1.	24CV0934	GLEN METCALF ET AL VS. YANASA, INC. ET AL
DEMURRER		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON AUGUST 28, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Pursuant to Code of Civil Procedure § 430.10(e), Defendants, Yanasa, Inc., a domestic corporation, and Aziz Shariat, an individual ("Defendants"), demurrer to Plaintiffs', Glen Metcalf, an individual dba Metcalf Family Sports, Damon Maraschino, an individual, Neil Bernoudy, an individual dba Bernoudy Machining, Mountain Specialties, Inc., a domestic corporation, and Andrew Horvath, an individual, and Danny B. Hall, an individual ("Plaintiffs"), First Amended Complainant ("FAC"). On July 13, 2026, Plaintiffs 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 Mark T. Lobre, counsel attempted to meet and confer with Plaintiffs prior to filing, but the dispute could not be resolved.

Background

Plaintiffs filed the FAC on June 12, 2026, alleging causes of action for 1) Breach of Lease Contract, Constructive Eviction; 2) Breach of Lease Contract, Mediation Provision; 3) Negligence; and 4) Breach of Unfair Competition Law (Maraschino v. Defendants).

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

Defendants demurrer to the first, second, and third causes of action, and thus the entire FAC with respect to Plaintiff Danny Brett Hall ("Plaintiff Hall") pursuant to Code of Civil Procedure § 430.10, as the complaint does not state facts sufficient to constitute a cause of action with respect to Plaintiff Hall.

1. First and Second Causes of Action – Breach of Lease Contract, Constructive Eviction and Breach of Lease Contract, Mediation Provision

Defendants argue that Plaintiff Hall is not a party to the subject contract and cannot enforce it, nor is he an intended beneficiary.

Code of Civil Procedure § 1159 provides that a contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Third parties claiming the right to performance under an agreement made by others are classified as either intended or incidental beneficiaries of the contract. As explained in the Restatement Second of Contracts: "An incidental beneficiary is a beneficiary who is not an intended beneficiary." (Rest.2d Contracts, § 302(2), p. 440.) As used in Civil Code section 1559, the "word 'expressly' ... has now come to mean merely the negative of 'incidentally.' " (*Gilbert Financial Corp. v. Steelform Contracting Co.* (1978) 82 Cal.App.3d 65, 70, 145 Cal.Rptr. 448; accord, *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1232–1233, 18 Cal.Rptr.3d 178 (*Prouty*).) *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1022 [90 Cal.Rptr.3d 453, 468].

> In *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 243 Cal.Rptr.3d 299, 434 P.3d 124 (*Goonewardene*) the Supreme Court established a three-part test to determine whether an individual or entity that is not a party to a contract may bring a breach of contract action against a party to the contract as a third party beneficiary. (*Id.* at p. 821, 243 Cal.Rptr.3d 299, 434 P.3d 124.) That test requires the third party to establish "**not only (1) that it is likely to benefit from the contract, but also (2) that a motivating purpose of the contracting parties is to provide a benefit to the third party, and further (3) that permitting the third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties.**" (*Ibid*.; see *Wexler v. California FAIR Plan Assn.* (2021) 63 Cal.App.5th 55, 65, 277 Cal.Rptr.3d 398 (*Wexler*). "All three elements must be satisfied to permit the third party action to go forward." (*Goonewardene*, at p. 830, 243 Cal.Rptr.3d 299, 434 P.3d 124.)
>
> In applying this test, the court may look to "**the express provisions of the contract at issue, as well as all of the relevant circumstances under which the contract was agreed to**." (*Goonewardene, supra*, 6 Cal.5th at p. 830, 243 Cal.Rptr.3d 299, 434 P.3d 124; see *Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 437, 204 Cal.Rptr. 435, 682 P.2d 1100 [considering evidence of the circumstances and negotiations of the parties to a contract to determine whether the parties intended the plaintiff to benefit from the contract]; *Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 349, 87 Cal.Rptr.2d 856 [same].) **In general, courts resolve doubts against the existence of a third party beneficiary**. (*Wexler*, *supra*, 63 Cal.App.5th at p. 66, 277 Cal.Rptr.3d 398; *Shaolian v. Safeco Ins. Co.* (1999) 71 Cal.App.4th 268, 275, 83 Cal.Rptr.2d 702.) (emphasis added)
>
> *City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 472–473 [299 Cal.Rptr.3d 463, 473–474]

As an employee of Mountain Specialties, Plaintiff Hall was likely to benefit from the contract. However, the Court does not find that the FAC contains facts to support there was a motivating purpose of the contracting parties to provide a benefit to Plaintiff Hall, nor would permitting Plaintiff Hall to bring his own breach of contract action against Defendants be consistent with the objectives of the contract and the reasonable expectations of the contracting parties. <u>Defendants' demurrer to the First and Second Causes of Action is sustained with leave to amend</u>.

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2. Third Cause of Action - Negligence

Defendants further allege that any negligence claim is barred because Defendants did not owe a duty to Plaintiff Hall, who was an employee of his father, Plaintiff Horvath.

Civil Code § 1714 establishes the general duty of ordinary care owed by every person to others. This duty is extended to landlords with respect to persons on the premises. *See Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1190 [43 Cal.Rptr.2d 836, 838, 899 P.2d 905, 907]; *Muro v. Superior Court* (1986) 184 Cal.App.3d 1089, 1098 [229 Cal.Rptr. 383, 389].

The Court finds that the FAC pleads facts sufficient to show Defendants owed a duty to Plaintiff Hall. Defendants' demurrer to the Third Cause of Action for Negligence is overruled.

TENTATIVE RULING #1:

DEFENDANTS' DEMURRER TO PLAINTIFFS' FIRST AND SECOND CAUSES OF ACTION IS SUSTAINED WITH LEAVE TO AMEND. DEFENDANTS' DEMURRER TO PLAINTIFFS' THIRD CAUSE OF ACTION IS OVERRULED.

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.	**24CV1721**	**BRETT BIRKELAND V. PROEQUITY ASSET MANAGEMENT CORPORATION**
MOTION TO BIFURCATE; MOTION TO COMPEL FURTHER RESPONSES		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON AUGUST 28, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Before the Court are two motions: 1) Plaintiff's Motion to Compel Further Responses to Requests for Production of Documents; and 2) Defendant's Motion to Bifurcate Breach of Contract Causes of Action from Corporation Code 2000 Valuation. On June 12, 2025, the Court ordered the Parties to meet and confer and file a joint status report regarding both motions. In compliance with the Court's order, the Parties filed a Joint Statement on August 7, 2026.

MOTION TO COMPEL

The Parties indicate that the requests at issue included: 18, 25, 26, 30, 31, 35, 38, 39, 43, 47, 49, 52-54, 66-71. Plaintiff has received documents from Defendant related to requests 18, 25, 26, 30, 31, 43, and 54 which Plaintiff has been unable to review. Plaintiff and Defendant agree to withdraw Plaintiff's motion to compel these specified requests while reserving Plaintiff's rights to move to compel compliance at a later date, if necessary. Plaintiff further agrees to withdraw request numbers 39, 52, 66, 68 and 70, and no longer presses request numbers 38, 47, 49, and 53. The remaining disputed requests are for numbers 67, 69, and 71:

REQUEST FOR PRODUCTION NO. 67: DOCUMENTS RELATING TO PROEQUITY'S purchase of PLAINTIFF'S shares in PROEQUITY.

