1.	25CV0119	THEOPOLIS WILLIAMS VS. UBER TECHNOLOGIES, INC. ET AL
MOTION TO COMPEL		

On April 20, 2026, Plaintiff filed the following two motions: 1) Motion to Compel Responses to Form Interrogatories, Set One; and 2) Motion to Compel Responses to Requests for Production, Set One.

On June 12, 2026, the Court found the Parties' meet and confer efforts inadequate. The Court ordered the Parties to further meet and confer and file a joint status report by July 24, 2026 outlining which, if any, items remain in dispute, and why.

The Parties provided the joint status report and have asserted that they were unable to resolve the discovery requests at issue. Plaintiff asserts all requests remain in dispute because, although some documents were received from Defendant's counsel, verified responses have not been provided for the Responses to Requests for Production and no verified or substantive responses have been provided for the Form Interrogatories. Defendant's counsel attests that she has been unable to contact Defendant Nunez Barajas ("Defendant") to verify responses or collect additional information, and she has produced the documents she has in her possession.

Motions to Compel – Request for Production and Form Interrogatories

Plaintiff argues that for all 68 Requests for Production, Defendant served the following objection and did not produce any documents:

> Responding Party objects to this request on the grounds that it is vague, ambiguous, undefined, overbroad and burdensome and is so overly broad that it seeks information that is not relevant to the subject matter of this lawsuit and therefore, is not reasonably calculated to lead to the discovery of admissible evidence. As phrased the request potentially seeks to invade the Attorney-Client Privilege, it potentially violates the Attorney Work-Product Doctrine, and it calls for the premature disclosure of expert witness information, opinions and conclusions in violation of the Code of Civil Procedure Section 2034.010 et seq. Without waiving the said objections and subject thereto, Responding Party will respond at a later time.

Plaintiff further argues that the responses to every Form Interrogatory consisted of the identical response and did not provide any substantive answer nor verification: "Responding Party will respond at a later time."

Defendant's counsel does not oppose Plaintiff's motion to compel substantive discovery responses. Defendant's counsel has been unable to locate Defendant and requests more time to locate him so that substantive responses may be provided. Additionally, Defendant's counsel requests the Court deny Plaintiff's request that Defendant's objections be deemed waived.

The Court finds that each response to the Request for Production and Form Interrogatories is not code compliant and accordingly tantamount to no response due to lack of verification. *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636 [253 Cal.Rptr. 762, 764]. <u>The Court grants Plaintiff's Motion to Compel Responses to Requests for Production of Documents, Set One and Form Interrogatories, Set One, in the entirety</u>.

Code of Civil Procedure §§ 2031.300 and 2030.290 provide that a party waives any objection to the demand for production of documents or form interrogatories if they fail to serve a timely response. However, where a party timely raises unverified objections to a discovery demand, they do not waive its legal objections to the production request. *Blue Ridge Ins. Co. v. Superior Court* (1988) 202 Cal.App.3d 339, 345 [248 Cal.Rptr. 346, 350], modified (July 19, 1988).

<u>As Defendant's counsel served timely objections to the Request for Production, Defendant's objections are preserved.</u> However, as no objections were made in response to the Form Interrogatories, <u>the Court grants Plaintiff's requests to deem Defendant's objections waived as to the Form Interrogatories</u>.

<u>Sanctions</u>

Plaintiff requests sanctions in the amount of $1,560 for each motion, totaling $3,120 against Defendant and Defendant's counsel, jointly and severally.

Defendant's counsel asserts that as she does not oppose Plaintiff's motion, sanctions are not appropriate. Should the Court determine sanctions are appropriate, Defendant's counsel requests the Court refrain from sanctioning Defendant's counsel as she has been unable to locate Defendant and therefore unable to serve substantive responses.

Code of Civil Procedure § 2031.310(h) provides: Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Code of Civil Procedure § 2030.300(d) provides: The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Code of Civil Procedure § 2031.300(c) provides: If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

Code of Civil Procedure § 2030.290(c) provides: If a party to whom interrogatories are directed fails to serve a timely response, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Code of Civil Procedure § 2023.010 defines "misuse of the discovery process" to include "making, without substantial justification, an unmeritorious objection to discovery"; "failing to respond or to submit to an authorized method of discovery"; "making, without substantial justification, an unmeritorious objection to discovery"; "making an evasive response to discovery."

Code of Civil Procedure § 2023.030 authorizes the Court to impose a monetary sanction against parties engaged in misuse of the discovery process, to pay the reasonable expenses including attorney's fees, incurred by anyone as a result of that conduct.

The Court finds that Defendant's failure to respond to Plaintiff's Request for Production and Form Interrogatories a misuse of the discovery process. Plaintiff's request for sanctions in the amount of $3,120.00 is granted against Defendant. Plaintiff's request for sanctions against Defendant's counsel is denied.

TENTATIVE RULING #1:

PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION AND FORM INTERROGATORIES IS GRANTED. DEFENDANT IS ORDERED TO SERVE VERIFIED, CODE-COMPLIANT RESPONSES WITHIN 10 DAYS OF THE COURT'S ORDER.

PLAINTIFF'S REQUEST ALL OBJECTIONS BE DEEMED WAIVED TO THE REQUEST FOR PRODUCTION IS DENIED. PLAINTIFF'S REQUEST ALL OBJECTIONS DEEMED WAIVED TO THE FORM INTERROGATORIES IS GRANTED.

PLAINTIFF'S REQUEST FOR SANCTIONS IN THE AMOUNT OF $3,120.00 IS GRANTED AGAINST DEFENDANT. PLAINTIFF'S REQUEST FOR SANCTIONS AGAINST DEFENDANT'S COUNSEL IS DENIED.

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

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

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

2.	25CV1880	KELLY WILSON VS. TESLA, INC.
MOTION FOR TRIAL PREFERENCE		

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.

Plaintiff, Kelly Wilson ("Plaintiff") filed a Motion for Trial Preference on June 1, 2026. Defendant, Tesla Inc., ("Defendant") filed an Opposition on July 20, 2026. Plaintiff filed a Reply on July 23, 2026.

Plaintiff filed a Complaint against Defendant on July 21, 2025, alleging causes of action for 1) Fraud & Deceit – Intentional Misrepresentation of Fact; 2) Fraud & Deceit – Concealment; 3) Fraud & Deceit – Suppression of Fact; 4) Fraud & Deceit – Negligent Misrepresentation; and 5) Breach of Contract.

Legal Principles:

Code of Civil Procedure § 36 provides, in part:

> (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
>
> > (1) The party has a substantial interest in the action as a whole.
> >
> > (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

Discussion:

Plaintiff requests the Court grant trial preference pursuant to Code of Civil Procedure § 36(a) and set the action for trial on a date not more than 120 days from the date of the order.

Plaintiff attests that he is currently 74 years old. Plaintiff has a substantial interest in the action as a whole, as all claims, damages, and interests at stake belong to Plaintiff alone. Plaintiff is under the ongoing care of Ruslan Khabatyuk, PA-C, a licensed Physician Assistant, who has treated Plaintiff since October 15, 2020. Plaintiff alleges that he has high blood pressure, tinnitus, gastrointestinal problems, psoriasis and related dermatitis, urinary problems, and stress-related teeth grinding. Plaintiff argues that he experiences persistent fatigue, disrupted sleep, and ongoing anxiety about the case. The physical and mental effort required to prepare and pursue the litigation has become more difficult for him to maintain, and the work takes him longer and costs him more than previously. Plaintiff is concerned that his ability to recall the events of 2022 accurately and to testify clearly about them will continue to diminish.

The Declaration of Ruslan Khabatyuk, PA-C ("Mr. Khabatyuk") attests that Plaintiff has been a patient of Dignity Health Mercy Medical Group since at least April 7, 2015. Plaintiff remains under Mr. Khabatyuk's care for hypertension, gastrointestinal distress, and for further constellation of stress-driven conditions. From October 2020 through September 2022, Plaintiff's chronic conditions were stable. Beginning on November 3, 2022, there is documentation of stress driven symptoms across multiple organ systems with rapid escalation in the fall of 2025. In his professional opinion, he believes Plaintiff's medical conditions are being significantly exacerbated by the acute and prolonged stress related to his ongoing legal and financial disputes and that trial preference was necessary to prevent prejudicing his interest in the litigation.

