SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 09
JUDICIAL OFFICER: JOHN P DEVINE
HEARING DATE: 07/07/2025

ALL APPEARANCES WILL BE BY ZOOM

For matters where an appearance is required, the parties should appear by Zoom unless told to appear by another method. For all other matters, if argument is requested appearances will be by Zoom.

Please email Dept09@contracosta.courts.ca.gov and opposing counsel by 4:00 p.m. if oral argument is requested and include specification to be argued.

Zoom hearing information
https://contracosta-courts-ca.zoomgov.com/j/1602392251?pwd=WmE4bG5iK0J3WWtTOHpteVBjRlBMQT09

Law & Motion

1. 9:00 AM CASE NUMBER: C22-01746
CASE NAME: ALBERT SEENO, JR. VS. ALBERT SEENO, III
HEARING ON SUMMARY MOTION CROSS-COMPLAINANT ASLAN FINANCIAL & LEASING, INC. AND ALBERT D. SEENO, JR.'S MOTION FOR SUMMARY ADJUDICATION ON THEIR SEVENTH CAUSE OF ACTION FOR DECLARATORY RELIEF
FILED BY:
TENTATIVE RULING:

Before the Court is Plaintiffs and Cross-Defendants Albert D. Seeno, Jr. ("Seeno") and Alsan Financial & Leasing, Inc. ("Alsan") (collectively, "Cross-Defendants") motion for summary adjudication. The motion relates to Defendants and Cross-Complainants Albert D. Seeno III ("Seeno III") and Defendant Discovery Builders, Inc (collectively, "Cross-Complainants")'s Seventh Cause of Action for Declaratory Relief.

Cross-Defendants move pursuant to CCP § 437c on the grounds that (1) factual recitals in a written agreement are conclusive presumptions under California Code of Evidence § 622(a) and cannot be controverted and (2) the conduct of debtors Seeno III and DBI over the course of nearly ten years estops them from disputing the validity of the written agreement they now seek to invalidate and waives any defense to the same.

For the following reasons, the motion is **denied**.

Legal Standard

Code of Civil Procedure ("CCP") §§ 437c(o)(1) and 437c(p)(2) provide the relevant legal standard for deciding the Motion. Section 437c(o)(1) provides, in relevant part:

> A cause of action has no merit if one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

Section 437c(p)(2) provides, in relevant part:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) Only if the moving party successfully meets this burden does the burden shift to the opposing party to make its own prima facie showing of the existence of a triable issue of material fact. (*Ibid*.; see also *Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The scope of the defendant's initial burden is defined by the pleadings. (See *580 Folsom Assocs. v. Prometheus Dev. Co*. (1990) 223 Cal.App.3d 1, 18.)

A party may also seek summary adjudication of select causes of action, affirmative defenses, claims for damages, or issues of duty, which may be made by a standalone motion or as an alternative to a motion for summary judgment and proceeds in all procedural respects like a motion for summary judgment. (Code Civ. Proc., § 437c, subds. (f)(1)-(2).)

Analysis

Evidence Code § 622

The seventh cause of action and the subject of the instant motion concerns what the parties describe as the "Alsan Debt." As a threshold issue, Plaintiffs argue that the presumption in Evidence Code § 622 "precludes any dispute as to the recited $99 million debt because it is a recital in a written instrument." (Reply at 2:21-22.)

Evidence Code § 622 provides that "[t]he facts recited in a written instrument are conclusively presumed to be true as between the parties thereto … but this rule does not apply to the recital of a consideration." (Evid. Code § 622.) The conclusive presumption of section 622, formerly Code of Civil Procedure section 1962, subdivision 2, codifies the common law doctrine of "estoppel by contract." (*Estate of Wilson* (1976) 64 Cal. App. 3d 786, 801.)

To the extent Cross-Defendants argue that this evidentiary provision precludes Cross-Complainants from arguing that the written documents at issue here (the December 30, 2013 Restructuring

Agreement and the First Amendment to the December 30, 2013 Restructuring Agreement) do not comprise an enforceable agreement, they are incorrect. Section 622 presumes mutual assent and formation of a contract. (See *City of Santa Cruz v. Pac. Gas & Elec. Co*. (2000) 82 Cal.App.4th 1167, 1176.) "[W]here the existence … of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the … trier of the facts to determine whether the contract did in fact exist… [.]" (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc*. (2015) 240 Cal.App.4th 763, 771.) Additionally, whether a particular term is material is a question of fact. (*Los Angeles Unified School District v. Torres Construction Corp*. (2020) 57 Cal.App.5th 480, 503.) "'[W]here the existence. . .of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the . . . trier of the facts to determine whether the contract did in fact exist. . . [.]'" (*Id*.)

Here, Cross-Complainants argue that the Restructuring Agreement is unenforceable because there was no meeting of the minds as to essential terms, including the amount and terms of any debt. (Opp. at 11:7-8; Supp. Opp. at § IV(A).)

The Court notes that the December 30, 2013 Restructuring Agreement describes the Alsan debt as "approximately $99 million as of 2009, to be updated to 1/1/2014." On its face, the amount is uncertain, and the import of "to be updated" is unclear from the Agreement. Furthermore, Cross-Complainants have adduced testimony that suggests greater uncertainty regarding this amount. (See Beach Decl. Ex. A (ADSJ Depo.) at 148:20-23; see also *id*. at Ex. B (McCauley Depo.) at 78:5-10, 82:7-12, 128:3-129:6, 132:7-133:8.) Cross-Defendants' argument on reply that "alleged uncertainty as to the amounts at issue can be extinguished through evidence of the parties' actions shortly after execution of the 2013 Agreement" (Reply at 4:14-15) belies their own argument that the debt is conclusively recited by the written Agreements and cannot be rebutted by Cross-Complainants. (See MSA at 9:4-7.)

Additionally, an expressed intention to later agree to more comprehensive terms (as is recited in the Restructuring Agreement) does not render an incomplete agreement comprehensive. (See *Weddington Prods., Inc. v. Flick* (1998) 60 Cal.App.4th 793, 812 ["a provision that some matter shall be settled by future agreement, has often caused a promise to be too indefinite for enforcement"] [quoting 1 Williston on Contracts (4th ed. 1990) § 4:18, pp.418-420].) Cross-Defendants do not meaningfully engage with *Weddington*, dismissing this authority in a footnote as "a substantial deviation from the facts of this case." (Reply at p.4, fn. 2.) Nevertheless, the contractual principles discussed in *Weddington* do apply to this case. Whether the Restructuring Agreement and its later Amendment are certain enough to form "a basis for determining what obligations the parties have agreed to" is in dispute. (*Weddington*, at p. 811.) Whether there was mutual agreement to material terms is a matter for the trier of facts.

Cross-Defendants are not entitled to summary adjudication on the grounds of Evidence Code § 622.

Equitable Claims and Affirmative Defenses

Finally, in addition to their contractual estoppel argument under Evidence Code § 622, Cross-Defendants argue that Cross-Complainants are estopped from arguing from contesting the existence or amount of the Alsan debt, (Mot. at § IV(D), (E).), that they have waived all defenses to enforcement

of the Restructuring Agreement, (*id*. at § IV(F)), and that laches bars their claim, (*id*. at § IV(G).).

The question of estoppel is generally a factual question (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 266.) Furthermore, a plaintiff moving for summary adjudication of an affirmative defense "bears the initial burden to show there is no triable issue of material fact as to the defense and that he or she is entitled to judgment on the defense as a matter of law. In so doing, the plaintiff must negate an essential element of the defense, or establish the defendant does not possess and cannot reasonably obtain evidence needed to support the defense." (See's *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.) Here, Cross-Defendants have not met this initial burden.

For example, Cross-Defendants rely on the Restructuring Agreement itself to support their argument that Cross-Complainants "are bound by their acknowledgement in the December 30, 2013 Restructuring Agreement that the Alsan Debt was approximately $99 million." (MSA at 19:12-14.) However, as discussed further above, the amount on its face is uncertain and Cross-Complainants have adduced evidence of greater uncertainty regarding this amount. (See Beach Decl. Ex. A (ADSJ Depo.) at 148:20-23; see also *id*. at Ex. B (McCauley Depo.) at 78:5-10, 82:7-12, 128:3-129:6, 132:7-133:8; see also Response to Separate Statement of Undisputed Fact Nos. 54-56, 59.)

Cross-Defendants are not entitled to summary adjudication of the seventh cause of action on estoppel grounds.

Evidentiary Objections

The Court need only rule on those objections to evidence that were material to the disposition of the MSJ. (See CCP § 437c(q).) Here, there were none.

2. 9:00 AM CASE NUMBER: C23-00233
CASE NAME: MAEN JWEINAT VS. NATALIE MOSS
***HEARING ON MOTION IN RE: TO CONSOLIDATE WITH CASE N25-0071**
FILED BY:
****TENTATIVE RULING:****

Introduction

Before the Court is Defendants Natalie Moss (standing in place of her late mother Edith Miladinovich), Individually and As Trustee of The 1987 Miladinovich Family Trust Dated May 4, 1987's Demurrer. The Demurrer relates to Plaintiff MAEN S. JWEINAT, dba FANTASIA SMOKE SHOP's second cause of action for Violation of Contra Costa County Ordinances to its Third Amended Complaint.

For the following reasons, the **Motion to Consolidate is granted.**

Statement of Facts

Plaintiff entered a lease of commercial property within Defendant Miladinovich's shopping center on December 24, 2012 (hereinafter "Lease"). (TAC ¶ 1.) In 2017, Fantasia exercised the first of two options under the Lease, extending the Lease term to December 31, 2022. (Id. at ¶¶ 11-12, Lease, §

2.) After the COVID-19 pandemic struck, the Contra Costa County Board of Supervisors enacted a successively superseding series of ordinances containing temporary prohibitions on certain evictions of commercial tenants in Contra Costa County to ameliorate the impacts of the pandemic (hereinafter, collectively "Ordinances") in 2020 to 2021. (Id. at ¶¶ 14-15 and 37-38 and Exh. 2; Miladinovich's RJNs filed June 21, 2023, and June 26, 2023, and her Errata filed August 27, 2024 (hereinafter "Miladinovich's RJNs").) The Ordinances provide that "a landlord of commercial real property shall not terminate a tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a loss of income or out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the pandemic." (See, e.g., TAC, Exh. 2, § 4(a).) In addition to prohibiting eviction notices and unlawful detainer actions served or filed during the effective term of the Ordinances, the Ordinances all provided actionable remedies in identical language as seen, for example, in Section 6 (b) of Ordinance 2021-20.

