November 20, 2026
Dept. 9
Civil Tentative Rulings

1.	**25CV3075**	**DEEPAK PATEL ET AL VS. ARVO SOLAR, A BUSINESS ENTITY FORM UNKNOWN ET AL**
ATTORNEY WITHDRAWAL		

Counsel for Defendants, Arvo Solar, a corporation and Jon Phillip Horton, has filed motions to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies each motion, as required by California Rules of Court, Rule 3.1362, stating the clients have not fulfilled a material obligation under the written engagement agreement relating to this representation, including payment of fees and costs, after written notice that counsel would move to withdraw unless the obligation was fulfilled. Other circumstances, which counsel cannot describe further without disclosing confidential information constitute good cause for withdrawal.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. California Rules of Court, Rule 3.1362(d) requires confirmation of the client's mailing address within 30 days before the filing of the motion to be relieved. Proof of service of the motion on Defendants at their last known was filed September 24, 2026.

On October 23, 2026, Defendant Horton filed a Substitution of Attorney, rendering the underlying motion to be relieved as to Defendant Horton moot.

Plaintiffs, Deepak Patel and Divya Patel (collectively "Plaintiffs"), filed an Opposition on November 4, 2026. Plaintiffs oppose the motion to withdraw as to Defendant Arvo Solar. Plaintiffs argue that substantial discovery obligations remain outstanding, including but not limited to, the Court's September 11, 2026, Order which granted Plaintiff's motion to compel as to Defendant Horton and ordered sanctions, joint and severally, against both Defendants.

Plaintiffs request that if withdrawal is granted, the Court require strict compliance with California Rules of Court, Rule 3.1362, provide Arvo Solar with clear notice of its obligation to appear through licensed counsel, and establish a reasonable, definite deadline for obtaining substitute counsel. Plaintiffs further request the Court preserve all existing discovery obligations, deadlines, and sanctions, together with Plaintiff's right to seek further discovery orders, sanctions, and appropriate enforcement remedies under § 2023.030, notwithstanding counsel's withdrawal. Lastly, Plaintiffs request the Court order Defendant Arvo Solar to satisfy the outstanding $1,995 monetary sanctions within ten (10) days of the Court's order relieving counsel, to the extent permitted by law and without seeking relief against Defendant Horton in violation of the automatic stay.

The determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court. (*People v. Brown* (1988) 203 Cal.App.3d 1335, 1340, 250 Cal.Rptr. 762.) Where issues of confidentiality prevent "counsel from further disclosure and the court [accepts] the good faith of counsel's representations, the court should find the conflict sufficiently established and permit withdrawal." (*Aceves v. Superior Court, supra,* 51 Cal.App.4th 584, 592, 59 Cal.Rptr.2d 280, citing *Uhl v. Municipal Court* (1974) 37 Cal.App.3d 526, 527–528, 112 Cal.Rptr. 478 and *Leversen v. Superior Court* (1983) 34 Cal.3d 530, 539, 194 Cal.Rptr. 448, 668 P.2d 755.) *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133 [78 Cal.Rptr.2d 494, 497].

The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court. (Merco Constr. Engineers, Inc. v. Municipal Court, 21 Cal.3d 724, 147 Cal.Rptr. 631, 581 P.2d 636; Vann v. Shilleh, 54 Cal.App.3d 192, 199, 126 Cal.Rptr. 401.)*Thomas G. Ferruzzo, Inc. v. Superior Court* (1980) 104 Cal.App.3d 501, 503 [163 Cal.Rptr. 573, 574]

There are two concepts, not one, which are here involved. The first is the principle supported by *Merco* that a corporation may not proceed in propria persona. The second is that an attorney, given proper grounds, may be permitted by the court to withdraw as attorney of record. (Code Civ.Proc., s 284.) These two concepts are not inconsistent in the case of a corporate client. An attorney may be allowed to withdraw without offending the rule against corporate self-representation.

The effect of withdrawal is to leave the corporation without representation and without the ability to practice self-representation. **For the uncooperative corporate client who has not been willing to bring in new counsel, granting of the withdrawal motion will put extreme pressure on it to obtain new counsel of record for <u>should it fail to do so it risks forfeiture of its rights through non-representation</u>.** *Id*. at 504. (emphasis added).

The Court finds good cause to grant counsel's request to be relieved as to Defendant Arvo Solar. The proposed Order contains sufficient notice to Defendant Arvo Solar of its obligation to retain counsel promptly. There are Case Management Conferences scheduled for December 1, 2026, and January 12, 2027, as well as motion to compel hearings on January 22, 2027, which are not listed in the proposed Order. <u>Counsel's motion is granted, contingent upon submitting a revised Order that includes the upcoming hearing dates as required by California Rules of Court, Rule 3.1362(e). All outstanding Court orders, discovery obligations, and sanctions remain in effect.</u>

TENTATIVE RULING #1:

THE MOTION TO BE RELIEVED AS COUNSEL IS GRANTED AS TO DEEFENDANT ARVO SOLAR, CONTINGENT ON COUNSEL'S FILING OF A PROPOSED ORDER (FORM MC-053) THAT MEETS THE REQUIREMENTS OF CALIFORNIA RULES OF COURT, RULE 3.1362(E). COUNSEL IS DIRECTED TO

SERVE A COPY OF THE SIGNED ORDER ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

THE MOTION TO BE RELIEVED AS COUNSEL AS TO DEFENDANT HORTON IS RENDERED MOOT.

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

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

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

2.	**26CV0275**	**CENTRAL PARK SYSTEMS CORPORATION D/B/A FORTIS TELECOM VS CAPITOL IT PARTNERS INC., ET AL**
MOTION TO COMPEL		

On November 16, 2026, the Court entered a Stipulation and Order to Continue Hearing on Defendants' Motion to Compel Further Responses to Requests for Production, which continued Defendants' Motion to Compel to December 4, 2026. The Court encourages the Parties to meet and confer prior to the hearing.

TENTATIVE RULING #2:

DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES FROM PLAINTIFF CENTRAL PARK SYSTEMS CORPORATION TO DEFENDANTS' REQUEST FOR PRODUCTION IS CONTINUED TO DECEMBER 4, 2026, AT 8:30 A.M. IN DEPARTMENT NINE.

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

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

3.	**26CV0723**	**JONATHAN EFRIN GALLEGOS VS. PARK PLACE FINANCE, LLC ET AL**
SET ASIDE DEFAULT AND QUASH SERVICE OF SUMMONS / SUMMARY ADJUDICATION / DEFAULT JUDGMENT / DEFAULT JUDGMENT PROVE UP		

Before the Court are the following matters: 1) Motion to Set Aside Default and Quash Service of Summons; 2) Summary Adjudication #2; and 3) Motion for Default Judgment and Quiet Title; and 4) 2nd Amended Notice of Six-Defendant Court Default Judgment Prove Up.

SET ASIDE DEFAULT AND QUASH SERVICE OF SUMMONS

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

On September 23, 2026, Defendants, Citadel Construction Co. and Alexander Eidemiller (collectively "Defendants"), filed a Motion to Set Aside Default and Quash Service of Summons. Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"), filed an Opposition on October 1, 2026.

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

Defendants argue that Plaintiff's Proof of Service, filed on July 23, 2026, represents that Defendant Eidemiller was personally served with the Complaint on June 5, 2026, and that an agent for Defendant Citadel was personally served with the Complaint on the same date; however, no process server or other individual ever personally delivered the Complaint or Cross-Complaint to either Defendant. Instead, Defendants only received the Summons and Complaint by mail on or about mid-June 2026. No Notice and Acknowledgment of Receipt was ever provided, signed, or returned by either Defendant, yet default was entered against Defendants on July 23, 2026. Defendants contend the default is void because they were never properly served.

The Declaration of Alexander Eidemiller provides that on June 5, 2026, he was not personally served with any legal papers in this case, nor was any officer, employee, or other person authorized to accept service of process on behalf of Defendant Citadel. No copies of the Summons and Complaint were left with any adult at Defendant Citadel's place of business nor at Defendant Eidemiller's home. Defendant Eidemiller received the Summons and Complaint by mail in mid-June 2026, which did not include a Notice and Acknowledgement of Receipt, nor was one ever signed or returned. He did not learn of the default entered against Defendant Citadel and himself until on or about August 20, 2026, when his counsel attempted to file an Answer, which was rejected due to the default.

In the alternative, Defendants request the Court set aside the default pursuant to Code of Civil Procedure § 473.5 because Defendants did not in fact receive the Summons and Complaint and had no actual knowledge of the lawsuit until after the default had been entered.

Plaintiff asserts the Eidemiller Declaration confirms he had actual notice of the lawsuit by way of receipt of the Summons and Complaint in mid-June, prior to the July 23 defaults, which contradicts the notice requirement pursuant to Code of Civil Procedure § 473.5. Additionally, the Proof of Service for Defendant Eidemiller indicates he was served via substituted service on June 5, 2026, wherein an unidentified employee accepted service, called Defendant Eidemiller in the process server's presence, and that Defendant Eidemiller authorized the employee to accept service.

Plaintiff provides a Proof of Service of Summons and Service Detail Report showing confirmation that Defendant Eidemiller was served by substitute service by process server Weslley Micheletti Silva after three prior service attempts were made over a period of six days. Mr. Silva attests that the documents were delivered to an individual who refused to give their name, who identified themselves as an employee. The employee confirmed Defendant Citadel was his employer and called Defendant Eidemiller in his presence. During the call, Defendant Eidemiller authorized the employee to accept service of the documents on his behalf without a signature. The documents were left with the employee pursuant to Defendant Eidemiller's authorization. Plaintiff further points to the Declaration of Mailing, Declaration of Reasonable Diligence, and Proof of Service of Summons filed with the Court on July 23, 2026, wherein the process server alleges Defendant Citadel was served by substitute service in the same manner as Defendant Eidemiller, and the documents were mailed thereafter.

In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, **a summons may be served by leaving a copy of the summons and complaint during usual office hours in the person's office** or, if no physical address is known, at the person's usual mailing address, other than a United States Postal Service post office box, **with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.** When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing. Code of Civil Procedure § 415.20(a).

If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, **a summons may be served by leaving a copy of the summons and complaint at the person's** dwelling house, usual place of abode, **usual place of business**, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or **a person apparently in charge of their office, place of business, or usual mailing address** other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing. Code of Civil Procedure § 415.20(b).

It has been held that the filing of a proof of service creates a rebuttable presumption that the service was proper. (*M. Lowenstein & Sons, Inc. v. Superior Court* (1978) 80 Cal.App.3d 762, 770, 145 Cal.Rptr. 814, quoting from Judicial Council Report, comment to section 417.10, p. 56;

but see *Johnson & Johnson v. Superior Court* (1985) 38 Cal.3d 243, 255, fn. 7, 211 Cal.Rptr. 517, 695 P.2d 1058, overruling *Lowenstein* on a related issue.) However, that presumption arises only if the proof of service complies with the statutory requirements regarding such proofs. *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441–1442 [29 Cal.Rptr.2d 746, 755], as modified on denial of reh'g (May 26, 1994).

Evidence Code section 604 states that a presumption affecting the burden of producing evidence requires "the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption." The process server's return may be impeached by contradictory evidence. (*American Express, supra*, 199 Cal.App.4th at p. 390, 131 Cal.Rptr.3d 99 [although return showed personal service on the defendant, return was discredited by evidence it inaccurately described the defendant's race and hair color].) *Chinese Theater, LLC v. Starline Tours USA, Inc.* (2025) 115 Cal.App.5th 1048, 1059–1060 [338 Cal.Rptr.3d 690, 698].

As to Defendant Eidemiller, his Declaration only disputes that he himself was not personally served the Summons and Complaint, or any legal papers in this case, on June 5, 2026, or any other date. The Proof of Service of Summons does not allege that Defendant Eidemiller was personally served, but rather service was effectuated by substituted service at his place of business with a person who was apparently in charge of the office. Accordingly, Defendant Eidemiller has not rebutted the presumption that service was proper. As to Defendant Citadel, the Court does not find Defendant Eidemiller's contradictory evidence within his declaration rebuts the presumption that service was proper.

Further, the Court does not find Defendants lacked actual knowledge of the Summons and Complaint permitting relief under § 473.5, as Defendant Eidemiller acknowledges receiving the pleadings in mid-June, prior to the defaults being entered.

Defendants' Motion to Set Aside Default and Quash Service of Summons is denied.

