SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005142

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: BLUE SKY UTILITY 2017 II LLC

vs.

DEFENDANT: 3902 ANNADALE LANE, LP, ET AL

NATURE OF PROCEEDINGS: MOTION - COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Blue Sky Utility filed a motion to compel further written responses to its Second Request for Production of Documents (the "SRPOD") to Defendant 3902 Annadale Lane ("Defendant"), and seeks documents responsive to the SRPOD, and Monetary Sanctions pursuant to Code of Civil Procedure §§ 2031.010 et seq. and 2023.010 et seq.

Defendant has not filed a response, nor was an opposition the discovery motion filed. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) Plaintiff's motion is therefore GRANTED in its entirely, including the award for sanctions in the amount of $4,350.00. Sanctions are due payable to Plaintiff within 30 days after entry of order.

Plaintiff to prepare the order.

Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are diving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005785

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: JOSE AVIGAIL GRAMAJO ORDONEZ

vs.

DEFENDANT: GENERAL MOTORS LLC

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

This matter was last called on July 31, 2026, with appearances made by the parties. Pursuant to Marin County Rule, Civil 2.13 Bryan Kreft was appointed to preside as Discovery Facilitator for Plaintiff's motion to compel responses to documents, set one, and Feb 18, 2026. Plaintiff alleges that he served three separate meet and confer letters outlining why defendant's responses were not code compliant. The defendant refused to supplement responses. Plaintiff alleges that defendant has not produced documents in connection with RFPs: 1-58. Plaintiff also alleges that Defendant has refused to meet and confer with Plaintiff's counsel via Zoom or phone calls to complete a good faith attempt to meet and confer.

Defendant filed its opposition on May 5, 2026, explaining that under modifications to the . Song-Beverly Consumer Warranty Act, new cases filed after January 1, 2025, new cases under the Act are subject to AB 1755. Defendant argues that discovery is limited, under the act in that defendant must now produce early disclosures of a specific set of documents related to the subject vehicle. The documents produced by the defendant thus far have been identified by the Legislature as "those most associated with lemon law claims". These include a vehicle summary reports, service documents, product brochures, etc.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

Nothing was filed by either party to provide the court with an update. The Court concludes that this discovery matter has been or is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the parties fail to reach resolution through the facilitator, either party may request (by ex parte application) that the Court re-set the motion for an expedited hearing.

Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007029

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: WILLIAM SCOTT HOPPE

vs.

DEFENDANT: THE ESTATE OF RICHARD CALDWELL BREWER, DECEASED ET AL

NATURE OF PROCEEDINGS: DEMURER

RULING

Defendants' demurrer to the First and Second Causes of Action is sustained *with* leave to amend.

Procedural Deficiencies

Local Rule 2.8(C)2 requires the moving party to attach the operative pleading as an exhibit to the demurrer. Code of Civil Procedure Section 430.41(a)(3) requires that the demurring party meet and confer "in person, by telephone, or by video conference". Defendants did not respect these codes and although the demurrer is not overruled for these reasons, the Court nevertheless reminds Defendants to follow all applicable rules when filing matters with the court. (Code Civ. Proc. § 430.41(a)(4).)

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.)

Allegations in the Amended Complaint

Plaintiff is the former owner of 85 Eastview Avenue in Tiburon and claims an interest in the adjacent parcels to 85 and 87 Eastview (the "Disputed Parcel"). Plaintiff now resides in Massachusetts. The named defendants, including Defendants Arne T. Morkemo and Emily G. Morkemo (the "Morkemo Defendants"), who own the property at 87 Eastview, claim or may claim some right or interest adverse to Plaintiff's claimed interest in the Disputed Parcel. The Disputed Parcel is described by metes and bounds in Exhibit A to the Amended Complaint. Plaintiff alleges that he "claims an interest in the Disputed Parcel based on boundary location as recognized by prior owners and as described in Exhibit A."

In or around 2007, in connection with Plaintiff's purchase and investigation of 85 Eastview Avenue, Plaintiff obtained a field survey and discussed the location of the boundary area between 85 Eastview Avenue and 87 Eastview Avenue with then-owner Richard Caldwell Brewer. After the boundary area was marked in the field, Plaintiff and Mr. Brewer conducted an on-site walk of the line and discussed the deed exception affecting 85 Eastview Avenue. Brewer stated that he was not asserting any claim based on that exception and that, consistent with the marked line and the public record mapping and survey references, each owner owned everything on his respective side of that line.

After the 2015 conveyances of 85 Eastview and 87 Eastview, a dispute arose regarding ownership and adverse claims to the Disputed Parcel. Defendants began asserting claims that overlap the Disputed Parcel, creating an actual and present controversy regarding the parties' respective interests and the boundary location. Defendants' claimed interest is adverse to Plaintiff's claimed interest and inconsistent with the boundary location recognized on the ground during Mr. Brewer's ownership and with the recorded survey/map references incorporated in Exhibit A.

The Morkemo Defendants obtained a judgment quieting title in Marin County Superior Court in Case No. CV0000520 concerning a larger, survey-defined area in the vicinity of 87 Eastview. Plaintiff was not named or served in that action.

The First Cause of Action is to quiet title to the Disputed Parcel, and the Second Cause of Action is for declaratory relief.