Through April 30, 2020, Fantasia timely made all required rent payments due under the Lease. TAC, ¶ 17. Thereafter, in May, 2020, after receiving a text message from a representative of Miladinovich, Fantasia provided Miladinovich with a Declaration of COVID-19 Financial Distress dated May 1, 2020, documenting Fantasia's inability to continue to timely pay rent as a result of the COVID-19 pandemic due to: (1) substantial loss of business income, (2) temporary closure of business, (3) substantial out-of-pocket medical expense, (4) decrease in traffic, and (5) shorter business hours (hereinafter "May 2020 Declaration"). (Id. at ¶ 18, Exh. 1, § 3.1, and Exh. 3.) Therein, it was stated that "Fantasia Smoke Shop is seeking protection under the Contra Costa County eviction moratorium ordinance." (Id.) Although not able to pay full rent due to hardships of the COVID-19 pandemic, Fantasia made a rent payment to Miladinovich in the amount of $3,322.60 on October 1, 2020. (Id. at ¶¶ 16 and 19.)

On March 8, 2021, Miladinovich served a Five Day Notice to Pay or Quit on Fantasia (hereinafter "March 2021 Notice") for "rent . . . for months of May, June, July, August, September, November, and December 2020, and January and February 2021" and "Common area maintenance charges . . . ." (Id. at ¶ 20 and Exh. 4.) The March 2021 Notice did not include a Notice of Tenant=s Rights and Availability of Assistance, as required by the Ordinances. (Id. at ¶21.) On March 15, 2021, Fantasia provided, under penalty of perjury, another Declaration of COVID-19 Financial Distress to Miladinovich in which Fantasia set forth a payment plan for the shortfall of actual rent and common area expense, with a final payment proposed for October 1, 2022 (hereinafter "March 2021 Declaration"). (Id. at Exh. 5.) Fantasia stated in the March 2021 Declaration that it was being presented "pursuant to Contra Costa Ordinance No. 2021-04" and "[d]ue to the COVID-19 pandemic." (Id.)

Fantasia commenced making payments as promised in his Declaration. Nevertheless, on October 15, 2021, Miladinovich caused to be served another Five Day Notice to Pay or Quit on Fantasia (hereinafter "October 2021 Notice") for "rent . . . for a portion of the month of May 2021, and the months of June, July, August, September, and October 2021" and "Common area maintenance charges . . . ." for a total demanded of $18,203.40. (Id. at ¶ 23 and Exh. 6.) The October 2021 Notice also did not include a Notice of Tenant=s Rights and Availability of Assistance, as required by the Ordinances. (Id.) Due to the immediate threat of eviction and further retaliation, Fantasia paid the entire sum set forth in the October 2021 Notice within the five-day period, as demanded. (Id. at ¶ 24.)

Under the Lease, Fantasia acquired Aan option to extend this lease for a period of two five (5) year options if all rents and common area costs have been paid in a timely manner. Tenant to notify landlord in writing of his intent to extend no less than 90 days before the expiration of original terms." (TAC, Exh. 1, § 2. On September 23, 2022, more than ninety days prior to the Lease expiring on December 31, 2022, Fantasia attempted to exercise the second of the two options to extend the

Lease. (Id. at ¶¶ 25-26 and Exh. 7.) Miladinovich refused to extend the Lease, citing Plaintiff having fallen behind on payment of rent due during the time that the Ordinances were in effect as a reason. (Id.)

In its TAC, Plaintiff seeks to hold Defendants accountable for violations of the Ordinances, including the two eviction notices and alleged retaliation against Plaintiff for exercising rights under the Ordinances as described therein. (Id. at ¶¶ 4, 7, and 36-40.)

Requests for Judicial Notice

Defendant's Requests for Judicial Notice

Defendant's request judicial notice of three documents, all of which are documents filed with this Court in relation to either the Civil Case or Unlawful Detainer Case. Under Evid. Code § 452, the Court is empowered to take judicial notice of "[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 " (Evid. Code § 452(d).) Pleadings fall within this category. The Court **grants Defendant's request for judicial notice of Exhibits 1-3**.

Legal Standard

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code Civ. Proc. § 1048(a).) The purpose of consolidation is to enhance trial court efficiency by avoiding unnecessary duplication of evidence and the danger of inconsistent adjudications. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-79.)

The decision to consolidate is left to the sound discretion of the trial court based on its assessment of various factors, including whether there are common issues of fact or law, and even if there are, whether other factors, such as potential prejudice to one or more parties, delay, confusion or other considerations do not warrant consolidation. (*Todd Steinberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979 ["Code of Civil Procedure section 1048 grants discretion to the trial courts to consolidate actions involving common questions of law or fact. The trial court's decision will not be disturbed on appeal absent a clear showing of abuse of discretion."])

Analysis

Common Question of Law and Facts

As underscored by both parties both cases have common questions of law and facts. Both cases involve the same parties and both stem from the same set of facts, namely, a commercial tenancy, the COVID-19 emergency, late and reduced rent payments made during that emergency, Emergency Ordinances and the applicability of such Ordinances to this case.

Defendant Natalie Miladinovich Moss, As Trustee Of The 1987 Miladinovich Family Trust Dated May 4, 1987's argument that Natalie Moss as an individual is not named in the Unlawful Detainer Action but is in the Civil Action is not persuasive because Plaintiff Maen Jweinat clarified in their reply that after her death Edith Miladinovich was dropped from the civil case in her individual capacity.

Defendant Natalie Miladinovich Moss, As Trustee Of The 1987 Miladinovich Family Trust Dated May 4, 1987, contends that the breaches of contract and violations of Ordinances alleged in 2021 are separate and distinct matter than whether Plaintiff successfully exercised the option to extend. (Oppo

at p. 4: 19-25.) The Court disagrees. The Court sees applicability of the Ordinances as central to both cases because the applicability of the Ordinances may excuse performance of the subject Lease Agreement.

Judicial Efficiency and Risk of Inconsistent Rulings

Consolidation promotes judicial efficiency because Plaintiff's action, if successful, would defeat Defendants' right of possession or in other words Defendants' right of possession cannot be determined without first determining the issues raised by Plaintiff's county Ordinance claims.

Consolidation would also eliminate the risk of inconsistent rulings by the courts because the civil action and the UD action ruling could be inconsistent considering that the findings of the county Ordinance claims in the Civil Action may directly affect Defendants' right of possession in the UD action.

Conclusion

Based on the analysis above, **Plaintiffs' motion to consolidate is granted**.

3. 9:00 AM CASE NUMBER: C24-00444
CASE NAME: DENTAL OFFICE OF MOUNIR N. GUIRGUIS DDS, INC., A CALIFORNIA CORPORATION VS. TOYOTA MOTOR SALES, U.S.A., INC
***HEARING ON MOTION IN RE: TO COMPEL PLAINTIFF MOUNIR GUIRGUIS' RESPONSES TO SPECIAL INTERROGATORIES.**
FILED BY:
****TENTATIVE RULING:****

Defendant's unopposed motion to compel is granted. Plaintiff is required to serve code compliant responses, without objections, within 30 days of the filing of the signed order for this matter.

Typically the court would impose sanctions for this matter. The court is not doing so, however, because the parties failed to meet and confer as ordered by the court on June 9, 2025. Moreover, the parties did not file a joint statement, also required by the order. No explanation is provided by defense counsel for these failures. Consequently, the court does not impose sanctions.

4. 9:00 AM CASE NUMBER: C24-00444
CASE NAME: DENTAL OFFICE OF MOUNIR N. GUIRGUIS DDS, INC., A CALIFORNIA CORPORATION VS. TOYOTA MOTOR SALES, U.S.A., INC
***HEARING ON MOTION IN RE: TO COMPEL PLAINTIFF DENTAL OFFICE OF MOUNIR N. GUIRGUIS DDS, INC.'S RESPONSES TO SPECIAL INTERROGATORIES, SET TWO**
FILED BY:
****TENTATIVE RULING:****

Defendant's unopposed motion to compel is granted. Plaintiff is required to serve code compliant responses, without objections, within 30 days of the filing of the signed order for this matter.

Typically the court would impose sanctions for this matter. The court is not doing so, however, because the parties failed to meet and confer as ordered by the court on June 9, 2025. Moreover, the parties did not file a joint statement, also required by the order. No explanation is provided by defense counsel for these failures.

5. 9:00 AM CASE NUMBER: C24-00444
CASE NAME: DENTAL OFFICE OF MOUNIR N. GUIRGUIS DDS, INC., A CALIFORNIA CORPORATION VS. TOYOTA MOTOR SALES, U.S.A., INC
***HEARING ON MOTION IN RE: TO COMPEL FURTHER RESPONSES TO PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**
FILED BY:
****TENTATIVE RULING:****

Plaintiff's motion to compel is denied.

California Code of Civil Procedure §2031.310(b)(2) requires that prior to filing a motion to compel further responses, the moving party must follow the meet and confer requirements of §2016.040. "The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain an informal resolution of each issue." (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431 at 1435.) This means that the parties must attempt to talk the matter over, compare their views, consult, and deliberate. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.) The purpose of the meet and confer requirement is to bridge the gap between the parties – to force lawyers to reexamine their positions, and to narrow their discovery disputes to the irreducible minimum, before calling upon the court to resolve the matter. (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) Plaintiffs did not do so here.

Plaintiff neither did so before filing the motion nor even after the court ordered the parties to meet and confer on June 29, 2025, and allowed them a few weeks to do so. No explanation is offered by plaintiff for this failure. Moreover, the parties were required to file a joint statement before the re-scheduled hearing. Likewise, this did not occur.

