SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 03/28/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requ
esting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Local Rule 3.43(2).) CourtCall will **NOT** be used by D18. Zoom is approved for all hearings except Issue Conferences and Trials. **Dept. 18's telephone number is: (925) 608-1118.**

NOTE: In order to minimize the risk of miscommunication, Dept. 18 prefers and encourages email notification to the department of the request to argue and specification of issues to be argued.

Dept. 18's email address is: dept18@contracosta.courts.ca.gov.

Submission of Orders After Hearing in Department 18 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. The order must include appearances. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C23-01788
CASE NAME: NEENA KADABA VS. ARASH HATAMBEIKI
HEARING ON SUMMARY MOTION ADJUDICATION RE 1ST CAUSE OF ACTION
FILED BY: KADABA, NEENA
TENTATIVE RULING:

Motion withdrawn.

2. 9:00 AM CASE NUMBER: C23-02292
CASE NAME: BEN HADDAD VS. MONROE RE, LLC
HEARING ON DEMURRER TO: VERIFIED SECOND AMENDED COMPLAINT

FILED BY: CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
TENTATIVE RULING:
Motion **continued** to May 16, 2025, at 9:00 a.m.

3. 9:00 AM CASE NUMBER: C24-01010
CASE NAME: STEPHAN ANDREA VS. STEVEN OAKS
***HEARING ON MOTION IN RE: SET ASIDE DEFAULT AGAINST ENTERPRISE TRUCK RENTAL**
FILED BY: ENTERPRISE TRUCK RENTAL, INC.
TENTATIVE RULING:

Pursuant to section 473(b) of the civil code a party may seek discretionary relief from default within 6 months of the clerk's entry of default upon a showing of mistake, inadvertence, surprise, or excusable neglect. This motion was filed within a month of entry of default. The default was taken as a result of surprise since Defendant believed he was working with Plaintiff as to whether a dismissal was warranted for naming the wrong defendant.

Moreover, *LaSalle v. Vogel* (2019) 36 Cal.App.5th 127, 137, disfavors defaults taken by "quiet speed and unreasonable deadlines." That appears to be exactly what occurred in this case. Without warning to Defendant's counsel, Plaintiff requested entry of default.

The unopposed motion to set aside default is granted.

4. 9:00 AM CASE NUMBER: C24-01064
CASE NAME: DENTAL & MEDICAL COUNSEL PC VS. ARUN RAMAKUMAR
***HEARING ON MOTION IN RE: TO TAX COSTS**
FILED BY: DENTAL & MEDICAL COUNSEL PC
TENTATIVE RULING:

The motion to tax costs in the amount of $9860.05 is granted. The court agrees with the moving party that section 1717(b)(2) of the Civil Code does not authorize attorney fees where the action has been voluntarily dismissed. It makes no difference whether the contract refers to a prevailing party or successful party if there is no statutory authority for such an award.

5. 9:00 AM CASE NUMBER: C24-01153
CASE NAME: PENNSYLVANIA STATE EMPLOYEES CREDIT UNION VS. JEAN LAVARELLO
***HEARING ON MOTION IN RE: ORDER AMENDING JUDGMENT NUNC PRO TUNC**
FILED BY: PENNSYLVANIA STATE EMPLOYEES CREDIT UNION
TENTATIVE RULING:

Granted.

6. 9:00 AM CASE NUMBER: C24-01206
CASE NAME: ISABELLA ESQUEDA VS. LUZ MENDOZA
***HEARING ON MOTION IN RE: MOTION TO QUASH NOTICE OF TAKING VIDEOTAPED DEPOSITION**
FILED BY: LOS MEDANOS VILLAGE
TENTATIVE RULING:

Granted. The Court imposes sanctions against Plaintiff's counsel in the amount of $2650.

7. 9:00 AM CASE NUMBER: C24-01746
CASE NAME: JORDAN MOUTON VS. RYAN BUENAFLOR
***HEARING ON MOTION IN RE: QUASH SUBPOENA FOR PLTF EMPLOYMENT RECORDS**
FILED BY: MOUTON, JORDAN
****TENTATIVE RULING:****

The parties stipulated to continue the motion to quash to today's date. However, the court has no opposition or notice of non-opposition to the motion. It is unclear to the court whether this matter is still at issue or has been resolved. If the matter has not resolved the parties are ordered to appear at the hearing to set a briefing schedule. If no party appears the matter will be dropped from calendar.

8. 9:00 AM CASE NUMBER: C24-01987
CASE NAME: MICHAEL HADERER VS. DAVID HADERER
***HEARING ON MOTION IN RE: STRIKE LAWSUIT**
FILED BY: HADERER, DAVID PORTER
****TENTATIVE RULING:****

Defendant David Porter Haderer [David] brings this Motion to Strike pursuant to Code of Civ. Proc. § 425.16 [Motion], which is opposed by Plaintiffs Michael Haderer [Michael] and Morgan Ulery [Morgan].

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

Background

Plaintiffs Michael and Morgan [Plaintiffs] state two causes of action, malicious prosecution and violation of Concord Municipal Code, arising from the unlawful detainer case brought by Defendant against Plaintiffs, entitled David Haderer v. Michael Haderer, et al., Contra Costa County Superior Court, Case No. MS22-0386 [UD Action]. (Complaint, ¶ 13.)

In the UD Action, jury trial was held on September 19, 2022. Michael and Morgan, as defendants therein, made an oral motion for Judgment after David rested his case. In response to such motion the court held: "The court states that the issue before him is whether or not there was a proper 3-day Notice to Quit. The evidence is clear to the court that Plaintiff did not believe there was an agreement. The court finds that tenancy was at will and that there was not proper notice." (Minutes of 9/19/2022 Jury Trial in UD Action; Decl. Sellards, Ex. B.) Thereafter, judgment was entered in favor of Michael and Morgan in the UD Action on November 14, 2022. (Judgment in UD Action; Decl. Sellards, Ex. C.)

In support of this Motion, David presents his own declaration and that of his counsel, David Ginn [Ginn], each as amended. Michael and Morgan present their own separate declarations and the declaration of their former counsel, Robert Sellards, in support of their opposition to the Motion.

This court summarizes the key facts from the parties' declarations below:

- Aug. 26, 2021: Parties have dinner to discuss rental of David's property at 1543 Garcez Dr.,

Concord, CA ["property"]. (Declaration of [Decl.] David, ¶¶ 4, 20; Michael Decl. ¶ 4; Morgan Decl., ¶ 7.) David states that the parties agreed to a price of $3,300 per month to rent the property with a discount for the first few months due to repairs at the property. (David Decl., ¶ 4.) Michael states that the parties agreed that he and Morgan "agreed to rent … the Property [from David] for two (2) years starting January 1, 2022. We agreed that for the first three months the rent would be $2,000/mo., and starting April 1, 2022, it'd increase to $3,000/mo." (Michael Dec., ¶ 4.) Morgan states that the parties agreed to the terms as stated by Michael, and, also, that she and Michael agreed to pay 75% of the utilities and that there would not be a security deposit. (Morgan Decl., ¶ 7.) Michael and Morgan recognize that David said at dinner that their terms would need to be formalized into a written lease. (Michael Decl., ¶ 4; Morgan Decl., ¶ 8)

- Dec. 1, 2021: David and Morgan exchange texts relating to signing a lease agreement for the subject property for purposes of refinancing the property for repairs. David called the 2021 Lease "fake" and "non-binding" and a "dummy lease." As to signing of the lease, Morgan said she is "totally comfortable with doing that for the refinance." (David Decl., ¶ 9; Morgan Decl., ¶¶ 11-18, Ex. A-G.) David states that at the time of signing he had an understanding that the parties "would be working on a new lease that would … control [the] tenancy." (David Decl., ¶¶ 9-10.)
- Dec. 9, 2021: The parties sign David's proposed Standard Lease Agreement [2021 Lease]. (David Decl., ¶ 9; Morgan Decl., ¶ 18; Michael Decl., ¶ 5.)
- Dec. 29, 2021: David advises Michael and Morgan that repairs are continuing. (David Decl., ¶ 11.)
- Dec. 31, 2021: Michael and Morgan move into the subject property. (David Decl., ¶ 11; Morgan Decl., ¶ 19.)
- Jan. to Mar. 2022: David attempts to negotiate a lease with Michael and Morgan. (David Decl., ¶¶ 12; Michael Decl., ¶¶ 7-18; Morgan Decl., ¶¶ 19-22.) David contends that "[i]t did not appear that they were serious about entering into a lease." (David Dec., ¶ 15.)
- Feb. 1/2, 2022: David rejected $1,000 payment from Michael and "told them not to attempt any further payments until we had a signed lease in place." (David Decl., ¶ 14.) Michael wrote to David stating "'despite not having a signed lease agreement in place… as a show of good faith' we're prepared to pay the $2,000/mo. as agreed in Aug." (Michael Decl., ¶ 11, Ex. E.)
- Mar. 2022: David contacts Ginn for assistance negotiating the terms of the lease with Michael and Morgan. (Ginn Decl., ¶ 3; David Decl., ¶ 15.)
- Mar. to April 2022: Ginn corresponds with Michael and Morgan regarding execution of a new written lease. Ginn provides Michael and Morgan a proposed six-month lease. Michael and Morgan do not agree to the terms. (Ginn Decl., ¶¶ 3-6; Michael Decl., ¶¶ 19-23.)
- May 18, 2022: David files a Elder Abuse Act claim against Michael and Morgan.
- May 18, 2022: Ginn serves a 30-day Notice of Termination of Tenancy on Michael and Morgan. (Michael Decl., ¶ 24.)
- June 2022: Ginn reviews correspondence between the parties with respect to the 2021 lease and determines the parties had an "agreement to agree" and that the enforceability of the lease should rest with the jury. (Ginn Decl., ¶¶ 8-13.)
- June 12, 2022: Ginn gives his advice and analysis to David. David agreed to follow Ginn's advice. (Ginn Decl., ¶ 14.)
- June 15, 2022: David's 3-Day Notice to Pay Rent or Surrender Possession of the Premises was served on Michael and Morgan seeking $9,900 in past due rent - $3,300/mo. for Apr., May,

June. (Ginn Decl., ¶ 15; Michael Decl., ¶ 25, Ex. P.)

