October 30, 2026
Dept. 9
Civil Tentative Rulings

1.	**22CV1011**	**SHINGLE SPRINGS BAND OF MIWOK INDIANS VS. FLINTCO PACIFIC, INC ET AL**
MOTION TO QUASH		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #1:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

2.	**24CV1448**	**BRUCE HENDERSON ET AL VS. YP JACKS LLC DBA JACK IN THE BOX**
MOTION TO COMPEL ARBITRATION		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #2:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

3.	**24CV1749**	**BRANDON A DAVIS VS. FCA US, LLC ET AL**
ATTORNEY'S FEES / MOTION TO STRIKE/TAX COSTS		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #3:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

4.	**25CV1073**	**US LBM OPERATING CO. 2009, LLC, DBA MEEK'S LUMBER, A DELAWARE LIMITED LIABILITY COMPANY VS. AM DEVELOPMENT INC., A CALIFORNIA CORPORATION ET AL**
MOTION FOR ENTRY OF STIPULATED JUDGMENT		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #4:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

5.	25CV2035	TRINADY L PALMER VS. GLADIOLUS HOLDINGS, LLC
APPROVAL OF PAGA SETTLEMENT		

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties executed a Settlement Agreement. *See* Exhibit B to Declaration of Manny Starr, filed September 8, 2026.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$143,750.00
Attorney's Fees representing 35% of Gross Settlement Amount	$50,312.50
Litigation Costs (not to exceed)	$16,651.31
Plaintiff Enhancement	$10,000.00
Settlement Administration Expenses (not to exceed)	$4,450.00
Net Settlement Amount:	$62,336.19
Distribution to Aggrieved Employees representing 35% of Net Settlement	$21,817.67
Distribution to LWDA representing 65% of Net Settlement	$40,518.52

Individual Payments will be paid on a pro-rata basis based on the number of pay periods worked during the PAGA Period. Each Individual Payment will be based on the number of pay periods worked during the PAGA Period divided by the total pay periods worked by all Aggrieved Employees, multiplied by the Net Settlement Amount allocated to Aggrieved Employees.

The Settlement Agreement does not require a claim form. The Settlement Administrator will be responsible for conducting a skip trace for the address of all former employee Aggrieved Employees and run the names of all Aggrieved Employees through the National Change of Address database to determine any updated addresses, mail the Individual Payment checks and Notice by first class U.S. mail to all Aggrieved including necessary tax forms.

TENTATIVE RULING #5:

THE MOTION FOR APPROVAL OF PAGA SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, OCTOBER 30, 2026, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

IF A PARTY WISHES TO APPEAR REMOTELY, INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

IF A PARTY PREVIOUSLY REGISTERED TO APPEAR REMOTELY FOR THE HEARING BUT ORAL ARGUMENT IS NOT REQUESTED AND THE PARTY DOES NOT INTEND TO APPEAR AT THE HEARING, THE PARTY MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. TO CANCEL A REMOTE APPEARANCE REGISTRATION, VISIT: https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

6.	**26CV0275**	**CENTRAL PARK SYSTEMS CORPORATION D/B/A FORTIS TELECOM VS CAPITOL IT PARTNERS INC., ET AL**
DEMURRER		

Before the Court are the following matters: 1) Demurrer filed by Central Park Systems d/b/a Fortis Telecom; and 2) Demurrer filed by David Ciapponi, David Little, Peter Oliver, and Enrique Pasos.

DEMURRER – CENTRAL PARK SYSTEMS D/B/A FORTIS TELECOM

Plaintiff/Cross-Defendant, Central Park Systems Corporation d/b/a FORTIS Telecom ("Cross-Defendant"), demurs to Defendant/Cross-Complainant's, Jason Howard and Capitol IT Partners, Inc. (collectively "Cross-Complainants"), Cross-Complaint. An Opposition was filed by Cross-Complainants on July 1, 2026. Cross-Defendant's Reply was filed on October 26, 2026.

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 Bianka Kadian-Dodov, counsel attempted to meet and confer with Cross-Complainants prior to filing, but the dispute could not be resolved.

Background

On May 12, 2026, Cross-Complainants filed a Cross-Complaint Against Central Park Systems, Corporation d/b/a Fortis Telecom, David Ciapponi, David Little, Enrique Pasos, Peter Oliver, and Does 1-50 for the following causes of action: 1) Breach of Contract; 2) Promissory Fraud; 3) Conversion; 4) Intentional Interference; 5) Libel and Trade Libel; 6) Unjust Enrichment; 7) Declaratory Relief; 8) Injunctive Relief; 9) Fraud/Misrepresentation; 10) Unfair Competition (Bus. & Prof. Code § 17200); and 11) Accounting.

Legal Principles

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

Discussion

1. First Cause of Action – Breach of Contract

Cross-Defendant asserts the Breach of Contract cause of action fails because it does not identify the MOU term that Cross-Defendant allegedly breached. Although the MOU required the parties to negotiate and sign a final asset purchase agreement and contemplated a later closing, it did not impose on Cross-Defendant an unconditional obligation to complete that agreement. As pleaded, the allegations establish a transaction the parties contemplated but did not complete, not a breach of an existing obligation.

Cross-Complainants contend that whether the parties committed to the completion of the asset purchase agreement is a question of fact which cannot be resolved on demurrer; nevertheless, Cross-Defendants breached the MOU by failing to complete the asset purchase agreement. Additionally, the Cross-Complaint explicitly alleged the nonpayment of the $250,000.00 owed to Cross-Complainants on June 15, 2024.

The Court finds the Cross-Complaint as pleaded adequately asserts breaches of both the execution of the Asset Purchase Agreement by March 15, 2024, and the failure to pay approximately $250,000 by June 15, 2024, which is further evidenced by the MOU. The MOU contained express terms and deadlines which reflected the parties' agreement. Cross-Defendant's demurrer as to the First Cause of Action is overruled.

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2. Second and Ninth Causes of Action – Promissory Fraud and Fraud/Misrepresentation

Cross-Defendant alleges the Cross-Complaint does not plead fraud with the required specificity, as its allegations are broad, conclusory, and collective against all Cross-Defendants. Additionally, promissory fraud requires something more than nonperformance to prove the intent not to perform, which Cross-Complainants failed to allege. Further, the fraud/misrepresentation cause of action is insufficient because the ownership statements were directed at customers, and no reliance by Cross-Complainants on those statements was identified. To the extent the cause of action rests on the misrepresented intent to perform the MOU, it presents the same promissory-fraud theory, which fails.

Cross-Complainants maintain the specificity is properly pled.

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 elements of fraud are misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, 49 Cal.Rptr.2d 377, 909 P.2d 981 (*Lazar*).) Promissory fraud is a subspecies of fraud, and an action may lie where a defendant fraudulently induces the plaintiff to enter into a contract, by making promises he does not intend to keep. (*Ibid.*) "[T]he intent element of promissory fraud entails more than proof of an unkept promise or mere failure of performance." (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1183, 151 Cal.Rptr.3d 93, 291 P.3d 316 (*Riverisland*); *Lazar*, *supra,* 12 Cal.4th at p. 638, 49 Cal.Rptr.2d 377, 909 P.2d 981 [a promissory fraud claim "does not depend upon whether the defendant's promise is ultimately enforceable as a contract"].) **"[P]romissory fraud requires proof of '(1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee;**

(5) nonperformance by the party making the promise; and (6) resulting damage to the promise[e].' [Citation.]" (*Gruber v. Gruber* (2020) 48 Cal.App.5th 529, 540, 261 Cal.Rptr.3d 819.) *Missakian v. Amusement Industry, Inc.* (2021) 69 Cal.App.5th 630, 653–654 [285 Cal.Rptr.3d 23, 38–39]. (emphasis added).

The Court finds Cross-Complainants have sufficiently plead a cause of action for promissory fraud and fraud/misrepresentation. Cross-Defendant's demurrer as to the Second and Ninth Causes of Action is overruled.

3. Third Cause of Action – Conversion

Cross-Defendant argues the Third Cause of Action is conclusory and does not state the underlying facts to support a claim.

Cross-Complainants assert the systems are described in Exhibit L of the Cross-Complaint regarding the cost of Cross-Defendant's use, with more specific cross-references to other exhibits.

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.

The Court does not find the Third Cause of Action adequately specifies the property at issue and Cross-Complainants' ownership or right to possess such property. The Cross-Complaint merely asserts that Cross-Defendants wrongfully exercised control over property and systems without identifying what those consist of and how Cross-Defendant acted inconsistently with their property rights. The reference to Exhibit L pertains to the summary of monthly costs and damages, not an identification of the property Cross-Defendant purportedly wrongfully exercised control of. Cross-Defendant's demurrer as to the Third Cause of Action is sustained, with leave to amend.

4. Fourth Cause of Action – Intentional Interference

Cross-Defendant alleges the Fourth Cause of Action is conclusory and does not include underlying facts to establish whether the claim is for an interference with existing contracts or as an interference with prospective economic advantage.

Cross-Complainants contend Cross-Defendants purported to a CIP customer via an email, included within the Cross-Complaint, that CIP is now owned by Fortis. The Cross-Complaint described the communications conducted by Cross-Defendants with CIP customers, along with providing proof of the communications, which included billing attempts and false representations that CIP was owned by Fortis. Such emails establish Cross-Defendants knew they were dealing with CIP customers who were confused by their interference.

To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Ibid.*) To establish the claim, the plaintiff need not prove that a defendant acted with the primary purpose of disrupting the contract, but must show the defendant's knowledge that the interference was certain or substantially certain to occur as a result of his or her action. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 56, 77 Cal.Rptr.2d 709, 960 P.2d 513.) *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148 [17 Cal.Rptr.3d 289, 294, 95 P.3d 513, 517].

To prevail on a cause of action for intentional interference with prospective economic advantage in California, a plaintiff must plead and prove (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's acts. (*Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6, 233 Cal.Rptr. 294, 729 P.2d 728.) Id. at 1152.

The Court does not find the Cross-Complaint contains sufficient facts to support a cause of action for intentional interference with contractual relations or prospective economic advantage. Cross-Defendant's demurrer as to the Fourth Cause of Action is sustained, with leave to amend.

5. Fifth Cause of Action – Libel and Trade Libel

Cross-Defendant asserts the Cross-Complaint does not plead the elements of either tort, as the allegations are conclusory. Although Exhibit H is described as emails showing representations of ownership, the Cross-Complaint does not tie any specific statement to Fortis as distinct from the individual Cross-Defendants and does not plead the special damages required for trade libel.

Cross-Complainants argues the false representation that Fortis owned CIP made by Cross-Defendants to CIP customers constituted defamation and/or trade libel for attempting to divert such customers to Fortis. Cross-Defendants knew it was false and intended to appropriate customers from Cross-Complainants.

Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage. (Civ.Code, §§ 45, 46; 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts § 471, pp. 557–558.) Publication means communication to some third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made. Publication need not be to the "public" at large; communication to a

single individual is sufficient. (*Cunningham v. Simpson* (1969) 1 Cal.3d 301, 306; , 81 Cal.Rptr. 855, 461 P.2d 39 5 Witkin, Summary of Cal. Law, *supra,* Torts, §§ 471, 476, pp. 557–558, 560–561.) *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 [85 Cal.Rptr.2d 397, 402], as modified (June 23, 1999).