For these reasons, plaintiff's motion to compel is denied.

6. 9:00 AM CASE NUMBER: C24-01622
CASE NAME: CHRISTOPHER JARZYNKA VS. TATILA DOWNING
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS.FILED BY TATILA DOWNING**

FILED BY:
TENTATIVE RULING:

Appearance required.

7. 9:00 AM CASE NUMBER: C24-01622
CASE NAME: CHRISTOPHER JARZYNKA VS. TATILA DOWNING
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES.FILED BY TATILA DOWNING.**
FILED BY:
TENTATIVE RULING:

Appearance required.

8. 9:00 AM CASE NUMBER: C24-01622
CASE NAME: CHRISTOPHER JARZYNKA VS. TATILA DOWNING
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES, COMPEL COMPLIANCE WITH REQUESTS FOR PRODUCTION. FILED BY CHRISTOPHER JARZYNKA.**
FILED BY:
TENTATIVE RULING:

Appearance required.

9. 9:00 AM CASE NUMBER: C24-01622
CASE NAME: CHRISTOPHER JARZYNKA VS. TATILA DOWNING
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO FIRST SET OF FORM INTERROGATORIES. FILED BY TATILA DOWNING.**
FILED BY:
TENTATIVE RULING:

Appearance required.

10. 9:00 AM CASE NUMBER: C24-01973
CASE NAME: DAVID WONG VS. JAFFE AND ASHER LLP

HEARING ON DEMURRER TO: FIRST AMENDED COMPLAINT
FILED BY: JAFFE AND ASHER LLP
TENTATIVE RULING:

The Court orders that Defendant Jaffe and Asher, LLP's Demurrer to First Amended Complaint is **continued** to August 4, 2025, to be heard concurrently with Defendant Charles Schwab & Co.'s Motion for Judgment on the Pleadings.

11. 9:00 AM CASE NUMBER: C24-02145
CASE NAME: MARK EITELGEORGE VS. NICHOLAS WELCH
***HEARING ON MOTION IN RE: TO QUASH FOR LACK OF PERSONAL JURISDICTION**
FILED BY: WELCH, NICHOLAS
TENTATIVE RULING:

Defendant Nicolas Welch [Defendant] brings this Motion to Quash Service of Summons of Plaintiff's Complaint [Motion]. The Motion is opposed by Plaintiffs Mark Eitelgeorge and Beverly Jean Eitelgorge [Plaintiffs]. Pursuant to the court's ruling on the Motion to Set Aside Default, the court hears this Motion concurrently.

For the following reasons, the Motion is **granted to quash service of the complaint on Defendant**.

Background

Plaintiffs' Complaint alleges claims against Defendant, as well as certain companies (Southern Safety Products, LLC and Smoke Shield System, LLC) in which it is alleged that Defendant is the only member, for claims of Breach of Contract, misrepresentation, fraud, and violation of unfair business practices act, declaratory and injunctive relief.

Plaintiffs allege that they entered into a promissory note with Defendant for a loan of $20,000 to Southern Safety Products, LLC, that the note was signed by Plaintiffs in California, it was due and payable on April 30, 2024, and no payments were made by Defendant to Plaintiffs. (Complaint, ¶¶ 8-9.) Plaintiffs also allege that a marketing video was uploaded to Youtube by Southern Safety Products, LLC identifying Plaintiff M. Eitelgeorge as its CFO and accountant, which is false, and Plaintiffs allege Defendant has refused to remove the video. (Complaint, ¶¶ 11-13.)

Plaintiffs allege that "[v]enue is proper in Contra Costa County, California because the contract was signed there, the EITELGEORGES resided there until March of 2024, and the alleged tortious acts occurred there." (Complaint, ¶ 14.)

Defendant does not introduce a declaration. Plaintiffs do not submit a declaration in support of their Opposition. As such, the Motion and Opposition are evaluated based on the relevant case law and the allegations in the Complaint and the records of this court.

Plaintiffs make a short argument there was improper service of the Motion. The record shows a proof

of service filed May 13, 2025, which lists the Motion to Quash and Motion to Set Aside as being mailed to Plaintiff's counsel by Defendant. The record also includes proof of electronic service filed May 13, 2025 that does not specify the motion documents that were served. The record contains a Notice of the Hearing mailed to Plaintiff's counsel by the Court on April 24, 2025.

Standard

A nonresident defendant may not be called upon to defend in a foreign forum unless it has minimal contacts with that state to exercise power over that party. (*Hensa v. Denckla* (1958) 357 U.S. 235, 251.) Minimum contacts exist where the defendant's conduct in the forum state is such that he should reasonably anticipate being subject to suit there, and it is reasonable and fair to force him to do so. (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 391.)

Personal jurisdiction may be general or specific. (Id., at 392.) "[Pe]rsonal jurisdiction can be based upon: '(1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered--and which the defendant knows is likely to be suffered--in the forum state.'" (*Jewish Def. Org. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1057.)

A nonresident defendant may be subject to general jurisdiction if his or her contacts with the forum are substantial, continuous and systematic. (*Evangelize China Fellowship, Inc. v. Evangelize China Fellowship* (1983) 146 Cal. App. 3d 440, 445, citing *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445.)

A nonresident defendant may be subject to specific jurisdiction if: (1) the defendant has purposefully availed himself or herself of forum benefits, and (2) the controversy is related to or arises out of the defendant's contacts with the forum. (*Vons Companies Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 446, citing *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472-73.) The assertion of jurisdiction over the defendant also must be reasonable - that is, comport with fair play and substantial justice. (Id. at 477-78; see also *Rivelli*, *supra*, 67 Cal.App.5th at 392.)

"When a nonresident defendant challenges personal jurisdiction the burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met." (*Jewish Def. Org*., *supra*, 72 Cal.App.4th at 1054-1055; *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 568.)

Analysis

With respect to the assertion that service of the Motion was improper or incomplete, this court finds that the defects in the service of a motion were waived by a Plaintiffs' substantive response on the merits of the motion with evident knowledge of the date and time set for the hearing and without requesting a continuance of the hearing. (See *Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930 ["It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion."]; *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 [defective notice of less than statutory notice period for motion for summary judgment waived by opposition on the merits without argument regarding prejudice or request for continuance].)

This court does not make any determination with respect to allegations of the jurisdiction of this court

over the companies named as defendants as such defendants did not appear or make a motion herein.

With respect to the lack of jurisdiction, Plaintiffs allege and contend in their Motion that this court has jurisdiction because, they allege, the contract was signed here, Plaintiffs resided here until March of 2024, and the alleged acts occurred here. However, no declaration of Plaintiffs is provided.

Defendant argues, “Defendant is not a California resident and is not domiciled in California, has no contacts, no ties, no relationship with California, was not served within California, and has not consented to or in the appeared in the California action.” (Motion, at 3:20-24.)

As discussed above, Plaintiffs do not introduce any evidence to support their allegation that the contract was signed in California, or to demonstrate why signing of the contract in California is sufficient to support personal jurisdiction against Defendant. Plaintiffs also make no argument or showing that the contracts were to be performed in California. Notably, Plaintiffs allege that the subject promissory note became due an payable on April 30, 2024, when Plaintiffs allege they no longer resided in California. (Complaint, ¶¶ 8, 14.)

Plaintiffs' contention that the contracts were entered into in California is not supported by any declaration stating where the agreement was signed.

Further, signing the contracts in California is not enough to create specific jurisdiction for a lawsuit for breach of those contracts. The place a contract is executed " 'is of far less importance than where the consequences of performing that contract come to be felt.'" (*Stone v. State of Texas* (1999) 76 Cal. App. 4th 1043, 1048.)

Due process requires a "substantial connection" between the contract at issue and the forum state, which the act of signing alone does not provide. (*Sibley v. Superior Court* (1976) 16 Cal. 3d 442, 445-47 [finding non-California resident's guaranty agreement with California resident did not make him subject to California jurisdiction even though his non-payment would have an "effect" in California; more is required, such as purposeful availment of California business or laws].)

Defendant argues that representations made on his companies’ websites and a Youtube video also do not support jurisdiction. Defendant argues, “The web site was a ‘passive’ website that did not involve the interactive exchange of information with users, did not solicit or engage in business activities and did not solicit contact with California residents.” (Motion, at 3:12-15.)

“A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. '[Citation].” (*Jewish Defense Organization*, *supra*, 72 Cal.App.4th at 1060.)

Neither party provides a supporting declaration. Thus, this court looks to the Complaint allegations.

Plaintiffs’ allegations do not include facts to indicate that Defendant engaged in an “interactive exchange of information” or “business activities” with Plaintiffs through the company websites or Youtube videos. The allegations regarding website and videos indicate only passive activities and, thus, are insufficient to support specific jurisdiction over Defendant.

For such reasons, the Motion is granted as to service of summons of the Complaint on Defendant.

12. 9:00 AM CASE NUMBER: C24-02145
CASE NAME: MARK EITELGEORGE VS. NICHOLAS WELCH
***HEARING ON MOTION IN RE: TO SET ASIDE DEFAULT AND FOR LEAVE TO FILE MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION**
FILED BY: WELCH, NICHOLAS
****TENTATIVE RULING:****

Defendant Nicolas Welch [Defendant] brings this Motion to Set Aside Default and Default Judgment and for Leave to Bring Motion to Quash [Motion]. The Motion is opposed by Plaintiffs Mark Eitelgeorge and Beverly Jean Eitelgorge [Plaintiffs].

For the following reasons, the Motion is **granted**. Accordingly, the default and default judgment entered against Defendant are set aside, and Defendant is granted leave to bring the Motion to Quash.

Background

Plaintiffs' Complaint alleges claims against Defendant, as well as certain companies (Southern Safety Products, LLC and Smoke Shield System, LLC) in which it is alleged that Defendant is the only member, for claims of Breach of Contract, misrepresentation, fraud, and violation of unfair business practices act, declaratory and injunctive relief.