Defendant argues that Plaintiff has failed to satisfy the requirements set by Code of Civil Procedure § 36(a)(2), as Plaintiff and Plaintiff's Physician Assistant fail to demonstrate how Plaintiff's hypertension and other conditions are such that a trial preference is necessary. Plaintiff does not demonstrate how he would be prevented from meaningfully participating in his own case and to provide testimony.

The Court does not find that Plaintiff's health is such that preference is necessary to prevent prejudicing his interest in the litigation. Plaintiff's request for trial preference is denied.

TENTATIVE RULING #2:

PLAINTIFF'S REQUEST FOR TRIAL PREFERENCE IS DENIED.

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

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

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3.	**25CV2341**	**GUY SEATON VS. ROBINSON AUTOMOTIVE INC. ET AL**
MOTION FOR SET ASIDE		

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.

Defendants, Robinson's Automatic Inc. and Martin Robinson ("Defendants"), bring this Motion to Set Aside Default under the provisions of Code of Civil Procedure § 473(b) on the following grounds:

1. Defendant has established excusable neglect based on a reasonable misunderstanding of the distinction between small claims and limited civil procedures, combined with Defendant's diligent appearance at the case management hearing and prompt action upon learning of the default;
2. The default entry is procedurally defective and violates the mandatory requirements of California Code of Civil Procedure § 587;
3. Defendant has established a meritorious defense based on the signed agreement's impound and lien provisions; and
4. The equities strongly favor setting aside the default and permitting resolution on the merits.

[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite v. Southern Pacific Co.* (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors*, supra, 13 Cal.App.3d at p. 483.)... A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; Martin v. Cook (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].) *Elston v. City of Turlock*, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

Code of Civil Procedure § 473(b) provides, in part:

> (b) The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

Plaintiff's Notice of Motion identifies the proposed Answer to Complaint is lodged herewith; however, the proposed Answer is not included in the Court's file. The Court is inclined to grant Plaintiff's motion upon receipt of the proposed Answer.

TENTATIVE RULING #3:

APPEARANCES REQUIRED FRIDAY, JULY 31, 2026, AT 8:30 AM IN DEPARTMENT NINE.

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

4.	26CV0127	EUGENE FRUEAN VS. COUNTY OF EL DORADO
MOTION TO COMPEL		

Respondent, County of El Dorado ("Respondent"), filed a Motion to Compel Discovery Responses and Document Production; Request for Monetary Sanctions on June 3, 2026. Respondent seeks an order compelling Petitioner to serve further responses to Respondent's Special Interrogatories, Set One and Request for Production of Documents, Set One along with the accompanying document production within five days of the order, as well as sanctions in the amount of $7,454.

Special Interrogatories

SPECIAL INTERROGATORY NO. 1: State the first date on which YOU[1] contacted an attorney or law firm after the INCIDENT[2].

RESPONSE TO SPECIAL INTERROGATORY NO. 1: Objection. The interrogatory is vague, ambiguous, and overbroad. The interrogatory is not full and complete of itself and improperly includes separate definitions and prefatory instructions in violation of Code of Civil Procedure section 2030.060. The interrogatory seeks information protected by the attorney client privilege. The interrogatory seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

AMENDED RESPONSE TO SPECIAL INTERROGATORY NO. 1: Objection. The interrogatory is vague, ambiguous, and overbroad. The interrogatory is not full and complete of itself and improperly includes separate definitions and prefatory instructions in violation of Code of Civil Procedure section 2030.060. The interrogatory seeks information protected by the attorney client privilege. The interrogatory seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing objections, Responding Party responds as follows: In or about October 2024, while Petitioner remained hospitalized as a quadriplegic requiring 24/7 care and suffering from significant ongoing medical complications, Petitioner's family contacted a workers' compensation attorney on his behalf. Due to the severity of his injuries and medical condition, Petitioner was physically incapable of pursuing legal matters, including contacting counsel or investigating potential claims. The family's contact with a workers' compensation attorney was solely for the limited purpose of securing urgently needed

[1] "YOU" and "YOUR" shall mean Eugene Fruean or anyone acting on his behalf.
[2] "INCIDENT" shall mean the truck accident identified in the PETITION.
"PETITION" shall mean Petitioner's Petition for Relief from Government Claim Filing Requirements (Government Code § 946.6) served on the County on February 10, 2026.

medical treatment and wage replacement benefits to sustain Petitioner's care and survival following the subject motor vehicle collision, which occurred while Petitioner was working.

Respondent argues Plaintiff's "substantive" response is non-responsive, evasive, and avoids the direct call of the question. Respondent seeks the exact date Petitioner or someone on his behalf contacted any attorney in relation to the accident. Petitioner's response leaves open the interpretation that Petitioner contacted some other attorney first and earlier.

The Court finds that Plaintiff's amended response sufficiently answered the call of the question. Respondent's request is denied.

Requests for Production of Documents

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: All CORRESPONDENCE[1] between YOU[2] and any other PERSON[3] relating to the INCIDENT[4]. (Excluded from this request is all correspondence with your attorney).

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Objection. The request is vague, ambiguous, overbroad, too general, and not reasonably particularized, as required by Code of Civil Procedure section 2031.030(c)(1), especially due to the use of the terms "relating to", "CORRESPONDENCE," "YOU," and "any other PERSON," including the overbroad definitions of same. These deficiencies make responding to the request unduly burdensome, and essentially impossible, as it is unclear what is sought by the request. The request also seeks information and documents protected from disclosure by the attorney client privilege and attorney work product doctrine. The request seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respondent agrees that the request is overbroad and narrowed the requests during meet-and-confer negotiations to correspondence (i.e., texts, emails, letters) about the accident and or the resulting injuries between: 1) Petitioner and his sons; 2) Petitioner and his wife; 3) Petitioner and his employer; 4) Petitioner's son Manuia and any other person when the former was acting at Petitioner's behest; 5) Petitioner's wife and any other person when the former was acting at

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[1] "CORRESPONDENCE" shall be deemed to include all forms of written communication, including letters, faxes, emails, deleted emails, instant messages, text messages, communications constituting "DOCUMENT(s)" as that term is defined above, and all other forms and means of written communication, including communication made via "electronic" means.
[2] "YOU" and "YOUR" shall mean Eugene Fruean or anyone acting on his behalf.
[3] "PERSON" shall be deemed to include natural persons, partnerships, firms and corporations, and all of their subsidiaries or divisions and, in the case of partnerships, firms and corporations, the individual member(s) or agent(s) thereof with the knowledge of the requested information.
[4] "INCIDENT" shall mean the truck accident identified in the PETITION. "PETITION" shall mean Petitioner's Petition for Relief from Government Claim Filing Requirements (Government Code § 946.6) served on the County on February 10, 2026.

Petitioner's behest; 6) Petitioner (or his family) and any attorney they did not retain (the request does not seek communications with retained counsel).

The Court finds Respondent's request is overbroad as to time and scope and requests documents protected by attorney-client privilege. The Court grants Respondent's motion to compel in part, in such that Petitioner shall provide all correspondence (i.e., texts, emails, letters) relating to the incident between the following individuals from the date of the incident (July 10, 2024) to the date the Petition for Relief was filed (January 14, 2026): 1) Petitioner and his sons; 2) Petitioner and his wife; 3) Petitioner and his employer; 4) Petitioner's son Manuia and any other person when the former was acting at Petitioner's behest; 5) Petitioner's wife and any other person when the former was acting at Petitioner's behest; 6) Petitioner (or his family) and any attorney they did not retain which have not previously been produced through Respondent's subpoena for the workers compensation file (the request does not seek communications with retained counsel). To the extent that Petitioner asserts a claim of attorney-client privilege, Petitioner shall provide a privilege log.

<u>REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7</u>: All DOCUMENTS[1] reflecting YOUR pursuit of workers' compensation benefits as a result of the INCIDENT.