RESPONSE TO REQUEST FOR PRODUCTION NO. 67: Responding Party objects to this request as it is uncertain, overbroad, unduly burdensome, and is unlimited in subject matter and scope. Responding Party objects to Propounding Party's request to the extent it seeks impermissible information protected by attorney-client privilege and/or the attorney work product doctrine by its definition. Responding Party further objects to this Request for Production of Document to the extent it seeks information protected by third-party privacy rights, and/or confidential information protected by constitutional, statutory, or common law rights of privacy, including tax and financial privacy rights. Responding Party objects to this request to the extent it seeks information that is protected by attorney-client privilege and/or attorney work product doctrine. Responding Party PROEQUITY responds as follows: Responding Party will produce all responsive, non-privileged documents in its possession, custody, or control.

SUPPLEMENTAL RESPONSE TO REQUEST NO. 67: ProEquity Asset Management Corporation never purchased Plaintiff's shares in the Corporation. The documents responsive to this Request relate to the negotiations and drafts of the Separation Agreement concerning a potential purchase, which was never executed. Those documents are the same documents responsive to Requests for Production Nos. 3, 5, and 7, and were produced to Plaintiff on April 3, 2026. Production as to this Request is complete.

The Court finds that Defendant's supplemental response is sufficient. The request seeks documents relating to Defendant's purchase of Plaintiff's shares in ProEquity. Defendant responded that Defendant never purchased Plaintiff's shares – therefore, no such documents exist. Plaintiff's request is denied.

REQUEST FOR PRODUCTION NO. 69: DOCUMENTS RELATING TO PROEQUITY'S delivery to PLAINTIFF of the Settlement Statement and payments due to PLAINTIFF thereunder, as referenced in the SEPARATION AGREEMENT.

RESPONSE TO REQUEST FOR PRODUCTION NO. 69: Responding Party objects to this request as it is uncertain, overbroad, unduly burdensome, and is unlimited in subject matter and scope. Responding Party objects to the extent propounding party seeks to impermissible information protected by attorney-client privilege and/or the attorney work product doctrine by its definition. Responding Party further objects to this Request for Production of Document to the extent it seeks information protected by third-party privacy rights, and/or confidential information protected by constitutional, statutory, or common law rights of privacy, including tax and financial privacy rights. Responding Party PROEQUITY responds as follows: Responding Party will produce all responsive, non-privileged documents in its possession, custody, or control.

SUPPLEMENTAL RESPONSE TO REQUEST NO. 69: The SEPARATION AGREEMENT was never executed. Because no separation agreement was executed, no Settlement Statement was delivered to Plaintiff and no payments became due to Plaintiff thereunder, and after a diligent search and reasonable inquiry Responding Party is unable to comply with this Request because no documents responsive to it have ever existed. The drafted separation agreement and the documents relating to it were produced to Plaintiff on April 3, 2026 in response to Requests for Production Nos. 3, 5, and 7.

The Court finds that Defendant's supplemental response is sufficient. The request seeks documents relating to Defendant's delivery to Plaintiff of the Settlement Statement and payments due to Plaintiff as referenced in the Separation Agreement. Defendant responded that as the Separation Agreement was never executed, no Settlement Statements and payments were delivered to Plaintiff – therefore, no such documents exist. Plaintiff's request is denied.

REQUEST FOR PRODUCTION NO. 71: DOCUMENTS RELATING TO PRO EQUITY'S delivery to PLAINTIFF of the executed purchase promissory note referenced in the SEPARATION AGREEMENT.

RESPONSE TO REQUEST FOR PRODUCTION NO. 71: Responding Party objects to this request as it is uncertain, overbroad, unduly burdensome, and is unlimited in subject matter and scope. Responding Party objects to the extent propounding party seeks information protected by attorney-client privilege and/or the attorney work product doctrine by its definition. Responding Party further objects to this Request for Production of Document to the extent it seeks information protected by third-party privacy rights, and/or confidential information protected by constitutional, statutory, or common law rights of privacy, including tax and financial privacy rights. Responding Party objects to this request to the extent it seeks information that is protected by attorney-client privilege and/or attorney work product doctrine. Responding Party PROEQUITY responds as follows: Responding Party will produce all responsive, non-privileged documents in its possession, custody, or control.

SUPPLEMENTAL RESPONSE TO REQUEST NO. 71: The SEPARATION AGREEMENT was never executed. A purchase promissory note was drafted in connection with the proposed separation, but that note was never agreed to, was never executed, and was never delivered to Plaintiff. Because no executed note came into existence, no documents relating to its delivery have ever existed, and after a diligent search and reasonable inquiry Responding Party is unable to comply with this Request. The drafted promissory note, the drafted separation agreement, and the documents relating to them were produced to Plaintiff on April 3, 2026 in response to Requests for Production Nos. 3, 5, and 7.

The Court finds that Defendant's supplemental response is sufficient. The request seeks documents relating to Defendant's delivery to Plaintiff of the executed purchase promissory note referenced in the Separation Agreement. Defendant responded that as the Separation Agreement was never executed, no promissory note was executed or delivered to Plaintiff – therefore, no such documents exist. Plaintiff's request is denied.

Sanctions

Plaintiff's request for sanctions is denied.

MOTION TO BIFURCATE

The Parties met and conferred yet were unable to reach an agreement regarding Defendant's motion for bifurcation. Defendant moves for an order bifurcating the trial pursuant to Code of Civil Procedure §§ 598 and 1048(b).

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Background

Plaintiff's Complaint filed on August 7, 2024, asserts causes of action for 1) Involuntary Dissolution of ProEquity Pursuant to Corporations Code § 1800(b)(4); 2) Involuntary Dissolution of ProEquity Pursuant to Corporations Code § 1800(b)(5); 3) Accounting; 4) Books and Records Demand for Inspection under California Corporations Code § 1601; 5) In the Alternative to Involuntary Corporate Dissolution – Breach of Contract; 6) In the Alternative to Involuntary Corporate Dissolution – Breach of Implied Covenant of Good Faith and Fair Dealing.

Defendant moves to bifurcate the causes of action at trial and seeks the following sequence:

> PHASE ONE: Jury Trial on Plaintiff's Fifth and Sixth Causes of Action ("In the Alternative to Dissolution, Breach of Contract" and "In the Alternative to Dissolution, Breach of Implied Contract of Good Faith and Fair Dealing") to determine whether there exists an enforceable contract for the purchase of Plaintiff's minority shareholder interest in ProEquity Asset Management (the "Contract Claims"). If the pled contract for purchase of the minority interest of plaintiff is held enforceable, then the case proceeds to either performance or enforcement of the judgment. If the pled contract for purchase of the minority interest of plaintiff is found unenforceable, then the case proceeds to Phase Two, relating to the non-jury involuntary dissolution causes of action.
>
> PHASE TWO: Plaintiff's First and Second Causes of Action seek involuntary dissolution of Defendant based on facts alleging violation of Corporation Code sections 1800 (b)(4) and (5) ('Dissolution Claims"). Section 1800 actions are statutory "special proceedings" tried before the Court. While Section 1800 allows minority shareholders to file for involuntary dissolution of a company, Section 2000 provides a mechanism for majority shareholders to avoid this by purchasing the minority's shares at "fair value". Section 2000 functions as a buyout alternative to avoid the court-ordered liquidation and 5 forced sales. Defendant elects this statutory process to "buy-out" the plaintiff at "fair value".

Legal Principles

The Court is vested with the discretion to separate issues at trial. Code of Civil Procedure § 1048(b) provides:

> The court, in **furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy**, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States. (emphasis added)

Similarly, Code of Civil Procedure § 598 instructs that the court may order that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof when the **convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted**.