Plaintiffs allege that they entered into a promissory note with Defendant for a loan of $20,000 to Southern Safety Products, LLC, that the note was signed by Plaintiffs in California, it was due and payable on April 30, 2024, and no payments were made by Defendant to Plaintiffs. (Complaint, ¶¶ 8-9.) Plaintiffs also allege that a marketing video was uploaded to Youtube by Southern Safety Products, LLC identifying Plaintiff M. Eitelgeorge as its CFO and accountant, which is false, and Plaintiffs allege Defendant has refused to remove the video. (Complaint, ¶¶ 11-13.)

Plaintiffs allege that "[v]enue is proper in Contra Costa County, California because the contract was signed there, the EITELGEORGES resided there until March of 2024, and the alleged tortious acts occurred there." (Complaint, ¶ 14.)

Defendant does not introduce a declaration. Plaintiffs do not submit a declaration in support of their Opposition. Plaintiffs' counsel presents a declaration regarding her communications with Defendant and his counsel. As with respect to the Motion to Quash, this Motion is evaluated based on the relevant case law and the allegations in the Complaint and the records of this court with respect to jurisdiction over Defendant.

Here, Defendant and his prior counsel were in contact with Plaintiffs' counsel. However, there is no indication that Plaintiffs' counsel reached out to Defendant or his counsel to warn of the impending

default, despite such communications.

Standard

CCP § 473 sets forth multiple ways to seek to set aside default. Under CCP 473, subpart (b), a default can be set aside on a showing of excusable neglect of the party or counsel. Under CCP 473, subpart (d), default may be set aside where the judgment is void, generally for lack of proper service.

Rather than citing CCP 473 (d), Plaintiff cites CCP 418.10, but the argument is that this court should find the default and default judgment void for lack of personal jurisdiction over Defendant pursuant to the holding in *Strathvale Holdings v E.B.H.* (2005) 126 Cal.App.4th 1241, which relates to setting aside default and default judgment pursuant to CCP § 473 (d).

"'When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or collateral attack at any time."' [Citation.]" (*Strathvale Holdings*, *supra*, 126 Cal.App.4th at 1249.)

"[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." (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 24, quoting *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 [emphasis added].)

Further, a default is premature where it is taken without written notice of the intent to request entry of default and a reasonable time to prepare an answer. (*Lasalle*, *supra*, 36 Cal.App.5th at 135; *Shapell SoCal*, *supra*, 85 Cal.App.5th at 215.) "[D]ue process requires not just notice, but notice reasonably calculated to reach the object of the notice." (*Lasalle*, *supra*, 36 Cal.App.5th. at 138.)

Analysis

This court understands Defendant's argument with respect to lack of jurisdiction under CCP 418.10 to seek to set aside the default and default judgment as void pursuant to CCP 473 (d).

Plaintiffs take significant issue with the passage of time from October 2024, when Defendant's response was initially due, and February 2025, when Plaintiff finally filed these motions. However, the record indicates that this Motion was filed approximately one month after Plaintiffs' counsel documents that Defendant initially was represented by counsel, but the original filing was rejected and several months passed before Defendant filed this Motion, pro per. Plaintiffs also do not show that they reached out to Defendant to advise that default would be entered prior to filing their default package.

As discussed in further detail in the ruling on the Motion to Quash, Plaintiffs do not introduce any evidence to support their allegation that the contract was signed in California, or to demonstrate why signing of the contract in California is sufficient to support personal jurisdiction against Defendant. (*Stone v. State of Texas* (1999) 76 Cal. App. 4th 1043, 1048.)

Due process requires a "substantial connection" between the contract at issue and the forum state, which the act of signing alone does not provide. (*Sibley v. Superior Court* (1976) 16 Cal. 3d 442, 445-47.

Plaintiffs' allegations do not include facts to indicate that Defendant engaged in an "interactive exchange of information" or "business activities" with Plaintiffs through the company websites or Youtube videos. The allegations regarding website and videos indicate only passive activities and, thus, are insufficient to support specific jurisdiction over Defendant. "A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. '[Citation]." ((*Jewish Def. Org. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1060.)

As such, the Complaint allegations do not support this court's personal jurisdiction over Defendant. Lack of personal jurisdiction renders a judgment (or default) void, and the default may be directly challenged at any time. (*Strathvale Holdings*, supra, 126 Cal.App.4th at 1250.) For such reason, the court finds that the default and default judgment entered against Defendant void pursuant to CCP § 473 (d).

For such reasons, the Motion is granted and the default and default judgment are set aside and Plaintiff is allowed leave to bring the Motion to Quash, which is heard concurrently herewith.

13. 9:00 AM CASE NUMBER: C24-02158
CASE NAME: ALMA ZAVALA VS. EVAN DORR
***HEARING ON MOTION IN RE: JUDGMENT ON THE PLEADINGS**
FILED BY: COUNTY OF CONTRA COSTA, A PUBLIC ENTITY
****TENTATIVE RULING:****

Defendants Contra Costa County, Contra Costa Office of the Sheriff and Evan Dorr's motion for judgment on the pleadings is **granted without leave to amend**.

Plaintiff Alma Zavala sued the Defendants for negligence related to a car accident allegedly caused by Evan Dorr. Plaintiff alleges that Dorr was an employee of the other defendants and was operating a vehicle owned by the County. The accident occurred on October 13, 2023.

Plaintiff filed this complaint on August 13, 2024. She alleges that she timely submitted government claims. (Comp. ¶6.) The Defendants answered on September 23, 2024. Defendants then filed this motion for judgment on the pleadings on March 17, 2025 arguing that there was no government claim submitted by the Plaintiff.

Government Code "Section 905 requires the presentation of 'all claims for money or damages against local public entities,' subject to exceptions not relevant here. Claims for personal injury and property damage must be presented within six months after accrual; all other claims must be presented within a year. (§ 911.2.) … **'**Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity.' [Citation.]" (*City of*

Stockton v. Superior Court (2007) 42 Cal.4th 730, 737-738.) "The defense of noncompliance with the Government Claims Act also applies to the claims against [an individual public employee]. [Citation.]" (*Olson v. Manhattan Beach Unified School Dist.* (2017) 17 Cal.App.5th 1052, 1055, fn. 1; Gov. Code, § 950.2.) The "failure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) The same claim presentation rules apply when suing a public employee. (Gov. Code §950.2.)

"If a plaintiff alleges compliance with the claims presentation requirement, but the public records do not reflect compliance, the governmental entity can request the court to take judicial notice under Evidence Code section 452, subdivision (c) that the entity's records do not show compliance. [Citations.]" (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 376.)

Government Code section 910 states in part that "A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following: [] (a) The name and post office address of the claimant. [] (b) The post office address to which the person presenting the claim desires notices to be sent…." (Gov. Code, § 910)

Here, Defendants' evidence shows that Plaintiff Alma Zavala did not submit a government claim to the County from October 2023 to the present. (Boyd dec.) Defendants received a government claim listing attorney Infuso as the "claimant" for an accident on October 13, 2023, but that claim form did not identify Zavala. (Defendants' RJN ex. B.)

The main issue here is whether the Infuso claim form can be used to show substantial compliance with the government claim statute such that Plaintiff's claims against the Defendants can proceed. Plaintiff argues that the Infuso claim is sufficient. Plaintiff does not offer to amend her complaint to allege that she timely submitted a government claim listing Alma Zavala as the claimant.

"The doctrine of substantial compliance prevents the public entity from using the claims statutes as 'traps for the unwary' when their underlying purposes have been met. [Citation.] However, the substantial compliance doctrine has application only when there is a defect in form but the statutory requirements have otherwise been met. [Citation.] The doctrine has no application when, as here, there has been a failure to comply with *all* of the statutory tort claim requirements." (*Nguyen v. Los Angeles County Harbor/UCLA Medical Center* (1992) 8 Cal.App.4th 729, 732-733.)

An earlier case explained that substantial compliance may be applied where "there [is] *some* compliance with *all* of the statutory requirements". (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456-457.) The court discussed several examples of where substantial compliance was applied where the location of the accident (another statutory requirement in Government Code section 910) had a typo in the address location. In addition, the court noted that substantial compliance did not apply where the location of the accident was missing. (*Id*. at 456.)

The Court finds that Plaintiff's name was not listed anywhere on the claim form and thus, she did not comply at all with Gov. Code section 910(a). Following both *City of San Jose* and *Nyugen*, Plaintiff cannot claim substantial compliance because she did not comply with section 910(a).

Plaintiff has not cited a case where substantial compliance was found where the injured person's name was missing entirely from the government claim form. The closest case Plaintiff found was an

unpublished opinion of *Solano v. County of L.A.* (July 18, 2006, No. B183169) ___Cal.App.4th___ [2006 Cal. App. Unpub. LEXIS 6151. It is improper to cite this an unpublished opinion. But Solano is also distinguishable as there the claimant was identified to include heirs of the decedent and the decedent's name was provided. Here, Zavala's name is nowhere in the claim form.

Plaintiff argues that the County's attorney found that form substantially complied, however, the form states that Infuso is the claimant and there is no indication that the County's attorney was making a finding that Plaintiff Zavala has substantially complied with the claim requirements.

Plaintiff also argues that the County did not timely mail a notice indicating there were any defects or omissions in the claim form and that its failure to timely send this notice waives those defects. (*Martinez v. County of Los Angeles* (1978) 78 Cal.App. 3d 242, 244-245.) The problem here is that there was no indication that Zavala was the claimant and thus, she cannot rely on the County's failure to send a notice of any defects where she cannot show that she timely submitted a government claim.

Plaintiff also argues that the County's claim form is confusing because "[t]he name of the claimant section references 'the Undersigned' which permits the signer to be a person acting on behalf of the claimant." The signature is not the issue here. The issue is that Infuso is identified as the claimant and Zavala is never identified in the form. Without identifying Zavala the Court cannot find that Zavala substantially complied with the claim requirements.

Finally, Plaintiff argues that when Infuso submitted the claim form it should have triggered Defendants to seek clarification on the form. But Plaintiff cites no law to support this argument.

The Court finds that Defendants have shown that Plaintiff did not comply with the government claim requirement and therefore the motion for judgment on the pleadings is granted without leave to amend.

