and the misrepresentations made to Plaintiff that induced Plaintiff to reveal trade secrets without receiving just compensation or any consideration, and then for Defendant(s) to then utilize the same trade secrets to directly compete against Plaintiff, punitive damages are justified equivalent to treble damages or at an amount to be proven in trial.

<u>As the Court sustained Defendants’ demurrer as to the Third Cause of Action, Defendants’ motion to strike paragraph 64 is rendered moot</u>.

> **82.** Plaintiff is informed and believes that Defendant(s) committed the aforementioned acts fraudulently, maliciously, and oppressively, with the wrongful intention of injuring Plaintiff by confusing and pilfering potential customers from Plaintiff. Such conduct amounts to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages equal to treble all general and special damages from Defendant(s) jointly and severally, in an amount according to proof.

As the Court sustained Defendants' demurrer as to the Fourth Cause of Action, Defendants' motion to strike paragraph 82 is rendered moot.

> **Prayer for Relief, D.** Punitive damages for all causes of action that provide for the recovery of punitive damages in an amount equal to treble all general and special damages

Plaintiff seeks punitive damages in the amount equal to treble all general and special damages, which is improper under Code of Civil Procedure § 3426.3(c). The Court grants Defendants' motion to strike in part and denies in part. The Court strikes the following from Prayer for Relief, D, "in an amount equal to treble all general and special damages". Defendant's motion to strike the remainder of Paragraph 53 is denied.

2. Paragraph 77, page 21, lines 23-28 through page 22, lines 1-2, Prayer for Relief, paragraph E, page 23, lines 22-23, Prayer for Relief, paragraph K, page 24, lines 15-17

Defendants argue the UCL does not permit compensatory damages, punitive damages, treble damages, or nonrestitutionary disgorgement. Defendants assert that Plaintiff seeks Defendants' revenues, income, and profits because they allegedly benefited from unfair competition, which is nonrestitutionary disgorgement and unavailable to a private UCL plaintiff.

> **77.** Plaintiff is further informed and believes, and thereupon avers, that Defendant(s) have been unjustly enriched through the aforesaid allegations, to the corresponding detriment of Plaintiff, as a result of their wrongful and intentional conduct. Pursuant to Bus. and Prof Code § 17203. Plaintiff is therefore entitled to disgorgement of all improper gains Defendant(s) achieved by use of information obtained from Plaintiff.

As the Court sustained Defendants' demurrer as to the Fourth Cause of Action, Defendants' motion to strike paragraph 77 is rendered moot.

> **Prayer for Relief, E:** Restitution to Plaintiff in the amount for which Defendants have been unjustly enriched according to proof.

A complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss. Code of Civil Procedure § 3426.3(a). "…a successful trade secret plaintiff is entitled to the full panoply of remedies, including injunctive relief against further misappropriation (§ 3426.2), damages for actual loss (§ 3426.3), and relief from unjust enrichment (*ibid.*)." *Cadence Design Systems, Inc. v. Avant! Corp.* (2002) 29 Cal.4th 215, 226.

Plaintiff seeks restitution in the amount Defendants have been unjustly enriched according to proof, which is an appropriate remedy. Defendants' motion to strike Prayer for Relief, E is denied.

> **Prayer for Relief, K**: That the court establish a constructive trust to hold all profits generated from Defendants and its successors and assigns, for which may be disgorged as restitution to Plaintiff upon a showing a proof.

To the extent a constructive trust functions as an equitable remedy tied to identifiable profits derived from misappropriation, it may be a form of relief pursuant to Code of Civil Procedure § 3426.2. However, Plaintiff's request is overbroad and seeks all profits generated from Defendants, not just those identifiable from the misappropriation. Defendants' motion to strike is granted, with leave to amend.

3. Prayer for Relief, paragraph F, page 23, lines 24-27

Defendants argue prayer paragraph F is overbroad and not in conformity with Code of Civil Procedure § 3426.3, which authorizes a reasonable royalty only as a CUTSA remedy for trade-secret misappropriation and does not apply to non-trade secret intellectual property, public trade dress, public signage, public menus, or other customer-facing materials.

> **Prayer for Relief, F:** Pursuant to California Civil Code §§ 3426.2(b) and 3426.3(b), a reasonable royalty of Defendant(s)' revenues and incomes derived from use of Plaintiff's intellectual property and trade dress.