Discussion

Defendant argues that trying the Contract Claims (the Fifth and Sixth Causes of Action) first promotes judicial economy because the most complex and expensive discovery and the most challenging-to-try elements are those that may be rendered moot after a decision on the more easily tried, less expensive to prepare contract issues. Bifurcation will promote judicial economy and efficiency by not wasting Court and party resources on the Dissolution Claims (the First and Second Causes of Action) if the trial on the Contract Claims resolves the case and if not, the remaining issues are handled without a jury. Lastly, Defendant argues that bifurcation is appropriate here where doing so promotes efficiency and serves the ends of justice, which favors allowing the Parties and the Court to resolve the threshold contract question – which may fully resolve the dispute – before embarking on the complex, time-consuming, and expensive dissolution proceeding.

Plaintiff argues that the motion should be denied, as discovery is far from complete which is necessary to obtain the required substantial information needed to determine what evidence is relevant to each cause of action and thereby whether such evidence only need to be presented once in a single phase should trial be bifurcated. In addition, bifurcation will not promote judicial economy, as there is significant overlap between the two categories of cases. Both the Contract and Dissolution claims are based on the same facts, wrongdoings, and mismanagement, as well both claims have the same witnesses.

Bifurcation would increase legal fees, as the Parties would have to again engage in discovery, trial preparation, trial on the additional phases, law and motion hearings, case management conferences, and trial. While awaiting trial, Plaintiff is prejudiced as the value of his stock potentially diminishes daily. Plaintiff further argues that regardless of the outcome of the Contract Claims, Plaintiff will seek dissolution of Defendant which will require an adjudication of the Dissolution Claims. Lastly, Defendant's motion does not address Plaintiff's Third or Fourth Causes of Action.

The Court finds that there is substantial overlap between the Contract Claims and Dissolution Claims wherein bifurcation would not promote the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation. Defendant's motion to bifurcate is denied.

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TENTATIVE RULING #2:

PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES AND REQUEST FOR SANCTIONS IS DENIED.

DEFENDANT'S MOTION TO BIFURCATE 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.

3.	**25CV2710**	**L.A. COMMERCIAL GROUP, INC., A CORPORATION VS. HANGTOWN BODY SHOP LLC, A LIMITED LIABILITY COMPANY ET AL**
MOTION TO ENFORCE SETTLEMENT AGREEMENT		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 11, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

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, L.A. Commercial Group, Inc., a Corporation, dba Continental Commercial Group ("Plaintiff"), seeks to enforce the settlement agreement pursuant to CCP § 664.6. No response has been filed by Defendants, Hangtown Body Shop LLC, a Limited Liability Company, Steven Joseph Smith, an individual, and Deva Ann Smith, an individual ("Defendants").

The Parties entered into a Mutual Release Agreement ("Settlement Agreement") on January 15, 2026, which provided Defendants were to render payment of $14,860.60 to Plaintiff in installments of $743.03/month effective January 15, 2026, and on the 15th of each month thereafter. The Parties agreed that the Court shall retain jurisdiction over the Parties to enforce the terms of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6 and to retain jurisdiction until final performance.

Plaintiff alleges that Defendants failed to make the payment due on May 15, 2026, leaving a remaining balance of $11,888.48. Plaintiff seeks the entry of Judgment against Defendants in the amount of $11,888.48, plus costs in the amount of $60.00 for having to bring the motion, and attorney's fees in the amount of $400.00, for a total Judgment in the amount of $12,348.48 in favor of Plaintiff and against Defendants.

Paragraph 13 instructs that should a party retain counsel due to breach of the Settlement Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all attorney's fees, costs, and expenses.

TENTATIVE RULING #3:

PLAINTIFF'S REQUEST TO ENFORCE THE SETTLEMENT AGREEMENT AND ENTER JUDGMENT AGAINST DEFENDANTS IS GRANTED. JUDGMENT SHALL BE ENTERED AGAINST DEFENDANTS IN THE AMOUNT OF $12,348.48, COMPRISED OF THE OUTSTANDING BALANCE ($11,888.48) AND ATTORNEYS' FEES AND COSTS ($460.00).

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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4.	**25CV2822**	**YOSEF ZAGHI VS. EVOLVE MANAGEMENT EXPERTS, LLC ET AL**
DEMURRER		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 11, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Pursuant to Code of Civil Procedure § 430.10(e), Defendants, Evolve Management Experts, LLC, a California limited liability company, and Clayton Adler, an individual (collectively "Defendants"), demurrer to Plaintiff's, Pedram Joseph Zaghi, an individual ("Plaintiff"), First Amended Complainant ("FAC"). On August 3, 2026, Plaintiff filed an opposition. Defendants filed a Reply on August 7, 2026.

JUDICIAL NOTICE

Defendants ask the Court to take judicial notice of 1) Notice of Stay of Proceedings; 2) the docket in *In re Clayton Alan Adler*, United States Bankruptcy Court for the Eastern District of California, Case No. 2:26-bk-22822; 3) Client Agreement between Defendant Evolve and Plaintiff (the "Agreement"). Plaintiff additionally asks the Court to take judicial notice of the Agreement attached to the Complaint filed on October 21, 2025.

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

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

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].

Although the *existence* of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable. (*StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9, 84 Cal.Rptr.2d 843, 976 P.2d 214.) *StorMedia* stated: "In ruling on a demurrer, a court may consider facts of which it has taken judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) This includes the existence of a document. When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable. (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [228 Cal.Rptr. 878].)" (*Ibid.*) *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113 [55 Cal.Rptr.3d 621, 633].

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

As Plaintiff also requests judicial notice of the Agreement attached to Plaintiff's original Complaint which is the same as attached to Defendant's Request for judicial Notice, the Court grants the requests to take judicial notice of the Agreement for the limited purpose of establishing the existence and terms of the Agreement as referenced in the pleadings.

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

Background

Plaintiff filed the FAC on December 2, 2025, alleging causes of action for 1) Intentional Misrepresentation; 2) Breach of Contract; 3) Unfair Competition (Bus. & Prof. Code § 17200); and 4) Breach of Implied Warranty of Fair Dealing.

On May 16, 2026, Defendant Adler filed a voluntary petition under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Case No. 2:26-bk-22822. A Notice of Stay of Proceedings was filed by Defendant Adler on May 22, 2026.

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.)

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Discussion

Defendants demurrer to all causes of action pursuant to Code of Civil Procedure § 430.10(e), as the FAC does not state facts sufficient to constitute a cause of action.

1. Automatic Stay

Plaintiff argues that as Defendant Adler has filed for bankruptcy and a stay is in place, the Court should take the demurrer off calendar as to Defendant Adler and hear and decide it as to Defendant Evolve only.

Upon filing of a voluntary bankruptcy petition, 11 U.S.C. § 362(a)(1) operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case.

Significantly, "the automatic stay of judicial proceedings against a debtor in bankruptcy does not apply to nondebtor codefendants." (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 365, fn. 2, 127 Cal.Rptr.3d 903 (*Cross*); accord, *Danko v. O'Reilly* (2014) 232 Cal.App.4th 732, 748, 181 Cal.Rptr.3d 304 (*Danko*) [" 'automatic stay does not ... apply to nondebtor entities such as ... *codefendants*' "].) As a general rule, therefore, because "the automatic stay protects only the *debtor*," the "[b]ankruptcy of one defendant in a multidefendant case does not stay the case as to the remaining defendants." (March et al., Cal. Practice Guide: Bankruptcy (The Rutter Group 2016) ¶ 8:100, p. 8(I)-8, ¶ 8:125, p. 8(I)-11 [citing federal authorities].) *Higgins v. Superior Court* (2017) 15 Cal.App.5th 973, 979–980 [224 Cal.Rptr.3d 11, 16], as modified (Sept. 28, 2017).