Judicial Notice

The Court grants Defendants' request for judicial notice of exhibits B and C. The Court takes judicial notice that the County does not have a record of a government claim submitted by Alam Zavala from October 2023 to present, which is stated in the Boyd declaration. (See, *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1752; *Gong, supra,* 226 CA4th at 376.)

The Court denies Plaintiff's requests for judicial notice. The Court has considered the declaration of attorney Russell and the traffic collision report when deciding whether to give Plaintiff leave to amend. The Court denies the request to take judicial notice of the complaint in this case as it is already part of the court's file.

14. 9:00 AM CASE NUMBER: C24-02184
CASE NAME: BETTENCOURT RANCH ASSOCIATION VS. STEVEN JACOBSEN
***HEARING ON MOTION IN RE: AUTOMATICALLY STAY ENFORCEMENT OF THE PRELIMINARY INJUNCTION PENDING AN APPEAL PURSUANT TO CCP 916**
FILED BY:

TENTATIVE RULING:

Defendants Steven Jacobsen and Aurora Jacobsen [Defendants] bring this Motion to Automatically Stay Enforcement of the Preliminary Injunction Pending an Appeal under Code of Civ. Proc. [CCP] § 916 [Motion]. The Motion is opposed by Plaintiff Bettencourt Ranch Association [Plaintiff or Association].

For the following reasons, the Motion is **denied**.

Background

This court granted a temporary restraining order on February 4, 2025, and a preliminary injunction on March 3, 2025, against Defendants, that restrained and enjoined Defendants from keeping their dog, Zeke, at the Bettencourt Ranch development [Order]. Defendants argue that they "were allowed to keep Zeke at their Home and within the HOA development as permitted by the CC&Rs." (Motion, at 10:19-20.) Such contention concedes that Defendants' right to keep Zeke at their home [Home] in the Bettencourt Ranch development [Development] is subject to rules and procedures in the Development's CC&Rs and, also, the determination of Plaintiff's Board of Directors [Board].

The Order held: "The CC&Rs include Article lV, Section 4.4, which provides the Association with the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other homeowners in the development, and Article IV, Section 4.1.2, which forbids nuisance conduct which interferes with the rights of other owners or which would be noxious, harmful or unreasonably offensive to other owners." The Order further held, "the Association held a disciplinary hearing on October 5, 2023," and "[t]he Association's board determined the dogs were a risk to the community and ordered Defendants to remove the dogs from the development within one week."

Thus, as of October 12, 2023, Defendants were no longer allowed to maintain Zeke at their Home or within the Development. Defendants failed to abide by Plaintiff HOA's determination, and this lawsuit was initiated.

Defendants argue that the injunction is mandatory as opposed to a prohibitory order. Plaintiff contends it is a prohibitory injunction and thus not subject to stay of enforcement under CCP § 916.

Standard

"To prevent injuries 'from the premature enforcement of a determination which may later be found to have been wrong,' the law has developed a set of rules and procedures for staying enforcement of certain court orders while they are reviewed on appeal." (*Daly v. San Bernardino County Bd. Of Supervisors* (2021) 11 Cal.5th 1030, 1035 [*Daly*].) "A prohibitory injunction remains in full force pending such an appeal, and the court below may enforce obedience thereto; but a mandatory injunction is stayed by the operation of such appeal, the object of the rule in both cases being to preserve the status quo." (*Id.*, at 1040–41).

"An injunction that requires no action and merely preserves the status quo (a so-called prohibitory injunction) ordinarily takes effect immediately, while an injunction requiring the defendant to take

affirmative action (a so-called mandatory injunction) is automatically stayed during the pendency of the appeal." (*Id*., at 1035.) While mandatory injunctions may be issued before trial, the filing of the notice of appeal renders them incapable of enforcement. (Code of Civ. Proc., § 916.)

"The substance of the injunction, not the form, determines whether it is mandatory or prohibitory. [Citation omitted.]" (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-47.) "[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties. [Citations omitted.]" (*Ibid*.)

In some instances, the status quo is considered the state of affairs when the motion for relief is sought; in others, courts have defined the status quo as "the last actual peaceable, uncontested status which preceded the pending controversy." (*Daly*, *supra*, 11 Cal.5th at 1045-46 [quoting *United Railroads v. Superior Court* (1916) 172 Cal. 80, 87 [internal quotation marks omitted].)

Analysis

Pursuant to *Daly*, the two inquiries to determine whether the Order is mandatory are (1) whether the injunction requires a person to refrain from an act or compels performance of an affirmative act, and (2) whether the order preserves the status quo.

The language of the Order is written as a prohibition. Defendants are "restrained" and "enjoined" from keeping their dog Zeke within the Development.

Defendants argue that the Order requires them to remove their dog from their home, but Defendants also recognize that their right to keep Zeke at the Development is subject to the Governing Documents. Defendants do not show they have a right to keep any dog at the premises where the dog's presence is prohibited by the Development's CC&Rs.

As discussed above, the Board of the HOA convened a disciplinary hearing on October 5, 2023, pursuant to the CC&Rs for the Development, and found, pursuant to Article IV, Sections 4.1.2 and 4.4, that Defendants could not keep their dogs at the Development due to their actions escaping their yard and killing the dog in their neighbors' backyard. Such determination has since been narrowed to Zeke pursuant to the Court's Order.

The status quo is considered the "state of affairs when the motion for relief is sought" or the "last actual uncontested status that preceded the controversy." Here, Defendants concede that their right to maintain their dogs at the Home is subject to the CC&Rs. Pursuant to the procedures and powers established by the CC&Rs, Defendants were prohibited from keeping dogs at their home when the HOA Board made its determination on October 5, 2023. Defendants have presented no evidence that they contested or otherwise appealed that determination by the Board. Defendants were then restrained from keeping Zeke at their home by the temporary restraining order entered on February 4, 2025.

Thus, the status quo is that Zeke is prohibited from being at the Development, pursuant to the determination of the Board and the CC&Rs. As such, this court finds the injunction prohibitory in nature and not subject to stay pursuant to CCP § 916. For such reasons, the Motion is denied.

15. 9:00 AM CASE NUMBER: C25-00102
CASE NAME: MIKHAIL PARNES VS. LYDMYLA PARNES
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: PARNES, LYDMYLA
TENTATIVE RULING:

Before the Court is a demurrer to the complaint. For the reasons set forth, (1) the general demurrers to the complaint as a whole and to the first, second, third, fourth, and sixth causes of action are **overruled**; and (2) the general demurrer to the fifth cause of action is **sustained, with leave to amend.**

Background

This case involves a dispute among family members after the passing of Lazar Parnes (the ''Father"). Plaintiff Mikhail Parnes is Father's son, and defendant Lydmyla Parnes was Father's wife when Father passed away on October 7, 2024. (Compl. ¶¶ 1, 2.) For clarity in light of the parties' same last names, the Court sometimes will refer to the parties by their first names or as "Son" and "Wife," respectively.

Father passed away without a will or other estate plan. (Compl. ¶ 3.) At the time of Father's death, Father held title to a condominium located at 4801 Clayton Road, Apt. 327, in Concord (the "Concord Condo") as his sole and separate property as of 2004 based on a divorce settlement between Father and his first wife, who was the biological mother of Mikhail and his sister Yuliya ("Daughter") in joint tenancy with Wife. (Compl. ¶¶ 2, 13 and fns. 1, 2.) Father married Lydmyla in 2005. (Compl. ¶ 13.)

Father had health problems, and in 2013, Father added Lydmyla on title to the Concord Condo and Father's Chase bank accounts. (Compl. ¶¶ 16, 17.) Father purchased an annuity in 2018 which was paid out to him in 2023, the proceeds of which he deposited into an account with Chase on which Wife was added as an account holder. (Compl. ¶ 19.) In 2019, Father purchased from his separate property certain real property in Odesa, Ukraine ("Odesa Property") for Wife to live in after his passing allegedly based on the Wife's agreement that Son and Daughter would become two-thirds owners of the Concord Condo after Father's passing. (Compl. ¶ 20.) Wife also appears to have been the beneficiary of Father's 401K account at Fidelity, as the Complaint alleges after Father's passing, she received "surviving spouse 401K benefits" that are now in an account solely in Wife's name. (Compl. ¶¶ 29, 30, 49.)

Plaintiff alleges that Father's wishes were that after Father's passing, Son and Daughter would each become a one-third owner of the Concord Condo with the Wife and share similarly in Father's other assets such that Son and Daughter would receive two-thirds of the assets and Wife receive or retain one-third of the assets upon his passing. (Compl. ¶¶ 3, 16, 17, 19, 20, 43, 44, 49.) Mikhail alleges Wife agreed to give Son and Daughter each a one-third interest in the Concord Condo after Father's death when Father added Wife to title to the Concord Condo in 2013 and that the change in title was for "emergency planning." (Compl. ¶¶ 16, 17.) Plaintiff alleges that Mikhail and Daughter are entitled to 100% of the Father's annuity proceeds and "at least two-thirds" of his other assets. (Compl. ¶¶ 49, 53, 60.) He further alleges that Wife knew what Father's wishes were "and promised that she would carry out his wishes were he to pass without an estate plan." (Compl. ¶ 3.) Father allegedly agreed to

create an estate plan on October 6, 2024 but died the next day before he could do so. (Compl. ¶ 21.)

Plaintiff alleges six causes of action for specific performance (1st C/A), constructive trust (2nd C/A), conversion (3rd C/A), unjust enrichment/restitution (4th C/A), equitable estoppel (5th C/A), and promissory estoppel (6th C/A). Defendant Lydmyla makes general demurrers to each cause of action for failure to allege facts sufficient to state those claims.

Legal Standards Governing Demurrer

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the complaint, but not legal or factual conclusions or contentions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 374.) The Court gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation omitted.]" (*Evans v. City of Berkeley* (2006) 38 Cal. 4th 1, 6.) (*See also* Code Civ. Proc. § 452.) In ruling on a demurrer, the Court is limited to consideration of the complaint and matters of which the Court can take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.)