Code of Civil Procedure § 3426.2(b) provides that if the Court determines it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of reasonable royalty for no longer than the period of time the use could have been prohibited. Code of Civil Procedure § 3426.3(b) provides that if neither damages nor unjust enrichment caused by misappropriation are provable, the Court may order payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

Both code sections expressly refer to "misappropriation," which is defined by Code of Civil Procedure § 3421.1(b) as the acquisition, use, or disclosure of a trade secret. A "trade secret" means information, including a formula pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *Id*. at (d).

Plaintiff's Prayer for Relief, F is overbroad, as it seeks a reasonable royalty on all Defendants' revenues and incomes without limiting the royalty to revenues attributable to misappropriation of trade secrets. Defendants' motion to strike is granted, with leave to amend.

4. Prayer for Relief, paragraph H, page 24, lines 3-10

Defendants argue the requested injunction is overbroad, as it is not limited to protectable trade secrets, confidential information, contractual restrictions, or independently unlawful conduct. It further extends to all customers, vendors, and business partners, whether or not their identities, terms, or relationships are secret.

> **Prayer for Relief, H**: Preliminary and permanent injunctive relief, including but not limited to, an order requiring Defendants to return and destroy all confidential, proprietary, trade dress, intellectual property, and trade secret information to Plaintiff; prohibiting Defendants from using any of Plaintiff's confidential, proprietary, trade dress, intellectual property, and trade secret information for any purpose whatsoever; prohibiting Defendants from contacting or soliciting any of Plaintiff's customers, vendors or business partners; and ordering Defendants to revise and re-file a truthful and correct Statement of Information with the California Secretary of State.

Code of Civil Procedure § 3426.2(a) provides that actual or threatened misappropriation may be enjoyed and that injunction shall be terminated when the trade secret has ceased to exist. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. *Id*. at (c).

" 'A trade secret will not be protected by the extraordinary remedy of an injunction on mere suspicion or apprehension of injury. There must be a substantial threat of impending injury before an injunction will issue....' [Citations.]" (*Del Monte Fresh Produce Co. v. Dole Food Co., Inc.* (S.D.Fla.2001) 148 F.Supp.2d 1326, 1328 [discussing California and Florida law].) *FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1279.

Plaintiff's Prayer for Relief, H is overbroad, as it seeks to prohibit Defendants from using any confidential, proprietary, trade dress, intellectual property, and trade secret information. Such language goes beyond the actual or threatened misappropriation of trade secrets as defined by Code of Civil Procedure § 3426.2(a). Defendants' motion to strike is granted, with leave to amend.

5. **Prayer for Relief, paragraph I, page 24, lines 11-12**

Defendants argue Plaintiff has not pleaded a contractual fee provision applicable to the alleged accord and CUTSA permits fees only in specified circumstances, such as willful and malicious misappropriation or bad-faith claims or motions, under Code of Civil Procedure § 3426.4.

> **Prayer for Relief, I:** Reasonable attorney's fees and costs if deemed appropriate by this court.

The Court is unpersuaded by Defendants' argument. *In Camenisch v. Superior Court* (1996) 44 Cal.App.4th 1689, the appellate court ruled it was not an error in refusing to strike a prayer for attorney fees on the basis the complaint did not allege a contract allowing for recovery of attorney fees by the prevailing party. The court held that "the court was not required to strike the prayer before he has had a full opportunity to determine, through discovery, whether a basis for recovery exists."

Plaintiff may be entitled to attorney fees under Code of Civil Procedure § 3426.4; however, whether Plaintiff qualifies is fact-dependent and discovery may be required to determine whether a basis for recovery exists. Defendants' motion to strike is denied.

TENTATIVE RULING #6:

DEMURRER

DEFENDANTS' DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND AS TO PLAINTIFF'S FIRST CAUSE OF ACTION. DEFENDANTS' DEMURRER IS OVERRULED AS TO PLAINTIFF'S SECOND CAUSE OF ACTION. DEFENDANTS' DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AS TO PLAINTIFF'S THIRD AND FOURTH CAUSES OF ACTION.

MOTION TO STRIKE

THE COURT GRANTS DEFENDANTS' MOTION TO STRIKE PARAGRAPH NO. 53 IN PART AND DENIES IN PART. THE COURT STRIKES THE FOLLOWING FROM PARAGRAPH NO. 53, "IN THE FORM OF TRIPLE THE COMBINED SUM OF THE GENERAL AND SPECIAL DAMAGES." DEFENDANTS' MOTION TO STRIKE THE REMAINDER OF PARAGRAPH NO. 53 IS DENIED.