Request for Judicial Notice

The Morkemo Defendants' request for judicial notice of the Grant Deed recorded on August 1, 2007, Document No. 2007-0046932 (Exhibit 1), Grant Deed recorded on April 20, 2015, Document No. 2015-0018060 (Exhibit 2), Grant Deed recorded on February 28, 2025, Document No. 2025-0004799 (Exhibit 3), Voluntary Petition for Individuals Filing for Bankruptcy filed in Case No. 18 32706-KRH (Exhibit 4), Summary of Your Assets and Liabilities and Certain Statistical Information filed in Case No. 18-32706-KRH (Exhibit 5), Amendment to Statement of Financial Affairs filed in Case No. 18-32706-KRH (Exhibit 6), Amendment to Schedule A/B filed in Case No. 18-32706-KRH (Exhibit 7), Final Decree filed in Case No. 18-32706-KRH (Exhibit 8), Complaint filed *in Emily G. Morkemo v. Town of Tiburon,* Case No. CV0000520 (Exhibit 9), and Judgment Quieting Title Case No. CV0000520 (Exhibit 10), is granted. (Evid. Code §§ 452, 453.)

Causes of Action Subject to Demurrer

First Cause of Action/Quiet Title

Section 761.020

The Morkemo Defendants demur to the First Cause of Action on the ground that the Amended Complaint fails to comply with Code of Procedure Section 761.020, which provides that a complaint in a quiet title action “shall be verified and shall include all the following:

a) A description of the property that is the subject of the action . . .
b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title . . . .
c) The adverse claims to the title of the plaintiff against which a determination is sought.
d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought . . . .” (Code Civ. Proc. § 761.020.)

The demurrer is sustained on the ground that Plaintiff does not comply with Section 761.020. Plaintiff does not identify the basis of his claimed title or the date as of which the determination is sought.

Res Judicata

The Morkemo Defendants demur to the First Cause of Action on the additional ground that it is barred by the doctrine of res judicata. “*Claim preclusion* prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. [Citation.] Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. [Citations.] If claim preclusion is established, it operates to bar relitigation of the claim altogether. Claim preclusion also bars claims that *could have been* raised in the first proceeding . . . . The court may sustain a demurrer on claim preclusion grounds [i]f all the facts necessary to show that the action is barred are within the complaint or subject to judicial notice . . . ” (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1190-1191 [citations and internal quotations omitted] [emphasis in original].)

Exhibit 9 to the Morkemo Defendants’ request for judicial notice is a Verified Complaint to quiet title filed by the Morkemo Defendants in August 2023. The Town of Tiburon (the “Town”) was named as a defendant, along with “all persons unknown, claiming any legal or equitable right, title estate, lien, or interest in the property described in the complaint adverse to Plaintiffs’ title, or any cloud on Plaintiffs’ title thereto . . . .” The Verified Complaint alleged that after the Morkemo Defendants bought the property at 87 Eastview in 2015, they learned of discrepancies between the dimensions of the parcel described in the grant deed and the dimensions of the parcel as reflected in the Marin County Assessor’s Parcel Map, and it was determined that a substantial portion of the Morkemo Defendants’ dwelling, and the garage were located outside the property as the property was described in the grant deed. The Verified Complaint also alleged that the Town owned, controlled, and maintained public roadway rights of way that border the property and that the Town did not claim any right of ownership of the disputed land shown in the Assessor's Parcel Map. The Morkemo Defendants sought either the consent of the Town or a judgment that the Town did not have a right or interest in the property.

Exhibit 10 is a Judgment Quieting Title entered on August 22, 2024, which stated among other things that title to the disputed property was vested in the Morkemo Defendants and that all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property adverse to the Morkemo Defendants have no right, title, estate, lien, or interest whatever in or to the Property, or any part of it, adverse to the Morkemo Defendants.

The demurrer is not sustained on this additional basis. Exhibit A to the Complaint reflects a different property description than the exhibit to the Judgment Quieting Title, so the Court cannot tell if the same parcel is at issue in both actions. In addition, the Morkemo Defendants argue that Plaintiff had notice of the earlier action because there was service by publication, but that fact is not found within the four corners of the Amended Complaint, and the Court does not consider extrinsic evidence in the context of a demurrer. (See *Kerivan v. Title Ins. & Trust Co.* (1983) 147 Cal.App.3d 225, 229.)

Judicial Estoppel

The Morkemo Defendants demur to the First Cause of Action on the additional ground that it is barred by judicial estoppel. "[J]udicial estoppel is an equitable doctrine aimed at preventing fraud on the courts. It is an extraordinary remedy that is applied with caution. The doctrine applies when (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Miyahara v. Wells Fargo Bank, NA* (2024) 99 Cal.App.5th 687, 697 [citations and internal quotations omitted].) "[W]here a debtor in bankruptcy violates its statutory and fiduciary duty to disclose a current claim during a bankruptcy proceeding, equitable and judicial estoppel operate as a bar to further litigation by the debtor.