The Court must accept as true the allegations of a complaint in ruling on a demurrer "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal. App. 3d 593, 604; *Universal By-Products, Inc. v. City of Modesto* (1974) 43 Cal.App.3d 145, 151.) Generally, a complaint is sufficient if it pleads "ultimate" facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550; *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) "If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.) If there is a reasonable possibility of amendment to cure the deficiencies in a complaint, then leave to amend must be granted. (*Id.* at 39.)

Procedural Objection to Demurrer

The opposition points to a procedural defect in the manner of presentation of the demurrer. A demurrer to a complaint is required to set forth each ground of a demurrer in a separate paragraph and state whether that ground for demurrer is asserted to the complaint as a whole, or to specified causes of action. (Cal. R. Ct., Rule 3.1320(a).) The notice of demurrer partially complies with the Rule of Court, in that in a separate paragraph, defendant demurs to the complaint in its entirety based on prematurity. The second paragraph combines demurrers to each individual cause of action for failure to allege facts sufficient to state those claims, which does not comply with Rule 3.1320. Nevertheless, Plaintiff has addressed the merits of each of the demurrers. The Court finds no prejudice to Plaintiff from the failure to comply with the Rule of Court. Counsel for defendant is cautioned that the Court expects compliance with the court rules and procedures in future filings.

Analysis

A. General Demurrer to the Complaint as A Whole

Defendant argues that the complaint in its entirety is premature, and the issues raised are not ripe as they involve intestate succession under the Probate Code which prescribes the manner in which a decedent's estate will be administered and distributed when the decedent dies without a will or other estate planning device. Defendant concedes that probate is not mandated when a person dies

intestate but is only required if court supervision is needed to transfer estate assets. The complaint does not allege a probate is pending, and defendant has not shown by any documents subject to judicial notice that a probate is pending. Defendant has also not shown based on the allegations of the complaint and applicable law that a probate will be required to administer or transfer the decedent's assets. Defendant has not met her burden of demonstrating the complaint fails for prematurity or ripeness as a matter of law. The general demurrer to the complaint in its entirety is **overruled.**

B. General Demurrer to 1st C/A - Specific Performance

Defendant contends the complaint fails to allege a written contract for the transfer of title to the Concord Condo into the names of Mikhail, Daughter, and the Wife collectively as joint tenants. She contends the statute of frauds requires an agreement to transfer real property to be reflected in a writing subscribed by the party to be charged, i.e., the party obligated to transfer the property. Exhibit B to the complaint, an email written by Mikhail purporting to summarize the terms of the Wife's agreement to make the transfer, fails to satisfy the statute of frauds because it is not subscribed by Wife as the party to be charged. (Civ. Code § 1624(a)(3).) (*See also Sterling v. Taylor* (2007) 40 Cal.4th 757, 765 cited by Plaintiff.) The demurrer to this cause of action also refers to the funds in the Chase account but cites no provision of the Civil Code statute of frauds and allegations of the complaint that would make an agreement to transfer a portion of those funds subject to the statute of frauds.

1. Writing for Purposes of Statute of Frauds

The complaint does not allege facts demonstrating the existence of a writing subscribed by Wife agreeing to or confirming the agreement Plaintiff alleges regarding the Concord Condo. To the contrary, the allegations indicate that Plaintiff sent emails describing what he contends was Wife's prior agreement made in 2013 for the immediate transfer of two-thirds of the title to the Concord Condo to Son and Daughter after Father's death, but Wife does not acknowledge such an agreement in her responses and only agreed to gift that interest to Son and Daughter through her own trust to be transferred to them on her death. (Compl. ¶¶ 16, 17, 31 [Wife said she would create a trust gifting one-third each of condo to Son and Daughter], 32 [email memorializing "their prior agreement"] and Exh. B, 33 [addressing January 7, 2025 conversation in which Wife refused to make immediate title transfer and "at most, would gift" the condominium into her trust for disposition to them upon her death, consistent with Mikhail's understanding of Wife's position reflected above in his January 8, 2025 email]; 34, 35 and Exhs. C and D [message was followed by an email in English of the same date stating she would "review the documents" sent to her and "get back to [Mikhail]," asking Mikhail to identify the claims he states he would make against her, and asking that future discussions be in writing], Exh. E [Mikhail email of 1/8/2025 stating, "Based on your FB message, I appreciate that you believe that you are not a thief, and that we ought to be satisfied with your assurances that you will gift to Yuliya and me each a one-third interest in the condominium in your estate plan. . . . In short, anything less than perfecting Yuliya's and my joint tenancy interest in the condominium this month (January 2025) is unacceptable to us." (emphasis added)]; 36 and Exh. F [Plaintiff acknowledges Wife did not agree to the terms stated in Plaintiff's January 8, 2025 email, as reflected in her response email of January 10, 2025].)

2. Part Performance and Equitable Estoppel

Other doctrines permit enforcement of an agreement that would otherwise be rendered unenforceable by the statute of frauds. Plaintiff cites the doctrine that "part performance" of a contract can allow the remedy of specific performance where there is no writing satisfying the statute of frauds under certain circumstances. (*In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1108-1109.) Plaintiff also argues the equitable estoppel doctrine, contending Wife is equitably estopped from raising the statute of frauds as a defense to enforcement of her alleged agreement regarding the disposition of Father's assets to Son and Daughter upon his passing.

"[T]o constitute part performance, the relevant acts either must 'unequivocally refer[]' to the contract [citation omitted], or 'clearly relate' to its terms. [Citations omitted.] Such conduct satisfies the evidentiary function of the statute of frauds by confirming that a bargain was in fact reached. [Citation omitted.]" (*In re Marriage of Benson, supra,* 36 Cal.4th at 1109.) *Marriage of Benson* cites and relies on a prior California Supreme Court decision on the part performance doctrine which explains, " '[P]art performance' of an otherwise invalid contract may satisfy the purposes of the statute of frauds. Thus a court may award damages based on an unenforceable contract if unconscionable injury would result from denying enforcement after one party has been induced to make a serious change of position. [Citations omitted.]." (*Earhart v. William Low Co.* (1979) 25 Cal.3d 503, 514.)

"Closely allied to the doctrine of part performance is the notion that reliance by one party on an oral contract may 'estop' the other from setting up a defense based upon the statute of frauds. [Citations omitted.] [¶] Finally, section 90 of the Restatement of Contracts -- the so-called 'promissory estoppel' section -- provides that reasonably expected reliance may under some circumstances make binding a promise for which nothing has been given or promised in exchange. In *Raedeke v. Gibraltar Savings & Loan Assn.* (1974) 10 Cal. 3d 665 we explained that a court may invoke the doctrine of promissory estoppel embodied in section 90 to bind a promisor ' "when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement." ' [Citation omitted.]" (*Earhart v. William Low Co., supra,* 25 Cal.3d at 514-515.) (*See also Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1069.)

Plaintiff alleges that Father intended Son and Daughter to receive "at a minimum, two-thirds" of his estate except for an asset he intended to leave only to his children, that Wife "knew" of his intention, and that Wife "promised" to carry out the Father's wishes if he died without a will or estate plan. (Compl. ¶ 3.) This general allegation is incorporated into the first cause of action, though the specific relief sought in the first cause of action is solely to have Wife transfer title to the Concord Condo. (Compl. ¶ 41.)

Plaintiff argues the allegations that Wife began transferring payments to Plaintiff and Daughter from funds of Father's estate after he died and proposed distributing Father's Honda vehicle to a grandchild with a corresponding cash equivalent payment made to the Daughter supports Wife's part performance of her agreement regarding the overall division of Father's assets. (Compl. ¶¶ 3, 26, 34 and Exh. C; *Marriage of Benson, supra,* 36 Cal.4th at 1109; Compl. ¶ 3.) For the reasons stated below with respect to the equitable estoppel cause of action, the complaint omits allegations of an essential component of equitable estoppel, namely that Wife knew that Plaintiff was relying on her alleged

promises to her husband or that she intended her promises to her husband to induce some detrimental reliance by Plaintiff. Nevertheless, the theory of part performance is adequately pleaded to overcome the demurrer based on the statute of frauds.

The general demurrer to the first cause of action is **overruled**.

C. General Demurrer to 2nd C/A – Constructive Trust

Both parties cite *Higgins v. Higgins* (2017) 11 Cal.App.5th 648. That case explains, "An action to impose a constructive trust is a suit in equity to compel a person holding property wrongfully to transfer the property interest to the person to whom it rightfully belongs. . . . [¶] Three conditions must be shown to impose a constructive trust: (1) a specific, identifiable property interest, (2) the plaintiff's right to the property interest, and (3) the defendant's acquisition or detention of the property interest by some wrongful act. [Citations omitted.]" (*Id*. at 658-659.) (*See also* Civ. Code §§ 2223 ["One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner."] and 2224 ["One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she 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."].)

Defendant argues that Plaintiff has not alleged Wife wrongfully detained any property interests, essentially because the "probate process" will determine the disposition of the assets of Father's estate. There is nothing before the Court that shows any probate that has been instituted, or that one is required to be instituted to address the assets of the Father's estate. Indeed, Plaintiff alleges Wife began distributing or offering to distribute some of the Father's assets, such as cash and the Honda, without any probate. (Compl. ¶ 26.)

Liberally construed as required for a demurrer, the complaint alleges that Wife was added to title to the Concord Condo, the Chase bank accounts, and the Chase account holding the proceeds of the annuity, essentially holding two-thirds title to those assets in trust for the benefit of Son and Daughter based on her agreement with Father and the children when she became a joint title holder to transfer the two-thirds interests to them upon Father's passing. (Compl. ¶¶ 16, 17, 19.) The complaint alleges she has wrongfully retained or detained full title to those assets for herself alone and refused to transfer the agreed interests to Son and Daughter by a wrongful act of falsely promising to convey two-thirds of the Father's assets to his children and failing to comply with the conditions she agreed to when she was added to title on the assets.

