

**TENTATIVE RULINGS: CIVIL LAW & MOTION**

**Wednesday, March 25, 2026 at 3:00 p.m.  
Courtroom 18 – Hon. Dana Simonds  
Civil and Family Law Courthouse  
3055 Cleveland Avenue  
Santa Rosa, California 95403**

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

**If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.**

**TO JOIN ZOOM ONLINE:**

**Department 18:**

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBeE9LVHU2NVVpQIVRUT09>

**TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

**1. SCV-273273 Bryant vs American Contractors Indemnity Company**

Defendants/Cross-Complainants’ unopposed petition to confirm arbitration award is **GRANTED**. If no hearing is requested, the Court will sign the proposed order and proposed judgment lodged with the Court on March 18, 2026.

Analysis:

Code of Civil Procedure (“CCP”) section 1285 provides: “Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.” “If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding.” (Code Civ. Proc., § 1286.)

“If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.” (Code Civ. Proc., § 1287.4.)

This matter arises out of a construction contract between Plaintiff, Stephen Bryant dba Liven Properties Construction, and Defendants/Cross-Complainants American Contractors Indemnity Company, Max Gaebler, and Sara Steinberg. Plaintiff alleges several causes of action against Defendants arising out of an alleged breach of contract and fraudulent conduct. Defendants/Cross-Complainants filed a Cross-Complaint also alleging several causes of action arising out of an alleged breach and fraudulent conduct. The matter was arbitrated and Defendants/Cross-Complainants now seek confirmation of the final arbitration award.

The arbitrator found in favor of Defendants/Cross-Complainants on all claims presented by Plaintiff as well as all claims presented by Cross-Complainants. The arbitrator found that Defendants/Cross-Complainants are entitled to recover damages in the amount of \$500,000 as well as attorney’s fees in the amount of \$232,788, costs in the amount of \$76,473.05, and prejudgment interest in the amount of \$35,619.45. The total award was \$844,880.50. The arbitrator also found that Defendants/Cross-Complainants have the right to seek the Court’s amendment of the judgment to include enforcement fees and costs, when and if they are incurred.

Defendants/Cross-Complainants herein seek to have the \$844,880.50 award confirmed. They also request additional prejudgment interest from December 11, 2025, to the date of entry of the Court Judgment, since the arbitrator’s award only included interest up until December 11th. They further seek additional attorney’s fees and costs that were not included in the arbitrator’s award, which were incurred through January of 2026.

The Court finds that the additional prejudgment interest, attorney’s fees, and costs requested are reasonable. Accordingly, \$98.89 per day from December 11, 2025, to the date of entry of the Court Judgment shall be added to the prejudgment interest calculated by the arbitrator. Furthermore, attorney’s fees shall be granted in the total amount of \$241,658 and costs shall be granted in the total amount of \$83,745.65.

Defendants/Cross-Complainants also request that the Court Judgment provide that petitioners have the right to seek the Court’s amendment of the Court Judgment to include enforcement of fees and costs when and if they are incurred. This request is granted. Finally, Defendants/Cross-Complainants request that the judgment dismiss Plaintiff’s claims against them with prejudice. The arbitrator found in favor of Defendants/Cross-Complainants on all claims asserted by Plaintiff. Therefore, this request is granted.

2. **25CV07333 Credit Corp Solutions Inc. vs Humes**

Defendant's unopposed motion to compel arbitration and to stay the proceedings is **GRANTED**. If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

On October 20, 2025, Plaintiff, Credit Corp Solutions, Inc., filed a complaint against Defendant alleging one count for Common Counts. Plaintiff seeks to recover \$2,282.08, which is the alleged past-due balance on a credit card account opened by Defendant with Citibank, N.A, who assigned the account to Plaintiff. Defendant filed an answer to the complaint on December 23, 2025. Defendant subsequently filed this motion seeking to compel arbitration of this matter. The motion was served on Plaintiff's counsel via mail on January 9, 2026. Plaintiff has failed to file an opposition.

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.)