While a cause of action for trade libel " 'resembles that for defamation ... [it] differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases. ... [T]he plaintiff must prove in all cases that the publication has played a material and substantial part in inducing others not to deal with him, and that as a result he has suffered special damages.' " (*Erlich v. Etner* (1964) 224 Cal.App.2d 69, 73, 36 Cal.Rptr. 256 (*Erlich*).) At a minimum, a trade libel cause of action requires: "(1) a publication; (2) which induces others not to deal with plaintiff; and (3) special damages." (*Nichols v. Great American Ins. Companies* (1985) 169 Cal.App.3d 766, 773 [215 Cal. Rptr. 416].)

Thus, unlike a claim for defamation, trade libel requires as an essential element that the plaintiff suffered direct financial harm because someone else acted in reliance on the defendant's statement. (CACI No. 1731.) To establish this element, " ' is not enough to show a general decline in [plaintiff's] business resulting from the falsehood, even where no other cause for it is apparent, ... it is only the loss of specific sales that can be recovered. This means, in the usual case, that the plaintiff must identify the particular purchasers who have refrained from dealing with him, and specify the transactions of which he claims to have been deprived.' " (*Erlich, supra*, 224 Cal.App. 2d at p. 73, 36 Cal.Rptr. 256; see *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 335-336, 42 Cal.Rptr.3d 607 [plaintiff failed to establish probability of prevailing on trade libel claim in opposition to special motion to strike where plaintiff "did not present any evidence showing it had suffered a specific pecuniary loss as a result of the defendant's communications"].) *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 925 [277 Cal.Rptr.3d 204, 221]

The Court does not find the libel cause of action is sufficiently plead, as it is unclear who, in what capacity, is making the purportedly false statements, to whom. Additionally, the trade libel cause of action fails to identify special damages. Cross-Defendant's demurrer as to the Fifth Cause of Action is sustained, with leave to amend.

6. Sixth Cause of Action – Unjust Enrichment

Cross-Defendant argues unjust enrichment is not an independent cause of action but rather a restitution theory, which cannot be sought when an enforceable express contract exists. The Cross-Complaint asserts the MOU as a binding contract governing the same transaction, the same benefit, and the same alleged nonpayment, yet seeks restitution on the same subject matter. The allegations are further conclusory.

Cross-Complainants assert the access they granted was not required by the MOU but was executed in good faith that the MOU would be honored by Cross-Defendants. The cause of action further functions as a pleading alternative.

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

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

The Court finds the cause of action as plead is conclusory and does not properly assert a pleading alternative. Cross-Defendant's demurrer as to the Sixth Cause of Action is sustained, with leave to amend.

7. Seventh Cause of Action – Declaratory Relief

Cross-Defendant contends the Cross-Complaint only seeks a declaration about the parties' past dispute over the alleged acquisition, not a declaration of prospective rights. The cause of action is duplicative of the other causes of action and seeks a declaration of rights at issue in those claims.

Cross-Complainants maintain there is an active controversy regarding the ownership of Cross-Complainants' assets, as Cross-Defendants persistently treat them as their own and directly claimed ownership of CIP itself.

A cause of action for declaratory relief may adjudicate future rights and liability between parties who have a relationship, either contractual or otherwise. (See *Cardellini v. Casey* (1986) 181 Cal.App.3d 389, 226 Cal.Rptr. 659; *Bachis v. State Farm Mutual Auto Ins. Co.* (1968) 265 Cal.App.2d 722, 71 Cal.Rptr. 486.) The pleader need not establish it is also entitled to a favorable judgment. (See *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606, 98 Cal.Rptr.2d 277.) To assert a cause of action for declaratory relief, Code of Civil Procedure section 1060 requires that there be an "*actual controversy* relating to the legal rights and duties

of the respective parties," not an abstract or academic dispute. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746–747, 53 Cal.Rptr.3d 203.) "However, the courts will nevertheless evaluate in the context of a demurrer whether the factual allegations of the complaint for declaratory relief reveal that an actual controversy exists between the parties. (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1721–1722 [45 Cal.Rptr.2d 752].) 'Sustaining a demurrer when the complaint reveals such a controversy constitutes error. [Citations.] [¶] Before a controversy is ripe for adjudication it " 'must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' " [Citations.]' (*Id.* at p. 1722 [45 Cal.Rptr.2d 752].)" (*Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 562, 86 Cal.Rptr.3d 408.) *Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 28–29 [187 Cal.Rptr.3d 542, 546–547].

The Court finds Cross-Complainants have properly alleged an ongoing controversy exists regarding the ownership of Cross-Complainants' assets and the ownership of CIP. Cross-Defendant's demurrer as to the Seventh Cause of Action is overruled.

8. Eighth Cause of Action – Injunctive Relief

Cross-Defendant argues injunctive relief is a remedy, not a cause of action, which fails as a matter of law.

Cross-Complainant asserts that its effect is an articulation of a prayer for relief.

Injunctive relief is a remedy, not a cause of action. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 618, 129 Cal.Rptr.2d 546; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159, 69 Cal.Rptr.2d 692.) A cause of action must exist before a court may grant a request for injunctive relief. (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973, 84 Cal.Rptr.2d 179; *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293, 35 Cal.Rptr.2d 113 [" 'A permanent injunction is merely a remedy for a proven cause of action. It may not be issued if the underlying cause of action is not established.' "]; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356, 176 Cal.Rptr. 620.) *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65 [183 Cal.Rptr.3d 654, 675], as modified on denial of reh'g (Mar. 6, 2015) (holding the court did not err in sustaining the demurrer to the cause of action for an injunction and that plaintiffs may still obtain injunctive relief if they prevail on a cause of action).

Cross-Defendant's demurrer to the Eighth Cause of Action is sustained with leave to amend to allow Cross-Complainant to reframe the request as a prayer for relief.

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9. Tenth Cause of Action – Unfair Competition

Cross-Defendant alleges the cause of action is conclusory and does not plead facts showing any unlawful, unfair, or fraudulent business practice, and does not plead a viable theory for restitution or injunctive relief.

Cross-Complainants contend the Cross-Complaint specifically provided that Cross-Defendants nonexclusively converted Cross-Complainants' property, defrauded Cross-Complainants, and defamed Cross-Complainants.

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. Business & Professions Code § 17200.

"[A] fraudulent business practice is one that is likely to deceive members of the public." (*Morgan v. AT & T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1255, 99 Cal.Rptr.3d 768.) "A claim based upon the fraudulent business practice prong of the UCL is 'distinct from common law fraud. "A [common law] fraudulent deception must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim who incurs damages. None of these elements are required to state a claim for ... relief" under the UCL. [Citations.] This distinction reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices.' " (*Ibid.*) A fraudulent business practice " ' "may be accurate on some level, but will nonetheless tend to mislead or deceive.... A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under" ' the UCL." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471, 49 Cal.Rptr.3d 227.) *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 252–253 [129 Cal.Rptr.3d 874, 893].

"The 'unfair' standard, the second prong of [Business and Professions Code] section 17200, also provides an independent basis for relief. This standard is intentionally broad." The test of whether a business practice is unfair "involves an examination of [that practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the Court must weigh the utility of the Defendant's conduct against the gravity of the harm to the alleged victim ... [Citations.]" [Citation.]' [Citation.] [¶] An 'unfair' business practice occurs when the practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. [Citation.] *Bardin v. DaimlerChrysler Corp. (*2006) 136 Cal.App.4th 1255, 1262–1263 [39 Cal.Rptr.3d 634, 637–638].

The Court finds the cause of action sufficiently pleads Cross-Defendant engaged in unfair and fraudulent conduct. Cross-Defendant's demurrer as to the Tenth Cause of Action is overruled.

10. Eleventh Cause of Action - Accounting

Cross-Defendant asserts the Cross-Complaint does not allege a relationship that requires Fortis to account to Cross-Complainants, and it pleads ordinary, calculable categories of damages, which are specifically identified by Cross-Complainants themselves.

Cross-Complainants argue that although an estimation of the cost of Cross-Defendants' misappropriation of Cross-Complainants' assets has been provided, this is neither final nor comprehensive. Additionally, the parties made an agreement in which Cross-Defendants owe Cross-Complainants money, which establishes the requisite relationship, and an accounting is necessary because Cross-Defendants are in a better position to know the extent of the damages they inflicted, as they retain the access logs, billing records, customer communication records, and other materials chronicling their misdeeds.

[A] fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting. (*Kritzer v. Lancaster* (1950) 96 Cal.App.2d 1, 7, 214 P.2d 407.) The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant's relationship with the plaintiff, the defendant is obliged to surrender. (1A Corpus Juris Secundum (2005) Accounting, § 6, p. 7.) *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179–180 [92 Cal.Rptr.3d 696, 716].

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

An action for an accounting has two elements: (1) "that a relationship exists between the plaintiff and defendant that requires an accounting" and (2) "that some balance is due the plaintiff that can only be ascertained by an accounting." (*Teselle*, *supra*, 173 Cal.App.4th at p. 179, 92 Cal.Rptr.3d 696; see also 5 Witkin, Cal. Procedure, *supra*, Pleading, § 820.) The action carries with it an inherent limitation; an accounting action "is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." (*Teselle*, at p. 179, 92 Cal.Rptr.3d 696; see also *St. James Church of Christ Holiness v. Superior Court of Los Angeles County* (1955) 135 Cal.App.2d 352, 359, 287 P.2d 387.) *Sass v. Cohen* (2020) 10 Cal.5th 861, 869 [272 Cal.Rptr.3d 836, 842, 477 P.3d 557, 562].

The Court finds Cross-Complainants have adequately pled a cause of action for an Accounting. Cross-Defendant's demurrer as to the Eleventh Cause of Action is overruled.

DEMURRER – DAVID CIAPPONI, DAVID LITTLE, PETER OLIVER, AND ENRIQUE PASOS

Cross-Defendants, David Ciapponi, David Little, Peter Oliver, and Enrique Pasos (collectively "Cross-Defendants"), demur to Defendant/Cross-Complainant's, Jason Howard and Capitol IT Partners, Inc. (collectively "Cross-Complainants"), Cross-Complaint. On September 28, 2026, Cross-Complainants filed an Opposition. Cross-Defendants filed a Reply on October 2, 2026.

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 Bianka Kadian-Dodov, counsel attempted to meet and confer with Cross-Complainants prior to filing, but the dispute could not be resolved.

Background

On May 12, 2026, Cross-Complainants filed a Cross-Complaint Against Central Park Systems, Corporation DBA Fortis Telecom, David Ciapponi, David Little, Enrique Pasos, Peter Oliver, and Does 1-50 for the following causes of action: 1) Breach of Contract; 2) Promissory

Fraud; 3) Conversion; 4) Intentional Interference; 5) Libel and Trade Libel; 6) Unjust Enrichment; 7) Declaratory Relief; 8) Injunctive Relief; 9) Fraud/Misrepresentation; 10) Unfair Competition (Bus. & Prof. Code § 17200); and 11) Accounting.

Legal Principles

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

Discussion

1. First Cause of Action – Breach of Contract

Cross-Defendants assert the Breach of Contract cause of action fails because the Cross-Complaint does not identify any signed APA or any MOU term imposing a personal obligation on the individual Defendants to complete the APA or make payments to Cross-Complainants. The MOU identifies the transaction between Capitol IT Partners, Inc. and Fortis, wherein David Ciappoini signed in his capacity as CEO of Fortis. No allegations are made that Defendants Little, Pasos, or Peter signed the MOU, agreed to be bound by it, or assumed any contractual obligations under it.