<u>RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7</u>: Objection. The request is vague, ambiguous, overbroad, too general, and not reasonably particularized, as required by Code of Civil Procedure section 2031.030(c)(1), especially due to the use of the terms "All DOCUMENTS," including the extremely overbroad definition of "DOCUMENTS," "YOUR," including the overbroad definition of same, "pursuit," and "worker's compensation benefits." These deficiencies make responding to the request unduly burdensome, and essentially impossible, as it is unclear what is sought by the request. The request also seeks information and documents protected from disclosure by the attorney client privilege and attorney work product doctrine. The request seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respondent seeks Petitioner's worker's compensation files (e.g., letters, emails, applications, etc.) from before Petitioner retained a worker's compensation law firm "in or around October 2024." Respondent seeks to discover who, if anyone, was representing Petitioner at this time in relation to his pursuit of worker's compensation benefits.

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[1] "DOCUMENT" shall be deemed to include every record of every type, including but not limited to, information stored on any electromagnetic storage device, emails, faxes, any written, printed, typed, recorded or graphic matter, however produced or reproduced or stored, in the possession, custody or control of the defendant or any agent, employee or attorney of the plaintiff, and all drafts, notes or preparatory material concerned with said document, and every additional copy of such record or document where such copy contains any commentary, notation, or other change whatsoever that does not appear on the original or other copy of the document produced. "Document" shall be deemed to also include any summary of a document or documents called for hereafter.

The Court finds Respondent's request is overbroad as to time and scope, requests documents protected by attorney-client privilege, and is vague and ambiguous. The Court grants Respondent's request in part, in such that Petitioner shall provide any letters, emails, or applications, which have not previously been produced through Respondent's subpoena for the workers compensation file, relating to his pursuit of workers compensation benefits from the date of the incident (July 10, 2024) to when Petitioner hired a worker's compensation law firm in or around October 2024. To the extent that Petitioner asserts a claim of attorney-client privilege, Petitioner shall provide a privilege log.

Sanctions

The Court denies Respondent's request for sanctions.

TENTATIVE RULING #4:

RESPONDENT'S MOTION TO COMPEL FURTHER RESPONSE OF SPECIAL INTERROGATORY NO. 1 IS DENIED. RESPONDENT'S MOTION TO COMPEL FURTHER RESPONSE OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 4 AND 7 IS GRANTED IN PART AS INSTRUCTED IN THE TENTATIVE RULING. RESPONDENT'S REQUEST FOR SANCTIONS IS DENIED.

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

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

5.	**26CV0275**	**CENTRAL PARK SYSTEMS CORPORATION D/B/A FORTIS TELECOM VS. CAPITOL IT PARTNERS, INC. ET AL**
OSC/ENFORCE PRELIMINARY INJUNCTION; WRIT OF ATTACHMENT		

Before the Court are two motions: 1) Order to Show Cause – Enforce Preliminary Injunction; and 2) Writ of Attachment. The Court orders all Parties to appear.

TENTATIVE RULING #5:

APPEARANCES REQUIRED FRIDAY, JULY 31, 2026, AT 8:30 AM IN DEPARTMENT NINE.
IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6.	**26CV1542**	**IN RE: UNINSURED MOTORIST CLAIM OF CATHY MILLER**
PETITION FOR ISSUANCE OF SUPERIOR COURT FILE NUMBER		

On June 3, 2026, Petitioner filed a Petition for Issuance of Superior Court File Number – Uninsured Motorist Claim pursuant to Insurance Code § 11580.2(f) and Code of Civil Procedure § 2016.010 et seq. in order to initiate discovery. A Proof of Service was filed on the same date.

TENTATIVE RULING #6:

PETITIONER'S REQUEST IS GRANTED.

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

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7.	25CV3235	SYNCHRONY BANK VS. DAVID CRAMER
MOTION TO STAY CASE/MOTION – SNAP, MEDI-CAL BENEFITS		

On June 4, 2026, Defendant, David Cramer ("Defendant"), filed a Motion to Stay Case. Defendant requests the matter be stayed to determine if Placer County Superior Court's, El Dorado County Superior Court's, and Santa Clara County Superior Court's application of the litigation privilege under Code of Civil Procedure § 47(b) is lawful. Defendant asserts this case will be filed in the United States District Court Eastern District of California, as well as for case numbers 26CV0687 and 22CV1608 which are unrelated to this matter.

A Proof of Service was filed on the same date, attesting "Karlin/Reider," "Kuzmich," and "Caulfield" were served with the "Notice, Memo and Points, Declaration Motion to Stay." Neither Plaintiff nor Plaintiff's counsel are included on the Proof of Service.

Defendant also filed a "Motion" containing only a Medi-Cal approval notice. It is unclear as to the purpose of this motion.

As there are no Proofs of Service, Defendant's requests are denied.

TENTATIVE RULING #7:

DEFENDANT'S REQUESTS TO STAY CASE AND MOTION – SNAP, MEDI-CAL BENEFITS ARE DENIED.

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

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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.	26CV0681	PETER ELLIS VS. MATTHEW JOHNSON
DEMURRER AND MOTION FOR COURT SEALED DOCUMENTS FOR COURT TRANSCRIPTS		

Before the Court are two motions: 1) Demurrer filed by Defendants; and 2) Motion for Court Sealed Documents for Court Transcripts filed by Plaintiff.

DEMURRER

On February 20, 2026, Plaintiff filed a Complaint. Thereafter, Plaintiff filed a First Amended Complaint on April 27, 2026. The Proof of Service of Summons indicates that the Summons and First Amended Complaint were served by mail on May 2, 2026. However, Plaintiff did not indicate that two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to him were included, nor did he attach the completed Notice and Acknowledgement of Receipt, rendering service defective.

On May 20, 2026, Defendants filed a Demurrer to Plaintiff's Complaint filed on February 20, 2026. As Plaintiff has filed a First Amended Complaint, Defendant's demurrer to Plaintiff's Complaint is moot.

MOTION FOR COURT SEALED DOCUMENTS

On June 18, 2026, Plaintiff filed a Motion for Court Sealed Documents for Court Transcripts. Plaintiff is requesting an order for the transcripts from the motion held on October 13, 2025, in department 2. No proof of service was filed. Accordingly, Plaintiff's motion is denied.

TENTATIVE RULING #8:

DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT IS RENDERED MOOT.

PLAINTIFF'S MOTION FOR COURT SEALED DOCUMENTS FOR COURT TRANSCRIPTS IS DENIED.

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

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9.	**25CV3397**	**DANIEL RUSSELL VS. KIMBERLY THOMPSON ET AL**
MOTION TO DISMISS – FAILURE TO AMEND COMPLAINT		

On June 9, 2026, Defendants, Kim Thompson and James Thompson (collectively "Defendants"), filed a Motion to Dismiss for Failure to Amend Complaint. A Proof of Service was filed on the same date.

Defendants assert that on March 27, 2026, this Court sustained Defendants' demurrer with leave to amend. The Court ordered the amended complaint was to be filed within 10 days. Plaintiff was served with notice of the Order by mail on May 14, 2026. Per the Court's order, the amendment deadline expired on May 29, 2026. To date, Plaintiff has not filed an amended complaint.

No opposition has been filed.

The Court may dismiss the complaint as to that defendant after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal. Code of Civil Procedure § 581(f)(2).

The Court finds that Plaintiff failed to timely file an amended complaint. Defendants' motion to dismiss is granted with prejudice.

TENTATIVE RULING #9:

DEFENANTS' MOTION TO DISMISS IS GRANTED WITH PREJUDICE.

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

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10.	**PC20210083**	**THOMAS STINSON VS. DAVID WEINER, ET AL**
MOTION FOR ATTORNEYS FEE		

Plaintiff, Thomas Stinson ("Plaintiff"), filed a Motion for Attorneys Fee on May 29, 2026. An Opposition was filed by Defendants, David Weiner & Melode Weiner ("Defendants") on July 20, 2026. In addition to the opposition, Defendants request a continuance to August 14, 2026, at which time Defendants' Motion to Tax Costs will be heard.

In the interests of judicial economy, the Court continues this matter to August 14, 2026.