THE COURT GRANTS DEFENDANTS' MOTION TO STRIKE PRAYER FOR RELIEF, D IN PART AND DENIES IN PART. THE COURT STRIKES THE FOLLOWING FROM PRAYER FOR RELIEF, D, "IN AN AMOUNT EQUAL TO TREBLE ALL GENERAL AND SPECIAL DAMAGES". DEFENDANTS' MOTION TO STRIKE THE REMAINDER OF PRAYER FOR RELIEF, D IS DENIED.

DEFENDANTS' MOTION TO STRIKE PRAYER FOR RELIEF, E AND I IS DENIED.

DEFENDANTS' MOTION TO STRIKE PRAYER FOR RELIEF, F, H, AND K IS GRANTED, WITH LEAVE TO AMEND.

AS THE COURT SUSTAINED DEFENDANTS' DEMURRER AS TO THE THIRD AND FOURTH CAUSES OF ACTION, DEFENDANTS' MOTION TO STRIKE PARAGRAPH NOS. 64, 77, 82 ARE RENDERED 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).

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.

7.	**26CV0799**	**MARY ASTOR SMITHE VS. EDIB ZILDZO ET AL**
PRELIMINARY INJUNCTION		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

On May 4, 2026, Plaintiff, Mary Astor Smithe ("Plaintiff"), filed a Motion for Preliminary Injunction. Plaintiff seeks to enjoin Defendants, Edib Zildzo, Alma Zildzo (aka Alma Trebincevic and Alma Maslic), and Aze Enterprises LLC (dba Crepe Town European Café & Grill) a California Limited Liability Company (collectively "Defendants") from:

1. Selling, transferring, encumbering or dissipating any interest in the real property at 3601 Eagle View Drive, Cameron Park, CA 95682, including any interest held by the Zildzo Family Trust or its trustees Edib Zildzo and Alma Zildzo;
2. Freezing all bank accounts and assets of AZE Enterprises LLC dba Crepe Town European Café & Grill;
3. Approving and ordering immediate recording of the Notice of Pendency of Action previously mailed by Plaintiff; and
4. Waiving any bond requirement pursuant to Code of Civil Procedure §§ 995.240 and 529.2 due to Plaintiff's granted fee waiver.

A Supplemental Request for Tentative Ruling Decision on the Papers was filed by Plaintiff on May 14, 2026.

It is unclear whether Plaintiff's motion and supplemental request have been served. Proofs of Electronic Service were filed on May 14, 2026 and May 18, 2026 indicating "Proof of Electronic Service, Request, and Request to Waive Court Fees" were served. A Proof of Electronic Service was also filed on May 4, 2026, indicating a "Motion in Limine and Proof of Electronic Service" were served. These Proofs of Service do not specify the underlying pleadings were served on Defendants.

There is no opposition on file.

Plaintiff's Motion for Preliminary Injunction is denied without prejudice.

TENTATIVE RULING #7:

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION IS DENIED WITHOUT 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).

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.

8.	25CV2627	MOUNTAIN ROOFING SYSTEMS VS AM DEVELOPMENT INC. ET AL
MOTION TO ENFORCE SETTLEMENT AGREEMENT		

This case stems from a Breach of Contract action filed by Plaintiff on September 29, 2025. The Parties thereafter entered into a Settlement Agreement pursuant to Code of Civil Procedure § 664.6

On May 29, 2026, Plaintiff filed the following:

1. Notice of Motion and Motion to Enforce Settlement Agreement; Plaintiff Mountain Roofing Systems' Memorandum of Points and Authorities; and
2. Declaration of Danyal J. Mico in Support of Plaintiff Mountain Roofing Systems' Motion to Enforce Settlement Agreement.

Plaintiff's motion seeks to enforce the Settlement Agreement and enter Judgment in the amount of $40,915, plus $4,060 in attorneys' fees and costs incurred in connection with bringing the motion.

Adam Murray signed the Settlement Agreement as President of Defendant, AM Development Inc.; however, he did not sign on the signature line for him as an individual Defendant. Plaintiff attempted to have Mr. Murray sign as an individual, but no signature was received. Pursuant to the Settlement Agreement, Defendants had 30 days from March 25, 2026, to remit the settlement payment. To date, it has not been received.

Plaintiff's attorney, Danayl Mico, attests under penalty of perjury Plaintiff has incurred costs and attorney's fees in the amount of $4,060 to enforce the stipulation.

