| 1. | 24CV2404 | DEMTECH SERVICES, INC. VS. DM SOLUTIONS, INC. ET AL |
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| **PRELIMINARY INJUNCTION** | | |

Plaintiff, DemTech Services, Inc. ("Plaintiff"), filed a Motion for Preliminary Injunction against Defendants, DM Solutions Inc., David McLaury, and Owen Mackendrick (collectively "Defendants") on May 21, 2026. No opposition has been filed.

The basis for Plaintiff's Preliminary Injunction is alleged as follows. Defendant, David McLaury ("Defendant McLaury") is the former CEO of DemTech, former member of DemTech's Board of Directors, and currently a shareholder of DemTech. Defendant McLaury had access to DemTech's highly confidential propriety, and trade secret information. As a condition of employment, Defendant McLaury signed a Confidentiality Agreement. On February 12, 2024, Defendant McLaury's employment with DemTech terminated. A forensic analysis of Defendant McLaury's work-issued laptop confirmed that in the days following his termination, he used six USB devices to download hundreds of files from the laptop.

On March 13, 2026, the Court granted Plaintiff's request for issue sanctions regarding the USB devices and took the following claims as established:

1. Defendant McLaury used USB devices to download Plaintiff's confidential and proprietary information from his work-issued laptop following termination of his employment;
2. The confidential and proprietary information included, but was not limited to, Plaintiff's customer information, financial records, sales orders, and technical specifications for Plaintiff's products; and
3. Defendant McLaury misappropriated the information contained in the USBs for his competing business, DM Solutions, Inc.

Upon receipt of five of the six USB devices in April 2026, Plaintiff's forensic analysis confirmed that Defendant McLaury used the USB devices to misappropriate Plaintiff's customer information, financial records, sales orders, and technical specifications for Plaintiff's products, including the schematics and related proprietary information for Plaintiff's "Pro-Wedge" wedge welder, which is Plaintiff's flagship product.

Defendant, Owen Mackendrick ("Defendant Mackendrick") worked as DemTech's lead engineer. Defendant Mackendrick had access and use of DemTech's highly confidential, proprietary and trade secret information. As part of his employment, Defendant Mackendrick signed a Confidentiality Agreement. Defendant Mackendrick abruptly resigned on May 16, 2026.

By April 25, 2024, Defendants McLaury and Mackendrick established DM Solutions, Inc. During this time period, Defendant Mackendrick was still employed with DemTech, serving as the lead engineer with live access to DemTech's current schematics, product development files, and research and development meetings. Evidence indicates that Defendant Mackendrick accessed DemTech's stolen files on the USB devices shortly after his resignation from DemTech, and thereafter began working to reproduce DemTech's products and parts for sale by DM Solutions, Inc.

Defendants currently sell a single product, the "Badass 300" wedge welder, which is a near duplicate of DemTech's "Pro-Wedge" wedge welder. Defendants continue to manufacture spare parts for DemTech's products while undercutting DemTech's pricing. Defendant DM Solutions currently sells spare parts for DemTech's "Pro-Wedge," "Pro X," "3XL Wedge Wedler" and "XL Wedge Welder" models. Plaintiff does not advertise spare parts for any other specific products, aside from DemTech's products.

Plaintiff requests the Court order Defendants to return the stolen information and documents, and enjoining Defendants from: 1) making use of Plaintiff's confidential, proprietary, or trade secret information; 2) producing or selling the "Badass 300 Wedge Welder" or replacement and spare parts for any device manufactured by Plaintiff; and 3) soliciting or attempting to solicit business from any customers that Defendants learned of as a result of employment with Plaintiff.

**Legal Principles**

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.3d 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.*, at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

Code of Civil Procedure section 526 provides for an injunction in the following cases: "(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. [¶] (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. [¶] (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. [¶] (4) When pecuniary compensation would not afford adequate relief. [¶] (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. [¶] (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. [¶] (7) Where the obligation arises from a trust." (*Id.*, subd. (a).)

A ruling on an application for a preliminary injunction is not an adjudication of the ultimate rights in the controversy. It merely represents the trial court's discretionary decision whether the defendant should be restrained from exercising a claimed right pending trial. (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.) “In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of [their] claim, and (ii) the balance of the harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction.” (*Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 441–442 [fn. omitted].) “The trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction. [Citation.]” (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678.) However, “[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim.” (*Ibid.*)

**Discussion**

Merits of the Claim

Plaintiff argues that it is likely to prevail on the merits for a claim of misappropriation of a trade secret under the California UTSA, which requires a showing of: 1) existence of a trade secret; and 2) improper acquisition, use, or disclosure of that trade secret.

1. Existence 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. Code of Civil Procedure § 3426.1(d).

   Plaintiff asserts that issue sanctions have established Defendants took Plaintiff’s customer and vendor lists, product specifications, and pricing information. These types of information are valuable because they are unknown to others. Defendants’ own business plans exemplify why the secrecy of this information is valuable. Competitors, such as Defendants, have replicated Plaintiff’s products and services while undercutting Plaintiff’s prices to steal Plaintiff’s market share. Additionally, Plaintiff sought to keep this information secret, as it keeps its electronic files containing its confidential, proprietary, and trade secret information in password-protected computers and restricts access to such employees who are required to use the confidential information in the performance of their jobs on a need-to-know basis. Confidentiality Agreements are also executed as a condition of employment.

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2. Improper acquisition, use, or disclosure of that trade secret

Plaintiff contends the issue sanctions have established that Defendants misappropriated the information contained in the USBs for DM Solutions, Inc. This has also been confirmed through forensic analysis of the USB devices. Additionally, Defendants' business plan for DM Solutions, Inc. confirms that Defendants intended to use their knowledge of Plaintiff's pricing and customer base to undercut Plaintiff through the sale of discounted "spare parts" and equipment. Defendants' current products and services virtually mirror Plaintiff's products and services.

Balance of Hardships

Plaintiff argues that the harm they would suffer from Defendants' continued misappropriation is significant. Defendants seek to put them out of business, as identified in their business plan. Plaintiff's harm is not limited to the loss of customers and sales, but also the uncontrolled dissemination of Plaintiff's trade secrets and loss of goodwill. Plaintiff has no control over whom Defendants may be providing "spare parts" to and whether other competitors may attempt to reverse engineer products and parts put to market by Defendants. Plaintiff's good will is jeopardized by the fact that they have no ability to conduct quality control for components being marketed and sold by Defendants as "spare parts" for Plaintiff's equipment.

Defendants have not filed an opposition to address the harm they may suffer. Plaintiff contends that because Defendants' misappropriation has already been established, they cannot reasonably argue that the equities require the Court to permit such misappropriation to continue. If the injunction is granted, Defendants will be permitted to operate their business; however, they will need to manufacture original products or obtain consent from manufacturers if they seek to fill the "spare parts" aftermarket.

The Court finds that Plaintiff has a likelihood of prevailing on the merits of their claim. Additionally, the balance of hardships weighs in Plaintiff's favor. Plaintiff's request for a preliminary injunction is granted.

**TENTATIVE RULING #1:**

**PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION 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.**

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| 2. | 25CV0266 | HEIDI PEREZ VS. COUNTY OF EL DORADO |
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| **MOTION TO CONSOLIDATE ACTIONS** | | |

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

On May 22, 2026, Defendant/Cross-Complainant/Cross-Defendant, Thomas Edward Fitch ("Defendant") filed a Notice of Motion to Consolidate Actions; Memorandum of Points and Authorities; Declaration of Denise M. Di Mascio. Notice of Hearing was filed on May 27, 2026. There is no opposition in the Court's file.

Defendant requests an order pursuant to Code of Civil Procedure § 1048(a) consolidating *Heidi Perez v. County of El Dorado et.al*., Case No. 25CV0266 (the 'Lead Case') with *Republic Indemnity Company of America v. Thomas Edward Fitch*, Case No. 26CV0048 (the 'Subrogation Action'). Defendant alleges that the actions involve common questions of fact in that Plaintiff, Republic Indemnity Company of America ("Plaintiff Republic"), asserts a subrogation interest from any recovery received by Plaintiff, Heidi Perez ("Plaintiff Perez"), and the action stems from the same claims and defenses regarding the injuries sustained by Plaintiff Perez.

Code of Civil Procedure § 1048(a) provides: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

These matters stem from an incident which occurred on March 21, 2024, wherein Plaintiff Perez was standing on the bridge on Mount Murphy Road east of State Route 49, within the unincorporated area of El Dorado County. Plaintiff Perez alleges, in part, Defendant negligently operated his vehicle, striking Plaintiff Perez and causing injury. Plaintiff Perez was in the course and scope of her employment with Katherine Delmar Burke School at the time of the incident. Plaintiff Perez initiated a claim for workers' compensation benefits and received benefits through Plaintiff Republic.