Cross-Complainants contend that whether the parties entered into an agreement is a question of fact which cannot be resolved on demurrer. Additionally, the Cross-Complaint explicitly alleged the nonpayment of the $250,000.00 owed to Cross-Complainants on June 15, 2024.

Directors and officers are not personally liable on contracts signed by them for and on behalf of the corporation unless they purport to bind themselves individually. (19 Am.Jur.2d, Corporations, s 1341; 19 C.J.S. Corporations s 839; cf. Carlesimo v. Schwebel, 87 Cal.App.2d 482, 487, 197 P.2d 167.) *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 595 [83 Cal.Rptr. 418, 423, 463 P.2d 770, 775].

[E]ven if the officers and directors acted as agents for the entities they represented, under ordinary rules of contract and agency law a representative who unambiguously signs a contract as a corporate officer or agent is not a party to the contract in his or her personal capacity. (*Ronay Family Limited Partnership v. Tweed*, *supra*, 216 Cal.App.4th at pp. 837-838, 157 Cal.Rptr.3d 680; *Benasra v. Marciano*, at p. 990, 112 Cal.Rptr.2d 358; see Cal. U. Com. Code, §

3402, subd. (b).) *Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 861 [243 Cal.Rptr.3d 340, 359–360]

The Court finds the MOU on its face establishes that Defendant Ciapponi signed as Fortis' CEO, not in his individual capacity. The Cross-Complaint does not plead any allegations against any of the individual Cross-Defendants. Cross-Defendant's demurrer as to the First Cause of Action is sustained, with leave to amend.

2. Second and Ninth Causes of Action – Promissory Fraud and Fraud/Misrepresentation

Cross-Defendants allege the Cross-Complaint does not plead fraud with the required specificity, as its allegations are broad, conclusory, and collective against all Cross-Defendants.

Cross-Complainants maintain the specificity is properly pled.

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 elements of fraud are misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, 49 Cal.Rptr.2d 377, 909 P.2d 981 (*Lazar*).) Promissory fraud is a subspecies of fraud, and an action may lie where a defendant fraudulently induces the plaintiff to enter into a contract, by making promises he does not intend to keep. (*Ibid.*) "[T]he intent element of promissory fraud entails more than proof of an unkept promise or mere failure of performance." (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1183, 151 Cal.Rptr.3d 93, 291 P.3d 316 (*Riverisland*); *Lazar*, *supra,* 12 Cal.4th at p. 638, 49 Cal.Rptr.2d 377, 909 P.2d 981 [a promissory fraud claim "does not depend upon whether the defendant's promise is ultimately enforceable as a contract"].) **"[P]romissory fraud requires proof of '(1) a promise made regarding a material fact without any intention of performing it; (2) the existence of**

the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promise[e].' [Citation.]" (*Gruber v. Gruber* (2020) 48 Cal.App.5th 529, 540, 261 Cal.Rptr.3d 819.) *Missakian v. Amusement Industry, Inc.* (2021) 69 Cal.App.5th 630, 653–654 [285 Cal.Rptr.3d 23, 38–39]. (emphasis added).

The Court does not find the Second and Ninth Causes of Action are sufficiently pleaded as to the individual Cross-Defendants. Cross-Defendants' demurrer as to the Second and Ninth Causes of Action is sustained, with leave to amend.

3. Third Cause of Action – Conversion

Cross-Defendants argue the Third Cause of Action is conclusory and does not state the underlying facts to support a claim.

Cross-Complainants assert the systems are described in Exhibit L of the Cross-Complaint regarding the cost of Cross-Defendants' use, with more specific cross-references to other exhibits.

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.

The Court does not find the Third Cause of Action adequately specifies the property at issue and Cross-Complainants' ownership or right to possess such property. The Cross-Complaint merely asserts that Cross-Defendants wrongfully exercised control over property and systems without identifying what those consist of and how the individual Cross-Defendants acted inconsistently with their property rights. The reference to Exhibit L pertains to the summary of monthly costs and damages, not an identification of the property Cross-Defendants purportedly wrongfully exercised control of. Cross-Defendants' demurrer as to the Third Cause of Action is sustained, with leave to amend.

4. Fourth Cause of Action – Intentional Interference

Cross-Defendants allege the Fourth Cause of Action is conclusory, collective, and does not include underlying facts to establish whether the claim is for an interference with existing contracts or as an interference with prospective economic advantage.

Cross-Complainants contend Cross-Defendants purported to a CIP customer via an email, included within the Cross-Complaint, that CIP is now owned by Fortis. The Cross-Complaint described the communications conducted by Cross-Defendants with CIP customers, along with providing proof of the communications, which included billing attempts and false

representations that CIP was owned by Fortis. Such emails establish Cross-Defendants knew they were dealing with CIP customers who were confused by their interference.

To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Ibid.*) To establish the claim, the plaintiff need not prove that a defendant acted with the primary purpose of disrupting the contract, but must show the defendant's knowledge that the interference was certain or substantially certain to occur as a result of his or her action. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 56, 77 Cal.Rptr.2d 709, 960 P.2d 513.) *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148 [17 Cal.Rptr.3d 289, 294, 95 P.3d 513, 517].

To prevail on a cause of action for intentional interference with prospective economic advantage in California, a plaintiff must plead and prove (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's acts. (*Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6, 233 Cal.Rptr. 294, 729 P.2d 728.) Id. at 1152.

The Court does not find the Cross-Complaint contains sufficient facts to support a cause of action for intentional interference with contractual relations or prospective economic advantage. Cross-Defendants' demurrer as to the Fourth Cause of Action is sustained, with leave to amend.

5. Fifth Cause of Action – Libel and Trade Libel

Cross-Defendants assert the Cross-Complaint does not plead the elements of either tort, as the allegations are conclusory. Although Exhibit H is described as emails showing representations of ownership, the Cross-Complaint does not tie any specific statement to any individual Cross-Defendant and does not plead the special damages required for trade libel.

Cross-Complainants argues the false representation that Fortis owned CIP made by Cross-Defendants to CIP customers constituted defamation and/or trade libel for attempting to divert such customers to Fortis. Cross-Defendants knew it was false and intended to appropriate customers from Cross-Complainants. Exhibit I of the Cross-Complaint includes emails with Cross-Defendants Little and Ciapponi wherein the customer expresses frustration, disappointment, and confusion due to Fortis' actions in the alleged merging with CIP.

Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure

or which causes special damage. (Civ.Code, §§ 45, 46; 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts § 471, pp. 557–558.) Publication means communication to some third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made. Publication need not be to the "public" at large; communication to a single individual is sufficient. (*Cunningham v. Simpson* (1969) 1 Cal.3d 301, 306; , 81 Cal.Rptr. 855, 461 P.2d 39 5 Witkin, Summary of Cal. Law, *supra,* Torts, §§ 471, 476, pp. 557–558, 560–561.) *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 [85 Cal.Rptr.2d 397, 402], as modified (June 23, 1999).

While a cause of action for trade libel " 'resembles that for defamation ... [it] differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases. ... [T]he plaintiff must prove in all cases that the publication has played a material and substantial part in inducing others not to deal with him, and that as a result he has suffered special damages.' " (*Erlich v. Etner* (1964) 224 Cal.App.2d 69, 73, 36 Cal.Rptr. 256 (*Erlich*).) At a minimum, a trade libel cause of action requires: "(1) a publication; (2) which induces others not to deal with plaintiff; and (3) special damages." (*Nichols v. Great American Ins. Companies* (1985) 169 Cal.App.3d 766, 773 [215 Cal. Rptr. 416].)

Thus, unlike a claim for defamation, trade libel requires as an essential element that the plaintiff suffered direct financial harm because someone else acted in reliance on the defendant's statement. (CACI No. 1731.) To establish this element, " ' is not enough to show a general decline in [plaintiff's] business resulting from the falsehood, even where no other cause for it is apparent, ... it is only the loss of specific sales that can be recovered. This means, in the usual case, that the plaintiff must identify the particular purchasers who have refrained from dealing with him, and specify the transactions of which he claims to have been deprived.' " (*Erlich, supra*, 224 Cal.App. 2d at p. 73, 36 Cal.Rptr. 256; see *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 335-336, 42 Cal.Rptr.3d 607 [plaintiff failed to establish probability of prevailing on trade libel claim in opposition to special motion to strike where plaintiff "did not present any evidence showing it had suffered a specific pecuniary loss as a result of the defendant's communications"].) *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 925 [277 Cal.Rptr.3d 204, 221]

The Court does not find the libel cause of action is sufficiently pled. Additionally, the trade libel cause of action fails to identify special damages. Cross-Defendants' demurrer as to the Fifth Cause of Action is sustained, with leave to amend.

6. Sixth Cause of Action – Unjust Enrichment

Cross-Defendants argue as pleaded, the cause of action does not allege facts showing that restitution is available against any individual Cross-Defendant.

Cross-Complainants assert the access they granted was not required by the MOU but was executed in good faith that the MOU would be honored by Cross-Defendants. The cause of action further functions as a pleading alternative.

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

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

The Court finds the cause of action as plead is conclusory, identifies no benefit received by the individual Cross-Defendants, and does not properly assert a pleading alternative. Cross-Defendants' demurrer as to the Sixth Cause of Action is sustained, with leave to amend.

7. Seventh Cause of Action – Declaratory Relief

Cross-Defendants contend the Cross-Complaint only seeks a declaration about the parties' past dispute over the alleged acquisition, not a declaration of prospective rights. The cause of action is duplicative of the other causes of action and seeks a declaration of rights at issue in those claims and does not identify any prospective right or duty to the individual Cross-Defendants.

Cross-Complainants maintain there is an active controversy regarding the ownership of Cross-Complainants' assets, as Cross-Defendants persistently treat them as their own and directly claimed ownership of CIP itself.

A cause of action for declaratory relief may adjudicate future rights and liability between parties who have a relationship, either contractual or otherwise. (See *Cardellini v. Casey* (1986) 181 Cal.App.3d 389, 226 Cal.Rptr. 659; *Bachis v. State Farm Mutual Auto Ins. Co.* (1968) 265 Cal.App.2d 722, 71 Cal.Rptr. 486.) The pleader need not establish it is also entitled to a favorable judgment. (See *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606, 98 Cal.Rptr.2d 277.) To assert a cause of action for declaratory relief, Code of Civil Procedure

section 1060 requires that there be an "*actual controversy* relating to the legal rights and duties of the respective parties," not an abstract or academic dispute. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746–747, 53 Cal.Rptr.3d 203.) "However, the courts will nevertheless evaluate in the context of a demurrer whether the factual allegations of the complaint for declaratory relief reveal that an actual controversy exists between the parties. (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1721–1722 [45 Cal.Rptr.2d 752].) 'Sustaining a demurrer when the complaint reveals such a controversy constitutes error. [Citations.] [¶] Before a controversy is ripe for adjudication it " 'must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' " [Citations.]' (*Id.* at p. 1722 [45 Cal.Rptr.2d 752].)" (*Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 562, 86 Cal.Rptr.3d 408.) *Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 28–29 [187 Cal.Rptr.3d 542, 546–547].