By virtue of this failure to disclose, equitable and judicial estoppel operate against further litigation. The rationale for these decisions is that the integrity of the bankruptcy system depends on full and honest disclosure by debtors of all of their assets. The courts will not permit a debtor to obtain relief from the bankruptcy court by representing that no claims exist and then subsequently to assert those claims for his own benefit in a separate proceeding." (*Id.* at p. 698 [citations and internal quotations omitted].) "[A] debtor's assertion [in a civil action] of legal claims not disclosed in earlier bankruptcy proceedings constitutes an assumption of inconsistent positions . . . The omission of a cause of action or claim from . . . mandatory bankruptcy filings is tantamount to a representation that no such claim existed." (*Id.* at p. 699 [citation and internal quotations omitted].)

Exhibits 4-7 to the Morkemo Defendants' request for judicial notice are filings from Plaintiff's 2018 bankruptcy proceeding. On page 8 of Schedule A/B, paragraph 34, Plaintiffs identify "potential one-quarter interest in real property at 85 Eastview Avenue in Tiburon, CA, as a result of pending boundary dispute litigation; debtors' potential interest could be worth up to $250,000 though being valued here at 'unknowns' due to speculative nature of interest." Considering this language, the Court cannot conclude that Plaintiff's claims are barred under the doctrine of judicial estoppel.

Uncertainty

"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 demurrer is not sustained because of uncertainty, as any uncertainty in the First Cause of Action stems from Plaintiff's failure to allege the requisite elements of a quiet title claim under Section 761.020, as discussed above. The Court already sustains the demurrer based on that deficiency.

Second Cause of Action/Declaratory Relief

Plaintiff's declaratory relief cause of action is wholly derivative of his quiet title cause of action. The Court sustains the demurrer to the Second Cause of Action on this basis. (See *City of Lancaster v. Netflix, Inc.* (2024) 99 Cal.App.5th 1093, 1114; *Lauckhart v. El Macero Homeowners Assn.* (2023) 92 Cal.App.5th 889, 909; *Ball v. FleetBoston Financial Corp*. (2008) 164 Cal.App.4th 794, 800.)

The demurrer is sustained on a related basis as well. As Plaintiff does not identify the basis for his claim to the Disputed Parcel, particularly given his allegations that he is the "former owner" of 85 Eastview and now lives in Massachusetts, he has failed to allege facts sufficient to show he has standing for the declaration he seeks. (See *D. Cummins Corp. v. United States Fidelity & Guaranty Co.* (2016) 246 Cal.App.4th 1484, 1489 [affirming order sustaining demurrer to declaratory relief claim where plaintiff failed to allege facts supporting standing]; *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389 [same].)

Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009430

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: MICHAEL PARTOW vs. DEFENDANT: JUSTIN HILTON, ET AL	

NATURE OF PROCEEDINGS: MOTION - AMEND

RULING

This matter was last called on July 31, 2026, with Plaintiff Michael Partow and Defendants Debra Evans and Justin Hilton ("Defendants") all appearing, in pro per. Plaintiff filed a Motion for Leave to Amend the Complaint on July 2, 2026. Defendants Hilton filed an untimely opposition to the motion on July 29. The case was continued to August 21.

A motion to amend a pleading before trial must include a copy of the proposed amendment or amended pleading, which must be appropriately numbered, here as the First Amendment Complaint. Rule of Court, Rule 3.1324(a)(1). The moving party must state the allegations to be added, and where by page, paragraph and line number, and where additional allegations are located. Rule 3.1324(a)(3). The party must file a declaration specifying the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amendment where discovered, and the reasons why the requested amendment was not made earlier. Rule 3.1324(b).

Plaintiff has not filed a proposed amended complaint, nor was the motion supported by a declaration, as required. The motion to amend is DENIED.

On July 10, 2026, the court GRANTED Defendants' demurrer to the complaint, with leave to amend the second and third causes of action. Defendant is to prepare the order, forthwith.

Plaintiff is to amend his compliant in conformity of the court's ruling on July 10, within 30 days of entry of this order.

Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-

7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0010022

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: MICHAEL BOROKHOVICH vs. DEFENDANT: VOLKSWAGEN A.G., A MULTINATIONAL CORPORATION, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) DEMURRER
3) DEMURRER

RULING

Defendant Volkswagen A.G. made a special appearance on July 2, 2026, to file a motion to quash service of summons and complaint. The motion also sought an order dismissing the claims against it for lack of personal jurisdiction. The motion was GRANTED WITHOUT PREJUDICE, because Plaintiff did not file a response, nor was an opposition to the motion filed. (The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.))

Defendant filed a proposed order dismissing the defendant *with prejudice*. The court signed the order on August 7, 2026; however was never entered. That order is hereby vacated, with the Defendant ordered to correct and file the order of dismissal without prejudice.

Plaintiff filed an *ex parte* request to set aside that prior order pursuant to CCP §473(b), to explain that the Plaintiff did not respond to the *ex parte* due to improper service. The *ex parte* was heard on August 12, 2026, and was DENIED.

Plaintiff argues that the email notice of hearing was sent to the wrong address. Plaintiff's counsel confirms that notice was sent to her work email by the Defendants, and not to the firms' dedicated e-mail service account "eservicewarrantylaw@squirepb.com." In the court's view, Plaintiff was served because counsel for Plaintiff acknowledged that the email was sent to her work email address. Therefore, the counsel's firm received notice of the motion.