MOTION FOR DEFAULT JUDGMENT AND QUIET TITLE

On July 13, 2026, Plaintiff, Jonathan Efrin Gallegos ("Plaintiff"), filed a Motion for Default Judgment and Quiet Title. Plaintiff requests a money judgment of $10,000,000.00 against Pacific Life Insurance Company, Park Place Finance, Inc., and JM Insulation Group. Plaintiff requests zero cash damages against RJ Realty Investments, LLC and seeks only constructive trust, equitable lien, title-transfer, property-capture, accounting, development-right capture, and related equitable relief.

On October 2, 2026, the Court vacated the entry of default as to Defendants Park Place Finance, Inc. and Pacific Life Insurance Company, and sustained Defendants' demurrer as to

Plaintiff's Quiet Title cause of action without leave to amend. On October 30, 2026, the Court vacated the entry of default as to JM Insulation Group and granted their Special Motion to Strike as to the FAC and each cause of action without leave to amend. On November 6, 2026, the Court vacated the entry of default as to RJ Realty. As such, Plaintiff's Motion for Default Judgment and Quiet Title is rendered moot.

2nd AMENDED NOTICE OF SIX-DEFENDANT COURT DEFAULT JUDGMENT PROVE-UP

On August 14, 2026, Plaintiff filed a Second Amended Notice of Six-Defendant Court Default Judgment Prove-Up, wherein requests court default judgment concerning Pacific Life Insurance Company, Park Place Finance, Inc., JM Insulation Group, Alexander Eidemiller, Citadel Spaces, and RJ Realty Investments LLC. Plaintiff requests the Court enter one monetary judgment up to $10,000,000.00 against Pacific Life Insurance Company, Park Place Finance, Inc., JM Insulation Group, Alexander Eidemiller, Citadel Spaces, zero cash damages against RJ Realty Investments LLC, and to adjudicate quiet title and constructive trust relief.

On October 2, 2026, the Court vacated the entry of default as to Defendants Park Place Finance, Inc. and Pacific Life Insurance Company, and sustained Defendants' demurrer as to Plaintiff's Quiet Title cause of action without leave to amend. On October 30, 2026, the Court vacated the entry of default as to JM Insulation Group. On November 6, 2026, the Court vacated the entry of default as to RJ Realty. As such, Plaintiff's Second Amended Notice of Six-Defendant Court Default Judgment Prove-Up is rendered moot as to Defendants Pacific Life Insurance Company, Park Place Finance, Inc., JM Insulation Group, and RJ Realty Investments LLC.

As to Defendants Alexander Eidemiller and Citadel Spaces, Plaintiff argues Defendant Citadel recorded a Claim of Mechanics Lien in the amount of $18,860.00 on December 24, 2025. Defendant Eidemiller later executed the recorded release on Defendant Citadel's behalf. Due to the lien, Western Highland Fund II stated the recorded mechanics lien prevented it from proceeding with the construction refinance even if the lien were cleared. Plaintiff asserts to mitigate the financing loss and continue protecting the project, Plaintiff obtained a $150,000.00 family loan and incurred a $20,000.00 finance/interest charge. Plaintiff requests the $20,000.00 financing cost caused by the title/lien disruption against Defendants Citadel and Eidemiller. In support of Plaintiff's request, he supplies his declaration and the Western Highland/closing records.

Although the FAC is riddled with uncertainty, the FAC appears to assert causes of action against Defendants Eidemiller and Citadel for Cancellation of Void Instruments, Slander of Title, and Intentional Interference with Prospective Economic Advantage for filing a mechanics lien in the amount of $18,860.00.

[T]he 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]; *See also Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 528 [32 Cal.Rptr.2d 103, 111], as modified on denial of reh'g (July 13, 1994) (holding the causes of action for slander of title, cloud on title, and intentional interference with prospective economic advantage are barred pursuant to the privileged publication doctrine in Civil Code § 47).

The Court finds Plaintiff is barred from relief against Defendants Eidemiller and Citadel for the causes of action of Slander of Title and Intentional Interference with Prospective Economic Advantage, as the filing of the mechanics lien is absolutely privileged.

California law generally provides that: "A complaint or cross-complaint shall contain both of the following: [¶] (1) A statement of the facts constituting the cause of action, in ordinary and concise language. [¶] (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, *the amount demanded shall be stated*." (§ 425.10, subd. (a), italics added.) There are exceptions to the general rule; a damage demand need not be stated in a complaint or a cross-complaint in cases involving personal injury or wrongful death, or when the plaintiff is seeking punitive damages. (§§ 425.10, subd. (b), 425.11.) However, in these cases the plaintiff must serve on the defendant a separate written statement as described in section 425.11 (compensatory damages) or section 425.115 (punitive damages) before a default judgment may be taken. (§ 425.11, subd. (c).)

Procedural due process requires " 'that a defendant be given notice of the existence of a lawsuit and notice of the specific relief which is sought *in the complaint served upon him*. The logic underlying this principle is simple: a defendant who has been served with a lawsuit has the right, in view of the relief which the complainant is seeking from him, to decide not to appear and defend. However, a defendant is not in a position to make such a decision if he or she has not been given full notice.' [Citation.]" (*Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1520, 127 Cal.Rptr.3d 542, italics added.)

The Legislature has provided that a default judgment "cannot exceed that demanded in the complaint." (§§ 580, 585, subds. (a) & (b).) "[A] default judgment greater than the amount *specifically demanded* is void as beyond the [trial] court's jurisdiction." (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826, 231 Cal.Rptr. 220, 726 P.2d 1295, italics added.) A default judgment is void if the required statement of damages *was not served* on the defendant *before* the default was taken. (*Van Sickle v. Gilbert*, *supra*, 196 Cal.App.4th at p. 1521, 127 Cal.Rptr.3d 542.) Formal notice "is an essential prerequisite to a valid default judgment." (*Engebretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 443-444, 178 Cal.Rptr. 77 [mail service constituted inadequate notice].) A void judgment can be collaterally attacked any time. (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239, 79 Cal.Rptr.2d 719.) *Yu v. Liberty Surplus Ins. Corp.* (2018) 30 Cal.App.5th 1024, 1030–1031 [242 Cal.Rptr.3d 102, 106].

As to the cause of action for Cancellation of Void Instruments, the Court finds that the Plaintiff is not entitled to the monetary relief requested. The prayer for relief within the FAC seeks, in relevant part: 1) a judicial declaration quieting title in Plaintiff and cancelling void, unauthorized, or clouding instruments affecting the subject property; 2) cancellation or expungement of any assignment, notice of default, substitution of trustee, mechanics lien, or related instrument found invalid; and 6) consequential damages including lost refinance, increased costs, lost development opportunity, title defense costs, and pipeline damages.

The prayer does not include an amount demanded, nor does anywhere in the FAC put Defendants on notice of the $20,000.00 Plaintiff now seeks to enforce against them. As such, Plaintiff's request for a default judgment in the amount of $20,000.00 is greater than the amount specifically demanded and is therefore beyond the Court's jurisdiction.

Plaintiff's request for default judgment as to Defendants Eidemiller and Citadel Spaces is denied.

SUMMARY ADJUDICATION # 2

On June 15, 2026, Plaintiff filed a Motion for Summary Adjudication. Plaintiff seeks summary adjudication of the following issues:

1. Maxton Builders, Inc. and Valentin Razumovsky - B&P section 7031 and related contractor-license/disgorgement issues. The certified CSLB records and draw documents establish that Maxton was suspended during material portions of the project period and that draw-funded work and compensation were recorded during the project period.
2. Lender-side active control. Park Place Finance, LLC, BSI Financial Services, and Ellington-related entities may not rely on a blanket passive-lender or passive-servicer defense where primary documents show draw funding administration, lender directives, inspection-review mechanisms, payoff/default control, and foreclosure consultation.
3. Objective draw-file unreliability. The draw file contains objective contradictions, including front-loaded structural line items, the stucco/cedar mismatch, inconsistent methodology, and payoff/default records that materially undermine the claimed ordinary/passive draw process. Plaintiff does not ask the Court through this motion to liquidate all damages, adjudicate punitive damages, decide offsets, or resolve all remaining factual issues. Those matters remain for further proceedings and trial.

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of

the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code of Civil Procedure § 437c(f)(1).

A plaintiff can obtain summary adjudication of a cause of action only by proving "each element of the cause of action entitling the party to judgment on that cause of action." *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241 [173 Cal.Rptr.3d 518, 531].

Legislative history is in accord. Prior to the 1990 amendment to the summary adjudication statute, parties could seek summary adjudication on any issues raised in a case. The 1990 amendment limited summary adjudication motions to a cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty. (Stats.1990, ch. 1561, § 2, p. 7330.) The amendment was proposed by the California Judges Association, which took the position that "it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 2594 (1989-1990 Reg. Sess.), as amended May 7, 1990, pp. 2-3.) The clear purpose of the amendment was to " 'stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense.' " (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1853, 16 Cal.Rptr.2d 458.) *Id*. at 241-242.

The Court does not find that the issues presented by Plaintiff completely dispose of the causes of action. As such, Plaintiff's Motion for Summary Adjudication is denied.

TENTATIVE RULING #3:

1. SET ASIDE DEFAULT AND QUASH SERVICE OF SUMMONS

DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND QUASH SERVICE OF SUMMONS IS DENIED.

2. MOTION FOR DEFAULT JUDGMENT AND QUIET TITLE

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AND QUIET TITLE IS RENDERED MOOT.

3. 2nd AMENDED NOTICE OF SIX-DEFENDANT COURT DEFAULT JUDGMENT PROVE-UP

PLAINTIFF'S 2ND AMENDED NOTICE OF SIX-DEFENDANT COURT DEFAULT JUDGMENT PROVE-UP IS RENDERED MOOT AS TO DEFENDANTS PACIFIC LIFE INSURANCE COMPANY, PARK PLACE FINANCE, INC., JM INSULATION GROUP, AND RJ REALTY INVESTMENTS LLC.

PLAINTIFF'S REQUEST FOR DEFAULT JUDGMENT AGAINST DEFENDANTS EIDEMILLER AND CITADEL SPACES IS DENIED.

4. SUMMARY ADJUDICATION #2

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION 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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

4.	**26CV1525**	**GRIFFIN BURKE ET AL VS. DEB HOWARD & CO INC.**
MOTION FOR IN CAMERA DETERMINATION		

On September 17, 2026, Plaintiffs, Griffin Burke and Gregory Burke (collectively "Plaintiffs"), filed a Motion for in Camera Determination of Claimed Attorney Client Privilege.

On November 4, 2026, Plaintiffs filed a Notice of Settlement of the Entire Case and Request to Vacate All Hearing Dates.

The hearing on Plaintiff's Motion for in Camera Determination of Claimed Attorney Client Privilege is vacated.

TENTATIVE RULING #4:

HEARING ON PLAINTIFF'S MOTION FOR IN CAMERA DETERMINATION OF CLAIMED ATTORNEY CLIENT PRIVILEGE IS VACATED.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

5.	PC20200294	ALL ABOUT EQUINE ANIMAL RESCUE V. ALEXANDER BYRD
ATTORNEY FEES		

On September 28, 2026, Plaintiff, All About Equine Animal Rescue, Inc. ("Plaintiff"), filed a Motion for Attorney Fees on Appeal. Defendants, Alexander Neal Byrd, Maynard Byrd, Debra Byrd, Laura Byrd Rodarte, Joshua Rodarte, Terry Wilson, and Dawn Wilson (collectively "Defendants"), filed an Opposition on November 6, 2026. Plaintiff filed a Reply on November 9, 2026.

Background

In 2020, Plaintiff inadvertently produced attorney-client communications to Defendants in response to a discovery demand. Despite Defendants' counsel, Mr. Taylor Call, agreeing to permanently delete the identified files, Defendants' counsel, Mr. Nabil Samaan, used the privileged documents during depositions. In response, Plaintiff moved to disqualify Mr. Samaan and Mr. Call on the ground they improperly retained and used privileged attorney-client information and work product documents. On December 20, 2024, the Court entered its Order on Motion to Disqualify Counsel, wherein the Court disqualified Mr. Samaan and denied the request to disqualify Mr. Call.

Defendants filed a notice of appeal on or about January 10, 2025, and the Court of Appeal issued its Decision on April 28, 2026, affirming the trial court's order and the remittitur was issued on August 17, 2026.