The Settlement Agreement provides, in part (emphasis added):

> This Settlement Agreement and Mutual Release ("Agreement") is made effective as of <u>March 25, 2026 ("Effective Date") by and between Plaintiff Mountain Roofing Systems, a California corporation, ("Mountain") and Defendants AM Development Inc., a California corporation ("AM Development") and Adam Murray ("Murray," collectively with AM Development shall be referred to as "Defendants")</u>. Mountain, AM Development, and Murray are each a "Party" to this Agreement, and referred to collectively herein as the "Parties" to this Agreement.
>
> 2. In consideration for this Agreement, <u>Defendants shall pay to Mountain the total sum of Forty Thousand Nine Hundred and Fifteen Dollars ($40,915.00) ("Settlement Payment") so that it is received within thirty (30) calendar days of the Effective Date of this Agreement</u>. Defendants shall issue payment to

> "ElGuindy, Meyer & Koegel, APC Trust Account", and send payment to 2990 Lava Ridge Court, Suite 205, Roseville, CA 95661.
>
> 3. In consideration for this Agreement, Mountain shall file and serve a Request for Dismissal of the entire Complaint with prejudice immediately upon receipt of the Settlement Payment but in no event later than thirty (30) days after receipt of such payment. In further consideration for this Agreement, Mountain shall record a Release of Mechanic's Lien releasing its mechanic's lien at issue in the Complaint in its entirety.
>
> 20. <u>This Agreement may be enforced by any procedure permitted by law, including without limitation under Code of Civil Procedure section 664.6, with the Santa El Dorado County Superior Court to retain jurisdiction thereon.</u> <u>If either Party brings an action to enforce or interpret this Agreement, following notice to the other Party and an opportunity to cure the alleged breach, the prevailing Party in any such action shall be entitled to reasonable attorney fees and costs of pursuing that action</u>.

<u>No response has been filed by Defendants</u>.

Code of Civil Procedure § 664.6 provides the Court may enter judgment pursuant to the terms of a written settlement agreement. Mr. Murray only signed the Settlement Agreement as President of Defendant, AM Development Inc., not as an individual. Despite the failure of all Defendants to sign, the Court has the authority to enforce agreements with the Parties who entered the Settlement Agreement.

> Notably, our holding does not interpret section 664.6 to require the signature of all of the parties in the action. Certainly we can conceive of a multiple party litigation where some, though not all of the parties enter into a settlement agreement. The statutory purpose of expediting settlement agreements to judgment would not be furthered if it was unavailable to those litigants on both sides of a multi-party action who chose to enter into a settlement agreement in the manner contemplated by the statute. We simply hold the section's requirement of a "writing signed by the parties" must be read to apply to all parties bringing the section 664.6 motion and against whom the motion is directed.
>
> *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 306 [87 Cal.Rptr.2d 822, 827]

As Mr. Murray did not sign as an individual, the Court does not have the authority to enforce the Settlement Agreement against him personally. The Court grants Plaintiff's request to enforce the Settlement Agreement and enter Judgment in the amount of $40,915, plus $4,060 in attorneys' fees and costs against Defendant, AM Development Inc. The Court denies Plaintiff's request to enforce the Settlement Agreement and enter Judgment against Defendant, Adam Murray, as an individual.

TENTATIVE RULING #8:

PLAINTIFF'S REQUEST TO ENFORCE THE SETTLEMENT AGREEMENT AND ENTER JUDGMENT AGAINST DEFENDANT, AM DEVELOPMENT INC., IS GRANTED. JUDGMENT SHALL BE ENTERED AGAINST DEFENDANT, AM DEVELOPMENT INC., IN THE AMOUNT OF $44,975, COMPRISED OF THE OUTSTANDING BALANCE ($40,915) AND ATTORNEYS' FEES AND COSTS ($4,060).

PLAINTIFF'S REQUEST TO ENFORCE THE SETTLEMENT AGREEMENT AND ENTER JUDGMENT AGAINST DEFENDANT, ADAM MURRAY AS AN INDIVIDUAL, 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.	25CV1097	PHILLIP LIIMATTA ET AL VS. JOHN WILLIAMS EVANS ET AL
MOTION FOR PROTECTIVE ORDER AND SANCTIONS		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

This matter arises from two motions for protective orders and requests for monetary sanctions filed by Defendants, Jared Evans and John William Evans (collectively "Defendants'). The Court issued a tentative ruling on May 15, 2026, directing the parties to meet and confer and file a status report with the Court before June 22, 2026. Defendants filed a Status Report on June 18, 2026. No Status Report has been filed by Plaintiffs.