- June 29, 2022: UD Action is filed and the operative agreement is identified as the Standard Lease Agreement. (Ginn Dec., ¶ 17.)
- Aug. 16, 2022: Michael and Morgan file a cross-complaint in David's civil action alleging claims for fraud, intentional infliction of emotional distress, breach of contract, and violations of the City of Concord's tenant protection ordinances. (Ginn Decl., ¶ 20, Ex. K.)
- Sept. 19, 2022: Trial was held in UD Action. (Ginn Decl., ¶ 22.) The court ruled in favor of Michael and Morgan and found that there was a tenancy at will. (Minutes in UD Action from Jury Trial on Sept. 19, 2022.) The same day, Michael and Morgan were served with a 30-day notice to quit. (Michael Dec., ¶ 30, Ex. Q.)
- Sept. 21, 2022: Michael and Morgan advised David via email that they would be moving out of the property within the week, and they did so vacate. Michael and Morgan also paid David $10,550 in rent for the property. (David Decl, ¶ 21.)

In addition to this action and the UD Action, the parties each have pending civil claims against each other arising from the above-described events. (Ginn Decl., ¶¶ 7, 20, Ex. F, K.)

Legal Standard for Anti-SLAPP Motion

Code of Civ. Proc. § 425.16 (b)(1) provides the basis for this anti-SLAPP Motion: "A cause of action against a person arising from … the person's right of petition or free speech … in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

There are two prongs to the anti-SLAPP motion analysis. First, the defendant must make a showing that the claim arises from the protected activity, and, then, the burden shits to the plaintiff to establish a probability of prevailing." (Code Civ. Proc. § 425.16 (b), (e); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821)

On a malicious prosecution claim, "the anti-SLAPP procedure is only intended to 'weed[] out, at an early stage, *meritless* claims arising from protected activity.'" (*Kinsella v. Kinsella* (2020) 45 Cal.App.5th 442, 460.) "'[T]o survive anti-SLAPP scrutiny, a plaintiff need only establish their cause of action has 'minimal merit.'" (*Id*.) The court must "draw[] all inferences in favor of the non-moving party and malicious prosecution plaintiff." (*Roche v. Hyde* (2020) 51 Cal.App.5th 757, 771.)

Analysis

A. Malicious Prosecution

1. First Prong: Protected Activity.

California precedent confirmed that "prosecution of an unlawful detainer action indisputably is protected activity within the meaning of section 425.16." (Birkner v. Lam (2007) 156 Cal.App.4th 275, 281.) The malicious prosecution case is based on the UD Action. As such, Plaintiff has satisfied the first prong of the Anti-SLAPP analysis.

2. Second Prong: Probability of Prevailing

a. Elements of Claim

To establish a cause of action for malicious prosecution, Plaintiffs must demonstrate "that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor, and (2) was brought without probable cause, and (3) was initiated with malice. (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 871.)

i. UD Action Disposition

With respect to the first element of a malicious prosecution claim, substantial evidence shows that the UD Action was brought by David and resulted in a judgment in favor of Michael and Morgan. However, "[a] 'favorable termination' does not occur merely because a party complained against has prevailed in an underlying action," although this "an ingredient of a favorable termination." (*Roche*, supra, 51 Cal.App.5th at 788.) "If the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense it would support a subsequent action for malicious prosecution.'" (*Ibid*.)
As discussed below, the UD Action rested on whether Plaintiffs owed the past due rent demanded in the 3-Day Notice. Here, the court did not make a finding as to whether the amount demanded was owed by Plaintiffs. As such, the Minutes of the trial and the Judgment is insufficient to show that there was a favorable termination for Plaintiffs.

ii. Probable Cause

With respect to the second element of a malicious prosecution claim, the court reviews the evidence as to whether David had probable cause for the UD Action.

The UD Action was based on a 3-Day Notice to Pay Rent or Quit that was served June 15, 2022 seeking $9,900 in past due rent. Plaintiffs did not pay the amount of $9,900 within the statutory 3-day period as demanded in the 3-Day Notice. David represented that rent was $3,300 per month and attached the 2021 Lease to the UD Action, representing that it was the written agreement between the parties. (Complaint in UD Action; Ginn Decl., Ex. I.)

Plaintiffs' claim for malicious prosecution rests on the fact that David attached the 2021 Lease to the UD Action after referring to such agreement as "fake," "non-binding" "dummy lease." However, as discussed below, the validity of the 2021 Lease is only tangential to the showing of probable cause for the UD Action. The key issue is the Plaintiffs failure to pay rent for six months and failure to make payment of $9,900 as demanded in the 3-Day Notice to cure the default. Importantly, Plaintiffs do not contend that they did not owe an obligation to pay rent for the property.

Probable Cause - Rent Obligation

Plaintiffs admit that they agreed to pay rent of $3,000 per month beginning April 1, 2022, and that they would receive a discount of $1,000 for the first three months beginning January 1, 2022.
Plaintiffs claim that their oral agreement with David was for a term of two years.
Plaintiffs state that David agreed they did not have to pay rent for January 2022 due to ongoing repairs. Michael then attempted pay rent of $2,000 for February, sending an initial payment of $1,000 via Zelle. David refused to accept rent in February 2022 until a written agreement was signed. David also refused to accept $2,000 for rent of March 2022 for the same reason.

These admissions and events demonstrate that Plaintiffs understood their obligation to pay rent for

the property in an amount of at least $2,000 beginning February 2022, increasing to $3,000 starting April 2022. Morgan also recognizes that Plaintiffs had agreed to pay 75% of the utilities for the property. Further, Judge Weil held in the UD Action that the parties had entered into a tenancy at will.

Accordingly, the court finds that substantial evidence supports David's demand in the 3-Day Notice for payment of $9,900 to satisfy the Plaintiffs' past due rent obligations.

Probable Cause – Lease Agreement and Rental Amount

The 2021 Lease provides that Plaintiffs will pay $3,300 per month in rent and is for a one-year term, beginning January 1, 2022. David referred to the 2021 Lease as a "dummy lease," "fake," and "non-binding." He explains that he needed a written agreement to submit for refinancing the home and he expected the parties would negotiate a further lease. Plaintiffs also recognize that David had expressed his intent to formalize their August 2021 discussion in writing.

The parties were not able to agree upon execution of a lease between January and April 2022, due to disagreement on the term of the lease and the rent amount - at least for the first three months of the tenancy. Substantial evidence shows that the 2021 Lease terms generally reflected the terms discussed by the parties in August 2021, except for these two disputed issues. Furthermore, an oral agreement to lease for a term greater than one year is not enforceable as a matter of law. (Civ. Code §§ 1091, 1624(a)(3) and (d), and 1971.) At trial in the UD Action, Judge Weil found that neither the 2021 Lease nor the two-year oral lease were enforceable. He instead found that there was a tenancy at will.

There is no question that Plaintiffs owed David past due rent for the time of their tenancy at the property and that they had paid no rent to David by the time the UD Action was commenced. Further, substantial evidence supports a finding that David relied on the advice of his counsel, Ginn to determine handling of the non-payment of rent and stalemate on lease negotiations, and in preparing and prosecuting the UD Action. The length of Ginn's involvement and the actions taken by David and Ginn to resolve the parties' dispute prior to bringing the UD Action, as well as Ginn's review of the parties' communications, provide substantial evidence that David acted in good faith after full disclosure of the facts to Ginn. Such evidence "customarily establishes probable cause." (*Brinkley v Appleby* (1969) 276 Cal.App.2d 244.246; *Matterson v Pig 'N' Whistle Corp.* (1958) 161 Cal.App.2d 323, 339.)

