SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/02/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003673

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: MYRNA ZURAMA ANZUETO vs. DEFENDANT: VALENTYNA GROMOVA	

NATURE OF PROCEEDINGS: ORDER – SHOW CAUSE – CONTEMPT/FAILURE TO COMPLY

RULING

The "Order to Show Cause and Affidavit for Contempt" ("OSC") was improperly issued on May 1, 2026 by the Clerk without prior judicial approval and proper notice. (*Cedars-Sinai Imaging Medical Group v. Superior Court*, (2000) 83 Cal. App. 4th 1281, 1286.) The OSC is therefore **STRICKEN** and the hearing is **VACATED.**

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for June, 2026 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/02/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004587

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: KEEP AMERICA SAFE AND BEAUTIFUL vs. DEFENDANT: AZURE FARMS, INC.	

NATURE OF PROCEEDINGS: MOTION – OTHER: APPROVE PROP 65 SETTLEMENT

RULING

The court **GRANTS** Plaintiff's unopposed motion to approve the Proposition 65 settlement and enter the consent judgment.

Discussion

California Health and Safety Code section 25249.7(f)(4) requires judicial approval of the settlement of a Proposition 65 action between private parties. The court may not grant approval unless it finds that all the statutory requirements have been met. (*Consumer Defense Group v. Rental Housing Industry Members* (2006) 137 Cal.App.4th 1185, 1207.) As set forth in the statute:

> If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:
>
> (A) The warning that is required by the settlement complies with this chapter.
>
> (B) The award of attorney's fees is reasonable under California law.
>
> (C) The penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(Health and Saf. Code § 25249.7(f)(4).)
The Court has reviewed the settlement terms and proposed consent judgment. After proper notice, no objections have been filed. As to factor (A), the court has reviewed the moving papers

and finds that the proposed warnings are in reasonable compliance with the requirements of Proposition 65. As to (C), the penalty of $4,000 is reasonable under the criteria of the statute. With regards to factor (B), the court finds that there is sufficient information to determine that the requested fees and costs in the amount of $23,000 are reasonable. The amount of fees requested is less than Plaintiff's documented lodestar calculation.
Accordingly, the settlement is approved and the Court will enter the consent judgment.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/02/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006402

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: IGOR DEEV vs. DEFENDANT: GENERAL MOTORS LLC	

NATURE OF PROCEEDINGS: MOTION – ATTORNEY'S FEES

RULING

Plaintiff's motion for attorney's fees and costs is **granted in part and denied in part**. Plaintiff is awarded of **$14,689 in attorney fees and costs in the amount of $1,125.24.**

Standard

"If a buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code § 1794(d).) The buyer has the burden of showing that the fees incurred were reasonably necessary to the conduct of the litigation and were reasonable in amount. (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 817.) A reasonable hourly rate is determined by the prevailing rate charged by attorneys of similar skill and expertise in the relevant community. (See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

"A trial court may **not** rubber stamp a request for attorney fees, but must determine the number of hours reasonably expended." (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271, italics omitted.) In evaluating whether the attorney fee request is reasonable, the trial court should consider " 'whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended.' " (*Ibid.*) "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether. 'If . . . the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be a reduction of their fee to what they should have asked for in the first place. To

discourage such greed, a severer reaction is needful . . . .'" (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 [citation omitted].)

Discussion

This was a straightforward lemon law case with no novel issues. The case was settled early in the proceedings without a trial and with only limited discovery. There were no contested court hearings. It is undisputed that Plaintiff was the prevailing party and he now seeks an award of attorney's fees and costs in the amount of $25,498.24. Defendant opposes the request contending it should be denied or reduced. Defendant argues that the claimed billing rates are excessive and that the request seeks compensation for inefficient and duplicative work.

After reviewing the submissions, the Court finds the fee request unreasonable and reduces it accordingly. First, the Court finds that the requested attorney rates of $745 for Mr. Dillavou and $945 for Mr. Jacobs are unreasonable. In the Court's experience, the proposed rates exceed the prevailing rate charged by attorneys of similar skill and expertise for such a simple case. Instead, the Court sets a reasonable rate of $550 per hour for both attorneys. This decrease in the hourly rate results in a reduction of $2,709 from the requested lodestar. On the other hand, the Court finds that the requested rate of $250 an hour for paralegals, although at the high end, falls within the range of reasonableness for such work.

Defendant argues that the request is also unreasonable because the time entries demonstrate duplicative or inefficient work carried out by multiple legal professionals over a brief period of litigation. "[I]t is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488, quoting *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.) Defendant has carried its burden to point to entries that are duplicative or inefficient by providing a declaration itemizing challenged billing entries. (See Declaration of Michelle M. Velazquez, Exhibit A.)