Discussion

Plaintiff seeks attorney fees in the amount of $27,793.90 against Defendants and their former attorney, Mr. Samaan, jointly and severally, for abuse of the discovery process pursuant to California's Civil Discovery Act, including, but not limited to Code of Civil Procedure §§ 2023.010 and 2023.030. Plaintiff argues Defendants are guilty of a serious abuse of the discovery process; therefore, sanctions are mandatory under Code of Civil Procedure § 2023.030(a).

Defendants assert Plaintiff is not entitled to attorney fees on appeal. The order Defendants appealed disqualified one attorney but imposed no monetary sanction. No statute shifted fees for that order, so there is no fee award for the appeal to carry forward. Additionally, Plaintiff did not prevail on the motion it seeks to recast as a discovery sanctions proceeding, as the Court denied the motion as to counsel Mr. Call. The appeal was a matter of right, not a misuse of discovery and every finding of misconduct concerns former counsel Mr. Samaan, not Defendants. Further, the Appellate Court did not award attorneys' fees or sanctions.

In reply, Plaintiff clarifies that the underlying motion seeks discovery sanctions, not the disqualification motion. This sanctions motion is an original proceeding seeking compensation for the fees and costs incurred due to Defendants' misuse and abuse of the discovery process.

By appealing, Defendants ratified Mr. Samaan's actions and made themselves liable to the harm imposed on Plaintiff in having to defend against that appeal.

Section 2023.030(a) states, in relevant part: "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, *including attorney's fees*, incurred by anyone as a result of that conduct." (Italics added.) *Baer v. Tedder* (2025) 115 Cal.App.5th 1139, 1150 [338 Cal.Rptr.3d 754, 765].

Sections 2023.030(a) and 2031.320(b) authorize recovery of attorney's fees and do not specifically preclude recovery of attorney's fees on appeal. (See *Evans v. Unkow, supra*, 38 Cal.App.4th at p. 1499, 45 Cal.Rptr.2d 624.) *Id*. at 1151.

The purpose and effect of sections 2023.030(a) and 2031.320(b) is not to punish but to compensate a litigant for costs that litigant incurred as the result of another litigant's misuse of the discovery process. "Monetary sanctions are intended to compensate a litigant for expenses incurred as a result of another litigant's misuse of the discovery process." (*Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 833, 306 Cal.Rptr.3d 311.) For that reason, sections 2023.030(a) and 2031.320(b) are best described as cost shifting statutes: They compensate a litigant for another litigant's misuse of the discovery process by requiring the trial court to shift expenses incurred, which include attorney's fees, onto the offending party. *Id*.

If sections 2023.030(a) and 2031.320(b) did not authorize recovery of appellate attorney's fees, a sanctioned party could defeat the purpose of the sanctions by forcing the party awarded sanctions to incur the cost of an appeal. *Id*. at 1152.

The Court finds Mr. Samaan's conduct of using attorney-client communications that were inadvertently received in response to discovery demands in subsequent depositions was a serious misuse of the discovery process under Code of Civil Procedure § 2023.010. The Court recognizes *Baer v. Tedder* (2025) 115 Cal.App.5th 1139 involved an appeal from an order imposing monetary discovery sanctions; however, its rationale recognizes the purpose of § 2023.030(a) is to compensate a litigant for expenses incurred as a result of another's misuse of the discovery process, which can include attorney's fees on appeal.

The fact that the underlying disqualification motion and order did not impose monetary sanctions, nor did the Court of Appeal expressly award attorney fees, does not foreclose upon Plaintiff making a separate application for discovery sanctions under Code of Civil Procedure § 2023.030(a) for costs incurred as a result of the misuse of the discovery process. Plaintiff would not have incurred the fees on appeal but for Mr. Samaan's misuse of the discovery process. These attorney fees are directly incurred as a result of Mr. Samaan's misconduct. The Court does not find that Defendants themselves engaged in a misuse of the discovery process and the misconduct fell on Mr. Samaan alone. <u>The Court accordingly finds sanctions are warranted against Mr. Samaan under Code of Civil Procedure § 2023.030(a)</u>.

Reasonable Rate

The Declaration of Thomas M. Swett provides that he was admitted to the California State Bar in 2004 and is a partner and shareholder at Burton & Swett, LLP. Mr. Swett's billing rate during the subject appeal was and is $495.00 per hour. Kathryn Garant (Jeffries) is a paralegal with a billing rate initially of $95.00 to $175.00 per hour based upon the nature of the task at hand.

The Court finds that the hourly fee rates are reasonable.

Number of Hours Claimed

Defendants argue that any award must be reduced to no more than $18,385.00, as the motion seeks fees "on appeal" but includes billing entries for work that was neither for work on appeal or legal work. Defendants have identified various entries totaling $3,408.90 for fees relating to clerical work, work performed regarding trial court proceedings, writ and State Bar complaint work, work performed for publication, and Memorandum of Costs and hard costs.

The Court agrees the clerical expenses, State Bar complaint expenses, and trial court proceeding expenses are not recoverable as reasonable attorney fees incurred on appeal as a result of Mr. Samaan's misuse of the discovery process. The Court finds the number of hours claimed, totaling $25,625.20 is reasonable.

Accordingly, the Court grants Plaintiff's Motion for Attorney Fees on Appeal in the amount of $25,625.20 payable by Mr. Samaan within sixty (60) days of the Court's order.

TENTATIVE RULING #5:

PLAINTIFF'S MOTION FOR ATTORNEY FEES ON APPEAL IS GRANTED IN THE AMOUNT OF $25,625.20, PAYABLE BY MR. SAMAAN WITHIN SIXTY (60) DAYS OF THE COURT'S ORDER.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.	**25CV0901**	**JANEEN KIMBRIEL VS. CHELSEA M. CISCOE ET AL**
ATTORNEY WITHDRAWAL		

Counsel for Defendant/Cross-Complainant, Chelsea M. Ciscoe, has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client has breached its Fee Agreement with the Firm making it extremely difficult for the Firm to continue representation.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. California Rules of Court, Rule 3.1362(d) requires confirmation of the client's mailing address within 30 days before the filing of the motion to be relieved. Proof of service of the motion on Defendants at their last known was filed on October 12, 2026.

TENTATIVE RULING #6:

THE MOTION TO BE RELIEVED AS COUNSEL IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.	**24CV0068**	**GRASSY SPRAIN GROUP, INC. VS. JENNIFER CURTSINGER, AN INDIVIDUAL**
MOTION TO ENFORCE SETTLEMENT AGREEMENT		

Plaintiff, Grassy Sprain Group, Inc. ("Plaintiff"), seeks to enter judgment pursuant to Defendant's, Jennifer Curtsinger ("Defendant"), default under the Settlement Agreement entered into on or about April 15, 2024 (the "Settlement Agreement").

Pursuant to the Settlement Agreement, the Parties agreed that Plaintiff shall take judgment against Defendant for the total sum of $26,782.62. Plaintiff would allow Defendant to pay $18,600.00 in monthly installments of $300.00 per month for twelve months with a balloon payment of $15,000.00 on the thirteenth month or pay $25,000.00 in monthly installments of $300.00 per month for eighty-four months, with the final payment being $100.00.

Should Defendant default, Plaintiff may seek entry of judgment for the balance due less any payments made by Defendant. The Settlement Agreement provided that the Court would retain jurisdiction pursuant to Code of Civil Procedure § 664.6 to enforce the terms of the agreement. Plaintiff alleges Defendant has not made any payments pursuant to the terms of the Settlement Agreement. Plaintiff accordingly seeks to enter judgment in the amount of $26,782.62.

Code of Civil Procedure § 664.6 provides that a Court may dismiss the case without prejudice and retain jurisdiction over the parties to enforce a settlement until performance in full of the terms of the settlement. Where a Court dismisses the case without prejudice pursuant to this section, a party may file a motion pertaining to the settlement if the terms are not performed. A Court need not vacate or set aside a prior dismissal before enforcing the settlement based upon a dismissal without prejudice pursuant to § 664.6.

Plaintiff's Motion to Enforce Settlement Agreement is granted. Judgment shall be entered against Defendant in the amount of $26,782.62.

TENTATIVE RULING #7:

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT IS GRANTED. JUDGMENT SHALL BE ENTERED AGAINST DEFENDANT IN THE AMOUNT OF $26,782.62.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

8.	**26CV0928**	**CITIBANK N.A. VS. KIMBERLY HOTTELL**
MOTION TO SET ASIDE DEFAULT/VACATE JUDGMENT		

On September 29, 2026, Defendant, Kimberly Hottell ("Defendant"), filed an Ex Parte Motion for Order Setting Aside Default/Vacating Default Judgment. The Court denied the ex parte application and set the motion for hearing on November 20, 2026. To date, no proof of service has been filed.

Code of Civil Procedure § 1005(b) provides, in part:

> **Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing**. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, **if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California**…(emphasis added).

California Rules of Court, Rule 3.1300 provides, in part:

> (a) Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service.
> …
> (c) **Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing**.

The Court finds Plaintiff was not timely served in compliance § 1005(b) and California Rules of Court, Rule 3.1300. Defendant's Motion for Order Setting Aside Default/Vacating Default Judgment is continued to January 8, 2026, to allow for proper service.

TENTATIVE RULING #8:

DEFENDANT'S MOTION FOR ORDER SETTING ASIDE DEFAULT/VACATING DEFAULT JUDGMENT IS CONTINUED TO JANUARY 8, 2026, TO ALLOW FOR PROPER SERVICE.

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

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

10.	**26CV1535**	**SAN XIN YAN ET AL VS. VIVIAN FANG LI**
ATTORNEY DISQUALIFICATION		

On October 23, 2026, the Court ordered a Status Report be filed by November 13, 2026, advising whether the corporation elects to continue pursing the Motion to Disqualify Counsel or the motion would be dropped from calendar. To date, no Status Report has been filed.

Plaintiff's Motion to Disqualify Counsel for Defendant is vacated from calendar.

TENTATIVE RULING #10:

PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL FOR DEFENDANT IS VACATED FROM CALENDAR.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

11.	25CV1028	WELLS FARGO BANK, N.A. VS. JESSE S MARTINCEK
JUDGMENT ON THE PLEADINGS		

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

On September 28, 2026, Plaintiff, Wells Fargo Bank, N.A., ("Plaintiff"), filed a Motion for Judgment on the Pleadings. No opposition has been filed.

Background

On April 17, 2025, Plaintiff filed a Complaint alleging a cause of action for Breach of Contract. On September 9, 2025, Defendant, Jesse S Martincek ("Defendant"), filed an Answer.

Request for Judicial Notice

Plaintiff seeks judicial notice of the following: 1) Defendant's Answer to the Complaint; 2) Motion to Deem Requests for Admissions Admitted; and 3) the Court's ruling and order granting Plaintiff's Motion to Deem Requests for Admissions Admitted dated June 12, 2026.

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

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

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

//

//

Legal Principles

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. "Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." Code of Civil Procedure § 438(d).

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. *People ex rel. Harris v. Pac Anchor Transp., Inc.* (2014) 59 Cal.4th 772, 777.

A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.) *Sykora v. State Department of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534.

The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff. (*Tyree v. Epstein*, 99 Cal.App.2d 361, 221 P.2d 1002.)" *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605.

If the allegations in the complaint conflict with attached exhibits, we rely on and accept as true the contents and legal effect of the exhibits. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83, 76 Cal.Rptr.3d 73; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505, 108 Cal.Rptr.2d 657.)" *Chisom v. Board of Retirement of County of Fresno Employees' Retirement Association* (2013) 218 Cal.App.4th 400, 410.

A motion for judgment on the pleadings may be granted with or without leave to amend. Cal. Civ. Pro. § 438(h)(1). Generally speaking, leave to amend is to be liberally granted. *Mendoza v. Continental Sales Co.* (2006) 140 Cal. App. 4th 1395 ("When there is a reasonable possibility that a defect in pleading can be cured by amendment, the trial court considering the motion for

judgment on the pleadings abuses its discretion by not granting leave to amend…"). However, where the defective pleading is not reasonably susceptible to cure, it is proper for the court to decline leave to amend. *Id*. When leave to amend is not granted, "…then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party." Cal. Civ. Pro. § 438(h)(3).

Meet and Confer

Code of Civil Procedure § 439(a) provides a meet and confer requirement in which the moving party must meet in confer in person, by telephone, or by video conference for the purpose of determining whether an agreement can be reached. A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings.