The Court finds Cross-Complainants have not properly alleged an ongoing controversy exists regarding the ownership of Cross-Complainants' assets and the ownership of CIP as to any of the individual Cross-Defendants. Cross-Defendant's demurrer as to the Seventh Cause of Action is sustained, with leave to amend.

8. Eighth Cause of Action – Injunctive Relief

Cross-Defendants argue injunctive relief is a remedy, not a cause of action, which fails as a matter of law.

Cross-Complainant asserts that its effect is an articulation of a prayer for relief.

Injunctive relief is a remedy, not a cause of action. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 618, 129 Cal.Rptr.2d 546; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159, 69 Cal.Rptr.2d 692.) A cause of action must exist before a court may grant a request for injunctive relief. (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973, 84 Cal.Rptr.2d 179; *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293, 35 Cal.Rptr.2d 113 [" 'A permanent injunction is merely a remedy for a proven cause of action. It may not be issued if the underlying cause of action is not established.' "]; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356, 176 Cal.Rptr. 620.) *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65 [183 Cal.Rptr.3d 654, 675], as modified on denial of reh'g (Mar. 6, 2015) (holding the court did not err in sustaining the demurrer to the cause of action for an injunction and that plaintiffs may still obtain injunctive relief if they prevail on a cause of action).

Cross-Defendants' demurrer to the Eighth Cause of Action is sustained with leave to amend to allow Cross-Complainant to reframe the request as a prayer for relief.

9. Tenth Cause of Action – Unfair Competition

Cross-Defendants allege the cause of action is conclusory and does not plead facts showing any unlawful, unfair, or fraudulent business practice by any individual Cross-Defendant and does not plead a viable theory for restitution or injunctive relief against any individual.

Cross-Complainants contend the Cross-Complaint specifically provided that Cross-Defendants nonexclusively converted Cross-Complainants' property, defrauded Cross-Complainants, and defamed Cross-Complainants.

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. Business & Professions Code § 17200.

"[A] fraudulent business practice is one that is likely to deceive members of the public." (*Morgan v. AT & T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1255, 99 Cal.Rptr.3d 768.) "A claim based upon the fraudulent business practice prong of the UCL is 'distinct from common law fraud. "A [common law] fraudulent deception must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim who incurs damages. None of these elements are required to state a claim for ... relief" under the UCL. [Citations.] This distinction reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices.' " (*Ibid.*) A fraudulent business practice " ' "may be accurate on some level, but will nonetheless tend to mislead or deceive.... A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under" ' the UCL." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471, 49 Cal.Rptr.3d 227.) *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 252–253 [129 Cal.Rptr.3d 874, 893].

"The 'unfair' standard, the second prong of [Business and Professions Code] section 17200, also provides an independent basis for relief. This standard is intentionally broad." The test of whether a business practice is unfair "involves an examination of [that practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the Court must weigh the utility of the Defendant's conduct against the gravity of the harm to the alleged victim ... [Citations.]" [Citation.]' [Citation.] [¶] An 'unfair' business practice occurs when the practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. [Citation.] *Bardin v. DaimlerChrysler Corp. (*2006) 136 Cal.App.4th 1255, 1262–1263 [39 Cal.Rptr.3d 634, 637–638].

The Court finds the cause of action fails to properly plead allegations constituting unlawful, unfair, or fraudulent conduct against the individual Cross-Defendants. Cross-Defendants' demurrer as to the Tenth Cause of Action is sustained, with leave to amend.

10. Eleventh Cause of Action - Accounting

Cross-Defendants assert the Cross-Complaint does not allege a relationship that requires any individual Cross-Defendant to account to Cross-Complainants, and it pleads ordinary, calculable categories of damages which are specifically identified by Cross-Complainants themselves.

Cross-Complainants argue that although an estimation of the cost of Cross-Defendants' misappropriation of Cross-Complainants' assets has been provided, this is neither final nor comprehensive. Additionally, the parties made an agreement in which Cross-Defendants owe Cross-Complainants money, which establishes the requisite relationship, and an accounting is necessary because Cross-Defendants are in a better position to know the extent of the damages they inflicted, as they retain the access logs, billing records, customer communication records, and other materials chronicling their misdeeds.

[A] fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting. (*Kritzer v. Lancaster* (1950) 96 Cal.App.2d 1, 7, 214 P.2d 407.) The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant's relationship with the plaintiff, the defendant is obliged to surrender. (1A Corpus Juris Secundum (2005) Accounting, § 6, p. 7.) *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179–180 [92 Cal.Rptr.3d 696, 716].

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

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

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

The Court finds Cross-Complainants have failed to adequately plead a cause of action for an Accounting as to the individual Cross-Defendants. Cross-Defendants' demurrer as to the Eleventh Cause of Action is sustained, with leave to amend.

TENTATIVE RULING #6:

1. DEMURRER – CENTRAL PARK SYSTEMS D/B/A FORTIS TELECOM

DEFENDANT'S DEMURRER AS TO THE THIRD, FOURTH, FIFTH, SIXTH, AND EIGHTH CAUSES OF ACTION IS SUSTAINED WITH LEAVE TO AMEND. DEFENDANT'S DEMURRER AS TO THE FIRST, SECOND, SEVENTH, NINTH, TENTH, AND ELEVENTH CAUSES OF ACTION IS OVERRULED.

2. DEMURRER - DAVID CIAPPONI, DAVID LITTLE, PETER OLIVER, AND ENRIQUE PASOS

DEFENDANT'S DEMURRER AS TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, AND ELEVENTH CAUSES OF ACTION IS SUSTAINED WITH LEAVE TO AMEND.

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

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.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

IF A PARTY WISHES TO APPEAR REMOTELY, INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

IF A PARTY PREVIOUSLY REGISTERED TO APPEAR REMOTELY FOR THE HEARING BUT ORAL ARGUMENT IS NOT REQUESTED AND THE PARTY DOES NOT INTEND TO APPEAR AT THE HEARING, THE PARTY MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. TO CANCEL A REMOTE APPEARANCE REGISTRATION, VISIT: https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

7.	**26CV0723**	**JONATHAN EFRIN GALLEGOS VS. PARK PLACE FINANCE, LLC ET AL**
ENFORCE DEFAULT / SET ASIDE DEFAULT / DEMURRER / DEMURRER / SPECIAL MOTION TO STRIKE		

Before the Court are the following matters: 1) Motion to Set Aside Entries of Default; 2) Motion to Enforce Default Against JM Insulation Group; Declare Corporate Portions of Joint Answer Nonoperative; and Preclude Affirmative Relief by Defaulted Corporation; 3) Demurrer filed by Defendant IROQ LLC and Elasha LLC; 4) Demurrer filed by Defendant Tahoe LLC; and 5) Special Motion to Strike.

SET ASIDE DEFAULT

On October 5, 2026, Defendants, Jose Guadalupe Medina and JM Insulation Group (collectively "Defendants"), filed a Motion to Set Aside Entries of Default. Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"), filed a Limited Opposition to JM/Medina Default-Relief Motion on October 15, 2026.

Request for Judicial Notice

Defendants seek judicial notice of the following: 1) Order Granting Leave to File First Amended Complaint, filed May 14, 2026; 2) First Amended Verified Complaint, filed May 15, 2026; 3) Proof of Service of Summons as to "JM Insulation Group," filed June 15, 2026; 4) Request for Entry of Default and Court Judgment, filed and entered July 1, 2026; 5) Request for Entry of Default, filed and endorsed July 13, 2026; 6) Plaintiff's Second Amended Notice of Six-Defendant Court Default Judgment Prove-Up, Second Amended Memorandum of Points and Authorities, and Second Amended Declaration of Jonathan Efrin Gallegos, with proposed form JUD-100 and Second Amended Attachments 5a, 6.a.(1), and 8, filed August 14, 2026; 7) Plaintiff's "Second Amended Attachments 5a, 6a & 8 - JM Insulation Group," with attached form JUD-100; 8) Plaintiff's Notice of Motion and Motion to Enforce Default Against JM Insulation Group; Declare Corporate Portions of Joint Answer Nonoperative; and Preclude Affirmative Relief by Defaulted Corporation, with supporting memorandum of points and authorities; and 9) The Court's October 2, 2026 tentative ruling.

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

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

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

Legal Principles

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

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

> (b) The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken… Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against the attorney's client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or

neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.

Discussion

On July 1, 2026, and July 13, 2026, the clerk entered defaults against Defendant JM Insulation Group. Defendants argue these defaults should not have been entered and request they be set aside.

July 13, 2026, Entry

Defendants argue the July 13, 2026, entry is void because it was entered on the original complaint two months after the Court ordered the First Amended Complaint superseded the original pleading. As there was no pleading left on which to default, it should be vacated.

The Court finds that as default was entered on the Complaint filed on March 16, 2026, which was superseded by Plaintiff's First Amended Complaint ("FAC"), the default as to Defendant JM Insulation Group is void. Defendants' request to set aside and vacate the July 13, 2026, entry of default against JM Insulation Group is granted.

July 1, 2026, Entry

Defendants argue that on May 6, 2026, Plaintiff agreed to serve Defendants via mail through counsel and acknowledged that counsel represented Defendant JM Insulation Group. On May 30, 2026, Plaintiff served the FAC at Defendant Medina's home, which Defendant Medina notified his counsel, Daniel Rodriguez, of. As Plaintiff accepted his 415.30 election in writing, Mr. Rodriguez did not treat the May 30 delivery as proper service and did not calendar a response date running from it, which he recognizes was his error. Additionally, Plaintiff served the requests for entry of default by mail at Defendant Medina's home on July 8, 2026, which Mr. Rodriguez was notified of the following day. The copy of the request for entry of default did not contain the clerk's endorsement.

On July 16, 2026, Mr. Rodriguez spoke with a clerk, in part, regarding about the fact that a request for entry of default had been submitted but had not been entered. Defendants' Answer was thereafter submitted on the same date. Mr. Rodriguez was not informed that defaults had been entered until October 2, 2026, after he called the clerk's office, and that the Answer was shown as lodged pending motion to strike.

Finding mandatory relief applicable pursuant to Code of Civil Procedure § 473(b), Defendants' request to set aside and vacate the July 1, 2026, entry of default against JM Insulation Group is granted. Mr. Rodriguez shall pay costs incurred by Plaintiff associated with

obtaining the July 13, 2026, entry of default, subject to verification, within thirty (30) days of the Court's order. Defendant's Answer shall be deemed filed as of July 16, 2026.

MOTION TO ENFORCE DEFAULT

On August 14, 2026, Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"), filed a Motion to Enforce Default Against JM Insulation Group; Declare Corporate Portions of Joint Answer Nonoperative; and Preclude Affirmative Relief by Defaulted Corporation.

As the Court has set aside the defaults entered against Defendant, JM Insulation Group, Plaintiff's motion is rendered moot.

SPECIAL MOTION TO STRIKE

On July 20, 2026, Defendants, Jose Guadalupe Medina and JM Insulation Group (collectively "Defendants"), filed a Special Motion to Strike Plaintiff's First Amended Verified Complaint. No opposition was filed by Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"). On October 22, 2026, Defendants filed a Notice of Plaintiff's Non-Opposition to Special Motion to Strike Plaintiff's First Amended Verified Complaint.