The court also advised Defense counsel that it would likely grant a request by Plaintiff's counsel to set aside the order re: motion to quash service based on this emailing error.

The court anticipates that the parties have met and conferred and that the matter has been resolved so the case can now move forward. If the lawyers have not resolved the issue, the Defendant may request a rehearing on the motion to quash service, with the Plaintiff provided with the opportunity file an opposition.

Appearances are required.

Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CIV2200568

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: NAOMI TSEGGAI, ET AL vs. DEFENDANT: WESTERN VILLAGE OAKS ASSOCIATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Appearances required.

Based on the papers submitted in connection with this motion, both Plaintiffs Naomi Tseggai and Ghenet Tekie ("Plaintiffs") and Defendant Dollar Tree Stores, Inc. ("Dollar Tree") believe that under the operative pleading, Plaintiffs' May 31, 2022 First Amended Complaint ("FAC"), Dollar Tree faces potential products liability in relation to a helium balloon.

Plaintiffs have not sued Dollar Tree, or any defendant currently involved in this case (as opposed to numerous yet-to-be-identified Doe defendants) for products liability. The only defendants sued for products liability are Doe Nos. 51-80. (See FAC, p. 7.) Dollar Tree is Doe No. 4. (See May 31, 2024 Doe Amendment.) No Doe defendant within the Nos. 51-80 range has yet been identified. The identified Does are No. 1 (RealManage, LLC, identified November 1, 2022); No. 2 (Azar Mahban, identified April 28, 2023); No. 3 (Barbier Security Group, identified September 22, 2023); and No. 4 (Dollar Tree). Plaintiffs likewise have not alleged that Dollar Tree, or any defendant who has been identified thus far, did anything in relation to a helium balloon. The only defendants the FAC describes as doing anything in relation to a helium balloon are the *unidentified* Doe Nos. 51-80. (FAC, p. 7.) This means the allegations surrounding the helium balloon cannot support the *identified* defendants' liability on any theory. For Plaintiffs to hold any of the defendants who have been identified thus far liable on a products liability theory, or on any other theory based on conduct involving a helium balloon, they would need to amend their complaint.

Dollar Tree recognizes that it is a target of the products liability claim even though that cause of action is not alleged against it. (Memorandum, p. 11, fn. 2.) Dollar Tree elected not to take advantage of this and instead challenges the products liability claim on its merits. The Court appreciates Dollar Tree's willingness to overlook what was obviously an oversight by Plaintiffs' counsel, but the Court cannot hold Dollar Tree liable on causes of action expressly alleged only against other defendants or based on conduct expressly attributed only to other defendants. With the operative pleading in its current state, the Court cannot entertain a summary judgment motion premised on the idea that Dollar Tree can be held liable to Plaintiffs based on this helium balloon. (See *Whelihan v. Espinoza* (2003) 110 Cal.App.4th 1566, 1576 ["The complaint serves to delimit the scope of the issues before the court on a motion for summary judgment[], and a party cannot successfully resist summary judgment on a theory not pleaded."] [internal citation omitted].)

Given Dollar Tree's willingness to overlook this error, the Court anticipates that Dollar Tree may be willing to withdraw its motion for summary judgment, stipulate to Plaintiffs' amending their complaint to assert the products liability claim against Dollar Tree, and resubmit its motion once Plaintiffs have amended the FAC. Appearances are required so that the parties can discuss next steps with the Court.

If Plaintiffs amend their complaint, they should remove Dollar Tree/Doe No. 4 as a defendant from the claims they now deny that they are pursuing against Dollar Tree. Based on Plaintiffs' discovery responses, this includes *at least* the premises liability claim. (See Def.'s Ex. 5 at Special Interrog. Nos. 5, 6.)

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 August, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1

Meeting ID: 161 548 7764
Passcode: 502070
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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300174

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: NICHOLAS M. JAMES and DEFENDANT: FAITH DOROTHY WATERS	

NATURE OF PROCEEDINGS: MOTION – DISMISS

RULING

The motion to dismiss by defendant Faith Dorothy Waters, a.k.a. Faith James Waters ("Defendant") is GRANTED. (11 U.S.C. § 524 (a)(2).)

The motion is DENIED to the extent it seeks sanctions, attorneys' fees, and a finding of contempt for violation of the discharge injunction. Enforcement of the Section 524 discharge injunction through civil contempt lies within the exclusive jurisdiction of the United States Bankruptcy Court that issued the discharge, not this Court.

Plaintiffs' request for sanctions under Code of Civil Procedure sections 128.7 and 1008(d) is DENIED.

Legal Standard

A discharge order "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset" a discharged debt. (11 U.S.C. § 524 (a)(2).)

Factual and Procedural Background

This action arises out of the administration of the estate of Nicholas D. James ("Decedent"), who died on December 4, 2020. Decedent was the brother of Defendant. Plaintiffs Nicholas M. James and Tristan Scaglione ("Plaintiffs") are Decedent's children and Defendant's niece and nephew. The underlying complaint, filed January 24, 2023, alleges that Defendant misappropriated funds from Decedent under a power of attorney and after his death but before her appointment as executor, and asserts claims for fraud, conversion, elder abuse, and breach of fiduciary duty. (See Complaint, 1/24/23.)