Defendant has provided a copy of his credit card agreement with Citibank that contains an arbitration provision. The arbitration provision provides that any party may elect to have any dispute arising out of the card agreement arbitrated. Defendant has shown the existence of a valid arbitration agreement that applies to the dispute. Plaintiff has failed to establish any defenses to arbitration by failing to oppose this motion. The motion is granted.

3. **SCV-269614 Ziegler vs Monsanto Company**

Plaintiff's unopposed motion to substitute Connis K. Aust as Plaintiff in place of deceased Plaintiff Maryanne Ziegler is **GRANTED** pursuant to Code of Civil Procedure CCP § 377.31.

Unless oral argument is requested, the Court will sign the proposed order lodged with this motion.

CCP § 377.31 provides, "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." Plaintiff's counsel has filed the death certificate for Plaintiff and has established that Connis K. Aust has been appointed the Executor of Plaintiff's estate. Accordingly, the motion is granted.

4. **25CV04505 Pitts vs. Parkpoint Health Club**

Plaintiff's motion to extend time to serve summons and complaint is **DENIED** as being untimely.

The Court's minute order shall constitute the order of the Court.

Analysis:

Plaintiff filed the complaint in this action on July 14, 2025. She has yet to serve the summons and complaint on the defendant. Plaintiff filed the instant motion on January 8, 2026, pursuant to Cal. Rules of Court, Rule 3.110 and CCP § 583.210, requesting a 60-day extension in time to serve the summons and complaint.

Cal. Rules of Court, Rule 3.110(b) provides that the complaint must be served on all named defendants and proof of service on those defendants must be filed with the court within 60 days after the filing of the complaint. Rule 3.110(e) provides that the Court may extend or otherwise modify that time frame on its own motion or by application of a party. However, "An application for a court order extending the time the serve a pleading **must be filed before the time for service has elapsed.**" (Emphasis added.)

CCP § 583.210 provides that proof of service of the summons shall be filed within 60 days after the time the summons and complaint must be served upon a defendant. CCP § 583.230 provides that the parties may extend the time within which service must be made by (1) written stipulation or (2) by oral agreement made in open court. Plaintiff has not cited, and the Court is not aware of, any authority allowing the Court to extend the time for serving the summons without agreement of the other party. In fact, CCP § 583.250 provides that if service is not made in an action within the time prescribed by the article, the action shall not proceed any further and the action shall be dismissed by the Court after notice to the parties. CCP § 583.250(b) states, "The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute."

Plaintiff failed to serve the summons and complaint within their respective time limits. Plaintiff also failed to timely make this motion to extend the time within which to serve the complaint. Since the complaint was filed on July 14, 2025, this motion must have been filed by September 12, 2025. This motion was filed on January 8, 2026, nearly 4 months after the deadline. Accordingly, the motion is denied as untimely.

The Court has issued an order to show cause re dismissal that is set for April 14, 2026, at 3:30 p.m. in Department 18.

## 5. SCV-264327 Paulsen vs MidPen Housing Corporation

Defendant MidPen Housing Corporation's motion for summary judgment, joined by Defendant Sonoma County Community Development, is **DENIED**.

Plaintiffs' objection to the reply separate statement is **SUSTAINED in part and OVERRULED in part**. A reply separate statement is expressly prohibited by CCP § 437c(b)(4). However, Defendant is entitled to respond to the additional facts posed by Plaintiffs' in their opposition. So, the objection is **SUSTAINED** as to the portions of the reply separate statement that reply to Plaintiffs' response to Defendants' own separate statement (pages 2-12), but **OVERRULED** as to the portions where Defendant responds to the additional facts presented by Plaintiffs (pages 13-19.)

CDC has raised a few arguments in their reply brief that were not listed in their opening brief. Since they were not raised in the opening brief, they were not properly raised. They consist of CDC's arguments that all members of the public have permission to cross the CDC property, that the nature of the properties have changed, and that any prescriptive easement is not burdened by the CDC's project. Even if these issues had been properly raised, these arguments are not persuasive. They do not establish the lack of a triable issue.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

### Summary of Facts and Arguments:

Defendant Midpen Housing Corporation ("MidPen"), in conjunction with Defendant Sonoma County Community Development Commission ("CDC") is currently redeveloping a portion of the Roseland Village Shopping Center in Santa Rosa. (MidPen's Undisputed Material Fact "UMF," 1.)

Plaintiffs, John Paulsen, Roseland Village, and Paulsen Land Co. ("PLC") assert prescriptive easement rights against MidPen and CDC. They claim that they have the right to use the CDC property for parking purposes and oppose the CDC's plan to redevelop the land into housing. This matter was tried in June of 2021 before the Honorable Gary Nadler. Judge Nadler ruled that former Plaintiff Roseland Village Corporation ("RVC") and the current Plaintiffs did not prove their claims for interference with a written easement because the CDC's and MidPen's planned use of the property did not violate the terms of the 1956 written easement between RVC and the former owners of the CDC property, Coddling Enterprises ("Coddling"). Judge Nadler also determined, without a trial, that Plaintiffs' prescriptive easement claims were foreclosed because use of the CDC property by all of the Plaintiffs had historically been permissive. Plaintiffs appealed.

In February 2024, the Court of Appeal affirmed Judge Nadler's ruling as to the written easement claims, but reversed as to the prescriptive easement claims. The Court of Appeal found that Plaintiffs had a constitutional right to a jury trial on the prescriptive easement claims. The Court remanded for further proceedings relating to PLC and Paulsen's claimed prescriptive easement over the CDC land "because they are not parties to the written easement, and the court did not make any findings regarding whether their use of CDC's parking lots and driveways was permissive." (Muller Decl., Exhibit A., p. 23.)

RVC owned three adjacent parcels of land, referred to as Parcel 37, Parcel 47 and Parcel 46. (UMF,

6.) As depicted in the parcel map on page 6 of Defendant MidPen’s memorandum of points and authorities, Parcel 37 is on the left, Parcel 47 is in the middle, and Parcel 46 is on the right. In 1956, RVC sold parcel 37 to Coddling Enterprises and recorded a Written Easement which provided that Parcels 37 and 47 “are now employed and used as the site of various store buildings, comprising a shopping center known as Roseland Village” and that the parties “desire to grant to each other reciprocal easements over that portion of said real property which has been, and will be in future, set aside for vehicular parking lots and driveways.” (UMF, 3.) Section 2 of the Written Easement grants the owner of the Roseland Corp. Property (Parcel 47) a non-exclusive easement to use the vehicular parking lots and driveways on the CDC Property (Parcel 37) “for the benefit of itself and its invitees and licensees, for the ingress, egress, and parking of motor vehicles, for all proper purposes connected with the operation of retail business establishments by the grantee, its lessees, tenants, or agents.” (UMF, 4.) The easement did not make any mention of Parcel 46. PLC now owns Parcel 46. (UMF, 8.)

Plaintiffs PLC and Paulsen contend that since 1956 to March of 2025, PLC has continuously been using the driveways and parking areas on the CDC Property (Parcel 37) for ingress, egress, loading/unloading, and parking. (Plaintiffs’ Additional Disputed Facts (“PADF”), 11.) Plaintiffs contend that they have never been given express permission to do so; therefore, their use has been adverse. (PADF, 11.) Plaintiffs contend that this adverse use independently ripened into prescriptive easement rights for PLC’s benefit in 1994 during the Baugh family’s ownership of the CDC property and years before Sonoma County purchased the property in 2011. (PADF, 3-4.)

Defendants contend the facts show that a prescriptive easement was never created because Plaintiffs’ use of the CDC property was always permissive, never blocked, and never objected to. (UMF 19-25.) They also assert that the Written Easement between RVC and Coddling constitutes express consent for the owners of Parcel 46 to use the Coddling/CDC property. Defendant CDC also raises the additional argument that Plaintiffs are barred from obtaining a prescriptive easement from CDC pursuant to CCP § 1007. Each argument is addressed below.

## I. Defendants Have Failed to Show a Lack of Triable Issue of Material Fact

### A. *Defendants Have Failed to Show Explicit or Implicit Permission*

Defendants first argue that the record reflects implicit permission for Plaintiffs’ use of the CDC property since the use was “welcomed and allowed,” since it was beneficial to both parcels, since that “is how a shopping center works,” and since no one ever attempted to block the PLC users’ use of the property. Defendants cite *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244 (“*Aaron*”) and *Richmond Ramblers Motorcycle Club v. Western Title Guaranty Co.* (1975) 47 Cal.App.3d 747 (“*Richmond Ramblers*”) for their proposition that consent can be given implicitly. Plaintiffs on the other hand argue that permission must be expressly given and consist of more than mere non-objection. Plaintiffs cite to *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564 (“*Warsaw*”) and *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445 (“*Felgenhauer*”) for this proposition.

While the *Aaron* Court, *supra*, stated “‘Adverse use’ means only that the claimant’s use of the property was made without the explicit or implicit permission of the landowner,” it also stated “‘it means no more than that possession must be hostile, which in turn means only that the owner has not expressly consented to it by lease or license or has not been led into acquiescing in it by the

denial of adverse claim on the part of the possessor.” (*Aaron, supra*, 137 Cal.App.4th at 1252.) The *Aaron* Court found that since “the Fullerton’s testimony was unequivocal that they never spoke to the owners of the Graham Way property about using the Texaco Road until...well after the period found by the jury to constitute the statutory period of prescriptive use,” “Necessarily, their used of the road was made without express permission, qualifying it as adverse use under *Felgenhauer*.” (*Ibid.*) Furthermore, the *Aaron* Court cited to *Warsaw v. Chicago Metallic Ceilings, Inc., supra*, for the proposition that “continuous use of an easement over a long period of time without the landowner’s interference is presumptive evidence of its existence and in the absence of evidence of [express] permissive use it will be sufficient to sustain a judgment.” (*Ibid.*)

Accordingly, while the *Aaron* decision includes the term “implicit permission,” the decision does not stand for the proposition that Defendants contend it does. It does not support Defendants’ argument that non-opposition, mutual benefit, or lack of physical blockade constitutes permission in the context of prescriptive easements.

Similarly, *Richmond Ramblers, supra*, also does not support Defendants’ position. It was decided 9 years prior to *Warsaw* and 20 years prior to *Felgenhauer*. Furthermore, it primarily discusses whether public dedication of land can be implied. It does not apply to the issue at bar.

Rather, *Warsaw* and *Felgenhauer* are instructive. As stated above, the *Warsaw* Court stated, “continuous use of an easement over a long period of time without the landowner's interference is presumptive evidence of its existence and in the absence of evidence of mere permissive use it will be sufficient to sustain a judgment.” (*Warsaw, supra*, 35 Cal.3d at 571–572.) In *Warsaw*, the Court found the existence of a prescriptive easement where there was “no evidence that defendant ever expressly permitted plaintiffs to use the parcel for truck and vehicular traffic” and where the plaintiffs’ use “continued uninterrupted for approximately seven years.” (*Id.* at 572.)

The facts of *Felgenhauer, supra*, are similar to those at bar. In *Felgenhauer*, the Felgenhauers purchased a parcel of property for their restaurant, the back portion of which consisted of a parking lot owned by a bank. The Felgenhauers used the parking lot for deliveries to their restaurant’s back door for several years, consistently from 1982 to 1988. The Sonis purchased the bank property in 1998 and told the Felgenhauers that they were planning to cut off access to the restaurant from their parking lot.

Considering the authorities cited by the parties, this Court finds that non-opposition, mutual benefit, and/or lack of blockade are insufficient under the law to show permissive use.

Defendants next argue that the written easement between RVC and Coddling Enterprises in 1956 concerning Parcels 37 and 47 establishes express consent for the owners of Parcel 46 (or PLC) to use the Coddling/CDC property. However, as explained by the Court of Appeal in this matter, PLC and Paulsen were not parties to the express easement. (Muller Decl., Exhibit A, p. 23.) The easement expressly applied only to Parcel 37 (Coddling/CDC property) and Parcel 47 (RVC property). (Muller Decl., Exhibit D.) The easement does not provide that it was intended to provide express permission to the owners of Parcel 46 (PLC) to use the Coddling/CDC property. Defendants have not established a lack of triable issue of fact regarding whether this was intended by the parties. The fact that Parcel 46 was owned by RVC at the time the written easement was created does not establish this fact, especially considering the specific language of the written easement and

considering that both parties contend that each parcel was separately owned. (MidPen MPA, p. 2, ln. 21; Plaintiffs' MPA, p. 12, ln. 18-19.)

Accordingly, Defendants have failed to meet their burden of establishing the lack of triable issue of material fact regarding Plaintiffs' prescriptive easement claims.

*B. Defendants Have Failed to Establish that Plaintiffs are Barred from Obtaining a Prescriptive Easement*

Defendant CDC argues, and Defendant MidPen joins, that Plaintiffs are barred from obtaining a prescriptive easement on the CDC property because it is owned by a public entity pursuant to Civil Code § 1007. Defendants point to *Los Angeles v. Coffey* (1966) 243 Cal.App.2d 121 ("*Coffey*") to argue that Plaintiffs cannot establish prescriptive rights before the CDC acquired the property. However, the *Coffey* decision does not support Defendants' contention.

Neither *Coffey*, *Heys v. Vanek* (1989) 217 Cal.App.3d 271 (also cited by Defendants), nor Civil Code § 1007 state that if the claimed prescriptive easement vested during the time the property was owned by a private entity, the prescriptive easement is then extinguished if the property is later acquired by a public entity. Unlike the case at bar where the CDC obtained the property in 2011 after it had allegedly been used adversely for decades while privately owned, in *Coffey*, title to the property was conveyed to the County of Los Angeles only two and a half years after Coffey took possession of it. (*Coffee, supra*, at 123.) Therefore, there was insufficient time for a prescriptive easement to vest prior to the transfer to the public entity. That is not the case here. Defendants have failed to show that Plaintiffs are barred by Civil Code § 1007 from obtaining a prescriptive easement on Parcel 37.

**6. SCV-269767 Ravioli LLC vs Master Bango**

Cross-Defendants' demurrer to Cross-Complainant Master Bango's First Amended Cross-Complaint is **OVERRULED**.

Cross-Defendants' request for judicial notice is **GRANTED** in part and **DENIED** in part. It is **GRANTED** as to requests numbers 1, 4, and 5 only. It is **DENIED** as to requests numbers 2 and 3 because they consist of discovery responses that are not judicially noticeable.

Cross-Complainant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

**Background:**

This action arises from a contractual dispute between the parties regarding the purchase and delivery of cannabis products (the "Purchase Agreement"). On December 20, 2021, Plaintiffs Ravioli LLC, Spaghetti LLC, and Tortellini LLC filed their Complaint against Defendant/Cross-Complainant Master Bango alleging breach of contract and goods sold and delivered. On October 11, 2022, Master Bango filed a Cross-Complaint against Ravioli LLC, Spaghetti LLC and Tortellini, LLC alleging (1) Breach of Contract, (2) Breach of Warranties, (3) Tortious Interference with Prospective Business and Economic Advantage, and (4) Unjust Enrichment/Restitution.

On July 17, 2023, Master Bango’s counsel David Carman served a signed request for dismissal dismissing without prejudice the Third and Fourth Causes of Action to the Cross-Complaint (tortious interference with prospective business and economic advantage, and unjust enrichment/restitution), but never filed it. After obtaining leave of Court to file an amended Cross-Complaint, Master Bango filed its First Amended Cross-Complaint (“FAXC”) against Ravioli LLC, Spaghetti LLC and Tortellini, LLC as well as newly-added Cross-Defendants Farfalle LLC, Gnocchi LLC, Fettuccine LLC, Linguine LLC, Rigatoni LLC, Penne LLC, Ziti LLC, and the Pasta Farm entities. The FAXC alleges causes of action for (1) Deceit; (2) Promissory Fraud; (3) Breach of Contract; (4) Breach of The Implied Warranty of Merchantability; (5) Violation of Business and Professions Code Section 26052; and (6) Violation of Business and Professions Code Section 26038.1. It does not reassert the Tortious Interference and Unjust Enrichment causes of action.

All of the additional allegations of the FAXC are premised on the same Purchase Agreement. Two of the claims—Breach of Contract and Breach of The Implied Warranty of Merchantability—were already pleaded in the original Cross-Complaint. The causes of action for Deceit, Promissory Fraud, and Unfair Competition allege Cross-Defendants’ failure to honor, or manipulation of, the Purchase Agreement.

Cross-Defendants now demur to all causes of action of the FAXC on the grounds that they do not relate back to the Cross-Complaint and are thus time-barred and because Cross-Complainant should be judicially estopped from asserting the Fourth Cause of Action for Breach of the Implied Warranty because it is essentially the same as the Tortious Interference claim that Cross-Defendants dropped.

Cross-Defendants also make arguments relating to the newly-added Cross-Defendants specifically (Farfalle LLC, Gnocchi LLC, Fettuccine LLC, Linguine LLC, Rigatoni LLC, Penne LLC, Ziti LLC, and the Pasta Farm entities). However, the Court has granted those parties’ motion to compel arbitration. Therefore, this motion is moot in so far as it is raised by them.

#### Analysis:

##### I. Cross-Defendant’s Newly Alleged Causes of Action Relate Back to the Original Cross-Complaint

“An amended complaint is considered a new action for purposes of the statute of limitations only if the claims do not “relate back” to an earlier, timely-filed complaint.” (*Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 276.) “Under the relation-back doctrine, an amendment relates back to the original complaint if the amendment: (1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality.” (*Ibid.*) “An amended complaint relates back to an earlier complaint if it is based on the same general set of facts, even if the plaintiff alleges a different legal theory or new cause of action.” (*Id.* at 277.) “However, the doctrine will not apply if the ‘the plaintiff seeks by amendment to recover upon a set of facts entirely unrelated to those pleaded in the original complaint.’” (*Ibid.*)

In determining whether the amended complaint alleges facts that are sufficiently similar to those alleged in the original complaint, the critical inquiry is whether the defendant had adequate notice of the claim based on the original pleading. “The policy behind statutes of

limitations is to put defendants on notice of the need to defend against a claim in time to prepare a fair defense on the merits. This policy is satisfied when recovery under an amended complaint is sought on the same basic set of facts as the original pleading... Additionally, in applying the relation-back analysis, courts should consider the “strong policy in this state that cases should be decided on their merits.”

(*Ibid.*)

Cross-Defendants argue that the newly-alleged causes of action for Deceit, Promissory Fraud, and Unfair Competition do not relate back to the original Cross-Complaint because the original Cross-Complaint was confined to specific product, sold by specific parties, at a specific place and time that was nonconforming to a well specific extent. They argue that the fraud or regulatory violation causes of action “have nothing to do with the facts alleged in the original Cross-Complaint...except that they vaguely arise out of the same purchase agreement.” They assert that they do not involve the same injury, the same facts, nor the same instrumentality.

The Court does not agree. It is clear that the Cross-Complaint merely “added related facts that expanded upon the core facts of the initial complaint or corrected information from the initial complaint.” (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 718.) Here, as in *Estrada*, “Crucially, though, these new allegations were still grounded in the same accident, injury, and instrumentality.” (*Ibid.*) All of the claims in both cross-complaints arise out of the execution of the Purchase Agreement, the parties’ performance of their obligations under the Purchase Agreement, Cross-Defendants’ delivery of poor quality cannabis, and the alleged harm caused to Master Bango by Cross-Defendants’ conduct. The Court agrees with Cross-Complainant that the new allegations merely expand on Cross-Defendants’ alleged intentions regarding the Purchase Agreement.

Cross-Defendants’ argument that the FAXC does not allege the same injury is unpersuasive. Both cross-complaints allege the same injury—economic harm due to paying nearly \$5,000,000 for nonconforming cannabis that damaged Master Bango’s business.

Finally, Cross-Defendants’ argument that the newly alleged causes of action do not arise out of the same instrumentality is unconvincing. All causes of action of both cross-complaint are premised on the Bulk Flower Purchase Agreement entered into on February 16, 2021.

## II. Cross-Defendant is Not Judicially Estopped from Maintaining the Fourth Cause of Action

Cross-Defendants argue that the Fourth Cause of Action of the FAXC (Breach of The Implied Warranty of Merchantability) restates the material allegations of the Third Cause of Action of the original Cross-Complaint (Tortious Interference). They argue that Cross-Complainant dismissed the tortious interference claim by serving a request for dismissal on Cross-Defendants (though it was never filed) and by arguing to the Court that Cross-Defendants’ motion for a nunc pro tunc order was moot because the FAXC did not include that claim. Therefore, Cross-Complainant should be estopped from now re-raising it.

Cross-Defendants have failed to show grounds for judicial estoppel. “Judicial estoppel bars a party from gaining an advantage by taking one position and then seeking a second advantage by taking an incompatible position.” (*DotConnectAfrica Trust v. Internet Corp. for Assigned Names & Numbers* (2021) 68 Cal.App.5th 1141, 1158.) “The goals are to maintain the integrity of the judicial system and to protect parties from opponents’ unfair strategies.”

The doctrine is discretionary and has five prerequisites: (1) The same party has taken two positions in (2) judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (that is, the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the party did not take the first position as a result of ignorance, fraud, or mistake.

(*Ibid.*)

The Fourth Cause of Action of the FAXC for Breach of Implied Warranty does not restate the Tortious Interference claim. Cross-Complainant has always stated a claim for breach of implied warranty (formerly the Second Cause of Action of the original Cross-Complaint). Cross-Complainant has not taken two inconsistent positions. The two causes of action involve entirely different elements. (See CACI 3210; *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) The Court does not agree that the Fourth Cause of Action of the FAXC is simply a “relabeling” of the former Third Cause of Action for Intentional Interference. They are two completely different causes of action and the allegations supporting them are different.

Furthermore, it cannot be said that Cross-Defendant was previously successful in asserting the first position (element 3 above). If we regard the “first position” taken by Cross-Complainant to be the former Third Cause of Action, Cross-Complainant was not previously successful in asserting it. There was no judgment in Cross-Complainant’s favor on that cause of action. On the other hand, if we regard the “first position” taken by Cross-Complainant to be that Cross-Defendants’ motion for nunc pro tunc order was moot, Cross-Complainant is not now asserting an inconsistent position. This argument by Cross-Defendants is unavailing.

## 7. 25CV03618 Hall vs Skyfarm Construction LLC

Plaintiffs Michael Hall and Nancy Hall (together “Plaintiffs”) filed the complaint against defendants Skyfarm Construction LLC (“Defendant”) and Does 1-50 with causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence (the “Complaint”) related to 3949 Skyfarm Drive Santa Rosa, California, in the County of Sonoma (the “Property”).

This matter is on calendar for the motion by Plaintiffs pursuant to Cal. Code Civ. Proc. (“CCP”) § 473 for leave to amend the Complaint. The motion is unopposed. The Motion is **GRANTED**.

### I. Facts and Procedure

The original complaint in this action was filed by Plaintiffs on May 22, 2025. Defendant filed their answer on July 7, 2025. The matter is not yet set for trial, and the next case management conference is set for June 23, 2026 in Department 18.

### II. Governing Authorities

The California Code of Civil Procedure provides that a court “may in the furtherance of justice, and on any terms as may be proper” allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may “in its discretion, after notice to the adverse party, allow, upon

any terms as may be just, an amendment to any pleading or proceeding in other particulars”. CCP § 473(a)(1). The general rule is “liberal allowance of amendments.” *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The “policy of great liberality” applies to amendments “at any stage of the proceedings, up to and including trial.” *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. “Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail.” *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

### III. Analysis

Plaintiffs have requested leave to amend the Complaint. This is the first amendment of the Complaint since the filing of the answers, and the matter is not set for trial. Defendant has filed no opposition to the motion. Therefore, there is no articulable prejudice. The Motion is GRANTED. Plaintiffs shall file their first amended complaint within 10 days of notice of this order.

### IV. Conclusion

Based on the foregoing, Plaintiffs’ motion for leave to amend the Complaint is GRANTED. Plaintiffs shall file the first amended complaint within ten days of notice of this order. Plaintiffs’ counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

**\*\*\*This is the end of the Tentative Rulings\*\*\***