SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 07/10/2025

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 email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their 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).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. 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.

Courtroom Clerk's Calendar

1. 10:00 AM CASE NUMBER: C22-01725
CASE NAME: LONELL SWEARINGTON VS. DONOR NETWORK WEST
HEARING IN RE: INFORMAL DISCVOERY CONFERENCE SET BY THE COURTROOM AS REUQESTED BY COUNSEL ON 06.02.2025
FILED BY:
TENTATIVE RULING:
Appearance (by zoom is acceptable) required.

Law & Motion

2. 9:00 AM CASE NUMBER: C22-01352
CASE NAME: ETHAN LYNCH VS. JOHN MUIR HEALTH, A CORPORATION
HEARING ON SUMMARY MOTION
FILED BY: DIABLO MX RANCH, LLC., A CORPORATION

TENTATIVE RULING:

The Court continues the hearing on this motion to **August 28, 2025, at 9:00 a.m.**

3. 9:00 AM CASE NUMBER: C23-01684
CASE NAME: STAR JOSHUA VS. THE COUNTY OF CONTRA COSTA
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY: JOSHUA , STAR
TENTATIVE RULING:

Plaintiff Star Joshua moves for preliminary approval of her class action settlement with defendant Contra Costa County. The case arises from an alleged "data incident."

Hearing required on two specified issues.

A. Background and Settlement Terms

The complaint alleges that on September 19 and 20, 2022, hackers gained access to two County employees' email accounts, the attachments to which included highly sensitive personally identifiable information ("PII").

The original complaint was filed on July 11, 2023. A First Amended Complaint was filed on August 30, 2023, and remains the operative complaint.

The parties engaged in early informal discovery and engaged a mediator. Informal discovery included identification of the number of affected persons, the categories of PII involved, and the number of notices to affected persons.

The proposed settlement would certify a class of all persons with California mailing addresses who were mailed a letter sent from Defendant County entitled "NOTICE OF DATA BREACH" on or about May 10, 2023. It includes approximately 15,591 members.

Class members will receive the following benefits: reimbursement of documented "extraordinary" economic losses up to $5,000; reimbursement of documented "ordinary" losses up to $500, and up to $100 in "lost time" compensation (at a rate of $25 per hour). In addition, class members may claim two years of credit monitoring and identity theft protections services. The county also will implement information security practice changes to reduce the risk of similar data incidents in the future.

"Ordinary" and "extraordinary" are defined in the agreement, with "extraordinary" having eight categories of expenses eligible for reimbursement. "Ordinary" losses are somewhat less demanding, including, but not limited to thirteen identified types of expenses that qualify. The difference appears to be that "extraordinary" expenses are intended to cover expenses that resulted from actual access to and misuse of PII in ways that had a direct cost to the class member. Any disputes about eligibility for reimbursement may be resolved by the settlement administrator.

The class will be given mail notice. A settlement website will be maintained, which can be used for filing reimbursement claims. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. The class members will be required to file a claim. Class members may object or opt out of the settlement. The Settlement administrator would be Eisner

Advisory Group. They estimate settlement costs at $47,551.

The settlement contains release language covering "released claims," which are identified as "all past, present, and future claims and causes of action including, but not limited to any individual or class-wide causes of action…based on or relating to, concerning or arising out of the Data Incident." (Settlement, Par. 1.20.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Because all released claims must be related to the Data Incident, which is specially defined in the agreement and alleged in the First Amended Complaint, these requirements appear to be satisfied.

Where the administrator issues a check for expense reimbursement, "any funds disbursed by Defendant for a voided check shall be paid to a mutually agreeable cy pre recipient to advance privacy interests," subject to this Court's approval. (Par. 10.13.) Counsel have provided the Court with no material meeting the requirements for a cy pres distribution to a non-profit entity. Counsel must provide a declaration concerning the cy pres recipient that meets the requirements of Code of Civil Procedure section 382.4. In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent[.]" Counsel also must attest that they do not have any pecuniary interest in the cy pres recipient, and must "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.) The Court understands that the payments here are unlikely to be large, and that the settlement provides that the recipient of the funds must be approved by the Court. Nonetheless these requirements must be established "in connection with the hearing for preliminary approval" of the settlement. (*Id*.)

Plaintiffs' counsel will seek, by motion, attorney's fees not to exceed $150,000. The named plaintiff seeks a service award in the amount of $2,500. These fees, plus the costs of claims administration and the costs of class notice, will be paid by the County.

The moving papers do not contain any discussion of the extent to which any individual's information actually was accessed and the nature of their damages. Nor is there any discussion of the extent to which class members actually are likely to file claims, which would presumably be addressed by experience with similar settlements.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also

Amaro v. Anaheim Arena Mgmt., LLC, supra, 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees

Plaintiff will seek no more than $150,000 in attorney's fees. The basis for this amount is not stated. Often in class actions, the amount sought is a percentage of a common fund. There is no identified fund here, however. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval. Under these circumstances, it appears that a lodestar analysis would be appropriate. The Court also notes that two firms will split the fee equally, which has been agreed to by the class representative. This would appear to comply with Rules of Professional Conduct Rule 1.5.1.

Similarly, the requested representative payment of $2,500 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

The Court has two concerns that need to be addressed, each of which is noted above.

First, counsel need to provide some indication of the likely damages experienced by class members, and the likelihood that class members actually will submit claims.

Second, counsel must address the requirements for cy pres payments as required by Code of Civil Procedure sections 382.4 and 384(b).)

The Court does not foresee any other barriers to preliminary approval. If approval is ultimately granted, counsel will be directed to prepare an order reflecting this tentative ruling, in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld

by the claims administrator pending satisfactory compliance as found by the Court.

4. 9:00 AM CASE NUMBER: C23-02891
CASE NAME: TAKENYA CLINTON VS. THE PERMANENTE MEDICAL GROUP
***HEARING ON MOTION IN RE: TO CHANGE VENUE**
FILED BY: CLINTON, TAKENYA B.
****TENTATIVE RULING:****

Before the Court is Plaintiff Takenya Clinton's Motion to Change Venue. Plaintiff seeks to have this matter transferred to the Superior Court in and for Alameda County.

Plaintiff's Motion is **denied.**

Factual and Procedural Background

Plaintiff has worked for Defendant since 2016. On November 28, 2023, she filed her initial complaint in pro per, naming Kaiser Permanente and Joshua Ausejo as Defendants. The Complaint asserted various claims including retaliation, loss of wages, and loss of earnings. On January 29, 2024, Plaintiff filed her First Amended Complaint – again acting in pro per. Proofs of service of summons were filed on February 14, 2024.

Defendant Kaiser filed a demurrer on April 10, 2024. At a May 21, 2024, CMC, the Court indicated that defense counsel agreed to allow Plaintiff to file a new amended complaint within two weeks – and ordered as such. A Second Amended Complaint was filed on May 21, 2024. Defendants demurred to the 'intentional tort' cause of action contained therein. The unopposed demurrer was sustained. Plaintiff was given leave to file a third amended complaint. No such amended complaint was filed. Kaiser filed an answer on November 11, 2024.

On March 24, 2025, a Substitution of Attorney was filed by Plaintiff indicated she retained counsel to represent her in this matter – The Law Office of Traci Hinden and Alexander Morrison + Fehr LLP. Plaintiff's counsel filed the instant motion for change of venue on April 4, 2025.