In considering a motion for consolidation, the Court considers the following:

1. Timeliness of the motion: i.e., whether granting consolidation would delay the trial of any of the cases involved, or whether *discovery* in one or more of the cases has proceeded without all parties present;
2. Complexity: i.e., whether joining the actions involved would make the trial too confusing or complex for a jury;
3. Prejudice: i.e., whether consolidation would adversely affect the rights of any party.

Defendant asserts the motion to consolidate is timely, as he only recently answered the Complaint in the Subrogation Action and is awaiting discovery responses from Defendant Republic. Plaintiff and Defendant executed a Good Faith Order on February 17, 2026. The terms of the settlement required Plaintiff to resolve any and all liens, including any liens for workers' compensation benefits. Before the settlement could be funded, Defendant was served with the Subrogation Action. To date, neither Plaintiff nor Defendant have been given information regarding the amount sought in the Subrogation Action and an opportunity to resolve

The Court further notes Defendant's, County of El Dorado, unopposed ex parte application to continue trial was granted and trial has been continued to April 13, 2027.

Defendant contends neither of the actions are complex such that they would cause jury or judge confusion. In the lead case, Plaintiff seeks both economic and noneconomic damages for her injuries. As for Plaintiff's economic damages, there are questions as to what Plaintiff Republic would be responsible to pay and the amount thereof. This would ensure that consistent rulings are reached with respect to each of the questions presented.

Lastly, Defendant asserts that all Parties would be benefited by having the actions consolidated to ensure one consistent and equitable ruling, while ensuring convenience of the parties and promoting judicial economy.

California Rules of Court, Rule 3.350 (Consolidation of Cases) provides further requirements for consolidation of cases:

(a) Requirements of motion
- (1) A notice of motion to consolidate must:
  - (A) List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;
  - (B) Contain the captions of all the cases sought to be consolidated, with the lowest numbered case shown first; and
  - (C) <u>Be filed in each case sought to be consolidated</u>.
- (2) The motion to consolidate:
  - (A) Is deemed a single motion for the purpose of determining the appropriate filing fee, but memorandums, declarations, and other supporting papers must be filed only in the lowest numbered case;
  - (B) Must be served on all attorneys of record and all nonrepresented parties in all of the cases sought to be consolidated; and
  - (C) Must have a proof of service filed as part of the motion.

Absent a stipulation to consolidate, a noticed and written motion to consolidate is required. *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 514.

The Court is not in receipt of the notice of motion in the Subrogation Action. The Court is inclined to grant Defendant's motion to consolidate upon stipulation or the filing of the notice of motion in the Subrogation Action in compliance with California Rules of Court, Rule 3.350.

**TENTATIVE RULING #2:**

**APPEARANCES REQUIRED FRIDAY, JULY 24, 2026, AT 8:30 AM IN DEPARTMENT NINE.**

| 3. | 25CV2459 | THOMAS STOKLEY VS. MCMAHON CONSTRUCTION INC. ET AL |
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| **MOTION FOR LEAVE TO FILE CROSS-COMPLAINT** | | |

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

On May 21, 2026, Defendants, Natalia Julia Hailen and Stan Vlade Hailen ("Defendants"), filed a Motion for Leave to File a Cross-Complaint in this action to assert indemnity-related claims that arises out of the same transaction, occurrence, or series of transactions or occurrences which are the subject of the Complaint. Proof of Service is attached to the motion evidencing service was effectuated on Plaintiff. There is no Proof of Service indicating service was effectuated on Co-Defendants.

**Background**

Plaintiff, Thomas Stokley ("Plaintiff"), alleges that on September 19, 2023, he was working for a painting subcontractor at a residence that was under construction at 2765 Capetanios Drive, El Dorado Hills, California. Plaintiff climbed scaffolding that had been erected by the stucco subcontractor and fell to the ground sustaining alleged personal injuries.

Plaintiff filed a complaint on September 17, 2025, alleging general negligence, negligence per se, premises liability and products liability against the general contractor, McMahon Construction, Michael McMahon, James McMahon; the Defendants/homeowners; Margarita Gnatyuk and Parsons Walls.

Defendants filed an Answer to the Complaint In Propria Persona and now have counsel and seek leave to file a Cross-Complaint for indemnity against their co-defendants, who they allege were in charge of the premises at the time of the incident and responsible for the safe condition of the premises.

**Legal Principles**

This motion is made pursuant to Code of Civil Procedure §§ 428.10(b) and 426.50, which provide:

> A party against whom a cause of action has been asserted in a complaint or cross-complaint may file a cross-complaint setting forth either or both of the following: (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim,

right, or interest in the property or controversy which is the subject of the cause brought against him. Code of Civil Procedure § 428.10(b)

A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action. Code of Civil Procedure § 426.50.

Code of Civil Procedure § 426.50 provides that the Court, after notice to the adverse party, shall grant leave to file the cross-complaint if the party acted in good faith. Defendants seek leave to file a cross-complaint against all Cross-Defendants. As such, notice must be provided to all Cross-Defendants. Pursuant to the Proof of Service filed, service was only effectuated upon Plaintiff. Defendants' motion for leave to file a cross-complaint is denied without prejudice.

**TENTATIVE RULING #3:**

**DEFENDANTS' MOTION FOR LEAVE TO FILE A CROSS-COMPLAINT IS DENIED WITHOUT PREJUDICE FOR LACK OF NOTICE.**

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| 4. | 25CV0195 | JODY GROVES VS. DIANNE GEE ET AL |
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| **MOTION TO DISMISS** | | |

On June 2, 2026, Defendants, Diane and David Gee ("Defendants"), filed a Notice of Motion and Motion for Order to Dismiss the Entire Action or, in the Alternative, Motion to Vacate all CMC Dates and Set a Date to Conclude Arbitration; Memorandum of Points and Authorities; Declaration of John D. Broghammer in Support; and [Proposed] Order Filed Concurrently Herewith. A Proof of Service was filed on the same date.

Plaintiff, Jody Groves, filed an Opposition to Defendant's Motion for Order to Dismiss Entire Action Or, in the Alternative, Motion to Vacate all CMC Dates and Set a Date to Conclude Arbitration on June 30, 2026.

On June 12, 2025, the Court entered an Order Compelling Arbitration and Staying Proceedings. To date, arbitration has not been initiated by Plaintiff, Jody Groves, an Individual DBA Jody Groves Construction ("Plaintiff"). Defendants argue there is no factual or legal reasons to continue the litigation, as the Court previously ordered arbitration over a year ago. Defendants assert that the case has been fully resolved and is rendered moot, therefore having nothing for the Court or jury to decide with the arbitration ruling.

Plaintiff argues that the action is not moot, as the underlying dispute remains unresolved and no arbitration award has been entered or settlement has been reached. An order compelling arbitration does not resolve the merits of the dispute.

Additionally, Defendants contend that the Court has the power to dismiss the case where continuing is a waste of judicial and litigant resources. Defendants contend that since the motion to compel arbitration was entered by the Court, Plaintiff has ignored most communications and requests. Plaintiff failed to respond to Defendant, Umpqua Bank's, Demurrer, which was sustained without leave to amend. Plaintiff did not attend the last Case Management Conference which resulted in an Order to Show Cause Hearing. At the OSC, Plaintiff's counsel asserted that it was Defendants' obligation to file for arbitration. The continued case management conferences have caused Defendants to incur additional unnecessary costs and deplete court resources.

Plaintiff asserts that Code of Civil Procedure § 1281.4 authorizes the Court to stay judicial proceedings pending completion of arbitration, not dismissal because arbitration has not yet been completed. Plaintiff remains willing to proceed with arbitration and requests the Court establish a reasonable deadline for commencement of arbitration if the Court determines additional direction is necessary.

A trial court exceeds its jurisdiction when it dismisses a plaintiff's claim against defendants for failure to prosecute after compelling the claims to arbitration and staying the action against the defendants. *Lew-Williams v. Petrosian* (2024) 101 Cal.App.5th 97, 107. A defendant seeking dismissal must do so by initiating arbitration and requesting the arbitrator dismiss arbitration for a plaintiff's failure to prosecute.