TENTATIVE RULING #10:

THE MATTER IS CONTINUED TO AUGUST 14, 2026 AT 8:30 A.M. IN DEPARTMENT NINE.

11.	**26CV0764**	**MARY ASTOR SMITHE (FKA MERJEM ZILDZO) VS. EDIB ZILDZO ET AL**
PRELIMINARY INJUNCTION		

On June 8, 2026, Plaintiff filed a motion for preliminary injunction. Plaintiff indicates the motion was electronically served on Defendant's counsel via Legal Document Server, Inc. on May 14, 2026, and references an attachment with the LDS Order Confirmation showing service. <u>No attachment is included showing service was effectuated, nor is a Proof of Service filed indicating the same</u>.

TENTATIVE RULING #11:

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION IS DENIED.

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

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12.	**23CV0403**	**LINDA BIGELOW ET AL VS. COUNTY OF EL DORADO ET AL**
SUMMARY JUDGMENT		

On January 14, 2026, a Motion for Summary Judgment was filed by Defendant, Department of Parks and Recreation. A Request for Dismissal was entered on July 13, 2026, which dismissed Defendant, Department of Parks and Recreation. As such, the Motion for Summary Judgment is rendered moot, and the hearing is dropped from calendar.

TENTATIVE RULING #12:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS RENDERED MOOT. HEARING DROPPED FROM CALENDAR.

13.	23CV0339	RANDY MICKELSON VS. MELODY
SUMMARY JUDGMENT		

Defendants/Cross-Defendants/Cross-Complainants, Side, Inc. dba Navigate Realty and Nathaniel Davis ("Side Defendants"), move for summary judgment pursuant to Code of Civil Procedure § 437(c). The motion is made on the grounds there are no triable issues of material fact precluding summary judgment in Side Defendants' favor on the Plaintiff's cause of action for Fraud in Purchase of Real Property, which is the only cause of action alleged against Side Defendants in Plaintiff's Second Amended Complaint.

Legal Principles:

[S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.

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

Under summary judgment law, any party to an action, whether plaintiff or defendant, "may move" the court "for summary judgment" in his favor on a cause of action (i.e., claim) or defense (Code Civ. Proc., § 437c, subd. (a))—a plaintiff "contend[ing] ... that there is no defense to the action," a defendant "contend[ing] that the action has no merit" (*ibid.*). The court must "grant[]" the "motion" "if all the papers submitted show" that "there is no triable issue as to any material fact" (*id.*, § 437c, subd. (c))—that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law (see *Riverside County Community Facilities Dist. v. Bainbridge 17* (1999) 77 Cal.App.4th 644, 653 [92 Cal.Rptr.2d 29]; *Kelly v. First*

Astri Corp. (1999) 72 Cal.App.4th 462, 470 [84 Cal.Rptr.2d 810])—and that the "moving party is entitled to a judgment as a matter of law" (Code Civ. Proc., § 437c, subd. (c)). The moving party must "support[]" the "motion" with evidence including "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Id.*, § 437c, subd. (b).)

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

Discussion:

Plaintiff's First Cause of Action in their Second Amended Complaint is for Fraud in Purchase of Real Property. Plaintiff alleges Side Defendants knew of facts materially affecting the value or desirability of the property, specifically: 1) the garage was unpermitted; 2) the permit for the property's septic repair had expired without final approval; and 3) a permit was needed to convert storage to living room. A prior permit (#15188) converted the original garage to storage. Plaintiff alleges that Defendants had an affirmative duty to disclose these material latent facts to Plaintiff but failed to do so.

A real estate buyer suing for fraud must prove each of the following elements: (1) a false representation or concealment of a material fact; (2) made with knowledge of its falsity; (3) with the intent to induce the person to whom it is made to act upon it; and such person must (4) act in reliance upon the representation (5) to his damage. *Roche v. Hyde* (2020) 51 Cal.App.5th 757,820, as modified on denial of reh'g (July 29, 2020), citing Reed v. King (1983) 145 Cal.App.3d 261,264, italics omitted.

The elements of a cause of action for damages for fraud based on mere nondisclosure and involving no fiduciary relationship are: (1) Nondisclosure by the defendant of facts materially affecting the value or desirability of the property; (2) Defendant's knowledge of such facts and of their being unknown to or beyond the reach of the plaintiff; (3) Defendant's intention to induce action by the plaintiff; (4) Inducement of the plaintiff to act by reason of the nondisclosure; and (5) Resulting damages. *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 738.

Side Defendants assert that Plaintiff cannot prove: 1) Side Defendants knowingly concealed or suppressed a material fact; and 2) Side Defendants concealed or suppressed a fact with the intent to defraud Plaintiff.

The undisputed facts and evidence support a finding that Side Defendants did not knowingly conceal or suppress a material fact and therefore did not conceal or suppress a fact with the intent to defraud Plaintiff.

Deposition testimony supports that Defendant Davis did not affirmatively believe the garage was unpermitted. Aside from the 2014 TDS Addendum, Plaintiff testified he did not know what Defendant Davis knew or didn’t know. Defendant Byers testified that Defendant Davis first learned the rebuilding over the garage required a permit in or around 2020, after the sale to Plaintiff. Plaintiff does not dispute the fact that the 2014 TDS Addendum is the only document Plaintiff has to support his allegation that Side Defendants knew the garage on the property was unpermitted before Plaintiff purchased the property. Plaintiff does not dispute that the 2014 TDS Addendum states, in part, “Per Buyers request to itemize work done without permit I have the following list. This list only represents **work known to have been done and not work that is required to be permitted**.” (emphasis added). The list includes, “Garage was rebuilt over existing foundation,” along with other items.

Plaintiff does not dispute that before the close of escrow on Plaintiff’s purchase of the property Defendant Davis was not aware that a permit for a septic repair for the property had expired without final approval. Plaintiff does not dispute that before the close of escrow on Plaintiff’s purchase of the property, Defendant Davis was unaware that the property’s lower level was converted from storage space to living space without the necessary permit(s). Plaintiff does not dispute that before the close of escrow on Plaintiff’s purchase of the property, Defendant Davis was unaware that a permit was necessary for the prior owner’s rebuilding of the garage over the existing foundation on the property.

As Plaintiff has not presented any evidence that a triable issue of material fact exists, the Court grants Side Defendants’ Motion for Summary Judgment.

TENTATIVE RULING #13:

SIDE DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT IS GRANTED.

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

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14.	25CV1068	JAMES R. MAUSS ET AL VS. YURIY KOLOTYUK
DEMURRER		

Pursuant to Code of Civil Procedure § 430.10(e), Cross-Defendant, Burne Engineering Services, Inc. ("Cross-Defendant"), demurrers to Cross-Complainant's, Yuriy Kolotyuk ("Cross-Complainant"), First Amended Cross-Complainant ("FACC"). On July 20, 2026, Cross-Complainant filed an opposition.

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 Janine M. Fiel-Cosse counsel attempted to meet and confer with Cross-Complainant prior to filing but received no response.

Background

Cross-Complainant filed the Cross-Complaint on June 16, 2025, which did not contain a Certificate of Merit. The Certificate of Merit was filed on March 18, 2026. On April 13, 2026, Cross-Complainant filed a First Amended Complaint against Cross-Defendants and Roes 1 through 50, for: 1) Breach of Contract; 2) Negligence; 3) Common Counts (Money Had and

Received); 4) Comparative Indemnity and Declarative Relief; 5) Total Equitable Indemnity and Declaratory Relief.

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

Cross-Defendant generally demurrers to Cross-Complainant's FACC because Cross-Complainant failed to timely file a certificate of merit as required pursuant to Code of Civil Procedure § 411.35. In addition and/or in the alternative, Cross-Defendant specially demurrers to the First, Second, Third, Fourth, and Fifth Causes of Action in the FACC.

Certificate of Merit

Cross-Defendant argues that Cross-Complainant failed to file a Certificate of Merit prior to filing the original Cross-Complaint on June 16, 2025, and did not file it until March 18, 2026, which is beyond the applicable statute of limitations pursuant to Code of Civil Procedure § 411.35.

