TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 26, 2025, 3:00 p.m.
Courtroom 16 – Hon. Bradford DeMeo for Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV00553, Looney v. Jaffer

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves to appoint Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of Judgment Debtor Karim Jaffer individually dba Nash's ("Judgment Debtor") in order to carry out the judgment. **The motion is DENIED without prejudice.**

On May 3, 2024, Plaintiff obtained a judgment in the amount of $2,438.49 against Judgment Debtor. Plaintiff states he has been unable to enforce the judgment; therefore, he's seeking a receiver as authorized by CCP sections 564(b)(3), 708.620, and 708.630(a) and (b).

Plaintiff states that since the entry of the judgment, he has investigated the Judgment Debtor's finances to locate a bank or deposit account but has not found any such accounts. (Looney decl., ¶6.) Exhibit A to the motion is a Business Application; Sales/Credit Agreement. It references a bank account number. Plaintiff has not stated whether he has pursued this bank account in his attempt to satisfy the judgment.

A google search shows that Nash's restaurant is permanently closed. (Looney decl. ¶7, Exhibit B.) Nash's was located at 229 E. Main Street in Visalia. (*Ibid.*) In reviewing service on Judgment Debtor, all mail has been directed to this address. (Looney decl., Exhibits C, D, F.) However, on Judgment Debtor's business application, he lists his mailing address as 168 North Tommy Street in Visalia. (Motion, Exhibit A.) Plaintiff has not indicated that he attempted to serve the Judgment Debtor at his home address or call him at the phone number listed in the business application.

Plaintiff has sent a letter to Defendant requesting payment, and has obtained and served an order compelling Defendant to provide responses to post-judgment discovery requests. (Looney decl., ¶¶9, 10, 16.) However, as noted above, these have been addressed to a business address for a business that is no longer operating. Therefore, it is not clear if Judgment Debtor is not responding because he is not receiving the communications.

Plaintiff states that a J1 Lien was filed on May 29, 2024, and a writ of execution was obtained on July 23, 2024, but that writ has not been successful. (Looney decl., ¶16.) Plaintiff has not stated what steps were taken to execute on the writ.

Based upon the circumstances of this case, the court finds the expensive process of appointing a receiver is not appropriate based upon the small judgment amount, the apparent lack of an attempt to reach the Judgment Debtor at his home address or via his phone number, and the lack of an attempt to execute on the bank account listed in his business application. Accordingly, the motion is DENIED without prejudice.

2. 24CV02366, Wells Fargo Bank, N.A. v. Hernandez

This matter is on calendar for the motion of Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") for an order pursuant to CCP §§ 2033.010, 2033.020, 2033.250, 2033.280, and 2033.420 deeming the truth of all facts in Plaintiff's Request for Admissions, Set One, propounded on Defendant Maria Tapia Hernandez ("Defendant"). ***Unless Defendant Maria Tapia Hernandez serves Plaintiff with verified responses prior to the hearing on this motion,*** **the motion will be GRANTED and Plaintiff's Requests for Admissions, Set One, will be deemed admitted.**

This action was filed against Defendant on April 25, 2024, alleging causes of action for breach of contract and common counts for a debt owed on a credit card. Plaintiff's attorney states that on January 1, 2025, Plaintiff served its first set of requests for admissions on Defendant. (Bartley decl., ¶¶2, 3.) However, it appears that this is when responses were due. (*Id.,* ¶4.) Proof of service shows the requests for admissions were mailed on November 27, 2024. (*Id.,* Exhibit 1.) The requests for admissions sought to have Defendant admit that she owes a certain amount on a credit card account. (*Ibid.*) Plaintiff has not received a response to its request for admissions. (Bartley decl., ¶4.)

The motion is GRANTED. The court will sign the proposed order.

3. 24CV02710, Discover Bank v. Goodwin

Plaintiff Discover Bank ("Plaintiff") moves for summary judgment in its favor against Defendant Bryant Goodwin ("Defendant") on Plaintiff's first cause of action for open book account and second cause of action for account stated. **The motion is GRANTED.**

On May 2, 2024, Plaintiff filed its complaint against Defendant alleging that Defendant is liable to it for $18,271.00 on a loan. On June 1, 2024, Defendant filed an answer denying the allegations and raising several affirmative defenses.

Defendant applied to Plaintiff for a personal loan and entered into a written loan agreement. (Plaintiff's Undisputed Material Facts ["UMF"] Nos. 1, 9.) Plaintiff dispersed the loan amount to Defendant by check to Defendant's account. (UMF Nos. 2, 10.) Defendant agreed to be bound by the terms and conditions set forth in the Loan Agreement, including to repay the amounts due. (UMF Nos. 3, 11.) The loan amount, the accrual of interest, and the amounts of fees and payments applied to the loan account are duly reflected on the computerized records regularly kept and

maintained by Plaintiff in connection with Defendant's loan amount. (UMF Nos. 4, 12.) Those records, in the form of billing statements, were provided to Defendant on a monthly basis. (UMF Nos. 4, 12.) Prior to February 2, 2024, Defendant failed to make payments due under the terms of the Loan Agreement; therefore, Plaintiff accelerated the account balance so that the entire balance came due. (UMF Nos. 5, 13.) The last payment made was on July 26, 2023. (UMF Nos. 6, 14.) Defendant currently owes $18,721.00 plus court costs. (UMF Nos. 7, 15.)

Plaintiff has established an open book account and an account stated between Plaintiff and Defendant and that Defendant owes Plaintiff $18,721.00. Defendant has not filed opposition; therefore, he has not shown a triable issue of material facts exists. Accordingly, the motion is GRANTED. The court will sign the proposed order and judgment.