Defendants' counsel describes attempts to meet and confer with Plaintiffs' counsel. Of note, the Parties had a lengthy conversation regarding their discovery disputes and Defendants' motion for protective Order. Following the call, Defendants' counsel sent Plaintiffs' counsel an outline of all outstanding issues. Plaintiffs' counsel responded noting that he does not believe Defendants' counsel summarized their position, which is outlined in their separate statement. Plaintiffs' counsel requested Defendants' counsel's availability to finish meeting and conferring. No further efforts to meet and confer have been made.

The Court finds the meet and confer efforts to be inadequate. The Court therefore orders the following:

Parties are to immediately begin the meet and confer process on Defendants' motions for protective orders. The parties are ordered to meet and confer on video conference or in person in a good faith effort to resolve each matter on an item-by-item basis. Both parties are referred to standards of professionalism and civility as discussed in *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1439; and *Manzetti v. Superior Court* (1993) 21 Cal.App.4th 373, 380, fn.8. The meet and confer meeting(s) is to be recorded and the recording is to be made available to the Court at the hearing. All parties/attorneys are ordered to make the recording or may all agree to only one party making the recording.

No later than August 21, 2026, the parties shall file a JOINT status report of no more than 5 pages outlining which, if any, items remain in dispute and why, including any request for sanctions. Failure to sign and participate in drafting the joint report will open each side to monetary sanctions of for failure to follow this Order pursuant to California Rules of Court 5.14 and 5.98.

The parties shall not file a response or reply papers or any other papers in support or opposition of this motion. The court will only consider the joint status report that should explain what item(s) remains in dispute and the legal reasons why it's in dispute.

Parties shall explain the amount of monetary sanctions sought and the reasons why within the joint status report such that the court can address the same in any subsequent order individually.

The court reminds the parties that it is not enough to refer the court back to the original papers or to other papers filed in association with each matter or previous status report. Moreover, the joint status report(s) should proceed to list items remaining in dispute along with the legal reason(s) why. The parties shall submit a joint status report that complies with CRC 3.1345 which explains why a specific request is in dispute and each party's position. Parties should be careful to delineate the items in dispute in such a way that the Court will be fully aware as to which set of discovery the item in dispute is referring. If an item is not specifically listed and briefed with applicable points and authorities in the joint status report, the Court will assume that the issue has been resolved.

The parties are required to be reasonable in this process or face additional monetary sanctions.

A courtesy copy of the joint status report(s) shall be delivered electronically to Department 9. The hearing on this motion is scheduled on August 28, 2026 at 8:30 AM in Department 9.

TENTATIVE RULING #9:

DEFENDANTS' MOTION FOR PROTECTIVE ORDERS AND SANCTIONS ARE CONTINUED TO AUGUST 28, 2026 AT 8:30 A.M. IN DEPARTMENT 9. PARTIES AND COUNSEL ARE ORDERED TO COMPLY WITH THE COURT'S ORDER TO MEET AND CONFER AS OUTLINED IN THE TENTATIVE RULING.

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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10.	**26CV0341**	**RAINER ENDERS VS. MICHAEL WEISSMANN**
MOTION FOR PROTECTIVE ORDER AND MOTION TO COMPEL FURTHER RESPONSES		

Pursuant to the Court's June 5, 2026, tentative ruling, the Parties filed a Joint Status Report regarding Defendant's motion to compel further special interrogatory responses from Plaintiff. The Parties advise that Plaintiff resolved all issues set forth in Defendant's motion to compel and Defendant waives their request for monetary sanctions.

The Parties request the Court vacate the hearing set for July 17, 2026, as there are no issues for the Court to resolve.

TENTATIVE RULING #10:

THE HEARING SCHEDULED FOR JULY 17, 2026, ON DEFENDANT'S MOTION TO COMPEL IS VACATED.

11.	**23CV2042**	**WELLS FARGO BANK VS. MURRAY HOLDINGS ET AL**
REVIEW HEARING		

On September 3, 2024, this Court issued an Order staying the proceedings pending resolution of the related criminal action, but authorized discovery as to third parties to proceed in the interim. The Court's Order provided that the stay of proceedings would be re-evaluated in one year; the Parties subsequently requested a continuance of that review hearing, which the Court granted.

At the review hearing on February 20, 2026, the Parties provided an update on the current status and the Court continued the hearing to July 17, 2026.

To date, nothing further has been filed with the Court.

TENTATIVE RULING #11:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 17, 2026, IN DEPARTMENT NINE.

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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12.	25CV2344	WELLS FARGO BANK, N.A. VS. PETER ZERI, AN INDIVIDUAL
MOTION FOR SUMMARY JUDGMENT		

Plaintiff filed this Motion for Summary Judgment Pursuant to CCP 437c on March 16, 2026. No opposition has been filed.