Request for Judicial Notice

Defendants seek judicial notice of the following: 1) Grant Deed from Jonathan Gallegos to It Aint Much But Its Honest Work LLC, recorded December 5, 2024; 2) Claim of Mechanics Lien recorded by "J M Insulation" on September 3, 2025; 3) Release of Mechanics Lien recorded September 24, 2025; 4) Quitclaim Deed from It Aint Much But Its Honest Work, LLC to Jonathan Efrin Gallegos, dated March 14, 2026 and recorded March 16, 2026; and 5) Proof of Service of Summons (Judicial Council form POS-010) as to "JM Insulation Group," filed in this action on June 15, 2026; 6)

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

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

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

Legal Principles

The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. **First, the defendant must establish that the challenged claim arises from activity protected by section 425.16.** (*Taus v. Loftus* (2007) 40 Cal.4th 683, 712, 54 Cal.Rptr.3d 775, 151 P.3d 1185 (*Taus*).) **If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.** We have described this second step as a "summary-judgment-like procedure." (*Id.* at p. 714, 54 Cal.Rptr.3d 775, 151 P.3d 1185.) The court does not weigh evidence or resolve conflicting factual claims. **Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment**. **It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law.** (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820, 124 Cal.Rptr.3d 256, 250 P.3d 1115 (*Oasis*).) " [C]laims with the requisite minimal merit may proceed." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94, 124 Cal.Rptr.2d 530, 52 P.3d 703 (*Navellier*).) *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385 [205 Cal.Rptr.3d 475, 480–481, 376 P.3d 604, 608–609]. (emphasis added).

Background

Defendants allege that at all relevant times, Defendant Medina held a California Contractors State License No. 982502 and was in good standing when the underlying mechanics lien was filed. At the time, Defendant Medina operated as a sole proprietor under the name "JM Insulation." Defendant Medina's corporation, JM Insulation Group, was formed on March 15, 2025, that held no contractor's license and conducted no operations until its license (no. 982502) was reissued to it on December 23, 2020, after the work on Plaintiff's property was performed, the lien was recorded and subsequently released. JM Insulation Group performed none of the acts alleged within the First Amended Complaint ("FAC").

In May 2025, Maxton Builders, Inc. ("Maxton") engaged Defendant as the insulation subcontractor for a project at 3687 Primrose Road, South Lake Tahoe, CA (the "Subject Property"). Defendant performed the work on or about May 17, 2025, and invoiced Maxton $8,500.00 on May 23, 2025. On June 20, 2025, Defendant Medina signed the 20-day preliminary notice. In June 2025, Maxton paid $5,100.00. On September 3, 2025, Defendant recorded a

Claim of Mechanics Lien in El Dorado County Official Records in the amount of $3,887.00 representing the unpaid balance after crediting Maxton's payment. The recorded lien identified the Subject Property's owner as It Aint Much But Its Honest Work LLC (the "Owner Entity"). The recorded lien was served on the Owner Entity by certified mail on September 3, 2025, with an affidavit of delivery.

On September 22, 2025, the $3,956.00 remaining balance was paid by JG Management and Consulting Services via Venmo. On September 24, 2025, a Release of Mechanics Lien was recorded. Defendant received no payment from any account in Plaintiff's individual name, nor does Defendant claim an interest in the Subject Property or have any intention of recording any further lien.

Discussion

Protected Activity

Defendants argue that every allegation directed at them in the FAC describes the recording (and satisfaction) of the mechanics lien and nothing else. The lien was recorded in contemplation of a foreclosure action which Defendant Medina intended to pursue if unpaid. As such, each challenged claim arises from protected activity.

Among other types of communications, the anti-SLAPP statute protects "any written or oral statement or writing made before a legislative, executive, or judicial proceeding" (Code Civ. Proc., § 425.16, subd. (e)(1)) or "in connection with an issue under consideration or review" in such proceedings (*id.*, subd. (e)(2)). Statements made in preparation for litigation or in anticipation of bringing an action fall within these categories. (*Flatley, supra,* 39 Cal.4th at p. 322, fn. 11, citing *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 [81 Cal. Rptr. 2d 471, 969 P.2d 564] (*Briggs*).) If a statement falls into one of these categories, a defendant does not separately need to show that his or her statement was made in connection with a "public issue." (*Briggs*, at p. 1123.) *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 425 [270 Cal.Rptr.3d 425, 437].

The filing of a mechanic's lien is a necessary prerequisite to bringing a foreclosure action. (§ 8460.) As such, it is a protected prelitigation statement preparatory to filing a judicial proceeding. (*Briggs, supra*, 19 Cal.4th at p. 1115, 81 Cal.Rptr.2d 471, 969 P.2d 564 [anti-SLAPP statute protects prelitigation statements " 'preparatory to or in anticipation of the bringing of an action or other official proceeding' "].) *Id.* at 426.

The Court finds that each allegation against Defendants throughout the FAC relate to the filing of a mechanic's lien – a protected activity.

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Probability of Success

1. Standing

Defendants argue Plaintiff lacks standing, as the Owner Entity, not Plaintiff as an individual, owned the Subject Property at every moment relevant to Defendant's conduct. Any purported injury that the lien could have inflicted was an injury to the Owner Entity's title and finances, not Plaintiff's. Plaintiff's restitution theory fails because no payment came from any account in Plaintiff's individual name. As for the Violation of Business and Professions Code §§ 7031 and 17200 cause of action, Plaintiff owned nothing encumbered by the lien and the payment records reflect no payment by him individually, which supports Plaintiff lacked standing.

As Plaintiff held no individual interest in the Subject Property at the time of the lien, and the lien was directed solely at the Owner Entity, Plaintiff lacks standing. The Court finds Plaintiff cannot demonstrate a probability of prevailing on the merits. Defendants' special motion to strike is granted.

2. First Cause of Action – Quiet Title/Cancellation of Void Instruments

Defendants argue the cause of action is moot as to Defendants because the lien was paid, satisfied in full, and released of record on September 24, 2025. Defendants assert no adverse claim or interest and disclaims any intent to record another lien. As such, there is no instrument left to cancel and no cloud left to quiet.

As a general rule, "[t]he voluntary cessation of allegedly wrongful conduct destroys the justiciability of a controversy and renders an action moot unless there is a reasonable expectation the allegedly wrongful conduct will be repeated." (*Center for Local Government Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146, 1157, 202 Cal.Rptr.3d 629.) *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434 [270 Cal.Rptr.3d 425, 444] (finding that as the lien was released and defendant indicated no additional liens would be filed, plaintiff's cause of action for quiet title was moot).

As Defendants' lien has been released and have indicated no intent to further record another lien, the Court finds the First Cause of Action moot as to Defendants. Accordingly, Plaintiff cannot demonstrate a probability of prevailing on the merits. Defendants' special motion to strike is granted as to the First Cause of Action.

3. Second Cause of Action – Slander of Title

Defendants argue the claim fails because the recording of the mechanic's lien is absolutely privileged and does not give rise to a slander of title action even if the claim of lien is invalid. Additionally, the lien encumbered the Owner Entity's title, not Plaintiff's, so Plaintiff suffered no direct pecuniary loss.

As established in *Frank Pisano*, the recording of a mechanic's lien is absolutely privileged, and does not give rise to a slander of title action even if the claim of lien is invalid. (*Frank Pisano, supra*, 29 Cal.App.3d at p. 25, 105 Cal.Rptr. 414.) *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 437 [270 Cal.Rptr.3d 425, 447] (finding the slander of title cause of action was barred by the litigation privilege rendering Plaintiff unable to establish the minimal merit of its action).

The Court finds the filing of Defendants' mechanics lien is absolutely privileged, rendering Plaintiff unable to demonstrate the probability of prevailing on the merits. Defendants' special motion to strike is granted as to the Second Cause of Action.

4. Third Cause of Action – Business and Professions Code Sections 7031 and 17200

Defendants argue that at all relevant times Defendant Medina was licensed and the FAC does not allege otherwise. Plaintiff's theory that somehow Maxton's suspension taints amounts paid to subcontractors is unsupported by law. The claim further fails because no payment was received from Plaintiff individually. The § 17200 claim rests entirely on the privileged recording of the lien and is barred by the litigation privilege, and Plaintiff lacks standing under § 17204.

Business & Professions Code § 7031(b) provides:

> Except as provided in subdivision (e), a person who utilizes the services of an **unlicensed contractor** may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract. (emphasis added).

[W]here the predicate statute for a UCL unlawfulness claim is barred by the litigation privilege, the UCL claim, too, must fail. (Citing *Cel-Tech*, *supra*, 20 Cal.4th at p. 182, 83 Cal.Rptr.2d 548, 973 P.2d 527.) *People v. Potter Handy, LLP* (2023) 97 Cal.App.5th 938, 957 [316 Cal.Rptr.3d 87, 102].

Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a county counsel of any county within which a city has a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, **or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition**. Bus. & Prof. Code, § 17204. (emphasis added)

The Court finds Plaintiff has not pled facts demonstrating Defendants were unlicensed to support a cause of action pursuant to Business and Professions Code § 7031. Additionally, the

Court finds Plaintiff's claim rests entirely on the mechanic's lien, which is barred by the litigation privilege, and Plaintiff lacks standing pursuant to Business and Professions Code § 17204. As such, Plaintiff cannot demonstrate a probability of prevailing on the merits. Defendants' special motion to strike is granted as to the Third Cause of Action.

5. Sixth Cause of Action – Intentional Interference with Prospective Economic Advantage

Defendants assert the FAC identifies no specific third-party relationship connected to Defendants. Defendants had no knowledge of any such relationship and no intent to disrupt one. The only "act" alleged, i.e., recording the lien, is privileged and cannot supply the independently wrongful conduct the tort requires.

In order to prove a claim for intentional interference with prospective economic advantage, a plaintiff has the burden of proving five elements: (1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–1154, 131 Cal.Rptr.2d 29, 63 P.3d 937.) The plaintiff must also prove that the interference was wrongful, independent of its interfering character. (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392–393, 45 Cal.Rptr.2d 436, 902 P.2d 740.) "[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co., supra,* 29 Cal.4th at p. 1159, 131 Cal.Rptr.2d 29, 63 P.3d 937.) *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944 [81 Cal.Rptr.3d 282, 287, 189 P.3d 285, 290]

The Court does not find Plaintiff has adequately pled a claim for Intentional Interference with Prospective Economic Advantage as to Defendants. Plaintiff's allegations are nonspecific and generalized. Additionally, the only alleged "wrongful conduct" relates to the mechanic's lien which is absolutely privileged. The Court therefore finds Plaintiff cannot demonstrate a probability of prevailing on the merits. Defendants' special motion to strike is granted as to the Third Cause of Action.

Attorney Fees

Defendants seek attorney's fees and costs upon the filing of a separately noticed motion.

Code of Civil Procedure § 425.16 provides:

> (c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), **a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs**. If the court finds that a special

> motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5. (emphasis added).

[T]here are three ways in which a party may seek an award of attorney fees and costs in connection with a special motion to strike under section 425.16. The party filing such a motion may seek attorney fees in its moving papers, or the party prevailing on the motion may bring a separate, subsequently filed motion for fees and costs. (*Doe v. Luster, supra,* 145 Cal.App.4th at p. 144, 51 Cal.Rptr.3d 403; *American Humane Assn., supra,* 92 Cal.App.4th at p. 1103, 112 Cal.Rptr.2d 488.) "The party prevailing on the special motion to strike can also seek its attorney fees as part of a cost memorandum *at the conclusion of the litigation.* [Citations.]" (*Doe v. Luster,* at p. 144, fn. 4, 51 Cal.Rptr.3d 403, italics added.) *Carpenter v. Jack in the Box Corp.* (2007) 151 Cal.App.4th 454, 468 [59 Cal.Rptr.3d 839, 851] (holding Plaintiff's motion for attorney fees filed before entry of judgment was not untimely under California Rules of Court, Rule 3.1702).