As there is a stay in place, the demurrer is taken off calendar as to Defendant Adler.

2. First Cause of Action – Intentional Misrepresentation

Defendants argue that the FAC does not contain the required specificity, as it does not provide specifications as to how the representation was made, in what context and via what method. Plaintiff argues the specificity requirement is met.

The well-established common law elements of fraud which give rise to the tort action for deceit are: (1) misrepresentation of a material fact (consisting of false representation, concealment or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to deceive and induce reliance; (4) justifiable reliance on the misrepresentation; and (5) resulting damage. *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 481 [80 Cal.Rptr.2d 329, 354], as modified on denial of reh'g (Jan. 6, 1999).

In California, fraud must be pled specifically; general and conclusory allegations do not suffice. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74, 269 Cal.Rptr. 337; *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268, 258 Cal.Rptr. 787; 5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 662, pp. 111–112.) "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] **This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered**." (*Stansfield*, supra, 220 Cal.App.3d at p. 73, 269 Cal.Rptr. 337, italics in original.) **A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written."** (*Tarmann v. State Farm Mutual Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157, 2 Cal.Rptr.2d 861.) *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 [49 Cal.Rptr.2d 377, 385, 909 P.2d 981, 989] (emphasis added).

The Court finds the FAC alleges the elements for intentional misrepresentation with the required specificity.

Defendants further argue that Plaintiff's allegation that Defendant Evolve's services would be different and improved from those of ExecTech are superlatives that do not qualify as misrepresentations. Plaintiff argues that Defendant Evolve's materials were nearly identical copies, which is not a matter of taste and is accordingly actionable.

"[A]dvertising which merely states in general terms that one product is superior is not actionable." *Smith–Victor,* 242 F.Supp. at 308. "However, misdescriptions of specific or absolute characteristics of a product are actionable." *Stiffel,* 658 F.Supp. at 1115. *Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service Inc.* (9th Cir. 1990) 911 F.2d 242, 246.

The FAC alleges that Defendant Evolve's services would be different and improved from those of ExecTech but much of Defendant Evolve's materials were nearly identical copies of ExecTech materials. The Court finds that such specific allegations are actionable.

Lastly, Defendants argue that Plaintiff will never be able to provide this representation was false because whether Defendant Evolve's services were an improvement over ExecTech's is subjective. Plaintiffs argue that Defendants' subjectivity argument presents a factual issue that cannot be resolved on demurrer.

The Court finds that Defendants' subjectivity argument is a question of fact that is not properly resolved on demurrer.

<u>The Court overrules Defendants' demurrer as to the First Cause of Action</u>.

3. <u>Second Cause of Action – Breach of Contract</u>

Defendants argue that Plaintiff's allegation that "several of the essential services Evolve promised and contracted for were either not provided at all, or were provided in such a minimal manner as to make them essentially worthless" also fails because the Agreement provides no guarantee of any particular services, as it used verbiage such as that Defendant Evolve "agrees to provide to Client a consulting program that *may* include, but is not limited to…"

Plaintiff contends that Defendants conceded that the Agreement obligated Defendant Evolve to provide "a consulting program" and the "may include" language identifies potential subject areas within the program. Whether what it delivered was a consulting program at all, or was instead so minimal as to be worthless, is a question of fact.

The elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821 [124 Cal.Rptr.3d 256, 263, 250 P.3d 1115, 1121].

Section 1 of the Agreement provides (emphasis added):

> 1. Management Consulting Program**. Evolve agrees to provide to Client a consulting program that may include**, but is not limited to: marketing, motivation systems for client and client's staff, methods of increasing existing production, procedures to increase staff responsibilities, advice on duties, goal setting, planning, plan execution, financial management, and problem solving to increase client profitability and freedom from time restraints. Additional topics to address and services to be provided by Evolve are outlined in Attachment "Evolve Proposal" which by reference is made a part of this Agreement.

Under the terms of the Agreement, Defendant Evolve agreed to provide Plaintiff a consulting program. The "may include" language identifies potential service areas within that program; it does not eliminate the core contractual obligation to actually deliver a consulting program of some meaningful substance. Plaintiff has alleged that several of the services Defendant Evolve promised and contracted for were either not provided at all, or were provided in such a minimal manner as to make them essentially worthless. Whether what Defendant Evolve delivered constituted a consulting program at all — or was instead so minimal as to be worthless — is a question of fact that cannot be resolved on demurrer.

<u>Defendants' demurrer as to the Second Cause of Action is overruled</u>.

4. <u>Third Cause of Action – Unfair Competition</u>

Defendants argue that because Plaintiff has not sufficiently alleged causes of action for fraud or breach of contract, the UCL claim fails because it explicitly incorporates and relies upon these allegations.

Plaintiff argues that not only are the first and second causes of action adequately pleaded to support the UCL claim, but it is also independently sufficient.

> As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. Bus. & Prof. Code, § 17200.
>
> Where a complaint alleges conduct that is fraudulent, unlawful, and unfair, and the UCL cause of action incorporates the allegations of all other causes of action, the court must read the complaint as a whole and its parts in their context. *Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1386 [108 Cal.Rptr.3d 669, 679].

The Court finds that the FAC sufficiently alleged facts for an unfair competition cause of action. <u>Defendants' demurrer as to the Third Cause of Action is overruled</u>.

5. <u>Fourth Cause of Action – Breach of Implied Warranty of Fair Dealing (Implied Covenant of Good Faith and Fair Dealing)</u>

Defendants argue that Plaintiff's allegations that Defendants breached the implied convent of good faith and fair dealing by "providing materials that were stolen from another company and failing to provide services that were pre-paid for" fails because the Agreement does not prohibit Defendants from using materials from another company and does not dictate exactly what services Defendant Evolve would provide.

Defendants further argue that Plaintiff's allegation that Defendants failed to provide the services he paid for is also insufficient to sustain his claim for breach of the implied covenant of good faith and fair dealing because it is identical to the allegation supporting his breach of contract claim.

Plaintiff argues that although the cause of action is labeled as a breach of the implied warranty of fair dealing, the allegations are sufficient to support a claim for breach of the implied covenant of good faith and fair dealing. Plaintiff argues that Defendants cannot claim unfettered discretion regarding the content of the program while simultaneously denying that the covenant governs its exercise.

Further, Plaintiff does not seek to impose duties beyond the Agreement, as he alleged that Defendant exercised the discretion the Agreement gave it in a manner that defeated the purpose for which he paid. Lastly, the FAC includes allegations that go beyond the breach of contract claim, as it includes a refusal to cooperate and interference with performance.

" 'Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.' (Rest.2d Contracts, § 205.) *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371 [6 Cal.Rptr.2d 467, 483, 826 P.2d 710, 726]. The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith. (See, *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 923, 216

Cal.Rptr. 345, 702 P.2d 503; *California Lettuce Growers Assn. v. Union Sugar Co.* (1955) 45 Cal.2d 474, 484, 289 P.2d 785.). *Id*. at 372.

A party violates the covenant if it subjectively lacks belief in the validity of its act or if its conduct is objectively unreasonable. (Comment, *Reconstructing Breach of the Implied Covenant of Good Faith and Fair Dealing as a Tort* (1985) 73 Cal.L.Rev. 1291, 1303; Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code* (1962–1963) 30 U.Chi.L.Rev. 666.) In the case of a discretionary power, it has been suggested the covenant requires the party holding such power to exercise it "for any purpose within the reasonable contemplation of the parties at the time of formation—to capture opportunities that were preserved upon entering the contract, interpreted objectively." (Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith* (1980) 94 Harv.L.Rev. at p. 373, fn. omitted.). *Id*. Breach of a specific provision of the contract is not a necessary prerequisite. *Id*. at 373.