[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.)

In *Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1084, 94 Cal.Rptr.2d 575, a trial court granted summary judgment to defendant because plaintiffs failed to file any opposition, pursuant to a local court rule providing that the failure to oppose a motion may be deemed an admission that the motion is meritorious. **On appeal, the local rule was held invalid because it conflicted with Code of Civil Procedure section 437c by authorizing the trial court "to grant summary judgment based solely on the absence of opposition, without a preliminary finding that the moving party has met its initial burden of proof."** (*Thatcher v. Lucky Stores, Inc., supra,* at pp. 1086–1087, 94 Cal.Rptr.2d 575.) The *Thatcher* court emphasized that the statute requires that the moving party assume the initial burden of producing evidence that no triable issue of material fact exists. (*Id.* at p. 1085, 94 Cal.Rptr.2d 575.) *Boyle v. CertainTeed Corp.,* 137 Cal. App. 4th 645, 654, 40 Cal. Rptr. 3d 501, 508 (2006)

Under summary judgment law, any party to an action, whether plaintiff or defendant, "may move" the court "for summary judgment" in his favor on a cause of action (i.e., claim) or defense (Code Civ. Proc., § 437c, subd. (a))—a plaintiff "contend[ing] ... that there is no defense to the action," a defendant "contend[ing] that the action has no merit" (*ibid.*). The court must "grant[]" the "motion" "if all the papers submitted show" that "there is no triable issue as to any material fact" (*id.*, § 437c, subd. (c))—that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law (see *Riverside County Community Facilities Dist. v. Bainbridge 17* (1999) 77 Cal.App.4th 644, 653 [92 Cal.Rptr.2d 29]; *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 470 [84 Cal.Rptr.2d 810])—and that the "moving party is entitled to a judgment as a matter of law" (Code Civ. Proc., § 437c, subd. (c)). The moving party must "support[]" the "motion" with evidence including "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Id.*, § 437c, subd. (b).)

Likewise, any adverse party may oppose the motion, and, "where appropriate," must present evidence including "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Ibid.*) An adverse party who chooses to oppose the motion must be allowed a reasonable opportunity to do so. (*Id.*, § 437c, subd. (h).) In ruling on the motion, the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom (*id.*, § 437c, subd. (c)), and must view such evidence (e.g., *Molko v. Holy Spirit Assn.*, *supra*, 46 Cal.3d at p. 1107; *Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785]) and such inferences (see, e.g., *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1520 [80 Cal.Rptr.2d 94] [review on appeal]; *Ales-Peratis Foods Internat., Inc. v. American Can Co.* (1985) 164 Cal.App.3d 277, 280, fn. * [209 Cal.Rptr. 917] [same]), in the light most favorable to the opposing party. *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 843, 24 P.3d 493 (2001), as modified (July 11, 2001).

The elements of a breach of a written contract 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. *Aton Center, Inc. v. United Healthcare Ins. Co.* (2023) 93 Cal.App.5th 1214, 1230. A cause of action for breach of implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor's conduct." *Id*.

Plaintiff has established the elements of breach of written contract and implied contract. Plaintiff provided documents establishing Defendant applied for and was issued a Wells Fargo Credit Card, a Customer Agreement that incorporated the terms and conditions of the card, and monthly account statements reflecting a history of purchase and payments on the account. The evidence indicates that Plaintiff lent credit and Defendant stopped making payments on June 29, 2024, leaving a balance owed of $6,587.19.

No evidence was offered to rebut the evidence presented.

TENTATIVE RULING #12:

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

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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13.	**25CV2822**	**YOSEF ZAGHI VS. EVOLVE MANAGEMENT EXPERTS, LLC ET AL**
MOTION FOR RELIEF		

This matter is before the Court on Defendants Motion for Relief from Attorney Mistake Under Code of Civil Procedure § 473(B) filed on May 27, 2026. Defendant filed a Demurrer on January 20, 2026. On May 15, 2026, the Court overruled the demurrer on the basis that Defendant failed to comply with the meet and confer requirements established by Code of Civil Procedure § 430.41(a)(3).

Defendant requests the Court: 1) grant relief under Code of Civil Procedure § 473(b) and vacate the May 15, 2026 order overruling the demurrer; 2) deem the meet and confer declaration as timely filed nunc pro tunc; and 3) set the demurrer for hearing on the merits.