As Defendants prevailed on the special motion to strike, Defendants are entitled to recover reasonable attorney's fees and costs upon the filing of a motion.

DEMURRER – DEFENDANT TAHOE LLC

Defendant, Tahoe LLC ("Defendant"), demurs to Plaintiff's, Jonathan Efrin Gallegos ("Plaintiff"), First Amended Complaint pursuant to Code of Civil Procedure § 430.10(e) and (f). An Amended Demurrer was filed on September 2, 2026. On August 14, 2026, Plaintiff 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.

Code of Civil Procedure §430.41(a)(4):

> A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

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 Susanne George, it does not appear that counsel and Plaintiff met and conferred. However, pursuant to Code of Civil Procedure §430.41(a)(4) and the Court's inherent discretion, the Court shall rule on Defendant's demurrer on the merits.

Background

On May 15, 2026, Plaintiff filed a First Amended Verified Complaint ("FAC") alleging causes of action for 1) Quiet Title and Cancellation of Void Instruments; 2) Slander of Title; 3) Violation of Business and Professions Code §§ 7031 and 17200; 4) Breach of Fiduciary Duty; 5) Negligence and Joint Enterprise Liability; and 6) Intentional Interference with Prospective Economic Advantage.

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

Defendant demurs to the FAC in its entirety, as Defendant does not appear anywhere within the FAC, despite being named in the Amended Summons. As the FAC does not contain any allegations against Defendant, no allegation that either Defendant engaged in any wrongful conduct, no allegation that either Defendant owed Plaintiff a duty, no allegation that Defendant caused Plaintiff any harm, the FAC fails to state any cause of action against Defendant.

Additionally, Defendant argues the FAC is uncertain. Defendant has been identified in the Amended Summons; however, Defendant is unable to ascertain what, if any allegations, are purportedly directed at them.

Plaintiff asserts the FAC alleges a coordinated lender, title, contractor, payment, and lien sequence surrounding the Subject Property, which identifies Defendant's receipt of funds, alleges Defendant's role in the entity and construction structure, and seeks remedies tied to those transactions.

The Court does not find a single reference to Defendant in the entirety of the FAC. The DOE allegation is general, nonspecific, conclusory, uncertain, and unintelligible. Defendant's demurrer as to the FAC in its entirety is sustained, with leave to amend.

Attorney Fees

Defendant requests attorney fees in the amount of $3,381.00, plus any additional amounts incurred, pursuant to Code of Civil Procedure § 128.7, as naming Defendant was completely meritless and frivolous.

Code of Civil Procedure § 128.7 provides:

> A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

The Court finds Defendant's request for attorney fees within the demurrer is procedurally defective. Defendant's request for attorney fees is denied.

DEMURRER – DEFENDANTS IROQ LLC AND ELASHA LLC

Defendants, IROQ, LLC and ELASHA, LLC (collectively "Defendants"), demur to Plaintiff's, Jonathan Efrin Gallegos ("Plaintiff"), First Amended Complaint pursuant to Code of Civil Procedure § 430.10(e) and (f). An Amended Demurrer was filed on September 2, 2026. On August 14, 2026, September 11, 2026, and October 1, 2026, Plaintiff filed an Opposition, an Opposition to Amended IROQ/Elasha Demurrer, and a Supplemental Opposition, respectively.

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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.

Code of Civil Procedure §430.41(a)(4):

> A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

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 Susanne George, it does not appear that counsel and Plaintiff met and conferred. However, pursuant to Code of Civil Procedure §430.41(a)(4) and the Court's inherent discretion, the Court shall rule on Defendants' demurrer on the merits.

Background

On May 15, 2026, Plaintiff filed a First Amended Verified Complaint ("FAC") alleging causes of action for 1) Quiet Title and Cancellation of Void Instruments; 2) Slander of Title; 3) Violation of Business and Professions Code §§ 7031 and 17200; 4) Breach of Fiduciary Duty; 5) Negligence and Joint Enterprise Liability; and 6) Intentional Interference with Prospective Economic Advantage.

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Legal Principles

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

Discussion

Defendants demur to the FAC in its entirety, as neither Defendant appear anywhere within the FAC nor in the Amended Summons. No allegations or causes of action appear to be alleged or brought as to any Doe Defendants for which the moving Defendants could reasonably understand, believe, or interpret to be alleged as to them. The identification of IROQ, LLC and ELASHA LLC as Doe Defendants is insufficient and improper in light of the complete absence of any allegations as to the moving Defendants. As the FAC does not contain any allegations against either Defendant, no allegation that either Defendant engaged in any wrongful conduct, no allegation that either Defendant owed Plaintiff a duty, no allegation that either Defendant caused Plaintiff any harm, the FAC fails to state any cause of action against Defendants.

Additionally, Defendants argue the FAC is uncertain. Defendants have been identified as Doe Defendants; however, Defendants are unable to ascertain what, if any allegations, are purportedly directed at them.

Plaintiff asserts the DOE amendments were filed after identifying Defendants and their alleged relationship to the property. Plaintiff asserts Grant Deed nos. 2025-0009474 and 2024-0022471 connects Defendants to the allegations in the FAC, as well as the Deed of Trust Nos. 2024-0029974 and 2025-0029355 which identifies Defendant ELASHA LLC as trustor.

The Court does not find a single reference to either Defendant in the entirety of the FAC. Plaintiff's argument that Defendants are referenced in the Grant Deeds and Deed of Trust is meaningless when neither documents are included in the FAC, nor does Defendants names mentioned within the Grant Deeds and Deed of Trust facially demonstrate they engaged in conduct sufficient to support the underlying causes of action. The Doe allegation is general, nonspecific, conclusory, uncertain, and unintelligible. Defendants' demurrer as to the FAC in its entirety is sustained, with leave to amend.

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Attorney Fees

Defendants request attorney fees in the amount of $4,983.24, plus any additional amounts incurred, pursuant to Code of Civil Procedure § 128.7, as naming Defendants was completely meritless and frivolous.

Code of Civil Procedure § 128.7 provides:

> A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

The Court finds Defendants' request for attorney fees within the demurrer is procedurally defective. Defendants' request for attorney fees is denied.

TENTATIVE RULING #7:

1. MOTION TO SET ASIDE DEFAULT

DEFENDANTS' REQUEST TO SET ASIDE THE JULY 1, 2026, AND JULY 13, 2026, ENTRY OF DEFAULT AGAINST DEFENDANT JM INSULATION GROUP IS GRANTED. DEFENDANTS' COUNSEL, MR. DANIEL RODRIGUEZ, IS ORDERED TO PAY COSTS INCURRED BY PLAINTIFF ASSOCIATED WITH OBTAINING THE JULY 13, 2026, ENTRY OF DEFAULT, SUBJECT TO VERIFICATION, WITHIN THIRTY (30) DAYS OF THE COURT'S ORDER. DEFENDANTS' ANSWER SHALL BE DEEMED FILED AS OF JULY 16, 2026.

2. MOTION TO ENFORCE DEFAULT

PLAINTIFF'S MOTION TO ENFORCE DEFAULT AGAINST JM INSULATION GROUP; DECLARE CORPORATE PORTIONS OF JOINT ANSWER NONOPERATIVE; AND PRECLUDE AFFIRMATIVE RELIEF BY DEFAULTED CORPORATION IS RENDERED MOOT.

3. SPECIAL MOTION TO STRIKE

DEFENDANTS' SPECIAL MOTION TO STRIKE IS GRANTED AS TO THE FAC AND EACH CAUSE OF ACTION WITHOUT LEAVE TO AMEND. DEFENDANTS SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEY FEES AND COSTS UPON THE FILING OF A SEPARATELY NOTICED MOTION.

4. DEMURRER – DEFENDANT TAHOE LLC

DEFENDANT'S DEMURRER TO THE FAC IN THE ENTIRETY IS SUSTAINED, WITH LEAVE TO AMEND. DEFENDANT'S REQUEST FOR ATTORNEY FEES IS DENIED.

5. DEMURRER – DEFENDANTS IROQ LLC AND ELASHA LLC

DEFENDANTS' DEMURRER TO THE FAC IN THE ENTIRETY IS SUSTAINED, WITH LEAVE TO AMEND. DEFENDANTS' REQUEST FOR ATTORNEY FEES 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.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

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IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE

APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

8.	**26CV1525**	**GRIFFIN BURKE ET AL VS. DEB HOWARD & CO INC.**
SET ASIDE DEFAULT		

On September 9, 2026, Defendant, Kevin K. Hopkins ("Defendant"), filed a Motion for Order Setting Aside Default/Vacating Default Judgment. Plaintiffs, Griffin Burke and Gregory Burke (collectively "Plaintiffs"), filed an Opposition on October 5, 2026. Defendant's Reply was filed on October 22, 2026.

Background

Plaintiffs filed a Complaint on February 18, 2025, asserting causes of action for 1) Breach of Contract (Against all Defendants); 2) Breach of Fiduciary Duty; 3) Negligent Misrepresentation (Against all Defendants); 4) Negligence (Against all Defendants); and 5) Fraud and Deceit (Against all Defendants). On May 15, 2025, Defendant filed an Answer to Plaintiff's Complaint.

On June 30, 2026, Plaintiffs filed a First Amended Complaint for Damages, asserting causes of action for 1) Fraud- Intentional Misrepresentation; 2) Fraud by Concealment; 3) Breach of Fiduciary Duty; 4) Negligent Misrepresentation; 5) Negligence; 6) Negligence (Against Defendant); 7) Violation of Civil Code §§ 1102 et seq. (Against Defendant).

Legal Principles

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

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

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

Discussion

On September 4, 2026, the clerk entered default against Defendant. Defendant argues default should be set aside as a result of mistake, inadvertence, and excusable neglect. Defendant filed an Answer to Plaintiffs original Complaint; however, after receiving Plaintiff's First Amended Complaint, Defendant did not realize or understand he was required to file a new Answer, as he is in pro per and does not have legal training or technological means. Upon learning of the default, Defendant asserts he acted with diligence to prepare the underlying motion and attempted to obtain a stipulation with Plaintiffs to set aside the default.

Plaintiffs argue Defendant has not provided a sufficient basis for relief, as he did not take any reasonable steps to verify his assumption that a new Answer was required to be filed.

Generally, " 'where a plaintiff amends his ... complaint so as to change the cause of action, or add a new one, it constitutes an abandonment of the original issues, and judgment by default may be taken against the defendant if he fails to file a new or amended answer or plea within the time allowed therefor, notwithstanding the original answer or plea is still on file.' " (*Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 808, 210 Cal.Rptr. 599 (*Carrasco*).)