For purposes of a demurrer, accepting the allegations as true, the complaint pleads facts sufficient to state the conditions for imposition of a constructive trust as to, at a minimum, those identified assets. The general demurrer to this cause of action is **overruled.**

D. General Demurrer to 3rd C/A - Conversion

A cause of action for conversion has three elements: "(1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) (*See also Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1271 [comparing claim to claim for trespass to chattels, in case involving alleged wrongful cat euthanasia]; *Burlesci v. Peterson* (1998) 68 Cal.App.4th 1062, 1066.) "

'Neither legal title nor absolute ownership of the property is necessary. [Citation.] A party need only allege it is " ' "entitled to immediate possession at the time of conversion." ' [Citations omitted.]" (*Applied Medical Corp. v. Thomas* (2017) 10 Cal.App.5th 927, 936.) (*See also Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 233.) Plaintiff can demonstrate conversion without a physical taking by demonstrating the defendant assumed "control or ownership over the property, or that the alleged converter has applied the property to his own use. [Citations and internal quotations omitted.]" (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1507; *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 50 [exertion of dominion or control over property of another "inconsistent with the owner's rights thereto constitutes conversion," quoting *McCafferty v. Gilbank* (1967) 249 Cal.App.2d 569, 576].)

Defendant contends Plaintiff has not alleged Wife has exercised wrongful dominion over the Father's assets because the assets are awaiting the "probate process." The argument does not support sustaining the general demurrer to this cause of action for the reasons stated above. There is nothing before the Court that indicates there is a probate process pending or that one is required. The complaint in any event alleges Wife has detained and exercised dominion over the entirety of Father's assets when, upon Father's passing, Plaintiff and Daughter became entitled to immediate possession of two-thirds interests in those assets, other than the Odesa property, including identified cash in specific bank accounts, and including as joint title holders, presumably with a right to possession as well as co-ownership, in the Concord Condo.

The general demurrer to the third cause of action is **overruled.**

E. <u>General Demurrer to 4th C/A - Unjust Enrichment/Restitution</u>

"Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another. [Citation omitted.] A person is enriched if he receives a benefit at another's expense. [Citation omitted.] The term 'benefit' 'denotes any form of advantage.' [Citation omitted.] Thus, a benefit is conferred not only when one adds to the property of another, but also when one saves the other from expense or loss. Even when a person has received a benefit from another, he is required to make restitution 'only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it.' [Citation omitted.]" (*Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 51.) (*See also Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238.) A quasi-contract claim can support restitution, and a complaint can inconsistently plead the existence of a contract, and a quasi-contract claim if the contract is found not to be enforceable. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231 [stating "Like the trial court, we will construe the cause of action as a quasi-contract claim seeking restitution," and recognizing that a complaint can plead inconsistently a quasi-contract claim for restitution and a cause of action for breach of contract based on the existence of an enforceable agreement].)

Defendant argues that Plaintiff cannot demonstrate he conferred any benefit on Wife. Plaintiff pleads that he encouraged Father to add Wife on title to the Concord Condo, an asset that was otherwise Father's separate property after his divorce and would have been inherited by Son and Daughter, based on Wife's express promise and agreement to transfer two-thirds title to the Concord Condo and Father's other assets to his children upon his passing. (Compl. ¶¶ 16, 17.) The complaint alleges

that based on an agreement with Son and Wife reconfirming the agreement regarding title to the Concord Condo as a condition, Father used substantial cash assets to buy the Odesa property for Wife's benefit to reside in after his passing, another benefit at the expense of Plaintiff and Daughter who would have otherwise obtained the funds used for the Odesa property purchase upon Father's passing. (Compl. ¶ 20.) The complaint for purposes of a demurrer alleges Wife received the benefit of the Odesa property, as well as title interests in other property, at the expense of rights and interests in those assets that Son and Daughter would otherwise have had as Father's sole heirs to his separate property, contingent upon Wife's agreement regarding the transfer of two-thirds of the assets to Son and Daughter when Father passed away. The complaint alleges Wife has refused to transfer the interests in the assets and is wrongfully retaining sole and exclusive ownership and possession of the assets, including the two-thirds interests in the assets that allegedly rightfully belong to Plaintiff and Daughter, such that it is unjust for her to retain that portion of the assets under the circumstances.

The general demurrer to the fourth cause of action is **overruled**.

F. <u>General Demurrer to 5th C/A – Equitable Estoppel</u>

" '[E]stoppel is applicable where the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts. [Citations omitted.] [¶] 'Four elements must ordinarily be proved to establish an equitable estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury.' [Citation omitted.]" (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59.)

Defendant contends (a) the complaint does not allege Wife knew that she promised Father that she would add Plaintiff to title to the Concord Condo "immediately" after the Father's death; (b) the complaint does not allege when Wife made the promise or facts showing Wife intended to induce Plaintiff's reliance on her promise or that Wife acted in a manner that Plaintiff has a right to believe she intended to induce his reliance; and (c) the complaint does not allege how Plaintiff relied on Wife's promise to his detriment.

The complaint alleges that "at all relevant times" Wife knew the Father's intention that two-thirds of his assets be left to Son and Daughter when he died and that Wife promised to carry out his wishes. (Compl. ¶ 3.) The complaint alleges that in May 2013, Father told Son when Father added Wife to title to the Concord Condo that Wife "understood and agreed" she was added for emergency purposes only and that she would honor the Father's wishes to "split immediately" the Concord Condo with Son and Daughter receiving one-third interests, and that Son told the Father not to have the children added to title in 2013 based on Wife's agreement to add them if Father passed unexpectedly. (Compl. ¶¶ 16, 17.) The complaint alleges Father similarly told him that "Wife understood and agreed" that the proceeds of the annuity would go to Son and Daughter when he died and agreed she would "honor his wishes" if he died. (Compl. ¶ 19.) (*See also* Compl. ¶ 20 with similar allegations that in 2019, Father told Son that Wife "understood" he would buy the Odesa property with his separate property contingent on Wife honoring her alleged promise to make Son and Daughter co-equal one-third owners each of the Concord Condo "immediately upon Father's death"].) The complaint

sufficiently alleges that she knew she promised the Father based on these allegations, accepted as true. The allegations also sufficiently allege facts showing that Plaintiff allegedly took actions to his detriment by foregoing being added to title to the Concord Condo in 2013 and objecting or providing different advice to Father regarding the title to the Chase accounts in 2013 and regarding the purchase of the Odesa property in 2019.

The Court agrees, however, that what is missing from the allegations of this cause of action is that Wife knew Son and Daughter were relying on the promises Wife allegedly made to Father to carry out his wishes regarding the disposition of his assets or that Wife made the alleged promises to her husband with an intent to induce reliance by the Son and Daughter on her alleged promises made to the Father. As defendant points out, the complaint does not allege any communications by the Wife regarding the alleged promises directly with the Son or Daughter or in which Wife and the Son or Daughter were parties with the Father; all communications were allegedly between the Son and Father until after Father passed away.

Defendant has shown the complaint fails to allege an essential element of equitable estoppel. The general demurrer to the fifth cause of action is **sustained, with leave to amend.**

G. General Demurrer to 6th C/A – Promissory Estoppel

" 'The elements of a promissory estoppel claim are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance." [Citation.]' [Citation omitted.]" (*Jones v. Wachovia Bank* (2014) 230 Cal.App.4th 935, 945.) Defendant argues that the complaint does not plead a promise whose terms are "clear and unambiguous" because the time when Wife is to convey the property is not alleged.

The complaint, however, alleges that the promise was to convey the two-thirds interests of Son and Daughter in the Concord Condo "immediately" after the Father's passing (Compl. ¶¶ 17, 20); to the extent the timing of the transfers of that asset or other assets of the Father's was not stated, the law implies a "reasonable" time after the Father's passing, depending on the nature of the performance. (*See* Civ. Code § 1657 ["If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained."].)

Defendant's other challenge to this cause of action is that the complaint does not allege facts showing Plaintiff reasonably and foreseeably relied on Wife's promise because it was unreasonable for Plaintiff to rely on an estate plan promise with regard to the Concord Condo made almost 10 years before the Father passed away. Defendant's challenge in this regard raises fact questions that defendant has not shown can properly be determined as a matter of law from the face of the complaint on demurrer.

The general demurrer to the sixth cause of action is **overruled.**

H. Additional Issue: "Remedies" Versus "Causes of Action" as to 1st, 2nd, and 4th C/As

Defendant argues that specific performance, constructive trust, and unjust enrichment/restitution are remedies, not causes of action. The complaint alleges underlying rights based on Wife's agreement for the disposition of Father's assets in consideration of or as a condition of her acquisition of title to

the Father's assets described in the complaint, and in effect theories of breach of contract, conversion, equitable estoppel, and promissory estoppel as a basis on which Plaintiff's right to the remedies of specific performance, imposition of a constructive trust, and restitution are founded. Further, as defendant's own authorities indicate, some California decisions address in particular constructive trust and unjust enrichment as causes of action. (*See, e.g., Dunkin v. Boskey* (2000) 82 Cal.App.4th 171, 197 [recognizing cause of action]; *Weiss v. Marcus, supra,* 51 Cal.App.3d at 600 [allowing the cause of action where founded on other underlying claims, including conversion]; *Burlesci v. Petersen, supra,* 68 Cal.App.4th at 1065, 1069 [reversing nonsuit on constructive trust cause of action, where conversion claim found to be sufficiently pleaded and provided a basis for the constructive trust cause of action]; *Rutherford Holdings, LLC v. Plaza Del Rey, supra,* 223 Cal.App.4th at 231 [addressing cause of action for unjust enrichment].)

16. 9:00 AM CASE NUMBER: C25-00406
CASE NAME: ALAIN DELIDES VS. MERCEDES-BENZ USA, LLC
***MOTION/PETITION TO COMPEL ARBITRATION**
FILED BY: MERCEDES-BENZ USA, LLC
****TENTATIVE RULING:****

Continued by the Court to July 28, 2025. The July 11, 2025, case management conference is also continued to July 28, 2025.

The California Supreme Court issued its decision in *Ford Motor Warranty Cases* (S279969) on July 3 (the day this tentative ruling was issued). This matter is continued so that the Court can consider the California Supreme Court's decision. The parties may, but are not required to, file and serve supplemental briefs of no more than five pages addressing the California Supreme Court's opinion and its application to this motion by July 17, 2025.