4. 24CV02971, Maverick Excavating, Inc. v. Dalk

I. Demurrer and Motion to Strike – Jason Dalk

Defendant Jason Dalk ("Dalk") demurs and/or moves to strike the fourth cause of action for fraud, the sixth cause of action for interference with prospective economic advantage, and the seventh cause of action for interference with contractual relations in the First Amended Complaint ("FAC") filed by Plaintiffs Maverick Excavating, Inc. ("Maverick") and Herring & Son Construction, Inc. ("Herring" or "HSCI")(together "Plaintiffs"). Dalk also moves to strike various allegations he states are irrelevant and false, including but not necessarily limited to, a contract with Dalk's former employer (FAC ¶ 21), that Dalk no longer has/had a contractor license (FAC ¶ 13, 58-61), that Dalk was allegedly involved in the preparation of a "fake" estimate (FAC ¶¶ 74-84, 121-127), actions "on November 27, 2023 and subsequently" (FAC ¶¶ 39-41), and reference to Penal Code section 496 (FAC ¶ 129). **The demurrers are OVERRULED. The motion to strike reference to Penal Code section 496 is GRANTED. The motion to strike is otherwise DENIED.**

a. Allegations

Maverick is a licensed Engineering Contractor. (FAC ¶5.) Herring is a licensed general contractor. (FAC ¶7.) Plaintiffs' FAC alleges defendant Mustang Court Community LLC ("MCC" or "Mustang") refused to pay Plaintiffs for construction services. Defendant Dalk is alleged to have been employed by Maverick for 9 weeks and by Herring for 16 weeks. (FAC, ¶19.) Prior to his employment with Plaintiffs, Dalk is alleged to have worked on the subject project, located on property owned by MCC at 906 Mustang Court in Petaluma, as an employee of general contractor Strategic Industry. (FAC, ¶18.) The project was aimed at preparing the property for independent living by disabled individuals to live in a congregate residential setting. (FAC, ¶10.)

While employed with Herring, Dalk is alleged to have made false time entries. (FAC, ¶34.) Dalk allegedly accepted payment and marked jobs as complete when they were not completed. (FAC, ¶34.) Despite this, Dalk was warned but was given a second chance. (FAC, ¶35.) Thereafter, during a time when Herring was preparing an estimate for an ADU, Dalk was overheard suggesting to the MCC Chair that MCC should find a different contractor for the ADU. (FAC, ¶36.) Herring later fired Dalk due to his alleged underperformance and poor attitude. (FAC, ¶38.) Herring alleges that Dalk billed for work that was not done or was incomplete. (FAC ¶38.) Dalk allegedly double-billed subcontractor work to both Herring and MCC by performing extra work outside of the contract for MCC and billed both Herring and MCC for that work. (FAC ¶38.)

Plaintiffs allege that after Herring fired Dalk, Dalk vandalized Herring's property and began a campaign to get MCC to terminate its contract with Herring, to get MCC to not pay Herring, and to have himself take over Plaintiffs' contracts with MCC. (FAC, ¶39.) Allegedly as a result of this campaign, MCC terminated its contracts with Plaintiffs stating that Plaintiffs' work was not up to

industry standards and because Herring had fired Dalk. (FAC, ¶¶41-44.) Plaintiffs allege the termination was without cause and that thousands of dollars of work remained on their contracts with MCC. (FAC, ¶¶45-48.) Subsequent to terminating its contracts with Plaintiffs, MCC hired Dalk as its construction manager. (FAC, ¶56.) After taking over, despite having had his contractor's license revoked and not having ever performed excavation work, Dalk allegedly falsely asserted that Maverick's work creating irrigation trenching was not performed according to industry standards. (FAC, ¶¶49-61.)

Plaintiffs allege that MCC did not pay their outstanding bills nor did MCC agree to have a neutral third-party evaluate Plaintiffs' work to determine the work quality. (FAC, ¶¶62-66.)

After mechanic's liens were filed and Plaintiffs attempted to obtain payment, they allege MCC presented them with a fake bill, created by Dalk, for services to correct their work. (FAC, ¶¶75-80.) Thereafter, MCC allegedly stated it paid Dalk to perform the corrections. (FAC, ¶¶81-82.)

b. Causes of Action against Dalk

The FAC alleges three causes of action against Dalk: the fourth cause of action for fraud, the sixth cause of action for interference with prospective economic advantage, and the seventh cause of action for interference with contractual relations.

i. Fraud

The cause of action for fraud is based upon Dalk's allegedly deceptive and fraudulent billing practices where he is alleged to have billed in such a way to obtain money owed to Herring, and his creation of a fake document to support MCC's position that it did not owe Plaintiffs for work performed. Dalk argues that the fraud allegations are amorphous and lack the required specificity.

The elements of the tort of fraud are: (1) misrepresentation, (2) knowledge of the statements' falsity, (3) intent to defraud (i.e., to induce reliance on the misrepresentation), (4) justifiable reliance, and (5) resulting damage. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974). Fraud must be pleaded with particularity and by facts that show how, when, where, to whom, and by what means the representations were tendered. (*Charnary v. Cobert* (2006) 145 Cal.App.4th 170, 185 fn. 14; *Cadlo v. Owens-Illinois, Inc*. (2004) 125 Cal.App.4th 513, 519.)

Here, while the FAC is not a model of clarity, Plaintiffs have alleged a misrepresentation in that Dalk stated in billing and/or timesheet entries that he had performed work when he had not and/or billed more than one entity for work performed. In addition, he is alleged to have misrepresented that money had been paid to a third party to correct errors made by Plaintiffs. These are alleged to have been intentional misrepresentations in order for Dalk to benefit financially which caused Plaintiffs to either pay money that was not earned or to lose money since Dalk directed it to himself. These allegations sufficiently cover the elements of a cause of action for fraud.

In addition, the allegations are sufficiently specific. Every detail to support a cause of action for fraud does not need to be alleged. Here, Plaintiffs allege who—Dalk; they allege when—during the subject construction project while Dalk was employed by Herring; they allege what—misrepresentation of work performed. They allege how or by what means—by way of timesheets and billing entries. Plaintiffs' reliance is alleged in that Dalk was their employee who was hired to manage the subject project—not to redirect money to his own pocket. Herring was damaged because it paid Dalk for work that was not performed.

Dalk also argues that additional allegations should be included in this cause of action. However, Dalk has not provided authority that specific allegations such as whether he was salaried or an hourly employee must be alleged.

Dalk also argues over the truth of the allegations, which is not an issue on demurrer where all allegations in the FAC are presumed to be true.