Cross-Complainant asserts that as the Certificate of Merit was served before the FACC was served, the requirements of Code of Civil Procedure § 411.35(a) have been met.

Code of Civil Procedure § 411.35(a) provides that in every action, including a cross-complaint for damages or indemnity, arising out of the professional negligence of a person holding a valid architect's certificate shall file and serve a certificate on or before the date of service of the complaint or cross-complaint. Where an attorney is unable to obtain the consultation required because a statute of limitations would impair the action and the certificate required could not be obtained before the impairment of the action, the certificate shall be filed within 60 days after filing the complaint. Id. at 411.35(b)(2).

This case is analogous to *Curtis Engineering Corp. v. Superior Court* (2017) 16 Cal.App.5th 542. In *Curtis Engineering Corp.*, Plaintiff filed an original complaint on May 3, 2016, but failed to include a certificate. *Id*. at 545. Plaintiff thereafter filed and served a first amended complaint which included a certificate on December 1, 2016. *Id*. Plaintiff did not include an excuse certificate regarding the reasoning for his late filed certificate of merit and failed to file a certificate of merit within 60 days of filing the original complaint. The court accordingly sustained the demurrer without leave to amend as there was no possibility of curing the defect. *Id*. at 551. The court reasoned this ruling was supported by the Legislature's intent to give plaintiffs a limited period of time to obtain the necessary consultation and failure to obtain the consultation within that time period would result in dismissal of the complaint. *Id*.

Cross-Complainant's reliance on *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355 is unavailing and was directly addressed in *Curtis Engineering Corp.*

> Citing *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 112 Cal.Rptr.2d 65, **Sutherland asserts that his failure to file the required certificate of merit with the original complaint can be cured by filing the required certificate of merit with an amended complaint. In *Price*, however, the plaintiff filed a certificate of merit within the statute of limitations period**. (*Id*. at pp. 358, 361-362, 112 Cal.Rptr.2d 65.) Although the certificate was defective, because the plaintiff signed it rather than an attorney as required by section 411.35(a), the **appellate court held that the trial court should have allowed leave to amend because the defect was curable**. (*Id.* at pp. 360-361, 112 Cal.Rptr.2d 65.) **The *Price* court did not hold that a failure to timely file a certificate of merit within the statutory deadlines may be cured by leave to amend**. *Curtis Engineering Corp. v. Superior Court* (2017) 16 Cal.App.5th 542, 549. (emphasis added)

Here, Cross-Complainant filed the Cross-Complaint on June 16, 2025. The Certificate of Merit was not filed until March 18, 2026, followed by the Amended Cross-Complaint on April 13, 2026. The Certificate of Merit was not filed within the statute of limitations period and the filing of the certificate with the amended complaint does not cure the defect under § 411.35. As there is no reasonable possibility of curing the defect, the <u>Court sustains Cross-Defendant's demurrer without leave to amend</u>. As the Court has sustained the demurrer, Cross-Defendant's arguments specially demurring to the First, Second, Third, Fourth, and Fifth Causes of Action will not be addressed.

TENTATIVE RULING #14:

CROSS-DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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

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

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15.	**26CV1183**	**DIOS AZUL TEQUILA LLC, A WYOMING LIMITED LIABILITY COMPANY VS. ROBERT STEVENSON LAIRD, III ET AL**
DEMURRER		

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.

Pursuant to Code of Civil Procedure § 430.10(e), Defendant, Robert S. Laird III ("Defendant") demurrers to Plaintiff's, Dios Azul Tequila, LLC ("Plaintiff" or the "Company"), Complaint. On July 20, 2026, Plaintiff filed an opposition.

JUDICIAL NOTICE

Defendant asks the Court to take judicial notice of the Dios Azul, LLC Operating Agreement and First Amendment to the Operating Agreement (collectively the "Operating Agreement").

Judicial notice may be taken of documents pertinent to the issues raised by a demurrer. *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1103 [87 Cal.Rptr.3d 424, 431], as modified on denial of reh'g (Feb. 3, 2009);) *Genis v. Schainbaum* (2021) 66 Cal.App.5th 1007, 1011 [281 Cal.Rptr.3d 484, 487]. "As to accepting the accuracy of the contents of judicially noticed documents, [citation] [there are] three different approaches to judicial notice at the demurrer stage: the truth of a document's contents will not be considered unless it is a judgment, statement of decision, or order [citations]; the truth of statements may be accepted when made by a party but not those of third parties or an opponent [citations]; and the contents of a document may only be accepted ' " 'where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.' " ' " (*C.R. v. Tenant Healthcare Corp*., at p. 1103, 87 Cal.Rptr.3d 424.) *Genis v. Schainbaum* (2021) 66 Cal.App.5th 1007, 1011 [281 Cal.Rptr.3d 484, 487].

As Plaintiff's Complaint repeatedly references the Operating Agreement and Plaintiff has waived any objection by referencing the Operating Agreement within Defendant's request for judicial notice, the Court grants Defendants request to take judicial notice of the Operating Agreement.

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 Jennifer M. Oliver, counsel attempted to meet and confer with Plaintiff prior to filing, but the dispute could not be resolved.

Background

Plaintiff filed the Complaint on April 28, 2026, against Defendant and Does 1 through 25, for: 1) Breach of Operating Agreement and Company Expense Policies; 2) Breach of Contractual Indemnity Obligations; 3) Conversion; 4) Fraud and Intentional Misrepresentation; 5) Fraudulent Concealment; 6) Breach of the Implied Covenant of Good Faith and Fair Dealing; 7) Unjust Enrichment/Restitution; 8) Money Had and Received; 9) Accounting; 10) Declaratory Relief Regarding Non-Exculpation, Non-Indemnification, and Offset Rights; 11) Constructive Trust/Equitable Lien; 12) Civil Theft/Receipt, Concealment, or Withholding of Stolen Property, California Penal Code § 496(c), if filed in California and supported by forum and limitations analysis.

Plaintiff asserts that Defendant misappropriated, converted, or caused to be spent for his personal benefit while serving as the Company's Chief Executive Officer, a member-owner of the Company, and a principal of the Company's initial Manager, RSL-TWN Investments LLC, a Nevada limited liability company. Plaintiff alleged that Defendant was entrusted with access to the Company credit, payment systems, funds, and expense authority for the limited purpose of advancing the Company's distilled spirits business. Instead, Defendant used Company credit cards and funds for his own personal expenses totaling at least $694,123.55.

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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. Breach of Operating Agreement and Company Expense Policies

Defendant argues that in applying Wyoming law as prescribed by the Operating Agreement, the Complaint does not allege facts sufficient to overcome the business judgment rule. The Operating Agreement vested management authority in Defendant to incur and approve expenditures and obligations on behalf of the Company, and to enter into transactions involving affiliates. Plaintiff's Complaint largely challenges the reasonableness of Defendant's actions rather than alleging facts establishing misconduct outside the scope of that authority.

Defendant also asserts that Plaintiff also fails to allege facts sufficient to establish improper self-dealing, as the characterizations of Defendant's expenditures are conclusory and insufficient to overcome the business judgment rule. Certain individuals that Plaintiff alleges were "personal companions" are explicitly identified as "Affiliates" under section 1.3 of the Operating Agreement. No facts have been alleged showing Defendant acted in bad faith or engaged in conduct outside the authority granted to him under the Operating Agreement.

Defendant asserts that Plaintiff has alleged he breached the Company's expense Policies, but Defendant does not possess a copy of those Policies due to Plaintiff removing his access to his Company email account. Defendant reserves the right to challenge Plaintiff's allegations once those are provided.

Plaintiff argues that the business judgment rule does not shield Defendant from liability for breach of the expense policies and therefore the demurrer should be overruled for failing to move to dismiss the entire cause of action. Additionally, the business judgment rule does not shield Defendant from liability for breach of contract. The Complaint alleges that Defendant breached the terms of the Operating Agreement and acted outside of his contractual authority, which is outside the scope of the business judgment rule.

Should the Court apply the business judgment rule, Plaintiff argues that the Company has alleged facts that rebut the presumption by showing Defendant engaged in fraud, bad faith, and self-dealing.