> Accordingly, **when a plaintiff "fail[s] to timely prosecute the arbitration," a defendant's "only avenue for redress" is in the arbitration proceeding**. (*Blake v. Ecker* (2001) 93 Cal.App.4th 728, 737, 113 Cal.Rptr.2d 422 (*Blake*), disapproved on another ground in *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107, fn. 5, 29 Cal.Rptr.3d 249, 112 P.3d 636; see *Titan/Value, supra*, 29 Cal.App.4th at p. 488, 35 Cal.Rptr.2d 4.) "The trial court may not step into a case submitted to arbitration and tell the arbitrator what to do and when to do it: it may not resolve procedural questions, order discovery, determine the status of claims before the arbitrator or set the case for trial because of a party's alleged dilatory conduct. It is for the arbitrator, and not the court, to resolve such questions." (*Titan/Value*, at p. 489, 35 Cal.Rptr.2d 4; accord, *Blake*, at p. 738, 113 Cal.Rptr.2d 422; *Brock, supra*, 10 Cal.App.4th at p. 1808, 13 Cal.Rptr.2d 678 [**remedy for "dilatory tactics" in an arbitration is to "move in the arbitration proceedings to terminate them for failure to pursue the arbitration claim with reasonable diligence**"]; see *Byerly v. Sale* (1988) 204 Cal.App.3d 1312, 1316, 251 Cal.Rptr. 749 (*Byerly*) ["arbitration has a life of its own outside the judicial system, and **only the arbitrator should determine whether there has been an unreasonable delay in prosecution which would justify dismissal**"].) *Id*. at 106. (emphasis added)

Code of Civil Procedure § 1238.8 provides an arbitration award shall be made within the time fixed therefor by the agreement, or, if not so fixed, within such time as the court orders on petition of a party to the arbitration.

> We hold that absent an arbitration completion deadline established by agreement, section 1283.8 gives the trial court the power, on petition of a party to the arbitration, to set a date by which the arbitration proceeding must be completed and the award rendered. The better practice is to establish that date when the case is first ordered to arbitration. However, the court has discretion to entertain a petition and set a completion date even after the arbitration is in progress. Of course, any date chosen (whether before or after arbitration has commenced) must be reasonable in light of the circumstances presented by the particular arbitration. *Bosworth v. Whitmore* (2006) 135 Cal.App.4th 536, 550 [37 Cal.Rptr.3d 560, 571]

Defendants' request to dismiss the entire action is denied. The Court grants Defendants' request to set a date to conclude arbitration. Plaintiff is ordered to initiate arbitration within 30 days of the court's order. Arbitration shall be completed within 180 days of the Court's order, unless the arbitrator determines that additional time is necessary. The Court denies Defendants' request to vacate all case management conference dates.

**TENTATIVE RULING #4:**

**DEFENDANTS' REQUEST TO DISMISS THE ENTIRE ACTION IS DENIED. THE COURT GRANTS DEFENDANTS' REQUEST TO SET A DATE TO CONCLUDE ARBITRATION. PLAINTIFF IS ORDERED TO INTIATE ARBITRATION WITHIN 30 DAYS OF THE COURT'S ORDER. ARBITRATION SHALL BE COMPLETED WITHIN 180 DAYS OF THE COURT'S ORDER, UNLESS THE ARBITRATOR DETERMINES THAT ADDITIONAL TIME IS NECESSARY. DEFENDANT'S REQUEST TO VACATE ALL CASE MANAGEMENT CONFERENCE DATES IS DENIED.**

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| 5. | 22CV1735 | BROOK HILTON VS. JACK GLUECK |
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| MOTION TO COMPEL | | |

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

On June 23, 2026, Plaintiff filed a Motion to Compel Responses to Written Discovery from Defendants Barry Hui and Jenny Hui; Request for Monetary Sanctions. Plaintiff indicates that Plaintiff's First Set of Requests for Production of Documents, Special Interrogatories, and Requests for Admission were served by mail on January 8, 2026. Exhibit A. At the time the discovery was served, Plaintiff indicates a medical stay was in effect.

The Court can find no order suggesting a stay was ever ordered. The Court notes the Court entered an Order on November 12, 2025, wherein the Parties stipulated to continue the mandatory settlement conference, trial, and pre-trial deadlines and conferences for 150-180 days due to Plaintiff's health; however, there was no stay of discovery or other proceedings. At the hearing on June 12, 2026, the Court granted Plaintiff's Motion to Lift or Modify Medical Stay to Permit Immediate Discovery to the extent any stay existed.

Plaintiff asserts that she did not seek enforcement of the discovery demand during the alleged medical stay. On June 12, 2026, Plaintiff mailed a meet and confer letter to Defendants advising of her intent to proceed with discovery. Exhibits B and C. On June 21, 2026, Defendant, Barry Hui was personally served with a copy of Plaintiff's First Set Of Requests For Production Of Documents, Special Interrogatories, And Request For Admission To Defendants Barry Hui And Jenny Hui, Letter Dated June 18, 20226 To Barry Hui From Brook D. Hilton; Meet And Confer Letter Re Hui Discovery - June 13, 2026; Proof Of Service By First Class Mail; Notice Of Taking Remote Oral Deposition Of Defendant Jack William Glueck; Notice Of Taking Remote Oral Deposition Of Defendant Barry Hui; Notice Of Taking Remote Oral Deposition Of Defendant Jenny Hui; Motion To Lift Stay - Tentative Rulings. Exhibit D.

Multiple attempts of personal service were made on Defendant, Jenny Hui but were unsuccessful. Exhibit D. To date, Defendants have not served discovery responses, asserted objections, or requested an extension.

Plaintiff further seeks sanctions in the amount of $1,500 or an amount the Court deems appropriate.

**Background**

On December 4, 2025, Plaintiff filed an Amendment to Complaint (Filing of True Names of Doe Defendants- CCP § 474) which substituted the true names of DOE 1 and DOE 2 as "Barry Hui" and "Jenny Hui." On December 5, 2025, a Proof of Service was filed indicating Barry Hui and Jenny Hui were served with the Amendment to Complaint, Declaration in Support of

Amendment, and Proposed Order. An Order RE: Amendment to Complaint was entered on December 5, 2025, wherein the Amendment to Complaint was deemed filed as of the date of the order.

There is no Proof of Service of Summons in the Court's file that indicates Defendants Barry Hui and Jenny Hui were ever served with the Complaint and Summons, nor have Defendants Barry Hui and Jenny Hui filed an Answer.

**Legal Principles**

Code of Civil Procedure § 410.50 provides the Court has jurisdiction over a party from the time summons is served on him. A general appearance by a party is equivalent to personal service of summons on such party.

> (I)f an amendment adds a new party defendant, an amended or new summons naming that party as a defendant Must be issued and served upon the new defendant, since no jurisdiction would be obtained by serving Him with a copy of the summons that does not name him. On its face the Comment suggests that service of an amended summons is discretionary in the instance of amended pleadings involving original parties defendant but mandatory in the instance of amended pleadings adding new parties defendant. " *Gillette v. Burbank Community Hosp.* (1976) 56 Cal.App.3d 430, 433.

As Plaintiff has identified new Parties (the true identities of DOES 1 and 2 – Defendants Barry Hui and Jenny Hui), service of the Summons and Complaint are mandatory. On June 25, 2026, Summons were issued in the names of Defendants Barry Hui and Jenny Hui. As the Complaint and Summons have not been served, nor has an Answer been filed, the Court does not have jurisdiction over Defendants Barry Hui and Jenny Hui, which renders Plaintiff's Motion to Compel moot.

**TENTATIVE RULING #5:**

**PLAINTIFF'S MOTION TO COMPEL IS RENDERED MOOT AS THE COURT DOES NOT HAVE JURISDICTION OVER DEFENDANTS BARRY HUI AND JENNY HUI.**

**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.**

| | | |
|---|---|---|
| **6.** | **26CV0983** | **IN THE MATTER OF MOHAMMED NAJAFPIR** |
| **PETITION TO VACATE ARBITRATION AWARD** | | |

An order was entered on June 26, 2026, denying the Petition to Vacate the Arbitration Award.

**TENTATIVE RULING #6:**

**AN ORDER DENYING PETITIONER'S MOTION TO VACATE THE ARBITRATION AWARD HAVING BEEN ENTERED BY THE COURT JUNE 26, 2026, THE MATTER IS DROPPED FROM CALENDAR.**

| 7. | 25CV3010 | WELLS FARGO BANK, N.A. VS. ROSEMARY L NAKAMIYO, AN INDIVIDUAL |
|---|---|---|
| MOTION FOR ORDER DEEMING THE TRUTH OF THE MATTERS AS ADMITTED | | |

On June 8, 2026, Plaintiff, Wells Fargo Bank, N.A. ("Plaintiff"), filed a Notice of Motion and Motion for an Order Deeming the Truth of the Matters Specified in Plaintiff's Request for Admissions as Admitted; Declaration of Edgar B. Lopez, Esq.; Notice of Lodging of Proposed Order; Proposed Order (the "Motion").

On July 16, 2026, the Court entered an Order to dismiss the action pursuant to the terms of the Settlement Agreement filed on July 14, 2026. As such, Plaintiff's Motion is rendered moot.

**TENTATIVE RULING #7:**

**PETITIONER'S MOTION FOR AN ORDER DEEMING THE TRUTH OF THE MATTERS SPECIFIED IN PLAINTIFF'S REQUEST FOR ADMISSIONS AS ADMITTED IS 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.**

| 8. | 24CV0811 | CAPITAL ONE, N.A. VS. KELLEY R ROGERS |
| --- | --- | --- |
| **MOTION FOR JUDGMENT ON THE PLEADINGS** | | |

On May 26, 2026, Plaintiff filed its Notice of Motion and Motion for Judgment on the Pleadings, Points and Authorities in Support Thereof; Declaration of Laura D'Anna in Support Thereof. A Proof of Service was filed on June 1, 2026. A Request for Judicial Notice and an accompanying Proof of Service were filed on May 26, 2026. No opposition has been filed.