If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated. *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 [272 Cal.Rptr. 387, 400]

The Court finds that the facts alleged do not independently constitute a cause of action for Breach of Implied Covenant of Good Faith and Fair Dealing, as they are substantially the same conduct as described in the Breach of Contract cause of action.

Defendants' demurrer as to the Fourth Cause of Action is sustained with leave to amend.

6. Alter Ego Liability

Defendants argue that all causes of action against Defendant Adler should be dismissed because Plaintiff has failed to adequately allege either unity of interest or an inequitable result. As the Court has taken the demurrer off calendar as to Defendant Adler due to the stay in place, the Court does not address Defendants' argument.

TENTATIVE RULING #4:

THE DEMURRER IS TAKEN OFF CALENDAR AS TO DEFENDANT ADLER WITHOUT PREJUDICE TO ITS RENEWAL AFTER THE AUTOMATIC STAY TERMINATES OR IS ANNULLED.

DEENDANTS' DEMURRER AS TO DEFENDANT EVOLVE IS OVERRULED AS TO THE FIRST, SECOND, AND THIRD CAUSES OF ACTION. DEFENDANTS' DEMURRER AS TO DEFENDANT EVOLVE IS SUSTAINED WITH LEAVE TO AMEND AS TO THE FOURTH CAUSE OF ACTION.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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

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

5.	26CV0723	JONATHAN EFRIN GALLEGOS VS. PARK PLACE FINANCE, LLC ET AL
MOTION TO EXPUNGE LIS PENDENS AND REQUEST FOR ATTORNEY'S FEES AND COSTS		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 4, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Defendants, Park Place Finance, LLC, Servis One, Inc. dba BSI Financial Services, Ellington Management Group, LLC and Cheryl Mallory ("Defendants"), move the Court for an order expunging the lis pendens, or in the alternate, to order Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"), to post a bond in the amount of the outstanding indebtedness and for their attorney fees incurred in connection with the motion.

JUDICIAL NOTICE

Defendants request judicial notice of the following: 1) Grant Deed recorded on May 16, 2024; 2) Grant Deed recorded on December 5, 2024; 3) Articles of Incorporation filed with the Secretary of State for the State of California on December 6, 2019; 4) Corporate records of "It Aint Much But Its Honest Work LLC" filed with the Secretary of State for the State of Wisconsin; 5) Construction Deed of Trust recorded on December 5, 2024; 6) Assignment of Deed of Trust recorded on March 12, 2026; 7) Notice of Default recorded on March 27, 2026; 8) Quitclaim Deed recorded on March 16, 2026; 9) Lis Pendens filed in this action.

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

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

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

LIS PENDENS

On May 15, 2026, Plaintiff filed a First Amended Verified Complaint against Park Place Finance LLC, Servis One, Inc. dba BSI Financial Services, Ellington Management Group, LLC, Pacific Life Insurance Company, Maxton Builders, Inc., Valentin Razumovsky, Old Republic Title Company, Cheryl Mallory, JM Insulation Group, Jose Guadalupe Medina, Citadel Spaces, and Alexander Eidemiller.

Defendants filed this motion to expunge notice of lis pendens on June 22, 2026. Defendants claim as the basis for the court to expunge that Plaintiff cannot show a valid real property claim.

"A party who asserts a claim to real property can record a notice of lis pendens, which serves as notice to prospective purchasers, encumbrancers and transferees that there is litigation pending that affects the property." (*Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1011, 57 Cal.Rptr.3d 686 (*Amalgamated Bank*).) "A lis pendens acts as a cloud against the property, effectively preventing sale or encumbrance until the litigation is resolved or the lis pendens is expunged." (*Ibid.*)

"A party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged," commonly known as a lis pendens. (§ 405.20.) Such a party is a " '[c]laimant' " for purposes of the lis pendens statute. (§ 405.1.) Once recorded, any party with an interest in the property can move to expunge the lis pendens pursuant to the procedure set forth in section 405.30.

A comment to section 405.30 identifies four bases upon which expungement may be sought: (1) the lis pendens is void and invalid (§ 405.23), (2) the action as pleaded does not contain a real property claim (§ 405.31), (3) the claimant fails to establish the probable validity of the claim (§ 405.32), and (4) monetary relief provides an adequate remedy (§ 405.33). (Code com., 14A West's Ann. Code Civ. Proc. (2004 ed.) foll. § 405.30, par. 2, pp. 336–337.) *J&A Mash & Barrel, LLC v. Superior Ct. of Fresno Cnty*. (2022), 74 Cal. App. 5th 1, 15–16.

The Plaintiff has the burden of proof that the notice lis pendens is valid.

<u>Validity of Real Property Claims</u>

Plaintiff's First Amended Complaint ("FAC") includes causes of action for (1) quiet title and cancellation of instruments; (2) slander of title; (3) disgorgement under Bus. & Prof. Code §§ 7031 and 17200; (4) breach of fiduciary duty (only as against Old Republic Title Company); (5) negligence and enterprise liability and (6) intentional interference with prospective economic advantage. Defendants contend that only the first and second causes of action could potentially be considered real property claims, as the remaining causes of action seek primarily monetary relief rather than a relief affecting title to real property.

Defendants assert that Plaintiff cannot establish the probable validity of either claim, as: 1) Plaintiff lacks standing as a stranger to the loan contract to bring these claims; 2) Plaintiff fails to name the actual lender, indispensable party Park Place Finance, Inc.; 3) the allegations basing the quiet title and cancellation claim are disproven by the public record; 4) the borrower has not tendered the indebtedness due under the loan; 5) Plaintiff cannot establish a false statement as to title to prevail in slander of title; and 6) Plaintiff's remaining causes of action do not relate to real property. Defendants further request attorney's fees and costs in the amount of $2,940.00 pursuant to Code of Civil Procedure § 405.38.

Plaintiff's claims for Quiet Title and Cancellation of Instruments and Slander of Title are real property claims, while his remaining causes of action do not support a lis pendens.

1. <u>Standing</u>

Defendants assert that Plaintiff was not a party to the underlying loan and the Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "DOT") and accordingly lacks standing to make any challenge related thereto. Plaintiff asserts that he has standing, as the Quitclaim Deed recorded on March 16, 2026, conveyed the property to him as an individual eleven days before the March 27, 2026, Notice of Default, as well as individually guaranteeing the construction loan obligations on November 22, 2024. The FAC also identifies Plaintiff as the recorded fee owner of the subject property.

The Quitclaim Deed conveyed the property to Plaintiff as an individual. As the record title holder at the time the Notice of Default was recorded, Plaintiff holds a direct ownership interest in the property at issue and accordingly has standing.

2. <u>Indispensable Party</u>

Defendants contend that Plaintiff correctly notes the lender of the DOT was Park Place Finance, Inc.; however, Plaintiff does not name this entity as a defendant, but rather Park Place Finances, LLC. Plaintiff's response does not address the failure to name Park Place Finance, Inc. However, Plaintiff does argue that a Request for Entry of Default has been filed against Park Place Finance, Inc. on July 2, 2026, therefore Defendants cannot use this motion to validate the title rights of nonappearing defaulted entities without first establishing their own authority and connection to the recorded instrument.

Upon review of the Court's file, the FAC does not name Park Place Finance, Inc. as a defendant, despite mentioning the entity throughout the pleading. However, a Summons was issued on May 15, 2026, which included Park Place Finance, Inc. as a Defendant and was thereafter personally served. A Proof of Service of Summons was filed on June 15, 2026. Service of the Summons and FAC on Park Place Finance, Inc. does not bring the entity into the action without being named as a defendant in the FAC.