But this rule does not " 'apply where the original plea or answer set forth a sufficient defense to the ... complaint as amended.' " (*Carrasco, supra,* 164 Cal.App.3d at p. 809, 210 Cal.Rptr. 599.) " '[W]hen a complaint is amended after answer, the defendant is not bound to answer *de novo.* He may do so if he chooses; but, if he does not elect to do so, his original answer stands as his answer to the amended complaint; and in such case he will not be in default except as to the additional facts set up in the amended complaint, and not put in issue by the answer ....' " (*Ibid.*; accord *Drotleff v. Renshaw* (1949) 34 Cal.2d 176, 182, 208 P.2d 969 [answer to original complaint "stood effective as a denial of the material allegations" in amended complaint].)

This rule aligns with the general principle of caution in entering default judgments. The law favors resolving disputes on the merits. (*Sass v. Cohen* (2020) 10 Cal.5th 861, 881, 272 Cal.Rptr.3d 836, 477 P.3d 557; *Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963, 90 Cal.Rptr.2d 227, 987 P.2d 697.) In a defendant's absence, justice requires trial courts to "act as gatekeepers to ensure only the appropriate claims" reach default judgment. (*LCPFV, LLC v. Somatdary Inc.* (2024) 106 Cal.App.5th 743, 754, 327 Cal.Rptr.3d 307; accord *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1000, 240 Cal.Rptr.3d 164.) "It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868, 121 Cal.Rptr.2d 695.) It is equally important to determine whether a defendant's prior answer denied allegations necessary for plaintiff to recover on an amended complaint. *Ammari v. Ammari* (2025) 117 Cal.App.5th 483, 487–488 [340 Cal.Rptr.3d 323, 326].

The Court that Defendant's actions constitute mistake, inadvertence, surprise, or excusable neglect which warrant relief pursuant to Code of Civil Procedure § 473(b). Additionally, the Court finds that Defendant was not required to file an Answer to Plaintiffs' First Amended Complaint. Although Plaintiffs added additional causes of action, the substantive allegations against Defendant remained consistent and Defendant's Answer, containing only a general denial and asserting affirmative defenses, was sufficient to stand as an Answer to the First Amended Complaint.

Defendant's Motion for Order Setting Aside Default/Vacating Default Judgment is granted.

TENTATIVE RULING #8:

DEFENDANT'S MOTION FOR ORDER SETTING ASIDE DEFAULT/VACATING DEFAULT JUDGMENT IS GRANTED.

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

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9.	**26CV1687**	**ADAM ADLER VS. OPTIMAL MOTION DYNAMICS**
TRANSFER VENUE		

On September 10, 2026, Defendants, Optimal Motion Dynamics, Inc. and Eric James Koontz (collectively "Defendants"), filed a Motion to Transfer Venue to the Superior Court of Sacramento County. No opposition has been filed by Plaintiff, Adam Adler ("Plaintiff").

Defendants argue corporate Defendant, Optimal Motion Dynamics, Inc. ("OMD"), does business as Stretch Zone of Fair Oaks and its principal place of business and corporate headquarters are in Sacramento County. The contracts and business relationship at issue were centered in Sacramento County, the franchise materials were for the Fair Oaks location, the site-selection area was Fair Oaks, and the employment relationship was made for performance at the Fair Oaks studio. Plaintiff's alleged employment obligations and alleged breach arose from Plaintiff's work as General Manager of Stretch Zone in Fair Oaks and his duties, operational records, email identity, ClubReady/POS activity, witnesses, and termination all relate to the Fair Oaks studio.

Alternatively, Defendants argue transfer to Sacramento County is warranted as the witnesses and evidence are concentrated in Sacramento County. Defendants maintain such witnesses and evidence include current and former employees of the Fair Oaks studio, the witnesses present at the December 13, 2025, termination meeting, witnesses connected to the December 12, 2025, customer report, payroll and business records, ADP materials, ClubReady/POS records, membership records, franchise records, and the Fair Oaks operational records. Defendants assert that trying a Sacramento County employment dispute in El Dorado County would impose a needless burden on the business and non-party witnesses and transferring to Sacramento County would promote convenience of the witness and the ends of justice.

Plaintiff's Complaint asserts that venue is proper in El Dorado County because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within El Dorado County, and because the work that is the subject of this action was and is performed by Plaintiff in El Dorado County.

Civil Code of Procedure § 395.5 provides:

> A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

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Civil Code of Procedure § 397 instructs:

> The court may, on motion, change the place of trial in the following cases:
>
> (a) When the court designated in the complaint is not the proper court.
>
> (b) When there is reason to believe that an impartial trial cannot be had therein.
>
> (c) When the convenience of witnesses and the ends of justice would be promoted by the change.
>
> (d) When from any cause there is no judge of the court qualified to act.
>
> (e) When a proceeding for dissolution of marriage has been filed in the county in which the petitioner has been a resident for three months next preceding the commencement of the proceeding, and the respondent at the time of the commencement of the proceeding is a resident of another county in this state, to the county of the respondent's residence when the ends of justice would be promoted by the change. If a motion to change the place of trial is made pursuant to this paragraph, the court may, prior to the determination of such motion, consider and determine motions for allowance of temporary spousal support, support of children, temporary restraining orders, attorneys' fees, and costs, and make all necessary and proper orders in connection therewith.

The Court finds venue is proper in Sacramento County. Defendants' Motion to Transfer Venue to the Superior Court of Sacramento County is granted.

TENTATIVE RULING #9:

DEFENDANTS' MOTION TO TRANSFER VENUE TO THE SUPERIOR COURT OF SACRAMENTO COUNTY 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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10.	**26CV2390**	**RICHARD SILVA VS. SUCCESSOR TRUSTEE OF RUSSELL STARR LINN TRUST**
LIS PENDENS		

On September 8, 2026, Plaintiff, Richard Silva ("Plaintiff"), filed an Application for Order Authorizing Recording of Lis Pendens. No opposition has been filed.

Plaintiff's application does not provide the basis of the relief requested. Plaintiff' filed a proposed Order Granting Leave to Record Lis Pendens but failed to include the proposed Notice of Pendency of Action (Lis Pendens). Plaintiff's Complaint includes causes of action for: 1) Property Damage; 2) Private Nuisance; and 3) Interference with Easement/Right of Access.

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. The notice may be recorded in the office of the recorder of each county in which all or part of the real property is situated. The notice shall contain the names of all parties to the action and a description of the property affected by the action. Code of Civil Procedure § 405.20. (emphasis added).

An attorney of record in an action may sign a notice of pendency of action. Alternatively, a judge of the court in which an action that includes a real property claim is pending may, upon request of a party thereto, approve a notice of pendency action. A notice of pendency of action shall not be recorded unless (a) it has been signed by the attorney of record, (b) it is signed by a party acting in propria persona and approved by a judge as provided in this section, or (c) the action is subject to Section 405.6. Code of Civil Procedure § 405.21.

Code of Civil Procedure § 405.4 defines "real property claims" as the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility.

There has been no definitive interpretation of the phrase "affect title to or right of possession." On the one hand, it is clear that an action that affects ownership of the disputed property is a proper action for a lis pendens notice. (*Nash v. Superior Court* (1978) 86 Cal.App.3d 690, 692, 150 Cal.Rptr. 394, overruled on unrelated grounds in *Malcolm v. Superior Court, supra,* 29 Cal.3d at p. 528, fn. 5, 174 Cal.Rptr. 694, 629 P.2d 495 [action for specific performance of an agreement for sale of residential property].) It has also been held that a lis pendens is proper in an action that would affect or impair the owner's right of possession of real property. (*Kendall-Brief Co. v. Superior Court, supra,* 60 Cal.App.3d 462, 131 Cal.Rptr. 515.) On the other hand, an action for money damages alone will not support a lis pendens. (*Allied Eastern Financial v. Goheen Enterprises, supra,* 265 Cal.App.2d at pp. 133–134, 71 Cal.Rptr. 126.) *Urez Corp. v. Superior Court* (1987) 190 Cal.App.3d 1141, 1145 [235 Cal.Rptr. 837, 840].

"In making [determination as to whether a real property claim is being asserted], the court must engage in a demurrer-like analysis. 'Rather than analyzing whether the pleading states any claim at all, as on a general demurrer, the court must undertake the more limited analysis of whether the pleading states a real property claim.' (Code com., 14A West's Ann.Code Civ. Proc., *supra,* foll. § 405.31, at p. 342.) Review 'involves only a review of the adequacy of the pleading and normally should not involve evidence from either side, other than possibly that which may be judicially noticed as on a demurrer.' (Code com., 14A West's Ann.Code Civ. Proc., *supra,* foll. § 405.30, at p. 337.) *Park 100 Investment Group II, LLC v. Ryan* (2009) 180 Cal.App.4th 795, 808–809 [103 Cal.Rptr.3d 218, 227].

Plaintiff's first and second causes of action do not constitute real property claims. As to Plaintiff's third cause of action for Interference with Easement/Right of Access, the Court recognizes the use of an easement may be considered a real property claim; however, upon review of the Complaint, the Court does not find Plaintiff has sufficiently identified the easement at issue as required by Code of Civil Procedure § 405.4. The Complaint as pleaded merely states the Parties' properties share a road, without containing any facts to support there is an actual easement at issue that is identified by legal description, instrument, or other specific identification.

Plaintiff's Application for Order Authorizing Recording of Lis Pendens is denied without prejudice.

TENTATIVE RULING #10:

PLAINTIFF'S APPLICATION FOR ORDER AUTHORIZING RECORDING OF LIS PENDENS IS DENIED WITHOUT PREJUDICE.

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11.	PC20200294	ALL ABOUT EQUINE ANIMAL RESCUE V. ALEXANDER BYRD
DEMURRER		

Plaintiff/Cross-Defendant, Georgetown Divide Recreation District ("Cross-Defendant" or the "District"), demurs to Cross-Complainants', Alexander Byrd, Maynard Byrd, Debra Byrd, Laura Byrd Rodarte, Joshua Rodarte, Terry Wilson, and Dawn Wilson (collectively "Cross-Complainants"), Third Amended Cross-Complaint pursuant to Code of Civil Procedure § 430.10(e). Cross-Complainants' Opposition was filed on September 22, 2026. Cross-Defendant's Reply was filed on October 1, 2026.

Request for Judicial Notice

Cross-Defendant seeks judicial notice of the following: 1) The First Amended Complaint by the District on or about August 31, 2021; 2) Second Amended Cross-Complaint filed on or about February 10, 2023; 3) The First Amended Cross-Complaint filed on or about August 2, 2022; 4) The Third Amended Cross-Complaint filed on or about June 28, 2024; 5) That the District is a local public entity/agency, a park and recreation special district, as defined by Government Code § 53090 pursuant to the District's Ordinance No. 1, approved on July 27, 2020; 6) Cross-Complainants' verified First Amended Responses to the District's Special Interrogatories Set No. 2, at numbers 45, 55, and 61; 7) The District's Board Meeting Agenda, Staff Report with Attachments A-I, and Minutes for March 28, 2022; 8) The District's Board Meeting Agenda, Staff Report, and Minutes, for May 23, 2022; 9) The 1977 Grant Deed; 10) The full and complete set of the District's Rules and Regulations; 11) The District's Original Complaint filed on May 3, 2021; and 12) The Cross-Complainants' Original Complaint, filed on or about March 18, 2022; The

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

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

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

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.

Code of Civil Procedure §430.41(a)(4):

> A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

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 James K. Ward, counsel attempted to meet and confer with Cross-Complainants, but the dispute could not be resolved.