On November 13, 2025, Defendant and her husband, Roger Waters, filed a joint voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Case No. 25-30929. Plaintiffs received notice of the same. (Declaration of Kathleen C. Miller, ¶ 3.) Defendant and her husband scheduled this lawsuit as an unsecured claim on Schedule E/F, identifying "Nicholas M. James and Tristan Scaglione" as creditors, listing the debt in the amount of $72,921.00, describing it as an "Unlimited civil suit," and cross-referencing "Case No. CIV 2300174." (Birnberg Decl., Exh. B.)

The bar date to file a complaint objecting to the discharge of a scheduled debt was February 17, 2026. (Birnberg Decl., Exh. C.) Plaintiffs did not file any adversary proceeding or complaint to determine dischargeability by that date. (Birnberg Decl., Exh. D.) On February 18, 2026, the bankruptcy court granted the debtors a discharge under 11 U.S.C. section 727. (11 U.S.C. § 727; see also Birnberg Decl., Exh. D.) Additionally, the trustee filed a report of no distribution. (Birnberg Decl., Exh. E.) The discharge was filed with this Court on March 26, 2026. (*Ibid*.)

Discussion

A discharge under Chapter 7 relieves the debtor from all debts that arose before the order for relief, "'[e]xcept as provided in section 523.'" (*Taggart v. Lorenzen* (2019) 587 U.S. 554, 558.) A discharge "voids any judgment" determining the personal liability of the debtor on a discharged debt and "operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any such debt as a personal liability of the debtor." (11 U.S.C. § 524.) The discharge order thus "'operates as an injunction' that bars creditors from collecting any debt that has been discharged." (*Taggart*, *supra*, 587 U.S. 554, at p. 558.)

U.S.C. section 523(a) excepts certain debts from discharge, including debts for fraud or false representation (§ 523(a)(2)), for "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny" (§ 523(a)(4)), and for "willful and malicious injury by the debtor" (§ 523(a)(6)). (11 U.S.C. § 523.) These three exceptions are not self-executing. Under section 523(c)(1), "the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) . . . unless, on request of the creditor . . . and after notice and a hearing, the court determines such debt to be excepted from discharge." (11 U.S.C. § 523.) The Supreme Court has confirmed that these are the only "three categories of debts for which creditors must obtain advance determinations" of nondischargeability. (*Taggart*, *supra*, 587 U.S. 554, at p. 564.)

The mechanism and deadline for obtaining that determination are prescribed by Federal Rule of Bankruptcy Procedure 4007(c): a complaint to determine dischargeability under section 523(c) "must be filed within 60 days after the first date set for the § 341(a) meeting of creditors," and any motion to extend must be filed "before the time expires." (Fed. R. Bankr. P. 4007.) That deadline may be extended only as Rule 4007(c) itself permits, or only on a timely pre-expiration motion, so a court has no authority to extend it after the bar date has passed. (Fed. R. Bankr. P. 9006.) The consequence of inaction is spelled out in the Advisory Committee's own commentary to Rule 4007: "The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged." (Fed. R. Bankr. P. 4007.)

Additionally, lack of formal notice does not preserve such a debt where the debt was scheduled or the creditor otherwise had timely knowledge of the case. Section 523(a)(3) excepts a debt from discharge only where it was "neither listed nor scheduled" in time to permit the creditor to act, and even then the exception does not apply where "such creditor had notice or actual knowledge of the case in time" to file. (11 U.S.C. § 523(a)(3).)

This Court retains concurrent jurisdiction with the bankruptcy court to give effect to a discharge as an affirmative defense, for example, when "the debtor interposes in a state court collection action the defense of discharge in bankruptcy." (*In re Hellhoff*, No. 09-81880-MHM, 2011 WL 873447 (Bankr. N.D. Ga. Mar. 14, 2011), p. 2 fn 2.) Indeed, the Supreme Court has observed that state courts "have concurrent jurisdiction over" the question whether a debt has been discharged. (*Taggart*, *supra*, 587 U.S. 554, at p. 564.) But there is a firm line between recognizing a discharge defensively and enforcing the discharge injunction through contempt. "'[W]hile state courts have concurrent jurisdiction to enforce a discharge injunction as an affirmative defense in collection suits, only the bankruptcy court that issued the discharge order may offer a contempt remedy for an alleged violation.'" (*In re Miller*, 674 B.R. 316, 329 (Bankr. D. Md. 2025).) There is no private right of action under section 524, and a motion for contempt to enforce the discharge injunction "must be brought via motion in the bankruptcy case." (*Barrientos v. Wells Fargo Bank, N.A.* (9th Cir. 2011) 633 F.3d 1186, 1188.) The remedy for a violation "is limited to contempt . . . which must be decided by the court that entered the discharge." (*In re Fagan*, 559 B.R. 718, 727 (Bankr. E.D. Cal. 2016).) Where such relief is sought, a court may hold a creditor in civil contempt only if there is no fair ground of doubt as to whether the order barred the creditor's conduct. (*Taggart*, *supra*, 587 U.S. 554 at p. 565.)

Here, and despite receiving the Notice of Bankruptcy Case Filing advising that the recipient "may be a creditor of the debtor" (Miller Decl., Exh. A), Plaintiffs failed to file any adversary proceeding or complaint by February 17, 2026 in the bankruptcy court to determine dischargeability and Defendant's debt was discharged on February 18, 2026. The discharge enjoins Plaintiffs from proceeding with this action against Defendant as set forth above.