As such, when viewing the evidence in the light most favorable to Plaintiffs, this court finds that Plaintiffs have not made a sufficient prima facie showing of minimal merit to their contention that David lacked probable cause to bring the UD Action based on their objections to the 2021 Lease.

iii. Malicious Intent

Plaintiffs contend that David's ill will is shown by an absence of an honest and sincere belief in the validity of the claim. As discussed above, substantial evidence shows that David relied on the advice of Ginn in preparing and prosecuting his claim, and substantial evidence shows that David was owed at least $9,900 in past due rent when the 3-Day Notice was served and the UD Action was brought thereon. The claim that David admitted at trial in the UD Action he did not want his son to get his way does not evidence ill will on the part of David, since, as discussed above, the evidence supports

David's claim for payment of past due rent in the 3-Day Notice and for possession of the property in the UD Action.

Thus, for the reasons discussed herein, even drawing all inference in favor of Plaintiffs, this court finds that Plaintiffs have not shown "minimal merit" to their malicious prosecution claim.

b. Violation of Concord Rent Ordinance

1. First Prong: Protected Activity.

California precedent confirmed that "prosecution of an unlawful detainer action indisputably is protected activity within the meaning of section 425.16." (Birkner v. Lam (2007) 156 Cal.App.4th 275, 281.) The Violation of Concord Rent Ordinance claim is based on a claim of harassment founded on the filing and prosecution of the UD Action. (Complaint, ¶¶ 13, 17, 29, 32.) As such, Plaintiff satisfied the first prong of the Anti-SLAPP analysis.

2. Second Prong: Probability of Prevailing

Plaintiffs' claim for harassment in Violation of Concord Rent Ordinance, Municipal Code § 19.50.10, et seq., is based on the contention that David (i) had no reasonable basis or cause, at any time, to believe the claim was truthful or (ii) to believe the legal theory for the claim was tenable, and (iii) at all times was acting in bad faith and in knowing violation and in reckless disregard of the provisions of the Ordinance and the Plaintiffs' rights thereunder. (Complaint, ¶ 32.)

As discussed above, with respect to the malicious prosecution claim, the evidence in this case does not support a finding that David did not have a reasonable basis to believe that his claim was untruthful or that his legal theory was untenable, or that David was acting in bad faith and in knowing violation and in reckless disregard of the provisions of the Ordinance in prosecuting the UD Action. For the reasons discussed above with respect to malicious prosecution, Plaintiffs have not established a probability of prevailing on their claim for Violation of Concord Rent Ordinance.

Objections

David submitted Objections to the evidence submitted by Plaintiffs. This court rules on objections pertaining to the evidence supporting the material facts outlined in this ruling.

Objection 4: Overruled. Evid. Code § 452 (d).
Objection 12: Overruled
Objection 13: Sustained as to the truth of the matter. (Evid. Code §§ 403, 702.) Considered for purposes of demonstrating that Morgan does not contradict Michael's referenced statements.
Objection 15: Overruled
Objection 16: Sustained as to the truth of the matter. (Evid. Code §§ 403, 702.) Considered for purposes of demonstrating that Michael does not contradict Morgan's referenced statements.

9. 9:00 AM CASE NUMBER: C24-02303
CASE NAME: JOSE O'COIRBHIN VS. NORTHERN CALIFORNIA MORTGAGE FUND XII, LLC
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: FJM PRIVATE MORTGAGE FUND, LLC
TENTATIVE RULING:

Before the Court is Defendants Northern California Mortgage Fund CVII, LLC ("Northern California") (erroneously sued as "Northern California Mortgage Fund, Xii, LLC") and FJM Private Mortgage Fund, LLC's Demurrer to Complaint.

Defendants' unopposed Request for Judicial Notice is **granted**. (Cal. Evid. Code § 452 (d); *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265.)

Background and Factual Allegations

Plaintiff filed his Complaint on August 28, 2024, alleging several causes of action all relating to the alleged mishandling of his mortgage contract. Plaintiff alleges that on May 31, 2023, he refinanced real property located at 2666 Wright Avenue in Pinole, California ("Property"). The Complaint alleges that Plaintiff borrowed $450,000 from Defendants. He was to make interest only payments of $3,371.25 a month for a one-year term, with a balloon payment due on July 1, 2024, in the amount of $453,371.25. Plaintiff alleges he made all payments in a timely manner.

Unbeknownst to Plaintiff, the Property was sold at a Trustee's auction on May 13, 2024. He did not find out about the sale until after it occurred. He later found out that Defendants recorded a Notice of Default against the Property on January 9,2024, but that he was never given notice. Plaintiff was later informed that he missed the December payment, and as such his subsequent cashier's checks were supposedly returned based on the default. Plaintiff claims several of the cashier's checks were not actually returned but were instead cashed.

Standard for Demurrer

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) A complaint must be "liberally construed" and a demurrer "overruled if any cause of action is stated by the plaintiff." (*Amacorp Industrial Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 237 Cal.App.2d 724, 727.)

Legal conclusions are insufficient. (*Id*. at 1098–99; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (CCP 430.40; *see Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer may be filed to one of several causes of action in a complaint. (Cal. R. Ct. 3.1320(b).)

Analysis

Defendants note in their demurrer that: "The Complaint is rife with inconsistent numbering, incomplete and nonsensical sentences, inconsistencies between allegations and descriptions of exhibits and other errors which render it difficult to parse and cite." The Court agrees with this description. The difficulty in deciphering the Complaint begins with the identification of the parties.

The Parties

There is much confusion about who the proper parties are to this litigation. The Complaint names two defendants: (1) Northern California Mortgage Fund XII [12], LLC ("NC 12") DBA First Bridge Lending, a Delaware limited liability company, and (2) FJM Private Mortgage Fund, LLC a California limited liability company.

The exhibits attached to the complaint, however, indicate that the Deed of Trust (Ex. A) and the Mortgage Loan Disclosure Statement/Good Faith Estimate (Ex. B) identify the lender is actually a company named: Northern California Mortgage Fund XVII [17] ("NC 17"), LLC. Moving Defendant NC 17 notes this concern and indicates that "it is clear that subject loan was owned and enforced by [Northern California] XVII, so it appeared in this case along with co-defendant FJM Private Mortgage Fund, LLC." Thus, while the Complaint misidentifies the lender as NC 12 – Defendant NC 17 understands that it is the actual entity at issue. In fact, it notes that Defendant NC 12 "does not appear in any of the loan documents and in fact no longer exits, having been canceled in 2020." (RJN Exhibit 3.)

As for Defendant FJM, the Complaint contains a single allegation that identifies FJM, paragraph 2, which states:

> Plaintiff alleges upon information and belief that Defendants, Northern California Mortgage Fund XII, LLC, DBA First Bridge Lending, a Delaware Limited Liability Company and their parent company; FJM Private Mortgage Fund, LLC a California Limited Liability Company and DOES 1 through 5, inclusive of each of them, were at all times relevant herein doing business in the County of Contra Costa County, State of California. (all caps removed.)

Defendants note in their demurrer that NC 17 does not do business as First Bridge Lending. In fact, FJM is the entity that does business under the name First Bridge Lending. (Demurrer at 3:14-19.) Thus, the Complaint misidentifies the lead defendant and mistakenly indicates that it does business under a "dba" which it does not. Instead, the second defendant actually does business under that "dba."

With the above understanding of who the actual Defendants are in this matter, the Court will address the merits of the demurrer.

Defendant FJM demurrers to the entire complaint based on the failure to allege facts sufficient to allege any cause of action against it. Defendant Northern California Mortgage demurrers to the first, second, third, and fifth causes of action.

FJM Private Mortgage Fund, LLC

The Complaint contains a single allegation that identifies FJM, paragraph 2, which is set forth in full above. The only other place FJM is mentioned is as the Trustee on the Deed of Trust attached to the Complaint. As noted above, FJM does business under the name First Bridge Lending. First Bridge Lending is only mentioned once in the Complaint (other than in paragraph 2 discussed above), at paragraph 8: On or around May 31, 2023, Plaintiff refinanced the Property by obtaining a loan through Northern California Mortgage Fund Xii, LLC DBA First Bridge. (A true and correct copy of Deed of Trust is attached hereto as Exhibit "A")." It is then mentioned in Exhibits A (the Deed of Trust) and Exhibit B

(Mortgage Loan Disclosure Statement.)

There are no specific allegations linking FJM to any of the actions alleged to have injured Plaintiff. In addition, as discussed below, there are insufficient facts to support the contract and fraud based claims in general. Given FJM is not specifically identified in any of those claims, there is even less connection between those causes of action and FJM.

Defendant FJM's demurrer is **sustained in full**.

Breach of Contract (First Cause of Action)

"The standard elements of a claim for breach of contract are '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom.'" (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178, citations omitted.)

"A written contract may be pleaded either by its terms – set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference – or by its legal effect." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.) "In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms [which] … requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*Ibid.* citation omitted.)

As to this cause of action, the Complaint alleges that "Defendants refinanced Plaintiffs loans and an agreement was drafted. (See attachment "C")." (¶ 42.) Exhibit C is a collection of several checks and cashier's checks made out to Northern California. There are no other allegations which identify or describe the contract that is alleged to have been breached. While exhibits A and B reference NC 17 (and First Bridge Lending – i.e. FJM), it is unclear if either/both of those documents are supposed to be the contract(s) at issue.