Defendant's counsel, Katy Young, swears under penalty of perjury that she failed to include a declaration regarding meet and confer efforts inadvertently. The declaration was transmitted to her paralegal for filing but did not realize its absence until the Court overruled the demurrer. Ms. Young included a Declaration of Katy M. Young in Support of Defendants' Demurrer as Exhibit A. No opposition has been received.

Code of Civil Procedure § 473(B) grants the Court the discretion to relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. The application for relief must be accompanied by a copy of the proposed pleading to be filed therein.

TENTATIVE RULING #13:

ABSENT OBJECTION DEFENDANT'S REQUEST FOR RELIEF FROM ATTORNEY MISTAKE IS GRANTED. THE MAY 15, 2025 ORDER OVERRULING THE DEMURRER IS VACATED. THE MEET AND CONFER DECLARATION PROVIDED AS EXHIBIT A SHALL BE DEEMED TIMELY FILED NUNC PRO TUNC. A HEARING ON THE DEMURRER HAS BEEN SET FOR AUGUST 14, 2026 AT 8:30 A.M. IN DEPARTMENT NINE.

DEFENDANT IS ORDERED TO SERVE PLAINTIFF WITH THE UNDERLYING MOTION AND ALL SUPPORTING PLEADINGS.

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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14.	**26CV0565**	**BENJAMIN CROCKER VS. CITY OF SOUTH LAKE TAHOE**
DEMURRER		

Defendant, City of South Lake Tahoe ("Defendant"), filed a demurrer to Plaintiff's, Benjamin Crocker ("Plaintiff"), Complaint on May 18, 2026. Defendant simultaneously filed a request for judicial notice on the same date. No opposition has been received. Defendant filed a Reply to Non-Opposition to Defendant City of South Lake Tahoe's Demurrer to Plaintiff's Complaint on July 10, 2026, requesting the Court sustain the Demurrer due to Plaintiff's failure to serve an opposition.

Judicial Notice

Defendant requests the Court take judicial notice of the following pursuant to California Evidence Code §§ 452, 453, and Code of Civil Procedure § 430.70:

1. *The People of the State of California v. Benjamin David Crocker*, Case No. 22CR0245, Criminal Complaint filed February 17, 2022;
2. *The People of the State of California v. Benjamin David Crocker*, Case No. 22CR0245, Amended Criminal Complaint filed March 4, 2025;
3. *The People of the State of California v. Benjamin David Crocker*, Case No. 22CR0245, Jury Verdict Minutes and Sentencing Order
4. *The People of the State of California v. Benjamin David Crocker*, Case No. 22CR0245, Order on Probation; and
5. Plaintiff's November 18, 2025 Government Claim stamped as received November 25, 2025.

The Court grants Defendant's unopposed request for judicial notice.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Declaration of Matthew Gross, counsel attempted to meet and confer with Plaintiff prior to filing, but Plaintiff failed to respond to counsel's emails or voicemails.

Background

Plaintiff's complaint was filed on March 3, 2026. Plaintiff asserts a Breach of Contract cause of action. Plaintiff alleges that on or about November 18, 2025, a written agreement was made between Plaintiff and Defendant, which is attached as Exhibit A, and that on or about December 1, 2025, Defendant breached the agreement by "failing to perform and or cancel contractual obligations per stipulations #19-#96." Plaintiff alleges he suffered damages caused by Defendant's breach of the agreement as attached in his Affidavit and Attachments to Contract (Exhibit A). No exhibits or affidavits were attached to the Complaint.

The Court notes Plaintiff filed four Declarations on the same date, as well as a Motion for Order and Judgment. It is unclear whether these were properly served, as the Proof of Service only provides the following documents were personally served: "Summons & Complaint, Notice [sp] of Case Assignment [sp]/Case Management, Declaration."

In one Declaration, Plaintiff alleges that Defendant entered into a contract on November 18, 2025, which Defendant breached on December 1, 2025 (Exhibit A). Plaintiff asserts Defendant was given the opportunity to cure on December 3, 2025, and again on January 1, 12, 2026 and again on January 27, 2026 (Exhibit B). No exhibits are attached.

In another Declaration, Plaintiff states "Exhibit A" Contract & Attachments" and "Contract, 24 Pages & Attachments, 30 pages). Plaintiff's Declaration includes 54 pages. Page 9 provides "Caveat, Facts, and Terms of Contract, This Contract Contains a Binding Arbitration Provision Which May be Enforced by the Parties. Warning: There is no Signature Needed on this Contract from the Respondent (See Stipulation #36)." This section provides provisions #19-96 as mentioned in the Complaint; however, it is unclear as to whether this is the contract Plaintiff is referring to. The purported "contract" is unsigned and is in one single document with other allegations.