Accordingly, Defendant's motion to dismiss is granted.

Further, the Court is without jurisdiction to determine whether there has been a violation of the discharge injunction and thus denies any request regarding the same.

Plaintiffs' request for contempt and sanctions pursuant to Code of Civil Procedure sections 1008(d) and 128.7 is, likewise, denied.

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 August, 2026 is as follows:
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Meeting ID: 161 548 7764
Passcode: 502070

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001063

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MAHER FAKHOURI

vs.

DEFENDANT: TAREQ FAKHOURI

NATURE OF PROCEEDINGS: DEMURRER

RULING

The demurrer by Cross-Defendants Mazen Fakhouri ("Mazen"), Fawzi Habhab ("Fawzi") and Petra Accounting and Consulting Group, Inc. ("Petra") is overruled.

Factual and Procedural Background

Maher Fakhouri ("Maher") filed his initial Complaint against Tareq Fakhouri ("Tareq") on October 4, 2023. Maher alleged that he is the majority owner, CEO and a director of MQM, Inc. ("MQM") and Zanoon, Inc. ("Zanoon"), and that Tareq is a minority owner, Treasurer and CFO, and a director of MQM and Zanoon. MQM operates the Crepevine restaurant in Santa Rosa and Zanoon operates the Crepevine restaurant in San Rafael. Maher further alleged that Tareq has embezzled funds and assets belonging to Maher and engaged in various schemes to launder the money wrongfully taken from Maher, such as falsely representing that the restaurants were in poor financial health such that Maher would not receive any distributions and influencing employees to lie for him to cover up his embezzlement.

On November 30, 2023, Tareq filed a Cross-Complaint against Maher, Maher's brother Mazen Fakhouri ("Mazen"), and CPA Fawzi Habhab ("Fawzi"), naming Zanoon, MQM and Saltio, Inc., which owns another restaurant, as nominal cross-defendants. Tareq alleged that it is Maher who has embezzled money from the corporations and has taken a disproportionate amount of distributions without accounting for it. Tareq also alleged that Maher has failed to pay Tareq's agreed-upon salary and has purported to appoint three of his close friends as directors. Tareq asserted both derivative claims on behalf of the corporations and individual claims.

Tareq filed a First Amended Cross-Complaint on January 31, 2024, adding Petra Accounting and Consulting Group, Inc. ("Petra"), through which Fawzi allegedly does business, as a cross-defendant. Tareq also added causes of action for civil theft against all cross-defendants derivatively and individually and causes of action for fraud against Fawzi derivatively and individually.

On May 16, 2024, the Court entered an Order sustaining Maher's demurrer to Tareq's extortion claim without leave to amend, and to Tareq's derivative claims for breach of fiduciary duty and civil theft on behalf of Saltio with leave to amend. Tareq filed a Second Amended Cross-Complaint on June 5, 2024 which added factual allegations to the derivative claims addressed in the Court's Order.

On July 19, 2024, Zanoon filed a motion to consolidate this action with another action pending in Department E, *San Rafael Properties, LLC v. Zanoon, Inc*., Case No. 0002145 (the "Lease Action"). The Lease Action involves a single cause of action for declaratory relief arising out of Zanoon's alleged default under a lease amendment for the San Rafael Crepevine restaurant. On October 24, 2024, the Court entered an Order denying the motion, finding no common questions of law or fact.

Tareq filed a Third Amended Cross-Complaint on November 19, 2024, pursuant to a Stipulation and Order filed October 29, 2024, which added causes of action for wrongful termination against the three corporations, defamation against Maher, and violation of Business & Professions Code Section 5058 against Fawzi and Petra.

A bench trial was held in the Lease Action on March 24-27, 2025. On August 4, 2025, the Court entered judgment finding the first amendment to the original lease dated July 21, 2022 valid and enforceable.

On March 2, 2026, Maher filed the operative Third Amended Complaint, alleging claims for conversion, receipt of stolen property, intentional misrepresentation, fraudulent concealment, breach of fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing and financial elder abuse.

On April 22, 2026, Tareq filed the operative Fourth Amended Verified Cross-Complaint ("FAXC"), pursuant to a Stipulation and Order filed April 21, 2026, alleging the following causes of action: 1) Derivative Breach of Fiduciary Duty on behalf of Zanoon and MQM (against Maher, Fawzi, and Mazen); 2) Individual Breach of Fiduciary Duty (against Maher, Fawzi, and Mazen); 3) Derivative Professional Negligence on behalf of Zanoon and MQM (against Fawzi); 4) Individual Professional Negligence (against Fawzi); 5) Involuntary Dissolution of Zanoon; 6) Involuntary Dissolution of MQM; 7) Derivative Civil Theft (Penal Code § 496) on behalf of Zanoon and MQM (against Maher, Fawzi, and Mazen); 8) Individual Civil Theft (Penal Code § 496) (against Maher, Fawzi, and Mazen); 9) Derivative Fraud on behalf of Zanoon and MQM (against Fawzi); 10) Individual Fraud (against Fawzi); 11) Wrongful Termination (against MQM and Zanoon).