Based on Plaintiff's opposition to the demurrer, it appears these are not the contract documents at issue. In his opposition, Plaintiff asserts:

> Here, Plaintiff is willing and able to provide all documents regarding the loan on the Subject Property that would evidence the existence of an agreement between the parties, including but not limited to the original note, all documents signed between FJM Capital and Plaintiff, as well as written communications that show that the Defendant breach their duty under the contract.

This seems to confirm that the contract documents underlying Plaintiff's first cause of action were not attached to the complaint. Plaintiff has also failed to allege the contract via its "legal effect." Plaintiff does not even attempt to 'allege the substance of its relevant terms [by providing] a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*McKell,* supra, 142 Cal.App.4th at 1489.)

Defendants' demurrer to the first cause of action is **sustained**.

Breach of Covenant of Good Faith and Fair Dealing (Second Cause of Action)

"A cause of action for tortious breach of the covenant of good faith and fair dealing requires that existence and breach of an enforceable contract as well as an independent tort." (*Innovative Business Partnerships, Inc. v. Inland Counties Regional Center, Inc.* (2011) 194 Cal.App.4th 623, 631-32.) "The inherent precondition to such a tort claim is the existence and breach of an enforceable contract." (*Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 57.)

Allegations that assert a breach of the covenant of good faith and fair dealing "must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints that reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.)

As the Complaint fails to properly allege the existence and breach of an enforceable contract (see above), the second cause of action for breach of the covenant of good faith and fair dealing likewise fails.

Defendants' demurrer to the second cause of action is **sustained**.

Fraudulent Misrepresentation (Third Cause of Action)

The Complaint makes clear that this cause of action is based on alleged "fraudulent and intentional misrepresentations of fact…." (¶ 58.) "The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage." (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-31.)

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered." (*Ibid.* quoting *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73 italics in original.) "[I]n the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793 citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

As noted by Defendants, the "Complaint in this case lacks the level of specificity required under case law, and therefore does not state a claim for intentional misrepresentation." (Demurrer at 6:15-16.) There are no allegations as to what the specific allegedly fraudulent statements are, who made them, when they were made, nor what authority the (unidentified) person(s) had to make the statements on Defendants' behalf.

Defendants' demurrer to the third cause of action is **sustained**.

Slander of Title (Fifth Cause of Action)

"The elements of the [slander of title] tort are (1) a publication, (2) without privilege or justification,

(3) falsity, and (4) direct pecuniary loss." (*Weeden v. Hoffman* (2021) 70 Cal.App.5th 269, 293 quoting *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030.)

According to the Complaint, the basis for this cause of action is the Defendants recording of the Trustee's Deed Upon Sale allegedly transferring title to the Property to Breckenridge Property Fund 2016, LLC ("Breckenridge"). (¶ 78.) As noted by Defendants, the Trustee's Deed Upon Sale, attached as Exhibit E to the Complaint, shows that it was recorded by Breckenridge – not either Defendant.

The court will "accept as true both facts alleged in the text of the complaint and facts appearing in exhibits attached to it." (*Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567.) "If the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence." (*Ibid*.) Thus, despite the allegation that Defendants recorded offending document the exhibit attached to the Complaint makes clear this was not the case.

In addition to the above, the recording of a deed upon sale is a privileged action. (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336.)

Defendants' demurrer to the fifth cause of action is **sustained**.

Summary and Conclusion

Defendant FJM's demurrer to the Complaint is **sustained**. Defendant NC 17's demurrer to the first, second, third, and fifth causes of action are **sustained**. As this is the first pleading, and given the liberal rules regarding leave to amend, Plaintiff is granted leave to amend. In light of Plaintiff counsel's motion to be relieved as counsel set for May 2, 2025, Plaintiff shall file any amended complaint by 4:00 p.m. on June 1, 2025.

10. 9:00 AM CASE NUMBER: C24-02303
CASE NAME: JOSE O'COIRBHIN VS. NORTHERN CALIFORNIA MORTGAGE FUND XII, LLC
***HEARING ON MOTION IN RE: STRIKE COMPLAINT**
FILED BY: FJM PRIVATE MORTGAGE FUND, LLC
****TENTATIVE RULING:****

Before the Court is Defendants Northern California Mortgage Fund CVII, LLC ("Northern California") (erroneously sued as "Northern California Mortgage Fund, Xii, LLC") and FJM Private Mortgage Fund, LLC's Motion to Strike Portions of Complaint.

Background and Factual Allegations

See Line 9.

Standard

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part of the pleading. (Code Civ. Proc. ("CCP") § 435(b)(1); Cal. Rules of Court, Rule 3.1322(b).) The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of the pleading not drawn or filed in conformity with the laws of California, a

court rule, or an order of the court. (CCP §§ 436(a)-(b); *Stafford v. Schultz* (1954) 42 Cal.2d 767, 782 ["matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded"].)

An "irrelevant" matter includes allegations not essential to the claim or defense, as well as allegations "neither pertinent to nor supported by an otherwise sufficient claim or defense." (CCP§ 431.10 (b).)

Analysis

Defendants seek to have certain paragraphs of the Complaint, and Prayer contained therein, to be stricken as improper. Specifically, those paragraphs that seek injunctive relief for alleged violations of California Homeowner's Bill of Rights ("HBOR") set forth in the sixth and seventh causes of action, and the Prayer.

The paragraphs as issue (misnumbered as 62 and 74 – i.e. the last paragraph of each the sixth and seventh causes of action) indicate that "Plaintiff is specifically entitled to injunctive relief, an order enjoining Defendants from foreclosing and recission from the sale on the Subject Property, pursuant to Civil Code § 2924.12."

That section of the Civil Code provides, in relevant part, that if a "trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of" certain sections of the HBOR. (Cal. Civ. Code §2924.12 (a)(1).) If, however, a trustee's deed upon sale has been recorded, then the defendant "shall be liable to a borrower for actual economic damages … resulting from a material violation" of the applicable sections of the HBOR. (Cal. Civ. Code § 2924.12 (b).)

The Complaint makes clear that the Property was sold at a trustee's auction and a Trustee's Deed Upon Sale was recorded on May 20, 2024. (¶ 18.) A copy of the Deed Upon Sale is attached as Exhibit E to the Complaint. Here, Plaintiff does "not seek to enjoin an ongoing violation of any of the enumerated sections [of HBOR], but seek[s] to unwind and regain title to the Property. Accordingly, [he] is not entitled to injunctive relief." (*Rockridge Trust v. Wells Fargo, N.A.* (N.D. Cal. 2013) 985 F.Supp.2d 1110, 1149.)

Conclusion

Defendants' motion to strike is **granted**. Those paragraphs seeking injunctive relief are stricken: ¶ 76 of the forth cause of action; ¶ 62 of the sixth cause of action, the second ¶ 74 of the seventh cause of action, and ¶¶ 6-9 of the Prayer.

11. 9:00 AM CASE NUMBER: MSC21-00819
CASE NAME: MICHELLE BARKER VS. JAMES WILLSON
***HEARING ON MOTION IN RE: TO ENFORCE SETTLEMENT AGREEMENT**
FILED BY: BARKER, STUART
****TENTATIVE RULING:****

Plaintiffs and Cross-Defendants Stuart and Michelle Barkers' motion to enforce the settlement is granted in part and denied in part. Defendants and Cross-Complainants James and Monique

Willsons' motion to enforce the settlement is granted in part and denied in part.

Language in the Disputed Agreement

The Court Orders that the Recording Agreement include the following underlined language:

Section 03. V-Ditch Storm Drain Easement

(B)With respect to the V-Ditch Storm Drain Easement, the Barkers shall have the same easement rights and maintenance obligations as originally intended and/or described in the 1988 Parcel Map, a true and correct copy of which is attached hereto as Exhibit "C", and any other documents related thereto.

Section 04. Private Access and Utility Easement

(A) The "Private Access & Utility Easement," as depicted on the 1988 Parcel Map is terminated, and a new private access and utility easement is established for the benefit of the Barkers, as shown on the 1988 Parcel Map, is modified as follows (the "New Driveway Easement"):

(i) [The parties agreed on the language shall be used for this subsection.]

(ii) The New Driveway Easement shall include within its boundary a paved asphalt area (the "Driveway") with a minimum width of sixteen (16) feet.

(iii) The New Driveway Easement shall include concrete curbs on the portion of the Driveway leading from the carport on the Willson Property up to the Barker Property.

(B) With respect to the New Driveway Easement described in subsection "(A)" above in this section, the Barkers shall have the same easement rights, as originally intended and described in the 1988 Parcel Map, a copy of which is attached hereto and labeled Exhibit "C," and any documents related thereto, though the location and area of the New Driveway Easement shall be as described above.

Section 07. Prescriptive Easements

(A) The Parties hereby expressly agree and acknowledge that the Barkers have established prescriptive easements for, and shall continue to hold easement rights over, all utility lines which service the Barker Property including, but not limited to, gas, water, electricity, telephone, cable, etc.

(B) The Parties hereby expressly agree and acknowledge that the Barkers have established prescriptive easements for, and shall continue to hold easement rights over, all drainage structures presently servicing the Barker Property.