Standard

"Venue is determined based on the complaint on file at the time the motion to change venue is made." (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 482.) For venue purposes, actions are classified as local or transitory. (*Id.* at 482 fn. 5.) When the main relief sought is personal – *i.e.* does not relate to rights in real property – the action is considered 'transitory.' (*Ibid.*) "Venue of transitory actions against corporations is governed by [CCP] section 395.5." (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 927.) That section provides:

> A corporation or association may be sued in [1] the county where the contract is made or is to be performed, or [2] where the obligation or liability arises, or the breach occurs; [3] or in the county where the principle place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

"The purpose of the section is to permit a wider choice of venue in suits against a corporation than is

permitted in suits against an individual defendant." (*Missions Imports, Inc.,* supra, 31 Cal.3d at 928.)

"[I]n the absence of an affirmative showing to the contrary, the presumption is that the county in which the title of the action shows that it is brought is, prima facie, the proper county for the commencement and trial of the action." (*Smith v. Stanford Research Institute* (1963) 212 Cal.App.2d 750, 753.)

Thus, a party "seeking a change of venue has the burden of negating the propriety of venue as laid on all possible grounds." (*Smith,* supra, 212 Cal.App.2d at 754.) "It is incumbent upon the moving party to show not only the place of its residence or principle place of business, but also that the contract was not made, that it was not performed, that the obligation or liability did not arise and that the breach did not occur in the county wherein the venue is originally placed by the filing of plaintiff's complaint." (*Kupersmith v. San Francisco Shippers, Inc.* (1960) 181 Cal.App.2d 144, 146 quoting *Owens v. Paraco, Inc.* (1958) 160 Cal.App.2d 824, 826.)

Analysis

According to Plaintiff, the "[r]elevant statute, Code of Civil Procedure §395.5, provides, in part: 'A corporation or association may be sued in the county […] where the principal place of business of such corporation is situated.'" (Motion at 4:8-10.) She notes that a defendant is entitled to have an action tried in the county of his or her residence. (*Id.* at 4:10-17 citations omitted.) She also cites to the Government Code relevant to her FEHA claims, which "affords a wide choice of venue to persons who bring actions under the FEHA." (*Id.* at 4:18-26.) The Government Code provides, in relevant part:

> An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office." (Gov't Code § 12965 (c)(3).)

Based on the above, Plaintiff argues that venue is proper in Alameda Superior Court because that is where Kaiser's principal place of business is.

It is not enough for Plaintiff to show that venue is proper in Alameda County. Instead, the party moving to transfer venue has the burden to demonstrate that the plaintiff's venue selection is "not proper under any of the statutory grounds." (*Ibid.* citation omitted.) In other words, Plaintiff must show that Contra Costa County is not an appropriate venue.

As noted by Defendant, section 395.5 allows for a corporation to be sued 'where the liability arises.' "For purposes of laying venue, a liability 'arises' where the injury occurs." (*Black Diamond Asphalt, Inc. v. Superior Court* (2003) 109 Cal.App.4th 166, 172.) Plaintiff confirms that she worked for Defendant in "Kaiser's Richmond location," *i.e.* in Contra Costa County. (Clinton Decl. ¶ 2.) Under a plain reading of Section 395.5, Defendant's liability arose in Conta Costa County because that is where the Labor Code violations allegedly occurred. (See e.g. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069, 1075-77 ("*Crestwood*")) Likewise, under the relevant Government Code section, an action "may be brought in any county in the state in which the unlawful practice is alleged to have

been committed…." Again, the alleged unlawful practices are alleged to have been committed in Contra Costa County.

On Reply, Plaintiff argues that her "choice of venue is presumed correct," and that Defendant "intentionally miscites *Fontaine v. Sup. Ct.* (2009) 175 Cal.App.4th 830." Plaintiff argues that "*Fontaine's* actual holding was based on defendant's motion to change venue and the defendant's heavy burden, ***as the moving party***, to overcome the strong presumption in favor of the plaintiff's choice of venue." (Reply at 2:7-9 emphasis added.) She then argues that "Plaintiff's choice of venue is Alameda County," and that her "choice of venue is presumed correct." (*Id.* at 2:9-11 quoting *Crestwood*, supra, 60 Cal.App.5th at 1075.)

Plaintiff is the party misinterpreting the case law. Plaintiff had the choice of venues when she initiated this action. She chose to file in Contra Costa County. To the extent she is claiming she did not understand her options because she was representing herself, the argument is not well taken.

"[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 894-85.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Id.* at 895.)

"[J]udges are not required to act as counsel for self-represented part[ies], instead, self-represented litigants "must expect and receive the same treatment as if represented by an attorney – no different, no better, no worse." (*Nuno v. California State University, Bakersfield* (2020) 47 Cal.App.5th 799, 811 quoting *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.)

As outlined above, Contra Costa County is a valid venue for this action. As such, Plaintiff – as the party seeking to change venue – bears the burden of establishing that Contra Costa County is not a proper venue under any applicable statute. (*Crestwood*, supra, 60 Cal.App.5th at 1075.) "It is elementary that on a motion such as this for a change of venue, the burden is on the moving party to show that the action was not brought in the proper county and that another place of trial should be ordered." (*Rudnick v. Delfino* (140 Cal.App.2d 260, 265; see also *Tutor-Saliba-Perini Joint Venture v. Superior Court* (1991) 233 Cal.App.3d 736, 744["The moving parties have the burden of negating plaintiff's choice of venue."]; *Buran Equip. Co. v. Superior Court* (1987) 190 Cal.App.3d 1662, 1666 ["The burden rests on the party seeking change of venue …."].)

Conclusion

Plaintiff has failed to met her burden to show that Contra Costa County is not a proper venue for this matter. As such, the motion for change of venue is **denied.**

5. 9:00 AM CASE NUMBER: C24-02134
CASE NAME: ASHWIN KRISHNA VS. JUAN FEJA
HEARING ON DEMURRER TO: 2ND AND 4TH CAUSES OF ACTION ON 1ST AMENDED COMPLAINT FILED BY: JOHN MUIR HEALTH
TENTATIVE RULING:
Continued on the Court's motion to **August 14, 2025, 9:00 a.m.**

6. 9:00 AM CASE NUMBER: L23-06045
CASE NAME: IAN EPSTEIN VS. KOJIE KHOJASTEHZAD
***HEARING ON MOTION IN RE: TO SET ASIDE ENTRY OF DEFAULT/ JUDGMENT (CONTINUED)**
FILED BY: KHOJASTEHZAD, KOJIE
****TENTATIVE RULING:****

Introduction

Before the Court is Defendant's Motion to Set Aside Default. For the reasons stated below, **the parties are directed to appear.**

The Court initially heard this matter on April 17, 2025, issuing an extensive tentative ruling. The Court was not inclined to set aside the underlying default, because the motion only provides for attorney fault as to the default judgment and is silent about the underlying default. The Court, however, gave the parties an opportunity to brief the issue of the effect of case law the Court had found, but which had not been addressed by the parties. The case, *Cisneros v. Vueve* (1995) 37 Cal.App.4th 906, has now been briefed by each side. The briefing confirms this Court's understanding of *Cisneros*, i.e., that it provides that where a default and default judgment have both been entered, the attorney's declaration of fault is not sufficient if it only addresses the entry of the default judgment, and not the default itself.