**JUDICIAL NOTICE**

Plaintiff asks the Court to take judicial notice of the following: 1) Plaintiff's Request for Admissions propounded on Defendant and; 2) Court order deeming Plaintiff's Request for Admissions to Defendant admitted on February 26, 2026.

Judicial notice is a mechanism which allows the Court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

While the requests made by Plaintiff fall within the purview of Section 452, matters which *may* be judicially noticed, the Court does find that Plaintiff provided Defendant and the Court sufficient notice of the request and copies of the documents requested to be noticed. As such, Plaintiff has satisfied the requirements of Evidence Code § 453 and the request for judicial notice is granted.

**JUDGMENT ON THE PLEADINGS**

**Background**

This matter stems from Plaintiff's efforts to collect $21,916.11 in credit card debt from Defendant. The Complaint asserting a cause of action for Common Counts was filed on April 18, 2024. Defendant filed an Answer on June 5, 2024. Defendant generally denied all allegations of the Complaint and raised the following affirmative defenses: 1) Failure to State a Cause of Action; 2) Unclean Hands; 3) Failure to Mitigate Damages; 4) Failure to Join a Necessary Party; 5)

Setoff; 6) Failure to Perform Conditions or Conditions Precedent; 7) Usury; 8) Justification; 9) Unconscionability and Waiver; 10) Implied and Equitable Release; 11) Good Faith; 12; Lack of Privity; 13) No Right to Attorney's Fees; and 14) Complete Performance.

**Legal Principles**

A plaintiff may move for judgment on the pleadings if the complaint states facts sufficient to constitute a cause of action against that defendant and the answer fails to state facts sufficient to constitute a defense to the complaint. Code Civ .Pro. § 438 (c)(1)(A). The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1064.

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)" *Allstate Ins. Co. v. Kim W.* (1984) 160 Cal.App.3d 326, 330-331. However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. *See Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 200.

Courts may consider judicially noticeable matters in the motion as well. *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672; *People ex rel. Harris v. Pac Anchor Transp., Inc.* (2014) 59 Cal.4th 772, 777. "The court will take judicial notice of records such as <u>admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court</u>. The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff. (*Tyree v. Epstein*, 99 Cal.App.2d 361, 221 P.2d 1002.) [Footnote omitted.]" (emphasis added.) *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605. Therefore, only the opposing defendants' discovery responses may be considered in ruling on a motion for judgment on the pleadings on those defendants' answer and affirmative defenses.

Code of Civil Procedure § 439(a) provides a meet and confer requirement in which the moving party must meet in confer in person, by telephone, or by video conference for the purpose of determining whether an agreement can be reached. A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings. The Declaration of Laura D'Anna provides that despite several meet and confer attempts made, no response has been received. In fact, no response has been received from any attempts to meet and confer since June 21, 2024.

A motion for judgment on the pleadings may be granted with or without leave to amend. Cal. Civ. Pro. § 438(h)(1). Generally speaking, leave to amend is to be liberally granted. *Mendoza v. Continental Sales Co.* (2006) 140 Cal. App. 4th 1395 ("When there is a reasonable possibility that a defect in pleading can be cured by amendment, the trial court considering the motion for judgment on the pleadings abuses its discretion by not granting leave to amend…"). However, where the defective pleading is not reasonably susceptible to cure, it is proper for the court to decline leave to amend. *Id*. When leave to amend is not granted, "…then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party." Cal. Civ. Pro. § 438(h)(3).

**<u>Discussion</u>**

The Complaint asserts a cause of action for Common Counts and alleges that Defendant became indebted to Plaintiff within the last four years because an account was stated in writing between Plaintiff and Defendant in which it was agreed that Defendant was indebted to Plaintiff. Plaintiff asserts Defendant has been unjustly enriched by virtue of Defendant receiving monetary or other benefit, by Defendant knowingly requesting the funds at issue and/or accepting the benefits bestowed. It is inequitable for Defendant to retain said benefits without repaying Plaintiff the value thereof.

On June 18, 2024, Defendant was served Request for Admissions (Set One). Defendant failed to respond. Plaintiff requested and an order was entered deeming Plaintiff's Request for Admissions to Defendant as Admitted.

The Request for Admissions deemed admitted are as follows:

1. YOU (as used herein, "YOU'' shall refer to the above-named responding party Defendant) applied for a credit card charge account with Plaintiff.
2. YOU received a Customer Agreement when YOU received the credit card with account number :XXXXXXXXXXXX:6713
3. The Agreement provided that by using the credit card, YOU agree to be bound by the terms therein.
4. YOU received a credit card with account number :XXXXXXXXXXXX:6713 from Plaintiff.
5. YOU agreed to pay Plaintiff for charges made on the charge account number ending in XXXXXXXXXXXX:6713.
6. YOU used the credit card to purchase goods, services, or to obtain cash advances.
7. YOU received regular monthly statements showing the charges made, payments received, and the total balance due, including any late fees and finance charges.

8. YOU did not send written notice of any dispute to Plaintiff within sixty (60) days of receiving the statement bearing an alleged disputed charge(s).
9. All payments YOU have made have been applied to this account by Plaintiff.
10. YOU did not cancel credit card account number :XXXXXXXXXXXX:6713.
11. YOU did not report credit card account number XXXXX:XXXXXXX6713 lost or stolen.
12. The principal amount of $21,916.11 due set forth in the Complaint filed in this matter is correct.
13. Every statement or allegation contained in Plaintiff's Complaint is true and correct.

Such admissions conclusively establish the elements needed to prove the cause of action asserted in the Complaint. The Court does not find there is a reasonable possibility that a defect in Defendant's pleading can be cured by amendment. Plaintiff's Motion for Judgment on the Pleadings is granted without leave to amend. The Court will enter judgment in favor of Plaintiff against Defendant in the sum of $21,916.11 principal, $666.55 costs, and $5,136.47 credits, for a total Judgment of $17,446.19.

**TENTATIVE RULING #8:**

**PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. THE COURT WILL ENTER JUDGMENT IN FAVOR OF PLAINTIFF AGAINST DEFENDANT IN THE SUM OF $21,916.11 PRINCIPAL, $666.55 COSTS, AND $5,136.47 CREDITS, FOR A TOTAL JUDGMENT OF $17,446.19.**

**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.**

| 9. | 22CV0137 | SCOTT NEFF VS. PAMELA ROSEN ET AL |
|---|---|---|
| **ENFORCE SETTLEMENT AGREEMENT** | | |

This is a motion to enforce a Settlement Agreement in this partition action. The parties have sold the shared property and the funds are being held in escrow pending resolution of this motion. Plaintiff asks the Court to enforce the Settlement Agreement and order an equal split of the funds resulting from the sale.

Defendant argues that she has the right to offset the 50/50 split of funds provided for in the Settlement Agreement with additional claims for costs, such as the value of certain personal property, an unanticipated mortgage loan balance and overdue mortgage loan payments from the time of the Settlement Agreement to the time of the sale, any foreclosure fees resulting from overdue mortgage payments, any amounts left in escrow, refunds due for overpayments, and outstanding utility bills.

The first, un-numbered paragraph of the Settlement Agreement provides: In consideration of the terms, covenants, conditions and releases of this Agreement, the Parties hereto agree as follows:

a) The parties shall proceed with the sale of the subject property in accordance with the terms set forth herein.
b) Proceeds from the sale of the subject property shall be divided equally between the parties, after deducting all sale-related expenses.
c) The Parties shall reasonably cooperate to ensure completion of the settlement.

Paragraph 1(b) provides a General Mutual Release by All Parties (emphasis added):

> **The Parties acknowledge that all matters arising out of the claims set forth above and any others are fully compromised and settled**. **The Parties**, on behalf of themselves, their heirs, spouses, executors, administrators and assigns, partners, officials, directors, officers, shareholders, affiliates, employee benefit plans, representatives, servants, employees, agents, attorneys, insurers, subsidiaries, parents, divisions, branches, units, affiliated organizations, successors, predecessors, assigns, and all persons acting by, though, under or in concert with them, past or present, **hereby releases and forever discharges each other and releases from any and all claims, demands, arbitrations, actions, or causes of action,** charges, complaints, lawsuits, claims, liabilities, obligations, promises, agreements, controversies, injuries, damages, actions, causes of action, suits, rights, demands, judgments, claims for relief, indebtedness, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred), of any

> nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, which the Parties now have, owns, or holds possesses, or claims to have, own, hold or possess against each other**, whether or not relating to the known or unknown,** asserted or unasserted, suspected or unsuspected, arising out of, and **in any way connected with the aforementioned disputes.**
>
> It is understood and agreed that this Agreement may be pleaded as a full and complete defense to, and the Parties understand and represent that it may be used as the basis for and injunction against any action, suit, or other proceeding based on allegations, claims, and/or causes of action covered by this Agreement.

Paragraph 1(c) provides a Waiver of Unknown and Unanticipated Claims:

> **The releases described above are full and final releases applying to all losses, including but not limited to damages, costs, expenses, and attorneys' fees, incurred by said Parties, arising out of or in any way connected with the above-described matters**. It is the intention of the Parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, and cause of action, by said Parties based upon the above-described matters, and said **Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code** which states at follows:
>
>> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.
>
> **The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action. This release specifically includes any and all allegations of wrongdoing, whatsoever, with respect to the loan listed above.** The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement, and, without such waiver, this Agreement would not have been entered into.

Paragraph 4 of the Settlement Agreement states that "The parties agree that this Agreement may be enforced by a court of competent jurisdiction, upon ex parte motion, as a judgment pursuant to Code of Civil Procedure Section 664.6."

The Settlement Agreement appears to have been executed by both parties on June 30, 2025.

At the hearing on March 6, 2026, the Court granted the motion to enforce the settlement agreement and ordered the Parties to <u>split the proceeds held in trust evenly after deductions for sale-related expenses, which includes sharing of any overpayments, refunds, or funds held in escrow</u>. The Court further ordered a full accounting of the proceeds and expenses from the sale to be equally shared prior to the final distribution. Full accounting was to be filed within 30 days of that court date.

On April 15, 2026, Defendant filed a Request for Further Hearing Regarding Plaintiff's Motion to Enforce Settlement, wherein she informed the Court that despite the Court's order to provide Defendant with a full accounting of all refunds received after close of escrow regarding the property within 30 days, Plaintiff only provided Defendant with one statement from the lender reflecting a refund of approximately $3,000.

At the hearing on June 5, 2026, the Court ordered Plaintiff to provide an accounting by June 12, 2026. Parties were ordered to file briefs before July 24, 2026. <u>To date, the Court is only in receipt of Defendant's Statement of Outstanding Issues in Connection with Plaintiff's Motion to Enforce Settlement.</u>

Defendant confirms that she received the Accounting Declaration by Scott Neff (the "Neff Declaration") on June 12, 2026, which included copies of two checks, one for $1,072.23 (which Defendant had previously been provided a copy of) and one for $1,968.56 (which Plaintiff never previously provided), for a <u>total of $3,040.79</u>.

<u>Defendant asserts the Neff Declaration does not address the issue of the refund of nearly a year's worth of homeowners insurance premiums</u>, which Plaintiff would have received after the closing. Defendant further contends there are several material misstatements of fact within the Neff Declaration, including any agreement over a generator.

The Neff Declaration provides that an initial agreement was reached prior to the Settlement Agreement, but Defendant reneged on the agreement. As the Parties entered into the Settlement Agreement, the generator issue was encompassed in it, thereby waiving any claim. Defendant asserts there was no agreement between the Parties regarding the generator prior to the Settlement Agreement. Defendant asserts that it belonged to Defendant and she intended to remove it from the property prior to escrow. After the Settlement Agreement was entered into, Plaintiff took the generator off the property.

Defendant asserts that on November 24, 2025, Plaintiff agreed that he would pay Defendant $4,150 of his sale proceeds to account for the increased mortgage balance ($3,150 constituting one half of the $6,300 increased balance) and the generator ($1,000). Plaintiff thereafter reneged on his agreement to pay for the increased loan balance and generator.

Defendant requests the following payments from Plaintiff which should be paid directly from Mr. Fry's trust account to Defendant before any money is distributed by Mr. Fry to Plaintiff:

1. $3,150 constituting one half of the foreclosure fees and increased loan balance due to Plaintiff's nonpayment of the mortgage after the Settlement Agreement was signed
2. $1,000 for Defendant's generator
3. $1,520.40 constituting one half of the refunds that he has received per the Neff Declaration which provides Plaintiff received $3,040.79 after the close of escrow
4. $574.38 constituting one half of utility bills that Defendant received after closing

Defendant seeks a total of $6,244.78 plus one half of any insurance premium refund that was sent to Plaintiff after close of escrow. Defendant further requests the Court order Plaintiff to appear at the hearing to provide information about the insurance premium refund that he received after close of escrow.

The Court finds that the Parties entered into the Settlement Agreement on June 30, 2025. Per Defendant's Statement of Outstanding Issues, there was no agreement regarding the generator prior to signing the Settlement Agreement. As such, Defendant waived her right to any claim for the generator pursuant to the mutual release in paragraph 1(b) and the waiver of unknown or unanticipated claims in paragraph 1(c) of the Settlement Agreement. Additionally, Defendant waived her right to any foreclosure fees, increased loan balances, and utility bills pursuant to the terms of the Settlement Agreement. As such, Defendant's request for these fees is denied.

Defendant's request for $1,520.40 (one half of refunds Plaintiff received after the close of escrow) is granted. The Court grants Defendant's request for one half of any insurance premium refunds Plaintiff received after the close of escrow upon proof. Plaintiff is ordered to provide all information regarding any insurance premiums that were received after close of escrow to Defendant at or before the hearing on July 24, 2026.

**TENTATIVE RULING #9:**

**APPEARANCES ARE REQUIRED FRIDAY, JULY 24, 2026, AT 8:30 AM IN DEPARTMENT NINE.**

**DEFENDANT'S REQUEST FOR $1,520.40 IS GRANTED. DEFENDANT'S REQUEST FOR ONE HALF OF ANY INSURANCE PREMIUM REFUND PLAINTIFF RECEIVED AFTER ESCROW IS GRANTED UPON PROOF. PLAINTIFF IS ORDERED TO PROVIDE PROOF OF ANY INSURANCE PREMIUM RECEIVED AFTER ESCROW TO PLAINTIFF AT OR BEFORE THE HEARING ON JULY 24, 2026.**

**DEFENDANT'S REQUESTS FOR ONE HALF OF THE FORECLOSURE FEES, INCREASED LOAN BALANCE, AND UTILITY BILLS ARE DENIED. DEFENDANT'S REQUEST FOR REIMBURSEMENT OF THE GENERATOR IS DENIED.**

| 10. | 23CV1771 | MADRONA VINEYARDS L.P ET AL VS. JERRY VISMAN, AN INDIVIDUAL ET AL |
|---|---|---|
| **MOTION TO DISMISS** | | |

Defendants/Cross-Complainants, Michelle Visman, personal representative of the Estate of Jerry W. Visman, deceased, and High Hill Ranch, LLC ("Defendants"), filed a Motion to Dismiss Mardrona's Quiet Title Causes of Action for Failure to Join Indispensable Parties and for Noncompliance with the Court's Order on June 15, 2026. A Request for Judicial Notice was filed on the same date.

**Background**

On April 23, 2026, the Court ordered the joinder of Frances "Jean" Reinders dba Fudge Factor Farm ("Fudge Factory") and Phylis McGee ("McGee") as Defendants to its quiet title actions pursuant to Code of Civil Procedure § 389 because they are indispensable parties to the causes of action (the "Order"). The Court ordered that Plaintiff, Madrona Vineyards L.P. ("Plaintiff") to add Fudge Factory and McGee as Defendants to its operative complaint and their refusal to do so would result in the dismissal of its complaint without prejudice.

On May 27, 2026, Plaintiff filed its Second Amended Complaint ("SAC") which added a "joinder" cause of action against Fudge Factory and McGee; however, no changes were made to its quiet title causes of action. Defendants attempted to meet and confer regarding this issue and Plaintiff confirmed that they are not asserting prescriptive easement claims against the Fudge Factory and McGee. Defendants assert that this is inconsistent with the Court's April 23, 2026, Order.

**Judicial Notice**

Defendants seek judicial notice of the following: 1) Exhibit A to Plaintiff's First Amended Complaint filed December 12, 2023; 2) Judgement as to Certain Issues Severed for Trial filed October 28, 1986 (Case No. 40145); 3) Parcel Map recorded November 17, 1976, in Book 13 of Parcel Maps at Page 13; 4) High Hill Ranch's Motion to Compel Joinder of Indispensable Parties filed on March 25, 2026; 5) Plaintiff's Opposition to High Hill Ranch's High Hill Ranch's Joinder Motion filed April 6, 2026; 6) High Hill Ranch's Reply in Support of Joinder Motion filed on April 10, 2026; and 7) Court's Order granting High Hill Ranch's Joinder Motion entered on April 23, 2026.

Judicial notice is a mechanism which allows the Court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including, but not limited to, "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

While the requests made by Defendants fall within the purview of Section 452, matters which *may* be judicially noticed, the Court does find that Defendants provided Plaintiff and the Court sufficient notice of the request and copies of the documents requested to be noticed. As such, Defendants have satisfied the requirements of Evidence Code § 453 and the request for judicial notice is granted.

**Legal Principles**

Code of Civil Procedure § 389(a) provides:

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

**Discussion**

Defendants argue that Plaintiff's "nominal defendant" approach is improper joinder and in direct violation with the Court's Order. Defendants contend that Plaintiff intentionally filed its SAC in a manner that does not substantively join Fudge Factory and McGee to the quiet title claims which is the same defect the Court ordered Plaintiff to correct. Pursuant to the Court's order, Defendants request the Court dismiss Plaintiff's quiet title causes of action regarding Easements 1 and 2 (causes of action 1, 2, 4, 5, 7, and 8; collectively "Quiet Title Claims"), and any derivative causes of action dependent on alleged interference with Easements 1 and 2 (causes of action 10, 11, 13, 15, 16, 18, 19) pursuant to Code of Civil Procedure § 389(b) and the Court's Order.

Defendants contend that the SAC fails to identify Fudge Factory or McGee's real property interests as part of its Quiet Title Claims, does not seek quiet title against these indispensable parties, and does not otherwise plead how or why Plaintiff is entitled to a judgment across all parcels making up the alleged Easement 1 and 2 corridors. The only substantive addition is the new cause of action for "Joinder Based on Indispensable Party" which acknowledges Fudge Factory and McGee own portions of High Hill and Exit Roads and recognizes the Court ordered these Parties to be joined.

Defendants assert that Plaintiff's nominal inclusion of a party is not enough if the controversy affecting the party's rights is not actually before the Court. By doing so, the SAC fails to comply with the Court's Order regarding complete relief cannot be accorded because Plaintiff cannot obtain the unrestricted access it seeks without a judicial determination of its asserted easement rights over all portions of the access corridors, including those owned by Fudge Factory and McGee. The SAC also does not properly plead that Fudge Factory and McGee's interests are already at issue, nor does it address the risk of inconsistent judgments.

Plaintiff argues that the Court did not require Plaintiff to make specific allegations or assert specific causes of action against Fudge Factory and McGee; nevertheless, the SAC's prayer seeks to quiet title in a manner so "that no defendant has any interest in the easements adverse to Plaintiff." Plaintiff contends that now that Fudge Factory and McGee are joined as Parties, Defendants do not have standing to challenge the claims against them.

Additionally, the Motion as to Fudge Factory is or will be moot because there is no dispute between Plaintiff and Fudge Factory. Plaintiff further asserts that Defendants' claim that a party cannot have different rights over different portions of a roadway is not supported by California law. Lastly, Plaintiff argues that the Court did not rule that as a matter of law, a party cannot acquire easement rights over only a portion of a roadway, nor did it rule that Plaintiff was required to bring specific causes of action against these parties, as the Court's concern was to ensure that the parties have the opportunity to be heard with respect to how their properties may or may not be impacted by Plaintiff's easement claims over the neighboring High Hill Ranch property.

Plaintiff's SAC names Fudge Factory and McGee in the caption and in the following paragraphs:

- Preliminary Allegations:
  - ¶ 9: Defendant Frances "Jean" Reinders is an individual residing in the County of El Dorado, and is doing business as Fudge Factory Farm ("Fudge Factory").
  - ¶ 10: Defendant Phyllis McGee ("McGee") is an individual residing in El Dorado County.
- Twentieth Cause of Action – Joinder Based on Indispensable Party:

- ¶ 269: On information and belief, Fudge Factory Farm is located at certain real property commonly known as 2860 High Hill Rd, Placerville, California 95667 (the "Fudge Factory Property"), and holds an easement for ingress and egress over portions of High Hill Road. Plaintiffs are informed and believe that a portion of High Hill Ranch Road is located on the Fudge Factory Property.
- ¶ 270: On information and belief, McGee is the owner of real property located at 3131 Carson Road, Placerville, California 95667 (the "McGee Property"), which operates McGee's Christmas Tree Farm. The McGee Property is located immediately to the west of High Hill Ranch along Carson Road and across from Exit Road. On information and belief, McGee is the owner of a portion of Exit Road.
- ¶ 271: On or about April 17, 2026, the Court granted High Hill Ranch's Motion to Compel Joinder of Indispensable Parties, ordering Plaintiffs to join Fudge Factory and McGee over Plaintiffs' opposition.
- ¶ 272: Plaintiffs are informed and believe that McGee recently placed signage and pylons on portions of Exit Road that stated Exit Road was closed and that there was no available access to the Madrona Property via Exit Road. Plaintiffs will attempt to resolve this issue but reserve the right to amend this pleading to add other causes of action against McGee.

Plaintiff's prayer for relief also requests the following relief:

- ¶ 3: For quiet title as to Easement 1, Easement 2, and the Sign Easements as described in this Supplemental Second Amended Verified Complaint, and that Plaintiff Leslie Bush as Trustee of the Bush Living Trust be declared the owner of these easements, and **that no defendant has any interest in the easements adverse to Plaintiff** (emphasis added)

The plaintiff shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought. Code of Civil Procedure § 762.010. Code of Civil Procedure § 762.060 requires:

> (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto," naming them in that manner.
>
> (b) In an action under this section, the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.

> (c) If the plaintiff admits the validity of any adverse claim, the complaint shall so state.

Code of Civil Procedure § 761.020 instructs that a verified complaint shall include the following:

> (a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.
>
> (b) **The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title.** If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.
>
> (c) **The adverse claims to the title of the plaintiff against which a determination is sought.**
>
> (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.
>
> (e) A prayer for the determination of the title of the plaintiff against the adverse claims. (emphasis added)

Plaintiff has failed to comply with § 761.020's requirements. Plaintiff alleges there are no adverse claims that need to be specified in the causes of action. This argument is unavailing and is in direct contradiction to the Court's ruling on April 17, 2026. The relevant excerpt from the transcript is as follows (<u>Decl. of Kevin James, Ex. A</u>):

> The Court: …This seems to be a very – a seemingly interminable process, but I think having looked at the case and looked at the law and now understanding with the maps, I don't think that there's really any choice from the Court to have to say that that these are indispensable parties that need to be joined. **I think that anybody who is an owner of a property for whom the quiet title action would implicate their property rights, they are an adverse party. There may not be any dispute now, but if they were not joined, then there is a restriction to their property when they are not part of that matter, which was the issue that was raised in the Ranch of the Falls case, and they would not be party to that action to then say we don't want that limit or restriction for whatever reasons**. (emphasis added)

The Declaration of Frances Reinders does not alleviate Plaintiff from complying with CCP § 761.020. There is presently no formal easement agreement. Until this has been completed, Fudge Factory remains an adverse party. Despite Plaintiff's hopes to resolve the issues with McGee (SAC ¶ 272), she nevertheless remains an adverse party. Each defendant must be put on notice of the nature of the action against them. The SAC fails to do so.

Plaintiff seeks leave to amend should the Court conclude the SAC should say more about Fudge Factory's and McGee's interests.

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1047.) The rule of great liberality is particularly important where an amendment is sought to an answer. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159; *Hyman v. Tarplee* (1944) 64 Cal.App.2d 805, 813-814.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) "…absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (*Board of Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.) It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

Defendants' motion dismiss for causes of action 1, 2, 4, 5, 7, 8, 10, 11, 13, 15, 16, 18, and 19 is granted with leave to amend.

**TENTATIVE RULING #10:**

**DEFENDANTS' MOTION TO DISMISS FOR CAUSES OF ACTION 1, 2, 4, 5, 7, 8, 10, 11, 13, 15, 16, 18, AND 19 IS GRANTED 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).**

**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.**

| 11. | 26CV0608 | BENJAMIN DAVID CROCKER VS. COUNTY OF EL DORADO |
|---|---|---|
| **DEMURRER** | | |

On July 17, 2026, the Court continued the matter to July 24, 2026. The Court advised that no new tentative ruling would be issued.

**TENTATIVE RULING #11:**

**APPEARANCES ARE REQUIRED FRIDAY, JULY 24, 2026, AT 8:30 AM IN DEPARTMENT NINE.**

| **12.** | **26CV0942** | **GREGORY SWIFT VS. FCA US, LLC ET AL** |
|---|---|---|
| **DEMURRER/MOTION TO STRIKE** | | |

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 is before the Court on two motions filed by Defendant, FCA US, LLC ("Defendant"): 1) Demurrer; and 2) Motion to Strike.

**DEMURRER**

Pursuant to Code of Civil Procedure §§ 430.10(e) and 430.10(f), Defendant demurrers to Plaintiff's Complaint. On July 13, 2026, Plaintiff, Gregory Swift ("Plaintiff"), filed an opposition. On July 16,2026, Defendant 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 Steven D. Park, counsel attempted to meet and confer with Plaintiff prior to filing, but the dispute could not be resolved.

**Background**

On March 5, 2025, Plaintiff filed a Complaint for Violations of Statutory Obligations against Defendants, FCA US, LLC; Thompsons Chrysler Dodge Jeep Ram; and Does 1 through 10, for: 1) Violation of Subdivision (D) of Civil Code Section 1793.2 (against Defendant FCA); 2) Violation of Subdivision (B) of Civil Code Section 1793.2 (against Defendant FCA); 3) Violation of Subdivision (A)(3) of Civil Code Section 1793.2 (against Defendant FCA); 4) Breach of the Implied Warranty of Merchantability (Civ. Code § 1971.1; § 1794; § 1795.5) (against Defendant FCA); 5) Negligent Repair (against Defendant Thompsons); and 6) Fraudulent Inducement Concealment (against Defendant FCA).

Plaintiff asserts on or around June 29, 2020, Plaintiff entered into a warranty contract with Defendant FCA regarding a 2020 Ram 1500 ("Subject Vehicle") which was manufactured and distributed by Defendant FCA. The warranty contract contained various warranties, including, but not limited to, bumper-bumper warranty, powertrain warranty, emission warranty, etc. Plaintiff pleads the Subject Vehicle constitutes "consumer goods" under the Song-Beverly Consumer Warranty Act Civil Code sections 17900 et seq., as it constitutes has been used primarily for family or household purposes. Plaintiff revokes acceptance of the Subject Vehicle pursuant to Civil Code § 1794 et seq by filing the Complaint and/or did so prior to filing the instant Complaint.

Plaintiff alleges the causes of action arise out of the warranty obligations of Defendant FCA in connection with a motor vehicle for which Defendant FCA issued a written warranty. Within the express warranty period, defects and nonconformities to warranty manifested themselves, including, but not limited to, engine defects, transmission defects, electrical defects, etc. which have substantially impaired the use, value, or safety of the Subject Vehicle. The value of the Subject Vehicle is worthless and/or de minimis.

Plaintiff believes that Defendant FCA knew about Subject Vehicle's defects but failed to disclose this to Plaintiff at the time of sale and thereafter.

**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, Second, and Third Causes of Action:

Defendant argues that Plaintiff's claims are time-barred pursuant to the four-year statute of limitations for breach of warranty claims under Commercial Code § 2725. Defendant asserts that Plaintiff purchased the vehicle in June 2020 but waited until March 2025 to file the underlying lawsuit. Defendant contends that the facts alleged in the Complaint do not support tolling or delayed discovery and the warranty-based claims are prima facie untimely. Defendant further argues that the Basic Limited Warranty does not assure a defect-free vehicle and it contemplates the possibility of defect. Such a warranty offers to repair or replace covered defects within a stated period, it is not a future performance guarantee, and as such, the discovery rule does not apply.

Plaintiff argues that the claims are not time-barred as they did not accrue at delivery of the vehicle, but rather when the breach was or should have been delivered. The Complaint alleges that discovery occurred shortly before suit. In addition, under the Repair Doctrine and Delayed Discovery Rule, Plaintiff could not have known of the breach until the defects occurred after Defendant's unsuccessful attempts to repair them.

Commercial Code § 2725 provides:

> (1) An action for breach of any contract for sale **must be commenced within four years after the cause of action has accrued**. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
>
> (2) **A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, *except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered*.**
>
> (3) Where an action commenced within the time limited by subdivision (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination

> resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
>
> (4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective. (emphasis added)

The Basic Limited Warranty at issue includes, in part (Complaint, Ex. A):

> B. What is Covered: The Basic Limited Warranty **covers the cost of all parts and labor needed to repair any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation**. There is no list of covered parts since the only exceptions are the items listed in "section 2.1 C". These warranty repairs or adjustments, including all parts and labor connected with them, will be made by an authorized dealer at no charge, using new or remanufactured parts.
>
> F. When it Ends: **The Basic Limited Warranty lasts for three years from the date it begins or for 36,000 miles on the odometer, whichever occurs first**. The following items are covered only for one year or for 12,000 miles on the odometer, whichever occurs first…

The terms of the warranty explicitly provides Defendant would repair the Subject Vehicle for three years from the date it begins or for 36,000 miles, whichever occurred first.

> **A promise to repair defects that occur during a future period is the very definition of express warranty of future performance, not only under the Act** (Civ.Code, § 1791.2), but also in the California Uniform Commercial Code section 2313. Civil Code section 1791.2 defines an express warranty under the Act to include "[a] written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in the utility or performance; ..." *Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 217.
>
> **If we adopted the position urged by respondent and held that a cause of action for breach of express warranty accrues on tender of delivery, before the seller has an opportunity to repair any defects, we would undermine the legislative purpose that the parties attempt to resolve any deficiencies in performance before resorting to the remedies provided in the Act**. In light of our conclusion that actions for breach of warranty under the Act and under the California Uniform Commercial Code are governed by the same statute of limitations, the same rule of accrual must apply to both causes of action. Application of California

> Uniform Commercial Code section 2725, subdivision (2) provides this consistency while meeting the policies of the Act. *Id.* at 219. (emphasis added).

Defendant's reliance on *Cardinal Health 301, Inc. v. Tyco Electronics Corp* is misplaced. There, the Court made a critical distinction to the holding in *Krieger*:

> *Krieger* is also inapposite in that it provides an example of a warranty that explicitly extends to future performance because it contains an express time limit. **The automobile warranty stated the defendant would repair defects for 36 months or the first 36,000 miles, whichever occurs first—thus creating a defined three-year outer limit for the warranty period.** (*Krieger, supra,* 234 Cal.App.3d at p. 216, 285 Cal.Rptr. 717.) Moreover, **the *Krieger* court focused on the promise to *repair* the vehicle during the warranty period.** The court stated: "A promise to repair defects that occur during a future period is the very definition of express warranty of future performance...." (*Id.* at p. 217, 285 Cal.Rptr. 717.) **Here, the warranty did not include a similar promise to repair**. *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 133. (emphasis added)

The warranty at issue here provides the same explicit promise as discussed in *Krieger* and *Cardinal Health*. As such, the exception provided in Commercial Code § 2725(2) applies. Plaintiff pleaded that he discovered Defendant's wrongful conduct shortly before the filing of the complaint, as the Subject Vehicle continued to exhibit symptoms of defects following Defendant's unsuccessful attempts to repair them. Defendants' demurrer is overruled to the First, Second, and Third Causes of Action.

2. <u>Fourth Cause of Action for Breach of the Implied Warranty of Merchantability (Civil Code §§ 1791.1, 1794, and 1795.5):</u>

Defendant argues that the statute of limitations for implied warranty claims generally begins to run at the time of sale and delivery, not when the defect is discovered. Additionally, Code of Civil Procedure § 1791.1(c) imposes a one-year cap that is not subject to tolling, delayed discovery or equitable extensions. Defendant asserts that the vehicle was sold on June 29, 2020, and under § 1791.1(c), the implied warranty expired no later than June 29, 2021. Plaintiff failed to plead any facts of a defect within this time period. Plaintiff's Complaint was filed in March 2025 and is accordingly time-barred.

Plaintiff argues that § 1791.1(c) is not a statute of limitations but rather it creates a limited prospective duration for the implied warranty of merchantability. Plaintiff further contends that the statute of limitations on the Implied Warranty of Merchantability also does not accrue until the breach is or should have been discovered, which is properly alleged in the Complaint.

Code of Civil Procedure § 1791.1(c) provides that:

> The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but **in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer**. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above. (emphasis added)

Defendant's argument contradicts the Legislature's intent and relevant case law. In *Mexia v. Rinker Boat Co.*, the Court of Appeal held that the provision of the Song-Beverly Consumer Warranty Act defining the duration of the implied warranty of merchantability merely creates a limited, prospective duration for the implied warranty of merchantability; it does not create a deadline for discovering latent defects or for giving notice to the seller. (2009) 174 Cal, App.4th 1297. The *Mexia* court further held that a consumer's action was not barred by the consumer's failure to report a defect to the seller within the duration of the implied warranty. *Id*. at 1306. The one-year period in § 1791.1(c) defines when the warranty is operative — not when a lawsuit must be commenced. *Id*.

> The duration provision provides, in essence, that the **duration of the implied warranty of merchantability shall be the same as the duration of any reasonable express warranty that accompanies the product, but in no event shorter than 60 days or longer than one year**. (Civ.Code § 1791.1, subd. (c).) **There is nothing that suggests a requirement that the purchaser discover and report to the seller a latent defect within that time period**. If the Legislature intended to create a deadline by which a purchaser of goods covered by the Song–Beverly Act must report a defect to the seller, it had a ready model for doing so. As discussed above, section 2607 of the Uniform Commercial Code provides that when a buyer has accepted a tender of goods, he or she "must, within a reasonable time after he or she discovers or should have discovered any breach, notify the seller of breach or be barred from any remedy...." (U.Com.Code, § 2607, subd. (3)(A).) **If the Legislature intended the duration provision to impose a deadline for consumers to give notice of defects under the Song–Beverly Act, it could have easily done so. It did not**. *Id*. at 1310 (emphasis added).

Plaintiff purchased the vehicle on June 29, 2020, and filed suit on March 5, 2025. Plaintiff alleges that an engine defect existed and was discovered during this period, which was not known at the time of purchase. Whether the four-year limitations period began to run at the time of purchase or upon discovery of the defect is a factual question not resolvable on demurrer. Defendants' demurrer is overruled to the Fourth Cause of Action.

3. <u>Sixth Cause of Action for Fraudulent Inducement – Concealment:</u>

Defendant argues that Plaintiff's claim is barred pursuant to Code of Civil Procedure § 338(d) which provides a three-year statute of limitations for fraud-based claims. As Plaintiff alleges that Defendant concealed material facts about the vehicle's alleged defects, intending to induce Plaintiff to purchase it, which he purchased on June 29, 2020, the statute of limitations began to run on the purchase date. In the absence of specific allegations to support tolling, the statute of limitations expired on June 29, 2023. Defendant asserts that Plaintiff failed to plead actionable fraud which precludes any tolling arguments.

Plaintiff claims the fraud claim is timely because the limitations period runs from the date of discovery, not from the date of the transaction. However, even if measured from the date of sale, the tolling mandated by Emergency Rule 9 added 178 days to any limitations period, which combined with the delayed discovery and repair doctrine principles, Plaintiff's claims are not time barred.

Code of Civil Procedure § 338(d) provides a three-year statute of limitations on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

> [Section 338] also codifies the delayed discovery rule, providing that a cause of action for fraud ' "is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." ' (*Brandon G. v. Gray* (2003) 111 Cal.App.4th 29, 35, 3 Cal.Rptr.3d 330; see § 338, subd. (d).) The date a complaining party learns, or at least is put on notice, that a representation was false is the date the statute starts running. (§ 338, subd. (d).)" (*Prakashpalan*, supra, 223 Cal.App.4th at p. 1123, 167 Cal.Rptr.3d 832, fn. omitted.) *Britton v. Girardi* (2015) 235 Cal.App.4th 721, 733.
>
> The fraudulent concealment doctrine will also toll the statute of limitations. " '[T]he ground of relief is that the defendant, having by fraud or deceit concealed material facts and by misrepresentations hindered the plaintiff from bringing an action within the statutory period, is estopped from taking advantage of his own wrong.' (*Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226, 231, 153 P.2d 325.) "To take advantage of this doctrine ' "the plaintiff must show ... the substantive elements of fraud ... and ... an excuse for late discovery of the facts." ' (*Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 890 [117 Cal.Rptr.2d 331].)" (*Prakashpalan, supra,* 223 Cal.App.4th at p. 1123, 167 Cal.Rptr.3d 832.) *Id*. at 734.

Plaintiff alleged that he discovered Defendant's wrongful conduct shortly before filing the Complaint, as the subject vehicle continued to exhibit symptoms of defects following Defendant's unsuccessful attempts to repair them. (Complaint ¶ 38). As such, the statute of limitations did not begin to run until the date of the discovery. Plaintiff's Complaint was filed on March 5, 2025. Thus, Plaintiff has adequately plead he did not become aware of the existence of the wrongful conduct until around this time period which confirms the statute of limitations period has not run.

Beyond the statute of limitations, Defendant further argues that Plaintiff's fraudulent concealment claim fails for lack of specificity as he failed to allege specific misrepresentations, omissions, and intent to deceive. Plaintiff asserts that the specificity requirement is relaxed in concealment cases and the Complaint alleges each element of fraud.

"As with all fraud claims, the necessary elements of a concealment/suppression claim consist of ' **"(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage**." ' " (Hoffman v. 162 North Wolfe LLC (2014) 228 Cal.App.4th 1178, 1185–1186 , 175 Cal.Rptr.3d 820. Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship. (*Id*. at pp. 1186–1187.) Fraud, including concealment, must be pleaded with specificity. (Linear Technology Corp. v. Applied Materials, Inc. (2007) 152 Cal.App.4th 115, 132 , 61 Cal.Rptr.3d 221. *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843–844.

In *Dhital*, plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car. *Id*. at 844. The court reversed the trial court's order sustaining Nissan's demurrer to the claim for fraudulent inducement by concealment.

Similarly here, Plaintiff alleged that Defendant concealed the Engine Defect, that Defendant knew of the defect before sale, that Defendant intended to induce reliance by concealing it, that Plaintiff justifiably relied and would not have purchased the Subject Vehicle had he known, and that Plaintiff suffered damages.

Defendant argues that it had no duty to disclose as there was no direct transactional relationship with Plaintiff.

A duty to disclose a material fact can arise where the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge). *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40. This type of relationship is created by **direct dealings between parties** from which a duty to disclose facts material to the transaction arises. *Id*. at 41. (emphasis added)

Plaintiff argues Defendant owed a duty to disclose as he entered into a warranty contract with Defendant regarding the subject vehicle, which constitutes a direct contractual relationship necessitating a duty to disclose. (Complaint ¶ 7).

Defendant asserts that Plaintiff failed to plead fraud with specificity to establish any duty to disclose. In *Dhital*, the court was unpersuaded by Nissan's argument that plaintiffs failed to plead the existence of a buyer-seller relationship between the parties because plaintiffs purchased the vehicle from a Nissan dealership as opposed to Nissan itself. *Id*. However, Plaintiffs alleged that they purchased the vehicle from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. 84 Cal.App.5th at 844.

A critical distinction arises here. Plaintiff alleged he entered into a warranty contract with Defendant regarding the subject vehicle, which was manufactured and or distributed by Defendant. (Complaint ¶ 7) and that Defendant "committed fraud by allowing the Subject Vehicle to be sold to Plaintiff without disclosing that the Subject Vehicle equipped with he 5.7L engine was defective…" (Complaint ¶ 65). The Complaint as plead is conclusory and does not plead how the warranty relationship was formed, where/from whom the vehicle was purchased or whether they are an agent/authorized dealer of Defendant's authorized to enter into warranty contracts. Defendant's demurrer is sustained to the Sixth Cause of Action, with leave to amend.

**MOTION TO STRIKE**

Pursuant to Code of Civil Procedure § 436, Defendant moves to strike specified portions of Plaintiff's FAC. On July 13,2026, Plaintiff filed an opposition. Defendant filed a Reply on July 16, 2026.

Defendant moves to strike the following portions of the Complaint: Prayer, item (e), Page 12, line 7: "For punitive damages."

**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**

Defendant argues that Plaintiff's claim for punitive damages should be stricken, as the Fraudulent Inducement – Concealment claim fails as a matter of law. Additionally, Plaintiff does not plead facts sufficient for punitive damages against a corporate entity, as Plaintiff does not allege an officer, director or managing agent of FCA US authorized, ratified or personally engaged in any oppressive, malicious, or fraudulent conduct as required. Lastly, Defendant asserts the claim for punitive damages must be struck because it is barred by the statute of limitations and economic loss rule.

Plaintiff argues that the Complaint alleges fraud which allows for punitive damages. Additionally, punitive damages are allowed under Code of Civil Procedure § 3294 for violations of other statutes as Plaintiff acted with oppression, fraud, or malice by knowingly concealing an engine defect and failing to repurchase the vehicle, instead allowing it to be driven with potentially dangerous consequences. Lastly, Plaintiff asserts that at the pleading stage, Plaintiff need only allege the ultimate fact of authorization or ratification, and the detailed allegations of Defendant's institutional knowledge and deliberate concealment permit that inference pertaining to punitive damages for a corporate defendant.

Having sustained Defendant's demurrer to the Sixth Cause of Action for Fraudulent Inducement – Concealment, the Court limits its review to facts plead within the First, Second, Third, and Fourth Causes of Action.

Civil Code section 3294 allows a plaintiff to recover exemplary (or "punitive") damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven be clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding exemplary damages, " '[m]alice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

> An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of

oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation. *Id*. at subd. (b).

The Court finds that the Complaint fails to allege Defendant acted with oppression, malice or fraud. In particular, as a corporate defendant, Plaintiff failed to allege that an officer, director, or managing agent of the corporation acted with oppression, fraud, or malice. Defendant's motion to strike is granted, with leave to amend.

**TENTATIVE RULING #12:**

**DEFENDANT'S DEMURRER IS OVERRULED AS TO PLAINTIFF'S FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION. DEFENDANT'S DEMURRER AS TO THE SIXTH CAUSE OF ACTION IS SUSTAINED WITH LEAVE TO AMEND.**

**DEFENDANT'S MOTION TO STRIKE PRAYER, ITEM (E), PAGE 12, LINE 7: "FOR PUNITIVE DAMAGES" IS GRANTED, 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).**

**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.**