Plaintiff's counsel states that Defendant was sent a meet-and-confer letter regarding the underlying motion on June 15, 2026. To date, no response has been received from Defendant.

Discussion

Plaintiff argues that Defendant's Answer to the Complaint does not assert any matter that would constitute a valid affirmative defense even if true. Additionally, the Court previously granted Plaintiff's Motion to Deem Requests for Admissions Admitted, which are in direct conflict with a general denial or affirmative defense.

The Complaint alleges that Defendant breached a written contract by failing to pay as agreed, wherein Plaintiff has been damaged in the amount of $29,591.61. Defendant's Answer does not contain a denial or affirmative defense but rather an acknowledgement that Defendant made arrangements to pay off the debt. This Court's Order dated August 25, 2026, which granted Plaintiff's Motion to Deem Requests for Admissions Admitted, conclusively establishes the elements needed to prove the cause of action asserted in the Complaint.

The Court does not find there is a reasonable possibility that a defect in Defendant's pleading can be cured by amendment. Plaintiff's Motion for Judgment on the Pleadings is granted without leave to amend. The Court will enter judgment in favor of Plaintiff against Defendant in the sum of $30,536.61, constituting a principal balance of $29,591.61, less payments/credits of $425.00, plus costs of $570.00, plus reasonable attorney's fee in the amount of $800.00.

TENTATIVE RULING #11:

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. THE COURT WILL ENTER JUDGMENT IN FAVOR OF PLAINTIFF AGAINST DEFENDANT IN THE SUM OF $29,591.61 PRINCIPAL, $570.00 COSTS, AND $425.00 CREDITS, FOR A TOTAL JUDGMENT OF $30,536.61.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

13.	26CV2899	JEFF RUSSELL, ET AL. V. COUNTY OF EL DORADO ET AL.
OSC RE PRELIMINARY INJUNCTION		

Petitioners, Jeff Russell, Julie Russell, James Stitt, Linda Stitt, Kenneth Hardy, and Shirley Hardy (collectively "Petitioners"), move for a preliminary injunction preserving the remaining disputed oak resources in East Ridge Village Unit 8A. On November 17, 2026, Respondent, County of El Dorado, and Real Party in Interest, Valley View Improvement Company, Inc. (collectively "Respondents"), filed an Opposition. No Opposition has been filed by Real Party in Interest, Millrose Properties California, LLC, nor have Petitioners filed a Proof of Service indicating service was effectuated on Millrose Properties.

Legal Principles

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

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

A ruling on an application for a preliminary injunction is not an adjudication of the ultimate rights in the controversy. It merely represents the trial court's discretionary decision whether the defendant should be restrained from exercising a claimed right pending trial. (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.) "In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of [their] claim, and (ii) the balance of the harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction." (*Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 441–

442 [fn. omitted].) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678.) However, "[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim." (*Ibid.*)

Discussion

Petitioners seek relief to preserve mature native oak resources within disputed portions of East Ridge Village Unit 8A while the Court reviews El Dorado County's determination that oak removal and grading that do not align exactly with the Board-approved mitigation framework nevertheless remains in "substantial conformance." Petitioners requests Respondent and Real Parties in Interest be prohibited from removing, cutting, destroying, or materially disturbing through grading or excavation the oak resources except for emergency work necessary to protect immediate public health or safety and only after notice to the Court and Petitioners where practicable.

Respondents argue that while Petitioners allege prospective environmental harm, they provide no evidence of such harms, as no documents described in their supporting declaration were provided. Evidence submitted by Respondents demonstrates the tree removal Petitioners seek to enjoin has already occurred and was completed over a year before they brought this action. As Petitioners cannot show any immediate risk of irreparable harm to the oak trees they seek to protect, the Court should dissolve the TRO and deny further injunctive relief.

Merits of the Claim

Petitioners contend a substantial question exists as to whether the County lawfully approved the challenged deviation and whether CEQA's subsequent review-requirements were followed before materially changed oak impacts were allowed. Petitioners assert that the County's March 3, 2026, Verification of Final Map Conformance provides, in part, that the project shall implement all applicable measures of the 2014 Oak Plan, yet the 2024 Implementation Plan is not consistent with the 2014 Oak Plan's development criteria. On August 3, 2026, Petitioners received a response from the County who acknowledged that permitted oak removal did not "align exactly" with anticipated removal in the 2014, 2024 Plan, conceptual lot notebooks, and/or transitional open spaces.

Respondents assert that Petitioners' main argument is that the grading and tree removal that occurred in the Unit 8A area of the East Ridge Village of the Valley View Specific Plan is not in "substantial conformance" with the County's approved mitigation framework; however, perfect conformity with the East Ridge Village Tentative Map which was approved in 2015 is neither expected nor required, particularly after over a decade has elapsed since it was

approved. On March 3, 2026, the Board of Supervisors expressly determined the project is complying with the Osterling Plan and applicable mitigation measures as required.

Moreover, Petitioners cannot succeed on the merits because their claims are time-barred under Public Resources Code § 21167(a), which prescribes an 180-day statute of limitations to challenge an approval alleged to be non-compliant with CEQA. The most recent "approval" was on March 3, 2026, whereas the Petition was filed 233 days after the Board's approval of the Unit 8A Final Map, 406 days from the most recent grading and improvement plan approvals involving Unit 8A, and more than 18 months since the commencement of rough grading and tree removal work in Unit 8A that began in April 2025 and ended in July 2025.

Public Resources Code § 21167(a) provides:

> An action or proceeding alleging that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment **shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project**, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project. (emphasis added).

The gravamen of the Petition rests on the County's approval of the Unit 8A Final Map and accompanying Verification of Final Map Conformance on March 3, 2026. As the action must have been commenced within 180 days, the Petition is time barred. As such, the Court finds that Petitioners are not likely to prevail on the merits.

Balance of Hardships

Petitioners assert that without an injunction, removal permanently destroys the resources and may defeat effective judicial review.

Respondents argue Petitioners have not established any admissible evidence of any articulated harm, nor any evidence that further tree removal in Unit 8A is currently occurring or will occur in the near future. Alternatively, Valley View has executed contracts with contractors and subcontractors, as well as sales contracts with homebuilders which require Valley View to provide completed lots. Any delay results in elevated carrying costs, penalties, inflationary cost increases, and other monetary damages, which will force Valley View to breach contracts and incur additional costs that could exceed 10 million dollars.

The Court finds the balance of hardships weighs in Respondents' favor.

Petitioners' request for a preliminary injunction is denied. The Temporary Restraining Order issued on October 22, 2026, and extended on November 6, 2026, is dissolved.

TENTATIVE RULING #13:

PETITIONER'S REQUEST FOR A PRELIMINARY INJUNCTION IS DENIED. THE TEMPORARY RESTRAINING ORDER ISSUED ON OCTOBER 22, 2026, AND EXTENDED ON NOVEMBER 6, 2026, IS DISSOLVED.

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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

14.	**26CV1260**	**CALVARY SPV I LLC AS ASSIGNEE OF BARCLAYS BANK DELAWARE VS. ALEXANDER P ZACHARIOU**
DEEM REQUESTS FOR ADMISSION ADMITTED		

On September 28, 2026, Plaintiff, Cavalry SPV I, LLC ("Plaintiff"), filed a Motion for Order that Matters in Request for Admissions be Deemed Admitted Pursuant to CCP 2033.280. No opposition has been filed.

On June 25, 2026, Plaintiff served Requests for Admission, Set No. 1 on Defendant, Alexander P Zachariou ("Defendant"). To date, no response has been received.

Pursuant to Code of Civil Procedure § 2033.280, if a party to whom requests for admission are directed fails to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for monetary sanctions. Such an order is mandatory unless the court finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with § 2033.220.

The Court finds that Defendant failed to provide a response to Requests for Admission, Set No. 1. Plaintiff's Motion for Order that Matters in Request for Admissions be Deemed Admitted Pursuant to CCP 2033.280 is granted as requested.

TENTATIVE RULING #14:

PLAINTIFF'S MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSIONS BE DEEMED ADMITTED PURSUANT TO CCP 2033.280 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 PARTIES ARE REQUIRED TO APPEAR AT THE HEARING WHERE THE COURT SHALL SELECT THE DATE FOR THE LONG CAUSE 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.

15.	24CV2015	WARREN TRUMBLY VS. KATHLEEN BAILEY
DEMURRER		

Before the Court are the following matters: 1) Plaintiff/Cross-Defendant Warren Trumbly's Demurrer to Defendant/Cross-Complainant's Cross-Complaint; and 2) Cross-Defendant Ronald Briggs Demurrer to Defendant/Cross-Complainant's Cross-Complaint.

DEMURRER – WARREN TRUMBLY

On August 7, 2026, Plaintiff/Cross-Defendant, Warren Trumbly ("Plaintiff"), filed a Demurrer to Defendant/Cross-Complainant's Cross-Complaint. Defendant/Cross-Complainant, Kathleen Bailey ("Defendant"), filed an Opposition on October 27, 2026. Plaintiff's Reply was filed on November 13, 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.

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 Timothy L. Hamilton, counsel attempted to meet and confer with Defendant's counsel prior to filing, but the dispute could not be resolved.

Background

On July 15, 2026, Defendant filed a Cross-Complaint against Plaintiff and Cross-Defendant, Ronald Briggs, asserting causes of action for 1) Breach of Contract; 2) Breach of Fiduciary Duty; and 3) 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

Plaintiff demurs to each cause of action pursuant to Code of Civil Procedure § 430.10(e).

1. First Cause of Action – Breach of Contract

Plaintiff argues the cause of action is based on Defendant's allegations that Plaintiff immediately stopped all payments to the joint venture after Defendant took control in April 2020, yet Defendant did not file the Cross-Complaint until July 15, 2026. As the statute of limitations is four years, Defendant's cause of action is barred.

Defendant asserts that each of Plaintiff's missed monthly payments is a separately accruing breach. Plaintiff's duty to continue funding the project did not stop at John Briggs' death, as he was required to continue funding the project at $5,000.00 per month, and the Cross-Complaint alleges he failed to fund the project in the amount of $380,000.00 between April 2020 and June 2025. As the sale of the project property never occurred but rather resulted in a foreclosure in June 2025, Plaintiff's obligations under the Joint Venture Agreement continued until then.

In reply, Plaintiff maintains the Joint Venture Agreement was a written agreement that makes no mention of any installment payment. The alleged installment agreement would be an oral side-agreement, a verbal modification, or an agreement implied by conduct outside the written partnership agreement, which would nevertheless be barred by the four-year statute of limitations.

" ' "A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar ... to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred." ' " (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42, 105 Cal.Rptr.3d 181, 224 P.3d 920.) *Spears v. Spears* (2023) 97 Cal.App.5th 1294, 1304 [316 Cal.Rptr.3d 451, 461].

A cause of action for breach of a contract generally accrues upon the alleged breach. (*Piedmont Capital Management, L.L.C. v. McElfish* (2023) 94 Cal.App.5th 961, 968, 312 Cal.Rptr.3d 664 (*McElfish*).) If a contract calls for a party's performance on separate occasions such that the contractual duties are divisible, each breach triggers a separate limitations period. (*Id.* at pp. 968–969, 312 Cal.Rptr.3d 664.) To determine whether breach of an agreement to repay a debt gives rise to one or multiple limitations periods, a court must first examine whether the contract requires periodic payments. (*Id.* at p. 971, 312 Cal.Rptr.3d 664.) If it does, then the court must then "determine whether or not the duty to make a monthly payment is divisible from the duty to pay the full amount of the debt." (*Ibid.*) *Id*. at 1304-1305.

The Cross-Complaint alleges Plaintiff was obligated under the Joint Venture Agreement to pay $5,000.00 per month until the sale of the project property with distribution of all assets to the joint venturers after all encumbrances ere paid, including any loans to the Joint Venture by any joint venturer or other party. (¶¶ 14, 55). The Cross-Complaint further alleges Plaintiff breached the Joint Venture Agreement in April 2020 when he stopped paying the $5,000.00 monthly payment and failed to provide any managerial, sales, or development assistance to the project. (¶¶ 20-21, 57).