A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing. Wyo. Stat. Ann. § 17-29-409(d)

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

> 1.7 "Approved by the Manager," "Approval of the Manager" or "Manager' Approval" means that a majority of the Manager have consented to or are required to consent to a particular matter or action.
>
> 7.1.1 Management by the Manager. The business, assets and affairs of the Company shall be managed exclusively by the Manager. Except for situations in which the Approval of the Members is expressly required by this Agreement, the Manager shall have full, complete and exclusive authority, power and discretion to manage and control the business, assets and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, assets and affairs. In the management of the Company's business, the Manager may delegate duties to such persons and entities as the Manager may deem appropriate. Without limiting the generality of the foregoing, the Manager shall have the power and authority, without the Approval of the Members, to: (**a) incur expenditure(s) and obligation(s) on behalf of the Company**;…
>
> 7.10 Reimbursement of the Members and the Manager. The Members, the Manager, the Officers and their respective Affiliates shall be entitled to reimbursement from the Company as **Approved by the Manager for all reasonable out-of-pocket expenses incurred by them or their respective Affiliates, on behalf of the Company and/or its assets**, in managing the business and affairs of the Company and/or its assets and in the formation and/or maintenance of the Company including, but not limited to, the Members' and Manager's expenses in preparation of this Agreement and related agreements, and any legal and accounting expenses incurred on behalf of the Company and/or its assets. (emphasis added)

The Court finds that Plaintiff has alleged specific violations of the Operating Agreement wherein Defendant purportedly acted outside the scope of his contractual duties. As such, these acts fall outside the scope of the business judgment rule. Taking these allegations as true, Plaintiff has adequately plead facts to survive demurrer. Defendant's demurrer as to the cause of action for Breach of Operating Agreement and Company Expense Policies is overruled.

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2. Conversion

Defendant argues that Plaintiff's conversion claim is barred by the economic loss rule, as it is premised upon the same alleged misconduct underlying its contract claims: alleged expenditures that Plaintiff contends were not authorized under the Operating Agreement.

Plaintiff argues that the conversion claim is based on the same intentional misconduct that goes beyond the conduct contemplated by the Parties under the Operating Agreement, such as Defendant's intentional misuse and misappropriation of Company assets.

Not all tort claims for monetary losses between contractual parties are barred by the economic loss rule. But such claims are barred when they arise from — or are not independent of — the parties' underlying contracts. (See *Robinson*, *supra*, 34 Cal.4th at p. 991, 22 Cal.Rptr.3d 352, 102 P.3d 268 [holding that "the economic loss rule does not bar [the plaintiff's] fraud and intentional misrepresentation claims because they were independent of [the defendant's] breach of contract"]; *Erlich*, *supra*, 21 Cal.4th at pp. 551, 552, 87 Cal.Rptr.2d 886, 981 P.2d 978 [explaining that "[t]ort damages have been permitted in contract cases" when "the duty that gives rise to tort liability is either completely independent of the contract or arises from conduct which is both intentional and intended to harm"].) *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 923–924 [290 Cal.Rptr.3d 834, 843, 505 P.3d 625, 633].

"[A] tortious breach of contract ... may be found when (1) the breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion or; (3) one party intentionally breaches the contract intending or knowing that such a breach will cause severe, unmitigable harm in the form of mental anguish, personal hardship, or substantial consequential damages." (*Freeman & Mills, supra,* 11 Cal.4th at p. 105, 44 Cal.Rptr.2d 420, 900 P.2d 669 (conc. and dis. opn. of Mosk, J.).) Focusing on intentional conduct gives substance to the proposition that a breach of contract is tortious only when some independent duty arising from tort law is violated. (*Applied Equipment, supra,* 7 Cal.4th at p. 515, 28 Cal.Rptr.2d 475, 869 P.2d 454.) *Erlich v. Menezes* (1999) 21 Cal.4th 543, 553–554 [87 Cal.Rptr.2d 886, 893, 981 P.2d 978, 984].

When evaluating whether the parties' expectations and risk allocations bar tort recovery, the court must consider the alleged facts. First, applying standard contract principles, it must ascertain the full scope of the parties' contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine **whether there is an independent tort duty to refrain from the alleged conduct**. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract. The guiding and distinguishing principle is this. **If the alleged breach is based on a failure to perform as the contract provides, and the parties reasonably anticipated and allocated the risks associated with the breach, the cause of action will generally sound only in**

contract because a breach deprives an injured party of a benefit it bargained for. However, if the contract reveals the consequences were not reasonably contemplated when the contract was entered and the duty to avoid causing such a harm has an independent statutory or public policy basis, exclusive of the contract, tort liability may lie. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 26 [324 Cal.Rptr.3d 433, 450–451, 553 P.3d 1213, 1228] (emphasis added).

The Court finds that Plaintiff has alleged facts demonstrating that Defendant has intentionally misappropriated company assets, which is outside the scope of a breach of contract claim. Defendant's purported actions were not reasonably contemplated when the contract was entered. The Court finds that the claim is not merely restating a contractual obligation but rather rests on an independent absolute duty owed to the property owner, i.e., the Company. <u>Defendant's demurrer is overruled as to the cause of action for Conversion</u>.

3. <u>Fraud and Intentional Misrepresentation and Fraudulent Concealment</u>

Defendant argues that Plaintiff's claims are barred by the economic loss rule, as Plaintiff failed to 1) allege the elements of the claim independently of the parties' contractual obligations; and 2) allege tortious conduct exposing the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract. Additionally, as the Operating Agreement waived all duties, no independent duty existed to support the fraudulent concealment claim.

Plaintiff argues that the economic loss rule does not bar the fraud and intentional misrepresentation and fraudulent concealment claims. Plaintiff alleges that the fraud and intentional misrepresentation claims are rooted in Defendant's intentional, affirmative, misrepresentations that his expenditure of Company funds was for a business purpose. As for fraudulent concealment, Defendant had an independent duty as an officer and fiduciary of the company which were independent to any obligations under the Operating Agreement to disclose his unauthorized use of company funds for personal use and for the benefit of his girlfriend, sons, friends, and companions. Additionally, the Complaint alleges fraudulent concealment resulting in harm that was beyond the reasonable contemplation of the Parties.

The economic loss rule does not bar fraud and intentional misrepresentation claims that are independent of breach of contract. *Robinson Helicopter Co., Inc. v. Dana Corp. (*2004) 34 Cal.4th 979, 991 [22 Cal.Rptr.3d 352, 360, 102 P.3d 268, 274].

> A breach of contract remedy assumes that the parties to a contract can negotiate the risk of loss occasioned by a breach. " '[W]hen two parties make a contract, they agree upon the rules and regulations which will govern their relationship; the risks inherent in the agreement and the likelihood of its breach. The parties to the contract in essence create a mini-universe for themselves, in which each voluntarily chooses his contracting partner, each trusts the other's willingness to keep his word and honor his commitments, and in which they define their

> respective obligations, rewards and risks. Under such a scenario, it is appropriate to enforce only such obligations as each party voluntarily assumed, and to give him only such benefits as he expected to receive; this is the function of contract law.' " (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 517, 28 Cal.Rptr.2d 475, 869 P.2d 454.) However, "[a] party to a contract cannot rationally calculate the possibility that the other party will deliberately misrepresent terms critical to that contract." (Tourek et al., *Bucking the "Trend": The Uniform Commercial Code, the Economic Loss Doctrine, and Common Law Causes of Action for Fraud and Misrepresentation* (1999) 84 Iowa L.Rev. 875, 894.) No rational party would enter into a contract anticipating that they are or will be lied to. *Id*. at 992-993.

A plaintiff may assert a tort claim for fraudulent concealment based on conduct occurring in the course of a contractual relationship, if the elements of the cause of action can be established independently of the parties' contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the agreement. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 38 [324 Cal.Rptr.3d 433, 461, 553 P.3d 1213, 1236–1237].