The demurrer to Plaintiff's fourth cause of action for fraud is OVERRULED.

ii. Punitive Damages

Based upon his arguments that the fraud allegations are insufficient, Dalk moves to strike punitive damages. Allegations of fraud support punitive damages. (Civil Code section 3294(c)(3).)

iii. Interference

The causes of action for interference with prospective economic advantage and for interference with contractual relations are based upon the allegations that Dalk made false accusations to MCC that Plaintiffs' work was not up to industry standards, his alleged lobbying MCC to terminate its contracts with Plaintiffs, and his alleged takeover of work covered by Plaintiffs' contracts with MCC.

Dalk argues that these causes of action fail because corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract. In other words, agents cannot be liable for conspiring with their own principals. Dalk argues at the time he is alleged to have induced a breach of the Plaintiffs' contracts with Mustang, he was Mustang's employee and was in a confidential relationship with Ms. Riggle, Mustang's principal.

The inducement of a breach of contract by an agent must be justifiable and by legitimate means. (*Lawless v. Brotherhood of Painters, Decorators and Paperhangers of America* (1956) 143 Cal.App.2d 474, 478.) The actions are privileged only where the inducement was ancillary to the exercise of peaceful and otherwise lawful methods of obtaining a legitimate objective. (*Ibid.*) The "agent's immunity rule" does not apply when the agents are acting "as individuals for their individual advantage." (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1605.)

Here, Plaintiffs allege that Dalk falsely claimed that their work was below industry standards in order to obtain that work for his own advantage, which is sufficient to allege a cause of action for interference with contractual relations. In addition, the FAC alleges that Plaintiffs were in a relationship with MCC, having completed two contracts and working on four others. Prospectively, Plaintiffs were anticipating working on another project creating the ADU. Plaintiffs allege Dalk disrupted the relationship such that Plaintiffs did not obtain this contract. The allegations sufficiently allege intentional interference with prospective economic advantage and with contractual relations.

The demurrers to these causes of action are OVERRULED.

iv. Motion to Strike

First, as a procedural issue, a demurrer and motion to strike are two separate motions which should be filed as separately. In addition, the notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. (Cal. Rules of Court, Rule 3.1322.)

It appears from the Notice of Motion that Dalk seeks to strike the following: (1) a contract with Dalk's former employer (FAC ¶ 21); (2) that Dalk no longer has/had a contractor license (FAC ¶13, 58=61); (3) that Dalk was allegedly involved in the preparation of a "fake" estimate (FAC ¶¶ 74-84, 121-127); (4) actions on November 27, 2023 and subsequently (FAC ¶¶ 39-41); and (5) reference to Penal Code section 496. (FAC ¶ 129)

1. A contract with Dalk's former employer (FAC ¶ 21)

Paragraph 21 of the FAC alleges: "DALK's actions working collusively with MCC Chair RIGGLE, to terminate a contract with his former employer demonstrate a pattern of violating contract boundaries for personal motivations. His actions were not authorized by his employer HSCI."

In his memorandum, Dalk argues that the former contract is irrelevant.

Plaintiffs make the allegation to show a pattern of disrupting contractual relations. Dalk has not provided authority that Plaintiffs cannot allege a pattern of behavior; therefore, they have not shown that this allegation is subject to being stricken as irrelevant, false, or as an improper matter. The motion to strike these allegations is denied.

2. That Dalk no longer has/had a contractor license (FAC ¶13, 58-61)

FAC ¶ 13 alleges: "Plaintiffs are informed and thereon allege that Defendant JASON DALK is debarred from working as a General Contractor due to various violations which the CSLB has noted in the record of his revoked license CSLB – #913453, and Citation #2 2018 2597."

FAC ¶¶ 58 through 60 allege: "58. Furthermore, DALK was debarred from general contracting, and had not formed a business entity, therefore there is no legal method that he could have entered into any contracts to work for MCC on Contracts A-D, after he was fired from HSCI employ.

"59. It does not appear that MCC has hired a licensed Contractor to finish the PROJECT, but is instead using the debarred contractor, Defendant DALK.

"60. State licensing law requires all work of improvement to be performed by a licensed contractor. None of the BPC §7044 Owner-Builder exemptions apply to congregate residences. BPC §7044 (1) is not operative because the accommodations are being offered for sale, BPC §7044 (2) requires the owner to contract with licensed contractors but the owner is now contracting with a debarred contractor; and BPC §7044 (3) is no help because this Property is not currently the principal place of residence of any LLC member-owners."

In his memorandum, Dalk argues that whether he has a contractor's license is irrelevant. The allegations are that Dalk was acting as a contractor. Therefore, it appears that whether or not he had a license, or had his license revoked, would be relevant to establish whether he was qualified to attest to industry standards of work performance and whether he was able to accept payment. It is not clear from the FAC whether Plaintiffs are also alleging that Dalk falsely represented to them that he had a valid contractor's license when they hired him.

The motion to strike these allegations is denied.

3. That Dalk was allegedly involved in the preparation of a "fake" estimate (FAC ¶¶ 74-84, 121-127)

FAC ¶¶74-84 allege: "74. Parties met on April 5, 2024, to attempt to resolve their differences regarding MAVERICK Contract D – irrigations trenches. In the beginning of the meeting, both parties made offers of compromise, but they were so far apart the meeting was cut short.

"75. As they were ending the meet and confer, Defendant MCC presented a proposal and proceeded to assert that the estimate it contained was for corrections to the work that Plaintiff MAVERICK had performed, and therefore obviated any need for payment.

"76. The document was on the letterhead of a paving contractor, not an excavating contractor, and was an estimate, not an invoice, for $30,937.00. (See EXHIBIT H). Defendant MCC Chair RIGGLE then claimed to have paid $30,937 to Mr. Garcia for the "corrections" and asserted that she had cancelled checks to prove it. She insisted no payment was due.

"77. The estimate was presented as proof that Contractor's work was defective and required corrections in a similar dollar amount to their final billing. It was very odd since the document said nothing about corrections to irrigation trenches.