Nevertheless, Plaintiff's failure to name Park Place Finance, Inc. in the FAC is a curable defect as opposed to a showing of being unable to prevail on the merits of the claims.

3. Quiet Title and Cancellation of Instruments

Defendants assert that Plaintiff cannot establish a likelihood of success on the cause of action for Quiet Title and Cancellation of Instruments because the allegations are demonstrably false. Plaintiff's claim that the title chain is void ab initio because Park Place Finance, LLC purported to assign an interest originally held by Park Place Finance, Inc. without a valid recorded chain bridging the entities is proven false by the record. The Assignment was executed by and on behalf of Park Place Finance, Inc., not Park Place Finance, LLC.

Plaintiff asserts that the Assignment's notary language identifies Justin Hubbert as "Managing Member of Park Place Finance, LLC, a Texas Limited Liability Company" and the dispute regarding the unreconciled Park Place Finance, Inc./Park Place Finance, LLC dispute supports probable validity of his claims.

Code of Civil Procedure § 1207 provides:

> Any instrument affecting the title to real property, 90 days after the same has been copied into the proper book of record, kept in the office of any county recorder, imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or encumbrancers previous to the taking effect of this act. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; provided, when such copying in the proper book of record occurred within five years prior to the trial of the action, it is first shown that the original instrument was genuine.

Code of Civil Procedure § 1189 makes clear that a certificate of acknowledgement verifies only the identity of the individual who signed the document to which the certificate is attached, not the truthfulness, accuracy, or validity of that document.

Plaintiff's causes of action rest entirely on the theory that the assignment and resulting chain are void abinitio because the notary section named Park Place Finance, LLC as the transferring party. This error in the notary section alone does not invalidate the otherwise valid assignment from Park Place Finance, Inc. to Pacific Life Insurance Company.

Defendants argue that Plaintiff cannot prove the DOT was satisfied and paid in full. Plaintiff argues that tender cannot be used as a forfeiture device when the entities demanding payment do not identify one stable amount or reconcile the default interest, late charges, fees, pending costs, and principal components that produced the moving demand. Plaintiff further asserts that tender exceptions apply, wherein he invokes each applicable exception.

Tender is required where the assignment is void, not merely voidable. *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 568 [202 Cal.Rptr.3d 219, 232]. There are four exceptions to the tender requirement:

> First, if the borrower's action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmation of the debt…Second, a tender will not be required when the person who seeks to set aside the trustee's sale has a counterclaim or setoff against the beneficiary. In such cases, it is deemed that the tender and the counterclaim offset one another, and if the offset is equal to or greater than the amount due, a tender is not required…Third, a tender may not be required where it would be inequitable to impose such a condition on the party challenging the sale…Fourth, no tender will be required when the trustor is not required to rely on equity to attack the deed because the trustee's deed is void on its face. *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112–113 [134 Cal.Rptr.3d 622, 640–641]

As Plaintiff has not demonstrated that the assignment was void, the tender exception based on void assignment does not apply. The Court does not find any of the other exceptions are applicable. Additionally, Plaintiff's argument that tender cannot be used as a forfeiture device without one stable amount does not substitute for a showing of probable validity on the merits of the underlying claim.

The Court finds that Plaintiff has not established by a preponderance of the evidence the probable validity of his cause of action for Quiet Title and Cancellation of Instruments.

4. Slander of Title

Defendants assert that none of the documents related to the construction loan contained a false statement, as the Assignment properly assigned the interest of Park Place Finance, Inc. to Pacific Life Insurance Company. Plaintiff's challenge to the Notice of Default relates to Ms. Mallory's signature on the attached Declaration, which she executed as an employee of BSI Financial Services, Mortgage Service. Plaintiff plead that BSI is the servicer of the loan, so there are no grounds to find her attestation was false. Additionally, the recording of the documents was privileged and cannot base liability for slander of title.

Plaintiff argues that the recorded documents were not privileged, and the evidence supports the inference that Defendants lacked a reasonable basis to treat the recorded amount and authority chain as settled. The privilege therefore does not justify expungement before adjudication of malice.

To state a claim for slander of title, a plaintiff must allege "(1) a publication, (2) which is without privilege or justification," (3) which is false, and (4) which "causes direct and immediate pecuniary loss." (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1050-1051, 93 Cal.Rptr.3d 457; *La Jolla Group II v. Bruce* (2012) 211 Cal.App.4th 461, 472, 149 Cal.Rptr.3d 716.) *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336 [220 Cal.Rptr.3d 408, 411], *as modified on denial of reh'g (July 18, 2017).*

Code of Civil Procedure § 47(b) provides that a privileged publication is one made in any legislative proceeding, judicial proceeding, or in any other official proceeding authorized by law. Code of Civil Procedure § 47 creates two privileges: (1) an absolute privilege, commonly called the litigation privilege, that applies irrespective of the speaker's motive (§ 47, subd. (b)); and (2) a qualified privilege that "applies only to communications made without malice." *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th at 1337. For the purposes of section 47 's qualified privilege, "malice" means that the defendant (1) " 'was motivated by hatred or ill will towards the plaintiff,' " or (2) " 'lacked reasonable grounds for [its] belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights.' *Id*.

Upon review of the published documents at issue, the Court does not find that the documents were false. Additionally, the recording of these documents was privileged.

<u>The Court finds that Plaintiff has not established by a preponderance of the evidence the probable validity of his cause of action for Slander of Title</u>.

<u>ATTORNEY'S FEES</u>

Defendants request attorney's fees and costs in the amount of $2,940.00 pursuant to Code of Civil Procedure § 405.38, which provides:

> The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Plaintiff argues that attorney's fees should not be awarded because he acted with substantial justification, as the recorded individual deed, executed personal Guaranty, materially inconsistent authority disclosures, moving payoff demands, open servicing review, court-default records, construction-draw directives, and CSLB history form a serious and documented title dispute.

The Court does not find that Plaintiff acted with substantial justification. <u>Defendants' request for attorney's fees is granted</u>.

TENTATIVE RULING #5:

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

6.	25CV1856	LUKE KILCOLLINS VS. KAREN MAYFIELD
MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 18, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Plaintiff, Luke Kilcollins ("Plaintiff"), moves for leave to amend the complaint to add additional facts, a cause of action for negligence, and request for punitive damages. A proposed amended complaint has been submitted.

The proof of service in the court's file declares that on June 18,2026, notice of the hearing and copies of the moving papers were served by electronic mail on Defendant, Karen Mayfield ("Defendant"). Defendant filed an opposition on July 24, 2026. Plaintiff filed a Reply on August 6, 2026.

Since filing the Complaint, Plaintiff has learned of additional information and has spoken with third parties regarding prior incidents of dog bites which Plaintiff argues supports a basis for punitive damages.

Defendant argues that Plaintiff seeks leave to amend based primarily on hearsay statements which would materially broaden the case from a dog-bite and negligence action into a punitive-damages case centered on alleged prior attacks. Defendant contends Plaintiff has not shown a competent factual basis for the proposed punitive allegations and since the amendment would materially expand the scope, burden, and cost of the litigation, the motion should be denied.

The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code. Code of Civil Procedure, § 473(a)(1).

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

It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

The Court is not persuaded that there will be substantial prejudice to Defendant, especially when weighed against the liberal policy in favor of amendment. Whether or not additional discovery is needed is not significant to the Court's analysis because the Court notes that trial has been set for March 30, 2027, and discovery is still open. Defendant's' argument that Plaintiff's motion rests on hearsay and lacks competent evidentiary foundation goes to the ultimate merits of the allegations, which is also unpersuasive at this stage.