"Plainly, it is appropriate for a trial court to reduce a fee award based on its reasonable determination that a routine, noncomplex case was overstaffed to a degree that significant inefficiencies and inflated fees resulted." (*Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 39.) Having reviewed Defendant's analysis (the entries marked in red, purple and yellow in Exhibit A), the Court agrees that approximately 13 hours of paralegal time should be removed because it was inefficient, duplicative, or of a clerical nature that should not be reimbursed as the work of legal professionals. The Court therefore imposes a reduction in the amount of $3,250.

Plaintiff also requests attorney's fees for an additional five hours he anticipates he will spend preparing for and attending the hearing on this motion. The request is unreasonable and the Court therefore deducts $3,725 from the request.

With these reductions, the Court finds that Plaintiff is entitled to an award of $14,689 in attorney fees and costs in the amount of $1,125.24.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/02/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0008118

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: SUSAN MULLOY vs. DEFENDANT: TOWN OF FAIRFAX	

NATURE OF PROCEEDINGS: HEARING – OTHER: PETITION ON LATE FILING

RULING

Appearances required.

Legal Standard

The Government Claims Act establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (Gov. Code, § 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (S*tate of Cal. v. Super. Ct.* (2004) 32 Cal.4th 1234, 1237 citing Gov. Code, § 945.4; but see Gov. Code, § 905 [itemized exceptions not relevant here].) "[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action." (*Sparks v. Kern County Bd. of Supervisors* (2009) 173 Cal.App.4th 794, 798.) "The policy underlying the claims presentation requirements is to afford prompt notice to public entities. This permits early investigation and evaluation of the claim and informed fiscal planning in light of prospective liabilities." (*Ibid*.)

Claims for personal injury must be presented no later than six months after the accrual of the cause of action. (Gov. Code, § 911.2, subd. (a).) If the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present such claim. (Gov. Code, § 911.4, subd. (a).) If the public entity denies the application, the injured party may petition the court for relief from the claim requirements. (Gov. Code, § 946.6.) A court shall relieve the petitioner from Section 945.4 if the court finds that one or more of the following are applicable:

> "(1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4.

> (2) The person who sustained the alleged injury, damage, or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.
> (3) The person who sustained the alleged injury, damage, or loss was a minor during any of the time specified in Section 911.2 for the presentation of the claim, provided the application is presented within six months of the person turning 18 years of age or a year after the claim accrues, whichever occurs first.
> (4) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time.
> (5) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during any of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time, provided the application is presented within six months of the person no longer being physically or mentally incapacitated, or a year after the claim accrues, whichever occurs first.
> (6) The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim."

(Gov. Code, § 946.6, subd. (c).)

The showing required of a petitioner seeking leave to file a late claim on the grounds of mistake, inadvertence, surprise, or excusable neglect is the same as that required by Code of Civil Procedure section 473 for relieving a party from default judgment. (*People ex rel. Dep't of Transportation v. Superior Ct.* (2003) 105 Cal.App.4th 39, 43–44. Internal citations omitted.)

The trial court's decision to grant or deny a petition for relief under Government Code section 946.6 will not be disturbed on appeal except for an abuse of discretion. (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435.) "Abuse of discretion is shown where uncontradicted evidence or affidavits of the petitioner establish adequate cause for relief." (*Ibid.*)

Discussion

Susan Mulloy's ("Petitioner") seeks Relief from Government Code section 945.4 (hereinafter "Petition") on order to file a late claim against the Town of Fairfax ("the Town" or "Respondent"). Petitioner argues that she was injured in a pedestrian versus vehicle accident while crossing the street on July 23, 2024, that the six (6) month claim period expired on January 23, 2025, and that she failed to submit a timely claim. (See Petition, Ex. A, ¶¶ 1-3.) On or about April 17, 2025, Petitioner made written application to the Town for permission to file a late claim in accordance with the provisions of the Government Code section 911.4. (Petition, ¶ 4.) Petitioner's application for permission to file a late claim was denied by Respondent on or about May 16, 2025. (*Id.*, ¶ 5.) She then filed this Petition to seek relief from the court.