Section 10. 2020 Easement Agreements

> [The parties agree on the beginning of this paragraph]... are hereby terminated and null and void to the extent necessary to give full force and effect to this Agreement.

Background

On November 3, 2023, the parties signed a written settlement agreement, "Settlement Agreement and Mutual Release". (Rozenblatt dec. ex. 1; Moss dec. ex.1, "Settlement Agreement".) Barkers live at 59A Saddle Road and the Willsons live at 59 Saddle Road. The Barkers filed this lawsuit in April 2021 and the Willsons filed a cross-complaint. The Parties' complaint and cross-complaint concern various disputes relating to certain easements on the Willsons' Property, the Parties' rights in connection with those easements, trespasses that allegedly occurred in 2016 and 2020, and private nuisance claims. (Settlement Agreement Recitals at p.1.)

Under the Settlement Agreement, the parties agreed to terminate certain easements and establish new easements and appurtenances based upon the Settlement Agreement. The parties agreed to "work together in good faith to draft, execute, notarize, and submit any additional documents ("New Easement Documents") to the County of Contra Costa as reasonably necessary to establish and record the easements and appurtenances described above." (Settlement Agreement ¶11.)

The parties have been working on the language for the document to be recorded, the Recording Agreement, but have been unable to agree on the language. The Barkers filed a motion to enforce the settlement agreement in December 2024. The Willsons filed a motion to enforce the settlement agreement. In their motion, the Willsons also request entry of a final judgment of dismissal and an order expunging the lis pendens recorded by the Barkers in 2021.

Analysis

Code of Civil Procedure "Section 664.6 permits the trial court judge to enter judgment on a settlement agreement without the need for a new lawsuit. [Citation.] It is for the trial court to determine in the first instance whether the parties have entered into an enforceable settlement. [Citation.] In making that determination, 'the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] Trial judges may consider oral testimony or may determine the motion upon declarations alone. [Citation.]" (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.)

"A settlement agreement is interpreted according to the same principles as any other written agreement. [Citation.]) It must be interpreted to give effect to the mutual intent of the parties as it existed at the time, insofar as that intent can be ascertained and is lawful. [Citations.] If the language of the agreement is clear and explicit and does not involve an absurdity, determination of the mutual

intent of the parties and interpretation of the contract is to be based on the language of the agreement alone. [Citations.]" (*Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1374.) "While the court may interpret the terms of the parties' settlement agreement, 'nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon.' [Citations.]" (*Leeman, supra,* 236 Cal.App.4th at 1374.)

The Court finds that the parties entered into an enforceable settlement agreement. The Settlement Agreement here is detailed and clear as to the material terms.

Termination of Easements

The Barkers argue that they agreed to have "the same easement rights, as originally intended" and that they should not be required to terminate the current easements. Instead, the Barkers argue that the easements should be modified, not terminated. The Court disagrees. The Settlement Agreement specifically says that "The Parties agree to terminating existing easements…". (Settlement Agreement p.1.) Further, terminating the previous easements is consistent with one of the purposes of the Settlement Agreement, which is to clarify the easements between these two properties, 59 and 59A. Finally, the Court does not see how the Barkers will be harmed by the termination of the easements since the parties have agreed to new easements which are identified in the Settlement Agreement.

Section 3, V-Ditch Storm Drain

The parties disagree over whether to include the reference to "any other documents related thereto". This language was included in the Settlement Agreement and shall be included in the recorded document.

The Court is unclear if the reference to the 1988 Parcel Map as exhibit C is an issue in dispute, but since Exhibit C appears to be the 1988 Parcel Map the Court finds that including it in the Recording Agreement is reasonable.

Section 04, Private Access and Utility Easement

The parties disagree over whether the utility easement as shown on the 1988 Parcel Map should be "terminated" (the Willsons' choice) or "modified" (the Barkers' choice). The Court finds that terminated is the appropriate word to use given the language in the Settlement Agreement that states "The Parties agree to terminating existing easements…". (Settlement Agreement p.1.)

Next, the parties disagree over whether the description of the New Driveway Easement should include that it is a paved asphalt area with a minimum width of sixteen (16) feet and has concrete curbs, or if that language was intended only to be used to provide instructions to the surveyor. The Court finds that this language shall be included in the recorded document as its details were included in the Settlement Agreement and the Barkers have not convinced the Court that the parties' intention was to exclude it from the easement description. (Settlement Agreement ¶¶5 (b),

(c).)

Finally, the parties again disagree over the reference to "any other documents related thereto". This language was included in the Settlement Agreement and shall be included in the recorded document. Further, the language attaching the Parcel Map as exhibit C to the Recording Agreement is reasonable.

Section 07, Prescriptive Easements

The parties disagree over whether the prescriptive easement should be included in the recorded document. The Barkers argue that the language should be included because it is what the parties' agreed to. The Willsons point to language at the beginning of the other easements sections "shall be established and recorded" and they point out that the prescriptive easement section does not include similar language. (Settlement Agreement ¶¶5, 6, 7 and 8.) The Willsons argue that recording the prescriptive easement will turn it into an express easement.

In the Settlement Agreement, the parties agreed that "the Barkers have established prescriptive easements for, and shall continue to hold easement rights over, all utility lines which service the Barker Property including, but not limited to, gas, water, electricity, telephone, cable, etc." and that the Barkers have a prescriptive "easement rights over, all drainage structures presently servicing the Barker Property." (Settlement Agreement ¶¶8 and 9.) The parties also agreed that "all easements and appurtenances described above… shall be appurtenant and run with the land." (Settlement Agreement ¶10.) Finally, the parties agreed that they would prepare "New Easement Documents" "as reasonably necessary to establish[] and record the easements and appurtenances described above". (Settlement Agreement ¶11.) The Settlement Agreement did not exclude the prescriptive easements from being recorded, but it does require that the parties would prepare easement documents to record the easements described above, which includes the prescriptive easements. In addition, the Settlement Agreements requires that the easements will run with the land and it is reasonable that all easements, including the prescriptive easements, would be recorded. The Court finds that the Recording Agreement shall include the prescriptive easement language.

Section 10, 2020 Easement Agreements

As to the 2020 easements, the parties disagree over whether they should be "superseded" or "rescinded", however, they both agree that the 2020 easements are "null and void to the extent necessary to give full force and effect to this Agreement."

The Willsons argue that supersede should be used because the merger clause for the Settlement Agreement states that the Settlement Agreement "supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties." (Settlement Agreement ¶17.) The Willsons also argue that if the 2020 Agreements are rescinded then the Willsons might be liable for their actions in 2020 when the 2020 Agreements were in effect. The problem with this argument is that the parties agreed to a broad mutual release. (Settlement Agreement ¶16.)

The Barkers argue that rescinded is the correct word. They point out that the 2020 Easement

Termination Agreement purported to terminate the V-Ditch Storm Drain Easement. The Barkers argue that if the 2020 Easement Termination Agreement is superseded instead of rescinded the agreement for the V-Ditch Storm Drain will not make sense. Yet, the Settlement Agreement makes clear that the Barkers will have the same easement rights and obligations as described in the 1988 Parcel Map so whether the 2020 Easement Termination Agreement is rescinded or superseded does not appear to change the Barkers' rights to the V-Ditch easement.

The parties each offer arguments on why supersede or rescind is a better choice, but neither side has convinced the Court that either one word is a materially better choice in this case. The Settlement Agreement states that the existing easements would be terminated. Therefore, the Court finds that the 2020 Easement Modification Agreements should be "terminated". In order to best effectuate the intent of the parties when the entered into the Settlement Agreement, the Court finds that the 2020 Easement Termination Agreement should also be "terminated".

Request for a Final Judgment and Expunging the Lis Pendens

As to the Willsons' request for a final judgment and their request to expunge the lis pendens, the parties should submit a proposed final judgment to the Court after the parties have finalized and recorded the Recording Agreement and the lis pendens has been expunged.

Evidence

The Willson's objections to evidence are overruled. Settlement communications are "inadmissible to prove…liability". (Evid. Code section 1152(a).) But here the parties' communications are not offered to provide liability.

12. 9:00 AM CASE NUMBER: MSC21-00819
CASE NAME: MICHELLE BARKER VS. JAMES WILLSON
***HEARING ON MOTION IN RE: ENFORCE SETTLEMENT, ENTER FINAL JUDGMENT AND EXPUNGE LIS PENDENS**
FILED BY: WILLSON, JAMES
****TENTATIVE RULING:****

See ruling on line 11.

13. 9:00 AM CASE NUMBER: MSC21-01940
CASE NAME: HUTSON VS. TAYLOR HOUSEMAN, INC
***HEARING ON MOTION IN RE: GFS BETWEEN JAURICE HUTSON AND TAYLOR HOUSEMAN, INC.**
FILED BY: HUTSON, JAURICE
****TENTATIVE RULING:****

Continued to April 4, 2025, pursuant to the parties' stipulation.