Pursuant to Code of Civil Procedure §§ 473(a)(1) and 576, in the furtherance of justice, and in light of the liberal policy favoring amendment, Plaintiff's Motion is granted.

TENTATIVE RULING #6:

PLAINTIFF'S MOTION FOR LEAVE TO AMEND 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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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.	**25CV3010**	**WELLS FARGO BANK, N.A. VS. ROSEMARY L MAKAMIYO, AN INDIVIDUAL**
MOTION FOR ORDER DEEMING THE TRUTH OF THE MATTERS AS ADMITTED		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 18, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

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

On July 16, 2026, the Court entered an Order to dismiss the action pursuant to the terms of the Settlement Agreement filed on July 14, 2026, rendering Plaintiff's motion moot.

At the hearing on July 24, 2026, Plaintiff requested a continuance. The Court set the hearing for August 14, 2026.

TENTATIVE RULING #8:

APPEARANCES ARE REQUIRED FRIDAY, SEPTEMBER 18, 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.

9.	**25CV0505**	**CAPITAL ONE N.A. VS. LINDA F RIDDLE**
ATTORNEY WITHDRAWAL		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 4, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Counsel for Defendant, Linda F. Riddle, has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client has dropped from the program. Counsel has not indicated whether a next hearing or trial have been set.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. California Rules of Court, Rule 3.1362(d) requires confirmation of the client's mailing address within 30 days before the filing of the motion to be relieved. Counsel has indicated the client was served by mail but has not provided confirmation of the client's current mailing address as required, rendering service defective.

The Findings and Order sections in Counsel's proposed Order are incomplete as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #9:

DEFENDANT'S COUNSEL'S MOTION IS DENIED WITHOUT PREJUDICE FOR DEFECTIVE SERVICE.

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.	**25CV0508**	**CAPITAL ONE N.A. VS. LINDA F RIDDLE**
ATTORNEY WITHDRAWAL		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 4, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Counsel for Defendant, Linda F. Riddle, has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client has dropped from the program. Counsel has not indicated whether a next hearing or trial have been set.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. California Rules of Court, Rule 3.1362(d) requires confirmation of the client's mailing address within 30 days before the filing of the motion to be relieved. Counsel has indicated the client was served by mail and has been unable to confirm the address is current after mailing the motion papers to the client's last known address, return receipt requested.

There is a Case Management Conference scheduled for August 25, 2026, which is not listed in the proposed Order. Counsel shall submit a revised Order that includes the upcoming hearing date and whether trial has been set as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #10:

ABSENT OBJECTION, THE MOTION IS GRANTED, CONTINGENT ON COUNSEL'S FILING OF A PROPOSED ORDER (FORM MC-053) THAT MEETS THE REQUIREMENTS OF CALIFORNIA RULES OF COURT, RULE 3.1362(E). COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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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11.	24CV1204	JULIE E BROWN ET AL VS. CHARLES B SUMNER
SUMMARY ADJUDICATION		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON AUGUST 28, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Defendant/Cross-Complainant, Charles B. Sumner ("Cross-Complainant"), moves for summary adjudication on his First Cause of Action for Partition by Sale of 5120 Oak Leaf Cir., Placerville, CA 95667 pursuant to Code of Civil Procedure §§§ 437(c)(f)(1), 872.720, and 873.010.

The motion is made on the grounds that 1) the Cross-Complainant and Cross-Defendant jointly own the Subject Property as tenants in common pursuant to that transfer dated November 17, 2021 recorded in the official records of the County of El Dorado as Document No. 2021-0071360, (2) Cross-Complainant and Cross-Defendant constitute all of the persons with legal title ownership interests of record in the Subject Property, (3) Cross-Complainant has not waived his right to partition the Subject Property, (4) the ownership interests of the Parties are clear and beyond reasonable dispute, (5) the Subject Property cannot feasibly be divided in kind and sale is the only viable option for partition, (6) there is no dispute as to any material fact, and thus no need for a trial, to adjudicate the factors justifying a partition by sale and therefore the Court can and should enter an interlocutory judgment of sale.

Defendant also seeks an order appointing Referee Chad Phillips to act as the Court's appointed referee to fulfill the sale pursuant to Code of Civil Procedure § 873.010 et seq.

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.

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

Cross-Complainant's First Cause of Action is for Partition and Accounting. At issue is the real property and residence located at 5120 Oak Leaf Cir., Placerville, CA 95667 (the "Subject Property"). The Subject Property consists of approximately 10.26 acres of land and a residential structure of approximately 2,759 square feet of habitable area, as well as other structures and improvements.

Cross-Complainant argues that he and Plaintiff equally share title to the Subject Property as tenants in common. The Deed of the Subject Property indicates the grantees as "Julie E. Brown, Trustee of The Julie E. Brown Revocable Trust dated November 24, 2015 and Charles Sumner, an unmarried man as tenants in common." Cross-Complainant seeks a partition by sale of the property, as it would not be reasonably possible to divide the Subject Property in kind. Cross-Complainant further argues that no waiver exists, as there has been no discussion of waiver in this matter, and no party knowingly or intentionally waived the right to partition the Subject Property.

Cross-Defendant argues that she is entitled to an appraisal and to purchase Cross-Complainant's interest in the Subject Property. Cross-Defendant asserts that she has requested a partition by appraisal and has pled a cause of action for such, which she contends is the more equitable remedy. Cross-Defendant alleges that she qualifies to refinance the loan in her own name and has the assets to purchase the Subject Property. An appraisal performed on May 12, 2026, indicates a value of $900,000. Cross-Defendant further argues that she is entitled to an accounting pursuant to Code of Civil Procedure § 872.140 as she has paid a debt or obligation which she is entitled as a matter of right to have Cross-Complainant refund to her.

Except as provided in Section 872.730, partition as to concurrent interests in the property shall be as of right unless barred by a valid waiver. Code of Civil Procedure § 872.710(b).

The court shall order that the property be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment. Code of Civil Procedure § 872.810. When the court determines that, under the circumstances, sale and division of the proceeds would be more equitable than division of the property, the court shall order the property be sold and the proceeds be divided among the parties in accordance with their interests in the property. Code of Civil Procedure § 872.820.

The undisputed facts and evidence support a finding that the Parties are equal joint owners of the Subject Property and no valid waiver exists. As such, Cross-Complainant is entitled to partition as a matter of law. The Court further finds that the undisputed facts and evidence support a finding that it would not be reasonably possible to divide the Subject Property in kind.

<u>As Cross-Defendant has not presented any evidence that a triable issue of material fact exists, Cross-Complainant's Motion for Summary Adjudication is granted.</u>

The Partition of Real Property Act ("PRPA") applies to actions for partition of real property filed on or after January 1, 2023, regarding real property held in tenancy in common where there is no agreement in a record binding all the cotenants which governs the partition of the property. Code of Civil Procedure § 874.311.

Code of Civil Procedure § 874.316 instructs, in part:

> (a) Except as otherwise provided in subdivisions (b) and (c), the court shall determine the fair market value of the property by ordering an appraisal pursuant to subdivision (d).
>
> (d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in the State of California to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

Code of Civil Procedure § 874.317 provides, in part:

> (a) If any cotenant requested partition by sale, the court shall, after the determination of value under Section 874.316, send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.
>
> (b) Not later than 45 days after the notice is sent under subdivision (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

<u>The Court finds the PRPA applies to the Subject Property and accordingly orders that the partition shall proceed in accordance with the Act</u>.