//

Legal Principles

[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.3d at p. 318.)

Discussion

Defendant argues that Plaintiff fails to state a breach of contract claim, as the entirety of the complaint regarding the alleged breach of contract is that Defendant "fail[ed] to perform and or cancel contractual obligations per stipulation #19-#96." Defendant asserts the Complaint references an Affidavit which says the parties entered into a contract on November 18, 2025, and the Defendant was given a chance to cure on December 3, 2025, January 12, 2026, and January 27, 2026, and that fees total $51,102,000.

Defendant contends the Complaint did not include the referenced Exhibits A-C. As such, the Complaint does not describe how the contract was formed, who signed the contract, or any details about the contract. The Complaint fails to describe how Defendant breached the contract or why Defendant was not excused from failure to perform the contract. Lastly, the Complaint does not describe why Plaintiff is entitled to $25,000 in daily fees for the alleged breach of contract and how this amount now totals over $51 million in fees.

No opposition has been filed by Plaintiff.

The Court finds that Plaintiff failed to assert any facts to support cause of action for breach of contract against Defendant. The demurrer is sustained with leave to amend.

TENTATIVE RULING #14:

DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND.

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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15.	**26CV0608**	**BENJAMIN DAVID CROCKER VS. COUNTY OF EL DORADO**
DEMURRER		

Defendant, County of El Dorado ("Defendant"), filed a demurrer to Plaintiff's, Benjamin Crocker ("Plaintiff"), Complaint on May 27, 2026. Defendant simultaneously filed a request for judicial notice on the same date. <u>No opposition has been received</u>.

<u>Judicial Notice</u>

Defendant requests the Court take judicial notice of Plaintiff's original complaint. Pursuant to Evidence Code § 452(d) the Court grants Defendant's unopposed request for judicial notice of Exhibit 1 (Plaintiff's original Complaint).

<u>Meet and Confer Requirement</u>

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Declaration of Joe Little, counsel attempted to meet and confer with Plaintiff prior to filing, but Plaintiff requested an in-person meeting. Mr. Little further attempted to call Plaintiff to meet and confer, but Plaintiff did not pick up or return his call.

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Background

Plaintiff's complaint was filed on March 6, 2026. Plaintiff asserts the following causes of action: 1) Unreasonable Search and Seizure – Excessive Force (42 U.S.C. § 1983); 2) Bane Act (Cal. Civ. Code § 52.1) California Tort Claims Act, Cal. Gov't Code §§ 815.2, 820; 3) Violation of Article 1, § 13 of the California Constitution; 4) Negligence Cal. Govt. Code § 820 and California Common Law; 5) Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983); 6) Battery (Cal. Govt. Code § 820 and California Common Law).

This matter stems from Plaintiff's arrest by Amador County Sherrif Deputies for an alleged warrant out of El Dorado County on October 29, 2025. Plaintiff makes no allegations against El Dorado County except that it refused to issue an arrest warrant at Plaintiff's request and that El Dorado is responsible for the alleged misconduct of an unnamed judicial officer of this Court.

Legal Principles

[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.3d at p. 318.)

Discussion

Defendant demurs to Plaintiff's complaint and each cause of action on the following grounds:

1. Plaintiff failed to state facts in the Complaint sufficient to constitute any cause of action against the County (Code of Civ. Proc. § 430.10(e)); and
2. The First Cause of Action through Sixth Causes of Action fail because there is no right to have someone else arrested under state or federal law, and because the Court and the County are separate legal entities not responsible for alleged wrongdoing by the other.

Demurrer to Entire Complaint

Under California Code of Civil Procedure § 430.10(e), a defendant may object by demurrer on the ground that the pleading does not state facts sufficient to constitute a cause of action. Defendant argues the entire Complaint does not allege any wrongdoing by El

Dorado County. The Complaint only alleges that El Dorado County failed to arrest an Amador County Sheriff Deputy that deployed excessive force.

The Court finds that Plaintiff failed to assert any cause of action against Defendant. The demurrer is sustained without leave to amend, finding there is no reasonable possibility of curing the defect. As the Court has sustained Defendant's demurrer to the entire complaint, Defendant's demurrer to the First through Sixth Causes of Action are rendered moot and will not be addressed.

TENTATIVE RULING #15:

DEFENDANT'S DEMURRER TO PLAINTIFF'S ENTIRE COMPLAINT IS SUSTAINED WITHOUT LEAVE TO AMEND.

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.