14. 9:00 AM CASE NUMBER: MSC21-02190
CASE NAME: DAVID WILLIAMS VS. JOHN HALSTEAD
HEARING ON SUMMARY MOTION
FILED BY: WILLIAMS, DAVID LEWIS
TENTATIVE RULING:

The unopposed Motion of Plaintiff David Lewis Williams for Summary Judgment on the Complaint for Registration and for Entry of Judgment Based on a Foreign Judgment against Defendant John Prescott Halstead is **granted**.

Facts

In his Complaint for Registration and for Entry of Judgment Based on a Foreign Judgment filed on October 4, 2021, Plaintiff David Lewis Williams request the recognition and entry of an Australian judgment against Defendant John Prescott Halstead. This action is brought pursuant to the provisions of CCP section 1713 et seq., the Uniform Foreign Country Money Judgments Recognition Act.

A money judgment (the Judgment) was entered by the Honorable Associate Justice Gardiner in the Supreme Court of Victoria at Melbourne, Commercial and Equity Division (the Australian court) on October 20, 2011 following an open court hearing before said court in favor of Plaintiff, and against Defendant, in the principal amount of $1,314,608.22 Australian Dollars (AUD) with an interest rate of 10.5% per annum. (Declaration Of David Lewis Williams (Williams Decl.), its ¶ 2; see also Williams Decl. Exhibit 1 for a certified copy of the Judgment and Apostille from the Australian Department of Foreign Affairs and Trade, Bates Nos. P0001-P0003.)

The Judgment is a foreign judgment granting recovery of a sum of money (i.e. a personal debt owed by Defendant) at the windup and liquidation of A.C.N. 076 673 875 PTY LTD., an Australian company, and Mark William Pearce, liquidator of that Australian company, as plaintiffs, versus John Prescott Halstead as defendant and debtor. (Williams Decl. ¶ 4; its Exhibit 2.)

Mark William Pearce, who was the plaintiff in the Australian action, assigned the Judgment to David Lewis Williams as indicated in a Notice of Assignment dated July 29, 2021. (Plaintiff's Separate Statement of Undisputed Material Facts (UMF) 1.)

As provided in that Notice of Assignment "A.C.N. 076 673 875 Ltd (In liquidation) (Company) and Mark William Pearce (Liquidator) hereby give you notice that on 29 July 2021 the Company and Liquidator have assigned absolutely all "of their right, title and interest in the Assets as defined in the Table of Definitions below) to David Lewis Williams C-134 West High Street Coifs Harbour, NSW, 2450. (UMF 2.)

Assets in the Notice of Assignment is defined as "means the Cowan Debt and the Halstead Debt." (UMF 3.)

Halstead Debt in the Notice of Assignment is defined as "means the balance owed to the Company and the Liquidator by Halstead as at the Assignment Date pursuant to the Halstead Judgment alter

adding Interest and costs." (UMF 4.)

Halstead Judgment in that Notice of Assignment is defined as "means the court judgment against Halstead in favour of the Company and the Liquidator made by the Supreme Court of Victoria in matter number CI 2011 01528 on 20 October 2011 in the sum of $1,314,608.22 (inclusive of interest) plus costs." (UMF 5.)

The Judgment indicates that "[t]he amount of the Judgment… is inclusive of interest at the rate of 10.5% (being the applicable rate under the Penalty Interest Act 1983) computed from 22 November 2010 to" the date of the Judgment, or October 20, 2011. (UMF 6.)

The Judgment indicates that "[t]he amount of the Judgment… is inclusive of interest at the rate of 10.5% (being the applicable rate under the Penalty Interest Act 1983) computed from 22 November 2010 to" the date of the Judgment, or October 20, 2011. (UMF 7.)

The sum owing to Plaintiff is the amount of the Judgment plus interest from the date of the Judgment to the date of the filing of Judgment entered in this matter. The interest accrued up to the date of the Complaint filed in the above-entitled matter is the Judgment amount (i.e. $1,291,744.35 USD) plus interest calculated above (i.e. $1,354,853.60 USD), or $2,646,597.95 USD plus interest since the filing of the complaint in the above-entitled matter. (UMF 8.)

Interest was calculated as follows: The total interest from the date of the Judgment to the date of filing the Complaint in this matter (i.e. October 13, 2021) accrued, and still accruing, is calculated as follows: $1,291,744.35 USD Judgment x 10.5% = $135,633.16 USD in interest per year / 365 days = $371.60 USD interest per day; 3,646 days (from October 20, 2011 to October 13, 2021) x $371.60 USD interest per day = $1,354,853.60 USD total interest. (UMF 9.)

The Australian court had jurisdiction over the subject matter as a court of unlimited subject matter jurisdiction and the underlying action regarded the up and liquidation of A.C.N. 076 673 875 PTY LTD., an Australian company. (UMF 10.)

Defendant was given notice of the proceedings in sufficient time to enable him to defend himself; service of process was completed. Defendant participated and was represented by legal counsel in the underlying matter. The Judgment itself identifies Defendant's legal counsel, who was present during the hearing in which the Australian Court issued the Judgment. (UMF 11.)

The Judgment rendered by the Australian court against Defendant was not obtained by fraud that deprived him of an adequate opportunity to present his case. As Defendant received notice and was represented by legal counsel in the underlying matter, he had the opportunity to present his case. (UMF 12.)

The cause of action, liquidation of the Australian company A.C.N. 076 673 875 PTY LTD., on which the Judgment is based is not repugnant to the public policy of this state or of the United States. (UMF 13.)

The proceeding before the Australian court was not contrary to an agreement between the parties

under which the dispute in question was to be determined otherwise than by proceedings before said court. (UMF 14.)

Judgment awarded by the Australian court was entered by a fair, impartial court, with Defendant being afforded sufficient due process to protect his rights. (UMF 16.)

The Judgment was not rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the Judgment. (UMF 17.)

The Judgment grants recovery of a sum of money (i.e. a personal debt owed by Defendant) at the windup and liquidation of A.C.N. 076 673 875 PTY LTD., an Australian company, and Mark William Pearce, liquidator of that Australian company, as plaintiffs, versus John Prescott Halstead as defendant and debtor. (UMF 18.)

The Judgment is not a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations. The judgment for divorce, support, maintenance, or other judgment rendered in connection with domestic relations. (UMF 19.)

The Judgment indicates that Defendant was sued in his personal capacity. (UMF 20.)

Plaintiff has not received any payment towards the Judgment. (UMF 21.)

The Judgment does not conflict with another final, conclusive and enforceable judgment and because no appeal was filed, the Judgment is final. (UMF 22.)

The Australian court had personal jurisdiction over Defendant. (UMF 23.)

Legal Standard

The United States has no reciprocal treaty with any country requiring that it recognize judgments rendered abroad. Foreign country money judgments may be enforceable in California if they meet the requirements of the Uniform Foreign-Country Money Judgments Recognition Act, and the creditor brings an action in California. (See *AO Alpha-Bank v. Yakovlev* (2018) 21 Cal.App.5th 189, 199-200; *Roulier v. Cannondale* (2002) 101 Cal.App.4th 1180, 1187; see also, *Ohno v. Yasuma* (9th Cir. 2013) 723 F.3d 984, 987.)

Under the Act, "foreign country" means a government other than the United States; a state, district, commonwealth, territory or insular possession of the United States; a federally recognized Indian nation, tribe, pueblo, band or Alaskan Nature village, or any other government where California's decision whether to recognize that government's judgment is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution. (CCP § 1714(a).)

Where recognition of a foreign country judgment is sought as an original matter, the issue shall be raised by filing an action seeking recognition of the judgment as plaintiff has done here. (CCP § 1718(a); see *Hyundai Secur. Co. Ltd. v. Lee* (2013) 215 Cal.App.4th 682, 689-690; *Manco Contracting Co. (W.W.L.) v. Bezdikian* (2008) 45 Cal.4th 192, 207 & fn. 12.) A party seeking recognition of a foreign

country judgment must then proceed in accordance with normal procedures applicable to civil actions, as no special procedures apply. (*Hyundai Secur. Co. Ltd. v. Lee, supra*, at 693 [trial court erred in recognizing foreign country judgment upon petition for entry of judgment rather than upon duly noticed motion for summary judgment].)

The party seeking recognition of the foreign country judgment has the burden of establishing that the judgment is entitled to recognition under the Act. (CCP § 1715(c); *AO Alpha-Bank v. Yakovlev*, *supra*, at 199; *Ohno v. Yasuma*, *supra*, at 991.)

CCP § 1715 states:

> (a) Except as otherwise provided in subdivision (b), this chapter applies to a foreign-country judgment to the extent that the judgment both:
>
> (1) Grants or denies recovery of a sum of money.
>
> (2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.
>
> (b) This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is any of the following:
>
> (1) A judgment for taxes.
>
> (2) A fine or other penalty.
>
> (3)
>
> (A) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.
>
> (B) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations may be recognized by a court of this state pursuant to Section 1723.
>
> (c) A party seeking recognition of a foreign-country judgment has the burden of establishing that the foreign-country judgment is entitled to recognition under this chapter.

CCP § 1716 states:

> (a) Except as otherwise provided in subdivisions (b), (c), (d), and (f), a court of this state shall recognize a foreign-country judgment to which this chapter applies.
>
> (b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:
>
> (1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(2) The foreign court did not have personal jurisdiction over the defendant.