Cross-Defendants Mazen, Fawzi and Petra now demur to the operative 4AXC.

Discussion

I. Procedural Issues

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

Defense counsel's declaration in support of the demurrer does not explicitly show that she complied with the meet and confer requirements of Code of Civil Procedure Section 430.41, which requires the demurring party to meet and confer "in person or by telephone." (*See* Code Civ. Proc. § 430.41(a); Declaration of Katy D. Young, ¶ 6.) Notwithstanding the failure to strictly comply with the meet and confer requirements, the court's ruling is not based upon the same. (Code of Civ. Proc., § 430.41(a)(4).)

II. Standard on Demurrer

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

III. Merits

A. Statute of Limitations

Mazen challenges the first and second causes of action for Breach of Fiduciary Duty (derivative and individual) as barred by the four-year statute of limitations (Code Civ. Proc., § 343) and the seventh and eighth causes of action for Civil Theft as barred by the three-year limitations period (Code Civ. Proc., § 338(c)). A demurrer based on a statute of limitations defense must clearly and affirmatively show that the claim is barred. (*Lockley v. Law Office of Cantrell, Green, Kekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.) "It is not sufficient that the complaint might be barred." (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324.) "If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment . . . .'" (*Id.* at 324-325 [internal citation omitted].)

The pleading does not clearly and affirmatively show a time-bar. The 4AXC alleges present-tense and ongoing conduct that, drawn favorably to Tareq, falls within the limitations windows measured from the October 4, 2023 filing. (See for example, 4AXC ¶¶ 35, 43, 44, 46-48, 95, 98, 104, 107, 123-127.) Cross-Defendants themselves concede the challenged paragraphs "are not given any temporal specificity." (Mtn., 4:6-17.) However, a pleading silent as to dates does not affirmatively establish accrual outside the limitations period; it establishes only that the question cannot be answered at the pleading stage. That ends the inquiry on demurrer.

To the extent the demurrer asserts that the parties have conducted extensive written discovery and Mazen's deposition, which purportedly "confirms that all claims against Mazen are outside the statute of limitations and must be dismissed," this argument is not proper on demurrer. (*Id.*) That is an evidence based argument and the Court may not consider the Declaration of Katy Young, the written discovery, or what Mazen's deposition did or did not produce at the pleadings stage. The demurrer is overruled.

B. Failure to State Facts Sufficient to Constitute a Cause of Action

<u>First and Second Causes of Action for Breach of Fiduciary Duty</u>

"The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 483.) "In order to plead a cause of action for breach of fiduciary duty, there must be an adequate showing of each of these elements." (*Id.*) Depending on the circumstances, a cause of action for breach of fiduciary duty can be based upon either negligence or fraud. (*Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1093.) An aiding-and-abetting breach-of-fiduciary-duty claim against a nonfiduciary requires allegations of a primary breach, the defendant's actual knowledge of that specific breach, substantial assistance or encouragement, and resulting harm. (*Casey v. United States Bank Nat'l Ass'n* (2005) 127 Cal.App.4th 1138, 1144–1145.) Generic allegations of awareness of wrongdoing do not satisfy the actual-knowledge element; the pleading must identify the specific wrong the defendant knew of and what the defendant did to assist it. (*Id.* at p. 1145–1146.)

Maher is alleged to have breached his fiduciary duties by, among other things, "making unauthorized payments to himself" and embezzling corporate funds. (4AXC, ¶¶ 53, 65.) Beyond the element-tracking allegation that Mazen "knew that Maher intended to breach his fiduciary duties" (*Id.* ¶ 56), the 4AXC identifies concrete breaches Mazen knew of and helped effect. Maher is alleged to have caused the corporations, "with the assistance and encouragement of Mazen," to cease paying Tareq's $12,000 monthly salary "in March 2023." (*Id.* ¶ 43.) Maher is further alleged to have "delegat[ed] his decision-making as a director to Mazen, who has aided in such breaches ... [by] ensuring the continued transfer of funds from the Corporations to an entity named Crepevine Ranch, Inc.," a co-owned entity, with "no proper accounting of the transactions." (*Id.* ¶ 44.) Mazen is alleged to have "gave substantial assistance or encouragement to Maher ... by allowing and aiding in fiduciary breaches including, among other things, Maher's embezzlement of funds from the Corporations." (*Id.* ¶¶ 57, 69.) These paragraphs supply particular breaches, dates, and mechanisms, not just conclusions. The corporations and Tareq are alleged to have suffered damages as a direct and proximate result. (4AXC ¶ 58.)

Cross-Defendants argue that because the gravamen is embezzlement, fraud particularity attaches under the anti-relabeling principle of *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 25.) Even applying that overlay, the 4AXC identifies the mechanism (Crepevine

Ranch transfers; March 2023 salary cessation), the timing, and Mazen's role as delegated decision-maker and advisor. (4AXC, ¶¶ 44, 98, 99.)

Cross-Defendants have not carried their burden to show facial insufficiency. (*Blank, supra*, 39 Cal.3d at p. 318.)

The demurrer to the First and Second Causes of Action against Mazen on pleading-sufficiency grounds is overruled.