TENTATIVE RULING #11:

CROSS-COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION 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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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.

12.	PC20210083	THOMAS STINSON VS DAVID WEINER, ET AL
ATTORNEY'S FEES / TAX COSTS		

ON THE COURT'S OWN MOTION DUE TO LACK OF JUDICIAL COVERAGE, THE COURT WILL HEAR THIS MATTER ON SEPTEMBER 11, 2026, AT 8:30 A.M. IN DEPARTMENT NINE. THERE WILL BE NO HEARING ON AUGUST 14, 2026. SHOULD A PARTY WISH TO REQUEST ORAL ARGUMENT, THE BELOW PROCEDURES REMAIN IN EFFECT.

Before the Court are two motions: 1) Plaintiff/Cross-Defendant's, Thomas Stinson ("Plaintiff"), Motion for Attorneys Fee; and 2) Defendants/Cross-Complainant's, David Weiner and Melode Weiner ("Defendants"), Motion to Tax Costs.

MOTION FOR ATTORNEY'S FEES

On May 29, 2026, Plaintiff filed a Motion for Attorneys Fee pursuant to Penal Code § 496(c). Pursuant to the Court's ruling on May 7, 2026, Plaintiff prevailed on his claim for conversion committed by Defendant. Plaintiff argues that this Court's finding that Defendant was liable for conversion is tantamount to a liability for theft. Plaintiff asserts there is no authority to support the position that the remedies available pursuant to Penal Code § 496(c) require an independent cause of action.

Defendants oppose Plaintiff's request, as Plaintiff failed to separately plead Penal Code § 496 in the Complaint. Additionally, the elements of conversion and Penal Code § 496(a) are different. Defendant asserts that the evidence at trial showed that Defendant never had possession of the funds he had mistakenly earmarked for Plaintiff in his 2002 calculations. Lastly, Defendants argue the statute of limitations have expired.

To prevail in a claim for conversion, a plaintiff must establish: (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066, 80 Cal.Rptr.2d 704.

Penal Code § 496 provides, in part:

> (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170…
>
> (c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

The elements required to show a violation of section 496(a) are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property. *Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126 [247 Cal.Rptr.3d 114, 121], as modified (May 10, 2019).

Although similar, the elements of conversion and a violation of § 496(a) differ. This Court did not find the distinct elements of § 496(a) were met.

Under the American rule, as a general proposition each party must pay his own attorney fees. This concept is embodied in section 1021 of the Code of Civil Procedure, which provides that each party is to bear his own attorney fees unless a statute or the agreement of the parties provides otherwise. *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 504 [198 Cal.Rptr. 551, 554, 674 P.2d 253, 256].

Wrongful possession of plaintiff's money does not warrant the imposition of attorney fees as damages. *Flyer's Body Shop Profit Sharing Plan v. Ticor Title Ins. Co.* (1986) 185 Cal.App.3d 1149, 1158 [230 Cal.Rptr. 276, 281]. Section 3336 of the Civil Code, which sets out the measure of damages in conversion actions, does not expressly provide for attorneys' fees for the converting of property. It has long been held that such fees are not within the rule of damages provided for by that section [citations]." (*Id.* at p. 91, 29 Cal.Rptr. 346; accord, *Viner v. Untrecht* (1945) 26 Cal.2d 261, 272, 158 P.2d 3; *W.R. Bradshaw & Co. v. Eggers* (1915) 27 Cal.App. 132, 148 P. 961; *W. & P. Nicholls v. Mapes* (1905) 1 Cal.App. 349, 82 P. 265.) *Haines v. Parra* (1987) 193 Cal.App.3d 1553, 1559 [239 Cal.Rptr. 178, 181].

Plaintiff's request for attorney's fees pursuant to Penal Code § 496(c) is denied.

MOTION TO TAX COSTS

This action was filed on February 26, 2021. On May 7, 2026, the Court ruled Plaintiff prevailed on his claim for conversion. On May 29, 2026, Plaintiff filed a Memorandum of Costs.

Plaintiff's Memorandum of Costs requests a total amount of $2,850.06, as follows: 1) $1,350.39 for filing and motion fees; 2) $150.00 for jury fees; 3) $50.00 for service of process; 4) $377.61 for witness fees; and 5) $922.06 for other.

Legal Principles

A prevailing party is entitled to recover its costs. (Code Civ. Proc., § 1032, subd. (b).) Code of Civil Procedure section 1033.5 creates three categories of costs—allowed, prohibited, and discretionary. (*Rozanova v. Uribe* (2021) 68 Cal.App.5th 392, 402 [question presented was which category covered the claimed item].) First, Code of Civil Procedure section 1033.5, subdivision (a) lists the items specifically allowed as recoverable costs. Second, Code of Civil Procedure section 1033.5, subdivision (b) lists items that "are not allowable as costs, except when expressly authorized by law[.]" (*Ibid.*) Third, Code of Civil Procedure section 1033.5, subdivision (c)(4) provides that an item neither specifically allowable under subdivision (a) nor explicitly prohibited under subdivision (b) may be allowed or denied in the discretion of the court if certain requirements are satisfied. (*Id.*, subd. (c)(4).) In particular, the item must be (1) "incurred, whether or not paid;" (2) "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation;" and (3) "reasonable in amount." (*Id.*, subd. (c).)

" 'In ruling upon a motion to tax costs, the trial court's first determination is whether the statute expressly allows the particular item and whether it appears proper on its face. "If so, the burden is on the objecting party to show [the costs] to be unnecessary or unreasonable." [Citation.] Where costs are not expressly allowed by the statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary.' " (*Rozanova*, *supra*, 68 Cal.App.5th at p. 399; see *Berkeley Cement*, *Inc. v. Regents of University of Cal.* (2019) 30 Cal.App.5th 1133, 1139.)

<u>Discussion</u>

Defendants object to the "witness fees" (#8) in the amount of $377.61 and "other" (#15) in the amount of $922.06. In regards to witness fees, Defendant concedes that witness fees are allowable; however, the witness fees in the worksheet says $0. As for the "other" expenses, Defendant argues those are not specified by Code of Civil Procedure § 1033.5 as an allowable cost and it is not specified to be able to tell if it is a listed allowable cost. In opposition, Plaintiff provided invoices which purportedly substantiate the "other" costs.

1. <u>Witness Fees</u>

Plaintiff did not address witness fees in his opposition. In review of the invoices provided by Plaintiff, the Court did not find any specific costs identified for witness fees; however, the Court found the following costs substantiate Plaintiff's request for $377.61:

1. Records subpoena of Garibaldi Ranch from Fidelity National Title Company in the amount of $111.04
2. Records subpoena of Garibaldi Ranch from American River Conservancy in the amount of $129.89
3. Records subpoena of Garibaldi Ranch from Placer Title Company in the amount of $136.68

The identified records subpoenas purport to be charges for the production of business records pursuant to a subpoena duces tecum, not witness fees pursuant to Government Code § 68093. <u>Defendant's motion to tax these costs is granted</u>.

//

2. "Other" Costs

It is unclear from the invoices provided which expenses substantiate the "other" costs. The invoices include expenses for prohibited items, such as postage, telephone, and photocopying charges, as well as fees that may be included as costs in a different category, such as filing fees. The Court finds that Plaintiff has not met his burden in showing the "other" charges are reasonable and necessary. Defendant's motion to tax these costs is granted.

TENTATIVE RULING #12:

PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES PURSUANT TO PENAL CODE § 496(C) IS DENIED.

DEFENDANT'S MOTION TO TAX COSTS IS GRANTED.

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