Petitioner's primary argument of why such relief should be granted is that she was delayed in submitting her claim because of the severity of her injuries. (Petition, Ex. A, ¶ 3.) She argues that she was physically incapacitated for the duration of the six (6) month claim period. (*Id.*, ¶ 3.) She further argues that her attorney was delayed in discovering the basis for the claim against the Town because of the difficulty in obtaining critical evidence. (*Ibid.*) Her attorney first requested information from the Town on or about October 7, 2024. (*Ibid.*) Although some information was sent over on November 18, 2024, video of the incident was not provided until December 10, 2024. (*Ibid.*) However counsel could not open the video link and requested a copy via portable drive, which was provided December 20, 2024. (*Ibid*.) Based upon the evidence depicted in the video, Petitioner's attorney discovered a basis for a potential claim against the Town based upon the possibly negligent and/or defective design, construction, and maintenance of the crosswalk including but not limited to the pavement marking, the lack of pedestrian signaling device, and inadequate lighting. (*Ibid*.)

On Reply, Petitioner confirms that her primary argument is incapacity under Government Code section 946.6, subdivision (c)(5). (Reply, p. 7:14-23.) While it is true that Petitioner has provided evidence that she was seriously injured and physically and mentally incapacitated, she has not shown that she, "by reason of that disability," failed to present a timely claim. As the Opposition points out, she had legal representation at least as of October 2024, perhaps sooner. Once legal counsel is retained, it is the responsibility of that attorney to diligently pursue the pertinent facts of the cause of action to identify possible defendants. (*People ex rel. Dep't of Transportation v. Superior Ct., supra,* 105 Cal.App.4th at pp. 44–45.)

The Petitioner has the burden of proving one of the statutory grounds for relief by a preponderance of the evidence. *(Rodriguez v. County of Los Angeles* (1985) 171 Cal.App.3d 171, 174.) On the record before the Court, Petitioner has failed to demonstrate that counsel diligently pursued the facts. (*People ex rel. Dep't of Transportation v. Superior Ct., supra,* 105 Cal.App.4th at p. 44 ["Excusable neglect" is defined as the act or omission that might be expected of a prudent person under similar circumstances. It is not shown by the mere failure to discover a fact until it is too late; the party seeking relief must establish that *in the exercise of reasonable diligence*, he failed to discover it."].)

In order to evaluate whether such diligence was exercised, the Court would need to be apprised of when legal representation began, the steps counsel took to investigate Petitioner's potential claims, and why the facts giving rise to the claim (possibly negligent and/or defective design, construction, and maintenance of the crosswalk including but not limited to the pavement marking, the lack of pedestrian signaling device, and inadequate lighting; See Petition, Ex. A, ¶ 3), could not have been discovered by a site visit, etc. Counsel should also be prepared to address the over one month period between receipt of the video and deadline to file a timely claim and why a claim could not have been submitted during that time period.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in

accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/02/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0008417

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: LACUNA SUSTAINABLE INVESTMENTS, LLC vs. DEFENDANT: CLAUDE PATRICK MCCONNELL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant Claude Patrick McConnell's demurrer to the First, Second, and Third Causes of Action is **OVERRULED**.

Procedural Deficiency

The Court draws Defendant's attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

Allegations in the First Amended Complaint

Plaintiffs Lacuna Sustainable Investments, LLC ("LSI") and Brad Bauer allege that Mr. Bauer is a member and the CEO of LSI and that Defendant Claude Patrick McConnell is a member and manager of LSI and a member of LSI's Investment Committee. Mr. Bauer and Defendant are the two managers of LSI. In November 2022, Defendant sent a letter to Mr. Bauer indicating his intention to depart LSI within approximately 12 months. To date, Defendant remains a member and manager and has been paid roughly $6 million in compensation, but he ceased providing professional services to LSI and has not actively worked on new investment opportunities or been involved in LSI administration since late 2022. After the parties were unsuccessful in working out a financial exit package for Defendant, Defendant made a payment to himself of $500,000 out of LSI's operating account on May 1, 2023. In September 2023, Defendant accepted a job as CFO of another company. Defendant never resigned from LSI but stopped working on its behalf. Defendant has also worked with various parties in litigation against LSI since 2024.

The First Cause of Action alleges breach of fiduciary duty, the Second Cause of Action alleges conversion, and the Third Cause of Action alleges violation of Penal Code Section 502.

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), 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 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id*. at 1098–1099; *Doe,* 42 Cal.4th 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.)

Request for Judicial Notice

Defendant requests that the Court take judicial notice of LSI's Operating Agreement. Plaintiffs oppose this request.

Evidence Code Section 452(h) provides that a court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Defendant argues that the Court can take judicial notice of the Operating Agreement because it is referenced in paragraph 37 of the First Amended Complaint. Specifically, paragraph 37 alleges: "As a member and manager of LSI, McConnell owed, and continues to owe, fiduciary duties to LSI, including duties of loyalty, care, and good faith. McConnell additionally agreed to undertake fiduciary duties to LSI when he signed the LSI operating agreement."