The Cross-Complaint does not disclose whether the installment agreement provision was in a written signed agreement or an oral modification. Although Plaintiff provided a copy of the Joint Venture Agreement in his Reply, the Court cannot consider the truth of its contents on demurrer. As pled, the Cross-Complaint expressly alleges that Plaintiff was required to make monthly periodic payments until the sale of the project property, rendering each monthly payment divisible and triggering separate limitations periods for each payment. Taking all facts pleaded as true, the Court finds that although some alleged missed monthly payments may be barred by the statute of limitations, others would be timely. Plaintiff's demurrer as to the First Cause of Action is overruled.

2. Second Cause of Action – Breach of Fiduciary Duty

Plaintiff asserts that the cause of action is also based on Plaintiff's alleged conduct in 2020 of repudiating any further support for the joint venture after the hostile takeover. Under Corporations Code § 16404, the statute of limitations for breach by a partner is four years. Therefore, Defendant's cause of action is barred by the statute of limitations.

Defendant argues that Plaintiff's fiduciary duties continued until the foreclosure of the project property in June 2025, as the Joint Venture was not wound up until that time. The Joint Venture Agreement provided for termination only upon the sale of the project property and distribution of all assets to the joint venturers after all encumbrances have been paid. As no sale occurred, no distribution was made, and no final accounting was rendered, Plaintiff's fiduciary duties continued.

Additionally, Defendant asserts that Plaintiff is equitably estopped from asserting the limitations period, as Plaintiff stated he would not put additional funds into the project but simply wanted to be paid any profits after the project's conclusion in March 2022. By asserting an entitlement to future profits in 2022, Plaintiff conveyed that the joint venture remained a live enterprise and that adversarial litigation was not yet necessary. Plaintiff is also judicially estopped because his Second Amended Complaint alleges that on or about January 19, 2022, Bailey deeded the joint venture property to herself without notice to Plaintiff and in January 2023 a law firm sent him a letter purporting to terminate the joint venture partnership and forfeit his investment.

The statute of limitations for breach of fiduciary duty is three years or four years, depending on whether the breach is fraudulent or nonfraudulent. (See *Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 963 [163 Cal.Rptr.3d 44] ["limitations period is three years ... for a cause of action for breach of fiduciary duty where the gravamen of the claim is deceit, rather than the catchall four-year limitations period that would otherwise apply..."]; *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1312 [139 Cal.Rptr.3d 670] ["[b]reach of fiduciary duty not amounting to fraud or constructive fraud is subject to the four-year 'catch-all statute' of Code of Civil Procedure section 343"]; *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 606–607 [129 Cal.Rptr.3d 525] [same]; *City of Vista v. Robert Thomas Securities, Inc.* (2000) 84 Cal.App.4th 882, 889 [101 Cal.Rptr.2d 237] [four-year statute of limitations applies to breach of fiduciary duty, unless the gravamen of the claim is actual or constructive fraud, in which case the statute of limitations is three years].) *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1479 [171 Cal.Rptr.3d 548, 570], as modified (May 27, 2014).

Equitable estoppel, however, is a different matter. It is not concerned with the running and suspension of the limitations period, but rather comes into play only after the limitations period has run and addresses itself to the circumstances in which **a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period**. Its application is wholly independent of the limitations period itself and takes its life, not from the language of the statute, but from the equitable principle that no man will be permitted to profit from his own wrongdoing in a court of justice. Thus, because equitable estoppel operates directly on the defendant without abrogating the running of the limitations period as provided

by statute, it might apply no matter how unequivocally the applicable limitations period is expressed." (*Bomba v. W.L. Belvidere, Inc.* (7th Cir.1978) 579 F.2d 1067, 1070.) *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847–848 [75 Cal.Rptr.2d 548, 551]. (emphasis added).

Under California law, judicial estoppel applies when "(1) the *same party* has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) *the two positions are totally inconsistent;* and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson, supra,* 60 Cal.App.4th at p. 183, 70 Cal.Rptr.2d 96, italics added.) *Daar & Newman v. VRL International* (2005) 129 Cal.App.4th 482, 491 [28 Cal.Rptr.3d 566, 573].

The Court finds that Plaintiff's alleged repudiation accrued in April 2020 when he ceased financial contributions, refused to provide managerial services, sales or development assistance, and failed to communicate with the managing partner or participate in any decision-making. (¶ 66). The venture's affairs may have terminated in June 2025; however, on the allegations pled, that does not shift the accrual date. As such, the four-year statute of limitations bars Defendant's cause of action for Breach of Fiduciary Duty.

The Court further does not find that the doctrine of equitable estoppel applies. Defendant has not pled facts supporting that Plaintiff's actions induced her into forbearing suit within the applicable limitations period. Similarly, the Court does not find the doctrine of judicial estoppel is applicable as the asserted positions are not totally inconsistent. Plaintiff's demurrer as to the Second Cause of Action is sustained, with leave to amend.

3. Third Cause of Action - Declaratory Relief

Plaintiff contends the cause of action is unnecessary and a waste of court resources as Plaintiff's lawsuit is at issue and answers have been filed.

Defendant argues the cause of action asks the Court to declare whether the Joint Venture has been dissolved and to fix the parties' respective rights and obligations following the June 2025 foreclosure, which involve questions that Plaintiff's lawsuit will not resolve. The Joint Venture Agreement provides the venture terminates only upon the sale of the project property with distribution of all assets to the joint venturers after all encumbrances have been paid, as determined by Capitol Consultants, Inc. As the project property was lost in foreclosure in approximately June 2025, the termination provision of the Joint Venture Agreement was not triggered. Whether the Joint Venture has been dissolved as a consequence of the foreclosure, and what rights and obligations each party holds going forward, remain live and contested questions about the parties' legal relationship under the agreement.

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another…may,

in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought. Code of Civil Procedure § 1060.

The Court finds Defendant has adequately pled a cause of action for Declaratory Relief. Plaintiff's demurrer as to the Third Cause of Action is overruled.

DEMURRER – RONALD BRIGGS

On August 27, 2026, Cross-Defendant, Ronald Briggs ("Cross-Defendant"), filed a Demurrer to Defendant/Cross-Complainant's Cross-Complaint. Defendant/Cross-Complainant, Kathleen Bailey ("Defendant"), filed an Opposition on October 27, 2026. Plaintiff's Reply was filed on November 13, 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.

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 Timothy L. Hamilton, counsel attempted to meet and confer with Defendant's counsel prior to filing, but the dispute could not be resolved.

Background

On July 15, 2026, Defendant filed a Cross-Complaint against Plaintiff and Cross-Defendant, Ronald Briggs, asserting causes of action for 1) Breach of Contract; 2) Breach of Fiduciary Duty; and 3) 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

Plaintiff demurs to each cause of action pursuant to Code of Civil Procedure § 430.10(e).

1. First Cause of Action – Breach of Contract

Cross-Defendant argues the cause of action is based on Defendant's allegations that Cross-Defendant stopped facilitating the joint venture after Defendant took control in April 2020, yet Defendant did not file the Cross-Complaint until July 15, 2026. As the statute of limitations is four years, Defendant's cause of action is barred.

Defendant asserts that Cross-Defendant had a recurring duty to contribute to the venture. The Cross-Complaint alleges that Cross-Defendant was obligated to provide development and advocating services, but he failed to do so after April 2020. Each month Cross-Defendant failed to perform these ongoing duties constituted a new breach. Defendant alleges the claim did not accrue until June 2025, as the full scope of the breach and resulting damages did not crystallize until the property was lost in foreclosure. Defendant further alleges Cross-Defendant is judicially estopped from asserting a limitation defense because Co-Defendant's counsel represents Plaintiff Trumbly who has taken positions on behalf of Plaintiff that are fundamentally inconsistent with the argument that all claims expired in 2024 within his Second Amended Complaint.

In reply, Cross-Defendant contends that he was disinherited from the family trust and management of the partnership, thereby extinguishing any obligation after the Baileys took over management of the partnership in 2020. No further obligation would have been owed that would have extended the statute of limitations.

" ' "A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar ... to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred." ' " (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42, 105 Cal.Rptr.3d 181, 224 P.3d 920.) *Spears v. Spears* (2023) 97 Cal.App.5th 1294, 1304 [316 Cal.Rptr.3d 451, 461].

A cause of action for breach of a contract generally accrues upon the alleged breach. (*Piedmont Capital Management, L.L.C. v. McElfish* (2023) 94 Cal.App.5th 961, 968, 312 Cal.Rptr.3d 664 (*McElfish*).) If a contract calls for a party's performance on separate occasions such that the contractual duties are divisible, each breach triggers a separate limitations period. (*Id.* at pp. 968–969, 312 Cal.Rptr.3d 664.) To determine whether breach of an agreement to repay a debt gives rise to one or multiple limitations periods, a court must first examine whether the contract requires periodic payments. (*Id.* at p. 971, 312 Cal.Rptr.3d 664.) If it does, then the court must then "determine whether or not the duty to make a monthly payment is divisible from the duty to pay the full amount of the debt." (*Ibid.*) *Id*. at 1304-1305.

Because the very existence of a contract is the product of the contracting parties' mutual intent (*American Employers Group, Inc. v. Employment Development Dept.* (2007) 154 Cal.App.4th 836, 846-847 [65 Cal.Rptr.3d 233] [" '[t]here is no contract until there has been a meeting of the minds on *all* material points' "]), the subsidiary question of whether contractual duties are divisible—and hence constitute separate breaches each triggering a separate statute of limitations periods—is also a function of the " " 'objective manifestations of the parties' [mutual] intent.' " " (*Eloquence, supra*, 49 Cal.App.5th at p. 661, 263 Cal.Rptr.3d 310; see *Armstrong, supra*, 116 Cal.App.4th at p. 1389, 11 Cal.Rptr.3d 412; Civ. Code, § 1636 ["mutual intention of the parties" controls].) In ascertaining this intent, courts are to examine (1) the plain text of the contract; and, to the extent it exists, (2) " " 'extrinsic evidence of such objective matters,' " " such as (a) " " 'the surrounding circumstances under which the parties negotiated or entered into the contract,' " " (b) the " " 'nature and subject matter of the contract,' " " and (c) " " 'the subsequent conduct of the parties.' " " (*Eloquence*, at p. 661, 263 Cal.Rptr.3d 310; see generally *Nelson v. Dual Diagnosis Treatment Center, Inc.* (2022) 77 Cal.App.5th 643, 654, 292 Cal.Rptr.3d 740 ["the best indicator of the parties' intent in a written contract is the words they chose for the agreement"]; Civ. Code, § 1638 ["language of a contract is to govern its interpretation"].) *Piedmont Capital Management, LLC v. McElfish* (2023) 94 Cal.App.5th 961, 969 [312 Cal.Rptr.3d 664, 671], as modified on denial of reh'g (Sept. 14, 2023), as modified (Sept. 21, 2023).

Under California law, judicial estoppel applies when "(1) the *same party* has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) *the two positions are totally inconsistent;* and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson, supra,* 60 Cal.App.4th at p. 183, 70 Cal.Rptr.2d 96, italics added.) *Daar & Newman v. VRL International* (2005) 129 Cal.App.4th 482, 491 [28 Cal.Rptr.3d 566, 573].

As pled, the Cross-Complaint alleges Cross-Defendant was obligated under the Joint Venture Agreement to provide development and advocating services with the County of El Dorado to relocate El Dorado County facilities to the project's business park (¶ 12). The Cross-Complaint asserts that Cross-Defendant failed to provide any development and services under the terms of the Joint Venture Agreement and failed to communicate with the Trustee regarding any work performed on behalf of the project after from April 2020. (¶¶ 38-39, 58).

As pled, the facts demonstrate one indivisible general obligation to provide development and advocating services throughout the life of the project. The Court further does not find the doctrine of judicial estoppel applicable, as the positions are not totally inconsistent and were not made by Cross-Defendant. Accordingly, Defendant's Breach of Contract Cause of Action is time barred. Cross-Defendant's demurrer as to the First Cause of Action is sustained, with leave to amend.

2. Second Cause of Action – Breach of Fiduciary Duty

Cross-Defendant asserts that the cause of action is also based on Cross-Defendant's alleged conduct in 2020 of repudiating any further support for the joint venture after the hostile takeover. In addition, Defendant asserts Cross-Defendant wrote a check on the Briggs checking account which Carmen Briggs deemed fraudulent. As Carmen Briggs died on March 11, 2021, the very latest the Cross-Complaint could have been filed was on March 11, 2025.

Defendant argues that Cross-Defendant's fiduciary duties continued until the foreclosure of the project property in June 2025, as the Joint Venture was not wound up until that time.

The statute of limitations for breach of fiduciary duty is three years or four years, depending on whether the breach is fraudulent or nonfraudulent. (See *Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 963 [163 Cal.Rptr.3d 44] ["limitations period is three years ... for a cause of action for breach of fiduciary duty where the gravamen of the claim is deceit, rather than the catchall four-year limitations period that would otherwise apply..."]; *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1312 [139 Cal.Rptr.3d 670] ["[b]reach of fiduciary duty not amounting to fraud or constructive fraud is subject to the four-year 'catch-all statute' of Code of Civil Procedure section 343"]; *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 606–607 [129 Cal.Rptr.3d 525] [same]; *City of Vista v. Robert Thomas Securities, Inc.* (2000) 84 Cal.App.4th 882, 889 [101 Cal.Rptr.2d 237] [four-year

statute of limitations applies to breach of fiduciary duty, unless the gravamen of the claim is actual or constructive fraud, in which case the statute of limitations is three years].) *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1479 [171 Cal.Rptr.3d 548, 570], as modified (May 27, 2014).

As pled, Defendant alleges Cross-Defendant breached his fiduciary duties by misappropriating $65,000.00 in Trust assets for personal use, failing to provide any development or advocating services as promised, and abandoning the project after John Briggs' death. (¶ 70). Cross-Defendant stopped providing services in April 2020, wrote the fraudulent check and kept the $65,000.00 no later than March 11, 2021, the date of Carmen's death, which is the latest date Cross-Defendant's repudiation could have accrued. The venture's affairs may have terminated in June 2025; however, on the allegations pled, that does not shift the accrual date. As such, under either the three-year or four-year statute of limitations, Defendant's cause of action is time barred. Cross-Defendant's demurrer as to the Second Cause of Action is sustained, with leave to amend.

3. Third Cause of Action - Declaratory Relief

Cross-Defendant contends the cause of action is unnecessary and a waste of court resources as Plaintiff's lawsuit is at issue and answers have been filed.

Defendant argues whether the Joint Venture has been dissolved as a consequence of the foreclosure, and what rights and obligations each party holds going forward, remain live and contested questions about the parties' legal relationship under the Joint Venture Agreement, which is properly pled.

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another…may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought. Code of Civil Procedure § 1060.

The Court finds Defendant has adequately pled a cause of action for Declaratory Relief. Cross-Defendant's demurrer as to the Third Cause of Action is overruled.

TENTATIVE RULING #15:

1. DEMURRER – WARREN TRUMBLY

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

2. DEMURRER – ROLAND BRIGGS

CROSS-DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AS TO THE FIRST AND SECOND CAUSES OF ACTION. CROSS-DEFENDANT'S DEMURRER IS OVERRULED AS TO THE THIRD CAUSE OF ACTION.

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

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

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

16.	24CV1948	LORI BACIGALUPI VS. JONATHAN O. YIP
DEMURRER		

On July 22, 2026, Plaintiff/Cross-Defendant, Lori Bacigalupi ("Plaintiff"), filed a Demurrer to Second Amended Cross-Complaint. Defendant/Cross-Complainant, Jonathan O. Yip ("Defendant"), filed an Opposition on November 6, 2026.

Request for Judicial Notice

Plaintiff seeks judicial notice of Defendant's original Cross-Complaint filed on October 24, 2024.

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 Plaintiff falls within the purview of Section 452, matters which *may* be judicially noticed, the Court does find that Plaintiff provided Defendant and the Court sufficient notice of the request and copies of the documents requested to be noticed. As such, the parties have satisfied the requirements of Evidence Code § 453 and the requests for judicial notice are 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 John R. Garner, counsel attempted to meet and confer with Defendant prior to filing, but the dispute could not be resolved.

Background

On May 22, 2026, Defendant filed a Second Amended Cross-Complaint ("SAXC"), asserting causes of action for 1) Breach of Oral Contract; 2) Quiet Title; 3) Declaratory Relief; 4) Money Had and Received; and 5) Violation of Penal Code § 496.

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

Plaintiff demurs to each cause of action pursuant to Code of Civil Procedure §§ 430.10(e), 430.10(f), and 430.30.

//

1. First Cause of Action – Breach of Oral Contract

Plaintiff argues Defendant's original Cross-Complaint alleged the parties entered into a notarized agreement wherein they agreed Plaintiff would pay $120,000.00 toward the downpayment and $2,000.00 monthly toward the mortgage. In return, Plaintiff would receive $120,000.00 plus 50% of any equity appreciation if and when the property sold. In contrast, the SAXC contends the $120,000.00 was a loan from Plaintiff to Defendant documented by a note and deed of trust, while the $2,000.00 obligation arose from a separate oral occupancy agreement while no factual explanation was given for the modification. Plaintiff contends the Court may disregard the altered theory and test the claim against the prior adverse allegation.

Defendant maintains the oral agreement to pay $2,000.00 per month for occupancy is not inconsistent with the original Cross-Complaint or the promissory note, as the original Cross-Complaint pleaded the sum was to help offset the mortgage and the SAXC pleads the sum for occupancy was to help Cross-Complainant offset the mortgage.

Under the sham pleading doctrine, "[i]f a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations." (*Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151, 281 Cal.Rptr. 191.) Where no explanation for an inconsistency is offered, the trial court is entitled to conclude that the pleading party's cause of action is a sham and sustain a demurrer without leave to amend. (*Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1390-1391, 261 Cal.Rptr. 240.) *Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 447 [245 Cal.Rptr.3d 215, 228].

The Court finds the change in form of the $2,000.00 monthly payments from a notarized agreement as alleged in the original Cross-Complaint to an oral contract as alleged in the SAXC is a material change that is unsupported by any explanation, thereby triggering the sham pleading doctrine. The Court accordingly disregards the oral-agreement allegation within the SAXC and First Cause of Action. Defendant has not offered any facts in his SAXC or Opposition as to the discrepancy regarding the change in form of the purported $2,000.00 monthly payment agreement. <u>As such, Plaintiff's demurrer as to the First Cause of Action is sustained without leave to amend, finding no reasonable possibility of curing the defect</u>.

2. Second Cause of Action – Quiet Title

Plaintiff argues Defendant has not pled facts establishing all sums secured by the deed of trust were paid. The SAXC does not allege the parties agreed the home had appreciated by only $10,000.00, that Plaintiff accepted $5,000.00 as the appreciation component, or that any appraisal occurred, but rather only Defendant's unilateral belief the value did not exceed $10,000.00.

Defendant contends he satisfied the obligation secured by the deed of trust Plaintiff holds against the property pursuant to Plaintiff's instructions, yet Plaintiff has refused to remove the deed of trust. Defendant asserts there was no objection noted by Plaintiff nor a demand for an appraisal, which is logical because the SAXC alleges the Property was purchased just two and a half months prior. After Defendant demanded Plaintiff return the funds, Plaintiff refused which confirms she did not dispute the payment was sufficient to satisfy the deed of trust.

A borrower may not, however, quiet title against a secured lender without first paying the outstanding debt on which the mortgage or deed of trust is based. (*Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707, 33 Cal.Rptr.2d 288 ["mortgagor of real property cannot, without paying his debt, quiet his title against the mortgagee"]; *Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477, 114 Cal.Rptr. 91 [borrower cannot quiet title without discharging the debt].) The cloud on title remains until the debt is paid. (*Burns v. Hiatt* (1906) 149 Cal. 617, 620–622, 87 P. 196.) *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86 [163 Cal.Rptr.3d 804, 835].

The Deed of Trust (SAXC, Ex. 5) provides the following acceleration provision:

> Upon demand by lender, borrow agrees to pay in full within 14 days, no less than the full amount borrowed on the date January 11, 2024 of $120,000.00 plus one half (50%) of the increased fair market value of the home, if any over and above the purchase price of $1,175,000.00 by borrower on December 5th, 2023. **If borrower and lender cannot agree on fair market value, on date of demand for repayment, lender may select any licensed real estate appraiser of lender's choosing with at least ten years of experience appraising residential homes in El Dorado County**. (emphasis added).

Defendant has not alleged any facts demonstrating that the parties agreed on the fair market value or that Plaintiff selected an appraiser, and that agreed-upon or appraised amount was paid by Defendant as required by the terms of the Deed of Trust. As pled, Defendant has not established the obligation was paid in full. Plaintiff's demurrer as to the Second Cause of Action is sustained, with leave to amend.

3. Third Cause of Action – Declaratory Relief

Plaintiff asserts the cause of action does not identify a prospective duty distinct from the quiet title claim but rather asks the Court to decide the same matured dispute over whether a past payment discharged a debt and lien.

Defendant argues the cause of action is not backward-looking but rather seeks to avoid potential future litigation certain to arise if Plaintiff makes a demand for repayment of the debt.

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another…may, in cases of actual controversy relating to the legal rights and duties of the respective parties,

bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought. Code of Civil Procedure § 1060.

The Court finds an actual controversy exists relating to the legal rights and duties of the respective parties. The parties dispute whether the Promissory Note obligation was satisfied which affects the parties' present legal rights. Plaintiff's demurrer as to the Third Cause of Action is overruled.

4. Fourth Cause of Action – Money Had and Received

Plaintiff contends that money paid to a creditor for the creditor's own benefit is not money received for the debtor's use. The later dispute over whether the amount fully discharged every component of the note does not create an implied promise to refund the entire principal balance. Plaintiff further alleges the cause of action is incoherent, as Plaintiff received the money in February 2024, yet the SAXC alleges she first became indebted to Defendant in February 2025 when she filed a declaration disputing his characterization. A litigation position one year after receipt does not retroactively alter the purpose for which money was received.

Defendant asserts the claim is pled in the alternative if the Court determines in the Second and Third Causes of Action that the payment to Plaintiff was not in satisfaction of his debt to her. Defendant was not aware that Plaintiff disputed that satisfaction of the debt until February 2025 when she acknowledged in her declaration that his payment was for a different purpose. If Defendant's payment to Plaintiff was not in satisfaction of the debt, Plaintiff is not entitled to retain those funds, as no other obligation exists between them, and Plaintiff is obligated to refund them.

"A cause of action for money had and received is stated if it is alleged [that] the defendant 'is indebted to the plaintiff in a certain sum "for money had and received by the defendant for the use of the plaintiff." ' " (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460, 61 Cal.Rptr.2d 707.) The claim is viable " 'wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter.' " (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 937, 125 Cal.Rptr.3d 210.) **"[T]he plaintiff must prove that the defendant received money 'intended to be used for the benefit of [the plaintiff],' that the money was not used for the plaintiff's benefit, and that the defendant has not given the money to the plaintiff**." (*Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th

1439, 1454, 151 Cal.Rptr.3d 804.) *Camden Systems, LLC v. 409 North Camden, LLC* (2024) 103 Cal.App.5th 1068, 1082 [323 Cal.Rptr.3d 562, 573], reh'g denied (Aug. 8, 2024). (emphasis added).

Reading the SAXC as a whole, Defendant asserts Plaintiff received $125,000.00 which was intended to be used for his benefit – i.e., satisfaction of the Promissory Note and Deed of Trust which would clear his title – and Plaintiff has not returned the funds to Defendant nor acknowledged repayment of the debt. The Court does not find that Defendant's allegation that Plaintiff did not become indebted until February 2025 despite receiving the funds in 2024 retroactively changes the transaction. Plaintiff's declaration put Defendant on notice of the dispute regarding the payment's purpose. Defendant has nevertheless properly asserted a cause of action for Money Had and Received. Plaintiff's demur as to the Fourth Cause of Action is overruled.

5. Fifth Cause of Action – Penal Code § 496

Plaintiff alleges Exhibit 6 disproves of Defendant's assertion that Plaintiff falsely represented the $125,000.00 would be accepted in satisfaction of Defendant's debt. The text message merely shows Defendant asking Plaintiff to send her account and routing information, which Plaintiff provided and requested confirmation after sending. Plaintiff made no promise the $125,000.00 constituted payment in full, no statement about the appreciation component, no waiver of appraisal, and no agreement to reconvey.

The only alleged basis for fraudulent intent is that Plaintiff filed a declaration a year later disputing Defendant's characterization and allegedly called the transfer a gift. Plaintiff argues the later litigation position does not plead that she made a knowingly false statement before the transfer or that she engaged in careful planning and deliberation to obtain stolen property. To the extent Plaintiff seeks to impose liability based on Plaintiff's declaration or positions taken in this action, those communications are privileged pursuant to Civil Code § 47(b).

Defendant argues Exhibit 6 does not contradict the allegations but is simply evidence corroborating Plaintiff's demand Defendant repay the promissory note as she provided banking information where and how to make the payment. To the extent Plaintiff claims Defendant has not alleged the elements of fraud with particularity, Defendant requests leave to amend to do so. Defendant asserts he was fraudulently induced to pay and deliver to Plaintiff $125,000.00 by her demand for and false representation that those funds were in satisfaction of his debt to her. Plaintiff's demand for repayment of the loan is the representation which Defendant alleges was false when made and Plaintiff's declaration is evidence of the falsity of that representation.

Penal Code section 496, subdivision (a) (section 496(a)) makes receiving or buying property "that has been obtained in any manner constituting theft" a criminal offense punishable by imprisonment. Section 496, subdivision (c) (section 496(c)) provides that any person "who has been injured by a *violation of* [section 496(a)] ... may bring an action for three

times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees." (Italics added.) *Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1043 [151 Cal.Rptr.3d 546, 547].

Section 496(a) extends to property "that has been obtained in any manner constituting theft." Penal Code section 484 describes acts constituting theft. The first sentence of section 484, subdivision (a) states: "*Every person* who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or *who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property,* or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, *is guilty of theft*." (Italics added.) **Section 484 thus defines theft to include theft by false pretense.** (*People v. Gomez* (2008) 43 Cal.4th 249, 255, fn. 4, 74 Cal.Rptr.3d 123, 179 P.3d 917.) Penal Code section 532 also defines criminal fraud "in terms nearly identical to [section] 484[, subdivision](a)" and "provides that these acts are punishable 'in the same manner and to the same extent' as larceny." (2 Witkin & Epstein, Cal.Criminal Law (4th ed. 2012) Crimes Against Property, § 48, p. 76.) *Id.* at 1048. (emphasis added).

A theft conviction on the theory of false pretenses requires proof that (1) **the defendant made a false pretense or representation to the owner of property; (2) with the intent to defraud the owner of that property; and (3) the owner transferred the property to the defendant in reliance on the representation**. (*Perry v. Superior Court* (1962) 57 Cal.2d 276, 282–283, 19 Cal.Rptr. 1, 368 P.2d 529; *People v. Whight* (1995) 36 Cal.App.4th 1143, 1151, 43 Cal.Rptr.2d 163.) In this context, reliance means that the false representation "materially influenced" the owner's decision to part with his property; it need not be the sole factor motivating the transfer. (*People v. Ashley* (1954) 42 Cal.2d 246, 259, 267 P.2d 271.) A victim does not rely on a false representation if "there is no causal connection shown between the [representations] alleged to be false" and the transfer of property. (*People v. Bliss* (1920) 47 Cal.App. 503, 506, 190 P. 1046; see also *People v. Canfield* (1915) 28 Cal.App. 792, 795, 154 P. 33; *People v. Emmons* (1910) 13 Cal.App. 487, 495–95, 110 P. 151.) Thus, if the defendant makes both true and false statements to the owner, but the false statements are irrelevant to the owner's decision to transfer the property, theft on the theory of false pretense has not been committed. (*People v. Bliss, supra,* 47 Cal.App. at p. 506, 190 P. 1046.) Reliance may be inferred from all the circumstances. (*People v. Randono* (1973) 32 Cal.App.3d 164, 174, 108 Cal.Rptr. 326.) *People v. Wooten* (1996) 44 Cal.App.4th 1834, 1842–1843 [52 Cal.Rptr.2d 765, 770]. (emphasis added).

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.) *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 [49 Cal.Rptr.2d 377, 385, 909 P.2d 981, 989]. (emphasis added)

The SAXC provides that on or about February 28, 2024, Plaintiff demanded Defendant repay her loan and provided payment instructions and that Plaintiff provided account information via text message as to where the payment could be made. Such allegations do not meet the required specificity to establish how and by what means the representation was made. Defendant further maintains there were no other existing obligations at the time of the demand. Although the allegation may support an inference that Plaintiff was to use the funds to repay the loan, Defendant does not plead what Plaintiff represented about the effect of paying the amounts or facts showing the representation was false when it was made. Plaintiff's demur to the Fifth Cause of Action is sustained, with leave to amend.

6. Entire SAXC – Uncertainty

Plaintiff argues the SAXC is uncertain as a whole as it contains pervasive contradictions that go beyond minor pleading imperfections.

The Court finds many of these alleged contradictions are moot pursuant to the Court's sustaining Plaintiff's demurrer as to the First, Second, and Fifth Causes of Action. The Court does not find the remaining allegations are so uncertain that Plaintiff cannot determine what factual theory she must meet. Plaintiff's demurrer to the entire SAXC for uncertainty is overruled.

TENTATIVE RULING #16:

PLAINTIFF'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND AS TO THE FIRST CAUSE OF ACTION. PLAINTIFF'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AS TO THE SECOND AND FIFTH CAUSES OF ACTION. PLAINTIFF'S DEMURRER IS OVERRULED AS TO THE THIRD AND FOURTH CAUSES OF ACTION. PLAINTIFF'S DEMURRER TO THE ENTIRE SAXC FOR UNCERTAINTY IS OVERRULED.

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

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY

4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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

17.	25CV1186	MICHAEL FISK ET AL VS. CONSTANCE ZUFELT ET AL
DEMURRER		

On July 31, 2026, Defendant, Constance Zufelt ("Defendant"), filed a Demurrer to Plaintiff's Second Amended Complaint. Plaintiffs, Michael Fisk and Nancy Fisk (collectively "Plaintiffs"), filed an Opposition on August 17, 2026. Defendant's Reply was filed on August 21, 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.

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 David P.E. Burkett, counsel attempted to meet and confer with Plaintiff prior to filing, but the dispute could not be resolved.

//

Background

On August 27, 2026, Plaintiffs filed a Second Amended Complaint ("SAC"), asserting causes of action for 1) Breach of Contract and Anticipatory Breach; 2) Unjust Enrichment; 3) Equitable Lien; 4) Quantum Meruit; 5) Constructive Trust; 6) Declaratory Relief; and 7) Breach of Covenant of Quiet Enjoyment.

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 each cause of action, as the SAC fails to state a claim because Plaintiffs have no current right to payment under the Lease and have not adequately alleged facts to support a claim for Breach of Covenant of Quiet Enjoyment.

1. First Cause of Action – Breach of Contract and Anticipatory Breach

Defendant argues that the cause of action is not supported by the facts and language of the Lease, as it only requires payment to them upon the sale of the Property, which has not sold. Defendant asserts the Lease provides that Defendant will pay to Plaintiffs the difference between the property with the manufactured home and the property without the manufactured home. The Lease did not contemplate the value of the improvements. Additionally, the right to payment is conditioned on Defendant selling the property and El Dorado County approving the manufactured home as a permanent structure, neither of which have occurred.

As for Plaintiffs' claims of an anticipatory breach, the SAC fails to provide any date when Defendant made an alleged express repudiation, what she allegedly said, who she made the statements to, and whether those statements were made orally or in writing. Such vague allegations fail to plead an anticipatory breach. Plaintiffs' allegation does not comport with the Lease, which does not require Defendant to "agree to a process that protects Plaintiffs' appraisal, valuation, payment and possession rights before sale." As such, Plaintiffs cannot assert a claim Defendant repudiated an obligation which she does not have.

Plaintiffs contend that Section 6 of the Lease provides a remedy upon Defendant's breach through "eviction or egregious behavior." Plaintiffs allege Defendant has engaged in

egregious behavior through threats of premature removal of the Manufactured Home, obstruction of the permanency process, refusal to participate in a contract-compliant appraisal, interference with access and use of the premises, unauthorized entry onto Plaintiffs' portion of the Property, and other interference with Plaintiffs' contractual and possessory rights. Additionally, Defendant cannot argue that Plaintiffs rights have not matured because the Manufactured Home has not received whatever governmental recognition Defendant contends the term "permanent" requires, as the SAC alleges such a process requires Defendant's cooperation which she has refused to provide. As to what "permanent" means is a contract interpretation issue that cannot be resolved on demurrer.

Plaintiffs further allege that Defendant has repudiated her obligation to implement the appraisal and compensation mechanism required by the Lease upon sale or breach and has obstructed the permanency process while simultaneously relying upon its noncompletion to deny Plaintiff's rights. Whether the evidence establishes a clear and unequivocal repudiation is a merits question rather than a basis for sustaining the demurrer. Defendant's specificity demand is not required at the pleading stage.

Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract. The repudiation may be express or implied. An express repudiation is a clear, positive, unequivocal refusal to perform (Guerrieri v. Severini (1958) 51 Cal.2d 12, 18, 330 P.2d 635; Gold Min. & Water Co. v. Swinerton, supra, 23 Cal.2d 19, 29, 142 P.2d 22; Whitney Inv. Co. v. Westview Dev. Co. (1969) 273 Cal.App.2d 594, 602—603, 78 Cal.Rptr. 302; Atkinson v. District Bond Co. (1935) 5 Cal.App.2d 738, 743—744, 43 P.2d 867); an implied repudiation results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible (Zogarts v. Smith (1948) 86 Cal.App.2d 165, 194 P.2d 143; 1 Witkin, Summary of Cal.Law (8th ed.) s 632, pp. 538—539; 4 Corbin, Contracts (1951) s 984, pp. 949—951). *Taylor v. Johnston* (1975) 15 Cal.3d 130, 137 [123 Cal.Rptr. 641, 646, 539 P.2d 425, 430].

To constitute an express repudiation, the promisor's statement, or in this case conduct, must amount to an unequivocal refusal to perform: 'A mere declaration, however, of a party of an intention not to be bound will not of itself amount to a breach, so as to create an effectual renunciation of the contract; for one party cannot by any act or declaration destrov the binding force and efficacy of the contract. To justify the adverse party in treating the renunciation as a breach, the refusal to perform must be of the whole contract . . . and must be distinct, unequivocal, and absolute.' (Atkinson v. District Bond Co., supra, 5 Cal.App.2d 738, 743, 43 P.2d 867, 869.) *Id*. at 140.

The Court finds the SAC adequately pleads a cause of action for breaching Section 6 of the Lease. Section 6 provides a remedy for breach through eviction *or* egregious behavior. It does not make removal a prerequisite to a claim based on egregious behavior. Plaintiffs have adequately alleged specific conduct which supports a claim that Defendant behaved egregiously. As to whether Defendant's conduct constitutes "egregious behavior" which is tantamount to a breach of the lease is a factual question not resolvable on demurrer.

As for anticipatory breach, the lease provides appraisal and payment obligations tied to the sale of the property coupled with the manufactured home being made permanent. The SAC alleges Defendant has stated an intent to sell the property and engaged in conduct that has obstructed or materially hindered the ability to obtain County permanency recognition. Such conduct has rendered an inability to obtain "permanent" status which affects Plaintiffs' right to an appraisal and obtaining the difference in value of the property with and without the manufactured home. Defendant cannot deliberately prevent the circumstances necessary for performance of the appraisal and payment obligations as defined in the lease to occur. Such a refusal to allow for the permanency status to transpire is sufficient in showing an express repudiation of the lease. Defendant's demurrer as to the First Cause of Action is overruled.

2. Second through Fifth Causes of Action – Unjust Enrichment, Equitable Lien, Quantum Meruit, and Constructive Trust

Defendant asserts Plaintiffs cannot claim equity requires payment for the alleged benefits associated with the manufactured home because the parties have already contracted regarding that subject matter. As for Unjust Enrichment, restitution is inapplicable as the parties have an enforceable express contract. A cause of action for Quantum Meruit fails because the parties have an actual contract covering payment. An Equitable Lien claim cannot proceed as the lease does not charge the debt to the Property but instead to the proceeds of the sale of the Property. The Lease at issue shows no intent to secure, to the Property itself, Plaintiffs' contractual right to proceeds from the sale of the Property. As for the Constructive Trust cause of action, the gain received by Defendant are the improvements to the property which cannot be considered wrongful because it is the subject of the parties' lease. Without any wrongful act and with the "thing" at issue being the subject of a contract, the claim fails.