17. 9:00 AM CASE NUMBER: MSC20-01066
CASE NAME: RHODES VS KRBC
HEARING ON SUMMARY MOTION ON BLUELINE'S CROSS-COMPLAINT FILED BY KRBC, LLC
FILED BY:
****TENTATIVE RULING:****

Withdrawn.

18. 9:00 AM CASE NUMBER: MSC22-00036

CASE NAME: CARTER ET AL. VS ALLEN ET AL.
***HEARING ON MOTION IN RE: RECONSIDERATION OF DENIAL OF MOTION FOR SANCTIONS AND RENEWAL OF MOTION FOR SANCTIONS**
FILED BY: ALLEN, TIFFANY SHANEE
****TENTATIVE RULING:****

Before the Court is Defendant Tiffany Allen's Motion for Reconsideration ("Motion").

Defendant's Motion is **granted** for the reasons set forth below.

Procedural Timeline

The initial Complaint was filed on January 5, 2022, by attorney Valerie Horn on behalf of Plaintiff. On February 28, 2022, Defendant filed an answer and a cross-complaint. Ms. Horn filed a motion to be relieved as counsel on September 26, 2022, which was granted on November 9, 2022. At that point, Plaintiff was proceeding pro se.

Defendant filed a motion to deem her RFAs admitted on January 20, 2023. No opposition was filed. A tentative ruling was posted on February 28, 2023, indicating that the motion would be granted. There was no contest of the tentative ruling, nor any appearance by Plaintiff at that time. As such, the Court deemed the RFAs admitted.

On March 9, 2023, Defendant filed a Motion for Judgment on the Pleadings ("MJOP"), based on the deemed RFAs. An opposition was filed by attorney Gary Saunders on behalf of Plaintiff on April 5, 2023. An official substitution of attorney was filed on April 6 confirming Mr. Saunders was now counsel of record for Plaintiff. That MJOP was denied without prejudice for procedural reasons.

On May 18, 2023, Defendant filed a second MJOP. Counsel of record for Plaintiff filed an opposition on June 30, 2023. A tentative ruling was posted on July 2, 2023, indicating that the MJOP was to be granted. Plaintiff did not contest the tentative ruling, nor did counsel appear at the hearing. Accordingly, the MJOP was granted.

Thereafter, on July 20, 2023, the Court signed a judgment in favor of Defendant. Notice of entry of judgment was provided on August 2, 2023. On October 30, 2023, Defendant dismissed, without prejudice, her cross-complaint.

On July 8, 2024, eleven months after entry of judgment, Plaintiff filed a Motion to Vacate the Default Judgment. The Court set the hearing on the Motion to Vacate for September 30, 2024.

On September 17, Defendant filed the underlying Motion for Sanctions based on Plaintiff's filing of the Motion to Vacate. The Court originally set the hearing on the sanctions motion for November 18. On November 18, the Court continued the hearing until December 9. On September 30, 2024, the Court denied Plaintiff's Motion to Vacate the Default Judgment, noting that "Plaintiff has failed to make any showing supporting his Motion."

On December 8, 2024, the court issued a Tentative Ruling denying Defendant's Motion for Sanctions. The Tentative Ruling indicated that Defendant failed to provide evidence that the Motion for Sanctions was served upon Plaintiff 21 days prior to filing the Motion with the Court. Defendant contested the

Tentative Ruling and the Court heard oral argument on December 9, 2024. At the hearing, Defendant's counsel confirmed the Motion was served on Plaintiff prior to filing with the Court. The Court confirmed there were three Proofs of Service indicating that the papers were served on Plaintiff beforehand.

The Court took the matter under submission. The Court's Order After Hearing, filed March 11, 2025, confirmed the Tentative Ruling denying the Motion for Sanctions based on a failure to properly serve Plaintiff with the Motion papers at least 21-days prior to filing them in Court.

Defendant seeks reconsideration of that Order based on the Proofs of Service which confirm the Motion for Sanctions was properly served on Plaintiff.

Standard of Review

Code of Civil Procedure section 1008(a) provides that a party affected by a prior court order may, "based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (Cal. Code Civ. Proc. § 1008(a).) Such an application must be accompanied by an affidavit that states "what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (*Ibid.*)

However, a trial court has inherent power to reconsider its own interim rulings even in the absence of a change in law or new or different facts or circumstances. (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 237; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1248 ("*Brown*".) "This authority derives from the judiciary's fundamental, constitutionally mandated function to resolve specific controversies between the parties." (*Brown*, 47 Cal.4th at 1248.)

Analysis

As outlined above, the Court denied Defendant's Motion for Sanctions purely on the alleged procedural issue of the failure to provide sufficient evidence that the Motion papers were properly served on Plaintiff at least 21-days prior to filing the Motion with the Court. This was due to Defendant's failure to bring the Proofs of Service confirming this occurred to the Court's attention.

As the Court's order on that motion indicated, the only reference to properly serving the Motion was a "statement in the Conclusion of Defendant's Ps and As which states that Defendant 'has served Plaintiff's counsel with a copy of Motion 21 days prior to filing this motion." There was no citation to evidence in support of this statement, and Defense Counsel's declaration in support failed to attach or highlight the statements or exhibits establishing this contention. The Court did observe that the Notice of Motion had two different proofs of service attached, one of which indicated that the Motion was served on August 22, 2024, which was 26-days prior to the filing of the Motion. However, this only showed that the Notice was served, not that the memorandum and supporting declaration were served as well.

At the hearing on the Motion, Defendant's counsel pointed out that there were three separate proofs of service – one for each of the Notice, Memorandum, and Declaration in Support – confirming that all the supporting papers were served 26-days prior to filing. The Court confirmed these were part of the

file.

As Plaintiff points out in his opposition, under Section 1008 the Court cannot reconsider an earlier order absent a showing of new or different facts, law, or circumstances. (Code of Civil Procedure ("CCP") § 1008(a)-(b); *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1098.) A trial court, however, "has inherent power to reconsider an interim ruling on its own motion." (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1248.) "This authority derives from the judiciary's fundamental, constitutionally mandated function to resolve specific controversies between parties." (*Ibid.*)

As the California Supreme Court noted, that "[c]concerns of procedural fairness … [requires] that a trial court intending to exercise this power must provide the parties 'notice that it may do so and a reasonable opportunity to litigate the question.'" (*Ibid.* quoting *Le Francois*, supra, 35 Cal.4th at 1097.)

The Court did not reach the merits of the sanctions motion because it mistakenly determined that Defendant failed to follow the proper procedure for bringing such a motion – *i.e.* failed to comply with the 21-day safe harbor provision. While Defendant's initial papers could have done a better job of highlighting the proofs of service confirming the pre-filing service upon Plaintiff, the Court is satisfied that Defendant did comply with that procedure and that the evidence was presented with the initial motion. As such, the Court will reconsider its order on that motion – and will address the substance of the motion.

The Court notes that the issue of sanctions was fully briefed by both parties in the underlying motion. Plaintiff also includes substantive arguments with his opposition to the motion for reconsideration. However, out of an abundance of caution, the Court will allow the parties a chance to supplement any of their arguments to ensure Plaintiff is given a fair opportunity to litigate the question.

Conclusion

Defendant's Motion for Reconsideration is **granted,** in that the Court will reconsider its ruling on the motion for sanctions upon its own motion. The new hearing date for the motion for sanctions is Monday, July 21, 2025, at 9:00 a.m. in Department 9.

The rulings will be based on the parties' earlier filings related to Defendant's Motion for Sanctions. However, each party may file a supplemental brief, no longer than 5 pages, by 4:00 p.m. on Monday, July 14, 2025, if they so desire. No late filings will be considered by the Court.

19. 9:00 AM CASE NUMBER: N23-1935
CASE NAME: PETITION OF: STATES RESOURCES CORP.
***HEARING ON MOTION IN RE: FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFF'S PETITION FOR SALE OF PROPERTY**
FILED BY:
****TENTATIVE RULING:****

Additional Briefing

Plaintiff State Resources Corp. argues that Family Code §910 applies to the subject property which provides that the community estate is liable for debt incurred by either spouse before or during marriage.

Defendant Fred Jahed cites CCP 695.020 which provides that community property is subject to enforcement of a money judgment as provided by the Family Code and any enforcement of money judgment applies to the community property interests of the spouse of the judgment debtor and community property interests in the possession or under the control of the spouse of the judgement debtor.

Neither one of these statutes apply to separate property which is what Plaintiff is alleging the subject property became after the 2006 Refinance and Transmutation Agreement.

The Court is requesting both parties for additional briefing regarding:

1) Whether the 2006 Refinance and Transmutation Agreement changed the character of the subject property from community property to separate property.
2) If the subject property did change to separate property, please provide authority regarding the ability of judgment creditor to enforce a money judgement to a judgment debtors' spouse's separate property.

Both Parties are limited to eight (8) pages for their additional briefing.

20. 9:00 AM CASE NUMBER: MSC19-02076
CASE NAME: MAUREEN MBADIKE-OBIORA, MD VS. CENTRAL EAST BAY IPA, MEDICAL GROUP INC
HEARING ON ORDER TO SHOW CAUSE IN RE: WHY PLAINTIFF HAS NOT PAID HER SHARE OF THE DISCOVERY REFEREE FEES
FILED BY:
TENTATIVE RULING:

Appearance required.

21. 9:00 AM CASE NUMBER: MSC19-02076
CASE NAME: MAUREEN MBADIKE-OBIORA, MD VS. CENTRAL EAST BAY IPA, MEDICAL GROUP INC
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:

Appearance required.

22. 10:00 AM CASE NUMBER: C24-00698

CASE NAME: FIRST TECHNOLOGY FEDERAL CREDIT UNION VS. JASON COPPOLA
COURT TRIAL HEARING
FILED BY:
TENTATIVE RULING:

Vacated. On July 3, 2025, the court executed an order regarding the stipulation for entry of judgment.