When ruling on a demurrer, a court can take judicial notice of a document that is referenced in the complaint. (See e.g. *Performance Plastering v. Richmond American Homes* (2007) 153 Cal.App.4th 659, 666, n.2; *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, n.3, disapproved on other grounds in *Leon v. County of Riverside* (2023) 14 Cal.5th 910; *Marina Tenants Ass'n v. Deauville Marina Dev. Co.* (1986) 181 Cal.App.3d 122, 130; *Salvaty v. Falcon Cable Television* (1985) 165 Cal.App.3d 798, 800, n.1; *Swiss Park, Inc. v. City of Duarte* (1982) 136 Cal.App.3d 755, 758.) However, the court does not take judicial notice of a document's enforceability or its meaning where the enforceability or interpretation of the document is disputed. (See *Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 115-116.) "'[J]udicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.'" (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375 [citation omitted].) Thus, courts have taken judicial notice of both a contract and the meaning of contractual language where the contractual language is not reasonably subject to dispute. (See *Scott v. JPMorgan Chase Bank, NA* (2013) 214 Cal.App.4th 743, 754 [court took judicial notice of fact that under agreement,

party transferred assets but not liabilities, where interpretation of agreement was not reasonably susceptible to dispute and was capable of ready determination].)

While Plaintiffs oppose Defendant's request for judicial notice, they do not contend that the copy of the Operating Agreement attached to Defendant's request is not the current, operative agreement, or that it is incomplete, or that it is unenforceable in any respect. Accordingly, the Court grants Defendant's request to take judicial notice of the Operating Agreement. However, the Court does not take judicial notice of the truth of any facts contained in the Operating Agreement or any interpretation of the agreement to the extent there is a reasonable dispute regarding the meaning of the language.

Discussion

I. All Causes of Action

A. LSI's Ability to Sue Under the Operating Agreement

Defendant argues that LSI cannot bring an action against him because Section 5.1(c) of the Operating Agreement, which falls under the "Litigation" heading, states: "if there are two (2) or fewer Managers, approval by all Managers shall be required for the Managers to take any action." Defendant argues that because he is one of two managers and he did not authorize this lawsuit against him, LSI does not have the authority under the Operating Agreement to bring this suit.

Plaintiffs make two arguments as to why the Court should not take judicial notice of Defendant's proffered interpretation of the Operating Agreement, namely, that Section 5.1(c) required Defendant's consent for LSI to bring this action against him. First, Plaintiffs attempt to create a reasonable dispute about the interpretation of the Operating Agreement by stating that they alleged something different than what Defendant contends the Operating Agreement requires. Specifically, in paragraph 13, Plaintiffs allege that "On information and belief, LSI did have the authority to maintain this suit directly." This bare legal conclusion alone is insufficient to create a reasonable dispute, particularly where Plaintiffs fail to cite to any authority or extrinsic evidence to support this allegation.

Plaintiffs' second argument is stronger, however. Plaintiffs argue that other language in the Operating Agreement supports their interpretation that LSI can bring an action without Defendant's approval. Plaintiffs point to Section 5.2(g), which provides in part that the CEO (here, Plaintiff Bauer) "shall have general supervision and control of the Company's business" and that Section 5.1 provides that "Article V sets forth provisions for the Company to be managed by the Managers subject to: (A) their delegations of authority to Officers pursuant to Section 5.2 . . . ." Plaintiffs argue that under these provisions, it is reasonable to interpret the Operating Agreement as granting Plaintiff Bauer the authority to commence this litigation on behalf of the company.

The *Anmaco* case relied upon by Defendant is not dispositive of this issue as *Anmaco* was decided under California law. Here, LSI is a Delaware LLC and the Operating Agreement states it is governed by Delaware law. The *Anmaco* court acknowledged that cases from other states

are "inconsistent in their results". (*Anmaco, Inc. v. Bohlken* (1993) 13 Cal.App.4th 891, 898-899.) Further, in *Anmaco*, the operating agreement contained language that would have also given the defendant, the CEO, the ability to sue the plaintiff. The court stated: "Pressing the corporation into litigation as a plaintiff is inappropriate where the other shareholder-director could claim equal authority to bring suit in the corporate name. This is particularly obvious in the instant case where [the defendant] is not only an equal director and shareholder, but is also chief executive officer of the company." (*Id.* at p. 900.) Here, Defendant does not point to any language in the Operating Agreement that gave him the same powers as Plaintiff Bauer, the CEO of LSI.[1] Defendant also cites to Delaware Code Section 18-402, but this section does not address the specific issue before the Court.