Plaintiffs argue the Unjust Enrichment and Quantum Meruit causes of action are alternative theories. Plaintiffs primarily contend the Lease is enforceable and governs Defendant's obligations. To the extent the Court determines the Lease is unenforceable or ineffective as to the benefits at issue, or the Lease does not govern the particular improvements, labor, expenditures, and value conferred by Plaintiffs, Plaintiffs alternatively seek restitution for benefits knowingly received and retained by Defendant. As for the Equitable Lien claim, Plaintiffs' allegations invoke detrimental-reliance and unjust-enrichment circumstances. Plaintiffs maintain the Constructive Trust cause of action alleges both an identifiable property interest and wrongful conduct giving rise to the requested equitable relief.

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*.

"Quantum meruit refers to the well-established principle that 'the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered.' [Citation.] To recover in quantum meruit, a party need not prove the existence of a contract [citations], but it must show the circumstances were such that 'the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made.' " (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458 , 9 Cal.Rptr.3d 693, 84 P.3d 379 (*Huskinson & Brown*).) The doctrine manifests " ' "a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly." ' " (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315 , 265 Cal.Rptr. 525; see Rest., Restitution, §§ 113, 114.) *County of Santa Clara v. Superior Court* (2023) 14 Cal.5th 1034, 1049–1050 [310 Cal.Rptr.3d 130, 142, 531 P.3d 951, 962].

Although the parties have an existing contract regarding payment of the difference in value of the property with and without the manufactured home, the contract does not expressly include a provision for the value of improvements made by Plaintiffs, such as foundation work, septic work, utility work, permitting efforts, site preparation, etc. As Defendant alleged in her Opposition, the value of the Property with and without the manufactured home is a different value than the value of the improvements. Such improvements were to Defendant's benefit at Plaintiff's expense sufficient to support a cause of action for Unjust Enrichment and Quantum Meruit. Defendant's demurrer to the Second and Fourth Causes of Action is overruled.

An equitable lien is a right to subject property not in the possession of the lienor to the payment of a debt as a charge against that property. (42 Cal.Jur.3d, Liens, § 10, p. 621.) It may arise from a contract which reveals an intent to charge particular property with a debt or "out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings." (Jones, The Law of Liens (3d ed. 1914) § 27, pp. 24–25.) "The basis of equitable liens is variously placed on the doctrines of estoppel, or unjust enrichment, or on the principle that a person having obtained an estate of another ought not in conscience to keep it as between them; and frequently it is based on the equitable maxim that equity will deem as done that which ought to be done, or that he who seeks the aid of equity must himself do equity." (53 C.J.S. Liens, § 5, pp. 462–463, fns. omitted.) *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 453 [61 Cal.Rptr.2d 707, 710–711].

A promise to pay a debt out of a particular fund, without more, will not create an equitable lien on that fund. (42 Cal.Jur.3d, *op. cit. supra,* at § 12, p. 626.) *Id*. at 454.

However, even a mere promise to pay from a specific fund may suffice to create an equitable lien if considerations of detrimental reliance or unjust enrichment are implicated. For example, where labor and material suppliers enhance the value of property, justifiably relying upon assurances they will be paid from a construction loan fund, an equitable lien on such fund will be recognized. (See *Smith v. Anglo–California Trust Co.* (1928) 205 Cal. 496, 501–504, 271 P. 898.) *Id*. at 455.

Plaintiffs allege that they spent substantial funds, labor, and resources improving Defendant's property, which directly enhanced its value. Such improvements were permitted by Defendant, who retained the resulting benefit. These allegations support an equitable lien theory on the basis of considerations of unjust enrichment. Defendant's demurrer as to the Third Cause of Action is overruled.

The principal constructive trust situations are set forth in Civil Code section 2223 and 2224. Section 2223 provides that "[o]ne who *wrongfully* detains a thing is an involuntary trustee thereof, for the benefit of the owner." (Emphasis added.) Section 2224 provides that "[o]ne who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, *or other wrongful act,* is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it." (Emphasis added.) The only conditions necessary to create a constructive trust are those stated in the above sections. (*Kraus v. Willow Park Public Golf Course, supra,* 73 Cal.App.3d 354, 373, 140 Cal.Rptr. 744; *Estrada v. Garcia* (1955) 132 Cal.App.2d 545, 552, 282 P.2d 547; *Rankin v. Satir, supra,* 75 Cal.App.2d at p. 695, 171 P.2d 78.) In order to provide the necessary flexibility to apply an equitable doctrine to individual cases, these sections state general principles for a court's guidance rather than restrictive rules. (*Elliott v. Elliott* (1964) 231 Cal.App.2d 205, 211, 41 Cal.Rptr. 686.) Thus, it has been pointed out that "a constructive trust may be imposed in practically any case where there is a wrongful acquisition or detention of property to which

another is entitled." (*Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 600, 124 Cal.Rptr. 297; *Estrada v. Garcia, supra,* 132 Cal.App.2d at p. 552, 282 P.2d 547; *Rankin v. Satir, supra,* 75 Cal.App.2d at p. 695, 171 P.2d 78.) *Martin v. Kehl* (1983) 145 Cal.App.3d 228, 237–238 [193 Cal.Rptr. 312, 317].

Plaintiffs have alleged Defendant has engaged in wrongful conduct by interfering with the permanency process, repudiating contractual obligations, engaging in egregious behavior, and intending to proceed with a sale while denying or impairing Plaintiffs' rights in the increased value attributable to the manufactured home. Plaintiffs further identify that Defendant holds an increased equity in the property and future proceeds attributable to the manufactured home and improvements Plaintiffs made to the property. Such allegations are sufficient to state a claim for a constructive trust. Defendant's demurrer as to the Fifth Cause of Action is overruled.

3. Sixth Cause of Action – Declaratory Relief

Defendant argues there is no actual controversy in the case as the property has not been sold, thus, Plaintiffs have no current right to any payment. Plaintiffs remain in possession and occupancy of the manufactured home and no unlawful detainer action or notice prior to such action is alleged to have been served on Plaintiffs.

Plaintiffs ask the Court to determine what the Lease requires before Defendant undertakes the contemplated transaction to which the disputed rights apply. Additionally, Plaintiffs seek declarations concerning the continued enforceability of the Lease, their possessory rights, the meaning of "permanent," Defendant's obligation to cooperate with permanency, the appraisal process, whether Defendant may rely upon a condition she allegedly prevented, and the rights that must be honored if Defendant sells the Property – all of which Defendant disputes. The parties hold adverse legal positions under an existing contract, not different predictions concerning hypothetical future events.

"Any person interested ... under a contract" as to which there is an "actual controversy relating to the legal rights and duties of the respective parties" may bring an action seeking "a declaration of rights or duties, either alone or with other relief," and a court may then "make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time." (Code Civ. Proc., § 1060.) Such a declaration "may be either affirmative or negative in form and effect, and ... shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought." (*Ibid*.) Declaratory relief under Code of Civil Procedure section 1060 is cumulative to other remedies that may be available. (*Id*., § 1062.)

" ' "The purpose of a declaratory judgment is to 'serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.' " [Citation.] "Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation." ' " (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647, 88 Cal.Rptr.3d 859, 200 P.3d 295 (*Meyer*).)

"Code of Civil Procedure section 1060 does not require a breach of contract in order to obtain declaratory relief, only an 'actual controversy.' Declaratory relief pursuant to this section has frequently been used as a means of settling controversies between parties to a contract regarding the nature of their contractual rights and obligations." (*Meyer*, *supra*, 45 Cal.4th at p. 647, 88 Cal.Rptr.3d 859, 200 P.3d 295; see also *Slobojan v. Western Travelers Life Ins. Co.* (1969) 70 Cal.2d 432, 435, 74 Cal.Rptr. 895, 450 P.2d 271; *Aitchison v. Founders Ins. Co.* (1958) 166 Cal.App.2d 432, 440, 333 P.2d 178 (*Aitchison*).) "The 'actual controversy' referred to in this statute is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117, 109 Cal.Rptr. 799, 514 P.2d 111.) A party seeking declaratory relief "must allege facts from which the court may determine that an actual controversy relating to legal rights and duties of the respective parties exists." (*Lord v. Garland* (1946) 27 Cal.2d 840, 851, 168 P.2d 5 (*Lord*).) *Fox Paine & Co., LLC v. Twin City Fire Ins. Co.* (2026) 20 Cal.5th 188, 207–208 [346 Cal.Rptr.3d 541, 556, 593 P.3d 832, 844–845].

In determining whether a dispute is ripe enough to involve an actual controversy permitting declaratory relief, courts have applied a two-part test drawn from our decision in *Pacific Legal Foundation*, *supra*, 33 Cal.3d at page 171, 188 Cal.Rptr. 104, 655 P.2d 306. This test considers "(1) whether the dispute is sufficiently concrete that declaratory relief is appropriate; and (2) whether withholding judicial consideration will result in the parties suffering hardship." (*Stonehouse Homes*, *supra*, 167 Cal.App.4th at p. 540, 84 Cal.Rptr.3d 223.) " 'Under the first prong, the courts will decline to adjudicate a dispute if "the abstract posture of [the] proceeding makes it difficult to evaluate ... the issues" [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a "contrived inquiry" [citation]. Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay.' " (*Ibid*.; see also *Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 562, 86 Cal.Rptr.3d 408 [" 'Before a controversy is ripe for adjudication it " 'must be definite and concrete, touching the legal relations of parties having adverse legal interests' " ' " and " ' " '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' " ' "].) *Id*. at 209.

The Court finds Plaintiffs have adequately plead a cause of action for declaratory relief. Defendants' demurrer as to the Sixth Cause of Action is overruled.

4. Seventh Cause of Action – Breach of the Covenant of Quiet Enjoyment

Defendant asserts the conduct alleged by Plaintiffs does not involve extreme conduct which deprives them of their right to possess and use the property. Plaintiffs allege a "threat" to evict, "announcing" an intent to sell without paying Plaintiffs, "refusing" to cooperate with

making the manufactured home permanent and "otherwise interfering" with the right to use and possession. Such allegations are not actual or constructive eviction as Plaintiffs continue to reside in the home, nor are they the kind of extreme conduct depriving them of their right to possess and use the property.

Plaintiffs maintain that Defendant threatened eviction and premature removal of the Manufactured Home, interfered with processes necessary to preserve Plaintiffs' use and possession of the premises, permitted persons acting on her behalf to enter Plaintiffs' leased area without notice to photograph and gather information concerning the Manufactured Home, interfered with Plaintiffs' access and parking, and otherwise interfered with Plaintiffs' lawful use and possession, which substantially interfered with their use, possession, access, enjoyment, and security and caused resulting damages. Additionally, the SAC alleges physical acts, including entry or attempted access onto Plaintiffs' portion of the Property without advance notice or consent to photograph the Manufactured Home and gather information, interference with Plaintiffs' access and parking, and threats of premature removal of the Manufactured Home.

"It has long been the rule that in the absence of language to the contrary, every lease contains an implied covenant of quiet enjoyment. [Citations.] Initially, the covenant related solely to the right of possession and only protected the lessee against any act of molestation committed by the landlord or anyone claiming under him, or by someone with paramount title, which directly affected the tenant's use and possession of the leased premises; the covenant was construed to protect the lessee against physical interference only. [Citation.] In recent years, the covenant of quiet enjoyment has been expanded, and in this state, for example, it insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy. [Citations.]" (*Petroleum Collections Inc. v. Swords* (1975) 48 Cal.App.3d 841, 846, 122 Cal.Rptr. 114; see *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 589–590, 22 Cal.Rptr.3d 832.)

It is not necessary to show that the landlord acted with the subjective intent to compel the tenant to leave the property or deprive the tenant of quiet enjoyment. (*Pierce v. Nash* (1954) 126 Cal.App.2d 606, 613, 614, fn. 1, 272 P.2d 938.) There is a "presumption that a landlord intends the natural and probable consequences of his acts; and where the acts of the landlord effectively deprive the tenant of the use and enjoyment of the premises, the intent to evict is implied from the character of the acts done. [Citations.]" (*Id.* at pp. 613–614, 272 P.2d 938, fn. omitted.) *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 291–292 [167 Cal.Rptr.3d 173, 199].

The Court finds Plaintiffs have adequately plead a cause of action for Breach of the Covenant of Quiet Enjoyment. Whether Defendant's conduct substantially interfered with Plaintiffs' right to use and enjoy the premises is a factual question not resolvable on demurrer. Defendant's demurrer as to the Seventh Cause of Action is overruled.

TENTATIVE RULING #17:

DEFENDANT'S DEMURRER IS OVERRULED.

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

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

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