In the supplemental briefing, defendant now files supplemental declarations, stating that "as further confirmed and clarified by the supplemental declarations of Fearzad Tabatabai and Kojie Khojastelhzad, Mr. Khojastehzad asked Mr. Tabatabai to retain him on or before January 22, 2023, well during the 30-day statutory time for Defendants to respond to Plaintiff's Complaint." In his original declaration, however, defendant asserted only that he received a request for entry of default dated February 12, 2024, "sometime in or after February 2024" and that he then "telephoned attorney Farzad Tabatabai, to request that he represent me in this matter." Under the circumstances, the credibility of these declarations must be examined closely. Counsel are to appear to discuss the provision of more detailed declarations that address, among other things, the records reviewed in order to establish the matters attested to in the supplemental declarations.

Procedural History

Plaintiff Ian Epstein filed his complaint on October 24, 2023. The form Complaint uses two cause of actions attachments but asserts three causes of action: (1) breach of contract, (2) violation of business and professions code section 17500 et seq., and (3) fraud. The essence of the Complaint is that Defendants promised a thoroughly inspected 2011 Nissan Murano of good quality and in safe working order to Plaintiff and delivered a vehicle with a non-operating air conditioner and a transmission that failed shortly after delivery.

Mr. Epstein served all Defendants with the complaint on January 9, 2024. On February 15, 2024, Mr. Epstein filed and served a Request for Entry of Default. After being served with that Request, Defendant Kojie Khojastehzad ("Mr. Khojastehzad") telephoned attorney Farzad Tabatabai ("Mr. Tabatabai") and requested that he represent the Defendants in this matter. (Khojastehzad Decl. at ¶8.) During that phone call, Mr. Tabatabai informed Mr. Khojastehzad that he had two trials coming up, but that he would get back to Mr. Khojastehzad. (Id. at ¶ 9; Tabatabai Decl. at ¶3.) However, one

of the two trials unexpectedly lasted for nearly a month, during which Mr. Tabatabai was working approximately 18 hours per day. (Tabatabai Decl. at ¶4.) Mr. Tabatabai became so overwhelmed that he did not inform Mr. Khojastehzad that he would be unable to defend Mr. Khojastehzad in this lawsuit. (Id.) All the while, Mr. Khojastehzad believed that Mr. Tabatabai would represent him in this matter. (Khojastehzad Declaration at ¶10.) As a result, Mr. Tabatabai did not file a response to the Request for Entry of Default, which led to the default. (Tabatabai Decl. at ¶5.) Mr. Tabatabai states in his declaration that his failure to file such a response was a result of his mistake, inadvertence, or neglect. (Id. at ¶3.) On March 21, 2024, a default judgment was entered for Mr. Epstein. Contemporaneously with this Motion, Defendants filed a Motion Transfer Venue of this lawsuit on September 23, 2024.

Legal Standard for CCP § 473

It has long been established that "[the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-855.) Thus, '"the provisions of section 473 … are to be liberally construed and sound policy favors the determination of actions on their merits." [Citation.]' [Citation.] '[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.'" (*Shapell SoCal Rental Properties, LLC v. Chico's FAS, Inc*. (2022) 85 Cal.App.5th 198, 212.) "'Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations "very slight evidence will be required to justify a court in setting aside the default." [Citations.]'" (*Fasuyi v. Permatex, Inc*. (2008) 167 Cal.App.4th 681, 695.)

Defendant moves to set aside the default judgment pursuant to California Code of Civil Procedure section 473 (b). "The statute includes a discretionary provision, which applies permissively, and a mandatory provision, which applies as of right." (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 25.) "Although this bifurcation is not demarcated in any internal subtitling, it is plainly evidence in the textual structure of the statute." (Ibid.)

When moving to set aside a default under CCP §473(b), the moving party has the burden of proof. (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 88.) However, section 473 is often applied liberally when a party in default moves promptly to seek relief and the party opposing the motion will not suffer prejudice if relief is granted. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

Mandatory Provision for Attorney Fault

The 'mandatory' provision that relates to times when an attorney admits fault in causing the default is provided for in the later portion of the statute:

> Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the

default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.

In accordance with the mandatory provision of section 473 subdivision (b), the court is required to set aside a default/default judgment "whenever an application for relief … is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect." (Cal. Code Civ. Proc. § 473 (b).) The statute, "does not provide for any exception to this requirement," even if the client claims that the attorney abandoned them. (*Las Vegas Land & Development Co., LLC v. Wilkie Way, LLC* (2013) 219 Cal.App.4th 1086, 1092; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) ¶ 5294a [noting "when the client is unable to obtain an affidavit because the attorney has abandoned the client, mandatory relief is unavailable."].) In "the case of any attorney's abandonment of a client, the injured client's remedy is to bring a motion for discretionary relief under section 473 … [or] bring an action against its attorney." (Id. at 1093.)

"[T]he court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect vacate any … resulting default [or default judgment] … entered against his or her client…." (Code Civ. Proc. § 473, subd. (b).)

"More specifically, section 473, subdivision (b)'s mandatory relief provision has three purposes: (1) "to relieve the innocent client of the consequences of the attorney's fault" (*Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003, 1009 (Solv-All); see *Generale Bank Nederland v. Eyes of the Beholder Ltd*. (1998) 61 Cal.App.4th 1384, 1397 [noting purpose is "'to alleviate the hardship on parties who lose their day in court due solely to an inexcusable failure to act on the part of their attorneys'"]); (2) "to place the burden on counsel" (Solv-All, at p. 1009); and (3) "to discourage additional litigation in the form of malpractice actions by the defaulted client against the errant attorney" (Citations Omitted.)" (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 439.)

These purposes are advanced as long as mandatory relief is confined to situations in which the attorney, rather than the client, is the cause of the default, default judgment, or dismissal. (See *Metropolitan Service Corp. v. Casa de Palms, Ltd*. (1995) 31 Cal.App.4th 1481, 1487 (Metropolitan Service) [fault of attorney sufficient]; *SJP Limited*, supra, 136 Cal.App.4th at p. 517 [fault of attorney who is not attorney of record sufficient]; *Rodrigues*, supra, 127 Cal.App.4th at p. 1037 [fault of attorney who is licensed outside of California sufficient]; *Hu v. Fang* (2002) 104 Cal.App.4th 61, 64 (Hu) [fault of paralegal supervised by attorney sufficient]; cf. *Todd*, supra, 34 Cal.App.4th at pp. 991–992 [fault of client; not sufficient].) In other words, the purpose of the mandatory relief provision under section 473, subdivision (b) is achieved by focusing on who is to blame, not why. (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 439.) Indeed, in many cases, the reasons for the attorney's mistake, inadvertence, surprise, or neglect will be irrelevant; that is because, as noted above, the mandatory relief provision entitles a party to relief even when his or her attorney's error is inexcusable. (*Graham v. Beers* (1994) 30 Cal.App.4th 1656, 1660 (Graham); *Solv-All*, supra, 131 Cal.App.4th at p. 1010 [attorney's conscious decision not to file an answer is grounds for mandatory relief]; cf. *Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1073–1074 [attorney's strategic decision to err with intent to have client later invoke § 473, subd. (b)'s mandatory relief provision precludes resort to mandatory relief].)