"78. Following the meeting, Tiffanie Herring called the Paving Contractor. As of April 5, 2024, Mr. Garcia said he had not been hired to perform any work for Defendants, he had not been paid anything by MCC, he had presented a proposal for other work, for paving, several months prior, but he was not hired as of that date, he had not presented any proposal on the day of

the meeting, he did not prepare any proposal to correct irrigation trenches, and he had no knowledge of what was described in the document.

"79. Plaintiff determined from this, that the document was a forgery, a "fake," and that RIGGLE had lied about making the payment to Mr. Garcia in the meeting.

"80. Plaintiff alleges that Defendant DALK created the fake document as Plaintiffs had first-hand knowledge of his deceptive practices and his computer skills. The fonts used are the same as DALK would use, the format and the language are the same as DALK would use, (and not the same as Mr. Garcia's) and Mr. Garcia's name is misspelled. Further, Plaintiffs HSCI had direct experience of DALK's fraudulently preparing change orders and getting MCC to pay him directly, and generally making up things to be paid for, that were not done.

"81. Plaintiff challenged MCC and their attorney that they knowingly presented a fake document and suggested this was intentionally deceptive because the scope of work bore no resemblance to the work MCC was refusing to pay. MCC doubled down. On April 8, 2024, Attorney Healy wrote a letter arguing about different scope than was covered by the Garcia proposal, and did not address what corrections to the irrigation trenches were done.

"82. Attorney Healy confirmed that Defendant Chair MCC made the payment of $30,937 to Defendant DALK thus: "Jason Dalk has done the work himself and my client has paid Mr. Dalk per the terms of the unexecuted EG Paving / Fago Garcia (again misspelled) contract. My client's position is that the entire $30,937 paid to Mr. Dalk for this work was to rectify the improper/incomplete work done by MAVERICK." Still, no mention of what work of correction to the (beautiful) irrigation trenches was done by DALK that cost $30,937.

"83. All of this was done to avoid any compromise and to avoid paying Plaintiffs the $33,987.50 that was due. In fact, Attorney Healy stated, "In light of the foregoing, my client has directed me to withdraw the [Evidence Code §1152 protected amount] settlement offer we conveyed last Friday." This last paragraph made it clear that the fake document was presented as pretext for not paying their bill, at all.

"84. This document was not an offer of compromise, it was a refusal to pay. It was a shell game – "it's too bad we already gave your money to some else." While the first half of the meeting was a discussion of potential offers to settle the case, this was not an offer of compromise and is not entitled to any Evidence Code §1152 protections."

FAC ¶¶121-127 allege: "121. On April 5, 2024, a full four months after the improper termination of Contractor, Plaintiffs and Defendant MCC, met to confer about the unpaid billing on Contract D –MAVERICK for irrigation trenches in the amount of $33,987.50.

"122. After efforts of compromise failed, Defendant MCC, through their attorney presented a false argument about having paid for corrections to the work Contractor had performed in November, then he presented a fake estimate that was fraudulent.

"123. Plaintiff claims that Defendant DALK maliciously created the document and he provided it to MCC with the intent to harm Plaintiff MAVERICK. His prior pattern of intervening in termination negotiations with Strategic Industry (p.4), coupled with his violence on being fired, and his various deceptive business practices, show his pattern of malicious and deceptive behavior.

"124. Plaintiff claims that RIGGLE intentionally presented the fraudulent document on April 5, 2024, to MCC attorney and Plaintiff MAVERICK as proof of corrections, to conceal her payment of the large sum to DALK, and to avoid her obligation to pay MAVERICK.

"125. By presenting the fake document. MCC ratified DALK's wrongful forgery. Both Defendants intended that everyone should rely upon the fake document when presented.

"126. When the fake document was presented, Plaintiffs relied on MCC's presentation of it as argument that MCC would pay nothing, had already paid Mr. Garcia the sum of $30,937, and were damaged when the meeting ended with no payment forthcoming.

"127. Plaintiffs were subsequently harmed by discovering that Mr. Garcia had been paid nothing, (learning it had been a lie), then hearing from Attorney Healy on April 8, 2024, that MCC had actually made payment of $30,937 to defendant DALK instead of to them."

Dalk argues that the "fake" assessment was not relied upon, was an opinion, and/or is privileged settlement negotiations. Dalk has not provided any authority that any of these arguments are applicable and support striking the allegations.

The motion to strike these allegations is DENIED.

4. Actions on November 27, 2023, and subsequently (FAC ¶¶ 39-41)

FAC ¶¶39-41 allege: "39. Upon learning of his termination, DALK, destroyed and vandalized property of Contractor. Then he immediately began a campaign for MCC to terminate his former employer, to encourage non-payment of the final bills, and to take over Contracts A-D.

"40. Plaintiff alleges that DALK's actions on November 27, 2023, and subsequently including the vandalism and false claims, have been intentional, retaliatory, and malicious, done with the intent to cause grievous harm to Plaintiffs.

"RETALIATORY TERMINATION PLAINTIFFS

"41. RIGGLE did terminate MAVERICK with a "Cease and Desist" email at 1:20 PM on November 29, 2023. (See EXHIBIT E) terminating Contract D. RIGGLE states the reasons for termination were that work was not up to industry standards (a false allegation made by DALK) and because Contractor had fired DALK from HSCI (Contracts A-C)."

Dalk argues that these allegations do not assist Plaintiffs in making their fraud and punitive damage allegations. Dalk fails to cite supportive authority that Plaintiffs must specifically allege what property was vandalized. Generally, the details supporting the complaint are fleshed out in discovery. In addition, these allegations appear to support a cause of action for trespass to chattels. Any cause of action overcomes a general demurrer. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal. 4th 992, 998.)

The motion to strike these allegations is DENIED.

5. Reference to Penal Code section 496. (FAC ¶ 129)

FAC ¶129 alleges: "Consistent with the application of Penal Code § 496(a) and 496(c), Plaintiff requests punitive damages for the misrepresentation, using treble of the $30,937 amount, plus other amounts paid to DALK prior to November 27, 2023, plus attorney fees and costs."

In opposition, Plaintiffs allege that Penal Code §496 is included because falsification and forgery are serious, and the Penal Code allows for treble damages in civil trials. Plaintiffs also argue, without citing supporting authority, that civil judgments are allowed to rely on the penal statute in awarding damages.

Penal Code section 496 pertains to receiving stolen property. It does not appear to be applicable to the facts of this case as there are no allegations that Dalk resold stolen property. Moreover, Civil Code section 3294 forms the basis of punitive damages.

Based upon the foregoing, the motion to strike the reference to Penal Code section 496 is GRANTED.

c. Conclusion and Order

The demurrers are OVERRULED. The motion to strike reference to Penal Code section 496 is GRANTED. The motion to strike is otherwise DENIED.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

II. Demurrer and Motion to Strike – Mustang Court Community

Defendant Mustang Court Community, LLC ("MCC" or "Mustang") demurs to the first, third, fourth, and fifth causes of action on the grounds of failure to plead sufficient facts to state a cause of action. **The demurrer to Plaintiffs' first cause of action for foreclosure on a mechanic's lien, third cause of action for unjust enrichment, and fourth cause of action for fraud are SUSTAINED with leave to amend. The demurrer to the fifth cause of action for breach of the covenant of good faith and fair dealing is OVERRULED.**

a. Procedural Issues

Plaintiffs rightly note in their opposition that MCC's motion fails to contain an actual demurrer. Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses. (Cal. Rules of Court, Rule 3.1320(a).) While Plaintiffs request that the demurrer be denied on this basis, no authority is cited supporting the request, particularly where the points for the objections are made clear in MCC's memorandum of points and authorities.

Plaintiffs' opposition is also not quite in proper form. Plaintiffs have filed two opposition documents. One appears to be a preview of the other. Only one opposition memorandum of points and authorities should be filed.

b. First Cause of Action for Foreclosure of Mechanics Lien

Plaintiffs' First Amended Complaint ("FAC") alleges that plaintiff Herring & Son Construction, Inc. ("Herring" or "HSCI") recorded a mechanic's lien on December 11, 2023, for the amount of $678.05. (FAC, ¶67.) Plaintiff Maverick Excavating, Inc. ("Maverick") recorded a mechanic's lien the same day in the amount of $33,987.50. (FAC, ¶68.) The FAC alleges that the parties participated in settlement negotiations which included tolling extensions to enforce the liens. (FAC ¶¶70, 92.) The last extension was through May 10, 2024. (*Ibid*.)

MCC argues that while the liens were timely recorded, this action to foreclosure upon those liens was not.

Civil Code section 8460(a) provides: "The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable."

Subsection (b) provides: "Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable."

Subsection (b) requires a recorded notice of an extension of credit. The FAC does not contain this requirement. As such, the action to foreclose the mechanic's lien must have been commenced within 90 days of December 11, 2023—by March 10, 2024. This action was not filed until May 10, 2024, making it untimely.

In opposition, Plaintiffs argue that Mustang granted an extension of time for filing suit but failed to sign an agreement to that effect. Plaintiffs argue that the lien is still valid but fail to explain how the facts alleged comply with subsection (b) of section 8460, or to provide any legal authority supporting their position.

The demurrer to Plaintiffs' first cause of action to foreclose on a mechanic's lien is SUSTAINED. Plaintiffs make some reference to MCC's bad faith tactics, and the purpose of

subsection (b). While they have not shown how they could amend the complaint to state a valid cause of action, as this is the first demurrer on this issue, Plaintiffs will be given a chance to amend.

c. Third Cause of Action for Unjust Enrichment

Plaintiffs' third cause of action alleges that MCC requested that Plaintiff improve MCC's property by conducting an extensive interior remodel of the main house, improving the pasture lands, building a pump house, demolishing structures, improving the exterior of the main house with new decks and providing preconstruction services for a new ADU. (FAC, ¶112.) Plaintiffs allege that between March 6, 2023, and November 29, 2023, Plaintiffs performed as required under the various contracts, meeting the intent and purpose of the different scopes of work. (FAC, ¶113.) No complaints or objections were received prior to November 29, 2023, and no opportunity to remedy was given Plaintiffs in order to maintain the working relationship. (FAC, ¶114.) MCC now refuses to pay for the benefits provided by Plaintiffs. (FAC, ¶115.) Plaintiffs allege it would be unjust for MCC to retain the benefit provided of increasing the value of MCC's property without fully compensating Plaintiffs for the work performed. (FAC, ¶¶116, 117.)

There is no cause of action in California for unjust enrichment. (*Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1138.) Unjust enrichment is synonymous with restitution. (*Ibid*.) Thus, the unjust enrichment claim does not properly state a cause of action. Plaintiffs concede MCC's point and request leave to change these allegations into a remedy. The demurrer is SUSTAINED with leave to amend.

d. Fourth Cause of Action for Fraud

Plaintiffs' allegations of fraud against MCC conclude that MCC chair Riggle colluded with defendant Dalk in Dalk's false timesheet and billing entries. (FAC, ¶119.) Dalk allegedly billed MCC separately from the Plaintiffs for work performed that was part of the scope of work included in the contracts, and that Dalk was paid separately. (FAC, ¶120.) The FAC concludes that MCC colluded in this deception. (FAC, ¶120.) The remainder of the allegations are based upon the alleged fake estimate presented to Maverick during settlement negotiations.

These allegations are insufficient. Conclusions are not presumed true for the purposes of a demurrer, and they do not allege how Maverick relied upon the alleged fake estimate to its detriment. The FAC alleges that Plaintiffs were harmed because no settlement was reached but there is no right to a settlement. The harm alleged in Plaintiffs' complaint is the failure to be paid under Plaintiffs' contract with MCC. The failure to settle this disagreement does not create an additional cause of action.

In opposition, Plaintiffs argue that being made to litigate a falsified document was found in various cases to be a form of reliance. No California authority is presented in support of this argument. The federal tenth circuit case cited, *Morgan v. Graham* (10th Cir. 1956) 228 F.2d 625, does not support the argument. It only provides that one who has lost money as a result of perjured statements may sue to for its recovery.

The demurrer is SUSTAINED with leave to amend.

e. Fifth Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing

Plaintiffs' fifth cause of action alleges a breach of the covenant of good faith and fair dealing by paying defendant Dalk for work performed by him when he was employed by Herring. (FAC, ¶¶134, 136.) The FAC alleges MCC and Dalk unfairly and deceptively interfered in payments to HSCI regarding the work of their employee and their subcontractor(s). (FAC, ¶135.) It is not clear if HSCI's employee and subcontractor(s) are referring solely to Dalk or others. Plaintiffs also raise the "fake estimate" as an attempt by MCC to avoid having to pay Maverick the amounts it is owed. (FAC, ¶137.) MCC does not address these allegations. Therefore, it has not met its burden as to this cause of action.

Plaintiffs also plead MCC's failure to sign an extension to file suit to foreclose on a mechanic's lien. This allegation does not pertain to any contract between the parties. However, as other allegations support the cause of action, the demurrer is OVERRULED.

f. Conclusion and Order

The demurrer to Plaintiffs' first cause of action for foreclosure on a mechanic's lien, third cause of action for unjust enrichment, and fourth cause of action for fraud are SUSTAINED with leave to amend. The demurrer to the fifth cause of action alleges a breach of the covenant of good faith and fair dealing is OVERRULED. Any amended complaint shall be filed within the timeframe specified in Cal. Rules of Court, Rule 3.1320(g).

MCC's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

III. Motion to Strike – MCC

Defendant Mustang Court Community, LLC ("MCC" or "Mustang") moves to strike portions of the First Amended Complaint ("FAC") filed by Plaintiff Maverick Excavating, Inc. ("Maverick"). **The motion to strike punitive damages is GRANTED with leave to amend. The motion to strike settlement discussions is DENIED.**

In its memorandum, MCC specifies that it seeks to strike punitive damages and all allegations that arise from the April 5, 2024 settlement meeting.

a. Procedural Issues

A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. (Cal. Rules of Court, Rule 3.1322(a).)

b. Punitive Damages

As the demurrer to the fourth cause of action for fraud was sustained, the FAC does not contain allegations supporting punitive damages. Therefore, the motion is GRANTED with leave to amend.

c. April 5, 2024, settlement meeting

MCC concludes that privileged settlement discussions are protected from disclosure by the provisions of Evidence Code Section 1152 as well as Evidence Code Section 1119.

MCC does not provide a discussion of these statutes. (See Cal. Rules of Court, Rule 3.1113(b).) Therefore, it has not met its burden on this issue.

Evidence Code section 1152 disallows using offers to compromise to prove liability. Evidence Code section 1119 pertains to written or oral communications during the process of formal mediation. Neither of these code sections appear applicable.

The motion to strike settlement meeting discussions is DENIED.

d. Conclusion and Order

The motion to strike punitive damages is GRANTED with leave to amend. The motion to strike settlement discussions is DENIED.

MCC's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. 24CV03553, Looney v. Cali Costa Dana Point, LLC

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order compelling Defendants Cali Costa Dana Point, LLC dba Cali Costa, and Joshua Benson, aka Josh Benson, individually as personal guarantor of Cali Costa Dana

Point, LLC ("Defendants"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of $60. As of the time the court reviewed this matter proof of service of the motion on Defendants had not been filed. Accordingly, **the motion is CONTINUED to May 7, 2025, at 3:00 p.m., in Department 16, to allow Plaintiff to file proof of service of the motion.**

6. 24CV04611, Wells Fargo Bank N.A. v. Hernandez

This matter is on calendar for the motion of Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") for an order pursuant to CCP §§ 2033.010, 2033.020, 2033.250, 2033.280, and 2033.420 deeming the truth of all facts in Plaintiff's Request for Admissions, Set One, propounded on Defendant Claudia A. Hernandez ("Defendant"). The motion was originally heard on February 26, 2025 but was continued to this date. As of the time the court reviewed this matter, there is no indication that Defendant has served responses. Accordingly, ***unless Defendant Claudia A. Hernandez serves Plaintiff with verified responses prior to the hearing on this motion,*** **the motion will be GRANTED and Plaintiff's Requests for Admissions, Set One, will be deemed admitted.**

This action was filed against Defendant on August 6, 2024, alleging one cause of action for breach of contract for a debt owed on a credit card. On October 23, 2024, Plaintiff served its first set of requests for admissions on Defendant by mail. (Bartley decl., ¶2.) The requests for admissions sought to have Defendant admit that she owes a certain amount on a credit card account. (*Id.,* Exhibit 1.) Plaintiff has not received a response to its request for admissions. (Bartley decl., ¶4.)

The motion is GRANTED. The court will sign the proposed order.

7. SCV-270908, Simoncini v. Luci

Plaintiff Kenneth Simoncini ("Simoncini") in his capacity as successor trustee of the Yvette M. Peline Irrevocable Trust dated September 19, 1998, Christopher D. Peline Irrevocable Trust dated September 19, 1998 and Melissa M. Peline Irrevocable Trust dated September 19, 1998, moves for an order appointing a receiver and for a preliminary injunction in aid thereof on the terms set forth in the proposed order filed with the motion. **The motion is DENIED.**

First, the court notes that, due to the denial of the motion to seal, the only operative documents supporting this motion are redacted. Some of the evidence used to support this motion is therefore not available.

1. The parties

Plaintiff Simoncini is the trustee of three irrevocable Trusts (collectively, the "Trusts") established by Val P. Peline ("Trustor") for his children Yvette Peline (deceased), Christopher Peline (deceased), and defendant Melissa Luci ("Luci") and their descendants. Angelo and Xavier Peline are the sons of Christopher Peline. The Trusts are limited partners of Peline Vineyards Partnership, L.P., a Delaware limited partnership (the "Partnership"). The Partnership owns and operates Peline Vineyards located in Healdsburg's Alexander Valley. Defendant Luci is the general partner of the Partnership; Anthony Luci ("Anthony") is Luci's husband; and Vincology, LLC is an entity solely owned by Luci and Anthony.

2. Receiver

A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in an action between partners or others jointly owning or interested in any

property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured; or in other cases where necessary to preserve the property or rights of any party. (CCP section 564(b)(1), (9).)

Simoncini presents several California cases which he argues support the appointment of a receiver in this case; however, those cases are different in that the court made findings of fact. For example, in *Koshaba v. Koshaba* (1942) 56 Cal.App.2d 302, the director of two corporations was found to have misappropriated corporate assets and therefore judgment was entered removing him. A receiver was appointed pursuant to CCP section 564(b)(3) "after judgment, to carry the judgment into effect" pending the appointment of a new director. This case is clearly *after* alleged misappropriation was found to be true. Here, there have been no such findings.

Jay v. Clark (1948) 85 Cal.App.2d 88 was an action filed by the representative of a deceased partner to secure winding up of the partnership. The court found that defendant carried on the business without the consent of plaintiffs or their heirs or legatees, and had failed to render any accounting. Therefore, the court appointed a receiver to take possession of property and assets of the partnership, to sell the business, and to operate it until it could be sold.

Plaintiff also cites Delaware cases. Peline Vineyards Partnership, L.P. is a Delaware limited partnership, which owns and operates Peline Vineyards. Plaintiff states that section 19.9 of the Partnership agreement and all rights and obligations of the parties thereto with reference to the Partnership are governed by the Delaware Revised Limited Partnership Act and all other applicable Delaware laws.

Pursuant to Delaware law, a court of equity has the inherent right to appoint a receiver pendente lite in appropriate cases in order to preserve the property involved in the litigation. (*Lichens Co. v. Standard Commercial Tobacco Co.* (Del. Ch. 1944) 28 Del.Ch. 220, 228.) A receiver may be appointed for an insolvent corporation on the application and for the benefit of any creditor or stockholder. (*Ibid.*) Originally, a receiver would not be appointed to wind up a solvent corporation even on the basis of fraud or gross misappropriation of funds and with losses being imminent. (*Ibid.*) However, there has been a growing tendency to recognize that inherent right under special circumstances of great exigency. (*Ibid.*) But, these powers are "are exercised with great caution and only as exigencies of the case appear." In *Lichens*, the appointment of a receiver was not justified as the misconduct relied upon occurred four to fourteen years before the bill was filed, and no real imminent danger of loss appeared at the time of the request.

Plaintiff's basis for the appointment of a receiver is the alleged extraordinary amount of compensation received by defendants Melissa Luci ("Luci") Anthony, and/or Vincology, LLC, and their expenditure of Partnership funds for personal gain. The court notes that much of the details of compensation are redacted. However, some evidence has been provided.

In her declaration, Vanessa J. Hill, a California licensed certified public accountant, states that she was hired by Simoncini to conduct a forensic review and provide expert opinions regarding the transactions reported in the tax, financial, and accounting books and records of the Peline Vineyard Partnership, including those where the business purpose appears questionable or is in dispute. (Hill decl., ¶2.)

Ms. Hill reviewed Partnership ledgers. The numbers are mostly redacted. However, Ms. Hill indicates that numerous expenses appear questionable. For example, expenditures were made for travel to Hawaii and Pennsylvania, but the Partnership does not have clients located in those states. (Hill decl., ¶¶23-26.) Other questionable expenses occurred near a vacation home in the Tahoe area; for a boat captain providing "sunset tours"; for travel; horse veterinarian services; chicken coop repair and maintenance; bee-keeping supplies, Western Farm Center supplies for dog food and other non-vineyard supplies; a new GMC Yukon and GMC Sierra; car expenses; meals and

entertainment; installation of a pool and pool supplies; property maintenance; legal fees; charitable donations; groceries; and various other housewares and goods. (Hill decl., ¶¶27-51.)

The total paid for general management is redacted. (Hill decl., ¶52(a).) The total for the capital expenditures category is $716,990.76. (Hill decl., ¶52(b).) The total charges for chickens, goats, horses, vegetables, bees, and pets through 2022 is $107,117.95. (Hill decl., ¶52(c).) Charges for items such as Apple subscriptions, iPhone financing, satellite radio, satellite television service, furniture, home and garden goods, men's clothing, candy, dry cleaning, and other charges identified as personal expenses amount to $469,220.37. (Hill decl., ¶52(d).) Ms. Hill's assessment includes findings of enormous increases in management costs from when the original Trustor was managing the vineyard. (Hill decl., ¶¶55-63.) No distributions to limited partners has been made since early January 2022. (Hill decl., ¶64.) The decline in cash holdings is redacted. (Hill decl., ¶65.)

In his declaration, Simoncini states that prior to the Trustor's death, Luci presented a trust modification to the Trustor which had the effect of disinheriting Christopher's sons Angelo and Xavier from their 50% interest in the YMP Trust. (Simoncini Decl., ¶13.) That issue was addressed in *In the Matter of: The Yvette M. Irrevocable Trust dated 9/19/1998*, in the Superior Court of California, County of Sonoma, Case No. SPR-096067, where in Luci agreed to withdraw the modification and return funds taken from the YMP Trust. (Simoncini decl., ¶13.)

On or about September 30, 2021, a letter from Luci and Anthony was forwarded to Simoncini notifying him that the Partnership was cutting distributions to the Trusts by 50% (i.e., from $10,000 to $5,000). (Simoncini decl., ¶14.) In early 2022, distributions were ceased altogether. (Simoncini decl., ¶¶15-16.)

Experienced vineyard manager, John Balletto, opines on reasonable vineyard management costs, including management housing and fire suppression, and opines that the amounts spent by Luci far exceed the norm. (Balletto decl.) The calculated costs for Peline Vineyards are redacted. Simoncini's memorandum indicates that the total spent ranges from 24% to 50% more than what was spent historically.

Experienced real estate appraiser, Dana Burwell, opines that the ranch home and improvements located on the property (excluding the vineyards) should rent for a minimum of $35,000 per month and up to $50,000 depending upon the interior of the home. (Burwell decl., ¶10.)

Simoncini argues that Luci must be removed as she refuses to stop paying Vincology its excessive compensation and she will not pay rent on the ranch house. Simoncini argues that each day Luci remains as General Partner/Manager represents another loss to the Partnership and only increases the Partnership's risk of a complete collapse.

3. Preliminary Injunction

Simoncini requests a preliminary injunction to aid the appointment of a receiver of the Partnership that requires defendants to: (1) relinquish possession, management, and control of the Partnership to the receiver; (2) peacefully vacate the ranch house; (3) not interfere with the management and control of the receiver; and (4) cease any payment or transfer of Partnership monies to defendants.

The three required elements for a preliminary injunction are likelihood of success on the merits, "imminent irreparable harm" and a balancing of the relative harms. (*Cantor Fitzgerald, L.P. v. Cantor* (1998) 724 A.2d 571, 579.)

Simoncini argues that, as described above, Luci has exercised her exclusive control over the Partnership to engage in consistent malfeasance and self-dealing to increase her wealth and wellbeing at the expense of the other partners and thus violated the Partnership agreement and her duties of loyalty, care, and good faith. Thus, in addition to the monetary remedies, Simoncini (on behalf of the Trusts) holds the right under the Partnership agreement to remove Luci as the General Partner/Manager and eliminate the excessive compensation paid to Vincology.

In opposition, Luci argues that there is no imminent harm; that all the facts alleged have been known to Simoncini for years. Luci argues that there is no alleged harm to Partnership assets—only the loss of money. There is no evidence the ranch property and vineyard are in any imminent threat.

Regarding the balance of harms, Angelo's and Xaiver's experiences are in stark contrast to Luci's as they do not receive any benefits from either the property or the Partnership.

Luci focuses on harm to Simoncini, which she argues is non-existent. She also argues that the Partnership is not required to give distributions, so there is no real harm. In contrast, she argues she will be evicted from her 7,000 sq. foot home and surrounding acreage and amenities.

Luci also argues that because the preliminary injunction would change the status quo, it is mandatory in nature, which requires a trial with factual findings or reliance upon undisputed facts. "Mandatory injunctions should only issue with the confidence of findings made after a trial or on undisputed facts." (*C & J Energy Services, Inc. v. City of Miami General Employees'* (Del. 2014) 107 A.3d 1049, 1053–1054.) Simoncini appears to concede this point as he does not argue against it in his reply.

Here, the facts are heavily disputed. Moreover, their resolution is pending in arbitration. Therefore, any order for a receivership or for an injunction is premature as the arbitrator must first make factual findings.

4. CCP section 1281.8

Citing CCP section 1281.8, Luci argues that appointing a receiver would make arbitration ineffectual, making such appointment inappropriate.

"A party to an arbitration agreement may file in the court in the county in which an arbitration proceeding is pending, or if an arbitration proceeding has not commenced, in any proper court, an application for a provisional remedy in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without provisional relief. The application shall be accompanied by a complaint or by copies of the demand for arbitration and any response thereto. If accompanied by a complaint, the application shall also be accompanied by a statement stating whether the party is or is not reserving the party's right to arbitration." (Code Civ. Proc., § 1281.8(b).)

It appears' Luci's interpretation of section 1281.8 is backwards. The statute states: "but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without provisional relief." In other words, section 1281.8 allows a provisional remedy if it is needed to effectuate relief sought in arbitration. In this case, assuming Simoncini has the right to remove Luci as the vineyard manager and to evict her from the ranch house, a preliminary injunction would be needed to effectuate that outcome.

5. Delaware Procedural Rules

Citing Delaware Chancery Court Rules, Luci argues that Delaware rules require a receiver to be appointed upon a verified complaint, require a bond if a receiver is appointed, and require that the receiver be a Delaware resident.

Delaware Chancery Court Rules only "govern the procedure in the Court of Chancery of the State of Delaware." (Del. Ch. Ct. Rule 1.) Venue in this case is in the Superior Court of California, County of Sonoma. Thus, Sonoma County procedural rules apply.

6. Opportunity to Cure

Luci argues that under the Partnership agreement she must be given the opportunity to cure the alleged breaches. This should be determined by the arbitrator.

7. Trustee standing

Luci argues that the prior trustee, Mr. Spadoni, did not properly resign because his written notice was sent via regular mail instead of certified mail as required by the Partnership agreement.

Therefore, Luci argues that Simoncini is not the current trustee and does not have standing to bring this motion. Alternatively, Luci argues one of the prior successor trustees listed in the partnership agreement is the successor trustee. As a second alternative, Luci suggests that Simoncini's appointment as trustee may be faulty as he was Mr. Spadoni's attorney at the time Mr. Spadoni suggested his appointment, indicating Simoncini himself recommended his own appointment.

In reply, Simoncini provides evidence that Luci was served with notice by certified mail. (Phair decl., ¶4, Exhibit C.)

8. Contrary to Partnership agreement; Misunderstanding of family dynamics

Luci argues that her removal as the general partner/manager is an issue before the arbitrator and is contrary to the Partnership agreement because the agreement would require the Partnership to be dissolved and then require her to sell her share of Partnership assets.

Luci also argues that Simoncini fundamentally misunderstands the Trustor's relationships with his children and grandchildren, his own desire to have Luci and her family live rent-free in the ranch house, and other family dynamics.

In addition, Luci argues that Simoncini does not understand the Partnership agreement, which does not require distributions to the Trusts and states that the general manager is the one to "exclusively manage, operate, and control the business."

As these are disputed issues, they are properly decided upon by the arbitrator.

9. Reply

In reply, Simoncini argues that the evidence filed in opposition is untimely as it was filed two days prior to the reply being due.

"All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing." (Code Civ. Proc., § 1005.)

The opposition documents were filed on February 13 and March 13—at least nine days prior to the hearing. Therefore, they are timely.

10. Objections to Evidence in Opposition

As the facts in this case are disputed, and therefore a mandatory injunction is not appropriate at this time, the court declines to rule on Luci's objections in opposition as unnecessary for determination of the issue before this court.

11. Conclusion and Order

Simoncini seeks what amounts to a mandatory injunction. A mandatory injunction requires a trial with factual findings or reliance upon undisputed facts. The facts and issues in this case are disputed. This court is not the finder of fact as the matter is presently before an arbitrator. Therefore, Simoncini's request is premature. The motion is DENIED.

Luci's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.