Background

On June 8, 2024, Cross-Complainants filed a Third Amended Cross-Complaint ("TACC") alleging causes of action for 1) 42 U.S.C. § 1983 – Taking under 5th Amendment of the U.S.

Constitution; 2) 42 U.S.C. § 1983 – Violation of 14th Amendment to the U.S. Constitution; 3) Quiet Title; and 4) Declaratory Relief.

Legal Principles

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

Discussion

Cross-Defendant demurs to the First and Second Causes of Action on the grounds of lack of ripeness and that no taking has occurred.

1. Ripeness

Cross-Defendant argues the First and Second Causes of Action are not ripe for money damages. Cross-Defendant asserts the TACC alleges no facts supporting a futility exception to the finality requirement, as Cross-Complainants have not exhausted all administrative remedies including seeking an exception or variance. Although two map approval requests were made and denied, these were two separate and distinct maps which were submitted, of which Cross-Complainants did not seek an appeal to the District of either decision. Additionally, the "maps" submitted by Cross-Complainants are not "land division maps" as required by the Grant Deed of 1977, which is one of the central findings of the Board Meeting Reports and the resulting denials.

Pursuant to Code of Civil Procedure §§ 1094.5 and 1094.6, Cross-Defendant contends Cross-Complainants could have filed a writ of mandate petition seeking a clarification or change of the District's decisions regarding the maps but failed to do so. As there are no statutory requirements and no District rules or regulations that provide for reconsideration of its decision or for a written decision or written findings supporting the decision, the District's decisions were final when announced at the Board Meetings, and Cross-Complainants could have initiated the mandamus action within 90 days of the District's decision, which they failed to do.

Lastly, Cross-Defendant acknowledges the same ripeness standards that apply to a Fifth Amendment Taking claim also apply to a Fourteenth Amendment Due Process Violation Claim. Cross-Defendant therefore argues the Fourteenth Amendment Due Process Claim is not ripe for judicial review, as Cross-Complainants have not pled they have taken any effort to seek clarification or change the District's decisions, and thereafter a judicial determination by writ of

administrative mandamus, and therefore, the claim is subject to dismissal. Additionally, there is no constitutionally protected property interest that would invoke Fourteenth Amendment protection.

Cross-Complainants assert they are not seeking an exception or variance because the case does not involve a land use regulation; rather, Cross-Complainants seek the approval of a map to establish the easement's location. Despite their attempts, the District's Board of Supervisors have denied the proposed easement locations and has continuously failed to acknowledge or approve the existence and location of the easement across its property in favor of Cross-Complainants. Cross-Defendant has reached a conclusive position in which it will not approve a map confirming the easement's location or acknowledge the location of the easement where a road currently exists.

Additionally, Cross-Complainants argue the filing of a writ of mandate petition under Code of Civil Procedure § 1094.5 is not required, as the District's decision to not approve a map is not a result of a quasi-judicial proceeding in which a hearing is required to be given and evidence is required to be taken. As such, the federal claims are ripe for adjudication.

Further, Cross-Complainants allege the District's general manager, Jacqui Brunton, admitted during her deposition that she did not know how the District could approve a map establishing the location of the easement. As such, submitting further maps for the District's approval would be futile.

The Takings Clause of the Fifth Amendment to the United States Constitution instructs, "nor shall private property be taken for public use, without just compensation."

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

An easement is generally defined as an "interest in land created by grant or agreement, express or implied, which confers a right upon the owner thereof to some profit, benefit, dominion, or lawful use out of or over the estate of another." Los Angeles Terminal Land Co. v. Muir (Southern Pac. R. R. Co.), 136 Cal. 36, 48, 68 P. 308, 312; see 17 Cal.Jur.2d, s 2, p. 89; Wright v. Best, 19 Cal.2d 368, 381, 121 P.2d 702. *Mosier v. Mead* (1955) 45 Cal.2d 629, 632 [290 P.2d 495, 498].

When a plaintiff alleges a regulatory taking in violation of the Fifth Amendment, a federal court should not consider the claim before the government has reached a "final" decision. *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 737, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997). *Pakdel v. City and County of San Francisco, California* (2021) 594 U.S. 474, 475 [141 S.Ct. 2226, 2228, 210 L.Ed.2d 617].

The rationales for the finality requirement underscore that nothing more than *de facto* finality is necessary. This requirement ensures that a plaintiff has actually "been injured by the Government's action" and is not prematurely suing over a hypothetical harm. *Horne*, 569 U.S. at 525, 133 S.Ct. 2053. Along the same lines, because a plaintiff who asserts a regulatory taking must prove that the government "regulation has gone 'too far,' " the court must first "kno[w] how far the regulation goes." *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986). Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution. *Id.* at 479.

Code of Civil Procedure section 1094.5, however, applies only to "any final administrative order or decision *made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken,* and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." (Emphasis added; *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 599, 297 P.2d 967 ["investigation" of employee's suspension did not require a hearing, therefore section 1094.5 did not apply].) *McDaniel v. Board of Education* (1996) 44 Cal.App.4th 1618, 1621 [52 Cal.Rptr.2d 448, 449–450].

Where, as here, the governmental action being challenged by a federal civil rights lawsuit is not the result of a quasi-judicial hearing, the above authorities do not apply and do not require the plaintiff first to seek another state judicial remedy, such as ordinary mandamus pursuant to Code of Civil Procedure section 1085. Generally, a federal civil rights plaintiff is not required to exhaust state administrative and judicial remedies. (*Felder v. Casey* (1988) 487 U.S. 131, 147, 108 S.Ct. 2302, 2311, 101 L.Ed.2d 123; *Patsy v. Florida Board of Regents* (1982) 457 U.S. 496, 500, 102 S.Ct. 2557, 2560, 73 L.Ed.2d 172; *McNeese v. Board of Education* (1963) 373 U.S. 668, 671, 83 S.Ct. 1433, 1435, 10 L.Ed.2d 622; *Brosterhous v. State Bar, supra,* 12 Cal.4th at pp. 336–341, 48 Cal.Rptr.2d 87, 906 P.2d 1242.) *Id*. at 1622.

Cross-Complainants have pled a claim of entitlement over the easement as provided in the 1977 Grant Deed, of which Cross-Defendant has interfered with this right in violation of the Fifth and Fourteenth Amendments. The Court finds that Cross-Complainants have sufficiently pleaded the District's decision to not approve any map submitted is *de facto* final and any further attempts by Cross-Complainants to obtain approval would be futile. The Court does not find Code of Civil Procedure § 1094.5 applicable, as the District's decision is not the result of a quasi-judicial proceeding, and therefore Cross-Complainants were not required to seek such remedy. Accordingly, Cross-Complainants' First and Second Causes of Action are ripe for adjudication.

2. <u>Taking</u>

Cross-Defendant contends that in the event the Court finds there is a valid easement across the District's property, the locked gate to prevent illegal activity is not a taking and the

TACC concedes that the District made efforts to provide Cross-Complainants with the combination to unlock the gate. Cross-Complainants allegations go to the reasonableness of the gate across the easement but do not rise to the level of a constitutional violation as Cross-Complainants do not allege a complete denial all access or a claim of exclusive ownership over the easement.

Cross-Complainants assert the TACC clearly alleges the locks on the gate sometimes malfunctioned and the number combinations were purposefully changed to prevent Cross-Complainants from accessing their properties and locking them on their properties with no way to leave. Moreover, it is a question of fact whether or not Cross-Defendant has a right to erect gates and whether the gate will unreasonably interfere with the exercise of the easement, which is not resolvable on demurrer.

We recognize that " '[u]nless it is expressly stipulated that the way shall be an open one, or it appears from the terms of the grant or the circumstances that such was the intention, the owner of the servient estate may erect gates across the way, if they are constructed so as not unreasonably to interfere with the right of passage.' " (*McCoy v. Matich* (1954) 128 Cal.App.2d 50, 53, 274 P.2d 714, quoting 73 A.L.R. 779.) *Van Klompenburg v. Berghold* (2005) 126 Cal.App.4th 345, 350 [23 Cal.Rptr.3d 799, 802].

The trial court was also correct in interpreting the indenture as prohibiting defendants from maintaining gates across the easement. Except during periods of intense activity (i.e., during the grape harvest), each time plaintiffs, their guests or their agents wish to visit plaintiffs' property, they must stop, get out of their vehicles, open at least one gate, and once through, repeat the process to close the gate. Additionally, plaintiffs' guests and agents who do not have keys will have to make arrangements to obtain them before visiting the property. There is no question that under the circumstances of this case a locked or closed gate constitutes an obstruction in that it delays, impedes and hinders plaintiffs' use and enjoyment of their easement. *Id*. at 350.

" 'The rights and duties between the owner of an easement and the owner of the servient tenement ... are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the "reasonableness" of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the transaction.' " (*Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419, 428-429, 165 Cal.Rptr.3d 658 (*Dolnikov*).) *Inzana v. Turlock Irrigation Dist. Bd. of Directors* (2019) 35 Cal.App.5th 429, 444–445 [247 Cal.Rptr.3d 427, 442].

" 'Whether a particular use by the servient owner of land subject to an easement is an unreasonable interference with the rights of the dominant owner is a question of fact for the

trier of fact,' whose findings are binding upon the appellate court if properly supported by the evidence." (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1599, 59 Cal.Rptr.3d 527.) *Id*. at 445.

The Court finds that Cross-Complainants have sufficiently pled a taking has occurred. Whether the gates were an unreasonable interference with Cross-Complainant's rights is a question of fact not resolvable on demurrer.

Cross-Defendant's demurrer as to the First and Second Causes of Action is overruled.

TENTATIVE RULING #11:

CROSS-DEFENDANT'S DEMURRER AS TO THE FIRST AND SECOND CAUSES 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).

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A REMOTE APPEARANCE REGISTRATION, VISIT:
https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

12.	22CV0571	JPMORGAN CHASE BANK, N.A. VS. LESLIE SULLIVAN
MOTION TO AMEND JUDGMENT		

On September 16, 2026, Plaintiff, JPMorgan Chase Bank, N.A. ("Plaintiff"), filed a Motion to Amend Judgment Entered on 07/24/2025. No opposition has been filed by Defendant, Leslie Sullivan ("Defendant").

Plaintiff asserts that a Request for Judgment was submitted on or about July 9, 2025, pursuant to a Stipulation between the Parties, and Judgment was entered on July 24, 2025, in the amount of $11,166.21. Due to a clerical error on the part of Plaintiff's counsel, the Judgment Amount erroneously included court costs. Plaintiff requests the Judgment Amount be amended to reflect the correct Judgment amount of $10,729.21 pursuant to Code of Civil Procedure § 473(d).

Code of Civil Procedure § 473(d) provides:

> The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

Finding a clerical error in the Judgment entered July 24, 2025, the Court grants Plaintiff's motion as requested.

TENTATIVE RULING #12:

PLAINTIFF'S MOTION TO AMEND JUDGMENT ENTERED ON 07/24/2025 IS GRANTED AS REQUESTED.

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.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

IF A PARTY WISHES TO APPEAR REMOTELY, INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

IF A PARTY PREVIOUSLY REGISTERED TO APPEAR REMOTELY FOR THE HEARING BUT ORAL ARGUMENT IS NOT REQUESTED AND THE PARTY DOES NOT INTEND TO APPEAR AT THE HEARING, THE PARTY MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. TO CANCEL A REMOTE APPEARANCE REGISTRATION, VISIT: https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.