Analysis

The California Supreme Court has set forth, over the years, the principles to be applied by a court involving motions for relief from default. Perhaps the three most significant are these:

- "[T]he policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." (*Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963 quoting *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.)
- "Because the law favors disposing of cases on their merits, 'any doubt in applying [CCP] section 473 must be resolved in favor of the party seeking relief from default." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980 quoting *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)
- "[V]ery slight evidence will be required to justify a court in setting aside the default." (*Elston, supra*, 38 Cal.3d at 233.)

The Motion Was Filed Timely

Here, Defendants were served with the operative Complaint on January 9, 2024, served with the request for entry of default on February 15, 2024, and the default judgment was entered on March 21, 2024. Defendants filed this motion along with a motion to change venue on September 23, 2024, six months after the default judgment was entered, one day before the six-month statutory deadline elapsed. (Oppo at p. 7: 26-27.) Therefore, the motion was filed timely.

Motion was in Proper Form

It is uncontroverted by the parties that this Motion is in the form required by C.C.P. §473 (b) and by *Martin Potts & Assocs., Inc. v. Corsair, LLC*.

Motion was Accompanied by Attorney Affidavit of Fault

It is uncontroverted that Attorney Farzad Tabatabai filed with this instant motion an Attorney Affidavit of fault.

Whether the Attorney Affidavit Demonstrates That Only the Default Judgment Was Caused by the Attorney

The Attorney Affidavit filed by Farzad Tabatabai unambiguously takes responsibility for and declares fault for the default judgment in this case. (Tabatabai Decl. at ¶ 3.) As described above, however, a default already had been entered by the time the attorney became involved. Under *Cisneros v. Vueve* (1995) 37 Cal.App.4th 906, because the attorney did not cause the entry of the initial default, the attorney provision does not apply here, based on the initial declarations filed in support of the motion. As noted above, however, Defendant and his attorney have now filed Supplemental Declarations contradicting the earlier versions of their declarations. Until the credibility of the new declarations are resolved, the Court cannot decide the motion.

Conclusion

For the reasons analyzed above, **the Parties are to appear at the hearing.**

7. 9:00 AM CASE NUMBER: MSC21-00513
CASE NAME: STANDEFER VS SIERRA-AT-TAHOE
***HEARING ON MOTION IN RE: FINAL APPROVAL**
FILED BY:
TENTATIVE RULING:

Hearing required.

Plaintiff Charlotte Standefer moves for final approval of her class action settlement with defendant Sierra-at-Taho, LLC. The case arises from the purchase of ski lift tickets, which plaintiff alleges defendant did not honor based on undisclosed terms and conditions.

A. Background and Settlement Terms

The complaint alleges that defendant sold ski left tickets by advance purchase for use on a specific day, but did not honor those tickets due to undisclosed terms and conditions regarding parking capacity.

The original complaint was filed on March 16, 2021. Defendant's demurrer was overruled. Substantial discovery was undertaken, and a class was certified. The class consists of:

> All natural persons who purchased a single day lift ticket from Defendant Sierra at Tahoe for use on one of the following dates that could not be used for the date purchased: December 12, 14, 18-19, and 29, 2020; January 9, 30-31, 2021; and February 6, 13, and 20, 2021.

The class excludes persons who used their ticket another day or who received a lift ticket voucher or a resort credit from Sierra-at-Tahoe, as well as any individual who timely and validly opts-out from the Settlement class.

Defendant will provide class members, at their option, with either a refund of the amount they paid for the unused ticket (electronically or by check) or a voucher that may be exchanged for a single-day lift ticket for use at Sierra-at-Tahoe, which will be valid for three ski seasons. Presumably, this means that if the price of a lift ticket has increased since that time, class members who opt for a voucher will receive a current lift ticket without paying additional funds to make up the price difference. There appear to be no limits on the days for which the voucher may be used to purchase a ticket. While class members must file a claim, Defendant represents that it has reliable business records showing who purchased tickets on-line, whether the ticket was used, and whether any refund was provided. (Settlement Agreement, Par. 4.5.)

The settlement procedure is being administered by Apex, whose costs will be paid by defendant. The class (ultimately determined to have 330 members) has been given postcard mail notice or email notice. 97% of class members received email notice, while 3% of class members (whose email messages were returned as undeliverable), received postcard notice. (Of the 330 class members who received notice, 321 were delivered, but only 237 recipients opened the email and 36 members clicked the link to complete the claim form.) No objections or requests for exclusion had been received as of the May 21st date of the administrator's declaration, but the deadline was not

until June 10. Reminders are to be sent to class members who do not submit claims, but had not as of the date of the declaration. As of May 21, 2025, 16 class members had submitted valid Claim Forms. Apex seeks $7,990 in administrator's costs.

The settlement contains release language covering all claims, demands, actions, suits, petitions, liabilities, and causes of action regarding or arising from or related to the allegations in the Action. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Plaintiffs' counsel now seeks attorney's fees as part of this motion. They seek $112,500.

The agreement and supporting papers do not provide an estimate of the likely amount of claims, or set a ceiling or a floor on the total amount to be paid. Defendant has not filed a brief on the fee issue.

Plaintiff also seeks an incentive award of $2,000.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees, costs, and other payments

The parties do not agree on attorney's fee. Plaintiff will file a motion for fees in conjunction as the motion for final approval. Often in class actions, the amount sought is a percentage of a common fund. There is no identified fund here, however. Presumably, plaintiff's counsel will base the fee request on a lodestar analysis. In any event, the amount of the fee will have no effect on the relief

provided to the class. The parties have not set a floor or ceiling on the amount of the fee.

At least in an uncontested matter, the court finds that plaintiff is entitled to an attorney's fee under either the Consumer Legal Remedies Act (Civil Code § 1780(e), or under Code of Civil Procedure section 1021.5. The proposed settlement provides some relief for the plaintiff class, and the necessity and burden of private enforcement are such as to make the award appropriate, in that no individual would have a sufficient stake in the matter to justify the expense of litigation.

Defendants document a lodestar fee of $530,453.25, based on 845 hours of work, based on hourly rates of $650 per hour, $825 per hour, $750 per hour, $500 per hour, and $1,000 per hour.

Based on the lodestar and the amount requested, there is an implied multiplier of 0.21. Given this, there is no point to further scrutiny of the hourly rate or time expended, because it would not result in a recalculation that would be less than $112,500. Accordingly, the request for fees in that amount is granted.

Similarly, the requested representative payment of $2,000 for plaintiff is reviewed under the criteria discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Counsel attests that plaintiff cooperated in the case, including consultation with counsel preparing for and attending her deposition and attending an all-day settlement conference. The award is approved in the amount of $2,000.

D. Conclusion

Because the date of the declaration (May 21) preceded the completion of the notice requirements, particularly the time for objections and opt-outs, the Court requires an update of the information in the administrator's declaration. Counsel are directed to appear in order to schedule submission of a supplemental declaration and continued hearing.

Subject to the updated information, the Court would find sufficient evidence that the settlement is fair, reasonable, and adequate to justify preliminary approval.

If the motion is granted, counsel will be directed to prepare an order reflecting this tentative ruling and, the other findings in the previously submitted proposed order. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

8. 9:00 AM CASE NUMBER: MSC21-00903
CASE NAME: ALTAMIRANO VS GARIBALDI
HEARING IN RE: MOTION FOR RECONSIDERATION OFTHE JUDGMENT
FILED BY: GARIBALDI, DOMINIC
TENTATIVE RULING

Defendant moves to reconsider the Court's decision awarding damages to plaintiff under Code of Civil Procedure section 1008(a), based on "new or different facts, circumstances, or law." Defendant argues that certain evidence that was admitted at trial was not provided in pre-trial discovery. Although the Court did not award medical bills as damages, the evidence was considered in determining the extent of damages for pain and suffering. Defendant, however, is simply rearguing an issue from the trial. No new or different facts, circumstances, or law are claimed. Accordingly, the

motion to reconsider is denied.

9. 9:00 AM CASE NUMBER: MSC21-01283
CASE NAME: BEROTTE VS. CIVIC CENTER MOTEL
***HEARING ON MOTION IN RE: RECONSIDERATION RE 02/13/25 MONETARY SANCTIONS**
FILED BY: BEROTTE, DEWAYNE
****TENTATIVE RULING:****

Plaintiffs move that the Court reconsider its February 13, 2025 order granting discovery sanctions, or in the alternative for relief pursuant to Code of Civil Procedure section 473(b).

Under Code of Civil Procedure section 1008(a), application for reconsideration may be "based on new or different facts, circumstances, or law[.]" The Court also has inherent authority to, on its own motion, reconsider its prior orders. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103-1104.) (This motion, however, is not on the Court's own motion, but by plaintiffs.)

Under Code of Civil Procedure section 473(b), the court may "relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his mistake, inadvertence, surprise, or excusable neglect."

Plaintiffs filed opposition to the earlier motion on February 4, 2025, and engaged in extensive oral argument at the hearing on February 13, 2025. Plaintiffs extensively argue that the order awarding sanctions was incorrect. They do not, however, identify any new facts or circumstances as required under section 1008(a) or any mistake, inadvertence, surprise, or excusable neglect under section 473(b).

The motion is denied.

10. 9:00 AM CASE NUMBER: MSC21-01298
CASE NAME: MARIO R LOPEZ VS. ELECTRIC TECH CONSTRUCTION
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE ORDER GRANTING FINAL APPROVAL**
FILED BY: LOPEZ, MARIO RAMIREZ
****TENTATIVE RULING:****

Hearing required. The Court has several questions that arise from its concern that vacating the class settlement may not be in the best interest of the class. Counsel should be prepared to address these issues:

Is it possible to identify the amount of funding still owing (apparently $314,225) and to enforce it by way of collecting the amount of funds still owing?

Is there enough information about the class members to engage in a partial distribution of the funds?

If the judgment is vacated, what is the proper disposition of the funds already collected? Would paragraph 4.3.1 of the settlement agreement require that the funds already paid be returned to defendant?

Would issuance by the Court of an Order to Show Cause re contempt (concerning both the funding

and class-related information) potentially a more productive way to proceed?

11. 9:00 AM CASE NUMBER: MSC21-02233
CASE NAME: ORTIZ VS. COUNTY OF CONTRA COSTA
HEARING ON SUMMARY MOTION
FILED BY: COUNTY OF CONTRA COSTA
TENTATIVE RULING

Defendants filed a Notice of Withdrawal for Motion for Summary Judgment. **Hearing vacated**.

12. 9:00 AM CASE NUMBER: MSC22-00438
CASE NAME: GODFREY VS. DENARD
HEARING IN RE: MOTION TO COMPEL ANSWERS
FILED BY:
TENTATIVE RULING:
Plaintiff Lavon Godfrey moves to compel further responses to Interrogatories, Set One, requests for admissions, and for sanctions.

Plaintiff served the discovery requests on December 2, 2024. After one extension of the response deadline, responses were served on January 31, 2025. After some meet and confer process, on March 26, 2025, plaintiff sent "Amended Special Interrogatories and Amended Requests for Admission. The motion to compel was filed on April 16, 2025. At no point did defendant extend the deadline to file a motion to compel. As to the "Amended" interrogatories and requests for admission, the time to respond did not run until at least April 25, 2025.

Under Code of Civil Procedure section 2030.300(c), notice of a motion to compel further production of documents must be given "within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed to in writing, the propounding party waives any right to compel a further response to the interrogatories." The motion was filed on April 16, which is more than 45 days after January 31. This does not give the Court discretion to hear the motion.

Even assuming that the "amended" requests were valid (which is an open question), this motion was filed before the responses to the "amended" requests were even due, which means that the motion was filed too soon.

Each side requests sanctions. Plaintiff's request is denied, because they did not prevail on the motion. Defendant requests $500 because plaintiff filed an unsuccessful discovery motion, which she declined to withdraw after being requested to do so. "The court shall impose a monetary sanction…against any party, person, or attorney who unsuccessfully makes or opposed a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (C.C.P. § 2030.300(d).) A similar provision applies to requests for admission. (C.C.P. § 2033.290.(c).) Accordingly, the court awards a sanction of $250.

The motion is denied. Sanctions of $250 are awarded.

13. 9:00 AM CASE NUMBER: MSC22-00438
CASE NAME: GODFREY VS. DENARD
HEARING IN RE: MOTION FOR SANCTIONS
FILED BY:
TENTATIVE RULING:

Plaintiff moves for sanctions against defendant and her attorney under Code of Civil Procedure section 128.7. She contends that in a May 1, 2024, declaration concerning defendant's motion to set aside her default, Ms. Denard "presents several assertions that I contend are inaccurate and misleading."

Plaintiff filed the motion for sanctions on April 16, 2025. A proof of service was filed with the court on May 22, 2025, but it does not set forth the date of service or the documents served. Defendant asserts that the motion was served on April 16, 2025.

Under Code of Civil Procedure section 128.7(c)(1), a motion for sanctions "shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected." (*Goodstone v. Southwest Airlines Co*. (1998) 63 Cal.App.4th 406, 418.)

The record does not show that plaintiff served the motion at least 21 days before filing with the court, as required by the code provision. Accordingly, **the motion is denied. Defendant's request for sanctions is denied.**

14. 9:00 AM CASE NUMBER: N24-2155
CASE NAME: CG PHARMACEUTICALS, INC VS. SANG CHO
***HEARING ON MOTION IN RE: TO STRIKE**
FILED BY: CHO, SANG SOOK
TENTATIVE RULING:

Introduction

Defendants Sangsook Ahn Cho, erroneously sued herein as SANG SOOK CHO, and Gene Young Cho ("Defendants") moves the Court to strike Plaintiff's Complaint.

Alternatively, Defendants request that the following allegations of privileged activity in the Complaint be stricken, in addition to the First Cause of Action for Conversion and/or the Second Cause of Action for Declaratory Relief:

1. Paragraph 15 in its entirety.

2. Paragraph 16 in its entirety.

3. The portion of Paragraph 22 at p. 6:18-24 that reads "Shortly after, Defendant Gene Young Cho, wrote Soo Yeon Oh a lengthy email alleging that CG Pharma 'has been legally separated as an independent entity under the control of its majority owner, Dr. JM Cho. Dr. Sangsook Cho (Defendant Sangsook Ahn Cho) and I (Defendant Gene Young Cho) were duly elected as officers' based on the premise that the Subscription Agreement, under which JM Cho failed to pay his subscription price,

was closed and the Shareholders Agreement took effect. However, such a premise is false, as stated in paragraphs 5 through 9. CG Invites owns 100% of Plaintiff CG Pharma."

4. Paragraph 24 in its entirety.

5. Paragraph 26 in its entirety.

6. Paragraph 28 in its entirety.

7. Paragraph 30 in its entirety.

8. Paragraph 31 in its entirety.

9. Paragraph 32 in its entirety.

10. Paragraph 33 in its entirety.

11. Paragraph 35 in its entirety.

For the following reasons, **Defendants' Anti-SLAPP Motion to Strike is denied.**

Requests for Judicial Notice

Defendants' Request for Judicial Notice

Defendants' request judicial notice of Complaint filed on October 10, 2024, in the United States District Court, Northern District of California as Case No. 3:24-CV-07112. 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 Defendants' request for judicial notice of Exhibits A**.

Legal Standard

The purpose of the anti-SLAPP statute is to encourage participation in matters of public importance and prevent meritless litigation aimed at chilling the exercise of constitutional free speech and petitioning rights under the First Amendment. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060 ("*Park*").)

Code of Civil Procedure § 425.16(b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution 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." Section 425.16(e) lists activities that qualify as "an act in furtherance of a person's right of petition or free speech" under the statute. (Code of Civ. Proc. § 425.16(e)(1)-(4).) In *Baral v. Schnitt* (2016) 1 Cal.5th 376, the California Supreme Court explained the two step approach courts take in ruling on an anti-SLAPP motion: "First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation omitted.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Id.* at 384-385.)

Applicable Law

"[L]itigation privilege is an entirely different type of statute than section 425.16. The former enshrines a substantive rule of law that grants absolute immunity from tort liability for communications made in relation to judicial proceedings [citation]; the latter is a procedural device for screening out meritless claims [citation]." (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 737.) Civil Code section 47 states a statutory privilege, not a constitutional protection. (*Flatley v. Mauro* (2006) 39 Cal.4th

299, 324.)

The litigation privilege embodied in Civil Code section 47, subdivision (b) serves broad goals of guaranteeing access to the judicial process, promoting the zealous representation by counsel of their clients, and reinforcing the traditional function of the trial as the engine for the determination of truth. Applying the litigation privilege to some forms of unlawful litigation-related activity may advance those broad goals notwithstanding the "occasional unfair result" in an individual case. (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 214.)

The purpose of section 425.16 is to protect the valid exercise of constitutional rights of free speech and petition from the abuse of the judicial process (CCP § 425.16, subd. (a)), by allowing a defendant to bring a motion to strike any action that arises from any activity by the defendant in furtherance of those rights. (CCP § 425.16, subd. (b)(1).) By necessary implication, the statute does not protect activity that, because it is illegal, is not in furtherance of constitutionally protected speech or petition rights. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 819 ["If the defendant's act is not constitutionally protected how can doing the act be 'in furtherance' of the defendant's constitutional rights?"].)

Analysis

Prong 1: Claim Does Not Arise from Protected Activity

"[T]he only thing the defendant needs to establish to invoke the protection of the SLAPP statute is that the challenged lawsuit arose from an act on the part of the defendant in furtherance of her right of petition or free speech." (*Equilon Enterprises v. Consumer Cause, Inc*. (2002) 29 Cal.4th 53, 61 (quoting *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 307). To do so, the defendant must show that the "conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e)" of Section 425.16. (Id. at 66.) To show that a plaintiff's cause of action "arises" from defendant's protected activity, the defendant must only demonstrate that his or her protected speech satisfies one or more elements of the plaintiff's claim (i.e., forms the basis of the plaintiff's claim). (*Park v Board of Trustees* (2017) 2 Cal.5th 1057, 1063.)

Filing Conflicting Statements of Information Is Not Criminal Conduct

Plaintiff posits, "Knowingly filing a false statement of information for a California corporation is illegal and can even lead to criminal charges of perjury, filing a false document, and fraud. (California Penal Code Section 118, 115, 532.)" (Oppo at p. 6: 16-18.) Plaintiff argues that Defendants' action can lead to criminal charges, but that is not the standard. The California Supreme Court held that the defendant was precluded from using the anti-SLAPP statute if, as it is here, the underlying speech or petitioning activity was illegal as a matter of law. (*Flatley v. Mauro* (2006) 39 Cal.4th 299; *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 806 (only "criminal conduct, not … conduct that is illegal because in violation of statute or common law" qualifies).)

Here, both sides contend the other side's filing of the Statement of Information is false based on each side's interpretation of the subject agreements. Since both sides have provided evidence to bolster their differing reasonable interpretations of the subject agreements neither side could prove the intent element of illegal criminal conduct as a matter of law.

Filing Conflicting Statements of Information Does Not Meet the Official Proceeding Requirement

The Complaint does not arise from statements made in court or during litigation. The Complaint arises

from alleged false public filings, specifically a series of Statements of Information made to the California Secretary of State from August to November 2024.

A statement of information is a ministerial corporate disclosure form, not a pleading, petition, or document related to litigation. (*Li v. Jin* (2022) 83 Cal.App.5th 481.) In *Li v. Jin*, the Court directly held that the statement of information filed with the California Secretary of State did not involve or relate to an issue under consideration in an official proceeding. The statement of information "served only to provide the public with basic information" about the new corporation and did not preclude claims such as constructive fraud. The Court further clarified that articles of incorporation and statements of information filed before the Secretary of State were not writings made before or in connection with an official proceeding. (*Li v. Jin* (2022) 83 Cal.App.5th 481, 494-495.)

Conclusion

Thus, Defendants were unable to satisfy prong one of the Anti-SLAPP analysis. **Defendants' Anti-SLAPP Motion to Strike is denied.**

Attorney's Fees Award

Under CCP Section 425.16(c)(1), a court shall award costs and reasonable attorney's fees to a plaintiff prevailing on a motion if the court finds that a special motion to strike is frivolous or solely intended to cause unnecessary delay. The two undisputed facts that (1) JM Cho had not completed his required capital contribution under the Subscription Agreement; and (2) CG Pharmaceuticals' Articles of Incorporation have never been amended, do not rise to the standard of frivolousness per CCP § 128.5. (See CCP § 128.5.) In fact, Defendants' have directly contradicted fact (1) that Dr. JM Cho did make his capital contributions. (MPA at p. 11: 1-4.)

In consideration of the above, **both parties are ordered to bear their own costs.**

15. 9:00 AM CASE NUMBER: N24-2155
CASE NAME: CG PHARMACEUTICALS, INC VS. SANG CHO
HEARING ON ORDER TO SHOW CAUSE IN RE: PRELIMINARY INJUNCTION (PER ORDER FILED 4/3/25)
FILED BY:
TENTATIVE RULING:
Introduction

Before the Court is Plaintiff CG Pharmaceuticals, Inc.'s Motion for Preliminary Injunction (1) directing Defendants Sang Sook Ahn Cho and Gene Young Cho (collectively, "Defendants") to immediately surrender all books, records, bank accounts, inventory, equipment and other assets of Plaintiff CG Pharma to Plaintiff's duly authorized officers and directors, (2) prohibiting Defendants, their employees, and persons acting on their behalf or acting in concert with them from filing any Statement of Information pertaining to Plaintiff with the California Secretary of State (3) prohibiting Defendants, their employees, and persons acting on their behalf or acting in concert with them from representing that they are an officer, director or employee of Plaintiff or that they have any authority to transact business on behalf of Plaintiff or bind Plaintiff to any business arrangement or contract, (4) prohibiting Defendants, their employees, and persons acting on their behalf or acting in concert with them from entering Plaintiff's business premises at 4 Orinda Way, Suite 100-D, Orinda, CA 94563, and (5) declaring the Statement of Information for CG Pharma filed by Defendants on or about October 2, 2024, October 12, 2024, October 15, 2024, November 8, 2024, and November 12, 2024, November

19, 2024 and March 14, 2025 with the California Secretary of State and any other Statement of Information filed by Defendants is void.

The Court inadvertently gave Defendants' motion for preliminary injunction two lines when the parties only briefed the one preliminary injunction motion brought by Plaintiff. The Court would like to apologize for any confusion this may have caused.

For the following reasons, **Plaintiff's Motion for Preliminary Injunction is denied.**

General Factual Background

Plaintiff CG Pharmaceuticals, Inc. ("CG Pharma") is a California corporation that was formed in 2006 as a wholly owned subsidiary of CG Invites, Co. Ltd. (formerly known as Crystal Genomics, Inc., "CG Invites"), a South Korean company. (Declaration of Soo Yeon Oh ("S. Oh Decl."), ¶ 4.) The primary purpose of CG Pharma is to conduct clinical trials on CG Invites' new medicine in the U.S. during its developmental phase. (S. Oh Decl. ¶ 4.) As shown below, CG Invites is the sole owner of the 1,000,000 issued shares of CG Pharma and has the right to remove or elect directors of CG Pharma.

Joong Myung Cho ("JM Cho" or "Dr. Cho") founded CG Invites in 2000. (S. Oh Decl. ¶ 4.) He subsequently sold a majority interest in CG Invites through a public offering, and he no longer controls CG Invites. (S. Oh Decl. ¶ 5.)

In February 2024, Dr. Cho entered into a Subscription Agreement with CG Invites (the "Subscription Agreement"), under which JM Cho would obtain a majority shareholder interest (60%) in CG Pharma in exchange for, among other things, Dr. Cho depositing six billion Korean Won into a specific bank account. (Declaration of Hong Kyu Yang ("H. Yang Decl.") ¶ 3; S. Oh Decl. ¶ 6.) The agreement also called for CG Invites to deposit four billion Korean Won to the same account. (S. Oh Decl. ¶ 6.; H. Yang Decl. ¶ 3.) Defendants contend that they have made the required payments under the Subscription Agreement, while Plaintiff contends that Defendants haven't made any contribution. It is uncontroverted that Plaintiff did not make any contribution per the Subscription Agreement.

The Parties filed a series of dueling, and allegedly fraudulent, Statements of Information to the California Secretary of State from August to November 2024. In sum, the Parties are struggling to gain power of Plaintiff CG Pharmaceutical Inc.

Dr. JM Cho filed a Complaint in the Northern District of California on October 10, 2024, for claims related to breaches of the Spinoff Agreements which includes the Subscription Agreement case number 3:24-cv-07112-WHO.

Plaintiff CG Pharmaceuticals Inc. filed a Complaint on November 27, 2024, alleging two causes of action: (1) conversion; (2) declaratory relief. Plaintiffs sought a temporary restraining order restraining enjoining Defendants from interfering with Plaintiffs' access to their personal property located at the Ranch. That request was denied.

Plaintiff now brings this motion for preliminary injunction.

Legal Standard for Preliminary Injunction

The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. (*Major v. Miraverde Homeowners Assn*. (1992) 7 Cal.App.4th 618, 623.) A cause of action must

exist before injunctive relief may be granted. (*Id*.) If a complaint fails to state a cause of action, an order granting a preliminary injunction must be reversed. (*Id*.)

In determining whether or not to grant a preliminary injunction, the court looks to two factors, including "(1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) "[T]he greater the . . . showing on one, the less must be shown on the other to support an injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.)

The moving party must demonstrate at least a reasonable probability of success on the merits. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72.) The second factor to be established is the occurrence of irreparable harm before a final judgment could be entered. (*Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1571.) Irreparable harm may exist if the plaintiff can show that "pecuniary compensation would not afford adequate relief." (Code Civ. Proc., § 526.)

The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. (*O'Connell v. Sup.Ct. (Valenzuela)* (2006) 141 Cal. 4th 1452, 1481.)

"The power to issue preliminary injunctions is an extraordinary one and should be exercised with great caution and only where it appears that sufficient cause for hasty action exists." (*West v. Lind* (1960) 186 Cal.App.2d 563, 565.) They should only be issued when there is a "clear showing that the threatened and impending injury is great and can be averted only by injunction." (*Western Electroplating Co. v. Henness* (1959) 172 Cal.App.2d 278, 283.)

Analysis

Likelihood of Prevailing on the Merits

In looking at the likelihood of prevailing on the merits, the moving party bears the burden of establishing a reasonable probability of success on the merits. (*Association for Los Angeles Dept Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 1634 ("*Sheriffs*").) An injunction will not issue if it appears the plaintiff will not prevail. (*SB Liberty, LLC v. Isla Verde Ass'n, Inc.* (2013) 217 Cal.App.4th 272, 280.)

While the Complaint asserts two causes of action, the declaratory relief cause of action relates to the claim of conversion of Plaintiff's corporate control. Conversion is the wrongful exercise of control over another's personal property. (*Moore v. Regents of California* (1990) 51 Cal.3d 120, 136.) "To establish a conversion, plaintiff must establish an actual interference with his *ownership* or *right of possession*." (*Ibid.*) Ownership of Plaintiff is at issue here.

Ownership Element of Conversion

The Complaint and preliminary injunctions papers assert that the Subscription Agreement, among other things, specifically requires both JM Cho and CG Invites to perform their funding obligations in full to issue new shares and assign them to the parties. This condition is based on Section 409 of the California Corporation Code that requires "consideration" such as "money paid; labor done; services actually rendered to the corporation or for its benefit or in its formation or reorganization; debts or securities canceled; and tangible or intangible property actually received either by the issuing corporation or by a wholly owned subsidiary" for issuance of shares.

Plaintiff adds that California Corporations Code Section 202 specifies that the articles of incorporation

must set forth the total number of shares the corporation is authorized to issue, including the designation and rights of each class or series of shares. Here, Plaintiff CG Pharma's Articles of Incorporation have never been amended to authorize CG Pharma to issue new shares, and the authorized 1,000,000 shares are entirely held by CG Invites, as JM Cho verified and admitted in the Subscription Agreement. Therefore, the sole shareholder of CG Pharma's 1,000,000 shares has always been CG Invites since its incorporation as a matter of law.

Defendants argue that Plaintiff conflates the closing of the Subscription Agreement with the parties' post-closing performance and other expressly reserved matters in the Subscription Agreement. (MPA pp.12- 14.) The Subscription Agreement closed and became a binding and enforceable agreement the day the parties signed the Subscription Agreement, February 22, 2024, and the "execution and effectiveness" of certain other agreements, including the License Agreement. (Declaration of Soo Yeon Oh, Ex. A (§13 ln. 5).) The Subscription Agreement expressly contemplated that Dr. Cho would acquire "60% of the post- closing issued and outstanding shares," of CGP, meaning that it was the parties' intent for Dr. Cho's shares to be issued and acquired after the Subscription Agreement closed and Plaintiff fails to cite anything that conditioned "closing" on Dr. Cho's acquisition of shares. (Id. (§1).)

Based on the facts presented, Plaintiff does demonstrate a reasonable probability of success on the merits. The Court does take note that determination of which Party has lawful control over Plaintiff CG Pharmaceuticals Inc. turns on the performance of the Parties to the Subscription Agreement, CG Invites and Dr. JM Cho.

Based on the above, Plaintiff has met its burden of establishing a reasonable probability of success on the merits. (*Sheriffs,* supra, 166 Cal.App.4th at 1634.)

Irreparable Harm

Courts in California have consistently recognized that the loss of lawful corporate governance, especially where it impairs financial integrity or compliance with external regulatory regimes, constitutes irreparable harm. (*Martin v. Bridgeport Community Assn., Inc*. (2009) 173 Cal.App.4th 1024, 1034; *Higgins v. San Diego Gas & Electric Co*. (1911) 154 Cal. 316, 322.)

Plaintiff in their initial MPA cite no evidence for its irreparable harm argument. Defendants' rightly point that out in their opposition.

Plaintiff then responds in their Reply that Defendants have refused to provide necessary financial data/information, forcing CG Invites to submit unverified and incomplete financials for its public filings, and exposing CG Invites to criminal and administrative sanctions under Korean securities law. (Declaration of Hong Kyu Yang dated July 2, 2025 ("07-02-2025 H. Yang Decl.") ¶¶ 4-12.) More specifically, CG Invites' semiannual financial disclosure, due imminently under Korean Financial Investment Services and Capital Markets Act requirements, cannot be completed without verified CG Pharma financials. Failure to file such disclosure subjects CG Invites to potential delisting from KOSDAQ. Such an outcome would not only devastate CG Invites but render CG Pharma, as its wholly owned subsidiary, commercially and operationally unviable. In June 2025, Defendants have entirely refused to cooperate with CGP's financial disclosure to CG Invites for its semiannual audit report. (07-02-2025 H. Yang Decl. ¶¶ 4-12.)

"The salutary rule is that points raised in a reply brief for the first time will not be considered unless

good cause is shown for the failure to present them before." (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.) This applies to new evidence as well — "[t]he general rule of motion practice ... is that new evidence is not permitted with reply papers." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.) "This rule is based on the same solid logic applied in the appellate courts, specifically, that '[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.'" (*Id.* at 1538 [citing *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453; *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn. 10].)

Here, Plaintiff did not provide good cause for failure to present the evidence earlier, and introducing new evidence and argument in the reply paper deprives Defendants of the chance to engage with such material. Thus, the Court will not consider the new evidence and arguments put forth in the Reply. Plaintiffs have failed to meet their burden to provide sufficient evidence to show that they will suffer irreparable harm if the injunction is not issued.

Indispensable Parties

Where persons are so interested in the controversy that they should normally be made parties to enable the court to do complete justice, but their interests are separable from the rest, they are necessary but not indispensable parties. On the other hand, one may be an indispensable party if one's interest in the subject matter of the controversy is of such a nature that a final decree cannot be rendered between the other parties to the suit without inevitably affecting that interest. (*Peabody Seating Co. v. Superior Court of Los Angeles County* (1962) 202 Cal.App.2d 537, 543.)

"Where, also, the plaintiff seeks some other type of affirmative relief which, if granted, would injure or affect the interests of a third person not joined, that third person is an indispensable party. Thus, in an action by a lessor against a sublessee to forfeit a parent lease because of acts of the sublessee, the sublessors (original lessees) were indispensable parties, since a decree of forfeiture would deprive them of their lease. (*Hartman Ranch Co.* v. *Associated Oil Co*., 10 Cal.2d 232.) The objection being so fundamental, it need not be raised by the parties themselves; the court may, on its own motion, dismiss the proceedings, or refuse to proceed, until these indispensable parties are brought in. [Citing cases.] It follows that if the court does attempt to proceed, it is acting beyond its jurisdiction and may be restrained by prohibition. (*Piedmont Publishing Co. v. Rogers* (1961) 193 Cal.App.2d 171, 181.)

The gravamen is defined by the *acts on which liability is based*, not some philosophical thrust or legal essence of the cause of action. (*MMM Holdings, Inc. v. Reich* (2018) 21 Cal.App.5th 167, 178; citing *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 404–405.)

The gravamen of the instant Complaint are the filings of the Statement of Information by Defendants and Defendants holding themselves out to be directors and officers of Plaintiff. However, the true and lawful directors and officers of Plaintiff can only be discovered by determining the performance of the Subscription Agreement between non-party and parent company to Plaintiff, CG Invites and Founder of CG Invites and Plaintiff, Dr. JM Cho, both of which are not parties to this lawsuit.

Essentially Plaintiff is asking the Court to issue a preliminary injunction to stop Defendants from filing Statements of Information and to refrain from holding themselves out as members of Plaintiff that can bind Plaintiff to third party contracts. To find out who the lawful directors and officers of Plaintiff are, the Court must determine if the Subscription Agreement was performed or breached by the parties,

CG Invites and Dr. JM Cho. Since CG Invites and Dr. JM Cho are the only two parties to the Subscription Agreement and a ruling on the Subscription Agreement would clearly and directly affect their interests in the Subscription Agreement, CG Invites and Dr. JM Cho are indispensable parties.

The Court is hesitant to grant a preliminary injunction for Plaintiff's second and third requests which broadly, "(2) prohibits Defendants, their officers and employees, and persons acting on their behalf or acting in concert with them from filing any Statement of Information or other document pertaining to Plaintiff with the California Secretary of State; and (3) prohibits Defendants, their officers and employees, and persons acting on their behalf or acting in concert with them from representing that they are an officer, director or employee of Plaintiff or that they have any authority to bind Plaintiff to any business arrangement or contract." The Court interprets the phrase, "their officers and employees, and persons acting on their behalf or acting in concert with them" to include the scenario to disallow Dr. JM Cho to serve as CEO. Courts do have authority to make injunctions binding on agents, servants, employees, aiders, and abettors, even though they are not parties to the action. (*NewLife Sciences, LLC v. Weinstock* (2011)197 Cal.App.4th 676, 690.) Nonetheless, the Court is concerned that it is not appropriate to effectively enjoin Dr. JM Cho without including him as a party, given that he is the primary target of the injunctive relief sought.

The Motion for Preliminary Injunction must be denied because the Court, "is without authority to render a judgment which would materially affect the rights of absent, known, indispensable parties." (See *Irwin v. City of Manhattan Beach* (1964) 227 Cal.App.2d 634, 636 (judgment vacated where the action sought to have a contract between the defendant and non-parties declared void).)

Conclusion

For the reasons analyzed above, **Plaintiffs' Motion for Preliminary Injunction is denied.**

16. 9:00 AM CASE NUMBER: N24-2155
CASE NAME: CG PHARMACEUTICALS, INC VS. SANG CHO
***HEARING ON MOTION IN RE: PRELIMINARY INJUNCTION**
FILED BY: CG PHARMACEUTICALS, INC
TENTATIVE RULING:
See line 15.

17. 9:00 AM CASE NUMBER: N25-0791
CASE NAME: PETITION OF:CARREN WALTERS
HEARING IN RE: PETITION TO APPOINT ELISOR
FILED BY:
TENTATIVE RULING:

The petition is granted, including the request for cost of enforcement in the amount of $4,565. Petitioner must comply with Local Rule 3.90/5.12