The Court does not sustain the demurrer based on the language of the Operating Agreement as Plaintiffs have offered a reasonable, contrary interpretation of the Operating Agreement that could potentially support their argument that LSI can bring this action against Defendant. The Court will not determine this issue as a matter of law at this stage of the litigation.

B. Uncertainty

Defendant argues that the First Amended Complaint is uncertain because it asserts alternative claims by LSI directly and by Plaintiff Bauer derivatively on behalf of LSI.

"Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (e) are disfavored. A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. A demurrer for uncertainty should be overruled when the facts as to which the complaint is uncertain are presumptively within the defendant's knowledge." (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 [citations and internal quotations omitted].)

The Court does not sustain the demurrer on this basis. Pleading in the alternative is a generally acceptable practice and Defendant has not shown that the claims are so ambiguous that he cannot meaningfully respond. The other "ambiguities" offered by Defendant pertain to facts that Defendant argues must be alleged but which are not actually required to be alleged to state a cause of action, as discussed more fully below.

II. First Cause of Action

Defendant demurs to the First Cause of Action for breach of fiduciary duty on the additional ground that Plaintiffs fail to allege sufficient facts that Defendant's payment to himself from LSI's account was unauthorized or constituted self-dealing. Defendant points out that Plaintiffs allege that Defendant was a member, manager, and President of LSI and do not identify any provision of the Operating Agreement or other governing document that prohibited Defendant

[1] Defendant states on page 18 of his MPA that he is also a CEO, but this is not alleged in the First Amended Complaint. Defendant also argues that California courts "routinely" apply *Anmaco* to foreign entities, and "routinely" sustain demurs to actions filed in the name of deadlocked entities even if formed elsewhere but does not cite to any cases that have actually done so.

from making this payment. Further, Defendant argues, Plaintiffs do not allege any facts showing the payment did not reflect compensation due or a distribution to which Defendant was entitled, and do not allege that LSI requested or demanded the return of the payment which was made almost three years before filing this suit. Defendant also contends that Plaintiffs' other allegations regarding Defendant's failure to continue working for LSI and Defendant's conduct relating to litigation against LSI are vague and conclusory because Plaintiffs do not identify the specific litigation, the parties involved, the nature of Defendant's assistance, or whether Defendant's assistance was required under law.

The demurrer to the First Cause of Action is overruled. Plaintiffs have alleged sufficient facts to state a cause of action for breach of fiduciary duty. They do not need to allege the additional facts identified by Defendant in order to state a cause of action. Defendant's additional argument that this cause of action is barred by the economic loss rule also fails as Defendant does not show that Plaintiff's claims are based solely on duties arising out of the Operating Agreement. Further, Defendant's economic loss rule argument challenges only the alleged unauthorized payment and not the other conduct at issue in this cause of action, and a demurrer does not lie to only part of a cause of action. (See *Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 944.)

III. Second Cause of Action

Defendant demurs to the Second Cause of Action on the additional ground that Plaintiffs fail to allege sufficient facts to state a cause of action for conversion. Defendant argues that Plaintiffs do not allege Defendant lacked the right to access or schedule the payment to himself or that the payment was not compensation due or a distribution. The demurrer is overruled. Plaintiffs have alleged sufficient facts to state a cause of action for conversion as they specifically allege that the payment was wrongful and unauthorized. Plaintiffs do not need to allege the additional facts identified by Defendant in order to state a cause of action. Defendant also fails to show how this cause of action is barred by the economic loss rule.

IV. Third Cause of Action

Defendant demurs to the Third Cause of Action for violation of Penal Code Section 502 on the additional ground that the allegation that Defendant did not have authority to make the payment is not supported by factual allegations. Specifically, Defendant argues that Plaintiffs do not allege Defendant's access to the payment system was revoked or limited before the payment was made, that Defendant exceeded the scope of his access, or that Defendant was not owed the money or entitled to the payment. Defendant also argues that Plaintiffs' allegation that Defendant did not have permission to make the payment is a legal conclusion only.

The demurrer to this cause of action is overruled. Plaintiffs allege that Defendant used the payment system without permission to devise or execute a scheme or artifice to defraud, deceive or extort LSI, or to wrongfully obtain LSI's money. Plaintiffs also allege that Defendant's use of the payroll software was without authorization and that despite Defendant's role as President, he did not have the authority to make withdrawals for improper purposes that were not authorized by LSI. These allegations are sufficient to state a cause of action.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for June, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov