TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 19, 2026, 3:00 p.m.
Courtroom 16 – Hon. Elliot L. Daum 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

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

Defendant and cross-complainant Jason Dalk ("Dalk") moves to compel plaintiffs and Cross-Defendants Herring & Son Construction, Inc. and Maverick Excavating, Inc. ("Cross-Defendants") to provide further discovery responses and for an award of sanctions in the amount of $5,142.50.

I. Legal Authority

If a timely motion to compel further responses has been filed, the burden is on the responding party to justify any objection or failure fully to answer the interrogatories. (*Coy v. Sup.Ct. (Wolcher)* (1962) 58 Cal. 2d 210, 220-221; *Fairmont Ins. Co. v. Sup.Ct. (Stendell)* (2000) 22 Cal. 4th 245, 255.)

II. Special Interrogatories, Numbers 1 – 4

Identified in the documents accompanying the motion are Dalk's special interrogatories, numbers 1-4. Dalk's attorney, Mr. Witteman, states Cross-Defendants were served with Dalk's special interrogatories on January 21, 2026. (Witteman decl., ¶2, Exhibits A, B) Mr. Witteman states that he sent two meet and confer letters to Cross-Defendants' attorney, Ms. Donoho, but failed to receive a response. (*Id.,* ¶3, Exhibit A, B.) However, on March 6, 2026, Ms. Donoho responded indicating she had drafted a response to Mr. Witteman's letters but that they did not get mailed. (*Id.,* Exhibit 3.) In the March 6 letter, Ms. Donoho stated that Cross-Defendants' responses were "substantially compliant with applicable law" such that any supplemental responses would be limited in scope. (*Ibid.*) Mr. Witteman sent a follow-up meet and confer letter but he does not state whether further responses were provided. (*Id.,* Exhibit 4.)

Dalk's special interrogatory, number 1, seeks a response to the question: "Do you contend that Mr. Dalk's cross-complaint is sanctionable under section 128.7 of the California Code of Civil Procedure?" Special interrogatories, numbers 2, 3, and 4 pertain to Dalk's first special interrogatory.

Cross-Defendants objected, in part, that special interrogatory, number 1, improperly required them to state a legal conclusion.

Interrogatories may require parties to state their contentions as to either factual or legal issues: "An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial." (CCP § 2030.010(b).)

In addition, Cross-Defendants have not filed opposition and have therefore not justified their objections.

III. Sanctions

Dalk requests sanctions in the amount of $5,142.50. Mr. Witteman states he spent .75 hours in meet and confer efforts with Cross-Defendants' counsel, and 3.5 hours on this motion. (Witteman decl., ¶5.) He states his hourly billing rate is $750. (*Ibid.*) He requests $80 incurred in filing the motion. This court finds that $1,480 is a reasonable amount of sanctions on this motion.

IV. Conclusion

The motion is GRANTED. Cross-Defendants are directed to provide further responses to Dalk's Special Interrogatories, Numbers 1 – 4, and to pay sanctions in the amount of $1,480 all within 30 days of the service of this motion.

Dalk's counsel is directed to submit a written order to the court consistent with this ruling.

2. <u>24CV06300, County of Sonoma v. Keyes</u>

Cross-Complainants Michael Keyes and Avril Hysmenya Maciel ("Cross-Complainants") move for leave to file their First Amended Cross-Complaint ("FAXC"). The proposed FAXC substitutes Caltrans in for a ROE defendant; removes the Sixth Cause of Action for Injunctive Relief; and adds causes of action for Violation of 42 USC §1983 Deprivation of Property with Procedural Due Process of Law and Violation of 42 USC §1983 Unreasonable Search and Seizure. The FAXC further clarifies factual allegations relating to all causes of action, expands upon the facts concerning the roles and interrelationships of defendants, and refines defined terms and phrasing throughout for consistency and clarity. The proposed FAXC is attached as Exhibit A to the declaration of Davin Bacho.

I. Legal Standards

Absent prejudice, the court's discretion should be exercised in favor of allowing amendments up to and including at the time of trial. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761; *Kittredge Sports Co. v. Superior Ct.* (1989) 213 Cal.App.3d 1045, 1048.)

II. Timeliness

In opposition, Plaintiff and Cross-Defendant County of Sonoma ("County") argues that the motion is untimely and not supported by newly discovered facts. The County argues that Cross-Complainants knew the identity of CalTrans, its involvement in the project that is the subject of this action, and the facts added in the FAXC back when they filed their initial cross-complaint. The

County cites *Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926 in support of its position that the delay in seeking this amendment warrants its denial.

Roemer, supra, involved a wholly different scenario. In that case, the defendant waited until the close of its case—in the second trial against it—just prior to instructions being given to the jury to request leave to amend its answer to plead partial truth of the defamatory statements in mitigation of damages. (*Roemer, supra,* at p. 398.) The court held that the objectionable subject matter of the amendment, the conduct of the moving party, or the belated presentation of the amendment are appropriate matters for the reviewing court to consider in evaluating the trial court's exercise of discretion. (*Id.,* at p. 939.) The appellate court stated: "Assuming arguendo that defendant did not know at the start of the first trial what the evidence would show, the conclusion is inescapable that it knew at the start of the second trial what the evidence would be and, more specifically, which of the statements in the reports were true and which were not." (*Ibid*.) While part of the reason for denying the request for leave to amend was because the proposed amended answer contradicted a stipulation in which the case had been tried, the appellate court stated that the lengthy delay in that case was also reason alone to deny the request for leave to amend. (*Id.,* at pp. 939-940.)

Here, trial is set for March 12, 2027. While the County may lament the delay, it has not shown the existence of the type of prejudice which would support denying the motion.

III. Rule of Court, Rule 3.1324(b)

The County also argues that Cross-Complainant's motion does not comply with Rule of Court, Rule 3.1324(b) as it does not identify what new facts were discovered, when those facts were discovered, or why they could not have been discovered earlier.

Rule 3.1342(b) provides:

"(b) Supporting declaration

"A separate declaration must accompany the motion and must specify:

"(1) The effect of the amendment;

"(2) Why the amendment is necessary and proper;

"(3) When the facts giving rise to the amended allegations were discovered; and

"(4) The reasons why the request for amendment was not made earlier."

Here, the motion explains the effects of the amendment and argues how it is necessary and proper. The declaration of Davin Bacho explains that the amendment reflects information learned through additional investigation, discovery, and expert evaluation conducted after the filing of the original cross-complaint. (Bacho decl., ¶5.) It also explains that the parties' counsel discussed adding Cal-Trans to the action and Cross-Complainants' counsel provided a draft copy to County's counsel, who did not stipulate to its filing. (*Id.,* ¶¶4, 5.) The motion substantially complies with Rule of Court, Rule 1.1324(b).

IV. Prejudice

The County argues that allowing Cross-Complainants to file the FAXC would cause the County prejudice. The County again argues delay, that Cross-Complainants knew of the facts supporting the FAXC at the time they filed their original cross-complaint, and that CalTrans denies liability. They also argue that the FAXC would expand the lawsuit beyond what the County intended when it brought the action to rectify code violations. The County cites no authority that broadening the scope of the lawsuit is cause to deny leave to amend. Nor have they shown actual prejudice which would support denying the motion.

V. Futile Amendment

The County also argues that the newly asserted causes of action are facially deficient.

Grounds for demurrer or motion to strike are premature. After leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading. (*Kittredge*

Sports Co. v. Sup.Ct. (Marker, U.S.A.) (1989) 213 Cal. App. 3d 1045, 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal. App. 4th 739, 760.)

VI. Conclusion

Based upon the liberal policy of allowing amendments and the absence of any prejudice to the Cross-Defendants, **the motion is GRANTED.** Cross-Complainants may file their proposed FAXC within 10 days of this order.

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

3. <u>24CV07395, Marquering v. FCA US, LLC.</u>

Defendant FCA US LLC ("Defendant") moves pursuant to Code of Civil Procedure section 438(c) for judgment on the pleadings as to the Sixth Cause of Action for Fraudulent Inducement – Concealment in the complaint filed by Plaintiff Michael Marquering ("Plaintiff") on December 9, 2024, on the grounds that the cause of action fails to state facts sufficient to constitute a cause of action and is barred by the economic loss rule.

I. Complaint

Plaintiff's complaint alleges that on or about October 7, 2022, Plaintiff entered into a warranty contract with Defendant regarding a 2022 Jeep Grand Cherokee ("Subject Vehicle") which was manufactured and/or distributed by Defendant. (Complaint ["C."] ¶7.) The warranty contract contained various warranties, including but not limited to the bumper-bumper warranty, powertrain warranty, and emission warranty. (C. ¶ 8.) The express warranty is attached as Exhibit A to the complaint. Plaintiff alleges defects and nonconformities to warranty manifested themselves within the applicable express warranty period, including but not limited to, engine defects, transmission defects, and electrical defects, among other defects and non-conformities. (C. ¶ ¶ 12, 15, 16.) Plaintiff alleges these defects make the Subject Vehicle worthless. (C. ¶¶13, 14.) More specifically, Plaintiff alleges the 3.6L engine defects can result in loss of power, stalling, running rough, misfiring, and failure such that the engine is a safety concern because it can suddenly affect the driver's ability to control the vehicle, cause a non-collision vehicle fire, or result in a sudden engine failure while driving at high speeds ("Engine Defect"). (C. ¶¶16, 17.) Plaintiff alleges that Defendant was aware of the defects but failed to disclose them to Plaintiff or Defendant's sales representatives. (C. ¶¶18, 20.) Plaintiff alleges Defendant acquired its knowledge of the Engine Defect prior to Plaintiff acquiring the Subject Vehicle, through sources not available to consumers such as Plaintiff, including but not limited to pre-production and postproduction testing data; early consumer complaints about the Engine Defect made directly to Defendant and its network of dealers; aggregate warranty data compiled from Defendant's network of dealers; testing conducted by Defendant in response to these complaints; as well as warranty repair and part replacements data received by Defendant from Defendant's network of dealers, amongst other sources of internal information. (C. ¶19.) The complaint includes additional details of Defendant's alleged exclusive knowledge of the Engine Defect. (See C. ¶¶22-26.)

Plaintiff's sixth cause of action for fraudulent inducement – concealment is based upon the allegations that Defendant knew about the Engine Defect in the Subject Vehicle but failed to inform its sales representatives or Plaintiff.

II. Economic Loss Rule

Defendant argues that Plaintiff's sixth cause of action is barred by the economic loss rule.

"Economic loss consists of ' " ' "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—without any claim of personal injury or damages to other property.... " ' [Citation.]" ' [Citation.] Simply stated, the economic loss rule provides: ' " '[W]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses.' " This doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts.' [Citation.] The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. [Citation.] Quite simply, the economic loss rule ' "prevent[s] the law of contract and the law of tort from dissolving one into the other." ' [Citations.]" (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.)

The economic loss rule does not bar a claim for fraudulent inducement by concealment. (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843.) Here, as in *Dhital,* Plaintiff alleges Defendant's breach of independent duties beyond merely those contemplated under the warranty. (See *ibid.* ["[P]laintiffs allege fraudulent conduct that is independent of [manufacturer's] alleged warranty breaches. The trial court erred by sustaining [manufacturer's] demurrer to plaintiffs' fraud claim on the ground it was barred by the economic loss rule."].)

Defendant's motion on this basis is denied.

III. Failure to state facts sufficient to constitute a cause of action

Defendant also argues Plaintiff's sixth cause of action fails to allege facts sufficient to constitute a cause of action.

To establish fraudulent concealment, a plaintiff must prove: "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact." (*Rattagan v. Uber Technologies, Inc*. (2024) 17 Cal.5th 1, 40.)

Defendant argues that the complaint does not allege facts demonstrating a fiduciary relationship or sufficient facts demonstrating a transactional relationship imposing a duty of Defendant to disclose known defects with the Subject Vehicle because the complaint does not allege that Plaintiff purchased the Subject Vehicle directly from Defendant. Defendant argues the allegations show Plaintiff's relationship with Defendant was via the public at large—not a direct transactional relationship and it fails to allege facts demonstrating Defendant had exclusive knowledge that was otherwise undiscoverable by a reasonable consumer at the time of sale. Defendant also argues that the allegations in the complaint are largely conclusory and fail to plead the necessary elements with the required specificity.

A. Transactional Relationship

As discussed in *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, the general principle that a manufacturer has a duty to warn consumers of a product's hazards and faults is based in strict liability theory—not in fraud. Products liability law involves a set of circumstances, elements, and doctrines that are independent from, and not directly applicable to, fraud. (*Id.,* at 312.) The duties underlying each cannot simply be applied to the other. (*Ibid*.)

In addition, a duty to disclose arises only where there is already a sufficient relationship or transaction between the parties. (*Ibid*.) If a sufficient relationship or transaction does not exist, no duty to disclose arises even when the defendant speaks. (*Ibid*.) An exception is when an affirmative statement is so misleading that it may give rise to a fraud cause of action even where the relationship or transaction would be insufficient to give rise to a generalized duty to disclose. (*Ibid.*)

The three circumstances giving rise to a duty to disclose—exclusive knowledge, partial concealment, and active concealment circumstances—"presuppose a preexisting relationship between the parties, such as 'between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.] All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances.' [Citation.] 'Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.' " (*Rattagan, supra*, at p. 40, quoting *Bigler-Engler.*, *supra,* at p. 312.)

In *Bigler-Engler,* the court considered whether a manufacturer of a medical device committed fraud by failing to disclose to a consumer the risk of injury from using the device. (See *Bigler-Engler, supra*, 7 Cal.App.5th at p. 289.) The court distinguished a manufacturer's duty to disclose information to consumers for purposes of a fraud claim from its duty to warn consumers under strict liability principles. (*Id*. at p. 312.) The court explained that a duty to disclose requires some sort of transaction between the manufacturer and the consumer, while a duty to warn does not. Moreover, the transaction giving rise to a duty to disclose "must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Ibid.*)

The court concluded the manufacturer did not owe the plaintiff a duty to disclose because there was insufficient evidence of a transaction between them. (*Bigler-Engler, supra*, at p. 314.) The court noted the plaintiff's doctor prescribed the device, the plaintiff rented the device from the doctor's medical group, and there was no evidence the manufacturer even knew the plaintiff was using the device. (*Ibid.*)

Bigler-Engler is distinguishable. That case dealt with a treating doctor who knew about the potential for harm from a medical device he prescribed to his patient and which he benefited from economically. Despite the manufacturer also knowing about the potential harm, the manufacturer had no knowledge that the plaintiff had been provided with its device (with its outdated warnings and directions). Therefore, there was no transactional relationship to support a fraud cause of action.

Defendant also relies upon *Bjoin v. J-M Manufacturing Co., Inc.* (2025) 113 Cal.App.5th 884, which is also distinguishable. *Bjoin* involved a laborer's claim for fraudulent concealment against the manufacturer of asbestos cement pipe for failure to disclose that the dust created when cutting the pipes could cause cancer.

The above cases state that a transactional relationship must arise from a "direct relationship." This is contrasted with the manufacturer's indirect relationship with the public at large. (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th at p. 312; *Bjoin v. J-M Manufacturing Co., Inc.*, *supra,* 113 Cal.App.5th at p. 902.) Here, Plaintiffs had an ongoing relationship with Defendant via the warranty contract whereby Defendant guaranteed repair of defects covered by the warranty when Plaintiffs brought the Subject Vehicle into an authorized repair facility for covered repairs or, if the Subject Vehicle could not be repaired, to replace it. (See C., ¶ ¶ 19, 28.) This is a direct relationship—not a relationship with the public at large.

B. Specificity

Defendant argues the complaint fails to include the necessary factual details to allege a cause of action for fraud with specificity, including the time, place, and manner of any purported misrepresentation or suppression of material facts making Plaintiff's cause of action for fraudulent inducement by concealment insufficient as a matter of law. Defendant argues without specific allegations demonstrating how and when Defendant concealed the defect in a way that prevented discovery, the claim cannot survive under established legal standards.

While no authority is cited, this court is aware of the requirement of a cause of action for fraud to be alleged with specificity. And, with respect to a plaintiff's burden in asserting a fraud claim against a corporate entity, it requires him or her to "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mutual Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) However, this rule is intended to apply to affirmative misrepresentations. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) In addition, there are certain exceptions which mitigate the rigor of the rule requiring specific pleading of fraud. "Less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' [Citation.] '[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party ....'" (*Committee On Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 217.)

Here, Plaintiff alleges that Defendant had significant information pertaining to the Engine Defect which it concealed. Plaintiff alleges that Defendant acquired its knowledge of the Engine Defect prior to Plaintiff acquiring the Subject Vehicle through sources not available to consumers such as Plaintiff. While Plaintiff does not state the name of the corporate officers who allegedly concealed this information, Plaintiff is not in a position to know that information at this stage of the action. The complaint is clear about what is being alleged and provides sufficient details about the alleged Engine Defect.

Based upon the foregoing, the motion on the grounds of lack of specificity is DENIED.

IV. Conclusion

Defendant's motion for judgment on the pleadings is DENIED.

Due to the lack of opposition, this court's minute order shall constitute the order of the court.

4. <u>25CV02902, Crown Asset Management, LLC v. Vargas</u>

Plaintiff Crown Asset Management, LLC ("Plaintiff") moves for an order deeming the truth of each matter specified in the Requests for Admissions, Set One, served on Defendant Leeana Vargas ("Defendant") on September 15, 2025, admitted. Plaintiff seeks sanctions in the amount of $60 for the cost of filing this motion.

If a party to whom requests for admission are directed fails to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. (CCP section 2033.280.)

On September 15, 2025, on behalf of Plaintiff, Gurstel Law Firm prepared and served Defendant with Plaintiffs Request for Admissions, Set One. (Long decl., ¶3, Exhibit A.) Despite meet and confer efforts, Defendant has not provided a response. (*Id.,* ¶¶4, 5, Exhibit B.)

As Plaintiff has shown it served Requests for Admissions and Defendant has not responded, **unless Defendant Leeana Vargas serves responses in substantial compliance with Code of Civil Procedure section 2033.220 before the hearing on this motion,** ***this court will GRANT the motion and deem the admissions admitted and sign the proposed order as submitted.*** Pursuant to CCP section 2033.280(c), sanctions are granted in the amount of $60.

5. 25CV04578, Capital One, N.A. v. Brown

Defendant Robert B. Brown ("Defendant") moves to compel Plaintiff Capital One, N.A. to submit its claims to binding arbitration based upon the parties' cardmember agreement and staying this action pending resolution of arbitration.

I. Legal Authority

Code of Civil Procedure section 1281.2 requires this court compel the parties to arbitration if it finds an agreement to arbitrate the controversy exists unless the party opposing arbitration establishes the existence of one of the defenses enumerated in section 1281.2.

II. Complaint

Plaintiff's complaint alleges Defendant has an unpaid balance on a credit card account. The credit card agreement is attached to the complaint.

III. Arbitration Clause

The same credit card agreement attached to the complaint is attached to Defendant's declaration. It contains an arbitration clause stating that either party may choose to arbitrate any dispute arising out of or relating to Defendant's account. (Brown decl., Exhibit A, p. 3.)

IV. Conclusion

Defendant has established the existence of an arbitration agreement between the parties to this action based upon the allegations in the complaint. Plaintiff has not filed opposition and has therefore not established that this court should not enforce the arbitration agreement. Accordingly**, the motion is GRANTED. This action is STAYED pending resolution of arbitration.**

The court will sign the proposed order.

6. 25CV06360, Boyda v. Day

Plaintiff Raymond Boyda moves for an order advancing the hearing date on Defendant's motion to quash service of summons from September 11, 2026, to the earliest available date.

I. Legal Authority

"The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005." (Cal. Rules of Court, Rule 3.1300(b).)

II. "Good Cause"

Plaintiff argues there is good cause to advance the hearing on the motion to quash due to the nature of the dispute. This dispute is over "irreplaceable 500-year-old Honduran mahogany guitar sets—a finite, non-reproducible cultural and commercial resource" valued at about $250,000. Plaintiff argues that Defendant Stuart Day ("Defendant") has already admitted to losing one guitar such that each passing month that the subject guitars remain in Defendant's possession increases the risk of permanent loss. Plaintiff argues this action is based upon financial elder abuse as Plaintiff is 67 years old.

Plaintiff's initial petition filed in this action seeks declaratory relief of allegedly false UCC filings. Plaintiff's First Amended Complaint ("FAC") continues the false UCC filing allegations and adds allegations related to retained guitars sent to Defendant. The FAC contains causes of action for declaratory relief, conversion, intentional interference with prospective economic advantage, recovery of specific property, and for an accounting.

Under the circumstances, Plaintiff has not shown good cause to advance the hearing on the Defendant's motion. Defendant's motion to quash is currently set for September 11, 2026. This department's law and motion calendars are full through the beginning of next year. Plaintiff's need to have the matter finalized is not so exigent such that this court should rearrange motions in other cases to allow this matter to proceed faster.

III. Conclusion

The motion is DENIED. This court's minute order shall constitute the order of the court.

7. 25CV08672, Hemphill v. Levine

This matter is on calendar for the petition of Robert Hemphill ("Petitioner" or "Hemphill") to confirm an arbitration award dated October 8, 2025, and later amended on November 25, 2025 ("the Award"). It is also on calendar for the cross-petition of Respondents Brandon Levine ("Levine") and Lierre, Inc. ("Respondents") to vacate the Award.

The dispute between the parties involved a commercial landlord tenant lease, with Hemphill as the landlord, and Respondents as the tenant. As reflected in the Award, Petitioner prevailed in the arbitration proceedings before arbitrator Robert Murray ("Arbitrator").

In opposition, Respondents request this court review the Award for legal errors as the underlying contract allowing for arbitration contained a provision that the arbitrator did not have the power to commit errors of law or legal reasoning and that any such errors could be corrected by a petition to correct or vacate the award under Code of Civil Procedure sections 1286.2 or 1286.6. (Attachment 4(b) to Petition, Commercial Lease, section 12.28.3, pp. 27-28.)

1. Timeliness

The above Codes of Civil Procedure are part of the statutory scheme for confirming, vacating, or correcting an arbitration award. This statutory scheme contains time limits for filing a petition to vacate or correct an award: "A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner." (CCP section 1288.)

The Award is dated October 8, 2025. Allowing for 100 days to file a petition results in finding that any petition to vacate or correct the award must have been filed by January 16, 2026. Respondents' Opposition to Petition to Confirm Arbitration Award and Counter Petition to Vacate Arbitration was filed on December 18, 2025, within the statutory timeframe and is therefore timely.

2. Merits of the Award

The Award imposed damages of $575,000 to rebuild the offices and bathrooms; $200,112 to restore the mezzanine, and $1,400 to dispose of the mezzanine debris, for a total gross recovery of $775,512. (Attachment 8(c) to Petition.) Levine was granted a credit of $15,000 for the security deposit retained by Hemphill. (*Ibid.*) Therefore, the net award to Petitioner was determined to be $761,512. (*Ibid.*)

The parties agree that this court may review the Award for legal error.

a. Lease Expiration, Surrender, Acceptance, and Waiver

i. Acceptance of Premises without Reservation

Respondents argue the Arbitrator failed to apply mandatory law governing lease expiration, surrender, acceptance, and waiver. They argue Hemphill's conduct accepting the subject premises after expiration of the parties' Lease without reservation operated as a waiver of post-termination claims based upon restoration or continued performance.

1. The Lease

The Lease granted the Tenant the right, during the Lease term, to remove two specific categories of improvements: (1) the mezzanine and (2) the existing interior office structures, which included bathrooms constructed within those offices.

Section 4.04(a) permitted removal of the mezzanine and required that, "At the end of the Lease, the tenant shall restore the mezzanine back to its original location."

Section 4.04(b) permitted removal of the offices and required restoration of those offices "to its original condition" at the end of the Lease, with an option to restore them to an alternative location with the landlord's prior written approval.

2. Breach of Lease

The first issue addressed in the Award is whether Levine breached the Lease. The Arbitrator found: "In late 2018, with proper permit, Levine removed the offices, bathrooms and mezzanine. (T:108 L.14-17.) He did not restore them upon termination of the Lease or vacation of the premises and has not performed any restorations to date. Those facts are at the core of this dispute." (Award, p. 2.)

The Arbitrator stated it was Respondents' position that Hemphill, with full knowledge, waived his right to performance; i.e., his restoration rights under the Lease, based upon his conduct during the final months of the Lease term and following termination of the Lease. Respondents argued that during those time periods Hemphill relisted the premises for lease "as is"; rented to another tenant; submitted an insurance claim for the loss of the offices; accepted reconstruction plans created by Levine; and, finally, waited more than two years before serving Levine with the Arbitration Demand and claiming damages. (Award, p. 3.)

In reviewing the voluminous record presented to him, the Arbitrator determined respondent Levine breached the Lease based upon the provision therein that Levine was to restore the offices, bathrooms, and mezzanine to "its original condition upon the end of the lease." (Award, p. 4.) Levine was aware of that and "clearly expressed his intent not to comply." (*Id.* p.5.)

3. Defense to Enforcement

The Arbitrator next considered whether Levine had a viable defense to breach of the Lease. The Arbitrator considered a statute of limitations defense and stated that Levine raised the defenses of waiver and estoppel. (Award, p. 5.) The Arbitrator determined that Levine failed to meet his burden on the issues.

The Arbitrator found: "Mr. Levine's denial that Mr. Hemphill ever asked him to restore the mezzanine is not accurate. (T-1112, 1113.)" (Award, p. 4.) "Hemphill repeatedly reminded Levine of his obligations under the Lease to restore or purchase the mezzanine. (For example, see Exh.46.)" (*Ibid*.) These reminders occurred prior to Levine vacating the premises. The Arbitrator noted: "within 19 minutes of receiving the September 9, 2024, email from Levine stating, 'I do not plan to undertake any construction', Hemphill responded, 'Thanks for the update but you have torn out my offices. You are responsible for this. You have also told me that you would rebuild. I cannot rent the building out without the offices.' (Exh.32.) (See the 12:18 p.m. email from Levine and Hemphill's response at 12:37 p.m.)." (Award, pp. 5-6.)

The Arbitrator also found that Hemphill did not make any demands to Levine after the latter vacated the premises. The Arbitrator states: "The fact that neither party contacted nor communicated with the other after September 30, 2022 to discuss restoration or mitigation is troublesome and curious to the arbitrator." (Award, p. 5.) Levine vacated the premises on September 30, 2022. (*Ibid*.) "[I]t is understandable Levine could have felt 'blindsided' when he eventually received the demand two years after termination." (*Ibid*.) The Arbitrator decided that, despite the two-year silence, Hemphill retained his right to pursue Levine for breach of contract; and, that Levine still had corresponding duties to fulfill his legal obligations under the Lease. (*Ibid*.)

"There are no writings in evidence- texts, emails or otherwise - indicating Mr. Hemphill would waive his rights. Levine argues his email at 2:13 p.m. on September 9, 2022, noting in part, 'If I can be released of any other liabilities, I can sign over the engineered set of plans for the project to use if that will help bring even more value to your new tenants.' (Exh. 119 -0000193.) There is no evidence that Hemphill ever responded to that email. The contention that Hemphill did not 'disavow' the proposal is neither acquiescence to releasing Levine of his liabilities nor supportive of waiver. Simply put, there was no meeting of the minds between these parties that Hemphill agreed to release Levine from any liabilities under the Lease, in exchange for the plans or otherwise. Hence, defense number 19, Release of Obligation, fails. (Exh.9, page 3.) Moreover, the plans had already been provided to Hemphill on August 5, 2022, without any conditions placed on their use by Hemphill. (Exh.41.) On August 12, 2022, a set of final approved plans were sent to Hemphill via email, again without any conditions or reference to a release or waiver of Levine's obligations under the Lease. (Exh.38-00768.)" (Award, p. 6.)

With respect to the issue of waiver, the Arbitrator wrote: "The same facts and lack of evidence convincing this arbitrator that waiver does not apply, serve to inform on estoppel and laches. Levine chose not to restore; he chose not to even address those obligations, other than, according to Hemphill, to state during the walk through, 'I know I owe you for this', which Levine adamantly denied. (T-181, 1164) To the extent Levine argues he has been prejudiced by the passage of time and an increase in the cost to restore, he chose to ignore his responsibilities and had no communication with Hemphill after September 30, 2022. (T-l165:3.). He chose not to purchase the mezzanine for $60,000. While a tenant, he obviously knew the mezzanine materials were sitting in the parking lot, rusting. (T-1114.) The record is void of any evidence to support a finding Levine was legally prejudiced by Hemphill waiting until October 2024 to pursue the claim." (Award, p. 7.)

The Arbitrator found that the arguments of surrender and abandonment were not applicable to the subject matter. (*Ibid*.) "Once Levine chose not to extend the Lease and notified Hemphill in May 2022, and the Lease terminated September 30, 2022, his tenancy ended. There was no surrender, abandonment or change in the positions of Hemphill and Levine except their commercial landlord/tenant relationship ended. Levine no longer had any rights to the property or how it would or should be managed by Hemphill. The rights and duties of the parties set forth in the subject Lease and applicable contract law governed their relationship from that point forward. Hemphill rightly took possession of the premises and dealt with it as he saw fit, which included finding another tenant, seeking compensation from the insurance carrier, and ultimately obtaining refinancing to hire counsel. At the same time, Levine's corresponding duties to restore were not extinguished when the Lease ended. He further made no attempt to minimize his continuing exposure under the Lease." (Award, p. 7.)

In Respondents' opposition and cross-petition, Levine cites cases with different scenarios—where the tenant left prior to the end of the lease terms—and a different type of damages—the right to collect rent.

In *Dorcich v. Time Oil Co*. (1951) 103 Cal.App.2d 677, the plaintiffs sued to recover the balance of rents due under a lease of a gasoline service station. The appellate court affirmed the trial court's determination. After the abandonment of the lease by defendant, when plaintiffs rented premises to a sub-lessee for the remainder of defendant's lease term and accepted rent from the sub-lessee for four months without notifying defendant, and did not notify the defendant until lease was executed, such acts were inconsistent with defendant's absolute dominion over leased premises and resulted in surrender by operation of law.

In *Rehkopf v. Wirz* (1916) 31 Cal.App. 695, the lease was for three years. Defendants paid rent in advance for one year and vacated the premises a few days prior to the end of the first year, informing the lessor of their intent to abandon the premises. The lessor accepted the premises back by taking possession and not informing the lessees of any planned course of action but, instead, finding a new lessee. To avoid a surrender, the landlord must notify the tenant that possession is retaken on behalf of the tenant and that the landlord intends to sublet to another on behalf of the tenant in order to mitigate damages. (*Id.,* at p. 696; *Dorchich, supra,* at p. 683-684.)

This court finds no fault with the Arbitrator's reasoning. In this case, the Lease terminated due to the end of its term. Hemphill recovered dominion over the premises due to the end of the contract period. Thus, the theories of surrender and abandonment do not apply.

ii. Civil Code section 1951.2

Respondents argue Civil Code section 1951.2 provides a limited statutory exception to the common-law surrender doctrine, permitting recovery of certain damages following termination for breach if—and only if—the landlord terminates the lease for breach and satisfies the statute's mitigation and damages requirements. The statute does not apply automatically, and it does not apply where a lease simply expires by its own terms and the landlord accepts surrender without reservation. Civil Code section 1951.2 is inapplicable to this case.

iii. Doctrine of Impossibility and Prevention of Performance – Mezzanine Damages

Respondents argue, even assuming that any restoration obligation survived surrender, California law independently discharges performance where the obligee's conduct renders performance impossible. Civil Code sections 1511 and 1512 codify this principle.

There is no mention of these doctrines in the Award and Respondents cite no evidence supporting finding that they raised this issue before the Arbitrator. Nor do they cite any evidence that Levine could not have complied with his contractual obligations within the time frame they were contemplated for under the Lease. Rather, the only evidence is that Levine informed Hemphill he would not do any construction on the premises.

b. Arbitrator's additions to Lease

Respondents argue the Arbitrator rewrote the Lease by imposing restoration and reconstruction obligations that do not exist. The gist of their argument is that despite Levine not complying with his obligations under the contract, Hemphill should be burdened with the extra cost of not only the delay in putting the building back to its original condition, but the added burdens imposed by the delay due to code compliance requirements. Respondents' authority does not support this position.

c. Speculative Damages Methodology; Material Evidence

Respondents argue the Arbitrator applied an unlawful and speculative damages methodology because he rejected all estimates in the record and selected a damages figure untethered to any evidence or methodology rejecting expert testimony by Cantu, Gemperline, and Eschoo without a rationale for doing so. Respondents argue that by disregarding all the rebuild estimates and substituting an unsupported figure, the Arbitrator effectively refused to consider material evidence central to the measure of damages, substantially prejudicing Respondents' rights.

Review of the Award shows the contrary. The Award dedicates six pages to Hemphill's damages. It discusses expert testimony and the cost to make Hemphill whole.

The Arbitrator did not wholeheartedly side with Hemphill. Rather, he correctly determined that Hemphill was not entitled to an upgrade of the offices, bathrooms, and mezzanine beyond what had been in place for 16 and 14 years, respectively; he was not entitled to loss rent based upon the lack of offices and bathrooms on the premises; and damages were offset by Levine's security deposit. This court finds the Arbitrator thoughtfully considered the testimony presented to come to a fair and reasonable damage calculation based upon correct legal standards.

d. Attorney Fees

Respondents argue that the November 25, 2025, Amended Final Award awarding attorney fees and costs is entirely derivative of the invalid merits award. They argue that the arbitrator failed to apply the California Evidence Code and the lodestar methodology required by California law. They argue that because the merits award must be vacated, so must the the fee award.

As this court has upheld the Arbitrator's findings, Respondents' arguments regarding attorney fees fail. Moreover, no authority is provided that this court may override the Arbitrator's discretion in determining the reasonable amount of attorney fees to award the prevailing party.

3. Conclusion and Order

Based upon the foregoing, **the Petition of Hemphill to confirm the arbitration Award is GRANTED. Respondents' counter-petition to vacate the Award is DENIED.**

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

8. <u>25CV08769, Cupp v. Adams</u>

I. Demurrer

Defendant Mark Adams ("Adams") demurs to the Amended Petition of Ronald Cupp ("Cupp") on the grounds of failure to state facts sufficient to constitute a cause of action, for lack of jurisdiction, that the Amended Petition seeks to confirm a void arbitration award, that Adams is not bound by any valid arbitration agreement, and that Petitioner Cupp lacks legal capacity to sue pursuant to Code of Civil Procedure section 430.10(b). The demurrer is SUSTAINED without leave to amend.

a. Amended Petition

Petitioner Cupp filed his Amended Petition on December 29, 2025. The Amended Petition seeks to confirm an arbitration award entered on May 29, 2025, by three arbitrators in the matter of *Nature's Way 12778 Dupont Road, LLC v. Mark Adam* ("Award"). Cupp alleges he is the assignee of the Award.

The Award is attached to the Amended Petition and states that *Nature's Way 12779 Dupont Road, LLC* ("LLC") is the holder of the dominant estate and as of May 25, 2022, Adams is the court-appointed title-holder-in-fact of the servient estate. Further possessory rights were granted to Adams on February 29, 2024.

The dispute involved an express grant easement and a lease agreement. The LLC alleged Adams interfered with the use and enjoyment of the easement, caused a nuisance, and breached the terms of a lease contract related to the easement. The LLC sought liquidated damages and damages.

The arbitrators found that the LLC holds an express easement over property located at 12778 Dupont Road in Sebastopol. The contract between tenant Michael Louis Castagnola ("Castagnola"), grantor, and landlord LLC, grantee, was entered into on February 12, 2022, recorded on February 22, 2024, and updated on August 6, 2024. The explicit easement is for the purpose of enjoying the rights, benefits, and uses of the property in the same manner as any lease-holding tenant would have while also conserving several local endangered species.

The Award states Adams became subject to the terms of the easement agreement, which is binding upon all future title-holders, upon becoming the title-holder-in-fact of the property and the court-appointed receiver on May 25, 2022.

The Award further states that Adams has taken actions that violate the terms of the lease. "On February 29, 2024 Adams obtained three Writs of Possession, which failed to specify the terms of the easement or the lease. Adams used the writs to evict lawful tenants of the claimant, remove property, prevent collection of rents and prevent access. These actions have directly interfered with the Claimant's ability to use the lease in the manner contemplated by the contract." (Award, ¶16.) "The Respondent's actions, which included evicting the lawful tenant and sub-tenants of Nature's Way, LLC, removing property, changing locks, preventing access to the rental properties, preventing collection of rents, and preventing access to the structures and the property, constitutes a clear breach of these contractual obligations." (*Id.,* ¶17.)

The June 3, 2025, Award ordered that the lease agreement between the LLC and its tenant is binding upon all title-holders, including Adams. It confirmed the existence of an express grant easement in the LLC's favor, which is also binding upon all title-holders. It determined Adams breached the lease and caused a nuisance. The Award ordered liquidated damages in the LLC's favor in the amount of $250,000; damages of $7,500 for each month of lost rents beginning March 1, 2024; reconstruction costs of $358,312.94; and $800 as the costs of arbitration.

b. 9/25 Order Vacating the Award

In his request for judicial notice, Adams attaches a copy of the September 5, 2025, Amended Order in SCV-265714, *County of Sonoma v. Michael L. Castagnola, Trustee of the Michael L. Castagnola Revocable Trust, et al.* ("9/25 Order"). Adams argues that the 9/25 Order vacated the Award.

The 9/25 Order was entered after the Hon. Oscar A. Pardo considered Adams' Thirteen Report of Receiver, the Declaration of Mark Adams, the Supplement to the Thirteenth Report of Receiver, and all other oral and documentary evidence presented in connection with the hearing of the Report. (RJN, Exhibit B, ¶2.)

The 9/25 Order states: "The June 3, 2025 Arbitration Award issued in the matter of Nature's Way 12778 Dupont Road, LLC v. Mark Adams is hereby vacated in its entirety pursuant to California Code of Civil Procedure §1286.2." (RJN, Exhibit B, ¶2.)

In opposition, Cupp argues various reasons why the 9/25 Order should be declared ineffective or invalid as to the LLC and Cupp. No authority is cited that this court may revive an arbitration award that has been invalidated in its entirety in another action. Here, Cupp never obtained leave to sue Adams in has capacity as a court-appointed receiver, which is required. (*Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 84.) Thus, there can be no valid arbitration award as to Adams.

c. Conclusion and Order

Because the Award has been vacated in its entirety and Cupp did not obtain leave to sue Adams in his capacity as a court-appointed receiver, the Amended Petition fails to state facts sufficient to constitute a cause of action against Adams as it is based entirely upon the vacated Award. Accordingly, the demurrer is SUSTAINED without leave to amend.

Adams is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

II. Confirm Arbitration Award

Petitioner Ron Cupp ("Petitioner") moves for an order granting his First Amended Petition to Confirm Arbitration Award. Due to the ruling on the demurrer showing no valid award against Adams, **the motion is DENIED.**

The court's minute order shall constitute the court's order.

9. SCV-267521, The Design Build Company, LLC v. De Arkos

This matter is on calendar for the motion of Defendant Eduardo De Arkos ("Defendant" or "De Arkos") for a renewed order awarding his attorney fees in the amount of $394,153 incurred in defending against the breach of contract claim brought by plaintiff The Design Build Company, LLC ("DBC"). The matter was originally heard on April 15, 2026, and was continued to this calendar to allow Defendant to file additional evidence.

I. Bankruptcy Court Orders

This motion is based upon clarification from the bankruptcy court regarding its initial order lifting the stay of this action. The bankruptcy court ordered: "The moving party shall have relief from stay to pursue through judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. [¶] The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001 (a) (3) will be waived. No other relief will be awarded." (October 18, 2021 Order, In Re: The Design Build Company, LLC, p. 16.)

Defendant's memorandum states that on December 15, 2025, the Honorable Fredrick E. Clement issued an order clarifying the above referenced order ("December Order"). The December order clarifies that De Arkos may obtain an order granting him attorney fees as the prevailing party on DBC's complaint but that he may not enforce that order against DBC except against insurance proceeds or through the bankruptcy court.

II. Timeliness of Motion

In opposition, DBC argues Defendant's motion is untimely. Cal. Rules of Court, Rule 3.1702(b)(1) provides: "A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court--including attorney's fees on an appeal before the rendition of judgment in the trial court--must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case or under rules 8.822 and 8.823 in a limited civil case."

Judgment in this case was entered on March 18, 2025. This motion was filed on December 22, 2025, beyond the time allowed for the motion. However, subsection (d) of rule 3.1702 provides: "For good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation." The circumstances of this case require allowing Defendant more time due to confusion created by the bankruptcy court's order which appeared to this court to disallow the filing of a motion for an award of attorney fees.

III. Amount of Reasonable Attorney Fees

Defendant has provided the declaration of his former counsel, Robert Nellessen, with attached invoices indicating Defendant incurred $417,168.33 in attorney fees in litigating this action.

In opposition, DBC argues Defendant has not segregated recoverable fees allegedly incurred defending DBC's contract complaint from non-recoverable fees incurred prosecuting his cross-complaint, litigating against other cross-defendants, pursuing fraud and mechanics-lien theories, and engaging in post-bankruptcy litigation activity unrelated to the complaint.

Defendant's attorney's billing records start on September 22, 2020, shortly before DBC filed this action against Defendant on December 9, 2020. DBC's complaint alleged four causes of action: 1) Breach of Contract; 2) Foreclosure of Mechanic's Lien; 3) Quantum Meruit; and 4) Violation of Prompt Payment Statutes.

On February 17, 2021, De Arkos filed his cross-complaint against DBC and five additional cross-defendants alleging nine causes of action: 1) Breach of Contract and Berach of Covenant of Good Faith and Fair Dealing; 2) Negligence; 3) Fraud and Conversion; 4) Statutory Violations and Violations of Contractors License Laws; 5) Unfair Business Practices; 6) Bond and Insurance

Claim; 7) Declaratory Relief; 8) Constructive Trust; and 9) Equitable Subrogation and Declaratory Relief. Thus, De Arkos took what began as a simple breach of contract action and made it much more complicated, lengthy, and litigious.

Mr. Nellessen's invoices are detailed, which allows this court to parse out entries related to the initial action filed by DBC and De Arkos' subsequent cross-complaint.

Mr. Nellessen's billing records show he started working on the cross-complaint on November 30, 2020. Defendant was aware of DBC's bankruptcy case by July 26, 2021, and DBC filed and served its Notice of Bankruptcy on August 25, 2021. Thus, absent De Arkos proceeding with litigation against DBC and others, and seeking relief from the stay in the bankruptcy court, he would have incurred far fewer attorney fees.

After reviewing the invoices, this court finds that De Arkos reasonably incurred $45,525 in attorney fees on DBC's complaint.

IV. Conclusion

Defendant's motion is GRANTED. Defendant is awarded attorney fees in the amount of $45,525 against DBC.

Defendant is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

10. <u>SCV-267587, Felker v. JRK Residential Group, Inc.</u>

Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs") move for final approval of the settlement entered into in this action; for an award of attorney fees, costs, and service payments; and for entry of judgment as set forth in the parties' Settlement Agreement.

I. Final Fairness Hearing

After preliminary approval, the court determines whether the settlement is fair, adequate, and reasonable in a final hearing. (CRC 3.769(g); *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers to determine whether the settlement is fair. (*Dunk v. Ford, supra*, at 1801; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) The purpose of this requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Officers for Justice v. Civil Service Com*., *supra*, 688 F. 2d at 624.)

At this hearing, the Court should consider relevant factors, such as the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. However, the list is not fixed and the factors which the court considers must be tailored to each case. (*Dunk v. Ford, supra*, at 1801.) Ultimately, "the inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' [Citation.]" (*Ibid*.) The determination is in the end '"an amalgam of delicate balancing, gross approximations and rough justice." (*Officers for Justice v. Civil Service Com*. (9th Cir.1982) 688 F.2d 615, 625; see also *Dunk v. Ford, supra*, at 1801, quoting *Officers for Justice, supra*.) However, while the party seeking settlement approval has the burden of showing the settlement is "fair and reasonable," nevertheless "there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; see also *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43; *Dunk v. Ford, supra,* at 1801.)

II. Preliminary Approval

On March 25, 2026, this court granted Plaintiffs' motion for preliminary approval of the class action settlement. The Settlement Agreement provides for a cash award of $4 million; equitable relief in the form of a two-year cessation of charging late fees and a seven-year cessation of charging fees related to insurance valued at approximately $800,000; debt relief and cessation of debt collection activities valued at $350,000; remedial measures valued at $50,000 to $2.3 million, for a total value of $5.2 million to $7.4 million. The remedial measures include reducing the fees charged as well as obtaining and using compliance software in managing the properties to avoid rent overcharges. From the Settlement Fund applying to Class Members generally, $41,250 will be set aside in a separate fund (the "Set-Aside Fund") for payment of $50 to each Collection Class Member beyond they payment they receive from the Net Settlement Fund.

Nothing in the Motion for Final Approval changes this court's determination that a presumption exists that the settlement was fair. Whether it remains adequate and reasonable based upon the allocation of the Net Settlement Amount remains to be determined, as discussed below.

III. Notice to Class Members

The Allocation Plan for distributing settlement amounts to Class Members first identified Class Members through defendant JRK's records and gave each a unique claimant identifier. (Osborne decl., Exhibit A.) Collection Class Members would be eligible to submit a claim for an additional $50. (*Ibid*.) The Settlement Fund was to be divided into a Net Settlement Fund and the smaller Set Aside Fund. (*Ibid*.) Each Settlement Class Member's pro rata share of the Net Settlement Fund will be determined based on the amount of alleged damages that Settlement Class Member experienced. (*Ibid*.)

On or about March 24, 2026, Settlement Administrator Angeion Group, LLC ("Angeion") received two Class Member lists from Defendants' Counsel. (Sugrim Decl., ¶5.) The first list identified 15,112 Settlement Class Members and provided their names, addresses and email addresses, as well as property identification numbers and apartment numbers. (*Ibid*.) The second list identified 795 individuals designated as Collection Class Members and included property identification numbers and apartment numbers for each Collection Class Member. (*Ibid*.)

On or about April 7, 2026, Class Counsel supplemented the existing class data with a list of total damages for each Settlement Class Member, as calculated by Class Counsel. (*Id.,* at ¶6.) No new Settlement Class Members were added. (*Ibid*.) As directed by Class Counsel, Angeion calculated the total expected payment for each Settlement Class Member in accordance with the requirements set forth in the Allocation Plan, found in the Motion for Preliminary Approval of Class Action Settlement at page 38. (*Ibid*.)

On or about April 30, 2026, Class Counsel supplemented the class data separating them into the four class categories of (1) Late Fee Class, (2) RINCO Class, (3) Section 396 Class and (4) Tenant Protection Act Class. (*Id.,* at ¶7.)

Angeion reviewed the data files and removed duplicative records, and determined 15,095 email addresses were for unique Settlement Class Members. (*Id.,* at ¶8.) On May 6, 2026, and May 19, 2026, it sent email notice to 11,877 Class Members and notice by postcard to 3,218 Class Members, including to the 1,072 who received an email but whose email bounced back as undeliverable. (*Id.,* ¶¶9-18.) Overall, 13 Class Members were not able to be notified. (*Id.,* ¶14.)

On May 5, 2026, Angeion activated a case-specific website in which Class Members were able to select a payment method and activated a toll-free settlement number. (*Id.,* ¶¶20-21.)

The deadline for Collection Class Members to submit a claim form was June 20, 2026. (*Id.,* at ¶22.) As of July 13, 2026, Angeion received 105 Collections Class Member Claim Forms (eligible for an additional $50) and 1,403 Payment Method Election submissions. (*Ibid*.) Angeion has received 7 requests for exclusion and no objections. (*Id.,* ¶¶23, 24.)

The Collections Class Members overlap with the general Class Members. Thus, of the 15,095 Class Members, 1,403 responded.

The Notice of Settlement indicated that if the Class Members did nothing, they would be included in the settlement. Therefore, all Class Members who did not opt out should receive payment. Whether those payments are cashed will be the deciding factor to determine what percentage of Class Members actually received notice of this settlement.

IV. Administrative Fees

Angieon seeks $47,619.00 in settlement administration expenses. Angeion's expenses include $6,150.00 for the website which received 2,607 website visits by 1,544 unique users and $2,675.00 for call center expenses that received 121 calls. (Memo., 7:15-23; Sugrim decl., ¶¶20, 21.) Of the 15,095 Class Members, 1,403 responded. This low response rate leaves this court wondering whether Class Members mostly read the notice and decided to opt in by doing nothing, or if the emails sent to them were directed to spam folders. If the latter, any electronic payments will likely be missed. Accordingly, this court will initially allow payment to Angieon of $20,000 as of a percentage of the $35,000 billed. This matter will be set for a follow-up hearing to determine the total number of payments cashed by Class Members and to finalize the total amount of allowable administrative fees.

V. Attorney Fees

A finding that the settlement is fair is not dispositive of the attorney fees issue. This court assumes a fiduciary role for the class members in evaluating a request for an award of attorney's fees from the common fund. (*In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994.) The distribution of fees must bear some relationship to the services rendered. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1142.)

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254.) The latter method is most commonly used in statutory fee-shifting schemes to reward attorneys for engaging in socially useful litigation. It is also applied when the type of recovery does not allow easy calculation of the settlement's value.

Class Counsel are seeking a percentage of the settlement fund. In determining what percentage is reasonable, courts commonly consider: the percentage likely to have been negotiated between private parties in a similar case (e.g., 30-40% in tort cases); percentages applied in other class actions (usually around 25%); the quality of class counsel; and the size of the award. (See Weil, et al, Civil Procedure Before Trial, (TRG 2024) § 14:145.3, citing *In re Ikon Office Solutions, Inc. Secur. Litig.* (ED PA 2000) 194 FRD 166, 193.)

Use of the percentage method is particularly appropriate in "common fund" cases such as this one, as it simply awards counsel some percentage of the settlement fund. (*In re Ikon Office Solutions, Inc. Secur. Litig, supra,* at p. 193.) This method theoretically aligns the interests of counsel and class more closely than does the lodestar method: a larger recovery with fewer hours expended benefits all parties. (*Ibid*.)

The question is whether the requested percent—here, 50 percent—is an appropriate percentage for Class Counsel in this action. This determination is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award. (*See In re Ikon Office Solutions, supra,* at p. 193.)

The Ninth Circuit has consistently approved a "benchmark" award of 25 percent of the common fund. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) However, that percentage is often higher for smaller cases where recovery is under $10 million. (*Haro v. Walmart, Inc.* (E.D. Cal., Jan. 10, 2025, No. 1:21-CV-00239-KES-SKO) 2025 WL 73109, at *13.)

With respect to the contingent nature of litigation, courts tend to find above-market-value fee awards more appropriate in this context given the need to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) Moreover, when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award. (*Ibid*.)

In cross-checking the attorney fee request, "the 'lodestar' is calculated by multiplying the number of hours ... reasonably expended on the litigation by a reasonable hourly rate." (*Id.* at p. 261.) In determining the reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. (*Ibid*.) "Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Ibid*.)

Class Counsel seek $2,000,000 in attorney's fees, 50% of the $4,000,000 Gross Settlement Amend. This is by far the largest percentage that this court has seen sought by any class counsel.

Class Counsel state they have expended more than 4,700 billable hours on this action—up approximately 300 hours since the motion for preliminary approval. (Osborne decl., ¶9; Preliminary Approval Osborne decl., ¶14.) Kevin Osborne, Elizabeth Kramer, and Julia Erickson are the three attorneys at Erickson Kramer Osborne LLP ("EKO") who worked on this case. (Osborne decl., ¶¶2-7.) Joshua Katz, of the Law Office of Joshua Katz, and Todd Espinosa, of the Law Office of Todd Espinosa, were also Class Counsel.

Ms. Kramer and Ms. Erickson appear to each have 13 years of experience in complex litigation and class actions. (Osborne decl., ¶¶5, 6.) There billing rates for this case are stated to be $1,050 per hour. (*Ibid*.) Ms. Kramer spent 716 hours on this case. (*Id.,* ¶20.) Ms. Erickson spent 239. (*Ibid*.)

Mr. Osborne has 18 years of experience in complex litigation. (*Id.,* ¶7.) His hourly rate is also stated to be $1,050. (*Ibid*.) He billed 506 hours. (*Id.,* at ¶20.)

Mr. Katz states he has practiced law for 36 years and that his experience includes class actions in state and federal courts. (Katz decl., ¶¶2, 3.) For the past 23 years, Mr. Katz has maintained a solo practice in Sonoma County focusing on housing issues. (*Id.,* ¶4.) He states his current billing rate is $650 per hour. (*Id.,* ¶7.) While he did not maintain contemporaneous records of the time he spent on this action, he estimates he spent 1685 hours on this case, presumably based upon the tasks he participated in. (*Id.,* ¶¶8-16.)

Mr. Espinosa has 25 years of experience, primarily in the areas of tenants' rights, housing discrimination, consumer protection and complex plaintiff-side litigation. (Espinosa decl., ¶ 4.) He states his hourly billing rate is $875. (*Id.* ¶ 8.) He states he spent 1,779.2 billable hours in this case. (*Id.,* ¶13.)

Class Counsel note they have obtained high hourly billing rates in other cases. However, their recovery in other cases, based upon the complexity of those cases, the work performed and results obtained therein, is irrelevant. No billing records for this case have been provided.

The hourly rates supporting Class Counsel's lodestar are excessive for this area. In addition, Class Counsel have not specified whether their fees include work performed by law clerks and/or paralegals not billed to the case. Routine case management, discovery, and basic motions do not support the above hourly rates. Nor does time spent in mediation or in discussions with experts. In fact, Class Counsel have not indicated what was so complex or extraordinary about this case, or how Class Counsel managed it so efficiently, that supports charging such high hourly rates.

Based upon the length of time this case was litigated, the issues involved, and the number of attorneys representing the class, this court finds that the percentage method of recovery is most appropriate. However, 50% is excessive. This court will allow attorney fees in the amount of 35% of the Settlement Amount, or $1,400,000.

VI. Expenses

Class Counsel seek $98,846 in expenses. In opposition, Defendant argues that some of the requested expenses are not authorized by CCP section 1032 and 1033.5.

In reply, Class Counsel argue that the settlement agreement did not limit costs to those recoverable under sections 1032 and 1033.5 and that litigation expenses for such things as expert fees are routinely granted in common fund cases.

Mr. Katz states he has advanced $19,793 in litigation expenses. (Katz decl., ¶20.) Mr. Espinosa states he has incurred $35,818.07 in litigation expenses. (Espinosa decl., ¶18.) Neither has specified how those costs were incurred.

EKO breaks down $98,846 into: $1,025.55 in copying fees; $12,693.47 for ESI collection and hosting; $52,350.00 for expert fees; $1,953.35 for filing and service; $228.70 for legal research; $10,752.38 for mediation fees; $14,239.90 for transcripts; $1,247.94 for translation; and $4,354.71 for travel. (Osborne decl., ¶27.)

While this court has discretion to award litigation expenses pursuant to the settlement agreement, the expenses must be reasonable. Generally, expert fees are only allowable when ordered by the court. (CCP section 1033.5(a)(8).) Travel, transcription, and interpreter expenses are only allowable for depositions. (CCP section 1033.5(a)(3).) Here, this court cannot determine how the costs were incurred. The amount of costs requested in this case seems unusually high. The court will continue the hearing on this issue to allow Class Counsel to provide a detailed explanation of expenses reasonably incurred in this matter.

VII. Representative Service Award

This case had four class representatives. Jeanace Zetino was a resident of JRK's apartment complex in Petaluma from 2018 through 2023. (Zetino decl., ¶2.) She states she has been involved in this case since 2020 and estimates she spent 50 hours collecting and reading documents; participating in phone calls, meetings, and emails; and sitting for her deposition. (*Id.,* ¶¶3-7.) She took a day off of work to participate in her deposition. (*Id.,* ¶4.) She also describes the toll the lawsuit took on her. (*Id.,* ¶¶8-9.)

Herman Grishaver was a resident at JRK's apartment in Petaluma from 2017 through 2020. (Grishaver decl., ¶2.) He estimates he spent 55 hours or more on this case and describes the impact of litigation on him and his wife. (*Id.,* ¶¶3-9.)

Edgar Cruz Soriano was a resident of JRK's apartment in Petaluma from 2009 through 2019. (*Id.,* ¶2.) He also estimates about 50 hours spent on this litigation. (*Id.,* ¶¶3-7.)

Sharon Felker was a resident at JRK's apartment in Petaluma from 2016 through 2023. (Felker decl., ¶2.) She also estimates 50 hours spent on this case and discusses the toll the case took on her. (*Id.,* ¶¶3-8.)

Based upon these declarations, this court finds that service awards of $7,500 each are reasonable in this matter.

VIII. Conclusion

The motion is GRANTED as follows: Settlement Administrator Angeion may pay itself $20,000 as an initial portion of the total allowable administration expense. Class Counsel are awarded $1,400,000 in attorney fees. Class Representatives Jeanace Zetino, Herman Grishaver, Edgar Cruz Soriano, and Sharon Felker are each awarded $7,500. **The hearing on this motion is CONTINUED to March 10, 2027, at 3:00 p.m., in Department 16, to allow Class Counsel to provide evidence of expenses incurred, and to allow Angeion to make payments to Class Members and to follow up with a report on the percentage of Class Members who cash payments.**

Class Counsel is directed to submit an updated order consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.