Fawzi and Petra also demur to these claims on the ground that the 4AXC does not allege facts establishing that Fawzi aided Maher in his breach of fiduciary duty. (Ntc. of Dmr., 2:20-3:2.) However, in reply, Fawzi and Petra state they withdraw the demurrer on this ground. (Reply, 8:2-4.) Therefore, it is not adjudicated.

Seventh and Eighth Causes of Action for Civil Theft

The elements of civil theft under Penal Code section 496 are: "(i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126.) Section 496 reaches the fraudulent diversion of an entity's funds by those who control it and is not limited to classic trafficking in stolen goods. (*Siry Inv. v. Farkhondehpour* (2022) 13 Cal.5th 333.)

Mazen argues the seventh and eighth causes of action for Civil Theft for fail to state a claim because there are not facts "that Mazen committed civil theft." On demurrer, the pleading is read as a whole and given a reasonable interpretation, with all properly pleaded material facts assumed true. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962 (1992); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Read as a whole, and with the theft counts' incorporation of the earlier factual allegations, the 4AXC states a section 496 claim against Mazen on an aiding theory.

The 4AXC alleges that Maher "maliciously, intentionally, and unlawfully misappropriated, received, and/or diverted funds owned by the Corporations which he knew had been stolen and unlawfully obtained as he was the one to take said funds" (4AXC, ¶ 94), and that Maher "further wrongfully withheld and continues to withhold the funds owned by the Corporations which he knew and continues to know has been stolen and unlawfully obtained" (*id.* ¶ 95). Together with the earlier allegations of embezzlement and continuing diversion, these paragraphs plead an underlying section 496(a) violation by Maher.

The 4AXC alleges Mazen "gave substantial assistance and encouragement to Maher" by "being the person to advise and direct Maher as to how he can acquire said funds via the aforementioned unsavory fashion" and by being "an agent, appointed to aid Maher" who "received benefit from the thefts by Crepevine Ranch, a corporation he has an ownership interest in, receiving stolen funds." (4AXC, ¶¶ 99, 108.) It also alleges Mazen "knew that Maher was planning to receive the aforementioned funds belonging to the Corporations and that these funds had been stolen in a manner constituting theft" and that Mazen "had such knowledge by being the person to advise and direct Maher as to how he can acquire said funds" and by his role "as an agent, appointed to aid Maher." (4AXC ¶¶ 98, 107.)

Cross-Defendants correctly note that not every diversion or fiduciary breach is theft; section 496 requires criminal intent beyond mere nonperformance or falsity. (*Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, 505.) The 4AXC's allegations go beyond bare fiduciary breach: Cross-Complainant alleges Maher took corporate funds "maliciously, intentionally, and unlawfully" with knowledge they had been stolen (4AXC, ¶ 94), and that Mazen advised and directed the acquisition mechanism with knowledge the funds "had been stolen in a manner constituting theft" (*Id.* ¶ 98).

The demurrer is overruled

.

Ninth and Tenth Causes of Action for Fraud

The elements of fraud are: (1) misrepresentation or concealment, (2) knowledge of its falsity, (3) intent to defraud, (4) justifiable reliance and (5) resulting damage. (*Gil v. Bank of America, Nat. Ass'n* (2006) 138 Cal.App.4th 1371, 1381; *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 376.) Fraud causes of action must be pleaded with particularity, meaning that the plaintiff must allege "how, when, where, to whom, and by what means the representations were tendered." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

The derivative and individual fraud claims against Fawzi and Petra are based on Fawzi's alleged misrepresentation of CPA credentials. Fawzi and Petra challenge these counts on the ground the 4AXC fails to allege damages resulting from the credential misrepresentation because the harms pleaded flow from Fawzi's later participation in Maher's scheme. Read as a whole, and with the standard incorporation paragraphs pulling the earlier factual allegations into the fraud counts, the 4AXC pleads damages sufficient to survive demurrer on the sole ground raised.

The 4AXC pleads a cognizable out-of-pocket theory on the face of the fraud counts themselves. Cross-Complainants alleged they contracted and paid for the services of a licensed CPA and received instead the services of an enrolled agent. (4AXC ¶¶ 117, 118.) That is the classic out-of-pocket measure of damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The incorporation paragraphs pull into the fraud counts specific, dollar-measurable harm traceable to the accounting services Cross-Complainants alleged they paid for on the strength of the CPA representation: "late tax payments and payments in incorrect amounts, which resulted in penalties imposed by the IRS," and "significant tax liability being imposed against Saltio, a now insolvent entity, resulting in Tareq being forced to pay the sums thereof." (4AXC, ¶¶ 77, 83.) Whether those injuries are ultimately provable and whether they were caused by reliance on the credential misstatement rather than by independent negligence are questions of proof, not of pleading.

The demurrer is overruled.

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: 08/21/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007679

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: SAN RAFAEL HOMEOWNERS UNITED, ET AL vs. DEFENDANT: HARMONY COMMUNITES, INC., ET AL	

NATURE OF PROCEEDINGS MOTION – LEAVE TO FILE SECOND AMENDED COMPLAINT

RULING

Plaintiff filed a motion for leave to file a second amended complaint. The motion was served on all parties and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

The Court grants the motion in light of the non-opposition. Plaintiff shall file its second amended complaint within ten days of service of this order.

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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