The Court finds that Plaintiff has alleged facts demonstrating that Defendant made misrepresentations that his use of Company funds was for a business purpose, which is outside the scope of a breach of contract claim. Defendant's purported actions were not reasonably contemplated when the contract was entered. Additionally, a duty exists independent of the Operating Agreement. Although the Operating Agreement waived all duties, the Wyoming LLC Act expressly prohibits an Operating Agreement from eliminating the contractual obligation of good faith and fair dealing. *Acorn v. Moncecchi* (Wyo. 2016) 386 P.3d 739, 754. As such, the fraud claims are not barred by the economic loss rule.

Defendant further alleges that the fraud claims fail because they are not pled with particularity. Defendant asserts that Plaintiff's identification of numerous expenditures it contends were improper, personal, unauthorized, or lacking a legitimate business purpose are conclusory and unsupported by any specifically alleged representation. Defendant asserts the Complaint does not identify what Defendant supposedly represented, to whom at the Company the representation was made, or when these alleged misrepresentations occurred.

Plaintiff asserts that the Complaint clearly alleges the "how, when, where, to, who, and by what means" fraudulent misrepresentations were made. Plaintiff argues that each time Defendant misused the Company credit card, he represented to the Company that the charge served a business purpose. Defendant's argument that the Complaint does not allege when the alleged misrepresentations occurred is false, as the Complaint alleges the date of each expense fraudulently incurred purportedly on Company's behalf.

When affirmative misrepresentation fraud is alleged, "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 43 [324 Cal.Rptr.3d 433, 465, 553 P.3d 1213, 1240]. California courts apply the same specificity standard to evaluate the factual underpinnings of a fraudulent concealment claim at the pleading stage, even though the focus of inquiry shifts to the unique elements of the claim. *Id*.

> The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 606, 172 Cal.Rptr.3d 218; see also CACI No. 1901.) A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) 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); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment). (Civ. Code, § 1710, subd. (3); *Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294, 85 Cal.Rptr. 444, 466 P.2d 996; *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336, 60 Cal.Rptr.2d 539; see generally, 5 Witkin, Summary of Cal. Law (11th ed. 2023) Torts §§ 913−919.) Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as "between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.] All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances." (*LiMandri,* at p. 337, 60 Cal.Rptr.2d 539.) "Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312, 213 Cal.Rptr.3d 82.). *Id*. at 40-41.

A misrepresentation need not be oral; it may be implied by conduct. *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1567 [54 Cal.Rptr.2d 468, 473]… For example, in *State v. Hamm* (Mo.Ct.App.1978) 569 S.W.2d 289, the defendant used the bank card and personal identification number (PIN) of another person to steal cash at an automatic teller machine. Rejecting the assertion he made no misrepresentation, the court noted defendant's use of the card and confidential PIN was an implied misrepresentation as to his identity. (*Id.* at pp. 290–291.) The same logic applies here. *Id*.

The Court finds that Plaintiff has provided numerous specific examples outlining transactions Defendant has engaged in that provide the requisite "how, when, where, to whom, and by what means the representations were tendered." Although no verbal representations were made by Defendant regarding these expenditures, by using the Company's funds for a personal purpose, Defendant made an implied misrepresentation as to the legitimacy of the expense. Additionally, as abovementioned, Defendant owed a duty to Plaintiff despite the waiver in the Operating Agreement. <u>Defendant's demurrer is overruled as to the causes of action for Fraud and Intentional Misrepresentation and Fraudulent Concealment.</u>

4. <u>Unjust Enrichment/Restitution and Money Had and Received</u>

Defendant argues that Plaintiff's claim for unjust enrichment fails because there is no standalone cause of action for unjust enrichment. Additionally, Plaintiff's claim for unjust enrichment is inconsistent with and precluded by the Operating Agreement. Defendant also asserts that Plaintiff's claim for money had and received fails because Plaintiff alleges that Defendant's authority to incur expenses, use Company funds, and seek reimbursement arose from and was governed by the Operating Agreement and related Company policies, which therefore bars recovery under quasi-contract theories.

Plaintiff argues that the Company may plead unjust enrichment and money had and received claims as an alternative to its contract claims in the event the court were to find that the operative contracts do not govern the misconduct alleged in the Complaint.

There is no cause of action in California for unjust enrichment. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." (L*auriedale Associates, Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448, 9 Cal.Rptr.2d 774.) Unjust enrichment is " 'a general principle, underlying various legal doctrines and remedies,' " rather than a remedy itself. (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315, 265 Cal.Rptr. 525.) It is synonymous with restitution. (*Id*. at p. 1314, 265 Cal.Rptr. 525.).) *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 [131 Cal.Rptr.2d 347, 357].

A plaintiff may plead inconsistent claims that allege both the existence of an enforceable agreement and the absence of an enforceable agreement. *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1389 [137 Cal.Rptr.3d 293, 331–332], as modified on denial of reh'g (Feb. 24, 2012). In *Klein*, the court found that plaintiffs' breach of contract claim pleaded the existence of an enforceable agreement and their unjust enrichment claim did not deny the existence or enforceability of that agreement. *Id.* Plaintiffs were therefore precluded from asserting a quasi-contract claim under the theory of unjust enrichment. *Id*.

Similarly here, Plaintiff's breach of the operating agreement claim pleaded the existence of an enforceable agreement and their unjust enrichment/restitution and money had and received claims do not deny the existence or enforceability of that agreement. As such, Plaintiff is precluded from asserting a quasi-contract claim under the theory of unjust enrichment/restitution or money had and received. <u>Defendant's demurrer as to the cause of action for Unjust Enrichment/Restitution and Money Had and Received is granted with leave to amend.</u>

5. <u>Accounting</u>

Defendant argues that a cause of action for accounting is not appropriate when Plaintiff has already asserted other claims which seek monetary damages for the same harm. Plaintiff does not allege these legal remedies are inadequate and the information sought is discoverable. The Complaint also undermines the accounting claim by alleging detailed knowledge regarding the challenged transactions, including dates, venues, account numbers, and estimated amounts owed.

Plaintiff argues an accounting is warranted because the amount of Company funds owed by Defendant cannot be determined without an accounting of all charges, receipts, travel records, card statements, reimbursements, etc. which charges and account transfers were used for non-business purposes and are subject to reimbursement. Although the Complaint alleges numerous improper charges, an accounting is needed to determine which expenses are legitimate business costs and which are not.

The nature of a cause of action in accounting is unique in that it is a means of discovery. An accounting is a "species of disclosure, predicated upon the plaintiff's legal inability to determine how much money, if any, is due." (1A Corpus Juris Secundum, *supra,* Accounting, § 6, pp. 7–8, fn. omitted.) Thus, the purpose of the accounting is, in part, to discover what, if any, sums are owed to the plaintiff, and an accounting may be used as a discovery device. (1A Corpus Juris Secundum, *supra,* Accounting, § 26, p. 26.). *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 180 [92 Cal.Rptr.3d 696, 716].

An action for an accounting has two elements: (1) "that a relationship exists between the plaintiff and defendant that requires an accounting" and (2) "that some balance is due the plaintiff that can only be ascertained by an accounting." (*Teselle*, *supra*, 173 Cal.App.4th at p. 179, 92 Cal.Rptr.3d 696; see also 5 Witkin, Cal. Procedure, *supra*, Pleading, § 820.) The action carries with it an inherent limitation; an accounting action "is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." (*Teselle*, at p. 179, 92 Cal.Rptr.3d 696; see also *St. James Church of Christ Holiness v. Superior*

Court of Los Angeles County (1955) 135 Cal.App.2d 352, 359, 287 P.2d 387.) *Sass v. Cohen* (2020) 10 Cal.5th 861, 869 [272 Cal.Rptr.3d 836, 842, 477 P.3d 557, 562].

There is no dispute that a relationship exists between the Parties that requires an accounting. Despite the Complaint providing detailed estimations of the purported damages which are recoverable under the separate causes of action, Plaintiff alleges the exact amount owed can only be ascertained with an accounting, as Defendant has access to records unavailable to Plaintiff. Without an accounting, Plaintiff cannot affirmatively calculate their damages. <u>Defendant's demurrer as to the Accounting cause of action is overruled</u>.

6. <u>Declaratory Relief Regarding Non-Exculpation, Non-Indemnification, and Offset Rights</u>

Defendant argues that Plaintiff seeks a declaration that he improperly used Company funds and a determination regarding redemption of shares and indemnity; however, whether Defendant breached the Operating Agreement or improperly used funds relates to prior conduct that is already addressed in Plaintiff's other causes of action which will determine the Parties' rights and obligations upon resolution, making declaratory relief unnecessary. Additionally, Plaintiff has failed to allege Defendant has asserted a claim for indemnity or that Plaintiff has issued a notice of redemption which would give rise to a ripe dispute regarding those issues.

Plaintiff argues declaratory relief is available because the Company seeks a declaration that Defendant is not protected by the Operating Agreement's liability limitations based on his fraudulent misconduct, and that the Company may, in exercising its right to redeem Defendant's shares in the Company, offset any amounts Defendant owes the Company. Plaintiff's claim is not only based upon Defendant's past conduct, but also ongoing disputes over the Company's right to redeem his units without offset.

California Code of Civil Procedure § 1060 permits any person to bring an action for a declaration of rights or duties in cases of actual controversy relating to the legal rights and duties of the respective parties, and the declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought. However, under § 1061, the court may refuse to exercise the power granted by the declaratory relief chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.

In *Dominguez v. Bonta*, the court affirmed that declaratory relief is not appropriate where it merely restates issues already addressed by other causes of action and no additional facts are alleged in the declaratory relief cause of action. (2022) 87 Cal.App.5th 389, 418 [303 Cal.Rptr.3d 115, 140], as modified (Jan. 6, 2023).

Here, Plaintiff seeks declaratory relief not only regarding past conduct relating to the breach of the Operating Agreement, but also continuing rights under the Operating Agreement. This includes whether Defendant is entitled to invoke the Operating Agreement's duty waiver, limited-liability provisions, exculpation provisions, indemnity provisions, or reimbursement provisions, whether the Company has the contractual right to redeem Defendant's membership interest, and whether the Company may offset damages against redemption proceeds. As such, Plaintiff's claim is not duplicative of other causes of action.

The two-pronged test for ripeness has also been described as follows: "(1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer hardship if judicial consideration is withheld." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 64 [24 Cal.Rptr.3d 72].) *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 418 [303 Cal.Rptr.3d 115, 140], as modified (Jan. 6, 2023).

Plaintiff plead that it is authorized to exercise its right of redemption of Defendant's membership interest in and to the Company pursuant to the Operating Agreement and First Amendment to the Operating Agreement, which it intends to do and will offset all amounts payable to Defendant. In addition, Plaintiff plead that Defendant contends he is 1) protected by the Operating Agreement's duty waiver, limited-liability provisions, exculpation provision, indemnity provisions, or reimbursement provisions; 2) his conduct does not constitute a breach of the Operating Agreement, breach of Company policies, fraud, bad faith, gross negligence, willful misconduct, conversion, and/or personal use; 3) he is entitled to indemnity defense, reimbursement, exculpation, or advancement for the challenged conduct; 4) the Company is not entitled to redeem Defendant's membership interest in and to the Company; and 5) the Company is not entitled to offset any amounts owed to him by the Company.

Accepting these allegations as true, the Court finds that the Complaint sufficiently alleges a ripe dispute. <u>Defendant's demurrer as to the Declaratory Relief Regarding Non-Exculpation, Non-Indemnification, and Offset Rights cause of action is overruled</u>.

7. <u>Constructive Trust/Equitable Lien</u>

Defendant argues that the allegations merely restate factual assertions underlying Plaintiff's other causes of action, as the alleged property which Plaintiff seeks to impose a constructive trust or equitable lien consists of the same Company funds, benefits, and other value that form the basis of Plaintiff's contracts and tort claims. No separate legal duty, independent wrongful act, or distinct basis for liability to support a standalone claim is identified in the Complaint. Plaintiff seeks a remedy that is derivative to the underlying causes of action.

Plaintiff argues that the Company has not asserted constructive trust and equitable lien claims as standalone theories of liability, but rather as remedies attached to the underlying claims.

The Complaint asserts an "Eleventh Cause of Action – Constructive Trust/Equitable Lien." The imposition of a constructive trust or equitable lien are remedies, not claims for relief. Plaintiff's Prayer for Relief seeks the imposition of a constructive trust/and or equitable lien which is an appropriate basis of relief to be requested. As such, <u>Defendant's demurrer as to the Constructive</u>

Trust/Equitable Lien cause of action is sustained without leave to amend, finding the requested relief is duplicative in Plaintiff's prayer for relief.

8. Civil Theft/Receipt, Concealment, or Withholding of Stolen Property Under California Penal Code § 496(c)

Defendant argues the Complaint does not allege facts sufficient to establish theft because California's civil theft statute requires more than allegations that property was obtained, retained, or used without authorization. Plaintiff must allege facts establishing the elements of theft, including the requisite felonious intent, which it fails to do.

Plaintiff argues that the Complaint details how Defendant acted with intent to obtain company property through theft, which can be inferred from his pattern of misconduct over several years where he used company resources for personal use based on the false pretense that his expenses were for business purposes. Such allegations reflect an intent to steal company property.

Defendant further alleges that Plaintiff's request for treble damages pursuant to Penal Code § 496(c) are time barred by a one-year statute of limitations to the extent any claim for treble damages accrued prior to April 28, 2025. To the extent the Court concludes that Defendant's challenge to Plaintiff's claims for treble damages are more appropriately raised by motion to strike than demurrer, Defendant requests the Court construe his Demurrer as a Motion to Strike.

Plaintiff asserts that the issue of whether certain damages are time-barred is a question of fact not appropriate for demurrer and as the Complaint alleges the conduct occurred within the limitations period, the cause of action cannot be dismissed in whole or in part.

[T]o sustain a conviction for receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property." (*People v. Land* (1994) 30 Cal.App.4th 220, 223, 35 Cal.Rptr.2d 544; see also CALCRIM No. 1750.) *Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 970 [236 Cal.Rptr.3d 641, 653], as modified (Aug. 14, 2018).

A fraudulent intent can be inferred from the circumstances surrounding the transactions. *People v. Selivanov* (2016) 5 Cal.App.5th 726, 750 [210 Cal.Rptr.3d 117, 140], as modified on denial of reh'g (Dec. 13, 2016). In *Selivanov*, the court found that the defendants' use of their employer's credit cards for personal charges which were documented as business expenses were sufficient to establish fraudulent intent. *Id*. at 751-751.

The Court finds that Plaintiff adequately plead the required elements of theft. Plaintiff's cause of action realleges and incorporates its allegations regarding Defendant's alleged misuse of company funds for personal expenditures. Such allegations are sufficient to infer fraudulent intent. Additionally, Plaintiff's cause of action limits treble damages "subject to applicable limitations and proof." Defendant's demurrer as to the Civil Theft/Receipt, Concealment, or

Withholding of Stolen Property Under Penal Code § 496(c) is denied. Defendant's request to construe his Demurrer as a Motion to Strike treble damages is denied, finding the request for treble damages is requested subject to the statute of limitations.

TENTATIVE RULING #15:

DEFENDANT'S DEMURRER IS OVERRULED AS TO THE CAUSES OF ACTION FOR BREACH OF OPERATING AGREEMENT AND COMPANY EXPENSE POLICIES, CONVERSION, FRAUD AND INTENTIONAL MISREPRESENTATION, FRAUDULENT CONCEALMENT, ACCOUNTING, DECLARATORY RELIEF, CIVIL THEFT/RECEIPT, CONCEALMENT, OR WITHHOLDING OF STOLEN PROPERTY UNDER PENAL CODE § 496(C).

DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AS TO THE CAUSES OF ACTION OF UNJUST ENRICHMENT/RESTITUTION AND MONEY HAD AND RECEIVED.

DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND AS TO THE CAUSE OF ACTION FOR CONSTRUCTIVE TRUST/EQUITABLE LIEN.

DEFENDANT'S REQUEST TO TREAT DEFENDANT'S DEMURERR AS A MOTION TO STRIKE TREBLE DAMAGES IS DENIED.

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

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.