(3) The foreign court did not have jurisdiction over the subject matter.

(c)(1) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(A) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(D) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(E) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a foreign-country judgment if the party seeking recognition of the judgment demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) A court of this state is not required to recognize a foreign-country judgment if the judgment conflicts with another final and conclusive judgment.

(e) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b), (c), or (d) exists.

(f) A court of this state shall not recognize a foreign-country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code.

Analysis/Order

Based on the evidence presented with this motion, the Court finds that Plaintiff has met his burden to

show that the money judgment is conclusive between all parties to the same extent as a sister state judgment entitled to full faith and credit in this state would be conclusive and enforceable in the same manner and to the same extent as a judgment rendered in this state. (See CCP § 1719; see *Hyundai Secur. Co. Ltd. v. Lee* (2013) 215 Cal.App.4th 682, 689.) Once coverage under the Act is shown, there is a presumption in favor of enforcement, and the party resisting recognition must establish a ground for nonrecognition. (*De Fontbrune v. Wofsy* (9th Cir. 2022) 39 F.4th 1214, 1222.)

Plaintiff filed and served this motion on November 21, 2024. Defendant Halstead's last day to oppose was March 10, 2025. Because Halstead did not file any opposition the motion, he does not meet his burden to establish a ground for nonrecognition of the Judgment. The motion is therefore granted.

Plaintiff shall prepare an order consistent with this ruling and serve and file notice of entry of order.

15. 9:00 AM CASE NUMBER: MSC21-02521
CASE NAME: PIERCE VS. COUNTY OF CONTRA COSTA
***HEARING ON MOTION IN RE: STRIKE OR TAX COSTS**
FILED BY: PIERCE, CHARLES ROYCE
****TENTATIVE RULING:****

The motion to tax costs is denied.

16. 9:00 AM CASE NUMBER: N24-0406
CASE NAME: WEST SAN CARLOS COURT APARTMENTS LLC VS. WOO DONG HANG
***HEARING ON MOTION IN RE: STRIKE ANSWER**
FILED BY: WEST SAN CARLOS COURT APARTMENTS LLC
****TENTATIVE RULING:****

The motion to strike the answer is granted. It appears Kang is attempting to file an answer on behalf of the corporation. As Kang is not an attorney, he is not entitled to practice law. Kang cannot represent the corporation.

Law & Motion
Add On

17. 9:00 AM CASE NUMBER: C22-02171
CASE NAME: ERNIE & SONS SCAFFOLDING, DBA UNIQUE SCAFFOLD, A CALIFORNIA CORPORATION VS. JOHN SOTO
***HEARING ON MOTION IN RE: TO ENFORCCE JUDGMENT**
FILED BY:
****TENTATIVE RULING:****

Plaintiff Ernesto Negrete Jr. [Plaintiff] brings this Motin to Enforce Judgment [Motion] requesting a ruling that Defendant John Soto is not entitled to reimbursement for reimbursement requests submitted on June 30, 2023, and October 13, 2023. The Motion is opposed by Defendant John Soto [Defendant].

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

Request for Judicial Notice

Defendant requests that this court take judicial notice of his Complaint, filed December 22, 2023, and First Amended Complaint, filed March 20, 2024, in the matter entitled John Soto, an individual, in his individual capacity and derivatively on behalf of Ernie & Sons Scaffolding, dba Unique Scaffold, v. Ernesto Negrete Jr., et al., Contra Costa Superior Court Case No. C23-03256 [Subsequent Action].

On Reply, Plaintiff requests that this court take judicial notice of Defendant's Objection to the Ex Parte Application to Enforce Judgment and Compel Delivery of Equipment filed December 12, 2023, and Defendant's Ex Parte Application for an Order Returning Converted Funds in Violation of the Settlement Agreement, filed on December 12, 2023.

The parties' requests for judicial notice of the records of this court are granted pursuant to this court's authority under Evid. Code § 452 (d).

Background

Plaintiff filed this action on October 7, 2022. The parties attended mediation in December 2022 to resolve the alleged claims and to wind-up and dissolve their jointly owned business, Ernie & Sons Scaffolding dba Unique Scaffold [E&S Corp.]. (Declaration of [Dec.] Plaintiff, ¶¶ 6-11, Ex. A [Settlement Agreement], §§ 1.7, 1.10.) They reached a tentative settlement at mediation, which was memorialized in the Settlement Agreement executed by the parties effective May 17, 2023. (Plaintiff Dec., ¶ 10, Ex. A)

That Settlement Agreement provides at Section 1.10 that "… the Parties intend to settle and dispose of, fully and completely, the Disputes [defined in 1.7] and any and all claims … that were raised or could have been raised relating to or arising out of the Disputes, Action, E&S, the Soto Entity, the Negrete Entity, S2W, or any other matter." The Settlement Agreement further provides in Section 2:

> 2.4 Access to Financial Information. Negrete and Soto agree that, during the transition period, both Negrete and Soto, and any of their respective designated representatives, are entitled to have full access to any and all E&S' financial information …
>
> 2.5. Payment of E&S' Liabilities. Negrete and Soto agree that, to the fullest extent possible, E&S will pay its liabilities with funds collected from its accounts receivable. If E&S is unable to timely pay all its liabilities with funds collected from its accounts receivable, Negrete and Soto agree that E&S will (i) sell a number of assets sufficient to timely pay its remaining liabilities and that the specific assets to be sold to make such a payment will be negotiated

> and agreed upon at that time or (ii) reimburse Negrete and/or Soto the amount that either has directly paid towards such an E&S liability after the Tentative Settlement Date, plus interest on the amount directly paid at the minimum legal interest rate. … If Negrete or Soto directly pays an amount of money towards an E&S debt, liability or obligation after the Tentative Settlement Date, such shareholder must provide the other shareholder documentation reflecting and confirming such a payment was made within five (5) court days of the Effective Date or of making such payment, whichever is the latter. If sufficient and reliable backup documentation is timely provided to support either shareholder's payment of an E&S debt (with monies that did not belong to E&S), then the respective shareholder will be reimbursed for said payment by E&S.

Plaintiff asserts that Defendant submitted two requests for reimbursement of expenses, which included email correspondence sent June 30, 2023, for expenses incurred from November 3, 2022, to June 11, 2023, and a letter sent via email on October 13, 2023, that updated the list of expenses through August 23, 2023. (Dec. D. Hallett, ¶¶ 2, 4, Ex. A, D.) Defendant contends that such correspondence was not a request for reimbursement but related to further settlement negotiations. (Dec. R. Hanlon, ¶ 10)

On November 13, 2023, this court granted Plaintiff's Motion to Enforce the Settlement Agreement and ordered all terms of the Settlement Agreement be entered as judgment herein. Judgment was entered on December 8, 2023.

Defendant opposed the entry of judgment on the basis that Defendant had recently discovered evidence of Plaintiff's misappropriation of funds due to E&S Corp. (Plaintiff's Request Judicial Notice [RJN], Ex. A, B.) In ruling on Plaintiff's Motion to Enforce Settlement, this court found that "the parties reached an agreement that was reduced to writing and signed by both parties and their attorney. As such pursuant at the request of Plaintiff, the Court enters judgment as agreed upon by stipulation of the parties." (Order after hearing on November 13, 2023.)

Thereafter, on December 22, 2023, Defendant filed the Subsequent Action. The Subsequent Action alleges claims against Plaintiff, including but not limited to conversion, theft under Penal Code § 496(c), breach of fiduciary and fraud in the inducement, arising from Plaintiff's alleged misappropriation of funds between April 2023 and August 2023. (Defendant's RJN, Ex. A, B.) Defendant has since conducted discovery to obtain evidence of Plaintiff's knowledge and handling of the disputed funds. At Plaintiff's deposition on March 25, 2024, Defendant obtained testimony from Plaintiff that conceded that Plaintiff received and deposited amounts due for work of E&S Corp. in the bank account of his new entity. (Dec. R. Hanlon, ¶ 7, Ex. B. The transcript also includes Plaintiff's testimony regarding Plaintiff's payment of certain amounts on behalf of E&S Corp. from the funds that he collected. (*Ibid*.)

Plaintiff's Motion now asks this court to enforce the terms of the Judgment by ruling that Defendant is not entitled to recover those amounts listed in his June 13, 2023, and October 13, 2023, correspondence. Defendant asks this court to deny this Motion, due to Plaintiff's breach of the Settlement Agreement and unclean hands, and because the requested ruling would not meet with

the core purpose of the Settlement Agreement: the dissolution of E&S Corp.

Standard

Plaintiff's Request for Enforcement of Judgment

Plaintiff asks this court to strictly enforce the terms of the parties' settlement agreement to extinguish Defendant's right to reimbursement thereunder, pursuant to the judgment entered herein. While Plaintiff's Notice does not set forth the legal basis for this Motion, Plaintiff's Memorandum of Points and Authorities [MPA] relies on Code of Civ. Proc. [CCP] §§ 128(a)(4), 177(b), and 664.6, and *Estate of Jones* (2022) 82 Cal.App.5th 948. (See Motion MPA, 7: 10-18; see also *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125; Code Civ. Proc., § 1010; Cal. Rule of Court 3.1110 (a).) On reply, Plaintiff also cites *Hines v. Lukes* (2008) 167 Cal.App.4th 1174.

CCP § 128 provides: "(a) Every court shall have the power … (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein." CCP § 128 also provides that this "court shall have the power … (8) To amend and control its process and orders so as to make them conform to law and justice."

CCP § 177 provides: "A judicial officer shall have power: … (b) To compel obedience to the officer's lawful orders as provided in this code."

CCP § 664.6 provides:

> (a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

In *Estate of Jones* (2022) 82 Cal.App.5th 948, the trial court was asked to enforce the terms of a stipulated judgment that required payment of the monetary judgment amounts from the proceeds of the sale of a particular property, which sale was pending at the time the stipulated judgment was entered. The moving party asked the court to appoint a temporary trustee to sell the property and to pay the stipulated judgment amount from such sale proceeds. The trial court, "[r]elying on what it deemed the unambiguous language in the settlement agreement, and declining to consider extrinsic evidence," determined that, the completion of the pending sale of the property was a "condition precedent [that] never materialized," and thus held that "there was 'nothing … for the court to enforce.'"

After review of the issues, the appellate court in *Estate of Jones* held: "[t]he order denying enforcement of the stipulated judgment is reversed, and the matter remanded for further proceedings." (*Id*. at 955.) With respect to the order for further proceedings, the appellate court held: "We remand for the court to exercise its inherent authority to enforce the stipulated judgment, including, where appropriate, making determinations regarding breach and excuse from

performance." (*Ibid*.)

> Stipulated judgments are interpreted according to contract principles. [Citation.] When interpreting a contract, courts give effect to the parties' mutual intentions, first examining the contract's plain language. [Citation.] The language governs if it is clear, explicit, and does not involve absurdity. [Citation.] It must be read in the context of the whole instrument and circumstances of the case. [Citation.] The construction should give effect to all provisions without inserting or omitting text. (Code Civ. Proc., § 1858.)
>
> A "condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises." [Citation.] Conditions precedent may be created either expressly—by words such as "'subject to'" or "conditioned upon"—or impliedly. [Citation.] They are generally disfavored and are strictly construed against a party arguing the agreement imposes one. [Citation.] Courts will not interpret a provision as a condition precedent absent clear, unambiguous language requiring that construction. (*Ibid.*)

(*Estate of Jones* (2022) 82 Cal.App.5th 948, 952-953.)

In *Hines v Lukes*, the trial court entered an order confirming terms of a settlement agreement under CCP § 664.6. Therein, the appealing party, Lukes, contended that the settlement terms should not be entered as judgment because her non-performance was excused since her performance was prevented by Hines, pursuant to Civ. Code §§ 1436, 1439, 1511. The appellate court held, "the [trial] court was authorized to enter a judgment pursuant to the settlement regardless of whether [the] nonperformance of her settlement obligations was excused." (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185.)

Defendant's Opposition to the Requested Enforcement

In opposition, Defendant argues that, according to contract principles, Plaintiff's material breach of the Settlement Agreement excuses Defendant's alleged non-compliance with the terms at issue, pursuant to Civ. Code § 1439, *Brown v. Grimes* (2011) 192 Cal.App.4th 265, and *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th 516. (See also *Walker v. Harbor Business Blocks Co.* (1919) 181 Cal. 773; *De Burgh v. De Burgh* (1952) 39 Cal.2d 858.)

Civ. Code § 1439 provides: "Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself."

The case of *Brown v Grimes* relates to interpretation and enforcement of a fee-sharing agreement between lawyers. (*Brown*, supra, 192 Cal.App.4th 265, 268.) In that case, the appellate court discussed both the principles of condition precedent and unclean hands.

> When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract. … Normally the question of whether a breach of an obligation is a material breach,

> so as to excuse performance by the other party, is a question of fact. … Whether a partial breach of a contract is material depends on 'the importance or seriousness thereof and the probability of the injured party getting substantial performance.' … 'A material breach of one aspect of a contract generally constitutes a material breach of the whole contract.'

(*Id.* at 277-278 [citations omitted].) "The determination of whether a promise is an independent covenant, so that breach of that promise by one party does not excuse performance by the other party, is based on the intention of the parties as deduced from the agreement." (*Id*. at 279.)

Additionally, "'[t]he [unclean hands] doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim.'" (*Id*. at 282.) "[T]he party seeking to invoke the unclean hands doctrine must have been injured by the alleged wrongful conduct." (*Id*. at 284.) "His misconduct must be so intimately connected to the injury of another with the matter for which he seeks relief, as to make it inequitable to accord him such relief." (*Id*. at 283.)

The case of *Sanchez v County of San Bernardino* involved a breach of contract claim based on a severance agreement. (*Sanchez*, *supra*, 176 Cal.App.4th at 518.) The ruling therein discussed the principle that "[a] party may waive a contract right by conduct so inconsistent with the intent to enforce the right as to induce a reasonable belief that it has been relinquished." (*Id*. at 529.) Based on the evidence at issue, the appellate court held that "[a] reasonable jury could conclude that the County's breach of the confidentiality provision excused any further performance by Sanchez." (*Id*. at 530.)

Analysis

Court's Authority to Enforce and Interpret the Judgment

This court has "inherent authority to enforce the stipulated judgment, including, where appropriate, making determinations regarding breach and excuse from performance." (*Estate of* Jones, 82 Cal.App.5th at 955.) "Stipulated judgments are interpreted according to contract principles." (*Id*. at 952.) Accordingly, this court reviews the terms of the terms of the Settlement Agreement in light of the contract principles discussed in the parties' briefs.

Breach of Material Terms

Plaintiff's Motion recognizes that "[t]he Settlement Agreement provides how Negrete and Soto shall wind up and dissolve E&S. *See id.*, ¶¶10-11; Exh. A." (Motion MPA at 4:26-27.) On opposition, Defendant agrees and argues that "the core purpose of the Agreement from Soto's perspective was to facilitate the prompt and efficient dissolution of E&S [Corp.]." (Opposition MPA at 7:21-22.) This intent is supported by the Settlement Agreement's Recitals at Section 1.10.

Plaintiff's requested relief rests on a five-day deadline for submission of expenses that is found in the middle of Section 2.5 of the Settlement Agreement. Pursuant to the holding in *Estate of Jones*, the subject reimbursement clause must be read within the context of the Settlement Agreement to

give full effect to the intent of the parties. (82 Cal.App.5th at 952.) Further, the language of the reimbursement provision must be read in the context of the whole instrument and circumstances of the case. (*Ibid*.)

The first sentence of Section 2.5 states: "Negrete and Soto agree that, to the fullest extent possible, E&S will pay its liabilities with funds collected from its accounts receivable." This language clearly and explicitly sets forth the intent of the parties that accounts receivable should be the first source for payment of liabilities of E&S Corp. Additionally, the preceding Section 2.4 provides that "Negrete and Soto agree that, during the transition period, both Negrete and Soto, and any of their respective designated representatives, are entitled to have full access to any and all E&S' financial information." Also, the second paragraph of Section 2.5 contemplates that the parties would communicate once a week with a written list of liabilities or expenses that they believe E&S Corp. should pay and provides the mechanism for discussion and resolution of payment of such amounts.

Here, Plaintiff seeks to extinguish Defendant's right to receive payment for the E&S Corp. expenses Defendant paid based on a five-day deadline, even though Plaintiff collected and retained funds due to E&S Corp. without notice to Defendant during the same period. Plaintiff has not made a showing that the five-day deadline is a material term of the parties' agreement or the resulting Judgment. Moreover, in the context of the whole instrument and the circumstances of the case, Plaintiff has not shown that the parties' Settlement Agreement contemplated cutting off the right to seek reimbursement based on non-compliance with of the five-day period in Section 2.5, particularly when accounts receivable are available to pay such liabilities and expenses.

The court finds that the parties' intent, as evidenced by the Settlement Agreement, would not be effectuated by an order narrowly construing the reimbursement terms in Section 2.5 so as to extinguish any right Defendant has to reimbursement for costs submitted on June 13, 2023, and October 13, 2023, as requested herein.

Unclean Hands

Here, Defendant presents evidence to show that Plaintiff has not acted fairly in the matter for which he seeks a remedy, namely extinguishing Defendant's right to claim reimbursement of expenses and liabilities he paid on behalf of E&S Corp. Defendant has shown that Plaintiff's misconduct is intimately connected to Defendant's injury, specifically that accounts receivable were not readily available for payment of costs of E&S Corp. due to Plaintiff's retention of such amounts in his separate bank account, that it would to be inequitable to accord Plaintiff the relief he seeks.

To obtain relief from this court, "[Plaintiff] must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Brown*, supra, 192 Cal.App.4th at 283.) This court finds that Defendant has made sufficient showing that Plaintiff has come to this court with unclean hands. Thus, on such further basis and for the reasons discussed above with respect to interpretation of the material terms of the Settlement Agreement, the Motion is denied.